

By: Representative Smith (39th)

To: Judiciary A

HOUSE BILL NO. 1276

1 AN ACT TO AMEND SECTION 41-29-315, MISSISSIPPI CODE OF 1972,
2 TO REVISE RESTRICTIONS ON THE PURCHASE AND SALE OF CERTAIN
3 METHAMPHETAMINE PRECURSORS; TO BRING FORWARD SECTIONS 41-29-313
4 AND 41-29-317, MISSISSIPPI CODE OF 1972, FOR PURPOSES OF
5 AMENDMENT; AND FOR RELATED PURPOSES.

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

7 **SECTION 1.** Section 41-29-315, Mississippi Code of 1972, is
8 amended as follows:

9 41-29-315. (1) For the purposes of this section the
10 following words and phrases shall have the meanings attributed to
11 them unless the context clearly requires otherwise:

12 (a) "Pseudoephedrine" means pseudoephedrine, its salts
13 or optical isomers, or salts of optical isomers.

14 (b) "Ephedrine" means ephedrine, its salts or optical
15 isomers, or salts of optical isomers.

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

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

23 (2) Any compound, mixture, or preparation containing any
24 detectable quantity of pseudoephedrine, its salts or optical
25 isomers, or salts of optical isomers shall only be distributed:

26 (a) In a pharmacy; and

27 (b) Any person purchasing, receiving, or otherwise
28 acquiring any compound, mixture, or preparation shall produce a

29 photo identification showing the date of birth of the person and
30 shall sign a written log or receipt showing the date of the
31 transaction, name of the person, and the amount of the compound,
32 mixture or preparation.

33 (3) (a) A pharmacist or his designee shall not transfer,
34 sell, deliver, distribute, dispense or provide to a consumer in a
35 single retail sales transaction:

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

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

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

42 (i) More than two (2) packages of any compound,
43 mixture or preparation containing pseudoephedrine or ephedrine; or

44 (ii) More than six (6) grams of pseudoephedrine or
45 ephedrine.

46 (c) No person shall purchase, receive, or otherwise
47 acquire more than nine (9) grams of any compound, mixture or
48 preparation containing pseudoephedrine or ephedrine within any
49 thirty-day period; this quantity limitation shall not apply to any
50 quantity of compound, mixture or preparation containing
51 pseudoephedrine or ephedrine dispensed pursuant to a valid
52 prescription.

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

56 1. Placing the products behind a counter
57 where the public is not permitted; or

58 2. Placing the products in a locked display
59 case so that a customer wanting access to the packages must ask a
60 store employee for assistance.

61 (ii) All packages of tablets containing
62 pseudoephedrine or ephedrine and other active ingredients shall be
63 stored by pharmacies by:

64 1. Placing the products behind a counter;

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

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

70 4. Placing the products under video
71 surveillance.

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

77 (4) The retail sale of any compound, mixture or preparation
78 containing pseudoephedrine or ephedrine is limited to sales in
79 packages containing not more than a total of three (3) grams of
80 pseudoephedrine or ephedrine.

81 (5) No pharmacy may sell to any person any product or
82 products containing pseudoephedrine or ephedrine unless the
83 pharmacy is in compliance with subsection (2) of this section.

84 (6) (a) Except as provided in paragraphs (b) and (c) of
85 this subsection, any violation of this section is a misdemeanor
86 subject to a fine of not more than Two Hundred Fifty Dollars
87 (\$250.00).

88 (b) Any person who shall transfer, sell, deliver,
89 distribute, dispense, provide, or purchase, receive, or otherwise
90 acquire two hundred fifty (250) or more dosage units or fifteen
91 (15) grams or more in weight (dosage unit and weight as defined in
92 Section 41-29-139) of pseudoephedrine or ephedrine in a single
93 retail transaction, knowing, or under circumstances where one

94 reasonably should know, that the pseudoephedrine or ephedrine will
95 be used to unlawfully manufacture a controlled substance shall be
96 guilty of a felony and, upon conviction, shall be punished by a
97 fine of not more than Five Thousand Dollars (\$5,000.00) or
98 imprisonment for not more than five (5) years, or both.

99 (c) A retailer who is the general owner or operator of
100 an establishment that sells pseudoephedrine or ephedrine products
101 shall not be penalized pursuant to this section if the retailer
102 documents that an employee training program was conducted to train
103 employees on compliance with this section.

104 **SECTION 2.** Section 41-29-313, Mississippi Code of 1972, is
105 brought forward as follows:

106 41-29-313. (1) (a) Except as authorized in this section
107 and in Section 41-29-315, it is unlawful for any person to
108 knowingly or intentionally:

109 (i) Purchase, possess, transfer, manufacture,
110 attempt to manufacture or distribute any two (2) or more of the
111 listed precursor chemicals or drugs in any amount with the intent
112 to unlawfully manufacture a controlled substance;

113 (ii) Purchase, possess, transfer, manufacture,
114 attempt to manufacture or distribute any two (2) or more of the
115 listed precursor chemicals or drugs in any amount, knowing, or
116 under circumstances where one reasonably should know, that the
117 listed precursor chemical or drug will be used to unlawfully
118 manufacture a controlled substance;

119 (b) The term "precursor drug or chemical" means a drug
120 or chemical that, in addition to legitimate uses, may be used in
121 manufacturing a controlled substance in violation of this chapter.
122 The term includes any salt, optical isomer or salt of an optical
123 isomer, whenever the existence of a salt, optical isomer or salt
124 of optical isomer is possible within the specific chemical
125 designation. The chemicals or drugs listed in this section are
126 included by whatever official, common, usual, chemical or trade

127 name designated. A "precursor drug or chemical" includes, but is
128 not limited to, the following:

- 129 (i) Ether;
- 130 (ii) Anhydrous ammonia;
- 131 (iii) Ammonium nitrate;
- 132 (iv) Pseudoephedrine;
- 133 (v) Ephedrine;
- 134 (vi) Denatured alcohol (Ethanol);
- 135 (vii) Lithium;
- 136 (viii) Freon;
- 137 (ix) Hydrochloric acid;
- 138 (x) Hydriodic acid;
- 139 (xi) Red phosphorous;
- 140 (xii) Iodine;
- 141 (xiii) Sodium metal;
- 142 (xiv) Sodium hydroxide;
- 143 (xv) Muriatic acid;
- 144 (xvi) Sulfuric acid;
- 145 (xvii) Hydrogen chloride gas;
- 146 (xviii) Potassium;
- 147 (xix) Methanol;
- 148 (xx) Isopropyl alcohol;
- 149 (xxi) Hydrogen peroxide;
- 150 (xxii) Hexanes;
- 151 (xxiii) Heptanes;
- 152 (xxiv) Acetone;
- 153 (xxv) Toluene;
- 154 (xxvi) Xylenes.

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

160 (2) (a) It is unlawful for any person to knowingly or
161 intentionally steal or unlawfully take or carry away any amount of
162 anhydrous ammonia or to break, cut, or in any manner damage the
163 valve or locking mechanism on an anhydrous ammonia tank with the
164 intent to steal or unlawfully take or carry away anhydrous
165 ammonia.

166 (b) (i) It is unlawful for any person to purchase,
167 possess, transfer or distribute any amount of anhydrous ammonia,
168 knowing, or under circumstances where one reasonably should know,
169 that the anhydrous ammonia will be used to unlawfully manufacture
170 a controlled substance.

171 (ii) The possession of any amount of anhydrous
172 ammonia in a container unauthorized for containment of anhydrous
173 ammonia pursuant to Section 75-57-9 shall be prima facie evidence
174 of intent to use the anhydrous ammonia to unlawfully manufacture a
175 controlled substance.

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

183 (ii) Except as provided in this subparagraph,
184 possession of one or more products containing more than
185 twenty-four (24) grams of ephedrine or pseudoephedrine shall
186 constitute a rebuttable presumption of intent to use the product
187 as a precursor to methamphetamine or another controlled substance.
188 The rebuttable presumption established by this subparagraph shall
189 not apply to the following persons who are lawfully possessing the
190 identified drug products in the course of legitimate business:

191 1. A retail distributor of the drug products
192 described in this subparagraph possessing a valid business license
193 or wholesaler;

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

196 3. A manufacturer of drug products described
197 in this subparagraph, or its agents, licensed by the Mississippi
198 State Board of Pharmacy;

199 4. A pharmacist licensed by the Mississippi
200 State Board of Pharmacy; or

201 5. A licensed health care professional
202 possessing the drug products described in this subparagraph (ii)
203 in the course of carrying out his profession.

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

209 (3) 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 (4) 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 (5) 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 (6) 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 (6), 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 having four
231 (4) or more dwelling units, including, without limitation, a
232 condominium building.

233 (7) Any person who violates the provisions of this section
234 who has in his possession any firearm, either at the time of the
235 commission of the offense or at the time any arrest is made, may
236 be subject to a term of imprisonment or a fine, or both, of twice
237 that provided in this section.

238 (8) Any person who violates the provisions of this section
239 upon any premises upon which any booby trap has been installed or
240 rigged may be subject to a term of imprisonment or a fine, or
241 both, of twice that provided in this section. For the purposes of
242 this subsection, the term "booby trap" means any concealed or
243 camouflaged device designed to cause bodily injury when triggered
244 by any action of a person making contact with the device. The
245 term includes guns, ammunition or explosive devices attached to
246 trip wires or other triggering mechanisms, sharpened stakes,
247 nails, spikes, electrical devices, lines or wires with hooks
248 attached, and devices designed for the production of toxic fumes
249 or gases.

250 **SECTION 3.** Section 41-29-317, Mississippi Code of 1972, is
251 brought forward as follows:

252 41-29-317. (1) The Bureau of Narcotics may develop and
253 maintain a program to inform retailers about the methamphetamine
254 problem in the state and devise procedures and forms for retailers
255 to use in reporting to the Bureau of Narcotics suspicious
256 purchases, thefts or other transactions involving any products

257 under the retailer's control which contain a regulated precursor
258 under the provisions of Section 41-29-313 or 41-29-315 including,
259 but not limited to, over-the-counter, nonprescription
260 pseudoephedrine products.

261 (2) Reporting by retailers as required by this section shall
262 be voluntary.

263 (3) Retailers reporting information to the Bureau of
264 Narcotics in good faith pursuant to this section shall be immune
265 from civil and criminal liability for a violation of Section
266 41-29-313 or 41-29-315.

267 **SECTION 4.** This act shall take effect and be in force from
268 and after July 1, 2006.