

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

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HOUSE BILL 1345

Short Title: Limit Certain Self-Service Drug Purchases. (Public)

Sponsors: Representatives Haire, Coates (Primary Sponsors); Insko, Justice, Kiser, Martin, Rapp, Sherrill, Underhill, and Weiss.

Referred to: Judiciary III.

April 21, 2005

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.