

CHAPTER NO. 18

SENATE BILL NO. 2318

By Kyle, Burks, McNally, McLeary, Kilby, Williams, Herron, Miller, Curtis S. Person, Jr., Burchett, Haynes, Ford, Harper, Cooper, Crutchfield, Hagood, Beavers, Black, Bryson, Chism, Cohen, Crowe, Finney, Fowler, Henry, Jackson, Ketron, Kurita, Norris, Ramsey, Southerland, Tracy, Mr. Speaker Wilder

Substituted for: House Bill No. 2334

By McMillan, Curtiss, Winningham, Mr. Speaker Naifeh, Russell Johnson, Cobb, Hackworth, Newton, Coleman, Fraley, Rinks, Armstrong, Shaw, McDonald, Hargrove, Litz, Hood, Briley, Davidson, Pinion, Sontany, Yokley, Fitzhugh, Bone, Vaughn, Tindell, Brown, Miller, Overbey, Roach, Harrison, Cochran, McDaniel, McKee, McCord, Bunch, Shepard, Tidwell, Henri Brooks, Odom, Sherry Jones, Langster, Moore, Pruitt, Harmon, Kernell, John DeBerry, Mike Turner, Fowlkes, Bowers, Cooper, West, Ulysses Jones, Marrero, Ferguson, Harwell, Favors, Sargent, Hill, Swafford, Phillip Johnson, Montgomery, Hawk, Maddox, Hargett, Rowland, Gresham, Niceley, Curtis Johnson, Eldridge, Watson, Lynn, Maggart, Lois DeBerry, Baird, Larry Turner, Clem, Todd, Hensley, Strader, Crider, Mumpower, Godsey, DuBois, Campfield, Dunn, Harry Brooks, Davis, Matheny, McCormick

AN ACT to amend Tennessee Code Annotated, Titles 39 and 68, relative to methamphetamine.

WHEREAS, the Tennessee General Assembly recognizes that the clandestine manufacture of the illegal drug methamphetamine is a clear and present danger to the health and well being of the State of Tennessee; and

WHEREAS, the United States Drug Enforcement Administration ("DEA") has found the availability and demand for methamphetamine continues to increase throughout Tennessee; and

WHEREAS, methamphetamine is commonly manufactured in clandestine laboratories that can be found across Tennessee and are encountered daily by federal, state and local law enforcement; and

WHEREAS, the DEA estimates Tennessee now accounts for 75 percent of the methamphetamine lab seizures in the Southeast; and

WHEREAS, these clandestine methamphetamine labs pose a significant threat because lab operators are frequently armed and are often directly involved in the drug's distribution; and

WHEREAS, the problem of methamphetamine manufacturing and abuse is particularly destructive to the children in our state and more than 700 children are entering state custody each year as a result of methamphetamine lab seizures and related incidents; and

WHEREAS, clandestine methamphetamine labs also pose a potentially lethal environmental hazard due to the unregulated and illegal use of harmful chemicals involved in the production of methamphetamine; and

WHEREAS, the hazardous materials generated during the clandestine manufacture of methamphetamine impose a significant burden on property owners; and

WHEREAS, there is anticipation of an increase in methamphetamine use in Tennessee as the drug gains popularity over other abused drugs; and

WHEREAS, this body desires to work with law enforcement, the health care industry, community agencies and other interested stakeholders to develop a comprehensive strategy including treatment and public awareness for addressing methamphetamine abuse; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act shall be known and may be cited as the Meth-Free Tennessee Act of 2005.

SECTION 2. Tennessee Code Annotated, Section 39-17-431, is amended by deleting the existing language in its entirety and substituting instead the following:

§ 39-17-431. (a) Except as provided in this section, any product that contains any immediate methamphetamine precursor may be dispensed only by a licensed pharmacy.

(b)(1) A product or category of products that contain any immediate methamphetamine precursor shall be exempt from the requirements of this section if the ingredients are not in a form that can be used in the manufacture of methamphetamine.

(2) The Board of Pharmacy, in consultation with the bureau of investigation, shall determine whether a product or category of products that contain any immediate methamphetamine precursor is not in a form that can be used in the manufacture of methamphetamine. In making such a determination, the board shall solicit the written opinion of the bureau and work with the bureau to develop procedures that consider, among other factors,

(A) ease with which the product can be converted to methamphetamine, including the presence or absence of a "molecular lock" completely preventing a product's use in methamphetamine manufacture;

(B) ease with which pseudoephedrine can be extracted from a product and whether it forms a salt, emulsion, or other form;

(C) any other pertinent data that can be used to determine the risk of a product being viable in the illegal manufacture of methamphetamine.

(3) The Board of Pharmacy shall maintain a public list of such exempted products or categories of products. Any person may request that a product or category of products be included on the exemption list. Such a list shall include, but not be limited to, products in the form of gel capsules and liquid preparations that contain any immediate methamphetamine precursor. The term "gel capsule" means any soft gelatin liquid-filled capsule that contains a liquid suspension,

which, in the case of pseudoephedrine, is suspended in a matrix of glycerin, polyethylene glycol, and propylene glycol, along with other liquid substances. Regardless of the product manufacturer's labeling, a gelatin-covered solid does not constitute a "gel capsule" under this provision.

(c) A pharmacy shall not sell to the same person more than three individual packages of any non-exempt product containing any immediate methamphetamine precursor, nor shall a pharmacy sell to the same person any combination of such products containing more than 9 grams of ephedrine, pseudoephedrine, or their salts, isomers, or salts of isomers, during the same 30-day period. The 9 gram limit shall apply to the total amount of base ephedrine and pseudoephedrine contained in the products, and not the overall weight of the products. The prohibition contained in this subsection shall not apply to a person who obtains the product or products pursuant to a valid prescription issued by a licensed physician, certified physician assistant, or nurse authorized pursuant to Tennessee Code Annotated, Section 63-6-204, who is rendering service under the supervision, control and responsibility of a licensed physician and who meets the requirements pursuant to Tennessee Code Annotated, Section 63-7-207(13).

(d) The pharmacist, or any pharmacy technician or pharmacy intern under the supervision of the pharmacist, shall require any person purchasing a non-exempt product that contains any immediate methamphetamine precursor to present valid government-issued identification at the point of sale. The pharmacist, pharmacy technician or pharmacy intern shall maintain an electronic record of the sale under this subsection and such record may be maintained in the form of a pharmacist prescription order as provided by Tennessee Code Annotated, Section 63-10-206(c). The electronic record shall include the name of purchaser, name and quantity of product purchased, date purchased, purchaser identification type and number (such as driver license state and number), and the identity (such as name, initials, or identification code) of the dispensing pharmacist, pharmacy technician or pharmacy intern. If a system is not able to record the identification type and number, the pharmacist, pharmacy technician or pharmacy intern shall write the identification type and number on the prescription order. The electronic record also shall be maintained in such a manner that allows for the determination of the equivalent number of packages purchased and total quantity of base ephedrine or pseudoephedrine purchased. In lieu of maintaining an electronic record, a pharmacy may maintain a written register containing the name of purchaser, name of product purchased, date purchased, number of packages purchased, total quantity of base ephedrine or pseudoephedrine purchased, purchaser identification type and number (such as driver license state and number), purchaser's signature and name or initials of the pharmacist, pharmacy technician or pharmacy intern. A pharmacy choosing to maintain a written register must retain the register for at least one year. The obligation of meeting the requirements of this section rests with the pharmacist.

(e) Non-exempt products containing an immediate methamphetamine precursor shall be maintained behind the counter of the pharmacy or in a locked case within view of and within 25 feet of the counter.

(f) A violation of any provision of this section is a Class A misdemeanor, punishable by fine only. If the person in violation is a licensed pharmacy or pharmacist, such violation shall be reported to the Board of Pharmacy for review and appropriate action. If a product is dispensed in violation of subsection (a), the owner or operator of

the wholesale or retail establishment dispensing such product shall be in violation of subsection (a).

(g) This section shall supersede any local laws or ordinances currently regulating sales of products containing any immediate methamphetamine precursor.

SECTION 3. Tennessee Code Annotated, Section 68-24-103(b), is amended by adding the following as a new subsection (2) and redesignating the existing subsections accordingly:

(2) As a component of the program described in subsection (1), the department, in coordination with the Department of Education, shall increase efforts to educate and raise public awareness of the dangers of methamphetamine manufacture and abuse, including but not limited to distribution of public information materials designed to oppose methamphetamine abuse, and shall direct persons suffering from the effects of methamphetamine abuse to proper treatment resources.

SECTION 4. Tennessee Code Annotated, Section 38-1-101(a), is amended by adding the following language after the word "violence," in the first sentence:

"or resulting from exposure to a methamphetamine laboratory or a methamphetamine laboratory related fire, explosion, or chemical release,"

SECTION 5. Tennessee Code Annotated, Section 68-212-502, is amended by deleting it and substituting instead the following:

The commissioner shall compile and maintain a list of certified industrial hygienists and such other persons or entities the commissioner certifies as qualified to perform the services of industrial hygienists. Such persons will test properties in which a process intended to result in the manufacture of methamphetamine has occurred, as defined by Section 10 of this act, to determine if a property is safe for human use. Such property may include, but is not limited to, leased or rented property such as a hotel or motel room, rented home or apartment, or any residential property. The commissioner shall also compile and maintain a list of persons authorized to perform clean-up of property where such a process has occurred. Such lists may be posted on the website maintained by the commissioner.

SECTION 6. Tennessee Code Annotated, Section 68-212-503, is amended by deleting subsection (a) in its entirety and substituting in its place the following language:

The purpose of the quarantine provided for in this section is to prevent exposure of any person to the hazards associated with methamphetamine and the chemicals associated with the manufacture of methamphetamine.

SECTION 7. Tennessee Code Annotated, Section 68-212-503, is amended by adding the following new subsection, appropriately designated:

() It is prohibited for any person to inhabit quarantined property, to offer such property to the public for temporary or indefinite habitation, or to remove any signs or notices of the quarantine. Any person who willfully violates this subsection commits a Class B misdemeanor.

SECTION 8. Tennessee Code Annotated, Title 68, Chapter 212, Part 5, is amended by adding the following new section, appropriately designated:

(a) Within seven (7) days of issuing an order of quarantine, the law enforcement agency that issued the order shall transmit to the commissioner at least the following information regarding the site: the date of the quarantine order, county, the address, the name of the owner of the site, and a brief description of the site (single family home, apartment, motel, wooded area, etc.).

(b) The Department of Environment and Conservation shall maintain a registry of all properties reported by a law enforcement agency that have been under order of quarantine for at least sixty (60) days. The registry shall be available for public inspection at the department and shall be posted on its website. Listed properties shall be removed from the registry when a law enforcement agency reports that the quarantine has been lifted in accordance with this part.

SECTION 9. Tennessee Code Annotated, Section 39-17-402, is amended by adding the following as a subsection (13) and renumbering the other subsections appropriately:

(13) "Immediate methamphetamine precursor" means ephedrine, pseudoephedrine or phenylpropanolamine, or their salts, isomers or salts of isomers, or any drug or other product that contains a detectable quantity of ephedrine, pseudoephedrine or phenylpropanolamine, or their salts, isomers or salts of isomers.

SECTION 10. Tennessee Code Annotated, Title 39, Chapter 17, Part 4, is amended by adding the following as a new, appropriately designated section:

(a) It is an offense for a person to knowingly initiate a process intended to result in the manufacture of any amount of methamphetamine.

(b) It shall not be a defense to a violation of this subsection that the chemical reaction is not complete, that no methamphetamine was actually created, or that the process would not actually create methamphetamine if completed.

(c) For purposes of this section, "initiates" means to begin the extraction of an immediate methamphetamine precursor from a commercial product, to begin the active modification of a commercial product for use in methamphetamine creation, or to heat or combine any substance or substances which can be used in methamphetamine creation.

(d) Expert testimony of a qualified law enforcement officer shall be admissible for the proposition that a particular process can be used to manufacture methamphetamine. For purposes of such testimony, a rebuttable presumption is created that any commercially sold product contains or contained the product that it is represented to contain on its packaging or labels.

(e) A person may not be prosecuted for a violation of this section and of manufacturing a controlled substance in violation of § 39-17-417 based upon the same set of facts.

(f) A violation of this section is a Class B felony.

SECTION 11. Tennessee Code Annotated, Section 39-17-433, is amended by deleting the existing language in its entirety and substituting instead the following:

(a) It is an offense for a person to promote methamphetamine manufacture. A person promotes methamphetamine manufacture who:

(1) Sells, purchases, acquires, or delivers any chemical, drug, ingredient, or apparatus that can be used to produce methamphetamine, knowing that it will be used to produce methamphetamine, or with reckless disregard of its intended use;

(2) Purchases or possesses more than 9 grams of an immediate methamphetamine precursor with the intent to manufacture methamphetamine or deliver the precursor to another person who they know intends to manufacture methamphetamine, or with reckless disregard of the person's intent; or

(3) Permits a person to use any structure or real property that the defendant owns or has control of, knowing that the person intends to use the structure to manufacture methamphetamine, or with reckless disregard of the person's intent.

(b) Expert testimony of a qualified law enforcement officer shall be admissible to establish that a particular chemical, drug, ingredient, or apparatus can be used to produce methamphetamine. For purposes of such testimony, a rebuttable presumption is created that any commercially sold product contains or contained the product that it is represented to contain on its packaging or labels.

(c) Possession of more than 20 grams of an immediate methamphetamine precursor shall be prima facie evidence of intent to violate this section. This subsection (c) shall not apply to the following persons or entities that lawfully possess drug products in the course of legitimate business activities: (1) A pharmacy or pharmacist licensed by the Board of Pharmacy; (2) a wholesale drug distributor, or its agents, licensed by the Board of Pharmacy; (3) a manufacturer of drug products, or its agents, licensed by the Board of Pharmacy; and (4) a licensed health care professional possessing the drug products in the course of carrying out his profession.

(d) For purposes of this section, "structure" means any house, apartment building, shop, barn, warehouse, building, vessel, railroad car, cargo container, motor vehicle, housecar, trailer, trailer coach, camper, mine, floating home, watercraft, or any other structure capable of holding a clandestine laboratory.

(e) A violation of this section is a Class D felony.

SECTION 12. Tennessee Code Annotated, Section 39-17-434, is amended by deleting the section in its entirety.

SECTION 13. Tennessee Code Annotated, Title 39, Chapter 17, Part 4, is amended by adding the following as a new, appropriately designated section:

(a) There is hereby created within the bureau of investigation a registry of persons convicted after the effective date of this act of a violation of Section 39-17-417 involving any substance defined in Section 39-17-408(d)(2) or of Section 10 of this act.

(b) This registry shall be maintained by the bureau of investigation and made available for public inquiry on the Internet.

(c) The registry shall consist of the person's name, date of birth, offense(s) making him or her eligible for inclusion on the registry, the conviction date and county of said offenses, and such other identifying data as the bureau of investigation determines is necessary to properly identify the person, but shall not include the person's social security number.

(d) Starting September 1, 2005, the court clerks shall forward a copy of the judgment and date of birth of all persons who are convicted of a violation of the offenses described in subsection (a) to the bureau of investigation. Such information shall be forwarded to the bureau within 45 days of the date of judgment.

(e) The bureau of investigation shall remove from the registry the name and other identifying information of persons who are convicted of a violation of the offenses described in subsection (a) seven years after the date of the most recent judgment.

SECTION 14. Tennessee Code Annotated, Title 39, Chapter 17, Part 4, is amended by adding the following as a new, appropriately designated section:

(a) It is an offense for a person to intentionally use, or possess with the intent to use, any substance or device designed to falsify the results of a drug test of that person.

(b) As used in this section, "drug test" means a lawfully administered test designed to detect the presence of a controlled substance.

(c) A violation of this section is a Class A misdemeanor.

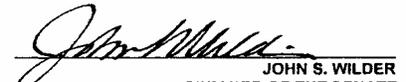
SECTION 15. Tennessee Code Annotated, Section 39-17-417, is amended by adding the following as a new, appropriately designated subsection:

() The offense described in subsection (a)(1) with respect to any substance defined in Section 39-17-408(d)(2) shall include the preparation or compounding of a controlled substance by an individual for the individual's own use.

SECTION 16. If any provisions of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 17. Section 2, Subsection (a) shall take effect 24 hours after becoming a law, the public welfare requiring it. Section 2, Subsections (c), (d), and (e) shall take effect 30 days after becoming a law, the public welfare requiring it, but pharmacies shall make every effort to comply sooner. All other provisions of this act shall take effect immediately upon becoming law, the public welfare requiring it.

PASSED: March 28, 2005


JOHN S. WILDER
SPEAKER OF THE SENATE


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 30th day of March 2005


PHIL BREDESEN, GOVERNOR