

1-1 By: Berman, et al. (Senate Sponsor - Estes) H.B. No. 164  
1-2 (In the Senate - Received from the House May 16, 2005;  
1-3 May 17, 2005, read first time and referred to Committee on Criminal  
1-4 Justice; May 20, 2005, reported adversely, with favorable  
1-5 Committee Substitute by the following vote: Yeas 4, Nays 0;  
1-6 May 20, 2005, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 164 By: Hinojosa

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to the civil and criminal consequences of engaging in  
1-11 conduct related to the manufacture of methamphetamine and to the  
1-12 distribution and retail sales of certain chemical substances.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. Section 99.003, Civil Practice and Remedies  
1-15 Code, is amended to read as follows:

1-16 Sec. 99.003. STRICT LIABILITY AND MINIMUM DAMAGES FOR  
1-17 EXPOSURE. A person who manufactures methamphetamine is strictly  
1-18 liable for any exposure by an individual to the manufacturing  
1-19 process, including exposure to the methamphetamine itself or any of  
1-20 the byproducts or waste products incident to the manufacture, for  
1-21 the greater of:

1-22 (1) actual damages for personal injury, death, or  
1-23 property damage as a result of the exposure; or

1-24 (2) \$20,000 [~~\$10,000~~] for each incident of exposure.

1-25 SECTION 2. Section 262.104, Family Code, is amended to read  
1-26 as follows:

1-27 Sec. 262.104. TAKING POSSESSION OF A CHILD IN EMERGENCY  
1-28 WITHOUT A COURT ORDER. (a) If there is no time to obtain a  
1-29 temporary restraining order or attachment before taking possession  
1-30 of a child consistent with the health and safety of that child, an  
1-31 authorized representative of the Department of Family and  
1-32 Protective [~~and Regulatory~~] Services, a law enforcement officer, or  
1-33 a juvenile probation officer may take possession of a child without  
1-34 a court order under the following conditions, only:

1-35 (1) on personal knowledge of facts that would lead a  
1-36 person of ordinary prudence and caution to believe that there is an  
1-37 immediate danger to the physical health or safety of the child;

1-38 (2) on information furnished by another that has been  
1-39 corroborated by personal knowledge of facts and all of which taken  
1-40 together would lead a person of ordinary prudence and caution to  
1-41 believe that there is an immediate danger to the physical health or  
1-42 safety of the child;

1-43 (3) on personal knowledge of facts that would lead a  
1-44 person of ordinary prudence and caution to believe that the child  
1-45 has been the victim of sexual abuse;

1-46 (4) on information furnished by another that has been  
1-47 corroborated by personal knowledge of facts and all of which taken  
1-48 together would lead a person of ordinary prudence and caution to  
1-49 believe that the child has been the victim of sexual abuse; or

1-50 (5) on information furnished by another that has been  
1-51 corroborated by personal knowledge of facts and all of which taken  
1-52 together would lead a person of ordinary prudence and caution to  
1-53 believe that the parent or person who has possession of the child is  
1-54 currently using a controlled substance as defined by Chapter 481,  
1-55 Health and Safety Code, and the use constitutes an immediate danger  
1-56 to the physical health or safety of the child.

1-57 (b) An authorized representative of the Department of  
1-58 Family and Protective Services, a law enforcement officer, or a  
1-59 juvenile probation officer may take possession of a child under  
1-60 Subsection (a) on personal knowledge or information furnished by  
1-61 another, that has been corroborated by personal knowledge, that  
1-62 would lead a person of ordinary prudence and caution to believe that  
1-63 the parent or person who has possession of the child has permitted

2-1 the child to remain on premises used for the manufacture of  
 2-2 methamphetamine.

2-3 SECTION 3. Subchapter C, Chapter 481, Health and Safety  
 2-4 Code, is amended by adding Section 481.0721 to read as follows:

2-5 Sec. 481.0721. OVER-THE-COUNTER SALES OF EPHEDRINE,  
 2-6 PSEUDOEPHEDRINE, AND NORPSEUDOEPHEDRINE. (a) In this section,  
 2-7 "ephedrine," "pseudoephedrine," and "norpseudoephedrine" mean any  
 2-8 compound, mixture, or preparation containing any detectable amount  
 2-9 of that substance, including its salts, optical isomers, and salts  
 2-10 of optical isomers. The term does not include any compound,  
 2-11 mixture, or preparation that is in liquid, liquid capsule, or  
 2-12 liquid gel capsule form.

2-13 (b) A business establishment may engage in over-the-counter  
 2-14 sales of products containing ephedrine, pseudoephedrine, or  
 2-15 norpseudoephedrine only if the establishment:

2-16 (1) operates a pharmacy licensed by the Texas State  
 2-17 Board of Pharmacy;

2-18 (2) engages only in direct retail sales to patrons of  
 2-19 the establishment for the patrons' personal use; and

2-20 (3) complies with the requirements of this section.

2-21 (c) A business establishment that engages in  
 2-22 over-the-counter sales of products containing ephedrine,  
 2-23 pseudoephedrine, or norpseudoephedrine as the only active  
 2-24 ingredient shall maintain those products behind the pharmacy  
 2-25 counter.

2-26 (d) A business establishment that engages in  
 2-27 over-the-counter sales of products that contain ephedrine,  
 2-28 pseudoephedrine, or norpseudoephedrine combined with at least one  
 2-29 other active ingredient shall maintain those products:

2-30 (1) behind the pharmacy counter; or

2-31 (2) in a locked case within 30 feet and in a direct  
 2-32 line of sight from the pharmacy counter staffed by an employee of  
 2-33 the establishment.

2-34 (e) Before completing an over-the-counter sale of a product  
 2-35 containing ephedrine, pseudoephedrine, or norpseudoephedrine, a  
 2-36 business establishment shall:

2-37 (1) require the person purchasing the product to:

2-38 (A) display a driver's license or other form of  
 2-39 identification containing the person's photograph and date of  
 2-40 birth; and

2-41 (B) sign for the purchase;

2-42 (2) make a record of the sale, including the name and  
 2-43 date of birth of the person making the purchase, the date of  
 2-44 purchase, and the item and number of grams purchased; and

2-45 (3) take actions necessary to prevent a person who  
 2-46 makes over-the-counter purchases of one or more products containing  
 2-47 ephedrine, pseudoephedrine, or norpseudoephedrine from obtaining  
 2-48 from the establishment in a single transaction more than:

2-49 (A) two packages of those products; or

2-50 (B) six grams of ephedrine, pseudoephedrine,  
 2-51 norpseudoephedrine, or a combination of those substances.

2-52 (f) The business establishment shall maintain each record  
 2-53 made under Subsection (e)(2) for at least two years after the date  
 2-54 the record is made and shall make each record available on request  
 2-55 by the department or the Texas State Board of Pharmacy.

2-56 SECTION 4. Section 481.077(1), Health and Safety Code, is  
 2-57 amended to read as follows:

2-58 (1) This section does not apply to the sale or transfer of  
 2-59 any compound, mixture, or preparation containing ~~a nonnarcotic~~  
 2-60 ~~product that:~~

2-61 ~~[(1) includes:~~

2-62 ~~[(A)] ephedrine, [+~~

2-63 ~~[(B)] pseudoephedrine, or [+~~

2-64 ~~[(C)] norpseudoephedrine that is in liquid,~~  
 2-65 ~~liquid capsule, or liquid gel capsule form [+, or~~

2-66 ~~[(D)] phenylpropanolamine, and~~

2-67 ~~[(2) is sold with a prescription or over the counter in~~  
 2-68 ~~accordance with a federal statute or rule].~~

2-69 SECTION 5. Subchapter C, Chapter 481, Health and Safety

Code, is amended by adding Section 481.0771 to read as follows:

Sec. 481.0771. RECORDS AND REPORTS ON PSEUDOEPHEDRINE.

(a) A wholesaler who sells, transfers, or otherwise furnishes a product containing ephedrine, pseudoephedrine, or norpseudoephedrine to a retailer shall:

(1) before delivering the product, obtain from the retailer the retailer's address, area code, and telephone number; and

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

(b) The wholesaler shall make all records available to the director in accordance with department rule, including:

(1) the information required by Subsection (a)(1);

(2) the amount of the product containing ephedrine, pseudoephedrine, or norpseudoephedrine delivered; and

(3) any other information required by the director.

(c) Not later than five business days after receipt of an order for a product containing ephedrine, pseudoephedrine, or norpseudoephedrine that requests delivery of a suspicious quantity of the product as determined by department rule, a wholesaler shall submit to the director a report of the order in accordance with department rule.

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

SECTION 6. Section 481.124(b), Health and Safety Code, is amended to read as follows:

(b) For purposes of this section, an intent to unlawfully manufacture the controlled substance methamphetamine is presumed if the actor possesses or transports:

(1) anhydrous ammonia in a container or receptacle that is not designed and manufactured to lawfully hold or transport anhydrous ammonia;

(2) lithium metal removed from a battery and immersed in kerosene, mineral spirits, or similar liquid that prevents or retards hydration; or

(3) in one container, vehicle, or building, phenylacetic acid, or more than nine grams, three containers packaged for retail sale, or 300 tablets or capsules of a product containing ephedrine or pseudoephedrine, and:

(A) anhydrous ammonia;

(B) at least three of the following categories of substances commonly used in the manufacture of methamphetamine:

(i) lithium or sodium metal or red phosphorus, iodine, or iodine crystals;

(ii) lye, sulfuric acid, hydrochloric acid, or muriatic acid;

(iii) an organic solvent, including ethyl ether, alcohol, or acetone;

(iv) a petroleum distillate, including naphtha, paint thinner, or charcoal lighter fluid; or

(v) aquarium, rock, or table salt; or

(C) at least three of the following items:

(i) an item of equipment subject to regulation under Section 481.080, if the person is not registered under Section 481.063; or

(ii) glassware, a plastic or metal container, tubing, a hose, or other item specially designed, assembled, or adapted for use in the manufacture, processing, analyzing, storing, or concealing of methamphetamine.

SECTION 7. Subchapter D, Chapter 481, Health and Safety Code, is amended by adding Section 481.1245 to read as follows:

Sec. 481.1245. OFFENSE: POSSESSION OR TRANSPORT OF ANHYDROUS AMMONIA; USE OF OR TAMPERING WITH EQUIPMENT. (a) A person commits an offense if the person:

(1) possesses or transports anhydrous ammonia in a container or receptacle that is not designed or manufactured to hold or transport anhydrous ammonia;

4-1 (2) uses, transfers, or sells a container or  
4-2 receptacle that is designed or manufactured to hold anhydrous  
4-3 ammonia without the express consent of the owner of the container or  
4-4 receptacle; or

4-5 (3) tampers with equipment that is manufactured or  
4-6 used to hold, apply, or transport anhydrous ammonia without the  
4-7 express consent of the owner of the equipment.

4-8 (b) An offense under this section is a felony of the third  
4-9 degree.

4-10 SECTION 8. Section 22.041, Penal Code, is amended by adding  
4-11 Subsection (c-1) to read as follows:

4-12 (c-1) For purposes of Subsection (c), it is presumed that a  
4-13 person engaged in conduct that places a child in imminent danger of  
4-14 death, bodily injury, or physical or mental impairment if the  
4-15 person manufactured the controlled substance methamphetamine in  
4-16 the presence of the child.

4-17 SECTION 9. Chapter 504, Health and Safety Code, is  
4-18 repealed.

4-19 SECTION 10. (a) Section 99.003, Civil Practice and  
4-20 Remedies Code, as amended by this Act, applies only to a cause of  
4-21 action that accrues on or after September 1, 2005. An action that  
4-22 accrued before September 1, 2005, is governed by the law applicable  
4-23 to the action immediately before September 1, 2005, and that law is  
4-24 continued in effect for that purpose.

4-25 (b) The changes in law made by this Act in amending Section  
4-26 481.124(b), Health and Safety Code, in adding Section 481.1245,  
4-27 Health and Safety Code, and Section 22.041(c-1), Penal Code, and in  
4-28 repealing Chapter 504, Health and Safety Code, apply only to an  
4-29 offense committed on or after September 1, 2005. An offense  
4-30 committed before September 1, 2005, is covered by the law in effect  
4-31 when the offense was committed, and the former law is continued in  
4-32 effect for that purpose. For purposes of this section, an offense  
4-33 was committed before September 1, 2005, if any element of the  
4-34 offense was committed before that date.

4-35 (c) The director of the Department of Public Safety of the  
4-36 State of Texas shall adopt any rules necessary to administer and  
4-37 enforce Section 481.0771, Health and Safety Code, as added by this  
4-38 Act, not later than September 1, 2005.

4-39 SECTION 11. This Act takes effect August 1, 2005, if it  
4-40 receives a vote of two-thirds of all the members elected to each  
4-41 house, as provided by Section 39, Article III, Texas Constitution.  
4-42 If this Act does not receive the vote necessary to take effect on  
4-43 that date, this Act takes effect September 1, 2005.

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