

1 **State of Arkansas**
2 **78th General Assembly**
3 **Regular Session, 1991**
4 **By: Representative Hutchinson**

A Bill

HOUSE BILL

For An Act To Be Entitled

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

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

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

16 "5-64-415. Definitions.

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

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

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

1 (2) In making a determination regarding a substance to be placed
2 on the drug precursor list, the department shall consider the following:

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

5 (B) The actual or relative potential for abuse;

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

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

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

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

14 (G) The risk to the public health;

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

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

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

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

31 (c) License required - controlled substances drug precursors.

32 (1) The department may promulgate regulations and charge
33 reasonable fees of not more than twenty-five dollars (\$25.00) relating to the
34 licensing and control of the manufacture, possession, transfer, and
35 transportation of drug precursors. The fees established under this subsection

1 shall be collected by the department and transmitted to the state treasurer,
2 who shall credit the same to the Health Department Drug Precursor Cash Fund,
3 which fund is hereby created. This fund shall be administered by the Division
4 of Pharmacy Services and Drug Controlled Department of Health.

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

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

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

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

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

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

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

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

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

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

1 and safety.

2 (e) Issuance of license - fees.

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

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

11 (B) Compliance with applicable state and local law;

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

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

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

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

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

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

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

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

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

33 (B) If a licensee has his federal registration to
34 manufacture, conduct research on, distribute, or dispense a controlled
35 substance or a drug precursor suspended or revoked. The department may limit

1 revocation or suspension of a license to the particular controlled substance
2 or drug precursor which was the basis for revocation or suspension; or

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

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

20 (g) Unlawful acts - licenses - penalties.

21 (1) It shall be unlawful to:

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

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

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

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

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

1 drug precursor not authorized by his license to another licensee or authorized
2 person;

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

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

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

10 (h) Records to be kept - order forms.

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

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

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

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

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

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

29 (iv) The recipient's signature; or

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

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

1 (ii) The recipient's signature; and
2 (iii) For any recipient, sign as a witness to the
3 signature and identification of the recipient.

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

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

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

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

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

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

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

35 (B) The recipient has established a record of utilization

1 of the drug precursor solely for a lawful purpose."

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

- 5 1. D-Lysergic acid.
- 6 2. Ergotamine and its salts.
- 7 3. Ergonovine and its salts.
- 8 4. Methylamine.
- 9 5. Ethylamine.
- 10 6. Phenyl-2-Propanone.
- 11 7. Phenylacetic acid and its salts.
- 12 8. Ephedrine, its salts, optical isomers and salts of optical isomers.
- 13 9. Norpseudoephedrine, its salts, optical isomers, and salts of optical
14 isomers.
- 15 10. Phenylpropanolamine, its salts, optical isomers and salts of
16 optical isomers.
- 17 11. Benzyl cyanide.
- 18 12. N-methylephedrine, its salts, optical isomers and salts of optical
19 isomers.
- 20 13. Pseudoephedrine, its salts, optical isomers and salts of optical
21 isomers.
- 22 14. Chloroephedrine, its salts, optical isomers and salts of optical
23 isomers.
- 24 15. Piperidine and its salts.
- 25 16. Pyrrolidine and its salts.
- 26 17. Propionic anhydride.
- 27 18. Isosafrole.
- 28 19. Safrols.
- 29 20. Piperonal.

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32 SECTION 3. The Arkansas State Police is specifically empowered to
33 investigate any violations of the provisions of this act, and enforce its
34 provisions. Further, the Arkansas State Police and the Department of Health
35 are authorized and directed to exchange information gathered or received by

1 either agency under the provisions of this act. All records kept by licensees
2 pursuant to this act shall be open to inspection by authorized investigators
3 of the Arkansas State Police and the Department of Health during normal
4 business hours and at all other reasonable times.

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

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

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

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

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