

By: Van de Putte, et al.

S.B. No. 112

A BILL TO BE ENTITLED

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AN ACT

relating to the civil and criminal consequences of engaging in certain conduct related to the manufacture of methamphetamine and to the distribution and retail sales of pseudoephedrine.

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

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

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

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

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

SECTION 2. Section 262.104, Family Code, is amended to read as follows:

Sec. 262.104. TAKING POSSESSION OF A CHILD IN EMERGENCY WITHOUT A COURT ORDER. (a) If there is no time to obtain a temporary restraining order or attachment before taking possession of a child consistent with the health and safety of that child, an authorized representative of the Department of Family and Protective [~~and Regulatory~~] Services, a law enforcement officer, or

1 a juvenile probation officer may take possession of a child without  
2 a court order under the following conditions, only:

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

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

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

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

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

25 (b) An authorized representative of the Department of  
26 Family and Protective Services, a law enforcement officer, or a  
27 juvenile probation officer may take possession of a child under

1 Subsection (a) on personal knowledge or information furnished by  
2 another, that has been corroborated by personal knowledge, that  
3 would lead a person of ordinary prudence and caution to believe that  
4 the parent or person who has possession of the child has permitted  
5 the child to remain on premises used for the manufacture of  
6 methamphetamine.

7 SECTION 3. Subsection (b), Section 481.124, Health and  
8 Safety Code, is amended to read as follows:

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

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

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

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

22 (A) anhydrous ammonia;

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

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

27 (ii) lye, sulfuric acid, hydrochloric acid,

1 or muriatic acid;

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

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

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

7 (C) at least three of the following items:

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

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

15 SECTION 4. Subchapter C, Chapter 481, Health and Safety  
16 Code, is amended by adding Section 481.0771 to read as follows:

17 Sec. 481.0771. RECORDS AND REPORTS ON PSEUDOEPHEDRINE.

18 (a) A wholesaler who sells, transfers, or otherwise furnishes  
19 pseudoephedrine to a retailer shall:

20 (1) before delivering the pseudoephedrine, obtain  
21 from the retailer the retailer's address, area code, and telephone  
22 number; and

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

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

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

4           (c) Not later than five business days after receipt of an  
5 order for pseudoephedrine that requests delivery of a suspicious  
6 quantity of pseudoephedrine as determined by department rule, a  
7 wholesaler shall submit to the director a report of the order in  
8 accordance with department rule.

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

12           SECTION 5. Section 22.041, Penal Code, is amended by adding  
13 Subsection (c-1) to read as follows:

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

19           SECTION 6. (a) Section 99.003, Civil Practice and Remedies  
20 Code, as amended by this Act, applies 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           (b) Subsection (b), Section 481.124, Health and Safety  
26 Code, as amended by this Act, and Subsection (c-1), Section 22.041,  
27 Penal Code, as added by this Act, apply only to an offense committed

1 on or after September 1, 2005. An offense committed before  
2 September 1, 2005, is covered by the law in effect when the offense  
3 was committed, and the former law is continued in effect for that  
4 purpose. For purposes of this section, an offense was committed  
5 before September 1, 2005, if any element of the offense was  
6 committed before that date.

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

11 SECTION 7. This Act takes effect immediately if it receives  
12 a vote of two-thirds of all the members elected to each house, as  
13 provided by Section 39, Article III, Texas Constitution. If this  
14 Act does not receive the vote necessary for immediate effect, this  
15 Act takes effect September 1, 2005.