

SENATE BILL NO. 112—SENATORS TITUS, AMODEI, BEERS, CARE, CARLTON, CEGAVSKE, COFFIN, HARDY, HECK, HORSFORD, LEE, MATHEWS, MCGINNESS, RAGGIO, RHOADS, SCHNEIDER, TOWNSEND, WASHINGTON, WIENER AND WOODHOUSE

FEBRUARY 19, 2007

Referred to Committee on Human Resources and Education

SUMMARY—Enacts provisions governing the sale of products containing materials that are used in the manufacture of methamphetamine and other controlled substances. (BDR 40-27)

FISCAL NOTE: Effect on Local Government: Increases or Newly Provides for Term of Imprisonment in County or City Jail or Detention Facility.
Effect on the State: Yes.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to controlled substances; requiring entities that sell certain products that are precursors to methamphetamine to place such products in an area to which the public does not have direct access, to limit the quantity of such products sold or transferred to the same person during any 24-hour period, to maintain a list of sales of such products and to ensure that certain information is entered in that list; prohibiting a person from acquiring more than a certain amount of certain products that are precursors to methamphetamine; providing penalties; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

- 1 This bill establishes restrictions on the sale and purchase of products that
- 2 contain materials that can be used to manufacture methamphetamine.



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Section 6 of this bill requires sellers of a product that contains certain materials that can be used to manufacture methamphetamine to keep the product in a locked case or cabinet or behind a store counter so that the public does not have direct access to the product. **Section 7** of this bill establishes limits on the quantity of certain chemicals that can be sold to the same person during a 24-hour period. **Section 8** of this bill requires sellers of a product that contains materials that can be used to manufacture methamphetamine to maintain a logbook of sales and transfers of the product and to ensure that certain information is entered in the logbook.

If a seller of a product that contains materials that can be used to manufacture methamphetamine violates **section 6, 7 or 8** of this bill, **section 9** of this bill provides that the seller is subject to a civil penalty of not more than \$25,000 for each violation. Moreover, if certain sellers knowingly or intentionally violate **section 6, 7 or 8**, then those sellers are subject to both civil penalties and criminal penalties.

Section 10 of this bill prohibits a person from knowingly or intentionally purchasing or otherwise acquiring a certain amount of certain chemicals that can be used to manufacture methamphetamine. A person who violates this provision is subject to criminal penalties.

Section 11 of this bill prohibits a person from knowingly or intentionally entering false information in the logbook. A person who violates this provision is guilty of a category D felony.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 453 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 11, inclusive, of this act.

Sec. 2. *As used in sections 2 to 11, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 3, 4 and 5 of this act have the meanings ascribed to them in those sections.*

Sec. 3. *“Logbook” means a written or electronic list of each sale or transfer of a product that is a precursor to methamphetamine.*

Sec. 4. *“Product that is a precursor to methamphetamine” means a product that contains ephedrine, pseudoephedrine or phenylpropanolamine or the salts, optical isomers or salts of optical isomers of such chemicals and may be marketed or distributed lawfully in the United States under the Federal Food, Drug and Cosmetic Act, 21 U.S.C. §§ 301 et seq., as a nonprescription drug.*

Sec. 5. *“Retail distributor” means a grocery store, general merchandise store, drugstore, pharmacy or other entity or person whose activities as a distributor of a product that is a precursor to methamphetamine are limited exclusively or almost exclusively to sales for personal use by an ultimate user, both in number of sales*



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1 and volume of sales, either directly to walk-in customers or in
2 face-to-face transactions by direct sales.

3 **Sec. 6.** A retail distributor shall keep, store or place a
4 product that is a precursor to methamphetamine in a locked case
5 or cabinet or behind a counter so that the public does not have
6 direct access to the product before a sale or transfer is made.

7 **Sec. 7. 1.** Except as otherwise provided in subsection 2, a
8 retail distributor shall not sell or transfer to the same person
9 during any 24-hour period more than 3.6 grams of ephedrine,
10 pseudoephedrine or phenylpropanolamine or the salts, optical
11 isomers or salts of optical isomers of such chemicals in a product
12 that is a precursor to methamphetamine.

13 2. The provisions of subsection 1 do not apply if, pursuant to
14 21 U.S.C. § 830(e)(3), the Attorney General of the United States
15 has determined that a product that is a precursor to
16 methamphetamine cannot be used to manufacture
17 methamphetamine and provided by regulation that the product is
18 exempt from the provisions of 21 U.S.C. § 830(d).

19 **Sec. 8. 1.** A retail distributor shall maintain a logbook.

20 2. At the time of a sale or transfer of a product that is a
21 precursor to methamphetamine, a retail distributor shall ensure
22 that the following information is entered in the logbook:

- 23 (a) The name of the product sold or transferred;
- 24 (b) The quantity of the product sold or transferred;
- 25 (c) The name and address of the purchaser or transferee; and
- 26 (d) The date and time of the sale or transfer.

27 3. A retail distributor shall not sell or transfer a product that
28 is a precursor to methamphetamine unless:

29 (a) The prospective purchaser or transferee:

30 (1) Presents an identification card that provides a
31 photograph and is issued by the Government of the United States
32 or the government of this State or any other state, or a document
33 that, with respect to identification, is considered acceptable
34 pursuant to 21 U.S.C. § 830(e)(1); and

35 (2) Signs his name in the logbook; and

36 (b) The retail distributor determines that the name entered in
37 the logbook corresponds to the name provided on the
38 identification presented by the prospective purchaser or transferee.

39 4. The logbook must include a notice to a prospective
40 purchaser or transferee that entering a false statement or
41 representation in the logbook may subject the prospective
42 purchaser or transferee to criminal penalties pursuant to section
43 11 of this act and 18 U.S.C. § 1001.



1 5. A retail distributor shall maintain each entry in the
2 logbook for not less than 2 years after the date on which the entry
3 is made.

4 6. A retail distributor shall not access, use or share the
5 information in the logbook unless the purpose of accessing, using
6 or sharing the information is to ensure compliance with this
7 chapter or to facilitate a product recall to protect the health and
8 safety of the public.

9 7. Upon the request of a law enforcement agency of this State
10 or a political subdivision thereof or a law enforcement agency of
11 the Federal Government, a retail distributor shall disclose the
12 information in the logbook to the law enforcement agency.

13 **Sec. 9.** 1. Unless a greater penalty is provided in subsection
14 2, 3 or 4, if a retail distributor violates any provision of section 6, 7
15 or 8 of this act, the retail distributor is subject only to a civil
16 penalty pursuant to the provisions of NRS 453.553 to 453.5533,
17 inclusive.

18 2. Unless a greater penalty is provided in subsection 3 or 4, if
19 a retail distributor knowingly violates any provision of section 6, 7
20 or 8 of this act, the retail distributor:

21 (a) Is subject to a civil penalty pursuant to the provisions of
22 NRS 453.553 to 453.5533, inclusive; and

23 (b) Is guilty of a misdemeanor.

24 3. Unless a greater penalty is provided in subsection 4, if a
25 retail distributor knowingly violates any provision of section 6, 7
26 or 8 of this act after a prior conviction under this chapter or the
27 law of the United States or of any state, territory or district relating
28 to a controlled substance has become final, the retail distributor:

29 (a) Is subject to a civil penalty pursuant to the provisions of
30 NRS 453.553 to 453.5533, inclusive; and

31 (b) Is guilty of a gross misdemeanor.

32 4. If a retail distributor knowingly violates any provision of
33 section 6, 7 or 8 of this act after two or more prior convictions
34 under this chapter or the law of the United States or of any state,
35 territory or district relating to a controlled substance, or a
36 combination of two or more such prior convictions, have become
37 final, the retail distributor:

38 (a) Is subject to a civil penalty pursuant to the provisions of
39 NRS 453.553 to 453.5533, inclusive; and

40 (b) Is guilty of a category D felony and shall be punished as
41 provided in NRS 193.130.

42 **Sec. 10.** 1. Except as otherwise provided in subsection 2, a
43 person shall not knowingly or intentionally purchase, receive or
44 otherwise acquire:



(a) During any 24-hour period, more than 3.6 grams of ephedrine, pseudoephedrine or phenylpropanolamine or the salts, optical isomers or salts of optical isomers of such chemicals in a product that is a precursor to methamphetamine; or

(b) During any 30-day period, more than 9 grams of ephedrine, pseudoephedrine or phenylpropanolamine or the salts, optical isomers or salts of optical isomers of such chemicals in a product that is a precursor to methamphetamine.

2. The provisions of this section do not apply if the person purchasing, receiving or otherwise acquiring a product that is a precursor to methamphetamine is a pharmacy, practitioner, distributor or dispenser that is purchasing, receiving or otherwise acquiring the product for the purpose of administering, distributing or dispensing it in a lawful manner.

3. A person who violates any of the provisions of this section is guilty of a misdemeanor, except that:

(a) If the person violates any of the provisions of this section after a prior conviction under this chapter or the law of the United States or of any state, territory or district relating to a controlled substance has become final, the person is guilty of a gross misdemeanor; and

(b) If the person violates any of the provisions of this section after two or more prior convictions under this chapter or the law of the United States or of any state, territory or district relating to a controlled substance, or a combination of two or more such prior convictions, have become final, the person is guilty of a category D felony and shall be punished as provided in NRS 193.130.

Sec. 11. Any person who knowingly or intentionally enters a false statement or representation in a logbook is guilty of a category D felony and shall be punished as provided in NRS 193.130.

Sec. 12. NRS 453.553 is hereby amended to read as follows:

453.553 1. In addition to any criminal penalty imposed for a violation of the provisions of NRS 453.011 to 453.552, inclusive, **and sections 2 to 11, inclusive, of this act**, any person who **violates section 6, 7 or 8 of this act**, unlawfully sells, manufactures, delivers or brings into this State, possesses for sale or participates in any way in a sale of a controlled substance listed in schedule I, II or III or who engages in any act or transaction in violation of the provisions of NRS 453.3611 to 453.3648, inclusive, is subject to a civil penalty for each violation. This penalty must be recovered in a civil action, brought in the name of the State of Nevada by the Attorney General or by any district attorney in a court of competent jurisdiction.



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2. As used in ~~this section and NRS 453.5531, 453.5532 and 453.5533;~~ **NRS 453.553 to 453.5533, inclusive:**

(a) "Each violation" includes a continuous or repetitive violation arising out of the same act.

(b) "Sell" includes exchange, barter, solicitation or receipt of an order, transfer to another for sale or resale and any other transfer for any consideration or a promise obtained directly or indirectly.

(c) "Substitute" means a substance which:

(1) Was manufactured by a person who at the time was not currently registered with the Secretary of Health and Human Services; and

(2) Is an imitation of or intended for use as a substitute for a substance listed in schedule I, II or III.

Sec. 13. NRS 453.5531 is hereby amended to read as follows:

453.5531 1. The State of Nevada is entitled, in a civil action brought pursuant to NRS 453.553 involving marijuana, to a civil penalty in an amount:

(a) Not to exceed \$350,000, if the quantity involved is 100 pounds or more, but less than 2,000 pounds.

(b) Not to exceed \$700,000, if the quantity involved is 2,000 pounds or more, but less than 10,000 pounds.

(c) Not to exceed \$1,000,000, if the quantity involved is 10,000 pounds or more.

2. The State of Nevada is entitled, in a civil action brought pursuant to NRS 453.553 involving a controlled substance, except marijuana, which is listed in schedule I or a substitute therefor, to a civil penalty in an amount:

(a) Not to exceed \$350,000, if the quantity involved is 4 grams or more, but less than 14 grams.

(b) Not to exceed \$700,000, if the quantity involved is 14 grams or more, but less than 28 grams.

(c) Not to exceed \$1,000,000, if the quantity involved is 28 grams or more.

3. The State of Nevada is entitled, in a civil action brought pursuant to NRS 453.553 involving a controlled substance which is listed in schedule II or III or a substitute therefor, to a civil penalty in an amount:

(a) Not to exceed \$350,000, if the quantity involved is 28 grams or more, but less than 200 grams.

(b) Not to exceed \$700,000, if the quantity involved is 200 grams or more, but less than 400 grams.

(c) Not to exceed \$1,000,000, if the quantity involved is 400 grams or more.

4. Unless a greater civil penalty is authorized by another provision of this section, the State of Nevada is entitled, in a civil



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1 action brought pursuant to NRS 453.553 involving any act or
2 transaction in violation of the provisions of NRS 453.3611 to
3 453.3648, inclusive, to a civil penalty in an amount not to exceed
4 \$350,000.

5 ***5. The State of Nevada is entitled, in a civil action brought***
6 ***pursuant to NRS 453.553 involving any act or transaction in***
7 ***violation of the provisions of section 6, 7 or 8 of this act, to a civil***
8 ***penalty in an amount not to exceed \$25,000 for each violation.***

9 **Sec. 14.** NRS 453.5533 is hereby amended to read as follows:

10 453.5533 1. A civil action brought pursuant to NRS 453.553
11 must be brought within 3 years after the conduct in violation of the
12 provisions of NRS 453.011 to 453.552, inclusive, ***and sections 2 to***
13 ***11, inclusive, of this act*** occurs.

14 2. Such a civil action is not barred by a prior acquittal of the
15 defendant in a criminal action arising out of the same act,
16 transaction or occurrence. A final judgment or decree rendered in
17 favor of the State in any criminal proceeding arising out of the same
18 act, transaction or occurrence estops the defendant in a subsequent
19 civil action from denying the essential allegations of the criminal
20 offense.

