

Hall of the House of Representatives
83rd General Assembly - Regular Session, 2001
Amendment Form

Subtitle of House Bill No. 1417

"AN ACT TO MAKE PSEUDOEPHEDRINE A SCHEDULE V AN EXEMPT DRUG."

Amendment No. 2 to House Bill No. 1417.

Amend House Bill No. 1417 as originally introduced:

Add Representatives Hutchi nson, Al tes, Borhauer, Carson, Cowli ng, Magnus, and Rodgers as cosponsors of the bill

AND

Page 1, delete lines 10 and 11 and substitute
"AN ACT TO AMEND VARIOUS SECTIONS OF THE ARKANSAS CODE TO CONTROL THE SALE AND POSSESSI ON OF EPHEDRI NE, PSEUDOEPHEDRI NE, NORPSEUDOEPHEDRI NE AND PHENYLPROPANOLAMI NE; AND FOR OTHER PURPOSES. "

AND

Page 1, delete lines 14 and 15 and substitute
"AN ACT TO AMEND VARIOUS SECTIONS OF THE ARKANSAS CODE TO CONTROL THE SALE AND POSSESSI ON OF EPHEDRI NE, PSEUDOEPHEDRI NE, NORPSEUDOEPHEDRI NE AND PHENYLPROPANOLAMI NE"

AND

Delete Section 1 and substitute
"SECTION 1. Arkansas Code 5-64-1005(d), concerning drugs which are exempt from keeping a record of transactions, is amended to read as follows:
(d) Any sale, transfer, furni shing, or receipt by a retail distributor of any drug which contains any ephedri ne, pseudoephedri ne, norpseudoephedri ne, or phenyl propanol ami ne and which is sold, transferred, or furnished, over the counter without a prescription pursuant to the Federal Food, Drug, and Cosmetic Act or regulations adopted thereunder-, provided that:
(1) The drug is sold in blister packs of not more than three (3) grams of ephedri ne, pseudoephedri ne, or phenyl propanol ami ne base, each blister containing not more than two (2) dosage uni ts;
(2) If the use of a blister pack is techni cally unfeasi ble, the

drug is packaged in unit dose packets or pouches;

(3) In the case of liquids, the drug is sold in package sizes of not more than three (3) grams of ephedrine, pseudoephedrine or phenyl propanolamine base;

(4) The total quantity of the sale is not greater than three (3) packages or nine (9) grams, whichever is smaller; and

SECTION 2. Arkansas Code Title 5, Chapter 64, Subchapter 10 is amended to add an additional section to read as follows:

5-64-1006. Suspicious Order Reports.

(a) Any manufacturer, wholesaler or retail distributor who is required to keep records under this subchapter, and who sells, transfers, or otherwise furnishes ephedrine, pseudoephedrine or phenyl propanolamine, or their salts, optical isomers and salts of optical isomers, alone or in a mixture, to any person in this state in a suspicious transaction shall report the transaction in writing to the State Board of Pharmacy.

(b) Any person who does not submit a report as required by subsection (a) of this section is guilty of a Class D felony.

(c) For the purposes of this section, "suspicious transaction" means a sale or transfer to which either of the following applies:

(1) The circumstances of the sale or transfer would lead a reasonable person to believe that the substance is likely to be used for the purpose of unlawfully manufacturing a controlled substance in violation of the Uniform Controlled Substances Act based on such factors as the amount involved, the method of payment, the method of delivery, and past dealings with the person acquiring the substance; or

(2) The transaction involves payment for ephedrine, pseudoephedrine or phenyl propanolamine, or their salts, optical isomers and salts of optical isomers, alone or in a mixture, in cash or money orders totaling more than two hundred dollars (\$200).

(d)(1) The State Board of Pharmacy shall adopt by rule criteria for determining whether a transaction is suspicious, taking into consideration the recommendations in Appendix A, Report to the United States Attorney General by the Suspicious Orders Task Force, under the federal Comprehensive Methamphetamine Control Act of 1996.

(2) In addition to any other penalties provided for in this section, the State Board of Pharmacy may impose a civil penalty for a violation of subsection (a) of this section not to exceed ten thousand dollars (\$10,000) per violation.

SECTION 3. Arkansas Code 5-64-1101 is amended to read as follows:

5-64-1101. Possession - Penalty.

(a) It shall be unlawful for any person to possess more than five (5) grams of ephedrine, or nine (9) grams of pseudoephedrine or phenyl propanolamine, or their ~~its~~ salts, optical isomers and salts of optical isomers, alone or in a mixture, except:

(1) Any pharmacist or other authorized person who sells or furnishes ephedrine, pseudoephedrine or phenyl propanolamine, their ~~its~~ salts, optical isomers and salts of optical isomers, upon the prescription of a physician, dentist, podiatrist, or veterinarian; or

(2) Without a prescription, pursuant to the Federal Food, Drug, and Cosmetic Act or regulations adopted thereunder provided that the person

possesses a sales and use tax permit issued by the Arkansas Department of Finance and Administration; or

(3) Any physician, dentist, podiatrist, or veterinarian who administers or furnishes ephedrine, pseudoephedrine or phenylpropanolamine, or their ~~its~~ salts, optical isomers and salts of optical isomers to his or her patients; or

(4) Any manufacturer, wholesaler, or distributor licensed by the State Board of Pharmacy who sells, transfers, or otherwise furnishes ephedrine, pseudoephedrine or phenylpropanolamine, or their ~~its~~ salts, optical isomers and salts of optical isomers, to a licensed pharmacy, physician, dentist, podiatrist, veterinarian, or any person who possesses a sales and use tax permit issued by the Arkansas Department of Finance and Administration.

(b) Possession of more than five (5) grams of ephedrine or more than nine (9) grams of pseudoephedrine or phenylpropanolamine, or their salts, optical isomers and salts of optical isomers shall constitute prima facie evidence of the intent to manufacture methamphetamine or another controlled substance in violation of this subchapter, unless the person qualifies for an exemption listed in subsection (a) of this section.

~~(b)~~(c) Any person who violates the provisions of this section shall be guilty of a Class D felony.

SECTION 4. Arkansas Code 5-64-1102 is amended to read as follows:

5-64-1102. Possession with intent to manufacture; Unlawful distribution.

(a)(1) It shall be unlawful for a person to possess ephedrine, pseudoephedrine or phenylpropanolamine, or their salts, optical isomers or salts of optical isomers with intent to manufacture methamphetamine.

(2) Any person who violates the provisions of this ~~section~~ subsection (a) shall be guilty of a Class D felony.

(b)(1) It shall be unlawful for a person to sell, transfer, distribute, or dispense any product containing ephedrine, pseudoephedrine or phenylpropanolamine, or their salts, isomers or salts of isomers if the person knows that the purchaser will use the product as a precursor to manufacture methamphetamine or another controlled substance, or if the person sells, transfers, distributes or dispenses the product with reckless disregard as to how the product will be used.

(2) Any person who violates the provisions of this subsection (b) shall be guilty of a Class D felony.

SECTION 5. Arkansas Code Title 5, Chapter 64, Subchapter 11 is amended to add an additional section to read as follows:

5-64-1103. Retail Sales Limits.

(a) It shall be unlawful for a retail distributor, or an employee thereof, to knowingly sell, transfer, or otherwise furnish, in a single transaction:

(1) More than three (3) packages of one (1) or more products that the distributor or employee knows to contain ephedrine, pseudoephedrine, or phenylpropanolamine, their salts, isomers, or salts of isomers; or

(2) Any single package of any product that the distributor or employee knows to contain ephedrine, pseudoephedrine, or phenylpropanolamine, which contains more than ninety-six (96) pills, tablets, gel caps, capsules,

or other individual units; or more than three (3) grams of ephedrine, pseudoephedrine, or phenylpropanolamine, their salts, isomers, or salts of isomers, or a combination of any of these substances, whichever is smaller.

(3) Any product containing ephedrine, pseudoephedrine or phenylpropanolamine unless:

(A) The product is sold in package sizes of not more than three (3) grams of ephedrine, pseudoephedrine, or phenylpropanolamine base, and is packaged in blister packs, each blister containing not more than two dosage units; or

(B) Where the use of blister packs is technically infeasible, that is packaged in unit dose packets or pouches; or

(C) In the case of liquids, the drug is sold in package sizes of not more than three (3) grams of ephedrine, pseudoephedrine or phenylpropanolamine base.

(4) Any product containing ephedrine, pseudoephedrine or phenylpropanolamine to any person under the age of eighteen (18) years.

(A) The person making the sale shall require proof of age from the purchaser unless from the purchaser's outward appearance the person would reasonably presume the purchaser to be twenty-five (25) years of age or older.

(B) "Proof of age" means any document issued by a governmental agency containing a description of the person, a photograph of the person, or both, and giving the person's date of birth and includes, without being limited to, a passport, military identification card, or driver's license.

(b)(1) Any retail distributor, or employee thereof, who violates subsection (a) of this section, shall be guilty of a Class A misdemeanor, and may also be subject to a civil fine not to exceed five thousand dollars (\$5,000).

(2)(A) The prosecuting attorney may waive any civil penalty under this section, if the retail distributor, or employee thereof, establishes that he or she acted in good faith to prevent violations of this section, and the violations occurred despite the exercise of due diligence.

(B) In making a determination, the prosecuting attorney may consider evidence that an employer trained employees on how to sell, transfer, or otherwise furnish substances specified in this subchapter in accordance with applicable laws.

(c) It shall be unlawful for any person, other than a person or entity described in § 5-64-1101(a)(1) through 5-64-1101(a)(4), to knowingly purchase, acquire or otherwise receive in a single transaction:

(1) More than three (3) packages of one (1) or more products that the person knows to contain ephedrine, pseudoephedrine, or phenylpropanolamine, their salts, isomers, or salts of isomers; or

(2) Any single package of any product that the person knows to contain ephedrine, pseudoephedrine, or phenylpropanolamine, which contains more than ninety-six (96) pills, tablets, gel caps, capsules, or other individual units; or more than three (3) grams of ephedrine, pseudoephedrine, or phenylpropanolamine, their salts, isomers, or salts of isomers, or a combination of any of these substances, whichever is smaller.

(3) Any person who violates the provisions of this subsection (c) of this section shall be guilty of a Class A misdemeanor.

(d) This subchapter shall not apply to products that the State Board

of Pharmacy, upon application of a manufacturer, exempts by rule from this section because the product has been formulated in such a way as to effectively prevent the conversion of the active ingredient into methamphetamine, or its salts or precursors.

(e) For the purposes of this subchapter:

(1) The terms "ephedrine," "pseudoephedrine" and "phenyl propanol amine" mean any drug product containing ephedrine, pseudoephedrine, or phenyl propanol amine or any of their salts, isomers or salts of isomers, alone or in a mixture.

(2) "Retail distributor" means a grocery store, general merchandise store, drugstore, convenience store or other related entity, the activities of which, as a distributor of ephedrine, pseudoephedrine, or phenyl propanol amine products, are limited exclusively to the sale of ephedrine, pseudoephedrine, or phenyl propanol amine products for personal use both in number of sales and volume of sales, either directly to walk-in customers or in face-to-face transactions by direct sales, and includes any person or entity that makes a direct sale or has knowledge of the sale, but does not include any manager, supervisor or owner not present and not otherwise aware of the sale, nor shall it include the parent company of that entity if the company is not involved in direct sales regulated by this subchapter.

(3) "Sale for personal use" means the sale in a single transaction to an individual customer for a legitimate medical use of a product containing ephedrine, pseudoephedrine, or phenyl propanol amine in quantities at or below that specified in subsection (a) of this section, and includes the sale of those products to employers to be dispensed to employees from first-aid kits or medicine chests."

AND

SECTION 6. Emergency It is found and determined by the General Assembly of the State of Arkansas that the methamphetamine problem has become epidemic in the State of Arkansas; that drastic measures are needed to control the sale and possession of large quantities of over-the-counter medicines which contain the necessary ingredients for making methamphetamine; that the public's inconvenience is far outweighed by the necessity of curtailing the illegal production and distribution of methamphetamine; that giving this act immediate effect may spare thousands of Arkansans from the devastation caused from methamphetamine addiction. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.

The Amendment was read _____
By: Representative Judy
PBB/RCK
RTK042 _____ Chief Clerk