

FIRST REGULAR SESSION

HOUSE BILL NO. 1012

91ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES MAYER, PORTWOOD, HUNTER, JETTON, WRIGHT,
HOSMER, MERIDETH (Co-sponsors), JOLLY AND MOORE.

Read 1st time March 15, 2001, and 1000 copies ordered printed.

TED WEDEL, Chief Clerk

2301L.011

AN ACT

To amend chapter 195, RSMo, by adding thereto four new sections relating to methamphetamine manufacture, with penalty provisions.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 195, RSMo, is amended by adding thereto four new sections, to be
2 known as sections 195.515, 195.518, 195.521 and 195.524, to read as follows:

**195.515. 1. Any manufacturer or wholesaler who sells, transfers, or otherwise
2 furnishes ephedrine, pseudoephedrine or phenylpropanolamine, or any of their salts,
3 optical isomers and salts of optical isomers, alone or in a mixture, to any person in this
4 state shall report any suspicious transaction to the department of health before completion
5 of the sale or as soon as practicable thereafter.**

**6 2. As used in this section, "suspicious transaction" means a sale or transfer to
7 which any of the following applies:**

**8 (1) The circumstances of the sale or transfer would lead a reasonable person to
9 believe that the substance is likely to be used for the purpose of unlawfully manufacturing
10 a controlled substance, based upon factors such as the amount involved, the method of
11 payment, the method of delivery and any past dealings with any participant in the
12 transaction; or**

**13 (2) The transaction involves payment in cash or money order in a total amount of
14 more than two hundred dollars.**

15 3. Any violation of this section shall be a class D felony.

**16 4. The department of health is granted authority to promulgate rules and forms
17 necessary to facilitate the reporting requirements contained in this section, including the
18 criteria for determining whether a transaction is suspicious, taking into consideration the**

19 recommendations in appendix A of the report to the United States Attorney General by the
20 Suspicious Orders Task Force pursuant to the federal Comprehensive Methamphetamine
21 Control Act of 1996.

22 **5. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo,**
23 **that is created under the authority delegated in this section shall become effective only if**
24 **it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if**
25 **applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable**
26 **and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo,**
27 **to review, to delay the effective date or to disapprove and annul a rule are subsequently**
28 **held unconstitutional, then the grant of rulemaking authority and any rule proposed or**
29 **adopted after August 28, 2001, shall be invalid and void.**

195.518. 1. It is unlawful for any person to possess more than five grams of
2 **ephedrine, its salts, optical isomers and salts of optical isomers or more than nine grams**
3 **of pseudoephedrine, its salts, optical isomers and salts of optical isomers.**

4 **2. This section shall not apply to:**

5 **(1) Any pharmacist or other authorized person acting upon the prescription of a**
6 **physician, dentist, podiatrist or veterinarian; or**

7 **(2) Any physician, optometrist, dentist, podiatrist or veterinarian who administers,**
8 **dispenses or furnishes a substance listed in subsection 1 of this section to his or her patients**
9 **within the scope of his or her professional practice. Such administration or dispensing**
10 **shall be recorded in the patient record; or**

11 **(3) Any pharmacy, retail outlet or retail distributor who possesses a sales and use**
12 **tax permit issued by the department of revenue and who possesses such substances in the**
13 **ordinary course of business; or**

14 **(4) Any manufacturer, wholesaler or distributor licensed by the department of**
15 **health who sells, transfers or otherwise furnishes any substance listed in subsection 1 of**
16 **this section to a licensed pharmacy, physician, dentist, podiatrist or veterinarian; or**

17 **(5) Any person in their home or residence under circumstances consistent with**
18 **typical medicinal or household use as indicated by factors including, but not limited to,**
19 **storage location and possession in products in a variety of strengths, brands, types,**
20 **purposes and expiration dates.**

21 **3. Possession of more than five grams of ephedrine or more than nine grams of**
22 **pseudoephedrine, or any of their salts, optical isomers and salts of optical isomers shall**
23 **constitute prima facie evidence of the intent to manufacture methamphetamine or any of**
24 **its analogs, or any other controlled substance in violation of this chapter.**

25 **4. A person who violates this section is guilty of a class D felony for the first offense,**

26 or a class C felony for a second or subsequent offense.

195.521. 1. It is unlawful for any person to sell, transfer, distribute or dispense any
2 product containing ephedrine, pseudoephedrine or phenylpropanolamine, or any of their
3 salts, optical isomers and salts of optical isomers, if the person knows that the purchaser
4 will use the product as a precursor to manufacture methamphetamine or other controlled
5 substance or with reckless disregard as to how the product will be used.

6 2. A person who violates this section is guilty of a class D felony for the first offense,
7 or a class C felony for the second or subsequent offense.

195.524. 1. It shall be unlawful for a retail distributor, or an employee thereof, to
2 sell, transfer, or otherwise furnish, in a single transaction:

3 (1) More than three packages of one or more products that he or she knows to
4 contain ephedrine, pseudoephedrine, or phenylpropanolamine, their salts, isomers, or salts
5 of isomers where the total quantity of the sale is greater than nine grams;

6 (2) Any single package of any product that he or she knows to contain ephedrine,
7 pseudoephedrine, or phenylpropanolamine, which contains more than ninety-six pills,
8 tablets, gelcaps, capsules, or other individual units where the total quantity of the sale is
9 greater than nine grams;

10 (3) When sold in blister packs, more than three grams of ephedrine,
11 pseudoephedrine, or phenylpropanolamine base, each blister containing not more than two
12 dosage units, or if the use of a blister pack is technically unfeasible, the drug is packaged
13 in unit dose packets or pouches; or

14 (4) In the case of liquids, not more than three grams of ephedrine,
15 pseudoephedrine, or phenylpropanolamine base.

16 2. It shall be unlawful for any person, other than a person or entity described in
17 subsection 1 of this section, to purchase, acquire or otherwise receive in a single
18 transaction:

19 (1) More than three packages of one or more products that he or she knows to
20 contain ephedrine, pseudoephedrine, or phenylpropanolamine, their salts, isomers, or salts
21 of isomers where the total quantity of the sale is greater than nine grams; or

22 (2) Any single package of any product that he or she knows to contain ephedrine,
23 pseudoephedrine, or phenylpropanolamine, which contains more than ninety-six pills,
24 tablets, gelcaps, capsules, or other individual units where the total quantity of the sale is
25 greater than nine grams; or

26 (3) More than nine grams of ephedrine, pseudoephedrine, or phenylpropanolamine,
27 their salts, isomers, or salts of isomers, or a combination of any such substances.

28 3. A violation of this section is a class A misdemeanor.

29 **4. This section shall not apply to:**

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

32 **(a) In solid dosage form whose individual dosage units do not exceed fifteen**
33 **milligrams of ephedrine, pseudoephedrine, or phenylpropanolamine; or**

34 **(b) In liquid form whose recommended dosage, according to label instructions, does**
35 **not exceed fifteen milligrams of ephedrine, pseudoephedrine, or phenylpropanolamine per**
36 **five milliliters of liquid product;**

37 **(2) Pediatric liquid products primarily intended for administration to children**
38 **under two years of age for which the recommended dosage does not exceed two milliliters**
39 **and the total package content does not exceed one fluid ounce;**

40 **(3) Products that the state department of health, upon application of a**
41 **manufacturer, exempts by rule from this section because the product has been formulated**
42 **in such a way as to effectively prevent the conversion of the active ingredient into**
43 **methamphetamine, or its salts or precursors;**

44 **(4) Products sold in package sizes of not more than three grams of ephedrine,**
45 **pseudoephedrine, or phenylpropanolamine base, and that is packaged in blister packs,**
46 **each blister containing not more than two dosage units, or where the use of blister packs**
47 **is technically infeasible, that is packaged in unit dose packets or pouches, where the total**
48 **quantity of the sale is not greater than three packages or nine grams, whichever is smaller;**

49 **(5) In the case of liquids, a product sold in package sizes of not more than three**
50 **grams ephedrine, pseudoephedrine or phenylpropanolamine base, where the total quantity**
51 **of the sale is not greater than three packages or nine grams, whichever is smaller.**

52 **5. As used in this section, the following terms mean:**

53 **(1) "Retail distributor", a grocery store, general merchandise store, drugstore,**
54 **convenience store or other related entity, the activities of which, as a distributor of**
55 **ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine products, are**
56 **limited exclusively to the sale of ephedrine, pseudoephedrine, phenylpropanolamine**
57 **products for personal use both in number of sales and volume of sales, either directly to**
58 **walk-in customers or in face-to-face transactions by direct sales. Retail distributor shall**
59 **include any person or entity that makes a direct sale or has knowledge of the sale, but does**
60 **not include any manager, supervisor or owner not present and not otherwise aware of the**
61 **sale, nor shall it include the parent company of that entity if the company is not involved**
62 **in direct sales regulated by this chapter;**

63 **(2) "Sale for personal use", the sale in a single transaction to an individual**
64 **customer for a legitimate medical use of a product containing ephedrine, pseudoephedrine,**

65 or phenylpropanolamine in dosages at or below that specified in subsection 4 of this
66 section. Sale for personal use also includes the sale of those products to employers to be
67 dispensed to employees from first-aid kits or medicine chests.

68 **6. Any person who is considered the general owner or operator of the outlet where**
69 **ephedrine, pseudoephedrine, or phenylpropanolamine products are available for sale who**
70 **violates subsection 1 of this section shall not be penalized pursuant to this section if such**
71 **person documents that an employee training program was in place to provide the employee**
72 **with information on the state and federal regulations regarding sales of ephedrine,**
73 **pseudoephedrine or phenylpropanolamine products. Such training program must be**
74 **attended by all employees who sell ephedrine, pseudoephedrine or phenylpropanolamine**
75 **products to the general public.**