

103D CONGRESS
1ST SESSION

S. 1767

AN ACT

To amend the Comprehensive Drug Abuse Prevention and Control Act of 1970 to control the distribution of certain chemicals used in the illicit production of controlled substances such as methcathinone and methamphetamine, and for other purposes.

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AN ACT

To amend the Comprehensive Drug Abuse Prevention and Control Act of 1970 to control the diversion of certain chemicals used in the illicit production of controlled substances such as methcathinone and methamphetamine, 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Domestic Chemical Di-
3 version Control Act of 1993”.

4 **SEC. 2. DEFINITION AMENDMENTS.**

5 (a) DEFINITIONS.—Section 102 of the Controlled
6 Substances Act (21 U.S.C. 802) is amended—

7 (1) in paragraph (33), by striking “any listed
8 precursor chemical or listed essential chemical” and
9 inserting “any list I chemical or any list II chemi-
10 cal”;

11 (2) in paragraph (34)—

12 (A) by striking “listed precursor chemical”
13 and inserting “list I chemical”; and

14 (B) by striking “critical to the creation”
15 and inserting “important to the manufacture”;

16 (3) in paragraph (34) (A), (F), and (H), by in-
17 serting “, its esters,” before “and”;

18 (4) in paragraph (35)—

19 (A) by striking “listed essential chemical”
20 and inserting “list II chemical”;

21 (B) by inserting “(other than a list I
22 chemical)” before “specified”; and

23 (C) by striking “as a solvent, reagent, or
24 catalyst”; and

25 (5) in paragraph (38), by inserting “or who
26 acts as a broker or trader for an international trans-

1 action involving a listed chemical, a tableting ma-
2 chine, or an encapsulating machine” before the pe-
3 riod;

4 (6) in paragraph (39)(A)—

5 (A) by striking “importation or exportation
6 of” and inserting “importation, or exportation
7 of, or an international transaction involving
8 shipment of,”;

9 (B) in clause (iii) by inserting “or any cat-
10 egory of transaction for a specific listed chemi-
11 cal or chemicals” after “transaction”;

12 (C) by amending clause (iv) to read as fol-
13 lows:

14 “(iv) any transaction in a listed chemical
15 that is contained in a drug that may be mar-
16 keted or distributed lawfully in the United
17 States under the Federal Food, Drug, and Cos-
18 metic Act (21 U.S.C. 301 et seq.) unless—

19 “(I)(aa) the drug contains ephedrine
20 or its salts, optical isomers, or salts of op-
21 tical isomers as the only active medicinal
22 ingredient or contains ephedrine or its
23 salts, optical isomers, or salts of optical
24 isomers and therapeutically insignificant

1 quantities of another active medicinal in-
2 gredient; or

3 “(bb) the Attorney General has deter-
4 mined under section 204 that the drug or
5 group of drugs is being diverted to obtain
6 the listed chemical for use in the illicit pro-
7 duction of a controlled substance; and

8 “(II) the quantity of ephedrine or
9 other listed chemical contained in the drug
10 included in the transaction or multiple
11 transactions equals or exceeds the thresh-
12 old established for that chemical by the At-
13 torney General.”; and

14 (D) in clause (v), by striking the semicolon
15 and inserting “which the Attorney General has
16 by regulation designated as exempt from the
17 application of this title and title III based on a
18 finding that the mixture is formulated in such
19 a way that it cannot be easily used in the illicit
20 production of a controlled substance and that
21 the listed chemical or chemicals contained in
22 the mixture cannot be readily recovered;”;

23 (7) in paragraph (40), by striking “listed pre-
24 cursor chemical or a listed essential chemical” each

1 place it appears and inserting “list I chemical or a
2 list II chemical”; and

3 (8) by adding at the end the following new
4 paragraphs:

5 “(42) The term ‘international transaction’ means a
6 transaction involving the shipment of a listed chemical
7 across an international border (other than a United States
8 border) in which a broker or trader located in the United
9 States participates.

10 “(43) The terms ‘broker’ and ‘trader’ mean a person
11 that assists in arranging an international transaction in
12 a listed chemical by—

13 “(A) negotiating contracts;

14 “(B) serving as an agent or intermediary; or

15 “(C) bringing together a buyer and seller, a
16 buyer and transporter, or a seller and transporter.”.

17 (b) REMOVAL OF EXEMPTION OF CERTAIN DRUGS.—

18 (1) PROCEDURE.—Part B of the Controlled
19 Substances Act (21 U.S.C. 811 et seq.) is amended
20 by adding at the end the following new section:

21 “REMOVAL OF EXEMPTION OF CERTAIN DRUGS

22 “SEC. 204. (a) REMOVAL OF EXEMPTION.—The At-
23 torney General shall by regulation remove from exemption
24 under section 102(39)(A)(iv) a drug or group of drugs
25 that the Attorney General finds is being diverted to obtain

1 a listed chemical for use in the illicit production of a con-
2 trolled substance.

3 “(b) FACTORS TO BE CONSIDERED.—In removing a
4 drug or group of drugs from exemption under subsection
5 (a), the Attorney General shall consider, with respect to
6 a drug or group of drugs that is proposed to be removed
7 from exemption—

8 “(1) the scope, duration, and significance of the
9 diversion;

10 “(2) whether the drug or group of drugs is for-
11 mulated in such a way that it cannot be easily used
12 in the illicit production of a controlled substance;
13 and

14 “(3) whether the listed chemical can be readily
15 recovered from the drug or group of drugs.

16 “(c) SPECIFICITY OF DESIGNATION.—The Attorney
17 General shall limit the designation of a drug or a group
18 of drugs removed from exemption under subsection (a) to
19 the most particularly identifiable type of drug or group
20 of drugs for which evidence of diversion exists unless there
21 is evidence, based on the pattern of diversion and other
22 relevant factors, that the diversion will not be limited to
23 that particular drug or group of drugs.

24 “(d) REINSTATEMENT OF EXEMPTION WITH RE-
25 SPECT TO PARTICULAR DRUG PRODUCTS.—

1 “(1) REINSTATEMENT.—On application by a
2 manufacturer of a particular drug product that has
3 been removed from exemption under subsection (a),
4 the Attorney General shall by regulation reinstate
5 the exemption with respect to that particular drug
6 product if the Attorney General determines that the
7 particular drug product is manufactured and distrib-
8 uted in a manner that prevents diversion.

9 “(2) FACTORS TO BE CONSIDERED.—In decid-
10 ing whether to reinstate the exemption with respect
11 to a particular drug product under paragraph (1),
12 the Attorney General shall consider—

13 “(A) the package sizes and manner of
14 packaging of the drug product;

15 “(B) the manner of distribution and adver-
16 tising of the drug product;

17 “(C) evidence of diversion of the drug
18 product;

19 “(D) any actions taken by the manufac-
20 turer to prevent diversion of the drug product;
21 and

22 “(E) such other factors as are relevant to
23 and consistent with the public health and safe-
24 ty, including the factors described in subsection
25 (b) as applied to the drug product.

1 “(3) STATUS PENDING APPLICATION FOR REIN-
2 STATEMENT.—A transaction involving a particular
3 drug product that is the subject of a bona fide pend-
4 ing application for reinstatement of exemption filed
5 with the Attorney General not later than 60 days
6 after a regulation removing the exemption is issued
7 pursuant to subsection (a) shall not be considered to
8 be a regulated transaction if the transaction occurs
9 during the pendency of the application and, if the
10 Attorney General denies the application, during the
11 period of 60 days following the date on which the
12 Attorney General denies the application, unless—

13 “(A) the Attorney General has evidence
14 that, applying the factors described in sub-
15 section (b) to the drug product, the drug prod-
16 uct is being diverted; and

17 “(B) the Attorney General so notifies the
18 applicant.

19 “(4) AMENDMENT AND MODIFICATION.—A reg-
20 ulation reinstating an exemption under paragraph
21 (1) may be modified or revoked with respect to a
22 particular drug product upon a finding that—

23 “(A) applying the factors described in sub-
24 section (b) to the drug product, the drug prod-
25 uct is being diverted; or

1 “(B) there is a significant change in the
2 data that led to the issuance of the regula-
3 tion.”.

4 (2) CLERICAL AMENDMENT.—The table of con-
5 tents of the Comprehensive Drug Abuse Prevention
6 and Control Act of 1970 (84 Stat. 1236) is amended
7 by adding at the end of that portion relating to part
8 B of title II the following new item:

 “Sec. 204. Removal of exemption of certain drugs.”.

9 (c) REGULATION OF LISTED CHEMICALS.—Section
10 310 of the Controlled Substances Act (21 U.S.C. 830) is
11 amended—

12 (1) in subsection (a)(1)—

13 (A) by striking “precursor chemical” and
14 inserting “list I chemical”; and

15 (B) in subparagraph (B), by striking “an
16 essential chemical” and inserting “a list II
17 chemical”; and

18 (2) in subsection (c)(2)(D), by striking “precur-
19 sor chemical” and inserting “chemical control”.

20 **SEC. 3. REGISTRATION REQUIREMENTS.**

21 (a) RULES AND REGULATIONS.—Section 301 of the
22 Controlled Substances Act (21 U.S.C. 821) is amended
23 by striking the period and inserting “and to the registra-
24 tion and control of regulated persons and of regulated
25 transactions.”.

1 (b) PERSONS REQUIRED TO REGISTER UNDER SEC-
2 TION 302.—Section 302 of the Controlled Substances Act
3 (21 U.S.C. 822) is amended—

4 (1) in subsection (a)(1), by inserting “or list I
5 chemical” after “controlled substance” each place it
6 appears;

7 (2) in subsection (b)—

8 (A) by inserting “or list I chemicals” after
9 “controlled substances”; and

10 (B) by inserting “or chemicals” after
11 “such substances”;

12 (3) in subsection (c), by inserting “or list I
13 chemical” after “controlled substance” each place it
14 appears; and

15 (4) in subsection (e), by inserting “or list I
16 chemicals” after “controlled substances”.

17 (c) REGISTRATION REQUIREMENTS UNDER SECTION
18 303.—Section 303 of the Controlled Substances Act (21
19 U.S.C. 823) is amended by adding at the end the following
20 new subsection:

21 “(h) The Attorney General shall register an applicant
22 to distribute a list I chemical unless the Attorney General
23 determines that registration of the applicant is inconsis-
24 tent with the public interest. Registration under this sub-
25 section shall not be required for the distribution of a drug

1 product that is exempted under section 102(39)(A)(iv). In
2 determining the public interest for the purposes of this
3 subsection, the Attorney General shall consider—

4 “(1) maintenance by the applicant of effective
5 controls against diversion of listed chemicals into
6 other than legitimate channels;

7 “(2) compliance by the applicant with applica-
8 ble Federal, State, and local law;

9 “(3) any prior conviction record of the appli-
10 cant under Federal or State laws relating to con-
11 trolled substances or to chemicals controlled under
12 Federal or State law;

13 “(4) any past experience of the applicant in the
14 manufacture and distribution of chemicals; and

15 “(5) such other factors as are relevant to and
16 consistent with the public health and safety.”.

17 (d) DENIAL, REVOCATION, OR SUSPENSION OF REG-
18 ISTRATION.—Section 304 of the Controlled Substances
19 Act (21 U.S.C. 824) is amended—

20 (1) in subsection (a)—

21 (A) by inserting “or a list I chemical”
22 after “controlled substance” each place it ap-
23 pears; and

24 (B) by inserting “or list I chemicals” after
25 “controlled substances”;

1 (2) in subsection (b), by inserting “or list I
2 chemical” after “controlled substance”;

3 (3) in subsection (f), by inserting “or list I
4 chemicals” after “controlled substances” each place
5 it appears; and

6 (4) in subsection (g)—

7 (A) by inserting “or list I chemicals” after
8 “controlled substances” each place it appears;
9 and

10 (B) by inserting “or list I chemical” after
11 “controlled substance” each place it appears.

12 (e) PERSONS REQUIRED TO REGISTER UNDER SEC-
13 TION 1007.—Section 1007 of the Controlled Substances
14 Import and Export Act (21 U.S.C. 957) is amended—

15 (1) in subsection (a)—

16 (A) in paragraph (1), by inserting “or list
17 I chemical” after “controlled substance”; and

18 (B) in paragraph (2), by striking “in
19 schedule I, II, III, IV, or V,” and inserting “or
20 list I chemical,”; and

21 (2) in subsection (b)—

22 (A) in paragraph (1), by inserting “or list
23 I chemical” after “controlled substance” each
24 place it appears; and

1 (B) in paragraph (2), by inserting “or list
2 I chemicals” after “controlled substances”.

3 (f) REGISTRATION REQUIREMENTS UNDER SECTION
4 1008.—Section 1008 of the Controlled Substances Import
5 and Export Act (21 U.S.C. 958) is amended—

6 (1) in subsection (c)—

7 (A) by inserting “(1)” after “(c)”; and

8 (B) by adding at the end the following new
9 paragraph:

10 “(2)(A) The Attorney General shall register an appli-
11 cant to import or export a list I chemical unless the Attor-
12 ney General determines that registration of the applicant
13 is inconsistent with the public interest. Registration under
14 this subsection shall not be required for the import or ex-
15 port of a drug product that is exempted under section
16 102(39)(A)(iv).

17 “(B) In determining the public interest for the pur-
18 poses of subparagraph (A), the Attorney General shall
19 consider the factors specified in section 303(h).”;

20 (2) in subsection (d)—

21 (A) in paragraph (3), by inserting “or list
22 I chemical or chemicals,” after “substances,”;
23 and

1 (B) in paragraph (6), by inserting “or list
2 I chemicals” after “controlled substances” each
3 place it appears;

4 (3) in subsection (e), by striking “and 307”
5 and inserting “307, and 310”; and

6 (4) in subsections (f), (g), and (h), by inserting
7 “or list I chemicals” after “controlled substances”
8 each place it appears.

9 (g) PROHIBITED ACTS C.—Section 403(a) of the
10 Controlled Substances Act (21 U.S.C. 843(a)) is amend-
11 ed—

12 (1) by amending paragraphs (6) and (7) to
13 read as follows:

14 “(6) to possess any three-neck round-bottom
15 flask, tableting machine, encapsulating machine, or
16 gelatin capsule, or any equipment, chemical, prod-
17 uct, or material which may be used to manufacture
18 a controlled substance or listed chemical, knowing,
19 intending, or having reasonable cause to believe, that
20 it will be used to manufacture a controlled substance
21 or listed chemical in violation of this title or title III;

22 “(7) to manufacture, distribute, export, or im-
23 port any three-neck round-bottom flask, tableting
24 machine, encapsulating machine, or gelatin capsule,
25 or any equipment, chemical, product, or material

1 which may be used to manufacture a controlled sub-
2 stance or listed chemical, knowing, intending, or
3 having reasonable cause to believe, that it will be
4 used to manufacture a controlled substance or listed
5 chemical in violation of this title or title III or, in
6 the case of an exportation, in violation of this title
7 or title III or of the laws of the country to which
8 it is exported;”;

9 (2) by striking the period at the end of para-
10 graph (8) and inserting “; or”; and

11 (3) by adding at the end the following new
12 paragraph:

13 “(9) to distribute, import, or export a list I
14 chemical without the registration required by this
15 title or title III.”.

16 **SEC. 4. REPORTS BY BROKERS AND TRADERS; CRIMINAL**
17 **PENALTIES.**

18 (a) NOTIFICATION, SUSPENSION OF SHIPMENT, AND
19 PENALTIES WITH RESPECT TO IMPORTATION AND EX-
20 PORTATION OF LISTED CHEMICALS.—Section 1018 of the
21 Controlled Substances Import and Export Act (21 U.S.C.
22 971) is amended by adding at the end the following new
23 subsection:

24 “(d) A person located in the United States who is
25 a broker or trader for an international transaction in a

1 listed chemical that is a regulated transaction solely be-
2 cause of that person's involvement as a broker or trader
3 shall, with respect to that transaction, be subject to all
4 of the notification, reporting, recordkeeping, and other re-
5 quirements placed upon exporters of listed chemicals by
6 this title and title II.”.

7 (b) PROHIBITED ACTS A.—Section 1010(d) of the
8 Controlled Substances Import and Export Act (21 U.S.C.
9 960(d)) is amended to read as follows:

10 “(d) A person who knowingly or intentionally—

11 “(1) imports or exports a listed chemical with
12 intent to manufacture a controlled substance in vio-
13 lation of this title or title II;

14 “(2) exports a listed chemical in violation of the
15 laws of the country to which the chemical is ex-
16 ported or serves as a broker or trader for an inter-
17 national transaction involving a listed chemical, if
18 the transaction is in violation of the laws of the
19 country to which the chemical is exported;

20 “(3) imports or exports a listed chemical know-
21 ing, or having reasonable cause to believe, that the
22 chemical will be used to manufacture a controlled
23 substance in violation of this title or title II; or

24 “(4) exports a listed chemical, or serves as a
25 broker or trader for an international transaction in-

1 chemical to a specified country if the Attorney General
2 determines that such notification is not required for effec-
3 tive chemical diversion control. If the notification require-
4 ment is waived, exporters of the listed chemical shall be
5 required to submit to the Attorney General reports of indi-
6 vidual exportations or periodic reports of such exportation
7 of the listed chemical, at such time or times and contain-
8 ing such information as the Attorney General shall estab-
9 lish by regulation.

10 “(3) The Attorney General may by regulation waive
11 the 15-day notification requirement for the importation of
12 a listed chemical if the Attorney General determines that
13 such notification is not necessary for effective chemical di-
14 version control. If the notification requirement is waived,
15 importers of the listed chemical shall be required to submit
16 to the Attorney General reports of individual importations
17 or periodic reports of the importation of the listed chemi-
18 cal, at such time or times and containing such information
19 as the Attorney General shall establish by regulation.”.

20 (b) PROHIBITED ACTS A.—Section 1010(d) of the
21 Controlled Substances Import and Export Act (21 U.S.C.
22 960(d)), as amended by section 4(b) of this Act, is amend-
23 ed—

24 (1) by striking “or” at the end of paragraph

25 (3);

1 (2) by striking the comma at the end of para-
2 graph (4) and inserting a semicolon; and

3 (3) by adding at the end the following new
4 paragraphs:

5 “(5) imports or exports a listed chemical, with
6 the intent to evade the reporting or recordkeeping
7 requirements of section 1018 applicable to such im-
8 portation or exportation by falsely representing to
9 the Attorney General that the importation or expor-
10 tation qualifies for a waiver of the 15-day notifica-
11 tion requirement granted pursuant to section
12 1018(e) (2) or (3) by misrepresenting the actual
13 country of final destination of the listed chemical or
14 the actual listed chemical being imported or ex-
15 ported; or

16 “(6) imports or exports a listed chemical in vio-
17 lation of section 1007 or 1018,”.

18 **SEC. 6. ADMINISTRATIVE INSPECTIONS AND AUTHORITY.**

19 Section 510 of the Controlled Substances Act (21
20 U.S.C. 880) is amended—

21 (1) by amending subsection (a)(2) to read as
22 follows:

23 “(2) places, including factories, warehouses,
24 and other establishments, and conveyances, where
25 persons registered under section 303 (or exempt

1 from registration under section 302(d) or by regula-
2 tion of the Attorney General) or regulated persons
3 may lawfully hold, manufacture, distribute, dispense,
4 administer, or otherwise dispose of controlled sub-
5 stances or listed chemicals or where records relating
6 to those activities are maintained.”; and

7 (2) in subsection (b)(3)—

8 (A) in subparagraph (B), by inserting “,
9 listed chemicals,” after “unfinished drugs”; and

10 (B) in subparagraph (C), by inserting “or
11 listed chemical” after “controlled substance”
12 and inserting “or chemical” after “such sub-
13 stance”.

14 **SEC. 7. THRESHOLD AMOUNTS.**

15 Section 102(39)(A) of the Controlled Substances Act
16 (21 U.S.C. 802(39)(A)), as amended by section 2, is
17 amended by inserting “a listed chemical, or if the Attorney
18 General establishes a threshold amount for a specific listed
19 chemical,” before “a threshold amount, including a cumu-
20 lative threshold amount for multiple transactions”.

21 **SEC. 8. AMENDMENTS TO LIST I.**

22 Section 102(34) of the Controlled Substances Act (21
23 U.S.C. 802(34)) is amended—

24 (1) by striking subparagraphs (O), (U), and
25 (W);

1 (2) by redesignating subparagraphs (P) through
2 (T) as (O) through (S), subparagraph (V) as (T),
3 and subparagraphs (X) and (Y) as (U) and (X), re-
4 spectively;

5 (3) in subparagraph (X), as redesignated by
6 paragraph (2), by striking “(X)” and inserting
7 “(U)”; and

8 (4) by inserting after subparagraph (U), as re-
9 designated by paragraph (2), the following new sub-
10 paragraphs:

11 “(V) benzaldehyde.

12 “(W) nitroethane.”.

13 **SEC. 9. ELIMINATION OF REGULAR SUPPLIER STATUS AND**
14 **CREATION OF REGULAR IMPORTER STATUS.**

15 (a) DEFINITION.—Section 102(37) of the Controlled
16 Substances Act (21 U.S.C. 802(37)) is amended to read
17 as follows:

18 “(37) The term ‘regular importer’ means, with re-
19 spect to a listed chemical, a person that has an established
20 record as an importer of that listed chemical that is re-
21 ported to the Attorney General.”.

22 (b) NOTIFICATION.—Section 1018 of the Controlled
23 Substances Act (21 U.S.C. 971) is amended—

24 (1) in subsection (b)—

1 (A) in paragraph (1) by striking “regular
2 supplier of the regulated person” and inserting
3 “to an importation by a regular importer”; and

4 (B) in paragraph (2)—

5 (i) by striking “a customer or supplier
6 of a regulated person” and inserting “a
7 customer of a regulated person or to an
8 importer”; and

9 (ii) by striking “regular supplier” and
10 inserting “the importer as a regular im-
11 porter”; and

12 (2) in subsection (c)(1) by striking “regular
13 supplier” and inserting “regular importer”.

14 **SEC. 10. REPORTING OF LISTED CHEMICAL MANUFACTUR-**
15 **ING.**

16 Section 310(b) of the Controlled Substances Act (21
17 U.S.C. 830(b)) is amended—

18 (1) by inserting “(1)” after “(b)”;

19 (2) by redesignating paragraphs (1), (2), (3),
20 and (4) as subparagraphs (A), (B), (C), and (D), re-
21 spectively;

22 (3) by striking “paragraph (1)” each place it
23 appears and inserting “subparagraph (A)”;

24 (4) by striking “paragraph (2)” and inserting
25 “subparagraph (B)”;

1 (5) by striking “paragraph (3)” and inserting
2 “subparagraph (C)”; and

3 (6) by adding at the end the following new
4 paragraph:

5 “(2) A regulated person that manufactures a
6 listed chemical shall report annually to the Attorney
7 General, in such form and manner and containing
8 such specific data as the Attorney General shall pre-
9 scribe by regulation, information concerning listed
10 chemicals manufactured by the person. The require-
11 ment of the preceding sentence shall not apply to the
12 manufacture of a drug product that is exempted
13 under section 102(39)(A)(iv).”.

14 **SEC. 11. EFFECTIVE DATE.**

15 This Act and the amendments made by this Act shall
16 take effect on the date that is 120 days after the date
17 of enactment of this Act.

 Passed the Senate November 20 (legislative day, No-
 vember 2), 1993.

 Attest:

Secretary.

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S 1767 ES—4