

1 STATE OF OKLAHOMA

2 2nd Session of the 53rd Legislature (2012)

3 SENATE BILL 1276

By: David

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5  
6 AS INTRODUCED

7 An Act relating to pseudoephedrine; amending 63 O.S.  
8 2011, Sections 2-208 and 2-212, which relate to the  
Uniform Controlled Dangerous Substances Act; adding  
9 pseudoephedrine to Schedule III; providing for  
certain exception; defining terms; deleting  
10 pseudoephedrine from Schedule V; deleting procedures  
for sale of certain products; amending 63 O.S. 2011,  
11 Sections 2-309C and 2-309D, which relate to the Anti-  
Drug Diversion Act; deleting reporting and monitoring  
12 requirements for dispensers and registrants who  
dispense certain product; and providing an effective  
13 date.

14  
15 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

16 SECTION 1. AMENDATORY 63 O.S. 2011, Section 2-208, is  
17 amended to read as follows:

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

20 A. Unless listed in another schedule, any material, compound,  
21 mixture, or preparation, which contains any quantity of the  
22 following substances or any other substance having a potential for  
23 abuse associated with a stimulant or depressant effect on the  
24 central nervous system:

- 1 1. Any substance which contains any quantity of a derivative of
- 2 barbituric acid, or any salt of a derivative of barbituric acid
- 3 unless specifically excepted or unless listed in another schedule;
- 4 2. Chlorhexadol;
- 5 3. Glutethimide;
- 6 4. Lysergic acid;
- 7 5. Lysergic acid amide;
- 8 6. Methyprylon;
- 9 7. Sulfondiethylmethane;
- 10 8. Sulfonethylmethane;
- 11 9. Sulfonmethane;
- 12 10. Benzephetamine and its salts;
- 13 11. Chlorphentermine and its salts;
- 14 12. Clortermine;
- 15 13. Mazindol;
- 16 14. Phendimetrazine;
- 17 15. Phenylacetone (P2P);
- 18 16. 1-Phenycyclohexylamine;
- 19 17. 1-Piperidinocyclohexanecarbo nitrile (PCC);
- 20 18. Ketamine, its salts, isomers, and salts of isomers;
- 21 19. Any material, compound, mixture, or preparation which
- 22 contains any quantity of the following hormonal substances or
- 23 steroids, including their salts, isomers, esters and salts of
- 24 isomers and esters, when the existence of these salts, isomers,

1 esters, and salts of isomers and esters is possible within the  
2 specific chemical designation:

- 3 a. Boldenone,
- 4 b. Chlorotestosterone,
- 5 c. Clostebol,
- 6 d. Dehydrochlormethyltestosterone,
- 7 e. Dihydrotestosterone,
- 8 f. Drostanolone,
- 9 g. Ethylestrenol,
- 10 h. Fluoxymesterone,
- 11 i. Formebolone,
- 12 j. Mesterolone,
- 13 k. Methandienone,
- 14 l. Methandranone,
- 15 m. Methandriol,
- 16 n. Methandrostenolone,
- 17 o. Methenolone,
- 18 p. Methyltestosterone, except as provided in subsection E  
19 of this section,
- 20 q. Mibolerone,
- 21 r. Nandrolone,
- 22 s. Norethandrolone,
- 23 t. Oxandrolone,
- 24 u. Oxymesterone,

1 v. Oxymetholone,

2 w. Stanolone,

3 x. Stanozolol,

4 y. Testolactone,

5 z. Testosterone, except as provided in subsection E of

6 this section, and

7 aa. Trenbolone;

8 20. Tetrahydrocannabinols;

9 21. Any drug product containing gamma-hydroxybutyric acid,  
10 including its salts, isomers, and salts of isomers, for which an  
11 application has been approved under Section 505 of the Federal Food,  
12 Drug, and Cosmetic Act;

13 22. Buprenorphine; ~~or~~

14 23. Hydrocodone with another active ingredient; or

15 24. Any compound, mixture, or preparation containing any  
16 detectable quantity of pseudoephedrine, its salts or optical  
17 isomers, or salts of optical isomers.

18 Livestock implants as regulated by the Federal Food and Drug  
19 Administration shall be exempt.

20 B. Nalorphine.

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

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

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

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

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

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

23 6. Not more than fifty (50) milligrams of morphine or any of  
24 its salts, per one hundred (100) milliliters or per one hundred

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;

24

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 F. This section shall not apply to any compounds, mixtures, or  
7 preparations which are in liquid, liquid capsule, or gel capsule  
8 form if pseudoephedrine is not the only active ingredient. For  
9 purposes of this section:

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

16 2. "Active ingredient" shall include the matrix of glycerin,  
17 polyethylene glycol, and propylene glycol that is found in liquid  
18 capsules.

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

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

23 ~~1.~~ Any compound, mixture, or preparation containing limited  
24 quantities of any of the following narcotic drugs, which also

1 contains one or more nonnarcotic active medicinal ingredients in  
2 sufficient proportion to confer upon the compound, mixture, or  
3 preparation, valuable medicinal qualities other than those possessed  
4 by the narcotic drug alone:

5 a. ~~not~~

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

9 b. ~~not~~

10 2. Not more than one hundred (100) milligrams of  
11 dihydrocodeine, or any of its salts, per one hundred (100)  
12 milliliters or per one hundred (100) grams ~~;~~i

13 c. ~~not~~

14 3. Not more than one hundred (100) milligrams of ethylmorphine,  
15 or any of its salts, per one hundred (100) milliliters or per one  
16 hundred (100) grams ~~;~~i

17 d. ~~not~~

18 4. Not more than two and five-tenths (2.5) milligrams of  
19 diphenoxylate and not less than twenty-five (25) micrograms of  
20 atropine sulfate per dosage unit ~~;~~i

21 e. ~~not~~

22 5. Not more than one hundred (100) milligrams of opium per one  
23 hundred (100) milliliters or per one hundred (100) grams ~~;~~i or

24

1       ~~2. Any compound, mixture, or preparation containing any~~  
2 ~~detectable quantity of pseudoephedrine, its salts or optical~~  
3 ~~isomers, or salts of optical isomers. If any compound, mixture, or~~  
4 ~~preparation as specified in this paragraph is dispensed, sold, or~~  
5 ~~distributed in a pharmacy:~~

6           ~~a. it shall be dispensed, sold, or distributed only by,~~  
7           ~~or under the supervision of, a licensed pharmacist or~~  
8           ~~a registered pharmacy technician, and~~

9           ~~b. any person purchasing, receiving, or otherwise~~  
10           ~~acquiring any compound, mixture, or preparation shall~~  
11           ~~produce a driver license, passport, military~~  
12           ~~identification, or other state-issued identification~~  
13           ~~card and shall sign a written log, receipt, or other~~  
14           ~~program or mechanism approved by the Oklahoma Bureau~~  
15           ~~of Narcotics and Dangerous Drugs Control, showing:~~

16           ~~(1) the date of the transaction,~~

17           ~~(2) name of the purchaser,~~

18           ~~(3) driver license number, passport, military~~

19           ~~identification, or state-issued identification~~

20           ~~number and state of residence of the purchaser,~~

21           ~~(4) name and initials of the pharmacist or pharmacy~~

22           ~~technician conducting the transaction,~~

23           ~~(5) the product being sold, and~~

1                   ~~(6) total quantity, in grams or milligrams, of~~  
2                   ~~pseudoephedrine purchased.~~

3           ~~No person shall purchase, receive, or otherwise acquire more~~  
4 ~~than nine (9) grams of any product, mixture, or preparation within~~  
5 ~~any thirty-day period. Provided, the requirements of this~~  
6 ~~subsection shall not apply to any quantity of such product, mixture~~  
7 ~~or preparation dispensed pursuant to a valid prescription.~~

8           ~~3. 6.~~ Any compound, mixture, or preparation containing any  
9 detectable quantity of pregabalin.

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

14           ~~C.~~ The Director of the Oklahoma State Bureau of Narcotics and  
15 Dangerous Drugs Control, by rule, may exempt other products from  
16 this Schedule which the Director finds are not used in the illegal  
17 manufacture of methamphetamine or other controlled dangerous  
18 substances. A manufacturer of a drug product may apply for removal  
19 of the product from the Schedule if the product is determined by the  
20 Director to have been formulated in such a way as to effectively  
21 prevent the conversion of the active ingredient into  
22 methamphetamine.

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

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

7       ~~2. "Active ingredient" shall include the matrix of glycerin,~~  
8 ~~polyethylene glycol, and propylene glycol that is found in liquid~~  
9 ~~capsules.~~

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

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

- 23       1. Recipient's name;
- 24       2. Recipient's address;

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

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

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

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

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

1 D. The provisions of subsection B of this section shall not  
2 apply to a nonresident drug outlet registered pursuant to the  
3 Oklahoma Pharmacy Act or to a resident drug outlet as defined in  
4 Section 353.1 of Title 59 of the Oklahoma Statutes if the  
5 nonresident or resident drug outlet mails or delivers a controlled  
6 substance to a patient or client. Nonresident and resident drug  
7 outlets shall transmit the information required in this section  
8 within seven (7) days of the date that the controlled substance is  
9 dispensed.

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

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

20 ~~G. The Oklahoma State Bureau of Narcotics and Dangerous Drugs~~  
21 ~~Control is authorized, by any funds available to it, to implement a~~  
22 ~~real-time electronic logbook to monitor the sale of nonprescription~~  
23 ~~Schedule V products containing any detectable quantity of~~  
24 ~~pseudoephedrine, its salts or optical isomers, or salts of optical~~

1 ~~isomers. Dispensers of such pseudoephedrine products shall report~~  
2 ~~all such sales electronically pursuant to rules promulgated by the~~  
3 ~~Oklahoma State Bureau of Narcotics and Dangerous Drugs Control.~~

4 ~~H. The Oklahoma State Bureau of Narcotics and Dangerous Drugs~~  
5 ~~Control shall have the authority to adopt rules for the reporting of~~  
6 ~~sales of Schedule V product containing any detectable quantity of~~  
7 ~~pseudoephedrine, its salts or optical isomers, or salts of optical~~  
8 ~~isomers.~~

9 SECTION 4. AMENDATORY 63 O.S. 2011, Section 2-309D, is  
10 amended to read as follows:

11 Section 2-309D. A. The information collected at the central  
12 repository pursuant to the Anti-Drug Diversion Act shall be  
13 confidential and shall not be open to the public. Access to the  
14 information shall be limited to:

15 1. Peace officers certified pursuant to Section 3311 of Title  
16 70 of the Oklahoma Statutes who are employed as investigative agents  
17 of the Oklahoma State Bureau of Narcotics and Dangerous Drugs  
18 Control;

19 2. The United States Drug Enforcement Administration Diversion  
20 Group Supervisor;

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

23 a. Board of Podiatric Medical Examiners,

24 b. Board of Dentistry,

- 1 c. State Board of Pharmacy,
- 2 d. State Board of Medical Licensure and Supervision,
- 3 e. State Board of Osteopathic Examiners,
- 4 f. State Board of Veterinary Medical Examiners, and
- 5 g. Oklahoma Health Care Authority;

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

10 4. A multicounty grand jury properly convened pursuant to the  
11 Multicounty Grand Jury Act, ~~Sections 350 through 363 of Title 22 of~~  
12 ~~the Oklahoma Statutes.~~

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

22 C. Any unauthorized disclosure of any information collected at  
23 the central repository provided by the Anti-Drug Diversion Act shall  
24 be a misdemeanor. Violation of the provisions of this section shall

1 be deemed willful neglect of duty and shall be grounds for removal  
2 from office.

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

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

22 SECTION 5. This act shall become effective November 1, 2012.

23

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