

BILL TEXT:

STATE OF NEW YORK

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R. R. 485

2005-2006 Regular Sessions

IN ASSEMBLY

June 2, 2005

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Dinowitz, Aubertine, Reilly, John, Lentol, Lupardo, Latimer, O'Mara, Grannis, Hoyt, Bing, Bradley, Canestrari, Carrozza, Cusick, DelMonte, Destito, Eddington, Englebright, Fields, Galef, Gottfried, Gunther, Koon, Lavelle, Lavine, Lifton, Magnarelli, Paulin, Ramos, Schroeder, Tokasz, Weisenberg, Zebrowski) -- read once and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported and referred to the Committee on Rules -- Rules Committee discharged, bill amended, ordered reprinted as amended and recommitted to the Committee on Rules -- amended on the special order of third reading, ordered reprinted as amended, retaining its place on the special order of third reading

AN ACT to amend the penal law, the agriculture and markets law, the tax law, the social services law, the executive law, the general municipal law, the mental hygiene law, the public health law, the environmental conservation law and the civil practice law and rules, in relation to preventing and making illegal the manufacture and production of methamphetamine through clandestine laboratory operation

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Legislative findings and intent. The legislature finds that
2 the increasing manufacture and use of the illicit drug methamphetamine
3 has created an urgent public health and safety problem in New York.
4 The legislature further finds it is necessary to enact new laws to
5 make the possession of the various ingredients and equipment used to
6 manufacture methamphetamine a felony. The legislature also finds that it
7 is both necessary and urgent to educate the citizens of this state on
8 the harmful effects of methamphetamine use and production, including the
9 health and environmental risks associated with this addictive drug, in
10 order to comprehensively address this growing problem. The legislature
11 concludes that the manufacturing of methamphetamine and the abuse of

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [-] is old law to be omitted.

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1 this drug impacts not only the individual, but also criminal justice
2 agencies, and other agencies dealing with child protective services and
3 environmental protection.

4 § 2. Subdivisions 9 and 10 of section 155.30 of the penal law, subdi-
5 vision 9 as added by chapter 450 of the laws of 1990 and subdivision 10
6 as added by chapter 491 of the laws of 1992, are amended and a new
7 subdivision 11 is added to read as follows:

8 9. The property consists of a scroll, religious vestment, vessel or
9 other item of property having a value of at least one hundred dollars
10 kept for or used in connection with religious worship in any building or
11 structure used as a place of religious worship by a religious corpo-
12 ration, as incorporated under the religious corporations law or the
13 education law[]; or

14 10. The property consists of an access device which the person intends
15 to use unlawfully to obtain telephone service[]; or

16 11. The property consists of anhydrous ammonia and the actor intends
17 to use or knows another person intends to use such anhydrous ammonia to
18 manufacture methamphetamine.

19 § 3. Subdivision 6 of section 165.45 of the penal law, as added by
20 chapter 450 of the laws of 1990, is amended and a new subdivision 7 is
21 added to read as follows:

22 6. The property consists of a scroll, religious vestment, vessel or
23 other item of property having a value of at least one hundred dollars
24 kept for or used in connection with religious worship in any building or
25 structure used as a place of religious worship by a religious corpo-
26 ration, as incorporated under the religious corporations law or the
27 education law[]; or

28 7. The property consists of anhydrous ammonia and the actor intends to
29 use or knows another person intends to use such anhydrous ammonia to
30 manufacture methamphetamine.

31 § 4. Section 220.65 of the penal law is renumbered section 220.67 and
32 six new sections 220.61, 220.62, 220.63, 220.64, 220.65 and 220.66 are
33 added to read as follows:

34 § 220.61 Clandestine methamphetamine laboratory operation; definitions.

35 For the purposes of sections 220.62, 220.63, 220.64, 220.65 and 220.66
36 of this article, the following terms shall mean:

37 1. "Clandestine methamphetamine laboratory" shall mean two or more
38 controlled substance precursors and clandestine laboratory equipment
39 which are collectively possessed at the same time and location under
40 circumstances which indicate that such substances and equipment are
41 collectively located for the purpose of unlawfully producing, preparing
42 or manufacturing methamphetamine.

43 2. "Clandestine laboratory equipment" means any two or more items,
44 components or materials that, when used together, aid in the manufac-
45 ture, preparation or production of methamphetamine in violation of this
46 article. For the purposes of this subdivision "items, components or
47 materials" shall mean the following:

48 (a) Glass reaction vessel;

49 (b) Separatory funnel;

50 (c) Glass condenser;

51 (d) Analytical balance;

52 (e) Heating mantle; or

53 (f) Any other item that is used to perform the same function with
54 respect to the manufacture, preparation or production of methamphetamine
55 as the items, components or materials described in paragraph (a), (b),
56 (c), (d) or (e) of this subdivision.

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1 3. "Hazardous or dangerous material" means any substance, or combina-
2 tion of substances, that is used to manufacture, prepare or produce
3 methamphetamine, which, because of its quantity, concentration, or phys-
4 ical or chemical characteristics, poses a substantial hazard to a
5 person's health or safety.

6 4. "Controlled substance precursor" shall mean a precursor of meth-
7 amphetamine which is a chemical reagent, or any salt, isomer or salt of
8 an isomer of:

- 9 (a) Anthranilic acid;
- 10 (b) Barbituric acid;
- 11 (c) Benzaldehyde;
- 12 (d) Benzyl chloride;
- 13 (e) Benzyl cyanide;
- 14 (f) D-lysergic acid;
- 15 (g) Diethyl malonate;
- 16 (h) Ephedrine;
- 17 (i) Ergonovine;
- 18 (j) Ergotamine;
- 19 (k) Ethyl malonate;
- 20 (l) Ethylamine;
- 21 (m) Hydriotic acid;
- 22 (n) Insosafrole;
- 23 (o) Lithium;
- 24 (p) Malonic acid;
- 25 (q) Methylamine;
- 26 (r) 3, 4-methylenedioxyphenyl-2-propanone;
- 27 (s) Morpholine;
- 28 (t) N-acetylanthranilic acid;
- 29 (u) N-ethylephedrine;
- 30 (v) N-ethylpseudoephedrine;
- 31 (w) N-methylephedrine;
- 32 (x) N-methylpseudoephedrine;
- 33 (y) Norpseudoephedrine;
- 34 (z) Nitroethane;
- 35 (aa) Phenyl-2-propanone;
- 36 (bb) Phenylacetic acid;
- 37 (cc) Phenylpropanolamine;
- 38 (dd) Phosphorus;
- 39 (ee) Piperidine;
- 40 (ff) Piperonal;
- 41 (gg) Propionic anhydride;
- 42 (hh) Pseudoephedrine;
- 43 (ii) Pyrrolidine;
- 44 (jj) Safrole;
- 45 (kk) Ammonia;
- 46 (ll) Acetic anhydride;
- 47 (mm) Acetone;
- 48 (nn) 2-butanone;
- 49 (oo) Ethyl ether;
- 50 (pp) Hydrochloric acid;
- 51 (qq) Iodine;
- 52 (rr) Potassium permanganate; or
- 53 (ss) Toluene.

54 § 220.62 Unlawful clandestine methamphetamine laboratory operation in
55 the third degree.

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1 A person is guilty of unlawful clandestine methamphetamine laboratory
2 operation in the third degree when, with the intent to manufacture,
3 prepare or produce methamphetamine, he or she establishes, maintains or
4 operates a clandestine methamphetamine laboratory.

5 Unlawful clandestine methamphetamine laboratory operation in the third
6 degree is a class D felony.

7 § 220.63 Unlawful clandestine methamphetamine laboratory operation in
8 the second degree.

9 A person is guilty of unlawful clandestine methamphetamine laboratory
10 operation in the second degree when he or she:

11 1. Commits the crime of unlawful clandestine methamphetamine laborato-
12 ry operation in the third degree after having previously been convicted
13 of unlawful clandestine methamphetamine laboratory operation in the
14 third degree or unlawful clandestine methamphetamine laboratory opera-
15 tion in the second degree within the preceding five years;

16 2. Commits the crime of unlawful clandestine methamphetamine laborato-
17 ry operation in the third degree, and such person is twenty-one years
18 old or older and knows that a child under the age of sixteen is present
19 at such unlawful clandestine methamphetamine laboratory.

20 Unlawful clandestine methamphetamine laboratory operation in the
21 second degree is a class C felony.

22 § 220.64 Unlawful clandestine methamphetamine laboratory operation in
23 the first degree.

24 A person is guilty of unlawful clandestine methamphetamine laboratory
25 operation in the first degree when such person commits the crime of
26 unlawful clandestine methamphetamine laboratory operation in the second
27 degree, as defined in subdivision two of section 220.63 of this article,
28 after having previously been convicted of unlawful clandestine laborato-
29 ry operation in the second degree or unlawful clandestine laboratory
30 operation in the third degree within the preceding five years.

31 Unlawful clandestine methamphetamine laboratory operation in the first
32 degree is a class B felony.

33 § 220.65 Unlawful disposal of clandestine methamphetamine laboratory
34 material.

35 A person is guilty of unlawful disposal of clandestine methamphetamine
36 laboratory material when such person is not convicted of unlawful clan-
37 destine methamphetamine laboratory operation as provided by section
38 220.62, 220.63 or 220.64 of this article with respect to a clandestine
39 methamphetamine laboratory, but, with respect to such clandestine meth-
40 amphetamine laboratory, he or she:

41 1. knowingly disposes of hazardous or dangerous material;

42 2. knows that such disposal is in furtherance of an unlawful clandes-
43 tine methamphetamine laboratory operation; and

44 3. knows or reasonably should have known that the disposal of such
45 material creates a substantial risk to a person's health or safety.

46 Unlawful disposal of clandestine methamphetamine laboratory material
47 is a class E felony.

48 § 220.66 Criminal possession of a methamphetamine precursor.

49 A person is guilty of criminal possession of a methamphetamine precu-
50 rior when he or she possesses more than nine grams of a product, which
51 contains as the only active ingredient pseudoephedrine, phenylpropanola-
52 mine or ephedrine, when such person intends to use such product to manu-
53 facture, prepare or produce methamphetamine.

54 Criminal possession of a methamphetamine precursor is a class A misde-
55 meanor.

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1 § 5. Section 16 of the agriculture and markets law is amended by
2 adding a new subdivision 43 to read as follows:

3 43. Require that any owner or operator of a farm, or his or her desig-
4 nated employee or agent, who keeps or uses anhydrous ammonia, must
5 secure the same in a locked and safe location, so that only the owner or
6 operator of such farm, or his or her designated employee or agent, can
7 access such anhydrous ammonia. The commissioner shall investigate and
8 may issue a fine of up to one hundred dollars for each violation of this
9 subdivision.

10 § 6. Subdivision 22 of section 210 of the tax law is amended by adding
11 a new paragraph (a-1) to read as follows:

12 (a-1) Additional credit. In the case of a taxpayer which is an eligi-
13 ble farmer or an eligible farmer who has paid taxes pursuant to a land
14 contract, there shall be allowed a credit, the maximum of which shall be
15 two hundred fifty dollars, for improvements made in furtherance of
16 complying with subdivision forty-three of section sixteen of the agri-
17 culture and markets law, which requires that the farmer, or his or her
18 employee or agent, secure anhydrous ammonia on farm property.

19 § 7. Subdivision 2 of section 413 of the social services law, as added
20 by chapter 544 of the laws of 1988, is amended and a new subdivision 4
21 is added to read as follows:

22 2. Any person, institution, school, facility, agency, organization,
23 partnership or corporation which employs persons mandated to report
24 suspected incidents of child abuse or maltreatment pursuant to subdivi-
25 sion one of this section shall provide consistent with section four
26 hundred twenty-one of this [~~chapter~~] title, all such current and new
27 employees with written information explaining the reporting requirements
28 set out in subdivision one of this section and in sections four hundred
29 fifteen through four hundred twenty of this title. For those employees
30 who, in the normal course of their employment, travel to a location
31 where a child is living, residing or otherwise staying for any period of
32 time, such information shall include, as an addition to the reporting
33 requirements set out in subdivision one of this section, information
34 pertaining to educating such employees on recognizing the materials,
35 substances, equipment, and other signs evidencing the presence of an
36 unlawful clandestine methamphetamine laboratory. The employers shall be
37 responsible for the costs associated with printing and distributing the
38 written information.

39 4. In addition to the written information provided pursuant to subdivi-
40 vision two of this section, any person, institution, school, facility,
41 agency, organization, partnership or corporation, which employs persons
42 who are mandated to report suspected incidents of child abuse or
43 maltreatment pursuant to subdivision one of this section and whose
44 employees, in the normal course of their employment, travel to locations
45 where children reside, shall provide consistent with section four
46 hundred twenty-one of this title all such current and new employees with
47 written information on recognizing the signs of an unlawful clandestine
48 methamphetamine laboratory, as defined in section 220.61 of the penal
49 law. Pursuant to section 19.26 of the mental hygiene law, the office of
50 alcoholism and substance abuse services shall make available to such
51 employers information on recognizing the signs of unlawful clandestine
52 methamphetamine laboratories.

53 § 8. Section 837 of the executive law is amended by adding a new
54 subdivision 17 to read as follows:

55 17. Maintain a statewide repository of data relating to unlawful clan-
56 destine methamphetamine laboratories and develop and implement a program

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1 to provide for the collection of data and the reporting thereof by law
2 enforcement agencies. Data acquired by law enforcement agencies shall be
3 sent to the repository within thirty days of acquisition. Data in the
4 repository shall be made available to law enforcement agencies for the
5 purpose of assisting them in combatting the unlawful manufacture, prepa-
6 ration or production of methamphetamine.

7 § 9. The executive law is amended by adding a new section 837-r to
8 read as follows:

9 § 837-r. Discovery of an unlawful clandestine methamphetamine labora-
10 tory. Whenever a law enforcement officer recognizes the presence of an
11 unlawful clandestine methamphetamine laboratory, such officer shall
12 notify, or cause to be notified, the department of environmental conser-
13 vation regarding the location of such laboratory.

14 § 9-a. The executive law is amended by adding a new section 221-c to
15 read as follows:

16 § 221-c. Reporting on manufacturing, preparing and producing meth-
17 amphetamine. The superintendent, in consultation with the department of
18 environmental conservation shall report to the governor, the temporary
19 president of the senate and the speaker of the assembly at such time as
20 is available an additive which can be added to anhydrous ammonia so that
21 such anhydrous ammonia would be rendered ineffectual for the purpose of
22 manufacturing, preparing or producing methamphetamine.

23 § 10. The general municipal law is amended by adding a new section
24 209-dd to read as follows:

25 § 209-dd. Discovery of unlawful drug laboratory. All emergency
26 services personnel, as defined in section two hundred nine-cc of this
27 article, shall be provided with written information on recognizing the
28 signs of an unlawful clandestine methamphetamine laboratory, as defined
29 in section 220.61 of the penal law, and shall notify or cause to be
30 notified the department of environmental conservation and the local law
31 enforcement agency regarding the location of such laboratory. Pursuant
32 to section 19.26 of the mental hygiene law, the office of alcoholism and
33 substance abuse services shall make available the information on recog-
34 nizing the signs of unlawful clandestine methamphetamine laboratories.

35 § 11. The mental hygiene law is amended by adding a new section 19.26
36 to read as follows:

37 § 19.26 Methamphetamine awareness and education program.

38 The office shall serve as the principle source for the statewide
39 dissemination of information on methamphetamines. The office shall
40 establish a methamphetamine awareness and education program that shall
41 include but not be limited to providing information about the dangers of
42 methamphetamine production and use and how to report suspected clandes-
43 tine methamphetamine laboratories, as defined in section 220.61 of the
44 penal law. The program shall be aimed at the following individuals and
45 groups: child protective services; social services; schools; community-
46 based organizations; chemical dependence and other related health care
47 providers; emergency services personnel (including police, fire fight-
48 ers, and ambulance personnel); other state and local law enforcement
49 agencies (including its respective drug abuse resistance education
50 (D.A.R.E.) program); the appropriate offices of the department of envi-
51 ronmental conservation; pharmacies; chemical suppliers and other groups.

52 § 12. Title I of article 33 of the public health law is amended by
53 adding a new section 3309 to read as follows:

54 § 3309. Information program for retailers. The department shall devel-
55 op and maintain a program to inform retailers about the methamphetamine
56 problem in New York state and devise procedures and forms for retailers

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1 to use when reporting to local police agencies and the division of crim-
2 inal justice services an incident pertaining to:

3 1. the theft of any product or products under the retailer's control
4 which contains a regulated chemical under the provisions of this arti-
5 cle, or

6 2. any situation in which such retailer becomes aware that a person is
7 attempting to evade the restrictions of section thirty-three hundred
8 eighty-four of this article by making multiple purchases of products
9 containing as an active ingredient pseudoephedrine, phenylpropanolamine
10 or ephedrine within a single three day period in order to accumulate
11 more than nine grams of such product for no apparent lawful medical
12 purpose.

13 § 13. The public health law is amended by adding a new section 3384 to
14 read as follows:

15 § 3384. Limitation on the sale of methamphetamine precursors. 1. No
16 person or retailer shall sell or cause to be sold, in a single sale or
17 transaction, more than nine grams of a product containing as the only
18 active ingredient pseudoephedrine, phenylpropanolamine, ephedrine, or
19 any salt, isomer or salt of an isomer thereof. This subdivision shall
20 not apply to such products which are in liquid, liquid capsule, or gel
21 capsule form.

22 2. For the first violation of this section, a notice of violation
23 shall be issued to the offending party and no penalty may be imposed.
24 For the second violation, a civil penalty not exceeding five hundred
25 dollars may be imposed. For the third and any subsequent violations, a
26 civil penalty not exceeding one thousand dollars may be imposed. No
27 civil penalty may be imposed under this section unless the alleged
28 violator has received notice of the charge against him or her and has an
29 opportunity to be heard.

30 § 14. The environmental conservation law is amended by adding a new
31 section 27-0927 to read as follows:

32 § 27-0927. Cleanup of unlawful clandestine methamphetamine laboratories.
33 The department shall be primarily responsible for the cleanup, or
34 supervising the cleanup, of an unlawful clandestine methamphetamine
35 laboratory site and shall promulgate rules and regulations to implement
36 the provisions of this section.

37 § 15. Section 1602 of the civil practice law and rules is amended by
38 adding a new subdivision 13 to read as follows:

39 13. not apply to any person responsible for the disposal or presence
40 of hazardous or dangerous materials that is the result of an unlawful
41 clandestine methamphetamine laboratory operation, when such person has
42 been convicted of section 220.62, 220.63, 220.64, 220.65 or 220.66 of
43 the penal law.

44 § 16. This act shall take effect on the first of November next
45 succeeding the date on which it shall have become a law; provided,
46 however, that sections five and six of this act shall take effect April
47 1, 2006.

SPONSORS MEMO:

**NEW YORK STATE ASSEMBLY
MEMORANDUM IN SUPPORT OF LEGISLATION
submitted in accordance with Assembly Rule III, Sec 1(e)**

BILL NUMBER: A8660C

SPONSOR: Rules (Dinowitz)

TITLE OF BILL: An act to amend the penal law, the agriculture and

markets law, the tax law, the social services law, the executive law, the general municipal law, the mental hygiene law, the public health law, the environmental conservation law and the civil practice law and rules, in relation to preventing and making illegal the manufacture and production of methamphetamine through clandestine laboratory operation

PURPOSE: To address the increasing presence of methamphetamine production and consumption in New York, by creating penal law provisions to make operating a methamphetamine laboratory illegal, as well as other provisions designed to prevent methamphetamine production and consumption.

SUMMARY OF PROVISIONS: Section one provides for the legislative findings and intent. Section two amends the Penal Law to make the theft of anhydrous ammonia an "E" felony, where the actor intends to use it to manufacture methamphetamine. Section three amends the Penal Law to make possession of stolen anhydrous ammonia an "E" felony, where the actor intends to use it to manufacture methamphetamine.

Section four creates new crimes related to unlawful clandestine methamphetamine laboratory operation. They include:

- a. .62 Unlawful Clandestine Lab Operation, Third Degree - makes the possession of two or more methamphetamine precursors and laboratory equipment, with intent to manufacture methamphetamine a "D" felony;
- b. .63 Unlawful Clandestine Lab Operation in the Second Degree ("C" felony) - applies to anyone previously convicted of operating a meth lab within the past 5 years - or in the presence of a child under 16;
- c. .64 Unlawful Clandestine Lab Operation in the First Degree ("B" felony) - applies to anyone previously convicted of operating a meth lab (last 5 years) and does so again in the presence of a child under 16;
- d. .65 Unlawful Disposal of Clandestine Lab Materials - makes the disposal of harmful meth lab materials an "E" felony when the actor has not otherwise been convicted of operating a meth lab;
- e. .66 Criminal Possession of a Methamphetamine Precursor makes the possession of more than 9 grams of a product containing ephedrine, pseudoephedrine or phenylpropanolamine with intent to manufacture meth a class "A" misdemeanor.

Section five amends the Agriculture and Markets Law to require that farmers who store anhydrous ammonia on their farm must secure it to prevent access by others. Section six amends the Tax Law to create a new tax credit (of up to \$250) for improvements made by farmers in furtherance of securing anhydrous ammonia.

Section seven amends the Social Services Law by requiring that certain mandated reporters are provided with information to help them recognize the presence of methamphetamine laboratories so that they can report instances of child abuse. Section eight amends the Executive Law to create a statewide repository for data relating to methamphetamine labs

and makes the data available to law enforcement agencies to help ongoing investigations.

Section nine amends the Executive Law by requiring that law enforcement agencies notify the Department of Environmental Conservation when a methamphetamine laboratory is discovered in order to facilitate the cleanup thereof. Section nine-a amends the Executive Law by requiring the state police to notify the Governor and state legislature at such time as there is available an additive which can be added to anhydrous

ammonia to make it ineffective in making methamphetamine.

Section ten amends the General Municipal Law by requiring that all emergency services personnel notify the Department of Environmental Conservation upon discovering a methamphetamine laboratory. Section eleven amends the Mental Hygiene Law to require the Office of Alcoholism and Substance Abuse to establish a methamphetamine education program and disseminate information to agencies throughout the state that serve children and other vulnerable persons on the risks associated with methamphetamine.

Section twelve amends the Public Health Law to require the Department of Health to inform retailers about the methamphetamine problem and create reporting procedures for suspicious purchases to law enforcement. Section thirteen also amends the Public Health Law to limit the sale of single-ingredient products containing pseudoephedrine, ephedrine, or phenylpropanolamine, to nine grams per transaction. This section also provides penalties for such violations.

Section fourteen amends the Environmental Conservation Law to make the DEC primarily responsible for the cleanup of methamphetamine lab sites. Section fifteen amends the Civil Practice Law and Rules to create joint and several liability for those convicted of operating methamphetamine laboratories for the costs associated with the lab cleanup. Section sixteen makes the effective date of this legislation the next first of November, and states that the above sections with respect to amending the agriculture and markets law and tax law will take effect April 1, 2006.

JUSTIFICATION: There is an increase in the illegal manufacture and use of methamphetamine across New York State. Unfortunately, the ingredients and equipment used to make this harmful drug are easily obtained. In many cases, when police are investigating suspects believed to be involved in producing methamphetamine, they are unable to recover any manufactured drug product. And, under existing law, a person cannot be charged with a felony unless the finished drug product is discovered. This bill would make the operation of a methamphetamine site a felony without the need to recover the finished drug product.

LEGISLATIVE HISTORY: New bill.

FISCAL IMPLICATIONS: Minimum to the state.

EFFECTIVE DATE: November 1st following enactment. April 1, 2006 for the provisions in the Agriculture and Markets Law and Tax Law.
