An Act relating to the practice of pharmacy; defining terms; requiring wholesale distributors to make adequate provisions for the return of certain outdated prescription drugs; requiring wholesale distributors to establish certain written policy; stating criteria of policy; providing exemption; providing eligibility criteria for drugs; requiring prompt full credit to purchaser; requiring certain notification and documentation; requiring wholesale distributors to maintain certain records; prohibiting submission of drugs under certain conditions; providing for disciplinary action; requiring compliance with applicable laws, rules, and regulations; amending 59 O.S. 2021, Section 353.24, which relates to unlawful acts; creating exception; updating statutory language; providing for codification; and providing an effective date.

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

SECTION 1. NEW LAW  A new section of law to be codified in the Oklahoma Statutes as Section 355.5 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. As used in this section:

1. “Full credit” means a cash refund or credit with the drug wholesale distributor for the purchase price of the drug as established by drug invoice less a reasonable fee for handling of
the returned drugs. A reasonable fee shall not be more than seven percent (7%) of the total invoice price of the returned drugs; and

2. “Reverse drug distributor” means a firm, whether located inside or outside this state, that receives drugs for destruction, return credit, or otherwise disposes of drugs received from a registrant located in this state who holds a permit or license to dispense or possess drugs. As used in this paragraph, “registrant” means a person registered by the Director of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control under Section 2-302 of Title 63 of the Oklahoma Statutes.

B. Effective with all drug orders placed on or after the effective date of this act, all wholesale distributors shall make adequate provisions for the return of outdated prescription drugs, both full and partial containers, for up to six (6) months after the labeled expiration date for prompt full credit.

C. Wholesale distributors shall establish a written policy providing for the return of outdated prescription drugs sold to a client by such wholesale distributor. Such policy may include a procedure for the drugs to be returned to the drug manufacturer, may include a requirement that the drugs be returned in the original containers in which they were purchased, and may include the use of a reverse drug distributor. Such policy shall be available to the State Board of Pharmacy or its agents upon request.
D. Influenza vaccines shall be exempt from the requirements of this provision if they have an expiration date of less than one year from the date such drug is manufactured.

E. In order to be eligible for full credit, the drug must be received by the wholesale distributor, or if not the wholesale distributor, its agent designated in its return policy, no later than the sixth month from the labeled expiration date. A signed delivery receipt shall constitute evidence of the drugs having been returned.

F. Prompt full credit to the purchaser shall occur within sixty (60) calendar days from the date the return drugs were received by the wholesale distributor or its designated agent. If the wholesale distributor determines that the drugs were not returned within six (6) months of the labeled expiration date, or were not returned consistent with the written return policy, then the wholesale distributor shall notify the purchaser in writing within thirty (30) calendar days of the receipt of the drugs of its intent not to give full credit. Wholesale distributors shall maintain documentation supporting their refusal to give full credit for a period of two (2) years. Such documentation shall be available to the Board or its agent upon request.

G. Wholesale distributors shall maintain records of all credits made under this section for a period of two (2) years and such
record shall be made available to the Board or its agent upon request.

H. The submission of drugs by a purchaser licensed by the Board in this state for refund or credit to a wholesale distributor pursuant to this section when the drugs are in a container other than the one in which they were purchased, when the drugs were not purchased from that wholesale distributor, or when the drugs were purchased for a pharmacy or facility outside this state shall constitute fraudulent and unprofessional conduct and may subject the purchaser to disciplinary action by the Board.

I. The return of drugs under this section shall comply with all other applicable federal, state, and local laws, rules, and regulations.

SECTION 2. AMENDATORY 59 O.S. 2021, Section 353.24, is amended to read as follows:

Section 353.24. A. It shall be unlawful for any licensee or other person to:

1. Forge or increase the quantity of drug in any prescription, or to present a prescription bearing forged, fictitious or altered information or to possess any drug secured by such forged, fictitious or altered prescription;

2. Sell, offer for sale, barter or give away any unused quantity of drugs obtained by prescription, except through a program
pursuant to the Utilization of Unused Prescription Medications Act or as otherwise provided by the State Board of Pharmacy;

3. Sell, offer for sale, barter or give away any drugs damaged by fire, water, or other causes without first obtaining the written approval of the Board or the State Department of Health;

4. No person, firm or business establishment shall offer to the public, in any manner, their services as a “pick-up station” or intermediary for the purpose of having prescriptions filled or delivered, whether for profit or gratuitously. Nor may the owner of any pharmacy or drug store authorize any person, firm or business establishment to act for them in this manner with these exceptions:

   a. patient-specific filled prescriptions may be delivered or shipped to a prescriber’s clinic for pick-up by those patients whom the prescriber has individually determined and documented do not have a permanent or secure mailing address,

   b. patient-specific filled prescriptions for drugs which require special handling written by a prescriber may be delivered or shipped to the prescriber’s clinic for administration or pick-up at the prescriber’s office,

   c. patient-specific filled prescriptions, including sterile compounded drugs, may be delivered or shipped to a prescriber’s clinic where they shall be administered,
d. patient-specific filled prescriptions for patients with end-stage renal disease (ESRD) may be delivered or shipped to a prescriber’s clinic for administration or final delivery to the patient,

e. patient-specific filled prescriptions for radiopharmaceuticals may be delivered or shipped to a prescriber’s clinic for administration or pick-up, or

f. patient-specific filled prescriptions may be delivered or shipped by an Indian Health Service (IHS) or federally recognized tribal health organization operating under the IHS in the delivery of the prescriptions to a pharmacy operated by the IHS or a federally recognized tribal health organization for pick-up by an IHS or tribal patient.

However, nothing in this paragraph shall prevent a pharmacist or an employee of the pharmacy from personally receiving a prescription or delivering a legally filled prescription to a residence, office or place of employment of the patient for whom the prescription was written. Provided further, the provisions of this paragraph shall not apply to any Department of Mental Health and Substance Abuse Services employee or any person whose facility contracts with the Department of Mental Health and Substance Abuse Services whose possession of any dangerous drug, as defined in Section 353.1 of this title, is for the purpose of delivery of a mental health
consumer’s medicine to the consumer’s home or residence. Nothing in
this paragraph shall prevent veterinary prescription drugs from
being shipped directly from an Oklahoma licensed wholesaler or
distributor registered with the Oklahoma State Board of Veterinary
Medical Examiners to a client; provided, such drugs may be dispensed
only on prescription of a licensed veterinarian and only when an
existing veterinary-client-patient relationship exists. Nothing in
this paragraph shall prevent dialysate and peritoneal dialysis
devices from being shipped directly from an Oklahoma licensed
manufacturer, wholesaler or distributor to an ESRD patient or
patient’s designee, consistent with subsection F of Section 353.18
of this title;

5. Sell, offer for sale or barter or buy any professional
samples except through a program pursuant to the Utilization of
Unused Prescription Medications Act;

6. Refuse to permit or otherwise prevent members of the Board
or such representatives thereof from entering and inspecting any and
all places, including premises, vehicles, equipment, contents, and
records, where drugs, medicine, chemicals or poisons are stored,
sold, vended, given away, compounded, dispensed, repackaged,
transported, or manufactured;

7. Interfere, refuse to participate in, impede or otherwise
obstruct any inspection, investigation or disciplinary proceeding
authorized by the Oklahoma Pharmacy Act;
8. Possess dangerous drugs without a valid prescription or a valid license to possess such drugs; provided, however, this provision shall not apply to any Department of Mental Health and Substance Abuse Services employee or any person whose facility contracts with the Department of Mental Health and Substance Abuse Services whose possession of any dangerous drug, as defined in Section 353.1 of this title, is for the purpose of delivery of a mental health consumer’s medicine to the consumer’s home or residence;

9. Fail to establish and maintain effective controls against the diversion of drugs for any other purpose than legitimate medical, scientific or industrial uses as provided by state, federal and local law;

10. Fail to have a written drug diversion detection and prevention policy;

11. Possess, sell, offer for sale, barter or give away any quantity of dangerous drugs not listed as a scheduled drug pursuant to Sections 2-201 through 2-212 of Title 63 of the Oklahoma Statutes when obtained by prescription bearing forged, fictitious or altered information.

   a. A first violation of this section shall constitute a misdemeanor and upon conviction shall be punishable by imprisonment in the county jail for a term not more
than one (1) year and a fine in an amount not more
than One Thousand Dollars ($1,000.00).

b. A second violation of this section shall constitute a
felony and upon conviction shall be punishable by
imprisonment in the Department of Corrections for a
term not exceeding five (5) years and a fine in an
amount not more than Two Thousand Dollars ($2,000.00);

12. Violate a Board order or agreed order;
13. Compromise the security of licensure examination materials;
or
14. Fail to notify the Board, in writing, within ten (10) days
of a licensee or permit holder’s address change.

B. 1. It shall be unlawful for any person other than a
licensed pharmacist or physician to certify a prescription before
delivery to the patient or the patient’s representative or
caregiver. Dialysate and peritoneal dialysis devices supplied
pursuant to the provisions of subsection F of Section 353.18 of this
title shall not be required to be certified by a pharmacist prior to
being supplied by a manufacturer, wholesaler or distributor.

2. It shall be unlawful for any person to institute or manage a
pharmacy unless such person is a licensed pharmacist or has placed a
licensed pharmacist in charge of such pharmacy.
3. No licensed pharmacist shall manage, supervise or be in
charge of more than one pharmacy.
4. No pharmacist being requested to sell, furnish or compound any drug, medicine, chemical or other pharmaceutical preparation, by prescription or otherwise, shall substitute or cause to be substituted for it, without authority of the prescriber or purchaser, any like drug, medicine, chemical or pharmaceutical preparation.

5. No pharmacy, pharmacist-in-charge or other person shall permit the practice of pharmacy except by a licensed pharmacist or assistant pharmacist.

6. No person shall subvert the authority of the pharmacist-in-charge of the pharmacy by impeding the management of the prescription department to act in compliance with federal and state law.

C. 1. Except as provided by Section 1 of this act, it shall be unlawful for a:
   1. A pharmacy to resell dangerous drugs to any wholesale distributor;
   2. It shall be unlawful for a; or
   2. A wholesale distributor to purchase drugs from a pharmacy.

SECTION 3. This act shall become effective November 1, 2023.

COMMITTEE REPORT BY: COMMITTEE ON HEALTH AND HUMAN SERVICES
March 2, 2023 – DO PASS