

1 State of Arkansas  
2 88th General Assembly  
3 Regular Session, 2011  
4  
5 By: Senator P. Malone  
6

As Engrossed: S3/2/11  
**A Bill**

SENATE BILL 437

**For An Act To Be Entitled**

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

**Subtitle**

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19 AN ACT TO CLARIFY THE ROLE OF PHARMACISTS  
20 WITH REGARD TO EPHEDRINE,  
21 PSEUDOEPHEDRINE, OR PHENYLPROPANOLAMINE.  
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25 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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27 *SECTION 1. Arkansas Code § 5-64-212(b), concerning substances in the*  
28 *Schedule V designation of controlled substances, is amended to read as*  
29 *follows:*

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

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

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

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



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

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

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

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

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

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

24                           (i) Prior medication-filling history;  
25                           (ii) Patient screening; and  
26                           (iii) Other tools that provide professional  
27 reassurance to the pharmacist that a legitimate medical and pharmaceutical  
28 need exists.

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

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

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

34                           (C) Take appropriate disciplinary action as required.

35           (d) ~~Unless pursuant to~~ Except under a valid prescription, it is  
36 unlawful for a licensed pharmacist to dispense or a registered pharmacy

1 technician to knowingly ~~dispense,~~ sell, transfer, or otherwise furnish in a  
2 single transaction:

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

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

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

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

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

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

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

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

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

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

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

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

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

8 5-64-1111. Liability of pharmacy or pharmacist.

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

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

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

19 5-64-1113. Pharmacist-authorized drugs.

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

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

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29 /s/P. Malone  
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