

Part X-F. Ephedrine, Pseudoephedrine, and Phenylpropanolamine Monitoring Act

[Editor's Note: This new part was created by Act 314 of the 2009 Legislature. Subsequent amendments are noted herein.]

§1049.1. Short title

This Part may be referred to and may be cited as the "Ephedrine, Pseudoephedrine, and Phenylpropanolamine Monitoring Act".

§1049.2. Legislative findings

- A. The Louisiana Legislature recognizes the devastating effect methamphetamine production has had on its citizens.
- B. Methamphetamine is unique in that it is a synthetic drug which can be produced by someone who does not possess specialized skill or training, is highly addictive, and can be made from inexpensive readily accessible ingredients.
- C. Methamphetamine has been reported as one of the most addictive and deadly drug threats in the United States. The use of methamphetamine can result in fatal kidney and lung disorders, brain damage, liver damage, chronic depression, psychosis, hallucinations, and many other devastating physical and mental effects.
- D. Louisiana has experienced a drop in methamphetamine production as restrictions on the sale of ephedrine, pseudoephedrine, and phenylpropanolamine have been implemented.
- E. Methamphetamine is not only deadly because of the devastating effects of drug addiction, but the production of methamphetamine has resulted in several laboratory explosions and the exposure of our citizens to death, injury, or toxic substances.
- F. While the production of methamphetamine has resulted in devastating effects on Louisiana citizens, the drugs used in making methamphetamine: ephedrine, pseudoephedrine, and phenylpropanolamine have legitimate medical uses.
- G. The Legislature of Louisiana hereby finds and declares that a pharmacist is in the unique position of dispensing nonprescription products containing ephedrine, pseudoephedrine, or phenylpropanolamine and interacting with the patient at the point of purchase of these products. This relationship with the consumer and the pharmacists' specialized knowledge about the pharmaceutical qualities of products containing ephedrine, pseudoephedrine, and phenylpropanolamine make the pharmacy the best location for the sale of those products to ensure the health and safety of Louisiana's citizens.
- H. The Louisiana Legislature, in enacting the provisions of this Part, seeks to provide for the legitimate medical needs of our citizens while at the same time protecting our citizens against the devastating effects of methamphetamines and methamphetamine production.
- I. In order to assist law enforcement and prosecutorial agencies in addressing the growing problems associated with methamphetamine production, a real time electronic database is needed to record purchases of products containing ephedrine, pseudoephedrine, and phenylpropanolamine at a pharmacy.
- J. Technology is available to record all purchases of products containing ephedrine, pseudoephedrine, and phenylpropanolamine at the point of sale and to transmit that information to a centralized location to be monitored and maintained in a central computer monitoring system operated by the Louisiana State Police.

§1049.3. Restriction on the sale of nonprescription products containing ephedrine, pseudoephedrine, or phenylpropanolamine or their salts, optical isomers, and salts of optical isomers

- A. A nonprescription material, compound, mixture, or preparation containing any detectable quantity of ephedrine, pseudoephedrine, or phenylpropanolamine, their salts, or optical isomers, or salts of optical isomers shall be dispensed, sold, or distributed only by a licensed pharmacist, certified pharmacy technician, or pharmacy employee permitted by the Louisiana Board of Pharmacy.
- B. A nonprescription material, compound, mixture, or preparation containing any detectable quantity of ephedrine, pseudoephedrine, or phenylpropanolamine, their salts or optical isomers, or salts of optical isomers shall not be dispensed, sold, or distributed by a pharmacist, certified pharmacy technician, or pharmacy employee to any person unless the following occur:
 - (1) The purchaser produces a federal or state issued photo identification, or a document that, with respect to identification, is considered acceptable for purposes of Sections 274a.2(b)(1)(v)(A) and 274a.2(b)(1)(v)(B) of Title 8, Code of Federal Regulations (as in effect on or after March 9, 2006).

- (2) The purchaser signs a written or electronic log or receipt showing the date of the transaction, the name of the purchaser, and the amount of the material, compound, mixture, or preparation sold.
- (3) The transaction information is recorded by the pharmacy and transmitted to the central computer monitoring system as provided for in this Part.
- C. (1) A pharmacist, certified pharmacy technician, or pharmacy employee may sell or distribute nonprescription products containing ephedrine, pseudoephedrine, or phenylpropanolamine; however, those drugs shall not be distributed in a quantity greater than nine grams of ephedrine base, pseudoephedrine base, or phenylpropanolamine base, to the same purchaser within any thirty-day period.
- (2) A pharmacist, certified pharmacy technician, or pharmacy employee selling or distributing nonprescription products containing ephedrine, pseudoephedrine, or phenylpropanolamine shall be exempt from the rules relative to the record keeping requirements for the dispensing of those nonprescription controlled dangerous substances; however, the pharmacist, certified pharmacy technician, or pharmacy employee shall record the transaction information and transmit it to the central computer monitoring system as provided for in this Part.
- D. (1) No person shall purchase, receive, or otherwise acquire more than nine grams of any product, mixture, or preparation described in Subsection A of this Section within any thirty-day period.
- (2) The requirements of this Section shall not apply to any quantity of such product, mixture, or preparation dispensed pursuant to a valid prescription from a licensed practitioner with prescriptive authority.
- E. A law enforcement officer may, pursuant to R.S. 40:986(B), obtain an administrative search warrant to inspect the written logs or receipts maintained at a pharmacy pursuant to the provisions of this Section.
- F. A parish or municipal government authority may regulate the selling, delivering, or providing of packages or grams of pseudoephedrine, ephedrine, or phenylpropanolamine only in a manner that is not more or less restrictive than regulation by the state under this Section.

§1049.4. Central computer monitoring system; system requirements

- A. In order to facilitate the monitoring of sales of nonprescription products containing ephedrine, pseudoephedrine, or phenylpropanolamine the pharmacist, certified pharmacy technician, or other pharmacy employee shall record all of the following information at the point of sale regarding the transaction:
 - (1) The date of the transaction.
 - (2) The name and address of the purchaser verified through photo identification of the purchaser as provided for in R.S. 40:1049.3(B)(1)(a).
 - (3) The name, quantity of packages, and total gram weight of the product or products purchased, received, or otherwise acquired.
- B. Upon recordation of the transaction information, the pharmacy shall transmit the information immediately to a central computer system for purposes of monitoring the sales of these products as provided for in this Section.
- C. The central computer system authorized by the provisions of this Section shall be designed and operated to allow the monitoring and reading of sales information regarding products containing ephedrine, pseudoephedrine, and phenylpropanolamine at the point of sale instantly and on a real-time basis.
- D. The central computer system authorized by the provisions of this Section shall be located within and administered by the Department of Public Safety and Corrections, office of state police.
- E. The central computer monitoring system shall provide for the monitoring of sales of compounds containing ephedrine, pseudoephedrine, and phenylpropanolamine and shall be capable of providing an online computer alert, to ensure direct scrutiny of conditions which would violate the provisions of this Part by law enforcement.
- F. The provisions of this Part shall not be construed to require that any pharmacy maintain the transaction records required under the provisions of this Part separate from the log book that is required under 21 USC 830(e). Use of the central computer monitoring system as required by this Part shall be deemed to satisfy both of these purposes.

§1049.5. Funding sources; no fees on pharmacists or pharmacies

- A. Funding for the acquisition, implementation, and operation of the central computer monitoring system shall be funded through appropriation, gifts, grants, donations, or any other funding sources not otherwise prohibited by law.
- B. Thereafter, the maintenance of the central computer monitoring system shall be funded through appropriation, gifts, grants, donations, or any other funding sources not otherwise prohibited by law.

- C. The Department of Public Safety and Corrections, office of state police, and the Louisiana Sheriffs' Association may actively seek gifts, grants, and donations that may be available through the federal government or other sources to help fund the central computer monitoring system, provided that such gifts, grants, and donations are not otherwise prohibited by law or rule.
- D. No fee shall be charged to any pharmacist or pharmacy to defray the costs of acquiring, implementing, or maintaining the central computer monitoring system as authorized by the provisions of this Part, nor shall any fee be charged to any pharmacist or pharmacy for the transmission of information to the central computer monitoring system.

§1049.6. Shared information; state police; sheriffs

- A. The Department of Public Safety and Corrections, office of state police, shall share the information regarding the sale of products containing ephedrine, pseudoephedrine, or phenylpropanolamine as authorized by the provisions of this Part and provide instant access to the Louisiana Sheriffs' Association.
- B. The Department of Public Safety and Corrections, office of state police, is authorized to enter into a cooperative endeavor, memorandum of understanding, contract, or any other agreement with the Louisiana Sheriffs' Association, or any other law enforcement agency in order to share the information regarding the sale of products containing ephedrine, pseudoephedrine, or phenylpropanolamine as authorized by the provisions of this Part and to provide instant access to all appropriate law enforcement agencies.

§1049.7. Board of Pharmacy access to information

The Department of Public Safety and Corrections, office of state police, shall provide access to the information regarding the sale of products containing ephedrine, pseudoephedrine, or phenylpropanolamine as authorized by the provisions of this Part to the Louisiana Board of Pharmacy.

§1049.8. Pharmacists, certified pharmacy technician, or pharmacy employee not required to stop sale; may report

- A. (1) The provisions of this Part shall not be construed to require a pharmacist, certified pharmacy technician, or pharmacy employee to prohibit or complete a sale of a product containing ephedrine, pseudoephedrine, or phenylpropanolamine even if the pharmacist, certified pharmacy technician, or other pharmacy employee observes a warning or signal from the central computer monitoring program which indicates that the purchaser has purchased those products in amounts which exceeds the amount which can be purchased by law.
(2) The provisions of this Part shall not be construed to limit a pharmacist's professional judgment as otherwise provided for by law or rules adopted by the Louisiana Board of Pharmacy.
- B. A pharmacist, certified pharmacy technician, or pharmacy employee may report suspected violations of this Section or any other law to any local, state, or federal law enforcement agency, or the appropriate prosecutorial agency for further investigation or prosecution.
- C. No pharmacist, certified pharmacy technician, or pharmacy employee who in good faith reports suspected violations as provided for in this Part shall be liable to any person or entity for any claim of damages as a result of the act of reporting the information, and no lawsuit may be predicated thereon.

§1049.9. Licensed practitioner with prescriptive authority exempted

A health care practitioner with prescriptive authority who is licensed in the state of Louisiana shall be exempt from the requirements of the provisions of this Part in dispensing any product containing ephedrine, pseudoephedrine, or phenylpropanolamine to his patient.

§1049.10. Transmission of information contingent on functionality of central computer monitoring system

- A. The transmittal of transaction information of products containing ephedrine, pseudoephedrine, and phenylpropanolamine as authorized by the provisions of this Part is contingent upon the acquisition, implementation, and operation of the central computer system.
- B. No licensed pharmacist, certified pharmacy technician, or pharmacy employee at a pharmacy located in Louisiana and permitted by the Louisiana Board of Pharmacy shall be required to transmit data to the central computer monitoring system until the funding for the acquisition and implementation of the central computer monitoring system has been secured through appropriation, gifts, grants, donations, or any other funding sources not otherwise prohibited by law.
- C. No pharmacy, licensed pharmacist, certified pharmacy technician, or pharmacy employee at a pharmacy located in Louisiana and permitted by the Louisiana Board of Pharmacy shall be held responsible for

failure to transmit transaction information as required by this Part if at any time the central computer monitoring system is rendered inoperable due to natural disaster, tampering, or any other reason.

§1049.11. Limitation of liability

- A. The owner or operator of a retail pharmacy, who has submitted to the United States Attorney General a self-certification in accordance with the requirements of 21 USC 830(e) regarding training of employees engaged in the sale of products containing ephedrine, pseudoephedrine, or phenylpropanolamine shall not be liable for violations of this Act by the retail pharmacy's employees.
- B. No licensed pharmacist, certified pharmacy technician, or pharmacy employee at a pharmacy located in Louisiana and permitted by the Louisiana Board of Pharmacy shall be personally liable for any act or omission resulting in damage, injury, or loss arising out of the dispensing of a compound containing ephedrine, pseudoephedrine, or phenylpropanolamine and the transmittal of that transaction to the central computer monitoring program as authorized by the provisions of this Part; however, this limitation of liability shall not be applicable if the damage, injury, or loss was caused by the gross negligence or willful or wanton misconduct of the pharmacist, certified pharmacy technician, or pharmacy employee.