GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

HOUSE BILL 248
RATIFIED BILL

AN ACT TO PROVIDE THAT CERTAIN PRODUCTS THAT CONTAIN PSEUDOEPHEDRINE SHALL NOT BE OFFERED FOR SELF-SERVICE SALES, BUT SHALL BE STORED AND SOLD BEHIND A PHARMACY COUNTER; TO PROVIDE THAT RETAILERS MUST REQUIRE IDENTIFICATION FROM PROSPECTIVE PURCHASERS AND MAINTAIN INFORMATION FROM EACH TRANSACTION IN A RECORD AVAILABLE FOR INSPECTION BY LAW ENFORCEMENT; TO PROVIDE FOR PURCHASE LIMITS ON CERTAIN PRODUCTS THAT CONTAIN PSEUDOEPHEDRINE OF TWO PACKAGES PER SINGLE TRANSACTION AND THREE PACKAGES PER MONTH; TO PROVIDE THAT RETAILERS MUST TRAIN EMPLOYEES INVOLVED IN THE SALE OF CERTAIN PSEUDOEPHEDRINE PRODUCTS; TO AUTHORIZE THE COMMISSION FOR MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE SERVICES TO ADD OR DELETE SPECIFIC PSEUDOEPHEDRINE PRODUCTS FROM THE REQUIREMENTS OF THE ARTICLE, OR MODIFY SECURITY AND STORAGE MEASURES APPLICABLE TO SPECIFIC PSEUDOEPHEDRINE PRODUCTS; TO PROVIDE FOR CRIMINAL AND CIVIL PENALTIES FOR RETAILERS', EMPLOYEES', AND PURCHASERS' VIOLATIONS OF THE ACT; TO CREATE THE LEGISLATIVE COMMISSION ON METHAMPHETAMINE ABUSE; TO REQUIRE THAT WHOLESALE DISTRIBUTORS OF PRODUCTS THAT CONTAIN PSEUDOEPHEDRINE MUST BE LICENSED UNDER ARTICLE 12A OF CHAPTER 106 OF THE GENERAL STATUTES; TO MAKE THE MANUFACTURE OF METHAMPHETAMINE IN A DWELLING THAT IS ONE OF FOUR OR MORE CONTIGUOUS DWELLINGS AN AGGRAVATING FACTOR; TO PROVIDE FOR RESTRICTED BAIL FOR CERTAIN PERSONS ARRESTED FOR VIOLATIONS OF G.S. 90-95(B)(1A) OR G.S. 90-95(D1)(2)B.; AND TO PROHIBIT THE SALE OF DRUGS AS DEFINED UNDER THE NORTH CAROLINA FOOD, DRUG, AND COSMETIC ACT AND PRODUCTS CONTAINING PSEUDOEPHEDRINE BY CERTAIN PERSONS.

The General Assembly of North Carolina enacts:

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

"Article 5D.
"Control of Methamphetamine Precursors.

"**§ 90-113.50. Title.**

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

"**§ 90-113.51. Definitions.**

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

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

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

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

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

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

(c) A pseudoephedrine product may be sold at retail without a prescription only to a person at least 18 years of age. The retailer shall require every retail purchaser of a pseudoephedrine product to furnish photo identification. If the retailer has reasonable grounds to believe that the prospective purchaser is under 18 years of age, the retailer shall require the prospective purchaser to furnish photo identification showing the date of birth of the person. The name and address of every purchaser shall be entered in a record of disposition of pseudoephedrine products to the consumer on a form approved by the Commission. The record of disposition shall also identify each pseudoephedrine product purchased, including the number of grams the product contains and the purchase date of the transaction. The retailer shall require that every purchaser sign the form attesting to the validity of the information. The form approved by the Commission shall be constructed so that it allows for entry of information in electronic format, including electronic signature. The form shall also be constructed and maintained so as to minimize disclosure of personal information to unauthorized persons and shall contain a statement in at least 10-point boldface type at the top of every page substantially similar to the following: "NORTH CAROLINA LAW STRICTLY PROHIBITS A SINGLE TRANSACTION PURCHASE OF MORE THAN TWO PACKAGES OF CERTAIN PRODUCTS CONTAINING PSEUDOEPHEDRINE (SIX GRAMS TOTAL), AND NO MORE THAN THREE PACKAGES (NINE GRAMS TOTAL) OF CERTAIN PRODUCTS CONTAINING PSEUDOEPHEDRINE WITHIN A 30-DAY PERIOD. BY MY SIGNATURE, I ATTEST THAT THE INFORMATION I HAVE PROVIDED IN CONNECTION WITH THIS TRANSACTION IS TRUE AND CORRECT AND THAT THIS TRANSACTION DOES NOT EXCEED THE PURCHASE RESTRICTIONS. I ACKNOWLEDGE THAT KNOWING AND WILLFUL VIOLATION OF THE PURCHASE RESTRICTIONS OR THE FURNISHING OF FALSE INFORMATION IN CONNECTION THEREWITH MAY SUBJECT ME TO CRIMINAL PENALTIES."

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

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

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

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

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

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

"**§ 90-113.54. Posting of signs.**

A retailer shall post a sign or placard in a clear and conspicuous manner in the area of the premises where the pseudoephedrine products are offered for sale stating: "North Carolina law strictly prohibits a single transaction purchase of more than two packages (six grams total) of products containing pseudoephedrine, and no more than three packages (nine grams total) of certain products containing pseudoephedrine within a 30-day period. This store will maintain a record of all sales of these products which may be accessible to law enforcement officers."

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

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

"**§ 90-113.56. Penalties.**

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

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

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

"**§ 90-113.57. Immunity.**

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

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

(a) The Commission may add or delete a specific pseudoephedrine product from requirements of this Article on the petition of any interested party, or its own motion. In addition, the Commission may modify the specific storage, security, transaction limit, and record-keeping requirements applicable to a particular product upon such terms and conditions as they deem appropriate. In every case, the Commission shall give notice of and hold a public hearing pursuant to Chapter 150B of the General Statutes prior to adding or deleting a product. A petition by the Commission or the North Carolina Department of Justice to add or delete a specific product from requirements of this Article shall be placed on the agenda for consideration at the next regularly scheduled meeting of the Commission, as a matter of right. In making a determination regarding a specific product, the Commission shall consider whether or not there is substantial evidence that the specific product would be used to manufacture methamphetamine in the State.

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

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

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

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

"**§ 90-113.60. Preemption.**

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

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

"**§ 106-145.2. Definitions.**

The following definitions apply in this Article:

…

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

…."

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

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

Every 30 calendar days, a wholesale distributor of pseudoephedrine products licensed as provided in this Article shall submit a report electronically to the State Bureau of Investigation that accounts for all transactions involving pseudoephedrine products with persons or firms located within this State for the preceding month. The report shall be submitted on a form and in a manner approved by the State Bureau of Investigation. A wholesale distributor shall maintain each monthly report for a period of two years from the date of submittal to the State Bureau of Investigation. The records shall be readily available for inspection by an authorized official of a federal, State, or local law enforcement agency or the Department of Agriculture and Consumer Services."

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 7. Legislative Commission on Methamphetamine Abuse Established.

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

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

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

(1) Two members of the Senate appointed by the President Pro Tempore of the Senate.

(2) Two members of the House of Representatives appointed by the Speaker of the House of Representatives.
(3) The Attorney General or the Attorney General's designee.
(4) The Governor or the Governor's designee.
(5) One representative from the North Carolina Association of County Directors of Social Services, as appointed by the President Pro Tempore of the Senate.
(6) One representative from the North Carolina Retail Merchants Association, as appointed by the Speaker of the House of Representatives.
(7) One representative from the North Carolina Association of Community Pharmacists, as appointed by the President Pro Tempore of the Senate.
(8) One representative from the Conference of District Attorneys of North Carolina, as appointed by the Speaker of the House of Representatives.
(9) One representative from the Consumer Healthcare Products Association, as appointed by the President Pro Tempore of the Senate.
(10) One representative from the North Carolina Sheriffs' Association, Inc., as appointed by the Speaker of the House of Representatives.
(11) The Secretary of Health and Human Services or the Secretary's designee.
(12) The Director of the State Bureau of Investigation or the Director's designee.
(13) One representative from the North Carolina Narcotic Enforcement Officers' Association, as appointed by the President Pro Tempore of the Senate.
(14) One representative from the North Carolina Association of Chiefs of Police, as appointed by the Speaker of the House of Representatives.
(15) The Commissioner of Agriculture or the Commissioner's designee.
(16) The Chair of the Commission on Mental Health or the Chair's designee.
(17) The Director of the National Drug Intelligence Center or the Director's designee.
(18) The Administrator of the United States Drug Enforcement or the Administrator's designee.
(19) One representative from the National Association of Chain Drug Stores, as appointed by the President Pro Tempore of the Senate.
(20) One representative from a child advocacy organization in the State, as appointed by the Speaker of the House of Representatives.

(d) Terms. – Members shall serve for two-year terms, with no prohibition against being reappointed, except initial appointments shall be for terms as follows:

(1) The President Pro Tempore of the Senate shall initially appoint three members for a term of two years and four members for a term of three years.
(2) The Speaker of the House of Representatives shall initially appoint three members for a term of two years and four members for a term of three years.

Initial terms shall commence on September 1, 2005.

(e) Cochairs. – The Commission shall have two Cochairs, one senator designated by the President Pro Tempore of the Senate and one representative designated by the Speaker of the House of Representatives from among their respective appointees. The initial terms shall commence on September 1, 2005.

(f) Vacancies. – A vacancy on the Commission shall be filled in the same manner in which the original appointment was made, and the term shall be for the balance of the unexpired term.

(g) Compensation. – The Commission members shall receive no salary as a result of serving on the Commission but shall receive per diem, subsistence, and travel expenses in accordance with the provisions of G.S. 120-3.1, 138-5, and 138-6, as applicable. When approved by the Commission, members may be reimbursed for subsistence and travel expenses in excess of the statutory amount.

(h) Meetings. – The Cochairs shall convene the Commission. Meetings shall be held as often as necessary, but not less than four times a year.

(i) Quorum. – A majority of the members of the Commission shall constitute a quorum for the transaction of business.

(j) Staff. – Upon the prior approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional staff to the Commission to aid in its work.

(k) Reports. – The Commission shall annually report on its activities and recommendations, including any legislative proposals, to the General Assembly. The Commission shall make its first report on or before November 1, 2005.

(l) Funding. – From funds appropriated to the General Assembly, the Legislative Services Commission shall allocate funds for the purpose of conducting the study provided for in this section.

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

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

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

In the General Assembly read three times and ratified this the 2nd day of September, 2005.

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Beverly E. Perdue
President of the Senate

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Richard T. Morgan
Speaker Pro Tempore of the House of Representatives

_____
Michael F. Easley
Governor

Approved _____.m. this _____ day of _____, 2005