

MAINE STATE LEGISLATURE

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122nd MAINE LEGISLATURE

FIRST SPECIAL SESSION-2005

Legislative Document

No. 1601

S.P. 575

In Senate, April 26, 2005

An Act To Prevent the Manufacturing of Methamphetamine in Maine

Submitted by the Department of the Attorney General pursuant to Joint Rule 204.

Reference to the Committee on Business, Research and Economic Development suggested and ordered printed.

A handwritten signature in black ink, reading 'Joy J. O'Brien'.

JOY J. O'BRIEN
Secretary of the Senate

Presented by President EDMONDS of Cumberland.

Cosponsored by Speaker RICHARDSON of Brunswick and

Senators: BARTLETT of Cumberland, BRENNAN of Cumberland, BROMLEY of Cumberland, DAMON of Hancock, DAVIS of Piscataquis, DIAMOND of Cumberland, DOW of Lincoln, GAGNON of Kennebec, HOBBS of York, MARTIN of Aroostook, MAYO of Sagadahoc, MILLS of Somerset, MITCHELL of Kennebec, NUTTING of Androscoggin, ROSEN of Hancock, STRIMLING of Cumberland, SULLIVAN of York, WESTON of Waldo, WOODCOCK of Franklin, Representatives: ADAMS of Portland, ANNIS of Dover-Foxcroft, AUSTIN of Gray, BARSTOW of Gorham, BEAUDETTE of Biddeford, BLISS of South Portland, BRAUTIGAM of Falmouth, BRYANT of Windham, BRYANT-DESCHENES of Turner, BURNS of Berwick, CAIN of Orono, CAMPBELL of Newfield, CANAVAN of Waterville, CARR of Lincoln, CEBRA of Naples, CLARK of Millinocket, CLOUGH of Scarborough, COLLINS of Wells, CRAVEN of Lewiston, CRESSEY of Cornish, CROSTHWAITE of Ellsworth, CUMMINGS of Portland, CURTIS of Madison, DAIGLE of Arundel, DAVIS of Falmouth, DUCHESNE of Hudson, DUDLEY of Portland, DUNN of Bangor, DUPLESSIE of Westbrook, EBERLE of South Portland, EDGECOMB of Caribou, FAIRCLOTH of Bangor, FISCHER of Presque Isle, FISHER of Brewer, FLETCHER of Winslow, GERZOFKY of Brunswick, GLYNN of South Portland, GOLDMAN of Cape Elizabeth, GROSE of Woolwich, HAMPER of Oxford, HANLEY of Gardiner, HARLOW of Portland, JACKSON of Fort Kent, JENNINGS of Leeds, JODREY of Bethel, KAELIN of Winterport, KOFFMAN of Bar Harbor, LANSLEY of Sabattus, LERMAN of Augusta, MAREAN of Hollis, MARRACHÉ of Waterville, MAZUREK of Rockland, McCORMICK of West Gardiner, McFADDEN of Dennysville, McLEOD of Lee, MERRILL of Appleton, MILLER of Somerville, MOORE of Standish, MOORE of the Passamaquoddy Tribe, MOULTON of York, NORTON of Bangor, NUTTING of Oakland, O'BRIEN of Lewiston, PARADIS of Frenchville, PATRICK of Rumford, PELLETIER-SIMPSON of Auburn, PERCY of Phippsburg, PERRY of Calais, PINEAU of Jay, PINGREE of North Haven, RECTOR of Thomaston, RICHARDSON of Greenville, RICHARDSON of Skowhegan, RINES of Wiscasset, ROSEN of Bucksport, SAMPSON of Auburn, SAVIELLO of Wilton, SCHATZ of Blue Hill, SHERMAN of Hodgdon, SMITH of Monmouth, SMITH of Van Buren, SOCKALEXIS of the Penobscot Nation, STEDMAN of Hartland, SYKES of Harrison, TUTTLE of Sanford, TWOMEY of Biddeford, WALCOTT of Lewiston, WEBSTER of Freeport.

2 **Be it enacted by the People of the State of Maine as follows:**

4 **Sec. 1. 17-A MRSA §1101, sub-§4-A is enacted to read:**

6 **4-A. "Methamphetamine precursor drug" means:**

8 **A. Any drugs or products that contain in the aggregate a**
10 **quantity of 9 grams or more of ephedrine, pseudoephedrine or**
12 **phenylpropanolamine or their salts, isomers or salts of**
14 **isomers, either alone or in combination with other**
16 **ingredients, in dry or solid nonliquid form; and**

18 **B. Any drugs or products that contain in the aggregate a**
20 **quantity of 9 grams or more of ephedrine, pseudoephedrine or**
22 **phenylpropanolamine or their salts, isomers or salts of**
24 **isomers, either alone or in combination with other**
26 **ingredients, in liquid, liquid-filled capsule or glycerin**
28 **matrix form if such products are designated as**
30 **methamphetamine precursor drugs by rule adopted by the**
32 **Department of Public Safety pursuant to Title 32, section**
34 **13795, subsection 5, paragraph A.**

36 **Sec. 2. 17-A MRSA §1102, sub-§4, ¶D, as enacted by PL 1987, c.**
38 **747, §2, is amended to read:**

40 **D. Butyl nitrite or isobutyl nitrite; and**

42 **Sec. 3. 17-A MRSA §1102, sub-§4, ¶E is enacted to read:**

44 **E. A methamphetamine precursor drug.**

46 **Sec. 4. 17-A MRSA §1107-A, sub-§3, as enacted by PL 2003, c.**
48 **61, §7, is repealed and the following enacted in its place:**

50 **3. It is an affirmative defense to prosecution under this**
section that:

A. The substance possessed is industrial hemp; or

B. That the substance possessed is a methamphetamine
precursor drug and was possessed by the defendant for a
legitimate medical purpose.

Sec. 5. 22 MRSA c. 556 is enacted to read:

CHAPTER 556

MAINE METH WATCH PROGRAM

§2351. Maine Meth Watch Program

2 1. Establishment; purpose. The Office of Substance Abuse
4 or its successor shall establish the Maine Meth Watch Program to
6 educate retailers, retail employees and the public in order to
8 help curtail suspicious sales and the theft of methamphetamine
 precursor drugs as defined in Title 17-A, section 1101,
 subsection 4-A, and to identify the location of illicit
 methamphetamine manufacturing.

10 2. Rulemaking. The Office of Substance Abuse may adopt
12 rules to carry out the purposes of this chapter. Rules adopted
14 pursuant to this subsection are routine technical rules as
 defined in Title 5, chapter 375, subchapter 2-A.

16 **Sec. 6. 32 MRSA §13702, sub-§25-B** is enacted to read:

18 25-B. Targeted methamphetamine precursor. "Targeted
 methamphetamine precursor" means:

20 A. Any product containing any amount of ephedrine,
22 pseudoephedrine or phenylpropanolamine or their salts,
24 isomers or salts of isomers, either alone or in combination
 with other ingredients, in dry or solid nonliquid form; and

26 B. Any product containing any amount of ephedrine,
28 pseudoephedrine or phenylpropanolamine or their salts,
30 isomers or salts of isomers, either alone or in combination
32 with other ingredients, in liquid, liquid-filled capsule or
 glycerin matrix form if such products are designated as
 targeted methamphetamine precursors by rule adopted by the
 Department of Public Safety pursuant to section 13795,
 subsection 5, paragraph A.

34 **Sec. 7. 32 MRSA §13795,** as amended by PL 1997, c. 437, §46,
36 is further amended to read:

38 **§13795. Photographic proof of identification; discretion to sell**
 or dispense; immunity

40 1. Photographic proof of identification. As a precondition
42 to filling any prescription or, dispensing any drug, or selling
44 any targeted methamphetamine precursor, a pharmacist or person
46 acting at the direction of a pharmacist may demand, inspect and
48 record proof of identification, including valid photographic
 identification, from any patient presenting a prescription or any
 person acting on behalf of the patient or person purchasing a
 targeted methamphetamine precursor. Valid photographic
 identification includes but is not limited to the following:

50 A. A valid Maine motor vehicle operator's license;

2 B. A valid Maine identification card issued under Title
4 29-A, section 1410;

6 C. A valid United States passport;

8 D. A valid passport ~~or~~, motor vehicle operator's license of
10 another state, territory, possession or foreign country or
official identification card issued by the United States
Government only if it:

12 (1) Contains a photograph of the ~~traveler-or-licensee~~
14 person presenting the identification;

16 (2) Is encased in tamper-resistant plastic or
otherwise possesses indicia of tamper-resistance; and

18 (3) Identifies the ~~traveler's-or-licensee's~~ person's
20 date of birth; or

22 E. Other valid, tamper-resistant, photographic
24 identification as provided in rules adopted by the board
pursuant to section 13722, subsection 1, paragraph A and in
accordance with Title 5, chapter 375.

26 **2. Refusal to fill prescription, dispense drug or sell**
targeted methamphetamine precursor; law enforcement reporting. A
28 pharmacist or person acting at the direction of a pharmacist may
exercise discretion and refuse to fill any prescription ~~or~~,
30 dispense any drug or sell any targeted methamphetamine precursor
if unsatisfied as to the legitimacy or appropriateness of any
32 prescription presented, the validity of any photographic
identification or the identity of any patient presenting a
34 prescription or any person acting on behalf of the patient, or
the intention of the customer to use the drug or targeted
36 methamphetamine precursor according to the instructions for use.
A pharmacist or person acting at the direction of a pharmacist
38 may make a report to a law enforcement agency when that person
has reasonable cause to suspect that a prescription is not
40 legitimate or appropriate, a person has presented photographic
identification that is not valid or that a customer has the
42 intention to use a drug or targeted methamphetamine precursor in
a manner inconsistent with the instructions for use.

44 **3. Record keeping.** A pharmacy may keep a log of
46 information on persons to whom targeted methamphetamine
precursors are sold, which may include the name, date of birth,
48 address and amount of targeted methamphetamine precursor sold.

2 4. Immunity; presumption of good faith. A pharmacist or
4 person acting at the direction of a pharmacist who in good faith
6 and pursuant to subsection 2 refuses to fill any prescription,
8 dispense any drug or sell any targeted methamphetamine precursor
10 or makes a report to a law enforcement agency is immune from any
12 civil liability that might otherwise result from these actions,
14 including, but not limited to, any civil liability that might
16 otherwise arise under state or local laws or rules regarding
18 confidentiality of information. In a proceeding regarding
20 immunity from liability, there is a rebuttable presumption of
22 good faith.

24 5. Rules authorized. The following governs rules regarding
26 this section.

28 A. If the Commissioner of Public Safety finds that the ease
30 of availability of liquid, liquid-filled capsule, or
32 glycerin matrix forms of products containing ephedrine,
34 pseudoephedrine or phenylpropanolamine is a threat to the
36 public health, safety and welfare, then the Commissioner of
38 Public Safety may adopt major substantive rules designating
40 as "targeted methamphetamine precursors" or "methamphetamine
42 precursor drugs" products containing any amount of
44 ephedrine, pseudoephedrine or phenylpropanolamine or their
46 salts, isomers or salts of isomers, either alone or in
48 combination with other ingredients, in liquid, liquid-filled
50 capsule or glycerin matrix form.

 B. If the Commissioner of Public Safety finds that sales of
targeted methamphetamine precursors that are made without
verifying the identity of the purchaser pose a threat to
public health, safety and welfare, then the Commissioner of
Public Safety may adopt major substantive rules requiring a
pharmacist or a person acting at the direction of a
pharmacist to demand, inspect and record proof of
identification, including valid photographic identification,
from any person purchasing a targeted methamphetamine
precursor prior to the sale and to keep a log of sales.

Sec. 8. 32 MRSA §13796 is enacted to read:

**§13796. Retail or over-the-counter sale of methamphetamine
precursor drugs**

1. Definitions. As used in this section, unless the
context otherwise indicates, the following terms have the
following meanings.

A. "Dosage unit" means that unit of measurement that is the
equivalent to an average adult dose.

2 B. "Package" means an item packaged and marked for retail
3 sale that is not designed to be broken down or subdivided
4 for the purpose of retail sale.

6 C. "Retailer" means a person or business entity engaged in
7 this State in the business of selling products to the
8 general public on a retail basis.

10 D. "Sale" or "sold" includes barter, exchange, transfer or
11 gift.

12 2. Restrictions on packaging. The retail sale of a
13 targeted methamphetamine precursor is limited to:

16 A. Sales in packages containing not more than a total of 3
17 grams of one or more targeted methamphetamine precursors; and

18 B. Sales in blister packs, each blister containing not more
19 than 2 dosage units, or when the use of blister packs is
20 technically infeasible, sales in single-dose packets or
21 pouches.

24 3. Restrictions on amount of sale. A person or retailer
25 may not sell more than 3 packages of a targeted methamphetamine
26 precursor per transaction.

28 4. Restrictions on place of sale; storage. Any product
29 containing any amount of a targeted methamphetamine precursor may
30 be sold only by a licensed pharmacist or a registered pharmacy
31 technician and must be stored in a location that is locked or
32 otherwise not accessible by customers.

34 5. Exceptions. Exceptions to this section are as follows.

36 A. This section does not apply to:

38 (1) Any targeted methamphetamine precursor that is
39 obtained by a prescription; and

40 (2) The sale or transfer of a targeted methamphetamine
41 precursor to a veterinarian, physician, pharmacist,
42 retail distributor, wholesaler, manufacturer, warehouse
43 operator or common carrier or an agent of any of these
44 in the regular course of lawful business activities.

46

2 B. Subsection 4 does not apply to single-dose packages
3 containing no more than 60 milligrams of a targeted
4 methamphetamine precursor if such packages are kept within
5 30 feet and in direct line of sight of a cash register or
6 store counter staffed by one or more employees.

7 **Sec. 9. Maine Meth Watch Program.** In establishing the Maine
8 Meth Watch Program under the Maine Revised Statutes, Title 22,
9 chapter 556, the Department of Health and Human Services, Office
10 of Substance Abuse or its successor shall use the national effort
11 known as "Meth Watch" first begun in Kansas as a public-private
12 partnership.

13 **Sec. 10. Effective date.** This Act takes effect October 1, 2005.

16 SUMMARY

17
18 This bill places several restrictions on over-the-counter
19 decongestant cold medicines that can be used in the toxic
20 chemical process of making the illegal drug methamphetamine. The
21 bill affects medicines in solid pill or dry form that contain
22 ephedrine, pseudoephedrine or phenylpropanolamine because those
23 products are commonly used to manufacture methamphetamine. The
24 bill defines those products as "targeted methamphetamine
25 precursors."

26
27 The bill exempts medicines in liquid, gel cap or
28 liquid-filled capsule form because those products are not
29 commonly used to manufacture methamphetamine.

30
31 The bill restricts the sale of targeted methamphetamine
32 precursors to blister packs containing less than 3 grams of the
33 targeted active ingredients and allows no more than 3 packages to
34 be sold in a single transaction. It requires targeted
35 methamphetamine precursors to be sold by a pharmacist or pharmacy
36 technician and stored in a location that is locked or otherwise
37 not accessible to the public. It authorizes but does not require
38 a pharmacy to request identification and log sales of these
39 products.

40
41 The bill allows single-dose packages to continue to be sold
42 at any store as long as they are close to and within sight of
43 store staff.

44
45 The bill allows a pharmacist or pharmacy technician to
46 refuse to make a suspicious sale of targeted methamphetamine
47 precursors and to report the situation to a law enforcement
48 agency. It confers immunity from civil liability on a pharmacist

2 or technician who in good faith refuses to sell the drug or who
2 makes a report to law enforcement.

4 The bill also designates more than 9 grams of a targeted
methamphetamine precursor as a schedule Z illegal drug, but
6 provides an affirmative defense if it is possessed for a
legitimate medical purpose. The bill requires the Department of
8 Health and Human Services, Office of Substance Abuse to create a
Maine Meth Watch Program, based on a national so-called "Meth
10 Watch" program, which helps deter suspicious sales and theft of
precursor-containing medicines and other products used in the
12 illegal manufacturing of methamphetamine.

14 The bill authorizes the Commissioner of Public Safety to
adopt major substantive rules on further restrictions if the
16 commissioner finds that certain circumstances pose a threat to
the public health, safety and welfare.