

HOUSE No. 118

The Commonwealth of Massachusetts

PRESENTED BY:

Michael J. Finn

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act specifying an electronic system to ensure that sales of certain products containing pseudoephedrine (PSE) do not exceed limits established under federal law.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: | DATE ADDED: |
|------------------------|--------------------|-----------------|
| <i>Michael J. Finn</i> | <i>6th Hampden</i> | <i>2/5/2021</i> |

HOUSE No. 118

By Mr. Finn of West Springfield, a petition (accompanied by bill, House, No. 118) of Michael J. Finn relative to electronic systems designed to monitoring sales of certain products containing pseudoephedrine. Advanced Information Technology, the Internet and Cybersecurity.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Second General Court
(2021-2022)**

An Act specifying an electronic system to ensure that sales of certain products containing pseudoephedrine (PSE) do not exceed limits established under federal law.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Chapter 94C of the General Laws is hereby amended by inserting after section [49] the
2 following section:-

3 Section [50]. (a) Definitions. The following definitions apply to this section 50. (1)

4 "Real-time stop sale system" means a system intended to be used by law enforcement agencies
5 and pharmacies or other business establishments that:

6 (A) is installed, operated, and maintained free of any one-time or recurring charge to the
7 business establishment or to the state;

8 (B) is able to communicate in real time with similar systems operated in other states and
9 similar systems containing information submitted by more than one state;

10 (C) complies with the security policy of the Criminal Justice Information Services
11 division of the Federal Bureau of Investigation;

12 (D) complies with information exchange standards adopted by the National Information
13 Exchange Model;

14 (E) uses a mechanism to prevent the completion of a sale of a product containing
15 ephedrine, pseudoephedrine, or norpseudoephedrine that would violate state or federal law
16 regarding the purchase of a product containing those substances; and

17 (F) is equipped with an override of the mechanism that:

18 (i) may be activated by an employee of a business establishment; and

19 (ii) creates a record of each activation of the override.]

20 (b) (1)A retailer shall not sell to the same person, and a person shall not purchase,
21 products containing more than three and six tenths (3.6) grams per day or more than nine (9)
22 grams per thirty day period of ephedrine or pseudoephedrine base, or their isomers. The limits
23 shall apply to the total amount of base ephedrine and pseudoephedrine contained in the products,
24 and not the overall weight of the products. (2) Nonprescription products containing
25 pseudoephedrine or ephedrine shall be maintained behind the counter or in a locked case where
26 the customer does not have direct access.

27 (c) The retailer shall require any person purchasing a nonprescription product that
28 contains pseudoephedrine or ephedrine to present valid government issued photo identification at
29 the point of sale. The retailer shall record the name and address of the purchaser; name and
30 quantity of product purchased; date and time purchased; and purchaser identification type and
31 number, such as driver license state and number, and require the purchaser's signature in a
32 logbook.

33 (d) Beginning January 1, 2022, a retailer shall, before completing a sale under this
34 section, electronically submit the required information to the real-time stop sale system
35 administered by the [state agency]; provided that the system is available without a charge to
36 retailers for access. Absent negligence, wantonness, recklessness, or deliberate misconduct, any
37 retailer utilizing the electronic sales tracking system in accordance with this subdivision shall not
38 be civilly liable as a result of any act or omission in carrying out the duties required by this
39 subsection and shall be immune from liability to any third party unless the retailer has violated
40 any provision of this subsection in relation to a claim brought for such violation.

41 (e) If a retailer selling a nonprescription product containing pseudoephedrine or
42 ephedrine experiences mechanical or electronic failure of the electronic sales tracking system
43 and is unable to comply with the electronic sales tracking requirement, the retailer shall maintain
44 a written log or an alternative electronic recordkeeping mechanism until such time as the retailer
45 is able to comply with the electronic sales tracking requirement.

46 (f) The vendor of the real time stop sale system shall forward state transaction records in
47 the real-time stop sale system to the appropriate state agency weekly, and provide real-time
48 access to the real-time stop sale system information through the system's online portal to law
49 enforcement in the state as authorized by the agency.

50 (g) This system shall be capable of generating a stop sale alert, which shall be a
51 notification that completion of the sale would result in the seller or purchaser violating the
52 quantity limits set forth in this section. The seller shall not complete the sale if the system
53 generates a stop sale alert. The system shall contain an override function that may be used by a
54 dispenser of ephedrine or pseudoephedrine who has a reasonable fear of imminent bodily harm if

55 they do not complete a sale. Each instance in which the override function is utilized shall be
56 logged by the system.

57 (h) A violation of any provision of this section is a misdemeanor, punishable by fine only
58 [not to exceed []]. If a product is dispensed in violation of subsection (a), the owner or operator
59 of the wholesale or retail establishment dispensing the product shall be in violation of subsection
60 (a).

61 (i) This section does not apply to a person who obtains the product pursuant to a valid
62 prescription.

63 (j) This section shall preempt and supersede any local laws or ordinances regulating sales
64 of products containing pseudoephedrine or ephedrine.