GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

SESSION LAW 2011-240
HOUSE BILL 12

AN ACT TO INCREASE THE REGULATION ON PSEUDOEPHEDRINE PRODUCTS TO CURTAIL METHAMPHETAMINE PRODUCTION AND TO REDUCE COSTS TO LOCAL GOVERNMENTS FOR LAB CLEANUP COSTS, AND TO STUDY THE EFFICACY OF ELECTRONIC RECORD KEEPING WITH A REPORT TO THE 2013 GENERAL ASSEMBLY.

The General Assembly of North Carolina enacts:

SECTION 1. It is the intent and purpose of this act to continue efforts begun with the Methamphetamine Lab Prevention Act of 2005 to regulate the sale of pseudoephedrine products that are used to manufacture methamphetamine. The use of electronic tracking of methamphetamine sales is being used in several states, including those bordering this State. Other states, which at the time of this act include Oregon and Mississippi, have seen a reduction in methamphetamine labs by designating pseudoephedrine and like products as Schedule III controlled substances, thereby requiring a prescription to obtain pseudoephedrine products. A study should be undertaken to evaluate the efficacy of this act in addressing the production of methamphetamine and to determine whether more stringent methods for the curtailment of methamphetamine production should be allowed to take effect.

SECTION 2. Article 5D of Chapter 90 of the General Statutes is amended by adding a new section to read:

"**§ 90-113.52A. Electronic record keeping.**

(a) A retailer shall, before completing a sale of a product containing a pseudoephedrine product, electronically submit the required information to the National Precursor Log Exchange (NPLEx) administered by the National Association of Drug Diversion Investigators (NADDI), provided that the NPLEx system is available to retailers in the State without a charge for accessing the system and the retailer has Internet access. The seller shall not complete the sale if the system generates a stop alert. Absent negligence, wantoness, recklessness, or deliberate misconduct, any retailer utilizing the electronic sales tracking system in accordance with this subsection shall not be civilly liable as a result of any act or omission in carrying out the duties required by this subsection and shall be immune from liability to any third party unless the retailer has violated any provision of this subsection in relation to a claim brought for such violation.

(b) If a pharmacy selling a product containing a pseudoephedrine product experiences mechanical or electronic failure of the electronic sales tracking system and is unable to comply with the electronic sales tracking requirement, the pharmacy or retail establishment shall record that the sale was made without submission to the NPLEx system in the record of disposition required under G.S. 90-113.52.

(c) The NADDI shall forward North Carolina transaction records in NPLEx to the State Bureau of Investigation weekly and provide real-time access to NPLEx information through the NPLEx online portal to law enforcement in the State as authorized by the SBI, provided that the SBI executes a memorandum of understanding with NADDI governing access.

(d) This system shall be capable of generating a stop sale alert, which shall be a notification that completion of the sale would result in the seller or purchaser violating the quantity limits set forth in G.S. 90-113.52. The system shall contain an override function that may be used by a dispenser of a pseudoephedrine product who has a reasonable fear of imminent bodily harm if the dispenser does not complete a sale. Each instance in which the override function is utilized shall be logged by the system."

SECTION 3. G.S. 90-113.56 reads as rewritten:

"**§ 90-113.56. Penalties.**

(a) If a retailer willfully and knowingly violates the provisions of G.S. 90-113.52, 90-113.52A, 90-113.53, or 90-113.54, the retailer shall be guilty of a Class A1 misdemeanor for the first offense and a Class I felony for a second or subsequent offense. A retailer convicted of a third offense occurring on the premises of a single establishment shall be prohibited from making pseudoephedrine products available for sale at that establishment.

(b) Any purchaser or employee who willfully and knowingly violates G.S. 90-113.52A, G.S. 90-113.52(c) or G.S. 90-113.53 shall be guilty of a Class 1 misdemeanor for the first offense, a Class A1 misdemeanor for a second offense, and a Class I felony for a third or subsequent offense. This subsection shall not be construed to apply to bona fide innocent purchasers.

(c) A retailer who fails to train employees in accordance with G.S. 90-113.55, adequately supervise employees in transactions involving pseudoephedrine products, or reasonably discipline employees for violations of this Article shall be fined up to five hundred dollars ($500.00) for the first violation, up to seven hundred fifty dollars ($750.00) for the second violation, and up to one thousand dollars ($1,000) for a third or subsequent violation of this section."

SECTION 4. Beginning with the 2011 calendar year, the State Bureau of Investigation shall determine the number of methamphetamine laboratories discovered in the State each calendar year and report its findings to the Legislative Commission on Methamphetamine Abuse by March 1, 2012, for the 2011 calendar year and each March 1 thereafter for the preceding calendar year. The State Bureau of Investigation shall participate in the High Intensity Drug Trafficking Areas (HIDTA) program, assist in coordinating the drug control efforts between local and State law enforcement agencies, and monitor the implementation and effectiveness of the electronic record-keeping requirements included in this act. The SBI shall include its findings in the report to the Commission required by this section.

SECTION 5. The Legislative Commission on Methamphetamine Abuse, established by the Methamphetamine Lab Prevention Act of 2005, in addition to its statutory responsibilities, shall study (i) the implementation of the provisions in this act, including the number of methamphetamine labs that are discovered annually and (ii) the potential costs of making pseudoephedrine products Schedule III controlled substances. The Commission may make an interim report to the 2012 Regular Session of the 2011 General Assembly and shall make a final report with findings and recommendations to the General Assembly upon the convening of the 2013 General Assembly.

SECTION 6. Sections 2 and 3 of this act become effective January 1, 2012, and Section 3 applies to offenses occurring on or after that date, and the remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 16th day of June, 2011.

s/ Walter H. Dalton
President of the Senate

s/ Thom Tillis
Speaker of the House of Representatives

s/ Beverly E. Perdue
Governor

Approved 1:02 p.m. this 23rd day of June, 2011