State of Arkansas
78th General Assembly
Regular Session, 1991
By: Representative Hutchinson

A BillACT 954 OF 1991

HOUSE BILL 2004

For An Act To Be Entitled

"AN ACT TO AMEND SUBCHAPTER 4 OF CHAPTER 64 OF TITLE 5, ARKANSAS CODE ANNOTATED TO ADD A NEW SECTION DEFINING 'DRUG PRECURSORS'; AND FOR OTHER PURPOSES."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Subchapter 4 of Chapter 64 of Title 5, Arkansas Code Annotated is amended by adding a new section to read as follows:

"5-64-415. Definitions.

(a) 'Drug precursor' means any substance, material, compound, mixture, or preparation listed in rules and regulations promulgated or adopted pursuant to this act or any of their salts or isomers. Drug precursor specifically excludes those substances, materials, compounds, mixtures, or preparations which are prepared for dispensing pursuant to a prescription or over-the-counter distribution as a substance which is generally recognized as safe and effective within the meaning of the federal Food, Drug, and Cosmetic Act as amended, or have been manufactured, distributed, or possessed in conformance with the provisions of an approved new drug application or an exemption for investigational use within the meaning of Section 505 of the federal Food, Drug, and Cosmetic Act, as amended.

(b) Authority to control drug precursors by rule and regulation.

(1) The Arkansas Department of Health, hereafter, the department, shall promulgate by rule and regulation a list of drug precursors, comprised of any substance, material, compound, mixture, or preparation or any of their salts or isomers which are drug precursors. The department may add substances to, delete substances from, and reschedule substances listed in such drug precursors list pursuant to the 'Arkansas Administrative Procedure Act', Arkansas Code Annotated §25-15-201 et seq.

(2) In making a determination regarding a substance to be placed

on the drug precursor list, the department shall consider the following:

(A) Whether the substance is an immediate precursor of a controlled substance;

(B) The actual or relative potential for abuse;

(C) The scientific evidence of its pharmacological effect, if known;

(D) The state of current scientific knowledge regarding the substance or the controlled substance for which it is a precursor;

(E) The history and current pattern of abuse of the controlled substance for which it is a precursor;

(F) The scope, duration, and significance of abuse of the controlled substance for which it is a precursor;

(G) The risk to the public health;

(H) The potential of the substance or the controlled substance to produce psychic or physiological dependence liability.

(3) The Health Department may consider findings of the federal Food and Drug Administration or federal Drug Enforcement Administration as prima facie evidence relating to one (1) or more of the factors in connection with its determination.

(4) After considering the factors enumerated in this subsection, the department shall make findings with respect thereto and shall promulgate a rule controlling a substance as a drug precursor upon a finding that the substance has a potential for abuse. If the department designates a substance as an immediate drug precursor, substances that are precursors of the controlled precursor are not subject to control solely because they are precursors of the controlled precursor.

(5) Authority to control under this section does not extend to alcoholic beverages or alcoholic liquors, fermented malt beverages, or tobacco.

(c) License required - controlled substances drug precursors.

(1) The department may promulgate regulations and charge reasonable fees of not more than twenty-five dollars ($25.00) relating to the licensing and control of the manufacture, possession, transfer, and transportation of drug precursors. The fees established under this subsection shall be collected by the department and transmitted to the state treasurer,

who shall credit the same to the Health Department Drug Precursor Cash Fund, which fund is hereby created. This fund shall be administered by the Division of Pharmacy Services and Drug Controlled Department of Health.

(2) Every person who manufactures, possesses, transfers, or transports any drug precursor or who proposes to engage in the manufacture, possession, transfer, or transportation of any drug precursor must obtain, annually, a license issued by the department.

(3) Persons licensed by the department to manufacture, possess, transfer, or transport drug precursors may manufacture, possess, transfer, or transport those substances to the extent authorized by their licenses and in conformity with other provisions of law.

(4) The following persons are not required to be licensed under this subsection and may lawfully possess drug precursors:

(A) Physicians, dentists, pharmacists, veterinarians, and podiatrists;

(B) An agent of any manufacturer, or wholesaler of any drug precursor if he is acting in the usual course of his principal's business or employment;

(C) An employee of a licensed common or contract carrier or licensed warehouseman whose possession of any drug precursor is in the usual course of the licensed common or contract carrier or licensed warehouseman's business;

(D) A student enrolled in a college chemistry class for credit if the student's use of the drug precursor is for a bona fide educational purpose and the educational institution otherwise possesses all the necessary licenses required by the department;

(E) Officers or employees of appropriate agencies of federal, state, or local government and law enforcement agencies acting pursuant to their official duties;

(F) Every researcher, including analytical laboratories, experimenting with, studying, or testing any drug analog who is licensed by the department pursuant to the requirements of this subsection.

(d) The department may waive by regulation the requirement for licensing of certain manufacturers if it is consistent with the public health and safety.

(e) Issuance of license - fees.

(1) The department shall license an applicant to manufacture, possess, transfer, or transport drug precursors unless it determines that the issuance of such license would be inconsistent with the public interest. In determining the public interest, the department shall consider the following factors:

(A) Maintenance of effective controls against diversion of drug precursors other than legitimate medical, scientific, or industrial channels;

(B) Compliance with applicable state and local law;

(C) Any conviction of the applicant under federal or state laws relating to any controlled substances or drug precursor;

(D) Past experience in the manufacture, possession, transfer, or transportation of drug precursors and the existence in the applicant's establishment of effective controls against diversion;

(E) Furnishing by the applicant of false or fraudulent material in any application filed under subsection (c);

(F) Suspension or revocation of the applicant's federal registration to manufacture, distribute, or dispense controlled substances or drug precursors authorized by federal law; and

(G) Any other factor relevant to and consistent with the public health and safety.

(2) Licensing under this section does not entitle a licensee to manufacture, possess, transfer, or transport drug precursors other than those allowed in the license.

(f) Denial, revocation, or suspension of license.

(1) The department may deny, revoke, or suspend a license issued pursuant to subsection (c) for any of the following reasons:

(A) If a licensee is convicted of, or has accepted by a court a plea of guilty or nolo contendere to a felony under any state or federal law relating to a controlled substance or a drug precursor; or

(B) If a licensee has his federal registration to manufacture, conduct research on, distribute, or dispense a controlled substance or a drug precursor suspended or revoked. The department may limit revocation or suspension of a license to the particular controlled substance

or drug precursor which was the basis for revocation or suspension; or

(C) If a licensee commits an unlawful act as enumerated in subsection (g).

(2) When the department suspends or revokes a license, all controlled substances or drug precursors owned or possessed by the licensee at the time of the suspension or on the effective date of the revocation order may be placed under seal. No disposition may be made of substances or precursors under seal until the time for making an appeal has elapsed or until all appeals have been concluded unless a court orders otherwise or orders the sale of any perishable controlled substances or drug precursors and the deposit of the proceeds with the court. Upon revocation orders becoming final, all controlled substances and all drug precursors may be forfeited to the department, and all expenses of disposing of the forfeited controlled substances or drug precursors shall be borne by the licensee, and the court may order the licensee to pay a reasonable sum of money to the Department of Health to cover the expenses of disposition, and the Department of Health is authorized to seek enforcement of the order of payment, or reimbursement for any expenses through all lawful means.

(g) Unlawful acts - licenses - penalties.

(1) It shall be unlawful to:

(A) Knowingly transfer drug precursors except to an authorized licensee;

(B) Knowingly use in the course of the manufacture or transfer of a drug precursor a license number which is fictitious, revoked, suspended, or issued to another person;

(C) Knowingly acquire or obtain, or attempt to acquire or obtain, possession of a drug precursor by misrepresentation, fraud, forgery, deception of subterfuge;

(D) Knowingly furnish false or fraudulent material information in, or omitting any material information from, any application, report, or other document required to be kept or filed under this act or any record required to be kept by this act;

(E) Have knowledge of the manufacture of a drug precursor not authorized by a licensee's license, or have knowledge of the transfer of a drug precursor not authorized by his license to another licensee or authorized

person;

(F) Refuse entry into any premises for any inspection authorized by this act; or

(G) Manufacture, possess, transfer, or transport a drug precursor without the appropriate license or in violation of any rule or regulation of the department.

(2) Any person who violates the provisions of this subsection is guilty of a Class D felony.

(h) Records to be kept - order forms.

(1) A manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes any drug precursor to a person shall make an accurate and legible record of the transaction and maintain the record for a period of at least two (2) years after the date of the transaction.

(2) Before selling, transferring, or otherwise furnishing to a person in this state a precursor substance subject to paragraph (1) of this subsection (h), a manufacturer, wholesaler, retailer, or other person shall:

(A) If the recipient does not represent a business, obtain from the recipient:

(i) The recipient's driver's license number or other personal identification certificate number, date of birth, and residential or mailing address, other than a post office box number, from a driver's license or personal identification card issued by the department of revenue that contains a photograph of the recipient;

(ii) The year, state, and number of the motor vehicle license of the motor vehicle owned or operated by the recipient;

(iii) A complete description of how the substance is to be used; and

(iv) The recipient's signature; or

(B) If the recipient represents a business, obtain from the recipient:

(i) A letter of authorization from the business that includes the business license or comptroller tax identification number, address, area code, and telephone number and a complete description of how the substance is to be used;

(ii) The recipient's signature; and

(iii) For any recipient, sign as a witness to the signature and identification of the recipient.

(3) Except as otherwise provided in this act, a manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes to a person in this state a drug precursor shall submit to the department, at least twenty-one (21) days before the delivery of the drug precursor, a report of the transaction on a form obtained from the department that includes the information required by subparagraph (A) or (B) of paragraph (2) of this subsection. A copy of this report shall be transmitted to the Arkansas State Police.

(i)(1) The theft or loss of any drug precursor discovered by any person regulated by this act shall be reported to the department and the Arkansas State Police within three (3) days after such discovery.

(2) Any differences between the quantity of any drug precursor received and the quantity shipped shall be reported to the department within three (3) days after the receipt of actual knowledge of the discrepancy. When applicable, any report made pursuant to this subsection shall also include the name of any common carrier or person who transported the substance and the date of shipment of the substance.

(3) On or after the effective date of this act, any manufacturer, wholesaler, retailer, or other person subject to any other reporting requirements in this act who receives from a source outside of this state any drug precursor specified in rules and regulations promulgated pursuant to this act shall submit a report of such transaction to the department in accordance with rules adopted by the department.

(4) Any person violating any of the provisions of this subsection is guilty of a Class A misdemeanor.

(5) The department may authorize a manufacturer, wholesaler, retailer, or other person to submit a comprehensive monthly report instead of the report required by paragraph (3)(A) of this subsection if the director determines that:

(A) There is a pattern of regular supply and purchase of the drug precursor between the furnisher and the recipient; or

(B) The recipient has established a record of utilization of the drug precursor solely for a lawful purpose."

SECTION 2. Until such time that the Health Department adopts the schedule of precursors, the following shall be deemed to be precursors:

1. D-Lysergic acid.

2. Ergotamine and its salts.

3. Ergonovine and its salts.

4. Methylamine.

5. Ethylamine.

6. Phenyl-2-Propanone.

7. Phenylacetic acid and its salts.

8. Ephedrine, its salts, optical isomers and salts of optical isomers.

9. Norpseudoephedrine, its salts, optical isomers, and salts of optical isomers.

10. Phenylpropanolamine, its salts, optical isomers and salts of optical isomers.

11. Benzyl cyanide.

12. N-methylephedrine, its salts, optical isomers and salts of optical isomers.

13. Pseudoephedrine, its salts, optical isomers and salts of optical isomers.

14. Chloroephedrine, its salts, optical isomers and salts of optical isomers.

15. Piperidine and its salts.

16. Pyrrolidine and its salts.

17. Propionic anhydride.

18. Isosafrole.

19. Safrols.

20. Piperonal.

SECTION 3. The Arkansas State Police is specifically empowered to investigate any violations of the provisions of this act, and enforce its provisions. Further, the Arkansas State Police and the Department of Health are authorized and directed to exchange information gathered or received by either agency under the provisions of this act. All records kept by licensees

pursuant to this act shall be open to inspection by authorized investigators of the Arkansas State Police and the Department of Health during normal business hours and at all other reasonable times.

SECTION 4. In addition to rules and regulations authorized by the provisions of this act, the Department of Health may promulgate necessary rules and regulations to carry out the provisions of this act.

SECTION 5. All provisions of this act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

SECTION 6. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

SECTION 7. All laws and parts of laws in conflict with this act are hereby repealed.

APPROVED: 3/29/91