

ENROLLED HOUSE
BILL NO. 2460

By: Schwartz and Roan of the
House

and

Lamb of the Senate

An Act relating to public health and safety; amending 63 O.S. 2001, Sections 2-303, as last amended by Section 61, Chapter 5, O.S.L. 2004, 2-309 and 2-309B, as last amended by Section 1, Chapter 81, O.S.L. 2007 (63 O.S. Supp. 2007, Sections 2-303 and 2-309B), which relate to the Uniform Controlled Dangerous Substances Act; modifying list of factors used in considering the registration of certain applicants; allowing transmission of prescriptions by electronic means; defining term; and providing an effective date.

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

SECTION 1. AMENDATORY 63 O.S. 2001, Section 2-303, as last amended by Section 61, Chapter 5, O.S.L. 2004 (63 O.S. Supp. 2007, 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 or her 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~~ Has been found guilty of, entered a plea of guilty or nolo contendere to a charge under the Uniform Controlled Dangerous Substances Act or any other state or federal law relating to any substance defined herein as a controlled dangerous substance or any felony under the laws of any state or the United States;

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	\$70.00	per year of registration
Home Care Agencies, Hospices & Home Care Services	\$70.00	annually
Distributors	\$100.00	annually
Manufacturers	\$200.00	annually
Manufacturer, Wholesaler, or Distributor of drug products containing pseudoephedrine or phenylpropanolamine	\$100.00	annually

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

Section 2-309. A. 1. Except for dosages medically required for a period not to exceed forty-eight (48) hours which are administered by or on direction of a practitioner, other than a pharmacist, or medication dispensed directly by a practitioner, other than a pharmacist, to an ultimate user, no controlled dangerous substance included in Schedule II, which is a prescription drug as determined under regulation promulgated by the Board of Pharmacy, may be dispensed without the written prescription of a practitioner; provided, that, in emergency situations, as prescribed by the Board of Pharmacy by regulation, such drug may be dispensed upon oral prescription reduced promptly to writing and filed by the pharmacist in a manner to be prescribed by rules and regulations of the Director.

2. The transmission of written prescription by practitioner to dispensing pharmacy by facsimile or electronic transmission with electronic signature is permitted only under the following conditions:

- a. for Schedule II drugs, the original prescription must be presented and verified against the facsimile at the time the substances are actually dispensed, and the original document must be properly annotated and retained for filing, except:
 - (1) home infusion pharmacy may consider the facsimile to be a "written prescription" as required by this act and as required by Title 21 U.S.C., Section 829(a). The facsimile copy of the prescription shall be retained as an original prescription, and it must contain all the information required by this act and 21 CFR, Section 1306.05(a), including date issued, the patient's full name and address, and the

practitioner's name, address, DEA registration number, and signature. The exception to the regulations for home infusion/IV therapy is intended to facilitate the means by which home infusion pharmacies obtain prescriptions for patients requiring the frequently modified parenteral controlled release administration of narcotic substances, but does not extend to the dispensing of oral dosage units of controlled substances, and

(2) the same exception is granted to patients in Long Term Care facilities (LTCF), which are filled by and delivered to the facility by a dispensing pharmacy, and

b. for drugs in Schedules III and IV, a facsimile copy of a written, signed prescription transmitted directly by the prescribing practitioner to the pharmacy can serve as an original prescription.

3. Prescriptions shall be retained in conformity with the requirements of this section and Section 2-307 of this title. No prescription for a Schedule II substance may be refilled.

B. 1. Except for dosages medically required for a period not to exceed forty-eight (48) hours which are administered by or on direction of a practitioner, other than a pharmacist, or medication dispensed directly by a practitioner, other than a pharmacist, to an ultimate user, no controlled dangerous substance included in Schedule III or IV, which is a prescription drug as determined under regulation promulgated by the Board of Pharmacy, may be dispensed without a written or oral prescription.

2. A written or oral prescription for a controlled dangerous substance in Schedule III or IV may not be filled or refilled more than six (6) months after the date thereof or be refilled more than five times after the date of the prescription, unless renewed by the practitioner.

C. No controlled dangerous substance included in Schedule V may be distributed or dispensed other than for a legitimate medical or scientific purpose.

D. Except for dosages medically required for a period not to exceed forty-eight (48) hours which are administered by or on direction of a practitioner, other than a pharmacist, or medication dispensed directly by a practitioner, other than a pharmacist, to an ultimate user, tincture opium camphorated, commonly known as paregoric, may not be dispensed without a written or oral prescription. The refilling of a prescription for paregoric shall be unlawful unless permission is granted by the prescriber, either written or oral.

E. Whenever it appears to the Director that a drug not considered to be a prescription drug under existing state law or regulation of the Board of Pharmacy should be so considered because of its abuse potential, he shall so advise the Board of Pharmacy and furnish to him all available data relevant thereto.

F. "Prescription", as used herein, means a written or oral order by a practitioner to a pharmacist for a controlled dangerous substance for a particular patient, which specifies the date of its issue, and the full name and address of the patient; if the controlled dangerous substance is prescribed for an animal, the species of the animal; the name and quantity of the controlled dangerous substance prescribed; the directions for use; the name and address of the owner of the animal and, if written, the signature of the practitioner.

G. No person shall solicit, dispense, receive or deliver any controlled dangerous substance through the mail, unless the ultimate user is personally known to the practitioner and circumstances clearly indicate such method of delivery is in the best interest of the health and welfare of the ultimate user.

SECTION 3. AMENDATORY 63 O.S. 2001, Section 2-309B, as last amended by Section 1, Chapter 81, O.S.L. 2007 (63 O.S. Supp. 2007, 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 recipient's valid passport, military identification card, driver license, 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 passport, military identification card, driver license, 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 license, 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; ~~and~~

6. "Registrant" means a person, persons, corporation or other entity who has been issued by the Director of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control a registration pursuant to Section 2-302 of this title; and

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

SECTION 4. This act shall become effective November 1, 2008.

Passed the House of Representatives the 19th day of May, 2008.

Presiding Officer of the House of
Representatives

Passed the Senate the 20th day of May, 2008.

Presiding Officer of the Senate