ENROLLED SENATE
BILL NO. 738

By: Helton and Price of the Senate

and

Kirby of the House

An Act relating to public health and safety; amending 63 O.S. 1991, Sections 2-505 and 2-509, which relate to destruction of controlled dangerous substances; authorizing the destruction and eradication of certain plants by use of herbicide; specifying chemical and method of eradication; providing for certain costs of eradication; and declaring an emergency.

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

SECTION 1. AMENDATORY 63 O.S. 1991, Section 2-505, is amended to read as follows:

Section 2-505. A. All controlled substances in Schedule I of Section 2-101 et seq. of this title and all controlled substances in Schedules II, III, IV, and V that are not in properly labeled containers in accordance with this act that are possessed, transferred, sold, or offered for sale in violation of this act are deemed contraband and shall be seized and summarily forfeited.

B. All hazardous materials and all property contaminated with hazardous materials described in paragraph 2 of subsection A of Section 2-503 of this title, used or intended to be used by persons to unlawfully manufacture or attempt to manufacture any controlled dangerous substance, shall be summarily forfeited to the state and submitted to the Oklahoma State Bureau of Investigation for prompt destruction in accordance with state and federal laws.

C. Species of plants from which controlled substances in Schedules I or II of the Uniform Controlled Dangerous Substances Act, Section 2-101 et seq. of this title, may be derived which have been planted or cultivated in violation of the Uniform Controlled Dangerous Substances Act, or of which the owners or cultivators are unknown, or which are wild growths, may be seized by peace officers, summarily forfeited, and, in lieu of the eradication procedures contained in Section 2-509 of this title, promptly cut and burned where seized <u>or destroyed by applications of herbicides approved for such purpose by the Department of Agriculture. Spraying shall be limited to the chemical glyphosate and shall be applied directly to the plants by hand spraying from portable ground-based spray units. The Oklahoma Bureau of Narcotics shall cooperate with the Oklahoma Department of Agriculture to ensure that persons spraying the plants are trained in its appropriate use and any safety and protection issues</u>.

SECTION 2. AMENDATORY 63 O.S. 1991, Section 2-509, is amended to read as follows:

Section 2-509. A. All species of plants from which controlled dangerous substances in Schedules I and II may be derived are hereby

declared inimical to health and welfare of the public, and the intent of the Legislature is to control and eradicate these species of the plants in the State of Oklahoma.

B. It shall be unlawful for any person to cultivate or produce, or to knowingly permit the cultivation, production, or wild growing of any species of such plants, on any lands owned or controlled by such person, and it is hereby declared the duty of every such person to destroy all such plants found growing on lands owned or controlled by him.

C. 1. Whenever any peace officer of the state shall receive information that any species of any such plants has been found growing on any private lands in the State of Oklahoma, he shall notify the sheriff and county commissioners of the county wherein such plants are found growing. Within five (5) days of receipt of such notice, the county commissioners shall notify the owner or person in possession of such lands that such plants have been found growing on the said lands and that the same must be destroyed or eradicated within fifteen (15) days. When the fifteen (15) days have elapsed, the reporting peace officer shall cause an investigation to be made of the aforesaid lands, and if any such plants be found growing thereon, the commissioners shall cause the same to be destroyed or eradicated by either cutting and burning ~~the same~~ or by applications of herbicides approved for such purpose by the Department of Agriculture.

2. Whenever any such plants are destroyed or eradicated by order of the commissioners as provided herein, the cost of the same shall, if the work or labor be furnished by the commissioners, be taxed against the lands whereon the work was performed, and shall be a lien upon such land in all manner and respects as a lien of judgment, if the owner is charged with a violation of subsection B of this section. If the violation of subsection B of this section is by a person other than the owner of the land, without the knowledge of the owner, the costs shall be paid by the initiating law enforcement agency.

D. Knowingly violating the provisions of subsection B of this section is hereby declared, as to the owner, or person in possession of such lands, to be a felony and punishable as such by a fine of not to exceed Fifty Thousand Dollars ($50,000.00) and imprisonment in the State Penitentiary for not less than two (2) years nor more than life. Any person convicted of a second or subsequent violation of subsection B of this section is punishable by a term of imprisonment twice that otherwise authorized and by twice the fine otherwise authorized. Said sentence shall not be subject to statutory provisions for suspended sentences, deferred sentences, or probation, except when the conviction is for a first offense.

E. It shall be the duty of any peace officer of the State of Oklahoma who receives information of such plants growing in the State of Oklahoma, to make notice, in writing, to the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control and the future destruction or eradication of the annual growth of such plants shall be supervised by the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control. Any destruction or eradication of the annual growth of such plants supervised by the Bureau shall be by cutting and burning the same or by destruction and eradication through applications of herbicides approved for such purpose by the Department of Agriculture.

F. Any application of herbicides authorized by this section shall be made pursuant to the provisions of Section 2-505 of this title.

G. In lieu of the eradication procedures provided for in subsections B and C of this section, all species of plants from which controlled dangerous substances in Schedules I and II of the Uniform Controlled Dangerous Substances Act may be derived, may be disposed of pursuant to the provisions of subsection C of Section 2-505 of this title.

SECTION 3. 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 9th day of May, 1994.

President of the Senate

Passed the House of Representatives the 24th day of May, 1994.

Speaker of the House of Representatives