

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE DRH60357-LH-179 (04/05)

Short Title: Limit Certain Self-Service Drug Purchases.

(Public)

Sponsors: Representative Haire.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT CERTAIN PSEUDOEPHEDRINE PRODUCTS SHALL NOT BE OFFERED FOR SELF-SERVICE SALES AND SHALL BE STORED BEHIND THE COUNTER, TO PROVIDE THAT STEALING A PRODUCT THAT CONTAINS MORE THAN NINE GRAMS OF PSEUDOEPHEDRINE IS FELONY LARCENY, TO PROHIBIT THE SALE OF CERTAIN PRODUCTS BY CERTAIN PERSONS, AND TO ESTABLISH THE NORTH CAROLINA METHAMPHETAMINE ABUSE TASK FORCE.

The General Assembly of North Carolina enacts:

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

"§ 90-94.1. Pseudoephedrine: prohibit over-the-counter 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. The product shall not be offered for retail sale by self-service and shall be stored behind a counter or barrier or in a locked container in such a manner that it is not accessible by the public and is only accessible by a retail store employee.

(b) No person shall deliver or purchase, or attempt to deliver or purchase, in any single over-the-counter sale more than three packages containing a combined total of more than nine grams of any product in the form of a tablet or caplet containing pseudoephedrine as the sole active ingredient or in combination with other active ingredients.

(c) This section does not apply to any of the following:

(1) Pediatric products primarily intended for administration, according to label instructions, to children under 12 years of age, either:

- 1 a. In solid dosage form when individual dosage units do not
2 exceed 15 milligrams of ephedrine, pseudoephedrine, or
3 phenylpropanolamine; or
4 b. In liquid form when recommended dosage units, according to
5 label instructions, do not exceed 15 milligrams of ephedrine,
6 pseudoephedrine, or phenylpropanolamine per five milliliters of
7 liquid product;

8 (2) Products in liquid form that are primarily intended for administration
9 to children under two years of age for whom the recommended dosage
10 does not exceed two milliliters and that have a total package content of
11 not more than one fluid ounce.

12 (3) A product in the form of gel capsules including any soft gelatin
13 liquid-filled capsule that contains a liquid suspension, which, in the
14 case of pseudoephedrine, is suspended in a matrix of glycerin,
15 polyethylene glycol, and propylene glycol, along with other liquid
16 substances. Regardless of the product manufacturer's labeling, a
17 gelatin-covered solid does not constitute a "gel capsule" under this
18 provision.

19 (d) A retailer who is the general owner or operator of an establishment where
20 pseudoephedrine products are available for sale who violates subsection (a) or (b) of
21 this section shall not be penalized pursuant to this section if the retailer documents that
22 an employee training program was conducted by or approved by the North Carolina
23 Methamphetamine Abuse Task Force pursuant to G.S. 114-44 and the employee in
24 question received the training.

25 (e) A violation of this subsection is a Class 1 misdemeanor on a first offense and
26 a Class I felony for a second or subsequent offense.

27 (f) This section shall preempt all local ordinances or regulations governing the
28 sale by a retail distributor of over-the-counter products containing pseudoephedrine."

29 **SECTION 2.** G.S. 14-72(b) is amended by adding a new subdivision to read:

30 "(6) In excess of nine grams of any product in the form of a tablet or caplet
31 containing pseudoephedrine as the sole active ingredient or in
32 combination with other active ingredients."

33 **SECTION 3.** Article 32 of Chapter 66 of the General Statutes is amended by
34 adding a new section to read:

35 "**§ 66-254.1. Certain sales prohibited.**

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

38 (1) The product contains three or more grams of pseudoephedrine as the
39 sole active ingredient or in combination with other active ingredients.

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

41 (3) The product is defined as "infant formula" pursuant to 21
42 U.S.C. § 321(z)."

43 **SECTION 4.** Article 7 of Chapter 114 is amended by adding a new section
44 to read:

1 **"§ 114-44. North Carolina Methamphetamine Abuse Task Force.**

2 (a) Establishment. – The North Carolina Methamphetamine Abuse Task Force is
3 established. The Task Force shall be located within the Department of Justice for
4 organizational, budgetary, and administrative purposes.

5 (b) Purpose. – The purpose of the Task Force is to develop training and education
6 programs targeted for employees of establishments where pseudoephedrine products are
7 available for sale. The Task Force may also conduct or approve training programs for
8 establishments where pseudoephedrine products are available for sale.

9 (c) Membership. – The Task Force shall consist of 10 members: one
10 representative from each of the following agencies and organizations to be appointed as
11 follows:

12 (1) The Office of the Governor as appointed by the Governor.

13 (2) The Office of the Attorney General as appointed by the Attorney
14 General.

15 (3) One member of the Senate as appointed by the President Pro Tempore
16 of the Senate.

17 (4) One member of the House of Representatives as appointed by the
18 Speaker of the House of Representatives.

19 (5) The North Carolina Association of County Directors of Social Services
20 as appointed by the President Pro Tempore of the Senate.

21 (6) The North Carolina Retail Merchants Association as appointed by the
22 Speaker of the House of Representatives.

23 (7) The North Carolina Association of Community Pharmacists as
24 appointed by the Governor.

25 (8) The District Attorney's Association of North Carolina as appointed by
26 the Governor.

27 (9) The Consumer Healthcare Products Association as appointed by the
28 Governor.

29 (10) The North Carolina Sheriffs' Association, Inc., as appointed by the
30 Governor.

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

33 (1) The Governor shall initially appoint three members for terms of two
34 years and two members for terms of three years.

35 (2) The President Pro Tempore of the Senate shall initially appoint one
36 member for a term of two years and one member for terms of three
37 years.

38 (3) The Speaker of the House of Representatives shall initially appoint one
39 member for a term of two years and one member for a term of three
40 years.

41 (4) The Attorney General shall appoint one member for a term of three
42 years.

43 Initial terms shall commence on September 1, 2005.

1 (e) Chair. – The chair shall be appointed biennially by the Governor from among
2 the membership of the Task Force. The initial term shall commence on September 1,
3 2005.

4 (f) Vacancies. – A vacancy on the Task Force or as chair of the Task Force
5 resulting from the resignation of a member or otherwise shall be filled in the same
6 manner in which the original appointment was made, and the term shall be for the
7 balance of the unexpired term.

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

13 (h) Removal. – Members may be removed in accordance with G.S. 143B-13 as if
14 that section applied to this section.

15 (i) Meetings. – The chair shall convene the Task Force. Meetings shall be held
16 as often as necessary, but not less than four times a year.

17 (j) Quorum. – A majority of the members of the Task Force shall constitute a
18 quorum for the transaction of business. The affirmative vote of a majority of the
19 members present at meetings of the Task Force shall be necessary for action to be taken
20 by the Task Force.

21 (k) Office Space and Staffing. – The Department of Justice shall provide office
22 space and staffing to the Task Force."

23 **SECTION 5.** There is appropriated from the General Fund to the
24 Department of Justice the sum of twenty-five thousand dollars (\$25,000) for the
25 2005-2006 fiscal year and twenty-five thousand dollars (\$25,000) for the 2006-2007
26 fiscal year to be allocated to the North Carolina Methamphetamine Abuse Task Force to
27 implement Section 4 of this act.

28 **SECTION 6.** Section 4 of this act becomes effective September 1, 2005;
29 Section 5 and Section 6 of this act become effective July 1, 2005; and the remainder of
30 this act becomes effective December 1, 2005, and applies to offenses committed on or
31 after that date.