

ENROLLED SENATE
BILL NO. 1123

By: Helton of the Senate

and

Kirby of the House

An Act relating to the Uniform Controlled Dangerous Substances Act; amending 63 O.S. 1991, Section 2-101, as amended by Section 4, Chapter 52, O.S.L. 1994 (63 O.S. Supp. 1995, Section 2-101), which relates to definitions; adding and modifying definitions; amending 63 O.S. 1991, Section 2-105, which relates to the duties of state departments, officers and employees; modifying term; amending 63 O.S. 1991, Section 2-210, as amended by Section 1, Chapter 147, O.S.L. 1995 (63 O.S. Supp. 1995, Section 2-210), which relates to Schedule IV controlled dangerous substances; deleting exception for ephedrine combinations; listing specific products for exclusion from schedules; authorizing Director to exempt other ephedrine products; amending 63 O.S. 1991, Sections 2-302, 2-303, 2-304, as amended by Section 1, Chapter 285, O.S.L. 1993, 2-309 and 2-315, as amended by Section 1, Chapter 127, O.S.L. 1992 (63 O.S. Supp. 1995, Sections 2-304 and 2-315), which relate to narcotics registration; modifying term; requiring home care agencies, hospices and home care services to obtain narcotics registration; establishing fee; modifying conditions for denial, suspension or revocation of registration; providing for transmission of prescription by facsimile under certain conditions; providing exceptions; providing for submission of controlled dangerous substances by registrants for destruction; amending 63 O.S. 1991, Section 2-407, which relates to obtaining controlled dangerous substances by fraud or deceit; prohibiting creation, delivery or possession of original or counterfeit prescription forms; establishing certain fines; and declaring an emergency.

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

SECTION 1. AMENDATORY 63 O.S. 1991, Section 2-101, as amended by Section 4, Chapter 52, O.S.L. 1994 (63 O.S. Supp. 1995, Section 2-101), is amended to read as follows:

Section 2-101. As used in the Uniform Controlled Dangerous Substances Act, Section 2-101 et seq. of this title:

1. "Administer" means the direct application of a controlled dangerous substance, whether by injection, inhalation, ingestion or

any other means, to the body of a patient, animal or research subject by:

- a. a practitioner (or, in his presence, by his authorized agent), or
 - b. the patient or research subject at the direction and in the presence of the practitioner;
2. "Agent" means a peace officer appointed by and who acts in behalf of the Director of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control or an authorized person who acts on behalf of or at the direction of a person who manufactures, distributes, dispenses, prescribes, administers or uses for scientific purposes controlled dangerous substances but does not include a common or contract carrier, public warehouseman or employee thereof, or a person required to register under the Uniform Controlled Dangerous Substances Act;
3. "Board" means the Advisory Board to the Director of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control;
4. "Bureau of Narcotics and Dangerous Drugs" means the Bureau of Narcotics and Dangerous Drugs, United States Department of Justice;
5. "Coca leaves" includes cocaine and any compound, manufacture, salt, derivative, mixture or preparation of coca leaves, except derivatives of coca leaves which do not contain cocaine or ecgonine;
6. "Commissioner" or "Director" means the Director of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control;
7. "Control" means to add, remove or change the placement of a drug, substance or immediate precursor under the Uniform Controlled Dangerous Substances Act;
8. "Controlled dangerous substance" means a drug, substance or immediate precursor in Schedules I through V of the Uniform Controlled Dangerous Substances Act, Section 2-101 et seq. of this title;
9. "Counterfeit substance" means a controlled substance which, or the container or labeling of which without authorization, bears the trademark, trade name or other identifying marks, imprint, number or device or any likeness thereof of a manufacturer, distributor or dispenser other than the person who in fact manufactured, distributed or dispensed the substance;
10. "Deliver" or "delivery" means the actual, constructive or attempted transfer from one person to another of a controlled dangerous substance, whether or not there is an agency relationship;
11. "Dispense" means to deliver a controlled dangerous substance to an ultimate user or human research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling or compounding necessary to prepare the substance for such distribution. "Dispenser" is a practitioner who delivers a controlled dangerous substance to an ultimate user or human research subject;
12. "Distribute" means to deliver other than by administering or dispensing a controlled dangerous substance;
13. "Distributor" means a ~~person who distributes~~ commercial entity engaged in the distribution or reverse distribution of narcotics and dangerous drugs and who complies with all regulations promulgated by the federal Drug Enforcement Administration and the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control;
14. "Drug" means articles recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; articles intended for use in the diagnosis, cure,

mitigation, treatment or prevention of disease in man or other animals; articles (other than food) intended to affect the structure or any function of the body of man or other animals; and articles intended for use as a component of any article specified in this paragraph; but does not include devices or their components, parts or accessories;

15. "Drug-dependent person" means a person who is using a controlled dangerous substance and who is in a state of psychic or physical dependence, or both, arising from administration of that controlled dangerous substance on a continuous basis. Drug dependence is characterized by behavioral and other responses which include a strong compulsion to take the substance on a continuous basis in order to experience its psychic effects, or to avoid the discomfort of its absence;

16. "Home care agency" means any sole proprietorship, partnership, association, corporation, or other organization which administers, offers, or provides home care services, for a fee or pursuant to a contract for such services, to clients in their place of residence;

17. "Home care services" means skilled or personal care services provided to clients in their place of residence for a fee;

18. "Hospice" means a centrally administered, nonprofit or profit, medically directed, nurse-coordinated program located in a municipality with a population in excess of twenty-five thousand (25,000) which provides a continuum of home and inpatient care for the terminally ill patient and the patient's family. Such term shall also include a centrally administered, nonprofit or profit, medically directed, nurse-coordinated program located in a municipality with a population of less than twenty-five thousand (25,000) if such program is licensed pursuant to the provisions of this act. A hospice program offers palliative and supportive care to meet the special needs arising out of the physical, emotional and spiritual stresses which are experienced during the final stages of illness and during dying and bereavement. This care is available twenty-four (24) hours a day, seven (7) days a week, and is provided on the basis of need, regardless of ability to pay. "Class A" Hospice refers to Medicare certified hospices. "Class B" refers to all other providers of hospice services;

19. "Imitation controlled substance" means a substance that is not a controlled dangerous substance, which by dosage unit appearance, color, shape, size, markings or by representations made, would lead a reasonable person to believe that the substance is a controlled dangerous substance. In the event the appearance of the dosage unit is not reasonably sufficient to establish that the substance is an "imitation controlled substance", the court or authority concerned should consider, in addition to all other factors, the following factors as related to "representations made" in determining whether the substance is an "imitation controlled substance":

- a. statements made by an owner or by any other person in control of the substance concerning the nature of the substance, or its use or effect,
- b. statements made to the recipient that the substance may be resold for inordinate profit,
- c. whether the substance is packaged in a manner normally used for illicit controlled substances,
- d. evasive tactics or actions utilized by the owner or person in control of the substance to avoid detection by law enforcement authorities,

- e. prior convictions, if any, of an owner, or any other person in control of the object, under state or federal law related to controlled substances or fraud, and
- f. the proximity of the substances to controlled dangerous substances;

~~17.~~ 20. "Immediate precursor" means a substance which the Director has found to be and by regulation designates as being the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used, or likely to be used, in the manufacture of a controlled dangerous substance, the control of which is necessary to prevent, curtail or limit such manufacture;

~~18.~~ 21. "Laboratory" means a laboratory approved by the Director as proper to be entrusted with the custody of controlled dangerous substances and the use of controlled dangerous substances for scientific and medical purposes and for purposes of instruction;

~~19.~~ 22. "Manufacture" means the production, preparation, propagation, compounding or processing of a controlled dangerous substance, either directly or indirectly by extraction from substances of natural or synthetic origin, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis. "Manufacturer" includes any person who packages, repackages or labels any container of any controlled dangerous substance, except practitioners who dispense or compound prescription orders for delivery to the ultimate consumer;

~~20.~~ 23. "Marihuana" means all parts of the plant *Cannabis sativa* L., whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture or preparation of such plant, its seeds or resin, but shall not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil or cake, or the sterilized seed of such plant which is incapable of germination;

~~21.~~ 24. "Medical purpose" means an intention to utilize a controlled dangerous substance for physical or mental treatment, diagnosis or for the prevention of a disease condition not in violation of any state or federal law and not for the purpose of satisfying physiological or psychological dependence or other abuse;

~~22.~~ 25. "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

- a. opium, coca leaves and opiates,
- b. a compound, manufacture, salt, derivative or preparation of opium, coca leaves or opiates,
- c. cocaine, its salts, optical and geometric isomers, and salts of isomers,
- d. ecgonine, its derivatives, their salts, isomers and salts of isomers, and
- e. a substance, and any compound, manufacture, salt, derivative or preparation thereof, which is chemically identical with any of the substances referred to in subparagraphs a through d of this paragraph, except that the words "narcotic drug" as used in Section 2-101 et seq. of this title shall not include decocainized coca leaves or extracts of coca leaves, which extracts do not contain cocaine or ecgonine;

~~23.~~ 26. "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having such addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under the Uniform Controlled Dangerous Substances Act, the dextrorotatory isomer of 3-methoxy-n-methyl-morphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms;

~~24.~~ 27. "Opium poppy" means the plant of the species *Papaver somniferum* L., except the seeds thereof;

~~25.~~ 28. "Peace officer" means a police officer, sheriff, deputy sheriff, district attorney's investigator, investigator from the Office of the Attorney General, or any other person elected or appointed by law to enforce any of the criminal laws of this state or of the United States;

~~26.~~ 29. "Person" means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity;

~~27.~~ 30. "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing;

~~28.~~ 31. "Practitioner" means:

- a. a physician, dentist, podiatrist, optometrist, veterinarian, scientific investigator or other person licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to, use for scientific purposes or administer a controlled dangerous substance in the course of professional practice or research in this state, or
- b. a pharmacy, hospital, laboratory or other institution licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to, use for scientific purposes or administer a controlled dangerous substance in the course of professional practice or research in this state;

~~29.~~ 32. "Production" includes the manufacture, planting, cultivation, growing or harvesting of a controlled dangerous substance;

~~30.~~ 33. "State" means the State of Oklahoma or any other state of the United States;

~~31.~~ 34. "Ultimate user" means a person who lawfully possesses a controlled dangerous substance for his own use or for the use of a member of his household or for administration to an animal owned by him or by a member of his household;

~~32.~~ 35. "Drug paraphernalia" means all equipment, products and materials of any kind which are used or intended 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 dangerous substance in violation of the Uniform Controlled Dangerous Substances Act. It includes, but is not limited to:

- a. kits used or intended for use in planting, propagating, cultivating, growing or harvesting of any species of plant which is a controlled dangerous substance or from which a controlled dangerous substance can be derived,
- b. kits used or intended for use in manufacturing, compounding, converting, producing, processing or preparing controlled dangerous substances,

- c. isomerization devices used or intended for use in increasing the potency of any species of plant which is a controlled dangerous substance,
- d. testing equipment used or intended for use in identifying, or in analyzing the strength, effectiveness or purity of controlled dangerous substances,
- e. scales and balances used or intended for use in weighing or measuring controlled dangerous substances,
- f. diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, used or intended for use in cutting controlled dangerous substances,
- g. separation gins and sifters used or intended for use in removing twigs and seeds from, or in otherwise cleaning or refining, marihuana,
- h. blenders, bowls, containers, spoons and mixing devices used or intended for use in compounding controlled dangerous substances,
- i. capsules, balloons, envelopes and other containers used or intended for use in packaging small quantities of controlled dangerous substances,
- j. containers and other objects used or intended for use in parenterally injecting controlled dangerous substances into the human body,
- k. hypodermic syringes, needles and other objects used or intended for use in parenterally injecting controlled dangerous substances into the human body, and
- l. objects used or intended for use in ingesting, inhaling or otherwise introducing marihuana, cocaine, hashish or hashish oil into the human body, such as:
 - (1) metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens, hashish heads or punctured metal bowls,
 - (2) water pipes,
 - (3) carburetion tubes and devices,
 - (4) smoking and carburetion masks,
 - (5) roach clips: meaning objects used to hold burning material, such as a marihuana cigarette, that has become too small or too short to be held in the hand,
 - (6) miniature cocaine spoons and cocaine vials,
 - (7) chamber pipes,
 - (8) carburetor pipes,
 - (9) electric pipes,
 - (10) air-driven pipes,
 - (11) chillums,
 - (12) bongs, or
 - (13) ice pipes or chillers.

Provided however, drug paraphernalia shall not include separation gins intended for use in preparing tea or spice, clamps used for constructing electrical equipment, water pipes designed for ornamentation or pipes designed for smoking tobacco;

~~33.~~ 36. "Synthetic controlled substance" means a substance that is not a controlled dangerous substance, but a substance that produces a like or similar physiological or psychological effect on the human central nervous system that currently has no accepted medical use in treatment in the United States and has a potential for abuse. The court or authority concerned with establishing that the substance is a synthetic controlled substance should consider,

in addition to all other factors, the following factors as related to "representations made" in determining whether the substance is a synthetic controlled substance:

- a. statements made by an owner or by any other person in control of the substance concerning the nature of the substance, its use or effect,
- b. statements made to the recipient that the substance may be resold for an inordinate profit,
- c. prior convictions, if any, of an owner or any person in control of the substance, under state or federal law related to controlled dangerous substances, and
- d. the proximity of the substance to any controlled dangerous substance;

~~34.~~ 37. "Tetrahydrocannabinols" means all substances that have been chemically synthesized to emulate the tetrahydrocannabinols of marihuana;

~~35.~~ 38. "Isomer" means the optical isomer, except as used in subsection C of Section 2-204 of this title and paragraph 4 of subsection A of Section 2-206 of this title. As used in subsection C of Section 2-204 of this title, "isomer" means the optical, positional or geometric isomer. As used in paragraph 4 of subsection A of Section 2-206 of this title, the term "isomer" means the optical or geometric isomer; and

~~36.~~ 39. "Hazardous materials" means materials, whether solid, liquid or gas, which are toxic to human, animal, aquatic or plant life, and the disposal of which materials is controlled by state or federal guidelines.

SECTION 2. AMENDATORY 63 O.S. 1991, Section 2-105, is amended to read as follows:

Section 2-105. It shall be the duty of all departments, officers, agencies, and employees of the state to cooperate with the ~~Commissioner~~ Director of the State Bureau of Narcotics and Dangerous Drugs Control in carrying out the functions of his office. The State Medical Examiner shall promptly report to the office of the ~~Commissioner~~ Director all deaths occurring within the state which were the result or probable result of abuse of a controlled dangerous substance.

SECTION 3. AMENDATORY 63 O.S. 1991, Section 2-210, as amended by Section 1, Chapter 147, O.S.L. 1995 (63 O.S. Supp. 1995, Section 2-210), is amended to read as follows:

Section 2-210. The controlled substances listed in this section are included in Schedule IV.

A. Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant or depressant effect on the central nervous system:

1. Chloral betaine-i
2. Chloral hydrate-i
3. Ethchlorvynol-i
4. Ethinamate-i
5. Meprobamate-i
6. Paraldehyde-i
7. Petrichloral-i
8. Diethylpropion-i
9. Phentermine-i
10. Pemoline-i
11. Chlordiazepoxide-i

12. Chlordiazepoxide and its salts, but not including chlordiazepoxide hydrochloride and clidinium bromide or chlordiazepoxide and water-soluble esterified estrogens-i

13. Diazepam~~;~~;
14. Oxazepam~~;~~;
15. Clorazepate~~;~~;
16. Flurazepam and its salts~~;~~;
17. Clonazepam~~;~~;
18. Barbital~~;~~;
19. Mebutamate~~;~~;
20. Methohexital~~;~~;
21. Methylphenobarbital~~;~~;
22. Phenobarbital~~;~~;
23. Fenfluramine~~;~~;
24. Pentazocine~~;~~;
25. Dextropropoxyphene~~;~~;
26. Butorphanol~~;~~;
27. Alprazolam~~;~~;
28. Halazepam~~;~~;
29. Lorazepam~~;~~;
30. Prazepam~~;~~;
31. Temazepam~~;~~;
32. Triazolam~~;~~;
33. Carisoprodol~~;~~; or
34. Ephedrine, its salts, optical isomers, and salts of optical isomers as the only active ingredient, or in combination with other active ingredients ~~unless the combination product is:~~
 - a. ~~in compliance with the pertinent federal OTC Tentative Final Monograph or Final Monograph as to dosage, labeling, and ingredient formulation, or~~
 - b. ~~the drug product is marketed pursuant to a federal Food and Drug Administration-approved new drug application or its equivalent.~~

B. 1. The following nonnarcotic substances, which may, under the Federal Food, Drug, and Cosmetic Act (21 U.S.C., Section 301), be lawfully sold over the counter without a prescription, are excluded from all schedules of controlled substances under this title:

- a. Breathe-Aid,
- b. BronCare,
- c. Bronchial Congestion,
- d. Bronkaid Tablets,
- e. Bronkaid Dual Action Caplets,
- f. Bronkotabs,
- g. Bronkolixir,
- h. NeoRespin,
- i. Pazo Hemorrhoid Ointment and Suppositories,
- j. Primatene Tablets,
- k. Primatene "Dual Action" Formula,
- l. Quelidrine,
- m. Resp, and
- n. Vatronal Nose Drops.

2. At the request of any person, the Director may exempt any other drug product containing ephedrine from being included as a Schedule IV controlled substance if such product:

- a. is labeled and marketed in a manner consistent with the pertinent OTC tentative final or final monograph issued by the FDA, and
- b. is manufactured and distributed for legitimate medicinal use and in a manner that reduces or eliminates the likelihood of abuse.

3. In making a determination regarding a drug product, the Director, after notice and hearing, shall consider the following:

- a. the history and current pattern of abuse,
- b. the name and labeling of the product,
- c. the intended manner of distribution, advertising and promotion of the product, and
- d. other factors as may be relevant to and consistent with the public health and safety.

4. The hearing shall be held in accordance with the Oklahoma Administrative Procedures Act.

5. A list of current drug products meeting exemption requirements under this subsection may be obtained from the Bureau upon written request.

C. The Board of Pharmacy may except by rule any compound, mixture, or preparation containing any depressant substance listed in subsection A of this section from the application of all or any part of the Uniform Controlled Dangerous Substances Act, Section 2-101 et seq. of this title, if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a depressant effect on the central nervous system.

SECTION 4. AMENDATORY 63 O.S. 1991, Section 2-302, is amended to read as follows:

Section 2-302. A. Every person who manufactures, distributes, dispenses, prescribes, administers or uses for scientific purposes any controlled dangerous substance, within this state, or who proposes to engage in the manufacture, distribution, dispensing, prescribing, administering or use for scientific purposes of any controlled dangerous substance, within this state, shall obtain a registration issued by the ~~Commissioner~~ Director in accordance with the rules and regulations promulgated by him. Persons registered by the ~~Commissioner~~ Director under Section 2-101 et seq. of this title to manufacture, distribute, dispense, or conduct research with controlled dangerous substances may possess, manufacture, distribute, dispense, or conduct research with those substances to the extent authorized by their registration and in conformity with the other provisions of this article.

Manufacturers, distributors, home care agencies, hospices, home care services, and scientific researchers shall obtain a registration annually. Other practitioners shall obtain a registration for a period to be determined by the Director that will be for a period not less than one (1) year nor more than three (3) years.

B. Every trainer or handler of a canine controlled dangerous substances detector who, in the ordinary course of their profession, desires to possess any controlled dangerous substance, annually, shall obtain a registration issued by the ~~Commissioner~~ Director for a fee of Thirty-five Dollars (\$35.00). Such persons shall be subject to all applicable provisions of Section 2-101 et seq. of this title and such applicable rules and regulations promulgated by the Director for those individuals identified in subparagraph a of paragraph 28 of Section 2-101 of this title. Persons registered by the ~~Commissioner~~ Director pursuant to this subsection may possess controlled dangerous substances to the extent authorized by their registration and in conformity with the other provisions of this article.

C. The following persons shall not be required to register and may lawfully possess controlled dangerous substances under the provisions of Section 2-101 et seq. of this title:

1. An agent, or an employee thereof, of any registered manufacturer, distributor, dispenser or user for scientific purposes of any controlled dangerous substance if such agent is acting in the usual course of his business or employment;

2. Any person lawfully acting under the direction of a person authorized to administer controlled dangerous substances under Section 2-312 of this title;

3. A common or contract carrier or warehouseman, or an employee thereof, whose possession of any controlled dangerous substance is in the usual course of his business or employment;

4. An ultimate user or a person in possession of any controlled dangerous substance pursuant to a lawful order of a practitioner;

5. An individual pharmacist acting in the usual course of his employment with a pharmacy registered under this act;

6. A nursing home licensed by this state; and

7. Registered nurses and licensed practical nurses.

D. The ~~Commissioner~~ Director may, by regulation, waive the requirement for registration and/or fee for registration of certain manufacturers, distributors, dispensers, prescribers, administrators, or users for scientific purposes if he finds it consistent with the public health and safety.

E. A separate registration shall be required at each principal place of business or professional practice where the applicant manufactures, distributes, dispenses, prescribes, administers, or uses for scientific purposes controlled dangerous substances.

F. The ~~Commissioner~~ Director is authorized to inspect the establishment of a registrant or applicant for registration in accordance with the rules and regulations promulgated by him.

G. No person engaged in a profession or occupation for which a license to engage in such activity is provided by law shall be registered under this act unless such person holds a valid license of his profession or occupation.

H. Registrations shall be issued on the first day of November of each year. Registrations may be issued at other times, however, upon certification of the professional licensing board.

I. The licensing boards of all professions and occupations to which the use of controlled dangerous substances is incidental shall furnish a current list not later than the first day of October of each year of the persons holding valid licenses. All such persons except persons exempt from registration requirements under subsection C of this section shall be subject to the registration requirements of Section 2-101 et seq. of this title.

SECTION 5. AMENDATORY 63 O.S. 1991, Section 2-303, is amended to read as follows:

Section 2-303. A. The Director of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control shall register an applicant to manufacture, distribute, dispense, prescribe, administer or use for scientific purposes controlled dangerous substances included in Schedules I through V of Section 2-101 et seq. of this title unless he determines that the issuance of such registration is inconsistent with the public interest. In determining the public interest, the following factors shall be considered:

1. Maintenance of effective controls against diversion of particular controlled dangerous substances and any Schedule I or II substance compounded therefrom into other than legitimate medical, scientific or industrial channels, including examination of the fitness of his employees or agents to handle dangerous substances;

2. Compliance with applicable state and local law;

3. Prior conviction record of applicant under federal or state laws relating to the manufacture, distribution or dispensing of such substances;

4. Furnishing by the applicant false or fraudulent material information in any application filed under Section 2-101 et seq. of this title;

5. Past experience in the manufacture, distribution, dispensing, prescribing, administering or use for scientific purposes of controlled dangerous substances, and the existence in the establishment of effective controls against diversion;

6. Denial, suspension or revocation of the applicant's federal registration to manufacture, distribute or dispense controlled dangerous substances as authorized by federal law; and

7. Such other factors as may be relevant to and consistent with the public health and safety.

Nothing herein shall be deemed to require individual licensed pharmacists to register under the provisions of this act.

B. Registration granted under subsection A of this section shall not entitle a registrant to manufacture, distribute, dispense, prescribe, administer or use for scientific purposes controlled dangerous substances in Schedule I or II other than those specified in the registration.

C. Practitioners shall be registered to dispense, prescribe, administer or use for scientific purposes substances in Schedules II through V if they are authorized to carry on their respective activities under the laws of this state. A registration application by a practitioner who wishes to conduct research with Schedule I substances shall be accompanied by evidence of the applicant's federal registration to conduct such activity and shall be referred to the Medical Research Commission for advice. The Medical Research Commission shall promptly advise the Director concerning the qualifications of each practitioner requesting such registration. Registration for the purpose of bona fide research or of use for scientific purposes with Schedule I substances by a practitioner deemed qualified by the Medical Research Commission may be denied only on a ground specified in subsection A of Section 2-304 of this title or if there are reasonable grounds to believe that the applicant will abuse or unlawfully transfer such substances or fail to safeguard adequately his supply of such substances against diversion from legitimate medical or scientific use.

D. 1. The Director shall initially permit persons to register who own or operate any establishment engaged in the manufacture, distribution, dispensing, prescribing, administering or use for scientific purposes of any controlled dangerous substances prior to the effective date of this act and who are registered or licensed by the state. Fees for registration under this section shall be as follows:

Practitioners	\$35.00	per year of registration
<u>Home Care Agencies,</u> <u>Hospices &</u> <u>Home Care Services</u>	<u>\$35.00</u>	<u>annually</u>
Distributors	\$50.00	annually
Manufacturers	\$100.00	annually

2. A registrant shall be required to pay double the amount of the above-listed fee for any renewal of registration received more than sixty (60) days late.

3. A Ten Dollar (\$10.00) fee shall be charged for a duplicate registration certificate.

E. Compliance by manufacturers and distributors with the provisions of the Federal Controlled Substances Act, 21 U.S.C., Section 801 et seq., respecting registration, excluding fees, shall be deemed sufficient to qualify for registration under this act.

SECTION 6. AMENDATORY 63 O.S. 1991, Section 2-304, as amended by Section 1, Chapter 285, O.S.L. 1993 (63 O.S. Supp. 1995, Section 2-304), is amended to read as follows:

Section 2-304. A. A registration, pursuant to Section 2-303 of this title, to manufacture, distribute, dispense, prescribe, administer or use for scientific purposes a controlled dangerous substance shall be limited, conditioned, denied, suspended or revoked by the Director upon a finding that the registrant:

1. Has materially falsified any application filed pursuant to this act or required by this act;

2. Has been ~~convicted of~~ found guilty of, entered a plea of guilty, or entered a plea of nolo contendere to a misdemeanor relating to any substance defined herein as a controlled dangerous substance or any felony under the laws of ~~this~~ any state or the United States;

3. Has had his federal registration retired, suspended, or revoked by a competent federal authority and is no longer authorized by federal law to manufacture, distribute, dispense, prescribe, administer or use for scientific purposes controlled dangerous substances;

4. Has failed to maintain effective controls against the diversion of controlled dangerous substances to unauthorized persons or entities;

5. Has prescribed, dispensed or administered a controlled dangerous substance from schedules other than those specified in his state or federal registration;

6. Has had a restriction, suspension, revocation ~~or,~~ limitation, condition, or probation placed on his professional license or certificate or practice as a result of a proceeding pursuant to the general statutes;

7. ~~Has~~ Is abusing or, within the past five (5) years, has abused or excessively used drugs or controlled dangerous substances;

8. Has prescribed, sold, administered, or ordered any controlled substance for an immediate family member, himself or herself; provided that this shall not apply to a medical emergency when no other doctor is available to respond to the emergency;

9. Has possessed, used, prescribed, dispensed or administered drugs or controlled dangerous substances for other than legitimate medical or scientific purposes or for purposes outside the normal course of his professional practice; ~~or~~

~~9.~~ 10. Has been under the influence of alcohol or another intoxicating substance which adversely affected the central nervous system, vision, hearing or other sensory or motor functioning to such degree the person was impaired during the performance of his job; or

11. Has violated any federal law relating to any controlled substances, any provision of the Uniform Controlled Dangerous Substances Act, Section 2-101 et seq. of this title, or any rules of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control.

B. In the event the Director suspends or revokes a registration granted under Section 2-303 of this title, all controlled dangerous

substances owned or possessed by the registrant pursuant to such registration at the time of denial or suspension or the effective date of the revocation order, as the case may be, may in the discretion of the Director be impounded and preserved. No disposition may be made of substances impounded and preserved until the time for taking an appeal has elapsed or until all appeals have been concluded unless a court, upon application therefor, orders the sale of perishable substances and the deposit of the proceeds of the sale with the court. Upon a revocation order becoming final, all such controlled dangerous substances shall be forfeited to the state.

C. The Drug Enforcement Administration shall promptly be notified of all orders suspending or revoking registration and all forfeitures of controlled dangerous substances.

D. In lieu of or in addition to any other remedies available to the Director, if a finding is made that a registrant has committed any act ~~provided for in paragraphs 1, 4, 5, 7 or 8 of subsection A of this section~~ in violation of federal law relating to any controlled substance, any provision of the Uniform Controlled Dangerous Substances Act, Section 2-101 et seq. of this title, or any rules of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, the Director is hereby authorized to assess an administrative penalty not to exceed Two Thousand Dollars (\$2,000.00) for each such act.

SECTION 7. AMENDATORY 63 O.S. 1991, Section 2-309, is amended to read as follows:

Section 2-309. A. 1. Except for dosages medically required for a period not to exceed forty-eight (48) hours which are administered by or on direction of a practitioner, other than a pharmacist, or medication dispensed directly by a practitioner, other than a pharmacist, to an ultimate user, no controlled dangerous substance included in Schedule II, which is a prescription drug as determined under regulation promulgated by the Board of Pharmacy, may be dispensed without the written prescription of a practitioner; provided, that, in emergency situations, as prescribed by the Board of Pharmacy by regulation, such drug may be dispensed upon oral prescription reduced promptly to writing and filed by the pharmacist in a manner to be prescribed by rules and regulations of the Director.

2. The transmission of written prescription by practitioner to dispensing pharmacy by facsimile is permitted only under the following conditions:

a. for Schedule II drugs, the original prescription must be presented and verified against the facsimile at the time the substances are actually dispensed, and the original document must be properly annotated and retained for filing, except:

(1) home infusion pharmacy may consider the facsimile to be a "written prescription" as required by this act and as required by Title 21 U.S.C., Section 829(a). The facsimile copy of the prescription shall be retained as an original prescription, and it must contain all the information required by this act and 21 CFR, Section 1306.05(a), including date issued, the patient's full name and address, and the practitioner's name, address, DEA registration number, and signature. The exception to the regulations for home infusion/IV therapy is intended to facilitate the means by which home

- infusion pharmacies obtain prescriptions for patients requiring the frequently modified parenteral controlled release administration of narcotic substances, but does not extend to the dispensing of oral dosage units of controlled substances, and
- (2) the same exception is granted to patients in Long Term Care facilities (LTCF), which are filled by and delivered to the facility by a dispensing pharmacy, and
- b. for drugs in Schedules III and IV, a facsimile copy of a written, signed prescription transmitted directly by the prescribing practitioner to the pharmacy can serve as an original prescription.

3. Prescriptions shall be retained in conformity with the requirements of this section and Section 2-307 of this title. No prescription for a Schedule II substance may be refilled.

B. 1. Except for dosages medically required for a period not to exceed forty-eight (48) hours which are administered by or on direction of a practitioner, other than a pharmacist, or medication dispensed directly by a practitioner, other than a pharmacist, to an ultimate user, no controlled dangerous substance included in Schedule III or IV, which is a prescription drug as determined under regulation promulgated by the Board of Pharmacy, may be dispensed without a written or oral prescription.

2. A written or oral prescription for a controlled dangerous substance in Schedule III or IV may not be filled or refilled more than six (6) months after the date thereof or be refilled more than five times after the date of the prescription, unless renewed by the practitioner.

C. No controlled dangerous substance included in Schedule V may be distributed or dispensed other than for a legitimate medical or scientific purpose.

D. Except for dosages medically required for a period not to exceed forty-eight (48) hours which are administered by or on direction of a practitioner, other than a pharmacist, or medication dispensed directly by a practitioner, other than a pharmacist, to an ultimate user, tincture opium camphorated, commonly known as paregoric, may not be dispensed without a written or oral prescription. The refilling of a prescription for paregoric shall be unlawful unless permission is granted by the prescriber, either written or oral.

E. Whenever it appears to the Director that a drug not considered to be a prescription drug under existing state law or regulation of the Board of Pharmacy should be so considered because of its abuse potential, he shall so advise the Board of Pharmacy and furnish to him all available data relevant thereto.

F. "Prescription", as used herein, means a written or oral order by a practitioner to a pharmacist for a controlled dangerous substance for a particular patient, which specifies the date of its issue, and the full name and address of the patient; if the controlled dangerous substance is prescribed for an animal, the species of the animal; the name and quantity of the controlled dangerous substance prescribed; the directions for use; the name and address of the owner of the animal and, if written, the signature of the practitioner.

G. No person shall solicit, dispense, receive or deliver any controlled dangerous substance through the mail, unless the ultimate user is personally known to the practitioner and circumstances

clearly indicate such method of delivery is in the best interest of the health and welfare of the ultimate user.

SECTION 8. AMENDATORY 63 O.S. 1991, Section 2-315, as amended by Section 1, Chapter 127, O.S.L. 1992 (63 O.S. Supp. 1995, Section 2-315), is amended to read as follows:

Section 2-315. A. Except as otherwise provided by law, any person required to obtain an annual registration pursuant to Section 2-302 of ~~Title 63 of the Oklahoma Statutes~~ this title, or any group home, or residential care home as defined by Section 1-820 of this title shall submit for destruction all controlled dangerous substances which are out of date, which are unwanted, unused or which are abandoned by their owner at their facility due to death or other circumstances.

B. All ~~such~~ controlled dangerous substances described in subsection A of this section shall be submitted to the Oklahoma City laboratory of the Oklahoma State Bureau of Investigation, along with all required information on forms provided by the Oklahoma State Bureau of Investigation, ~~or to the Federal~~ federal Drug Enforcement Administration, to a duly registered reverse distributor, or to the original registered supplier or their registered agent. When any such substance is transported by private contract or common carrier or United States Postal Service for the purpose of destruction, the sender shall require a receipt from such private contract or common carrier or United States Postal Service, and such receipt shall be retained as a permanent record by the sender.

C. Controlled dangerous substances submitted to the Oklahoma State Bureau of Investigation pursuant to the provisions of this section shall be destroyed pursuant to the procedures provided in subsection A of Section 2-508 of ~~Title 63 of the Oklahoma Statutes~~ this title.

Controlled dangerous substances submitted to any distributors, reverse distributors or their original registered suppliers pursuant to the provisions of this section shall be destroyed by incineration so as to make the substance absolutely unusable for human purposes. An official record listing the property destroyed, the location of destruction and disposal, and the name and title of the person supervising the destruction and disposal shall be submitted to the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control and the federal Drug Enforcement Administration office located nearest the destruction site.

D. The Office of the Chief Medical Examiner is hereby authorized to perform on-site incineration of all controlled dangerous substances which are obtained in the discharge of the official duties of the Chief Medical Examiner. Any record relating to destruction of a controlled dangerous substance shall be maintained as required by the state or federal government and shall be available for inspection by appropriate state or federal government regulatory agencies.

E. This section shall constitute a part of the Uniform Controlled Dangerous Substances Act.

SECTION 9. AMENDATORY 63 O.S. 1991, Section 2-407, is amended to read as follows:

Section 2-407. A. No person shall obtain or attempt to obtain any preparation excepted from the provisions of the Uniform Controlled Dangerous Substances Act pursuant to Section 2-313 of this title in a manner inconsistent with the provisions of paragraph 1 of subsection B of Section 2-313 of this title, or a controlled dangerous substance or procure or attempt to procure the administration of a controlled dangerous substance:

1. By fraud, deceit, misrepresentation, or subterfuge;

2. By the forgery ~~of~~ of, alteration of, adding any information to or changing any information on a prescription or of any written order;

3. By the concealment of a material fact; or

4. By the use of a false name or the giving of a false address.

B. Except as authorized by this act, a person shall not manufacture, create, deliver, or possess with intent to manufacture, create, or deliver or possess a prescription form, an original prescription form, or a counterfeit prescription form. This shall not apply to the legitimate manufacture or delivery of prescription forms, or a person acting as an authorized agent of the practitioner.

C. Information communicated to a physician in an effort unlawfully to procure a controlled dangerous substance, or unlawfully to procure the administration of any such drug, shall not be deemed a privileged communication.

~~C.~~ D. Any person who violates this section is guilty of a felony punishable by imprisonment for not more than ten (10) years, by a fine of not more than Ten Thousand Dollars (\$10,000.00) or both such fine and imprisonment. A second or subsequent offense under this section is a felony punishable by imprisonment for not less than four (4) nor more than twenty (20) years, by a fine of not more than Twenty Thousand Dollars (\$20,000.00) or both such fine and imprisonment.

~~D.~~ E. Convictions for second or subsequent violations of this section shall not be subject to statutory provisions for suspended sentences, deferred sentences, or probation.

SECTION 10. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the Senate the 20th day of May, 1996.

President of the Senate

Passed the House of Representatives the 29th day of May, 1996.

Speaker of the House of Representatives