



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2005 Assembly Bill 183

**Assembly Substitute
Amendment 1**

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Regulation of Pseudoephedrine as a Schedule V Controlled Substance

Current law classifies controlled substances into five schedules. Schedule I controlled substances have a high potential for abuse, have no currently accepted medical use in the United States, and lack accepted safety for use in treatment under medical supervision. Schedules II to IV controlled substances have varying potentials for abuse and have currently accepted medical use in treatment. Controlled substances in Schedules II to IV require prescriptions in order to be dispensed. Methamphetamine is a Schedule II controlled substance.

Under current law, a Schedule V controlled substance has a low potential for abuse relative to a Schedule IV controlled substance, has currently accepted medical use in treatment in the United States, and has limited physical or psychological dependence liability relative to a Schedule IV controlled substance. Current law places the following restrictions on dispensing Schedule V controlled substances: (1) they may be dispensed and sold in good faith as a medicine, and not for the purpose of evading the controlled substances chapter of the statutes; (2) they may be sold at retail only by a registered pharmacist when sold in a retail establishment; (3) when sold in a retail establishment, they must bear the name and address of the establishment on the container; (4) any person purchasing the substance must present to the seller the person's correct name and address, which must be recorded by the seller, and the purchaser and seller must sign the record of the transaction; and (5) limits are placed on the amount of Schedule V controlled substances that may be purchased within a specified time period.

Assembly Substitute Amendment 1 classifies pseudoephedrine as a Schedule V controlled substance, unless one of the following conditions is met:

- The pseudoephedrine is in a product that contains therapeutically significant quantities of another active medicinal ingredient.

- The pseudoephedrine is in a liquid or a soft gelatin capsule.
- The Controlled Substances Board has determined, by rule, that the pseudoephedrine cannot be used readily in the manufacture of methamphetamine.

Assembly Substitute Amendment 1 provides that, in addition to presenting one's name and address, a person purchasing pseudoephedrine must present an identification card containing the person's photograph. Also, pseudoephedrine may not be sold to a person under 18 years of age.

The substitute amendment permits a pharmacist or a person working under the direct supervision of a pharmacist to dispense pseudoephedrine.

The substitute amendment also provides that no person, other than a physician, dentist, veterinarian, or pharmacist may purchase more than nine grams of a product that is a Schedule V substance containing pseudoephedrine within a 30-day period without the authorization of a physician, dentist, or veterinarian.

Offenses Relating to Distributing or Purchasing Pseudoephedrine

Current law provides that it is a Class I felony to distribute or deliver, or to possess with intent to distribute or deliver, a Schedule V controlled substance.

Assembly Substitute Amendment 1 includes additional penalties that are specific to Schedule V pseudoephedrine.

The substitute amendment provides that a person who purchases within a 30-day period more than nine grams of pseudoephedrine from a single seller other than in person from a pharmacy or pharmacist is guilty of a Class I felony. A Class I felony is 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. This provision does not apply to a purchase by or a purchase that is authorized by a physician, dentist, or veterinarian.

Also, under the substitute amendment, 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 nine grams of pseudoephedrine 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, punishable by a fine not to exceed \$10,000 and a term of imprisonment and extended supervision not to exceed six years.

Under the substitute amendment, it is also a Class I felony to purchase pseudoephedrine on behalf of another with the intent to facilitate another person's manufacture of methamphetamine.

Possession of Methamphetamine Precursors

Assembly Substitute Amendment 1 prohibits the possession of a methamphetamine precursor, red phosphorus, lithium metal, sodium metal, iodine, anhydrous ammonia, pressurized ammonia, or liquid nitrogen with intent to manufacture methamphetamine. "Methamphetamine precursor" is defined

under the bills as ephedrine, pseudoephedrine, phenylpropanolamine, or any of their salts, isomers, and salts of isomers that are theoretically possible within the specific chemical designation. Under the bills, possession of materials used in manufacture of methamphetamine is a Class H felony. Possession of more than 24 grams of methamphetamine precursors is *prima facie* evidence of intent to manufacture methamphetamine.

Agricultural Chemicals Used to Manufacture Methamphetamine

Under *current law*, no person may do any of the following:

- Store, hold, or transport anhydrous ammonia into a container that does not meet the requirements of the rules for safe storage and handling promulgated by the Department of Commerce.
- Transfer or attempt to transfer anhydrous ammonia into a container that does not meet the requirements of the rules for safe storage and handling.
- Transfer or attempt to transfer anhydrous ammonia without the consent of the owner of the anhydrous ammonia.
- Intentionally cause damage to anhydrous ammonia equipment without the consent of the owner of the equipment.
- 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.

In general, a violation of the above provision is a Class I felony.

Assembly Substitute Amendment 1 also prohibits the following:

- Intentionally taking, carrying away, using, concealing, or retaining possession of liquid nitrogen belonging to another without the other's consent and with intent to deprive the owner permanently of possession of the liquid nitrogen.
- 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.

These offenses are also Class I felonies.

The substitute amendment also provides that a person who attempts to intentionally take, carry away, use, conceal, or retain possession of liquid nitrogen, 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.

Distributing Methamphetamine to Minors

Under *current law*, if a person distributes or delivers a controlled substance or controlled substance analog to a person who is 17 years of age or under and who is at least three years younger than the person, the applicable maximum term of imprisonment for the offense may be increased by not more than five years.

Under *Assembly Substitute Amendment 1*, if a person distributes or delivers methamphetamine or controlled substance analog of methamphetamine to a person who is 17 years of age or under and who is at least two years younger than the person, the person is guilty of a Class B felony, punishable by a term of imprisonment and extended supervision not to exceed 60 years.

Legislative History

Assembly Substitute Amendment 1 was offered by Representative Rhoades. On April 7, 2005, the Assembly Committee on Criminal Justice and Homeland Security unanimously recommended adoption of Assembly Substitute Amendment 1, and recommended passage of the bill as amended, by a vote of Ayes, 8; Noes, 4.

AS:jal