



## 94TH GENERAL ASSEMBLY

### State of Illinois

2005 and 2006

SB0107

Introduced 2/1/2005, by Sen. Dale A. Righter

#### SYNOPSIS AS INTRODUCED:

720 ILCS 570/212 from Ch. 56 1/2, par. 1212  
720 ILCS 570/216  
720 ILCS 647/26 new  
720 ILCS 647/35

Amends the Illinois Controlled Substances Act. Provides that any compound, mixture, or preparation containing any detectable quantity of pseudoephedrine, its salts or optical isomers, or salts of optical isomers is a Schedule V controlled substance. Amends the Methamphetamine Manufacturing Chemical Retail Sale Control Act. Provides that if any compound, mixture, or preparation containing any detectable quantity of pseudoephedrine, its salts or optical isomers, or salts of optical isomers is dispensed, sold, or distributed in a pharmacy: (1) the compound, mixture, or preparation shall be dispensed, sold, or distributed only by a pharmacist or a pharmacy technician licensed under the Pharmacy Practice Act of 1987; and (2) any person purchasing, receiving, or otherwise acquiring the compound, mixture, or preparation shall produce a photo identification showing the date of birth of the person and shall sign a written log or receipt showing the date of the transaction, name of the person, and the amount of the compound, mixture, or preparation. Provides that a person may not purchase, receive, or otherwise acquire more than 9 grams of any compound, mixture, or preparation containing any detectable quantity of pseudoephedrine, its salts or optical isomers, or salts of optical isomers within any 30-day period. Provides that an individual who violates these provisions is guilty of a Class 4 felony. Establishes exemptions. Effective immediately.

LRB094 07179 RLC 37334 b

CORRECTIONAL  
BUDGET AND  
IMPACT NOTE ACT  
MAY APPLY

1 AN ACT concerning pseudoephedrine.

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

4 Section 5. The Illinois Controlled Substances Act is  
5 amended by changing Sections 212 and 216 as follows:

6 (720 ILCS 570/212) (from Ch. 56 1/2, par. 1212)

7 Sec. 212. (a) The controlled substances listed in this  
8 section are included in Schedule V.

9 (b) Any compound, mixture, or preparation containing  
10 limited quantities of any of the following narcotic drugs, or  
11 their salts calculated as the free anhydrous base or alkaloid  
12 which also contains one or more non-narcotic active medicinal  
13 ingredients in sufficient proportion to confer upon the  
14 compound, mixture, or preparation, valuable medicinal  
15 qualities other than those possessed by the narcotic drug alone  
16 as set forth below:

17 (1) not more than 200 milligrams of codeine, or any of  
18 its salts, per 100 milliliters or per 100 grams;

19 (2) not more than 100 milligrams of dihydrocodeine; or  
20 any of its salts, per 100 milliliters or per 100 grams;

21 (3) not more than 100 milligrams of ethylmorphine, or  
22 any of its salts, per 100 milliliters or per 100 grams;

23 (4) not more than 2.5 milligrams of diphenoxylate and  
24 not less than 25 micrograms of atropine sulfate per dosage  
25 unit;

26 (5) not more than 100 milligrams of opium per 100  
27 milliliters or per 100 grams;

28 (6) not more than 0.5 milligram of difenoxin (DEA Drug  
29 Code No. 9618) and not less than 25 micrograms of atropine  
30 sulfate per dosage unit.

31 (c) Buprenorphine.

32 (d) Pyrovalerone.

1       (d-5) Any compound, mixture, or preparation containing any  
2       detectable quantity of pseudoephedrine, its salts or optical  
3       isomers, or salts of optical isomers.

4       (e) Any compound, mixture or preparation which contains any  
5       quantity of any controlled substance when such compound,  
6       mixture or preparation is not otherwise controlled in Schedules  
7       I, II, III or IV.

8       (Source: P.A. 89-202, eff. 10-1-95.)

9       (720 ILCS 570/216)

10       Sec. 216. Ephedrine.

11       (a) The following drug products containing ephedrine, its  
12       salts, optical isomers and salts of optical isomers shall be  
13       exempt from the application of Sections 312 and 313 of this Act  
14       if they: (i) may lawfully be sold over-the-counter without a  
15       prescription under the Federal Food, Drug, and Cosmetic Act;  
16       (ii) are labeled and marketed in a manner consistent with  
17       Section 341.76 of Title 21 of the Code of Federal Regulations;  
18       (iii) are manufactured and distributed for legitimate  
19       medicinal use in a manner that reduces or eliminates the  
20       likelihood of abuse; and (iv) are not marketed, advertised, or  
21       labeled for the indications of stimulation, mental alertness,  
22       weight loss, muscle enhancement, appetite control, or energy:

23               (1) Solid oral dosage forms, including soft gelatin  
24               caplets, which are formulated pursuant to 21 CFR 341 or its  
25               successor, and packaged in blister packs of not more than 2  
26               tablets per blister.

27               (2) Anorectal preparations containing not more than 5%  
28               ephedrine.

29       (b) The marketing, advertising, or labeling of any product  
30       containing ephedrine, a salt of ephedrine, an optical isomer of  
31       ephedrine, or a salt of an optical isomer of ephedrine, for the  
32       indications of stimulation, mental alertness, weight loss,  
33       appetite control, or energy, is prohibited. In determining  
34       compliance with this requirement the Department may consider  
35       the following factors:

- 1 (1) The packaging of the drug product;
- 2 (2) The name and labeling of the product;
- 3 (3) The manner of distribution, advertising, and  
4 promotion of the product;
- 5 (4) Verbal representations made concerning the  
6 product;
- 7 (5) The duration, scope, and significance of abuse or  
8 misuse of the particular product.

9 (c) A violation of this Section is a Class A misdemeanor. A  
10 second or subsequent violation of this Section is a Class 4  
11 felony.

12 (d) This Section does not apply to dietary supplements,  
13 herbs, or other natural products, including concentrates or  
14 extracts, which:

- 15 (1) are not otherwise prohibited by law; and
- 16 (2) may contain naturally occurring ephedrine,  
17 ephedrine alkaloids, or pseudoephedrine, or their salts,  
18 isomers, or salts of isomers, or a combination of these  
19 substances, that:
  - 20 (i) are contained in a matrix of organic material;
  - 21 and
  - 22 (ii) do not exceed 15% of the total weight of the  
23 natural product.

24 (e) Notwithstanding any other provision of this Section to  
25 the contrary, the sale and distribution of any compound,  
26 mixture, or preparation containing any detectable quantity of  
27 pseudoephedrine, its salts or optical isomers, or salts of  
28 optical isomers shall be governed by Section 26 of the  
29 Methamphetamine Manufacturing Chemical Retail Sale Control  
30 Act.

31 (Source: P.A. 90-775, eff. 1-1-99.)

32 Section 10. The Methamphetamine Manufacturing Chemical  
33 Retail Sale Control Act is amended by changing Section 35 and  
34 by adding Section 26 as follows:

1 (720 ILCS 647/26 new)

2 Sec. 26. Pseudoephedrine sales and distribution.

3 (a) If any compound, mixture, or preparation containing any  
4 detectable quantity of pseudoephedrine, its salts or optical  
5 isomers, or salts of optical isomers is dispensed, sold, or  
6 distributed in a pharmacy:

7 (1) the compound, mixture, or preparation shall be  
8 dispensed, sold, or distributed only by a pharmacist or a  
9 pharmacy technician licensed under the Pharmacy Practice  
10 Act of 1987; and

11 (2) any person purchasing, receiving, or otherwise  
12 acquiring the compound, mixture, or preparation shall  
13 produce a photo identification showing the date of birth of  
14 the person and shall sign a written log or receipt showing  
15 the date of the transaction, name of the person, and the  
16 amount of the compound, mixture, or preparation.

17 (b) A person may not purchase, receive, or otherwise  
18 acquire more than 9 grams of any compound, mixture, or  
19 preparation containing any detectable quantity of  
20 pseudoephedrine, its salts or optical isomers, or salts of  
21 optical isomers within any 30-day period.

22 (c) Subsections (a) and (b) of this Section do not apply to  
23 any compound, mixture, or preparation containing any  
24 detectable quantity of pseudoephedrine, its salts or optical  
25 isomers, or salts of optical isomers that are in liquid, liquid  
26 capsule, or gel capsule form if pseudoephedrine is not the only  
27 active ingredient.

28 (d) The Secretary of Human Services, after consultation  
29 with the Director of State Police, may exempt by rule other  
30 compounds, mixtures, or preparations containing any detectable  
31 quantity of pseudoephedrine, its salts or optical isomers, or  
32 salts of optical isomers from the requirements of this Section  
33 which the Secretary finds are not used in the illegal  
34 manufacture of methamphetamine or other controlled substances.  
35 A manufacturer of a drug product containing any detectable  
36 quantity of pseudoephedrine, its salts or optical isomers, or

1 salts of optical isomers may apply for removal of the product  
2 from the requirements of this Section if the product is  
3 determined by the Secretary to have been formulated in such a  
4 way as to effectively prevent the conversion of the active  
5 ingredient into methamphetamine.

6 (720 ILCS 647/35)

7 Sec. 35. Violations.

8 (a) An individual who violates any provision of this Act,  
9 other than Section 26, is guilty of a Class A misdemeanor for a  
10 first offense and a Class 4 felony for a second or subsequent  
11 offense. An individual who violates Section 26 of this Act is  
12 guilty of a Class 4 felony.

13 (b) Except as provided in subsections (c) and (d) of this  
14 Section, the owner and the operator of a retail distributor  
15 that violates any provision of this Act are guilty of a  
16 business offense and subject to a fine of:

17 (1) \$500 for a first offense;

18 (2) \$1,000 for a second offense occurring at the same  
19 retail location as and within 3 years of the prior offense;  
20 and

21 (3) \$5,000 for a third or subsequent offense occurring  
22 at the same retail location as and within 3 years of the  
23 prior offenses.

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

34 (1) \$100 for a first offense;

35 (2) \$200 for a second offense occurring at the same

1 retail location as and within 3 years of the prior offense;

2 (3) \$500 for a third or subsequent offense occurring at  
3 the same retail location as and within 3 years of the prior  
4 offenses;

5 (4) \$1,000 for a fourth offense occurring at the same  
6 retail location as and within 3 years of the prior  
7 offenses; and

8 (5) \$5,000 for a fifth offense occurring at the same  
9 retail location as and within 3 years of the prior  
10 offenses.

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

15 (1) strictly complied with subsections (a), (b), and  
16 (d) of Section 15 of this Act, Sections 20 and 25 of this  
17 Act, and subsection (a) of Section 30 of this Act;

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

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

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

26 (Source: P.A. 93-1008, eff. 1-1-05.)

27 Section 99. Effective date. This Act takes effect upon  
28 becoming law.