

ENGROSSED SENATE AMENDMENT
TO
ENGROSSED HOUSE
BILL NO. 1507

By: Roan and Nance of the House

and

Gumm of the Senate

An Act relating to controlled dangerous substances; amending 22 O.S. 2001, Section 1105, as amended by Section 2, Chapter 59, O.S.L. 2004 (22 O.S. Supp. 2004, Section 1105), which relates to defendants discharged on giving bail; modifying standard of proof for rebuttable presumption; amending 63 O.S. 2001, Section 2-212, as last amended by Section 9, Chapter 300, O.S.L. 2004 (63 O.S. Supp. 2004, Section 2-212), which relates to Schedule V of the Uniform Controlled Dangerous Substances Act; requiring driver license or state-issued identification card to purchase certain items; specifying information to be obtained from purchaser; defining terms; and providing an effective date.

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

"An Act relating to controlled dangerous substances; amending 22 O.S. 2001, Section 1105, as amended by Section 2, Chapter 59, O.S.L. 2004 (22 O.S. Supp. 2004, Section 1105), which relates to defendants discharged on giving bail; modifying standard of proof for rebuttable presumption; amending 63 O.S. 2001, Sections 2-212, as last amended by Section 9, Chapter 300, O.S.L. 2004, 2-309C, as amended by Section 3, Chapter 300, O.S.L. 2004, and 2-309D, as amended by Section 4, Chapter 300, O.S.L. 2004 (63 O.S. Supp. 2004, Sections 2-212, 2-309C and 2-309D), which relate to the Uniform Controlled Dangerous Substances Act; requiring driver license or state-issued identification card to purchase certain items; specifying information to be obtained from purchaser; defining terms; authorizing implementation of electronic logbook for specified purposes; construing provision; and providing an effective date.

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

SECTION 1. AMENDATORY 22 O.S. 2001, Section 1105, as amended by Section 2, Chapter 59, O.S.L. 2004 (22 O.S. Supp. 2004, Section 1105), is amended to read as follows:

Section 1105. A. Except as otherwise provided by this section, upon the allowance of bail and the execution of the requisite recognizance, bond, or undertaking to the state, the magistrate, judge, or court, shall, if the defendant is in custody, make and sign an order for discharge. The court, in its discretion, may prescribe by court rule the conditions under which the court clerk or deputy court clerk, or the sheriff or deputy sheriff, may prepare and execute an order of release on behalf of the court.

B. No police officer or sheriff may release a person arrested for a violation of an ex parte or final protective order as provided in Sections 60.2 and 60.3 of this title, or arrested for an act constituting domestic abuse as specified in Section 644 of Title 21 of the Oklahoma Statutes, or arrested for any act constituting domestic abuse, stalking or harassment as defined by Section 60.1 of this title without the violator appearing before a magistrate, judge or court. The magistrate, judge or court shall determine bond and other conditions of release as necessary for the protection of the alleged victim.

C. No police officer or sheriff may release a person arrested for any violation of subsection G of Section 2-401 of Title 63 of the Oklahoma Statutes, without the violator appearing before a magistrate, judge, or court. In determining bond and other conditions of release, the magistrate, judge, or court shall consider any evidence that the person is in any manner dependent upon a controlled dangerous substance or has a pattern of regular, illegal use of any controlled dangerous substance. A rebuttable presumption that no conditions of release on bond would assure the safety of the community or any person therein shall arise if the state shows by ~~a preponderance of the~~ clear and convincing evidence:

1. The person was arrested for a violation of subsection G of Section 2-401 of Title 63 of the Oklahoma Statutes, relating to manufacturing or attempting to manufacture a controlled dangerous

substance, or possessing any of the substances listed in subsection G of Section 2-401 of Title 63 of the Oklahoma Statutes with the intent to manufacture a controlled dangerous substance; and

2. The person is in any manner dependent upon a controlled dangerous substance or has a pattern of regular illegal use of a controlled dangerous substance, and the violation referred to in paragraph 1 of this subsection was committed or attempted in order to maintain or facilitate the dependence or pattern of illegal use in any manner.

SECTION 2. AMENDATORY 63 O.S. 2001, Section 2-212, as last amended by Section 9, Chapter 300, O.S.L. 2004 (63 O.S. Supp. 2004, Section 2-212), 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 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~~ driver license or other state-issued identification card and shall sign a written log, receipt, or other program or mechanism approved by the Oklahoma Bureau of Narcotics and Dangerous Drugs Control, showing:
 - (1) the date of the transaction,
 - (2) name of the person, and the amount of the compound, mixture, or preparation purchaser,
 - (3) driver license number or state-issued identification number and state of residence of the purchaser,
 - (4) name and initials of the pharmacist or pharmacy technician conducting the transaction,
 - (5) the product being sold, and
 - (6) total quantity, in grams or milligrams, of pseudoephedrine purchased.

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~~ the requirements of this subsection 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.

D. As used in this section:

1. "Gel capsule" means any soft gelatin, liquid-filled capsule that contains a liquid suspension, which, in the case of pseudoephedrine, is suspended in a matrix of glycerin, polyethylene glycol, and propylene glycol, along with other liquid substances. Regardless of product manufacturer labeling, a gelatin-covered solid does not constitute a gel capsule under this definition; and

2. "Active ingredient" shall include the matrix of glycerin, polyethylene glycol, and propylene glycol that is found in liquid capsules.

SECTION 3. AMENDATORY 63 O.S. 2001, Section 2-309C, as amended by Section 3, Chapter 300, O.S.L. 2004 (63 O.S. Supp. 2004, 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 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 United States Drug Enforcement Agency

registration number; and

7. Dispenser's registration number.

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 a format or other media designated acceptable by the Oklahoma Bureau of Narcotics and Dangerous Drugs Control; and

2. Within 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 allow paper submissions on the universal claim form, if the dispenser has an appropriate hardship.

E. The Oklahoma Bureau of Narcotics and Dangerous Drugs Control is authorized, by any funds available to it, to implement a real-time electronic logbook to monitor the sale of Schedule V products containing any detectable quantity of pseudoephedrine, its salts or optical isomers, or salts of optical isomers. Dispensers of such pseudoephedrine products shall report all such sales electronically pursuant to rules promulgated by the Oklahoma Bureau of Narcotics and Dangerous Drugs Control. 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, as amended by Section 4, Chapter 300, O.S.L. 2004 (63 O.S. Supp. 2004, 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. Nothing herein shall be construed to relieve a registrant from any duty to monitor and report the sales of certain products pursuant to subsection E of Section 2-309C of this title.

SECTION 5. This act shall become effective November 1, 2005."

Passed the Senate the 14th day of April, 2005.

Presiding Officer of the Senate

Passed the House of Representatives the ____ day of _____,
2005.

Presiding Officer of the House
of Representatives