~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

March 8, 2018

**H. 4487**

Introduced by Reps. Henderson, Hewitt, Robinson‑Simpson, Fry, West, Atwater, Erickson, Norrell, Weeks, Douglas, Ridgeway, Dillard, Huggins and W. Newton

S. Printed 3/8/18--H.

Read the first time January 9, 2018.

**THE COMMITTEE ON MEDICAL,**

**MILITARY, PUBLIC AND MUNICIPAL AFFAIRS**

To whom was referred a Bill (H. 4487) to amend Section 44‑53‑160, Code of Laws of South Carolina, 1976, relating to scheduling of controlled substances, so as to provide a process for the, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, SECTION 1, by striking Section 44-53-1650(E) and inserting:

/ (E) The department shall exclude any nonnarcotic substance from a schedule if the substance may, under the federal Food, Drug, and Cosmetic Act and the laws of this State, be lawfully sold over the counter or behind the counter without a prescription./

Renumber sections to conform.

Amend title to conform.

LEON HOWARD for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**Explanation of Fiscal Impact**

**Updated for Additional Agency Response on January 30, 2018**

**State Expenditure**

This bill grants DHEC additional authority over scheduling controlled substances. Any person engaging in activities involving the manufacture, distribution, or dispensing of any controlled substance must obtain an annual registration. The bill renders a registration immediately canceled if not renewed on or before April first of each year. The bill also repeals an obsolete section of law that details the transfer of DHEC agents engaged in the enforcement of laws or regulations relating to controlled or counterfeit substances from DHEC to SLED from 1971.

**Department of Health and Environmental Control.** This bill eliminates registration renewal grace periods. DHEC would no longer be required to send late notices by certified mail to registrants who fail to renew their annual registrations, thereby creating a savings. DHEC mailed 1,812 certified late notices in calendar year 2017 at a cost of $5.26 per mailing. Based on these numbers, this bill would decrease other fund expenditures by $9,531 in FY 2018-19 and each year thereafter. This bill will have no impact on the general fund or federal funds. This fiscal impact statement has been updated based on a response from DHEC.

**State Law Enforcement Division.** As the division is not responsible for the scheduling of controlled substances, this bill will have no expenditure impact on the general fund, federal funds, or other funds. This fiscal impact statement has been updated based on a response from SLED.

**Introduced on January 9, 2018**

**State Expenditure**

This bill grants DHEC additional authority over scheduling controlled substances. Any person engaging in activities involving the manufacture, distribution, or dispensing of any controlled substance must obtain an annual registration. The bill renders a registration immediately canceled if not renewed on or before April first of each year. The bill also repeals the transfer of DHEC agents engaged in the enforcement of laws or regulations relating to controlled or counterfeit substances from DHEC to SLED.

**Department of Health and Environmental Control.** A determination of the bill’s fiscal impact is pending, as the agency is still reviewing the bill.

**State Law Enforcement Division.** A determination of the bill’s fiscal impact is pending, as the agency is still reviewing the bill.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

**A** **BILL**

TO AMEND SECTION 44‑53‑160, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO SCHEDULING OF CONTROLLED SUBSTANCES, SO AS TO PROVIDE A PROCESS FOR THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL (DHEC) TO SCHEDULE CERTAIN SUBSTANCES ON AN EMERGENCY BASIS; TO AMEND SECTION 44‑53‑280, RELATING TO REGISTRATIONS TO MANUFACTURE, DISTRIBUTE, OR DISPENSE CONTROLLED SUBSTANCES, SO AS TO ELIMINATE REGISTRATION RENEWAL GRACE PERIODS; TO AMEND SECTION 44‑53‑290, RELATING IN PART TO REGISTRATIONS ISSUED TO PRACTITIONERS TO DISPENSE NARCOTICS FOR MAINTENANCE OR DETOXIFICATION TREATMENTS AND TO NURSE PRACTITIONERS AND PHYSICIAN ASSISTANTS TO PRESCRIBE SCHEDULE V DRUGS, SO AS TO CHANGE CERTAIN REQUIREMENTS; TO AMEND SECTION 44‑53‑310, RELATING TO APPLICATIONS FOR REGISTRATIONS TO MANUFACTURE, DISTRIBUTE, OR DISPENSE CONTROLLED SUBSTANCES, SO AS TO ALLOW DHEC TO DENY AN APPLICATION FOR REGISTRATION FOR ANY CRIMINAL CONVICTION; TO AMEND SECTION 44‑53‑480, RELATING TO THE DEPARTMENT OF NARCOTICS AND DANGEROUS DRUGS WITHIN THE SOUTH CAROLINA LAW ENFORCEMENT DIVISION (SLED), SO AS TO ELIMINATE ENFORCEMENT OF DRUG LAWS AS A FUNCTION OF DHEC; AND TO REPEAL SECTION 44‑53‑560 RELATING TO THE TRANSFER OF AGENTS FROM DHEC TO SLED.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 44‑53‑160(D) and (E) of the 1976 Code is amended to read:

“(D) Except as otherwise provided in this section, the department may schedule a substance as a controlled substance on an emergency basis if the department, in consultation with SLED, determines the action is necessary to avoid imminent danger to the public health and safety. Upon the addition or rescheduling of a substance pursuant to this subsection, the department shall forward copies of the change to the Chairmen of the Medical Affairs Committee and the Judiciary Committee of the Senate, the Medical, Military, Public and Municipal Affairs Committee, and the Judiciary Committee of the House of Representatives, and to the Clerks of the Senate and House of Representatives, and shall post the schedules on the department’s website indicating the change and specifying the effective date of the change. The addition or rescheduling of a substance pursuant to this subsection has the full force of law unless overturned by the General Assembly.

(E) The department shall exclude any nonnarcotic substance from a schedule if the substance may, under the federal Food, Drug, and Cosmetic Act and the laws of this State, be lawfully sold over the counter without a prescription.

~~(E)~~(F) The department’s addition, deletion, or rescheduling of a substance as a controlled substance is governed by this section and is not subject to the promulgation requirements of Title 1, Chapter 23.”

SECTION 2. Section 44‑53‑280(C) and (D) of the 1976 Code is amended to read:

“(C) A class 20‑28 registration, as provided for by the board in regulation, expires October first of each year. ~~A registrant who fails to renew by October thirty‑first must be penalized twenty‑five dollars. If failure to renew continues beyond October thirty‑first, the registrant must be notified, by certified mail return receipt requested, sent to the registrant’s last known address, that continued failure to renew will result in the cancellation of the registration.~~ The registration of a registrant who fails to renew by ~~December thirty‑first~~ October first is canceled. However, registration may be reinstated upon payment of the renewal fees due and a penalty of one hundred dollars if the registrant is otherwise in good standing and presents a satisfactory explanation for failure to renew.

(D) All registrations other than class 20‑28, as provided for by the board in regulation, expire on April first of each year. ~~A registrant who fails to renew by April thirtieth must be penalized twenty‑five dollars. If failure to renew continues beyond April thirtieth, the registrant must be notified, by certified mail return receipt requested, sent to the registrant’s last known address, that continued failure to renew will result in cancellation of the registration.~~ The registration of a registrant who fails to renew by ~~June thirtieth~~ April first is canceled. However, registration may be reinstated upon payment of the renewal fees due and a penalty of one hundred dollars if the registrant is otherwise in good standing and presents a satisfactory explanation for failure to renew.”

SECTION 3. Section 44‑53‑290(i) and (j) of the 1976 Code is amended to read:

“(i) Practitioners who dispense narcotic drugs to individuals for maintenance treatment or detoxification treatment shall obtain annually a separate registration for that purpose. The Board shall register an applicant to dispense but not prescribe narcotic drugs to individuals for maintenance treatment or detoxification treatment, or both,

(1) if the applicant is a practitioner who is otherwise qualified to be registered under the provisions of this article to engage in the treatment with respect to which registration has been sought;

(2) if the Board determines that the applicant will comply with standards established by the Board respecting security of stocks of narcotic drugs for such treatment, and the maintenance of records in accordance with Section 44‑53‑340 and the rules issued by the Board on such drugs; and

(3) if the Board determines that the applicant will comply with standards established by the Board ~~after consultation with the South Carolina Methadone Council~~ respecting the quantities of narcotic drugs which may be provided for unsupervised use by individuals in such treatment.

(j) Pursuant to the procedures set forth in Section 44‑53‑300, the department may issue a registration ~~in Schedule V~~ to a licensed nurse practitioner, certified nurse‑midwife, or clinical nurse specialist ~~certified~~ authorized to prescribe ~~Schedule V~~ controlled substances by the State Board of Nursing for South Carolina, consistent with such prescription authorization. The department also may issue a registration, pursuant to the procedures set forth in Section 44‑53‑300, ~~and~~ to a ~~physician’s~~ licensed physician assistant ~~certified~~ authorized to prescribe ~~Schedule V~~ controlled substances by the State Board of Medical Examiners, consistent with such prescription authorization. A nurse practitioner, certified nurse‑midwife, clinical nurse specialist, or ~~a physicians’~~ physician assistant registered by the department pursuant to this subsection may not acquire, possess, or dispense, other than by prescription, a controlled substance except as provided by law.”

SECTION 4. Section 44‑53‑310(a) of the 1976 Code is amended to read:

“(a) An application for a registration or a registration granted pursuant to Section 44‑53‑300 to manufacture, distribute, or dispense a controlled substance, may be denied, suspended, or revoked by the Board upon a finding that the registrant:

(1) Has materially falsified any application filed pursuant to this article;

(2) Has been convicted of a felony or misdemeanor under any State or Federal law ~~relating to any controlled substance~~;

(3) Has had his Federal registration suspended or revoked to manufacture, distribute, or dispense controlled substances; or

(4) Has failed to comply with any standard referred to in Section 44‑53‑290(i).”

SECTION 5. Section 44‑53‑480 of the 1976 Code is amended to read:

“Section 44‑53‑480. (a) The South Carolina Law Enforcement Division shall establish within its Division a Department of Narcotics and Dangerous Drugs, which shall be administered by a director and shall be primarily responsible for the enforcement of all laws pertaining to illicit traffic in controlled and counterfeit substances. The Department of Narcotics and Dangerous Drugs, in discharging its responsibilities concerning illicit traffic in narcotics and dangerous substances and in suppressing the abuse of controlled substances, shall enforce the State plan formulated in cooperation with the Narcotics and Controlled Substance Section as such plan relates to illicit traffic in controlled and counterfeit substances.

As part of its duties the Department of Narcotics and Dangerous Drugs shall:

(1) Assist the Commission on Alcohol and Drug Abuse in the exchange of information between itself and governmental and local law‑enforcement officials concerning illicit traffic in and use and abuse of controlled substances.

(2) Assist the Commission in planning and coordinating training programs on law enforcement for controlled substances at the local and State level.

(3) Establish a centralized unit which shall accept, catalogue, file and collect statistics and make such information available for Federal, State and local law‑enforcement purposes.

(4) Have the authority to execute and serve search warrants, arrest warrants, administrative inspection warrants, subpoenas, and summonses.

(b) The Department of Health and Environmental Control shall be primarily responsible for making accountability audits of the supply and inventory of controlled substances in the possession of pharmacists, doctors, hospitals, health care facilities and other practitioners as well as in the possession of any individuals or institutions authorized to have possession of such substances and shall also be primarily responsible for such other duties in respect to controlled substances as shall be specifically delegated to the Department of Health and Environmental Control by the General Assembly. Drug inspectors and special agents of the Department of Health and Environmental Control as provided for in Section 44‑53‑490, while in the performance of their duties as prescribed herein, shall have:

(1) statewide police powers;

(2) authority to carry firearms;

(3) authority to execute and serve search warrants, arrest warrants, administrative inspection warrants, subpoenas, and summonses;

(4) authority to make investigations to determine whether there has been unlawful dispensing of controlled substances or the removal of such substances from regulated establishments or practitioners into illicit traffic;

(5) authority to seize property; and

(6) authority to make arrests without warrants for offenses committed in their presence.

~~(c)~~ ~~The Department of Health and Environmental Control may contract with the Board of Pharmaceutical Examiners for the Chief Drug Inspector of the Board of Pharmacy and his assistants, to enforce the provisions of this article with respect to inspections and audits which apply to pharmacists or pharmacies whether located in drugstores, hospitals or other health care facilities.~~”

SECTION 6. Section 44‑53‑560 of the 1976 Code is repealed.

SECTION 7. This act takes effect upon approval by the Governor.

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