ENGROSSED SENATE
BILL NO. 385

BY: WILKERSON of the SENATE

and

WILLIAMS of the HOUSE

[PUBLIC HEALTH AND SAFETY - AMENDING FIVE SECTIONS

IN TITLE 63 - CONTROLLED SUBSTANCES -

EMERGENCY]

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

SECTION 1. AMENDATORY 63 O.S. 1981, Section 2-210, as last amended by Section 2, Chapter 271, O.S.L. 1990 (63 O.S. Supp. 1990, Section 2-210), is amended to read as follows:

Section 2-210. The controlled substances listed in this section are included in Schedule IV.

A. Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant or depressant effect on the central nervous system:

1. Chloral betaine.

2. Chloral hydrate.

3. Ethchlorvynol.

4. Ethinamate.

5. Meprobamate.

6. Paraldehyde.

7. Petrichloral.

8. Diethylpropion.

9. Phentermine.

10. Pemoline.

11. Chlordiazepoxide.

12. Chlordiazepoxide and its salts, but not including chlordiazepoxide hydrochloride and clidinium bromide or chlordiazepoxide and water-soluble esterified estrogens.

13. Diazepam.

14. Oxazepam.

15. Clorazepate.

16. Flurazepam and its salts.

17. Clonazepam.

18. Barbital.

19. Mebutamate.

20. Methohexital.

21. Methylphenobarbital.

22. Phenobarbital.

23. Fenfluramine.

24. Pentazocine.

25. Dextropropoxyphene.

26. Butorphanol.

27. Alprazolam.

28. Halazepam.

29. Lorazepam.

30. Prazepam.

31. Temazepam.

32. Triazolam.

33. Carisoprodol.

34. Methandrostenolone.

~~34.~~ 35. Stanozolol.

~~35.~~ 36. Ethylestrenol.

~~36.~~ 37. Nandrolene phenpropionate.

~~37.~~ 38. Nandrolone deconoate.

~~38.~~ 39. Testosterone propionate.

~~39.~~ 40. Chorionic gonadotropin.

B. The Board of Pharmacy may except by rule any compound, mixture, or preparation containing any depressant substance listed in subsection A of this section from the application of all or any part of the Uniform Controlled Dangerous Substances Act, Section 2-101 et seq. of this title, if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a depressant effect on the central nervous system.

C. By rule, the Board of Pharmacy may except from the application of all or any part of the Uniform Controlled Dangerous Substances Act any material, compound, mixture or preparation containing an anabolic steroid listed in paragraphs ~~33~~ 34 through ~~39~~ 40 of subsection A of this section if the material, compound, mixture or preparation is expressly intended for administration through implants to cattle or other nonhuman species and is approved by the Federal Food and Drug Administration for such use.

D. In addition to the anabolic steroids listed in paragraphs ~~33~~ 34 through ~~39~~ 40 of subsection A of this section, "anabolic steroids" shall include any salt, optical and geometric isomers, and salts of isomers, compound, or derivative which is a chemical analog to any of the substances listed in paragraphs 33 through 39 of subsection A of this section.

SECTION 2. AMENDATORY 63 O.S. 1981, Section 2-302, as last amended by Section 4, Chapter 232, O.S.L. 1990 (63 O.S. Supp. 1990, Section 2-302), is amended to read as follows:

Section 2-302. A. Every person who manufactures, distributes, dispenses, prescribes, administers or uses for scientific purposes any controlled dangerous substance, within this state, or who proposes to engage in the manufacture, distribution, dispensing, prescribing, administering or use for scientific purposes of any controlled dangerous substance, within this state, shall obtain ~~annually~~ a registration issued by the Commissioner in accordance with the rules and regulations promulgated by him. Persons registered by the Commissioner under Section 2-101 et seq. of this title to manufacture, distribute, dispense, or conduct research with controlled dangerous substances may possess, manufacture, distribute, dispense, or conduct research with those substances to the extent authorized by their registration and in conformity with the other provisions of this article.

Manufacturers, distributors and scientific researchers shall obtain a registration annually. Other practioners shall obtain a registration for a period to be determined by the Director that will be for a period not less than one (1) year nor more than three (3) years.

B. Every trainer or handler of a canine controlled dangerous substances detector who, in the ordinary course of their profession, desires to possess any controlled dangerous substance, annually, shall obtain a registration issued by the Commissioner for a fee of Thirty-five Dollars ($35.00). Such persons shall be subject to all applicable provisions of Section 2-101 et seq. of this title and such applicable rules and regulations promulgated by the Director for those individuals identified in subparagraph a of paragraph 28 of Section 2-101 of this title. Persons registered by the Commissioner pursuant to this subsection may possess controlled

dangerous substances to the extent authorized by their registration and in conformity with the other provisions of this article.

C. The following persons shall not be required to register and may lawfully possess controlled dangerous substances under the provisions of ~~this act~~ Section 2-101 et seq. of this title:

1. An agent, or an employee thereof, of any registered manufacturer, distributor, dispenser or user for scientific purposes of any controlled dangerous substance if such agent is acting in the usual course of his business or employment;

2. Any person lawfully acting under the direction of a person authorized to administer controlled dangerous substances under Section 2-312 of this title;

3. A common or contract carrier or warehouseman, or an employee thereof, whose possession of any controlled dangerous substance is in the usual course of his business or employment;

4. An ultimate user or a person in possession of any controlled dangerous substance pursuant to a lawful order of a practitioner;

5. An individual pharmacist acting in the usual course of his employment with a pharmacy registered under this act;

6. A nursing home licensed by this state; and

7. Registered nurses and licensed practical nurses.

D. The Commissioner may, by regulation, waive the requirement for registration and/or fee for registration of certain manufacturers, distributors, dispensers, prescribers, administrators, or users for scientific purposes if he finds it consistent with the public health and safety.

E. A separate registration shall be required at each principal place of business or professional practice where the applicant manufactures, distributes, dispenses, prescribes, administers, or uses for scientific purposes controlled dangerous substances.

F. The Commissioner is authorized to inspect the establishment of a registrant or applicant for registration in accordance with the rules and regulations promulgated by him.

G. No person engaged in a profession or occupation for which a license to engage in such activity is provided by law shall be registered under this act unless such person holds a valid license of his profession or occupation.

H. Registrations shall be issued on the first day of November of each year. Registrations may be issued at other times, however, upon certification of the professional licensing board.

I. The licensing boards of all professions and occupations to which the use of controlled dangerous substances is incidental shall furnish a current list not later than the first day of October of each year of the persons holding valid licenses. All such persons except persons exempt from registration requirements under subsection C of this section shall be subject to the registration requirements of Section 2-101 et seq. of this title.

SECTION 3. AMENDATORY 63 O.S. 1981, Section 2-303, as last amended by Section 5, Chapter 232, O.S.L. 1990 (63 O.S. Supp. 1990, Section 2-303), is amended to read as follows:

Section 2-303. A. The Director of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control shall register an applicant to manufacture, distribute, dispense, prescribe, administer or use for scientific purposes controlled dangerous substances included in Schedules I through V of Section 2-101 et seq. of this title unless he determines that the issuance of such registration is inconsistent with the public interest. In determining the public interest, the following factors shall be considered:

1. Maintenance of effective controls against diversion of particular controlled dangerous substances and any Schedule I or II substance compounded therefrom into other than legitimate medical,

scientific or industrial channels, including examination of the fitness of his employees or agents to handle dangerous substances;

2. Compliance with applicable state and local law;

3. Prior conviction record of applicant under federal or state laws relating to the manufacture, distribution or dispensing of such substances;

4. Furnishing by the applicant false or fraudulent material information in any application filed under Section 2-101 et seq. of this title;

5. Past experience in the manufacture, distribution, dispensing, prescribing, administering or use for scientific purposes of controlled dangerous substances, and the existence in the establishment of effective controls against diversion;

6. Denial, suspension or revocation of the applicant's federal registration to manufacture, distribute or dispense controlled dangerous substances as authorized by federal law; and

7. Such other factors as may be relevant to and consistent with the public health and safety.

Nothing herein shall be deemed to require individual licensed pharmacists to register under the provisions of this act.

B. Registration granted under subsection A of this section shall not entitle a registrant to manufacture, distribute, dispense, prescribe, administer or use for scientific purposes controlled dangerous substances in Schedule I or II other than those specified in the registration.

C. Practitioners shall be registered to dispense, prescribe, administer or use for scientific purposes substances in Schedules II through V if they are authorized to carry on their respective activities under the laws of this state. A registration application by a practitioner who wishes to conduct research with Schedule I substances shall be accompanied by evidence of the applicant's federal registration to conduct such activity and shall be referred

to the Medical Research Commission for advice. The Medical Research Commission shall promptly advise the Director concerning the qualifications of each practitioner requesting such registration. Registration for the purpose of bona fide research or of use for scientific purposes with Schedule I substances by a practitioner deemed qualified by the Medical Research Commission may be denied only on a ground specified in subsection A of Section 2-304 of this title or if there are reasonable grounds to believe that the applicant will abuse or unlawfully transfer such substances or fail to safeguard adequately his supply of such substances against diversion from legitimate medical or scientific use.

D. 1. The Director shall initially permit persons to register who own or operate any establishment engaged in the manufacture, distribution, dispensing, prescribing, administering or use for scientific purposes of any controlled dangerous substances prior to the effective date of this act and who are registered or licensed by the state. ~~Annual fees~~ Fees for registration under this section shall be as follows:

Practitioners	$35.00	per year of registration
Distributors	$50.00	annually
Manufacturers	$100.00	annually

2. A registrant shall be required to pay double the amount of the above-listed fee for any renewal of registration received more than sixty (60) days late.

3. A Ten Dollar ($10.00) fee shall be charged for a duplicate registration certificate.

E. Compliance by manufacturers and distributors with the provisions of the Federal Controlled Substances Act, 21 U.S.C., Section 801 et seq., respecting registration, excluding fees, shall be deemed sufficient to qualify for registration under this act.

SECTION 4. AMENDATORY Section 1, Chapter 79, O.S.L. 1990 (63 O.S. Supp. 1990, Section 2-407.1), is amended to read as follows:

Section 2-407.1 A. For the purpose of inducing intoxication or distortion or disturbance of the auditory, visual, muscular, or mental process, no person shall ingest, use, or possess any compound, liquid, or chemical which contains ethylchloride, butyl nitrite, isobutyl nitrite, secondary butyl nitrite, tertiary butyl nitrite, amyl nitrite, isopropyl nitrite, isopentyl nitrite, or mixtures containing butyl nitrite, isobutyl nitrite, secondary butyl nitrite, tertiary butyl nitrite, amyl nitrite, isopropyl nitrite, isopentyl nitrite, or any of their esters, isomers, or analogues, or any other similar compound.

B. No person shall possess, buy, sell, or otherwise transfer any substance specified in subsection A of this section for the purpose of inducing or aiding any other person to inhale or ingest such substance or otherwise violate the provisions of this section.

C. The provisions of subsections A and B of this section shall not apply to:

1. the possession and use of a substance specified in subsection A of this section which is used as part of the care or treatment by a licensed physician of a disease, condition or injury or pursuant to a prescription of a licensed physician; and

2. the possession of a substance specified in subsection A of this section which is used as part of a known manufacturing process or industrial operation when the possessor has obtained a permit from the State Department of Health.

D. The State Board of Health shall promulgate rules and regulations establishing procedures for the application, form and issuance of a permit to legitimate manufacturing and industrial applicants as provided for in subsection C of this section.

E. Any person convicted of violating any provision of subsection A or B of this section shall be guilty of a misdemeanor punishable by imprisonment in the county jail not to exceed ninety (90) days or by the imposition of a fine not to exceed Five Hundred Dollars ($500.00), or by both such imprisonment and fine. Each violation shall be considered a separate offense.

SECTION 5. AMENDATORY 63 O.S. 1981, Section 2-503, as last amended by Section 1, Chapter 117, O.S.L. 1990 (63 O.S. Supp. 1990, Section 2-503), is amended to read as follows:

Section 2-503. A. The following shall be subject to forfeiture:

1. All controlled dangerous substances which have been manufactured, distributed, dispensed, acquired, concealed or possessed in violation of the Uniform Controlled Dangerous Substances Act, Section 2-101 et seq. of this title.

2. All raw materials, products and equipment of any kind and all drug paraphernalia as defined by the Uniform Controlled Dangerous Substances Act, which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing or exporting, injecting, ingesting, inhaling, or otherwise introducing into the human body any controlled dangerous substance in violation of the provisions of the Uniform Controlled Dangerous Substances Act.

3. All property which is used, or intended for use, as a container for property described in paragraphs 1 and 2 of this subsection.

4. All conveyances, including aircraft, vehicles, vessels, or farm implements which are used to transport, conceal, or cultivate for the purpose of distribution as defined in Section 2-101 of this title, or in any manner to facilitate the transportation or cultivation for the purpose of sale or receipt of property described

in paragraphs 1 or 2 of this subsection or when such property is unlawfully possessed by an occupant thereof, except that:

a. no conveyance used by a person as a common carrier in the transaction of business as a common carrier shall be forfeited under the provisions of the Uniform Controlled Dangerous Substances Act unless it shall appear that the owner or other person in charge of such conveyance was a consenting party or privy to a violation of the Uniform Controlled Dangerous Substances Act; and

b. no conveyance shall be forfeited under the provisions of this section by reason of any act or omission established by the owner thereof to have been committed or omitted without the knowledge or consent of such owner, and if the act is committed by any person other than such owner the owner shall establish further that the conveyance was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States, or of any state.

5. All books, records and research, including formulas, microfilm, tapes and data which are used in violation of the Uniform Controlled Dangerous Substances Act.

6. All things of value furnished, or intended to be furnished, in exchange for a controlled dangerous substance in violation of the Uniform Controlled Dangerous Substances Act, all proceeds traceable to such an exchange, and all monies, negotiable instruments, and securities used, or intended to be used, to facilitate any violation of the Uniform Controlled Dangerous Substances Act.

7. All moneys, coin and currency found in close proximity to forfeitable substances, to forfeitable drug manufacturing or distribution paraphernalia or to forfeitable records of the

importation, manufacture or distribution of substances, which are rebuttably presumed to be forfeitable under this act. The burden of proof is upon claimants of the property to rebut this presumption.

8. All real property, including any right, title, and interest in the whole of any lot or tract of land and any appurtenance or improvement thereto, which is used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, a violation of the Uniform Controlled Dangerous Substances Act which is punishable by imprisonment for more than one (1) year, except that no property right, title or interest shall be forfeited pursuant to this paragraph, by reason of any act or omission established by the owner thereof to have been committed or omitted without the knowledge or consent of that owner.

9. All weapons possessed, used or available for use in any manner to facilitate a violation of the Uniform Controlled Dangerous Substances Act, Section 2-101 et seq. of this title.

B. Any property or thing of value of a person is subject to forfeiture if it is established by a preponderance of the evidence that such property or thing of value was acquired by such person during the period of the violation of the Uniform Controlled Dangerous Substances Act or within a reasonable time after such period and there was no likely source for such property or thing of value other than the violation of the Uniform Controlled Dangerous Substances Act.

C. Any property or thing of value of a person is subject to forfeiture if it is established by a preponderance of the evidence that the person has not paid all or part of a fine imposed pursuant to the provisions of Section 2-415 of this title.

D. All items forfeited in this section shall be forfeited under the procedures established in Section 2-506 of this title. Whenever any item is forfeited pursuant to this section except for items confiscated by the Oklahoma State Bureau of Narcotics and Dangerous

Drugs Control, the Oklahoma Department of Public Safety, the Oklahoma State Bureau of Investigation or the Alcoholic Beverage Laws Enforcement Commission, the district court of the district shall order that such item, money, or monies derived from the sale of such item be deposited by the state, county or city law enforcement agency which seized the item in the revolving fund provided for in Section 2-506 of this title; provided, such item, money or monies derived from the sale of such item forfeited due to nonpayment of a fine imposed pursuant to the provisions of Section 2-415 of this title shall be apportioned as provided in Section 2-416 of this title. Items, money or monies seized pursuant to subsections A and B of this section shall not be applied or considered toward satisfaction of the fine imposed by Section 2-415 of this title. All raw materials used or intended to be used by persons to unlawfully manufacture or attempt to manufacture any controlled dangerous substance in violation of the Uniform Controlled Dangerous Substances Act shall be summarily forfeited pursuant to the provisions of Section 2-505 of this title.

E. All property taken or detained under this section by the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, the Oklahoma Department of Public Safety, the Oklahoma State Bureau of Investigation or the Alcoholic Beverage Laws Enforcement Commission shall not be repleviable, but shall remain in the custody of the Bureaus, Department, or Commission, respectively, subject only to the orders and decrees of a court of competent jurisdiction. The Director of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, the Commissioner of Public Safety, the Director of the Oklahoma State Bureau of Investigation or the Director of the Alcoholic Beverage Laws Enforcement Commission shall follow the procedures outlined in Section 2-506 of this title dealing with notification of seizure, intent of forfeiture, final disposition procedures, and release to innocent claimants with regard to all

property included in this section detained by the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, the Oklahoma Department of Public Safety, the Oklahoma State Bureau of Investigation or the Alcoholic Beverage Laws Enforcement Commission. Property taken or detained by the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, the Oklahoma Department of Public Safety, the Oklahoma State Bureau of Investigation or the Alcoholic Beverage Laws Enforcement Commission shall be disposed of or sold pursuant to the provisions of Section 2-508 of this title.

SECTION 6. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the Senate the 27th day of February, 1991.

President of the Senate

Passed the House of Representatives the ____ day of _____, 1991.

Speaker of the House of Representatives