

Uniform Controlled Substances Act

5-64-101. Definitions.

As used in subchapters 1-6 of this chapter.

- (a) “Administer” means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:
 - (1) A practitioner; or
 - (2) The patient or research subject at the direction and in the presence of the practitioner;
- (b) “Agent” means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. It does not include a common or contract carrier, public warehouseman, or employee of the carrier or warehouseman;
- (c) “Bureau” means the Drug Enforcement Agency of the United States Department of Justice, or its successor agency;
- (d) “Controlled substance” means a drug, substance, or immediate precursor in Schedules I through VI;
- (e) The term “counterfeit substance” means a noncontrolled substance, which by overall dosage unit appearance (including color, shape, size, markings, packaging, labeling, and overall appearance) or upon the basis of representations made to the recipient, purports to be a controlled substance or to have the physical or psychological effect associated with a controlled substance;

In determining whether a substance is counterfeit, the following factors shall be utilized. A finding of any two (2) of these factors constitutes prima facie evidence that a substance is a “counterfeit substance:”

- (1) Statements made by an owner or by anyone else in control of the substance concerning the nature of the substance, or its use or effect;
 - (2) The physical appearance of the finished product containing the noncontrolled substance is substantially the same as that of a specific controlled substance;
 - (3) The noncontrolled substance is unpackaged or is packaged in a manner normally used for the illegal delivery of a controlled substance;
 - (4) The noncontrolled substance is not labeled in accordance with 21 U.S.C. § 352 or § 353;
 - (5) The person delivering, attempting to deliver, or causing delivery of the noncontrolled substance states or represents to the recipient that the noncontrolled substance may be resold at a price that substantially exceeds the value of the substance;
 - (6) Evasive tactics or actions utilized by the owner or person in control of the substance to avoid detection by law enforcement authorities;
 - (7) Prior convictions, if any, of an owner, or anyone in control of the object under state or federal laws related to controlled substances or fraud;
- (f) “Deliver” or “delivery” means the actual, constructive, or attempted transfer from one (1) person to another of a controlled substance or counterfeit substance in exchange for money or anything of value, whether or not there is an agency relationship;

- (g) “Dispense” means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for that delivery;
- (h) “Dispenser” means a practitioner who dispenses;
- (i) “Distribute” means to deliver other than by administering or dispensing a controlled substance;
- (j) “Distributor” means a person who distributes;
- (k) “Drug” means (1) Substances recognized as drugs in the official *United States Pharmacopoeia*, official *Homeopathic Pharmacopoeia of the United States*, or official *National Formulary*, or any supplement to any of them; (2) Substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals; (3) Substances (other than food) intended to affect the structure or any function of the body of man or animals; and (4) Substances intended for use as a component of any article specified in clause (1), (2), or (3) of this subsection. It does not include devices or their components, parts, or accessories;
- (l) “Immediate precursor” means a substance which the director has found to be and by rule designates as being the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail, or limit manufacture;
- (m) “Manufacture” means the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation or compounding of a controlled substance by an individual for his own use or the preparation, compounding, packaging, or labeling of a controlled substance:
 - (1) By a practitioner as an incident to his administering or dispensing of a controlled substance in the course of his professional practice; or
 - (2) By a practitioner or by his authorized agent under his supervision for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale;
- (n) “Marijuana” means all parts and any variety and/or species of the plant Cannabis that contains THC (Tetrahydrocannabinol) whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination;
- (o)

- (1) “Narcotic drug” means any drug which is defined as a narcotic drug by order of the Director of the Department of Health. In the formulation of definitions of narcotic drugs, the Director of the Department of Health is directed to include all drugs which he finds are narcotic in character and by reason thereof are dangerous to the public health or are promotive of addiction-forming or addiction-sustaining results upon the user which threaten harm to the public health, safety, or morals. In formulating these definitions, the Director of the Department of Health shall take into consideration the provisions of the federal narcotic laws as they exist from time to time and shall amend the definitions so as to keep them in harmony with the definitions prescribed by the federal narcotic laws, so far as is possible under the standards established herein and under the policy of this section.
- (2) “Narcotic drug” also means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:
- (A) Opium, opiates, derivatives of opium and opiates, including their isomers, esters, and ethers whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation. This term does not include the isoquinoline alkaloids of opium;
 - (B) Poppy straw and concentrate of poppy straw;
 - (C) Coca leaves, except coca leaves and extracts of coca leaves from which cocaines, ecgonine, and derivatives of ecgonine or their salts have been removed;
 - (D) Cocaine, its salts, optical and geometric isomers, and salts of isomers;
 - (E) Ecgonine, its derivatives, their salts, isomers, and salts of isomers;
 - (F) Any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subdivisions (o)(2)(A)-(E).
- (p) “Person” means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity;
- (q) “Practitioner” means:
- (1) A physician, dentist, veterinarian, scientific investigator, or other person licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or to administer a controlled substance in the course of professional practice or research in this state;
 - (2) A pharmacy, hospital, or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or to administer a controlled substance in the course of professional practice or research in this state;
- (r) “Production” includes the manufacture, planting, cultivation, growing, or harvesting of a controlled substance;

- (s) “State” when applied to a part of the United States, includes any state, district, commonwealth, territory, insular possession thereof, and any area subject to the legal authority of the United States of America;
- (t) “Ultimate user” means a person who lawfully possesses a controlled substance for his own use or for the use of a member of his household or for administering to an animal owned by him or by a member of his household;
- (u) “Director” shall mean the Director of the Arkansas Department of Health or his duly authorized agent;
- (v) The term “drug paraphernalia” means all equipment, products, and materials of any kind which are used, intended for use, or designed for use, in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of subchapters 1-6 of this chapter (meaning the Controlled Substances Act of this state). It includes, but is not limited to:
 - (1) Kits used, intended for use, or designed for use in planting, propagating, cultivating, growing, or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived;
 - (2) Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances;
 - (3) Isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant which is a controlled substance;
 - (4) Testing equipment used, intended for use, or designed for use in identifying, or in analyzing the strength, effectiveness, or purity of controlled substances;
 - (5) Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances;
 - (6) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose, and lactose, used, intended for use, or designed for use in cutting controlled substance;
 - (7) Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana;
 - (8) Blenders, bowls, containers, spoons, mixing devices used, intended for use, or designed for use in packaging small quantities of controlled substances;
 - (9) Capsules, balloons, envelopes and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances;
 - (10) Containers and other objects used, intended for use, or designed for use in storing or concealing controlled substances;
 - (11) Hypodermic syringes, needles, and other objects used, intended for use, or designed for use in parenterally injecting controlled substances into the human body; and

- (12) Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, or hashish oil into the human body, such as:
- (A) Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;
 - (B) Water pipes;
 - (C) Carburetion tubes and devices;
 - (D) Smoking and carburetion masks;
 - (E) Roach clips: meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand;
 - (F) Miniature cocaine spoons and cocaine vials;
 - (G) Chamber pipes;
 - (H) Carburetor pipes;
 - (I) Electric pipes;
 - (J) Air-driven pipes;
 - (K) Chillums;
 - (L) Bongs; and
 - (M) Ice pipes or chillers.

In determining whether an object is drug paraphernalia, a court or other authority should consider, in addition to all other logically relevant factors, the following:

- (1) Statements by an owner or by anyone in control of the object concerning its use;
- (2) Prior convictions, if any, of an owner, or of anyone in control of the object, under any state or federal law relating to any controlled substance;
- (3) The proximity of the object, in time and space, to a direct violation of subchapters 1-6 of this chapter;
- (4) The proximity of the object to controlled substances;
- (5) The existence of any residue of controlled substances on the object;
- (6) Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons whom he knows, or should reasonably know, intend to use the object to facilitate a violation of subchapters 1-6 of this chapter; the innocence of an owner, or of anyone in control of the object, as to a direct violation of subchapters 1-6 of this chapter shall not prevent a finding that the object is intended for use, or designed for use, as drug paraphernalia;
- (7) Instructions, oral or written, provided with the object concerning its use;
- (8) Descriptive materials accompanying the object which explain or depict its use;
- (9) National and local advertising concerning its use;
- (10) The manner in which the object is displayed for sale;
- (11) Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;

- (12) Direct or circumstantial evidence of the ratio of sales of the objects to the total sales of the business enterprise;
 - (13) The existence and scope of legitimate uses for the object in the community; and
 - (14) Expert testimony concerning its use.
- (w) “Noncontrolled substance” means any liquid, substance, or material not listed in Schedules I through VI of the Schedules of Controlled Substances promulgated by the Director of the Arkansas Department of Health;
- (x) The term “anabolic steroid” means any drug or hormonal substance, chemically and pharmacologically related to testosterone, other than estrogens, progestin, and corticosteroid, that promotes muscle growth. Except that such term does not include an anabolic steroid which is expressly intended for administration through implants to cattle or other nonhuman species and which has been approved by the Director of the Department of Health for such administration. If any person prescribes, dispenses, or distributes such steroid for human use, such person shall be considered to have prescribed, dispensed, or distributed an anabolic steroid within the meaning of this subdivision.

5-64-201. Director’s duties.

- (a) The director shall administer subchapters 1-6 of this chapter and may add substances to or delete or reschedule all substances enumerated in the schedules, pursuant to the procedures of the Administrative Procedure Act, as amended § 25-15-201 et seq. Provided, the director shall not delete any substance from the Schedules in effect on July 20, 1979, without prior approval by the Legislative Council. In making a determination regarding a substance, the director shall consider the following:
- (1) The actual or relative potential for abuse;
 - (2) The scientific evidence of its pharmacological effect, if known;
 - (3) The state of current scientific knowledge regarding the substance;
 - (4) The history and current pattern of abuse;
 - (5) The scope, duration, and significance of abuse;
 - (6) The risk to public health;
 - (7) The potential of the substance to produce psychic or physiological dependence liability; and
 - (8) Whether the substance is an immediate precursor of a substance already controlled under this subchapter.
- (b) After considering the factors enumerated in subsection (a) of this section, the director shall make findings with respect thereto and issue a rule controlling the substance if he finds the substance has a potential for abuse.
- (c) If the director designates a substance as an immediate precursor, substances which are precursors of the controlled precursor shall not be subject to control solely because they are precursors of the controlled precursor.
- (d) If any substance is designated as a controlled substance under federal law and notice thereof is given to the director, the director shall similarly control the substance under subchapters 1-6 of this chapter after the expiration of thirty (30) days from publication in the Federal Register of a final order designating a

- substance as a controlled substance, unless within that thirty-day period, the director objects to inclusion. In that case, the director shall publish the reasons for objection and afford all interested parties an opportunity to be heard. At the conclusion of the hearing, the director shall publish his decision. Any person aggrieved by a decision of the director shall be entitled to judicial review in the Circuit Court of Pulaski County. Upon publication of objection to inclusion under subchapters 1-6 of this chapter by the director, control under subchapters 1-6 of this chapter is stayed until the director publishes his decision or, if judicial review is sought, such inclusion is stayed until such adjudication.
- (e) Authority to control under this section does not extend to distilled spirits, wine, malt beverages, or tobacco.
 - (f) The director shall schedule gamma-hydroxybutyrate and its known precursors and analogs in a manner consistent with the procedures outlined in this section.

5-64-202. Nomenclature.

The controlled substances listed or to be listed in the schedules shall be included by whatever official, common, usual chemical, or trade name designated.

5-64-203. Criteria for Schedule I.

The director shall place a substance in Schedule I if he finds that the substance:

- (a) Has high potential for abuse; and
- (b) Has no accepted medical use in treatment in the United States or lacks accepted safety for use in treatment under medical supervision.

5-64-204. [Reserved.]

5-64-205. Criteria for Schedule II.

The director shall place a substance in Schedule II if he finds that:

- (a) The substance has high potential for abuse;
- (b) The substance has currently accepted medical use in treatment in the United States, or currently accepted medical use with severe restrictions; and
- (c) The abuse of the substance may lead to severe psychic or physical dependence.

5-64-206. [Reserved.]

5-64-207. Criteria for Schedule III.

The director shall place a substance in Schedule III if he finds that:

- (a) The substance has a potential for abuse less than the substances listed in Schedules I and II;
- (b) The substance has currently accepted medical use in treatment in the United States; and
- (c) Abuse of the substance may lead to moderate or low physical dependence or high psychological dependence.

5-64-208. [Reserved.]

5-64-209. Criteria for Schedule IV.

The director shall place a substance in Schedule IV if he finds that:

- (a) The substance has a low potential for abuse relative to substances in Schedule III;
- (b) The substance has currently accepted medical use in treatment in the United States; and
- (c) Abuse of the substance may lead to limited physical dependence or psychological dependence relative to the substances in Schedule III.

5-64-210. [Reserved.]

5-64-211. Criteria for Schedule V.

The director shall place a substance in Schedule V if he finds that:

- (a) The substance has low potential for abuse relative to the controlled substances listed in Schedule IV;
- (b) The substance has currently accepted medical use in treatment in the United States; and
- (c) The substance has limited physical dependence or psychological dependence liability relative to the controlled substances listed in Schedule IV.

5-64-212. [Reserved.]

5-64-213. Schedule VI established.

There is established a Schedule VI for the classification of those substances which are determined to be inappropriately classified by placing them in Schedules I through V. Schedule VI includes controlled substances listed or to be listed by whatever official name, common or usual name, chemical name, or trade name designated.

5-64-214. Criteria for Schedule VI.

The director shall place a substance in Schedule VI if he finds that:

- (a) The substance is not currently accepted for medical use in treatment in the United States;
- (b) That there is lack of accepted safety for use of the drug or other substance even under direct medical supervision;
- (c) That the substance has relatively high psychological and/or physiological dependence liability; and
- (d) That use of the substance presents a definite risk to public health.

5-64-215. Substances in Schedule VI.

- (a) Any material, compound, mixture, or preparation, whether produced directly or indirectly from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, which contains any quantity of the following substances, or which contains any of their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation are included in Schedule VI:
 - 1. Marijuana

2. Tetrahydrocannabinols

Synthetic equivalents of the substances contained in the plant, or in the resinous extractives of cannabis, sp. And/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following:

1 cis or trans
tetrahydrocannabinol, and their optical isomers

6 cis or trans
tetrahydrocannabinol, and their optical isomers

3.4 cis or trans
tetrahydrocannabinol and their optical isomers.

- (b) Provided, that the director shall not delete the controlled substances listed in this section from Schedule VI.

5-64-216. Schedule revisions.

The director shall revise and republish the schedule annually.

5-64-301 – 5-64-306. [Reserved.]

5-64-307. Order forms.

Controlled substances in Schedules I and II shall be distributed by a practitioner to another practitioner only pursuant to an order form. Compliance with the provisions of federal law respecting order forms shall be deemed compliance with this section.

5-64-308. Written prescriptions.

- (a) Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, no controlled substance in Schedule II may be dispensed without the written prescription of a practitioner.
- (b) In emergency situations, as defined by rule of the director, Schedule II drugs may be dispensed upon oral prescription of a practitioner, reduced promptly to writing, and filed by the pharmacy. Prescriptions shall be retained in conformity with the requirements of section 6 of this subchapter. No prescription for a Schedule II substance may be refilled.
- (c) Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, no controlled substance included in Schedules III or IV, which is a prescription drug, shall not be dispensed without a written or oral prescription of a practitioner. The prescription shall not be filled or refilled more than six (6) months after the date thereof or be refilled more than five (5) times, unless renewed by the practitioner.
- (d) A controlled substance included in Schedule V shall not be distributed or dispensed other than for a medical purpose.

5-64-1005. Exemptions.

The provisions of § 5-64-1001 shall not apply to any of the following:

- (a) Any pharmacist or other authorized person who sells or furnishes a substance upon the prescription of a physician, dentist, podiatrist, or veterinarian;

- (b) Any physician, dentist, podiatrist, or veterinarian who administers or furnishes a substance to his or her patients;
- (c) Any manufacturer or wholesaler licensed by the State Board of Pharmacy who sells, transfers, or otherwise furnishes a substance to a licensed pharmacy, physician, dentist, podiatrist, or veterinarian;
- (d) Any sale, transfer, furnishing, or receipt by a retail distributor of any drug which contains any ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine and which is sold, transferred, or furnished over the counter without a prescription pursuant to the Federal Food, Drug, and Cosmetic Act or regulations adopted thereunder, provided that:
 - (1) The drug is sold in blister packs of not more than three (3) grams of ephedrine, pseudoephedrine, or phenylpropanolamine base, each blister containing not more than two (2) dosage units;
 - (2) If the use of a blister pack is technically unfeasible, the drug is packaged in unit dose packets or pouches;
 - (3) In the case of liquids, the drug is sold in package sizes of not more than three (3) grams of ephedrine, pseudoephedrine, or phenylpropanolamine base; and
 - (4) The total quantity of the sale is not greater than three (3) packages or nine (9) grams, whichever is smaller.

5-64-1006. Suspicious order reports.

- (a) Any manufacturer, wholesaler, or retail distributor who is required to keep records under this subchapter and who sells, transfers, or otherwise furnishes ephedrine, pseudoephedrine, or phenylpropanolamine or their salts, optical isomers, and salts of optical isomers, alone or in a mixture, to any person in this state in a suspicious transaction shall report the transaction in writing to the Arkansas State Board of Pharmacy.
- (b) Any person who does not submit a report as required by subsection (a) of this section is guilty of a Class A misdemeanor.
- (c) For the purposes of this section, “suspicious transaction” means a sale or transfer to which either of the following applies:
 - (1) The circumstances of the sale or transfer would lead a reasonable person to believe that the substance is likely to be used for the purpose of unlawfully manufacturing a controlled substance in violation of the Uniform Controlled Substances Act, § 5-64-101 et seq., based on such factors as the amount involved, the method of payment, the method of delivery, and past dealings with the person acquiring the substance; or
 - (2) The transaction involves a payment for ephedrine, pseudoephedrine, or phenylpropanolamine or their salts, optical isomers, and salts of optical isomers, alone or in a mixture, in cash or money orders totaling more than two hundred dollars (\$200).
- (d)
 - (1) The board shall adopt by rule criteria for determining whether a transaction is suspicious, taking into consideration the recommendations in Appendix A, Report to the United States Attorney General by the Suspicious Orders

Task Force, under the federal Comprehensive Methamphetamine Control Act of 1996, Pub.L. 104-237.

- (2) In addition to any other penalties provided for in this section, the board may impose a civil penalty for a violation of subsection (a) of this section not to exceed ten thousand dollars (\$10,000) per violation.

5-64-1101. Possession – Penalty.

- (a) It shall be unlawful for any person to possess more than five (5) grams of ephedrine or nine (9) grams of pseudoephedrine or phenylpropanolamine, or their salts, optical isomers, and salts of optical isomers, alone or in a mixture, except:
 - (1) Any pharmacist or other authorized person who sells or furnishes ephedrine, pseudoephedrine, or phenylpropanolamine or their salts, optical isomers, and salts of optical isomers, upon the prescription of a physician, dentist, podiatrist, or veterinarian; or
 - (2) Without a prescription, pursuant to the Federal Food, Drug, and Cosmetic Act or regulations adopted under the act, provided that the person possesses a sales and use tax permit issued by the Department of Finance and Administration; or
 - (3) Any physician, dentist, podiatrist, or veterinarian who administers or furnishes ephedrine, pseudoephedrine, or phenylpropanolamine or their salts, optical isomers, and salts of optical isomers to his or her patients; or
 - (4)
 - (A) Any manufacturer, wholesaler, or distributor licensed by the Arkansas State Board of Pharmacy who meets one (1) of the requirements in subdivision (a)(4)(B) of this section and sells, transfers, or otherwise furnishes ephedrine, pseudoephedrine, or phenylpropanolamine or their salts, optical isomers, and salts of optical isomers to a licensed pharmacy, physician, dentist, podiatrist, veterinarian, or any person who possesses a sales and use tax permit issued by the department.
 - (B)
 - (i) The manufacturer, wholesaler, or distributor must hold or store the substances in facilities that meet the packaging requirements of § 5-64-1005(d)(1)-(3).
 - (ii) The manufacturer, wholesaler, or distributor must sell, transfer, or otherwise furnish only to healthcare professionals identified in subdivisions (a)(1) and (3) of this section.
- (b) Possession of more than five (5) grams of ephedrine or more than nine (9) grams of pseudoephedrine or phenylpropanolamine or their salts, optical isomers, and salts of optical isomers shall constitute prima facie evidence of the intent to manufacture methamphetamine or another controlled substance in violation of this subchapter, unless the person qualifies of an exemption listed in subsection (a) of this section.
- (c) Any person who violates the provisions of this section shall be guilty of a Class D felony.

History. Acts 1997, No. 565, § 1; 2001, No. 1209, § 3; No 1782, § 1; 2003, No. 867, § 2.

5-64-1102. Possession with intent to manufacture – Unlawful distribution.

- (a)
 - (1) It shall be unlawful for a person to possess ephedrine, pseudoephedrine, or phenylpropanolamine or their salts, optical isomers, and salts of optical isomers with intent to manufacture methamphetamine.
 - (2) Any person who violates the provisions of subdivision (a)(1) of this section shall be guilty of a Class D felony.
- (b)
 - (1) It shall be unlawful for a person to sell, transfer, distribute, or dispense any product containing ephedrine, pseudoephedrine, or phenylpropanolamine or their salts, optical isomers, and salts of optical isomers if the person knows that the purchaser will use the product as a precursor to manufacture methamphetamine or another controlled substance, or if the person sells, transfers, distributes, or dispenses the product with reckless disregard as to how the product will be used.
 - (2) Any person who violates the provisions of subdivision (b)(1) of this section shall be guilty of a Class D felony.

5-64-1103. Retail sales limits.

- (a) It shall be unlawful for a retail distributor or an employee of a retail distributor to knowingly sell, transfer, or otherwise furnish in a single transaction:
 - (1) More than three (3) packages of one (1) or more products that the distributor or employee knows to contain ephedrine, pseudoephedrine, or phenylpropanolamine, their salts, isomers, or salts of isomers; or
 - (2) Any single package of any product that the distributor or employee knows to contain ephedrine, pseudoephedrine, or phenylpropanolamine, which contains more than ninety-six (96) pills, tablets, gelcaps, capsules, or other individual units or more than three (3) grams of ephedrine, pseudoephedrine, or phenylpropanolamine, their salts, isomers, or salts of isomers, or a combination of any of these substances, whichever is smaller; or
 - (3) Any product containing ephedrine, pseudoephedrine, or phenylpropanolamine, unless:
 - (A) The product is sold in package sizes of not more than three (3) grams of ephedrine, pseudoephedrine, or phenylpropanolamine base and is packaged in blister packs, each blister containing not more than two dosage units; or
 - (B) Where the use of blister packs is technically infeasible, that is packaged in unit dose packets or pouches; or
 - (C) In the case of liquids, the drug is sold in package sizes of not more than three (3) grams of ephedrine, pseudoephedrine, or phenylpropanolamine base; or
 - (4)
 - (A) Any product containing ephedrine, pseudoephedrine, or phenylpropanolamine to any person under the age of eighteen (18)

years, unless the person is purchasing a pediatric product intended for a child.

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

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

- (i) Contains a description of the person or a photograph of the person, or both, and gives the persons' date of birth; and
- (ii) Includes, without being limited to, a passport, military identification card, or driver's license.

(b)

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

(2)

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

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

(c)

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

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

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

(2) Any person who violates the provisions of subdivision (c)(1) of this section shall be guilty of a Class A misdemeanor.

(d) This section shall not apply to:

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

- (A) In solid dosage form whose individual dosage units to not exceed recommended dosage, according to label instructions, does not exceed fifteen (15) milligrams of ephedrine, pseudoephedrine, or phenylpropanolamine; or
- (B) In liquid form whose recommended dosage, according to label instruction, does not exceed fifteen milligrams (15 mg) of ephedrine, pseudoephedrine, or phenylpropanolamine per five milliliters (5 ml) of liquid product;
- (2) Pediatric liquid products primarily intended for administration to children under two (2) years of age for which the recommended dosage does not exceed two milliliters (2 ml) and the total package content does not exceed one fluid ounce (1 fl. oz.); or
- (3) Products that the State Board of Pharmacy, upon application of a manufacturer, exempts by rule from this section because the product has been formulated in such a way as to effectively prevent the conversion of the active ingredient into methamphetamine or its salts or precursors.
 - (1) For the purposes of this subchapter:
 - (1) The terms “ephedrine,” “pseudoephedrine,” and “phenylpropanolamine” mean any drug product containing ephedrine, pseudoephedrine, or phenylpropanolamine or any of their salts, isomers, or salts of isomers, alone or in a mixture;
 - (2) “Retail distributor” means a grocery store, general merchandise store, drugstore, convenience store, or other related entity, the activities of which, as a distributor of ephedrine, pseudoephedrine, or phenylpropanolamine products, are limited exclusively to the sale of ephedrine, pseudoephedrine, or phenylpropanolamine products 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 and includes any person or entity that makes a direct sale or has knowledge of the sale, but does not include any manager, supervisor, or owner not present and not otherwise aware of the sale, nor shall it include the parent company of that entity if the company is not involved in direct sales regulated by this subchapter; and
 - (3) “Sale for personal use” means the sale in a single transaction to an individual customer for a legitimate medical use of a product containing ephedrine, pseudoephedrine, or phenylpropanolamine in quantities at or below that specified in subsection (a) of this section, and includes the sale of those products to employers to be dispensed to employees from first-aid kits or medicine chests.
- (f) Nothing in this section shall prohibit a person under the age of eighteen (18) years from possessing and selling ephedrine, pseudoephedrine, or phenylpropanolamine as an agent of the minor’s employer acting within the scope of the minor’s employment.