MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M

ROLL NUMBER

1353

DESCRIPTION

2003 HOUSE JUDICIARY

HB 1353

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1353

House Judiciary Committee

☐ Conference Committee

Hearing Date 1-22-03

Tape Number	Side A	Side B	Meter #
1	xx		20-end
1		xx	0-7
Committee Clerk Signature	A Penrose		

Minutes: 11 members present, 2 members absent (Rep. Bernstein, Rep. Maragos)

Chairman DeKrey: We will hear testimony for HB 1353.

Robert Bennett, Asst. AG: (see attached summary) Support.

Chairman DeKrey: We will now have Rep. Thoreson give his testimony, and then we will take questions for Mr. Bennett.

Rep. Blair Thoreson: Support. I am a resident of the Horace-Mann neighborhood near the elementary school in Fargo. Several weeks ago we had a shooting gallery which was located right near the school. (see attached e-mail message). My wife works with foster care children, and in Cass County we have seen an incredible rise in the number of homes that need to be found to place these children in.

Chairman DeKrey: Thank you. At this time we will take questions for Mr. Bennett.

Sen. Trenbeath: Will this outlaw the sale of ephedrine in vending machines, or maybe it wasn't inadvertent.

Mr. Bennett: I don't think anything in the bill is inadvertent. It may impact products where ephedrine is found in bulk, it may affect the sale of items that are sold in convenience stores where you can just buy bottles of ephedrine that are sitting on the shelf in quantities of 100, 200, or 300 counts.

Sen. Trenbeath: But do you agree that under this, it would be unlawful to stock these in vending machines, even though they are single dose packages, an 18 year old would have access to the vending machine or under 18 year old.

Mr. Bennett: That might be an issue, depending on the type of package. The package could not contain more than 3 grams; but if it is a vending machine, it may very well. If that is considered to be the retail, over-the-counter sale.

Chairman DeKrey: Is there any mechanism, if this law is passed, that those people who have a legitimate use for it and do buy it in bulk, would still be able to do that somehow.

Mr. Bennett: I guess the issue may involved in bulk, most of the cold medications I found are either 30 mg. or 60 mg. sold in 24 or 48 packs. You are usually allowed to take around 3 or 4 dosages a day. There may be some which are limited to 2 a day. Again, we are talking about a single, over-the-counter sale. This is certainly not going to prevent people from coming in and buying separate sale after separate sale.

Rep. Klemin: It sounds like the source of the problem is the ephedrine based drugs, without that it would be a lot harder to manufacture meth. and I don't know the whole ramifications of all these things with cold medications and other things, but it occurs to me that there must be an alternative to ephedrine based drugs. Is there any discussion happening relating to getting ephedrine based drugs as a controlled substance, for example.

Mr. Bennett: Some states have looked at that, controlling these substances, providing more control. Maybe the State Board of Pharmacy could declare it to be an immediate pre-cursor of meth, but the problem is that ephedrine is widespread and very effective in drying up a bad cold, and the dosages are so small. Ephedrine does have legitimate use.

Rep. Galvin: I know a pharmacist who, voluntarily, moved the products into the section behind the till. She has control over the products, would this work?

Mr. Bennett: That is one way, the pharmacist could keep on eye on sales; but what about the large discount stores, such as Wal-Mart, Target, etc. They do notify law enforcement when they see people buying these products. What we have is a non-prescription drug approved for use by the public without a prescription, it is not a controlled substance.

Rep. Onstad: If you purchase the products over the Internet, is that addressed or not?

Mr. Bennett: You can buy anything over the Internet, particularly when it is a non-prescription type of drug. As far as being addressed, it probably wouldn't be covered by the bill, unless flagged for buying large quantities, along with other drug paraphernalia.

Rep. Onstad: Is there a cost to the retail store.

Wayne Stenehjem, AG: There is not a cost for the retail meth. watch, that's something that we have undertaken with our staff. We did work with some of the retailers, who helped us come up with the funding to buy the stickers, etc. We are also seeking a grant, because part of the training program that we're talking about in this bill, will consist of watching a video tape, that we are going to produce which shows which products people are buying, what they should do, and what they should not do when they see someone coming into the store and buying these products.

Sen. Dever: Self-service counters, are there software programs through the check-out registers, do they have the ability to red flag this kind of a purchase.

Mr. Bennett: The possession of the cold medicine alone, is not the only evidence that you are engaged in this activity. If someone has 12 boxes of cold medicine, along with all the other ingredients that might be involved, the containers, the batteries, that's going to be a strong indication that they are involved in the manufacture of this drug. We do look at the quantity in light of other things, such as drug paraphernalia. I don't see how this is going to impact the law-abiding person.

Sen. Trenbeath: I think you misunderstood my comment with regard to the vending machine. I am not concerned about people with a pocketful of quarters buying out all the ephedrine, I am worried about under this bill, it would be unlawful to stock it in a vending machine, because an 18 year old could access it.

Mr. Bennett: Yes, it could fall within the over-the-counter sale, where it might be. That would certainly be an issue that might have to be addressed, if it is under the age of 18. If it is the issue of the packages of the sales, that could be addressed, also.

Wayne Stenehjem, AG: This goes back to the point I was making this morning, when I introduced all of these bills. I said, I'm not promising anybody that there's not going to be some inconvenience, and that may be the situation with the vending machines, which are typically found in a hotel, they could just as easily move it behind the counter at the front desk and sell it there. There may be problems with people who want to buy more than 2 or 3. The problem in ND is severe enough that it needs a reaction, that yes, it's going to cost some inconvenience to people, and that is simply the way it has to be, in my mind.

Rep. Klemin: I understand that there is a large problem with these kinds of products is that they are susceptible to shoplifting and you don't need proof of age or anything to shoplift. How is this going to help that sort of thing, if we don't have some kind of restrictive access to that.

Mr. Stenehjem: Here is how that is going to happen in the marketplace. What's going to happen is that people who operate grocery stores, convenience stores for a profit, will if they feel the need is there and that the loss is great enough, decide to take alternative measures to protect their inventory. I know there are stores here in North Dakota that, in the evenings and on the weekends, remove the cold capsules from their shelves, or remove all of them but one or two because what you are talking about happens to them. They are finding that they are the victims of such huge amounts of shoplifting, they have to get control of their inventory. They'll take care of themselves I think.

Chairman DeKrey: Thank you. Any further testimony in support of HB 1353.

Tom Woodmansee, President of the ND Grocers Association: We appear in support of the Attorney General's efforts in this area. We've been working with him since midsummer and are people are willing to do their part as to what they have to do, and should this become a problem on theft, I'm sure most of you will make the proper adjustments and get them out of the way, but our people have learned a lot over the last six months, we just had a convention last weekend in Fargo. They feel that this is something they can deal with. I think you will have the complete support of the retail community. We're getting very good of checking ID's to determine who is old enough and who is not. I think we can do our part in this one too.

Chairman DeKrey: Thank you.

Rep. Kretschmar: Would it be less onerous or more onerous for retailers, if the law provided that if someone bought more than 3 packages, they'd have to take down their name and address, SS #.

Mr. Woodmansee: I think it would be more, because I think a lot of them are doing it now, just writing it down and taking addresses at the advice of the law enforcement community, because they would prefer them not to be strictly identified with that individual, so that retaliation could not come back, if they started taking names. What they do now, is take whatever information they've got and supply it to the law enforcement people. In the Fargo area, some of the merchants are now already having it show up on their till, if they come through with more than 2 pkgs.

Chairman DeKrey: Thank you. Anyone else wish to testify in support of HB 1353.

Nancy Bukar, Director of State Governmental Relations for the CHPA: CHPA is the trade association that represents the manufacturers of the over-the-counter drugs in question and in this bill today. Our members include the large pharmaceutical companies as well as smaller ones, and generic companies that manufacturer drugs containing ephedrine, etc. that are used to manufacturer meth. We've been working on this issue for a long time, over 7 years. We participated this summer with the A.G. in North Dakota Meth. Seminars. We did actually make a donation to the Meth Watch program. We did want to assist the A.G. in his good efforts. Our member companies have also contributed up to 5 million dollars to the partnership for a drug free America to try and fight this problem on a national level and particularly in the Midwest, and they do that voluntarily. There have been some questions come about at pseudoephedrine as a whole, and I want to address those before I talk about the bill. Pseudoephendrine is the only

over-the-counter decongestant available without a prescriptions. Previously, PPA, was removed from the market within the past two years because of some health and safety concerns, so right now, pseudoephedrine is it for those people suffering from coughs, colds, allergies, and for sinus relief. There are over 4,000 products containing pseudoephedrine, that's counting all the brand name products, as well as any of the store brands that are manufactured. You won't see that many in a store. The federal law would address the on-line purchase concerns that was raised. There are reporting requirements for any mail order purchases, anyone ordering over the Internet and receiving their products via the mail, that would trigger some reporting requirements to the DEA. So that would be addressed at the federal level, and would cover some of the concerns there. I'd like to talk a little bit of HB 1353. In a number of states working on this issue, this is the strongest, single piece of legislation that I have seen, and we support the AG's efforts in trying to accomplish that. We are pleased to see that CHPA model's language is included in the bill, specifically the language pertaining to the 24 g possession, the exemption for the pediatric products, which is important to us. We don't want to see a parent trying to dose their child with an adult strength product. There is simply too little pseudoephedrine in those products to make it worth any meth. cook's while, and a majority are in liquid form. It is very difficult to cook meth with a liquid pseudoephedrine product. Also included in the bill is what we call the lock technology. You heard Mr. Bennett talk about that. That would give an exemption to those products that include an ingredient that make it impossible to manufacturer meth. The company, Warner Lambert, has started that research a number of years ago, and progressed very well. Pfizer acquired Warner Lambert, they've continued that research and we hope to see something this summer, and Pfizer has agreed to license that technology to other companies at a nominal

cost, so they can also include that technology in their products. CHPA member products, are all in compliance with the federal law, which would require blister packs, no more than 3 g base per product or liquid. None of our members make products in bottles since the federal law passed in 1996. We do have some concerns, and we are continuing our discussions with the AG about, and we hope to be able to reach resolution with that.

Rep. Klemin: The federal law that you refer to, is that a proposed law.

Ms. Bukar: In 1996, Congress passed the Comprehensive Meth. Control Act. That gave a safe harbor to products that were packed in certain ways, to prevent use in the meth labs. That is the blister pack language that set up suspicious order reporting requirements for wholesalers and manufacturers. We saw higher peaks of ordering from retailers or grocery stores, so there is a reporting system in place, one level removed from the retailers. It caused people to treat pseudoephedrine differently in the manufacturing and wholesale level. In the year 2000, Congress passed, and President signed, the Meth. Anti-Proliferation Act, that places further controls on pseudoephedrine products; thereby making it impossible or illegal for someone to manufacturer a product that contains more than 3 g. base per product, so you won't see the 200 count bottles around anymore, it's not legal. There are still bottled products out there, but it also set up stricter controls on pseudoephedrine products and lowered the standard criminally for people to violate those rules.

Rep. Klemin: What is the information about the Pfizer company?

Ms. Bukar: We call it the lock technology, and I hear from Pfizer that it could be as soon as this summer. DEA and FDA are both working with Pfizer, so that when this ingredient is available

and works, that there will be an expedited approval process. The FDA won't hold up their approval.

Rep. Klemin: What is the lock technology?

Ms. Bukar: It would be another ingredient that you would put into the pills so that when someone tried to make meth with a pseudoephedrine product, it would turn into a tar, which would make it unable to be used to make meth and it emits a very stinky odor. That's what I have been told, I haven't seen it in process. DEA is working with Pfizer to test their ingredient in a meth lab. They are actually meth at the DEA lab to see if it would work, and that is an ongoing process which we hope to see finalized sometime this summer or hopefully by the end of the year.

Chairman DeKrey: Thank you for your testimony. Any further testimony in support of HB 1353.

Sen. Bercier: I'd like to assure the AG that I just talked to a pharmacist back home, and he used to get that in large bottles and now it's all by prescription.

Mr. Stenehjem: This ephedrine is not in the blister packs, where you have to punch through. This bill makes all of these illegal. This bill will prohibit any sale where it is not in a blister pack.

Howard Anderson, Jr., Executive Director of the ND Board of Pharmacy: We're in support of HB 1353. We have talked to our Board of Pharmacy and several members of the pharmacy community, we don't feel that this will adversely affect any legitimate patients who are out there purchasing these medications.

Chairman DeKrey: Thank you. Any further testimony in support of HB 1353, anyone wishing to testify in opposition to HB 1353. We will close the hearing.

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1353

House Judiciary Committee

❑ Conference Committee

Hearing Date 1-28-03

Tape Number	Side A	Side B	Meter #
1		x	15-end
2	x		0-17
Committee Clerk Signature	dl Penrose		

Minutes: 12 members present, 1 member absent (Rep. Maragos)

Chairman DeKrey: We will go to HB 1353.

Sandi Tabor, Deputy AG: There are some amendments beside ours on HB 1353. I will review the AG's quickly. After the hearing on Wednesday, the State Crime Lab contacted us and said that we had the terminology wrong. One of the amendments will add an emergency clause. (see attached amendments).

Rep. Kretschmar: What does HCl mean?

Ms. Tabor: The chemical name is hydrochloride.

Rep. Onstad: Are you aware that they sell the pills in pkgs of 3.

Ms. Tabor: That is what Rep. Grande told me about. They will have to break them up or not sell the products.

Discussion was held as to precursor vs. analog. Precursors are utilized to make meth. Analogs are the finished product.

Rep. Delmore: I move the amendments to HB 1353, the AG's.

Rep. Kretschmar: Seconded.

Voice vote: 12 Yes, 1 absent.

Chairman DeKrey: Any discussion.

Rep. Grande: I would like to offer an amendment, pg 6, line 28 to change from 2 to 3 packs.

Rep. Bernstein: Seconded.

Chairman DeKrey: Please explain your amendment.

Rep. Grande: I guess this amendment comes into play in a couple different area. What about the bulk rate savings at Sam's Club, where the pills comes in a 3 pk.

Discussion continued regarding 2 packs vs. 3 packs, and that if we were to adopt language, ND will have the strongest language in the US. The AG wants only 2 packs, or a limit of 3 g. in a sale. Liquid can't be used to make meth, which keeps the pediatric ephedrine available, since the amount of ephedrine is so low. We will put together a subcommittee of Rep. Grande, Rep. Delmore and Rep. Klemin, working with the AG's office.

Rep. Grande: I will withdraw my motion.

Rep. Bernstein: I will withdraw my second.

The meeting was closed.

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1353

House Judiciary Committee

☐ Conference Committee

Hearing Date 2-4-03

Tape Number	Side A	Side B	Meter #
3	x		44-45
3		x	2.4-13.4
Committee Clerk Signature	DLRenrose		

Minutes: 11 members present, 2 members absent (Rep. Bernstein, Rep. Wrangham)

Chairman DeKrey: We will open the hearing on HB 1353 to receive testimony from Mr. Jordre.

Galen Jordre, Executive Vice President of ND Pharmaceutical Association: (see attached testimony).

Chairman DeKrey: Thank you. We will close the hearing now.

(Reopened later in the same session)

Chairman DeKrey: What are the committee's wishes in regard to HB 1353.

Rep. Grande: I have amendment 38295.0102 dated 2/4/03 which encompass all the amendments that were accepted by the committee.

Rep. Delmore: I move the Grande Amendments as it stands.

Rep. Klemin: Seconded.

Voice vote: Carries.

Rep. Delmore: I move a Do Pass as amended.

Rep. Boehning: Seconded.

11 YES 0 NO 2 ABSENT **DO PASS AS AMENDED** **CARRIER: Rep. Maragos**

Proposed Amendments to House Bill 1353

January 28, 2003
Presented by the Office of Attorney General

Page 1, line 6, after ";" remove "and"

Page 1, line 6, after "penalty" insert "; to provide an effective date; and to declare an emergency"

Page 5, line 25, remove "phenylpropanolamine"

Page 6, line 14, after "drugs" insert "calculated in the terms of ephedrine HCl and pseudoephedrine HCl"

Page 6, line 23, after "ephedrine" insert "HCl"

Page 6, line 24, replace the first "base" with "and"

Page 6, line 24, after "pseudoephedrine" replace "base, and phenylpropanolamine base" with "HCl"

Page 8, after line 9, insert:

SECTION 6. EFFECTIVE DATE. This Act becomes effective immediately upon its filing with the secretary of state.

SECTION 7. EMERGENCY. This Act is declared to be an emergency measure.

Renumber accordingly

38295.0102
Title.0200

Prepared by the Legislative Council staff for
Representative Grande
February 4, 2003

VIC 2/5/03

HOUSE AMENDMENTS TO HOUSE BILL NO. 1353 JUD 2-05-03

Page 1, line 6, remove the second "and" and after "penalty" insert "; and to declare an emergency"

HOUSE AMENDMENTS TO HB 1353 JUD 2-05-03

Page 5, line 25, remove "phenylpropanolamine."

HOUSE AMENDMENTS TO HB 1353 JUD 2-05-03

Page 6, line 14, after "drugs" insert "calculated in terms of ephedrine HCl and pseudoephedrine HCl"

Page 6, line 21, after "of" insert "nonliquid"

Page 6, line 24, replace the first "base," with "HCl and" and replace "base, and phenylpropanolamine base" with "HCl"

Page 6, line 25, replace "For nonliquid products, sales" with "Sales"

HOUSE AMENDMENTS TO HB 1353 JUD 2-05-03

Page 8, after line 9, insert:

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

SECTION 6. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

Date: 2/4/03
Roll Call Vote #: 1

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1353

House Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 38295.0102 .0200

Action Taken Do Pass As Amended

Motion Made By Rep. Delmore Seconded By Rep. Boehning

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey	✓		Rep. Delmore	✓	
Vice Chairman Maragos	✓		Rep. Eckre	✓	
Rep. Bernstein	AB		Rep. Onstad	✓	
Rep. Boehning	✓				
Rep. Galvin	✓				
Rep. Grande	✓				
Rep. Kingsbury	✓				
Rep. Klemin	✓				
Rep. Kretschmar	✓				
Rep. Wrangham	AB				

Total (Yes) 11 No 0

Absent 2

Floor Assignment Rep. Maragos

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
February 5, 2003 9:29 a.m.

Module No: HR-22-1676
Carrier: Maragos
Insert LC: 38295.0102 Title: .0200

REPORT OF STANDING COMMITTEE

HB 1353: Judiciary Committee (Rep. DeKrey, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (11 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB 1353 was placed on the Sixth order on the calendar.

Page 1, line 6, remove the second "and" and after "penalty" insert "; and to declare an emergency"

Page 5, line 25, remove "phenylpropanolamine,"

Page 6, line 14, after "drugs" insert "calculated in terms of ephedrine HCl and pseudoephedrine HCl"

Page 6, line 21, after "of" insert "nonliquid"

Page 6, line 24, replace the first "base," with "HCl and" and replace "base, and phenylpropanolamine base" with "HCl"

Page 6, line 25, replace "For nonliquid products, sales" with "Sales"

Page 8, after line 9, insert:

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

SECTION 6. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

2003 SENATE JUDICIARY

HB 1353

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1353

Senate Judiciary Committee

☐ Conference Committee

Hearing Date 03/05/03

Tape Number	Side A	Side B	Meter #
2	X		19.1 - 37.9
Committee Clerk Signature	Maria L Hollberg		

Minutes: **Senator John T. Traynor, Chairman**, called the meeting to order. Roll call was taken and not all committee members present. Sen. Traynor requested meeting starts with committee work on the bill:

The original hearing on this bill was heard in a joint session, January 22, 2003 Attachment #1 are the notes to the joint session.

Sandy Tabor - Assistant to the Attorney General - Reintroduce the bill

CHPA - Consumer Healthcare Products Association - Hand out of state restrictions on Ephedrine, Pseudoephedrine & Phenylpropanolamine - Attachment #1

Discussion of current state law.

Sen. Nelson made a motion to do pass without any amendments.

Motion Made to DO PASS HB 1351 Senator Carolyn Nelson and seconded by Senator Thomas L. Trenbeath

Roll Call Vote: 5 Yes. 0 No. 1 Absent

Motion Passed

Floor Assignment: Senator Thomas L. Trenbeath

Senator John T. Traynor, Chairman closed the hearing

Date: March 5, 2003
Roll Call Vote #: 1

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1353

Senate **JUDICIARY** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken DO PASS Engrossed Bill

Motion Made By Senator Carolyn Nelson Seconded By Senator Thomas L. Trenbeath

Senators	Yes	No	Senators	Yes	No
Sen. John T. Traynor - Chairman	X		Sen. Dennis Bercier	A	A
Sen. Stanley. Lyson - Vice Chair	X		Sen. Carolyn Nelson	X	
Sen. Dick Dever	X				
Sen. Thomas L. Trenbeath	X				

Total (Yes) FIVE (5) No ZERO (0)

Absent ONE (1)

Floor Assignment Sen. Trenbeath

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
March 6, 2003 9:07 a.m.

Module No: SR-40-4063
Carrier: Trenbeath
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1353, as engrossed: Judiciary Committee (Sen. Traynor, Chairman) recommends **DO PASS** (5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed HB 1353 was placed on the Fourteenth order on the calendar.

(2) DESK, (3) COMM

SR-40-4063

2003 TESTIMONY

HB 1353

Summary of House Bill 1353

Robert Bennett
Assistant Attorney General

SECTION 1 –

This amendment applies, unless the context otherwise requires, the definitions of the Uniform Controlled Substances Act to North Dakota Century Code chapters 19-03.2 (Imitation Controlled Substances) and 19-03.4 (Drug Paraphernalia), each chapter involving closely related drug enforcement provisions.

SECTION 2 –

Provides definitions of "methamphetamine precursor drug", "over-the-counter-sale", and "sale" –

SECTIONS 3 and 4 –

Amends provisions of chapter 19-03.4 relating to the definition of drug paraphernalia to specifically include methamphetamine precursor drugs and to establish prima facie evidence of intent to violate provisions regarding the unlawful possession, manufacture, or delivery of drug paraphernalia -

The remainder of the bill addresses the restrictions on the sale of non-prescription, over-the-counter ephedrine-based (methamphetamine precursor) drugs.

SECTION 5 -

Establishes requirements for the packaging of ephedrine-based (methamphetamine precursor) drugs for retail sale -

Prohibits the sale other than in blister packs, unit doses, or pouches with each package containing no more than a total of 3 grams of methamphetamine precursor drugs –

Prohibits the delivery of more than 2 packages of ephedrine-based drugs in a single over-the-counter sale –

Prohibits the retail sale of ephedrine-based drugs to a person under the age of 18 years –

Imposes penalties of up to 1 year imprisonment, a $2000, fine, or both, for violation of the retail-sale packaging requirements and up to a $500 fine, for a first offense, for delivering more than 2 packages of the ephedrine-based drug in a single sale, or delivering such a drug to a person under the age of 18 years -

Provides incentives to persons making retail sales of ephedrine-based drugs to obtain "proof of age" from a purchaser –

A prima facie case of a violation is established if "proof of age" is not obtained, unless the purchaser appears to be at least 25 years of age -

An affirmative defense is provided if "proof of age" is obtained, it is false, the purchaser reasonably appeared to be at least 18 years of age, and the seller acted in good faith –

Exempts certain pediatric products primarily intended for use by children under the age of 12 years and those drugs that the state board of pharmacy has determined are formulated to prevent their use and conversion of its active ingredient into methamphetamine --

Encourages the use of, and participation in, approved retail training programs regarding state and federal requirements for the sale and packaging of ephedrine-based (methamphetamine precursor) drugs by owners, operators, and managers of businesses engaged in the over-the-counter retail sale of such drugs -

HMANA Meeting 6:30 p.m., Thursday, January 16 Horace Mann Library

The Lemonade House!

HMANA is investigating the possibility of rehabilitating a house in our neighborhood. Probably most of you are familiar with the "shooting gallery" drug house at 904 3rd St, which has been in the news recently. Mike Simonson has come up with the idea of HMANA buying the house, fixing it up, and selling it to a family with children. This idea has received a great reception and wonderful support from the city. Currently inquiries are being made to see if the owner is in a position to sell. We hope to have more information for you at the meeting on Thursday. If this project becomes a reality, we have a great opportunity to turn lemons into lemonade!

The Meth Threat

HMANA is hosting an informative presentation on methamphetemine. A Fargo Police narcotics officer, Pat Claus, will speak on meth use, and how to recognize it in our families and neighborhood. He will bring drug paraphernalia, so we can recognize it if we ever see it. And Joel Vettel, a patrol officer, will also give us his perspective on the topic. This event is open to the public and will be held at the Fargo Public Library, 7:00 to 8:30 p.m., Thursday, January 30.

HB 1353
Limitations on the Retail Sale of Over-The-Counter
Methamphetamine Precursor Drugs

The bill does the following:

- Adds three definitions to the controlled substances act – methamphetamine precursor drug, over-the-counter sale and sale
- Establishes that possessing more than 24 grams of a methamphetamine precursor is prima facie evidence of intent to violate the drug paraphernalia statute.
- Clarifies that the bill does not apply to practitioners or products possessed in the course of a legitimate and lawful business.
- Limits the retail sale of methamphetamine precursor to a total of three grams of product or two packages of product.
- Prohibits the sale of over-the-counter methamphetamine precursor drugs to people under the age of 18.
- Provides a defense for retailers making the sale to someone under 18 if certain precautions are taken.
- Clarifies that the section does not apply to pediatric products intended for children under 12.
- Makes it either a class A misdemeanor or an infraction to violate the section.
- Clarifies that a retailer will not be found guilty of violating the section if the retailer conducts a training program similar to the Retail Meth Watch program implemented last summer by the Attorney General's office.

NDPhA
NORTH DAKOTA PHARMACEUTICAL ASSOCIATION

1906 E Broadway Ave.
Bismarck, ND 58501-4700
Tel. 701-258-4968
Fax 701-258-9312
e-mail ndpha@nodakpharmacy.com

February 4, 2003

Honorable Duane DeKrey
State Representative
Chairman – Judiciary Committee
600 E Boulevard Ave
Bismarck ND 58505

Dear Chairman DeKrey:

On behalf of the North Dakota Pharmaceutical Association (NDPhA) an organization that represents the 700 pharmacists practicing in the state I want to indicate our support HB 1353.

We realize that the provisions of HB 1353 related to the retail or over-the-counter sale of methamphetamine precursor drugs will place additional requirements on our members and may cause slight inconvenience to the public that we serve. However, we feel that the human costs of the illegal methamphetamine trade are such we all need to make some sacrifice to control this scourge in our state.

After reviewing the contents of this bill, we have determined that the limitations on packaging, quantities, and age limits do not interfere with the ability of the public to obtain these products for their health needs. The package size of three grams of pseudoephedrine will allow up to one hundred 30mg. tablets to be delivered. This is a one-month supply if a person is taking them regularly, something that does not happen often. The limitation of two packages per purchase does not greatly impair the ability of the public to obtain these products. If patients suffer a medical condition that requires greater quantities in higher doses, they would be able to obtain those quantities through a prescription by their physician. While the limitation of sales to persons under the age of eighteen may inconvenience some, there are always opportunities for that age group to obtain the products through parents or other caretakers.

We realize that determined criminals can use techniques to develop creative tactics to obtain these products through purchasing from multiple outlets but we feel that the limitations in HB 1353 will make it more difficult and will create a greater opportunity for apprehension. We do not see any legitimate medical hardships caused by the restrictions outlined in the bill and will work with the officials of the state to ensure that illegitimate use of these products is diminished.

Sincerely,

Galen Jordre, R.Ph.
Executive Vice President

AH # 1 HB

CHPA
FOUNDED 1881

CONSUMER HEALTHCARE PRODUCTS ASSOCIATION®

Summary of State Restrictions on Ephedrine, Pseudoephedrine & Phenylpropanolamine

(Updated October 2002)

Below is a listing of the states with their statutory or regulatory restrictions specific to nonprescription medicines containing ephedrine, pseudoephedrine and phenylpropanolamine as they relate to the precursor status of these chemicals to manufacture an illicit substance. Clicking on the state name will take you directly to the summary information for that state, or alternatively, scroll to view all listed states.

CHPA makes every effort to monitor developments in all 50 states and to keep this information complete and accurate. However, this summary should not replace the thoughtful advice of legal counsel and discussions with relevant state agencies. Seek the advice of legal counsel, as well as regulators in a particular state, before establishing a compliance program in reliance on these requirements.

Dates of enactment are included where statute or regulation has changed since 1990.

Alabama

Restricted Availability of EPH, PSE or PPA	Requirements for Distributors of Over-the-Counter EPH, PSE or PPA	Restrictions and/or Limits on Retail Sales of OTCs w/EPH, PSE or PPA	Restrictions on Marketing, Advertising and Labeling	Limitations on Possession of EPH, PSE and PPA
None	None – EPH, PSE and PPA are regulated as precursor chemicals but OTCs exempted. Ala. Code §20-2-188(a).	None	None	None

Alaska

Restricted Availability of EPH, PSE or PPA	Requirements for Distributors of Over-the-Counter EPH, PSE or PPA	Restrictions and/or Limits on Retail Sales of OTCs w/EPH, PSE or PPA	Restrictions on Marketing, Advertising and Labeling	Limitations on Possession of EPH, PSE and PPA
None	None	None	None	Unlawful to possess EPH, PSE or PPA with intent to manufacture methamphetamine. Alaska Stat. §11.71.020(a) (2000). Unlawful to possess EPH, PSE or PPA with intent to manufacture an imitation controlled substance. Alaska Stat. §11.73.020.

Arizona

Restricted Availability of EPH, PSE or PPA	Requirements for Distributors of Over-the-Counter EPH, PSE or PPA	Restrictions and/or Limits on Retail Sales of OTCs w/EPH, PSE or PPA	Restrictions on Marketing, Advertising and Labeling	Limitations on Possession of EPH, PSE and PPA
Schedule V for single ingredient EPH. Ariz. Rev. Stat. §36-2516.3 (1990).	EPH, PSE and PPA are regulated as precursor chemicals and distributors must register with state; safe-harbor OTCs are exempt at retail; DEA registrants submit fed'l forms in lieu of AZ reports. Ariz. Rev. Stat. §§13-3404 and 3404.01 (1999).	Retail sales of EPH, PSE or PPA limited to 24 gm./transaction. Above threshold sales and suspicious transactions require reports. Ariz. Rev. Stat. §13-3404 (1999). Unlawful to sell EPH, PSE or PPA with knowledge precursor will be used for illicit substance. Ariz. Rev. Stat. §13-3404.01 (1999).	None	Unlawful to possess EPH, PSE or PPA with intent to manufacture illicit substance or to sell with knowledge precursor will be used for illicit substance. Ariz. Rev. Stat. §13-3404.01 (1999).

Restricted Availability of EPH, PSE or PPA	Requirements for Distributors of Over-the-Counter EPH, PSE or PPA	Restrictions and/or Limits on Retail Sales of OTCs w/EPH, PSE or PPA	Restrictions on Marketing, Advertising and Labeling	Limitations on Possession of EPH, PSE and PPA
Schedule V for single ingredient EPH (including combos with insignificant amounts of other active ingredients). Dept. of Health Rule- Ark. Controlled Substance List (effective Feb. 1996). However, all OTCs are exempt from CSA by statute. Ark. Code Ann. §5-64-608 (2001).	EPH, PSE and PPA are regulated as precursor chemicals. Retail distributors are exempt from keeping records of OTC transactions that conform to retail sales limits; manufacturers and wholesalers must submit suspicious order reports to the state board of pharmacy. Ark. Code Ann §5-64-1005(d), 1006 (2001). Wholesale distributors must comply with Board of Pharmacy regulations regarding the storage and handling of List I Chemicals. Regulations mirror current federal law. Ark. State Board of Pharmacy Code §08-02-0006.	3 pkg. limit per transaction on retail sales of EPH, PSE or PPA; 3 gm. / 96 pill single package limit; blister pack/unit dose packaging restriction; 18+ restriction w/proof of age ID requirement. Exemptions for pediatric solids <=15mg. /dose, liquids <=15 mg./dose per 5 ml., and concentrated infant drops <=2 ml/dose and total package <=1 fl. oz. Ark. Code. Ann §5-64-1103 (2001). Reckless disregard standard for unlawful distribution. Ark. Code. Ann. §5-64-1102 (2001).	None	Unlawful to possess > 5 grams of EPH and > 9 grams of PSE or PPA; exemption for retailers and health care providers, and manufacturers, wholesalers and distributors furnishing EPH, PSE and PPA to health care providers. Unlawful possession shall constitute prima facie evidence of intent to manufacture methamphetamine. Ark. Code. Ann. §5-64-1101 (2001). Unlawful to possess EPH, PSE, or PPA with intent to manufacture or distribute methamphetamine. Ark. Code. Ann. §5-64-1102 (2001).

California

Restricted Availability of EPH, PSE or PPA	Requirements for Distributors of Over-the-Counter EPH, PSE or PPA	Restrictions and/or Limits on Retail Sales of OTCs w/EPH, PSE or PPA	Restrictions on Marketing, Advertising and Labeling	Limitations on Possession of EPH, PSE and PPA
None	EPH, PSE and PPA are regulated as precursor chemicals; includes registration and reporting by distributors. Cal. Health & Safety Code §11106 (1997); §11100(e)(4); -(a)(16) (1996); and §11383 (1993). Recordkeeping and reporting of threshold transactions of EPH, PSE & PPA required. Cal. Health & Safety Code §11106 (1997).	3 pkg./9 gm. limit per transaction on retail sales of EPH, PSE or PPA; exempts pediatric liquids, incl. concentrated infant drops. Preempts all CA local ordinances restricting retail sales EPH, PSE and PPA products. Cal. Health & Safety Code §§11100, 11106 (1999).	None	Unlawful to possess EPH or PSE with intent to manufacture methamphetamine. Cal. Health & Safety Code §11383 (1997).

Colorado

Restricted Availability of EPH, PSE or PPA	Requirements for Distributors of Over-the-Counter EPH, PSE or PPA	Restrictions and/or Limits on Retail Sales of OTCs w/EPH, PSE or PPA	Restrictions on Marketing, Advertising and Labeling	Limitations on Possession of EPH, PSE and PPA
Schedule II for EPH with exemption for products exempt from federal CSA (i.e., OTC products). Col. Rev. Stat. §18-18-418(2).	None	None	None	Unlawful to possess EPH, PSE or PPA with intent to use as a precursor. Col. Rev. Stat. §18-18-412.5.

Connecticut

Restricted Availability of EPH, PSE or PPA	Requirements for Distributors of Over-the-Counter EPH, PSE or PPA	Restrictions and/or Limits on Retail Sales of OTCs w/EPH, PSE or PPA	Restrictions on Marketing, Advertising and Labeling	Limitations on Possession of EPH, PSE and PPA
None	None	None	None	None

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...cted Availability of EPH, PSE or PPA	Requirements for Distributors of Over-the-Counter EPH, PSE or PPA	Restrictions ... or Limits on Retail Sales of OTCs w/EPH, PSE or PPA	Restrictions on Marketing, Advertising and Labeling	Limitations on Possession of EPH, PSE and PPA
None	None	None	None	None

District of Columbia

Restricted Availability of EPH, PSE or PPA	Requirements for Distributors of Over-the-Counter EPH, PSE or PPA	Restrictions and/or Limits on Retail Sales of OTCs w/EPH, PSE or PPA	Restrictions on Marketing, Advertising and Labeling	Limitations on Possession of EPH, PSE and PPA
None	None	None	None	None

Florida

Restricted Availability of EPH, PSE or PPA	Requirements for Distributors of Over-the-Counter EPH, PSE or PPA	Restrictions and/or Limits on Retail Sales of OTCs w/EPH, PSE or PPA	Restrictions on Marketing, Advertising and Labeling	Limitations on Possession of EPH, PSE and PPA
Prescription drug status for EPH with exemptions for specific OTC product formulations in compliance with FDA. Fl. Stat. Ann. §499.033 (1995).	None	None	Prohibits advertising or labeling of ephedrine products for unapproved uses. Fl. Stat. Ann. §499.033.	Prohibits possession of any precursor chemical with intent to manufacture a controlled substance. Fl. Stat. Ann §893.033 and §893.149.

Georgia

Restricted Availability of EPH, PSE or PPA	Requirements for Distributors of Over-the-Counter EPH, PSE or PPA	Restrictions and/or Limits on Retail Sales of OTCs w/EPH, PSE or PPA	Restrictions on Marketing, Advertising and Labeling	Limitations on Possession of EPH, PSE and PPA
PSE listed as a Dangerous Drug but OTC formulations are exempt. Ga. Code §16-13-71(b)(806) and (c)(23).	None	None	None	None

Restricted Availability of EPH, PSE or PPA	Requirements for Distributors of Over-the-Counter EPH, PSE or PPA	Restrictions and/or Limits on Retail Sales of OTCs w/EPH, PSE or PPA	Restrictions on Marketing, Advertising and Labeling	Limitations on Possession of EPH, PSE and PPA
Local ordinance in Honolulu prohibits sales of ephedrine-containing dietary supplements but exempts FDA-approved OTC drugs from prohibition; prohibits sale of *any* EPH product to anyone under 18 years. City Ord. for City of Honolulu (1996).	EPH, PSE and PPA are regulated as precursor chemicals but OTCs exempted. Haw. Rev. Stat. §329-64(a)(4). Non-retail distributors must file copies of federal registration with state. Haw. Rev. Stat. §329-64(b) (1999).	DEA registrants must file copies of suspicious order reports with state. Haw. Rev. Stat §329-64(b) (1999). Unlawful to sell EPH, PSE or PPA with knowledge that chemicals will be used to manufacture controlled substance. Haw. Rev. Stat. §329-65 (1999).	Prohibits sale of any EPH product labeled for ecstasy, euphoria, sexual sensation or legal "high". Haw. Rev. Stat. §329-65(e) (1999).	Unlawful to possess EPH, PSE or PPA with intent to manufacture or to sell with knowledge that chemicals will be used to manufacture controlled substance. Haw. Rev. Stat. §329-65 (1999).

Idaho

Restricted Availability of EPH, PSE or PPA	Requirements for Distributors of Over-the-Counter EPH, PSE or PPA	Restrictions and/or Limits on Retail Sales of OTCs w/EPH, PSE or PPA	Restrictions on Marketing, Advertising and Labeling	Limitations on Possession of EPH, PSE and PPA
Schedule II for EPH, PSE & PPA; exemption for OTC products unless possessed with intent to manufacture meth. Idaho Code §37-2707 (1998). Prescription drug status for EPH with list of exempted products by brand name. Bd. of Pharmacy Rule No. 158 (revised 1994).	None	None	None	Possession with intent to manufacture methamphetamine nullifies exemption and converts substance to Schedule II. Idaho Code §37-2707 (1998).

Illinois

Restricted Availability of EPH, PSE or PPA	Requirements for Distributors of Over-the-Counter EPH, PSE or PPA	Restrictions and/or Limits on Retail Sales of OTCs w/EPH, PSE or PPA	Restrictions on Marketing, Advertising and Labeling	Limitations on Possession of EPH, PSE and PPA
Schedule IV for EPH with exemptions for specific OTC product formulations. 720 Ill. Rev. Stat. Ch. 570, §§210(g) and 216(a) (1998).	None	None	Prohibits advertising and labeling of EPH for unapproved uses. 720 Ill. Rev. Stat. Ch. 570, §216(b) (1998).	Prohibits possession of any methamphetamine manufacturing chemical (includes EPH, PSE or PPA) with intent to manufacture methamphetamine. 720 Ill. Rev. Stat. Ch. 570, §401 (1999).

Indiana

Restricted Availability of EPH, PSE or PPA	Requirements for Distributors of Over-the-Counter EPH, PSE or PPA	Restrictions and/or Limits on Retail Sales of OTCs w/EPH, PSE or PPA	Restrictions on Marketing, Advertising and Labeling	Limitations on Possession of EPH, PSE and PPA
None	None	None	None	Prohibits possession of 2 or more chemical reagents (includes EPH, PSE or PPA) with intent to manufacture methamphetamine. Ind. Code §35-48-4-14.5(b) (1999).

Restricted Availability of EPH, PSE or PPA	Requirements for Distributors of Over-the-Counter EPH, PSE or PPA	Restrictions and/or Limits on Retail Sales of OTCs w/EPH, PSE or PPA	Restrictions on Marketing, Advertising and Labeling	Limitations on Possession of EPH, PSE and PPA
Schedule V for EPH with exemptions for specific OTC product formulations. Iowa Code §124.212 (1997).	None – EPH, PSE and PPA are regulated as precursor chemicals but OTCs exempted. Iowa Code §124B.6(4) (1997).	Prohibits sale of EPH or PSE if person knows or should know product will be used as precursor to an illegal substance. Iowa Code §124.401.3 (1997).	None	Prohibits possession of EPH or PSE with intent to manufacture an illicit substance or for other than a medicinal use. Iowa Code §124.401.4 (1997).

Kansas

Restricted Availability of EPH, PSE or PPA	Requirements for Distributors of Over-the-Counter EPH, PSE or PPA	Restrictions and/or Limits on Retail Sales of OTCs w/EPH, PSE or PPA	Restrictions on Marketing, Advertising and Labeling	Limitations on Possession of EPH, PSE and PPA
Schedule V for single ingredient EPH. Kan. Stat. Ann. §65-4113.	None – EPH, PSE and PPA are regulated as precursor chemicals but OTCs exempted. Kan. Stat. Ann. §65-7003 and §65-7007(c)(3) and (4) (1999). Kansas Bureau of Investigation required to develop and maintain program to inform retailers about meth problem and devise procedures and forms for suspicious purchases, thefts or other transactions involving any nonprescription, OTC medicines. Voluntary retailer reporting; reporting information in good faith immune from civil liability. Kan. Stat. Ann. §65-7008 (1999).	Unlawful to sell EPH, PSE or PPA with knowledge or if seller should reasonably know chemical will be used to manufacture any illegal substance. Kan. Stat. Ann §65-7006(b) (1999).	Prohibits marketing of EPH drug products for stimulation, mental alertness, weight loss or increased energy. Kan. Stat. Ann. §65-7006(c) (1999).	Unlawful to possess EPH, PSE or PPA with intent to manufacture or to sell with knowledge that chemical will be used to manufacture any illegal substance. Kan. Stat. Ann. §65-7006(a) (1999).

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...ricted Availability of EPH, PSE or PPA	Requirements for Distributors of Over-the-Counter EPH, PSE or PPA	Restrict... and/or Limits on Retail Sales of OTCs w/EPH, PSE or PPA	Restrictions on Marketing, Advertising and Labeling	Limitations on Possession of EPH, PSE and PPA
None	EPH, PSE and PPA are regulated as precursors. KY ST §218A.1438 (2002). *(Statutory link not yet available.)*	Unlawful to sell EPH, PSE or PPA if the person knows the drug product will be used as a precursor. KY ST §218A.1438(1) (2002). *(Statutory link not yet available.)*	None	Possession of more than 24 gm. of EPH, PSE or PPA is prima facie evidence of intent to use the product as a precursor. KY ST §218A.1437(2)(a) (2002). *(Statutory link not yet available.)*

Louisiana

Restricted Availability of EPH, PSE or PPA	Requirements for Distributors of Over-the-Counter EPH, PSE or PPA	Restrictions and/or Limits on Retail Sales of OTCs w/EPH, PSE or PPA	Restrictions on Marketing, Advertising and Labeling	Limitations on Possession of EPH, PSE and PPA
Prescription status for EPH with exemptions for specific product formulations in compliance with FDA. Dep't. may exempt other products for valid medicinal use. La. Rev. Stat. Ann. §40:962.1 (1995); La. Admin. Code §48:1.3945 (1995).	None – EPH, PSE and PPA are regulated as precursor chemicals but OTCs exempted. La. Rev. Stat. Ann. §40:976.1.H.	None	Prohibits advertising and labeling of EPH for unapproved uses. La. Rev. Stat. Ann. §40:962.1 (1995); La. Admin. Code §48:1.3945 (1995).	None

Maine

Restricted Availability of EPH, PSE or PPA	Requirements for Distributors of Over-the-Counter EPH, PSE or PPA	Restrictions and/or Limits on Retail Sales of OTCs w/EPH, PSE or PPA	Restrictions on Marketing, Advertising and Labeling	Limitations on Possession of EPH, PSE and PPA
None	None	None	None	None

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ricted Availability of EPH, PSE or PPA	Requirements for Distributors of Over-the-Counter EPH, PSE or PPA	Restrict and/or Limits on Retail Sales of OTCs w/EPH, PSE or PPA	Restrictions on Marketing, Advertising and Labeling	Limitations on Possession of EPH, PSE and PPA
None	None	None	None	None

Massachusetts

Restricted Availability of EPH, PSE or PPA	Requirements for Distributors of Over-the-Counter EPH, PSE or PPA	Restrictions and/or Limits on Retail Sales of OTCs w/EPH, PSE or PPA	Restrictions on Marketing, Advertising and Labeling	Limitations on Possession of EPH, PSE and PPA
None	None	None	None	None

Michigan

Restricted Availability of EPH, PSE or PPA	Requirements for Distributors of Over-the-Counter EPH, PSE or PPA	Restrictions and/or Limits on Retail Sales of OTCs w/EPH, PSE or PPA	Restrictions on Marketing, Advertising and Labeling	Limitations on Possession of EPH, PSE and PPA
Prescription required to possess more than 10 grams EPH, single ingredient or in combination. Mich. Comp. Laws. Ann. §333.17766c (1996). Schedule V for EPH with exemptions for specific formulations of drugs and dietary supplements. Mich. Comp. Laws. Ann. §333.7220 (1)(c) (1999).	Prohibits sale of dietary supplements or food containing EPH to anyone under 18 years old. Mich. Comp. Laws. Ann. §333.7339(1) (1999).	None	Prohibits ads for EPH dietary supplement products as providing euphoria, ecstasy, altered mental state, heightened sexual performance or increased muscle mass. Mich. Comp. Laws. Ann. §333.7339(2) (1999).	Unlawful to possess more than 10 grams of EPH, without a prescription; exemptions for certain OTC combo products. Mich. Comp. Laws. Ann. §333.17766c (1996).

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tricted Availability of EPH, PSE or PPA	Requirements for Distributors of Over-the-Counter EPH, PSE or PPA	Restricti[illegible]and/or Limits on Retail Sales of OTCs w/EPH, PSE or PPA	Restrictions on Marketing, Advertising and Labeling	Limitations on Possession of EPH, PSE and PPA
Prescription status for EPH with exemptions for specific OTC product formulations in compliance with FDA. Minn. Stat. §152.135 (1998).	None – EPH, PSE and PPA are regulated as precursor chemicals but OTCs exempted. Minn. Stat. §152.0974(4).	Prohibits sale of EPH, PSE or PPA if person knows or reasonably should know product will be used to manufacture an illegal substance. Minn. Stat. §152.135 (1998).	Prohibits advertising, marketing & labeling of EPH for unapproved uses. Minn. Stat. §152.135 (1998).	Prohibits possession of EPH, PSE or PPA with intent to manufacture an illegal substance. Minn. Stat. §152.135 (1998).

Mississippi

Restricted Availability of EPH, PSE or PPA	Requirements for Distributors of Over-the-Counter EPH, PSE or PPA	Restrictions and/or Limits on Retail Sales of OTCs w/EPH, PSE or PPA	Restrictions on Marketing, Advertising and Labeling	Limitations on Possession of EPH, PSE and PPA
None	None	Prohibits sale of 250 dosage units or 15 grams of PSE or EPH knowing product will be used to manufacture a controlled substance. Miss. Code Ann. §41-29-313(2)(c) (2000).	None	Prohibits possession of 250 dosage units or 15 grams of PSE or EPH knowing product will be used to manufacture a controlled substance. Miss. Code Ann. §41-29-313(2)(c) (2000).

Restricted Availability of EPH, PSE or PPA	Requirements for Distributors of Over-the-Counter EPH, PSE or PPA	Restrict... and/or Limits on Retail Sales of OTCs w/EPH, PSE or PPA	Restrictions on Marketing, Advertising and Labeling	Limitations on Possession of EPH, PSE and PPA
Schedule IV for single ingredient EPH including combos with therapeutically insignificant quantities of other active ingredients. Mo. Rev. Stat. §195.017.8(6) (1995).	EPH, PSE and PPA are regulated as precursor chemicals. Mo. Rev. Stat. §195.010 (2001). Suspicious transaction reports filed with with U.S. AG must be copied to the chief law enforcement official with jurisdiction. Mo. Rev. Stat. §195.515 (2001). Lawful sale, transfer, furnishing or receipt of OTCs is exempt from proper ID and state department of health reporting requirements regarding precursor chemicals. Mo. Rev. Stat. §195.400 (2001).	3 pkg. Limit per transaction on retail sales of EPH, PSE or PPA; exemption for pediatric OTCs; sales limited to packages with <=3 gm. Base EPH, PSE, PPA with safe harbor or unit dose packets. Mo. Rev. Stat. §195.417, 418 (2001).	Prohibits marketing of ephedrine or pseudoephedrine for unapproved uses. Mo. Rev. Stat § 195.248 (1996).	Possession of > 24 gm. of EPH, PSE or PPA shall be prima facie evidence of intent to deliver and manufacture methamphetamine; exemption for practitioners, or for any product possessed in the course of legitimate business. Mo. Rev. Stat §195.235, 246 (2001).

Mo

tricted Availability of EPH, PSE or PPA	Requirements for Distributors of Over-the-Counter EPH, PSE or PPA	Restricti and/or Limits on Retail Sales of OTCs w/EPH, PSE or PPA	Restrictions on Marketing, Advertising and Labeling	Limitations on Possession of EPH, PSE and PPA
Schedule IV for single ingredient EPH (including combos with therapeutically insignificant amount of other active ingredients). Mont. Code Ann. §50-32-229(5) (1997).	None	None	None	Unlawful to possess EPH, PSE or PPA with intent to manufacture a dangerous drug. Mont. Code Ann. §45-9-107 (1999).

Nebraska

Restricted Availability of EPH, PSE or PPA	Requirements for Distributors of Over-the-Counter EPH, PSE or PPA	Restrictions and/or Limits on Retail Sales of OTCs w/EPH, PSE or PPA	Restrictions on Marketing, Advertising and Labeling	Limitations on Possession of EPH, PSE and PPA
Schedule IV for EPH with exemptions for named FDA-approved OTC products. Neb. Rev. Stat. §28-405(IV)(g)(2) (1996).	None	Unlawful to sell EPH, PSE, or PPA if seller knows that transferee will use product to manufacture a controlled substance; unlawful to sell with reckless disregard as to how the product will be used. Neb. Rev. Stat. §28-450 (2001). Rx status for EPH, PSE and PPA products unless they are packaged in "safe harbor" packaging (blister packed, no more than 3 grams base, 2 tablets per blister OR liquid with no more than 3 grams base). Neb. Rev. Stat. §28-456 (2001).	Prohibits labeling and marketing of PPA or PSE for unapproved uses. Neb. Rev. Stat. §28-456 (2001).	No person shall possess EPH, PSE or PPA with the intent to manufacture methamphetamine. Neb. Rev. Stat. §28-452 (2001).

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Restricted Availability of EPH, PSE or PPA	Requirements for Distributors of Over-the-Counter EPH, PSE or PPA	Restrictions and/or Limits on Retail Sales of OTCs w/EPH, PSE or PPA	Restrictions on Marketing, Advertising and Labeling	Limitations on Possession of EPH, PSE and PPA
Schedule III for EPH, PSE and PPA with exemption for OTC; exemptions granted by brand name. Nev. Admin. Code §453.530(6)-(8) (1994).	None	None	None	None

New Hampshire

Restricted Availability of EPH, PSE or PPA	Requirements for Distributors of Over-the-Counter EPH, PSE or PPA	Restrictions and/or Limits on Retail Sales of OTCs w/EPH, PSE or PPA	Restrictions on Marketing, Advertising and Labeling	Limitations on Possession of EPH, PSE and PPA
None	None	None	None	None

New Jersey

Restricted Availability of EPH, PSE or PPA	Requirements for Distributors of Over-the-Counter EPH, PSE or PPA	Restrictions and/or Limits on Retail Sales of OTCs w/EPH, PSE or PPA	Restrictions on Marketing, Advertising and Labeling	Limitations on Possession of EPH, PSE and PPA
None	None	None	None	None

New Mexico

Restricted Availability of EPH, PSE or PPA	Requirements for Distributors of Over-the-Counter EPH, PSE or PPA	Restrictions and/or Limits on Retail Sales of OTCs w/EPH, PSE or PPA	Restrictions on Marketing, Advertising and Labeling	Limitations on Possession of EPH, PSE and PPA
Prescription required for EPH with exemption for OTCs in compliance with FDA and containing 0.5% or less of ephedrine. N.M. Admin. Code 16.19.17.7 (1944).	None, EPH and PSE are regulated as precursor chemicals but OTCs exempted. N.M. Stat. Ann. §30-31B-2.L.	Albuquerque local ordinance limits sales to 3 packages or 100 pills in a single transaction. Albuquerque City Ordinance (1999).	None	None

Ne

ricted Availability of EPH, PSE or PPA	Requirements for Distributors of Over-the-Counter EPH, PSE or PPA	Restricti and/or Limits on Retail Sales of OTCs w/EPH, PSE or PPA	Restrictions on Marketing, Advertising and Labeling	Limitations on Possession of EPH, PSE and PPA
None	None	None	None	None

North Carolina

Restricted Availability of EPH, PSE or PPA	Requirements for Distributors of Over-the-Counter EPH, PSE or PPA	Restrictions and/or Limits on Retail Sales of OTCs w/EPH, PSE or PPA	Restrictions on Marketing, Advertising and Labeling	Limitations on Possession of EPH, PSE and PPA
None	None	Prohibits sale of any precursor chemical (including EPH, PSE or PPA) with intent to manufacture methamphetamine. N.C. Gen. Stat. §90-95(d1).	None	Prohibits possession of any precursor chemical (including EPH, PSE or PPA) with intent to manufacture methamphetamine. N.C. Gen. Stat. §90-95(d1).

North Dakota

Restricted Availability of EPH, PSE or PPA	Requirements for Distributors of Over-the-Counter EPH, PSE or PPA	Restrictions and/or Limits on Retail Sales of OTCs w/EPH, PSE or PPA	Restrictions on Marketing, Advertising and Labeling	Limitations on Possession of EPH, PSE and PPA
None	None	None	None	None

Ohio

Restricted Availability of EPH, PSE or PPA	Requirements for Distributors of Over-the-Counter EPH, PSE or PPA	Restrictions and/or Limits on Retail Sales of OTCs w/EPH, PSE or PPA	Restrictions on Marketing, Advertising and Labeling	Limitations on Possession of EPH, PSE and PPA
Schedule V for EPH; exemptions granted by brand name by Bd. of Pharmacy, see regulations. Ohio Rev. Code §3719.44 (2002) and OAR Ch. 4729 (2002).	None	None	Prohibits marketing dietary supplement containing EPH for euphoria, ecstasy, buzz or high or heightened sexual performance. Ohio Rev. Code §3719.44 (2002).	Assembly or possession of precursor chemicals with intent to manufacture methamphetamine is a third-degree felony. Ohio Rev. Code §2925.041 (2001).

Restricted Availability of EPH, PSE or PPA	Requirements for Distributors of Over-the-Counter EPH, PSE or PPA	Restrictions and/or Limits on Retail Sales of OTCs w/EPH, PSE or PPA	Restrictions on Marketing, Advertising and Labeling	Limitations on Possession of EPH, PSE and PPA
Schedule IV for EPH with list of exempted brand name products and criteria for further exemptions. Okla. Stat. Title 63, §2-210 (1996).	None, EPH, PSE and PPA are regulated as precursor chemicals but OTCs exempted. Okla. Stat., Title 63, §2-327.	None	Dietary supplements containing naturally occurring ephedrine alkaloids that are exempt from controlled substances list cannot make certain advertising/marketing claims regarding euphoria, sexual performance or muscle mass development. Okla. Admin. Rule 475:10-1-24.	Unlawful to possess EPH or PSE with the intent to manufacture controlled dangerous substance. Okla Stat., Title 63, §2-401(F) (1994). 1999 amendment clarifies that OTC exemption from precursor controls in controlled substance law does not apply if person knows product will be used to manufacture methamphetamine. Okla. Stat., Title 63, §2-327 (1999). Possession of more than 24 grams of EPH, PSE or PPA, or their salts, isomers or salts of isomers, constitutes a rebuttable presumption of the intent to use the product as a precursor to methamphetamine or another controlled substance. Legitimate possession by retailers, wholesalers, manufacturers, pharmacists and health care professionals is exempt. Illegal to knowingly and unlawfully sell, transfer, distribute or dispense any product

				containing EPH, PSE or PPA, or their salts, isomers or salts of isomers, if the person knows that the purchaser will use the product as a precursor to manufacture methamphetamine or another controlled illegal substance, or if the person sells, transfers, distributes or dispenses the product with reckless disregard as to how the product will be used. Okla. Stat., Title 63, §2-332-333 (2002). *(Statutory link not yet available.)*

Restricted Availability of EPH, PSE or PPA	Requirements for Distributors of Over-the-Counter EPH, PSE or PPA	Restrictions and/or Limits on Retail Sales of OTCs w/EPH, PSE or PPA	Restrictions on Marketing, Advertising and Labeling	Limitations on Possession of EPH, PSE and PPA
Schedule II for EPH; exemptions granted by brand name and blanket exemption for products approved for OTC sales by FDA. Ore. Admin. Rule 855-80-022 and -028 (1995).	EPH, PSE and PPA regulated as precursor chemicals; EPH combination OTCs exempted. Distributors licensed by board of pharmacy and retailers in compliance with 3 pkg./ 9-gm. sales limit exempt from reporting requirements. Or. Rev. Stat. §475.940, 950 (2001). Reporting requirement to state police upon discovery of theft or loss of precursor substance. Or. Rev. Stat. §475.955 (2001).	3 pkg./9 gm. limit per transaction on retail sales of EPH, PSE or PPA; exemptions for pediatric solid dose <=15mg. /dose, liquids <=15 mg. /5 ml. liquid product and concentrated infant drops <=2 ml/dose and pkg. content <=1 fl. oz.; exemption for dietary supplements containing naturally occurring ephedrine alkaloids (ephedra content must be <=15 percent of total weight of dietary supplement). Or. Rev. Stat. §475.973(2) (2001).	None.	Unlawful to possess > 9 gm. of EPH, PSE or PPA; exemption for physicians, pharmacists, retail distributors, wholesalers, manufacturers, warehousmen or common carriers; household exemption for persons in possession of <24 gm. of EPH, PSE or PPA under circumstances consistent with typical medicinal or household use (under circumstances consistent with typical medicinal or household use as indicated by storage location, and possession of products in a variety of strengths, brands, types, purposes and expiration dates). Or. Rev. Stat. §475.973(1) (2001).

Penn[illegible]ia

Restricted Availability of EPH, PSE or PPA	Requirements for Distributors of Over-the-Counter EPH, PSE or PPA	Restrictions and/or Limits on Retail Sales of OTCs w/EPH, PSE or PPA	Restrictions on Marketing, Advertising and Labeling	Limitations on Possession of EPH, PSE and PPA
Unlawful to sell EPH to any person under 18 years old; exemptions for specific OTC formulations in compliance with FDA and distributed for legitimate medicinal use in a manner to reduce likelihood of abuse. 18 Pa. Cons. Stat. §6316 (1997).	None, EPH, PSE and PPA are regulated as precursor chemicals but OTCs exempted. 35 Pa. Cons. Stat. §885(b)(4).	None	None	None

Rhode Island

Restricted Availability of EPH, PSE or PPA	Requirements for Distributors of Over-the-Counter EPH, PSE or PPA	Restrictions and/or Limits on Retail Sales of OTCs w/EPH, PSE or PPA	Restrictions on Marketing, Advertising and Labeling	Limitations on Possession of EPH, PSE and PPA
None	None	None	None	None

South Carolina

Restricted Availability of EPH, PSE or PPA	Requirements for Distributors of Over-the-Counter EPH, PSE or PPA	Restrictions and/or Limits on Retail Sales of OTCs w/EPH, PSE or PPA	Restrictions on Marketing, Advertising and Labeling	Limitations on Possession of EPH, PSE and PPA
None	None	None	None	None

South Dakota

Restricted Availability of EPH, PSE or PPA	Requirements for Distributors of Over-the-Counter EPH, PSE or PPA	Restrictions and/or Limits on Retail Sales of OTCs w/EPH, PSE or PPA	Restrictions on Marketing, Advertising and Labeling	Limitations on Possession of EPH, PSE and PPA
Schedule III for EPH; Dept. of Health exempts specific product formulations by regulation. S.D. Laws §34-20B-19 (1997). S.D. Admin. R. §44:58:13:01 (1997).	None	None	None	None

Tennessee

Restricted Availability of EPH, PSE or PPA	Requirements for Distributors of Over-the-Counter EPH, PSE or PPA	Restrictions and/or Limits on Retail Sales of OTCs w/EPH, PSE or PPA	Restrictions on Marketing, Advertising and Labeling	Limitations on Possession of EPH, PSE and PPA
Prescription status for EPH with exemptions for specific OTC product formulations in compliance with FDA. Tenn. Code §39-17-431 (1995).	None	None	Prohibits advertising & labeling EPH for unapproved uses. Tenn. Code §39-17-431 (1995).	None

Texas

Restricted Availability of EPH, PSE or PPA	Requirements for Distributors of Over-the-Counter EPH, PSE or PPA	Restrictions and/or Limits on Retail Sales of OTCs w/EPH, PSE or PPA	Restrictions on Marketing, Advertising and Labeling	Limitations on Possession of EPH, PSE and PPA
None	None, EPH, PSE and PPA are regulated as precursor chemicals but OTCs exempted. Tex. H&S Code §481.077(l). Unlawful to provide dietary supplement containing EPH to anyone under 18 years old. Tex. H&S Code §431.022 (1999).	None	None	None

ricted Availability of EPH, PSE or PPA	Requirements for Distributors of Over-the-Counter EPH, PSE or PPA	Restrictio nd/or Limits on Retail Sales of OTCs w/EPH, PSE or PPA	Restrictions on Marketing, Advertising and Labeling	Limitations on Possession of EPH, PSE and PPA
None	None, EPH, PSE and PPA are regulated as precursor chemicals but OTCs exempted. Utah Code Ann. §58-37c-8.	None	None	Prohibits possession of >12 gm. Of EPH or PSE; exemption for legitimate sales. Utah Code Ann. §58-37c-20 (1998).

Vermont

Restricted Availability of EPH, PSE or PPA	Requirements for Distributors of Over-the-Counter EPH, PSE or PPA	Restrictions and/or Limits on Retail Sales of OTCs w/EPH, PSE or PPA	Restrictions on Marketing, Advertising and Labeling.	Limitations on Possession of EPH, PSE and PPA
None	None	None	None	None

Virginia

Restricted Availability of EPH, PSE or PPA	Requirements for Distributors of Over-the-Counter EPH, PSE or PPA	Restrictions and/or Limits on Retail Sales of OTCs w/EPH, PSE or PPA	Restrictions on Marketing, Advertising and Labeling	Limitations on Possession of EPH, PSE and PPA
Prescription required to sell EPH to any minor in combination with caffeine. Va. Code Ann. §18.2-248.5.	None	None	None	None

Wa[illegible]n

Restricted Availability of EPH, PSE or PPA	Requirements for Distributors of Over-the-Counter EPH, PSE or PPA	Restrictions and/or Limits on Retail Sales of OTCs w/EPH, PSE or PPA	Restrictions on Marketing, Advertising and Labeling	Limitations on Possession of EPH, PSE and PPA
Prescription status for any products containing EPH; exemptions granted by brand name. Wash. Admin. Code §246-883-030.	EPH, PSE and PPA regulated as precursor chemicals. Reports must be submitted to the state board of pharmacy by manufacturers, wholesalers and retailers on EPH, PSE and PPA sales and transfers and the receipt of EPH, PSE and PPA from out-of-state sources. Proper identification requirement for purchase of precursor substance. Wash.Rev.Code §69.43.010, 69.43.020 (2001). Wash. Admin.Code §246-889-030, §246-889-040 (2001). Manufacturers and wholesalers must report suspicious transactions in writing to board of pharmacy. Rev. Wash. Code §69.43.035 (2001). Manufacturers and wholesalers are required to maintain records of sales and transfers of EPH, PSE and PPA. Rev. Wash. Code §69.43.043 (2001).	3 pkg./9 gm. limit per transaction on retail sales of EPH, PSE or PPA. Rev. Wash. Code §69.43.110 (2001). Exemptions for pediatric solid dose & liquids<=15mg./dose, and concentrated infant drops <=2 ml/dose. Rev. Wash. Code §69.43.130 (2001). Preempts all WA local ordinances restricting retail sales of EPH, PSE and PPA products. Rev. Wash. Code §69.43.150 (2001).	None	Unlawful to possess >15 gm. EPH, PSE and PPA; exemptions from possession limit for pharmacy, practitioner, distributor, retailer and "typical medicinal/household" use (under circumstances consistent with typical medicinal or household use as indicated by storage location, and possession of products in a variety of strengths, brands, types, purposes and expiration dates). Wash. Rev. Code §69.43.120 (2001). Unlawful to purchase more than 9 grams in a 24 hour period. Wash. Rev. Code §69.43.110 (2001).

West[illegible]a

Restricted Availability of EPH, PSE or PPA	Requirements for Distributors of Over-the-Counter EPH, PSE or PPA	Restrictions and/or Limits on Retail Sales of OTCs w/EPH, PSE or PPA	Restrictions on Marketing, Advertising and Labeling	Limitations on Possession of EPH, PSE and PPA
None	None	None	None	None

Wisconsin

Restricted Availability of EPH, PSE or PPA	Requirements for Distributors of Over-the-Counter EPH, PSE or PPA	Restrictions and/or Limits on Retail Sales of OTCs w/EPH, PSE or PPA	Restrictions on Marketing, Advertising and Labeling	Limitations on Possession of EPH, PSE and PPA
Schedule IV for EPH including combos with therapeutically insignificant quantities of other active ingredients. Wisc. Stat. §961.20(3) (1996).	None	None	None	None

Wyoming

Restricted Availability of EPH, PSE or PPA	Requirements for Distributors of Over-the-Counter EPH, PSE or PPA	Restrictions and/or Limits on Retail Sales of OTCs w/EPH, PSE or PPA	Restrictions on Marketing, Advertising and Labeling	Limitations on Possession of EPH, PSE and PPA
Prescription status for single ingredient EPH and certain combination EPH (25 mg. ephedrine in combination with less than 400 mg. Guaifenesin per dose). Wyoming Board of Pharmacy Rules, Chapter XI, Section C (1999).	None	None	None	Unlawful for any person to knowingly or intentionally possess EPH, PSE or PPA with the intent to engage in a clandestine laboratory operation, W.S. 35-7-1058(a)(i), or to sell, distribute or otherwise supply EPH, PSE or PPA knowing it will be used for a clandestine laboratory operation. Wyo. Stat. 35-7-1059(a).

Att #1

ENGROSSED HB 1353

House Bill 1353 is a major component in the Attorney General's fight against methamphetamine. It was drafted in consultation with the ND Retail Association and ND Grocers Association.

The bill places reasonable restrictions on the amount of over the counter medicine containing ephedrine or pseudoephedrine a person may purchase. The ingredients – ephedrine and pseudoephedrine are key ingredients in making methamphetamine.

The bill sets limits in two ways:

1) provides that a retailer cannot sell a package containing more than 3 grams of the methamphetamine precursor drug – this serves as a limit for the retailer ... so the retailer only stocks packages containing 3 grams or less of the chemicals needed to manufacturer methamphetamine .. this was done so that clerks at stores would not have to use a calculator every time a person paid for cold medicine.

2) the bill allows customers to buy 2 packages

Other provisions of the bill include:

3) It also prohibits the sale of medicine to persons under 18. The bill includes provisions so that storeowners have an affirmative defense if they checked for ID.

4) The bill does not apply to pediatric products ... the committee learned through testimony that meth cannot be made using pediatric products.

5) It will be a class A misdemeanor if a person sells packages containing more than 3 grams of ephedrine or pseudoephedrine

6) It will be an infraction to sell more than 2 packages or to sell to someone under 18.

7) The bill encourages education by providing that storeowners who conduct training programs for their employees will not be subject to the criminal penalties. This requirement dovetails with the on-going education program sponsored by the Attorney General's office and the Retail Association called the Retail Meth Watch program.

8) The House added several technical amendments to the bill suggested by the crime lab ... in addition the House Judiciary Committee thought it appropriate to adopt an amendment limiting the ability of political subdivisions to enact separate ordinances, and finally the Attorney General requested that the emergency clause be placed on the bill.

This bill was the product of work with both the North Dakota Grocers Association and the Retail Association ...each group stated that they recognized the seriousness of the problem and the bill reflects their willingness to support law enforcement's efforts to fight this deadly and destructive drug.

#2b

NORTH DAKOTA HOUSE BILL 1353
PROPOSED AMENDMENTS

SECTION 4. A new section to chapter 19-03.4 of the North Dakota Century Code is created and enacted as follows:

~~**Prima facie proof of intent.**~~ ***Possession Limits; Penalties.***

1. Possession of more than twenty-four grams of a methamphetamine precursor drug or combination of methamphetamine precursor drugs calculated in terms of ephedrine HCl and pseudoephedrine HCl is prima facie evidence of intent to violate sections 19-03.4-03 and 19-03.4-04. This subsection does not apply to a practitioner as defined in subsection 23 of section 19-03.1-01 or to a product possessed in the course of a legitimate and lawful business.

2. (a) Any person who possesses more than fifteen grams of ephedrine, pseudoephedrine, or phenylpropanolamine, their salts, isomers, or salts of isomers, or a combination of any of those substances, is guilty of a class A misdemeanor.
(b) This section does not apply to any of the following:
(1) a practitioner as defined in subsection 23 of section 19-03.1-01 or to a product possessed in the course of a legitimate and lawful business; or
(2) A person in possession of more than fifteen grams of ephedrine, pseudoephedrine, or phenylpropanolamine in their home or residence under circumstances consistent with typical medicinal or household use as indicated by, but not limited to, storage location and possession of products in a variety of strengths, brands, types, purposes, and expiration dates.

SECTION 5. A new section to chapter 19-03.4 of the North Dakota Century Code is created and enacted as follows:

Retail or over-the-counter sale of methamphetamine precursor drugs - Penalty.
1. The retail sale of nonliquid methamphetamine precursor drugs is limited to:
a. Sales in packages containing not more than a total of three grams of one or more methamphetamine precursor drugs, calculated in terms of ephedrine HCl and pseudoephedrine HCl; and
b. Sales in blister packs, each blister containing not more than two dosage units, or when the use of blister packs is technically infeasible, sales in unit dose packets or pouches.
2. A person may not deliver in a single over-the-counter sale more than ~~two~~ *three* packages of a methamphetamine precursor drug or a combination of methamphetamine precursor drugs.
3. A person may not deliver in an over-the-counter sale a methamphetamine precursor drug to a person under the age of eighteen years.

2c

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1353

Page 7, after line 26, insert:

7. Subsections 1 and 2 of this section do not apply to an over-the-counter sale of a methamphetamine precursor drug to a person whose purchase is funded by medical assistance benefits through the department of human services.

Renumber accordingly

AH #3

To: Senate Judiciary Committee
From: North Dakota League of Cities
Date: March 4, 2003

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1353

Page 8, remove lines 12 through 15

Renumber accordingly