

REFERENCE TITLE: pseudoephedrine products; pharmacies

State of Arizona  
Senate  
Forty-eighth Legislature  
Second Regular Session  
2008

## **SB 1202**

Introduced by  
Senator O'Halleran

AN ACT

AMENDING SECTION 32-1971, ARIZONA REVISED STATUTES; AMENDING TITLE 32, CHAPTER 18, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTION 32-1974; REPEALING LAWS 2006, CHAPTER 337, SECTION 7; RELATING TO THE STATE BOARD OF PHARMACY.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 32-1971, Arizona Revised Statutes, is amended to  
3 read:

4 32-1971. Pseudoephedrine products; location; civil penalty;  
5 definition

6 A. ONLY a PHARMACY permittee ~~under this chapter~~ OR A NONPRESCRIPTION  
7 DRUG PERMITTEE shall OFFER FOR SALE AT RETAIL PSEUDOEPHEDRINE PRODUCTS TO THE  
8 PUBLIC. A PHARMACY PERMITTEE OR A NONPRESCRIPTION DRUG PERMITTEE MUST keep  
9 ALL products ~~in which~~ THAT CONTAIN pseudoephedrine ~~is the single active~~  
10 ~~ingredient~~ behind a ~~store~~ counter or in a locked facility that is  
11 inaccessible to customers without the assistance of the permittee or an  
12 employee of the permittee, ~~except that this restriction does not apply to~~  
13 ~~liquid, liquid capsule or gel capsule forms of these products.~~

14 B. PRODUCT PACKAGING THAT LISTS PSEUDOEPHEDRINE AS AN ACTIVE  
15 INGREDIENT IS PRIMA FACIE EVIDENCE THAT THE PRODUCT CONTAINS PSEUDOEPHEDRINE.

16 C. A PHARMACY PERMITTEE OR A NONPRESCRIPTION DRUG PERMITTEE WHO  
17 VIOLATES THIS SECTION IS SUBJECT TO A CIVIL PENALTY OF NOT MORE THAN  
18 TWENTY-FIVE THOUSAND DOLLARS. THIS SECTION MAY BE ENFORCED BY THE ATTORNEY  
19 GENERAL OR BY THE COUNTY ATTORNEY IN THE COUNTY IN WHICH THE VIOLATION  
20 OCCURRED. ENFORCEMENT ACTION BY THE ATTORNEY GENERAL OR A COUNTY ATTORNEY  
21 UNDER THIS SECTION DOES NOT AFFECT THE BOARD'S ABILITY TO PURSUE DISCIPLINARY  
22 ACTION AGAINST A PERMITTEE.

23 D. CIVIL PENALTIES COLLECTED UNDER THIS SECTION BY THE ATTORNEY  
24 GENERAL SHALL BE DEPOSITED, PURSUANT TO SECTIONS 35-146 AND 35-147, IN THE  
25 ADDICTION REDUCTION AND RECOVERY FUND ESTABLISHED BY SECTION 36-2007. CIVIL  
26 PENALTIES COLLECTED UNDER THIS SECTION BY A COUNTY ATTORNEY SHALL BE  
27 TRANSFERRED TO THE COUNTY HEALTH DEPARTMENT.

28 E. FOR THE PURPOSES OF THIS SECTION, "PSEUDOEPHEDRINE" MEANS  
29 PSEUDOEPHEDRINE AND ITS SALTS OR OPTICAL ISOMERS OR SALTS OF ITS OPTICAL  
30 ISOMERS.

31 Sec. 2. Title 32, chapter 18, article 3, Arizona Revised Statutes, is  
32 amended by adding section 32-1974, to read:

33 32-1974. Pseudoephedrine; sales; logs; civil penalty; state  
34 preemption; definitions

35 A. ANY COMPOUND, MIXTURE OR PREPARATION THAT CONTAINS ANY DETECTABLE  
36 QUANTITY OF PSEUDOEPHEDRINE MUST BE DISPENSED, SOLD OR DISTRIBUTED ONLY BY A  
37 PERMITTEE OR A PERMITTEE'S EMPLOYEE.

38 B. A PERMITTEE OR PERMITTEE'S EMPLOYEE SHALL NOT DISPENSE, SELL OR  
39 DISTRIBUTE TO A PERSON MORE THAN NINE GRAMS OF PSEUDOEPHEDRINE WITHIN A  
40 THIRTY DAY PERIOD OR MORE THAN 3.6 GRAMS IN ONE DAY. THIS SUBSECTION DOES  
41 NOT APPLY TO ANY QUANTITY THAT IS DISPENSED PURSUANT TO A VALID PRESCRIPTION  
42 ORDER.

43 C. AT THE TIME OF MAKING A PURCHASE, A PERSON WHO PURCHASES  
44 PSEUDOEPHEDRINE MUST PROVIDE THE PERMITTEE OR PERMITTEE'S EMPLOYEE WITH AN  
45 IDENTIFICATION DOCUMENT THAT INCLUDES THE PERSON'S DATE OF BIRTH AND THE

1 PERSON'S PHOTOGRAPH AND THAT IS ISSUED BY A STATE OR THE FEDERAL GOVERNMENT  
2 OR THAT IS AUTHORIZED TO BE USED AS IDENTIFICATION TO PURCHASE  
3 PSEUDOEPHEDRINE UNDER THE COMBAT METHAMPHETAMINE EPIDEMIC ACT OF 2005.

4 D. A PERSON WHO PURCHASES PSEUDOEPHEDRINE MUST ENTER INTO A WRITTEN OR  
5 ELECTRONIC LOG THE PURCHASER'S NAME AND ADDRESS AND THE TIME AND DATE OF THE  
6 TRANSACTION AND MUST SIGN THE LOG. A PERMITTEE OR A PERMITTEE'S EMPLOYEE  
7 MUST ENTER INTO THE LOG THE TYPE OF IDENTIFICATION PROVIDED PURSUANT TO  
8 SUBSECTION C OF THIS SECTION, THE NAME OF THE PRODUCT AND THE AMOUNT OF  
9 PSEUDOEPHEDRINE PURCHASED. THE PERMITTEE OR EMPLOYEE MUST VERIFY THAT THE  
10 NAME ENTERED INTO THE LOG CORRESPONDS TO THE NAME PROVIDED ON THE  
11 IDENTIFICATION AND THAT THE DATE AND TIME ENTERED ARE CORRECT. THIS  
12 SUBSECTION DOES NOT APPLY TO ANY PURCHASE OF A SINGLE SALES PACKAGE IF THAT  
13 PACKAGE CONTAINS SIXTY MILLIGRAMS OF PSEUDOEPHEDRINE OR LESS.

14 E. THE PERMITTEE AND THE PERMITTEE'S EMPLOYEE MUST MAINTAIN THE LOG IN  
15 A MANNER THAT DOES NOT DISCLOSE THE IDENTITY OF THE PURCHASER TO ANY OTHER  
16 PERSON EXCEPT TO THE PERMITTEE, AN EMPLOYEE OF THE PERMITTEE, THE BOARD OR A  
17 LAW ENFORCEMENT OFFICER. THE PERMITTEE MUST STORE THE LOG FOR AT LEAST TWO  
18 YEARS AND, IF REQUIRED BY LOCAL ORDINANCE, MUST SUBMIT A COPY OF THE LOG TO  
19 LAW ENFORCEMENT. A LOG MAINTAINED PURSUANT TO THIS SUBSECTION SHALL BE  
20 AVAILABLE FOR INSPECTION AND COPYING BY THE BOARD OR LAW ENFORCEMENT OFFICERS  
21 AT ANY TIME DURING BUSINESS HOURS.

22 F. THE PERMITTEE MUST DISPOSE OF A WRITTEN OR ELECTRONIC LOG IN A  
23 MANNER THAT ENSURES THE CONTINUED CONFIDENTIALITY OF INFORMATION IN THE LOG.

24 G. A PERMITTEE WHO VIOLATES THIS SECTION IS SUBJECT TO A CIVIL PENALTY  
25 OF NOT MORE THAN TWENTY-FIVE THOUSAND DOLLARS. THIS SECTION MAY BE ENFORCED  
26 BY EITHER THE ATTORNEY GENERAL OR THE COUNTY ATTORNEY IN THE COUNTY IN WHICH  
27 THE VIOLATION OCCURRED. ENFORCEMENT ACTION BY THE ATTORNEY GENERAL OR A  
28 COUNTY ATTORNEY UNDER THIS SECTION DOES NOT AFFECT THE BOARD'S ABILITY TO  
29 PURSUE DISCIPLINARY ACTION AGAINST A PERMITTEE.

30 H. CIVIL PENALTIES COLLECTED UNDER THIS SECTION BY THE ATTORNEY  
31 GENERAL SHALL BE DEPOSITED, PURSUANT TO SECTIONS 35-146 AND 35-147, IN THE  
32 ADDICTION REDUCTION AND RECOVERY FUND ESTABLISHED BY SECTION 36-2007. CIVIL  
33 PENALTIES COLLECTED UNDER THIS SECTION BY A COUNTY ATTORNEY SHALL BE  
34 TRANSFERRED TO THE COUNTY HEALTH DEPARTMENT.

35 I. THE BOARD MAY APPLY FOR GRANTS AND ACCEPT GIFTS, GRANTS OR  
36 DONATIONS TO ASSIST IN DEVELOPING AND MAINTAINING A STATEWIDE COMPUTERIZED  
37 SYSTEM TO TRACK PSEUDOEPHEDRINE SALES.

38 J. PRODUCT PACKAGING THAT LISTS PSEUDOEPHEDRINE AS AN ACTIVE  
39 INGREDIENT IS PRIMA FACIE EVIDENCE THAT THE PRODUCT CONTAINS PSEUDOEPHEDRINE.

40 K. THE REGULATION AND USE OF PSEUDOEPHEDRINE IS A STATEWIDE CONCERN.  
41 BEGINNING ON THE EFFECTIVE DATE OF THIS SECTION, THE REGULATION AND USE OF  
42 PSEUDOEPHEDRINE PURSUANT TO SECTION 32-1971 OR THIS SECTION IS NOT SUBJECT TO  
43 FURTHER REGULATION BY A COUNTY, CITY, TOWN OR OTHER POLITICAL SUBDIVISION OF  
44 THIS STATE.

1           L. FOR THE PURPOSES OF THIS SECTION:  
2           1. "PERMITTEE" MEANS A PHARMACY PERMITTEE OR A NONPRESCRIPTION DRUG  
3 PERMITTEE.  
4           2. "PSEUDOEPHEDRINE" MEANS PSEUDOEPHEDRINE AND ITS SALTS OR OPTICAL  
5 ISOMERS OR SALTS OF ITS OPTICAL ISOMERS.  
6           Sec. 3. Repeal  
7           Laws 2006, chapter 337, section 7 is repealed.  
8           Sec. 4. Emergency  
9           This act is an emergency measure that is necessary to preserve the  
10 public peace, health or safety and is operative immediately as provided by  
11 law.