

By: Representatives Smith (39th), Reynolds

To: Judiciary A

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 607

1 AN ACT TO PLACE RESTRICTIONS ON THE SALE OF METHAMPHETAMINE
2 PRECURSORS; TO PROVIDE CRIMINAL OFFENSES AND PENALTIES; TO
3 PROHIBIT THE POSSESSION OF PRECURSORS WITH THE INTENT TO CREATE
4 METHAMPHETAMINE OR OTHER CONTROLLED SUBSTANCES; TO PROVIDE
5 PENALTIES; TO PROVIDE FOR UNIFORM APPLICATION OF THE PROVISIONS OF
6 THIS ACT; TO REQUIRE THE BUREAU OF NARCOTICS TO CREATE A PROGRAM
7 RELATED TO THE METHAMPHETAMINE PROBLEM TO ASSIST RETAILERS IN
8 REPORTING SUSPICIOUS ACTIVITIES; TO AMEND SECTION 41-29-313,
9 MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO; AND FOR RELATED
10 PURPOSES.

11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

12 **SECTION 1.** (1) (a) No retail establishment or individual
13 shall transfer, sell, deliver or provide more than two (2)
14 packages or six (6) grams of pseudoephedrine base, ephedrine base
15 or phenylpropanolamine base product in a single retail sales
16 transaction to a consumer.

17 (b) Pseudoephedrine base, ephedrine base or
18 phenylpropanolamine products shall be stored by retail
19 establishments by: (i) placing the products behind a counter;
20 (ii) placing the products within thirty (30) feet of the
21 establishment's cashiers; (iii) placing the products in a locked
22 display case; or (iv) placing the products under video
23 surveillance.

24 (c) Every month all wholesalers of pseudoephedrine
25 base, ephedrine base or phenylpropanolamine products shall provide
26 the Mississippi Bureau of Narcotics with copies of all sales
27 receipts of such products.

28 (2) This section does not apply to pediatric products
29 primarily intended for administration, according to label
30 instructions, to children under twelve (12) years of age, either:

31 (a) In solid dosage form when individual dosage units
32 do not exceed fifteen (15) milligrams of ephedrine,
33 pseudoephedrine or phenylpropanolamine; or

34 (b) In liquid form when recommended dosage units,
35 according to label instructions, do not exceed fifteen (15)
36 milligrams of ephedrine, pseudoephedrine or phenylpropanolamine
37 per five (5) milliliters of liquid product; or

38 (c) In liquid form that are primarily intended for
39 administration to children under two (2) years of age for whom the
40 recommended dosage does not exceed two (2) milliliters and that
41 have a total package content of not more than one (1) fluid ounce.

42 (3) The retail sale of nonliquid pseudoephedrine, ephedrine
43 or phenylpropanolamine product is limited to:

44 (a) Sales in packages containing not more than a total
45 of three (3) grams of pseudoephedrine base, ephedrine base or
46 phenylpropanolamine base; and

47 (b) Sales in blister packs, each blister containing not
48 more than two (2) dosage units, or when the use of blister packs
49 is technically infeasible, sales in unit dose packets or pouches.

50 (4) Any retail establishment, not currently
51 licensed/registered by the Mississippi State Board of Pharmacy,
52 which sells pseudoephedrine, ephedrine or phenylpropanolamine
53 products shall submit a notice of intent to sell with the
54 Mississippi State Board of Pharmacy indicating the establishment's
55 intent to sell pseudoephedrine, ephedrine or phenylpropanolamine
56 products.

57 (5) A person is guilty of unlawful distribution of a
58 methamphetamine precursor when he knowingly and unlawfully sells,
59 transfers, distributes, or dispenses any product containing
60 ephedrine, pseudoephedrine or phenylpropanolamine, if the person
61 knows that the purchaser will use the product as a precursor to
62 methamphetamine or another controlled illegal substance or if the

63 person sells, transfers, distributes or dispenses the product with
64 reckless disregard as to how the product will be used.

65 (a) Unlawful distribution of a methamphetamine
66 precursor is a felony subject to a fine of not more than Five
67 Thousand Dollars (\$5,000.00) or imprisonment for not more than
68 five (5) years, or both, for the first offense and subject to a
69 fine of not more than Twenty-five Thousand Dollars (\$25,000.00) or
70 imprisonment for not more than twenty (20) years, or both, for a
71 second or subsequent offense.

72 (b) A retailer who is the general owner or operator of
73 an establishment that sells pseudoephedrine, ephedrine, or
74 phenylpropanolamine products shall not be penalized pursuant to
75 this section if the retailer documents that an employee training
76 program was conducted to train employees on compliance with this
77 section.

78 **SECTION 2.** (1) A person is guilty of unlawful possession of
79 a methamphetamine precursor when he knowingly and unlawfully
80 possesses a product containing ephedrine, pseudoephedrine or
81 phenylpropanolamine with intent to use the product as a precursor
82 to methamphetamine or another controlled substance.

83 (2) Except as provided herein, possession of one or more
84 products containing more than forty-eight (48) grams of ephedrine,
85 pseudoephedrine or phenylpropanolamine, or their salts, isomers or
86 salts of isomers shall constitute a rebuttable presumption of the
87 intent to use the product as a precursor to methamphetamine or
88 another controlled substance. The rebuttable presumption
89 established by this subsection shall not apply to the following
90 persons who are lawfully possessing the identified drug products
91 in the course of legitimate business:

92 (a) A retail distributor of the drug products described
93 in subsection (2) possessing a valid business license or
94 wholesaler;

95 (b) A wholesale drug distributor, or its agents,
96 licensed by the Mississippi State Board of Pharmacy;

97 (c) A manufacturer of drug products described in
98 subsection (2), or its agents, licensed by the Mississippi State
99 Board of Pharmacy;

100 (d) A pharmacist licensed by the Mississippi State
101 Board of Pharmacy; or

102 (e) A licensed health care professional possessing the
103 drug products described in subsection (2) in the course of
104 carrying out his profession.

105 (3) Unlawful possession of a methamphetamine precursor is a
106 felony subject to a fine of not more than Five Thousand Dollars
107 (\$5,000.00) or imprisonment for not more than five (5) years, or
108 both, for the first offense and subject to a fine of not more than
109 Twenty-five Thousand Dollars (\$25,000.00) or imprisonment for not
110 more than twenty (20) years, or both, for a second or subsequent
111 offense.

112 **SECTION 3.** This act is applicable and uniform throughout
113 this state and in all counties, cities, towns and political
114 subdivisions, whether incorporated or unincorporated therein. A
115 county, city or town may not adopt or enforce any ordinance,
116 pertaining to this act, which prohibits conduct that is not
117 prohibited under this act, or defining violations or penalties
118 different from those provided under this act. However, this
119 section does not preclude a county, city, town or political
120 subdivision from revoking, canceling, suspending, or otherwise
121 limiting a business or professional license it has issued for
122 conduct that violates any provision of this act.

123 **SECTION 4.** (1) The Bureau of Narcotics shall develop and
124 maintain a program to inform retailers about the methamphetamine
125 problem in the state and devise procedures and forms for retailers
126 to use in reporting to the Bureau of Narcotics suspicious
127 purchases, thefts or other transactions involving any products

128 under the retailer's control which contain a regulated precursor
129 under the provisions of this act including, but not limited to,
130 over-the-counter, nonprescription pseudoephedrine products.

131 (2) Reporting by retailers as required by this section shall
132 be voluntary.

133 (3) Retailers participating in the program and reporting
134 information to the Bureau of Narcotics in good faith pursuant to
135 this section shall be immune from civil and criminal liability for
136 a violation of this act.

137 **SECTION 5.** Section 41-29-313, Mississippi Code of 1972, is
138 amended as follows:

139 41-29-313. (1) (a) Except as authorized in this section
140 and as provided in Sections 1 through 4 of this act, it is
141 unlawful for any person to knowingly or intentionally:

142 (i) Purchase, possess, transfer or distribute any
143 two (2) or more of the listed precursor chemicals or drugs in any
144 amount with the intent to unlawfully manufacture a controlled
145 substance;

146 (ii) Purchase, possess, transfer or distribute any
147 two (2) or more of the listed precursor chemicals or drugs in any
148 amount, knowing, or under circumstances where one reasonably
149 should know, that the listed precursor chemical or drug will be
150 used to unlawfully manufacture a controlled substance.

151 (b) Any person who violates this subsection (1), upon
152 conviction, is guilty of a felony and may be imprisoned for a
153 period not to exceed thirty (30) years and shall be fined not less
154 than Five Thousand Dollars (\$5,000.00) nor more than One Million
155 Dollars (\$1,000,000.00), or both fine and imprisonment.

156 (2) (a) It is unlawful for any person to knowingly or
157 intentionally steal or unlawfully take or carry away any amount of
158 anhydrous ammonia.

159 (b) It is unlawful for any person to purchase, possess,
160 transfer or distribute any amount of anhydrous ammonia, knowing,

161 or under circumstances where one reasonably should know, that the
162 anhydrous ammonia will be used to unlawfully manufacture a
163 controlled substance.

164 (c) It is unlawful for any person to purchase, possess,
165 transfer or distribute two hundred fifty (250) dosage units or
166 fifteen (15) grams in weight (dosage unit and weight as defined in
167 Section 41-29-139) of pseudoephedrine or ephedrine, knowing, or
168 under circumstances where one reasonably should know, that the
169 pseudoephedrine or ephedrine will be used to unlawfully
170 manufacture a controlled substance.

171 (d) Any person who violates this subsection (2), upon
172 conviction, is guilty of a felony and may be imprisoned for a
173 period not to exceed five (5) years and shall be fined not more
174 than Five Thousand Dollars (\$5,000.00), or both fine and
175 imprisonment.

176 (3) The terms "listed precursor drug or chemical" means a
177 precursor drug or chemical that, in addition to legitimate uses,
178 may be used in manufacturing a controlled substance in violation
179 of this chapter. Such term includes any salt, optical isomer or
180 salt of an optical isomer, whenever the existence of such salt,
181 optical isomer or salt of optical isomer is possible within the
182 specific chemical designation. The chemicals or drugs listed in
183 this section are included by whatever official, common, usual,
184 chemical or trade name designated. The following are "listed
185 precursor drugs or chemicals":

- 186 (a) Ether;
- 187 (b) Anhydrous ammonia;
- 188 (c) Pseudoephedrine;
- 189 (d) Ephedrine;
- 190 (e) Denatured alcohol (Ethanol);
- 191 (f) Lithium;
- 192 (g) Freon;
- 193 (h) Hydrochloric acid;

- 194 (i) Hydriodic acid;
- 195 (j) Red phosphorous;
- 196 (k) Iodine;
- 197 (l) Sodium metal;
- 198 (m) Muriatic acid;
- 199 (n) Sulfuric acid;
- 200 (o) Hydrogen chloride gas;
- 201 (p) Potassium;
- 202 (q) Methanol;
- 203 (r) Isopropyl alcohol;
- 204 (s) Hexanes;
- 205 (t) Heptanes;
- 206 (u) Acetone;
- 207 (v) Toluene;
- 208 (w) Xylenes.

209 (4) Nothing in this section shall preclude any farmer from
210 storing or using any of the listed precursor drugs or chemicals
211 listed in this section in the normal pursuit of farming
212 operations.

213 (5) Nothing in this section shall preclude any wholesaler,
214 retailer or pharmacist from possessing or selling the listed
215 precursor drugs or chemicals in the normal pursuit of business.

216 (6) Any person who violates the provisions of this section
217 with children under the age of eighteen (18) years present may be
218 subject to a term of imprisonment or a fine, or both, of twice
219 that provided in this section.

220 (7) Any person who violates the provisions of this section
221 when the offense occurs in any hotel or apartment building or
222 complex may be subject to a term of imprisonment or a fine, or
223 both, of twice that provided in this section. For the purposes of
224 this subsection (7), the following terms shall have the meanings
225 ascribed to them:

226 (a) "Hotel" means a hotel, inn, motel, tourist court,
227 apartment house, rooming house, or any other place where sleeping
228 accommodations are furnished or offered for pay if four (4) or
229 more rooms are available for transient guests.

230 (b) "Apartment building" means any building, including,
231 without limitation, a condominium building, having four (4) or
232 more dwelling units.

233 **SECTION 6.** This act shall take effect and be in force from
234 and after July 1, 2005.