



A T T O R N E Y S

SMITH, RODGERS &  
STRICKLAND, PLLC

24 Hour Legal Support for Law Enforcement

PO Box 4803  
Greensboro, NC 27404  
Phone (336) 691-7058  
Fax (336) 969-1879  
www.policehelp.net

**The Methamphetamine Lab Prevention  
Act of 2005  
North Carolina General Assembly  
SESSION LAW 2005-434  
HOUSE BILL 248**

By

*Reece Trimmer*

*Ralph B. Strickland, Jr.*

**REECE & RALPH**

**Reece Trimmer  
Ralph B. Strickland, Jr.**

The two mature geezers of SR&S

**NOVEMBER 21, 2005**

**Meth Act 2005**

**THE NEW BILL (Word-for-Word)**

**SECTION 1. Chapter 90 of the General Statutes is amended by adding a new Article to read:**

**“Article 5D.**

**“Control of Methamphetamine Precursors.**

**“§ 90-113.50. Title.**

This Article shall be known and may be cited as the “Methamphetamine Lab Prevention Act of 2005.”

**Our Comments:** This particular statute (§ 90-113.50) is effective January 15, 2006, and applies to offenses committed on or after that date. Although this is the official name of the act, we wonder what will be the name bestowed on it by our friends, the narc agents. “The Meth Mouth Prevention Act?” “The Good-Citizen Permanent Cold Act?” “The Might As Well Cook Up Some Chili Act?” And Trimmer’s Favorite – “I’ll Be Damned If I’ll Sign For Cold Medicine! I’ll Just Be Sick.”

**“§ 90-113.51. Definitions.**

(a) For purposes of this Article, “pseudoephedrine product” means a product containing any detectable quantity of pseudoephedrine or ephedrine base, their salts or isomers, or salts of their isomers.

(b) For purposes of this Article, a “retailer” means an individual or entity that is the general owner of an establishment where pseudoephedrine products are available for sale.

(c) For purposes of this Article, the “Commission” means the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services.

**Our Comments:** this particular statute is effective January 15, 2006, and applies to offenses committed on or after that date. You may as well go ahead and memorize the definition of “pseudoephedrine product” and learn to spell it, as well. Please note the definition of “retailer” means an individual (Mom or Pop Pharmacy) or the general owner (CVS or Walgreen’s, etc.)

**“§ 90-113.52. Pseudoephedrine: restrictions on 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.

**Note paragraph (a). If any product has as its sole ingredient pseudoephedrine in a strength of 30 milligrams or more it MAY NOT be sold loose in a bottle, but must be sold in “blister packs.” It does not matter that the product will not be out from behind the pharmacy counter for “self-serve,” it still must be in a packed in a blister. We have trouble getting medicine out of a blister pack already. Once Ralph attempted to help Reece get some medicine out of a blister pack. Both failed, so Reece swallowed the blister pack and in no time at all he felt exactly the same.**

(b) Pseudoephedrine products shall not be offered for retail sale by self-service, but shall be stored and sold in the following manner: Any pseudoephedrine product in the form of a tablet or caplet containing pseudoephedrine as the sole active ingredient or in combination with other active ingredients shall be stored and sold behind a pharmacy counter.

**Note paragraph (b). No pseudoephedrine product, nor any product containing it in combination with other ingredients, shall be sold self-service. All such products must be sold from behind a pharmacy counter.**

**There are gonna be some long lines at the counter come flu and cold season, and the guy waiting behind you will probably have the bird flu. You can tell if he gives you the finger. As we understand it, the symptoms of bird flu are an inexplicable desire to fly, lay an egg and preen non-existent feathers. Some people sleep standing on one foot. If you get it, we suggest spreading a lot of newspapers on the floor, and staying away from mirrors.**

(c) A pseudoephedrine product may be sold at retail without a prescription only to a person at least 18 years of age. The retailer shall require every retail purchaser of a pseudoephedrine product to furnish photo identification. If the retailer has reasonable grounds to believe that the prospective purchaser is under 18 years of age, the retailer shall require the prospective purchaser to furnish photo identification showing the date of birth of the person. The name and address of every purchaser shall be entered in a record of disposition of pseudoephedrine products to the consumer on a form approved by the Commission. The record of disposition shall also identify each pseudoephedrine product purchased, including the number of grams the product contains and the purchase date of the transaction. The retailer shall require that every purchaser sign the form attesting to the validity of the information. The form approved by the Commission shall be constructed so that it allows for entry of information in electronic format, including electronic signature. The form shall also be constructed and maintained so as to minimize disclosure of personal information to unauthorized persons and shall contain a statement in at least 10-point bold-face type at the top of every page substantially similar to the following: “NORTH CAROLINA LAW STRICTLY PROHIBITS A SINGLE TRANSACTION PURCHASE OF MORE THAN TWO PACKAGES OF CERTAIN PRODUCTS CONTAINING PSEUDOEPHEDRINE (SIX GRAMS TOTAL), AND NO MORE THAN THREE PACKAGES (NINE GRAMS TOTAL) OF CERTAIN PRODUCTS CONTAINING PSEUDOEPHEDRINE WITHIN A 30-DAY PERIOD. BY MY SIGNATURE, I ATTEST THAT THE INFORMATION I HAVE PROVIDED IN CONNECTION WITH THIS TRANSACTION IS TRUE AND CORRECT AND THAT THIS TRANSACTION DOES NOT EXCEED THE PURCHASE RESTRICTIONS. I ACKNOWLEDGE THAT KNOWING AND WILLFUL VIOLATION OF THE PURCHASE RESTRICTIONS OR THE FURNISHING OF FALSE INFORMATION IN CONNECTION THEREWITH MAY SUBJECT ME TO CRIMINAL PENALTIES.”

**Note paragraph (c). A purchaser of a pseudoephedrine product may be allowed to purchase a limited number of grams of pseudoephedrine if he/she is at least 18 years of age, and presents photo identification. No person who is 17 years of age or less will be allowed to purchase such product without a prescription. The adult purchaser must show a photo ID and shall produce his/her name and address. That information,**

along with the type of product purchased, including the number of grams of pseudoephedrine, and the date purchased, shall be entered on a form approved by the Legislative Commission on Methamphetamine Abuse. The purchaser shall sign the form attesting to the validity of the information provided. Each store retailer must have the capacity to allow entry of this information in an electronic format, including an electronic signature. It must contain the statement as highlighted in paragraph (c). **THOSE LINES AT THE PHARMACY COUNTER ARE GOING TO BE SO VERY, VERY LONG!**

(d) A retailer shall maintain a record of disposition of pseudoephedrine products to the consumer for a period of two years from the date of each transaction. A record shall be readily available within 48 hours of the time of the transaction for inspection by an authorized official of a federal, State, or local law enforcement agency. The records maintained by a retailer are privileged information and are not public records but are for the exclusive use of the retailer and law enforcement. The retailer may destroy the information after two years from the date of the transactions.

**Note paragraph (d): The retailer has to keep the registration information for two years from date of transaction, and must have available for your inspection all information on file EXCEPT THAT OF THE PAST 48 HOURS. The statute gives the retailer that much time to get the registration information available for you – even though it is electronically stored.**

(e) This section does not apply to any pseudoephedrine product that is in the form of a liquid, liquid capsule, gel capsule, or pediatric product labeled pursuant to federal regulation primarily intended for administration to children under 12 years of age according to label instruction, except as to those specific products for which the Commission issues an order pursuant to G.S. 90-113.58 subjecting the product to requirements under this Article.

**Note paragraph (e): most of the pseudoephedrine labeled and packaged for children does not come within the purview of this section. We say most because this section allows the Commission to issue an order subjecting any such product to these requirements. As for us, we shall buy the children's doses for ourselves. We will feel partially better. This particular statute, sections (a) through (e) is effective January 15, 2006, and applies to offenses committed on or after that date.**

**“§ 90-113.53. Pseudoephedrine transaction limits.**

(a) No person shall deliver or purchase, or attempt to deliver or purchase, in any single over-the-counter retail sale more than two packages containing a combined total of more than six grams of any pseudoephedrine products. This limit does not apply if the product is dispensed under a valid prescription.

**Note paragraph (a): A person can legally buy, and the stores legally deliver, one or two packages of pseudoephedrine containing six grams or less in a single transaction. Of course, with a *valid prescription*, more than this amount may be dispensed. Hello, more forged ‘scripts! There’ll be no available seats at the Institute for Forged Prescriptions. Gee, we hope our doctor can spell pseudoephedrine. He can certainly spell “Bill for Services Rendered.”**

(b) No person shall purchase at retail more than three packages containing a combined total of more than nine grams of pseudoephedrine products within any 30-day period. This limit does not apply if the product is dispensed under a valid prescription.

**Note paragraph (b): A person can legally buy, and the stores legally deliver, no more than three packages of pseudoephedrine with a total of nine grams or less WITHIN A 30-DAY PERIOD! Of course, with a *valid prescription*, more than this amount may be dispensed. Hello, EVEN *more* forged ‘scripts! We hope you folks are memorizing all these little statutory restrictions. Test later, and you WERE warned.**

(c) This section does not apply to any pseudoephedrine products that are in the form of liquids, liquid capsules, gel capsules, or pediatric products labeled pursuant to federal regulation primarily intended for administration to children under 12 years of age according to label instruction, except as to those specific products for which the Commission issues an order pursuant to G.S. 90-113.58 subjecting the product to requirements under this Article. **Note paragraph (c): most of the pseudoephedrine labeled and packaged for children does not come within the purview of this section. We say most because this section allows the Commission to issue an order subjecting any such product to these requirements. This particular statute, sections (a) through (c), is effective January 15, 2006, and applies to offenses committed on or after that date.**

**“§ 90-113.54. Posting of signs.**

A retailer shall post a sign or placard in a clear and conspicuous manner in the area of the premises where the pseudoephedrine products are offered for sale stating: “North Carolina law strictly prohibits a single transaction purchase of more than two packages (six grams total) of products containing pseudoephedrine, and no more than three packages (nine grams total) of certain products containing pseudoephedrine within a 30-day period. This store will maintain a record of all sales of these products which may be accessible to law enforcement officers.”

**Note: Now you become the sign police as well. Some of you will become the placard police, too. Our faces will just at first seem ghostly, and then they will all turn a whiter shade of pale. We’ll skip the light fandango and turn cartwheels ‘cross the floor, we might feel seasick, and hope you guys don’t call out for more. This particular statute is effective January 15, 2006, and applies to offenses committed on or after that date.**

**“§ 90-113.55. Training of employees.**

A retailer shall require that employees of the establishment involved in the sale of pseudoephedrine products in the form of tablets or caplets, and any other pseudoephedrine product for which the Commission issues an order pursuant to G.S. 90-113.58 to subject the product to requirements under this Article, be trained in a program conducted by or approved by the Commission pursuant to G.S. 90-113.59.

**Note: The Commission will create a course for store employees. The retailer will be probably required to deliver the training. Get a copy of the handout material so that you will know how much the employees are expected to know. That will come in handy if you are called upon to investigate an employee, or retailer, for some violation of this law. And my bet is that some of you will conduct such an investigation. This particular statute is effective January 15, 2006, and applies to offenses committed on or after that date.**

**“§ 90-113.56. Penalties.**

(a) If a retailer willfully and knowingly violates the provisions of G.S. 90-113.52, 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.

**Note paragraph (a): It will, in almost all cases, not be much fun having to charge a retailer with a violation of this statute. Contact your District Attorney, or drug ADA, and discuss this before the act becomes effective. I suspect the arrest will go down like all others, but it will be big news in the media. The DA and the head of your agency need to know what will be in the morning paper tomorrow, and if your name is in the article (or likely to be) give them notice the day before.**

(b) Any purchaser or employee who willfully and knowingly violates 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.

**Note paragraph (b): Careful here! The law would certainly not apply to any bona fide *innocent* purchaser. You know that, and so does anybody with the power of arrest. But the General Assembly made a specific point of stating the obvious in the statute. In my experience, when the folks in Raleigh state the obvious, any following mistake is taken VERY seriously. Think about it – if you are not certain, ask somebody! Ralph: Bona fide – Latin for “real bone.” Reece: it means “in good faith.”**

(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.

**Note paragraph (c): Now you are required to determine if a retailer is an adequate supervisor, or a reasonable discipliner, or an inept trainer. With the amount of Excedrin that is going to be purchased in January to alleviate the headaches that will be caused by having to determine this, now is the time to purchase Excedrin stock. DO NOT MAKE THIS CHARGE WITHOUT ADVICE FROM LEGAL COUNSEL, ESPECIALLY YOUR LOCAL PROSECUTOR. This particular statute, sections (a) through (c) is effective January 15, 2006, and applies to offenses committed on or after that date.**

**“§ 90-113.57. Immunity.**

A retailer or an employee of the retailer who, reasonably and in good faith, reports to any law enforcement agency any alleged criminal activity related to the sale or purchase of pseudoephedrine products, or who refuses to sell a pseudoephedrine product to a person reasonably believed to be ineligible to purchase a pseudoephedrine product pursuant to this Article, is immune from civil liability for that conduct except in cases of willful misconduct. No retailer shall retaliate in any manner against any employee of the establishment for a report made in good faith to any law enforcement agency concerning alleged criminal activity related to the sale or purchase of pseudoephedrine products.

**Note: Well, this statute turns the teenagers working for the retailer into informants for you. And they are immune both from civil liability and retaliation. Now you will also be called upon to determine if a retailer is retaliating against an employee who turns in a customer or the retailer. Always seek advice of legal counsel before making a final determination of retaliation by a retailer. This particular statute is effective January 15, 2006, and applies to offenses committed on or after that date.**

**“§ 90-113.58. Commission authority to control pseudoephedrine products.**

(a) The Commission may add or delete a specific pseudoephedrine product from requirements of this Article on the petition of any interested party, or its own motion. In addition, the Commission may modify the specific storage, security, transaction limit, and record-keeping requirements applicable to a particular product upon such terms and conditions as they deem appropriate. In every case, the Commission shall give notice of and hold a public hearing pursuant to Chapter 150B of the General Statutes prior to adding or deleting a product. A petition by the Commission or the North Carolina Department of Justice to add or delete a specific product from requirements of this Article shall be placed on the agenda for consideration at the next regularly scheduled meeting of the Commission, as a matter of right. In making a determination regarding a specific product, the Commission shall consider whether or not there is substantial evidence that the specific product would be used to manufacture methamphetamine in the State.

(b) In making a determination, the Commission shall make findings with respect thereto and shall issue an order adding or deleting the specific product from requirements of this Article. The order shall be published in the North Carolina Register at least 60 days prior to the time that the addition or deletion of a specific product from the requirements of this Article becomes effective.



**SECTION 3. Effective January 15, 2006 and applies to offenses committed on or after that date. Chapter 106 of the General Statutes is amended by adding a new section to read:**

**“§ 106-145.13. Submittal of reports by wholesale distributors of transactions involving pseudoephedrine products.**

Every 30 calendar days, a wholesale distributor of pseudoephedrine products licensed as provided in this Article shall submit a report electronically to the State Bureau of Investigation that accounts for all transactions involving pseudoephedrine products with persons or firms located within this State for the preceding month. The report shall be submitted on a form and in a manner approved by the State Bureau of Investigation. A wholesale distributor shall maintain each monthly report for a period of two years from the date of submittal to the State Bureau of Investigation. The records shall be readily available for inspection by an authorized official of a federal, State, or local law enforcement agency or the Department of Agriculture and Consumer Services.”

**Note: What happens to the SBI reminds us of what happens to the Sheriffs: another obligation from the General Assembly with no additional funding. But both somehow manage to continue to get the job done. Good on you, mates!**

**SECTION 4. Effective January 15, 2006 and applies to offenses committed on or after that date. G.S. 15A-1340.16(d) is amended by adding a new subdivision to read:**

“(16b) The offense is the manufacture of methamphetamine and was committed in a dwelling that is one of four or more contiguous dwellings.”

**Note: (16b) is another aggravating factor when considering punishment in Superior Court for a felony.**

**SECTION 5. Effective January 15, 2006 and applies to offenses committed on or after that date. Article 32 of Chapter 66 of the General Statutes is amended by adding a new section to read:**

**“§ 66-254.1. Certain sales prohibited.**

No person who is described by G.S. 66-250(1), (2), (5), or (6) shall sell or offer to sell any product that meets any of the following criteria:

- (1) The product contains pseudoephedrine as the sole active ingredient or in combination with other active ingredients.
- (2) The product is a drug as defined by G.S. 106-121(6).

Any person who violates this section 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.”

**Note: First the definitions Chapter 66, Commerce and Business, Article 32, - Peddlers, Itinerant Merchants, and Specialty Markets.:**

§ 66-250. Definitions.

The following definitions apply in this Article:

- (1) Itinerant merchant. – A person, other than a merchant with an established retail store in the county, who transports an inventory of goods to a building, vacant lot, or other location in a county and who, at that location, displays the goods for sale and sells the goods at retail or offers the goods for sale at retail.
- (2) Peddler. – A person who travels from place to place with an inventory of goods, who sells the goods at retail or offers the goods for sale at retail, and who delivers the identical goods.
- (5) Specialty market operator. – A person, other than the State or a unit of local government, who rents space, at a location other than a permanent retail store, to others for the purpose of selling goods at retail or offering goods for sale at retail.

- (6) Specialty market vendor. – A person, other than a merchant with an established retail store in the county, who transports an inventory of goods to a specialty market and, at that location, displays the goods for sale and sells the goods at retail or offers the goods for sale at retail. (1996, 2nd Ex. Sess., c. 14, s. 24.)

**Now, let's look at GS 106-121(6) – Chapter 106, Agriculture:**

§ 106-121. Definitions and general consideration.

For the purpose of this Article:

- (6) The term “drug” means
- a. Articles recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; and
  - b. Articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals; and
  - c. Articles (other than food) intended to affect the structure or any function of the body of man or other animals; and
  - d. Articles intended for use as a component of any article specified in paragraphs a, b or c; but does not include devices or their components, parts, or accessories.

**SECTION 6. Effective January 15, 2006 and applies to offenses committed on or after that date. Chapter 15A of the General Statutes is amended by adding a new section to read:**

**“§ 15A-736.1. Bail in cases of manufacture of methamphetamine.**

Notwithstanding the provisions of G.S. 15A-736, in determining bond and other conditions of release for a person arrested for any violation of G.S. 90-95(b)(1a) or G.S. 90-95(d1)(2)b., the magistrate, judge, or court shall consider any evidence that the person is in any manner dependent upon methamphetamine or has a pattern of regular illegal use of methamphetamine. A rebuttable presumption that no conditions of release on bond would assure the safety of the community or any person therein shall arise if the State shows by clear and convincing evidence both:

- (1) The person was arrested for a violation of G.S. 90-95(b)(1a) or G.S. 90-95(d1)(2)b., relating to the manufacture of methamphetamine or possession of an immediate precursor chemical with knowledge or reasonable cause to know that the chemical will be used to manufacture methamphetamine.
- (2) The person is in any manner dependent upon methamphetamine or has a pattern of regular illegal use of methamphetamine, and the violation referred to in subdivision (1) of this section was committed or attempted in order to maintain or facilitate the dependence or pattern of illegal use in any manner.”

**Note: If you can show both conditions to a magistrate at time of arrest and appearance before a criminal magistrate, there is a chance that the defendant will get NO BOND! Or, later at his first appearance before a district court judge, if you provide the DA with sufficient evidence of both conditions, the judge may determine that the defendant is entitled to NO BOND! It will happen. But you need to investigate fully and be prepared for the bond hearing in the same manner as for a probable cause hearing. The ball is in our court on this one – give the DA the ammunition for a heartbreaking bond hearing for the defendant.**

**SECTION 7. Effective immediately. Legislative Commission on Methamphetamine Abuse Established.**

**We deleted this section because it was a two-page list of all the folks who may appoint a person to the Commission. As we were reading it, and got about halfway through, Trimmer started moaning and groaning. So we stopped, deleted it, and now he feels much better. Believe me, you should be glad we took it upon ourselves to save you from the list.**

**SECTION 8. Effective immediately.** The State Bureau of Investigation shall study issues regarding the use of pseudoephedrine products to make methamphetamine, including any data on the use of particular pseudoephedrine products in that regard, pertinent law enforcement statistics, trends observed, and other relevant information, and report annually to the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services, the Legislative Commission on Methamphetamine Abuse, and the Joint Governmental Operations Subcommittee on Justice and Public Safety. The first report shall be submitted on or before November 1, 2006.

**Note: Boom! Another obligation for the SBI. Don't you hear all the Sheriffs heaving a sigh of relief? And somebody is in a big hurry. We can help out here by writing the first report for the Bureau. "First report. Meth is here in North Carolina. It is bad stuff. We have meth labs, too. Producing it is dangerous; so is consuming it. Sometimes meth labs blow up, sometimes people die. The chemicals are always dangerous, especially to little children. People who consume meth beat up other people for no reason; sometimes they kill them for the same reason. Send us enough money to fight it or we are all in big trouble. (Signed The SBI)." By God, we love this job!**

**SECTION 9. Effective immediately.** If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.

**Note: Yeah, yeah. The End.**

**[WE HAVE ALREADY INCORPORATED THIS SECTION WITHIN EVERY PREVIOUS SECTION, BUT HERE IT IS FOR ALL YOU FANATICS.] SECTION 10. G.S. 90-113.58 and G.S. 90-113.59, as enacted by Section 1 of this act, and Sections 7, 8, 9, and 10 of this act are effective when it becomes law. The remainder of Section 1, and Sections 2, 3, 4, 5, and 6 of this act become effective January 15, 2006, and apply to offenses committed on or after that date.**

**Final Comments by Reece: Well, this should help control meth production, sales and use here. I hope we see fewer people with all their teeth broken off at the gum line, a condition referred to as "Meth Mouth" by those in the know. Ralph grew up in a part of Durham where just about all the guys, and quite frankly, some of the "gals," he knew had their teeth broken off at the gum line, but not from meth addiction. They'd just turn to Ralph and say, "Hey! Y'all watch this!" Next thing you know – Boom! A mouthful of broken teeth! He said it often looked as if somebody had dropped a bunch of Chiclets on the ground, and sounded almost exactly like gravel when you crunched them underfoot.**