

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

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HOUSE BILL 248*
Committee Substitute Favorable 6/13/05
Senate Judiciary I Committee Substitute Adopted 8/24/05

Short Title: Meth. Lab Prevention Act.

(Public)

Sponsors:

Referred to:

February 16, 2005

A BILL TO BE ENTITLED

1
2 AN ACT TO PROVIDE THAT CERTAIN PRODUCTS THAT CONTAIN
3 PSEUDOEPHEDRINE SHALL NOT BE OFFERED FOR SELF-SERVICE
4 SALES, BUT SHALL BE STORED AND SOLD BEHIND A PHARMACY
5 COUNTER; TO PROVIDE THAT RETAILERS MUST REQUIRE
6 IDENTIFICATION FROM PROSPECTIVE PURCHASERS AND MAINTAIN
7 INFORMATION FROM EACH TRANSACTION IN A RECORD AVAILABLE
8 FOR INSPECTION BY LAW ENFORCEMENT; TO PROVIDE FOR PURCHASE
9 LIMITS ON CERTAIN PRODUCTS THAT CONTAIN PSEUDOEPHEDRINE OF
10 TWO PACKAGES PER SINGLE TRANSACTION AND THREE PACKAGES
11 PER MONTH; TO PROVIDE THAT RETAILERS MUST TRAIN EMPLOYEES
12 INVOLVED IN THE SALE OF CERTAIN PSEUDOEPHEDRINE PRODUCTS;
13 TO AUTHORIZE THE COMMISSION FOR MENTAL HEALTH,
14 DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE SERVICES
15 TO ADD OR DELETE SPECIFIC PSEUDOEPHEDRINE PRODUCTS FROM
16 THE REQUIREMENTS OF THE ARTICLE, OR MODIFY SECURITY AND
17 STORAGE MEASURES APPLICABLE TO SPECIFIC PSEUDOEPHEDRINE
18 PRODUCTS; TO PROVIDE FOR CRIMINAL AND CIVIL PENALTIES FOR
19 RETAILERS', EMPLOYEES', AND PURCHASERS' VIOLATIONS OF THE
20 ACT; TO CREATE THE LEGISLATIVE COMMISSION ON
21 METHAMPHETAMINE ABUSE; TO REQUIRE THAT WHOLESALE
22 DISTRIBUTORS OF PRODUCTS THAT CONTAIN PSEUDOEPHEDRINE
23 MUST BE LICENSED UNDER ARTICLE 12A OF CHAPTER 106 OF THE
24 GENERAL STATUTES; TO MAKE THE MANUFACTURE OF
25 METHAMPHETAMINE IN A DWELLING THAT IS ONE OF FOUR OR MORE
26 CONTIGUOUS DWELLINGS AN AGGRAVATING FACTOR; TO PROVIDE
27 FOR RESTRICTED BAIL FOR CERTAIN PERSONS ARRESTED FOR
28 VIOLATIONS OF G.S. 90-95(B)(1A) OR G.S. 90-95(D1)(2)B.; AND TO

1 PROHIBIT THE SALE OF DRUGS AS DEFINED UNDER THE NORTH
2 CAROLINA FOOD, DRUG, AND COSMETIC ACT AND PRODUCTS
3 CONTAINING PSEUDOEPHEDRINE BY CERTAIN PERSONS.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. Chapter 90 of the General Statutes is amended by adding a
6 new Article to read:

7 "Article 5D.

8 "Control of Methamphetamine Precursors.

9 "§ 90-113.50. Title.

10 This Article shall be known and may be cited as the "Methamphetamine Lab
11 Prevention Act of 2005."

12 "§ 90-113.51. Definitions.

13 (a) For purposes of this Article, "pseudoephedrine product" means a product
14 containing any detectable quantity of pseudoephedrine or ephedrine base, their salts or
15 isomers, or salts of their isomers.

16 (b) For purposes of this Article, a "retailer" means an individual or entity that is
17 the general owner of an establishment where pseudoephedrine products are available for
18 sale.

19 (c) For purposes of this Article, the "Commission" means the Commission for
20 Mental Health, Developmental Disabilities, and Substance Abuse Services.

21 "§ 90-113.52. Pseudoephedrine: restrictions on sales.

22 (a) A product whose sole active ingredient is pseudoephedrine in strength of 30
23 milligrams or more per tablet or caplet shall not be offered for retail sale loose in bottles
24 but shall be sold only in blister packages.

25 (b) Pseudoephedrine products shall not be offered for retail sale by self-service,
26 but shall be stored and sold in the following manner: Any pseudoephedrine product in
27 the form of a tablet or caplet containing pseudoephedrine as the sole active ingredient or
28 in combination with other active ingredients shall be stored and sold behind a pharmacy
29 counter.

30 (c) A pseudoephedrine product may be sold at retail without a prescription only
31 to a person at least 18 years of age. The retailer shall require every retail purchaser of a
32 pseudoephedrine product to furnish photo identification. If the retailer has reasonable
33 grounds to believe that the prospective purchaser is under 18 years of age, the retailer
34 shall require the prospective purchaser to furnish photo identification showing the date
35 of birth of the person. The name and address of every purchaser shall be entered in a
36 record of disposition of pseudoephedrine products to the consumer on a form approved
37 by the Commission. The record of disposition shall also identify each pseudoephedrine
38 product purchased, including the number of grams the product contains and the
39 purchase date of the transaction. The retailer shall require that every purchaser sign the
40 form attesting to the validity of the information. The form approved by the Commission
41 shall be constructed so that it allows for entry of information in electronic format,
42 including electronic signature. The form shall also be constructed and maintained so as
43 to minimize disclosure of personal information to unauthorized persons and shall
44 contain a statement in at least 10-point boldface type at the top of every page

1 substantially similar to the following: "NORTH CAROLINA LAW STRICTLY
2 PROHIBITS A SINGLE TRANSACTION PURCHASE OF MORE THAN TWO
3 PACKAGES OF CERTAIN PRODUCTS CONTAINING PSEUDOEPHEDRINE (SIX
4 GRAMS TOTAL), AND NO MORE THAN THREE PACKAGES (NINE GRAMS
5 TOTAL) OF CERTAIN PRODUCTS CONTAINING PSEUDOEPHEDRINE WITHIN
6 A 30-DAY PERIOD. BY MY SIGNATURE, I ATTEST THAT THE INFORMATION
7 I HAVE PROVIDED IN CONNECTION WITH THIS TRANSACTION IS TRUE
8 AND CORRECT AND THAT THIS TRANSACTION DOES NOT EXCEED THE
9 PURCHASE RESTRICTIONS. I ACKNOWLEDGE THAT KNOWING AND
10 WILLFUL VIOLATION OF THE PURCHASE RESTRICTIONS OR THE
11 FURNISHING OF FALSE INFORMATION IN CONNECTION THEREWITH MAY
12 SUBJECT ME TO CRIMINAL PENALTIES."

13 (d) A retailer shall maintain a record of disposition of pseudoephedrine products
14 to the consumer for a period of two years from the date of each transaction. A record
15 shall be readily available within 48 hours of the time of the transaction for inspection by
16 an authorized official of a federal, State, or local law enforcement agency. The records
17 maintained by a retailer are privileged information and are not public records but are for
18 the exclusive use of the retailer and law enforcement. The retailer may destroy the
19 information after two years from the date of the transactions.

20 (e) This section does not apply to any pseudoephedrine product that is in the
21 form of a liquid, liquid capsule, gel capsule, or pediatric product labeled pursuant to
22 federal regulation primarily intended for administration to children under 12 years of
23 age according to label instruction, except as to those specific products for which the
24 Commission issues an order pursuant to G.S. 90-113.58 subjecting the product to
25 requirements under this Article.

26 **"§ 90-113.53. Pseudoephedrine transaction limits.**

27 (a) No person shall deliver or purchase, or attempt to deliver or purchase, in any
28 single over-the-counter retail sale more than two packages containing a combined total
29 of more than six grams of any pseudoephedrine products. This limit does not apply if
30 the product is dispensed under a valid prescription.

31 (b) No person shall purchase at retail more than three packages containing a
32 combined total of more than nine grams of pseudoephedrine products within any 30-day
33 period. This limit does not apply if the product is dispensed under a valid prescription.

34 (c) This section does not apply to any pseudoephedrine products that are in the
35 form of liquids, liquid capsules, gel capsules, or pediatric products labeled pursuant to
36 federal regulation primarily intended for administration to children under 12 years of
37 age according to label instruction, except as to those specific products for which the
38 Commission issues an order pursuant to G.S. 90-113.58 subjecting the product to
39 requirements under this Article.

40 **"§ 90-113.54. Posting of signs.**

41 A retailer shall post a sign or placard in a clear and conspicuous manner in the area
42 of the premises where the pseudoephedrine products are offered for sale stating: "North
43 Carolina law strictly prohibits a single transaction purchase of more than two packages
44 (six grams total) of products containing pseudoephedrine, and no more than three

1 packages (nine grams total) of certain products containing pseudoephedrine within a
2 30-day period. This store will maintain a record of all sales of these products which may
3 be accessible to law enforcement officers."

4 **"§ 90-113.55. Training of employees.**

5 A retailer shall require that employees of the establishment involved in the sale of
6 pseudoephedrine products in the form of tablets or caplets, and any other
7 pseudoephedrine product for which the Commission issues an order pursuant to
8 G.S. 90-113.58 to subject the product to requirements under this Article, be trained in a
9 program conducted by or approved by the Commission pursuant to G.S. 90-113.59.

10 **"§ 90-113.56. Penalties.**

11 (a) If a retailer willfully and knowingly violates the provisions of
12 G.S. 90-113.52, 90-113.53, or 90-113.54, the retailer shall be guilty of a Class A1
13 misdemeanor for the first offense and a Class I felony for a second or subsequent
14 offense. A retailer convicted of a third offense occurring on the premises of a single
15 establishment shall be prohibited from making pseudoephedrine products available for
16 sale at that establishment.

17 (b) Any purchaser or employee who willfully and knowingly violates
18 G.S. 90-113.52(c) or G.S. 90-113.53 shall be guilty of a Class 1 misdemeanor for the
19 first offense, a Class A1 misdemeanor for a second offense, and a Class I felony for a
20 third or subsequent offense. This subsection shall not be construed to apply to bona fide
21 innocent purchasers.

22 (c) A retailer who fails to train employees in accordance with G.S. 90-113.55,
23 adequately supervise employees in transactions involving pseudoephedrine products, or
24 reasonably discipline employees for violations of this Article shall be fined up to five
25 hundred dollars (\$500.00) for the first violation, up to seven hundred fifty dollars
26 (\$750.00) for the second violation, and up to one thousand dollars (\$1,000) for a third or
27 subsequent violation of this section.

28 **"§ 90-113.57. Immunity.**

29 A retailer or an employee of the retailer who, reasonably and in good faith, reports to
30 any law enforcement agency any alleged criminal activity related to the sale or purchase
31 of pseudoephedrine products, or who refuses to sell a pseudoephedrine product to a
32 person reasonably believed to be ineligible to purchase a pseudoephedrine product
33 pursuant to this Article, is immune from civil liability for that conduct except in cases of
34 willful misconduct. No retailer shall retaliate in any manner against any employee of the
35 establishment for a report made in good faith to any law enforcement agency
36 concerning alleged criminal activity related to the sale or purchase of pseudoephedrine
37 products.

38 **"§ 90-113.58. Commission authority to control pseudoephedrine products.**

39 (a) The Commission may add or delete a specific pseudoephedrine product from
40 requirements of this Article on the petition of any interested party, or its own motion. In
41 addition, the Commission may modify the specific storage, security, transaction limit,
42 and record-keeping requirements applicable to a particular product upon such terms and
43 conditions as they deem appropriate. In every case, the Commission shall give notice of
44 and hold a public hearing pursuant to Chapter 150B of the General Statutes prior to

1 adding or deleting a product. A petition by the Commission or the North Carolina
2 Department of Justice to add or delete a specific product from requirements of this
3 Article shall be placed on the agenda for consideration at the next regularly scheduled
4 meeting of the Commission, as a matter of right. In making a determination regarding a
5 specific product, the Commission shall consider whether or not there is substantial
6 evidence that the specific product would be used to manufacture methamphetamine in
7 the State.

8 (b) In making a determination, the Commission shall make findings with respect
9 thereto and shall issue an order adding or deleting the specific product from
10 requirements of this Article. The order shall be published in the North Carolina Register
11 at least 60 days prior to the time that the addition or deletion of a specific product from
12 the requirements of this Article becomes effective.

13 (c) The Commission may adopt temporary and permanent rules in accordance
14 with this section.

15 **"§ 90-113.59. Commission development of employee training programs.**

16 The Commission shall develop training and education programs targeted for
17 employees of establishments where pseudoephedrine products are available for sale and
18 shall approve such programs for implementation by retailers. The Commission may also
19 conduct employee training programs for retail establishments. The Commission may
20 adopt temporary and permanent rules in this regard.

21 **"§ 90-113.60. Preemption.**

22 This Article shall preempt all local ordinances or regulations governing the sale by a
23 retailer of over-the-counter products containing pseudoephedrine."

24 **SECTION 2.** G.S. 106-145.2 reads as rewritten:

25 **"§ 106-145.2. Definitions.**

26 The following definitions apply in this Article:

27 ...

- 28 (9) Prescription drug. – A human drug required by federal law or
29 regulation to be dispensed only by a prescription, including finished
30 dosage forms and active ingredients subject to 21 U.S.C. § 353(b).
31 Only for the purposes of the provisions of this Article, the term
32 "prescription drug" shall include pseudoephedrine products as defined
33 in G.S. 90-113.51 that may be dispensed without a prescription.

34"

35 **SECTION 3.** Chapter 106 of the General Statutes is amended by adding a
36 new section to read:

37 **"§ 106-145.13. Submittal of reports by wholesale distributors of transactions**
38 **involving pseudoephedrine products.**

39 Every 30 calendar days, a wholesale distributor of pseudoephedrine products
40 licensed as provided in this Article shall submit a report electronically to the State
41 Bureau of Investigation that accounts for all transactions involving pseudoephedrine
42 products with persons or firms located within this State for the preceding month. The
43 report shall be submitted on a form and in a manner approved by the State Bureau of
44 Investigation. A wholesale distributor shall maintain each monthly report for a period of

1 two years from the date of submittal to the State Bureau of Investigation. The records
2 shall be readily available for inspection by an authorized official of a federal, State, or
3 local law enforcement agency or the Department of Agriculture and Consumer
4 Services."

5 **SECTION 4.** G.S. 15A-1340.16(d) is amended by adding a new subdivision
6 to read:

7 "(16b) The offense is the manufacture of methamphetamine and was
8 committed in a dwelling that is one of four or more contiguous
9 dwellings."

10 **SECTION 5.** Article 32 of Chapter 66 of the General Statutes is amended by
11 adding a new section to read:

12 "**§ 66-254.1. Certain sales prohibited.**

13 No person who is described by G.S. 66-250(1), (2), (5), or (6) shall sell or offer to
14 sell any product that meets any of the following criteria:

15 (1) The product contains pseudoephedrine as the sole active ingredient or
16 in combination with other active ingredients.

17 (2) The product is a drug as defined by G.S. 106-121(6).

18 Any person who violates this section shall be guilty of a Class 1 misdemeanor for
19 the first offense, a Class A1 misdemeanor for a second offense, and a Class I felony for
20 a third or subsequent offense."

21 **SECTION 6.** Chapter 15A of the General Statutes is amended by adding a
22 new section to read:

23 "**§ 15A-736.1. Bail in cases of manufacture of methamphetamine.**

24 Notwithstanding the provisions of G.S. 15A-736, in determining bond and other
25 conditions of release for a person arrested for any violation of G.S. 90-95(b)(1a) or
26 G.S. 90-95(d1)(2)b., the magistrate, judge, or court shall consider any evidence that the
27 person is in any manner dependent upon methamphetamine or has a pattern of regular
28 illegal use of methamphetamine. A rebuttable presumption that no conditions of release
29 on bond would assure the safety of the community or any person therein shall arise if
30 the State shows by clear and convincing evidence both:

31 (1) The person was arrested for a violation of G.S. 90-95(b)(1a) or
32 G.S. 90-95(d1)(2)b., relating to the manufacture of methamphetamine
33 or possession of an immediate precursor chemical with knowledge or
34 reasonable cause to know that the chemical will be used to
35 manufacture methamphetamine.

36 (2) The person is in any manner dependent upon methamphetamine or has
37 a pattern of regular illegal use of methamphetamine, and the violation
38 referred to in subdivision (1) of this section was committed or
39 attempted in order to maintain or facilitate the dependence or pattern
40 of illegal use in any manner."

41 **SECTION 7.** Legislative Commission on Methamphetamine Abuse
42 Established.

43 (a) Establishment. – The Legislative Commission on Methamphetamine Abuse is
44 established.

1 (b) Purpose. – The purpose of the Commission is to study: (i) issues regarding
2 the abuse of methamphetamine precursors used to make methamphetamine and any
3 other issues that are relevant to that topic; (ii) the cost, feasibility, and advisability of
4 developing and implementing data-tracking mechanisms related to the sale of
5 pseudoephedrine products; (iii) development of programs to curb the use of and access
6 to methamphetamine in North Carolina; (iv) development of training and education
7 programs targeted for employees of establishments where pseudoephedrine products are
8 available for sale; (v) development of programs to educate the citizens of the State on
9 the issues of detection and prevention of clandestine methamphetamine laboratories in
10 the State and to educate the citizens of the State of the restrictions on the sale of
11 pseudoephedrine products set forth in Article 5D of Chapter 90 of the General Statutes.

12 (c) Membership. – The Commission shall consist of 22 members to be appointed
13 as follows:

- 14 (1) Two members of the Senate appointed by the President Pro Tempore
15 of the Senate.
- 16 (2) Two members of the House of Representatives appointed by the
17 Speaker of the House of Representatives.
- 18 (3) The Attorney General or the Attorney General's designee.
- 19 (4) The Governor or the Governor's designee.
- 20 (5) One representative from the North Carolina Association of County
21 Directors of Social Services, as appointed by the President Pro
22 Tempore of the Senate.
- 23 (6) One representative from the North Carolina Retail Merchants
24 Association, as appointed by the Speaker of the House of
25 Representatives.
- 26 (7) One representative from the North Carolina Association of
27 Community Pharmacists, as appointed by the President Pro Tempore
28 of the Senate.
- 29 (8) One representative from the Conference of District Attorneys of North
30 Carolina, as appointed by the Speaker of the House of Representatives.
- 31 (9) One representative from the Consumer Healthcare Products
32 Association, as appointed by the President Pro Tempore of the Senate.
- 33 (10) One representative from the North Carolina Sheriffs' Association, Inc.,
34 as appointed by the Speaker of the House of Representatives.
- 35 (11) The Secretary of Health and Human Services or the Secretary's
36 designee.
- 37 (12) The Director of the State Bureau of Investigation or the Director's
38 designee.
- 39 (13) One representative from the North Carolina Narcotic Enforcement
40 Officers' Association, as appointed by the President Pro Tempore of
41 the Senate.
- 42 (14) One representative from the North Carolina Association of Chiefs of
43 Police, as appointed by the Speaker of the House of Representatives.
- 44 (15) The Commissioner of Agriculture or the Commissioner's designee.

- 1 (16) The Chair of the Commission on Mental Health or the Chair's
2 designee.
- 3 (17) The Director of the National Drug Intelligence Center or the Director's
4 designee.
- 5 (18) The Administrator of the United States Drug Enforcement or the
6 Administrator's designee.
- 7 (19) One representative from the National Association of Chain Drug
8 Stores, as appointed by the President Pro Tempore of the Senate.
- 9 (20) One representative from a child advocacy organization in the State, as
10 appointed by the Speaker of the House of Representatives.
- 11 (d) Terms. – Members shall serve for two-year terms, with no prohibition against
12 being reappointed, except initial appointments shall be for terms as follows:
- 13 (1) The President Pro Tempore of the Senate shall initially appoint three
14 members for a term of two years and four members for a term of three
15 years.
- 16 (2) The Speaker of the House of Representatives shall initially appoint
17 three members for a term of two years and four members for a term of
18 three years.
- 19 Initial terms shall commence on September 1, 2005.
- 20 (e) Cochairs. – The Commission shall have two Cochairs, one senator designated
21 by the President Pro Tempore of the Senate and one representative designated by the
22 Speaker of the House of Representatives from among their respective appointees. The
23 initial terms shall commence on September 1, 2005.
- 24 (f) Vacancies. – A vacancy on the Commission shall be filled in the same
25 manner in which the original appointment was made, and the term shall be for the
26 balance of the unexpired term.
- 27 (g) Compensation. – The Commission members shall receive no salary as a result
28 of serving on the Commission but shall receive per diem, subsistence, and travel
29 expenses in accordance with the provisions of G.S. 120-3.1, 138-5, and 138-6, as
30 applicable. When approved by the Commission, members may be reimbursed for
31 subsistence and travel expenses in excess of the statutory amount.
- 32 (h) Meetings. – The Cochairs shall convene the Commission. Meetings shall be
33 held as often as necessary, but not less than four times a year.
- 34 (i) Quorum. – A majority of the members of the Commission shall constitute a
35 quorum for the transaction of business.
- 36 (j) Staff. – Upon the prior approval of the Legislative Services Commission, the
37 Legislative Services Officer shall assign professional staff to the Commission to aid in
38 its work.
- 39 (k) Reports. – The Commission shall annually report on its activities and
40 recommendations, including any legislative proposals, to the General Assembly. The
41 Commission shall make its first report on or before November 1, 2005.
- 42 (l) Funding. – From funds appropriated to the General Assembly, the Legislative
43 Services Commission shall allocate funds for the purpose of conducting the study
44 provided for in this section.

1 **SECTION 8.** The State Bureau of Investigation shall study issues regarding
2 the use of pseudoephedrine products to make methamphetamine, including any data on
3 the use of particular pseudoephedrine products in that regard, pertinent law enforcement
4 statistics, trends observed, and other relevant information, and report annually to the
5 Commission for Mental Health, Developmental Disabilities, and Substance Abuse
6 Services, the Legislative Commission on Methamphetamine Abuse, and the Joint
7 Governmental Operations Subcommittee on Justice and Public Safety. The first report
8 shall be submitted on or before November 1, 2006.

9 **SECTION 9.** If any provision of this act or its application is held invalid, the
10 invalidity does not affect other provisions or applications of this act that can be given
11 effect without the invalid provisions or application, and to this end the provisions of this
12 act are severable.

13 **SECTION 10.** G.S. 90-113.58 and G.S. 90-113.59, as enacted by Section 1
14 of this act, and Sections 7, 8, 9, and 10 of this act are effective when it becomes law.
15 The remainder of Section 1, and Sections 2, 3, 4, 5, and 6 of this act become effective
16 January 15, 2006, and apply to offenses committed on or after that date.