

1 State of Arkansas
2 88th General Assembly
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4

As Engrossed: S3/2/11 H3/8/11

A Bill

SENATE BILL 437

5 By: Senator P. Malone
6 By: Representatives Tyler, Perry, J. Roebuck
7

For An Act To Be Entitled

9 AN ACT TO CLARIFY THE ROLE OF PHARMACISTS WITH REGARD
10 TO EPHEDRINE, PSEUDOEPHEDRINE, OR
11 PHENYLPROPANOLAMINE; TO IMPROVE THE PROCESS FOR
12 IDENTIFYING PERSONS AUTHORIZED TO PURCHASE EPHEDRINE,
13 PSEUDOEPHEDRINE, OR PHENYLPROPANOLAMINE; TO AUTHORIZE
14 THE ARKANSAS STATE BOARD OF PHARMACY TO PROPOSE
15 ADDITIONS TO THE LIST OF DRUGS SIMILAR TO EPHEDRINE,
16 PSEUDOEPHEDRINE, OR PHENYLPROPANOLAMINE; AND FOR
17 OTHER PURPOSES.

Subtitle

21 AN ACT TO CLARIFY THE ROLE OF PHARMACISTS
22 WITH REGARD TO EPHEDRINE,
23 PSEUDOEPHEDRINE, OR PHENYLPROPANOLAMINE.
24
25

26 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
27

28 *SECTION 1. Arkansas Code § 5-64-212(b), concerning substances in the*
29 *Schedule V designation of controlled substances, is amended to read as*
30 *follows:*

31 *(b) The Schedule V classification does not apply to:*

32 *(1) An exempt product described in § 5-64-1103(b)(1); or*

33 *(2) Any ephedrine or pseudoephedrine in liquid, liquid capsule,*
34 *or liquid gel capsule form described in § 5-64-1103(b)(2); ~~or~~*

35 *~~(3)(A) A product that is dispensed pursuant to a valid~~*
36 *~~prescription that is not restricted to five (5) refills within a six (6)~~*



1 ~~month period.~~

2 ~~(B) A product described in subdivision (b)(3)(A) of this~~
3 ~~section is regulated in the same manner as any nonscheduled prescription drug~~
4 ~~and shall be kept in a container that is supplied by the pharmacy and labeled~~
5 ~~in a manner consistent with any other prescription.~~

6
7 SECTION 2. Arkansas Code § 5-64-1103(a), concerning sales limits on
8 ephedrine and similar drugs, is amended to read as follows:

9 (a) It is unlawful for any person, other than a person or entity
10 described in § 5-64-1101(a)(3) and (4), to knowingly ~~dispense,~~ sell,
11 transfer, or otherwise furnish in a single transaction a product containing
12 ephedrine, pseudoephedrine, or phenylpropanolamine except in a licensed
13 pharmacy by a licensed pharmacist or a registered pharmacy technician.

14
15 SECTION 3. Arkansas Code § 5-64-1103(c) and (d), concerning sales
16 limits on ephedrine and similar drugs, are amended to read as follows:

17 (c)(1)(A) ~~{Repealed.}~~ Except under a valid prescription, before
18 dispensing a product containing ephedrine, pseudoephedrine, or
19 phenylpropanolamine that is not exempt under subdivision (b)(1) or (b)(2) of
20 this section, a pharmacist shall make a professional determination, based on
21 a pharmacist-patient relationship, as to whether or not there is a legitimate
22 medical and pharmaceutical need for the drug.

23 (B) The determination under subdivision (c)(1)(A) of this
24 section may be based on factors including without limitation:

25 (i) Prior medication-filling history;

26 (ii) Patient screening; and

27 (iii) Other tools that provide professional
28 reassurance to the pharmacist that a legitimate medical and pharmaceutical
29 need exists.

30 (2) The Arkansas State Board of Pharmacy may:

31 (A) Adopt rules regarding determinations made under
32 subdivision (c)(1) of this section;

33 (B) Review determinations made under subdivision (c)(1) of
34 this section; and

35 (C) Take appropriate disciplinary action as required.

36 (d) ~~Unless pursuant to~~ Except under a valid prescription, it is

1 unlawful for a licensed pharmacist to dispense or a registered pharmacy
2 technician to knowingly ~~dispense~~, sell, transfer, or otherwise furnish in a
3 single transaction:

4 (1) More than three (3) packages of one (1) or more products
5 that contain ephedrine, pseudoephedrine, or phenylpropanolamine, or their
6 salts, isomers, or salts of isomers;

7 (2) Any single package of any product that contains ephedrine,
8 pseudoephedrine, or phenylpropanolamine, that contains more than ninety-six
9 (96) pills, tablets, gelcaps, capsules, or other individual units or more
10 than three grams (3 g) of ephedrine, pseudoephedrine, or phenylpropanolamine,
11 or their salts, isomers, or salts of isomers, or a combination of any of
12 these substances, whichever is smaller;

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

15 (A) The product is sold in a package size of not more than
16 three grams (3 g) of ephedrine, pseudoephedrine, or phenylpropanolamine base
17 and is packaged in a blister pack, each blister containing not more than two
18 (2) dosage units;

19 (B) When the use of a blister pack is technically
20 infeasible, that is packaged in a unit dose packet or pouch; or

21 (C) In the case of a liquid, the drug is sold in a package
22 size of not more than three grams (3 g) of ephedrine, pseudoephedrine, or
23 phenylpropanolamine base; or

24 (4)(A) Any product containing ephedrine, pseudoephedrine, or
25 phenylpropanolamine to any person under eighteen (18) years of age, unless
26 the person is purchasing an exempt product under subdivision (b)(1) or (2) of
27 this section.

28 (B) The person making the sale shall require proof of age
29 from the purchaser, ~~unless from the purchaser's outward appearance the person~~
30 ~~would reasonably presume the purchaser to be twenty five (25) years of age or~~
31 ~~older.~~

32
33 SECTION 4. Arkansas Code § 5-64-1105(2), concerning the definitions of
34 proof of age and proof of identity, is amended to read as follows:

35 (2)(A) "Proof of age" and "proof of identity" means ~~any document~~
36 a driver's license or identification card issued by a governmental agency the

1 Department of Finance and Administration or an identification card issued by
2 the United States Department of Defense to active duty military personnel
3 ~~that contains a description of the person or a photograph of the person, or~~
4 ~~both, and gives the person's date of birth, and a functioning magnetic stripe~~
5 ~~or bar code.~~

6 ~~(B) "Proof of age" and "proof of identity" includes~~
7 ~~without limitation, a passport, military identification card, or driver's~~
8 ~~license;~~

9
10 SECTION 5. Arkansas Code § 5-64-1111 is amended to read as follows:

11 5-64-1111. Liability of pharmacy or pharmacist.

12 (a) A pharmacy in this state is not liable civilly for a sale of
13 ephedrine, pseudoephedrine, or phenylpropanolamine that occurs at another
14 pharmacy in this state.

15 (b) A pharmacy or pharmacist is not civilly liable for a determination
16 made under § 5-64-1103(c) or for any refusal to dispense, sell, transfer, or
17 otherwise furnish ephedrine, pseudoephedrine, or phenylpropanolamine based on
18 a determination of age or identity.

19
20 SECTION 6. Arkansas Code Title 5, Chapter 64, Subchapter 11 is amended
21 to add an additional section to read as follows:

22 5-64-1113. Pharmacist-authorized drugs.

23 (a) The Arkansas State Board of Pharmacy may adopt rules adding to a
24 list additional nonprescription drugs that are subject to the same
25 restrictions as are imposed for ephedrine, pseudoephedrine, or
26 phenylpropanolamine under § 5-64-1103(c) and (d)(4) and § 5-64-1104.

27 (b) A pharmacy or a pharmacist has the same immunity from civil
28 liability with regard to actions regarding non-prescription drugs under
29 subsection (a) of this section as is provided under § 5-64-1111 for actions
30 concerning ephedrine, pseudoephedrine, or phenylpropanolamine.

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32 /s/P. Malone

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35 APPROVED: 03/23/2011