

2011 SENATE JUDICIARY


SB 2259

2011 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

SB2259
1/24/11
Job #13275

Conference Committee

Committee Clerk Signature 

Explanation or reason for introduction of bill/resolution:

Relating to records of the sale of methamphetamine precursors

Minutes:

There is attached written testimony

Senator Nething – Chairman

Senator Olafson – Vice Chairman - opens the hearing on 2259

Wayne Stenehjem – ND Attorney General – Introduces the bill and its purpose. He provides an attachment showing how meth labs have gone down dramatically from 297 in 2003 to 7 in 2010. He reminds us those are the one they found not necessarily the ones that existed. He talks of the one chemical you have to have to make meth and that is pseudo-ephedrine. In 2005 the legislature restricted the amount that could be purchased monthly to 9 grams. He says that is a large part of the reduction in meth labs that we have seen. He said these innovative groups are now employing individuals that go from store to store buying pseudo-ephedrine. These people are referred to a "smurfs". Under the statute they is a limit to what can be purchased, a log is maintained in each store that will tell who was in to buy the product. Currently there is no system to provide for the uploading of all this information into one central source. He said it is not unheard of for these smurfs to travel 100 or 200 miles to purchase the product they need. He said he was at a meeting and met with someone from the Consumer Health Products Association that told him they have a program that will permit the uploading of all the information from the log that they will provide every state free of charge. Stenehjem was told by this company that any state that wants to enact legislation that requires the uploading of this information to a central source can do so thereby enabling them to see who is out smurfing and buying these products.

Senator Olafson – Asks what happens after they find and individual that is buying an inordinate amount of the active ingredient.

Attorney General – Replies it is then reported to law enforcement as a criminal offense that exceeds the limitations that are provided in the statute. It can be a Class B or Class A misdemeanor depending on the amount being purchased.

Senator Sorvaag – Asks if the records are kept in the AG's office.

Attorney General – Responds yes, the public cannot go in and look at them. He says the statute speaks quite specifically on how to maintain confidentiality of those logs.

Senator Lyson – Asks about the amendments they are going to bring in.

Attorney General – He said the main issue was to provide a way that there is an electronic signature that can be uploaded and forwarded.

Senator Nelson – Asks if there is any cost to the stores or special equipment.

Attorney General – Said it is internet based and no cost to the retailers. The group that is providing the software has an on-line 24/7 help line that can answer any questions that arise. He mentions the several other states that have adopted this legislation.

Senator Sitte – Ask how many boxes do you have to buy to get 9 grams and be subject to punishment.

Attorney General – Replies, you can get 2 grams at a time and 9 grams in a month. Two grams is about 2 boxes.

Tom Woodmansee – President of the ND Groceries Association – In support of this bill.

Mike Schwab – Executive Vice President of the ND Pharmacists Association – See written testimony.

Attorney General – Adds that this bill will do two things, it will stop sales from occurring because it's in real-time and second it provides for that central log so they can see who is violating that statute.

Howard Anderson – Executive Director Board of Pharmacy – He says this is an excellent system. The message comes back right away and approves it or not. Like a credit card sale.

Senator Olafson – Asks if he sees there are any problems with the system.

Anderson – Doesn't see any as long as the person is legitimate.

Opposition

Kara Johnson – Zuger, Kermit & Smith – Speaking for Pat Ward – Medco Pharmaceutical Company may have opposition to this bill. Mainly that they want to insure that if a doctor issues prescription for a certain amount that those prescriptions are covered. She says they may bring in an amendment.

Anderson – Says there has always been an exemption for prescription sales in the tracking program. It does not go into the data base.


Close the hearing on 2259.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

SB2259
2/9/11
Job #14279

Conference Committee

Committee Clerk Signature 

Explanation or reason for introduction of bill/resolution:

Relating to records of the sale of methamphetamine precursors

Minutes:

Senator Nething – Chairman

The committee discusses an amendment that was proposed but is no longer a concern. Senator Olafson explains that this bill provides a “real time” notification system for the tracking of medications that are used in the manufacturing of methamphetamine. This can be instantly used to keep track on who is buying these medications. There was no opposition to this bill.

Senator Olafson motions for a do pass
Senator Nelson seconds

Roll call vote – 6 yes, 0 no
Motion carries

Senator Sitte will carry

REPORT OF STANDING COMMITTEE

SB 2259: Judiciary Committee (Sen. Nething, Chairman) recommends DO PASS
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2259 was placed on the
Eleventh order on the calendar.

2011 HOUSE JUDICIARY

SB 2259

2011 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

SB 2259
March 15, 2011
15433

Conference Committee

Committee Clerk Signature

DeMose

Minutes:

Chairman DeKrey: We will open the hearing on SB 2259.

Wayne Stenehjem, Attorney General: Support (see attached 1). I'm here to talk about some successes and some issues that remain in the area of meth. As many of you who may have been here in 2001, will know that when I took office as Attorney General, we were in the midst of what I determined, and maintained was the most serious law enforcement issue that ND had ever seen. That was the alarming increase in the use, manufacture, possession of one of the deadliest, most toxic substances that has ever been developed, that of meth. I worked with this committee and others, for which I want to publicly thank you for a number of initiatives, including enhanced penalties, educational programs, additions of members from the Bureau of Criminal Investigation Narcotic Task Forces, public education, a lot of things that were done. Perhaps one of the most significant things was legislation that provided for restrictions on the purchase of the substance that you have to have to manufacture meth; that of pseudo-ephedrine. So starting in 2003, but more significantly in 2005, we enacted restrictions on the amount of pseudo-ephedrine that could be purchased. Pseudo-ephedrine is simply an ingredient in what were then, the most common cold medicines, Sudafed, etc. Those products had a useful medical purpose, they also had a nefarious purpose which made it possible to manufacture meth out of it. We enacted legislation that provides for severe restrictions on the amount of pseudo-ephedrine that could be purchased at one time, or during the course of one month. Retailers were required to maintain a log. People who were purchasing the substances that were limited in amount had to provide proof of their identity, you had to be over 18, the product had to be kept behind a counter, not just available to the public to grab from the shelves. Since that time, we saw as a result a dramatic reduction in the number of meth labs in ND. Where we were seizing one meth lab somewhere in the state of ND almost every day in 2003, that number went down to 7 in all of 2010, there were 31 in 2009. I want to, in fact, relate to you an interview with one of our BCI Narcotics agents with a source of information, an SOI that really underlines and highlights the effectiveness of this legislation. This particular source of information was currently on probation in the state of ND, he was an amphetamine cook, according to the

report, and conspired to deliver meth in Burleigh and Emmons counties. Excerpts from the interview with our agents SOI: "like I said, I just want this all behind me, I just hope 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 this time. Like I said earlier, I gave up marijuana when I wanted to, I said no 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 that methamphetamine. The biggest thing about them cooking it, these idiots (the AG) that want to lock up the anhydrous tanks was a cover up. We laughed at that from the word go. That's not going to stop you, you're going to take the chance of running out in the field, run out there with a bolt cutter, you know, but taking them cold medicines off the shelf, as far as I'm concerned, that's the best thing they ever did. As far as I'm concerned, you know, that did it; I mean, that shut it down." That's what you see in the charts that you have in front of you. In the meantime, some things have changed. These folks can sometimes be innovative, sometimes can be desperate, who sometimes see a potential for an enormous profit motive have gone to the next step and are going to the next step, and that next step is to employ a group of people, in law enforcement they call them "smurfs". The people are 18-19 years old and they will go from store to store to store and they will buy that limited 1 pack or 2 packs and then they will drive 100-200 miles sometimes to buy that same amount somewhere else. The problem that we have, even with the legislation currently on the books, is that there is little way to assemble all of that information about who is going from one store to another. In some communities, the stores, the retailers that sell pseudo-ephedrine will fax those log sheets to the BCI, Narcotics Task Force in that region and will get a handle if you go through them meticulously and look at them, but we would have no way of knowing if someone was going from Grand Forks to Devils Lake to West Fargo to Bismarck, and believe me they do. I was attempting to think of a way to get a handle on that issue and so I went to a conference of Attorneys General and there was a fellow from PHARMA, the pharmaceutical group, and he said that they have a program that they will offer to us for free that will provide for the uploading over the internet of the retail sales of pseudo-ephedrine and that can be uploaded and stores will be able to upload the information of who is buying these products and also go to the Narcotics Task Forces and they can see who is going from place to place to buy them. They are offering it, and they are, free of charge so that there is no cost to the retailers. When I came back home, I decided that I would go and talk to my friends in the ND Petroleum Marketers, the Grocer's Association, the ND Pharmacy Association, and ask them if this is something they would be willing to work with me to enact here in ND; as they have from the beginning recognizing the importance of attempting to get a handle on this program. Everyone of them jumped on board and said absolutely, we'll be happy to do that. The Petroleum Marketers I think are the first ones that I talked to and I think, in large part, aren't selling these products any more. Most of the pharmacies are selling them and are well used to doing the same kind of thing because you have enacted the prescription drug monitoring program, so pharmacies already do that. I went to the ND Grocer's Association, which I thought was selling the products and they likewise said we're all in support, we're happy to do it, we have no objection, it's free. We like it and we're happy to help. Of course, the ND

Pharmacy Association, they are used to doing this kind of thing as well. This bill would simply provide for the enactment of a provision that allows for this internet based program so that stores will have access over the internet, as long as they have an internet connection, they will have a secure connection to the website, so that when somebody comes in and offers the identification that they are required to offer, they can determine if they have bought this product elsewhere and if they are above the limit, and then decline the sale. Likewise, then that is something our agents would be able to have one set place where they could go and see if there is somebody who is travelling all around the state of ND buying pseudo-ephedrine. That's what this bill does and I would like your favorable action.

Chairman DeKrey: Thank you. If you'll remember when we passed that, the Fargo Forum took us and you to task, and later which does not happen very often, the Fargo Forum had to retract it and come back and say that we were right.

Wayne Stenehjem: That is exactly what happened.

Chairman DeKrey: I hope you have that framed somewhere.

Wayne Stenehjem: We were in a situation where we were just desperate, we had to do something, people were dying in ND and we had to do something. That's why I know it was difficult for the Legislature to take this step, but you did and you did the right thing. Likewise, I think this is the same kind of legislation you see here except that we have the support from everybody who is involved.

Rep. Delmore: As we look at this, it certainly seems to be an easier way to track these sales. Is there an amount bought that triggers something. I'm asking that because in my family, my husband and son have allergies, and sometimes I get the pseudo-ephedrine because I have a head cold. Is there an amount that has to be pretty large to trigger that?

Wayne Stenehjem: The amount has already been made illegal already under current law, which is 2 grams a day, 9 grams in a month, which is quite a bit of pseudo-ephedrine. That is enough for more than one person and their cold needs for a month. Likewise there are some people who go to a doctor to get a prescription for pseudo-ephedrine. This doesn't apply to them, the doctor's will continue to have the authority to give a prescription; they don't go into this particular database. Of course, it wouldn't hurt your husband to go to the store himself sometime.

Rep. Klemin: I'm looking at page 2, lines 3-5, where it says, "before completing the transaction, the person making the sale shall submit all the information into the electronic recordkeeping system". Is there somewhere in here that I don't see right now, or somewhere else where it says that if they find that they made another purchase somewhere else, that they can't sell it to that person.

Wayne Stenehjem: Yes, what will happen is that it will come back and tell them that this person has bought more than the permitted amount and then the store will know that they have bought more than they are permitted to do during the course of that day or that month? The store has two options. One is to decline the sale and that is what we recommend; the other option is, if they are concerned that they might be in danger physically, we tell them to complete the sale and then we'll find out or they will let us know, then we will take it from there. We don't want any clerks putting themselves in any potential danger.

Rep. Klemin: So there is nothing in here that says you can't complete the sale.

Wayne Stenehjem: The law now says that you're not to complete the sale. This just provides information and notification whether someone has exceeded the amount. We always tell them to complete the sale, especially if you feel that you're in some kind of danger complete the sale and let us know.

Rep. Koppelman: You mentioned that the prescriptions would not be subject to this and I assume that most pseudo-ephedrine is not a prescription product, but if a doctor writes a prescription and a pharmacist fills it, it doesn't go on a list at all, or how does that work.

Wayne Stenehjem: That's my understanding. Someone from the Board of Pharmacy is here and he can tell you exactly how that works. My understanding is that it is exempt from this provision, from this chapter.

Rep. Koppelman: With regard to convenience stores, you mentioned that they don't carry this product any more. I remember when we first passed this that was one of the issues that in succeeding years we dealt with a little bit. Those folks just quit carrying pseudo-ephedrine in ND. What's the status of that. Is the product still available for legitimate use widely.

Wayne Stenehjem: I don't know how widely available it is. When I get a cold, I find that pseudo-ephedrine is the product that works. But I always go to the pharmacy because the pharmacy's have them. But it is unusual to find them in a convenience store anymore. I think Wal-Mart still sells them, maybe Target.

Chairman DeKrey: Thank you. Further testimony in support.

Mike Rud, President of the ND Petroleum Marketers and ND Retail Association: Support (see attached 2). I think Wal-Mart does sell it but I don't think any of the other big box stores do. We tell people to go to the pharmacy. Those members that continue to sell the drug have done it in a responsible manner using the recording methods that were required in previous legislation, but the passage of this bill will have real-time methods for recording purchaser information and law enforcement will have the instant access to the information so we can continue to keep this away

from our kids and other folks. It is a destructive drug and let's just make sure that we do our part.

Chairman DeKrey: Thank you. Further testimony in support.

Marissa Clarin, Pharm.D. Candidate: Support (see attached 3). Howard Anderson's testimony (see attached 4, he was not present).

Chairman DeKrey: Thank you. Further testimony in support. Testimony in opposition. We will close the hearing. We will take a look at SB 2259.

Rep. Hogan: I move a Do Pass.

Rep. Beadle: Second the motion.

13 YES 0 NO 1 ABSENT

DO PASS

CARRIER: Rep. Kingsbury

Date: 3/15/11
 Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
 BILL/RESOLUTION NO. 2259

House JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Rep. Hogan Seconded By Rep. Beadle

Representatives	Yes	No	Representatives	Yes	No
Ch. DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin	✓		Rep. Guggisberg	✓	
Rep. Beadle	✓		Rep. Hogan	✓	
Rep. Boehning	✓		Rep. Onstad		
Rep. Brabandt	✓				
Rep. Kingsbury	✓				
Rep. Koppelman	✓				
Rep. Kretschmar	✓				
Rep. Maragos	✓				
Rep. Steiner	✓				

Total (Yes) 13 No 0

Absent 1

Floor Assignment Rep. Kingsbury

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

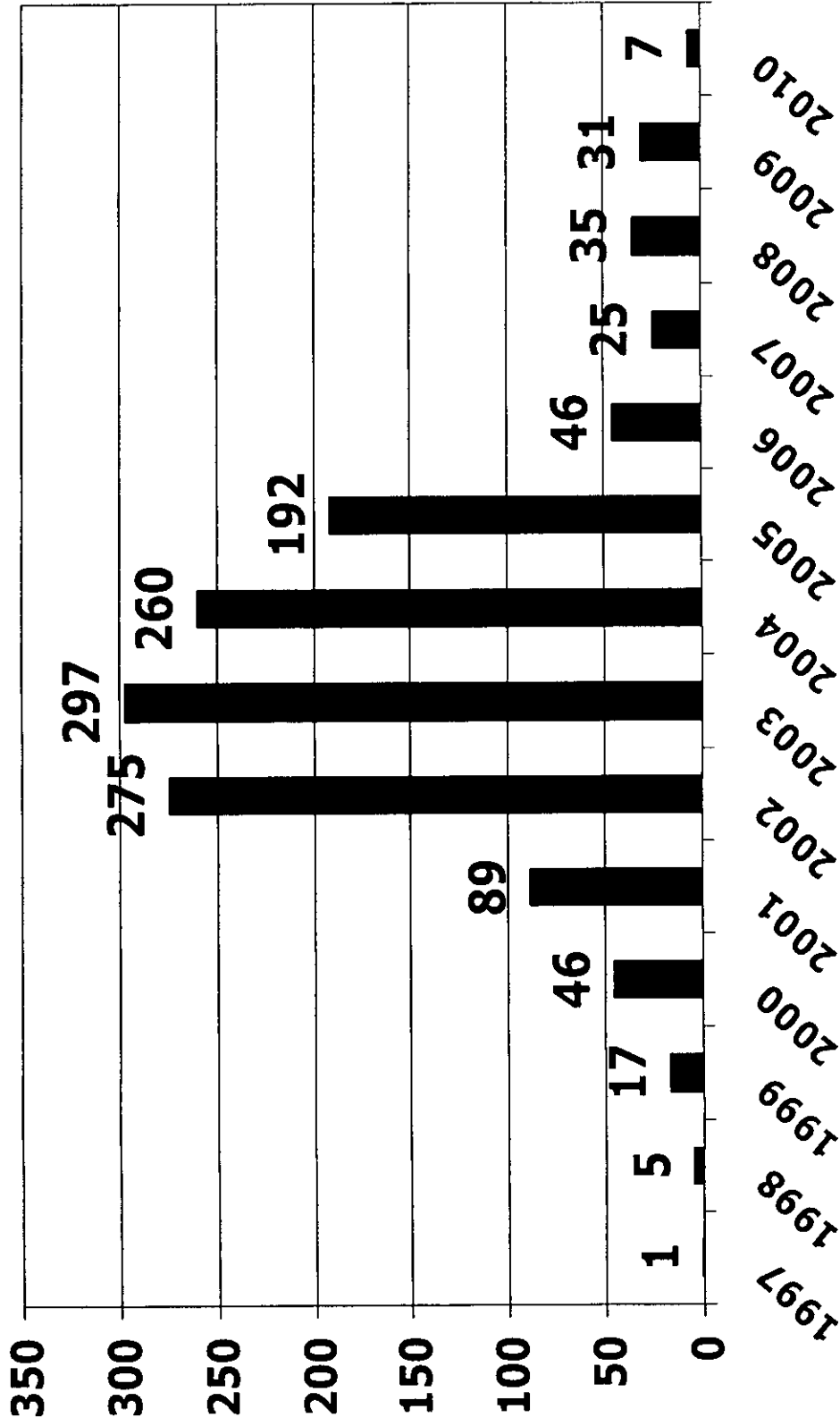
REPORT OF STANDING COMMITTEE

SB 2259: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO PASS
(13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2259 was placed on the
Fourteenth order on the calendar.

2011 TESTIMONY

SB 2259

State of North Dakota
Meth Lab Busts 1997 - 2010



Stenehjem, Wayne K.

From: JF410
Date: Friday, October 16, 2009 12:34 PM
To: Stenehjem, Wayne K.
Subject: Pseudoephedrine supply for labs

Wayne,

I had Joe F. go through the seven meth labs in Cass County. Three were from the same group of people. The other four were also mom and pop type labs. All of the pseudo was coming from local retailers. The cooks are having several people pick up a couple packs of pseudo at several different retail stores and they lump them together for a cook.

I talked with Agents Wimer and Ness. They do not have any intelligence that indicates that the pseudo is coming from sources other than people buying a couple packs at a time at different retail stores.

Currently in the Fargo area, there are two retailers that consistently fax the pseudo logs to BCI. The others have agreed to contact BCI if there is suspicious activity.

I have found no intelligence from any of the agencies here that indicates there is ephedrine, in any form, being supplied in bulk.

I hope that this answers your inquiry. Call me or contact Chief Agent Carlson if you need anything else.


Special Agent, ND BCI
Task Force Officer, FARGO RO


Interview of Source of Information on case that is currently being investigated. This SOI is currently on probation in the state of North Dakota.

This SOI was a methamphetamine cook and conspired to deliver methamphetamine in Burleigh and Emmons counties.

Excerpt from interview with Agents Dahl and Fugleberg:

SOI: Like I said, I just want this all behind me. I just hope that more people realize that, that, methamphetamine, I wish I would've known what I know now....

I hope I could have cut the beasts head off at this time. Like I said earlier, I give up marijuana when I wanted to, I said no and haven't drank alcohol in fifteen years,..., cocaine same way, I could've said yes or no to it. But, for some reason that ~~fuckin'~~ methamphetamine,....,

the biggest thing about them cookin' it, these idiots that wanted to lock up the anhydrous tanks was a coverup,..., we laughed at that from the word go. I mean that's not going to stop you. You're gonna take the chance of runnin' out in the field, run out there with a bolt cutter, you know.

But takin' them cold medicines off the shelf, as far as I'm concerned that's the best thing they ever did.... As far as I'm concerned, you know, that did it, I mean, that shut it down.



Senate Judiciary Committee - Fort Lincoln Room
Chairman - Senator Dave Nething
January 24, 2011 - 9:00am

Chairman and members of the Committee, my name is Mike Schwab, Executive Vice President of the North Dakota Pharmacists Association. I am here today to offer support for SB 2259.

Members of our Association support additional efforts that help control and eliminate the making and use of methamphetamine. SB 2259 is another important step in that direction. This bill will help prevent and in most cases stop users from purchasing more than the legally identified amount of pseudo-ephedrine and other products used in the production, sale and use of methamphetamine.

As you know, pharmacies are currently required to keep a signature log or other written record when they sell pseudo-ephedrine to members of the public. This is helpful but doesn't provide "real-time" notification or doesn't identify those individuals who have been to multiple stores in the same day, week or month. Requiring and utilizing an electronic recordkeeping system which provides "real-time" notification and identification is supported by members of our Association.

Providing a real-time electronic recordkeeping system free of charge and having it be Internet based will also help streamline and implement provisions of this bill in a timely and effective manner. Thanks for your time and attention today. I would be happy to try and answer any questions you may have.

Respectfully Submitted,

Michael D. Schwab
NDPhA - EVP



PROPOSED AMENDMENTS TO SENATE BILL NO. 2259

Page 1, line 14, overstrike "maintain a written list of sales that identifies the product by name, the quantity sold, the names and addresses of the purchasers, the dates and times of the sales," and insert immediately thereafter "require the purchaser's signature in a log with "

Page 1, line 20, overstrike "The purchaser shall sign the written list of sales and enter the purchaser's name, address, and the date and time of the sale. The person making the sale shall determine that the name entered by the purchaser corresponds with the name on the identification provided by the purchaser and that the date and time of the purchase is correct. The person making the sale shall enter the name of the product and the quantity sold on the list."

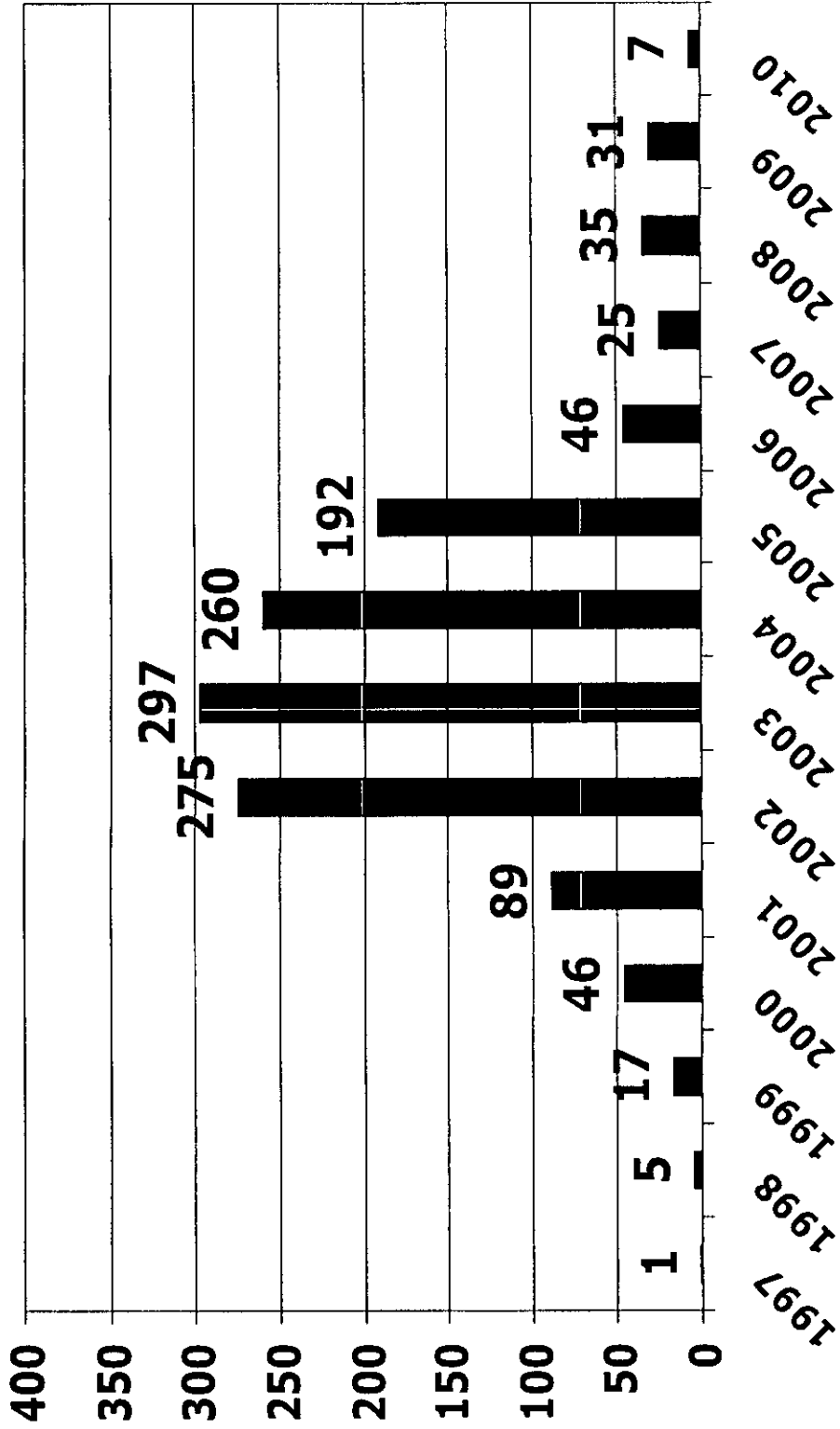
Page 2, line 3, replace "all the information from the written record into the electronic recordkeeping system described in section 2 of this Act." with "the following information to the electronic recordkeeping system described in subsection 13: the product by name, the quantity sold, the names and addresses of the purchasers, the dates and times of the sales."

Page 2, line 6, overstrike "record of identification required by this subsection" remove "section ", and overstrike "for three years, after which the record must be destroyed."

Page 2, line 8, overstrike "record " and insert immediately thereafter "information collected pursuant to this section"

Renumber accordingly

State of North Dakota
Meth Lab Busts 1997 - 2010





ND Petroleum Marketers Association
ND Retail Association



Testimony SB 2259
March 15, 2011- House Judiciary

Chairman Dekrey and members of the Committee:

For the record, my name is Mike Rud. I'm the President of the North Dakota Petroleum Marketers and North Dakota Retail Association. I'm here today urging a **"DO PASS"** on SB 2259.

Back in 2003, our joint association held a workshop to discuss the growing problem of meth production in our state. I don't think any of our members in attendance will ever forget what the DEA agent said about the addictive power of meth. He told us the only reason ourselves or our children weren't struggling with meth addiction was because we hadn't tried the drug.

In the years that have followed, many of our members simply pulled medications containing meth making chemicals off the shelf.

Those members opting to continue to sell any drugs with the potential to be used to make meth are selling and recording purchaser information in a responsible manner.

With the passage of SB 2259, retailers will have a real time method for recording purchaser information and law enforcement will have instant access to this information so we all can continue to do our part to keep this destructive drug off the streets.

Again, We urge a **"DO PASS"** on SB 2259.

House Judiciary Committee - Prairie Room
Chairman – Representative Duane DeKrey
SB 2259 – Tuesday, March 15, 2011

Chairman and members of the Committee, my name is Marissa Clarin, Pharm.D. Candidate 2011 and interning at the North Dakota Pharmacists Association. I am here today to offer support for SB 2259.

As a future North Dakota pharmacist, I support additional efforts that help control and eliminate the making and use of methamphetamine. Pseudoephedrine is an important over the counter medication that can be obtained at many pharmacies and some retailers. When used correctly pseudoephedrine can help relieve nasal congestion quickly and effectively. However, pseudoephedrine and other ephedrine products can be used in the production of methamphetamines. SB 2259 will aid in further reducing the ability to obtain more than the legal amount of methamphetamine precursors.

Currently, pharmacies and other retailers are required to keep record of pseudoephedrine sales, which must include the purchasers name, address, signature, product, amount, date and time of purchase and verification by government issued photo ID. While this strategy for preventing the purchase of more than the legally allowed amount of methamphetamine precursors is effective in one store, it may not effectively curb purchasers from going to multiple pharmacies or other retailers and purchasing more than the legal amount in one day or month.

Implementation of "real-time" electronic recordkeeping will more effectively track the sales of methamphetamine precursors not only in each pharmacy or retailer, but enable access to sales information at locations across the state. Additionally, providing an internet based real-time electronic recordkeeping system free of charge will help streamline and implement provisions of this bill in a timely and effective manner. Thank you for your time and attention today. I would be happy to try and answer any questions you may have.

Respectfully Submitted,
Marissa Clarin
Marissa Clarin, Pharm.D. Candidate 2011
NDPhA - Extern



BOARD OF PHARMACY
State of North Dakota

Jack Dalrymple, Governor

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William J Grosz, ScD., R.Ph.
Wahpeton, Treasurer

Senate Bill #2259 – Methamphetamine Precursors
House Judiciary Committee
Prairie Room – State Capitol Building
Tuesday – March 15th, 2011

Chairman Dekrey and Members of the House Judiciary Committee the North Dakota State Board of Pharmacy is in support of efforts for the appropriate control of the illegitimate use of pseudoephedrine type products in the manufacturer of methamphetamine.

The technology for this electronic tracking has been developed since you originally passed the elements in your Methamphetamine statutes several years ago.

This new system will help retailers stay in compliance with point of sale calculations of individual's purchases. It will make the database searchable when law enforcement is conducting an investigation and it will make the capture of information and signatures electronic and should save retailers considerable time and paperwork. It will also make the information readable.

Howard C. Anderson, Jr, R.Ph.
Executive Director