

By: Representative Smith (39th)

To: Judiciary A

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

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

20 (a) In solid dosage form when individual dosage units
21 do not exceed fifteen (15) milligrams of ephedrine,
22 pseudoephedrine or phenylpropanolamine; or

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

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

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

33 (a) Sales in packages containing not more than a total
34 of three (3) grams of pseudoephedrine base, ephedrine base or
35 phenylpropanolamine base; and

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

39 (4) Any retail establishment, not currently
40 licensed/registered by the Mississippi State Board of Pharmacy,
41 which sells pseudoephedrine, ephedrine or phenylpropanolamine
42 products shall submit a notice of intent to sell with the
43 Mississippi State Board of Pharmacy indicating the establishment's
44 intent to sell pseudoephedrine, ephedrine or phenylpropanolamine
45 products.

46 (5) A person is guilty of unlawful distribution of a
47 methamphetamine precursor when he knowingly and unlawfully sells,
48 transfers, distributes, or dispenses any product containing
49 ephedrine, pseudoephedrine or phenylpropanolamine, if the person
50 knows that the purchaser will use the product as a precursor to
51 methamphetamine or another controlled illegal substance or if the
52 person sells, transfers, distributes or dispenses the product with
53 reckless disregard as to how the product will be used.

54 (a) Unlawful distribution of a methamphetamine
55 precursor is a felony subject to a fine of not more than Five
56 Thousand Dollars (\$5,000.00) or imprisonment for not more than
57 five (5) years, or both, for the first offense and subject to a
58 fine of not more than Twenty-five Thousand Dollars (\$25,000.00) or
59 imprisonment for not more than twenty (20) years, or both, for a
60 second or subsequent offense.

61 (b) A retailer who is the general owner or operator of
62 an establishment that sells pseudoephedrine, ephedrine, or
63 phenylpropanolamine products shall not be penalized pursuant to

64 this section if the retailer documents that an employee training
65 program was conducted to train employees on compliance with this
66 section.

67 **SECTION 2.** (1) A person is guilty of unlawful possession of
68 a methamphetamine precursor when he knowingly and unlawfully
69 possesses a product containing ephedrine, pseudoephedrine or
70 phenylpropanolamine with intent to use the product as a precursor
71 to methamphetamine or another controlled substance.

72 (2) Except as provided herein, possession of one or more
73 products containing more than twenty-four (24) grams of ephedrine,
74 pseudoephedrine or phenylpropanolamine, or their salts, isomers or
75 salts of isomers shall constitute a rebuttable presumption of the
76 intent to use the product as a precursor to methamphetamine or
77 another controlled substance. The rebuttable presumption
78 established by this subsection shall not apply to the following
79 persons who are lawfully possessing the identified drug products
80 in the course of legitimate business:

81 (a) A retail distributor of the drug products described
82 in subsection (2) possessing a valid business license or
83 wholesaler;

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

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

89 (d) A pharmacist licensed by the Mississippi State
90 Board of Pharmacy; or

91 (e) A licensed health care professional possessing the
92 drug products described in subsection (2) in the course of
93 carrying out his profession.

94 (3) Unlawful possession of a methamphetamine precursor is a
95 felony subject to a fine of not more than Five Thousand Dollars
96 (\$5,000.00) or imprisonment for not more than five (5) years, or

97 both, for the first offense and subject to a fine of not more than
98 Twenty-five Thousand Dollars (\$25,000.00) or imprisonment for not
99 more than twenty (20) years, or both, for a second or subsequent
100 offense.

101 **SECTION 3.** This act is applicable and uniform throughout
102 this state and in all counties, cities, towns and political
103 subdivisions, whether incorporated or unincorporated therein. A
104 county, city or town may not adopt or enforce any ordinance,
105 pertaining to this act, which prohibits conduct that is not
106 prohibited under this act, or defining violations or penalties
107 different from those provided under this act. However, this
108 section does not preclude a county, city, town or political
109 subdivision from revoking, canceling, suspending, or otherwise
110 limiting a business or professional license it has issued for
111 conduct that violates any provision of this act.

112 **SECTION 4.** (1) The Bureau of Narcotics shall develop and
113 maintain a program to inform retailers about the methamphetamine
114 problem in the state and devise procedures and forms for retailers
115 to use in reporting to the Bureau of Narcotics suspicious
116 purchases, thefts or other transactions involving any products
117 under the retailer's control which contain a regulated precursor
118 under the provisions of this act including, but not limited to,
119 over-the-counter, nonprescription pseudoephedrine products.

120 (2) Reporting by retailers as required by this section shall
121 be voluntary.

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

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

128 41-29-313. (1) (a) Except as authorized in this section
129 and as provided in Sections 1 through 4 of this act, it is
130 unlawful for any person to knowingly or intentionally:

131 (i) Purchase, possess, transfer or distribute any
132 two (2) or more of the listed precursor chemicals or drugs in any
133 amount with the intent to unlawfully manufacture a controlled
134 substance;

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

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

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

148 (b) It is unlawful for any person to purchase, possess,
149 transfer or distribute any amount of anhydrous ammonia, knowing,
150 or under circumstances where one reasonably should know, that the
151 anhydrous ammonia will be used to unlawfully manufacture a
152 controlled substance.

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

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

165 (3) The terms "listed precursor drug or chemical" means a
166 precursor drug or chemical that, in addition to legitimate uses,
167 may be used in manufacturing a controlled substance in violation
168 of this chapter. Such term includes any salt, optical isomer or
169 salt of an optical isomer, whenever the existence of such salt,
170 optical isomer or salt of optical isomer is possible within the
171 specific chemical designation. The chemicals or drugs listed in
172 this section are included by whatever official, common, usual,
173 chemical or trade name designated. The following are "listed
174 precursor drugs or chemicals":

- 175 (a) Ether;
- 176 (b) Anhydrous ammonia;
- 177 (c) Pseudoephedrine;
- 178 (d) Ephedrine;
- 179 (e) Denatured alcohol (Ethanol);
- 180 (f) Lithium;
- 181 (g) Freon;
- 182 (h) Hydrochloric acid;
- 183 (i) Hydriodic acid;
- 184 (j) Red phosphorous;
- 185 (k) Iodine;
- 186 (l) Sodium metal;
- 187 (m) Muriatic acid;
- 188 (n) Sulfuric acid;
- 189 (o) Hydrogen chloride gas;
- 190 (p) Potassium;
- 191 (q) Methanol;
- 192 (r) Isopropyl alcohol;

- 193 (s) Hexanes;
- 194 (t) Heptanes;
- 195 (u) Acetone;
- 196 (v) Toluene;
- 197 (w) Xylenes.

198 (4) Nothing in this section shall preclude any farmer from
199 storing or using any of the listed precursor drugs or chemicals
200 listed in this section in the normal pursuit of farming
201 operations.

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

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

209 (7) Any person who violates the provisions of this section
210 when the offense occurs in any hotel or apartment building or
211 complex may be subject to a term of imprisonment or a fine, or
212 both, of twice that provided in this section. For the purposes of
213 this subsection (7), the following terms shall have the meanings
214 ascribed to them:

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

219 (b) "Apartment building" means any building, including,
220 without limitation, a condominium building, having four (4) or
221 more dwelling units.

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