

By: Berman

H.B. No. 164

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the civil and criminal consequences of engaging in
3 certain conduct related to the manufacture of methamphetamine and
4 to the distribution and retail sales of pseudoephedrine; providing
5 penalties.

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

7 ARTICLE 1. CIVIL AND CRIMINAL CONSEQUENCES OF
8 ENGAGING IN CERTAIN CONDUCT RELATED TO
9 THE MANUFACTURE OF METHAMPHETAMINE

10 SECTION 1.01. Sections 481.112(b)-(f), Health and Safety
11 Code, are amended to read as follows:

12 (b) An offense under Subsection (a) is a state jail felony
13 if the amount of the controlled substance to which the offense
14 applies is, by aggregate weight, including adulterants or
15 dilutants, less than one gram, except that the offense is a felony
16 of the third degree if the controlled substance is methamphetamine
17 and is in an amount described by this subsection.

18 (c) An offense under Subsection (a) is a felony of the
19 second degree if the amount of the controlled substance to which the
20 offense applies is, by aggregate weight, including adulterants or
21 dilutants, one gram or more but less than four grams, except that
22 the offense is a felony of the first degree if the controlled
23 substance is methamphetamine and is in an amount described by this
24 subsection.

1 (d) An offense under Subsection (a) is a felony of the first
2 degree if the amount of the controlled substance to which the
3 offense applies is, by aggregate weight, including adulterants or
4 dilutants, four grams or more but less than 200 grams, except that
5 the offense is punishable by imprisonment in the institutional
6 division of the Texas Department of Criminal Justice for life or for
7 a term of not more than 99 years or less than 10 years and a fine not
8 to exceed \$100,000 if the controlled substance is methamphetamine
9 and is in an amount described by this subsection.

10 (e) An offense under Subsection (a) is punishable by
11 imprisonment in the institutional division of the Texas Department
12 of Criminal Justice for life or for a term of not more than 99 years
13 or less than 10 years, and a fine not to exceed \$100,000, if the
14 amount of the controlled substance to which the offense applies is,
15 by aggregate weight, including adulterants or dilutants, 200 grams
16 or more but less than 400 grams, except that the minimum term of
17 imprisonment is increased to 15 years and the maximum fine is
18 increased to \$250,000 if the controlled substance is
19 methamphetamine and is in an amount described by this subsection.

20 (f) An offense under Subsection (a) is punishable by
21 imprisonment in the institutional division of the Texas Department
22 of Criminal Justice for life or for a term of not more than 99 years
23 or less than 15 years, and a fine not to exceed \$250,000, if the
24 amount of the controlled substance to which the offense applies is,
25 by aggregate weight, including adulterants or dilutants, 400 grams
26 or more, except that the minimum term of imprisonment is increased
27 to 20 years and the maximum fine is increased to \$300,000 if the

1 controlled substance is methamphetamine and is in an amount
2 described by this subsection.

3 SECTION 1.02. Subchapter D, Chapter 481, Health and Safety
4 Code, is amended by adding Section 481.1122 to read as follows:

5 Sec. 481.1122. MANUFACTURE OF METHAMPHETAMINE: PRESENCE OF
6 CHILD. If it is shown at the punishment phase of a trial for the
7 manufacture of methamphetamine that when the offense was committed
8 a child younger than 18 years of age was present on the premises
9 where the offense was committed:

10 (1) the punishment specified by Section 481.112(b) is
11 increased to a felony of the second degree;

12 (2) the punishment specified by Section 481.112(c) is
13 enhanced by increasing the minimum term of imprisonment to 10 years
14 and increasing the maximum fine to \$100,000;

15 (3) the minimum term of imprisonment specified by
16 Section 481.112(d) is increased to 15 years and the maximum fine
17 specified by that section is increased to \$250,000;

18 (4) the minimum term of imprisonment specified by
19 Section 481.112(e) is increased to 20 years and the maximum fine
20 specified by that section is increased to \$300,000; and

21 (5) the minimum term of imprisonment specified by
22 Section 481.112(f) is increased to 25 years and the maximum fine
23 specified by that section is increased to \$350,000.

24 SECTION 1.03. Section 481.124, Health and Safety Code, is
25 amended by amending Subsection (d) and adding Subsection (d-1) to
26 read as follows:

27 (d) An offense under this section is:

1 (1) a felony of the second degree if the controlled
2 substance is listed in Penalty Group 1 or 1-A, except as provided by
3 Subsection (d-1);

4 (2) a felony of the third degree if the controlled
5 substance is listed in Penalty Group 2;

6 (3) a state jail felony if the controlled substance is
7 listed in Penalty Group 3 or 4; or

8 (4) a Class A misdemeanor if the controlled substance
9 is listed in a schedule by an action of the commissioner under this
10 chapter but not listed in a penalty group.

11 (d-1) An offense under this section is a felony of the first
12 degree if it is shown at the punishment phase of a trial of the
13 offense that:

14 (1) the person committed the offense with the intent
15 to unlawfully manufacture methamphetamine; and

16 (2) when the offense was committed a child younger
17 than 18 years of age was:

18 (A) present on the premises where the defendant
19 was in possession of the chemical; or

20 (B) in or on a vehicle in or on which the
21 defendant was transporting the chemical.

22 SECTION 1.04. Chapter 504, Health and Safety Code, is
23 amended by adding Section 504.003 to read as follows:

24 Sec. 504.003. INTENT TO FACILITATE THE MANUFACTURE OF
25 METHAMPHETAMINE. If it is shown at the punishment phase of a trial
26 of an offense under Section 504.001 or 504.002 that the person
27 committed the offense with the intent to facilitate the manufacture

1 of methamphetamine, the offense is a felony of the second degree.

2 SECTION 1.05. Section 99.003, Civil Practice and Remedies
3 Code, is amended to read as follows:

4 Sec. 99.003. STRICT LIABILITY AND MINIMUM DAMAGES FOR
5 EXPOSURE. A person who manufactures methamphetamine is strictly
6 liable for any exposure by an individual to the manufacturing
7 process, including exposure to the methamphetamine itself or any of
8 the byproducts or waste products incident to the manufacture, for
9 the greater of:

10 (1) actual damages for personal injury, death, or
11 property damage as a result of the exposure; or

12 (2) \$20,000 [~~\$10,000~~] for each incident of exposure.

13 SECTION 1.06. Article 17.15, Code of Criminal Procedure, is
14 amended to read as follows:

15 Art. 17.15. RULES FOR FIXING AMOUNT OF BAIL. (a) The amount
16 of bail to be required in any case is to be regulated by the court,
17 judge, magistrate, or officer taking the bail; they are to be
18 governed in the exercise of this discretion by the Constitution and
19 by the following rules:

20 1. The bail shall be sufficiently high to give
21 reasonable assurance that the undertaking will be complied with.

22 2. The power to require bail is not to be so used as to
23 make it an instrument of oppression.

24 3. The nature of the offense and the circumstances
25 under which it was committed are to be considered.

26 4. The ability to make bail is to be regarded, and
27 proof may be taken upon this point.

1 5. The future safety of a victim of the alleged offense
2 and the community shall be considered.

3 (b) A judge, magistrate, or officer who requires bail in an
4 amount less than \$300,000 for a defendant charged with the
5 manufacture of methamphetamine, or less than \$500,000 if the
6 accusation against the defendant includes an allegation that at the
7 time of the offense a child younger than 18 years of age was present
8 on the premises where the offense was committed, shall state the
9 reasons for setting the lesser amount in writing and include that
10 writing in the record of the proceedings.

11 SECTION 1.07. Article 37.07, Code of Criminal Procedure, is
12 amended by adding Section 4A to read as follows:

13 Sec. 4A. In the penalty phase of the trial of an offense in
14 which punishment is to be assessed by the jury rather than the
15 court, if the offense of which the jury has found the defendant
16 guilty is an offense involving the manufacture of methamphetamine
17 punishable under Section 481.112 or 481.1122, Health and Safety
18 Code, the court shall charge the jury as provided by Section 4(b) or
19 (c), as applicable, except that the judge shall amend the charge to
20 accurately reflect the defendant's eligibility for parole as
21 provided by Section 508.145, Government Code.

22 SECTION 1.08. Section 262.104, Family Code, is amended to
23 read as follows:

24 Sec. 262.104. TAKING POSSESSION OF A CHILD IN EMERGENCY
25 WITHOUT A COURT ORDER. (a) If there is no time to obtain a
26 temporary restraining order or attachment before taking possession
27 of a child consistent with the health and safety of that child, an

1 authorized representative of the Department of Protective and
2 Regulatory Services, a law enforcement officer, or a juvenile
3 probation officer may take possession of a child without a court
4 order under the following conditions, only:

5 (1) on personal knowledge of facts that would lead a
6 person of ordinary prudence and caution to believe that there is an
7 immediate danger to the physical health or safety of the child;

8 (2) on information furnished by another that has been
9 corroborated by personal knowledge of facts and all of which taken
10 together would lead a person of ordinary prudence and caution to
11 believe that there is an immediate danger to the physical health or
12 safety of the child;

13 (3) on personal knowledge of facts that would lead a
14 person of ordinary prudence and caution to believe that the child
15 has been the victim of sexual abuse;

16 (4) on information furnished by another that has been
17 corroborated by personal knowledge of facts and all of which taken
18 together would lead a person of ordinary prudence and caution to
19 believe that the child has been the victim of sexual abuse; or

20 (5) on information furnished by another that has been
21 corroborated by personal knowledge of facts and all of which taken
22 together would lead a person of ordinary prudence and caution to
23 believe that the parent or person who has possession of the child is
24 currently using a controlled substance as defined by Chapter 481,
25 Health and Safety Code, and the use constitutes an immediate danger
26 to the physical health or safety of the child.

27 (b) An authorized representative of the Department of

1 Protective and Regulatory Services, a law enforcement officer, or a
2 juvenile probation officer shall take possession of a child under
3 Subsection (a) on personal knowledge or information furnished by
4 another indicating that the parent or person who has possession of
5 the child has permitted the child to remain on premises used for the
6 manufacture of methamphetamine.

7 SECTION 1.09. Section 508.145, Government Code, is amended
8 by amending Subsections (e) and (f) and adding Subsections (g),
9 (h), and (i) to read as follows:

10 (e) An inmate serving a sentence for an offense involving
11 the manufacture of methamphetamine that is punishable under Section
12 481.112 or 481.1122, Health and Safety Code, as a felony of the
13 first degree or by imprisonment for a minimum term or by a maximum
14 fine that is more than a minimum term or maximum fine for a felony of
15 the first degree, who has been previously convicted of an offense
16 involving the manufacture of methamphetamine that is punishable
17 under one of those sections as a felony of the first degree or by
18 imprisonment for a minimum term or by a maximum fine that is more
19 than a minimum term or maximum fine for a felony of the first
20 degree, is not eligible for release on parole until the actual
21 calendar time the inmate has served, without consideration of good
22 conduct time, equals the term to which the inmate was sentenced or
23 25 calendar years, whichever is less.

24 (f) An inmate serving a sentence for an offense involving
25 the manufacture of methamphetamine that is punishable under Section
26 481.112 or 481.1122, Health and Safety Code, by imprisonment for a
27 minimum term or by a maximum fine that is more than a minimum term or

1 maximum fine for a felony of the first degree is not eligible for
2 release on parole until the actual calendar time the inmate has
3 served, without consideration of good conduct time, equals the term
4 to which the inmate was sentenced or 20 calendar years, whichever is
5 less.

6 (g) An inmate serving a sentence for an offense involving
7 the manufacture of methamphetamine that is punishable under Section
8 481.112 or 481.1122, Health and Safety Code, as a felony of the
9 first degree is not eligible for release on parole until the actual
10 calendar time the inmate has served, without consideration of good
11 conduct time, equals the term to which the inmate was sentenced or
12 10 calendar years, whichever is less.

13 (h) An inmate serving a sentence for an offense involving
14 the manufacture of methamphetamine that is punishable under Section
15 481.112 or 481.1122, Health and Safety Code, as a felony of the
16 second or third degree or serving a sentence for which the
17 punishment is increased under Section 481.134, Health and Safety
18 Code, except with respect to an increase to which Subsection (d)
19 applies, is not eligible for release on parole until the [~~inmate's~~]
20 actual calendar time the inmate has served, without consideration
21 of good conduct time, equals [~~five years or~~] the term to which the
22 inmate was sentenced or five calendar years, whichever is less.

23 (i) [~~(f)~~] Except as provided by Section 508.146, any other
24 inmate is eligible for release on parole when the inmate's actual
25 calendar time served plus good conduct time equals one-fourth of
26 the sentence imposed or 15 calendar years, whichever is less.

ARTICLE 2. DISTRIBUTION AND RETAIL SALES OF
PSEUDOEPHEDRINE

SECTION 2.01. Subtitle B, Title 6, Health and Safety Code,
is amended by adding Chapter 468 to read as follows:

CHAPTER 468. METHAMPHETAMINE WATCH PROGRAM

Sec. 468.001. DEFINITIONS. In this chapter:

(1) "Department" means the Department of State Health
Services.

(2) "Program" means the methamphetamine watch program
established under this chapter.

(3) "Retailer" means a business establishment in this
state that engages in over-the-counter retail sales of any product
containing pseudoephedrine.

Sec. 468.002. ESTABLISHMENT OF METHAMPHETAMINE WATCH
PROGRAM. The department shall establish a methamphetamine watch
program to:

(1) inform retailers of the problems associated with
the illicit manufacture and use of methamphetamine in this state;

(2) establish procedures and develop forms for
retailers and other persons to use in reporting to the department
any incidents of theft, suspicious purchases, or other transactions
involving products used in the illicit manufacture of
methamphetamine;

(3) increase community awareness of methamphetamine;

(4) encourage retailers, law enforcement, state and
local agencies, and other persons to cooperate in efforts to reduce
the diversion of legitimate products for use in the illicit

1 manufacture of methamphetamine; and

2 (5) assist local communities in addressing problems
3 created by the illicit manufacture and use of methamphetamine.

4 Sec. 468.003. RETAILER PARTICIPATION. (a) Retailer
5 participation in the program is voluntary.

6 (b) A retailer participating in the program shall make
7 reasonable efforts to deter the theft or improper sale of products
8 used in the illicit manufacture of methamphetamine, including
9 products containing pseudoephedrine, by:

10 (1) implementing product management practices that
11 deter theft or suspicious purchases of the products, including
12 placing signs at strategic locations within the retail
13 establishment to inform patrons of the retailer's participation in
14 the program; and

15 (2) providing annual personnel training on products
16 used in the illicit manufacture of methamphetamine and procedures
17 to follow on observing theft or suspicious purchases of those
18 products.

19 Sec. 468.004. REPORTING; IMMUNITY FROM LIABILITY. A person
20 is not liable for any damages arising from an act relating to the
21 reporting of information made in good faith and in substantial
22 compliance with the reporting procedures established under Section
23 468.002(2).

24 Sec. 468.005. GRANT PROGRAM. (a) The criminal justice
25 division of the governor's office shall implement a grant program
26 for public and private organizations to engage in initiatives
27 designed to support the methamphetamine watch program established

1 under this chapter. The grant recipient may use grant money only to
2 pay for activities directly related to the purpose of the
3 initiative as described by this subsection.

4 (b) The governor's office may accept gifts, grants,
5 donations, and other contributions for the purpose of the grant
6 program.

7 SECTION 2.02. Chapter 481, Health and Safety Code, is
8 amended by adding Section 481.0771 to read as follows:

9 Sec. 481.0771. RECORDS AND REPORTS ON PSEUDOEPHEDRINE. (a)
10 A wholesaler who sells, transfers, or otherwise furnishes
11 pseudoephedrine to a retailer shall:

12 (1) before delivering the pseudoephedrine, obtain
13 from the retailer a copy of the retailer's license to operate a
14 pharmacy and the retailer's address, area code, and telephone
15 number; and

16 (2) make an accurate and legible record of the
17 transaction and maintain the record for at least two years after the
18 date of the transaction.

19 (b) The wholesaler shall submit to the director in
20 accordance with department rule a monthly report that includes:

- 21 (1) the information required by Subsection (a)(1);
22 (2) the amount of pseudoephedrine delivered; and
23 (3) any other information required by the director.

24 (c) Not later than five business days after receipt of an
25 order for pseudoephedrine, a wholesaler shall submit to the
26 director in accordance with department rule a report of the order if
27 the order:

1 (1) is received from a retailer that is not licensed to
2 operate a pharmacy; or

3 (2) requests delivery of a suspicious quantity of
4 pseudoephedrine as determined by department rule.

5 (d) A wholesaler who, with reckless disregard for the duty
6 to report under Subsection (c), fails to report as required by that
7 subsection may be subject to disciplinary action in accordance with
8 department rule.

9 SECTION 2.03. Subtitle C, Title 6, Health and Safety Code,
10 is amended by adding Chapter 486 to read as follows:

11 CHAPTER 486. PSEUDOEPHEDRINE

12 SUBCHAPTER A. GENERAL PROVISIONS

13 Sec. 486.001. DEFINITIONS. (a) In this chapter:

14 (1) "Board" means the Texas State Board of Pharmacy.

15 (2) "Commissioner" means the commissioner of state
16 health services.

17 (3) "Council" means the State Health Services Council.

18 (4) "Department" means the Department of State Health
19 Services.

20 (5) "Executive director" means the executive director
21 of the Texas State Board of Pharmacy.

22 (6) "Pseudoephedrine" means any compound, mixture, or
23 preparation containing any detectable amount of pseudoephedrine,
24 including its salts, optical isomers, and salts of optical isomers.
25 The term does not include any compounds, mixtures, or preparations
26 that are in liquid, liquid capsule, or gel capsule form and in which
27 pseudoephedrine is not the only active ingredient.

1 (7) "Sale" includes a conveyance, exchange, barter, or
2 trade.

3 (b) A term that is used in this chapter but is not defined by
4 Subsection (a) has the meaning assigned by Section 481.002.

5 Sec. 486.002. APPLICABILITY. This chapter does not apply
6 to the sale of any product dispensed or delivered by a pharmacist
7 according to a prescription issued by a practitioner for a valid
8 medical purpose and in the course of professional practice.

9 Sec. 486.003. RULES. (a) The council shall adopt rules
10 necessary to implement and enforce Subchapter B.

11 (b) The board shall adopt rules necessary to implement and
12 enforce Subchapter C.

13 [Sections 486.004-486.010 reserved for expansion]

14 SUBCHAPTER B. PROHIBITED SALES

15 Sec. 486.011. SALES BY ESTABLISHMENTS OTHER THAN
16 PHARMACIES. A business establishment that does not operate a
17 pharmacy licensed by the board may not engage in over-the-counter
18 sales of pseudoephedrine.

19 [Sections 486.012-486.020 reserved for expansion]

20 SUBCHAPTER C. REGULATED SALES

21 Sec. 486.021. APPLICABILITY. This subchapter applies only
22 to a business establishment that operates a pharmacy licensed by
23 the board.

24 Sec. 486.022. RESTRICTION OF ACCESS TO PSEUDOEPHEDRINE. A
25 business establishment that engages in over-the-counter sales of
26 pseudoephedrine shall display the pseudoephedrine in a manner that
27 makes the pseudoephedrine accessible to a patron of the business

1 establishment only with the assistance of an employee of the
2 establishment.

3 Sec. 486.023. PREREQUISITES TO SALE OF PSEUDOEPHEDRINE.
4 Before completing an over-the-counter sale of pseudoephedrine, a
5 business establishment that engages in those sales shall:

6 (1) require the person purchasing pseudoephedrine to:
7 (A) display a driver's license or other form of
8 identification containing the person's photograph; and

9 (B) sign for the purchase;

10 (2) make a record of the sale, including the name of
11 the person purchasing pseudoephedrine, the date of purchase, and
12 the number of grams of pseudoephedrine purchased; and

13 (3) take action as necessary to ensure that a person
14 does not purchase more than nine grams of pseudoephedrine from the
15 establishment in any 30-day period.

16 Sec. 486.024. MAINTENANCE OF RECORDS. A business
17 establishment that engages in over-the-counter sales of
18 pseudoephedrine shall maintain all records made under Section
19 486.023(2) in a secure centralized location. The establishment
20 shall maintain each record until at least the first anniversary of
21 the date the record is made.

22 [Sections 486.025-486.030 reserved for expansion]

23 SUBCHAPTER D. ADMINISTRATIVE PENALTY

24 Sec. 486.031. IMPOSITION OF PENALTY. (a) The department
25 may impose an administrative penalty on a person who violates
26 Subchapter B.

27 (b) The board may impose an administrative penalty on a

1 person who violates Subchapter C.

2 Sec. 486.032. AMOUNT OF PENALTY. (a) The amount of the
3 penalty may not exceed \$1,000 for each violation, and each day a
4 violation continues or occurs is a separate violation for purposes
5 of imposing a penalty. The total amount of the penalty assessed for
6 a violation continuing or occurring on separate days under this
7 subsection may not exceed \$5,000.

8 (b) The amount shall be based on:

9 (1) the seriousness of the violation, including the
10 nature, circumstances, extent, and gravity of the violation;

11 (2) the threat to health or safety caused by the
12 violation;

13 (3) the history of previous violations;

14 (4) the amount necessary to deter a future violation;

15 (5) whether the violator demonstrated good faith,
16 including when applicable whether the violator made good faith
17 efforts to correct the violation; and

18 (6) any other matter that justice may require.

19 Sec. 486.033. REPORT AND NOTICE OF VIOLATION AND PENALTY.

20 (a) If the department or the board, as applicable, initially
21 determines that a violation occurred, that entity shall give
22 written notice of the report by certified mail to the person.

23 (b) The notice must:

24 (1) include a brief summary of the alleged violation;

25 (2) state the amount of the recommended penalty; and

26 (3) inform the person of the person's right to a
27 hearing on the occurrence of the violation, the amount of the

1 penalty, or both.

2 Sec. 486.034. PENALTY TO BE PAID OR HEARING REQUESTED. (a)
3 Before the 21st day after the date the person receives notice under
4 Section 486.033, the person in writing may:

5 (1) accept the determination and recommended penalty;
6 or

7 (2) make a request for a hearing on the occurrence of
8 the violation, the amount of the penalty, or both.

9 (b) If the person accepts the determination and recommended
10 penalty or if the person fails to respond to the notice, the
11 commissioner or the executive director, as applicable, by order
12 shall approve the determination.

13 Sec. 486.035. HEARING. (a) If the person requests a
14 hearing, the commissioner or the executive director, as applicable,
15 shall refer the matter to the State Office of Administrative
16 Hearings, which shall promptly set a hearing date and give written
17 notice of the time and place of the hearing to the person. An
18 administrative law judge of the State Office of Administrative
19 Hearings shall conduct the hearing.

20 (b) The administrative law judge shall make findings of fact
21 and conclusions of law and promptly issue to the commissioner or the
22 executive director, as applicable, a proposal for a decision about
23 the occurrence of the violation and the amount of a proposed
24 penalty.

25 Sec. 486.036. DECISION. (a) Based on the findings of fact,
26 conclusions of law, and proposal for a decision, the commissioner
27 or the executive director, as applicable, by order may:

1 (1) find that a violation occurred and impose a
2 penalty; or

3 (2) find that a violation did not occur.

4 (b) The notice of the commissioner's or the executive
5 director's order under Subsection (a) that is sent to the person in
6 the manner provided by Chapter 2001, Government Code, must include
7 a statement of the right of the person to judicial review of the
8 order.

9 Sec. 486.037. OPTIONS FOLLOWING DECISION: PAY OR APPEAL.

10 Before the 31st day after the date the order under Section 486.036
11 that imposes an administrative penalty becomes final, the person
12 shall:

13 (1) pay the penalty; or

14 (2) file a petition for judicial review of the order
15 contesting the occurrence of the violation, the amount of the
16 penalty, or both.

17 Sec. 486.038. STAY OF ENFORCEMENT OF PENALTY. (a) Within
18 the period prescribed by Section 486.037, a person who files a
19 petition for judicial review may:

20 (1) stay enforcement of the penalty by:

21 (A) paying the penalty to the court for placement
22 in an escrow account; or

23 (B) giving the court a supersedeas bond approved
24 by the court that:

25 (i) is for the amount of the penalty; and

26 (ii) is effective until all judicial review
27 of the order is final; or

1 (2) request the court to stay enforcement of the
2 penalty by:

3 (A) filing with the court a sworn affidavit of
4 the person stating that the person is financially unable to pay the
5 penalty and is financially unable to give the supersedeas bond; and

6 (B) sending a copy of the affidavit to the
7 commissioner or the executive director, as applicable, by certified
8 mail.

9 (b) Following receipt of a copy of an affidavit under
10 Subsection (a)(2), the commissioner or the executive director, as
11 applicable, may file with the court, before the 6th day after the
12 date of receipt, a contest to the affidavit. The court shall hold a
13 hearing on the facts alleged in the affidavit as soon as practicable
14 and shall stay the enforcement of the penalty on finding that the
15 alleged facts are true. The person who files an affidavit has the
16 burden of proving that the person is financially unable to pay the
17 penalty or to give a supersedeas bond.

18 Sec. 486.039. COLLECTION OF PENALTY. (a) If the person
19 does not pay the penalty and the enforcement of the penalty is not
20 stayed, the penalty may be collected.

21 (b) The attorney general may sue to collect the penalty.

22 Sec. 486.040. DECISION BY COURT. (a) If the court sustains
23 the finding that a violation occurred, the court may uphold or
24 reduce the amount of the penalty and order the person to pay the
25 full or reduced amount of the penalty.

26 (b) If the court does not sustain the finding that a
27 violation occurred, the court shall order that a penalty is not

1 owed.

2 Sec. 486.041. REMITTANCE OF PENALTY AND INTEREST. (a) If
3 the person paid the penalty and if the amount of the penalty is
4 reduced or the penalty is not upheld by the court, the court shall
5 order, when the court's judgment becomes final, that the
6 appropriate amount plus accrued interest be remitted to the person
7 before the 31st day after the date that the judgment of the court
8 becomes final.

9 (b) The interest accrues at the rate charged on loans to
10 depository institutions by the New York Federal Reserve Bank.

11 (c) The interest shall be paid for the period beginning on
12 the date the penalty is paid and ending on the date the penalty is
13 remitted.

14 Sec. 486.042. RELEASE OF BOND. (a) If the person gave a
15 supersedeas bond and the penalty is not upheld by the court, the
16 court shall order, when the court's judgment becomes final, the
17 release of the bond.

18 (b) If the person gave a supersedeas bond and the amount of
19 the penalty is reduced, the court shall order the release of the
20 bond after the person pays the reduced amount.

21 Sec. 486.043. ADMINISTRATIVE PROCEDURE. A proceeding to
22 impose the penalty is considered to be a contested case under
23 Chapter 2001, Government Code.

24 ARTICLE 3. TRANSITION LANGUAGE

25 AND EFFECTIVE DATE

26 SECTION 3.01. Sections 481.112 and 481.124, Health and
27 Safety Code, as amended by this Act, and Sections 481.1122 and

1 504.003, Health and Safety Code, as added by this Act, apply only to
2 an offense committed on or after September 1, 2005. An offense
3 committed before September 1, 2005, is covered by the law in effect
4 when the offense was committed, and the former law is continued in
5 effect for that purpose. For purposes of this section, an offense
6 was committed before September 1, 2005, if any element of the
7 offense was committed before that date.

8 SECTION 3.02. Articles 17.15 and 37.07, Code of Criminal
9 Procedure, and Section 508.145, Government Code, as amended by this
10 Act, apply only to a defendant charged with or an inmate serving a
11 sentence for an offense committed on or after September 1, 2005. A
12 defendant charged with or an inmate serving a sentence for an
13 offense committed before September 1, 2005, is covered by the law in
14 effect when the offense was committed, and the former law is
15 continued in effect for that purpose. For purposes of this section,
16 an offense was committed before September 1, 2005, if any element of
17 the offense was committed before that date.

18 SECTION 3.03. Section 99.003, Civil Practice and Remedies
19 Code, as amended by this Act, and Section 468.004, Health and Safety
20 Code, as added by this Act, apply only to a cause of action that
21 accrues on or after September 1, 2005. An action that accrued
22 before September 1, 2005, is governed by the law applicable to the
23 action immediately before September 1, 2005, and that law is
24 continued in effect for that purpose.

25 SECTION 3.04. (a) The Department of State Health Services
26 shall take all action necessary to establish the methamphetamine
27 watch program as required by Chapter 468, Health and Safety Code, as

1 added by this Act, not later than September 1, 2005.

2 (b) The criminal justice division of the governor's office
3 shall take all action necessary to begin implementation of the
4 grant program required under Section 468.005, Health and Safety
5 Code, as added by this Act, not later than September 1, 2005.

6 SECTION 3.05. The director of the Department of Public
7 Safety shall adopt any rules necessary to administer and enforce
8 Section 481.0771, Health and Safety Code, as added by this Act, not
9 later than September 1, 2005.

10 SECTION 3.06. (a) The State Health Services Council shall
11 adopt rules to implement and enforce Subchapter B, Chapter 486,
12 Health and Safety Code, as added by this Act, not later than
13 September 1, 2005.

14 (b) The Texas State Board of Pharmacy shall adopt rules to
15 implement and enforce Subchapter C, Chapter 486, Health and Safety
16 Code, as added by this Act, not later than September 1, 2005.

17 SECTION 3.07. This Act takes effect immediately if it
18 receives a vote of two-thirds of all the members elected to each
19 house, as provided by Section 39, Article III, Texas Constitution.
20 If this Act does not receive the vote necessary for immediate
21 effect, this Act takes effect September 1, 2005.