

STATE OF OKLAHOMA

1st Session of the 49th Legislature (2003)

HOUSE BILL HB1326

By: Nance

AS INTRODUCED

An Act relating to controlled dangerous substances; enacting the Pseudoephedrine Control Act; amending 63 O.S. 2001, Sections 2-302 and 2-303, which relate to registration requirements; establishing registration and fees for certain categories; amending Sections 1 and 2, Chapter 288, O.S.L. 2002 (63 O.S. Supp. 2002, Sections 2-332 and 2-333), which relate to the Precursor Substances Act; requiring registration for possession of substances to be used as precursor to manufacture of methamphetamine; establishing notification requirements; defining terms; establishing liability for damages; providing for noncodification; 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 not to be codified in the Oklahoma Statutes reads as follows:

This act shall be known and may be cited as the "Pseudoephedrine Control Act."

SECTION 2. AMENDATORY 63 O.S. 2001, 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 Director of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, in accordance with rules promulgated by the Director. Persons registered by the 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. Every wholesaler, manufacturer, distributor, or retailer of any drug product containing ephedrine, pseudoephedrine or phenylpropanolamine, or their salts, isomers, or salts of isomers shall obtain a registration issued by the Director of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control in accordance with rules promulgated by the Director and as provided for in Section 2-332 of this title.

B. Out-of-state pharmaceutical suppliers who provide controlled dangerous substances to individuals within this state shall obtain a registration issued by the Director of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, in accordance with rules promulgated by the Director; provided that this provision shall not apply to wholesale distributors who ship controlled dangerous substances to pharmacies or other entities registered within this state in accordance with rules promulgated by the Director.

C. 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.

D. Every trainer or handler of a canine controlled dangerous substances detector who, in the ordinary course of such trainer's or handler's profession, desires to possess any controlled dangerous substance, annually, shall obtain a registration issued by the 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 promulgated by the

Director for those individuals identified in subparagraph a of paragraph ~~28~~ 32 of Section 2-101 of this title. Persons registered by the 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.

E. 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 such agent's or employee's 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 such carrier's or warehouseman's 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 such pharmacist's employment with a pharmacy registered pursuant to the provisions of Section 2-101 et seq. of this title;

6. A nursing home licensed by this state; and

7. Registered nurses and licensed practical nurses.

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

G. 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.

H. The Director is authorized to inspect the establishment of a registrant or applicant for registration in accordance with rules promulgated by the Director.

I. 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 such person's profession or occupation.

J. 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.

K. The licensing boards of all professions and occupations to which the use of controlled dangerous substances is incidental shall furnish a current list to the Director, 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 E of this section shall be subject to the registration requirements of Section 2-101 et seq. of this title.

L. The licensing board of any professional defined as a mid-level practitioner shall notify and furnish to the Director, not later than the first day of October of each year that such professional holds a valid license, a current listing of individuals licensed and registered with their respective boards to prescribe, order, select, obtain and administer controlled dangerous substances. The licensing board shall immediately notify the Director of any action subsequently taken against any such individual.

SECTION 3. AMENDATORY 63 O.S. 2001, 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 the Director 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 the Uniform Controlled Dangerous Substances 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 such applicant's 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 June 4, 1991, and who are registered or licensed by the state. Fees for registration under this section shall be as follows:

Practitioners and

mid-level practitioners	\$35.00	per year
		of registration

Home Care Agencies,

Hospices & Home Care Services	\$35.00	annually
Distributors	\$50.00	annually
Manufacturers	\$100.00	annually

Manufacturer, Wholesaler,

or Distributor of drug

products containing ephedrine,

pseudoephedrine, or

<u>phenylpropanolamine</u>	<u>\$3,500.00</u>	<u>annually</u>
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Retailer of drug products

containing ephedrine,

pseudoephedrine, or

<u>phenylpropanolamine</u>	<u>\$5.00</u>	<u>annually</u>
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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 4. AMENDATORY Section 1, Chapter 288, O.S.L. 2002 (63 O.S. Supp. 2002, Section 2-332), is amended to read as follows:

Section 2-332. A. It shall be unlawful for a person to knowingly and unlawfully possess a drug product containing ephedrine, pseudoephedrine or phenylpropanolamine, or their salts, isomers or salts of isomers with intent to use the product as a precursor to manufacture methamphetamine or another controlled substance.

B. Except as provided in this subsection, possession of a drug product containing more than twenty-four (24) grams of ephedrine, pseudoephedrine or phenylpropanolamine, or their salts, isomers or salts of isomers shall constitute a rebuttable presumption of the intent to use the product as a precursor to methamphetamine or another controlled substance. The rebuttable presumption established by this subsection shall not apply to the following persons who are lawfully possessing drug products in the course of legitimate business:

1. A retail distributor of drug products or wholesaler;
2. A wholesale drug distributor, or its agents, licensed by the Board of Pharmacy;
3. A manufacturer of drug products, or its agents, licensed by the Board of Pharmacy;
4. A pharmacist licensed by the Board of Pharmacy; and
5. A licensed healthcare professional possessing the drug products in the course of carrying out his profession.

C. A violation of this section shall be a felony punishable by imprisonment in the State Penitentiary for a term of not more than five (5) years.

D. Any person other than a registrant who sells, transfers, or otherwise furnishes a drug product described in subsection A of this section to any person in this state, or who causes such a drug product to be imported, carried, or otherwise brought into this state shall notify the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control of the transaction not less than twenty-one (21) days prior to the delivery of the drug product. The advance notice requirement of this subsection shall apply only to quantities of the drug products in excess of twenty-four (24) grams, or quantities intended for resale regardless of the amount.

E. Any wholesaler, manufacturer, or distributor of drug products described in subsection A of this section shall obtain a

registration annually from the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control. Any such wholesaler, manufacturer, or distributor shall keep complete records of all transactions involving such drug products including the names of all parties involved in the transaction and amount of the drug products involved. The records shall be kept readily retrievable and separate from all other invoices or records of transactions not involving such drug products, and shall be maintained for not less than three (3) years.

F. Any retailer of a drug product described in subsection A of this section shall obtain a registration annually from the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control. Any such retailer of such drug products shall keep complete records showing all purchases of the drug products they make from any wholesaler, manufacturer, distributor, or other person. The records shall be kept readily retrievable and separate from all other invoices or records of transactions not involving such drug products, and shall be maintained for not less than three (3) years.

G. As used in this section:

1. "Manufacturer" means any person within this state who produces, compounds, packages, or in any manner initially prepares for sale or use any drug product described in subsection A of this section, or any such person in another state if they cause the products to be compounded, packaged, or transported into this state;

2. "Wholesaler" means any person within this state or another state, other than a manufacturer, who sells, transfers, or in any manner furnishes a drug product described in subsection A of this section to any other person in this state for the purpose of being resold;

3. "Distributor" means any person within this state or another state, other than a manufacturer or wholesaler, who sells, delivers, transfers, or in any manner furnishes a drug product described in

subsection A of this section to any person who is not the ultimate user or consumer of the product; and

4. "Retailer" means any person within this state or another state, who sells, delivers, transfers, or in any manner furnishes a drug product described in subsection A of this section to any person in this state who is the ultimate user or consumer of the product.

H. Any substances imported without prior notification as provided for in this section shall be subject to forfeiture upon conviction for a violation of this section.

I. In addition to any administrative penalties provided by law, any violation of this section shall be a misdemeanor, punishable upon conviction, by not more than one (1) year in the county jail or fine of not more than Five Thousand Dollars (\$5,000.00), or both such imprisonment and fine. Any second or subsequent conviction shall be a felony punishable, upon conviction, by not more than two (2) years imprisonment, a fine of not more than Ten Thousand Dollars (\$10,000.00), or both such imprisonment and fine.

SECTION 5. AMENDATORY Section 2, Chapter 288, O.S.L. 2002 (63 O.S. Supp. 2002, Section 2-333), is amended to read as follows:

Section 2-333. A. It shall be unlawful for any person to knowingly ~~and unlawfully~~ sell, transfer, distribute, or dispense any product containing ephedrine, pseudoephedrine or phenylpropanolamine, or their salts, isomers or salts of isomers if the person knows that the purchaser will use the product as a precursor to manufacture methamphetamine or another controlled illegal substance or if the person sells, transfers, distributes or dispenses the product with reckless disregard as to how the product will be used.

B. A violation of this section shall be a felony punishable by imprisonment in the State Penitentiary for a term of not more than ten (10) years.

C. Any person who sells, transfers, distributes, dispenses, or in any manner furnishes any product containing ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers in a negligent manner, with knowledge or reason to know that the product will be used as a precursor to manufacture methamphetamine or any other illegal controlled substance, or with reckless disregard as to how the product will be used, shall be liable for all damages, whether directly or indirectly caused by the sale, transfer, distribution, dispensation, or furnishing.

1. Such damages may include, but are not limited to, any and all costs of detecting, investigating, and cleaning up or remediating clandestine or other unlawfully operated or maintained laboratories where controlled dangerous substances are manufactured, any and all costs of prosecuting criminal cases arising from such manufacture, and any and all consequential and punitive damages otherwise allowed by law.

2. A civil action to recover damages against persons violating this subsection may be brought by the Attorney General or by any district attorney in whose jurisdiction such person may be shown to have committed such violation.

D. Violation of subsection A or C of this section shall be considered to affect at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon the individuals may be unequal and is subject to the provisions of Section 2 of Title 50 of the Oklahoma Statutes and Section 1397 of Title 12 of the Oklahoma Statutes.

SECTION 6. This act shall become effective November 1, 2003.

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