

By: Senator(s) Albritton

To: Judiciary, Division B

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 2141

1 AN ACT TO PLACE RESTRICTIONS ON THE PURCHASE AND SALE OF
2 CERTAIN METHAMPHETAMINE PRECURSORS; TO PROVIDE CRIMINAL PENALTIES;
3 TO AUTHORIZE THE BUREAU OF NARCOTICS TO CREATE A PROGRAM RELATED
4 TO THE METHAMPHETAMINE PROBLEM TO ASSIST RETAILERS IN REPORTING
5 SUSPICIOUS ACTIVITIES; TO AMEND SECTION 41-29-313, MISSISSIPPI
6 CODE OF 1972, TO CREATE A REBUTTABLE PRESUMPTION OF INTENT TO
7 MANUFACTURE FOR A PERSON IN POSSESSION OF CERTAIN QUANTITIES OF
8 EPHEDRINE OR PSEUDOEPHEDRINE AND TO LIMIT APPLICABILITY OF THE
9 PRESUMPTION; AND FOR RELATED PURPOSES.

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

11 **SECTION 1.** (1) For the purposes of this section the
12 following words and phrases shall have the meanings attributed to
13 them unless the context clearly requires otherwise:

14 (a) "Pseudoephedrine" means pseudoephedrine, its salts
15 or optical isomers, or salts of optical isomers.

16 (b) "Ephedrine" means ephedrine, its salts or optical
17 isomers, or salts of optical isomers.

18 (c) "Tablet" means a solid dosage form of varying
19 weight, size and shape that may be molded or compressed and that
20 contains a medicinal substance in pure or diluted form; the term
21 also includes "caplet" but does not include "capsule."

22 (d) "Capsule" means a dosage form in which a medicinal
23 substance is enclosed by either a hard or soft soluble outer
24 shell.

25 (2) (a) A retail establishment or individual shall not
26 transfer, sell, deliver, distribute, dispense or provide to a
27 consumer in a single retail sales transaction:

28 (i) More than two (2) packages of any
29 compound, mixture or preparation containing pseudoephedrine or
30 ephedrine; or

31 (ii) More than six (6) grams of
32 pseudoephedrine or ephedrine.

33 (b) No person shall purchase, receive, or otherwise
34 acquire in a single retail transaction:

35 (i) More than two (2) packages of any
36 compound, mixture or preparation containing pseudoephedrine or
37 ephedrine; or

38 (ii) More than six (6) grams of
39 pseudoephedrine or ephedrine.

40 (c) No person shall purchase, receive, or otherwise
41 acquire more than nine (9) grams of any compound, mixture or
42 preparation containing pseudoephedrine or ephedrine within any
43 thirty-day period; this quantity limitation shall not apply to any
44 quantity of compound, mixture or preparation containing
45 pseudoephedrine or ephedrine dispensed pursuant to a valid
46 prescription.

47 (d) (i) All packages of tablets containing
48 pseudoephedrine or ephedrine as the sole active ingredient shall
49 be stored by retail establishments by:

50 1. Placing the products behind a counter
51 where the public is not permitted; or

52 2. Placing the products in a locked display
53 case so that a customer wanting access to the packages must ask a
54 store employee for assistance.

55 (ii) All packages of tablets containing
56 pseudoephedrine or ephedrine and other active ingredients shall be
57 stored by retail establishments by:

58 1. Placing the products behind a counter;

59 2. Placing the products within thirty (30)
60 feet of the establishment's cashiers;

61 3. Placing the products in a locked display
62 case so that a customer wanting access to the packages must ask a
63 store employee for assistance; or

64 4. Placing the products under video
65 surveillance.

66 (e) Every wholesaler of pseudoephedrine or ephedrine
67 products shall provide the Bureau of Narcotics with copies of all
68 sales receipts of such products upon request of the bureau.
69 Wholesalers shall be required to maintain this information for a
70 period of not less than one (1) year.

71 (3) The retail sale of any compound, mixture or preparation
72 containing pseudoephedrine or ephedrine is limited to sales in
73 packages containing not more than a total of three (3) grams of
74 pseudoephedrine or ephedrine.

75 (4) A retailer may require any person purchasing any product
76 or products containing pseudoephedrine or ephedrine to display
77 identification in order to complete the purchase.

78 (5) (a) Except as provided in paragraphs (b) and (c) of
79 this subsection, any violation of this section is a misdemeanor
80 subject to a fine of not more than Two Hundred Fifty Dollars
81 (\$250.00).

82 (b) Any person who shall transfer, sell, deliver,
83 distribute, dispense, provide, or purchase, receive, or otherwise
84 acquire two hundred fifty (250) or more dosage units or fifteen
85 (15) grams or more in weight (dosage unit and weight as defined in
86 Section 41-29-139) of pseudoephedrine or ephedrine in a single
87 retail transaction, knowing, or under circumstances where one
88 reasonably should know, that the pseudoephedrine or ephedrine will
89 be used to unlawfully manufacture a controlled substance shall be
90 guilty of a felony and, upon conviction, shall be punished by a
91 fine of not more than Five Thousand Dollars (\$5,000.00) or
92 imprisonment for not more than five (5) years, or both.

93 (c) A retailer who is the general owner or operator of
94 an establishment that sells pseudoephedrine or ephedrine products
95 shall not be penalized pursuant to this section if the retailer

96 documents that an employee training program was conducted to train
97 employees on compliance with this section.

98 **SECTION 2.** (1) The Bureau of Narcotics may develop and
99 maintain a program to inform retailers about the methamphetamine
100 problem in the state and devise procedures and forms for retailers
101 to use in reporting to the Bureau of Narcotics suspicious
102 purchases, thefts or other transactions involving any products
103 under the retailer's control which contain a regulated precursor
104 under the provisions of this act including, but not limited to,
105 over-the-counter, nonprescription pseudoephedrine products.

106 (2) Reporting by retailers as required by this section shall
107 be voluntary.

108 (3) Retailers reporting information to the Bureau of
109 Narcotics in good faith pursuant to this section shall be immune
110 from civil and criminal liability for a violation of this act.

111 **SECTION 3.** Section 41-29-313, Mississippi Code of 1972, is
112 amended as follows:

113 41-29-313. (1) (a) Except as authorized in this section
114 and in Section 1 of Senate Bill No. 2141, 2005 Regular Session, it
115 is unlawful for any person to knowingly or intentionally:

116 (i) Purchase, possess, transfer or distribute any
117 two (2) or more of the listed precursor chemicals or drugs in any
118 amount with the intent to unlawfully manufacture a controlled
119 substance;

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

125 (b) Any person who violates this subsection (1), upon
126 conviction, is guilty of a felony and may be imprisoned for a
127 period not to exceed thirty (30) years and shall be fined not less

128 than Five Thousand Dollars (\$5,000.00) nor more than One Million
129 Dollars (\$1,000,000.00), or both fine and imprisonment.

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

133 (b) It is unlawful for any person to purchase, possess,
134 transfer or distribute any amount of anhydrous ammonia, knowing,
135 or under circumstances where one reasonably should know, that the
136 anhydrous ammonia will be used to unlawfully manufacture a
137 controlled substance.

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

145 (ii) Except as provided in this subparagraph,
146 possession of one or more products containing more than
147 twenty-four (24) grams of ephedrine or pseudoephedrine shall
148 constitute a rebuttable presumption of intent to use the product
149 as a precursor to methamphetamine or another controlled substance.
150 The rebuttable presumption established by this subsection shall
151 not apply to the following persons who are lawfully possessing the
152 identified drug products in the course of legitimate business:

153 1. A retail distributor of the drug products
154 described in this subsection possessing a valid business license
155 or wholesaler;

156 2. A wholesale drug distributor, or its
157 agents, licensed by the Mississippi State Board of Pharmacy;

158 3. A manufacturer of drug products described
159 in this subsection, or its agents, licensed by the Mississippi
160 State Board of Pharmacy;

161 4. A pharmacist licensed by the Mississippi
162 State Board of Pharmacy; or

163 5. A licensed health care professional
164 possessing the drug products described in this subsection in the
165 course of carrying out his profession.

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

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

- 181 (a) Ether;
- 182 (b) Anhydrous ammonia;
- 183 (c) Pseudoephedrine;
- 184 (d) Ephedrine;
- 185 (e) Denatured alcohol (Ethanol);
- 186 (f) Lithium;
- 187 (g) Freon;
- 188 (h) Hydrochloric acid;
- 189 (i) Hydriodic acid;
- 190 (j) Red phosphorous;
- 191 (k) Iodine;
- 192 (l) Sodium metal;
- 193 (m) Muriatic acid;

- 194 (n) Sulfuric acid;
- 195 (o) Hydrogen chloride gas;
- 196 (p) Potassium;
- 197 (q) Methanol;
- 198 (r) Isopropyl alcohol;
- 199 (s) Hexanes;
- 200 (t) Heptanes;
- 201 (u) Acetone;
- 202 (v) Toluene;
- 203 (w) Xylenes.

204 (4) Nothing in this section shall preclude any farmer from
205 storing or using any of the listed precursor drugs or chemicals
206 listed in this section in the normal pursuit of farming
207 operations.

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

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

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

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

225 (b) "Apartment building" means any building, including,
226 without limitation, a condominium building, having four (4) or
227 more dwelling units.

228 **SECTION 4.** This act shall take effect and be in force from
229 and after July 1, 2005.