

STATE OF OKLAHOMA

1st Session of the 43rd Legislature (1991)

HOUSE BILL NO. 1570

BY: RICE

AS INTRODUCED

AN ACT RELATING TO PROFESSIONS AND OCCUPATIONS;

PROVIDING FOR NONPRESCRIPTION DRUGS; AMENDING 21 O.S. 1981, SECTION 832, AS AMENDED BY SECTION 1, CHAPTER 19, O.S.L. 1983 (21 O.S. SUPP. 1990, SECTION 832), WHICH RELATES TO CONTAMINATION OF FOOD, DRINK, MEDICINE, OR WATER; MODIFYING TERM; AMENDING 59 O.S. 1981, SECTIONS 353.1, AS LAST AMENDED BY SECTION 1, CHAPTER 20, O.S.L. 1987 AND 353.18, AS LAST AMENDED BY SECTION 3, CHAPTER 120, O.S.L. 1990 (59 O.S. SUPP. 1990, SECTIONS 353.1 AND 353.18), WHICH RELATE TO THE OKLAHOMA PHARMACY ACT; MODIFYING A DEFINITION; PROHIBITING THE ADOPTION OF CERTAIN RULES AND REGULATIONS; AMENDING 68 O.S. 1981, SECTION 1357, AS LAST AMENDED BY SECTION 2, CHAPTER 280, O.S.L. 1990 (68 O.S. SUPP. 1990, SECTION 1357), WHICH RELATES TO EXEMPTIONS FROM SALES TAX; MODIFYING TERM; AND PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 21 O.S. 1981, Section 832, as amended by Section 1, Chapter 19, O.S.L. 1983 (21 O.S. Supp. 1990, Section 832), is amended to read as follows:

Section 832. A. 1. No person shall willfully mingle any poison, Schedule I through V drug pursuant to the provisions of Sections 2-203 through 2-212 of Title 63 of the Oklahoma Statutes, or sharp object, or any other object or substance which if used in a manner which is not customary or usual is harmful to human life, with any food, drink, medicine, or ~~patent or proprietary medicine~~ nonprescription drug, as defined in Section 353.1 of Title 59 of the Oklahoma Statutes, with intent that the same shall be taken, consumed, applied, or used in any manner by any human being to his injury; and

2. Unless authorized by law, no person shall willfully poison or place any Schedule I through V drug pursuant to the provisions of Sections 2-203 through 2-212 of Title 63 of the Oklahoma Statutes or any other object or substance which if used in a manner which is not customary or usual is harmful to human life in any spring, well, or reservoir of water.

B. Any person convicted of violating any of the provisions of this section shall be guilty of a felony, punishable by imprisonment in the penitentiary for not less than five (5) years, or by a fine of not less than One Thousand Dollars (\$1,000.00), or by both such fine and imprisonment.

SECTION 2. AMENDATORY 59 O.S. 1981, Section 353.1, as last amended by Section 1, Chapter 20, O.S.L. 1987 (59 O.S. Supp. 1990, Section 353.1), is amended to read as follows:

Section 353.1 For the purposes of Sections 353.1 et seq. of this title:

1. "Pharmacy" means a place regularly licensed by the Oklahoma State Board of Pharmacy in which prescriptions, drugs, medicines, chemicals and poisons are compounded or dispensed.

2. "Pharmacist" means a person registered by the Oklahoma State Board of Pharmacy to prepare, compound and dispense drugs, medicines, chemicals and poisons.

3. "Drugs" means all medicinal substances and preparations recognized by the United States Pharmacopoeia and National Formulary, or any revision thereof, and all substances and preparations intended for external and internal use in the cure, diagnosis, mitigation, treatment or prevention of disease in man and all substances and preparations, other than food, intended to affect the structure or any function of the body of man.

4. "Medicine" means any drug or combination of drugs which has the property of curing, preventing, treating or mitigating diseases, or which is used for that purpose.

5. "Poison" means any substance which when introduced into the system, either directly or by absorption, produces violent, morbid or fatal changes, or which destroys living tissue with which such substance comes into contact.

6. "Chemical" means any medicinal substance, whether simple or compound or obtained through the process of the science and art of chemistry, whether of organic or inorganic origin.

7. a. "Prescription" means and includes any order for drug or medical supplies written or signed or transmitted by word of mouth, telephone, telegraph, or other means of communication by a legally competent practitioner of medicine, dentistry, osteopathy, optometry certified by the Board of Examiners in Optometry to administer ocular pharmaceutical agents as authorized by Sections 581 and 584 of this title, podiatry, or veterinary medicine, licensed by law to prescribe and administer such drugs and medical supplies intended to be filled, compounded, or dispensed by a pharmacist. Such prescription received by other than written

communication shall be promptly recorded in writing by the pharmacist. The record made by the pharmacist shall constitute the original prescription to be filed by the pharmacist.

- b. For purposes of Sections 353.1 et seq. of this title, pharmacists may dispense ocular topical pharmaceutical agents for qualified optometrists certified by the Board of Examiners in Optometry to use such ocular topical pharmaceutical agents. Nothing in this subsection shall provide for optometrists to be authorized in any way to manufacture, distribute, dispense, prescribe, administer or use for scientific purposes any controlled dangerous substance as defined in paragraph 8 of Section 2-101 of Title 63 of the Oklahoma Statutes. All prescriptions issued by certified optometrists shall include the certification number of the optometrist as assigned by the Board of Examiners in Optometry. The Board of Examiners in Optometry shall provide an annual list of all certified optometrists directly to each pharmacy licensed by the Oklahoma State Board of Pharmacy. Any additions or deletions in certification shall be mailed to all pharmacies in this state within thirty (30) days of such change.
- c. "Filled prescription" means a packaged prescription medication to which a label has been affixed, which label includes the name and address of the pharmacy of origin, date of filling, name of patient, name of prescriber, directions for administration and prescription number. When directed by the prescriber, such label shall legibly state, in addition to any other information, the trade or generic name, and the

quantity and strength, not meaning ingredients, of the drug therein contained. This requirement shall not apply to compounded prescriptions or medicines and drugs supplied or delivered directly to patients for consumption on the premises while admitted to any hospital or mental institution.

8. ~~"Patent or proprietary medicines" means and includes packaged medicines, drugs, medical and dental supplies, and bottled or nonbulk chemicals identified by and sold pursuant to a trademark, trade name or other trade symbol, privately owned or registered in the United States Patent Office, which are sold or offered for sale to the general public, if such articles or preparations meet the requirements of the Federal Food, Drug and Cosmetic Act~~

"Nonprescription drugs" means non-narcotic medicines or drugs which may be sold without a prescription and which are prepackaged for use by the consumer and labeled in accordance with the requirements of the statutes of Oklahoma and the United States.

9. "Hospital" means any institution for the care and treatment of the sick and injured approved and licensed by this state.

10. Masculine words shall include the feminine and neuter, and the singular includes the plural.

11. "Person" means every individual, copartnership, corporation or association, unless the context otherwise requires.

12. "The Board" or "The State Board" means the Oklahoma State Board of Pharmacy.

13. "Administer" means the direct application of a drug, whether by injection, inhalation, ingestion or any other means, to the body of a patient.

14. "Dispense" includes sell, distribute, leave with, give away, dispose of, deliver, or supply.

15. A "Wholesaler" or "Distributor" means a person engaged in the business of distributing drugs or medicines at wholesale to

pharmacies, hospitals, practitioners, government agencies, or other lawful outlets permitted to sell or use drugs or medicines.

16. "Dangerous drugs" shall mean and include any drug intended for use by man which, because of its toxicity or other potentiality for harmful effects, or the method of its use, or the collateral measures necessary for its use, is not safe for use except pursuant to the supervision of a practitioner licensed by law to administer such drugs. This shall include all drugs upon which the manufacturer or distributor has, in compliance with federal law and regulations, placed the following - "Caution - Federal Law prohibits dispensing without prescription".

17. "Manufacturer" means and includes a person, except a pharmacy, who prepares, derives, produces, compounds, or repackages any drug.

SECTION 3. AMENDATORY 59 O.S. 1981, Section 353.18, as last amended by Section 3, Chapter 120, O.S.L. 1990 (59 O.S. Supp. 1990, Section 353.18), is amended to read as follows:

Section 353.18 A. It shall be unlawful:

For any person, firm or corporation to engage in selling at retail, or offering for sale, drugs, medicines, chemicals or poisons for the treatment of disease, excluding agricultural chemicals and drugs, or to accept prescriptions for same, without first procuring a license from the Board of Pharmacy. On evidence satisfactory to the Board:

1. that the said place for which the license is sought will be conducted in full compliance with the law and the rules and regulations of the Board;

2. that the location, appointments and physical characteristics of said place are reasonably consistent with the maintenance of professional surroundings and constitute no known danger to the public health and safety;

3. that said place will be under the management and control of a registered pharmacist; and

4. that a registered pharmacist or assistant pharmacist will be present and on duty at all hours the pharmacy is open for business, a license shall be issued to such person as the Board shall deem qualified. Application for such license shall be in writing, shall contain the name or names of persons who shall own the pharmacy and shall be accompanied by a payment to the Board of a sum not to exceed One Hundred Fifty Dollars (\$150.00) as a license fee; prior to opening for business, all applicants for an initial license or permit shall receive the required inspection during the next scheduled routine inspections to be made in that geographical area and there shall be no extra fee for such initial inspection. However, applicants requesting a special nonscheduled initial inspection shall pay a special inspection fee not to exceed One Hundred Dollars (\$100.00); provided however, that no charge shall be made for the licensing of any Federal Veterans Hospital in the State of Oklahoma. A registered pharmacist shall be on duty during regular working hours. Such license shall be valid for a period of one (1) year, commencing on July 1 and ending on June 30, and such license shall contain the name of the licensee and the address of the place at which such business shall be conducted.

B. It shall further be unlawful for any person to manufacture, make, produce, package, pack or prepare within this state any drugs except under the management and control of a registered pharmacist or such other persons as may be approved by the Board after an investigation and determination of such person's qualification. No person shall manufacture, make, produce, pack, package, prepare or sell or offer for sale at wholesale such articles without first obtaining a permit to do so from the Board. Application for such permit shall be made in writing and shall be accompanied by a payment to the Board of a sum of not to exceed Three Hundred Dollars

(\$300.00) as a permit fee. Such permit shall be valid for a period of one (1) year, commencing on July 1 and ending on June 30, and such permit shall contain the name of the permittee and the address of the place at which such business shall be conducted. Such permit shall be subject to such rules and regulations with respect to sanitation and equipment as the said Board may from time to time adopt and invoke for the protection of public health and safety.

Nothing in Section 353.1 et seq. of this title shall be construed to prevent the sale of ~~patent or proprietary medicines~~ nonprescription drugs in original packages by any merchant or dealer. No rule or regulation shall be adopted by the Board which shall require the sale of nonprescription drugs by a licensed pharmacist or under the supervision of a licensed pharmacist or otherwise apply to or interfere with the sale and distribution of such medicines.

Any person violating any portion of the provisions of Section 353.1 et seq. of this title shall be guilty of a misdemeanor.

SECTION 4. AMENDATORY 68 O.S. 1981, Section 1357, as last amended by Section 2, Chapter 280, O.S.L. 1990 (68 O.S. Supp. 1990, Section 1357), is amended to read as follows:

Section 1357. Exemptions - General.

There are hereby specifically exempted from the tax levied by this article:

(A) Transportation of school pupils to and from elementary schools or high schools in motor or other vehicles;

(B) Transportation of persons where the fare of each person does not exceed One Dollar (\$1.00), or local transportation of persons within the corporate limits of a municipality except by taxicabs;

(C) Sales for resale to persons engaged in the business of reselling the articles purchased, whether within or without the state, provided that such sales to residents of this state are made

to persons to whom sales tax permits have been issued as provided in this article. This exemption shall not apply to the sales of articles made to persons holding permits when such persons purchase items for their use and which they are not regularly engaged in the business of reselling; neither shall this exemption apply to sales of tangible personal property to peddlers, solicitors and other salesmen who do not have an established place of business and a sales tax permit. The exemption provided by this subsection shall apply to sales of motor fuel or diesel fuel to a Group Five vendor, but the use of such motor fuel or diesel fuel by the Group Five vendor shall not be exempt from the tax levied by this article. The purchase of motor fuel or diesel fuel is exempt from sales tax when the motor fuel is for shipment outside this state and consumed by a common carrier by rail in the conduct of its business. The sales tax shall apply to the purchase of motor fuel or diesel fuel in Oklahoma by a common carrier by rail when such motor fuel is purchased for fueling, within this state, of any locomotive or other motorized flanged wheel equipment;

(D) Sales of advertising space in newspapers and periodicals and billboard advertising service, and any advertising through the electronic media, including radio, television and cable television;

(E) Eggs, feed, supplies, machinery and equipment purchased by persons regularly engaged in the business of raising worms, fish, any insect or any other form of terrestrial or aquatic animal life and used for the purpose of raising same for marketing. This exemption shall only be granted and extended to the purchaser when the items are to be used and in fact are used in the raising of animal life as set out above. Each purchaser shall certify, in writing, on the invoice or sales ticket retained by the vendor that he is regularly engaged in the business of raising such animal life and that the items purchased will be used only in such business. The vendor shall certify to the Oklahoma Tax Commission that the

price of the items has been reduced to grant the full benefit of the exemption. Violation hereof by the purchaser or vendor shall be a misdemeanor;

(F) Sale of natural or artificial gas and electricity when sold exclusively for residential use after December 31, 1980. Provided, nothing herein shall be construed as limiting or prohibiting cities and towns from levying and collecting taxes on the sale of natural or artificial gas and electricity. Provided further, any sales tax levied by a city or town on natural or artificial gas and electricity shall be in effect regardless of ordinance or contractual provisions referring to previously imposed state sales tax on such items;

(G) Sales of medicines or drugs prescribed for the treatment of human beings by a person licensed to prescribe the medicines or drugs. Provided, this exemption shall not apply to ~~proprietary or patent medicines~~ nonprescription drugs as defined by Section 353.1 of Title 59 of the Oklahoma Statutes;

(H) Transfers of title or possession of empty, partially filled, or filled returnable oil and chemical drums to any person who is not regularly engaged in the business of selling, reselling or otherwise transferring empty, partially filled, or filled returnable oil drums;

(I) Sales of one-way utensils, paper napkins, paper cups, disposable hot containers and other one-way carry out materials to a vendor of meals or beverages;

(J) Sales of food or food products for home consumption which are purchased in whole or in part with coupons issued pursuant to the federal food stamp program as authorized by Sections 2011 through 2029 of Title 7 of the United States Code, as to that portion purchased with such coupons. The exemption provided for such sales shall be inapplicable to such sales upon the effective date of any federal law that removes the requirement of the

exemption as a condition for participation by the State of Oklahoma in the federal food stamp program; and

(K) Sales of computers, data processing equipment, related peripherals and telephone, telegraph or telecommunications service and equipment to a new or expanding business. In order to qualify for the exemption provided for by this subsection, the sale of said items shall equal or exceed the sum of Two Million Dollars (\$2,000,000.00). For purposes of this subsection, qualified purchaser means any new or expanding business which adds at least one hundred (100) new full-time-equivalent employees, as certified by the Employment Security Commission. Only sales of computers, data processing equipment, related peripherals and telephone, telegraph or telecommunications service and equipment made within thirty-six (36) months of the effective date of this act shall be eligible for the exemption provided by this subsection.

SECTION 5. This act shall become effective September 1, 1991.

43-1-5267

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