

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2319

2007 SENATE JUDICIARY

SB 2319

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2319**

Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: January 31, 2007

Recorder Job Number: 1805

Committee Clerk Signature

Mona L. Solby

Minutes: Relating to definitions and the sale of scheduled listed chemical products.

Senator David Nething, Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following testimony:

Testimony In Support of Bill:

Sen. Tony Grindberg, Dist. #41 Introduced the bill. Oklahoma was the first State that banded cold medicine. I am proud to stand before this committee to say the millions of dollars we have saved with our past legislation. This bill continues with the progress that those meth bills started last session.

Wayne Stenehjem, ND Attorney General spoke of the one concern last session was the Meth lab problem. He reviewed the history of the sky rocketing problem with meth in ND, speaking of the past legislation in detail and how these laws helped put a halt to meth production. We have caused the local meth labs to drive to our neighboring states. Wayne discussed the work in the House side, putting a two year sunset clause on a bill to show our success rate or if the legislation did not have success. Presented chart #1a chart #1b and charts showing the actual drug seizures. Cited a story of a person who was arrested on meth. Spoke of Federal Law passed in 2006. Penalty and daily (3.6 grams) /monthly (9 grams) limit would bring ND in compliance with federal law. He discussed training of the retail industry on the new laws. Mr.

Stenehjem thanked the merchants who have been of great assistance to these laws, even though it has caused them so much more work. Caution, this does not solve the meth problem in ND this solves the meth lab problems. These labs were very dangerous and often had kids in the home. He spoke of the emergency of the situations using 90% of the time going after 10% of the problem (labs). Now we can spend 90% of the time attacking 90% of the problem. He compared the Federal Law to our State Law.

Sen. Nelson asked about the dosage/package amounts legal to have. (meter 12:51) They spoke of different amounts. Approx. 48 pills in two packs to purchase. Sen. Nething asked for a review (meter 14:00) of the disclosure forms the retailers have.

Testimony in Opposition of the Bill:

None

Testimony Neutral to the Bill:

None

Senator David Nething, Chairman closed the hearing.

Sen. Nelson made the motion to Do Pass and **Sen. Lyson** seconded the motion. All members were in favor and the motion passes.

Carrier: **Sen. Nelson**

Senator David Nething, Chairman closed the hearing.

REPORT OF STANDING COMMITTEE (410)
January 31, 2007 1:23 p.m.

Module No: SR-21-1645
Carrier: Nelson
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2319: Judiciary Committee (Sen. Nething, Chairman) recommends DO PASS
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2319 was placed on the
Eleventh order on the calendar.

2007 HOUSE JUDICIARY

SB 2319

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2319

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 3/12/07

Recorder Job Number: 4830

Committee Clerk Signature

R. Penrose

Minutes:

Chairman DeKrey: We will open the hearing on SB 2319.

Wayne Stenehjem, Attorney General: We have a great success story to report in the meth problems and that meth labs, in ND, historically have flourished and in 2003, ND passed the first precursor control legislation in the country; controlling the purchase of one product that you have to have in order to manufacture meth, and that is cold medicine with ephedrine. Our law was quite simple, that said no one under 18 could buy cold medicine with pseudo ephedrine in it and we were limited to two packages that you could buy, and each package could only have 2 grams. That worked for a little while, until our meth cooks came to learn that you can go to Minnesota and Montana, South Dakota or Manitoba to buy the same products and that's exactly what was happening. Other states learned that they needed to adopt similar precursor control legislation and OK passed the first very comprehensive statute in the nation. Last session I came to the Legislature and asked you for similar legislation. What you enacted, the statute that said all cold medicines with pseudo ephedrine had to be placed behind a counter or in a locked cabinet and you were limited to have one package out on the shelf or you could have as many packages as you wanted out on the shelf, as long as you maintained that aisle under constant video surveillance. The store had written logs of who

was purchasing these products and then had to have the log for law enforcement officers when they arrived. This committee was at the forefront of seeing that that legislation got enacted but there was nervousness on the Floor of the House of Representatives about possible inconvenience to customers, so what you did was to give the bill a two year life span. I promised that I would come back and show you that I thought this legislation would work. We are here today to show you that the bulk of that legislation worked.

Chairman DeKrey: I noticed in the Fargo Forum, which very seldom backtracks on one of their editorials, but they did on this one. The Fargo Forum said we did the wrong thing, but it wasn't much later than that they wrote in their editorial page that they had been wrong.

Wayne Stenehjem: I remember it well.

Chairman DeKrey: I remember it very well.

Wayne Stenehjem: They were upset that we were promoting the passage of the legislation and Fargo said why are we enacting this kind of useless legislation and then when the statistics became obvious and what was happening, they backtracked and said they were wrong.

Chairman DeKrey: That doesn't happen very often.

Wayne Stenehjem: I want to read something from one of our confidential informants that our narcotics task force has worked with that I think you might find very interesting. This is an interview with a confidential informant, who is active in the drug manufacturing and trafficking in ND. He was a meth cook and conspired to deliver meth in Burleigh and Emmons County. This was an excerpt from the interview with two of our agents. He said, "Like I said, I just want this all behind me, I just hope that more people realize that meth, I wish I would have known what I know now. I hope I could have cut the beast's head off at that time. I quit marijuana when I wanted to, I said to alcohol and haven't had a drink of alcohol in 15 years, cocaine

same way, I could have said yes or no to it, but for some reason, not to meth. Taking cold medicines off the shelf, as far as I'm concerned, is the best thing they ever did. As far as I'm concerned, you know, that did it, I mean that shut it down". I think that is exactly what has happened in ND. Finally, the federal government that they would get involved in the fight against meth, and they passed a federal law which restricted purchase of precursor chemicals. In 1987, we had our first meth lab in ND; we were up to 297 by 2003; back when you enacted the first precursor control, it went down at that point the next year. In 2005, that was halfway through the year that you had enacted that legislation last session and gave it an emergency clause. In 2006, we were down to 45 and so far in 2007, we had three identified statewide. The federal law is also on the books and stores are required to abide by it. So what we did in SB 2319 was to take the most restrictive provisions of both federal law and the state law and put them into one law so that they would all be enforceable here in ND. What was added from the federal law that helps us enormously will be a penalty that we didn't have before, for falsely entering information on a log. You can have 3.6 grams of pseudo ephedrine and a monthly limit of 9 grams. That will help. We want to thank the ND Retailers and pharmacies that backed this law. They have never been in opposition to this legislation, as has been the case in several other states. They don't want to make money this way and we have worked on them on the meth lab project, we have trained them in regular training sessions that we have and that has worked very well. We have not had to institute charges against one retailer in ND, because they want to help us. I want to emphasize one other point, that is that the meth labs, wherever the source of most of the meth that is used in ND, those meth labs were volatile, explosive and toxic. So often there were kids who were located in the place where meth was being manufactured and had to be removed and placed into foster care. Those were emergency situations and we had to deal with them. We had to deal with them to the

exclusion of going after the big dealers, which is what we really wanted to do, because the emergency situations demanded our immediate attention. We found that we were spending about 90% of our time going after 10% of the problem. If these trends continue on the number of meth labs, I think we'll be able to spend 90% of our time going after 90% of the problem and that's exactly what we've been doing. After we saw this decline in the number of meth labs, I set up a program what I called a proposed seizure analysis team operating in Grand Forks, working in conjunction with federal authorities, state and local authorities put together all the criminal intelligence information, where meth was coming from, who are all the traffickers, which has enabled us to work to take on some of the big dealers that you've been reading about in the newspaper. That's what the bill does. I hope that you will reenact it. The bill does not have an emergency clause. I would like to recommend that to your committee, because the state law and the federal laws on the books also.

Rep. Delmore: One of the things that caught my eye in the federal, is that you can't purchase more than 9 grams in a month. Are we tracking that. There are so many places that we can go to get packages.

Wayne Stenehjem: We are not tracking it in a manner that I would like to. We are just now seeing the kind of database being assembled for prescription drugs so that we can track those kinds of things. Someday I would like to see that we have a similar thing for cold medicines. We're not there yet, but I can tell you that the law enforcement officers do go to the store and look at the logs. In some jurisdictions in ND, cooperative merchants fax their purchase log to the ND Task Force for the East, every Monday morning, so we can cross check them. There are several things to keep track of, that it is difficult to key, the problem now is that there is no limit on the amount you can purchase in a day, or the amount that you can purchase in a

month, whereas this legislation just purchasing too much of it will be an offense, so we'll be able to track them down.

Rep. Klemin: There are a lot of changes, are these being made to more closely follow the federal law.

Wayne Stenehjem: Yes, we're taking the most restrictive of the state law and federal law and putting it into one bill.

Rep. Klemin: The penalty, for example, that you can't purchase more than 9 grams of this in a 30 day period. First of all, how do you keep track of whether somebody has got more than 9 grams in a month. How would you know.

Wayne Stenehjem: You have to put it on the log what it is you buy and how much of it.

Rep. Klemin: I understand that, but if you bought some in Dickinson, Grand Forks and Fargo, how would you know that the person had more than 9 grams.

Wayne Stenehjem: That would be hard, that's why it would be useful to be able to have a database. We don't now because it is too expensive. If we have a person who we are suspicious of, we could go from one jurisdiction to the other and look at the logs and see if we have a pattern of that same person buying too much.

Rep. Klemin: What is the penalty if you do have more than 9 grams.

Wayne Stenehjem: I don't recall off the top of my head. I will have to find it, it's in the bill.

Rep. Klemin: It's not death is it.

Wayne Stenehjem: No, it's a class A or B misdemeanor.

Rep. Kretschmar: If there are persons who need these things as medicines and needs more than these limits, is there a provision that if you have prescription from a physician for it, could you get more.

Wayne Stenehjem: Nine grams of cold medicine is a lot. It is enough for any one person to get by for over a month. Sometimes, people tell me about their allergies and sniffles they have, I offer to bring them a box of cold medicine.

Rep. Koppelman: I had a hard time getting some cold medicine earlier this year, when I had a cold.

Wayne Stenehjem: You may have to go to the pharmacy.

Rep. Koppelman: Has there been any thought of making ephedrine and pseudo ephedrine prescription drugs.

Wayne Stenehjem: There has been. I have thought about it.

Rep. Wolf: I know my brother-in-law and child both need the cold medicine for both of them and could only get medicine for one of them, because of the limit that was imposed on it. He chose to purchase it for his daughter and had to go back the next day to purchase it for himself. He could have called someone to run to the store and get it for him, but he ran into problems purchasing that for the two of them. My concern is, I don't know grams or sizes or if it is enough for one person for a month, is it for enough for two people.

Wayne Stenehjem: You can buy 3.6 grams in a day, that's more than enough. He may have run into some difficulty with a store that may not have understood, but 3.6 grams is more than a day's supply.

Rep. Wolf: They wouldn't allow him to buy two products.

Wayne Stenehjem: There is nothing wrong with that, as long as the total amount is 2 grams per package, you can buy 2 packages for a total of 3.6 grams. That's more than enough for a day.

Rep. Wolf: They wouldn't let him buy it. He was not able to get himself medicine.

Wayne Stenehjem: That's not because of a problem with the statute. A person can legally have what they need for their colds and allergies under this section.

Rep. Delmore: As someone who has 2 or 3 people in my household with bad allergies, that's plenty for at least 3 days if you get the total amount. One of the things that I found, is that it varies who will give you two packages and who will only give you one package. The pharmacy where I go, it's never a problem. I think a lot of larger places err on the side of caution and they will only sell you one package.

Wayne Stenehjem: So that's an internal decision of the store. We'll continue our efforts to train merchants because it is important for people to get what they need.

Chairman DeKrey: Thank you. Further testimony in support.

Mike Rud, ND Petroleum Marketers and ND Retail Association: We stand in firm support of SB 2319. The stricter the rules are, I guess the better they are for our industry. I can tell you that I know a lot of the concerns that Rep. Wolf and Rep. Klemin voiced, most of our merchants, at this point in time, have gone away in the C-store setting, from selling any of these products, products which I think is probably the best scenario for us, in terms of all the paperwork that would go with it and tracking this. Most members don't want the headache of keeping three or four packs on the shelf and the C-store is not really dying to have product sitting on the shelf behind the counter. We're fine with that. We would rather see the meth go away than to make \$2-3 bucks on a cold medicine. We're definitely in support of this. We will continue to educate our retailers as well. Howard can address the pharmacy situation a lot better than I can. That's our stand and we're definitely in support.

Chairman DeKrey: Thank you. Further testimony in support.

Howard Anderson, Executive Director, Board of Pharmacy: We support this bill. This bill is intended to match the federal and state. We've had some problems with the different

interpretations and this will clear up some of those things. Occasionally we have had a few problems that you've mentioned here, where somebody is going to come in and restock their medicine cabinet and need to buy three or four products, well the limit is two different products, or two different packages. People have learned pretty well to take care of that. Also, your question about prescriptions, you will notice in the bill, that it says that a person may not deliver in an over-the-counter sale. So prescriptions, it is our interpretation is that it's exempt. So if you are on a regular medication, for example, and you need 240 milligrams of pseudo ephedrine every day, obviously you have to buy that in five tablet packages, but if you get your prescription from your doctor, then you can get your month's supply and then you're fine. Many patients, in the pharmacies are conversant. The reason that we did not choose, and I think Mike Rud was up here and talked to you, to make it a schedule 5 drug to distribute only to pharmacies, we didn't feel there was any reason to restrict those retailers that wanted to be in the business to have the products, as long as they did it the same as everybody else.

Chairman DeKrey: Thank you. Further testimony in support. Testimony in opposition.

Vern Wagner: I have several problems with this bill, in fact, I oppose it totally on general principle. It is one more thing with big brother looking over your shoulder and seeing what you are doing. I also know that I am smartest enough not to step in front of a moving train. I won't oppose that. I want you to take a close look at some of the problems of the bill. I'll tell you where I'm coming from. I am one of those people that has to take the drug every day, twice a day, for many, many years. I'm not making any meth out of it. I use it because of a chronic sinus congestion and that is one of the few things that my physician has found that will control it. I want you to look on page 6, line 7, it says you can't purchase a package with more than 2 grams in it. A package of Drixoral, 20 capsules, has 2.4 grams. But you can buy two packages of 10 and by golly, they also have 2.4 grams. So it is a little more expensive that

way, but really what difference does it make whether you buy a package of 20 or two packages of 10. Then later on, it says that you can buy up to 3.6 grams a day. Well that means that you couldn't buy a package of 30, which would be considerably cheaper than three packages of 10. I can't understand the rationale of those figures and the other thing is that they are now converting it to pseudo ephedrine ace instead of pseudo ephedrine sulfate. Maybe someone from the pharmacy can tell me how that differs. I hope that you would take a good look at that particular thing. I thought it quite interesting that Howard mentioned that you could do it on a prescription. Again, I have to question that, it says a person cannot buy more than that amount. I feel if you want to allow it for prescription, then I think you should do it. Then there should be an exception written in there for the prescription exceptions. So there is no confusion. I agree with Howard, that there has been some confusion out there as to what you can buy and what you can't. Then you should also look closely at page 8 and 9, at the bottom of page 8, line 28, it says no person shall purchase more than 9 grams per month, if you go back and look at the definition of person, it says an individual, corporation, limited partnership, government entity, any conceivable organization cannot purchase more than 9 grams per month. That would mean that the drug store couldn't stock very much of this in inventory, nor could the wholesale house that supplies the drugstore.

Rep. Koppelman: Where did you find Drixoral, I couldn't find it at all.

Vern Wagner: I have been purchasing it for so long that the pharmacy stocks it for me.

Rep. Koppelman: I found that it's almost not sold any more.

Vern Wagner: People are afraid to sell it. I've gone to some drugstores that won't carry it.

Rep. Delmore: Would you say that you are probably an exception to the rule as far as the general population.

Vern Wagner: I suppose that there aren't too many people that take it every day. I know there are some. My preference is if you want to control it, put it on the controlled substance list and let it go prescription only. I'm sure I'm not the only one that needs to take it every day.

Rep. Delmore: My husband takes a great deal of it for severe allergies. My point being is that he doesn't require it every single day, during allergy season, yes. We think of this largely in terms of people who have colds and need for a limited length of time. There are people obviously that fall into that category, but I'm saying that you are probably an exception to the rule. There probably aren't a lot of people that fall into your classification of need and I am certainly receptive to your idea of the prescription so that nobody has to feel like a criminal, either you or your pharmacist when you go in.

Vern Wagner: That's right, I agree with you.

Chairman DeKrey: Thank you. Howard, is there a prescription exception in here.

Howard Anderson: As I indicated, the bill says over the counter sale, which is different than a prescription. We've always interpreted that to mean that a prescription is exempt from the recordkeeping, etc. Obviously, when you get a prescription filled the pharmacy has a record of what you got and they can print that out any time. Yes, prescriptions are exempt; however, it doesn't say that language in there.

Chairman DeKrey: But if we put that in there, then it would be clear.

Howard Anderson: If you put that in there, it would be clear to everybody and I do get a lot of calls from our pharmacies saying, is a prescription exempt, because they don't know that just from reading. That might help. Now Vern's comments about the wholesale level, the way that works at the wholesale level, if you are going to sell any of these precursor chemicals at the wholesale level, you have to be licensed with the feds. There are restrictions on wholesalers because they have to record who they sell to and where they sell it, and how much they sell,

and those are available to the governing portions of the administration. This is a retail sale bill. It doesn't affect the wholesale business at all. The wholesale business is covered by the governing portions of the administration under the regulations at the federal level. In fact, we did have a wholesaler in ND who was a little careless with their sales of ephedrine and recordkeeping and we helped the DEA receipt about \$500,000 worth of ephedrine that they had and it was disposed of.

Vern Wagner: I don't disagree with Howard on that. When I take a literal reading of the bill, where it lists the definitions for that particular bill, would include any wholesaler and it says you cannot purchase more than that.

Rep. Koppelman: At the beginning of that section, I agree with you. If you read just that item that you talked about, a person under law means more than an individual; however, it does relate to section 2, which as Mr. Anderson says, talks about retail over the counter sale, not wholesale.

Chairman DeKrey: Thank you. Further testimony in SB 2319. We will close the hearing.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2319

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 3/12/07

Recorder Job Number: 4904

Committee Clerk Signature

Remose

Minutes:

Chairman DeKrey: We will take a look at SB 2319. What are the committee wishes. We need an emergency clause and a prescription exception.

Rep. Koppelman: I move that we add the Emergency clause.

Rep. Boehning: Second.

Chairman DeKrey: We will have to have an amendment drafted to reflect that we want a prescription exemption and then add the emergency clause. We will take this up later.

(Motions were withdrawn)

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2319

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 3/14/07

Recorder Job Number: 5024

Committee Clerk Signature *D. Pericose*

Minutes:

Chairman DeKrey: We will take a look at SB 2319. This is the amendment that makes an exception by prescription and then puts the emergency clause on it that the AG wanted.

Rep. Koppelman: I move the amendment.

Rep. Delmore: Second.

Rep. Kretschmar: Maybe it should be licensed physician not doctor.

Rep. Klemin: I'm looking on page 5, why is the amendment going on page 5, line 25.

Intern: LC put it in that section with definitions, because that appears in any place that they will want that, that way if this section is amended further, it will still apply to that. So that it will appear in all the sections that you need it to appear in.

Chairman DeKrey: Further discussion on the amendment. We are going to change it to "unless prescribed by a licensed physician", all those in favor, voice vote. Motion carried. We now have the bill before us as amended.

Rep. Koppelman: I move a Do Pass as amended.

Rep. Boehning: Second.

13 YES 0 NO 1 ABSENT

DO PASS AS AMENDED

CARRIER: Rep. Boehning

Date: 3/14/07
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2319

House JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as Amended

Motion Made By Rep. Koppelman Seconded By Rep. Boehning

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin	✓		Rep. Griffin	✓	
Rep. Boehning	✓		Rep. Meyer	✓	
Rep. Charging			Rep. Onstad	✓	
Rep. Dahl	✓		Rep. Wolf	✓	
Rep. Heller	✓				
Rep. Kingsbury	✓				
Rep. Koppelman	✓				
Rep. Kretschmar	✓				

Total (Yes) 13 No 0

Absent 1

Floor Assignment Rep. Boehning

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2319: Judiciary Committee (Rep. DeKrey, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2319 was placed on the Sixth order on the calendar.

Page 1, line 2, after "products" insert "; and to declare an emergency"

Page 5, line 25, after "drug" insert "unless prescribed by a licensed physician"

Page 11, after line 19, insert:

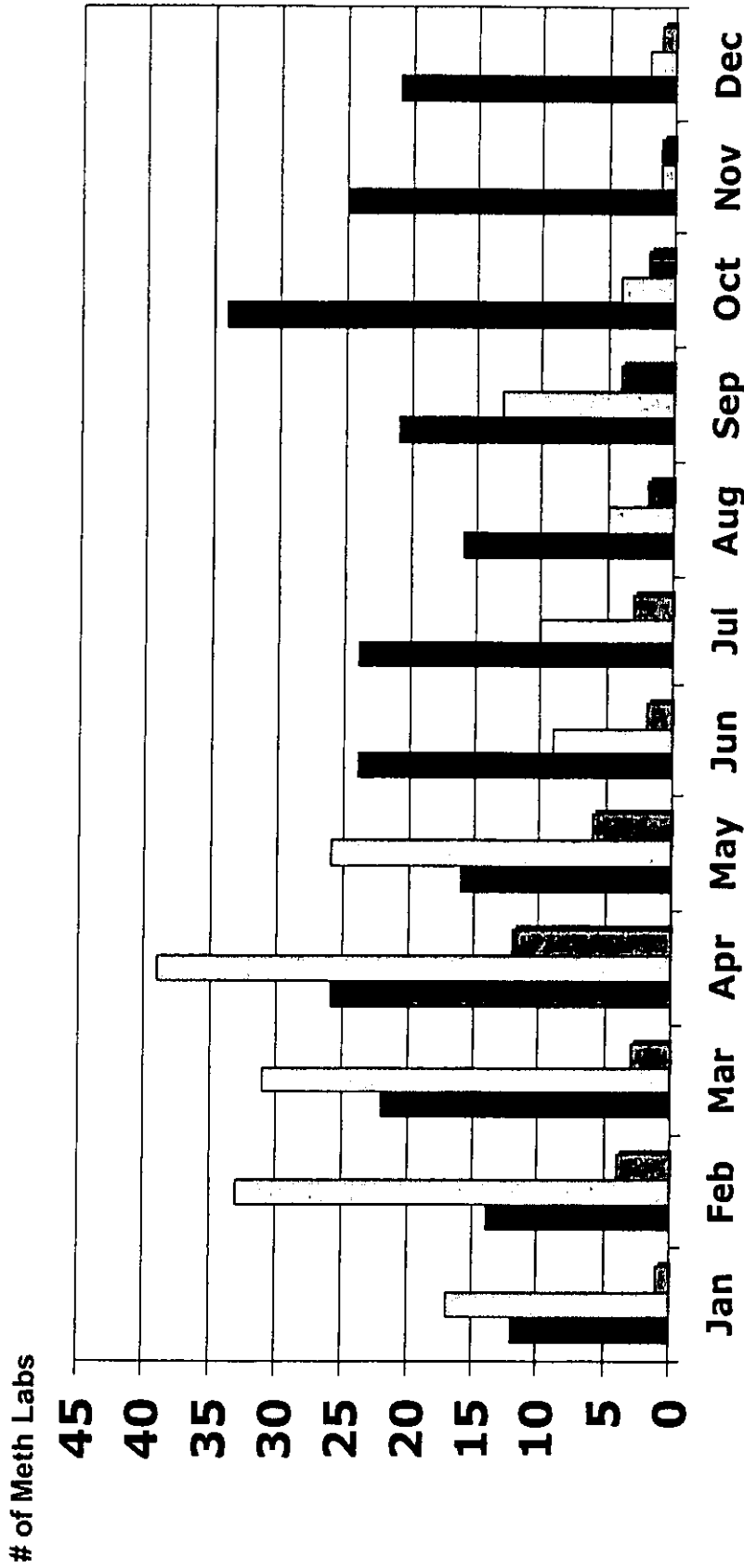
"SECTION 3. EMERGENCY. This Act is declared to be an emergency measure."

Re-number accordingly

2007 TESTIMONY

SB 2319

Meth Lab Trends: 2004-2006



■ 2004 □ 2005 ▒ 2006

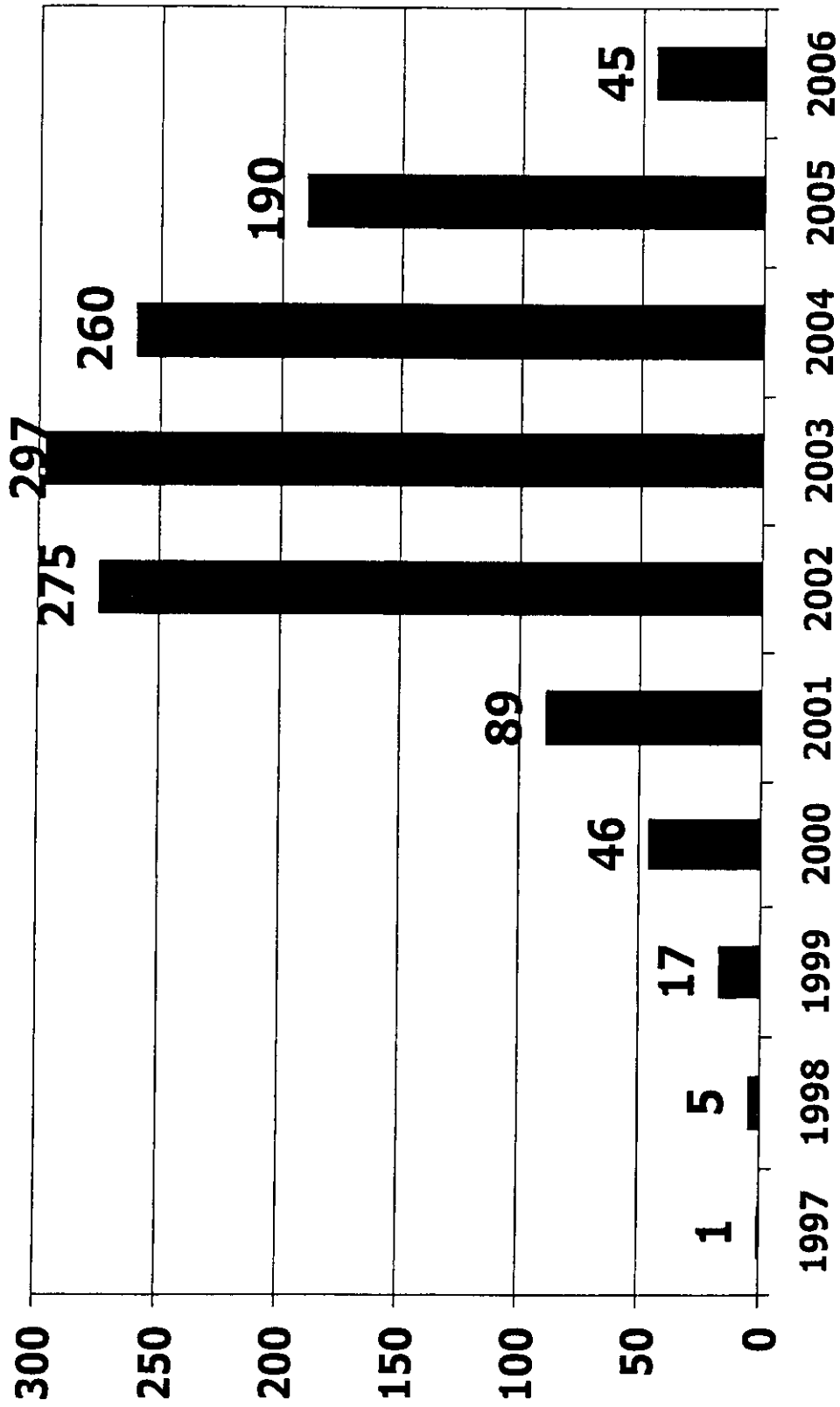
Additional ND retail restrictions took effect on June 1, 2005

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
2004	12	14	22	26	16	24	24	16	21	34	25	21
2005	17	33	31	39	26	9	10	5	13	4	1	2
2006	1	4	3	12	6	2	3	3	4	2	1	1

Att #1a

A

State of North Dakota
Meth Lab Busts 1997 - 2006



Att 1b

