

SECOND REGULAR SESSION

# SENATE BILL NO. 706

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR KOENIG.

Pre-filed December 1, 2019, and ordered printed.

ADRIANE D. CROUSE, Secretary.

3864S.01I

## AN ACT

To repeal sections 195.417 and 579.060, RSMo, and to enact in lieu thereof six new sections relating to the monitoring of certain prescribed controlled substances, with penalty provisions.

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

Section A. Sections 195.417 and 579.060, RSMo, are repealed and six new sections enacted in lieu thereof, to be known as sections 195.417, 195.650, 195.655, 195.660, 195.665, and 579.060, to read as follows:

195.417. 1. The limits specified in this section shall not apply to any quantity of such product, mixture, or preparation which must be dispensed, sold, or distributed in a pharmacy pursuant to a valid prescription.

2. Within any thirty-day period, no person shall sell, dispense, or otherwise provide to the same individual, and no person shall purchase, receive, or otherwise acquire more than the following amount: any number of packages of any drug product containing any detectable amount of ephedrine, phenylpropanolamine, or pseudoephedrine, or any of their salts or optical isomers, or salts of optical isomers, either as:

(1) The sole active ingredient; or

(2) One of the active ingredients of a combination drug; or

(3) A combination of any of the products specified in subdivisions (1) and (2) of this subsection;

in any total amount greater than **[nine] seven and one-half** grams, without regard to the number of transactions.

3. Within any twenty-four-hour period, no pharmacist, intern pharmacist, or registered pharmacy technician shall sell, dispense, or otherwise provide to the

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

18 same individual, and no person shall purchase, receive, or otherwise acquire more  
19 than the following amount: any number of packages of any drug product  
20 containing any detectable amount of ephedrine, phenylpropanolamine, or  
21 pseudoephedrine, or any of their salts or optical isomers, or salts of optical  
22 isomers, either as:

23 (1) The sole active ingredient; or

24 (2) One of the active ingredients of a combination drug; or

25 (3) A combination of any of the products specified in subdivisions (1) and  
26 (2) of this subsection;

27 in any total amount greater than three and six-tenths grams without regard to  
28 the number of transactions.

29 4. All packages of any compound, mixture, or preparation containing any  
30 detectable quantity of ephedrine, phenylpropanolamine, or pseudoephedrine, or  
31 any of their salts or optical isomers, or salts of optical isomers, except those that  
32 are excluded from Schedule V in subsection 17 or 18 of section 195.017, shall be  
33 offered for sale only from behind a pharmacy counter where the public is not  
34 permitted, and only by a registered pharmacist or registered pharmacy technician  
35 under section 195.017.

36 5. Each pharmacy shall submit information regarding sales of any  
37 compound, mixture, or preparation as specified in this section in accordance with  
38 transmission methods and frequency established by the department by regulation.

39 6. **No prescription shall be required for the dispensation, sale, or**  
40 **distribution of any drug product containing any detectable amount of**  
41 **ephedrine, phenylpropanolamine, or pseudoephedrine, or any of their**  
42 **salts or optical isomers, or salts of optical isomers, in an amount within**  
43 **the limits described in subsections 2 and 3 of this section; provided,**  
44 **that a valid prescription shall be required for amounts in excess of**  
45 **such limits.** This section shall supersede and preempt any local ordinances or  
46 regulations, including any ordinances or regulations enacted by any political  
47 subdivision of the state. This section shall not apply to the sale of any animal  
48 feed products containing ephedrine or any naturally occurring or herbal ephedra  
49 or extract of ephedra.

50 7. All logs, records, documents, and electronic information maintained for  
51 the dispensing of these products shall be open for inspection and copying by  
52 municipal, county, and state or federal law enforcement officers whose duty it is  
53 to enforce the controlled substances laws of this state or the United States.

54           8. All persons who dispense or offer for sale pseudoephedrine and  
55 ephedrine products, except those that are excluded from Schedule V in subsection  
56 17 or 18 of section 195.017, shall ensure that all such products are located only  
57 behind a pharmacy counter where the public is not permitted.

58           9. The penalty for a knowing or reckless violation of this section is found  
59 in section 579.060.

**195.650. 1. For the purposes of sections 195.650 to 195.665, the**  
2 **following terms shall mean:**

3           (1) "Controlled substance", the same meaning ascribed to it in  
4 section 195.010;

5           (2) "Department", the department of health and senior services;

6           (3) "Health care provider", the same meaning ascribed to it in  
7 section 376.1350;

8           (4) "Registry", the prescription abuse registry established under  
9 sections 195.650 to 195.665.

10          **2. The department shall promulgate rules and regulations to**  
11 **implement the provisions of sections 195.650 to 195.665. Any rule or**  
12 **portion of a rule, as that term is defined in section 536.010, that is**  
13 **created under the authority delegated in this section shall become**  
14 **effective only if it complies with and is subject to all of the provisions**  
15 **of chapter 536 and, if applicable, section 536.028. This section and**  
16 **chapter 536 are nonseverable and if any of the powers vested with the**  
17 **general assembly pursuant to chapter 536 to review, to delay the**  
18 **effective date, or to disapprove and annul a rule are subsequently held**  
19 **unconstitutional, then the grant of rulemaking authority and any rule**  
20 **proposed or adopted after August 28, 2020, shall be invalid and void.**

**195.655. 1. There is hereby established within the department of**  
2 **health and senior services a "Prescription Abuse Registry", which shall**  
3 **be available by January 1, 2022.**

4          **2. An individual who is eighteen years of age or older may**  
5 **request to be listed in the registry.**

6          **3. Information regarding individuals in the registry shall**  
7 **include, but not be limited to, the following:**

8           (1) The individual's name;

9           (2) The individual's date of birth;

10          (3) The individual's Social Security number; and

11          (4) The date on which the individual was listed in the registry.

195.660. 1. Information contained in the registry shall be  
2 confidential and not subject to public disclosure under chapter 610  
3 except as provided in subsection 3 of this section.

4 2. The department shall maintain procedures to ensure the  
5 privacy and confidentiality of personal information maintained in the  
6 registry and to ensure such information is not disclosed, except as  
7 provided in subsection 3 of this section.

8 3. The department shall establish procedures to enable health  
9 care providers to access the registry for the sole purpose of  
10 determining whether an individual is listed in the registry. A health  
11 care provider may submit a request to determine if an individual is  
12 listed in the registry by submitting the individual's name and date of  
13 birth or Social Security number. The health care provider shall receive  
14 a response that only confirms or denies the individual's listing in the  
15 registry. No health care provider shall have access to any other  
16 personal information contained in the registry.

17 4. No department, agency, instrumentality, political subdivision,  
18 or law enforcement agency of this state, including the bureau of  
19 narcotics and dangerous drugs, federal law enforcement agencies, or  
20 individuals other than a health care provider under the provisions of  
21 subsection 3 of this section shall have access to the registry. The  
22 department shall have access solely for purposes of administering the  
23 provisions of sections 195.650 to 195.665 and maintaining the registry.

195.665. 1. Individuals listed in the registry may submit a  
2 petition to the department to be removed from the registry after five  
3 years from the date such individual was placed in the registry. In  
4 order to be eligible for removal from the registry, a person shall  
5 execute and submit, in a manner acceptable to the department, an  
6 application for removal on a form provided by the department. Such  
7 application shall include:

8 (1) The person's full name and all aliases;

9 (2) The person's current home address, email address, and phone  
10 number;

11 (3) Social Security number, when voluntarily provided in  
12 accordance with section 7 of the Privacy Act of 1974 or International  
13 Identification number;

14 (4) Date of birth and gender;

15           (5) A statement that the person wishes to be removed from the  
16 registry and accepts full responsibility for any adverse consequences  
17 which may result from removal;

18           (6) A photograph suitable for the department to use in  
19 identifying the person requesting removal from the registry; and

20           (7) Other information deemed necessary by the department.

21 The application shall be verified and reviewed as designated by the  
22 director of the department. Once an application for removal from the  
23 registry has been deemed complete and valid, the director shall file a  
24 notice of removal from the registry and shall provide a copy to the  
25 applicant by regular U.S. mail to the address provided. Should the  
26 director find an applicant does not qualify for removal from the  
27 registry, the director shall notify the applicant by regular U.S. mail to  
28 the address provided.

29           2. Any person who unlawfully and knowingly accesses or  
30 discloses, or a person authorized to have information in the registry  
31 who knowingly discloses, such information in violation of sections  
32 195.650 to 195.665 or knowingly uses such information in a manner and  
33 for a purpose in violation of sections 195.650 to 195.665 is guilty of a  
34 class E felony.

35           3. If a person unlawfully and knowingly accesses or discloses, or  
36 if a person authorized to have information in the registry knowingly  
37 discloses, such information in violation of sections 195.650 to 195.665 or  
38 knowingly uses such information in a manner and for a purpose in  
39 violation of sections 195.650 to 195.665, the person whose information  
40 was disclosed shall have a cause of action to recover liquidated  
41 damages in the amount of two thousand five hundred dollars in  
42 addition to compensatory economic and noneconomic damages,  
43 attorney's fees, and court costs. If it is determined by a court of  
44 competent jurisdiction that such disclosure was done intentionally and  
45 maliciously, the person shall be entitled to punitive damages in  
46 addition to the damages above.

579.060. 1. A person commits the offense of unlawful sale, distribution,  
2 or purchase of over-the-counter methamphetamine precursor drugs if he or she  
3 knowingly:

4           (1) Sells, distributes, dispenses, or otherwise provides any number of  
5 packages of any drug product containing detectable amounts of ephedrine,

6 phenylpropanolamine, or pseudoephedrine, or any of their salts, optical isomers,  
7 or salts of optical isomers, in a total amount greater than **[nine] seven and one-**  
8 **half** grams to the same individual within a thirty-day period, unless the amount  
9 is dispensed, sold, or distributed pursuant to a valid prescription; or

10 (2) Purchases, receives, or otherwise acquires within a thirty-day period  
11 any number of packages of any drug product containing any detectable amount  
12 of ephedrine, phenylpropanolamine, or pseudoephedrine, or any of their salts or  
13 optical isomers, or salts of optical isomers in a total amount greater than **[nine]**  
14 **seven and one-half** grams, without regard to the number of transactions, unless  
15 the amount is purchased, received, or acquired pursuant to a valid prescription;  
16 or

17 (3) Purchases, receives, or otherwise acquires within a twenty-four-hour  
18 period any number of packages of any drug product containing any detectable  
19 amount of ephedrine, phenylpropanolamine, or pseudoephedrine, or any of their  
20 salts or optical isomers, or salts of optical isomers in a total amount greater than  
21 three and six-tenths grams, without regard to the number of transactions, unless  
22 the amount is purchased, received, or acquired pursuant to a valid prescription;  
23 or

24 (4) Dispenses or offers drug products that are not excluded from Schedule  
25 V in subsection 17 or 18 of section 195.017 and that contain detectable amounts  
26 of ephedrine, phenylpropanolamine, or pseudoephedrine, or any of their salts,  
27 optical isomers, or salts of optical isomers, without ensuring that such products  
28 are located behind a pharmacy counter where the public is not permitted and that  
29 such products are dispensed by a registered pharmacist or pharmacy technician  
30 under subsection 11 of section 195.017; or

31 (5) Holds a retail sales license issued under chapter 144 and knowingly  
32 sells or dispenses packages that do not conform to the packaging requirements  
33 of section 195.418.

34 2. A pharmacist, intern pharmacist, or registered pharmacy technician  
35 commits the offense of unlawful sale, distribution, or purchase of over-the-counter  
36 methamphetamine precursor drugs if he or she knowingly:

37 (1) Sells, distributes, dispenses, or otherwise provides any number of  
38 packages of any drug product containing detectable amounts of ephedrine,  
39 phenylpropanolamine, or pseudoephedrine, or any of their salts or optical isomers,  
40 or salts of optical isomers, in a total amount greater than three and six-tenth  
41 grams to the same individual within a twenty-four hour period, unless the

42 amount is dispensed, sold, or distributed pursuant to a valid prescription; or

43 (2) Fails to submit information under subsection 13 of section 195.017 and  
44 subsection 5 of section 195.417 about the sales of any compound, mixture, or  
45 preparation of products containing detectable amounts of ephedrine,  
46 phenylpropanolamine, or pseudoephedrine, or any of their salts, optical isomers,  
47 or salts of optical isomers, in accordance with transmission methods and  
48 frequency established by the department of health and senior services; or

49 (3) Fails to implement and maintain an electronic log, as required by  
50 subsection 12 of section 195.017, of each transaction involving any detectable  
51 quantity of pseudoephedrine, its salts, isomers, or salts of optical isomers or  
52 ephedrine, its salts, optical isomers, or salts of optical isomers; or

53 (4) Sells, distributes, dispenses or otherwise provides to an individual  
54 under eighteen years of age without a valid prescription any number of packages  
55 of any drug product containing any detectable quantity of pseudoephedrine, its  
56 salts, isomers, or salts of optical isomers, or ephedrine, its salts or optical  
57 isomers, or salts of optical isomers.

58 3. Any person who violates the packaging requirements of section 195.418  
59 and is considered the general owner or operator of the outlet where ephedrine,  
60 pseudoephedrine, or phenylpropanolamine products are available for sale shall  
61 not be penalized if he or she documents that an employee training program was  
62 in place to provide the employee who made the unlawful retail sale with  
63 information on the state and federal regulations regarding ephedrine,  
64 pseudoephedrine, or phenylpropanolamine.

65 4. The offense of unlawful sale, distribution, or purchase of  
66 over-the-counter methamphetamine precursor drugs is a class A misdemeanor.

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