

RESTRICTIONS ON OVER-THE-COUNTER SALES/PURCHASES OF PRODUCTS CONTAINING PSEUDOEPHEDRINE

STATE LEGISLATIVE/REGULATORY RESTRICTIONS

A review of 2005 state bills and/or regulations establishing or enhancing existing restrictions on over-the-counter sales/purchases of pseudoephedrine products. For comparative purposes, applicable provisions of existing laws which were enhanced in 2005 are included.

Also included is a review of 2006 state bills enacted by November 3, 2006.

MAJORITY OF STATES TAKE ACTION

41 states in 2005 and to date in 2006 passed measures establishing or enhancing restrictions on over-the-counter sales of pseudoephedrine products.

- 35 states passed bills in 2005
- 1 state – Virginia- issued an Executive Order requiring the state Department of Health (DH) to establish restrictions; The DH issued an emergency order effective until July 1, 2006. Virginia' 2006 bill will take effective on July 1, 2006 as the emergency order ceases to be effective.
- Alaska, Idaho, New Mexico, Ohio, South Carolina and Vermont enacted bills implementing new restrictions; Colorado, Hawaii, Illinois, North Carolina, South Dakota and Wisconsin passed amendments to their 2005 laws.

Michigan passed HB 5822 in 2006 which bans Internet and mail-order sales of ephedrine/pseudoephedrine products.

COMMON THEMES

Restrictions on the Over-the-Counter Sales/Transfers or Purchases of Pseudoephedrine Products

Four (4) general categories of restrictions on the over-the-counter sales/purchases of pseudoephedrine products are found:

1. Restrictions on the display or offer of the products for sale.
2. Restrictions on who can sell/transfer and/or who can purchase the products, and the requirement to maintain a log/record of the transaction.
3. Restrictions on the quantity of a product that can be sold/transferred or purchased within a specified time frame.

4. Restrictions on packaging of the products.

Restrictions on the Display or Offer of the Products for Sale/Transfer

1. Scheduling of pseudoephedrine as a controlled substance: 11 states

Schedule V – Arkansas, Illinois, Iowa, Kansas, Minnesota, Missouri, New Mexico, Oklahoma, West Virginia (sole-active pseudoephedrine), Wisconsin

Schedule III – Oregon; requires a prescription for all pseudoephedrine products

2. Placement of pseudoephedrine products in specified locations.

State legislative language often lists the methods below as options, requiring only that one option be used. However, in certain circumstances multiple placement methods must be used conjunctively.

- a. Behind a counter or in an area inaccessible to the public without assistance of an employee.
- b. In a locked display case or other locked location.
- c. Within the direct line of sight of a staffed counter.
- d. Within specified feet of a counter.

10 feet – Missouri

20 feet – Michigan

25 feet – Tennessee

30 feet – Indiana (convenience packages), Louisiana, Maine (applies only to 60 mg. single dose packages), Mississippi (multi-active), Texas, Virginia (multi-active), Wyoming

- e. In an area subject to constant video monitoring/surveillance.
- f. Use of anti-theft mechanism or alarm system.
- g. Use of restricted shelving which allows a pseudoephedrine product to be released only every 15 seconds.

- h. Display of a limited number of packages of a brand or type in a public area.

No more than 1 package of any brand or type in a public area – North Dakota

No more than 3 packages or 9 grams of each stocked product can be placed on shelf – Louisiana

Restrictions on Who can Sell/Transfer and/or Who can Purchase the Pseudoephedrine Products and Log/Record Requirements

1. Seller/Transferor requirements.
 - a. Products must be sold by pharmacy/pharmacist/pharmacy technician or clerk: 14 states

Arkansas, Iowa (except 360 mg. or less of liquid products), Illinois (except convenience packages containing 360 mg. or less of liquid products), Kansas, Kentucky, Maine (except 60 mg. single dose packages offered for sale pursuant to specified display methods), Minnesota, Missouri, New Mexico, Oklahoma, Oregon, Tennessee, West Virginia, Wisconsin
 - b. Certified/authorized retail establishment in addition to pharmacy:

Alabama, California, Montana, Texas, Washington, Wyoming
2. Purchaser requirements.
 - a. Person must be a minimum age: 19 states

18 years of age – Alabama (sole-active), Arkansas, California, Colorado, Delaware, Indiana (inapplicable to convenience packages), Illinois, Kentucky, Michigan, Minnesota, Missouri, Nebraska, North Carolina, North Dakota, Ohio (purchase allowed in selected circumstances) Washington, West Virginia

16 years of age – Alaska, Texas
 - b. Person must produce a photo identification, generally government or school-issued: 32 states

Alabama (sole-active pseudoephedrine; in lieu of photo id can provide two other specified types of identification), Alaska (incorporates by reference identification requirement in Combat Meth Epidemic Act of 2005), Arkansas, California, Delaware, Hawaii, Idaho, Illinois (alternative options provided in select circumstances if purchaser is without a photo identification), Indiana (inapplicable to convenience packages), Iowa (applies to liquid products of 360 mg. or less of pseudoephedrine), Kansas, Kentucky, Louisiana (applies only if video surveillance is not used), Michigan Minnesota, Mississippi, Missouri (if purchaser not known to pharmacist or technician), Montana, Nebraska, New Mexico, North Carolina, North Dakota, Ohio(sole-active pseudoephedrine), Oklahoma, South Carolina (inapplicable to single sale packages of 60 mg. or less of pseudoephedrine) South Dakota, Texas, Tennessee, Virginia, Washington, West Virginia, Wisconsin.

In Maine, the requirement to produce identification to purchase pseudoephedrine products is implemented at the discretion of the pharmacist. The requirement even when implemented is inapplicable to 60 mg. single dose packages offered for sale pursuant to specified display methods.

- c. Person must sign a log or record of the individual sales transaction which is kept by the seller/transferor: 22 states

Alabama (sole-active pseudoephedrine), Alaska (incorporates by reference Combat Meth Act logbook requirement and exception re: single sale packages of 60 mg. or less of pseudoephedrine), Arkansas, Delaware, Hawaii, Illinois, Iowa (applies to liquid products of 360 mg or less of pseudoephedrine), Kansas, Kentucky, Louisiana (applies only if video monitoring not used), Minnesota, Montana, New Mexico, North Carolina, Ohio, Oklahoma, South Carolina (inapplicable to single sale packages of 60 mg. or less of pseudoephedrine), Tennessee (only written log), Texas, Virginia, West Virginia, Wisconsin

Four additional states have a log or record requirement but do not require the purchaser to sign the log or record:

Maine (keeping of a log/record is voluntary), Michigan (log/record requirement applies only if products are not stored behind a counter or in a locked case), South Dakota (record of identification of purchaser), Tennessee

Indiana requires completion of a log in a format approved by the state

police; this may require a signature. The log requirement is inapplicable to convenience packages.

3. Contents of log/record.

Information often required:

- a. Name of purchaser.
- b. Date of transaction.
- c. Quantity/Amount and/or name of product.

Information sometimes required:

- a. Address of purchaser.
- b. Record of purchaser identification, such as driver's license number or date of birth.
- c. Seller's/Transferor's initials, name, signature or identification code.

Restrictions on the Quantity of a Product that can be Sold/Transferred or Purchased within a Specified Time Frame

1. Maximum amount of pseudoephedrine product that can be sold/transferred or purchased within 30 days.

9 grams:

Arkansas, Delaware, Hawaii, Idaho, Kentucky, Louisiana, Mississippi, Missouri, Montana, New Mexico, North Carolina, Ohio, Oklahoma, South Dakota, Tennessee, West Virginia

7.5 grams:

Illinois, Iowa, Wisconsin

6 grams:

Minnesota, Alaska, Alabama (The AL law makes it unlawful to purchase more than 6 grams within 30 days with the intent to manufacture methamphetamine. This is a variation on the traditional quantity requirement.)

2. Other time frames used to cap the amount of a pseudoephedrine product that can be sold/purchased:

a. In a single transaction.

This limitation is traditionally phrased as a maximum number of packages/grams of the product that can be sold/purchased in a single sale or transaction. For example:

Arkansas – No more than 3 packages or 1 package containing 3 grams or 96 units.

Hawaii and South Carolina – No more than 3 packages or 9 grams.

Idaho – No more than 9 grams.

Illinois – No more than 2 targeted packages.

Michigan – No more than 2 packages or 48 tablets or 2 convenience packages.

Missouri – No more than 2 packages or 6 grams of sole active pseudoephedrine; 3 packages or 9 grams of pseudoephedrine as a multi-active ingredient.

This limitation is sometimes combined with the 30 day quantity limitation. The legislative language sometimes caps the amount or number of packages/grams a seller can sell in a single transaction, and caps the number of grams that a purchaser can acquire within 30 days.

b. In a 24 hour period/Daily.

Illinois – No more than one convenience package containing no more than 360 mg. of liquid pseudoephedrine.

Iowa – No more than one package containing no more than 360 mg. of a liquid pseudoephedrine product.

Nebraska – No more than 1,440 mg. of pseudoephedrine.

Alaska (incorporates by reference requirement in Combat Meth Act), Colorado, Hawaii, North Carolina, Vermont, Virginia – No more than 3.6 grams of pseudoephedrine.

Washington – No more than one transaction per 24 hours; no more than 2 packages or a single package containing 3 grams in a single transaction.

c. In 7 days or a week.

Indiana – No more than 3 grams (except convenience packages).

Kansas – No more than 3 packages.

Restrictions on Packaging of the Products

1. Maximum amount of pseudoephedrine that can be in one package/product.
 - a. 3 grams – most common
 - b. 2 grams – North Dakota
 - c. 1,440 mg. – Nebraska
 - d. 360 mg. – Iowa and Illinois, liquid pseudoephedrine product sold by retailers
 - e. 120 mg. – Indiana convenience packages
 - f. 60 mg. – Maine, single dose packages sold by retailers and offered for sale using specified display methods

2. Pseudoephedrine products must be in blister packs: 12 states

Alabama (30 mg. or more of pseudoephedrine), Alaska (non-liquid), Arkansas, Georgia (sole-active pseudoephedrine), Illinois, Maine, Minnesota, Nebraska, North Carolina, North Dakota, South Carolina (sole-active pseudoephedrine), Wyoming

No more than 2 unit doses in each pack, and if blister packs are infeasible, the product must be in unit dose pouches or packages: All states listed above except Alabama, Georgia, North Carolina, South Carolina

Exemptions/Exceptions to Restrictions on the Over-the-Counter Sales/Transfers or Purchases of Pseudoephedrine Products

1. Products for which a person has a valid prescription.
2. Products purchased/possessed by or sold/transferred to persons in the lawful course of their business, e.g., pharmacist, physicians, common carriers.
3. Pediatric products administered to children under 12 years of age.

The legislative language sometimes requires the product to cap the amount of pseudoephedrine in a single dosage for the exemption to apply. For example:

- a. No more than 15 mg. for a solid product
 - b. No more than 15 mg. per 5 milliliters for a liquid product
 - c. No more than 2 milliliters for a total package of 1 fluid ounce if the product is intended for children under 2 years of age
4. Products not found to be used in illegal manufacture or that present no significant risk of use in illegal manufacture.
 5. Products formulated to prevent the active ingredient from being converted for use in illegal manufacture. A state will generally grant this exemption only upon application of the manufacturer.
 6. Products that are in liquid, liquid gel, or liquid capsule form.

Traditionally states exempted/excepted liquid products in general from over-the-counter sales restrictions. However, several states narrowed this exemption as reports surfaced that liquid products were being used in the illegal manufacture of methamphetamine. For example, states:

- a. Applied the exemption to liquid products in which pseudoephedrine is not the sole active ingredient (e.g., Oklahoma)
- b. Allowed only liquid products in small or low dosage amounts to be sold by retailers (e.g., Iowa, Illinois)
- c. Maximized the amount of liquid products that can be sold in a single

transaction (e.g., Arkansas, Missouri)

Some states exempted liquid products but specifically authorized a state agency to regulate the products if the agency determined that the products were being used in the illegal manufacture of methamphetamine.

Preemption

States often preempted localities or municipalities from imposing over-the-counter sales/purchase restrictions which were more restrictive than those required under state law:

Alabama, Arizona, California, Florida, Georgia (effective 1/1/06), Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Missouri, North Carolina, North Dakota, South Carolina, South Dakota, Tennessee, Texas