

State of South Dakota

EIGHTY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2006

400M0673

CONFERENCE COMMITTEE ENGROSSED NO. **SB** **207** - 02/23/2006

Introduced by: The Committee on Health and Human Services at the request of the Governor

1 FOR AN ACT ENTITLED, An Act to revise certain provisions pertaining to the sale,
2 purchasing, and possession of products containing pseudoephedrine or ephedrine.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 34-20D-1 be amended to read as follows:

5 34-20D-1. No retailer may sell, in a single transaction, more than two packages containing
6 pseudoephedrine or ephedrine as an active ingredient. For purposes of this chapter, the term,
7 retailer, means any person who sells merchandise at retail and from whom original packages of
8 nonprescription drugs are sold or taken to be sold at retail and who is licensed by the Board of
9 Pharmacy to sell nonprescription drugs. This restriction does not apply to any sale made
10 pursuant to a valid prescription drug order prescribed by a practitioner as defined in § 36-11-2
11 with appropriate authority. Any retailer or any employee of a retailer who sells packages
12 containing pseudoephedrine or ephedrine in violation of this section is guilty of a Class 1
13 misdemeanor.

14 Section 2. That § 34-20D-2 be amended to read as follows:

15 34-20D-2. No person may purchase, in a single transaction, more than two packages



1 containing pseudoephedrine or ephedrine as an active ingredient. This restriction does not apply
2 to purchases made with a valid prescription drug order prescribed by a practitioner as defined
3 in § 36-11-2 with appropriate authority. Any person who purchases packages containing
4 pseudoephedrine or ephedrine in violation of this section is guilty of a Class 1 misdemeanor.

5 Section 3. That § 34-20D-3 be amended to read as follows:

6 34-20D-3. Any retailer who offers for sale a product containing pseudoephedrine ~~as the~~
7 ~~product's sole~~ or ephedrine as an active ingredient shall display and offer the product for sale,
8 except as otherwise provided, behind a counter where the public is not permitted or in a locked
9 case so that a customer wanting access to the package must ask a store employee for assistance.
10 The retailer may display or offer for sale without restriction a product containing
11 pseudoephedrine ~~as the sole~~ or ephedrine as an active ingredient if the product is displayed using
12 any type of anti-theft device system including an electronic anti-theft device system that utilizes
13 a product tag and detection alarm which prevents the theft of the product. ~~This section does not~~
14 ~~apply to any package of a product containing pseudoephedrine as the product's sole active~~
15 ~~ingredient which is in liquid, liquid cap, or gel cap form or any package of a product containing~~
16 ~~pseudoephedrine as the product's sole active ingredient which is primarily intended for~~
17 ~~administration to children under twelve years of age, according to the product's label, regardless~~
18 ~~of whether the product is in liquid or solid form.~~

19 Section 4. That § 34-20D-4 be repealed.

20 ~~34-20D-4. Any retailer who offers for sale any combination product containing~~
21 ~~pseudoephedrine or ephedrine as an active ingredient, any package of a product containing~~
22 ~~pseudoephedrine as the product's sole active ingredient which is in liquid, liquid cap, or gel cap~~
23 ~~form or any package of a product containing pseudoephedrine as the product's sole active~~
24 ~~ingredient which is primarily intended for administration to children under twelve years of age,~~

1 ~~according to the product's label, regardless of whether the product is in liquid or solid form,~~
2 ~~shall display and offer such product for sale, except as otherwise provided, within twenty feet~~
3 ~~of a counter which allows the attendant to view the products in an unobstructed manner. A~~
4 ~~retailer may display or offer for sale without restriction any of the products listed in this section~~
5 ~~if the product is displayed using any type of anti-theft device system, including an electronic~~
6 ~~anti-theft device system that utilizes a product tag and detection alarm which prevents the theft~~
7 ~~of the product.~~

8 Section 5. That § 34-20D-5 be amended to read as follows:

9 34-20D-5. A retailer shall post notice at the location where a product containing
10 pseudoephedrine or ephedrine as an active ingredient is displayed or offered for sale stating the
11 following:

12 South Dakota law prohibits the sale or purchase of more than two packages containing
13 pseudoephedrine or ephedrine as an active ingredient unless sold or purchased with a valid
14 prescription drug order prescribed by a practitioner as defined in § 36-11-2 with appropriate
15 authority.

16 Section 6. That chapter 34-20D be amended by adding thereto a NEW SECTION to read
17 as follows:

18 If offering for sale a product containing pseudoephedrine or ephedrine as an active
19 ingredient, a retailer shall, before making such a sale, require and make a record of the
20 identification of the person purchasing the product containing pseudoephedrine or ephedrine.
21 For purposes of this section, the term, identification, means a document issued by a
22 governmental agency which contains a description of the person or a photograph of the person,
23 or both, and gives the person's date of birth, such as a driver's license, passport, or military
24 identification card. The retailer shall maintain the record of identification, including the

1 purchaser's name and date of birth. On August 1, 2006, and no later than the fifth day of every
2 month thereafter, the retailer shall send any such records to the Office of the Attorney General.
3 No retailer may use or maintain the record for any private or commercial purpose or disclose
4 the record to any person, except as authorized by law. The retailer shall disclose the record,
5 upon request, to a law enforcement agency for a law enforcement purpose.

6 Section 7. That chapter 34-20D be amended by adding thereto a NEW SECTION to read
7 as follows:

8 Any retailer who in good faith releases information governed by this chapter to a law
9 enforcement agency for a law enforcement purpose is immune from civil liability for such
10 release unless the release constitutes gross negligence or intentional, wanton, or willful
11 misconduct.

12 Section 8. That chapter 34-20D be amended by adding thereto a NEW SECTION to read
13 as follows:

14 No person may possess, receive, or otherwise acquire more than nine grams of ephedrine
15 base, pseudoephedrine base, or phenylpropanolamine base in any product, mixture, or
16 preparation within any thirty-day period. This restriction does not apply to any quantity of
17 product, mixture, or preparation obtained pursuant to a valid prescription drug order prescribed
18 by a practitioner as defined in § 36-11-2 with appropriate authority.

19 Possession of more than nine grams of a drug product containing more than nine grams of
20 ephedrine base, pseudoephedrine base, or phenylpropanolamine base constitutes a rebuttable
21 presumption of the intent to use the product as a precursor to methamphetamine or another
22 controlled substance. This rebuttable presumption does not apply to:

- 23 (1) A retail distributor of drug products;
- 24 (2) A wholesale drug distributor, or its agents;

- 1 (3) A manufacturer of drug products, or its agents;
- 2 (4) A pharmacist licensed by the Board of Pharmacy; or
- 3 (5) A licensed health care professional possessing the drug products in the course of
- 4 carrying out the profession.
- 5 Any violation of this section is a Class 1 misdemeanor.