HOUSE OF REPRESENTATIVES - FLOOR VERSION

STATE OF OKLAHOMA

2nd Session of the 53rd Legislature (2012)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 2808 By: Roberts (Sean) of the House

and

David of the Senate

COMMITTEE SUBSTITUTE

An Act relating to public health and safety; amending 63 O.S. 2011, Section 2-210, which relates to Schedule IV controlled substances; prohibiting the sale of certain products except by certain individuals; requiring determination be made prior to dispensing certain products; providing basis of determination; permitting State Board of Pharmacy to adopt certain rules, review determinations, and take disciplinary action; excluding civil liability from certain determination; prohibiting certain individuals from selling certain products to certain underage individuals; requiring proof of age and identity prior to sale of certain products; defining term; permitting Board to adopt rules which add to list of certain drugs; and providing an effective date.

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

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

SECTION 1. AMENDATORY 63 O.S. 2011, Section 2-210, is amended to read as follows:

Section 2-210. A. Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant or depressant effect on the central nervous system:

1. Chloral betaine;

2. Chloral hydrate;

3. Ethchlorvynol;

4. Ethinamate;

5. Meprobamate;

6. Paraldehyde;

7. Petrichloral;

8. Diethylpropion;

9. Phentermine;

10. Pemoline;

11. Chlordiazepoxide;

12. Chlordiazepoxide and its salts, but not including chlordiazepoxide hydrochloride and clidinium bromide or chlordiazepoxide and water-soluble esterified estrogens;

13. Diazepam;

14. Oxazepam;

15. Clorazepate;

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16. Flurazepam and its salts;

17. Clonazepam;

18. Barbital;

19. Mebutamate;

20. Methohexital;

21. Methylphenobarbital;

22. Phenobarbital;

23. Fenfluramine;

24. Pentazocine;

25. Propoxyphene;

26. Butorphanol;

27. Alprazolam;

28. Halazepam;

29. Lorazepam;

30. Prazepam;

31. Temazepam;

32. Triazolam;

33. Carisoprodol;

34. Ephedrine, its salts, optical isomers, and salts of optical isomers as the only active ingredient, or in combination with other active ingredients;

35. Dichloralphenazone;

36. Estazolam;

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37. Eszopiclone;

38. Midazolam;

39. Modafinil;

40. Zaleplon; or

41. Zolpidem.

B. 1. The following nonnarcotic substances, which may, under the Federal Food, Drug, and Cosmetic Act (21 U.S.C., Section 301), be lawfully sold over the counter without a prescription, are excluded from all schedules of controlled substances under this title:

a. Breathe-Aid,

b. BronCare,

c. Bronchial Congestion,

d. Bronkaid Tablets,

e. Bronkaid Dual Action Caplets,

f. Bronkotabs,

g. Bronkolixir,

h. NeoRespin,

i. Pazo Hemorrhoid Ointment and Suppositories,

j. Primatene Tablets,

k. Primatene "Dual Action" Formula,

l. Quelidrine,

m. Resp, and

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n. Vatronal Nose Drops.

2. At the request of any person, the Director may exempt any other drug product containing ephedrine from being included as a Schedule IV controlled substance if such product:

a. is labeled and marketed in a manner consistent with the pertinent OTC tentative final or final monograph issued by the FDA, and

b. is manufactured and distributed for legitimate medicinal use and in a manner that reduces or eliminates the likelihood of abuse.

3. In making a determination regarding a drug product, the Director, after notice and hearing, shall consider the following:

a. the history and current pattern of abuse,

b. the name and labeling of the product,

c. the intended manner of distribution, advertising and promotion of the product, and

d. other factors as may be relevant to and consistent with the public health and safety.

4. The hearing shall be held in accordance with the Administrative Procedures Act.

5. A list of current drug products meeting exemption requirements under this subsection may be obtained from the Bureau upon written request.

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C. The State Board of Pharmacy may except by rule any compound, mixture, or preparation containing any depressant substance listed in subsection A of this section from the application of all or any part of the Uniform Controlled Dangerous Substances Act, Section 2-101 et seq. of this title, if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a depressant effect on the central nervous system.

D. 1. It shall be unlawful for any person to knowingly dispense, sell, transfer, or otherwise furnish in a single transaction a product containing ephedrine, pseudoephedrine, or phenylpropanolamine except in a licensed pharmacy by a licensed pharmacist or a registered pharmacy technician.

2. Except under a valid prescription, before dispensing a product containing ephedrine, pseudoephedrine, or phenylpropanolamine, a pharmacist shall make a professional determination, based on a pharmacist-patient relationship, as to whether or not there is a legitimate medical and pharmaceutical need for the drug.

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3. The determination under paragraph 2 of this subsection may be based on factors including without limitation:

a. prior medication-filling history,

b. patient screening, and

c. other tools that provide professional assurance to the pharmacist that a legitimate medical and pharmaceutical need exists.

4. The State Board of Pharmacy may:

a. adopt rules regarding determinations made under paragraphs 2 and 3 of this subsection,

b. review determinations made under paragraphs 2 and 3 of this subsection, and

c. take appropriate disciplinary action as required.

5. A pharmacy or pharmacist is not civilly liable for a determination made for any refusal to dispense, sell, transfer, or otherwise furnish ephedrine, pseudoephedrine, or phenylpropanolamine based on a determination of need, age or identity.

6. Unless pursuant to a valid prescription, it is unlawful for a licensed pharmacist or a registered pharmacy technician to knowingly dispense, sell, transfer, or otherwise furnish in a single transaction any product containing ephedrine, pseudoephedrine, or phenylpropanolamine to any person who fails to present proof of age and identity and to any individual under eighteen (18) years of age.

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The person making the sale shall require proof of age and identity from the purchaser prior to completing the sale. For purposes of this paragraph, "proof of age and identity" means any official document which establishes proof of age and identity issued by a state agency or an identification card issued by the United States Department of Defense to active duty military personnel that contains a description of the person or a photograph of the person, or both, and gives the person's date of birth, and a functioning magnetic stripe or bar code.

7. The State Board of Pharmacy may adopt rules adding to a list additional nonprescription drugs that are subject to the same restrictions as are imposed for ephedrine, pseudoephedrine, or phenylpropanolamine.

SECTION 2. This act shall become effective November 1, 2012.

COMMITTEE REPORT BY: COMMITTEE ON PUBLIC SAFETY, dated 03/01/2012 - DO PASS, As Amended and Coauthored.

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