

STATE OF OKLAHOMA

1st Session of the 44th Legislature (1993)

HOUSE BILL NO. 1749

By: Webb

AS INTRODUCED

An Act relating to public health and safety;

abolishing the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control; transferring personnel, property, funds, records, obligations and encumbrances to the Oklahoma State Bureau of Investigation; transferring responsibility for enforcement of certain acts to the Oklahoma State Bureau of Investigation; clarifying references; amending 63 O.S. 1991, Sections 2-101, 2-104.1, as amended by Section 6, Chapter 364, O.S.L. 1992, and 2-107 (63 O.S. Supp. 1992, Section 2-104.1), which relate to the Uniform Controlled Dangerous Substances Act; modifying definitions; redesignating the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control Commission as the Public Safety Commission; modifying certain revolving fund; amending 47 O.S. 1991, Section 2-102, which relates to the Department of Public Safety; modifying appointment procedure for Commissioner of Public Safety; providing for recodification; providing for codification; providing an effective date; and declaring an emergency.

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 2-104.2 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. The Oklahoma State Bureau of Narcotics and Dangerous Drugs Control is hereby abolished as a state agency and shall be a division of the Oklahoma State Bureau of Investigation. All personnel, property, unexpended funds, and records of the Bureau shall be transferred to the Oklahoma State Bureau of Investigation. All contractual obligations and encumbrances of the Bureau shall be assumed by the Oklahoma State Bureau of Investigation.

B. When the Oklahoma State Bureau of Investigation submits its annual budget request, it shall submit a separate budget request for the Narcotics and Dangerous Drugs Control Division.

C. Any reference in the Oklahoma Statutes to the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control shall mean the Narcotics and Dangerous Drugs Control Division of the Department of Public Safety. Any reference in the Oklahoma Statutes to the Director of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control shall mean the Commissioner of Public Safety.

SECTION 2. AMENDATORY 63 O.S. 1991, Section 2-101, is amended to read as follows:

Section 2-101. As used in the Uniform Controlled Dangerous Substances Act, Section 2-101 et seq. of this title:

1. "Administer" means the direct application of a controlled dangerous substance, whether by injection, inhalation, ingestion or any other means, to the body of a patient, animal or research subject by:

- a. a practitioner (or, in his presence, by his authorized agent), or

b. the patient or research subject at the direction and in the presence of the practitioner.

2. "Agent" means a peace officer appointed by and who acts in behalf of the Director of the Oklahoma State Bureau of ~~Narcotics and Dangerous Drugs Control~~ Investigation or an authorized person who acts on behalf of or at the direction of a person who manufactures, distributes, dispenses, prescribes, administers or uses for scientific purposes controlled dangerous substances but does not include a common or contract carrier, public warehouseman or employee thereof, or a person required to register under the Uniform Controlled Dangerous Substances Act.

3. "Board" means the Advisory Board to the Director of the Oklahoma State Bureau of ~~Narcotics and Dangerous Drugs Control~~ Investigation.

4. "Bureau of Narcotics and Dangerous Drugs" means the Bureau of Narcotics and Dangerous Drugs, United States Department of Justice.

5. "Coca leaves" includes cocaine and any compound, manufacture, salt, derivative, mixture or preparation of coca leaves, except derivatives of coca leaves which do not contain cocaine or ecgonine.

6. "Commissioner" or "Director" means the Director of the Oklahoma State Bureau of ~~Narcotics and Dangerous Drugs Control~~ Investigation.

7. "Control" means to add, remove or change the placement of a drug, substance or immediate precursor under the Uniform Controlled Dangerous Substances Act.

8. "Controlled dangerous substance" means a drug, substance or immediate precursor in Schedules I through V of the Uniform Controlled Dangerous Substances Act, Section 2-101 et seq. of this title.

9. "Counterfeit substance" means a controlled substance which, or the container or labeling of which without authorization, bears the trademark, trade name or other identifying marks, imprint, number or device or any likeness thereof of a manufacturer, distributor or dispenser other than the person who in fact manufactured, distributed or dispensed the substance.

10. "Deliver" or "delivery" means the actual, constructive or attempted transfer from one person to another of a controlled dangerous substance, whether or not there is an agency relationship.

11. "Dispense" means to deliver a controlled dangerous substance to an ultimate user or human research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling or compounding necessary to prepare the substance for such distribution. "Dispenser" is a practitioner who delivers a controlled dangerous substance to an ultimate user or human research subject.

12. "Distribute" means to deliver other than by administering or dispensing a controlled dangerous substance.

13. "Distributor" means a person who distributes.

14. "Drug" means articles recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals; articles (other than food) intended to affect the structure or any function of the body of man or other animals; and articles intended for use as a component of any article specified in this paragraph; but does not include devices or their components, parts or accessories.

15. "Drug-dependent person" means a person who is using a controlled dangerous substance and who is in a state of psychic or physical dependence, or both, arising from administration of that

controlled dangerous substance on a continuous basis. Drug dependence is characterized by behavioral and other responses which include a strong compulsion to take the substance on a continuous basis in order to experience its psychic effects, or to avoid the discomfort of its absence.

16. "Imitation controlled substance" means a substance that is not a controlled dangerous substance, which by dosage unit appearance, color, shape, size, markings or by representations made, would lead a reasonable person to believe that the substance is a controlled dangerous substance. In the event the appearance of the dosage unit is not reasonably sufficient to establish that the substance is an "imitation controlled substance", the court or authority concerned should consider, in addition to all other factors, the following factors as related to "representations made" in determining whether the substance is an "imitation controlled substance":

- a. statements made by an owner or by any other person in control of the substance concerning the nature of the substance, or its use or effect;
- b. statements made to the recipient that the substance may be resold for inordinate profit;
- c. whether the substance is packaged in a manner normally used for illicit controlled substances;
- d. evasive tactics or actions utilized by the owner or person in control of the substance to avoid detection by law enforcement authorities;
- e. prior convictions, if any, of an owner, or any other person in control of the object, under state or federal law related to controlled substances or fraud; and
- f. the proximity of the substances to controlled dangerous substances.

17. "Immediate precursor" means a substance which the Director has found to be and by regulation designates as being the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used, or likely to be used, in the manufacture of a controlled dangerous substance, the control of which is necessary to prevent, curtail or limit such manufacture.

18. "Laboratory" means a laboratory approved by the Director as proper to be entrusted with the custody of controlled dangerous substances and the use of controlled dangerous substances for scientific and medical purposes and for purposes of instruction.

19. "Manufacture" means the production, preparation, propagation, compounding or processing of a controlled dangerous substance, either directly or indirectly by extraction from substances of natural or synthetic origin, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis. "Manufacturer" includes any person who packages, repackages or labels any container of any controlled dangerous substance, except practitioners who dispense or compound prescription orders for delivery to the ultimate consumer.

20. "Marihuana" means all parts of the plant *Cannabis sativa* L., whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture or preparation of such plant, its seeds or resin, but shall not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil or cake, or the sterilized seed of such plant which is incapable of germination.

21. "Medical purpose" means an intention to utilize a controlled dangerous substance for physical or mental treatment, diagnosis or for the prevention of a disease condition not in

violation of any state or federal law and not for the purpose of satisfying physiological or psychological dependence or other abuse.

22. "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

- a. opium, coca leaves and opiates;
- b. a compound, manufacture, salt, derivative or preparation of opium, coca leaves or opiates;
- c. cocaine, its salts, optical and geometric isomers, and salts of isomers;
- d. ecgonine, its derivatives, their salts, isomers and salts of isomers; and
- e. a substance, and any compound, manufacture, salt, derivative or preparation thereof, which is chemically identical with any of the substances referred to in subparagraphs a through d of this paragraph, except that the words "narcotic drug" as used in this act shall not include decocainized coca leaves or extracts of coca leaves, which extracts do not contain cocaine or ecgonine.

23. "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having such addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under the Uniform Controlled Dangerous Substances Act, the dextrorotatory isomer of 3-methoxy-n-methyl-morphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms.

24. "Opium poppy" means the plant of the species *Papaver somniferum* L., except the seeds thereof.

25. "Peace officer" means a police officer, sheriff, deputy sheriff, district attorney's investigator, investigator from the Office of the Attorney General, or any other person elected or appointed by law to enforce any of the criminal laws of this state or of the United States.

26. "Person" means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

27. "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

28. "Practitioner" means:

- a. a physician, dentist, podiatrist, veterinarian, scientific investigator or other person licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to, use for scientific purposes or administer a controlled dangerous substance in the course of professional practice or research in this state; or
- b. a pharmacy, hospital, laboratory or other institution licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to, use for scientific purposes or administer a controlled dangerous substance in the course of professional practice or research in this state.

29. "Production" includes the manufacture, planting, cultivation, growing or harvesting of a controlled dangerous substance.

30. "State" means the State of Oklahoma or any other state of the United States.

31. "Ultimate user" means a person who lawfully possesses a controlled dangerous substance for his own use or for the use of a



member of his household or for administration to an animal owned by him or by a member of his household.

32. "Drug paraphernalia" means all equipment, products and materials of any kind which are used or intended for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body, a controlled dangerous substance in violation of the Uniform Controlled Dangerous Substances Act. It includes, but is not limited to:

- a. kits used or intended for use in planting, propagating, cultivating, growing or harvesting of any species of plant which is a controlled dangerous substance or from which a controlled dangerous substance can be derived;
- b. kits used or intended for use in manufacturing, compounding, converting, producing, processing or preparing controlled dangerous substances;
- c. isomerization devices used or intended for use in increasing the potency of any species of plant which is a controlled dangerous substance;
- d. testing equipment used or intended for use in identifying, or in analyzing the strength, effectiveness or purity of controlled dangerous substances;
- e. scales and balances used or intended for use in weighing or measuring controlled dangerous substances;
- f. diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, used or intended for use in cutting controlled dangerous substances;

- g. separation gins and sifters used or intended for use in removing twigs and seeds from, or in otherwise cleaning or refining, marihuana;
- h. blenders, bowls, containers, spoons and mixing devices used or intended for use in compounding controlled dangerous substances;
- i. capsules, balloons, envelopes and other containers used or intended for use in packaging small quantities of controlled dangerous substances;
- j. containers and other objects used or intended for use in parenterally injecting controlled dangerous substances into the human body;
- k. hypodermic syringes, needles and other objects used or intended for use in parenterally injecting controlled dangerous substances into the human body;
- l. objects used or intended for use in ingesting, inhaling or otherwise introducing marihuana, cocaine, hashish or hashish oil into the human body, such as:
  - (1) metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens, hashish heads or punctured metal bowls;
  - (2) water pipes;
  - (3) carburetion tubes and devices;
  - (4) smoking and carburetion masks;
  - (5) roach clips: meaning objects used to hold burning material, such as a marihuana cigarette, that has become too small or too short to be held in the hand;
  - (6) miniature cocaine spoons and cocaine vials;
  - (7) chamber pipes;
  - (8) carburetor pipes;
  - (9) electric pipes;

- (10) air-driven pipes;
- (11) chillums;
- (12) bongs;
- (13) ice pipes or chillers.

Provided however, drug paraphernalia shall not include separation gins intended for use in preparing tea or spice, clamps used for constructing electrical equipment, water pipes designed for ornamentation or pipes designed for smoking tobacco.

33. "Synthetic controlled substance" means a substance that is not a controlled dangerous substance, but a substance that produces a like or similar physiological or psychological effect on the human central nervous system that currently has no accepted medical use in treatment in the United States and has a potential for abuse. The court or authority concerned with establishing that the substance is a synthetic controlled substance should consider, in addition to all other factors, the following factors as related to "representations made" in determining whether the substance is a synthetic controlled substance:

- a. statements made by an owner or by any other person in control of the substance concerning the nature of the substance, its use or effect;
- b. statements made to the recipient that the substance may be resold for an inordinate profit;
- c. prior convictions, if any, of an owner or any person in control of the substance, under state or federal law related to controlled dangerous substances; and
- d. the proximity of the substance to any controlled dangerous substance.

34. "Tetrahydrocannabinols" means all substances that have been chemically synthesized to emulate the tetrahydrocannabinols of marihuana.

35. "Isomer" means the optical isomer, except as used in subsection C of Section 2-204 of this title and paragraph 4 of subsection A of Section 2-206 of this title. As used in subsection C of Section 2-204 of this title, "isomer" means the optical, positional or geometric isomer. As used in paragraph 4 of subsection A of Section 2-206 of this title, the term "isomer" means the optical or geometric isomer.

36. "Hazardous materials" means materials, whether solid, liquid or gas; which are toxic to human, animal, aquatic or plant life, and the disposal of which materials is controlled by state or federal guidelines.

SECTION 3. AMENDATORY 63 O.S. 1991, Section 2-104.1, as amended by Section 6, Chapter 364, O.S.L. 1992 (63 O.S. Supp. 1992, Section 2-104.1), is amended to read as follows:

Section 2-104.1 A. There is hereby created an Oklahoma State Bureau of Narcotics and Dangerous Drugs Control Commission which shall consist of seven (7) members, not more than two of whom shall be from the same congressional district. Effective July 1, 1993, the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control Commission shall become the Department of Public Safety Commission and shall cease to have any responsibility for the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control. The members shall be appointed by the Governor and confirmed by the Senate and shall be removable only for cause, as provided by law for the removal of officers not subject to impeachment. The term of office of each member shall be seven (7) years. The first appointments shall be for the following terms as designated by the Governor: one member for a term of one (1) year; one member for a term of two (2) years; one member for a term of three (3) years; one member for a term of four (4) years; one member for a term of five (5) years; one member for a term of six (6) years; and one member for a term of seven (7) years. A member may serve more than one term on the Commission.

Each member shall continue to serve so long as he is qualified until his successor has been appointed and confirmed by the Senate.

Vacancies occurring during a term shall be filled for the unexpired portion of the term by the same procedure used to make the regular appointments.

B. Four of the members shall represent the lay citizenry, one member shall be a district attorney while serving in that capacity, one member shall be a sheriff while serving in that capacity, and one member shall be a chief of police while serving in that capacity; provided that the sheriff and police chief members shall have successfully completed an approved course of instruction for peace officers as required by law.

C. Annually the Commission shall select one of the Commission members to serve as Chairman and one member to serve as Vice Chairman. The Commission shall meet at least quarterly. The Chairman shall preside at all meetings of the Commission and shall have the power to call meetings of the Commission. In addition, meetings of the Commission may be called by a majority of the members. The Vice Chairman shall perform these functions in the absence or incapacity of the Chairman. A quorum of four members of the Commission shall be necessary to conduct any official business. All actions taken by the Commission shall be by a simple majority vote of a quorum. In the event of a tie vote, the measure being voted upon shall be deemed to have failed.

The Commission shall adopt rules of procedure for the orderly performance of its functions.

D. Members of the Commission shall serve without salary but may be reimbursed for travel expenses in attending meetings and performing their duties in the manner provided for other state officers and employees under the State Travel Reimbursement Act, Section 500.1 et seq. of Title 74 of the Oklahoma Statutes. No other provisions of law shall be construed as prohibiting public

officers from also serving as members of the Commission, nor shall any other provisions of law be construed as prohibiting public officers or public employees from performing services for the Commission without compensation. It is further provided that no town, city, county, or other subdivision or other agency of state government shall be prohibited from receiving a grant or from benefiting from grants or expenditures of the Commission for the reason that an officer or employee of such town, city, county, or other subdivision or agency of state government is a Commission member or employee.

E. The Commission shall have the following powers and duties and responsibilities:

1. To appoint the ~~Director of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control~~ Commissioner of Public Safety, whose compensation shall be determined by the Legislature.

2. To hear any complaint against the ~~Oklahoma State Bureau of Narcotics and Dangerous Drugs Control~~ Department of Public Safety or any of its employees according to the following procedure:

- a. Only those complaints which have been submitted in writing and are signed will be acted upon by the Commission.
- b. All hearings on complaints shall be conducted in executive sessions, and shall not be open to the public.
- c. The Commission shall have limited access to pertinent investigative files when investigating a complaint. The ~~Director~~ Commissioner shall provide a procedure whereby the identification of all persons named in any investigative file except the subject of the complaint and the complaining witness shall not be revealed to the members of the Commission. Any consideration of investigative files shall be in executive session not

open to the public. No information or evidence received in connection with the hearings shall be revealed to any person or agency. Any violation hereof shall be grounds for removal from the Commission, and shall constitute a misdemeanor.

3. To make recommendations to the ~~Director~~ Commissioner of any needed disciplinary action necessary as a result of an investigation conducted upon a complaint received.

4. To establish general procedures with regard to assisting law enforcement officers and district attorneys.

~~5. To establish a program of training for agents utilizing such courses as the National Police Academy conducted by the Federal Bureau of Investigation.~~

SECTION 4. AMENDATORY 63 O.S. 1991, Section 2-107, is amended to read as follows:

Section 2-107. There is hereby created in the State Treasury a revolving fund for the Oklahoma State Bureau of ~~Narcotics and Dangerous Drugs Control~~ Investigation to be designated the "Oklahoma State Bureau of Investigation Narcotics Division Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of any monies received from the sale of surplus and confiscated property, fees and receipts collected pursuant to the Oklahoma Open Records Act, gifts, bequests, devises, contributions or grants, public or private, including federal funds unless otherwise provided by federal law or regulation, registration fees and receipts relating to prescription pads and receipts from any other source. All monies accruing to the credit of said fund are hereby appropriated and may be budgeted and expended by the Oklahoma State Bureau of ~~Narcotics and Dangerous Drugs Control~~ Investigation for general operations of the ~~agency~~ Narcotics and Dangerous Drugs Control Division. Expenditures from said fund shall be made upon warrants issued by the State Treasurer against claims

filed as prescribed by law with the Director of State Finance for approval and payment.

SECTION 5. AMENDATORY 47 O.S. 1991, Section 2-102, is amended to read as follows:

Section 2-102. A. The Department shall be under the control of an executive officer to be known as the "Commissioner of Public Safety", who shall be appointed by the ~~Governor~~ Public Safety Commission with the advice and consent of the Senate.

The Commissioner of Public Safety shall be a professional law enforcement officer with ten (10) years' experience in the field of law enforcement or with five (5) years' experience in the field of law enforcement and a graduate of a four-year college with a degree in law enforcement administration, law, criminology or a related science.

Any vacancy in the office of the Commissioner of Public Safety shall be filled in the same manner as the original appointment is made.

Said Commissioner of Public Safety shall be allowed his actual and necessary telephone and telegraph expenses incurred in the performance of his official duties while away from his office.

B. The Commissioner of Public Safety, after his appointment and before entering upon the discharge of his duties, shall take and subscribe to the oath of office required by the Constitution. Bonding of the Commissioner of Public Safety and other employees of the Department will be provided under the provisions of Section 85.26 of Title 74 of the Oklahoma Statutes.

SECTION 6. RECODIFICATION 63 O.S. 1991, Section 2-104.1, as last amended by Section 3 of this act, shall be renumbered as Section 2-101.1 of Title 47 of the Oklahoma Statutes, unless there is created a duplication in numbering.

SECTION 7. This act shall become effective July 1, 1993.



SECTION 8. 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.

44-1-5917

SD