

ENGROSSED HOUSE AMENDMENT

TO

ENGROSSED SENATE BILL NO. 1526

By: Wilkerson of the Senate

and

Roan of the House

An Act relating to Anti-Drug Diversion Act; amending 63 O.S. 2001, Sections 2-309A, 2-309B, 2-309C, 2-309D, 2-309E, 2-309F, 2-309G and 2-309H, which relate to the Anti-Drug Diversion Act; including additional schedules of drugs; modifying certain definition; modifying language; modifying requirements to be transmitted to central registry; authorizing administrative action in lieu of certain criminal penalty; expanding disclosure of certain information to registrants for certain purpose; and declaring an emergency.

AUTHOR: Add the following House Coauthor: Nance

AMENDMENT NO. 1. Strike the title, enacting clause and entire bill and insert

"An Act relating to Anti-Drug Diversion Act; amending 63 O.S. 2001, Sections 2-309A, 2-309B, 2-309C, 2-309D, 2-309E, 2-309F, 2-309G and 2-309H, which relate to the Anti-Drug Diversion Act; including additional schedules of drugs; modifying certain definition; modifying language; modifying requirements to be transmitted to central registry; authorizing administrative action in lieu of certain criminal penalty; delaying reporting requirements for certain product until the adoption of certain procedures and rules; expanding disclosure of certain information to registrants for certain purpose; providing exemption from liability for registrants; amending 63 O.S. 2001, Section 2-212, as amended by Section 3 of Enrolled House Bill No. 2176 of the 2nd Session of the 49th Oklahoma Legislature, which relates to Schedule V controlled substances; expanding method of procedures for the dispensation of certain Schedule V products; and declaring an emergency.

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

SECTION 1. AMENDATORY 63 O.S. 2001, Section 2-309A, is amended to read as follows:

Section 2-309A. ~~Sections 1 through 8~~ Section 2-309A et seq. of this ~~act~~ title shall be known and may be cited as the "Anti-Drug Diversion Act".

SECTION 2. AMENDATORY 63 O.S. 2001, Section 2-309B, is amended to read as follows:

Section 2-309B. For the purposes of the Anti-Drug Diversion Act:

1. "Bureau" means the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control;

2. "Dispenser" means a person who distributes a Schedule II controlled dangerous substance, but does not include a licensed hospital pharmacy or a licensed nurse or medication aide who administers such a substance at the direction of a licensed physician;

3. "Dispenser's registration number" means the dispenser's Oklahoma Bureau of Narcotics and Dangerous Drugs Control registration number or, in the case of a pharmacist, the National Association of Boards of Pharmacy number for the pharmacy where the dispensation is made;

4. "Exception report" means an output of data indicating Schedule II controlled dangerous substance dispensation which is outside expected norms for a prescriber practicing a particular specialty or field of health care, for a dispenser doing business in a particular location, or for a recipient;

5. "Recipient's identification number" means the unique number contained on a ~~Schedule II controlled dangerous substance recipient's valid driver's~~ driver license, ~~valid military identification card,~~ or valid identification card issued pursuant to Section 6-105 of Title 47 of the Oklahoma Statutes or similar statute of another state if the recipient is not a resident of the

State of Oklahoma, or, if the recipient is less than eighteen (18) years old and has no such identification, the unique number contained on the recipient's parent's or guardian's valid ~~driver's~~ driver license, ~~valid military identification card,~~ or valid identification card issued pursuant to Section 6-105 of Title 47 of the Oklahoma Statutes or similar statute of another state if the parent or guardian is not a resident of the State of Oklahoma, or, if the controlled dangerous substance is obtained for an animal, the unique number contained on the animal owner's valid ~~driver's~~ driver license, ~~valid military identification card,~~ or valid identification card issued pursuant to Section 6-105 of Title 47 of the Oklahoma Statutes or similar statute of another state if the owner is not a resident of the State of Oklahoma;

6. "State" means any state, territory, or possession of the United States, the District of Columbia, or foreign nation.

SECTION 3. AMENDATORY 63 O.S. 2001, Section 2-309C, is amended to read as follows:

Section 2-309C. A. A dispenser of a Schedule II, III, IV or V controlled dangerous substance, except Schedule V substances that contain any detectable quantity of pseudoephedrine, its salts or optical isomers, or salts of optical isomers shall transmit to a central repository designated by the Oklahoma Bureau of Narcotics and Dangerous Drugs Control ~~the following~~ using the American Society for Automation in Pharmacy's (ASAP) Telecommunications Format for Controlled Substances version designated in rules by the Oklahoma Bureau of Narcotics and Dangerous Drugs Control, the following information for each dispensation:

1. Recipient's name, when feasible to submit;
2. Recipient's identification number;
3. National Drug Code number of the substance dispensed;
4. Date of the dispensation;
5. Quantity of the substance dispensed;

6. Prescriber's ~~U.S.~~ United States Drug Enforcement Agency registration number; and

7. Dispenser's registration number ~~and location~~.

B. The information required by this section shall be transmitted:

1. On an electronic device which is compatible with the receiving device of the central repository or by computer diskette, magnetic tape, CD-ROM or, ~~in the case of fewer than twenty submissions per month, by pharmacy universal claim form, which meets the specifications provided by rules of the Bureau~~ a format or other media designated acceptable by the Oklahoma Bureau of Narcotics and Dangerous Drugs Control; and

2. Within ~~fifteen (15)~~ thirty (30) days of the time that the substance is dispensed.

C. Willful failure to transmit information as required by this section shall be a misdemeanor punishable, upon conviction, by not more than one (1) year in the county jail, or by a fine of not more than One Thousand Dollars (\$1,000.00), or by both such imprisonment and fine, or administrative action may be taken pursuant to Section 2-304 of this title.

D. The Director of the Bureau shall have the authority to ~~waive the limit on the number of~~ allow paper submissions on the universal claim form, ~~and to allow a dispenser of a Schedule II controlled dangerous substance to submit more than twenty universal claim forms per month~~ if the dispenser has an appropriate hardship.

E. The reporting requirements of this title do not apply to any lawful sale of a Schedule V product containing any detectable quantity of pseudoephedrine, its salts or optical isomers, or salts of optical isomers, until such time that:

1. The Oklahoma Bureau of Narcotics and Dangerous Drugs Control implements a statewide real-time logbook that authorizes purchases and records purchaser information statewide; and

2. The Oklahoma Bureau of Narcotics and Dangerous Drugs Control adopts rules for the reporting of sales of Schedule V product containing any detectable quantity of pseudoephedrine, its salts or optical isomers, or salts of optical isomers.

SECTION 4. AMENDATORY 63 O.S. 2001, Section 2-309D, is amended to read as follows:

Section 2-309D. A. The information collected at the central repository pursuant to the Anti-Drug Diversion Act shall be confidential and shall not be open to the public. Access to the information shall be limited to:

1. Peace officers certified pursuant to Section 3311 of Title 70 of the Oklahoma Statutes who are employed as investigative agents of the Oklahoma Bureau of Narcotics and Dangerous Drugs Control;

2. The United States Drug Enforcement Administration Diversion Group Supervisor;

3. The executive director or chief investigator, as designated by each board, of the following state boards:

- a. Board of Podiatric Medical Examiners,
- b. Board of Dentistry,
- c. Board of Pharmacy,
- d. State Board of Medical Licensure and Supervision,
- e. State Board of Osteopathic Examiners, and
- f. State Board of Veterinary Medical Examiners;

provided, however, that the executive director or chief investigator of each of these boards shall be limited to access to information relevant to licensees of the employing board of such executive director or chief investigator; and

4. A multicounty grand jury properly convened pursuant to the Multicounty Grand Jury Act, Sections 350 through 363 of Title 22 of the Oklahoma Statutes.

B. This section shall not prevent the disclosure, at the discretion of the Director of the Oklahoma Bureau of Narcotics and

Dangerous Drugs Control, of investigative information to peace officers and investigative agents of federal, state, county or municipal law enforcement agencies, district attorneys and the Attorney General in furtherance of criminal investigations or prosecutions within their respective jurisdictions, and to registrants in furtherance of efforts to guard against the diversion of controlled dangerous substances.

C. Any unauthorized disclosure of any information collected at the central repository provided by the Anti-Drug Diversion Act shall be a misdemeanor. Violation of the provisions of this section shall be deemed willful neglect of duty and shall be grounds for removal from office.

D. Notwithstanding the provisions of subsection B, registrants shall have no requirement or obligation to access or check the information in the central repository prior to dispensing or administering medications or as part of their professional practices. Registrants shall not be liable to any person for any claim of damages as a result of accessing or failing to access the information in the central repository and no lawsuit may be predicated thereon.

SECTION 5. AMENDATORY 63 O.S. 2001, Section 2-309E, is amended to read as follows:

Section 2-309E. All access to information in the central repository shall be controlled by and made through the Oklahoma Bureau of Narcotics and Dangerous Drugs Control.

SECTION 6. AMENDATORY 63 O.S. 2001, Section 2-309F, is amended to read as follows:

Section 2-309F. A. The central repository provided by the Anti-Drug Diversion Act shall:

1. Be capable of providing the collected information in forms required by the Oklahoma Bureau of Narcotics and Dangerous Drugs Control, including but not limited to, dispensations by prescriber

name or registration number, dispenser name or registration number, recipient name or identification number, type of substance, frequency, quantity, and location of dispensation;

2. Provide the Bureau with continual, twenty-four-hour per day, on-line access to the collected information;

3. Secure the collected information against access by unauthorized persons;

4. Provide the Bureau, in a reasonable time, with all collected information in a format readily usable by the Bureau, in the event the relationship between the state and central repository is terminated; and

5. Not withhold access to the collected information for any reason other than failure of the Bureau to timely pay agreed fees and charges for use of the central repository.

B. The Bureau is authorized to enter into a contract with a vendor to serve as the central repository provided for in the Anti-Drug Diversion Act or to purchase the necessary equipment to create the central repository within the Bureau.

SECTION 7. AMENDATORY 63 O.S. 2001, Section 2-309G, is amended to read as follows:

Section 2-309G. The Oklahoma Bureau of Narcotics and Dangerous Drugs Control shall develop criteria for the production of exception reports out of the information collected at the central repository. In developing these criteria, the Bureau shall seek the counsel of the following entities:

1. Board of Podiatric Medical Examiners;
2. Board of Dentistry;
3. Board of Pharmacy;
4. State Board of Medical Licensure and Supervision;
5. State Board of Osteopathic Examiners;
6. State Board of Veterinary Medical Examiners;
7. Oklahoma Podiatric Medical Association;

8. Oklahoma Dental Association;
9. Oklahoma Pharmaceutical Association;
10. Oklahoma State Medical Association;
11. Oklahoma Osteopathic Association; and
12. Oklahoma Veterinary Medical Association.

SECTION 8. AMENDATORY 63 O.S. 2001, Section 2-309H, is amended to read as follows:

Section 2-309H. The Director of the Oklahoma Bureau of Narcotics and Dangerous Drugs Control shall promulgate and adopt rules to implement and enforce the Anti-Drug Diversion Act.

SECTION 9. AMENDATORY 63 O.S. 2001, Section 2-212, as amended by Section 3 of Enrolled House Bill No. 2176 of the 2nd Session of the 49th Oklahoma Legislature, is amended to read as follows:

Section 2-212. A. The controlled substances listed in this section are included in Schedule V.

1. Any compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, which also contains one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation, valuable medicinal qualities other than those possessed by the narcotic drug alone:

- a. not more than two hundred (200) milligrams of codeine, or any of its salts, per one hundred (100) milliliters or per one hundred (100) grams,
- b. not more than one hundred (100) milligrams of dihydrocodeine, or any of its salts, per one hundred (100) milliliters or per one hundred (100) grams,
- c. not more than one hundred (100) milligrams of ethylmorphine, or any of its salts, per one hundred (100) milliliters or per one hundred (100) grams,

- d. not more than two and five-tenths (2.5) milligrams of diphenoxylate and not less than twenty-five (25) micrograms of atropine sulfate per dosage unit, or
- e. not more than one hundred (100) milligrams of opium per one hundred (100) milliliters or per one hundred (100) grams.

2. Any compound, mixture, or preparation containing any detectable quantity of pseudoephedrine, its salts or optical isomers, or salts of optical isomers. If any compound, mixture, or preparation as specified in this paragraph is dispensed, sold, or distributed in a pharmacy:

- a. it shall be dispensed, sold, or distributed only by, or under the supervision of, a licensed pharmacist or a ~~licensed~~ registered pharmacy technician, and
- b. any person purchasing, receiving, or otherwise acquiring any compound, mixture, or preparation shall produce a photo identification showing the date of birth of the person and shall sign a written log ~~or,~~ receipt, or other program or mechanism approved by the Oklahoma Bureau of Narcotics and Dangerous Drugs Control, showing the date of the transaction, name of the person, and the amount of the compound, mixture, or preparation.

No person shall purchase, receive, or otherwise acquire more than nine (9) grams of any product, mixture, or preparation within any thirty-day period. Provided, this limit shall not apply to any quantity of such product, mixture or preparation dispensed pursuant to a valid prescription.

B. The Schedule, as specified in paragraph 2 of subsection A, shall not apply to any compounds, mixtures, or preparations which are in liquid, liquid capsule, or gel capsule form if pseudoephedrine is not the only active ingredient.

C. The Director of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, by rule, may exempt other products from this Schedule which the Director finds are not used in the illegal manufacture of methamphetamine or other controlled dangerous substances. A manufacturer of a drug product may apply for removal of the product from the Schedule if the product is determined by the Director to have been formulated in such a way as to effectively prevent the conversion of the active ingredient into methamphetamine.

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 House of Representatives the 15th day of April, 2004.

Presiding Officer of the House of
Representatives

Passed the Senate the ____ day of _____, 2004.

Presiding Officer of the Senate