# Uniform Controlled Substances Act

## Definitions

### 5-64-101. Definitions.

As used in this chapter:

(1) "Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means to the body of a patient or research subject by:

(A) A practitioner; or

(B) The patient or research subject at the direction and in the presence of the practitioner;

(2)

(A) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser.

(B) "Agent" does not include a common or contract carrier, public warehouseman, or employee of the common or contract carrier or warehouseman;

(3)

(A) "Anabolic steroid" means any drug or hormonal substance, chemically and pharmacologically related to testosterone, other than estrogens, progestin, and corticosteroid that promotes muscle growth.

(B)

(i) "Anabolic steroid" does not include an anabolic steroid that is expressly intended for administration through an implant to cattle or another nonhuman species and that has been approved by the Secretary of the Department of Health for such administration.

(ii) If any person prescribes, dispenses, or distributes a steroid described in subdivision (3)(B)(i) of this section for human use, the person is considered to have prescribed, dispensed, or distributed an anabolic steroid within the meaning of this subdivision (3);

(4) "Controlled substance" means a drug, substance, or immediate precursor in Schedules I through VI;

(5)

(A) "Counterfeit substance" means a noncontrolled substance, that by overall dosage unit appearance including color, shape, size, markings, packaging, labeling, and overall appearance or upon the basis of representations made to the recipient, purports to be a controlled substance or to have the physical or psychological effect associated with a controlled substance.

(B) In determining whether a substance is a "counterfeit substance", the following factors shall be utilized and a finding of any two (2) of these factors constitutes prima facie evidence that the substance is a "counterfeit substance":

(i) A statement made by an owner or by anyone else in control of the substance concerning the nature of the substance, its use, or effect;

(ii) The physical appearance of the finished product containing the noncontrolled substance is substantially the same as that of a specific controlled substance;

(iii) The noncontrolled substance is unpackaged or is packaged in a manner normally used for the illegal delivery of a controlled substance;

(iv) The noncontrolled substance is not labeled in accordance with 21 U.S.C. § 352 or 21 U.S.C. § 353;

(v) The person delivering, attempting to deliver, or causing delivery of the noncontrolled substance states or represents to the recipient that the noncontrolled substance may be resold at a price that substantially exceeds the value of the substance;

(vi) An evasive tactic or action utilized by the owner or person in control of the substance to avoid detection by a law enforcement authority; or

(vii) A prior conviction, if any, of an owner, or anyone in control of the object under a state or federal law related to a controlled substance or fraud;

(6) "Deliver" or "delivery" means the actual, constructive, or attempted transfer from one (1) person to another of a controlled substance or counterfeit substance in exchange for money or anything of value, whether or not there is an agency relationship;

(7) "Dispense" means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the controlled substance for that delivery;

(8) "Dispenser" means a practitioner who dispenses;

(9) "Distribute" means to deliver other than by administering or dispensing a controlled substance;

(10) "Distributor" means a person who distributes;

(11)

(A) "Drug" means a substance:

(i) Recognized as a drug in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, official National Formulary, or any supplement to any of them;

(ii) Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or animals;

(iii) Other than food intended to affect the structure or any function of the body of humans or animals; and

(iv) Intended for use as a component of any article specified in subdivision (11)(A)(i), subdivision (11)(A)(ii), or subdivision (11)(A)(iii) of this section.

(B) "Drug" does not include a device or its components, parts, or accessories;

(12)

(A) "Drug paraphernalia" means any equipment, product, and material of any kind that are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of this chapter.

(B) "Drug paraphernalia" includes, but is not limited to:

(i) A kit used, intended for use, or designed for use in planting, propagating, cultivating, growing, or harvesting any species of plant that is a controlled substance or from which a controlled substance can be derived;

(ii) A kit used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing a controlled substance;

(iii) An isomerization device used, intended for use, or designed for use in increasing the potency of any species of plant that is a controlled substance;

(iv) Testing equipment used, intended for use, or designed for use in identifying or in analyzing the strength, effectiveness, or purity of a controlled substance;

(v) A scale or balance used, intended for use, or designed for use in weighing or measuring a controlled substance;

(vi) A diluent or adulterant, such as quinine hydrochloride, mannitol, mannite, dextrose, and lactose used, intended for use, or designed for use in cutting a controlled substance;

(vii) A separation gin or sifter used, intended for use, or designed for use in removing a twig or seed from, or in otherwise cleaning or refining, marijuana;

(viii) A blender, bowl, container, spoon, or mixing device used, intended for use, or designed for use in compounding a controlled substance;

(ix) A capsule, balloon, envelope, or other container used, intended for use, or designed for use in packaging a small quantity of a controlled substance;

(x) A container or other object used, intended for use, or designed for use in storing or concealing a controlled substance;

(xi) A hypodermic syringe, needle, or other object used, intended for use, or designed for use in parenterally injecting a controlled substance into the human body; and

(xii) An object used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing a controlled substance into the human body, such as:

(a) A metal, wooden, acrylic, glass, stone, plastic, or ceramic pipe with or without a screen, permanent screen, hashish head, or punctured metal bowl;

(b) A water pipe;

(c) A carburetion tube or device;

(d) A smoking or carburetion mask;

(e) A roach clip, meaning an object used to hold burning material, such as a marijuana cigarette that has become too small or too short to be held in the hand;
(f) A miniature cocaine spoon or cocaine vial;

(g) A chamber pipe;

(h) A carburetor pipe;

(i) An electric pipe;

(j) An air-driven pipe;

(k) A chillum;

(l) A bong;

(m) An ice pipe or chiller; and

(n) An aluminum foil boat.

(C) In determining whether an object is "drug paraphernalia", a court or other authority shall consider, in addition to any other logically relevant factor, the following:

(i) A statement by an owner or by anyone in control of the object concerning its use;

(ii) A prior conviction, if any, of an owner or of anyone in control of the object under any state or federal law relating to any controlled substance;

(iii) The proximity of the object in time and space to a direct violation of this chapter;

(iv) The proximity of the object to a controlled substance;

(v) The existence of any residue of a controlled substance on the object;

(vi)

(a) Direct or circumstantial evidence of the intent of an owner or of anyone in control of the object to deliver it to a person whom he or she knows, or should reasonably know, intends to use the object to facilitate a violation of this chapter.

(b) The innocence of an owner or of anyone in control of the object as to a direct violation of this chapter does not prevent a finding that the object is intended for use or designed for use as "drug paraphernalia";

(vii) An oral or written instruction provided with the object concerning its use;

(viii) Descriptive materials accompanying the object that explain or depict its use;

(ix) National and local advertising concerning the object's use;

(x) The manner in which the object is displayed for sale;

(xi) Whether the owner or anyone in control of the object is a legitimate supplier of a like or related item to the community, such as a licensed distributor or dealer of a tobacco product;

(xii) Direct or circumstantial evidence of the ratio of sales of the objects to the total sales of the business enterprise;

(xiii) The existence and scope of legitimate uses for the object in the community; and

(xiv) Expert testimony concerning the object's use;

(13) "Fentanyl" means the opioid known as fentanyl, an analog of fentanyl that is a fentanyl-related controlled substance, and any chemical structure modification to fentanyl or a fentanyl analog, including without limitation the isomers, esters, ethers, and salts of fentanyl;

(14) "Immediate precursor" means a substance that the secretary has found to be and by rule designates as being the principal compound commonly used or produced primarily for use, and that is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail, or limit manufacture;

(15)

(A) "Manufacture" means the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, either directly or indirectly by extraction from a substance of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis.

(B) "Manufacture" includes any packaging or repackaging of a controlled substance or labeling or relabeling of a controlled substance's container.

(C) However, "manufacture" does not include the preparation or compounding of a controlled substance by an individual for his or her own use or the preparation, compounding, packaging, or labeling of a controlled substance:

(i) By a practitioner as an incident to his or her administering or dispensing of a controlled substance in the course of his or her professional practice; or

(ii) By a practitioner or by his or her authorized agent under his or her supervision for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale;

(16)

(A) "Marijuana" means:

(i) Any part and any variety or species, or both, of the Cannabis plant that contains THC (Tetrahydrocannabinol) whether growing or not;

(ii) The seeds of the plant;

(iii) The resin extracted from any part of the plant; and

(iv) Every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin.

(B) "Marijuana" does not include:

(i) The mature stalks of the plant;

(ii) Fiber produced from the stalks;

(iii) Oil or cake made from the seeds of the plant;

(iv) Any other compound, manufacture, salt, derivative, mixture, or preparation of the:

(a) Mature stalks, except the resin extracted from the mature stalks;

(b) Fiber;

(c) Oil; or

(d) Cake;

(v) The sterilized seed of the plant that is incapable of germination; or

(vi) Hemp-derived cannabidiol that:

(a) Contains not more than three-tenths of one percent (0.3%) of tetrahydrocannabinol (THC) on a dry weight basis as verified by a nationally accredited laboratory for quality, purity, and accuracy standards; and

(b) Is not approved by the United States Food and Drug Administration for marketing as a medication;

(17)

(A)

(i) "Narcotic drug" means any drug that is defined as a narcotic drug by order of the secretary.

(ii) In the formulation of a definition of "narcotic drug", the secretary shall:

(a) Include any drug that he or she finds is narcotic in character and by reason of being narcotic is dangerous to the public health or is promotive of addiction-forming or addiction-sustaining results upon the user that threaten harm to the public health, safety, or morals; and

(b) Take into consideration the provisions of the federal narcotic laws as they exist from time to time and shall amend the definitions so as to keep them in harmony with the definitions prescribed by the federal narcotic laws, so far as is possible under the standards established in this subdivision (17) and under the policy of this chapter.

(B) "Narcotic drug" also means any of the following, whether produced directly or indirectly by extraction from a substance of vegetable origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(i)

(a) Opium, opiates, a derivative of opium or opiates, including their isomers, esters, and ethers whenever the existence of the isomers, esters, ethers, and salts is possible within the specific chemical designation.

(b) "Narcotic drug" does not include an isoquinoline alkaloid of opium;

(ii) Poppy straw and concentrate of poppy straw;

(iii) Coca leaves, except coca leaves and extracts of coca leaves from which cocaines, ecgonine, and derivatives of ecgonine or their salts have been removed;

(iv) Cocaine, its salts, optical and geometric isomers, and salts of isomers;

(v) Ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

(vi) Any compound, mixture, or preparation that contains any quantity of any substance referred to in subdivisions (17)(B)(i)-(v) of this section;

(18) "Noncontrolled substance" means any liquid, substance, or material not listed in Schedules I through VI of the Schedules of Controlled Substances promulgated by the secretary;

(19) "Person" means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity;

(20) "Practitioner" means:

(A) A physician, dentist, veterinarian, scientific investigator, or other person licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or to administer a controlled substance in the course of professional practice or research in this state; and

(B) A pharmacy, hospital, or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or to administer a controlled substance in the course of professional practice or research in this state;

(21) "Production" includes the manufacture, planting, cultivation, growing, or harvesting of a controlled substance;

(22) "State" when applied to a part of the United States, includes any state, district, commonwealth, territory, insular possession thereof, and any area subject to the legal authority of the United States of America; and

(23) "Ultimate user" means a person who lawfully possesses a controlled substance for:

(A) The person's own use;

(B) The use of a member of the person's household; or

(C) Administering to an animal owned by the person or by a member of his or her household.

## Designation of Controlled Substances

### 5-64-201. Secretary's Duties

(a)

(1)

(A)

(i) The Secretary of the Department of Health shall administer this chapter and may add a substance to or delete or reschedule any substance enumerated in a schedule under the procedures of the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(ii) The secretary may promulgate without action or approval of the State Board of Health an emergency rule under the procedures of the Arkansas Administrative Procedure Act, § 25-15-201 et seq., that adds a substance to or deletes a substance from a schedule or reschedules a substance.

(iii) If the secretary adds, deletes, or reschedules a substance through an emergency rule under the procedures of the Arkansas Administrative Procedure Act, § 25-15-201 et seq., the emergency rule may be effective for no longer than one hundred eighty (180) days.

(B) However, the secretary shall not delete any substance from a schedule in effect on July 20, 1979, without prior approval by the Legislative Council.

(2) In making a determination regarding a substance, the secretary shall consider the following:

(A) The actual or relative potential for abuse;

(B) The scientific evidence of its pharmacological effect, if known;

(C) The state of current scientific knowledge regarding the substance;

(D) The history and current pattern of abuse;

(E) The scope, duration, and significance of abuse;

(F) The risk to public health;

(G) The potential of the substance to produce psychic or physiological dependence liability; and

(H) Whether the substance is an immediate precursor of a substance already controlled under this subchapter.

(b) After considering the factors enumerated in subsection (a) of this section, the secretary shall make findings with respect to the factors and issue a rule controlling the substance if he or she finds the substance has a potential for abuse.

(c) If the secretary designates a substance as an immediate precursor, a substance that is a precursor of the controlled precursor is not subject to control solely because it is a precursor of the controlled precursor.

(d)

(1) If any substance is designated as a controlled substance under federal law and notice of the designation is given to the secretary, the secretary shall similarly control the substance under this chapter after the expiration of thirty (30) days from publication in the Federal Register of a final order designating a substance as a controlled substance unless within that thirty-day period the secretary objects to inclusion.

(2)

(A) If the secretary objects to inclusion, the secretary shall publish the reasons for objection and afford any interested party an opportunity to be heard.

(B) At the conclusion of the hearing, the secretary shall publish his or her decision.

(C) Any person aggrieved by a decision of the secretary is entitled to judicial review in the Pulaski County Circuit Court.

(3) Upon publication of objection to inclusion under this chapter by the secretary, control under this chapter is stayed until the secretary publishes his or her decision or, if judicial review is sought, the inclusion is stayed until adjudication of the judicial review.

(4) If notice has been given to the secretary that the United States Food and Drug Administration has designated, rescheduled, or descheduled a marijuana-derived substance under federal law and approved for marketing the marijuana-derived substance as a prescription medication, the secretary shall consider the designation, rescheduling, or descheduling of the marijuana-derived substance under this chapter.

(e) Authority to control under this section does not extend to distilled spirits, wine, malt beverages, or tobacco.

(f) The secretary shall schedule gamma-hydroxybutyrate and its known precursors and analogs in a manner consistent with the procedures outlined in this section.

## 5-64-202. Nomenclature.

A controlled substance listed or to be listed in a schedule shall be included by whatever official, common, usual chemical, or trade name designated.

## 5-64-203. Criteria for Schedule I.

The Secretary of the Department of Health shall place a substance in Schedule I if he or she finds that the substance has:

(1) High potential for abuse; and

(2) No accepted medical use in treatment in the United States or lacks accepted safety for use in treatment under medical supervision.

## 5-64-204. Substances in Schedule I.

(a) In addition to any substance placed in Schedule I by the Secretary of the Department of Health under § 5-64-203, any material, compound, mixture, or preparation, whether produced directly or indirectly from a substance of vegetable origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis, that contains any quantity of the following substances, or that contains any of the following substances' analogs, salts, isomers, and salts of isomers when the existence of the analogs, salts, isomers, and salts of isomers is possible within the specific chemical designation, with the following chemical structure is included in Schedule I:

(1) 4-Methylmethcathinone (Mephedrone);

(2) Methylenedioxypyrovalerone (MDPV);

(3) 3,4-Methylenedioxy-N-methylcathinone (Methylone);

(4) 4-Methoxymethcathinone;

(5) 3-Fluoromethcathinone;

(6) 4-Fluoromethcathinone; or

(7) A compound, unless listed in another schedule or a legend drug, that is structurally derived from 2-Amino-1-phenyl-1-propanone by modification or by substitution:

(A) In the phenyl ring to any extent with alkyl, alkoxy, alkylenedioxy, haloalkyl or halide substituents, whether or not further substituted in the phenyl ring by one (1) or more other univalent substituents;

(B) At the 3-position with an alkyl substituent; or

(C) At the nitrogen atom with alkyl or dialkyl groups, or by inclusion of the nitrogen atom in a cyclic structure.

(b) The Secretary of the Department of Health shall not delete a controlled substance listed in this section from Schedule I.

### 5-64-205. Criteria for Schedule II.

The Secretary of the Department of Health shall place a substance in Schedule II if he or she finds that:

(1) The substance has high potential for abuse;

(2) The substance has currently accepted medical use in treatment in the United States or currently accepted medical use with severe restrictions; and

(3) The abuse of the substance may lead to severe psychic or physical dependence.

### 5-64-206. [Reserved.]

### 5-64-207. Criteria for Schedule III.

The Secretary of the Department of Health shall place a substance in Schedule III if he or she finds that:

(1) The substance has a potential for abuse less than the substances listed in Schedules I and II;

(2) The substance has currently accepted medical use in treatment in the United States; and

(3) Abuse of the substance may lead to moderate or low physical dependence or high psychological dependence.

### 5-64-208. [Reserved.]

### 5-64-209. Criteria for Schedule IV.

The Secretary of the Department of Health shall place a substance in Schedule IV if he or she finds that:

(1) The substance has a low potential for abuse relative to substances in Schedule III;

(2) The substance has currently accepted medical use in treatment in the United States; and

(3) Abuse of the substance may lead to limited physical dependence or psychological dependence relative to the substances in Schedule III.

### 5-64-210. Substances in Schedule IV.

Schedule IV includes any material, compound, mixture, or preparation that contains any quantity of tramadol or that contains any of tramadol's salts, isomers, or salts of isomers.

### 5-64-211. Criteria for Schedule V.

The Secretary of the Department of Health shall place a substance in Schedule V if he or she finds that:

(1) The substance has low potential for abuse relative to the controlled substances listed in Schedule IV;

(2) The substance has currently accepted medical use in treatment in the United States; and

(3) The substance has limited physical dependence or psychological dependence liability relative to the controlled substances listed in Schedule IV.

## 5-64-212. Substances in Schedule V.

(a) An ephedrine combination product, pseudoephedrine, and phenylpropanolamine, as defined in § 5-64-1105, are designated Schedule V controlled substances in addition to the drugs and other substances listed in Schedule V of the List of Controlled Substances for the State of Arkansas promulgated by the Secretary of the Department of Health.

(b) The Schedule V classification does not apply to:

(1) An exempt product described in § 5-64-1103(b)(1); or

(2) Any ephedrine or pseudoephedrine in liquid, liquid capsule, or liquid gel capsule form described in § 5-64-1103(b)(2).

(c) The secretary may reschedule a product described in subdivision (b)(1) or subdivision (b)(2) of this section if it is determined that the conversion of the active ingredient in the product into methamphetamine or its salts or precursors is feasible.

(d) A wholesale distributor with exclusive rights to distribute pseudoephedrine to only licensed pharmacies is exempt from Schedule V requirements for the storage and distribution of pseudoephedrine.

## 5-64-213. Schedule VI established.

(a) There is established a Schedule VI for the classification of those substances that are determined to be inappropriately classified by placing them in Schedules I through V.

(b) Schedule VI includes a controlled substance listed or to be listed by whatever official name, common or usual name, chemical name, or trade name designated.

## 5-64-214. Criteria for Schedule VI.

The Secretary of the Department of Health shall place a substance in Schedule VI if he or she finds that:

(1) The substance is not currently accepted for medical use in treatment in the United States;

(2) There is lack of accepted safety for use of the drug or other substance even under direct medical supervision;

(3) The substance has relatively high psychological or physiological dependence liability, or both; and

(4) Use of the substance presents a definite risk to public health.

## 5-64-215. Substances in Schedule VI.

(a) In addition to any substance placed in Schedule VI by the Secretary of the Department of Health under § 5-64-214, any material, compound, mixture, or preparation, whether produced directly or indirectly from a substance of vegetable origin or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, that contains any quantity of the following substances, or that contains any of their salts, isomers, and salts of isomers when the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation, is included in Schedule VI:

(1) Marijuana;

(2) Tetrahydrocannabinols, unless the tetrahydrocannabinol is:

(A) Contained in hemp-derived cannabidiol;

(B) Not more than three-tenths of one percent (0.3%) of the hemp-derived cannabidiol on a dry weight basis as verified by a nationally accredited laboratory for quality, purity, and accuracy standards; and

(C) Not approved by the United States Food and Drug Administration for marketing as a medication;

(3) A synthetic equivalent of:

(A) The substance contained in the Cannabis plant; or

(B) The substance contained in the resinous extractives of the genus Cannabis;

(4) Salvia divinorum or Salvinorin A, which includes all parts of the plant presently classified botanically as Salvia divinorum, whether growing or not, the seeds of the plant, any extract from any part of the plant, and every compound, manufacture, derivative, mixture, or preparation of the plant, its seeds, or its extracts, including salts, isomers, and salts of isomers when the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation;

(5) Synthetic substances, derivatives, or their isomers in the chemical structural classes described below in subdivisions (a)(5)(A)-(J) of this section and also specific unclassified substances in subdivision (a)(5)(K) of this section. Compounds of the structures described in this subdivision (a)(5), regardless of numerical designation of atomic positions, are included in this subdivision (a)(5). The synthetic substances, derivatives, or their isomers included in this subdivision (a)(5) are:

(A)

(i) Tetrahydrocannabinols, including without limitation the following:

(a) Delta-1 cis or trans tetrahydrocannabinol, and its optical isomers;

(b) Delta-6 cis or trans tetrahydrocannabinol, and its optical isomers; and

(c) Delta-3.4 cis or trans tetrahydrocannabinol, and its optical isomers.

(ii) Dronabinol in sesame oil and encapsulated in a soft gelatin capsule in a drug product approved by the United States Food and Drug Administration is not a tetrahydrocannabinol under this subdivision (a)(5)(A);

(B) Naphthoylindoles, or any compound structurally derived from 3-(1-naphthoyl)indole or 1H-indol-3-yl-(1-naphthyl)methane by substitution at the nitrogen atom of the indole ring by alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent, including without limitation the following:

(i) JWH-007, or 1-pentyl-2-methyl-3-(1-naphthoyl)indole;

(ii) JWH-015, or 1-Propyl-2-methyl-3-(1-naphthoyl)indole;

(iii) JWH-018, or 1-Propyl-3-(1-naphthoyl)indole;

(iv) JWH-019, or 1-Hexyl-3-(1-naphthoyl)indole;

(v) JWH-073, or 1-Butyl-3-(1-naphthoyl)indole;

(vi) JWH-081, or 1-Pentyl-3-(4-methoxy-1-naphthoyl)indole;

(vii) JWH-098, or 1-pentyl-2-methyl-3-(4-methoxy-1-naphthoyl)indole;

(viii) JWH-122, or 1-Pentyl-3-(4-methyl-1-naphthoyl)indole;

(ix) JWH-164, or 1-pentyl-3-(7-methoxy-1-naphthoyl)indole;

(x) JWH-200, or 1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl)indole;

(xi) JWH-210, or 1-Pentyl-3-(4-ethyl-1-naphthoyl)indole;

(xii) JWH-398, or 1-Pentyl-3-(4-chloro-1-naphthoyl)indole;

(xiii) AM-2201, or 1-(5-fluoropentyl)-3-(1-naphthoyl)indole;

(xiv) MAM2201, or (1-(5-fluoropentyl)-1H-indol-3-yl)(4-methyl-1-naphthalenyl)-methanone; and

(xv) EAM2201, or (1-(5-fluoropentyl)-1H-indol-3-yl)(4-ethyl-1-naphthalenyl)-methanone;

(C) Naphthylmethylindoles, or any compound structurally derived from an H-indol-3-yl-(1-naphthyl) methane by substitution at the nitrogen atom of the indole ring by alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent, including without limitation the following:

(i) JWH-175, or 1-Pentyl-1H-indol-3-yl-(1-naphthyl)methane; and

(ii) JWH-184, or 1-Pentyl-1H-3-yl-(4-methyl-1-naphthyl)methane;

(D) Naphthoylpyrroles, or any compound structurally derived from 3-(1-naphthoyl)pyrrole by substitution at the nitrogen atom of the pyrrole ring by alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the pyrrole ring to any extent and whether or not substituted in the naphthyl ring to any extent, including without limitation JWH-307, or (5-(2-fluorophenyl)-1-pentylpyrrol-3-yl)-naphthalen-1-ylmethanone;

(E) Naphthylmethylindenes, or any compound structurally derived from 1-(1-napthylmethyl)indene with substitution at the 3-position of the indene ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indene ring to any extent and whether or not substituted in the naphthyl ring to any extent, including without limitation JWH-176, or E-1-[1-(1-Naphthalenylmethylene)-1H-inden-3-yl]pentane;

(F) Phenylacetylindoles, or any compound structurally derived from 3-phenylacetylindole by substitution at the nitrogen atom of the indole ring with alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent, including without limitation the following:

(i) JWH-201, or 2-(4-methoxyphenyl)-1-(1-pentylindol-3-yl)ethanone;

(ii) JWH-203, or 1-Pentyl-3-(2-chlorophenylacetyl)indole;

(iii) JWH-250, or 1-Pentyl-3-(2-methoxyphenylacetyl)indole;

(iv) JWH-251, or 1-Pentyl-3-(2-methylphenylacetyl)indole; and

(v) RCS-8, or 1-(2-cyclohexylethyl)-3-(2-methoxyphenylacetyl)indole;

(G) Cyclohexylphenols, or any compound structurally derived from 2-(3-hydroxycyclohexyl)phenol by substitution at the 5-position of the phenolic ring by alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not substituted in the cyclohexyl ring to any extent, including without limitation the following:

(i) CP 47,497 5-(1,1-dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol;

(ii) Cannabicyclohexanol or CP 47,497 C8 homologue, or 5-(1,1-dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol; and

(iii) CP 55,940, or 5-(1,1-dimethylheptyl)-2-[(1R,2R)-5-hydroxy-2-(3-hydroxypropyl)cyclohexyl]-phenol;

(H) Benzoylindoles, or any compound structurally derived from a 3-(benzoyl)indole structure with substitution at the nitrogen atom of the indole ring by alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent, including without limitation the following:

(i) AM-694, or 1-(5-fluoropentyl)-3-(2-iodobenzoyl)indole;

(ii) RCS-4, or 1-Pentyl-3-(4-methoxybenzoyl)indole;

(iii) WIN-48,098 or Pravadoline, or (4-Methoxyphenyl)-[2-methyl-1-(2-(4-morpholinyl)ethyl) indol-3-y]methanone;

(iv) AM-2233, or 1-[(N-methylpiperidin-2-yl)methyl]-3-(2-iodobenzoyl)indole; and

(v) RCS-4 (C4 homologue) or (4-methoxyphenyl)(1-butyl-1H-indol-3-yl)-methanone;

(I) Adamantoylindoles, or Adamantoylindazoles, including Adamantyl Carboxamide Indoles and Adamantyl Carboxamide Indazoles, or any compound structurally derived from 3-(1-adamantoyl) indole, 3-(1-adamantoyl) indazole, or 3-(2-adamantoyl)indole by substitution at a nitrogen atom of the indole or indazole ring with alkyl, haloalkyl, alkenyl, cyanoalkyl, hydroxyalkyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl or 2-(4-morpholinyl) ethyl, whether or not further substituted in the indole or indazole ring to any extent and whether or not substituted in the adamantyl ring to any extent, including without limitation the following:

(i) AM-1248, or 1-adamantyl-[1-[(1-methylpiperidin-2-yl)methyl]indol-3-yl]methanone;

(ii) AB-001, or 1-adamantyl-(1-pentylindol-3-yl)methanone;

(iii) 2NE1, or 1-pentyl-3-(1-adamantylamido)indole;

(iv) JWH-018 adamantyl carboxamide, or 1-pentyl-N-tricyclo[3.3.1.13,7]dec-1-yl-1H-indole-3-carboxamide;

(v) AKB-48, or N-(1-adamantyl)-pentyl-1H-indazole-3-carboxamide;

(vi) 5F-AKB-48, or N-((3s,5s,7s)-adamantan-1-yl)-1-(5-fluoropentyl)-1H-indazole-3-carboxamide; and

(vii) STS-135, or N-(1-adamantyl)-1-(5-fluoropentyl)indole-3-carboxamide;

(J) Tetramethylcyclopropylcarbonylindoles or any compound structurally derived from 3-(2,2,3,3-tetramethylcyclopropylcarbonyl) indole by substitution at the nitrogen atom of the indole ring with alkyl, haloalkyl, alkenyl, cyanoalkyl, hydroxyalkyl, cycloalkylmethyl, cycloalkylethyl, (N-methylpiperidin-2-yl)methyl or 2-(4-morpholinyl) ethyl, whether or not further substituted in the indole ring to any extent, including without limitation the following:

(i) UR-144, or (1-pentylindol-3-yl)-(2,2,3,3-tetramethylcyclopropyl)methanone;

(ii) XLR-11, or [1-(5-fluoropentyl)-1H-indol-3-yl]-(2,2,3,3-tetramethylcyclopropyl)methanone;

(iii) A-796,260, or [1-(2-morpholin-4-yl-ethyl)-1H-indol-3-yl]-(2,2,3,3-tetramethylcyclopropyl)methanone;

(iv) 5-Chloro-UR-144, or ([-(5-chloropentyl)-1H-indol-3-yl](2,2,3,3-tetramethylcyclopropyl)methanone;

(v) 5-Bromo-UR-144, or [1-(5-bromopentyl)-1H-indol-3-yl](2,2,3,3-tetramethylcyclopropyl)methanone; and

(vi) A-834,735, or 1-(tetrahydropyran-4-ylmethyl)-1H-indol-3-yl]-(2,2,3,3-tetramethylcyclopropyl)methanone; or

(K) Unclassified Synthetic Cannabinoids, including without limitation the following:

(i) CP 50556-1 hydrochloride, or [(6S,6aR,9R,10aR)-9-hydroxy-6-methyl-3-[(2R)-5-phenylpentan-2-yl]oxy-5,6,6a,7,8,9,10,10a-octahydrophenanthridin-1-yl] acetate;

(ii) HU-210, or (6aR,10aR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol;

(iii) HU-211, or Dexanabinol,(6aS,10aS)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol;

(iv) Dimethylheptylpyran or DMHP;

(v) WIN55,212-2, or 2,3-Dihydro-5-methyl-3-(4-morpholinylmethyl)pyrrolo[1,2,3-de]-1,4-benzoxazin-6-yl-1-naphthalenylmethanone;

(vi) URB597, or [3-(3-carbamoylphenyl)phenyl] N-cyclohexylcarbamate;

(vii) URB754, or 6-methyl-2-[(4-methylphenyl)amino]-1-benzoxazin-4-one;

(viii) AKB-48, or N-(1-adamantyl)-1-pentylindazole-3-carboxamide;

(ix) CB-13, or 1-naphthalenyl[4-(pentyloxy)-1-naphthalenyl]-methanone;

(x) URB602, or cyclohexyl N-(3-phenylphenyl)carbamate;

(xi) PB-22, or quinolin-8-yl 1-(5-pentyl)-1H-indole-3-carboxylate;

(xii) 5F-PB-22, or quinolin-8-yl 1-(5-fluoropentyl)-1H-indole-3-carboxylate;

(xiii) BB-22, or quinolin-8-yl 1-(cyclohexylmethyl)-1H-indole-3-carboxylate;

(xiv) NNEI (MN-24), or N-1-naphthalenyl-1-pentyl-1H-indole-3-carboxamide; and

(xv) 5F-NNEI, or 1-(5-fluoropentyl)-N-(naphthalen-1-yl)-1H-indole-3-carboxamide; or

(6) A synthetic substance, derivative, or its isomers with:

(A) Similar chemical structure to any substance described in subdivisions (a)(1)-(5) of this section; or

(B) Similar pharmacological effects to any substance described in subdivisions (a)(1)-(5) of this section.

(b) However, except as provided under subsection (c) of this section, the secretary shall not delete a controlled substance listed in this section from Schedule VI.

(c) A prescription drug approved by the United States Food and Drug Administration under 21 U.S.C. § 355 is excluded from Schedule VI unless the secretary objects under § 5-64-201.

### 5-64-216. Schedule Revisions.

The Secretary of the Department of Health shall revise and republish the schedules annually.

## Regulation of Distribution

### 5-64-305. Powers of Arkansas State Board of Pharmacy – Sale of nonnarcotic drugs.

(a)

(1) Nothing contained in this chapter shall affect the licensing or regulation of pharmacists or pharmacies in this state by the Arkansas State Board of Pharmacy.

(2) The board may also inventory and destroy any outdated or unwanted controlled substance at the request of a licensee of the board with proper record of the destruction provided to appropriate agencies.

(3) The board is given primary but not exclusive jurisdiction in the enforcement application of this chapter to the board's licensees.

(b) Nothing in this chapter is deemed to prohibit the sale of a nonnarcotic proprietary drug if the nonnarcotic proprietary drug, under the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 301 et seq., or the Food, Drug, and Cosmetic Act, § 20-56-201 et seq., may be lawfully sold over the counter without a prescription.

### 5-64-306. Offenses relating to records.

It is unlawful for any person to refuse or fail to make, keep, or furnish any record, notification, order form, statement, invoice, or information required under this chapter.

### 5-64-307. Order forms.

(a) A controlled substance in Schedule I or Schedule II shall be distributed by a practitioner to another practitioner only pursuant to an order form.

(b) Compliance with the provisions of federal law respecting an order form is deemed compliance with this section.

**5-64-308. Prescriptions. [Effective until contingent effective date as stated in Acts 2019, No. 447, § 2]**

(a) Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, no controlled substance in Schedule II may be dispensed without the written prescription of a practitioner or the oral, faxed, or electronic prescription of a practitioner, if issued in compliance with federal law and regulations.

(b)

(1) Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, a controlled substance included in Schedule III or Schedule IV that is a prescription drug shall not be dispensed without a written or oral prescription of a practitioner or the faxed or electronic prescription of a practitioner, if issued in compliance with federal law and regulations.

(2) The prescription shall not be filled or refilled more than six (6) months after the date of the prescription or be refilled more than five (5) times unless renewed by the practitioner.

(c) A controlled substance included in Schedule V shall not be distributed or dispensed other than for a medical purpose.

**5-64-308. Prescriptions – Mandatory electronic prescribing. [Effective on contingent effective date as stated in Acts 2019, No. 447, § 2]**

(a) A prescription for a controlled substance included in Schedule III or Schedule IV shall not be filled or refilled more than six (6) months after the date of the prescription or be refilled more than five (5) times unless renewed by the practitioner.

(b) A controlled substance included in Schedule V shall not be distributed or dispensed other than for a medical purpose.

(c) Except as provided in subsection (d) of this section, a practitioner shall not issue a prescription for a controlled substance included in Schedule II through Schedule VI unless the prescription is made by electronic prescription from the practitioner issuing the prescription to a pharmacy.

(d) A practitioner may issue a prescription for a controlled substance included in Schedule II through Schedule VI by written, oral, or faxed method if issued:

(1) By:

(A) A veterinarian; or

(B) A practitioner:

(i) To be dispensed by a pharmacy located outside of the state;

(ii) For a controlled substance for which the United States Food and Drug Administration requires the prescription to contain certain elements that are not captured through electronic prescribing methods;

(iii) For the dispensing of a nonpatient-specific prescription under a standing order, approved protocol for drug therapy, collaborative drug management or comprehensive medication management, or in response to a public health emergency or other circumstances in which the practitioner may issue a nonpatient-specific prescription;

(iv) For a controlled substance under a research protocol;

(v)

(a) Who has received a waiver or a renewal of a waiver for a specified time period from the electronic prescription requirement due to economic hardship, technological limitations that are not reasonably within the control of the practitioner, or other exceptional circumstances demonstrated by the practitioner.

(b) A practitioner who has received a waiver from the United States Department of Health and Human Services shall have a valid waiver in this state; or

(vi) Under circumstances in which the practitioner reasonably determines that obtaining the controlled substances in a timely manner is impractical through electronic prescription and the delay would adversely impact the medical condition of the patient;

(2) In circumstances in which electronic prescribing is not available due to temporary technological or electrical failure; or

(3) When the practitioner and the dispenser are the same entity.

(e)

(1) A pharmacist or pharmacy that receives a written, oral, or faxed prescription for a controlled substance included in Schedule I through Schedule VI is not required to verify that the prescription properly falls under one (1) of the exceptions listed in subsection (d) of this section.

(2) A pharmacist may continue to dispense a controlled substance from an otherwise valid written, oral, or faxed prescription that is consistent with state law or rules or federal law and regulations.

(f) In addition to other penalties available under this chapter, a licensing board of a practitioner may impose a civil penalty of two hundred fifty dollars ($250) per violation of this section.

(g) This section does not apply to prescriptions written by a prescriber employed by or working under a professional services contract for the Division of Correction or the Division of Community Correction.

## Records of Transactions

### 5-64-1005. Exemptions.

The provisions of § 5-64-1001 do not apply to any of the following:

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

(2) Any physician, dentist, podiatrist, or veterinarian who administers or furnishes a substance to his or her patient;

(3) Any manufacturer or wholesaler licensed by the Arkansas State Board of Pharmacy that sells, transfers, or otherwise furnishes a substance to a licensed pharmacy, physician, dentist, podiatrist, or veterinarian; or

(4) Any sale, transfer, furnishing, or receipt by a retail distributor of any drug that contains any ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine and that is sold, transferred, or furnished over the counter without a prescription pursuant to the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 301 et seq., or regulations adopted under the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 301 et seq., if:

(A) The drug is sold in a blister pack of not more than three grams (3g) of ephedrine, pseudoephedrine, or phenylpropanolamine base, each blister containing not more than two (2) dosage units;

(B) The use of a blister pack is technically unfeasible, the drug is packaged in a unit dose packet or pouch;

(C) The drug is an exempted product described in § 5-64-1103(b)(1), or the product contains ephedrine or pseudoephedrine in liquid, liquid capsule, or liquid gel capsule form described in § 5-64-1103(b)(2), and is sold in a package size of not more than three grams (3g) of ephedrine or pseudoephedrine base; and

(D) The total quantity of the sale is not greater than three (3) packages or five grams (5g) of ephedrine or nine grams (9g) of pseudoephedrine, whichever is smaller.

**5-64-1006. Suspicious transaction reports.**

(a) Any pharmacy, manufacturer, wholesaler, or retail distributor that is required to keep records under this subchapter and that sells, transfers, or otherwise furnishes ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, optical isomers, and salts of optical isomers, alone or in a mixture, to any person in this state in a suspicious transaction shall report the transaction in writing to the Arkansas State Board of Pharmacy.

(b) Any person who does not submit a report as required by subsection (a) of this section is guilty of a Class A misdemeanor.

(c) As used in this section, "suspicious transaction" means a sale or transfer to which either of the following applies:

(1) The circumstances of the sale or transfer would lead a reasonable person to believe that the substance is likely to be used for the purpose of unlawfully manufacturing a controlled substance in violation of this chapter based on such factors as:

(A) The amount involved;

(B) The method of payment;

(C) The method of delivery; and

(D) Past dealings with the person acquiring the substance; or

(2) The transaction involves payment for ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, optical isomers, and salts of optical isomers, alone or in a mixture, in cash or money orders totaling more than two hundred dollars ($200).

(d)

(1) The board shall adopt by rule criteria for determining whether a transaction is a suspicious transaction, taking into consideration the recommendations in Appendix A, Report to the United States Attorney General by the Suspicious Orders Task Force, under the Comprehensive Methamphetamine Control Act of 1996, Pub. L. No. 104-237.

(2) In addition to any other penalty provided for in this section, the board may impose a civil penalty for a violation of subsection (a) of this section not to exceed ten thousand dollars ($10,000) per violation.

## Ephedrine and Other Nonprescription Drugs

### 5-64-1101. Possession – Penalty.

(a) It is unlawful for any person to possess more than five grams (5g) of ephedrine or nine grams (9g) of pseudoephedrine or phenylpropanolamine, or their salts, optical isomers, and salts of optical isomers, alone or in a mixture, except:

(1) Any pharmacist or other authorized person who sells or furnishes ephedrine, pseudoephedrine, or phenylpropanolamine or their salts, optical isomers, and salts of optical isomers, upon the prescription of a physician, dentist, podiatrist, veterinarian, or other healthcare professional with prescriptive authority, or as authorized pursuant to § 5-64-1103;

(2) A product exempted under § 5-64-1103(b)(1) and (2), without a prescription, pursuant to the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 301 et seq., or regulations adopted under the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 301 et seq., if the person possesses a sales and use tax permit issued by the Department of Finance and Administration;

(3) Any physician, dentist, podiatrist, veterinarian, or other healthcare professional with prescriptive authority who administers or furnishes ephedrine, pseudoephedrine, or phenylpropanolamine or their salts, optical isomers, and salts of optical isomers to his or her patient; or

(4)

(A) Any manufacturer, wholesaler, or distributor licensed by the Arkansas State Board of Pharmacy that meets one (1) of the requirements in subdivision (a)(4)(B) of this section and sells, transfers, or otherwise furnishes ephedrine, pseudoephedrine, or phenylpropanolamine or their salts, optical isomers, and salts of optical isomers to:

(i) A licensed pharmacy, physician, dentist, podiatrist, veterinarian, or other healthcare professional with prescriptive authority; or

(ii) Any person who possesses a sales and use tax permit issued by the department.

(B)

(i) The manufacturer, wholesaler, or distributor shall hold or store the substance in a facility that meets the packaging requirements of § 5-64-1005(4)(A)-(C).

(ii) The manufacturer, wholesaler, or distributor shall sell, transfer, or otherwise furnish only to a healthcare professional identified in subdivisions (a)(1) and (a)(3) of this section.

(b) Possession of more than five grams (5g) of ephedrine or more than nine grams (9g) of pseudoephedrine or phenylpropanolamine, or their salts, optical isomers, and salts of optical isomers constitutes prima facie evidence of the intent to manufacture methamphetamine or another controlled substance in violation of this subchapter unless the person qualifies for an exemption listed in subsection (a) of this section.

(c) Any person who violates a provision of this section is guilty of a Class D felony.

### 5-64-1102. Possession with purpose to manufacture – Unlawful distribution.

(a)

(1) It is unlawful for a person to possess ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, optical isomers, or salts of optical isomers with a purpose to manufacture methamphetamine.

(2) A person who violates subdivision (a)(1) of this section upon conviction is guilty of a:

(A) Class D felony if the quantity of substances listed in subdivision (a)(1) of this section is capable of producing ten grams (10g) or less of methamphetamine; or

(B) Class B felony if the quantity of substances listed in subdivision (a)(1) of this section is capable of producing more than ten grams (10g) of methamphetamine.

(b)

(1) It is unlawful for a person to possess ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, optical isomers, or salts of optical isomers in a quantity capable of producing twenty-eight grams (28g) or more of a Schedule I or Schedule II controlled substance that is a narcotic drug or methamphetamine with a purpose to manufacture methamphetamine.

(2) A person who violates subdivision (b)(1) of this section upon conviction is guilty of a Class B felony.

(c)

(1) It is unlawful for a person to sell, transfer, distribute, or dispense any product containing ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers if the person:

(A) Knows that the purchaser will use the product as a precursor to manufacture methamphetamine or another controlled substance; or

(B) Sells, transfers, distributes, or dispenses the product with reckless disregard as to how the product will be used.

(2) A person who violates subdivision (c)(1) of this section upon conviction is guilty of a Class D felony.

**5-64-1103. Sales limits.**

(a) It is unlawful for any person, other than a person or entity described in § 5-64-1101(a)(3) and (4), to knowingly sell, transfer, or otherwise furnish in a single transaction a product containing ephedrine, pseudoephedrine, or phenylpropanolamine except in a licensed pharmacy by a licensed pharmacist or a registered pharmacy technician.

(b) Unless the product has been rescheduled pursuant to § 5-64-212(c), this section does not apply to a retail distributor sale for personal use of a product:

(1) That the Department of Health, in collaboration with the Arkansas State Board of Pharmacy, 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; or

(2) Containing ephedrine or pseudoephedrine in liquid, liquid capsule, or liquid gel capsule form if the drug is dispensed, sold, transferred, or otherwise furnished in a single transaction limited to no more than three (3) packages, with any single package containing not more than ninety-six (96) liquid capsules or liquid gel capsules or not more than three grams (3g) of ephedrine or pseudoephedrine base.

(c)

(1)

(A) Except under a valid prescription, before dispensing a product containing ephedrine, pseudoephedrine, or phenylpropanolamine that is not exempt under subdivision (b)(1) or subdivision (b)(2) of this section, a pharmacist shall make a professional determination as to whether or not there is a legitimate medical and pharmaceutical need for the product containing ephedrine, pseudoephedrine, or phenylpropanolamine.

(B) The determination under subdivision (c)(1)(A) of this section may be based on factors, including without limitation:

(i) Prior medication-filling history;

(ii) Patient screening; and

(iii) Other tools that provide professional reassurance to the pharmacist that a legitimate medical and pharmaceutical need exists.

(2) The board may:

(A) Adopt rules regarding determinations made under subdivision (c)(1) of this section;

(B) Review determinations made under subdivision (c)(1) of this section; and

(C) Take appropriate disciplinary action as required.

(3) This subsection does not prohibit a pharmacist from dispensing a product containing ephedrine, pseudoephedrine, or phenylpropanolamine to a person who:

(A) Has not utilized the services of the pharmacist frequently; or

(B) Has not established a pharmacist-patient relationship with the pharmacist before the instance of dispensing.

(d) Except under a valid prescription, it is unlawful for a licensed pharmacist to dispense or a registered pharmacy technician to knowingly sell, transfer, or otherwise furnish in a single transaction:

(1) More than three (3) packages of one (1) or more products that contain ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers;

(2) Any single package of any product that contains ephedrine, pseudoephedrine, or phenylpropanolamine, that contains more than ninety-six (96) pills, tablets, gelcaps, capsules, or other individual units or more than three grams (3g) of ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers, or a combination of any of these substances, whichever is smaller;

(3) Any product containing ephedrine, pseudoephedrine, or phenylpropanolamine, unless:

(A) The product is sold in a package size of not more than three grams (3g) of ephedrine, pseudoephedrine, or phenylpropanolamine base and is packaged in a blister pack, each blister containing not more than two (2) dosage units;

(B) When the use of a blister pack is technically infeasible, that is packaged in a unit dose packet or pouch; or

(C) In the case of a liquid, the drug is sold in a package size of not more than three grams (3g) of ephedrine, pseudoephedrine, or phenylpropanolamine base; or

(4)

(A) Any product containing ephedrine, pseudoephedrine, or phenylpropanolamine to any person under eighteen (18) years of age, unless the person is purchasing an exempt product under subdivision (b)(1) or subdivision (b)(2) of this section.

(B) The person making the sale shall require proof of age from the purchaser.

(e)

(1)

(A) A person who violates subsection (a) or subsection (d) of this section for a first or second offense upon conviction is guilty of a Class A misdemeanor and also may be subject to a civil fine not to exceed five thousand dollars ($5,000).

(B) A person who violates subsection (a) or subsection (d) of this section for a third offense upon conviction is guilty of a Class D felony and also may be subject to a civil fine not to exceed five thousand dollars ($5,000).

(C) A person who violates subsection (a) or subsection (d) of this section for a fourth or subsequent offense upon conviction is guilty of a Class C felony and also may be subject to a civil fine not to exceed ten thousand dollars ($10,000).

(2) A plea of guilty or nolo contendere to or a finding of guilt under a penal law of the United States or another state that is equivalent to subsection (a) or subsection (d) of this section is considered a previous offense for purposes of this subsection.

(3)

(A) The prosecuting attorney may waive any civil penalty under this section if a person establishes that he or she acted in good faith to prevent a violation of this section, and the violation occurred despite the exercise of due diligence.

(B) In making this determination, the prosecuting attorney may consider evidence that an employer trained employees how to sell, transfer, or otherwise furnish substances specified in this subchapter in accordance with applicable laws.

(f)

(1)

(A) It is unlawful for any person, other than a person or entity described in § 5-64-1101(a), to knowingly purchase, acquire, or otherwise receive in a single transaction:

(i) More than three (3) packages of one (1) or more products that the person knows to contain ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers; or

(ii) Any single package of any product that the person knows to contain ephedrine, pseudoephedrine, or phenylpropanolamine, that contains more than ninety-six (96) pills, tablets, gelcaps, capsules, or other individual units or more than three grams (3g) of ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers, or a combination of any of these substances, whichever is smaller.

(B) It is unlawful for any person, other than a person or entity described in § 5-64-1101(a), to knowingly purchase, acquire, or otherwise receive more than five grams (5g) of ephedrine or nine grams (9g) of pseudoephedrine or phenylpropanolamine within any thirty-day period.

(2)

(A) A person who violates subdivision (f)(1)(A) or subdivision (f)(1)(B) of this section for a first or second offense upon conviction is guilty of a Class A misdemeanor.

(B) A person who violates subdivision (f)(1)(A) or subdivision (f)(1)(B) of this section for a third offense upon conviction is guilty of a Class D felony.

(C) A person who violates subdivision (f)(1)(A) or subdivision (f)(1)(B) of this section for a fourth or subsequent offense upon conviction is guilty of a Class C felony.

(3) A plea of guilty or nolo contendere to or a finding of guilt under a penal law of the United States or another state that is equivalent to subdivision (f)(1)(A) or subdivision (f)(1)(B) of this section is considered a previous offense for the purposes of this subsection.

(g) This section does not prohibit a person under eighteen (18) years of age from possessing and selling a product described in subsections (a) and (b) of this section as an agent of the minor's employer acting within the scope of the minor's employment.

### 5-64-1104. Sales records – Entering transactions into real-time electronic logbook – Purchaser's proof of identity.

(a) A pharmacy shall:

(1) Maintain a written or electronic log or receipts of transactions involving the sale of ephedrine, pseudoephedrine, or phenylpropanolamine; and

(2) Enter any transaction required to be maintained by this section into the real-time electronic logbook maintained by the Arkansas Crime Information Center under § 5-64-1106.

(b) A person purchasing, receiving, or otherwise acquiring ephedrine, pseudoephedrine, or phenylpropanolamine shall:

(1) Produce current and valid proof of identity; and

(2) Sign a written log or an electronic log or a receipt that documents the date of the transaction, the name of the person, and the quantity of ephedrine, pseudoephedrine, or phenylypropanolamine purchased, received, or otherwise acquired.

(c) The requirements of subsection (a) of this section and subdivision (b)(2) of this section are satisfied by entering the information required to be produced into the real-time electronic logbook maintained by the Arkansas Crime Information Center under § 5-64-1106.

### 5-64-1111. Liability of pharmacy or pharmacist.

(a) A pharmacy in this state is not liable civilly for a sale of ephedrine, pseudoephedrine, or phenylpropanolamine that occurs at another pharmacy in this state.

(b) A pharmacy or pharmacist is not civilly liable for a determination made under § 5-64-1103(c) or for any refusal to dispense, sell, transfer, or otherwise furnish ephedrine, pseudoephedrine, or phenylpropanolamine based on a determination of age or identity.