

FIRST REGULAR SESSION
[P E R F E C T E D]
SENATE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILLS NOS. 89 & 37
91ST GENERAL ASSEMBLY

Offered April 10, 2001.

Senate Substitute adopted, April 10, 2001.

Taken up for Perfection April 10, 2001. Bill declared Perfected and Ordered Printed, as amended.

TERRY L. SPIELER, Secretary.

0301S.06P

AN ACT

To repeal section 570.030, RSMo 2000, and to enact in lieu thereof nine new sections relating to the manufacture of methamphetamine, with penalty provisions.

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

Section A. Section 570.030, RSMo 2000, is repealed and nine new sections enacted in lieu thereof, to be known as sections 195.515, 195.518, 195.521, 195.524, 441.236, 442.606, 537.297, 570.030 and 578.154, to read as follows:

195.515. 1. Any manufacturer or wholesaler who sells, transfers, or otherwise furnishes ephedrine, pseudoephedrine or phenylpropanolamine, or any of their salts, optical isomers and salts of optical isomers, alone or in a mixture, and is required by federal law to report any suspicious transaction to the United States attorney general, shall submit a copy of the report to the chief law enforcement official with jurisdiction before completion of the sale or as soon as practicable thereafter.

2. As used in this section, "suspicious transaction" means any sale or transfer required to be reported pursuant to 21 U.S.C. 830(b)(1).

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

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

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

grams of pseudoephedrine, its salts, optical isomers and salts of optical isomers.

2. This section shall not apply to:

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

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

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

(4) Any person who lawfully manufactures or distributes or any wholesaler who sells, transfers or otherwise furnishes any substance listed in subsection 1 of this section to a licensed pharmacy, physician, dentist, podiatrist or veterinarian; or

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

3. A person who violates this section is guilty of a class D felony for the first offense, 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 product containing ephedrine, pseudoephedrine or phenylpropanolamine, or any of their salts, optical isomers and salts of optical isomers, if the person knows that the purchaser will use the product as a precursor to manufacture methamphetamine or other controlled substance or with reckless disregard as to how the product will be used.

2. A person who violates this section is guilty of a class D felony for the first offense, 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 sell, transfer, or otherwise furnish, in a single transaction:

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

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

(3) When sold in blister packs, more than three grams of ephedrine,

pseudoephedrine, or phenylpropanolamine base, each blister containing not more than two dosage units, or if the use of a blister pack is technically infeasible, the drug is packaged in unit dose packets or pouches; or

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

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

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

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

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

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

4. This section shall not apply to:

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

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

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

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

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

(4) Products sold in package sizes of not more than three grams of ephedrine, pseudoephedrine, or phenylpropanolamine base, and that is packaged in blister packs, each blister containing not more than two dosage units, or where the use of blister

packs is technically infeasible, that is packaged in unit dose packets or pouches, where the total quantity of the sale is not greater than three packages or nine grams, whichever is smaller;

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

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

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

(2) "Sale for personal use", the sale in a single transaction to an individual customer for a legitimate medical use of a product containing ephedrine, pseudoephedrine, or phenylpropanolamine in dosages at or below that specified in subsection 4 of this section. Sale for personal use also includes the sale of those products to employers to be dispensed to employees from first-aid kits or medicine chests.

6. Any person who is considered the general owner or operator of the outlet where ephedrine, pseudoephedrine, or phenylpropanolamine products are available for sale who violates subsection 1 of this section shall not be penalized pursuant to this section if such person documents that an employee training program was in place to provide the employee with information on the state and federal regulations regarding ephedrine, pseudoephedrine, or phenylpropanolamine.

441.236. 1. In the event that any premises to be leased by a landlord is or was used as a site for methamphetamine production, the landlord shall disclose in writing to the tenant the fact that methamphetamine was produced on the premises, provided that the landlord had knowledge of such prior methamphetamine production. The landlord shall disclose any prior knowledge of methamphetamine production, regardless of whether the persons involved in the production were convicted for such production.

2. A landlord shall disclose in writing the fact that any premises to be leased by

the landlord either was the place of residence of a person convicted of any of the following crimes, or was the storage site or laboratory for any of the substances for which a person was convicted of any of the following crimes, provided that the landlord knew or should have known of such convictions:

- (1) Creation of a controlled substance in violation of section 195.420, RSMo;
- (2) Possession of ephedrine with intent to manufacture methamphetamine in violation of section 195.246, RSMo;
- (3) Unlawful use of drug paraphernalia with the intent to manufacture methamphetamine in violation of subsection 2 of section 195.233, RSMo;
- (4) Endangering the welfare of a child by any of the means described in subdivision (4) or (5) of subsection 1 of section 568.045, RSMo; or
- (5) Any other crime related to methamphetamine, its salts, optical isomers and salts of its optical isomers either in chapter 195, RSMo, or in any other provision of law.

442.606. 1. In the event that any parcel of real property to be sold, exchanged or transferred is or was used as a site for methamphetamine production, the seller or transferor shall disclose in writing to the buyer or transferee the fact that methamphetamine was produced on the premises, provided that the seller or transferor had knowledge of such prior methamphetamine production. The seller or transferor shall disclose any prior knowledge of methamphetamine production, regardless of whether the persons involved in the production were convicted for such production.

2. A seller or transferor of any parcel of real property shall disclose in writing the fact that any premises to be sold or transferred either was the place of residence of a person convicted of any of the following crimes, or was the storage site or laboratory for any of the substances for which a person was convicted of any of the following crimes, provided that the seller or transferor knew or should have known of such convictions:

- (1) Creation of a controlled substance in violation of section 195.420, RSMo;
- (2) Possession of ephedrine with intent to manufacture methamphetamine in violation of section 195.246, RSMo;
- (3) Unlawful use of drug paraphernalia with the intent to manufacture methamphetamine in violation of subsection 2 of section 195.233, RSMo;
- (4) Endangering the welfare of a child by any of the means described in subdivision (4) or (5) of subsection 1 of section 568.045, RSMo; or
- (5) Any other crime related to methamphetamine, its salts, optical isomers and salts of its optical isomers either in chapter 195, RSMo, or in any other provision of law.

537.297. 1. The following words as used in this section shall have the following meanings:

(1) "Owner", all of the following persons:

(a) Any person who lawfully owns anhydrous ammonia;

(b) Any person who lawfully owns a container, equipment or storage facility containing anhydrous ammonia;

(c) Any person responsible for the installation or operation of such containers, equipment or storage facilities;

(d) Any person lawfully selling anhydrous ammonia;

(e) Any person lawfully purchasing anhydrous ammonia for agricultural purposes;

(f) Any person who operates or uses anhydrous ammonia containers, equipment or storage facilities when lawfully applying anhydrous ammonia for agricultural purposes;

(2) "Tamperer", a person who commits or assists in the commission of tampering;

(3) "Tampering", transferring or attempting to transfer anhydrous ammonia from its present container, equipment or storage facility to another container, equipment or storage facility, without prior authorization from the owners.

2. A tamperer assumes the risk of any personal injury, death and other economic and noneconomic loss arising from his or her participation in the act of tampering. A tamperer or any person related to a tamperer shall not commence a direct or derivative action against any owner as it relates to the act of tampering. Owners are immune from suit by a tamperer or any person related to a tamperer and shall not be held liable for any negligent act or omission which may cause personal injury, death or other economic or noneconomic loss to a tamperer as it relates to the act of tampering.

3. The immunity from liability and suit authorized by this section is expressly waived for owners whose acts or omissions constitute willful or wanton negligence.

570.030. 1. A person commits the crime of stealing if he or she appropriates property or services of another with the purpose to deprive him or her thereof, either without his or her consent or by means of deceit or coercion.

2. Evidence of the following is admissible in any criminal prosecution under this section on the issue of the requisite knowledge or belief of the alleged stealer:

(1) That he or she failed or refused to pay for property or services of a hotel, restaurant, inn or boardinghouse;

(2) That he or she gave in payment for property or services of a hotel, restaurant, inn or boardinghouse a check or negotiable paper on which payment was refused;

(3) That he or she left the hotel, restaurant, inn or boardinghouse with the intent to not pay for property or services;

(4) That he or she surreptitiously removed or attempted to remove his or her baggage from

a hotel, inn or boardinghouse.

3. Stealing is a class C felony if:

(1) The value of the property or services appropriated is seven hundred fifty dollars or more; or

(2) The actor physically takes the property appropriated from the person of the victim; or

(3) The property appropriated consists of:

(a) Any motor vehicle, watercraft or aircraft; or

(b) Any will or unrecorded deed affecting real property; or

(c) Any credit card or letter of credit; or

(d) Any firearms; or

(e) A United States national flag designed, intended and used for display on buildings or stationary flagstaffs in the open; or

(f) Any original copy of an act, bill or resolution, introduced or acted upon by the legislature of the state of Missouri; or

(g) Any pleading, notice, judgment or any other record or entry of any court of this state, any other state or of the United States; or

(h) Any book of registration or list of voters required by chapter 115, RSMo; or

(i) Any animal of the species of horse, mule, ass, cattle, swine, sheep, or goat; or

(j) Live fish raised for commercial sale with a value of seventy-five dollars; or

(k) Any controlled substance as defined by section 195.010, RSMo.

4. If an actor appropriates any material with a value less than one hundred fifty dollars in violation of this section with the intent to use such material to manufacture, compound, produce, prepare, test or analyze amphetamine or methamphetamine or any of their analogues, then such violation is a class D felony. The theft of any amount of anhydrous ammonia **or liquid nitrogen, or any attempt to steal any amount of anhydrous ammonia or liquid nitrogen,** is a class [D] C felony. **The theft of any amount of anhydrous ammonia by appropriation of a tank truck, tank trailer, rail tank car, bulk storage tank, field (nurse) tank or field applicator is a class A felony.**

5. The theft of any item of property or services under subsection 3 of this section which exceeds seven hundred fifty dollars may be considered a separate felony and may be charged in separate counts.

6. Any person with a prior conviction of paragraph (i) of subdivision (3) of subsection 3 of this section and who violates the provisions of paragraph (i) of subdivision (3) of subsection 3 of this section when the value of the animal or animals stolen exceeds three thousand dollars is guilty of a class B felony.

7. Any violation of this section for which no other penalty is specified in this section is a class A misdemeanor.

578.154. 1. A person commits the crime of possession of anhydrous ammonia in a nonapproved container if he or she possesses any quantity of anhydrous ammonia in any container other than a tank truck, tank trailer, rail tank car, bulk storage tank, field (nurse) tank or field applicator or any container approved for anhydrous ammonia by the department of agriculture or the United States Department of Transportation.

2. A violation of this section is a class D felony.

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