ENROLLED SENATE
BILL NO. 466

By: Laughlin and Muegge of the Senate

and

Leist of the House

An Act relating to agriculture; creating the Competitive Livestock Markets Act; defining term; prohibiting certain acts; making certain actions unlawful; authorizing certain persons to bring certain actions against certain parties; requiring packers to keep certain records; amending 59 O.S. 1991, Sections 353.1, as last amended by Section 1, Chapter 128, O.S.L. 1998, 353.13, as amended by Section 11, Chapter 199, O.S.L. 1993, and 353.24, as amended by Section 18, Chapter 199, O.S.L. 1993 (59 O.S. Supp. 2000, Sections 353.1, 353.13 and 353.24), which relate to the Oklahoma Pharmacy Act; modifying definitions; adding certain exemption; providing for codification; and providing an effective date.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 9-160 of Title 2, unless there is created a duplication in numbering, reads as follows:

The provisions of this act shall be known and may be cited as the "Competitive Livestock Markets Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 9-161 of Title 2, unless there is created a duplication in numbering, reads as follows:

As used in the Competitive Livestock Markets Act, "packer" means any person:

1. Engaged in the business of buying more than five thousand (5,000) animal units of livestock per year in commerce for purpose of slaughter;

2. Manufacturing or preparing meats or meat food products for sale of shipment in commerce; or

3. Marketing meats, meat food products or livestock products in an unmanufactured form acting as a wholesale broker, dealer or distributor.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 9-162 of Title 2, unless there is created a duplication in numbering, reads as follows:

It shall be unlawful for any packer with respect to livestock, meats, meat products or livestock products in unmanufactured form to:

1. Engage in or use any unfair, unjustly discriminatory or deceptive practice or device;

2. Sell or otherwise transfer to or for any other packer or buy or otherwise receive from or for any other packer any article for the purpose or with the effect of apportioning the supply between any such persons if such apportionment has the tendency or effect of restraining commerce or of creating a monopoly;

3. Sell or otherwise transfer to or for any other person, or buy or otherwise receive from or for any other person, any article for the purpose or with the effect of manipulating or controlling prices, or of creating a monopoly in the acquisition of buying, selling or dealing in any article, or of restraining commerce;

4. Engage in any course of business or do any act for the purpose of or with the effect of manipulating or controlling prices, or of creating a monopoly in the acquisition of buying, selling, dealing in any article or of restraining commerce;

5. Conspire, combine, agree or arrange with any other person to apportion territory for carrying on business, to apportion purchases of any article or to manipulate or control prices; or

6. Conspire, combine, agree or arrange with any other person to aid or abet the doing of any act made unlawful by paragraph 1, 2, 3 or 4 of this section.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 9-163 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. Any person who has incurred damages as a result of the Competitive Livestock Markets Act may bring an action to:

1. Obtain a declaratory judgment that an act or practice violates the Competitive Livestock Markets Act; or

2. Enjoin or obtain a restraining order against a packer who is violating the Competitive Livestock Markets Act.

B. A person who suffers damages as a result of a violation of the Competitive Livestock Markets Act may bring an individual or a class action for the damages caused by any violation of the Competitive Livestock Markets Act together with reasonable attorney fees, against the party or parties whose conduct is the proximate cause of such damages.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 9-164 of Title 2, unless there is created a duplication in numbering, reads as follows:

Every packer shall keep such accounts, records and memoranda as necessary to fully and correctly disclose all transactions involved in such person's business, including the true ownership of the business by stockholding or otherwise.

SECTION 6. AMENDATORY 59 O.S. 1991, Section 353.1, as last amended by Section 1, Chapter 128, O.S.L. 1998 (59 O.S. Supp. 2000, Section 353.1), is amended to read as follows:

Section 353.1 For the purposes of the Oklahoma Pharmacy Act, Section 353 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 engage in the practice of pharmacy;

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 humans and all substances and preparations, other than food, intended to affect the structure or any function of the body of a human;

4. "Medicine" means any drug or combination of drugs which has the property of curing, preventing, treating, diagnosing 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. "Prescription" means and includes any order for drug or medical supplies written or signed, or transmitted by word of mouth, telephone or other means of communication by a licensed practitioner of allopathic or osteopathic medicine, including physician assistants under the supervision of a licensed physician, dentistry, optometry certified by the Board of Examiners in Optometry, podiatry, or veterinary medicine, licensed by law to prescribe such drugs and medical supplies intended to be filled, compounded, or dispensed by a pharmacist;

8. "Filled prescription" means a packaged prescription medication to which a label has been affixed, which shall contain such information as is required by the Oklahoma Pharmacy Act;

9. "Nonprescription drugs" means medicines or drugs which are sold without a prescription and which are prepackaged for use by the consumer and labeled in accordance with the requirements of the statutes and regulations of this state and the federal government. Such items shall also include medical and dental supplies, and bottled or nonbulk chemicals 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, 21 U.S.C.A., Section 321 et seq.;

10. "Hospital" means any institution licensed by this state for the care and treatment of patients;

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

12. "Board" or "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. "Wholesaler" or "Distributor" means a person engaged in the business of distributing dangerous drugs or medicines at wholesale to pharmacies, hospitals, practitioners, government agencies, or other lawful drug outlets permitted to sell or use drugs or medicines, or as authorized in subsection G of Section 353.13 of this title;

16. "Dangerous drug", "legend drug" or "prescription drug" means a drug which, under federal law, is required, prior to being dispensed or delivered, to be labeled with either of the following statements: (i) "Caution: Federal law prohibits dispensing without prescription", or (ii) "Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian", or a drug which is required by any applicable federal or state law or regulation to be dispensed on prescription only or is restricted to use by practitioners only;

17. "Manufacturer" means a person engaged in the manufacturing of drugs;

18. "Practice of pharmacy" means:

a. the interpretation and evaluation of prescription orders,

b. the compounding, dispensing, and labeling of drugs and devices, except labeling by a manufacturer, packer or distributor of nonprescription drugs and commercially packaged legend drugs and devices,

c. the participation in drug selection and drug utilization reviews,

d. the proper and safe storage of drugs and devices and the maintenance of proper records thereof,

e. the responsibility for advising by counseling and providing information, where professionally necessary or where regulated, of therapeutic values, content, hazards and use of drugs and devices,

f. the offering or performing of those acts, services, operations, or transactions necessary in the conduct, operation, management and control of a pharmacy, and

g. the provision of those acts or services that are necessary to provide pharmaceutical care;

19. "Drug outlet" means all pharmacies, wholesalers, manufacturers, or wherever dangerous drugs are stored, and facilities which are engaged in dispensing, delivery or distribution of dangerous drugs;

20. "Manufacturing" means the production, preparation, propagation, compounding, conversion, or processing of a device or a drug, either directly or indirectly by extraction from substances of natural origin or independently by means of chemical or biological synthesis and includes any packaging or repackaging of the substances or labeling or relabeling of its container, and the promotion and marketing of such drugs or devices. The term "manufacturing" also includes the preparation and promotion of commercially available products from bulk compounds for resale by pharmacies, practitioners or other persons;

21. "Assistant pharmacist" means any person presently licensed as an assistant pharmacist in the State of Oklahoma by the Board pursuant to Section 353.10 of this title and for the purposes of this act shall be considered the same as a pharmacist, except where otherwise specified;

22. "Packager" means any person, firm, or corporation, except a pharmacy, who transfers dangerous drugs including but not limited to compressed medical gases from one container to another of any type;

23. "Continuing professional education" means professional, pharmaceutical education in the general areas of the socioeconomic and legal aspects of health care; the properties and actions of drugs and dosage forms; and the etiology, characteristics and therapeutics of the diseased state;

24. "Accredited program" means those seminars, classes, meetings, work projects and other educational courses approved by the Board for purposes of continuing professional education;

25. "Supervising physician" means an individual holding a current license to practice as a physician from the State Board of Medical Licensure and Supervision, pursuant to the provisions of

Section 481 et seq. of this title, or the State Board of Osteopathic Examiners, pursuant to the provisions of Section 620 et seq. of this title, who supervises an advanced practice nurse as defined in Section 567.3a of this title, and who is not in training as an intern, resident, or fellow. To be eligible to supervise an advanced practice nurse, such physician shall remain in compliance with the rules promulgated by the State Board of Medical Licensure and Supervision or the State Board of Osteopathic Examiners; and

26. "Compounding" means the preparation, mixing, assembling, packaging, or labeling of a drug or device:

a. as the result of a practitioner's prescription drug order or initiative based on the practitioner/patient/pharmacist relationship in the course of professional practice, or

b. for the purpose of, or incident to, research, teaching, or chemical analysis and not for sale or dispensing.

Compounding also includes the preparation of drugs or devices in anticipation of prescription drug orders based on routine, regularly observed prescribing patterns.

SECTION 7. AMENDATORY 59 O.S. 1991, Section 353.13, as amended by Section 11, Chapter 199, O.S.L. 1993 (59 O.S. Supp. 2000, Section 353.13), is amended to read as follows:

Section 353.13 A. It shall be unlawful for any person, other than a registered pharmacist or assistant pharmacist, to certify the finished prescription, as defined by the Board, before delivery to the patient or the patient's agent or care giver.

B. It shall be unlawful for any person to institute or manage a pharmacy unless such person shall be a registered pharmacist, or shall place in charge of said pharmacy a registered pharmacist.

C. No registered pharmacist shall manage, supervise nor be in charge of more than one pharmacy.

D. No pharmacist being requested to sell, furnish or compound any drug, medicine, chemical or other pharmaceutical preparation, by prescription or otherwise, shall substitute or cause to be substituted therefor, without authority of the prescriber or purchaser, any like drug, medicine, chemical or pharmaceutical preparation.

E. No proprietor of a pharmacy, or other person, shall permit the practice of pharmacy except by a registered pharmacist or assistant pharmacist.

F. No proprietor of a pharmacy, or other person, shall subvert the authority of the pharmacist in charge of the pharmacy by impeding the management of the prescription department in compliance with federal and state pharmacy laws and regulations.

G. Nothing in the Oklahoma Pharmacy Act shall prevent veterinary prescription drugs from being shipped directly from a wholesaler or distributor to a client; provided, such drugs may be dispensed only on prescription of a licensed veterinarian and only when an existing veterinary-client-patient relationship exists.

SECTION 8. AMENDATORY 59 O.S. 1991, Section 353.24, as amended by Section 18, Chapter 199, O.S.L. 1993 (59 O.S. Supp. 2000, Section 353.24), is amended to read as follows:

Section 353.24 It shall be unlawful for any person, firm or corporation to:

1. Forge or increase the quantity of drug in any prescription, or to present a prescription bearing forged, fictitious or altered information or to possess any drug secured by such forged, fictitious or altered prescription;

2. Sell, offer for sale, barter or give away any unused quantity of drugs obtained by prescription, except as provided by the State Board of Pharmacy;

3. Sell, offer for sale, barter or give away any drugs damaged by fire, water, or other causes without first obtaining the written approval of the Board or the State Department of Health;

4. Enter into any arrangement whereby prescription orders are received, or prescriptions delivered at a place other than the pharmacy in which they are compounded and dispensed. However, nothing in this paragraph shall prevent a pharmacist or his employee from personally receiving a prescription or delivering a legally filled prescription at a residence, office or place of employment of the patient for whom the prescription was written. Nothing in this paragraph shall prevent veterinary prescription drugs from being shipped directly from a wholesaler or distributor to a client; provided, such drugs may be dispensed only on prescription of a licensed veterinarian and only when an existing veterinary-client-patient relationship exists; ~~or~~

5. Sell, offer for sale or barter or buy any professional samples. For purpose of this paragraph, "professional samples" means complimentary drugs packaged in accordance with federal and state statutes and regulations and provided to a licensed practitioner free of charge by manufacturers or distributors for the purpose of being distributed free of charge in such package by the licensed practitioner to his patient~~.~~; or

6. Refuse to permit or otherwise prevent members of the Board or such representatives thereof from entering and inspecting any and all places, including premises, equipment, contents, and records, where drugs, medicine, chemicals or poisons are stored, sold, vended, given away, compounded, dispensed or manufactured.

SECTION 9. This act shall become effective November 1, 2001.

Passed the Senate the 21st day of May, 2001.

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Presiding Officer of the Senate

Passed the House of Representatives the 23rd day of May, 2001.

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Presiding Officer of the House
of Representatives