

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 53rd Legislature (2011)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 1235

By: Sherrer, Cox, Bennett and
Derby of the House

and

Nichols and Burrage of the
Senate

11 COMMITTEE SUBSTITUTE

12 An Act relating to public health and safety; amending
13 63 O.S. 2001, Sections 2-208, as amended by Section
14 3, Chapter 283, O.S.L. 2005 and 2-212, as last
15 amended by Section 4, Chapter 458, O.S.L. 2010 (63
16 O.S. Supp. 2010, Sections 2-208 and 2-212), which
17 relate to the Uniform Controlled Dangerous Substances
18 Act; adding pseudoephedrine to Schedule III; deleting
19 pseudoephedrine from Schedule V; deleting procedures
20 for sale of certain products; amending 63 O.S. 2001,
21 Sections 2-309C, as last amended by Section 5,
22 Chapter 458, O.S.L. 2010 and 2-309D, as last amended
23 by Section 3, Chapter 160, O.S.L. 2010 (63 O.S. Supp.
24 2010, Sections 2-309C and 2-309D), which relate to
 the Anti-Drug Diversion Act; deleting reporting and
 monitoring requirements for dispensers and
 registrants who dispense certain product; and
 providing an effective date.

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

1 SECTION 1. AMENDATORY 63 O.S. 2001, Section 2-208, as
2 amended by Section 3, Chapter 283, O.S.L. 2005 (63 O.S. Supp. 2010,
3 Section 2-208), is amended to read as follows:

4 Section 2-208. The controlled substances listed in this section
5 are included in Schedule III.

6 A. Unless listed in another schedule, any material, compound,
7 mixture, or preparation, which contains any quantity of the
8 following substances or any other substance having a potential for
9 abuse associated with a stimulant or depressant effect on the
10 central nervous system:

- 11 1. Any substance which contains any quantity of a derivative of
12 barbituric acid, or any salt of a derivative of barbituric acid
13 unless specifically excepted or unless listed in another schedule;
- 14 2. Chlorhexadol;
- 15 3. Glutethimide;
- 16 4. Lysergic acid;
- 17 5. Lysergic acid amide;
- 18 6. Methyprylon;
- 19 7. Sulfondiethylmethane;
- 20 8. Sulfonethylmethane;
- 21 9. Sulfonmethane;
- 22 10. Benzephetamine and its salts;
- 23 11. Chlorphentermine and its salts;

- 1 12. Clortermine;
- 2 13. Mazindol;
- 3 14. Phendimetrazine;
- 4 15. Phenylacetone (P2P);
- 5 16. 1-Phenycyclohexylamine;
- 6 17. 1-Piperidinocyhexanecarbo nitrile (PCC);
- 7 18. Ketamine, its salts, isomers, and salts of isomers;
- 8 19. Any material, compound, mixture, or preparation which
- 9 contains any quantity of the following hormonal substances or
- 10 steroids, including their salts, isomers, esters and salts of
- 11 isomers and esters, when the existence of these salts, isomers,
- 12 esters, and salts of isomers and esters is possible within the
- 13 specific chemical designation:
- 14 a. Boldenone,
- 15 b. Chlorotestosterone,
- 16 c. Clostebol,
- 17 d. Dehydrochlormethyltestosterone,
- 18 e. Dihydrotestosterone,
- 19 f. Drostanolone,
- 20 g. Ethylestrenol,
- 21 h. Fluoxymesterone,
- 22 i. Formebolone,
- 23 j. Mesterolone,

- 1 k. Methandienone,
2 l. Methandranone,
3 m. Methandriol,
4 n. Methandrostenolone,
5 o. Methenolone,
6 p. Methyltestosterone, except as provided in subsection E
7 of this section,
8 q. Mibolerone,
9 r. Nandrolone,
10 s. Norethandrolone,
11 t. Oxandrolone,
12 u. Oxymesterone,
13 v. Oxymetholone,
14 w. Stanolone,
15 x. Stanozolol,
16 y. Testolactone,
17 z. Testosterone, except as provided in subsection E of
18 this section, and
19 aa. Trenbolone;
20 20. Tetrahydrocannabinols; ~~or~~
21 21. Any drug product containing gamma-hydroxybutyric acid,
22 including its salts, isomers, and salts of isomers, for which an
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1 application has been approved under Section 505 of the Federal Food,
2 Drug, and Cosmetic Act; or

3 22. Any compound, mixture, or preparation containing any
4 detectable quantity of pseudoephedrine, its salts or optical
5 isomers, or salts of optical isomers.

6 Livestock implants as regulated by the Federal Food and Drug
7 Administration shall be exempt.

8 B. Nalorphine.

9 C. Unless listed in another schedule, any material, compound,
10 mixture, or preparation containing limited quantities of any of the
11 following narcotic drugs, or any salts thereof:

12 1. Not more than one and eight-tenths (1.8) grams of codeine or
13 any of its salts, per one hundred (100) milliliters or not more than
14 ninety (90) milligrams per dosage unit, with an equal or greater
15 quantity of an isoquinoline alkaloid of opium;

16 2. Not more than one and eight-tenths (1.8) grams of codeine or
17 any of its salts, per one hundred (100) milliliters or not more than
18 ninety (90) milligrams per dosage unit, with one or more active,
19 nonnarcotic ingredients in recognized therapeutic amounts;

20 3. Not more than three hundred (300) milligrams of
21 dihydrocodeinone or any of its salts, per one hundred (100)
22 milliliters or not more than fifteen (15) milligrams per dosage
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1 unit, with a fourfold or greater quantity of an isoquinoline
2 alkaloid of opium;

3 4. Not more than three hundred (300) milligrams of
4 dihydrocodeinone or any of its salts, per one hundred (100)
5 milliliters or not more than fifteen (15) milligrams per dosage
6 unit, with one or more active, nonnarcotic ingredients in recognized
7 therapeutic amounts;

8 5. Not more than one and eight-tenths (1.8) grams of
9 dihydrocodeine or any of its salts, per one hundred (100)
10 milliliters or not more than ninety (90) milligrams per dosage unit,
11 with one or more active, nonnarcotic ingredients in recognized
12 therapeutic amounts;

13 6. Not more than three hundred (300) milligrams of
14 ethylmorphine or any of its salts, per one hundred (100) milliliters
15 or not more than fifteen (15) milligrams per dosage unit, with one
16 or more ingredients in recognized therapeutic amounts;

17 7. Not more than five hundred (500) milligrams of opium per one
18 hundred (100) milliliters or per one hundred (100) grams, or not
19 more than twenty-five (25) milligrams per dosage unit, with one or
20 more active, nonnarcotic ingredients in recognized therapeutic
21 amounts; or

22 8. Not more than fifty (50) milligrams of morphine or any of
23 its salts, per one hundred (100) milliliters or per one hundred
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1 (100) grams with one or more active, nonnarcotic ingredients in
2 recognized therapeutic amounts.

3 D. The Board of Pharmacy may except by rule any compound,
4 mixture, or preparation containing any stimulant or depressant
5 substance listed in subsections A and B of this section from the
6 application of all or any part of the Uniform Controlled Dangerous
7 Substances Act if the compound, mixture, or preparation contains one
8 or more active medicinal ingredients not having a stimulant or
9 depressant effect on the central nervous system, and if the
10 admixtures are included therein in combinations, quantity,
11 proportion, or concentration that vitiate the potential for abuse of
12 the substances which have a stimulant or depressant effect on the
13 central nervous system.

14 E. The following hormonal substances or steroids are exempt
15 from classification as Schedule III controlled dangerous substances:

16 1. Estratest, containing 1.25 mg esterified estrogens and 2.5
17 mg methyltestosterone;

18 2. Estratest HS, containing 0.625 mg esterified estrogens and
19 1.25 mg methyltestosterone;

20 3. Premarin with Methyltestosterone, containing 1.25 mg
21 conjugated estrogens and 10.0 mg methyltestosterone;

22 4. Premarin with Methyltestosterone, containing 0.625 mg
23 conjugated estrogens and 5.0 mg methyltestosterone;

1 5. Testosterone Cypionate - Estrodiol Cypionate injection,
2 containing 50 mg/ml Testosterone Cypionate; and

3 6. Testosterone Enanthate - Estradiol Valerate injection,
4 containing 90 mg/ml Testosterone Enanthate and 4 mg/ml Estradiol
5 Valerate.

6 SECTION 2. AMENDATORY 63 O.S. 2001, Section 2-212, as
7 last amended by Section 4, Chapter 458, O.S.L. 2010 (63 O.S. Supp.
8 2010, Section 2-212), is amended to read as follows:

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

11 ~~1.~~ Any compound, mixture, or preparation containing limited
12 quantities of any of the following narcotic drugs, which also
13 contains one or more nonnarcotic active medicinal ingredients in
14 sufficient proportion to confer upon the compound, mixture, or
15 preparation, valuable medicinal qualities other than those possessed
16 by the narcotic drug alone:

17 a. ~~not~~

18 1. Not more than two hundred (200) milligrams of codeine, or
19 any of its salts, per one hundred (100) milliliters or per one
20 hundred (100) grams~~;~~i

21 b. ~~not~~

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1 2. Not more than one hundred (100) milligrams of
2 dihydrocodeine, or any of its salts, per one hundred (100)
3 milliliters or per one hundred (100) grams_{7i};

4 e. not

5 3. Not more than one hundred (100) milligrams of ethylmorphine,
6 or any of its salts, per one hundred (100) milliliters or per one
7 hundred (100) grams_{7i};

8 d. not

9 4. Not more than two and five-tenths (2.5) milligrams of
10 diphenoxylate and not less than twenty-five (25) micrograms of
11 atropine sulfate per dosage unit_{7i} or

12 e. not

13 5. Not more than one hundred (100) milligrams of opium per one
14 hundred (100) milliliters or per one hundred (100) grams.

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

20 a. ~~it shall be dispensed, sold, or distributed only by,~~
21 ~~or under the supervision of, a licensed pharmacist or~~
22 ~~a registered pharmacy technician, and~~

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

18 ~~No person shall purchase, receive, or otherwise acquire more~~
19 ~~than nine (9) grams of any product, mixture, or preparation within~~
20 ~~any thirty day period. Provided, the requirements of this~~
21 ~~subsection shall not apply to any quantity of such product, mixture~~
22 ~~or preparation dispensed pursuant to a valid prescription.~~

1 B. ~~The Schedule, as specified in paragraph 2 of subsection A,~~
2 This section shall not apply to any compounds, mixtures, or
3 preparations which are in liquid, liquid capsule, or gel capsule
4 form if pseudoephedrine is not the only active ingredient.

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

14 D. As used in this section:

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

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

1 SECTION 3. AMENDATORY 63 O.S. 2001, Section 2-309C, as
2 last amended by Section 5, Chapter 458, O.S.L. 2010 (63 O.S. Supp.
3 2010, Section 2-309C), is amended to read as follows:

4 Section 2-309C. A. A dispenser of a Schedule II, III, IV or V
5 controlled dangerous substance including any compound mixture or
6 preparation containing any detectable quantity of pseudoephedrine,
7 its salts or optical isomers, or salts of optical isomers when
8 dispensed pursuant to a valid prescription shall transmit to a
9 central repository designated by the Oklahoma State Bureau of
10 Narcotics and Dangerous Drugs Control using the American Society for
11 Automation in Pharmacy's (ASAP) Telecommunications Format for
12 Controlled Substances version designated in rules by the Oklahoma
13 State Bureau of Narcotics and Dangerous Drugs Control, the following
14 information for each dispensation:

- 15 1. Recipient's name;
- 16 2. Recipient's address;
- 17 3. Recipient's date of birth;
- 18 4. Recipient's identification number;
- 19 5. National Drug Code number of the substance dispensed;
- 20 6. Date of the dispensation;
- 21 7. Quantity of the substance dispensed;
- 22 8. Prescriber's United States Drug Enforcement Agency
23 registration number;

1 9. Dispenser's registration number; and

2 10. Other information as required by administrative rule.

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

5 1. In a format or other media designated acceptable by the
6 Oklahoma State Bureau of Narcotics and Dangerous Drugs Control; and

7 2. Within twenty-four (24) hours of the time that the substance
8 is dispensed. Beginning January 1, 2012, all information shall be
9 submitted on a real-time log.

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

18 D. The provisions of subsection B of this section shall not
19 apply to a nonresident drug outlet registered pursuant to the
20 Oklahoma Pharmacy Act or to a resident drug outlet as defined in
21 Section 353.1 of Title 59 of the Oklahoma Statutes if the
22 nonresident or resident drug outlet mails or delivers a controlled
23 substance to a patient or client. Nonresident and resident drug

1 outlets shall transmit the information required in this section
2 within seven (7) days of the date that the controlled substance is
3 dispensed.

4 E. Willful failure to transmit accurate information as required
5 by this section shall be a misdemeanor punishable, upon conviction,
6 by not more than one (1) year in the county jail, or by a fine of
7 not more than One Thousand Dollars (\$1,000.00), or by both such
8 imprisonment and fine, or administrative action may be taken
9 pursuant to Section 2-304 of this title.

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

14 ~~G. The Oklahoma State Bureau of Narcotics and Dangerous Drugs~~
15 ~~Control is authorized, by any funds available to it, to implement a~~
16 ~~real time electronic logbook to monitor the sale of nonprescription~~
17 ~~Schedule V products containing any detectable quantity of~~
18 ~~pseudoephedrine, its salts or optical isomers, or salts of optical~~
19 ~~isomers. Dispensers of such pseudoephedrine products shall report~~
20 ~~all such sales electronically pursuant to rules promulgated by the~~
21 ~~Oklahoma State Bureau of Narcotics and Dangerous Drugs Control.~~

22 ~~H. The Oklahoma State Bureau of Narcotics and Dangerous Drugs~~
23 ~~Control shall have the authority to adopt rules for the reporting of~~

1 ~~sales of Schedule V product containing any detectable quantity of~~
2 ~~pseudoephedrine, its salts or optical isomers, or salts of optical~~
3 ~~isomers.~~

4 SECTION 4. AMENDATORY 63 O.S. 2001, Section 2-309D, as
5 last amended by Section 3, Chapter 160, O.S.L. 2010 (63 O.S. Supp.
6 2010, Section 2-309D), is amended to read as follows:

7 Section 2-309D. A. The information collected at the central
8 repository pursuant to the Anti-Drug Diversion Act shall be
9 confidential and shall not be open to the public. Access to the
10 information shall be limited to:

11 1. Peace officers certified pursuant to Section 3311 of Title
12 70 of the Oklahoma Statutes who are employed as investigative agents
13 of the Oklahoma State Bureau of Narcotics and Dangerous Drugs
14 Control;

15 2. The United States Drug Enforcement Administration Diversion
16 Group Supervisor;

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

- 19 a. Board of Podiatric Medical Examiners,
- 20 b. Board of Dentistry,
- 21 c. State Board of Pharmacy,
- 22 d. State Board of Medical Licensure and Supervision,
- 23 e. State Board of Osteopathic Examiners,

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

1 f. State Board of Veterinary Medical Examiners, and

2 g. Oklahoma Health Care Authority;

3 provided, however, that the executive director or chief investigator
4 of each of these boards shall be limited to access to information
5 relevant to licensees of the employing board of such executive
6 director or chief investigator; and

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

10 B. This section shall not prevent the disclosure, at the
11 discretion of the Director of the Oklahoma Bureau of Narcotics and
12 Dangerous Drugs Control, of investigative information to peace
13 officers and investigative agents of federal, state, county or
14 municipal law enforcement agencies, district attorneys and the
15 Attorney General in furtherance of criminal investigations or
16 prosecutions within their respective jurisdictions, and to
17 registrants in furtherance of efforts to guard against the diversion
18 of controlled dangerous substances.

19 C. Any unauthorized disclosure of any information collected at
20 the central repository provided by the Anti-Drug Diversion Act shall
21 be a misdemeanor. Violation of the provisions of this section shall
22 be deemed willful neglect of duty and shall be grounds for removal
23 from office.

1 D. Notwithstanding the provisions of subsection B, registrants
2 shall have no requirement or obligation to access or check the
3 information in the central repository prior to dispensing or
4 administering medications or as part of their professional
5 practices. Registrants shall not be liable to any person for any
6 claim of damages as a result of accessing or failing to access the
7 information in the central repository and no lawsuit may be
8 predicated thereon. ~~Nothing herein shall be construed to relieve a~~
9 ~~registrant from any duty to monitor and report the sales of certain~~
10 ~~products pursuant to subsection E of Section 2-309C of this title.~~

11 E. Information regarding nonfatal overdoses, other than
12 statistical information as required by Section 2-106 of this title,
13 shall be completely confidential. Access to this information shall
14 be strictly limited to the Director of the Oklahoma State Bureau of
15 Narcotics and Dangerous Drugs Control or designee, the Chief Medical
16 Examiner, and the registrant that enters the information.
17 Registrants shall not be liable to any person for a claim of damages
18 for information reported pursuant to the provisions of Section 2-105
19 of this title.

20 SECTION 5. This act shall become effective November 1, 2011.

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22 COMMITTEE REPORT BY: COMMITTEE ON PUBLIC SAFETY, dated 03-03-2011 -
23 DO PASS, As Amended and Coauthored.