



WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

2005 Wisconsin Act 14
[2005 Senate Bill 78]

**Regulation of Pseudoephedrine and
Other Substances Used to
Manufacture Methamphetamine**

2005 Wisconsin Act 14 creates regulations relating to the sale of pseudoephedrine and handling of other substances used in the manufacturing of methamphetamine.

Classification of Pseudoephedrine as a Controlled Substance

Pseudoephedrine is an ingredient in over-the-counter medications, such as Sudafed, and is used to produce methamphetamine. Prior law did not classify pseudoephedrine as a controlled substance.

The Act classifies any pseudoephedrine product as a Schedule V controlled substance. “Pseudoephedrine product” is defined in the Act as a material, compound, mixture, or preparation containing any quantity of pseudoephedrine or any of its salts, isomers, or salts of isomers but does not include such a product if any of the following applies:

- The product is a pseudoephedrine liquid¹ or liquid-filled pseudoephedrine gelcap.² This exception does *not* apply if the Controlled Substances Board has determined, by rule, that the product can be readily used in the manufacture of methamphetamine.
- The Controlled Substances Board has determined, by rule, that the pseudoephedrine product cannot be readily used in the manufacture of methamphetamine.

Under the Act, a pseudoephedrine product must be dispensed as follows under the Act:

¹ “Pseudoephedrine liquid” is defined as a product that is intended to be sold at retail, that is a liquid at room temperature, and that contains pseudoephedrine or any of its salts, isomers, or salts of isomers.

² “Liquid-filled pseudoephedrine gelcap” is defined as a soft, liquid-filled gelatin capsule that is intended to be sold at retail and that contains pseudoephedrine or any of its salts, isomers, or salts of isomers.

This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature’s Web site at: <http://www.legis.state.wi.us/>.

- It must be dispensed and sold in good faith as a medicine, and not for the purpose of evading the Uniform Controlled Substances Act.
- It must be sold by a pharmacist *or* a person who is working under the direction of a registered pharmacist when sold in a retail establishment.
- When sold in a retail establishment, it must bear the name and address of the establishment on the immediate container.
- Any person purchasing the substance must, at the time of purchase, present to the seller that person's name and address and an identification card containing the person's photograph. The seller must record the name and address and the name and quantity of the product sold. The purchaser and seller must sign the record of the transaction unless the product is sold by a person working under the direction of a pharmacist, in which case, the supervising pharmacist must sign the record of the transaction.
- The records of transactions of sales of pseudoephedrine products may be kept in either a paper or electronic format and must be maintained by the pharmacy for at least two years. Only a pharmacist or a law enforcement officer may have access to information recorded with respect to the sale of a pseudoephedrine product.
- No person may sell a pseudoephedrine product to a person under 18 years of age, and no person under 18 years of age may purchase a pseudoephedrine product.
- No person, other than a physician, dentist, veterinarian, or pharmacist may purchase more than **7.5 grams** of a pseudoephedrine product within a 30-day period without the authorization of a physician, dentist, or veterinarian.

Criminal Offenses Relating to Delivery of Pseudoephedrine

A person who dispenses a pseudoephedrine product in violation of the requirements for dispensing may be charged with distribution or delivery of a Schedule V controlled substance, which is a Class I felony, punishable by a fine not to exceed \$10,000 and a term of imprisonment and extended supervision not to exceed three years and six months.

Acquiring or obtaining possession of a pseudoephedrine product by misrepresentation, fraud, forgery, deception, or subterfuge is a Class H felony, punishable by a fine not to exceed \$10,000 and a term of imprisonment and extended supervision not to exceed six years. A person purchasing a pseudoephedrine product who gives a false name or address is presumed to have violated this provision.

Under the Act, a person who purchases within a 30-day period more than 7.5 grams of a pseudoephedrine product other than by purchasing the product in person from a pharmacy or pharmacist is guilty of a Class I felony. This provision does not apply to a purchase authorized by a physician, dentist, or veterinarian.

The Act also provides that no person may knowingly solicit, hire, direct, employ, or use another to purchase, on behalf of the person, pseudoephedrine with the intent to acquire more than 7.5 grams of a pseudoephedrine product within a 30-day period. This offense is a Class I felony unless the person who was solicited, hired, directed, employed, or used was under 18 years of age. In that case, the offense is a Class H felony.

It is also a Class I felony under the Act to purchase pseudoephedrine on behalf of another with the intent to facilitate another person's manufacture of methamphetamine.

The Act includes defenses to prosecution for offenses relating to dispensing pseudoephedrine products and purchasing more than the legal limit of pseudoephedrine products for acts that are not knowingly or recklessly committed or for sales made in good faith.

Possession of Methamphetamine Precursors

The Act prohibits the possession of an ephedrine or pseudoephedrine product, red phosphorus, lithium metal, sodium metal, iodine, anhydrous ammonia, or pressurized ammonia with intent to manufacture methamphetamine. Under the Act, possession of materials used in manufacture of methamphetamine is a Class H felony. Possession of more than **9 grams** of ephedrine or pseudoephedrine, other than pseudoephedrine contained in a product that is not included as a Schedule V controlled substance, creates a rebuttable presumption of intent to manufacture methamphetamine. The penalty may be increased by five years if the person intended to distribute methamphetamine within 1,000 feet of certain places, such as a school or a park.

Under the Act, when making a sentencing decision concerning a person convicted of the above offense, the court must consider as an aggravating factor that the person intended to deliver or distribute methamphetamine to a prisoner within the precincts of any prison, jail, or house of correction or knowingly used a public transit vehicle during the violation.

Standards for Storage of Controlled Substances by Distributors and Manufacturers

The Act provides that Pharmacy Examining Board rules for manufacturing and distributing drugs may not impose requirements regarding the storage of a controlled substance in a safe, a steel cabinet, a vault, or any other secure storage compartment, area, room, or building **unless**: (1) the controlled substance is included in Schedule I, II, III, or IV under current Wisconsin law; or (2) the controlled substance is also a controlled substance under federal law.

Agricultural Chemicals Used to Manufacture Methamphetamine

Current law prohibits: (1) transferring or attempting to transfer anhydrous ammonia without the consent of the owner of the anhydrous ammonia; and (2) intentionally taking, carrying away, using, concealing, or retaining possession of anhydrous ammonia or anhydrous ammonia equipment belonging to another without the other's consent and with intent to deprive the owner permanently of the anhydrous ammonia or the equipment, among other offenses relating to misuse of anhydrous ammonia. In general, a violation of these provisions is a Class I felony.

The Act also prohibits intentionally releasing or allowing the escape of anhydrous ammonia belonging to another into the atmosphere. This provision does not apply if the owner has authorized the actor to exercise control over the anhydrous ammonia or has consented to its release. The offense is a Class I felony.

Also under the Act, a person who **attempts** to intentionally take, carry away, use, conceal, or retain possession of anhydrous ammonia, or anhydrous ammonia equipment belonging to another without the other's consent and with intent to deprive the owner permanently of the anhydrous ammonia or the equipment is subject to the penalty for the completed act. Generally, an attempt to commit an

offense is punishable by one-half of the maximum fine and one-half of the maximum imprisonment for the completed offense.

Effective Date: The Act takes effect on June 22, 2005 except that the provisions providing that pseudoephedrine products are a Schedule V controlled substance and the requirements for dispensing a pseudoephedrine product as a Schedule V controlled substance takes effect on October 1, 2005.

Prepared by: Anne Sappenfield, Senior Staff Attorney

June 8, 2005

AS:ksm