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State of Minnesota  
HOUSE OF REPRESENTATIVES  
NINETIETH SESSION

H. F. No. 3604

03/12/2018 Authored by Lesch and Baker  
The bill was read for the first time and referred to the Committee on Health and Human Services Reform

1.1 A bill for an act  
1.2 relating to health; creating an exemption to pharmacy practice for certain  
1.3 investigation activities; amending Minnesota Statutes 2016, section 151.26;  
1.4 proposing coding for new law in Minnesota Statutes, chapter 151.

1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6 Section 1. Minnesota Statutes 2016, section 151.26, is amended to read:

1.7 **151.26 EXCEPTIONS.**

1.8 Subdivision 1. **Generally.** (a) Nothing in this chapter shall subject a person duly licensed  
1.9 in this state to practice medicine, dentistry, or veterinary medicine, to inspection by the  
1.10 State Board of Pharmacy, nor prevent the person from administering drugs, medicines,  
1.11 chemicals, or poisons in the person's practice, nor prevent a duly licensed practitioner from  
1.12 furnishing to a patient properly packaged and labeled drugs, medicines, chemicals, or poisons  
1.13 as may be considered appropriate in the treatment of such patient; unless the person is  
1.14 engaged in the dispensing, sale, or distribution of drugs and the board provides reasonable  
1.15 notice of an inspection.

1.16 (b) Except for the provisions of section 151.37, nothing in this chapter applies to or  
1.17 interferes with the dispensing, in its original package and at no charge to the patient, of a  
1.18 legend drug that was packaged by a manufacturer and provided to the dispenser for dispensing  
1.19 as a professional sample. Samples of a controlled substance shall only be dispensed when  
1.20 one of the approved indications for the controlled substance is a seizure disorder and when  
1.21 the sample is prepared and distributed pursuant to Code of Federal Regulations, title 21,  
1.22 part 203, subpart D.

2.1        (c) Nothing in this chapter shall prevent the sale of drugs, medicines, chemicals, or  
2.2 poisons at wholesale to licensed physicians, dentists and veterinarians for use in their practice,  
2.3 nor to hospitals for use therein.

2.4        (d) Nothing in this chapter shall prevent the sale of drugs, chemicals, or poisons either  
2.5 at wholesale or retail for use for commercial purposes, or in the arts, nor interfere with the  
2.6 sale of insecticides, as defined in Minnesota Statutes 1974, section 24.069, and nothing in  
2.7 this chapter shall prevent the sale of common household preparations and other drugs,  
2.8 chemicals, and poisons sold exclusively for use for nonmedicinal purposes; provided that  
2.9 this exception does not apply to any compound, substance, or derivative that is not approved  
2.10 for human consumption by the United States Food and Drug Administration or specifically  
2.11 permitted for human consumption under Minnesota law, and, when introduced into the  
2.12 body, induces an effect similar to that of a Schedule I or Schedule II controlled substance  
2.13 listed in section 152.02, subdivisions 2 and 3, or Minnesota Rules, parts 6800.4210 and  
2.14 6800.4220, regardless of whether the substance is marketed for the purpose of human  
2.15 consumption.

2.16        (e) Nothing in this chapter shall apply to or interfere with the vending or retailing of any  
2.17 nonprescription medicine or drug not otherwise prohibited by statute that is prepackaged,  
2.18 fully prepared by the manufacturer or producer for use by the consumer, and labeled in  
2.19 accordance with the requirements of the state or federal Food and Drug Act; nor to the  
2.20 manufacture, wholesaling, vending, or retailing of flavoring extracts, toilet articles, cosmetics,  
2.21 perfumes, spices, and other commonly used household articles of a chemical nature, for use  
2.22 for nonmedicinal purposes; provided that this exception does not apply to any compound,  
2.23 substance, or derivative that is not approved for human consumption by the United States  
2.24 Food and Drug Administration or specifically permitted for human consumption under  
2.25 Minnesota law, and, when introduced into the body, induces an effect similar to that of a  
2.26 Schedule I or Schedule II controlled substance listed in section 152.02, subdivisions 2 and  
2.27 3, or Minnesota Rules, parts 6800.4210 and 6800.4220, regardless of whether the substance  
2.28 is marketed for the purpose of human consumption. Nothing in this chapter shall prevent  
2.29 the sale of drugs or medicines by licensed pharmacists at a discount to persons over 65 years  
2.30 of age.

2.31        (f) A person who is engaged in an investigation of the counterfeit drug trade may engage  
2.32 in pharmacy-related activities pursuant to section 151.311.

3.1 Sec. 2. [151.311] INVESTIGATION OF COUNTERFEIT DRUGS.

3.2 (a) For the purposes of this section, "investigator" means a person who is engaged in an  
3.3 investigation of the counterfeit drug trade.

3.4 (b) A person who is employed or retained as an investigator by a pharmaceutical  
3.5 manufacturer or practitioner may dispense a prescription drug order for the purpose of  
3.6 determining whether a legend drug has been counterfeited, adulterated, or misbranded.

3.7 (c) A drug sample collected by an investigator during an investigation of counterfeit  
3.8 drugs may only be used for testing or as evidence in a civil or criminal action, and may not  
3.9 be resold or used for human consumption.

3.10 (d) A pharmaceutical manufacturer that collects drug samples during an investigation  
3.11 of counterfeit drugs must: (1) maintain records of the drug samples, and (2) make the records  
3.12 available to law enforcement agencies or other entities engaged in enforcement of this  
3.13 chapter.