

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 Engrossed: S1/20/05 S2/1/05 H2/11/05*

2 85th General Assembly

# A Bill

3 Regular Session, 2005

SENATE BILL 109

4

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, *Abernathy, Adcock, Anderson, Bolin, Bond,*  
9 *Borhauer, Boyd, Bradford, Burris, Childers, Cook, Cooper, Cowling, D. Creekmore, Dangeau,*  
10 *Davenport, Dickinson, Dobbins, Dunn, Edwards, Elliott, D. Evans, George, T. Hutchinson, Jackson,*  
11 *Jeffrey, D. Johnson, Key, Kidd, Lamoureux, Ledbetter, W. Lewellen, Mack, Maloch, M. Martin, Matayo,*  
12 *Mathis, Maxwell, McDaniel, Medley, Nichols, Norton, Ormond, Overbey, Pate, Petrus, Pickett, S. Prater,*  
13 *Pritchard, Pyle, Ragland, Rainey, Reep, Roebuck, Rogers, Rosenbaum, Sample, Saunders, Scroggin, L.*  
14 *Smith, Sullivan, Thomason, Thompson, Thyer, Walters, Wells, Wills, Wyatt*

15

16

17

## For An Act To Be Entitled

18

AN ACT TO CONTROL THE DISTRIBUTION OF CERTAIN

19

PRECURSOR INGREDIENTS UTILIZED TO MANUFACTURE

20

METHAMPHETAMINE; TO CLASSIFY EPHEDRINE

21

COMBINATION PRODUCTS, PSEUDOEPHEDRINE, AND

22

PHENYLPROPANOLAMINE AS SCHEDULE V CONTROLLED

23

SUBSTANCES; TO CREATE OFFENSES REGARDING THE SALE

24

AND PURCHASE OF EPHEDRINE, PSEUDOEPHEDRINE, AND

25

PHENYLPROPANOLAMINE; AND FOR OTHER PURPOSES.

26

27

## Subtitle

28

AN ACT TO CONTROL THE DISTRIBUTION OF

29

CERTAIN PRECURSOR INGREDIENTS UTILIZED

30

TO MANUFACTURE METHAMPHETAMINE.

31

32

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

34

35 SECTION 1. Findings.

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



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

4           (2) The citizens of Arkansas are entitled to the maximum  
5 protection practicable from the harmful effects of methamphetamine abuse and  
6 the harmful effects of excessive and improper exposure to illicit clandestine  
7 laboratories for the manufacture of methamphetamine; and

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

11  
12           SECTION 2. Arkansas Code Title 5, Chapter 64, Subchapter 2 is amended  
13 to add an additional section to read as follows:

14           5-64-212. Substances in Schedule V.

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

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

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

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

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

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

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

36

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

3 (d) Any sale, transfer, furnishing, or receipt by a retail distributor  
4 of any drug which contains any ephedrine, pseudoephedrine,  
5 norpseudoephedrine, or phenylpropanolamine and which is sold, transferred, or  
6 furnished over the counter without a prescription pursuant to the Federal  
7 Food, Drug, and Cosmetic Act or regulations adopted thereunder, provided  
8 that:

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

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

14 (3) ~~In the case of liquids, the drug~~ The drug is an exempted  
15 product described in § 5-64-1103(b)(1), or the product contains ephedrine or  
16 pseudoephedrine in liquid, liquid capsule, or liquid gel capsule form  
17 described in § 5-64-1103(b)(2), and is sold in package sizes of not more than  
18 three (3) grams of ephedrine, or pseudoephedrine, or phenylpropanolamine  
19 base; and

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

23  
24 SECTION 4. Arkansas Code § 5-64-1006(a), pertaining to suspicious  
25 order reports, is amended to read as follows:

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

33  
34 SECTION 5. Arkansas Code § 5-64-1101(a), pertaining to possession  
35 limitations for ephedrine and pseudoephedrine, is amended to read as follows:

36 (a) It shall be unlawful for any person to possess more than five (5)

1 grams of ephedrine or nine (9) grams of pseudoephedrine or  
2 phenylpropanolamine, or their salts, optical isomers, and salts of optical  
3 isomers, alone or in a mixture, except:

4 (1) Any pharmacist or other authorized person who sells or  
5 furnishes ephedrine, pseudoephedrine, or phenylpropanolamine or their salts,  
6 optical isomers, and salts of optical isomers, upon the prescription of a  
7 physician, dentist, podiatrist, ~~or~~ veterinarian, or other healthcare  
8 professional with prescriptive authority, or as authorized pursuant to § 5-  
9 64-1103; or

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

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

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

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

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

32  
33 SECTION 6. Arkansas Code § 5-64-1103 is amended to read as follows:

34 5-64-1103. ~~Retail sales~~ Sales limits.

35 (a) It shall be unlawful ~~for a retail distributor or an employee of a~~  
36 ~~retail distributor~~ for any person, other than a person or entity described in

1 § 5-64-1101(a)(3) and (a)(4), to knowingly dispense, sell, transfer, or  
2 otherwise furnish in a single transaction+ products containing ephedrine,  
3 pseudoephedrine, or phenylpropanolamine except in a licensed pharmacy by a  
4 licensed pharmacist or a registered pharmacy technician.

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

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

12 (2) Products containing ephedrine or pseudoephedrine in liquid,  
13 liquid capsule, or liquid gel capsule form if the drug is dispensed, sold,  
14 transferred, or otherwise furnished in a single transaction limited to no  
15 more than three (3) packages, with any single package containing not more  
16 than ninety-six (96) liquid capsules or liquid gel capsules or not more than  
17 three (3) grams of ephedrine or pseudoephedrine base.

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

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

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

24 (B) Sign a written or electronic log or receipt that  
25 documents the date of the transaction, the name of the person, and the  
26 quantity of pseudoephedrine or ephedrine purchased, received, or otherwise  
27 acquired.

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

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

34 (2) Any single package of any product that ~~the distributor or~~  
35 ~~employee knows to~~ contains ephedrine, pseudoephedrine, or  
36 phenylpropanolamine, which contains more than ninety-six (96) pills, tablets,

1 gelcaps, capsules, or other individual units or more than three (3) grams of  
2 ephedrine, pseudoephedrine, or phenylpropanolamine, their salts, isomers, or  
3 salts of isomers, or a combination of any of these substances, whichever is  
4 smaller; or

5 (3) Any product containing ephedrine, pseudoephedrine, or  
6 phenylpropanolamine, unless:

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

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

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

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

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

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

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

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

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

34 (2)(A) The prosecuting attorney may waive any civil penalty  
35 under this section if ~~the retail distributor or employee of the retail~~  
36 ~~distributor~~ a person establishes that he or she acted in good faith to

1 prevent violations of this section, and the violations occurred despite the  
2 exercise of due diligence.

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

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

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

13 (B) Any single package of any product that the person  
14 knows to contain ephedrine, pseudoephedrine, or phenylpropanolamine, which  
15 contains more than ninety-six (96) pills, tablets, gelcaps, capsules, or  
16 other individual units or more than three (3) grams of ephedrine,  
17 pseudoephedrine, or phenylpropanolamine, their salts, isomers, or salts of  
18 isomers, or a combination of any of these substances, whichever is smaller.

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

23 ~~(2)(3)~~ Any person who violates the provisions of ~~subdivision~~  
24 subdivisions ~~(e)(f)~~(1) or (2) of this section shall be guilty of a Class A  
25 misdemeanor.

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

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

30 ~~(A) In solid dosage form whose individual dosage units do~~  
31 ~~not exceed recommended dosage, according to label instructions, does not~~  
32 ~~exceed fifteen (15) milligrams of ephedrine, pseudoephedrine, or~~  
33 ~~phenylpropanolamine; or~~

34 ~~(B) In liquid form whose recommended dosage, according to~~  
35 ~~label instructions, does not exceed fifteen milligrams (15 mg) of ephedrine,~~  
36 ~~pseudoephedrine, or phenylpropanolamine per five milliliters (5 ml) of liquid~~

1 product;

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

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

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

11 (1) The terms "ephedrine", "pseudoephedrine", and  
12 "phenylpropanolamine" mean any product containing ephedrine, pseudoephedrine,  
13 or phenylpropanolamine or any of their salts, isomers, or salts of isomers,  
14 alone or in a mixture;

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

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

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

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

33 ~~(3)~~ (4) "Sale for personal use" means the sale in a single  
34 transaction to an individual customer for a legitimate medical use of a  
35 product containing ephedrine, pseudoephedrine, or phenylpropanolamine in  
36 quantities at or below that specified in subsection (a) of this section, and



1 includes the sale of those products to employers to be dispensed to employees  
2 from first-aid kits or medicine chests.

3 ~~(f)~~(h) Nothing in this section shall prohibit a person under the age  
4 of eighteen (18) years from possessing and selling products described in  
5 subsections (a) and (b) of this section ~~ephedrine, pseudoephedrine, or~~  
6 ~~phenylpropanolamine~~ as an agent of the minor's employer acting within the  
7 scope of the minor's employment.

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

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

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

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

27  
28 /s/ Malone, et al  
29  
30  
31  
32  
33  
34  
35  
36