

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
2 85th General Assembly
3 Regular Session, 2005
4

As Engrossed: H4/1/05 H4/4/05

A Bill

HOUSE BILL 2970

5 *By: Representatives Norton, Dunn, Bolin*
6 *By: Senator Laverty*
7
8

For An Act To Be Entitled

10 AN ACT TO REQUIRE DISCLOSURE OF CERTAIN
11 PHARMACEUTICAL MARKETING PRACTICES; TO EXEMPT
12 DISTRIBUTOR WAREHOUSES FROM ACT 256 OF 2005; AND
13 FOR OTHER PURPOSES.
14

Subtitle

15 TO REQUIRE DISCLOSURE OF CERTAIN
16 PHARMACEUTICAL MARKETING PRACTICES.
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20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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22 *SECTION 1. Arkansas Code § 5-64-212, as amended by Act 256 of 2005 and*
23 *pertaining to exemptions to Schedule V requirements, is amended to add a new*
24 *subsection as follows:*

25 *(e) A wholesaler with a distribution center in Arkansas shall be*
26 *exempt from Schedule V requirements for the storage and distribution of*
27 *ephedrine, pseudoephedrine, and phenylpropanolamine if the wholesaler:*

28 *(1) Is engaged in interstate business with a retail distributor*
29 *or wholesaler located in a state in which ephedrine, pseudoephedrine, and*
30 *phenylpropanolamine may be sold legally; and*

31 *(2) Possesses a limited Schedule V license issued under § 20-64-*
32 *501 et seq.*
33

34 *SECTION 2. Arkansas Code § 5-64-1101(a)(4) as amended by Act 256 of*
35 *2005 and pertaining to possession limitations for ephedrine and*
36 *pseudoephedrine, is amended to read as follows:*



1 (4)(A) Any manufacturer, wholesaler, or distributor licensed by
2 the Arkansas State Board of Pharmacy who meets one (1) of the requirements in
3 subdivision (a)(4)(B) of this section and sells, transfers, or otherwise
4 furnishes ephedrine, pseudoephedrine, or phenylpropanolamine or their salts,
5 optical isomers, and salts of optical isomers to:

6 (i) A a licensed pharmacy, physician, dentist,
7 podiatrist, veterinarian, or other healthcare professional with prescriptive
8 authority, ~~or any;~~

9 (ii) Any person who possesses a sales and use tax
10 permit issued by the department who is permitted to sell products described
11 in § 5-64-1103(b)(1) and (2); or

12 (iii) A retail distributor or wholesaler located in
13 a state in which ephedrine, pseudoephedrine, and phenylpropanolamine may be
14 sold legally.

15 (B)(i) The manufacturer, wholesaler, or distributor must
16 hold or store the substances in facilities that meet the packaging
17 requirements of § 5-64-1005(d)(1)-(3);

18 (ii) The manufacturer, wholesaler, or distributor
19 must sell, transfer, or otherwise furnish only to healthcare professionals
20 identified in subdivisions (a)(1) and (3) of this section; or

21 (iii) The wholesaler or distributor:

22 (a) Sells, transfers, or otherwise furnishes
23 ephedrine, pseudoephedrine, or phenylpropanolamine only to a retail
24 distributor or wholesaler who is located in a state in which ephedrine,
25 pseudoephedrine, and phenylpropanolamine may be sold legally; and

26 (b) Holds or stores ephedrine,
27 pseudoephedrine, or phenylpropanolamine in facilities that meet the packaging
28 requirements of § 5-64-1005(d)(1) and (2).

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30 SECTION 3. Arkansas Code Title 20, Chapter 64, Subchapter 5, is
31 amended to add a new section as follows:

32 20-64-514. Limited Schedule V license for wholesale distributors.

33 (a)(1) As used in this section, "ephedrine, pseudoephedrine, and
34 phenylpropanolamine" means any product containing ephedrine, pseudoephedrine,
35 or phenylpropanolamine or any of their salts, isomers, or salts of isomers,
36 alone or in a mixture.

1 (2) “Ephedrine, pseudoephedrine, and phenylpropanolamine” does
2 not mean:

3 (A) Exempt products described in § 5-64-1103(b)(1); or

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

6 (b) A wholesaler with a distribution center located in Arkansas who
7 makes interstate sales of goods into a state in which ephedrine,
8 pseudoephedrine, and phenylpropanolamine may be sold legally may apply to the
9 Arkansas State Board of Pharmacy for a license limited to ephedrine,
10 pseudoephedrine, and phenylpropanolamine.

11 (c) The board may consider the following conditions for license
12 eligibility:

13 (1) That the applicant is actively engaged in the interstate
14 sale of grocery or pharmaceutical items;

15 (2) That the applicant holds a List I chemical registration in
16 good standing issued by the Drug Enforcement Administration;

17 (3) That the applicant’s sales are not predominately ephedrine,
18 pseudoephedrine, or phenylpropanolamine either separately or in conjunction
19 with other items associated with the illegal manufacture of methamphetamine
20 or other controlled substances;

21 (4)(A) That the applicant or the applicant’s customers do not
22 have a history of diverting, or failing to guard against the diversion of,
23 ephedrine, pseudoephedrine, or phenylpropanolamine or other products used in
24 manufacturing illegal drugs.

25 (B) The diversion history may include settlements with or
26 without admission of liability or violation of law or rules with any federal
27 or state authority concerning alleged violations of law or rules applicable
28 to controlled substances or chemicals contained on List I of the Drug
29 Enforcement Administration;

30 (5) That the applicant:

31 (A) Meets the security conditions for the storage of
32 ephedrine, pseudoephedrine, and phenylpropanolamine as determined by the
33 board;

34 (B) Has a program of effective controls against the
35 diversion of ephedrine, pseudoephedrine, and phenylpropanolamine; and

36 (C) Has a system for recording and retention of records

1 concerning the acquisition and disposition of ephedrine, pseudoephedrine, and
2 phenylpropanolamine; and

3 (6) Any other factors or conditions relevant to public health
4 and safety as determined on a case-by-case basis by the board.

5 (d) Each applicant shall appear before the board during a formal
6 meeting for consideration of its application.

7 (e) The board shall adopt rules for the limited wholesale distribution
8 of ephedrine, pseudoephedrine, or phenylpropanolamine by a wholesaler
9 licensed under this section.

10 (f) A license issued under this section shall entitle the wholesaler
11 to:

12 (1) Possess and distribute only ephedrine, pseudoephedrine, or
13 phenylpropanolamine; and

14 (2) Distribute ephedrine, pseudoephedrine, or
15 phenylpropanolamine only to customers in other states.

16 (g) A wholesaler licensed under this section shall not surrender
17 possession of ephedrine, pseudoephedrine, or phenylpropanolamine to any
18 person in this state other than a carrier for delivery to locations outside
19 of this state.

20 (h)(1) The Department of Arkansas State Police may investigate any
21 violations of this section, § 20-64-501 et seq., or board rules and may
22 coordinate enforcement of the law or rules with the board.

23 (2) The Department of Arkansas State Police and the board shall
24 exchange information gathered or received by either agency under the
25 provisions of this section.

26 (3) A wholesaler licensed under this section shall report the
27 theft or loss of any ephedrine, pseudoephedrine, or phenylpropanolamine to
28 the board and the Department of Arkansas State Police within three (3) days
29 after discovering the theft or loss.

30 (i) The provisions of § 20-64-501 et seq. and rules promulgated under
31 § 20-64-501 that are not inconsistent with this section are applicable to a
32 wholesaler licensed under this section.

33 /s/ Norton, et al
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