

SENATE No. 1106

The Commonwealth of Massachusetts

PRESENTED BY:

Pavel Payano

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:

Pavel Payano

DISTRICT/ADDRESS:

First Essex

SENATE No. 1106

By Mr. Payano, a petition (accompanied by bill, Senate, No. 1106) of Pavel M. Payano for legislation to specify an electronic system to ensure that sales of certain products containing pseudoephedrine (PSE) do not exceed limits established under federal law. The Judiciary.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Third General Court
(2023-2024)

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

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

4 (1) "Real-time stop sale system" means a system intended to be used by law enforcement
5 agencies 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;

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

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

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

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

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

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

(b)(1) A retailer shall not sell to the same person, and a person shall not purchase, products containing more than three and six tenths (3.6) grams per day or more than nine (9) grams per thirty day period of ephedrine or pseudoephedrine base, or their isomers. The limits shall apply to the total amount of base ephedrine and pseudoephedrine contained in the products, and not the overall weight of the products.

(2) Nonprescription products containing pseudoephedrine or ephedrine shall be maintained behind the counter or in a locked case where the customer does not have direct access.

(c) The retailer shall require any person purchasing a nonprescription product that contains pseudoephedrine or ephedrine to present valid government issued photo identification at the point of sale. The retailer shall record the name and address of the purchaser; name and

31 quantity of product purchased; date and time purchased; and purchaser identification type and
32 number, such as driver license state and number, and require the purchaser's signature in a
33 logbook.

34 (d) Beginning January 1, 2024, a retailer shall, before completing a sale under this
35 section, electronically submit the required information to the real-time stop sale system
36 administered by the department of public health or such other appropriate state agency; provided
37 that the system is available without a charge to retailers for access. Absent negligence,
38 wantonness, recklessness, or deliberate misconduct, any retailer utilizing the electronic sales
39 tracking system in accordance with this subdivision shall not be civilly liable as a result of any
40 act or omission in carrying out the duties required by this subsection and shall be immune from
41 liability to any third party unless the retailer has violated any provision of this subsection in
42 relation to a claim brought for such violation.

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

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

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

(h) A violation of any provision of this section is a misdemeanor, punishable by fine only, not to exceed \$1,000 for a first violation of this section, and not to exceed \$5,000 for any subsequent violation. If a product is dispensed in violation of subsection (a), the owner or operator of the wholesale or retail establishment dispensing the product shall be in violation of subsection (a).

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

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