

**FIRST ENGROSSMENT
with Conference Committee Amendments****ENGROSSED HOUSE BILL NO. 1346**

Introduced by

Representatives Thoreson, Horter, Kingsbury

Senators Flakoll, Klein, O'Connell

1 A BILL for an Act to amend and reenact section 19-03.4-08 of the North Dakota Century Code,
2 relating to retail sale of a methamphetamine precursor drug; to provide a penalty; to provide an
3 effective date; to provide an expiration date; and to declare an emergency.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1. AMENDMENT.** Section 19-03.4-08 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **19-03.4-08. Retail or over-the-counter sale of methamphetamine precursor**
8 **drugs - Penalty.**

- 9 1. The retail sale of methamphetamine precursor drugs is limited to:
- 10 a. Sales in packages containing not more than a total of ~~three~~ two grams of one
11 or more methamphetamine precursor drugs, calculated in terms of ephedrine
12 HCl and pseudoephedrine HCl; and
- 13 b. Sales in blister packs, each blister containing not more than two dosage units,
14 or when the use of blister packs is technically infeasible, sales in unit dose
15 packets or pouches.
- 16 2. A person may not deliver in a single over-the-counter sale more than two
17 packages of a methamphetamine precursor drug or a combination of
18 methamphetamine precursor drugs.
- 19 3. a. When offering a methamphetamine precursor drug for retail sale, a person
20 shall require, obtain, and make a written record of the identification of the
21 person purchasing the methamphetamine precursor drug, the identification
22 being a document issued by a government agency as described in
23 subdivisions a and b of subsection 5, and shall do at least one of the
24 following:

1 (1) Maintain continuous recorded video surveillance of the portion of the
2 premises where the methamphetamine precursor drug is displayed for
3 sale and place signs or placards giving notice to the public of the
4 surveillance;

5 (2) Place the methamphetamine precursor drug behind a counter or other
6 barrier accessible only to the person making the sale of the drug; or

7 (3) Display only one package of any brand or type of a methamphetamine
8 precursor drug for purchase in an area accessible to the public.

9 b. The person shall maintain the record of identification required by this
10 subsection for three years, after which the record must be destroyed. The
11 person may not use or maintain the record for any private or commercial
12 purpose or disclose the record to any person, except as required by law. The
13 person shall disclose the record, upon request, to a law enforcement agency
14 for a law enforcement purpose.

15 4. A person may not deliver in an over-the-counter sale a methamphetamine
16 precursor drug to a person under the age of eighteen years.

17 4- 5. It is a prima facie case of a violation of subsection 3 4 if the person making the
18 sale did not require and obtain proof of age from the purchaser, unless from the
19 purchaser's outward appearance the person would reasonably presume the
20 purchaser to be twenty-five years of age or older. "Proof of age" means a
21 document issued by a governmental agency which:

22 a. Contains a description of the person or a photograph of the person, or both,
23 and gives the person's date of birth; and

24 b. Includes a passport, military identification card, or driver's license.

25 5- 6. It is an affirmative defense to a violation of subsection 3 4 if:

26 a. The person making the sale required and obtained proof of age from the
27 purchaser;

28 b. The purchaser falsely represented the purchaser's proof of age by use of a
29 false, forged, or altered document;

30 c. The appearance of the purchaser was such that an ordinary and prudent
31 person would believe the purchaser to be at least eighteen years of age; and

1 d. The sale was made in good faith and in reliance upon the appearance and
2 representation of proof of age of the purchaser.

3 ~~6.~~ 7. This section does not apply to pediatric products labeled pursuant to federal
4 regulation primarily intended for administration to children under twelve years of
5 age according to label instructions or to a product that the state board of
6 pharmacy, upon application of a manufacturer, exempts from this section because
7 the product has been formulated in such a way as to effectively prevent the
8 conversion of the active ingredient into methamphetamine, or its salts or
9 precursors.

10 ~~7.~~ 8. A person who willfully violates subsection 1 is guilty of a class A misdemeanor. A
11 person who willfully violates subsection 2 ~~or~~, 3, or 4 is guilty of an infraction.

12 ~~8.~~ 9. A person who is the owner, operator, or manager of the retail outlet or who is the
13 supervisor of the employee or agent committing a violation of this section of the
14 outlet where methamphetamine precursor drugs are available for sale is not
15 subject to the penalties of this section if the person:

16 a. Did not have prior knowledge of, participate in, or direct the employee or
17 agent to commit, the violation of this section; and

18 b. Documents that the employee or agent, at the time of initial employment and
19 each calendar year thereafter, participated in a training program approved by
20 the attorney general providing the employee or agent with information
21 regarding the state and federal regulations governing the sale, possession,
22 and packaging of such drugs.

23 The approval of the training program by the attorney general is not subject to
24 chapter 28-32.

25 ~~9.~~ 10. A political subdivision, including a home rule city or county, may not enact any
26 ordinance relating to the sale by a retail distributor of over-the-counter products
27 containing ephedrine, pseudoephedrine, or phenylpropanolamine. Any existing
28 ordinance is void.

29 **SECTION 2. EFFECTIVE DATE.** This Act becomes effective on June 1, 2005.

30 **SECTION 3. EXPIRATION DATE.** This Act is effective through July 31, 2007, and
31 after that date is ineffective.

1 **SECTION 4. EMERGENCY.** This Act is declared to be an emergency measure.