

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas

As Enrolled: H1/29/01 H3/5/01 H3/9/01

2 83rd General Assembly

A Bill

3 Regular Session, 2001

HOUSE BILL 1417

4

5 By: Representatives Judy, Shoffner, Trammell, Allison, Hutchinson, Altes, Borhauer, Carson, Cowling,
6 Magnus, Rodgers

7 By: Senators P. Malone, Critcher, Miller

8

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10 For An Act To Be Entitled

11 AN ACT TO AMMEND VARIOUS SECTIONS OF THE ARKANSAS
12 CODE TO CONTROL THE SALE AND POSSESSION OF
13 EPHEDRINE, PSEUDOEPHEDRINE, NORPSEUDOEPHEDRINE
14 AND PHENYLPROPANOLAMINE; AND FOR OTHER PURPOSES.

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Subtitle

17 AN ACT TO AMEND VARIOUS SECTIONS OF THE
18 ARKANSAS CODE TO CONTROL THE SALE AND
19 POSSESSION OF EPHEDRINE, PSEUDOEPHEDRINE,
20 NORPSEUDOEPHEDRINE AND PHENYLPROPANOLAMINE.

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23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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25 SECTION 1. Arkansas Code 5-64-1005(d), concerning drugs which are exempt
26 from keeping a record of transactions, is amended to read as follows:

27 (d) Any sale, transfer, furnishing, or receipt by a retail distributor
28 of any drug which contains any ephedrine, pseudoephedrine, norpseudoephedrine,
29 or phenylpropanolamine and which is sold, transferred, or furnished, over the
30 counter without a prescription pursuant to the Federal Food, Drug, and
31 Cosmetic Act or regulations adopted thereunder-, provided that:

32 (1) The drug is sold in blister packs of not more than three (3)
33 grams of ephedrine, pseudoephedrine, or phenylpropanolamine base, each blister
34 containing not more than two (2) dosage units;

35 (2) If the use of a blister pack is technically unfeasible, the
36 drug is packaged in unit dose packets or pouches;

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

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

6
7 SECTION 2. Arkansas Code Title 5, Chapter 64, Subchapter 10 is amended
8 to add an additional section to read as follows:

9 5-64-1006. Suspicious Order Reports.

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

16 (b) Any person who does not submit a report as required by subsection
17 (a) of this section is guilty of a Class A misdemeanor.

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

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

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

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

35 (2) In addition to any other penalties provided for in this
36 section, the State Board of Pharmacy may impose a civil penalty for a

1 violation of subsection (a) of this section not to exceed ten thousand dollars
2 (\$10,000) per violation.

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

5 5-64-1101. Possession - Penalty.

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

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

14 (2) Without a prescription, pursuant to the Federal Food, Drug,
15 and Cosmetic Act or regulations adopted thereunder provided that the person
16 possesses a sales and use tax permit issued by the Arkansas Department of
17 Finance and Administration; or

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

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

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

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

36

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

2 5-64-1102. Possession with intent to manufacture; Unlawful
3 distribution.

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

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

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

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

18
19 SECTION 5. Arkansas Code Title 5, Chapter 64, Subchapter 11 is amended
20 to add an additional section to read as follows:

21 5-64-1103. Retail Sales Limits.

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

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

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

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

36 (A) The product is sold in package sizes of not more than

1 three (3) grams of ephedrine, pseudoephedrine, or phenylpropanolamine base,
2 and is packaged in blister packs, each blister containing not more than two
3 dosage units; or

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

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

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

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

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

20 (b)(1) Any retail distributor, or employee thereof, who violates
21 subsection (a) of this section, shall be guilty of a Class A misdemeanor, and
22 may also be subject to a civil fine not to exceed five thousand dollars
23 (\$5,000).

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

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

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

35 (1) More than three (3) packages of one (1) or more products that
36 the person knows to contain ephedrine, pseudoephedrine, or

1 phenylpropanolamine, their salts, isomers, or salts of isomers; or

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

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

10 (d) This section shall not apply to:

11 (1) Pediatric products primarily intended for administration to
12 children under twelve (12) years of age, according to label instructions,
13 either:

14 (A) In solid dosage form whose individual dosage units to
15 not exceed recommended dosage, according to label instructions, does not
16 exceed fifteen (15) milligrams of ephedrine, pseudoephedrine, or
17 phenylpropanolamine; or

18 (B) In liquid form whose recommended dosage, according to
19 label instructions, does not exceed fifteen (15) milligrams of ephedrine,
20 pseudoephedrine, or phenylpropanolamine per five (5) milliliters of liquid
21 product;

22 (2) Pediatric liquid products primarily intended for
23 administration to children under two (2) years of age for which the
24 recommended dosage does not exceed two (2) milliliters and the total package
25 content does not exceed one (1) fluid ounce; or

26 (3) Products that the State Board of Pharmacy, upon application
27 of a manufacturer, exempts by rule from this section because the product has
28 been formulated in such a way as to effectively prevent the conversion of the
29 active ingredient into methamphetamine, or its salts or precursors.

30 (e) For the purposes of this subchapter:

31 (1) The terms "ephedrine," "pseudoephedrine" and
32 "phenylpropanolamine" mean any drug product containing ephedrine,
33 pseudoephedrine, or phenylpropanolamine or any of their salts, isomers or
34 salts of isomers, alone or in a mixture.

35 (2) "Retail distributor" means a grocery store, general
36 merchandise store, drugstore, convenience store or other related entity, the

1 activities of which, as a distributor of ephedrine, pseudoephedrine, or
2 phenylpropanolamine products, are limited exclusively to the sale of
3 ephedrine, pseudoephedrine, or phenylpropanolamine products for personal use
4 both in number of sales and volume of sales, either directly to walk-in
5 customers or in face-to-face transactions by direct sales, and includes any
6 person or entity that makes a direct sale or has knowledge of the sale, but
7 does not include any manager, supervisor or owner not present and not
8 otherwise aware of the sale, nor shall it include the parent company of that
9 entity if the company is not involved in direct sales regulated by this
10 subchapter.

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

17
18 (f) Nothing in this section shall prohibit a person under the age of
19 eighteen (18) years from possessing and selling ephedrine, pseudoephedrine, or
20 phenylpropanolamine as an agent of the minor's employer acting within the
21 scope of the minor's employment.

22
23 SECTION 6. This act shall become effective on June 1, 2001.

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25 SECTION 7. Emergency It is found and determined by the General Assembly
26 of the State of Arkansas that the methamphetamine problem has become epidemic
27 in the State of Arkansas; that drastic measures are needed to control the sale
28 and possession of large quantities of over-the-counter medicines which contain
29 the necessary ingredients for making methamphetamine; that the public's
30 inconvenience is far outweighed by the necessity of curtailing the illegal
31 production and distribution of methamphetamine; that giving this act immediate
32 effect may spare thousands of Arkansans from the devastation caused from
33 methamphetamine addiction. Therefore, an emergency is declared to exist and
34 this act being immediately necessary for the preservation of the public peace,
35 health and safety shall become effective on the date of its approval by the
36 Governor. If the bill is neither approved nor vetoed by the Governor, it

1 shall become effective on the expiration of the period of time during which
2 the Governor may veto the bill. If the bill is vetoed by the Governor and the
3 veto is overridden, it shall become effective on the date the last house
4 overrides the veto.

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/s/ Judy, et al.