

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: S1/20/05 S2/1/05

# A Bill

SENATE BILL 109

5 By: Senators Malone, Altes, Argue, Bisbee, J. Bookout, Broadway, Bryles, Capps, Faris, Glover,  
6 Higginbotham, Horn, Hendren, Hill, G. Jeffress, J. Jeffress, B. Johnson, Laverty, Miller, Salmon, T.  
7 Smith, Steele, J. Taylor, Trusty, Whitaker, Wilkinson, Womack, Wooldridge  
8 By: Representatives Stovall, J. Johnson, Hardwick  
9

## For An Act To Be Entitled

12 AN ACT TO CONTROL THE DISTRIBUTION OF CERTAIN  
13 PRECURSOR INGREDIENTS UTILIZED TO MANUFACTURE  
14 METHAMPHETAMINE; TO CLASSIFY EPHEDRINE  
15 COMBINATION PRODUCTS, PSEUDOEPHEDRINE, AND  
16 PHENYLPROPANOLAMINE AS SCHEDULE V CONTROLLED  
17 SUBSTANCES; TO CREATE OFFENSES REGARDING THE SALE  
18 AND PURCHASE OF EPHEDRINE, PSEUDOEPHEDRINE, AND  
19 PHENYLPROPANOLAMINE; AND FOR OTHER PURPOSES.  
20

## Subtitle

22 AN ACT TO CONTROL THE DISTRIBUTION OF  
23 CERTAIN PRECURSOR INGREDIENTS UTILIZED  
24 TO MANUFACTURE METHAMPHETAMINE.  
25  
26

27 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
28

### SECTION 1. Findings.

30 The General Assembly of the State of Arkansas finds that:

31 (1) Pseudoephedrine and ephedrine are known medicinal  
32 ingredients, with known scientific evidence of pharmacological effect, and  
33 have known currently accepted medical use in treatment in the United States;

34 (2) The citizens of Arkansas are entitled to the maximum  
35 protection practicable from the harmful effects of methamphetamine abuse and  
36 the harmful effects of excessive and improper exposure to illicit clandestine



1 laboratories for the manufacture of methamphetamine; and

2 (3) The protection of the citizens of Arkansas will be increased  
3 by controlling specific precursor ingredients, ephedrine, pseudoephedrine,  
4 and phenylpropanolamine utilized to manufacture methamphetamine.

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

8 5-64-212. Substances in Schedule V.

9 (a) Ephedrine combination products, pseudoephedrine, and  
10 phenylpropanolamine, as defined in § 5-64-1103(g)(1), shall be designated  
11 Schedule V controlled substances in addition to the drugs and other  
12 substances listed in Schedule V of the List of Controlled Substances for the  
13 State of Arkansas promulgated by the Director of the Department of Health.

14 (b) The Schedule V classification shall not apply to:

15 (1) Exempt products described in § 5-64-1103(b)(1);

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

18 (3) Products that are dispensed pursuant to a valid prescription  
19 which is not restricted to five (5) refills within a six (6) month period.  
20 These products are regulated in the same manner as any non-scheduled  
21 prescription drug and must be kept in a container that is supplied by the  
22 pharmacy and labeled in a manner consistent with any other prescription.

23 (c) The Director of the Department of Health may reschedule a product  
24 described in subdivision (b)(1) or (b)(2) of this section if it is determined  
25 that the conversion of the active ingredient in the product into  
26 methamphetamine or its salts or precursors is feasible.

27 (d) A wholesale distributor with exclusive rights to distribute  
28 pseudoephedrine to only licensed pharmacies is exempt from Schedule V  
29 requirements for the storage and distribution of pseudoephedrine.

30  
31 SECTION 3. Arkansas Code § 5-64-1005(d), pertaining to exemptions from  
32 recordkeeping requirements, is amended to read as follows:

33 (d) Any sale, transfer, furnishing, or receipt by a retail distributor  
34 of any drug which contains any ephedrine, pseudoephedrine,  
35 norpseudoephedrine, or phenylpropanolamine and which is sold, transferred, or  
36 furnished over the counter without a prescription pursuant to the Federal

1 Food, Drug, and Cosmetic Act or regulations adopted thereunder, provided  
2 that:

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

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

8 (3) ~~In the case of liquids, the drug~~ The drug is an exempted  
9 product described in § 5-64-1103(b)(1), or the product contains ephedrine or  
10 pseudoephedrine in liquid, liquid capsule, or liquid gel capsule form  
11 described in § 5-64-1103(b)(2), and is sold in package sizes of not more than  
12 three (3) grams of ephedrine, ~~or pseudoephedrine, or phenylpropanolamine~~  
13 base; and

14 (4) The total quantity of the sale is not greater than three (3)  
15 packages, or five (5) grams of ephedrine, or nine (9) grams of  
16 pseudoephedrine, whichever is smaller.

17  
18 SECTION 4. Arkansas Code § 5-64-1006(a), pertaining to suspicious  
19 order reports, is amended to read as follows:

20 (a) Any pharmacy, manufacturer, wholesaler, or retail distributor ~~who~~  
21 that is required to keep records under this subchapter and ~~who~~ that sells,  
22 transfers, or otherwise furnishes ephedrine, pseudoephedrine, or  
23 phenylpropanolamine or their salts, optical isomers, and salts of optical  
24 isomers, alone or in a mixture, to any person in this state in a suspicious  
25 transaction shall report the transaction in writing to the Arkansas State  
26 Board of Pharmacy.

27  
28 SECTION 5. Arkansas Code § 5-64-1101(a), pertaining to possession  
29 limitations for ephedrine and pseudoephedrine, is amended to read as follows:

30 (a) It shall be unlawful for any person to possess more than five (5)  
31 grams of ephedrine or nine (9) grams of pseudoephedrine or  
32 phenylpropanolamine, or their salts, optical isomers, and salts of optical  
33 isomers, alone or in a mixture, except:

34 (1) Any pharmacist or other authorized person who sells or  
35 furnishes ephedrine, pseudoephedrine, or phenylpropanolamine or their salts,  
36 optical isomers, and salts of optical isomers, upon the prescription of a

1 physician, dentist, podiatrist, ~~or~~ veterinarian, or other healthcare  
2 professional with prescriptive authority, or as authorized pursuant to § 5-  
3 64-1103; or

4 (2) Without a prescription, pursuant to the Federal Food, Drug,  
5 and Cosmetic Act or regulations adopted under the act, products exempted  
6 under § 5-64-1103(b)(1) and (2), provided that the person possesses a sales  
7 and use tax permit issued by the Department of Finance and Administration; or

8 (3) Any physician, dentist, podiatrist, ~~or~~ veterinarian, or  
9 other healthcare professional with prescriptive authority who administers or  
10 furnishes ephedrine, pseudoephedrine, or phenylpropanolamine or their salts,  
11 optical isomers, and salts of optical isomers to his or her patients; or

12 (4)(A) Any manufacturer, wholesaler, or distributor licensed by  
13 the Arkansas State Board of Pharmacy who meets one (1) of the requirements in  
14 subdivision (a)(4)(B) of this section and sells, transfers, or otherwise  
15 furnishes ephedrine, pseudoephedrine, or phenylpropanolamine or their salts,  
16 optical isomers, and salts of optical isomers to a licensed pharmacy,  
17 physician, dentist, podiatrist, veterinarian, or other healthcare  
18 professional with prescriptive authority, or any person who possesses a sales  
19 and use tax permit issued by the department.

20 (B)(i) The manufacturer, wholesaler, or distributor must  
21 hold or store the substances in facilities that meet the packaging  
22 requirements of § 5-64-1005(d)(1)-(3).

23 (ii) The manufacturer, wholesaler, or distributor  
24 must sell, transfer, or otherwise furnish only to healthcare professionals  
25 identified in subdivisions (a)(1) and (3) of this section.

26  
27 SECTION 6. Arkansas Code § 5-64-1103 is amended to read as follows:

28 5-64-1103. ~~Retail sales~~ Sales limits.

29 (a) It shall be unlawful ~~for a retail distributor or an employee of a~~  
30 ~~retail distributor~~ for any person, other than a person or entity described in  
31 § 5-64-1101(a)(3) and (a)(4), to knowingly dispense, sell, transfer, or  
32 otherwise furnish in a single transaction+ products containing ephedrine,  
33 pseudoephedrine, or phenylpropanolamine except in a licensed pharmacy by a  
34 licensed pharmacist or a registered pharmacy technician.

35 (b) Unless the product has been rescheduled pursuant to § 5-64-212(c),  
36 this section shall not apply to retail distributor sales for personal use of:

1           (1) Products that the Department of Health, in collaboration  
2 with the Arkansas State Board of Pharmacy, upon application of a  
3 manufacturer, exempts by rule from this section because the product has been  
4 formulated in such a way as to effectively prevent the conversion of the  
5 active ingredient into methamphetamine or its salts or precursors; or

6           (2) Products containing ephedrine or pseudoephedrine in liquid,  
7 liquid capsule, or liquid gel capsule form if the drug is dispensed, sold,  
8 transferred, or otherwise furnished in a single transaction limited to no  
9 more than three (3) packages, with any single package containing not more  
10 than ninety-six (96) liquid capsules or liquid gel capsules or not more than  
11 three (3) grams of ephedrine or pseudoephedrine base.

12           (c)(1) A pharmacy must maintain a written or electronic log, or  
13 receipts of transactions involving the sale of ephedrine, pseudoephedrine, or  
14 phenylpropanolamine.

15           (2) A person purchasing, receiving, or otherwise acquiring  
16 ephedrine, pseudoephedrine, or phenylpropanolamine shall be required to:

17                   (A) Produce current and valid proof of identity; and

18                   (B) Sign a written or electronic log or receipt that  
19 documents the date of the transaction, the name of the person, and the  
20 quantity of pseudoephedrine or ephedrine purchased, received, or otherwise  
21 acquired.

22           (d) Unless pursuant to a valid prescription, it shall be unlawful for  
23 a licensed pharmacist or a registered pharmacy technician to knowingly  
24 dispense, sell, transfer or otherwise furnish in a single transaction:

25                   (1) More than three (3) packages of one (1) or more products  
26 that ~~the distributor or employee knows to~~ contain ephedrine, pseudoephedrine,  
27 or 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~~ contains ephedrine, pseudoephedrine, or  
30 phenylpropanolamine, which contains more than ninety-six (96) pills, tablets,  
31 gelcaps, capsules, or other individual units or more than three (3) grams of  
32 ephedrine, pseudoephedrine, or phenylpropanolamine, their salts, isomers, or  
33 salts of isomers, or a combination of any of these substances, whichever is  
34 smaller; or

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

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

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

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

10 (4)(A) Any product containing ephedrine, pseudoephedrine, or  
11 phenylpropanolamine to any person under the age of eighteen (18) years,  
12 unless the person is purchasing a ~~pediatric product intended for a child~~ an  
13 exempt product under subdivision (b)(1) or (2) of this section.

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

18 ~~(C) "Proof of age" means any document issued by a~~  
19 ~~governmental agency which:~~

20 ~~(i) Contains a description of the person or a~~  
21 ~~photograph of the person, or both, and gives the person's date of birth; and~~

22 ~~(ii) Includes, without being limited to, a passport,~~  
23 ~~military identification card, or driver's license.~~

24 ~~(b)(e)(1) Any retail distributor or employee of the retail distributor~~  
25 person who violates ~~subsection~~ subsections (a) or (d) of this section shall  
26 be guilty of a Class A misdemeanor and may also be subject to a civil fine  
27 not to exceed five thousand dollars (\$5,000).

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

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

1       ~~(e)(f)~~(1) It shall be unlawful for any person, other than a person or  
2 entity described in § 5-64-1101(a)(1)-(4) ~~of this section~~, to knowingly  
3 purchase, acquire, or otherwise receive in a single transaction:

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

7               (B) Any single package of any product that the person  
8 knows to contain ephedrine, pseudoephedrine, or phenylpropanolamine, which  
9 contains more than ninety-six (96) pills, tablets, gelcaps, capsules, or  
10 other individual units or more than three (3) grams of ephedrine,

11 pseudoephedrine, or phenylpropanolamine, their salts, isomers, or salts of  
12 isomers, or a combination of any of these substances, whichever is smaller.

13               (2) It shall be unlawful for any person, other than a person or  
14 entity described in § 5-64-1101(a)(1) – (4), to knowingly purchase, acquire,  
15 or otherwise receive more than five (5) grams of ephedrine or nine (9) grams  
16 of pseudoephedrine or phenylpropanolamine within any thirty-day period.

17               ~~(2)(3)~~ Any person who violates the provisions of ~~subdivision~~  
18 subdivisions ~~(e)(f)~~(1) or (2) of this section shall be guilty of a Class A  
19 misdemeanor.

20       ~~(d)~~This section shall not apply to:

21               ~~(1)~~ Pediatric products primarily intended for administration to  
22 children under twelve (12) years of age, according to label instructions,  
23 either:

24               ~~(A)~~ In solid dosage form whose individual dosage units do  
25 not exceed recommended dosage, according to label instructions, does not  
26 exceed fifteen (15) milligrams of ephedrine, pseudoephedrine, or  
27 phenylpropanolamine; or

28               ~~(B)~~ In liquid form whose recommended dosage, according to  
29 label instructions, does not exceed fifteen milligrams (15 mg) of ephedrine,  
30 pseudoephedrine, or phenylpropanolamine per five milliliters (5 ml) of liquid  
31 product;

32               ~~(2)~~ Pediatric liquid products primarily intended for  
33 administration to children under two (2) years of age for which the  
34 recommended dosage does not exceed two milliliters (2 ml) and the total  
35 package content does not exceed one fluid ounce (1 fl. oz.); or

36               ~~(3)~~ Products that the State Board of Pharmacy, upon application

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

4 ~~(e)~~(g) For the purposes of this subchapter:

5 (1) The terms "ephedrine", "pseudoephedrine", and  
6 "phenylpropanolamine" mean any product containing ephedrine, pseudoephedrine,  
7 or phenylpropanolamine or any of their salts, isomers, or salts of isomers,  
8 alone or in a mixture;

9 (2) "Proof of age" or "proof of identity" means any document  
10 issued by a governmental agency that:

11 (A) Contains a description of the person or a photograph  
12 of the person, or both, and gives the person's date of birth; and

13 (B) Includes, without being limited to, a passport,  
14 military identification card, or driver's license;

15 ~~(2)~~ (3) "Retail distributor" means a grocery store, general  
16 merchandise store, drugstore, convenience store, or other related entity, the  
17 activities of which, as a distributor of ephedrine, pseudoephedrine, or  
18 phenylpropanolamine products, are limited exclusively to the sale of  
19 ephedrine, pseudoephedrine, or phenylpropanolamine products for personal use,  
20 both in number of sales and volume of sales, either directly to walk-in  
21 customers or in face-to-face transactions by direct sales and includes any  
22 person or entity that makes a direct sale or has knowledge of the sale, but  
23 does not include any manager, supervisor, or owner not present and not  
24 otherwise aware of the sale, nor shall it include the parent company of that  
25 entity if the company is not involved in direct sales regulated by this  
26 subchapter; and

27 ~~(3)~~ (4) "Sale for personal use" means the sale in a single  
28 transaction to an individual customer for a legitimate medical use of a  
29 product containing ephedrine, pseudoephedrine, or phenylpropanolamine in  
30 quantities at or below that specified in subsection (a) of this section, and  
31 includes the sale of those products to employers to be dispensed to employees  
32 from first-aid kits or medicine chests.

33 ~~(f)~~(h) Nothing in this section shall prohibit a person under the age  
34 of eighteen (18) years from possessing and selling products described in  
35 subsections (a) and (b) of this section ~~ephedrine, pseudoephedrine, or~~  
36 ~~phenylpropanolamine~~ as an agent of the minor's employer acting within the



1 scope of the minor's employment.

2  
3 SECTION 7. EMERGENCY CLAUSE. It is hereby found and determined by the  
4 Eighty-fifth General Assembly that the effectiveness of this act is essential  
5 to the safety of the citizens of Arkansas; that excessive and improper  
6 exposure to illicit clandestine laboratories for the manufacture of  
7 methamphetamine causes harm to citizens of Arkansas; and that a delay in the  
8 effective date of this act beyond thirty days needed to implement it would  
9 unnecessarily expose the citizens of Arkansas to the risk of irreparable  
10 harm. Therefore, an emergency is declared to exist and this act being  
11 immediately necessary for the preservation of the public peace, health, and  
12 safety shall be effective on:

13 (1) Thirty (30) days from and after the date of its passage and  
14 approval;

15 (2) If the bill is neither approved nor vetoed by the Governor, it  
16 shall become effective thirty (30) days from the expiration of the period of  
17 time during which the Governor may veto the bill; or

18 (3) If the bill is vetoed by the Governor and the veto is overridden,  
19 it shall become effective thirty (30) days from the date the last house  
20 overrides the veto.

21  
22 /s/ Malone  
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