HOUSE . . . . . No. 3499

By Mr. Teague of Yarmouth, petition of Edward B. Teague III and other members of the General Court relative to the penalty for violation of certain laws regulating controlled substances. Criminal Justice.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety-Five.

AN ACT FURTHER REGULATING CERTAIN CONTROLLED SUBSTANCES.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Section 31 of chapter 94C of the General Laws, as appearing in the 1992 Official Edition, is hereby amended by striking out the introductory clause and inserting in place thereof the following:— .

(1) For the purposes of establishing criminal penalties for violation of a provision of this chapter, there are established the following five classes of controlled substances:.

SECTION 2. Said section 31 of said chapter 94C, as so appearing, is hereby amended by adding the following subsections:—

(2) For the purposes of establishing criminal penalties for violation of a provision of this chapter, a controlled substance shall be deemed to include its controlled substance analog which shall be treated the same as the controlled substance of which it is an analog.

(3) For purposes of this section, the term "controlled substance analog" shall, except as provided in subsection (4), mean: (i) a substance the chemical structure of which is substantially similar to the chemical structure of a controlled substance classified in this section; or (ii) a substance which has, is represented as having, or is intended to have a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucino-

genic effect on the central nervous system of a controlled substance classified in this section.

(4) The term "controlled substance analog" shall not include any of the following:

(a) Any substance for which there is an approved new drug application as defined under Section 505 of the federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 355) or which is generally recognized as safe and effective for use pursuant to Sections 501, 502, and 503 of the federal Food, Drug, and Cosmetic Act (21 S.C. Secs. 351, 352, and 353) and 21 C.F.R. Section 330, et seq.

(b) With respect to a particular person, any substance for which an exemption is in effect for investigational use for that person under Section 505 of the federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 355), to the extent that the conduct with respect to that substance is pursuant to the exemption.

(c) Any substance, before an exemption as specified in clause (b) takes effect with respect to the substance, to the extent the substance is not intended for human consumption.

SECTION 3. Said chapter 94C is hereby further amended by inserting after section 32K, the following section:—

Section 32L. (a) Any person who possesses for sale, offers for sale, sells, manufactures or transports, imports or exports both methylamine and phenyl-2-propanone (phenylacetone) at the same time with the intent to manufacture methamphetamine, or who possesses for sale, offers for sale, sells, manufactures or transports, imports or exports both ethylamine and phenyl-2; propanone (phenylacetone) at the same time with the intent to manufacture N-ethylamphetamine shall be punished by imprisonment in the state prison for not less than three years nor more than five years.

(b) Any person who possesses for sale, offers for sale, sells, manufactures, or transports, imports or exports at the same time any of the following combinations, or a combination product thereof: (i) Peperidine and cyclohexanone; (ii) Pyrrolidine and cyclohexanone; (iii) Morpholine and cyclohexanone; with intent to manufacture phencyclidine (PCP) or any of its analogs shall be

punished by imprisonment in the state prison for not less than three years nor more than five years.

(c) Any person who possesses for sale, offers for sale, sells, manufactures, or transports, imports or exports any of the following combinations, or a combination product thereof:

(i) Ephedrine, pseudoephedrine, norpseudoephedrine, or N-methylephedrine, N-ethylephedrine, N-methylpseudoephedrine, N-ethylpseudoephedrine, or phenylpropanolamine, plus hydriotic acid;

(ii) Ephedrine, pseudoephedrine, norpseudoephedrine, N-methylephedrine, N-ethylephedrine, N-methylpseudoephedrine, N-ethylpseudoephedrine, phenylpro-panolamine, thionyl chloride and hydrogen gas;

(iii) Ephedrine, pseudoephedrine, norpseudoephedrine, N-methylephedrine, N-ethylephedrine, N-methylpseudoephedrine, N-ethylpseudoephedrine or phenylpropanolamine, plus phosphorous pentachloride and hydrogen gas;

(iv) Ephedrine, pseudoephedrine, norpseudoephedrine, N-methylephedrine, N-ethylephedrine, N-methylpseudoephedrine, N-ethylpseudoephedrine, chlorephedrine and chloropseudoephedrine, or phenylpropanolamine, plus any "reducing" agent, with intent to manufacture methamphetamine or any of its analogs shall be punished by imprisonment in the state prison or not less than three years nor more than five years.

(d) For purposes of this section, "reducing" means a chemical reaction in which hydrogen combines with another substance or in which oxygen is removed from a substance.

(e) For purposes of this section, possession of the optical, positional, or geometric isomer of any of the compounds listed in this section shall be deemed to be possession of the derivative substance.

(f) For purposes of this section, possession of immediate precursors sufficient for the manufacture of methylamine, ethylamine, phenyl-2-propanone , piperidine , cyclohexanone , pyrrolidine, morpholine, ephedrine, pseudoephedrine, norpseudophedrine, N-methylephedrine, N-ethylephedrine, phenylpropanolamine, hydriotic acid, thionyl chloride, or phosphorus pentachloride shall be deemed to be possession of such a derivative substance. Additionally, possession of any compound or mix-

58 ture containing piperidine, cyclohexanone, pyrrolidine, or
59 morpholine, ephedrine, pseudoephedrine, norpseudoephedrine,
60 N-methylephedrine, N-ethylephedrine, phenylpropanolamine,
61 hydriotic acid, thionyl chloride, or phosphorus pentachloride
62 shall be deemed to be possession of the substance.
63 (g) Subsections (a), (b), (c), (e), and (f) shall not apply to drug
64 manufacturers licensed by the commonwealth or persons autho-
65 rized by law to possess such substances or combinations of sub-
66 stances.
67 The board of registration in pharmacy, in consultation with the
68 commissioner, shall promulgate regulations to authorize such per-
69 sons to possess any combinations of substances specified in sub-
70 section (a) or (b) as it determines need and will use such
71 substance for a lawful purpose.
72 Section 32L. (a) Any manufacturer, wholesaler, retailer, or
73 other person who sells, transfers, or otherwise furnishes any of the
74 following substances to any person in the commonwealth shall
75 submit a report to the commissioner of all of such transactions:
76 (1) Phenyl-2-propanone.
77 (2) Methylamine.
78 (3) Ethylamine.
79 (4) D-lysergic acid.
80 (5) Ergotamine tartrate.
81 (6) Diethyl malonate.
82 (7) Malonic acid .
83 (8) Ethyl malonate.
84 (9) Barbituric acid.
85 (10) Piperidine.
86 (11) N-acetylanthranilic acid.
87 (12) Pyrolidine.
88 (13) Phenylacetic acid.
89 (14) Anthranilic acid.
90 (15) Morpholine.
91 (16) Ephedrine.
92 (17) Pseudoephedrine.
93 (18) Norpseudoephedrine.
94 (19) Phenylpropanolamine.
95 (20) Propionic anhydride.
96 (21) Isosafrole.

97 (22) Safrole.
98 (23) Piperonal.
99 (24) Thionylchloride.
100 (25) Benzyl cyanide.
101 (26) Ergonovine maleate.
102 (27) N-methylephedrine.
103 (28) N-ethylephedrine.
104 (29) N-methpseudoephedrine.
105 (30) N-ethylpseudoephedrine.
106 (31) Chloroephedrine.
107 (32) Chloropseudoephedrine.
108 Said report should contain, at the least, the following
109 information:
110 (a) name of the substance.
111 (b) quantity of the substance sold, transferred, or furnished.
112 (c) the date the substance was sold, transferred, or furnished.
113 (d) the name and address of the person buying or receiving
114 such substance.
115 (e) the name and address of the manufacturer, wholesaler or
116 other person selling, transferring, or furnishing such substance.
117 (f) name of the common carrier or person who transports the
118 substance and date of shipment thereof.
119 No manufacturer, wholesaler, retailer, or other person shall sell,
120 transfer, or otherwise furnish any of the substances listed in this
121 subsection with knowledge or the intent that the recipient will use
122 the substance to unlawfully manufacture a controlled substance.
123 (b) Any manufacturer, wholesaler, retailer, or other person
124 shall, prior to selling, transferring, or otherwise furnishing any
125 substance specified in subsection (a) to a person in the common-
126 wealth, require proper identification from the purchaser.
127 For the purposes of this subsection "proper identification" shall
128 mean a motor vehicle operator's license or other official state-
129 issued identification of the purchaser which contains a photograph
130 of the purchaser, and includes the residential or mailing address of
131 the purchaser, other than a post office box number, the motor
132 vehicle license number of any motor vehicle owned or operated
133 by the purchaser, a letter of authorization front the business for
134 which any substance specified in subsection (a) is being fur-
135 nished, which includes the business license number and address of

136 the business, a full description of how the substance is to be used,
137 and the signature of the purchaser. The person selling, transfer-
138 ring, or otherwise furnishing any substance specified in subsec-
139 tion(a) shall affix his or her signature as a witness to the signature
140 and identification of the purchaser.
141 (c) Any manufacturer, wholesaler, retailer, or other person who
142 sells, transfers, or otherwise furnishes a substance specified in
143 subsection (a) to a person in the commonwealth shall, not less
144 than 21 days prior to delivery of the substance, submit a report of
145 the transaction, which includes the identification information
146 specified in subsection (b), to the commissioner; provided, how-
147 ever, the commissioner may authorize the submission of the
148 reports on a monthly basis with respect to repeated, regular trans-
149 actions between the furnisher and the recipient involving the same
150 substance if the commissioner determines that:
151 (i) A pattern of regular supply of the substance exists between
152 the manufacturer, wholesaler, retailer, or other person who sells,
153 transfers, or otherwise furnishes such substance and the recipient
154 of the substance; or
155 (ii) The recipient has established a record of utilization of the
156 substance for lawful purposes.
157 (d) The theft or loss of any substance regulated pursuant to this
158 section discovered by any licensee or any person regulated by the
159 provisions of this chapter shall be reported to the commissioner
160 within three days after such discovery.
161 Any difference between the quantity of any substance regulated
162 pursuant to this section received and the quantity shipped shall be
163 reported to the commissioner within three days of the receipt of
164 actual knowledge of the discrepancy.
165 (e) No person shall knowingly make a false statement in con-
166 nection with any report required under this section.
167 The commissioner shall promulgate rules and regulations to
168 implement the provisions of this section.
169 (f) This section shall not apply to any of the following:
170 (1) Any pharmacist or other authorized person who sells or fur-
171 nishes such substance upon the prescription of a physician, den-
172 tist, podiatrist, or veterinarian.
173 (2) Any physician, dentist, podiatrist, or veterinarian who
174 administers or furnishes such substance to his patients.

175 (3) Any manufacturer or wholesaler licensed by the board of
176 registration in pharmacy who sells, transfers, or otherwise fur-
177 nishes a substance to a licensed pharmacy, physician, dentist,
178 podiatrist, or veterinarian.
179 (4) Any sale, transfer, furnishing, or receipt of any drug which
180 contains ephedrine, pseudoephedrine, norpseudoephedrine, or
181 phenylpropanolamine and which is lawfully sold, transferred, or
182 furnished, over the counter without a prescription pursuant to the
183 federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 301, et
184 seq.) or regulations adopted thereunder.
185 (g) Any person who violates any provision of this section shall
186 for the first offense be punished by imprisonment for not more
187 than one year, or by a fine of not more than five thousand dollars,
188 or both, and for a second or subsequent offense by imprisonment
189 in the state prison for less than four years, or by a fine of not more
190 than one hundred thousand dollars, or both.