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94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

HB0662

Introduced 1/28/2005, by Rep. Roger L. Eddy

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.

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CORRECTIONAL
BUDGET AND
IMPACT NOTE ACT
MAY APPLY

A BILL FOR

AN ACT concerning pseudoephedrine.

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

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

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

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

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

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

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

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

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

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

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

(c) Buprenorphine.

(d) Pyrovalerone.

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

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

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

(720 ILCS 570/216)

Sec. 216. Ephedrine.

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

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

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

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

(1) The packaging of the drug product;

(2) The name and labeling of the product;

(3) The manner of distribution, advertising, and promotion of the product;

(4) Verbal representations made concerning the product;

(5) The duration, scope, and significance of abuse or misuse of the particular product.

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

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

(1) are not otherwise prohibited by law; and

(2) may contain naturally occurring ephedrine, ephedrine alkaloids, or pseudoephedrine, or their salts, isomers, or salts of isomers, or a combination of these substances, that:

(i) are contained in a matrix of organic material; and

(ii) do not exceed 15% of the total weight of the natural product.

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

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

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

(720 ILCS 647/26 new)

Sec. 26. Pseudoephedrine sales and distribution.

(a) 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.

(b) 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.

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

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

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

(720 ILCS 647/35)

Sec. 35. Violations.

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

(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.

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

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