

109<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 3568

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.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 28, 2005

Mr. LATHAM (for himself, Mr. BOSWELL, Mr. LEACH, and Mr. NUSSLE) 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.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Angie Fatino Save Our  
5 Children from Meth Act of 2005”.

1 **SEC. 2. SCHEDULES OF CONTROLLED SUBSTANCES; TRANS-**  
2 **FER OF EPHEDRINE, PSEUDOEPHEDRINE,**  
3 **AND PHENYLPROPANOLAMINE TO SCHEDULE**  
4 **V.**

5 (a) IN GENERAL.—The Controlled Substances Act  
6 (21 U.S.C. 801 et seq.) is amended by inserting after sec-  
7 tion 202 the following section:

8 **“SEC. 202A. SCHEDULING OF EPHEDRINE,**  
9 **PSEUDOEPHEDRINE, AND PHENYL-**  
10 **PROPANOLAMINE.**

11 “(a) SCHEDULE V.—With respect to schedule V of  
12 the schedules of controlled substances established under  
13 section 202(c), the Attorney General shall by regulation,  
14 not later than 90 days after the date of the enactment  
15 of the Angie Fatino Save Our Children from Meth Act  
16 of 2005, transfer to such schedule the following chemicals,  
17 subject to subsection (b):

18 “(1) Ephedrine.

19 “(2) Pseudoephedrine.

20 “(3) Phenlypropanolamine.

21 “(4) Each of the salts, optical isomers, and  
22 salts of optical isomers of the chemicals specified in  
23 paragraphs (1) through (3).

24 “(b) PSEUDOEPHEDRINE IN CERTAIN PRODUCTS;  
25 CONTINUED REGULATION AS LIST I CHEMICAL.—Subject  
26 to the authority of the Attorney General under this Act

1 to designate substances as controlled substances or listed  
2 chemicals:

3 “(1) Subsection (a) does not apply to  
4 pseudoephedrine when contained in a product that—

5 “(A) is in the form of a liquid, liquid cap-  
6 sule, or liquid-filled gel capsule;

7 “(B) does not contain more than 360 milli-  
8 grams of pseudoephedrine; and

9 “(C) is approved under section 505 of the  
10 Federal Food, Drug, and Cosmetic Act.

11 “(2) Pseudoephedrine, when contained in such  
12 a product, shall be considered a list I chemical.”.

13 (b) DEFINITIONS.—Section 102 of the Controlled  
14 Substances Act (21 U.S.C. 102) is amended by adding at  
15 the end the following paragraph:

16 “(46)(A) The term ‘pseudoephedrine’ includes  
17 each of the salts, optical isomers, and salts of optical  
18 isomers of pseudoephedrine.

19 “(B) The term ‘schedule V pseudoephedrine  
20 product’ means a product that contains  
21 pseudoephedrine and—

22 “(i) is not a list I pseudoephedrine prod-  
23 uct; and

24 “(ii) is approved under section 505 of the  
25 Federal Food, Drug, and Cosmetic Act.

1           “(C) The term ‘list I pseudoephedrine product’  
2           means a product that contains pseudoephedrine and  
3           is described in section 202A(b)(1).”.

4 **SEC. 3. REGULATION OF PSEUDOEPHEDRINE AS LIST I**  
5           **CHEMICAL; EXCEPTIONS FROM DEFINITION**  
6           **OF REGULATED TRANSACTION; CONFORMING**  
7           **AMENDMENTS REGARDING SCHEDULE V**  
8           **PRODUCTS.**

9           (a) IN GENERAL.—Section 102 of the Controlled  
10          Substances Act (21 U.S.C. 802) is amended—

11           (1) in paragraph (39)(A), by amending clause  
12          (iv) to read as follows:

13                   “(iv)(I) subject to to subclause (II), any  
14                   transaction in a listed chemical that is con-  
15                   tained in a drug that may be marketed or dis-  
16                   tributed lawfully in the United States under the  
17                   Federal Food, Drug, and Cosmetic Act un-  
18                   less—

19                           “(aa) the Attorney General has deter-  
20                           mined under section 204 that the drug or  
21                           group of drugs is being diverted to obtain  
22                           the listed chemical for use in the illicit pro-  
23                           duction of a controlled substance; and

24                                   “(bb) the quantity of the listed chem-  
25                                   ical contained in the drug included in the

1 transaction or multiple transactions equals  
2 or exceeds the threshold established for  
3 that chemical by the Attorney General; or  
4 “(II) any transaction in a list I  
5 pseudoephedrine product, unless the Attorney  
6 General has determined under section 204 that  
7 the product is being diverted to obtain  
8 pseudoephedrine for use in the illicit production  
9 of a controlled substance; or”;

10 (2) by striking paragraph (45); and

11 (3) by redesignating the paragraph (46) that  
12 relates to retail distributor as paragraph (45).

13 (b) CONFORMING AMENDMENT.—Section  
14 310(b)(3)(D)(ii) of the Controlled Substances Act (21  
15 U.S.C. 830(b)(3)(D)(ii)) is amended by striking  
16 “102(46)” and inserting “102(45)”.

17 **SEC. 4. RESTRICTIONS ON NONPRESCRIPTION RETAIL**  
18 **SALES OF PSEUDOEPHEDRINE PRODUCTS.**

19 (a) LIST I AND SCHEDULE V PRODUCTS; REGISTRA-  
20 TION CONDITIONS.—Section 303 of the Controlled Sub-  
21 stances Act (21 U.S.C. 823) is amended by adding at the  
22 end the following subsection:

23 “(i)(1) With respect to list I pseudoephedrine prod-  
24 ucts, a registration under this section that includes au-  
25 thority for the sale of such products at retail (including

1 a registration for a pharmacy) shall provide that, for the  
2 general physical location for which the registration is  
3 issued, the registration is subject to the following condi-  
4 tions:

5           “(A) In offering the products for sale, the reg-  
6 istrant places the products such that customers do  
7 not have direct access to the products (commonly  
8 known as behind the counter).

9           “(B) The registrant does not sell such a prod-  
10 uct that is in the form of a package that can be fur-  
11 ther broken down or subdivided into two or more  
12 separate and distinct packages.

13           “(C) The registrant does not knowingly sell to  
14 an individual more than one such product during a  
15 24-hour period.

16           “(D) The registrant maintains a written list of  
17 sales of such products that identifies the products,  
18 the purchasers, and the dates and times of the sales  
19 (which list is referred to in this subsection as the  
20 ‘logbook’).

21           “(E) The registrant does not sell such a prod-  
22 uct unless—

23                   “(i) the prospective purchaser—

24                           “(I) is 18 years of age or older;

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

4           “(III) legibly signs the logbook and  
5           prints in the logbook his or her name, ad-  
6           dress, and the date and time of the sale;  
7           and

8           “(ii) the registrant determines that the  
9           name signed and printed in the logbook cor-  
10          responds to the name provided on such identi-  
11          fication and that the date and time entered are  
12          correct.

13          “(F) After a volume of the logbook is full, the  
14          registrant maintains possession of the volume for  
15          not fewer than 12 months after the date of the last  
16          sale entered in the logbook.

17          “(G) The registrant does not offer a promotion  
18          in which, as part of a purchase transaction, such a  
19          product is provided without charge.

20          “(H) On the premises of the location, the reg-  
21          istrant posts a clear and conspicuous notice pro-  
22          viding as follows: ‘Federal law prohibits the over-the-  
23          counter purchase of more than one product con-  
24          taining pseudoephedrine in a 24-hour period, and  
25          prohibits the over-the-counter purchase of more than

1       7,500 milligrams of pseudoephedrine within a 30-  
2       day period. If you make an over-the-counter pur-  
3       chase of such a product, you are required to sign a  
4       logbook that may be accessible to law enforcement  
5       officers.’.

6       “(2) With respect to schedule V pseudoephedrine  
7       products that do not require prescriptions, a registration  
8       under this section for a pharmacy shall provide that, for  
9       the general physical location involved, the registration is  
10      subject to the following conditions:

11             “(A) The registrant does not dispense such a  
12      product unless—

13                     “(i) the prospective purchaser is 18 years  
14                     of age or older; and

15                     “(ii) in any case in which the prospective  
16                     purchaser is not known to the pharmacist in-  
17                     volved, such purchaser presents an identifica-  
18                     tion card that provides a photograph, is issued  
19                     by a State or the Federal Government, and in-  
20                     dicates the age of such purchaser.

21             “(B) The registrant maintains a record for the  
22      dispensing of such a product that contains, for each  
23      sale of the product—

24                     “(i) the name and address of the pur-  
25                     chaser;

1           “(ii) the name and quantity of the product  
2           purchased;

3           “(iii) the date of the purchase; and

4           “(iv) the name or unique identification of  
5           the pharmacist involved.

6           “(C) The record under subparagraph (B) is in  
7           one or more of the following forms:

8           “(i) A hard-copy record.

9           “(ii) A record in an electronic prescription-  
10          dispensing system.

11          “(iii) A record in an electronic data collec-  
12          tion system that contains the information re-  
13          quired in this subparagraph and that is capable  
14          of producing a hard-copy printout of the  
15          record.”.

16          (b) PENALTIES.—Section 402(a) of the Controlled  
17          Substances Act (21 U.S.C. 842(a)) is amended—

18                 (1) in paragraph (10), by striking “or” after  
19                 the semicolon at the end;

20                 (2) in paragraph (11), by striking the period at  
21                 the end and inserting “; or”; and

22                 (3) by inserting after paragraph (11) the fol-  
23                 lowing paragraph:

24                         “(12) who is a registrant to violate any of the  
25                         registration conditions described in section 303(i)

1 (relating to the sale of list I and schedule V  
2 pseudoephedrine products).”.

3 **SEC. 5. RESTRICTIONS ON PURCHASES OF**  
4 **PSEUDOEPHEDRINE.**

5 Section 404(a) of the Controlled Substances Act (21  
6 U.S.C. 844(a)) is amended by inserting after the second  
7 sentence the following: “It shall be unlawful for any per-  
8 son to knowingly or intentionally purchase at retail with-  
9 out a prescription more than one list I pseudoephedrine  
10 product during a 24-hour period, or to knowingly or inten-  
11 tionally purchase such a product at retail without legibly  
12 signing the appropriate logbook referred to in section  
13 303(i)(1)(D). It shall be unlawful for any person to know-  
14 ingly or intentionally purchase at retail without a prescrip-  
15 tion more than 7,500 milligrams of pseudoephedrine in list  
16 I or schedule V pseudoephedrine products during a 30-  
17 day period.”.

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