

Amendment No. 123

Assembly Amendment to Assembly Bill No. 148

(BDR 40-512)

Proposed by: Assembly Committee on Health and Human Services**Amends:** Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) *green bold* is newly added transitory language.

BFG/BAW



Date: 4/4/2007

A.B. No. 148—Enacts provisions governing the sale of products containing materials that are used in the manufacture of methamphetamine and other controlled substances. (BDR 40-512)



ASSEMBLY BILL NO. 148—COMMITTEE ON
HEALTH AND HUMAN SERVICES

(ON BEHALF OF THE ATTORNEY GENERAL)

FEBRUARY 22, 2007

Referred to Committee on Health and Human Services

SUMMARY—Enacts provisions governing the sale of products containing materials that are used in the manufacture of methamphetamine and other controlled substances. (BDR 40-512)

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.

~

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,}~~ *calendar day*, 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:

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

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,}~~ *calendar day*. **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]~~ *\$250,000* 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 and volume of sales, either directly to walk-in customers or in face-to-face transactions by direct sales.*

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

Sec. 7. *1. Except as otherwise provided in subsection 2, a retail distributor shall not ~~sell~~ :*

(a) Sell or transfer to the same person during any ~~[24-hour period]~~ calendar day, without regard to the number of transactions, 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.

(b) Sell at retail and in nonliquid form a product that is a precursor to methamphetamine, including, without limitation, gel caps, unless:

(1) The product is packaged in blister packs, each blister containing not more than two dosage units; or

(2) If the use of blister packs is technically infeasible, the product is packaged in unit dosage packets or pouches.

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

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

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

- 5 (a) *The name of the product sold or transferred;*
6 (b) *The quantity of the product sold or transferred;*
7 (c) *The name and address of the purchaser or transferee; and*
8 (d) *The date and time of the sale or transfer.*

9 **3. A retail distributor shall not sell or transfer a product that is a precursor**
10 **to methamphetamine unless:**

11 (a) *The prospective purchaser or transferee:*

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

16 (2) *Signs his name in the logbook; and*

17 (b) *The retail distributor determines that the name entered in the logbook*
18 *corresponds to the name provided on the identification presented by the*
19 *prospective purchaser or transferee.*

20 **4. The logbook must include a notice to a prospective purchaser or**
21 **transferee that entering a false statement or representation in the logbook may**
22 **subject the prospective purchaser or transferee to criminal penalties ~~pursuant to~~**
23 **under state law, as set forth in section 11 of this act, and under federal law, as**
24 **set forth in 18 U.S.C. § 1001.**

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

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

31 **7. Upon ~~the request of~~ a request, which is made for the purpose of**
32 **enforcing the provisions of sections 2 to 11, inclusive, of this act, by a law**
33 **enforcement agency of this State or a political subdivision thereof or a law**
34 **enforcement agency of the Federal Government, a retail distributor shall disclose**
35 **the information in the logbook to the law enforcement agency.**

36 **Sec. 9. 1. Unless a greater penalty is provided in subsection 2, ~~3 or 4,~~ if**
37 **a retail distributor violates any provision of section 6, 7 or 8 of this act, the retail**
38 **distributor is subject ~~only~~ to a civil penalty pursuant to the provisions of NRS**
39 **453.553 to 453.5533, inclusive.**

40 ~~2. Unless a greater penalty is provided in subsection 3 or 4, if a retail~~
41 ~~distributor knowingly violates any provision of section 6, 7 or 8 of this act, the~~
42 ~~retail distributor~~

43 ~~—(a) Is subject to a civil penalty pursuant to the provisions of NRS 453.553 to~~
44 ~~453.5533, inclusive; and~~

45 ~~—(b) Is guilty of a misdemeanor.~~

46 ~~3. Unless a greater penalty is provided in subsection 4, if a retail distributor~~
47 ~~knowingly violates any provision of section 6, 7 or 8 of this act after a prior~~
48 ~~conviction under this chapter or the law of the United States or of any state,~~
49 ~~territory or district relating to a controlled substance has become final, the retail~~
50 ~~distributor~~

51 ~~—(a) Is subject to a civil penalty pursuant to the provisions of NRS 453.553 to~~
52 ~~453.5533, inclusive; and~~

53 ~~—(b) Is guilty of a gross misdemeanor.~~

~~4.1~~ If a retail distributor knowingly violates any provision of section 6, 7 or 8 of this act after being ordered on two or more prior occasions to pay a civil penalty for violating section 6, 7 or 8 of this act or 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 retail distributor:

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

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

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

(a) During any ~~(24-hour period)~~ calendar day 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, retail 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.

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

5. *The State of Nevada is entitled, in a civil action brought pursuant to NRS 453.553 involving any act or transaction in violation of the provisions of section 6, 7 or 8 of this act, to a civil penalty in an amount not to exceed ~~(\$25,000)~~ \$250,000 for each violation.*

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

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

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