

1 **SENATE FLOOR VERSION**

2 February 27, 2012

3 COMMITTEE SUBSTITUTE
4 FOR

5 SENATE BILL NO. 1634

By: Brinkley of the Senate

and

Derby of the House

6
7
8
9 [pseudoephedrine - electronic methamphetamine
10 precursor tracking service - codification - effective
11 date]

12
13 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

14 SECTION 1. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 2-341 of Title 63, unless there
16 is created a duplication in numbering, reads as follows:

17 A. Beginning January 1, 2013, any pharmacy that dispenses,
18 sells or distributes any compound mixture or preparation containing
19 any detectable quantity of base pseudoephedrine or ephedrine, its
20 salts or optical isomers, or salts of optical isomers shall maintain
21 an electronic record of the sale. The electronic record of the sale
22 shall include the following information:

- 23 1. Name and address of the purchaser;
24 2. Date of birth of the purchaser;

1 3. Type of identification and number;

2 4. Date and time of the purchase;

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

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

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

14 B. By January 1, 2013, each pharmacy in this state shall have
15 in place and operational all equipment necessary to access and use a
16 real-time electronic methamphetamine precursor tracking service
17 which is approved by the Oklahoma State Bureau of Narcotics and
18 Dangerous Drugs Control. The electronic methamphetamine precursor
19 tracking service shall be available free of charge to all law
20 enforcement agencies within the state for purposes of viewing and
21 searching the database. Pharmacies shall be permitted to access
22 only the information that is submitted by the pharmacy and such
23 access shall be available free of charge. The electronic
24 methamphetamine precursor tracking service shall be self-sustaining

1 and shall not require the use of state or federal taxpayer dollars
2 to operate. The tracking service shall operate and communicate in
3 real-time throughout the state and across state lines with similar
4 multistate systems. The tracking service shall be capable of
5 tracking all required information and generating a stop-sale alert
6 to notify a pharmacy that an attempted purchase by a person of
7 pseudoephedrine or ephedrine exceeds the quantity limits set forth
8 in Section 2-212 of Title 63 of the Oklahoma Statutes. The tracking
9 service shall have the capability of stopping an illegal purchase in
10 real-time and shall contain an override function that allows a
11 pharmacy to complete a sale in violation of this section if the
12 circumstances require that such sale be completed. The tracking
13 service shall track all override sales made by the pharmacy. The
14 Bureau shall select a vendor that meets the requirements specified
15 in this section by no later than October 1, 2012.

16 C. Beginning January 1, 2013, before completing the sale of an
17 over-the-counter product containing pseudoephedrine or ephedrine, a
18 pharmacy shall electronically submit the required information to the
19 electronic methamphetamine precursor tracking service. The pharmacy
20 shall not complete the sale of the product if the electronic
21 methamphetamine precursor tracking service generates a stop-sale
22 alert.

23 D. Absent negligence, wantonness, recklessness, or deliberate
24 misconduct, any pharmacy utilizing the electronic methamphetamine

1 precursor tracking service in accordance with this section shall not
2 be civilly liable as a result of any act or omission in carrying out
3 the duties required by this section. Such pharmacies shall also be
4 immune from liability to any third party unless the pharmacy has
5 violated a provision of this section in relation to a claim brought
6 for such violation. The provisions of this section shall not apply
7 to a person who obtains the product or products pursuant to a valid
8 prescription.

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

14 F. If a pharmacy selling an over-the-counter product containing
15 pseudoephedrine or ephedrine experiences mechanical or electronic
16 failure of the electronic tracking service and is unable to comply
17 with the provisions of this section, the pharmacy shall maintain a
18 written log until such time as the pharmacy is able to comply with
19 the electronic tracking service requirements.

20 G. A pharmacy selling an over-the-counter product containing
21 pseudoephedrine or ephedrine may seek an exemption from submitting
22 transactions to the electronic tracking service in writing to the
23 Oklahoma State Bureau of Narcotics and Dangerous Drugs Control
24 stating the reasons for such exemption. The Bureau may grant an

1 exemption for good cause, but in no event shall such exemption
2 exceed one hundred eighty (180) days. Any pharmacy that receives an
3 exemption shall maintain a hard-copy logbook and shall require the
4 purchaser to provide the information required pursuant to subsection
5 A of this section before completion of any sale. The logbook shall
6 be maintained as a record of each sale for inspection by any law
7 enforcement official during normal business hours.

8 H. All data that is collected from the pharmacies of this state
9 and stored in the electronic methamphetamine precursor tracking
10 service shall be downloaded and exported by electronic means to the
11 Oklahoma State Bureau of Narcotics and Dangerous Drugs Control at
12 least every twenty-four (24) hours. The export of data shall be in
13 a version that is in compliance with the standards agreed to by both
14 the Bureau and the provider of the electronic methamphetamine
15 precursor tracking service. The export of data shall be executed by
16 way of a memorandum of understanding and without charge to the
17 Bureau. Any and all data exported to, obtained by, gathered by,
18 transmitted to or stored by the Bureau or its designee shall be the
19 property of the state. The Bureau shall have the authority to
20 control, administer, and disseminate, at the discretion of the
21 Bureau, the transaction data for the purpose of enforcing federal
22 and state laws. In addition to exporting data to the Bureau, real-
23 time access to information contained in the electronic
24 methamphetamine precursor tracking service through an online portal

1 shall be provided to all law enforcement agencies within the state
2 free of charge.

3 I. The electronic methamphetamine precursor tracking service
4 shall generate a stop-sale alert if completion of a sale would
5 result in the seller or purchaser violating the quantity limits set
6 forth in Section 2-212 of Title 63 of the Oklahoma Statutes. The
7 electronic tracking service shall contain an override function that
8 may be used by a dispenser of pseudoephedrine or ephedrine products
9 who has a reasonable fear of imminent bodily harm if the sale is not
10 completed. Each instance in which the override function is utilized
11 shall be logged by the electronic tracking service.

12 J. A person who violates any of the provisions of this section
13 shall, upon conviction, be guilty of a misdemeanor punishable by a
14 fine of not more than Five Hundred Dollars (\$500.00). If the person
15 convicted is a licensed pharmacist or registered pharmacy
16 technician, the violation shall be reported to the State Board of
17 Pharmacy for review and appropriate action.

18 SECTION 2. AMENDATORY 63 O.S. 2011, Section 2-212, is
19 amended to read as follows:

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

22 1. Any compound, mixture, or preparation containing limited
23 quantities of any of the following narcotic drugs, which also
24 contains one or more nonnarcotic active medicinal ingredients in

1 sufficient proportion to confer upon the compound, mixture, or
2 preparation, valuable medicinal qualities other than those possessed
3 by the narcotic drug alone:

- 4 a. not more than two hundred (200) milligrams of codeine,
5 or any of its salts, per one hundred (100) milliliters
6 or per one hundred (100) grams,
- 7 b. not more than one hundred (100) milligrams of
8 dihydrocodeine, or any of its salts, per one hundred
9 (100) milliliters or per one hundred (100) grams,
- 10 c. not more than one hundred (100) milligrams of
11 ethylmorphine, or any of its salts, per one hundred
12 (100) milliliters or per one hundred (100) grams,
- 13 d. not more than two and five-tenths (2.5) milligrams of
14 diphenoxylate and not less than twenty-five (25)
15 micrograms of atropine sulfate per dosage unit, or
- 16 e. not more than one hundred (100) milligrams of opium
17 per one hundred (100) milliliters or per one hundred
18 (100) grams.

19 2. Any compound, mixture, or preparation containing any
20 detectable quantity of base pseudoephedrine or ephedrine, its salts
21 or optical isomers, or salts of optical isomers. If any compound,
22 mixture, or preparation as specified in this paragraph is dispensed,
23 sold, or distributed in a pharmacy:

1 a. it shall be dispensed, sold, or distributed only by,
2 or under the supervision of, a licensed pharmacist or
3 a registered pharmacy technician, and
4 b. any person purchasing, receiving, or otherwise
5 acquiring any compound, mixture, or preparation shall
6 produce a driver license, passport, military
7 identification, or other state-issued identification
8 card and shall sign a written or electronic log,
9 receipt, or other program or mechanism approved by the
10 Oklahoma Bureau of Narcotics and Dangerous Drugs
11 Control, showing:

- 12 (1) the date and time of the transaction,
13 (2) name, address and date of birth of the purchaser,
14 (3) driver license number, passport, military
15 identification, or state-issued identification
16 number and state of residence of the purchaser,
17 (4) name and initials of the pharmacist or pharmacy
18 technician conducting the transaction,
19 (5) the product being sold, and
20 (6) total quantity⁷ in grams ~~or milligrams~~, of base
21 pseudoephedrine or ephedrine purchased.

22 No person shall purchase, receive, or otherwise acquire more
23 than ~~nine (9)~~ three and six-tenths (3.6) grams of any product,
24 mixture, or preparation per day or more than seven and two-tenths

1 (7.2) grams of any product, mixture, or preparation within any
2 thirty-day period or sixty (60) grams of any product, mixture, or
3 preparation within a twelve-month period. Once a person has
4 purchased, received or otherwise acquired the daily limit of three
5 and six-tenths (3.6) grams of any product, mixture or preparation,
6 the person shall be prohibited from purchasing, receiving or
7 otherwise acquiring any additional product, mixture or preparation
8 containing any detectable quantity of base pseudoephedrine or
9 ephedrine for a period of not less than seventy-two (72) hours
10 following the last permitted purchase. Provided, the requirements
11 of this ~~subsection~~ paragraph shall not apply to any quantity of such
12 product, mixture or preparation dispensed pursuant to a valid
13 prescription. There shall be no protocol or procedure mandated by
14 any individual or corporate entity that interferes with the
15 professional duty of a pharmacist to counsel and evaluate the
16 appropriate pharmaceutical needs of a patient and the exercise of
17 the professional judgment of a pharmacist as to whether it is
18 appropriate to dispense medication as set forth in this paragraph or
19 otherwise.

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

22 B. ~~The Schedule, as specified in paragraph 2 of subsection A,~~
23 ~~shall not apply to any compounds, mixtures, or preparations which~~
24

1 ~~are in liquid, liquid capsule, or gel capsule form if~~
2 ~~pseudoephedrine is not the only active ingredient.~~

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

12 ~~D. As used in this section:~~

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

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

22 SECTION 3. AMENDATORY 63 O.S. 2011, Section 2-309C, is
23 amended to read as follows:

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

- 12 1. Recipient's name;
- 13 2. Recipient's address;
- 14 3. Recipient's date of birth;
- 15 4. Recipient's identification number;
- 16 5. National Drug Code number of the substance dispensed;
- 17 6. Date of the dispensation;
- 18 7. Quantity of the substance dispensed;
- 19 8. Prescriber's United States Drug Enforcement Agency
20 registration number;
- 21 9. Dispenser's registration number; and
- 22 10. Other information as required by administrative rule.

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

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

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

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

14 D. The provisions of subsection B of this section shall not
15 apply to a nonresident drug outlet registered pursuant to the
16 Oklahoma Pharmacy Act or to a resident drug outlet as defined in
17 Section 353.1 of Title 59 of the Oklahoma Statutes if the
18 nonresident or resident drug outlet mails or delivers a controlled
19 substance to a patient or client. Nonresident and resident drug
20 outlets shall transmit the information required in this section
21 within seven (7) days of the date that the controlled substance is
22 dispensed.

23 E. Willful failure to transmit accurate information as required
24 by this section shall be a misdemeanor punishable, upon conviction,

1 by not more than one (1) year in the county jail, or by a fine of
2 not more than One Thousand Dollars (\$1,000.00), or by both such
3 imprisonment and fine, or administrative action may be taken
4 pursuant to Section 2-304 of this title.

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

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

17 ~~H. The Oklahoma State Bureau of Narcotics and Dangerous Drugs~~
18 ~~Control shall have the authority to adopt rules for the reporting of~~
19 ~~sales of Schedule V product containing any detectable quantity of~~
20 ~~pseudoephedrine, its salts or optical isomers, or salts of optical~~
21 ~~isomers.~~

22 SECTION 4. AMENDATORY 63 O.S. 2011, Section 2-701, is
23 amended to read as follows:

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1 Section 2-701. A. There is hereby created within the Oklahoma
2 State Bureau of Narcotics and Dangerous Drugs Control a registry of
3 persons who, after November 1, 2010, have been convicted, whether
4 upon a verdict or plea of guilty or upon a verdict or plea of nolo
5 contendere, or received a suspended sentence or any deferred or
6 probationary term, or are currently serving a sentence or any form
7 of probation or parole for a crime or attempt to commit a crime
8 including, but not limited to, unlawful possession, conspiring,
9 endeavoring, manufacturing, distribution or trafficking of a
10 precursor or methamphetamines under the provisions of Section 2-322,
11 2-332, 2-401, 2-402, 2-408 or 2-415 of this title, or any crime
12 including, but not limited to, crimes involving the possession,
13 distribution, manufacturing or trafficking of methamphetamines or
14 illegal amounts of or uses of pseudoephedrine in any federal court,
15 Indian tribal court, or any court of another state if the person is
16 a resident of the State of Oklahoma or seeks to remain in the State
17 of Oklahoma in excess of ten (10) days.

18 B. It shall be unlawful for any person subject to the registry
19 created in subsection A of this section to purchase, possess or have
20 control of any Schedule V compound, mixture, or preparation
21 containing any detectable quantity of pseudoephedrine, its salts or
22 optical isomers, or salts of optical isomers. ~~As provided in~~
23 ~~Section 2-212 of this title, the provisions of this subsection shall~~
24 ~~not apply to any compounds, mixtures, or preparations which are in~~

1 ~~liquid, liquid capsule, or gel capsule form if pseudoephedrine is~~
2 ~~not the only active ingredient.~~ A prescription for pseudoephedrine
3 shall not provide an exemption for any person to this law. Any
4 person convicted of violating the provisions of this subsection
5 shall be guilty of a felony, punishable by imprisonment in the
6 custody of the Department of Corrections for not less than two (2)
7 years and not more than ten (10) years, or by a fine of not more
8 than Five Thousand Dollars (\$5,000.00), or by both such fine and
9 imprisonment.

10 C. The registry created in subsection A of this section shall
11 be maintained by the Bureau. The registry shall be made available
12 for registrants who sell or dispense pseudoephedrine-related
13 products and to law enforcement agencies for law enforcement
14 purposes through the ~~Central Repository and the prescription~~
15 ~~monitoring program.~~ Every registrant selling, dispensing or
16 ~~otherwise delivering pseudoephedrine products~~ electronic
17 methamphetamine precursor tracking service. The electronic
18 methamphetamine precursor tracking service shall ~~deny~~ generate a
19 stop-sale alert on any sale of pseudoephedrine to any individual
20 listed on the methamphetamine offender registry in real time.

21 D. The registry shall consist of the following information:

- 22 1. Name and address of the person;
- 23 2. Date of birth of the person;

24

1 3. The offense or offenses which made the person eligible for
2 inclusion on the registry;

3 4. The date of conviction or the date that a plea of guilty or
4 nolo contendere was accepted by the court for any violation of an
5 offense provided for in subsection A of this section;

6 5. The county where the offense or offenses occurred; and

7 6. Such other identifying data as the Bureau determines is
8 necessary to properly identify the person.

9 E. Beginning November 1, 2010, all district court clerks shall
10 forward a copy of the judgment and sentence or other applicable
11 information relating to the disposition of the criminal case and
12 date of birth of all persons who are subject to the provisions of
13 this act for a violation of the offenses described in subsection A
14 of this section to the Bureau. The information shall be sent in an
15 electronic format in a manner prescribed by the Bureau within ~~thirty~~
16 ~~(30)~~ ten (10) days of the date of final disposition of the case.

17 Any person subject to the registry pursuant to subsection A of this
18 section, having received a deferred sentence or conviction in a
19 federal court, Indian tribal court, or any court of another state,
20 shall be required to register and submit a methamphetamine offender
21 registration form in a format prescribed by the Bureau within ten
22 (10) days of entering the State of Oklahoma or if incarcerated in a
23 federal institution within the boundaries of Oklahoma, within ten

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1 (10) days of release from said institution. Failure to submit the
2 form required by this subsection shall constitute a misdemeanor.

3 F. Upon receipt of the information provided by the district
4 court clerk, the Bureau shall transmit, in an electronic format to
5 the electronic methamphetamine precursor tracking service at least
6 every seven (7) days, the name of any person placed on the
7 methamphetamine offender registry as provided in this section. The
8 information transmitted to the electronic tracking service shall
9 include the first, middle, and last name of the person, and the
10 address and date of birth of the person. The electronic
11 methamphetamine precursor tracking service shall be designed to
12 generate a stop-sale alert for any person who is on the
13 methamphetamine offender registry and whose name, address and date
14 of birth have been transmitted by the Bureau to the electronic
15 tracking service.

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

1 Bureau may remove the person from the methamphetamine offender
2 registry upon expiration of the deferred sentence. The Bureau shall
3 also be required to notify the provider of the electronic
4 methamphetamine precursor tracking service when a person is removed
5 from the methamphetamine offender registry. Upon notification from
6 the Bureau, the provider of the electronic tracking service shall
7 remove the name of the person from the electronic methamphetamine
8 precursor tracking service and the person shall thereafter be
9 permitted to purchase pseudoephedrine-related products.

10 G. H. It shall be a violation for any person to assist another
11 person who is subject to the registry in the purchase of any
12 pseudoephedrine products. Any person convicted of violating the
13 provisions of this subsection shall, for a first offense, be guilty
14 of a misdemeanor, punishable by incarceration in the county jail for
15 not more than one (1) year, or by a fine of not more than One
16 Thousand Dollars (\$1,000.00), or by both such fine and imprisonment.
17 Any second or subsequent conviction for a violation of this
18 subsection shall be a felony, punishable by incarceration in the
19 custody of the Department of Corrections for not more than two (2)
20 years, or by a fine of not less than Two Thousand Five Hundred
21 Dollars (\$2,500.00) or by both such fine and imprisonment. For the
22 purposes of this subsection, knowledge that a person was subject to
23 the methamphetamine offender registry may be proven through court
24 testimony or any other public notice or publicly available record

1 including, but not limited to, court records maintained by the
2 Oklahoma Supreme Court Network and the Oklahoma Court Information
3 System.

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

8 SECTION 5. This act shall become effective September 1, 2012.

9 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS, dated 2-22-12 - DO
10 PASS, As Amended and Coauthored.

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