

ARKANSAS SENATE

88th General Assembly - Regular Session, 2011

Amendment Form

Subtitle of Senate Bill No. 437

AN ACT TO CLARIFY THE ROLE OF PHARMACISTS WITH REGARD TO EPHEDRINE,
PSEUDOEPHEDRINE, OR PHENYLPROPANOLAMINE.

Amendment No. 1 to Senate Bill No. 437

Amend Senate Bill No. 437 as originally introduced:

Delete everything after the enacting clause and substitute the following:

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

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

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

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

~~(3)(A) A product that is dispensed pursuant to a valid prescription that is not restricted to five (5) refills within a six (6) month period.~~

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

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

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

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

(c)(1)(A) ~~{Repealed.}~~ Except under a valid prescription, before dispensing a product containing ephedrine, pseudoephedrine, or phenylpropanolamine that is not exempt under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



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

(i) Prior medication-filling history;

(ii) Patient screening; and

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

(2) The Arkansas State Board of Pharmacy may:

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

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

(C) Take appropriate disciplinary action as required.

(d) ~~Unless pursuant to~~ Except under a valid prescription, it is unlawful for a licensed pharmacist to dispense or a registered pharmacy technician to knowingly ~~dispense~~, sell, transfer, or otherwise furnish in a single transaction:

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

(2) Any single package of any product that contains ephedrine, pseudoephedrine, or phenylpropanolamine, that contains more than ninety-six (96) pills, tablets, gelcaps, capsules, or other individual units or more than three grams (3 g) of ephedrine, pseudoephedrine, or phenylpropanolamine, or 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 a package size of not more than three grams (3 g) of ephedrine, pseudoephedrine, or phenylpropanolamine base and is packaged in a blister pack, each blister containing not more than two (2) dosage units;

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

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

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

(B) 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.~~

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

(2)(A) "Proof of age" and "proof of identity" means ~~any document a driver's license or identification card issued by a governmental agency the Department of Finance and Administration that contains a description of the~~

~~person or a photograph of the person, or both, and gives the person's date of birth, and a functioning magnetic stripe or bar code.~~

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

SECTION 5. Arkansas Code § 5-64-1111 is amended to read as follows:
5-64-1111. Liability of pharmacy or pharmacist.

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

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

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

5-64-1113. Pharmacist-authorized drugs.

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

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

The Amendment was read the first time, rules suspended and read the second time and _____

By: Senator P. Malone
MGF/CDS - 03/01/11 12:13
MGF274

Secretary