

AN ACT concerning the retail sale of methamphetamine manufacturing chemicals.

**Be it enacted by the People of the State of Illinois,
represented in the General Assembly:**

Section 1. Short title. This Act may be cited as the Methamphetamine Manufacturing Chemical Retail Sale Control Act.

Section 5. Purpose. The purpose of this Act is to reduce the harm that methamphetamine is inflicting on individuals, families, communities, the economy, and the environment in Illinois by making it more difficult for persons engaged in the unlawful manufacture of methamphetamine to obtain methamphetamine manufacturing chemicals.

Section 10. Definitions. In this Act:

"Methamphetamine manufacturing chemical" has the meaning ascribed to it in subsection (z-1) of Section 102 of the Illinois Controlled Substances Act.

"Targeted methamphetamine manufacturing chemical" and "targeted medications" mean a subset of "methamphetamine manufacturing chemicals". "Targeted methamphetamine manufacturing chemical" means any medication in the form of a tablet, capsule, caplet, or similar product that is sold over the counter, without a prescription, and that contains either (A) more than 15 milligrams of ephedrine or its salts, optical isomers, or salts of optical isomers or (B) more than 15 milligrams of pseudoephedrine or its salts, optical isomers, or salts of optical isomers. "Targeted methamphetamine manufacturing chemical" does not include any medication in the form of a liquid, liquid cap, gel cap, or other similar substance, or any medication dispensed by a licensed pharmacist pursuant to a valid prescription.

"Package" means an item packaged and marked for retail sale that is not designed to be further broken down or subdivided for the purpose of retail sale.

"Targeted package" means a package containing any amount of a targeted methamphetamine manufacturing chemical.

"Single active ingredient targeted methamphetamine manufacturing chemical" means a targeted methamphetamine manufacturing chemical whose sole active ingredient is ephedrine or its salts, optical isomers, or salts of optical isomers; or pseudoephedrine or its salts, optical isomers, or salts of optical isomers.

"Single active ingredient targeted package" means a package containing any amount of single active ingredient targeted methamphetamine manufacturing chemical.

"Multiple active ingredient targeted methamphetamine manufacturing chemical" means a targeted methamphetamine manufacturing chemical that contains at least one active ingredient other than ephedrine or its salts, optical isomers, or salts of optical isomers; or pseudoephedrine or its salts, optical isomers, or salts of optical isomers.

"Multiple active ingredient targeted package" means a package containing any amount of multiple active ingredient targeted methamphetamine manufacturing chemical.

"Stock keeping unit" or "SKU" means the primary or basic unit of measure assigned to an item sold by a retail distributor and the smallest unit of an item that may be dispensed from a retail distributor's inventory.

"Targeted stock keeping unit" means a stock keeping unit assigned to a targeted package.

"Blister pack" means a unit dose package commonly constructed from a formed cavity containing one or more individual doses.

"Capsule" means a solid dosage form in which a medicinal substance is enclosed and consisting of either a hard or soft soluble outer shell.

"Customer" means a person who buys goods from a retail

distributor.

"Distribute" means to sell, give, provide or otherwise transfer.

"Dosage unit" means an exact amount of a drug's treatment pre-packaged by the manufacturer or pharmacist in standardized amounts.

"Sales employee" means any employee who at any time (a) operates a cash register at which targeted packages may be sold, (b) works at or behind a pharmacy counter, (c) stocks shelves containing targeted packages, or (d) trains or supervises other employees who engage in any of the preceding activities.

"Tablet" means a solid dosage form of varying weight, size, and shape that may be molded or compressed and that contains a medicinal substance in pure or diluted form.

"Single retail transaction" means a sale by a retail distributor to a specific customer at a specific time.

"Retail distributor" means a grocery store, general merchandise store, drug store, other merchandise store, or other entity or person whose activities as a distributor relating to drug products containing targeted methamphetamine manufacturing chemicals are limited exclusively or almost exclusively to sales for personal use, both in number of sales and volume of sales, either directly to walk-in customers or in face-to-face transactions by direct sales.

Section 15. Package sale restrictions.

(a) Any targeted methamphetamine manufacturing chemical displayed or distributed by any retail distributor in Illinois shall be packaged in blister packs, with each blister containing not more than 2 dosage units, or when the use of blister packs is technically infeasible, in unit dose packets or pouches.

(b) Any targeted package displayed or distributed by any retail distributor in Illinois shall contain no more than 3 grams of ephedrine or its salts, optical isomers, or salts of

optical isomers; or pseudoephedrine or its salts, optical isomers, or salts of optical isomers.

(c) A retail distributor may not distribute more than 2 targeted packages in a single retail transaction.

(d) A retail distributor may not permit the purchase of any targeted package by means of a self-service checkout station, unless the self-service checkout station is programmed in a manner that satisfies all of the following conditions for each retail transaction:

(1) When a particular customer seeks to purchase a single targeted package, the self-service checkout station may allow him or her to do so without any special prompts or actions.

(2) If the customer seeks to purchase a second targeted package, the self-service checkout station shall not allow him or her to purchase the second targeted package without the assistance of a sales employee. If the customer then seeks the assistance of a sales employee, the sales employee may instruct the self-service checkout station to allow the sale of the second targeted package.

(3) If the customer seeks to purchase a third targeted package, neither the self-service checkout station nor the store employee shall allow him or her to do so.

(e) A retail distributor, its employees, or its agents may not distribute any targeted package or packages with knowledge that they will be used to manufacture methamphetamine or with reckless disregard of the likely use of such package or packages to manufacture methamphetamine.

Section 20. Display and sale of single active ingredient targeted packages. All single active ingredient targeted packages must be displayed behind a store counter, in an area not accessible to customers, or in a locked case so that a customer wanting access to the packages must ask a store employee for assistance.

Section 25. Display and sale of multiple active ingredient targeted packages.

(a) Except as provided in subsection (b), every retail distributor must treat multiple active ingredient targeted packages in at least one of the following 4 ways:

(1) The retail distributor may display the multiple active ingredient targeted packages behind a store counter, in an area not accessible to customers;

(2) The retail distributor may display the multiple active ingredient targeted packages in a locked case so that a customer wanting access to the packages must ask a store employee for assistance;

(3) The retail distributor may (i) require that any customer purchasing a targeted package produce a state-issued photo identification featuring a photograph that reasonably resembles the customer making the purchase, and (ii) record the name, issuing state, and official identification number of the customer into a log specially designed and designated for this purpose; or

(4) The retail distributor may comply with this Section by adopting at least 2 of the following options:

(A) The retail distributor may keep multiple active ingredient targeted packages within 30 feet and the direct line of sight of a cash register or store counter staffed by one or more store employees.

(B) The retail distributor may employ a reliable anti-theft device that uses special package tags and detection alarms designed to prevent the theft of multiple active ingredient targeted packages from the retail distributor's place of business.

(C) The retail distributor may utilize restricted access shelving so that (i) only one multiple active ingredient targeted package can be removed from the shelf at a time, and (ii) there is a delay of 15 seconds or more between the time one such package is removed and the time the next such package can be

removed from the shelf.

(D) The retail distributor may keep multiple active ingredient targeted packages under constant video surveillance in a manner that satisfies the following conditions:

(i) A video camera must be positioned so that persons examining or removing the packages are visible;

(ii) The video camera must, at a minimum, record a one-second image every 10 seconds;

(iii) These images must be preserved for a minimum of 72 hours;

(iv) These images must be available to law enforcement authorities immediately upon request; and

(v) The retail distributor must post a sign in a prominent manner stating that the area is under constant video surveillance.

(b) A retail distributor that complies with this Section by adopting 2 of the options listed in paragraph (4) of subsection (a) of this Section must implement the first of the 2 chosen options by the effective date of this Act and the second of the 2 chosen options within 180 days of the effective date of this Act.

If the retail distributor's first chosen option is to employ anti-theft devices as described in clause (a)(4)(B) of this Section, the retailer shall ensure that special package tags are affixed to at least 50 percent of the targeted packages for each targeted stock keeping unit (SKU) by the effective date of the Act, and that special package tags are affixed to all targeted packages within 180 days of the effective date of this Act. If the retail distributor's second chosen option is to employ anti-theft devices as described in clause (a)(4)(B) of this Section, the retail distributor shall ensure that special package tags are affixed to all targeted packages within 180 days of the effective date of this Act.

Section 30. Training and certification.

(a) Every retail distributor of any targeted methamphetamine manufacturing chemical shall train each sales employee on the topics listed on the certification form described in subsection (b) of this Section. This training may be conducted by a live trainer or by means of a computer-based training program. This training shall be completed by the effective date of this Act or within 30 days of the date that each sales employee begins working for the retail distributor, whichever of these 2 dates comes later.

(b) Immediately after training each sales employee as required in subsection (a) of this Section, every retail distributor of any targeted methamphetamine manufacturing chemical shall have each sales employee read, sign, and date a certification form containing the following language:

(1) My name is (insert name of employee) and I am an employee of (insert name of business) at (insert street address).

(2) I understand that in Illinois there are laws governing the sale of certain over-the-counter medications that contain a chemical called ephedrine or a second chemical called pseudoephedrine. Medications that are subject to these laws are called "targeted medications" and they are sold in "targeted packages".

(3) I understand that "targeted medications" can be used to manufacture the illegal and dangerous drug methamphetamine and that methamphetamine is causing great harm to individuals, families, communities, the economy, and the environment throughout Illinois.

(4) I understand that under Illinois law, the store where I work is not allowed to sell more than 2 "targeted packages" in a single retail transaction. That means the store cannot sell more than 2 "targeted packages" to a single customer at one time.

(5) I understand that under Illinois law, the store

where I work cannot allow customers to buy "targeted packages" at self-service check-out lanes, except under certain conditions which have been described to me.

(6) I understand that under Illinois law, I cannot sell "targeted medications" to a person if I know that the person is going to use them to make methamphetamine.

(7) I understand that there are a number of ingredients that are used to make the illegal drug methamphetamine, including "targeted medications" sold in "targeted packages". My employer has shown me a list of these various ingredients, and I have reviewed the list.

(8) I understand that there are certain procedures that I should follow if I suspect that a store customer is purchasing "targeted medications" or other products for the purpose of manufacturing methamphetamine. These procedures have been described to me, and I understand them.

(c) A certification form of the type described in subsection (b) of this Section may be signed with a handwritten signature or a reliable electronic signature that includes, a unique identifier for each employee. The certification shall be retained by the retail distributor for each sales employee for the duration of his or her employment and for at least 30 days following the end of his or her employment. Any such form shall be made available for inspection and copying by any law enforcement officer upon request.

(d) The office of the Illinois Attorney General shall make available to retail distributors the list of methamphetamine ingredients referred to in subsection (b) of this Section.

Section 35. Violations.

(a) An individual who violates any provision of this Act is guilty of a Class A misdemeanor for a first offense and a Class 4 felony for a second or subsequent offense.

(b) Except as provided in subsections (c) and (d) of this Section, the owner and the operator of a retail distributor

that violates any provision of this Act are guilty of a business offense and subject to a fine of:

(1) \$500 for a first offense;

(2) \$1,000 for a second offense occurring at the same retail location as and within 3 years of the prior offense; and

(3) \$5,000 for a third or subsequent offense occurring at the same retail location as and within 3 years of the prior offenses.

(c) Any retail distributor that seeks to comply with subsection (c) of Section 15 of this Act by installing automated cash register prompts informing sales employees when the two-package limit described in subsection (c) of Section 15 of this Act has been exceeded shall be subject to all of the penalties described in subsection (b) of this Section except as follows: The owner and the operator of a retail distributor that violates subsection (b) or subsection (c) of Section 30 of this Act are guilty of a business offense and subject to a fine of:

(1) \$100 for a first offense;

(2) \$200 for a second offense occurring at the same retail location as and within 3 years of the prior offense;

(3) \$500 for a third or subsequent offense occurring at the same retail location as and within 3 years of the prior offenses;

(4) \$1,000 for a fourth offense occurring at the same retail location as and within 3 years of the prior offenses; and

(5) \$5,000 for a fifth offense occurring at the same retail location as and within 3 years of the prior offenses.

(d) The owner and the operator of a retail distributor are not liable for any violation of subsection (c) or subsection (e) of Section 15 of this Act if and only if the owner and the operator:

(1) strictly complied with subsections (a), (b), and

(d) of Section 15 of this Act, Sections 20 and 25 of this Act, and subsection (a) of Section 30 of this Act;

(2) made a good-faith effort to ensure compliance with subsections (c) and (e) of Section 15 of this Act;

(3) made a good-faith effort to comply with subsection (b) and subsection (c) of Section 30 of this Act; and

(4) had no advance knowledge of the violation or violations in question and did not act in reckless disregard of the likelihood of such violation or violations.

Section 40. Defense of Necessity. Conduct which would otherwise be an offense under this Act is justifiable by reason of necessity if the accused was without blame in occasioning or developing the situation and reasonably believed such conduct was necessary to avoid a public or private injury greater than the injury which might reasonably result from his or her own conduct.

Section 45. Immunity from civil liability. In the event that any agent or employee of a retail distributor reports to any law-enforcement agency any suspicious activity concerning a targeted methamphetamine manufacturing chemical or other methamphetamine ingredient or ingredients, the agent or employee and the retail distributor itself are immune from civil liability based on allegations of defamation, libel, slander, false arrest, or malicious prosecution, or similar allegations, except in cases of willful or wanton misconduct.

Section 50. Special exclusion. If the United States Drug Enforcement Administration has formally certified that a targeted methamphetamine manufacturing chemical has been produced in a manner that prevents its use for the manufacture of methamphetamine, this Act does not apply to the sale of the targeted methamphetamine manufacturing chemical produced in that manner.

Section 55. Relationship to other laws and rules. Nothing in this Act shall be construed to conflict with, contradict, restrict, or in any way limit the enforcement of any federal or State law or rule, including but not limited to Section 216 of the Illinois Controlled Substances Act.

Section 60. Preemption and home rule powers.

(a) Except as provided in subsection (b) of this Section, a county or municipality, including a home rule unit, may regulate the sale of targeted methamphetamine manufacturing chemicals and targeted packages in a manner that is not more or less restrictive than the regulation by the State under this Act. This Section is a limitation under subsection (i) of Section 6 of Article VII of the Illinois Constitution on the concurrent exercise by home rule units of the powers and functions exercised by the State.

(b) Any regulation of the sale of targeted methamphetamine manufacturing chemicals and targeted packages by a home rule unit that took effect on or before May 1, 2004, is exempt from the provisions of subsection (a) of this Section.