



Public Health Law

Office for State, Tribal, Local and Territorial Support
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Pseudoephedrine: Legal Efforts To Make It a Prescription-Only Drug

Pseudoephedrine (PSE) is the main ingredient used to make methamphetamine (meth), a highly addictive stimulant drug.¹ PSE is a nasal decongestant typically found in nonprescription cold, allergy, and sinus medications, making it an easy source for people who operate illegal meth labs to obtain this precursor chemical.² To address this issue, statutes and ordinances have been used at federal, state, and local levels as a tool to limit access to PSE.

Relevant Federal Laws

Congress enacted the Combat Methamphetamine Epidemic Act of 2005 (CMEA), which limits the sale of products containing PSE to behind-the-counter placement.³ In addition, the Act

- Sets limits (daily and during a 30-day period) on PSE amounts that any customer may purchase;
- Requires customers to present photo identification to purchase medications containing PSE; and
- Requires sellers to maintain a logbook of sales and customer information.⁴

There is currently no federal law that has classified nonprescription PSE products into prescription-only drugs.

¹ U.S. Gov't Accountability Office (GAO), GAO-13-204, Drug Control: State Approaches Taken to Control Access to Key Methamphetamine Ingredient Show Varied Impact on Domestic Drug Labs (2013), *available at* <http://www.gao.gov/assets/660/651709.pdf>. Note that ephedrine can be used as a substitute for PSE to make meth.

² James K. Cunningham, Russell C. Callaghan, Daoqin Tong, Lon-Mu Liu, Hsiao-Yun Li, William J. Lattyak. *Changing over-the-Counter Ephedrine and pseudoephedrine Products to Prescription Only: Impacts on Methamphetamine Clandestine Laboratory Seizures*. 126 DRUG AND ALCOHOL DEPENDENCE (Issues 1–2), 55–64 (2012).

³ USA Patriot Improvement and Reauthorization Act of 2005, Pub. L. No. 109-177, 120 Stat. 192 (2006).

⁴ *Id.* In 2010, the Combat Methamphetamine Enhancement Act was signed into law. It clarifies that all retailers, including mail order retailers, who sell products that contain meth precursor chemicals like PSE must verify that they have trained their personnel and will comply with the CMEA legal requirements. Press Release, United States Senator for California Dianne Feinstein, President Obama Signs Combat Methamphetamine Enhancement Act (Oct. 12, 2010), <http://www.feinstein.senate.gov/public/index.cfm/press-releases?ID=aa6def5a-5056-8059-7660-40dfcf1a7a23>.



State Laws

Generally, states have exercised their authority to use several different legal strategies to limit access to PSE, some of which predate the CMEA. State laws either overlap with or create additional requirements to the federal law. These laws include behind-the-counter sales of PSE and photo identification requirements.⁵ Many states also require logbooks or tracking system for sales of PSE products.⁶

Oregon (as of July 2006) and Mississippi (as of July 2010)⁷ are the only two states that currently require a prescription for dispensing PSE to a customer.⁸ These states have classified PSE (and ephedrine) as Schedule III substances, making PSE products available by prescription only.⁹ According to a recent Government Accountability Office report, between 2010 and January 2013, at least sixty-nine bills were introduced in eighteen states that would require consumers to obtain a prescription in order to purchase PSE products.¹⁰ In the 2013 legislative session, at least sixteen bills¹¹ were introduced in eight states¹² that would require a prescription for PSE products.¹³ Most of these bills were referred to various committees, and the effect of adjournment on the bills is not clear at this time. Many of the bills proposed the classification of pseudoephedrine as a controlled substance, making PSE products available by prescription only.¹⁴ Hawaii's proposed bill would have also reclassified pseudoephedrine as a controlled substance that may be dispensed only with a prescription.¹⁵ Vermont's proposed bill would

⁵ GAO, *supra* note 1. See also, National Alliance for Model State Drug Laws (NAMSDL). States That Require Identification for Over-the-Counter Purchases of Ephedrine and Pseudoephedrine, *available at* <http://www.namsdl.org/library/80C3E643-1C23-D4F9-740FAACB575C9772/> (Research current as of December 31, 2012).

⁶ NAMSDL. Map States That Require Logbooks for Sales of Products Containing Ephedrine and Pseudoephedrine, *available at* <http://www.namsdl.org/library/80C4C116-1C23-D4F9-74B8F8D786ED1A5D/> (Research current as of December 31, 2012).

⁷ Cunningham et. al, *supra* note 2.

⁸ PHLP was not able to conduct a 50-state assessment given the short turn-around period needed for this information. NAMSDL's research, the GAO January Report, and other literature suggests that these states are the only two that have made PSE prescription-only drugs. See also, NAMSDL. Compilation of Maps and Charts Relating to Policies Governing Over-the-Counter Sales of Products Containing Ephedrine and Pseudoephedrine, *available at* <http://www.namsdl.org/library/80B9B381-1C23-D4F9-74B123D4FFCCDDDE/> (Research is current as of December 31, 2012. Revised April 23, 2013).

⁹ Cunningham et. al, *supra* note 2.

¹⁰ GAO, *supra* note 1.

¹¹ S.B. 639, 2013 Leg., Reg. Sess. (Haw. 2013); H.B. 1063, 2013 Leg., Reg. Sess. (Ind. 2013); H.B. 1355, 2013 Leg., Reg. Sess. (Ind. 2013); S.B. 419, 2013 Leg., Reg. Sess. (Ind. 2013); S.B. 498, 2013 Leg., Reg. Sess. (Ind. 2013); S.B. 611, 2013 Leg., Reg. Sess. (Ind. 2013); H.B. 4248, 2013 Leg., Reg. Sess. (Mich. 2013); H.B. 365, 2013 Leg., Reg. Sess. (Mo. 2013); H.B. 991, 2013 Leg., Reg. Sess. (Mo. 2013); A. 3677, 2013 Leg., Reg. Sess. (N.J. 2013); S. 447, 2013 Leg., Reg. Sess. (S.C. 2013); H.B. 368, 2013 Leg., Reg. Sess. (Tenn. 2013); H.B. 530, 2013 Leg., Reg. Sess. (Tenn. 2013); S.B. 984, 2013 Leg., Reg. Sess. (Tenn. 2013); S.B. 985, 2013 Leg., Reg. Sess. (Tenn. 2013); H.B.211, 2013 Leg., Reg. Sess. (Vt. 2013).

¹² Hawaii, Indiana, Michigan, Missouri, New Jersey, South Carolina, Tennessee, and Vermont.

¹³ PHLP conducted a quick search of the 2013 legislative session for such bills through the CQ StateTrack system on August 16, 2013.

¹⁴ H.B. 1355; S.B. 498; S.B. 611; H.B. 365; H.B. 991; A. 3677; S. 447; H.B. 368; S.B. 984.

¹⁵ S.B. 639. This bill also exempts cold products that contain other active ingredients subject to certain conditions.

have specifically provided that drug products containing PSE shall not be dispensed without a valid prescription.¹⁶

In Indiana, some proposed bills would have allowed for action to be taken at the local level to limit access to PSE. One proposed bill would have allowed for local governments to adopt ordinances that would make the sale of PSE products only pursuant to a prescription.¹⁷ Another proposed bill would have allowed for counties or municipalities to adopt ordinances to establish pilot projects that would require prescriptions for the sale of PSE or ephedrine.¹⁸

Local Laws

Since 2009¹⁹, a number of cities in Missouri have enacted ordinances that make pseudoephedrine a prescription-only drug.²⁰ Some of these include the cities of Arnold, Branson, Cape Girardeau, Crystal City, Doniphan, Joplin, Perryville, Licking, Jackson, and Houston.²¹ These ordinances typically include language that allows for PSE products to be sold by a licensed pharmacist after being authorized to do so by a written prescription from a licensed physician or other healthcare professional.²²

Local ordinances to make PSE a prescription-only drug have also been passed in cities in Tennessee, such as Huntland, Winchester, and Estill Springs²³ and as of August 12, 2013, the Martin City Board voted to make pseudoephedrine a prescription-only drug.²⁴

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This issue brief includes laws enacted through August 17, 2013.

¹⁶ H.B. 211.

¹⁷ H.B. 1063.

¹⁸ S.B. 419.

¹⁹ A quick search of media reports indicate that Washington, Missouri was the earliest city to enact this kind of ordinance in July, 2009. Unable to verify this city ordinance as unavailable in Municode.

²⁰ GAO, *supra* note 1.

²¹ All these city ordinances have been verified using Municode. One reason that so many cities in Missouri have passed ordinances converting PSE into a prescription only medicine may be the issuance of a 2009 Missouri Attorney General's Opinion stating that federal and state laws did not preempt local jurisdictions from passing prescription requirements for PSE. See Op. Att'y Gen. 194-2009, available at <http://ago.mo.gov/opinions/2009/194-2009.htm>.

²² See, e.g., JOPLIN, MO., Ord. No. 2011-032, § 2, 3-7-11; BRANSON, MO., Ord, No, 2012-0034, § 1, 3-13-2012.

²³ Ben Benton, *Local Meth Controls May Be Catching on in Tennessee*, CHATTANOOGA TIMES FREE PRESS, June 27, 2013, available at <http://www.timesfreepress.com/news/2013/jun/27/tennessee-local-meth-controls-may-be-catching-on/>. Unable to verify city ordinances referenced in article as unavailable in Municode.

²⁴ Cyndi Lundeberg, *Martin Board Decides to Make Pseudoephedrine Prescription Only*, WBBJTV.com, Aug. 12, 2013, available at <http://www.wbbjtv.com/news/local/Martin-Board-Decides-to-Make-Psuedoephedrine-Prescription-Only-219344811.html>.