

**218A.1438 Unlawful distribution of a methamphetamine precursor -- Penalties.**

- (1) Notwithstanding KRS 218A.1442, a person is guilty of unlawful distribution of a methamphetamine precursor when he or she knowingly and unlawfully sells, transfers, distributes, dispenses, or possesses with the intent to sell, transfer, distribute, or dispense any drug product or combination of drug products containing ephedrine, pseudoephedrine, or phenylpropanolamine, or any of their salts, isomers, or salts of isomers, if the person knows that the purchaser intends that the drug product or combination of drug products will be used as a precursor to methamphetamine or other controlled substance, or if the person sells, transfers, distributes, or dispenses the drug product or combination of drug products with reckless disregard as to how the drug product or combination of drug products will be used.
- (2) Unlawful distribution of a methamphetamine precursor is a Class D felony for the first offense and a Class C felony for each subsequent offense.
- (3) In addition to the criminal penalty specified in subsection (2) of this section, or in lieu of the criminal penalty specified in subsection (2) of this section, any person who traffics in or transfers any drug product or combination of drug products specified in subsection (1) of this section intentionally or recklessly with knowledge of or reason to know that the drug product or combination of drug products will be used to illegally manufacture methamphetamine or other controlled substance shall be liable for damages in a civil action for all damages, whether directly or indirectly caused by the sale or trafficking or transfer of the drug product or drug products.
  - (a) Damages may include but are not limited to:
    1. Any and all costs of detecting, investigating, and cleaning up or remediating unlawfully operated laboratories or other facilities for the illegal manufacture of methamphetamine or other controlled substance;
    2. Costs of prosecution of criminal cases arising from the illegal sale, transfer, distribution, manufacture, or dispensing of a controlled substance or their precursors;
    3. Court costs and reasonable attorney's fees for bringing this civil action;
    4. Consequential damages; and
    5. Punitive damages.
  - (b) A civil action to recover damages against a person or persons violating this section may be brought by the Attorney General, an attorney of the Justice and Public Safety Cabinet, or by any Commonwealth's attorney in whose jurisdiction the defendant may be shown to have committed an act specified in this section.
  - (c) All moneys collected pursuant to such civil action shall be distributed in the following order:
    1. Court costs and reasonable attorney's fees for bringing this civil action;

2. The reimbursement of all reasonable costs of detecting, investigating, cleaning up or remediating the laboratory or other facility utilized for manufacture of methamphetamine underlying the present judgment;
3. The reasonable costs of prosecution of criminal cases arising from trafficking in or transfer of a precursor for the illegal manufacture of methamphetamine giving rise to the present judgment; and
4. All remaining moneys shall be distributed to the General Fund.

**Effective:** June 20, 2005

**History:** Amended 2005 Ky. Acts ch. 150, sec. 11, effective June 20, 2005. -- Created 2002 Ky. Acts ch. 170, sec. 2, effective July 15, 2002.

**Legislative Research Commission Note** (6/20/2005). 2005 Ky. Acts ch. 150, sec. 11, amended KRS 218A.1438. This amendment inserted the following phrase at the beginning of the section: "Notwithstanding Section 3 of this Act," it appears that this reference is not correct. Section 3 of this Act was a newly created section, which was codified as KRS 218A.1442, and deals with controlled substance endangerment to children. A representative of the executive agency that prepared the original draft of this bill has told LRC staff that the reference should have been to Section 6 of the bill, a newly created section, which was codified as KRS 218A.1446, and deals with requirements for dispensing certain nonprescription drugs.