

**Fifty-ninth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 4, 2005**

HOUSE BILL NO. 1346
(Representatives Thoreson, Horter, Kingsbury)
(Senators Flakoll, Klein, O'Connell)

AN ACT to amend and reenact section 19-03.4-08 of the North Dakota Century Code, relating to retail sale of a methamphetamine precursor drug; to provide a penalty; to provide an effective date; to provide an expiration date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 19-03.4-08 of the North Dakota Century Code is amended and reenacted as follows:

19-03.4-08. 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~~ two 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 packages of a methamphetamine precursor drug or a combination of methamphetamine precursor drugs.
3.
 - a. When offering a methamphetamine precursor drug for retail sale, a person shall require, obtain, and make a written record of the identification of the person purchasing the methamphetamine precursor drug, the identification being a document issued by a government agency as described in subdivisions a and b of subsection 5, and shall do at least one of the following:
 - (1) Maintain continuous recorded video surveillance of the portion of the premises where the methamphetamine precursor drug is displayed for sale and place signs or placards giving notice to the public of the surveillance;
 - (2) Place the methamphetamine precursor drug behind a counter or other barrier accessible only to the person making the sale of the drug; or
 - (3) Display only one package of any brand or type of a methamphetamine precursor drug for purchase in an area accessible to the public.
 - b. The person shall maintain the record of identification required by this subsection for three years, after which the record must be destroyed. The person may not use or maintain the record for any private or commercial purpose or disclose the record to any person, except as required by law. The person shall disclose the record, upon request, to a law enforcement agency for a law enforcement purpose.
4. A person may not deliver in an over-the-counter sale a methamphetamine precursor drug to a person under the age of eighteen years.

- ~~4.~~ 5. It is a prima facie case of a violation of subsection ~~3~~ 4 if the person making the sale did not require and obtain proof of age from the purchaser, unless from the purchaser's outward appearance the person would reasonably presume the purchaser to be twenty-five years of age or older. "Proof of age" means a document issued by a governmental agency which:
- a. Contains a description of the person or a photograph of the person, or both, and gives the person's date of birth; and
 - b. Includes a passport, military identification card, or driver's license.
- ~~5.~~ 6. It is an affirmative defense to a violation of subsection ~~3~~ 4 if:
- a. The person making the sale required and obtained proof of age from the purchaser;
 - b. The purchaser falsely represented the purchaser's proof of age by use of a false, forged, or altered document;
 - c. The appearance of the purchaser was such that an ordinary and prudent person would believe the purchaser to be at least eighteen years of age; and
 - d. The sale was made in good faith and in reliance upon the appearance and representation of proof of age of the purchaser.
- ~~6.~~ 7. This section does not apply to pediatric products labeled pursuant to federal regulation primarily intended for administration to children under twelve years of age according to label instructions or to a product that the state board of pharmacy, upon application of a manufacturer, exempts from this section because the product has been formulated in such a way as to effectively prevent the conversion of the active ingredient into methamphetamine, or its salts or precursors.
- ~~7.~~ 8. A person who willfully violates subsection 1 is guilty of a class A misdemeanor. A person who willfully violates subsection 2 ~~or~~, 3, or 4 is guilty of an infraction.
- ~~8.~~ 9. A person who is the owner, operator, or manager of the retail outlet or who is the supervisor of the employee or agent committing a violation of this section of the outlet where methamphetamine precursor drugs are available for sale is not subject to the penalties of this section if the person:
- a. Did not have prior knowledge of, participate in, or direct the employee or agent to commit, the violation of this section; and
 - b. Documents that the employee or agent, at the time of initial employment and each calendar year thereafter, participated in a training program approved by the attorney general providing the employee or agent with information regarding the state and federal regulations governing the sale, possession, and packaging of such drugs.
- The approval of the training program by the attorney general is not subject to chapter 28-32.
- ~~9.~~ 10. 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 2. EFFECTIVE DATE. This Act becomes effective on June 1, 2005.

SECTION 3. EXPIRATION DATE. This Act is effective through July 31, 2007, and after that date is ineffective.

SECTION 4. EMERGENCY. This Act is declared to be an emergency measure.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Fifty-ninth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1346 and that two-thirds of the members-elect of the House of Representatives voted in favor of said law.

Vote: Yeas 72 Nays 20 Absent 2

Speaker of the House

Chief Clerk of the House

This certifies that two-thirds of the members-elect of the Senate voted in favor of said law.

Vote: Yeas 47 Nays 0 Absent 0

President of the Senate

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2005.

Approved at _____ M. on _____, 2005.

Governor

Filed in this office this _____ day of _____, 2005,
at _____ o'clock _____ M.

Secretary of State