

CS for EHB 1507

1 THE STATE SENATE
2 Monday, April 11, 2005

3 Committee Substitute for
4 ENGROSSED
5 House Bill No. 1507

6 COMMITTEE SUBSTITUTE FOR ENGROSSED HOUSE BILL NO. 1507 - By: ROAN
7 and NANCE of the House and GUMM of the Senate.

8 An Act relating to controlled dangerous substances; amending
9 22 O.S. 2001, Section 1105, as amended by Section 2, Chapter
10 59, O.S.L. 2004 (22 O.S. Supp. 2004, Section 1105), which
11 relates to defendants discharged on giving bail; modifying
12 standard of proof for rebuttable presumption; amending 63
13 O.S. 2001, Sections 2-212, as last amended by Section 9,
14 Chapter 300, O.S.L. 2004, 2-309C, as amended by Section 3,
15 Chapter 300, O.S.L. 2004, and 2-309D, as amended by Section
16 4, Chapter 300, O.S.L. 2004 (63 O.S. Supp. 2004, Sections 2-
17 212, 2-309C and 2-309D), which relate to the Uniform
18 Controlled Dangerous Substances Act; requiring driver
19 license or state-issued identification card to purchase
20 certain items; specifying information to be obtained from
21 purchaser; defining terms; authorizing implementation of
22 electronic logbook for specified purposes; construing
23 provision; and providing an effective date.

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

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

28 Section 1105. A. Except as otherwise provided by this section,
29 upon the allowance of bail and the execution of the requisite
30 recognizance, bond, or undertaking to the state, the magistrate,
31 judge, or court, shall, if the defendant is in custody, make and

1 sign an order for discharge. The court, in its discretion, may
2 prescribe by court rule the conditions under which the court clerk
3 or deputy court clerk, or the sheriff or deputy sheriff, may prepare
4 and execute an order of release on behalf of the court.

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

15 C. No police officer or sheriff may release a person arrested
16 for any violation of subsection G of Section 2-401 of Title 63 of
17 the Oklahoma Statutes, without the violator appearing before a
18 magistrate, judge, or court. In determining bond and other
19 conditions of release, the magistrate, judge, or court shall
20 consider any evidence that the person is in any manner dependent
21 upon a controlled dangerous substance or has a pattern of regular,
22 illegal use of any controlled dangerous substance. A rebuttable
23 presumption that no conditions of release on bond would assure the

1 safety of the community or any person therein shall arise if the
2 state shows by ~~a preponderance of the~~ clear and convincing evidence:

3 1. The person was arrested for a violation of subsection G of
4 Section 2-401 of Title 63 of the Oklahoma Statutes, relating to
5 manufacturing or attempting to manufacture a controlled dangerous
6 substance, or possessing any of the substances listed in subsection
7 G of Section 2-401 of Title 63 of the Oklahoma Statutes with the
8 intent to manufacture a controlled dangerous substance; and

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

15 SECTION 2. AMENDATORY 63 O.S. 2001, Section 2-212, as
16 last amended by Section 9, Chapter 300, O.S.L. 2004 (63 O.S. Supp.
17 2004, Section 2-212), is amended to read as follows:

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

20 1. Any compound, mixture, or preparation containing limited
21 quantities of any of the following narcotic drugs, which also
22 contains one or more nonnarcotic active medicinal ingredients in
23 sufficient proportion to confer upon the compound, mixture, or

1 preparation, valuable medicinal qualities other than those possessed
2 by the narcotic drug alone:

- 3 a. not more than two hundred (200) milligrams of codeine,
4 or any of its salts, per one hundred (100) milliliters
5 or per one hundred (100) grams,
- 6 b. not more than one hundred (100) milligrams of
7 dihydrocodeine, or any of its salts, per one hundred
8 (100) milliliters or per one hundred (100) grams,
- 9 c. not more than one hundred (100) milligrams of
10 ethylmorphine, or any of its salts, per one hundred
11 (100) milliliters or per one hundred (100) grams,
- 12 d. not more than two and five-tenths (2.5) milligrams of
13 diphenoxylate and not less than twenty-five (25)
14 micrograms of atropine sulfate per dosage unit, or
- 15 e. not more than one hundred (100) milligrams of opium
16 per one hundred (100) milliliters or per one hundred
17 (100) grams.

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

- 1 a. it shall be dispensed, sold, or distributed only by,
2 or under the supervision of, a licensed pharmacist or
3 a registered pharmacy technician, and
- 4 b. any person purchasing, receiving, or otherwise
5 acquiring any compound, mixture, or preparation shall
6 produce a ~~photo identification showing the date of~~
7 ~~birth of the person~~ driver license or other state-
8 issued identification card and shall sign a written
9 log, receipt, or other program or mechanism approved
10 by the Oklahoma Bureau of Narcotics and Dangerous
11 Drugs Control, showing:
- 12 (1) the date of the transaction,
13 (2) name of the person, and the amount of the
14 compound, mixture, or preparation purchaser,
15 (3) driver license number or state-issued
16 identification number and state of residence of
17 the purchaser,
18 (4) name and initials of the pharmacist or pharmacy
19 technician conducting the transaction,
20 (5) the product being sold, and
21 (6) total quantity, in grams or milligrams, of
22 pseudoephedrine purchased.

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

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

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

19 D. As used in this section:

20 1. "Gel capsule" means any soft gelatin, liquid-filled capsule
21 that contains a liquid suspension, which, in the case of
22 pseudoephedrine, is suspended in a matrix of glycerin, polyethylene
23 glycol, and propylene glycol, along with other liquid substances.

1 Regardless of product manufacturer labeling, a gelatin-covered solid
2 does not constitute a gel capsule under this definition; and

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

6 SECTION 3. AMENDATORY 63 O.S. 2001, Section 2-309C, as
7 amended by Section 3, Chapter 300, O.S.L. 2004 (63 O.S. Supp. 2004,
8 Section 2-309C), is amended to read as follows:

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

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

1 6. Prescriber's United States Drug Enforcement Agency
2 registration number; and

3 7. Dispenser's registration number.

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

6 1. On an electronic device which is compatible with the
7 receiving device of the central repository or by computer diskette,
8 magnetic tape, CD-ROM or in a format or other media designated
9 acceptable by the Oklahoma Bureau of Narcotics and Dangerous Drugs
10 Control; and

11 2. Within thirty (30) days of the time that the substance is
12 dispensed.

13 C. Willful failure to transmit information as required by this
14 section shall be a misdemeanor punishable, upon conviction, by not
15 more than one (1) year in the county jail, or by a fine of not more
16 than One Thousand Dollars (\$1,000.00), or by both such imprisonment
17 and fine, or administrative action may be taken pursuant to Section
18 2-304 of this title.

19 D. The Director of the Bureau shall have the authority to allow
20 paper submissions on the universal claim form, if the dispenser has
21 an appropriate hardship.

22 E. The Oklahoma Bureau of Narcotics and Dangerous Drugs Control
23 is authorized, by any funds available to it, to implement a real-

1 time electronic logbook to monitor the sale of Schedule V products
2 containing any detectable quantity of pseudoephedrine, its salts or
3 optical isomers, or salts of optical isomers. Dispensers of such
4 pseudoephedrine products shall report all such sales electronically
5 pursuant to rules promulgated by the Oklahoma Bureau of Narcotics
6 and Dangerous Drugs Control. The reporting requirements of this
7 title do not apply to any lawful sale of a Schedule V product
8 containing any detectable quantity of pseudoephedrine, its salts or
9 optical isomers, or salts of optical isomers, until such time that:

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

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

17 SECTION 4. AMENDATORY 63 O.S. 2001, Section 2-309D, as
18 amended by Section 4, Chapter 300, O.S.L. 2004 (63 O.S. Supp. 2004,
19 Section 2-309D), is amended to read as follows:

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

1 1. Peace officers certified pursuant to Section 3311 of Title
2 70 of the Oklahoma Statutes who are employed as investigative agents
3 of the Oklahoma Bureau of Narcotics and Dangerous Drugs Control;

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

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

8 a. Board of Podiatric Medical Examiners,

9 b. Board of Dentistry,

10 c. Board of Pharmacy,

11 d. State Board of Medical Licensure and Supervision,

12 e. State Board of Osteopathic Examiners, and

13 f. State Board of Veterinary Medical Examiners;

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

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

21 B. This section shall not prevent the disclosure, at the
22 discretion of the Director of the Oklahoma Bureau of Narcotics and
23 Dangerous Drugs Control, of investigative information to peace

1 officers and investigative agents of federal, state, county or
2 municipal law enforcement agencies, district attorneys and the
3 Attorney General in furtherance of criminal investigations or
4 prosecutions within their respective jurisdictions, and to
5 registrants in furtherance of efforts to guard against the diversion
6 of controlled dangerous substances.

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

12 D. Notwithstanding the provisions of subsection B, registrants
13 shall have no requirement or obligation to access or check the
14 information in the central repository prior to dispensing or
15 administering medications or as part of their professional
16 practices. Registrants shall not be liable to any person for any
17 claim of damages as a result of accessing or failing to access the
18 information in the central repository and no lawsuit may be
19 predicated thereon. Nothing herein shall be construed to relieve a
20 registrant from any duty to monitor and report the sales of certain
21 products pursuant to subsection E of Section 2-309C of this title.

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

23 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 4-5-05 - DO PASS,
24 As Amended.