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109TH CONGRESS
1ST SESSION

H. R. 3955

To amend the Controlled Substances Act to provide for the transfer of ephedrine, pseudoephedrine, and phenylpropanolamine to schedule V of the schedules of controlled substances, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 29, 2005

Mr. KING of Iowa introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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A BILL

To amend the Controlled Substances Act to provide for the transfer of ephedrine, pseudoephedrine, and phenylpropanolamine to schedule V of the schedules of controlled substances, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Meth Lab Eradication Act''.

SEC. 2. TRANSFER OF EPHEDRINE, PSEUDOEPHEDRINE, AND PHENYLPROPANOLAMINE TO SCHEDULE V; EXCEPTION FOR LIST I PSEUDOEPHEDRINE PRODUCTS.

(a) TRANSFER TO SCHEDULE V; EXCEPTION.—Section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)) is amended in schedule V—

(1) by inserting ''(a)'' before ''Any compound''; and

(2) by adding at the end the following:

''(b) Unless specifically excepted or unless listed in another schedule, any of the following substances, including their salts, optical isomers, and salts of optical isomers:

''(1) Ephedrine.

''(2) Pseudoephedrine.

''(3) Phenlypropanolamine.

''(c) Pseudoephedrine, including its salts, optical isomers, and salts of optical isomers, is excepted from this schedule when contained in a product that—

''(1) is in the form of a liquid, liquid capsule, or liquid-filled gel capsule;

''(2) does not contain more than 360 milligrams of pseudoephedrine; and

''(3) is approved under section 505 of the Federal Food, Drug, and Cosmetic Act.''.

(b) CONFORMING AMENDMENTS REGARDING LIST I CHEMICALS.—

(1) DEFINITION; STRIKING OF PROVISIONS RELATING TO EPHEDRINE AND PHENYLPROPANOLAMINE.—Section 102(34) of the Controlled Substances Act (21 U.S.C. 802(34)) is amended—

(A) by striking subparagraphs (C) and (I);

(B) by redesignating subparagraphs (D) through (H) as subparagraphs (C) through (G), respectively;

(C) by redesignating subparagraphs (J) through (Y) as subparagraphs (H) through (W), respectively; and

(D) by moving subparagraphs (N), (Q), and (S) (as so redesignated) two ems to the left.

(2) LIST I PSEUDOEPHEDRINE PRODUCT.—Section 102 of the Controlled Substances Act (21 U.S.C. 802) is amended—

(A) in paragraph (34), by amending subparagraph (I) (as redesignated by paragraph (1)(C) of this subsection) to read as follows:

''(I) Pseudoephedrine, and its salts, optical isomers, and salts of optical isomers, when contained in

a list I pseudoephedrine product (as defined in paragraph (45)).'';

(B) by striking paragraph (45) and inserting the following:

''(45) The term 'list I pseudoephedrine product' means a chemical specified in paragraph (34)(I) when contained in a product referred to in schedule V(c).''; and

(C) in paragraph (46)—

(i) in subparagraph (A), by striking ''or phenylpropanolamine'';

(ii) by striking subparagraph (B); and

(iii) by redesignating subparagraph (C) as subparagraph (B).

(3) REGULATED TRANSACTIONS.—The Controlled Substances Act (21 U.S.C. 801 et seq.) is amended—

(A) in section 102(a)(39)(A), by amending clause (iv) to read as follows:

''(iv)(I) any transaction in a listed chemical that is contained in a drug that may be marketed or distributed lawfully in the United States under the Federal Food, Drug, and Cosmetic Act (other than a list I pseudoephedrine product) unless—

''(aa) the Attorney General has determined under section 204 that the drug or group of drugs is being diverted to obtain the listed chemical for use in the illicit production of a controlled substance; and

''(bb) the quantity of the listed chemical contained in the drug included in the transaction or multiple transactions equals or exceeds the threshold established for that chemical by the Attorney General; or

''(II) any transaction in a list I pseudoephedrine product by a retail distributor, unless the Attorney General has determined under section 204 that the product is being diverted to obtain pseudoephedrine for use in the illicit production of methamphetamine; or''; and

(B) in section 204, by striking subsection (e).

SEC. 3. REQUIREMENTS REGARDING LIST I PSEUDOEPHEDRINE PRODUCTS.

Section 310 of the Controlled Substances Act (21 U.S.C. 830) is amended—

(1) in subsection (b), by striking paragraph (3); and

(2) by adding at the end the following subsection:

''(d) LIST I PSEUDOEPHEDRINE PRODUCTS.—

''(1) REQUIREMENTS REGARDING RETAIL SALES.—Each person who sells at retail a list I pseudoephedrine product shall ensure that sales of such product are made in accordance with the following requirements:

''(A) In offering the product for sale, the person places the product such that customers do not have direct access to the product before the sale is made (commonly known as behind-the-counter).

''(B) The person delivers the product directly to the purchaser, and not through use of the mails or any private or commercial carrier.

''(C) The person does not sell such a product that is in the form of a package that can be further broken down or subdivided into two or more separate and distinct packages.

''(D) The person does not knowingly sell to an individual more than one such product during a 24-hour period.

''(E) The person maintains a written list of sales of such products that identifies the

products, the purchasers, and the dates and times of the sales (which list is referred to in this paragraph as the 'logbook)').

''(F) The person does not sell such a product unless—

''(i) the prospective purchaser—

''(I) is 18 years of age or older;

''(II) presents an identification card that provides a photograph and is issued by a State or the Federal Government; and

''(III) signs the logbook and legibly prints in the logbook his or her name, address, and the date and time of the sale; and

''(ii) the person determines that the name signed and printed in the logbook corresponds to the name provided on such identification and that the date and time entered are correct.

''(G) The person maintains possession of each logbook for not fewer than two years after the date of the last sale entered in the logbook.

''(H) The person does not offer a promotion in which, as part of a purchase trans-

action, such a product is provided without charge.

''(I) On the premises of the location involved, the person posts a clear and conspicuous notice providing as follows: 'Federal law prohibits the over-the-counter purchase of more than one product containing pseudoephedrine in a 24-hour period, and prohibits the over-the-counter purchase of more than 7,500 milligrams of pseudoephedrine within a 30-day period. If you make an over-the-counter purchase of such a product, you are required to sign a logbook that may be accessible to law enforcement officers.'

''(2) AUTHORITY TO REQUIRE CERTAIN REPORTS.—

''(A) IN GENERAL.—With respect to each person who manufactures a list I pseudoephedrine product, or who distributes such a product (including a sale at retail), the Attorney General may by regulation require the person to report to the Attorney General—

''(i) any uncommon method of payment or delivery, or any other circumstance that the person believes may in-

dicate that the product will be used in violation of this title;

''(ii) any proposed transaction with an individual or organization whose description or other identifying characteristic the Attorney General furnishes in advance to the person; and

''(iii) any unusual or excessive loss or disappearance of supplies of the product that are under the control of the person.

''(B) ADDITIONAL REPORTS FOR MANUFACTURERS AND DISTRIBUTORS AT WHOLESALE.—With respect to each person who manufactures a list I pseudoephedrine product, or who distributes such a product at wholesale, the Attorney General may by regulation require the person to report to the Attorney General any transaction involving an extraordinary quantity of the product.

''(C) CERTAIN REGULATIONS.—Regulations under subparagraphs (A) through (C) of subsection (b)(1) apply to subparagraphs (A) and (B) of this paragraph to the extent that the provisions of such subparagraphs of subsection (b)(1) are identical to the provisions of such

subparagraphs of this paragraph. Subparagraphs (A) and (B) of this paragraph do not require the Secretary to promulgate regulations with respect to such identical provisions.

''(D) RELATION TO CERTAIN EXEMPTION.—Subparagraphs (A) and (B) apply notwithstanding the exemption for list I pseudoephedrine products under section 102(39)(A)(iv)(II).

''(3) REMOVAL OF EXCEPTION REGARDING STATUS AS LIST I CHEMICAL.—

''(A) IN GENERAL.—If the Attorney General determines that list I pseudoephedrine products are being diverted for use in the illicit production of methamphetamine, the Attorney General may by regulation remove the exception under schedule V(c).

''(B) RELATION TO SECTION 204.—The authority established for the Attorney General under subparagraph (A) is in addition to the authority under section 204. The Attorney General may apply such section in lieu of applying subparagraph (A).''.

SEC. 4. REQUIREMENTS REGARDING SCHEDULE V METHAMPHETAMINE-RELATED PRODUCTS.

(a) IN GENERAL.—Section 303 of the Controlled Substances Act (21 U.S.C. 823) is amended by adding at the end the following subsection:

''(i) With respect to schedule V methamphetamine-related products that do not require prescriptions, a registration under this section for a pharmacy shall provide that, for the general physical location involved, the registration is subject to the condition that a sale of such a product at retail be made in accordance with the same requirements as apply under subparagraphs (B) through (I) of section 310(d)(1) for the sale at retail of list I pseudoephedrine products.''.

(b) CONFORMING AMENDMENT.—Section 201(g)(1) of the Controlled Substances Act (21 U.S.C. 811(g)(1)), as amended by section 2(b)(1) of Public Law 108–358 (118 Stat. 1663), is amended—

(1) by striking ''titles II and III of the Comprehensive Drug Abuse Prevention and Control Act (21 U.S.C. 802 et seq.)'' and inserting ''this title and title III''; and

(2) by adding at the end the following: ''The preceding sentence does not apply to controlled substances specified in schedule V(b).''.

(c) DEFINITIONS.—Section 102 of the Controlled Substances Act (21 U.S.C. 802) is amended—

(1) by redesignating paragraph (46) (as amended by section 2(b)(2)(C) of this Act) as paragraph (47); and

(2) by inserting after paragraph (45) the following paragraph:

''(46)(A) The term 'schedule V methamphetamine-related product' means a product that is approved under section 505 of the Federal Food, Drug, and Cosmetic Act and—

''(i) contains ephedrine or phenylpropanolamine; or

''(ii)(I) contains pseudoephedrine; and

''(II) is not a list I pseudoephedrine product.

''(B) The term 'schedule V pseudoephedrine product' means a product described in subparagraph (A) to which clause (ii) of such subparagraph applies.''.

SEC. 5. ENFORCEMENT.

(a) SALES AT RETAIL OF METHAMPHETAMINE-RELATED PRODUCTS.—

(1) IN GENERAL.—Section 402 of the Controlled Substances Act (21 U.S.C. 842) is amended—

(A) in subsection (a)—

(i) in paragraph (5), by inserting ", other than section 310(d)(2)" before the semicolon;

(ii) in paragraph (10), by striking "section 310; or" and inserting "section 310, other than subsection (d)(2);";

(iii) in paragraph (11), by striking the period at the end and inserting a semicolon; and

(iv) by inserting after paragraph (11) the following paragraphs:

"(12) who is a retail distributor to knowingly or negligently sell at retail a list I pseudoephedrine product in violation of a requirement under section 310(d)(1), or who is a manufacturer or distributor (retail or wholesale) to fail to submit a report regarding such a product that is required under section 310(d)(2) or regulations under such section; or

"(13) who is a pharmacy or pharmacist registered under section 303(f) to knowingly or negligently sell at retail a schedule V methamphetamine-related product in violation of any requirement under section 303(i);"; and

(B) in subsection (c)(1)(B), by inserting before the period the following: ", except that

this subparagraph does not apply to a violation of subsection (a) or (b) of section 310 with respect to a list I pseudoephedrine product by a person who is not a retail distributor''.

(2) CONFORMING AMENDMENTS.—Section 401 of the Controlled Substances Act (21 U.S.C. 841) is amended—

(A) in subsection (b)(3), in the first sentence, by inserting after ''shall'' the following: '', except to the extent that section 402(a)(13) applies,''; and

(B) in subsection (f)—

(i) in paragraph (1), by inserting after ''shall'' the following: '', except to the extent that section 402(a)(12) applies,''; and

(ii) in paragraph (2), by inserting '', other than subsection (d)(2),'' after ''section 310''.

(b) RESTRICTIONS ON RETAIL PURCHASES OF PSEUDOEPHEDRINE PRODUCTS; VIOLATION OF LOGBOOK REQUIREMENTS FOR METHAMPHETAMINE-RELATED PRODUCTS.—Section 404(a) of the Controlled Substances Act (21 U.S.C. 844(a)) is amended by inserting after the second sentence the following: ''It shall be unlawful for any person to knowingly or intentionally purchase at retail

without a prescription more than one schedule V or list I pseudoephedrine product during a 24-hour period, or more than 7,500 milligrams of pseudoephedrine in such products during a 30-day period, or to knowingly or intentionally purchase a schedule V methamphetamine-related product or a list I pseudoephedrine product without signing the appropriate logbook and printing information in accordance with section 310(d)(1)(F)(i)(III) or 303(i).''.

(c) CONTROLLED SUBSTANCES; UNAUTHORIZED MANUFACTURING-RELATED POSSESSION OR DISTRIBUTION OF EPHEDRINE, PSEUDOEPHEDRINE, OR PHENYLPROPANOLAMINE; DISTRIBUTION IN GENERAL.—Section 401 of the Controlled Substances Act (21 U.S.C. 841) is amended—

(1) in subsection (b)(3) (as amended by subsection (a)(2)(A) of this section), in the first sentence, by inserting ''subsection (g) or'' before ''section 402(a)(13)'' ; and

(2) by adding at the end the following:

''(g)(1) Any person who possesses a controlled substance specified in schedule V(b) with intent to manufacture a controlled substance except as authorized by this title, or who possesses, distributes, or dispenses such a substance knowing, or having reasonable cause to believe, that the substance will be used to manufacture a con-

trolled substance except as authorized by this title, shall be sentenced in accordance with the same provisions as apply under subsection (c).

''(2) Any person who knowingly distributes or dispenses a controlled substance specified in schedule V(b) in violation of this title shall, except to the extent that section 402(a)(13) applies, be fined under title 18, United States Code, or imprisoned not more than 5 years, or both.''.

SEC. 6. IMPORTS.

Section 1002(a) of the Controlled Substances Import and Export Act (21 U.S.C. 952(a)) is amended—

(1) in the heading for the section, by adding at the end the following: ''AND EPHEDRINE, PSEUDOEPHEDRINE, AND PHENYLPROPANOLAMINE'';

(2) in the matter preceding paragraph (1), by inserting ''or ephedrine, pseudoephedrine, or phenylpropanolamine,'' after ''schedule III, IV, or V of title II,''; and

(3) in paragraph (1), by inserting '', and of ephedrine, pseudoephedrine, and phenylpropanolamine, '' after ''coca leaves''.

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