

A BILL TO BE ENTITLED

AN ACT

relating to prohibitions on engaging in conduct related to the manufacture of methamphetamine and to the regulation and wholesale distribution of certain chemical substances; providing penalties.

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

SECTION 1. 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;

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

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

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

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

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

9 (b) A business establishment may engage in over-the-counter
10 sales of products containing ephedrine, pseudoephedrine, or
11 norpseudoephedrine only if the establishment:

12 (1) operates a pharmacy licensed by the Texas State
13 Board of Pharmacy;

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

16 (3) complies with the requirements of this section.

17 (c) A business establishment that engages in
18 over-the-counter sales of products containing ephedrine,
19 pseudoephedrine, or norpseudoephedrine as the only active
20 ingredient shall maintain those products behind the pharmacy
21 counter.

22 (d) A business establishment that engages in
23 over-the-counter sales of products that contain ephedrine,
24 pseudoephedrine, or norpseudoephedrine combined with at least one
25 other active ingredient shall maintain those products:

26 (1) behind the pharmacy counter; or

27 (2) in a locked case within 30 feet and in a direct

1 line of sight from the pharmacy counter staffed by an employee of
2 the establishment.

3 (e) Before completing an over-the-counter sale of a product
4 containing ephedrine, pseudoephedrine, or norpseudoephedrine, a
5 business establishment shall:

6 (1) require the person purchasing the product to:

7 (A) display a driver's license or other form of
8 identification containing the person's photograph and date of
9 birth; and

10 (B) sign for the purchase;

11 (2) make a record of the sale, including the name and
12 date of birth of the person making the purchase, the date of
13 purchase, and the item and number of grams purchased; and

14 (3) take actions necessary to prevent a person who
15 makes over-the-counter purchases of one or more products containing
16 ephedrine, pseudoephedrine, or norpseudoephedrine from obtaining
17 from the establishment in a single transaction more than:

18 (A) two packages of those products; or

19 (B) six grams of ephedrine, pseudoephedrine,
20 norpseudoephedrine, or a combination of those substances.

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

25 SECTION 3. Subsection (1), Section 481.077, Health and
26 Safety Code, is amended to read as follows:

27 (1) This section does not apply to the sale or transfer of

1 any compound, mixture, or preparation containing ~~[a nonnarcotic~~
2 ~~product that:~~

- 3 ~~[(1) includes:~~
- 4 ~~[(A)] ephedrine,~~ ~~[+~~
 - 5 ~~[(B)] pseudoephedrine,~~ ~~or~~ ~~[+~~
 - 6 ~~[(C)] norpseudoephedrine~~ that is in liquid,
7 liquid capsule, or liquid gel capsule form ~~[+ or~~
 - 8 ~~[(D)] phenylpropanolamine; and~~
- 9 ~~[(2) is sold with a prescription or over the counter in~~
10 ~~accordance with a federal statute or rule].~~

11 SECTION 4. Chapter 504, Health and Safety Code, is
12 repealed.

13 SECTION 5. The changes in law made by this Act in adding
14 Section 481.1245, Health and Safety Code, and repealing Chapter 504
15 of that code apply only to an offense committed on or after the
16 effective date of this Act. An offense committed before the
17 effective date of this Act is governed by the law in effect when the
18 offense was committed, and the former law is continued in effect for
19 that purpose. For purposes of this section, an offense was
20 committed before the effective date of this Act if any element of
21 the offense was committed before that date.

22 SECTION 6. This Act takes effect on June 1, 2005, if it
23 receives a vote of two-thirds of all the members elected to each
24 house, as provided by Section 39, Article III, Texas Constitution.
25 If this Act does not receive the vote necessary to take effect on
26 that date, this Act takes effect September 1, 2005.