

ENROLLED HOUSE
BILL NO. 3380

By: Terrill, McCullough,
Luttrell, Smithson, Osborn,
Christian, Duncan, Wright
(John), Kern, Johnson,
Roan, Joyner, Tibbs,
Rousselot and Derby of the
House

and

Sykes and Stanislawski of
the Senate

An Act relating to public health and safety; creating the Oklahoma Methamphetamine Offender Registry Act; creating registry of persons convicted of certain crimes; prohibiting registered persons from purchasing or possessing Schedule V compounds and certain precursors; providing an exception; providing penalties; directing the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control to maintain certain registry; making registry available to certain persons; directing registrants to deny sales of pseudoephedrine products to certain persons; stating information to be included on registry; directing district court clerks to forward certain conviction information; requiring persons who receive certain sentence to submit registration form; providing penalty for noncompliance; providing process for removal of name from registry; making certain acts unlawful; providing penalties; directing the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control to maintain certain website for the public; directing the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control to conduct background investigations on certain persons and companies; amending 63 O.S. 2001, Section 2-212, as last amended by Section 2, Chapter 128, O.S.L. 2005 (63 O.S. Supp. 2009, Section 2-212), which relates to

Schedule V controlled substances; modifying personal identification requirements for purchasing certain controlled substance; amending 63 O.S. 2001, Sections 2-309C, as last amended by Section 5, Chapter 445, O.S.L. 2009 and 2-309F, as amended by Section 6, Chapter 300, O.S.L. 2004 (63 O.S. Supp. 2009, Sections 2-309C and 2-309F), which relate to the Anti-Drug Diversion Act; modifying dispensation requirement for certain controlled substances; deleting certain exception to reporting requirement; authorizing use of Social Security number under certain circumstances; exempting central repository from certain specific provisions of certain act; directing personnel of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control to maintain and control central repository; providing for codification; 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:

Section 2 of this act shall be known and may be cited as the "Oklahoma Methamphetamine Offender Registry Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-701 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. There is hereby created within the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control a registry of persons who, after November 1, 2010, have been convicted, whether upon a verdict or plea of guilty or upon a verdict or plea of nolo contendere, or received a suspended sentence or any deferred or probationary term, or are currently serving a sentence or any form of probation or parole for a crime or attempt to commit a crime including, but not limited to, unlawful possession, conspiring, endeavoring, manufacturing, distribution or trafficking of a precursor or methamphetamines under the provisions of Section 2-322, 2-332, 2-401, 2-402, 2-408 or 2-415 of Title 63 of the Oklahoma Statutes.

B. It shall be unlawful for any person subject to the registry created in subsection A of this section to purchase, possess or have control of any Schedule V compound, mixture, or preparation containing any detectable quantity of pseudoephedrine, its salts or optical isomers, or salts of optical isomers. As provided in Section 2-212 of Title 63 of the Oklahoma Statutes, the provisions of this subsection 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. A prescription for pseudoephedrine shall not provide an exemption for any person to this law. Any person convicted of violating the provisions of this subsection shall be guilty of a felony, punishable by imprisonment in the custody of the Department of Corrections for not less than two (2) years and not more than ten (10) years, or by a fine of not more than Five Thousand Dollars (\$5,000.00), or by both such fine and imprisonment.

C. The registry created in subsection A of this section shall be maintained by the Bureau. The registry shall be made available for registrants who sell or dispense pseudoephedrine-related products and to law enforcement agencies for law enforcement purposes through the Central Repository and the prescription monitoring program. Every registrant selling, dispensing or otherwise delivering pseudoephedrine products shall deny any sale of pseudoephedrine to any individual listed on the methamphetamine offender registry.

D. The registry shall consist of the following information:

1. Name of the person;
2. Date of birth of the person;
3. The offense or offenses which made the person eligible for inclusion on the registry;
4. The date of conviction or the date that a plea of guilty or nolo contendere was accepted by the court for any violation of an offense provided for in subsection A of this section;
5. The county where the offense or offenses occurred; and
6. Such other identifying data as the Bureau determines is necessary to properly identify the person.

E. Beginning November 1, 2010, all district court clerks shall forward a copy of the judgment and sentence or other applicable information relating to the disposition of the criminal case and date of birth of all persons who are subject to the provisions of this act for a violation of the offenses described in subsection A of this section to the Bureau. The information shall be sent in an electronic format in a manner prescribed by the Bureau within thirty (30) days of the date of final disposition of the case. Every person that receives a deferred sentence or is otherwise not in the custody of the Department of Corrections shall be required to register and submit a methamphetamine offender registration form in a format prescribed by the Bureau within thirty (30) days of entering a plea or receiving a sentence for an offense described in subsection A of this section. Failure to submit the form required by this subsection shall constitute a misdemeanor.

F. The Bureau shall remove from the registry the name and other identifying information of a person who has been convicted of a violation of any of the offenses described in subsection A of this section ten (10) years after the date of the most recent judgment and sentence. Any person having received a deferred sentence that expires prior to the ten-year time limitation may apply to the Bureau to be removed from the registry upon the completion of the deferred sentence by providing to the Bureau a certified copy of the dismissal of the case by certified mail. The Bureau may remove the person from the registry upon expiration of the deferred sentence.

G. It shall be a violation for any person to assist another person who is subject to the registry in the purchase of any pseudoephedrine products. Any person convicted of violating the provisions of this subsection shall, for a first offense, be guilty of a misdemeanor, punishable by incarceration in the county jail for not more than one (1) year, or by a fine of not more than One Thousand Dollars (\$1,000.00), or by both such fine and imprisonment. Any second or subsequent conviction for a violation of this subsection shall be a felony, punishable by incarceration in the custody of the Department of Corrections for not more than two (2) years, or by a fine of not less than Two Thousand Five Hundred Dollars (\$2,500.00) or by both such fine and imprisonment. For the purposes of this subsection, knowledge that a person was subject to the methamphetamine offender registry may be proven through court testimony or any other public notice or publicly available record including, but not limited to, court records maintained by the Oklahoma Supreme Court Network and the Oklahoma Court Information

System. On or prior to November 1, 2011, the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control shall maintain a methamphetamine offender registry website available for viewing by the public.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-109a of Title 63, unless there is created a duplication in numbering, reads as follows:

The Oklahoma State Bureau of Narcotics and Dangerous Drugs Control shall conduct background investigations and national criminal history record checks on companies and individuals with which the Bureau contracts to provide janitorial services and shall not be subject to the provisions of Section 3007 of Title 74 of the Oklahoma Statutes.

SECTION 4. AMENDATORY 63 O.S. 2001, Section 2-212, as last amended by Section 2, Chapter 128, O.S.L. 2005 (63 O.S. Supp. 2009, 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 driver license, passport, military identification, 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 purchaser,
 - (3) driver license number, passport, military identification, 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, 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 5. AMENDATORY 63 O.S. 2001, Section 2-309C, as last amended by Section 5, Chapter 445, O.S.L. 2009 (63 O.S. Supp. 2009, 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~~ including any compound mixture or preparation containing any detectable quantity of pseudoephedrine, its salts or optical isomers, or salts of optical isomers when dispensed pursuant to a valid prescription shall transmit to a central repository designated by the Oklahoma State 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 State Bureau of Narcotics and Dangerous Drugs Control, the following information for each dispensation:

1. Recipient's name;
2. Recipient's address;
3. Recipient's date of birth;
4. Recipient's identification number;
5. National Drug Code number of the substance dispensed;
6. Date of the dispensation;
7. Quantity of the substance dispensed;
8. Prescriber's United States Drug Enforcement Agency registration number;
9. Dispenser's registration number; and
10. Other information as required by administrative rule.

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

1. In a format or other media designated acceptable by the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control; and
2. Within twenty-four (24) hours of the time that the substance is dispensed. Beginning January 1, 2012, all information shall be submitted on a real-time log.

C. When a prescription is written or dispensed to a resident of a nursing home or a person who is under the care of a hospice program licensed pursuant to the provisions of the Oklahoma Hospice Licensing Act who does not have an identification card issued by the state or another form of a recipient identification number pursuant to Section 2-309B of this title, a Social Security number may be used for the purpose of complying with the reporting requirements provided for in this section.

D. The provisions of subsection B of this section shall not apply to a nonresident drug outlet registered pursuant to the Oklahoma Pharmacy Act or to a resident drug outlet as defined in Section 353.1 of Title 59 of the Oklahoma Statutes if the nonresident or resident drug outlet mails or delivers a controlled

substance to a patient or client. Nonresident and resident drug outlets shall transmit the information required in this section within seven (7) days of the date that the controlled substance is dispensed.

~~D.~~ E. Willful failure to transmit accurate 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.

~~E.~~ F. The Director of the Bureau shall have the authority to allow paper submissions on a form designated by the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, if the dispenser has an appropriate hardship.

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

~~2.~~ H. The Oklahoma State Bureau of Narcotics and Dangerous Drugs Control ~~adopts~~ shall have the authority to adopt 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 6. AMENDATORY 63 O.S. 2001, Section 2-309F, as amended by Section 6, Chapter 300, O.S.L. 2004 (63 O.S. Supp. 2009, 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 State 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. The central repository shall not be subject to the provisions of Sections 34.6 through 34.33 of Title 62 of the Oklahoma Statutes and shall be maintained and controlled by personnel of the Bureau pursuant to the confidentiality requirements provided for in Section 2-309D of this title.

SECTION 7. This act shall become effective November 1, 2010.

Passed the House of Representatives the 28th day of May, 2010.

Presiding Officer of the House of
Representatives

Passed the Senate the 28th day of May, 2010.

Presiding Officer of the Senate