

HOUSE BILL 288

By McDonald

AN ACT to amend Tennessee Code Annotated, Title 38;
Title 39 and Title 40, relative to ephedrine and
pseudoephedrine.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 39-17-410, is amended by adding the following as a new subsection:

(j) Any material, compound, mixture, or preparation which contains any quantity of ephedrine or pseudoephedrine.

SECTION 2. Tennessee Code Annotated, Section 39-17-431, is amended by deleting the section in its entirety and substituting instead the following:

(a) Except as provided in this section, any product or products that contain any immediate methamphetamine precursor may be dispensed only by a licensed pharmacy upon presentment of a valid prescription issued by a licensed physician, certified physician assistant, or nurse authorized pursuant to § 63-6-204, who is rendering service under the supervision, control and responsibility of a licensed physician and who meets the requirements pursuant to § 63-7-207(13).

(b)

(1) A product or category of products that contains any immediate methamphetamine precursor shall be exempt from the requirements of subsection (a), if the ingredients are not in a form that can be used in the manufacture of methamphetamine.

(2) The board of pharmacy, in consultation with the Tennessee bureau of investigation, shall determine whether a product or category of products that contain any immediate methamphetamine precursor is not in a form that can be

used in the manufacture of methamphetamine. In making such a determination, the board shall solicit the written opinion of the bureau and work with the bureau to develop procedures that consider, among other factors:

(A) The ease with which the product can be converted to methamphetamine, including the presence or absence of a “molecular lock” completely preventing a product's use in methamphetamine manufacture;

(B) The ease with which pseudoephedrine can be extracted from a product and whether it forms a salt, emulsion, or other form; and

(C) Any other pertinent data that can be used to determine the risk of a product being viable in the illegal manufacture of methamphetamine.

(3) The board of pharmacy shall maintain a public list of the exempted products or categories of products. Any person may request that a product or category of products be included on the exemption list. The list shall include, but not be limited to, products in the form of gel capsules and liquid preparations that contain any immediate methamphetamine precursor. The term “gel capsule” means any soft gelatin liquid-filled capsule that contains a liquid suspension, that, in the case of pseudoephedrine, is suspended in a matrix of glycerin, polyethylene glycol, and propylene glycol, along with other liquid substances. Regardless of the product manufacturer's labeling, a gelatin covered solid does not constitute a “gel capsule” under this subdivision (b)(3).

(c) Unless a person presents a valid prescription issued by a licensed physician, certified physician assistant, or nurse authorized pursuant to § 63-6-204, who is rendering service under the supervision, control and responsibility of a licensed

physician and who meets the requirements pursuant to § 63-7-207(13), a pharmacy shall not sell a nonexempt product containing any immediate methamphetamine precursor to the person.

(d) Nonexempt products containing an immediate methamphetamine precursor shall be maintained in the same manner as other controlled substances.

(e) A violation of any provision of this section is a Class A misdemeanor, punishable by fine only. If the person in violation is a licensed pharmacy or pharmacist, the violation shall be reported to the board of pharmacy for review and appropriate action. If a product is dispensed in violation of subsection (a), the owner or operator of the wholesale or retail establishment dispensing the product shall be in violation of subsection (a) and such violation shall be treated as provided by law for other violations of dispensing a controlled substance without a valid prescription.

(f) This section shall supersede any local laws or ordinances currently regulating sales of products containing any immediate methamphetamine precursor.

SECTION 3. This act shall take effect July 1, 2011, the public welfare requiring it.