HOUSE OF REPRESENTATIVES - FLOOR VERSION

STATE OF OKLAHOMA

2nd Session of the 53rd Legislature (2012)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 2941

By: Derby and Ritze of the House

and

Brinkley of the Senate

COMMITTEE SUBSTITUTE

An Act relating to public health and safety; requiring pharmacies to maintain electronic records of nonprescription pseudoephedrine or ephedrine sales; providing list of information to be collected; providing alternate means for recording certain information; directing pharmacies to have approved equipment in place by a certain date; providing description of electronic methamphetamine precursor tracking functions; providing for the selection of a vendor by certain date; directing pharmacies to electronically submit information prior to completing the sale of certain products; providing an exception; making pharmacies exempt from liability under certain circumstances; providing for the confidentiality of information collected; authorizing access of data to certain persons; authorizing use of alternate logging systems under certain circumstances; authorizing exemptions for certain pharmacies; providing requirements and guidelines for exporting data; providing procedures for stop-sale alerts; making certain actions unlawful; providing penalty; amending 63 O.S. 2011, Section 2-212, which relates to Schedule V substances; modifying pseudoephedrine purchasing restrictions; prohibiting sales of products under certain circumstances; prohibiting

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mandatory protocols or procedures on dispensing decisions made by pharmacists; deleting liquid capsule exception; deleting certain definitions; amending 63 O.S. 2011, Section 2-309C, which relates to the Anti-Drug Diversion Act; deleting requirement to transmit data for certain products to the central repository; deleting authority of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control to implement certain monitoring program; amending 63 O.S. 2011, Section 2-401, which relates to penalties for prohibited acts; providing penalty for certain unlawful act; amending 63 O.S. 2011, Section 2-701, which relates to the methamphetamine offender registry; deleting certain exception; modifying references to certain monitoring programs; requiring stop-sale alerts under certain circumstances; modifying time limitation for submitting judgment and sentences; directing the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control to transmit registry information to the electronic methamphetamine precursor tracking service; requiring transmission of certain data; providing for stop-sale alerts; directing Bureau to notify tracking service upon certain occurrences; providing for the removal of names from tracking service; providing for codification; 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 to be codified in the Oklahoma Statutes as Section 2-341 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Beginning January 1, 2013, any pharmacy that dispenses, sells or distributes any compound mixture or preparation containing any detectable quantity of base pseudoephedrine or ephedrine, its salts or optical isomers, or salts of optical isomers shall maintain

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an electronic record of the sale. The electronic record of the sale shall include the following information:

1. Name and address of the purchaser;

2. Date of birth of the purchaser;

3. Type of identification and number;

4. Date and time of the purchase;

5. Name and quantity of base pseudoephedrine or ephedrine purchased in grams, but not the overall weight of the products; and

6. Name, initials and registration number of the licensed pharmacist or registered pharmacy technician.

If the electronic tracking service is not able to record the identification type and identification number of the purchaser, the licensed pharmacist or a registered pharmacy technician shall write the identification type and number on the order. The electronic record shall also be maintained in a manner that allows for the determination of the equivalent number of packages purchased and total quantity of base ephedrine or pseudoephedrine purchased.

B. By January 1, 2013, each pharmacy in this state shall have in place and operational all equipment necessary to access and use a real-time electronic methamphetamine precursor tracking service which is approved by the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control. The electronic methamphetamine precursor tracking service shall be available free of charge to all law

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enforcement agencies within the state for purposes of viewing and searching the database. Pharmacies shall be permitted to access only the information that is submitted by said pharmacy and such access shall be available free of charge. The electronic methamphetamine precursor tracking service shall be self-sustaining and shall not require the use of state or federal taxpayer dollars to operate. The tracking service shall operate and communicate in real-time throughout the state and across state lines with similar multistate systems. The tracking service shall be capable of tracking all required information and generating a stop-sale alert to notify a pharmacy that an attempted purchase by a person of pseudoephedrine or ephedrine exceeds the quantity limits set forth in Section 2-212 of Title 63 of the Oklahoma Statutes. The tracking service shall have the capability of stopping an illegal purchase in real-time and shall contain an override function that allows a pharmacy to complete a sale in violation of this section if the circumstances require that such sale be completed. The tracking service shall be in real time and track all override sales made by the pharmacy. The Bureau shall select a vendor that meets the requirements specified in this section by no later than October 1, 2012.

C. Beginning January 1, 2013, before completing the sale of an over-the-counter product containing pseudoephedrine or ephedrine, a

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pharmacy shall electronically submit the required information to the electronic methamphetamine precursor tracking service. The pharmacy shall not complete the sale of the product if the electronic methamphetamine precursor tracking service generates a stop-sale alert.

D. Absent negligence, wantonness, recklessness, or deliberate misconduct, any pharmacy utilizing the electronic methamphetamine precursor tracking service in accordance with this section shall not be civilly liable as a result of any act or omission in carrying out the duties required by this section. Such pharmacies shall also be immune from liability to any third party unless the pharmacy has violated a provision of this section in relation to a claim brought for such violation. The provisions of this section shall not apply to a person who obtains the product or products pursuant to a valid prescription.

E. The information entered, stored and maintained by the electronic methamphetamine precursor tracking service shall be confidential and shall only be accessed by law enforcement officials, health care professionals and licensed pharmacists for the purpose of controlling the sale of methamphetamine precursors.

F. If a pharmacy selling an over-the-counter product containing pseudoephedrine or ephedrine experiences mechanical or electronic failure of the electronic tracking service and is unable to comply

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with the provisions of this section, the pharmacy shall maintain a written log until such time as the pharmacy is able to comply with the electronic tracking service requirements.

G. A pharmacy selling an over-the-counter product containing pseudoephedrine or ephedrine may seek an exemption from submitting transactions to the electronic tracking service in writing to the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control stating the reasons for such exemption. The Bureau may grant an exemption for good cause, but in no event shall such exemption exceed one hundred eighty (180) days. Any pharmacy that receives an exemption shall maintain a hard-copy logbook and shall require the purchaser to provide the information required pursuant to subsection A of this section before completion of any sale. The logbook shall be maintained as a record of each sale for inspection by any law enforcement official during normal business hours.

H. All data that is collected from the pharmacies of this state and stored in the electronic methamphetamine precursor tracking service shall be downloaded and exported by electronic means to the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control at least every twenty-four (24) hours. The export of data shall be in a version that is in compliance with the standards agreed to by both the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control and the provider of the electronic methamphetamine precursor

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tracking service. The export of data shall be executed by way of a memorandum of understanding and without charge to the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control. Any and all data exported to, obtained by, gathered by, transmitted to or stored by the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control or its designee shall be the property of the state. The Oklahoma State Bureau of Narcotics and Dangerous Drugs Control shall have the authority to control, administer, and disseminate, at the discretion of the Bureau, the transaction data for the purpose of enforcing federal and state laws. In addition to exporting data to the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, real-time access to information contained in the electronic methamphetamine precursor tracking service through an online portal shall be provided to all law enforcement agencies within the state free of charge.

I. The electronic methamphetamine precursor tracking service shall generate a stop-sale alert if completion of a sale would result in the seller or purchaser violating the quantity limits set forth in Section 2-212 of Title 63 of the Oklahoma Statutes. The electronic tracking service shall contain an override function that may be used by a dispenser of pseudoephedrine or ephedrine products who has a reasonable fear of imminent bodily harm if the sale is not

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completed. Each instance in which the override function is utilized shall be logged by the electronic tracking service.

J. A person who violates any of the provisions of this section shall, upon conviction, be guilty of a misdemeanor punishable by a fine of not more than One Thousand Dollars ($1,000.00). If the person convicted is a licensed pharmacist or registered pharmacy technician, the violation shall be reported to the State Board of Pharmacy for review and appropriate action.

SECTION 2. AMENDATORY 63 O.S. 2011, 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,

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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 base pseudoephedrine or ephedrine, 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

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identification, or other state-issued identification card and shall sign a written or electronic log, receipt, or other program or mechanism approved by the Oklahoma Bureau of Narcotics and Dangerous Drugs Control, showing:

(1) the date and time of the transaction,

(2) name, address and date of birth 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 base pseudoephedrine or ephedrine purchased.

No person shall purchase, receive, or otherwise acquire more than ~~nine (9)~~ three and six-tenths (3.6) grams of any product, mixture, or preparation per day or more than seven and two-tenths (7.2) grams of any product, mixture, or preparation within any thirty-day period or sixty (60) grams of any product, mixture, or preparation within a twelve-month period. Once a person has purchased, received or otherwise acquired the daily limit of three and six-tenths (3.6) grams of any product, mixture or preparation,

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the person shall be prohibited from purchasing, receiving or otherwise acquiring any additional product, mixture or preparation containing any detectable quantity of base pseudoephedrine or ephedrine for a period of not less than seventy-two (72) hours following the last permitted purchase. ~~Provided, the~~ The requirements of this ~~subsection~~ paragraph shall not apply to any quantity of such product, mixture or preparation dispensed pursuant to a valid prescription. There shall be no protocol or procedure mandated by any individual or corporate entity that interferes with the professional duty of a pharmacist to counsel and evaluate the appropriate pharmaceutical needs of a patient and the exercise of the professional judgment of a pharmacist as to whether it is appropriate to dispense medication as set forth in this paragraph or otherwise.

3. Any compound, mixture, or preparation containing any detectable quantity of pregabalin.

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

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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 3. AMENDATORY 63 O.S. 2011, 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 ~~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

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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

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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.

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

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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.

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.

~~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.~~

~~H. The Oklahoma State Bureau of Narcotics and Dangerous Drugs Control 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 4. AMENDATORY 63 O.S. 2011, Section 2-401, is amended to read as follows:

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Section 2-401. A. Except as authorized by the Uniform Controlled Dangerous Substances Act is shall be unlawful for any person:

1. To distribute, dispense, transport with intent to distribute or dispense, possess with intent to manufacture, distribute, or dispense, a controlled dangerous substance or to solicit the use of or use the services of a person less than eighteen (18) years of age to cultivate, distribute or dispense a controlled dangerous substance;

2. To create, distribute, transport with intent to distribute or dispense, or possess with intent to distribute, a counterfeit controlled dangerous substance; or

3. To distribute any imitation controlled substance as defined by Section 2-101 of this title, except when authorized by the Food and Drug Administration of the United States Department of Health and Human Services.

B. Any person who violates the provisions of this section with respect to:

1. A substance classified in Schedule I or II which is a narcotic drug, lysergic acid diethylamide (LSD), gamma butyrolactone, gamma hydroxyvalerate, gamma valerolactone, 1,4 butanediol, or gamma-hydroxybutyric acid as defined in Sections 2-204 and 2-208 of this title, upon conviction, shall be guilty of a

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felony and shall be sentenced to a term of imprisonment for not less than five (5) years nor more than life and a fine of not more than One Hundred Thousand Dollars ($100,000.00), which shall be in addition to other punishment provided by law and shall not be imposed in lieu of other punishment. Any sentence to the custody of the Department of Corrections shall not be subject to statutory provisions for suspended sentences, deferred sentences, or probation except when the conviction is for a first offense;

2. Any other controlled dangerous substance classified in Schedule I, II, III, or IV, upon conviction, shall be guilty of a felony and shall be sentenced to a term of imprisonment for not less than two (2) years nor more than life and a fine of not more than Twenty Thousand Dollars ($20,000.00), which shall be in addition to other punishment provided by law and shall not be imposed in lieu of other punishment. Any sentence to the custody of the Department of Corrections shall not be subject to statutory provisions for suspended sentences, deferred sentences, or probation except when the conviction is for a first offense;

3. A substance classified in Schedule V, upon conviction, shall be guilty of a felony and shall be sentenced to a term of imprisonment for not more than five (5) years and a fine of not more than One Thousand Dollars ($1,000.00), which shall be in addition to

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other punishment provided by law and shall not be imposed in lieu of other punishment; or

4. An imitation controlled substance as defined by Section 2-101 of this title, upon conviction, shall be guilty of a misdemeanor and shall be sentenced to a term of imprisonment in the county jail for a period of not more than one (1) year and a fine of not more than One Thousand Dollars ($1,000.00). A person convicted of a second violation of the provisions of this paragraph shall be guilty of a felony and shall be sentenced to a term of imprisonment for not more than five (5) years and a fine of not more than Five Thousand Dollars ($5,000.00), which shall be in addition to other punishment provided by law and shall not be imposed in lieu of other punishment.

C. 1. Except when authorized by the Food and Drug Administration of the United States Department of Health and Human Services, it shall be unlawful for any person to manufacture, cultivate, distribute, or possess with intent to distribute a synthetic controlled substance.

2. Any person convicted of violating the provisions of this paragraph is guilty of a felony and shall be punished by imprisonment in the State Penitentiary for a term not to exceed life and a fine of not more than Twenty-five Thousand Dollars ($25,000.00), which shall be in addition to other punishment

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provided by law and shall not be imposed in lieu of other punishment.

3. A second or subsequent conviction for the violation of the provisions of this paragraph is a felony punishable as a habitual offender pursuant to Section 51.1 of Title 21 of the Oklahoma Statutes.

4. In addition the violator shall be fined an amount not more than One Hundred Thousand Dollars ($100,000.00), which shall be in addition to other punishment provided by law and shall not be imposed in lieu of other punishment.

D. 1. Any person convicted of a second or subsequent felony violation of the provisions of this section, except for paragraph 4 of subsection B of this section, shall be punished as a habitual offender pursuant to Section 51.1 of Title 21 of the Oklahoma Statutes.

2. In addition the violator shall be fined twice the fine otherwise authorized, which shall be in addition to other punishment provided by law and shall not be imposed in lieu of other punishment.

3. Convictions for second or subsequent violations of the provisions of this section shall not be subject to statutory provisions for suspended sentences, deferred sentences, or probation.

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E. Any person who is at least eighteen (18) years of age and who violates the provisions of this section by using or soliciting the use of services of a person less than eighteen (18) years of age to distribute, dispense, transport with intent to distribute or dispense or cultivate a controlled dangerous substance or by distributing a controlled dangerous substance to a person under eighteen (18) years of age is punishable by twice the fine and by twice the imprisonment otherwise authorized.

F. Any person who violates any provision of this section by transporting with intent to distribute or dispense, distributing or possessing with intent to distribute a controlled dangerous substance to a person, or violation of subsection G of this section, in or on, or within two thousand (2,000) feet of the real property comprising a public or private elementary or secondary school, public vocational school, public or private college or university, or other institution of higher education, recreation center or public park, including state parks and recreation areas, public housing project, or child care facility as defined by Section 402 of Title 10 of the Oklahoma Statutes shall be punished by:

1. For a first offense, a term of imprisonment, or by the imposition of a fine or by both, not exceeding twice that authorized by the appropriate provision of this section and shall serve a minimum of fifty percent (50%) of the sentence received prior to

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becoming eligible for state correctional institution earned credits toward the completion of said sentence; or

2. For a second or subsequent offense, a term of imprisonment as provided for a habitual offender pursuant to Section 51.1 of Title 21 of the Oklahoma Statutes. In addition the violator shall serve eighty-five percent (85%) of the sentence received prior to becoming eligible for state correctional institution earned credits toward the completion of said sentence or eligibility for parole.

G. 1. Except as authorized by the Uniform Controlled Dangerous Substances Act, it shall be unlawful for any person to manufacture or attempt to manufacture any controlled dangerous substance or possess any substance listed in Section 2-322 of this title or any substance containing any detectable amount of pseudoephedrine or its salts, optical isomers or salts of optical isomers, iodine or its salts, optical isomers or salts of optical isomers, hydriodic acid, sodium metal, lithium metal, anhydrous ammonia, phosphorus, or organic solvents with the intent to use that substance to manufacture a controlled dangerous substance.

2. Any person violating the provisions of this subsection with respect to the unlawful manufacturing or attempting to unlawfully manufacture any controlled dangerous substance, or possessing any substance listed in this subsection or Section 2-322 of this title, upon conviction, is guilty of a felony and shall be punished by

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imprisonment in the State Penitentiary for not less than seven (7) years nor more than life and by a fine of not less than Fifty Thousand Dollars ($50,000.00), which shall be in addition to other punishment provided by law and shall not be imposed in lieu of other punishment. The possession of any amount of anhydrous ammonia in an unauthorized container shall be prima facie evidence of intent to use such substance to manufacture a controlled dangerous substance.

3. Any person violating the provisions of this subsection with respect to the unlawful manufacturing or attempting to unlawfully manufacture any controlled dangerous substance in the following amounts:

a. one (1) kilogram or more of a mixture or substance containing a detectable amount of heroin,

b. five (5) kilograms or more of a mixture or substance containing a detectable amount of:

(1) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed,

(2) cocaine, its salts, optical and geometric isomers, and salts of isomers,

(3) ecgonine, its derivatives, their salts, isomers, and salts of isomers, or

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(4) any compound, mixture, or preparation which contains any quantity of any of the substances referred to in divisions (1) through (3) of this subparagraph,

c. fifty (50) grams or more of a mixture or substance described in division (2) of subparagraph b of this paragraph which contains cocaine base,

d. one hundred (100) grams or more of phencyclidine (PCP) or 1 kilogram or more of a mixture or substance containing a detectable amount of phencyclidine (PCP),

e. ten (10) grams or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD),

f. four hundred (400) grams or more of a mixture or substance containing a detectable amount of N-phenyl-N-[1-(2-pheylethy)-4-piperidinyl] propanamide or 100 grams or more of a mixture or substance containing a detectable amount of any analogue of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide,

g. one thousand (1,000) kilograms or more of a mixture or substance containing a detectable amount of marihuana or one thousand (1000) or more marihuana plants regardless of weight, or

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h. fifty (50) grams or more of methamphetamine, its salts, isomers, and salts of its isomers or 500 grams or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers,

upon conviction, is guilty of aggravated manufacturing a controlled dangerous substance punishable by imprisonment in the State Penitentiary for not less than twenty (20) years nor more than life and by a fine of not less than Fifty Thousand Dollars ($50,000.00), which shall be in addition to other punishment provided by law and shall not be imposed in lieu of other punishment. Any person convicted of a violation of the provisions of this paragraph shall be required to serve a minimum of eighty-five percent (85%) of the sentence received prior to becoming eligible for state correctional earned credits towards the completion of the sentence or eligible for parole.

4. Any sentence to the custody of the Department of Corrections for any violation of paragraph 3 of this subsection shall not be subject to statutory provisions for suspended sentences, deferred sentences, or probation. A person convicted of a second or subsequent violation of the provisions of paragraph 3 of this subsection shall be punished as a habitual offender pursuant to Section 51.1 of Title 21 of the Oklahoma Statutes and shall be

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required to serve a minimum of eighty-five percent (85%) of the sentence received prior to becoming eligible for state correctional earned credits or eligibility for parole.

5. Any person who has been convicted of manufacturing or attempting to manufacture methamphetamine pursuant to the provisions of this subsection and who, within sixty (60) days after such conviction, purchases or attempts to purchase, receive or otherwise acquire any product, mixture, or preparation containing any detectable quantity of base pseudoephedrine or ephedrine shall, upon conviction, be guilty of a felony punishable by imprisonment in the custody of the Department of Corrections for a term in the range of twice the minimum term provided for in paragraph 2 of this subsection.

H. Any person convicted of any offense described in the Uniform Controlled Dangerous Substances Act may, in addition to the fine imposed, be assessed an amount not to exceed ten percent (10%) of the fine imposed. Such assessment shall be paid into a revolving fund for enforcement of controlled dangerous substances created pursuant to Section 2-506 of this title.

I. Any person convicted of any offense described in this section shall, in addition to any fine imposed, pay a special assessment trauma-care fee of One Hundred Dollars ($100.00) to be

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deposited into the Trauma Care Assistance Revolving Fund created in Section 1-2522 of this title.

J. For purposes of this section, "public housing project" means any dwelling or accommodations operated as a state or federally subsidized multifamily housing project by any housing authority, nonprofit corporation or municipal developer or housing projects created pursuant to the Oklahoma Housing Authorities Act.

K. When a person is found guilty of a violation of the provisions of this section, the court shall order, in addition to any other penalty, the defendant to pay a one-hundred-dollar assessment to be deposited in the Drug Abuse Education and Treatment Revolving Fund created in Section 2-503.2 of this title, upon collection.

SECTION 5. AMENDATORY 63 O.S. 2011, Section 2-701, is amended to read as follows:

Section 2-701. 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,

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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 this title, or any crime including, but not limited to, crimes involving the possession, distribution, manufacturing or trafficking of methamphetamines or illegal amounts of or uses of pseudoephedrine in any federal court, Indian tribal court, or any court of another state if the person is a resident of the State of Oklahoma or seeks to remain in the State of Oklahoma in excess of ten (10) days.

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 this title, 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

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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~~ electronic methamphetamine precursor tracking service. ~~Every registrant selling, dispensing or otherwise delivering pseudoephedrine products~~ The electronic methamphetamine precursor tracking service shall ~~deny~~ generate a stop-sale alert on any sale of pseudoephedrine to any individual listed on the methamphetamine offender registry in real time.

D. The registry shall consist of the following information:

1. Name and address 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

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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)~~ ten (10) days of the date of final disposition of the case. Any person subject to the registry pursuant to subsection A of this section, having received a deferred sentence or conviction in a federal court, Indian tribal court, or any court of another state, shall be required to register and submit a methamphetamine offender registration form in a format prescribed by the Bureau within ten (10) days of entering the State of Oklahoma or if incarcerated in a federal institution within the boundaries of Oklahoma, within ten (10) days of release from said institution. Failure to submit the form required by this subsection shall constitute a misdemeanor.

F. Upon receipt of the information provided by the district court clerk, the Bureau shall transmit in an electronic format to the electronic methamphetamine precursor tracking service at least every seven (7) days the name of any person placed on the

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methamphetamine offender registry as provided in this section. The information transmitted to the electronic tracking service shall include the first, middle, and last name of the person, and address and the date of birth of the person. The electronic methamphetamine precursor tracking service shall be designed to generate a stop-sale alert for any person who is on the methamphetamine offender registry and whose name, address and date of birth have been transmitted by the Bureau to the electronic tracking service.

G. The Bureau shall remove from the methamphetamine offender 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 methamphetamine offender registry upon expiration of the deferred sentence. The Bureau shall also be required to notify the provider of the electronic methamphetamine precursor tracking service when a person is removed from the methamphetamine offender registry. Upon notification from the Bureau, the provider of the electronic tracking service shall

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remove the name of the person from the electronic methamphetamine precursor tracking service and the person shall thereafter be permitted to purchase pseudoephedrine-related products.

~~G.~~ H. 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.

I. On or prior to November 1, 2011, the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control shall maintain a

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methamphetamine offender registry website available for viewing by the public.

SECTION 6. This act shall become effective September 1, 2012.

COMMITTEE REPORT BY: COMMITTEE ON PUBLIC HEALTH, dated 02/22/2012 - DO PASS, As Amended and Coauthored.

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