

1 STATE OF OKLAHOMA

2 1st Session of the 53rd Legislature (2011)

3 HOUSE BILL 1235

By: Sherrer

4  
5  
6 AS INTRODUCED

7 An Act relating to public health and safety; amending  
8 63 O.S. 2001, Sections 2-208, as amended by Section  
9 3, Chapter 283, O.S.L. 2005 and 2-212, as last  
10 amended by Section 4, Chapter 458, O.S.L. 2010 (63  
11 O.S. Supp. 2010, Sections 2-208 and 2-212), which  
12 relate to the Uniform Controlled Dangerous Substances  
13 Act; adding pseudoephedrine to Schedule III; deleting  
14 pseudoephedrine from Schedule V; deleting procedures  
15 for sale of certain products; deleting exemptions;  
16 deleting defined terms; amending 63 O.S. 2001,  
17 Sections 2-309C, as last amended by Section 5,  
18 Chapter 458, O.S.L. 2010 and 2-309D, as last amended  
19 by Section 3, Chapter 160, O.S.L. 2010 (63 O.S. Supp.  
20 2010, Sections 2-309C and 2-309D), which relate to  
21 the Anti-Drug Diversion Act; deleting reporting and  
22 monitoring requirements for dispensers and  
23 registrants who dispense certain product; and  
24 providing an effective date.

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

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

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

1 A. Unless listed in another schedule, any material, compound,  
2 mixture, or preparation, which contains any quantity of the  
3 following substances or any other substance having a potential for  
4 abuse associated with a stimulant or depressant effect on the  
5 central nervous system:

6 1. Any substance which contains any quantity of a derivative of  
7 barbituric acid, or any salt of a derivative of barbituric acid  
8 unless specifically excepted or unless listed in another schedule;

9 2. Chlorhexadol;

10 3. Glutethimide;

11 4. Lysergic acid;

12 5. Lysergic acid amide;

13 6. Methyprylon;

14 7. Sulfondiethylmethane;

15 8. Sulfonethylmethane;

16 9. Sulfonmethane;

17 10. Benzephetamine and its salts;

18 11. Chlorphentermine and its salts;

19 12. Clortermine;

20 13. Mazindol;

21 14. Phendimetrazine;

22 15. Phenylacetone (P2P);

23 16. 1-Phenycyclohexylamine;

24 17. 1-Piperidinocyclohexanecarbo nitrile (PCC);

1 18. Ketamine, its salts, isomers, and salts of isomers;

2 19. Any material, compound, mixture, or preparation which  
3 contains any quantity of the following hormonal substances or  
4 steroids, including their salts, isomers, esters and salts of  
5 isomers and esters, when the existence of these salts, isomers,  
6 esters, and salts of isomers and esters is possible within the  
7 specific chemical designation:

8 a. Boldenone,

9 b. Chlorotestosterone,

10 c. Clostebol,

11 d. Dehydrochlormethyltestosterone,

12 e. Dihydrotestosterone,

13 f. Drostanolone,

14 g. Ethylestrenol,

15 h. Fluoxymesterone,

16 i. Formebolone,

17 j. Mesterolone,

18 k. Methandienone,

19 l. Methandranone,

20 m. Methandriol,

21 n. Methandrostenolone,

22 o. Methenolone,

23 p. Methyltestosterone, except as provided in subsection E  
24 of this section,

- 1 q. Mibolerone,  
2 r. Nandrolone,  
3 s. Norethandrolone,  
4 t. Oxandrolone,  
5 u. Oxymesterone,  
6 v. Oxymetholone,  
7 w. Stanolone,  
8 x. Stanozolol,  
9 y. Testolactone,  
10 z. Testosterone, except as provided in subsection E of  
11 this section, and  
12 aa. Trenbolone;  
13 20. Tetrahydrocannabinols; ~~or~~  
14 21. Any drug product containing gamma-hydroxybutyric acid,  
15 including its salts, isomers, and salts of isomers, for which an  
16 application has been approved under Section 505 of the Federal Food,  
17 Drug, and Cosmetic Act; or  
18 22. Any compound, mixture, or preparation containing any  
19 detectable quantity of pseudoephedrine, its salts or optical  
20 isomers, or salts of optical isomers.  
21 Livestock implants as regulated by the Federal Food and Drug  
22 Administration shall be exempt.  
23 B. Nalorphine.  
24

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

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

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

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

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

22 5. Not more than one and eight-tenths (1.8) grams of  
23 dihydrocodeine or any of its salts, per one hundred (100)  
24 milliliters or not more than ninety (90) milligrams per dosage unit,

1 with one or more active, nonnarcotic ingredients in recognized  
2 therapeutic amounts;

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

7 7. Not more than five hundred (500) milligrams of opium per one  
8 hundred (100) milliliters or per one hundred (100) grams, or not  
9 more than twenty-five (25) milligrams per dosage unit, with one or  
10 more active, nonnarcotic ingredients in recognized therapeutic  
11 amounts; or

12 8. Not more than fifty (50) milligrams of morphine or any of  
13 its salts, per one hundred (100) milliliters or per one hundred  
14 (100) grams with one or more active, nonnarcotic ingredients in  
15 recognized therapeutic amounts.

16 D. The Board of Pharmacy may except by rule any compound,  
17 mixture, or preparation containing any stimulant or depressant  
18 substance listed in subsections A and B of this section from the  
19 application of all or any part of the Uniform Controlled Dangerous  
20 Substances Act if the compound, mixture, or preparation contains one  
21 or more active medicinal ingredients not having a stimulant or  
22 depressant effect on the central nervous system, and if the  
23 admixtures are included therein in combinations, quantity,  
24 proportion, or concentration that vitiate the potential for abuse of

1 the substances which have a stimulant or depressant effect on the  
2 central nervous system.

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

5 1. Estratest, containing 1.25 mg esterified estrogens and 2.5  
6 mg methyltestosterone;

7 2. Estratest HS, containing 0.625 mg esterified estrogens and  
8 1.25 mg methyltestosterone;

9 3. Premarin with Methyltestosterone, containing 1.25 mg  
10 conjugated estrogens and 10.0 mg methyltestosterone;

11 4. Premarin with Methyltestosterone, containing 0.625 mg  
12 conjugated estrogens and 5.0 mg methyltestosterone;

13 5. Testosterone Cypionate - Estrodiol Cypionate injection,  
14 containing 50 mg/ml Testosterone Cypionate; and

15 6. Testosterone Enanthate - Estradiol Valerate injection,  
16 containing 90 mg/ml Testosterone Enanthate and 4 mg/ml Estradiol  
17 Valerate.

18 SECTION 2. AMENDATORY 63 O.S. 2001, Section 2-212, as  
19 last amended by Section 4, Chapter 458, O.S.L. 2010 (63 O.S. Supp.  
20 2010, Section 2-212), is 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<sub>7i</sub>

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<sub>7i</sub>

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<sub>7i</sub>

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<sub>7i</sub> or

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.

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

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

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

22           ~~1. "Gel capsule" means any soft gelatin, liquid filled capsule~~  
23 ~~that contains a liquid suspension, which, in the case of~~  
24 ~~pseudoephedrine, is suspended in a matrix of glycerin, polyethylene~~

1 ~~glycol, and propylene glycol, along with other liquid substances.~~

2 ~~Regardless of product manufacturer labeling, a gelatin covered solid~~  
3 ~~does not constitute a gel capsule under this definition; and~~

4 ~~2. "Active ingredient" shall include the matrix of glycerin,~~  
5 ~~polyethylene glycol, and propylene glycol that is found in liquid~~  
6 ~~capsules.~~

7 SECTION 3. AMENDATORY 63 O.S. 2001, Section 2-309C, as  
8 last amended by Section 5, Chapter 458, O.S.L. 2010 (63 O.S. Supp.  
9 2010, Section 2-309C), is amended to read as follows:

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

- 21 1. Recipient's name;
- 22 2. Recipient's address;
- 23 3. Recipient's date of birth;
- 24 4. Recipient's identification number;

1 5. National Drug Code number of the substance dispensed;

2 6. Date of the dispensation;

3 7. Quantity of the substance dispensed;

4 8. Prescriber's United States Drug Enforcement Agency  
5 registration number;

6 9. Dispenser's registration number; and

7 10. Other information as required by administrative rule.

8 B. The information required by this section shall be  
9 transmitted:

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

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

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

23 D. The provisions of subsection B of this section shall not  
24 apply to a nonresident drug outlet registered pursuant to the

1 Oklahoma Pharmacy Act or to a resident drug outlet as defined in  
2 Section 353.1 of Title 59 of the Oklahoma Statutes if the  
3 nonresident or resident drug outlet mails or delivers a controlled  
4 substance to a patient or client. Nonresident and resident drug  
5 outlets shall transmit the information required in this section  
6 within seven (7) days of the date that the controlled substance is  
7 dispensed.

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

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

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

24

1 ~~all such sales electronically pursuant to rules promulgated by the~~  
2 ~~Oklahoma State Bureau of Narcotics and Dangerous Drugs Control.~~

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

8 SECTION 4. AMENDATORY 63 O.S. 2001, Section 2-309D, as  
9 last amended by Section 3, Chapter 160, O.S.L. 2010 (63 O.S. Supp.  
10 2010, Section 2-309D), is 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, 2011.

23

24 53-1-5827 GRS 01/13/11