ENROLLED SENATE
BILL NO. 878

By: Helton, Weedn and Martin of the Senate

and

Pope (Clay), Nance, Lindley, Collins, Corn, Easley, Ostrander and Braddock of the House

An Act relating to controlled dangerous substances; amending 63 O.S. 1991, Section 2-401, as last amended by Section 1, Chapter 319, O.S.L. 1999 (63 O.S. Supp. 1999, Section 2-401), which relates to prohibited acts and penalties; prohibiting theft of anhydrous ammonia; stating penalty; making possession of certain substance or possession of any combination of certain substances prima facie evidence of intent to manufacture controlled dangerous substance; prohibiting unlawful tampering with certain equipment, container or storage device; stating penalty; defining term; barring derivative action against certain persons due to unlawful conduct; specifying persons immune from liability; providing for codification; and declaring an emergency.

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

SECTION 1. AMENDATORY 63 O.S. 1991, Section 2-401, as last amended by Section 1, Chapter 319, O.S.L. 1999 (63 O.S. Supp. 1999, Section 2-401), is amended to read as follows:

Section 2-401. A. Except as authorized by the Uniform Controlled Dangerous Substances Act, Section 2-101 et seq. of this title, it shall be unlawful for any person:

1. To distribute, dispense, transport with intent to distribute or dispense, possess with intent to manufacture, distribute, or dispense, a controlled dangerous substance or to solicit the use of or use the services of a person less than eighteen (18) years of age to cultivate, distribute or dispense a controlled dangerous substance;

2. To create, distribute, transport with intent to distribute or dispense, or possess with intent to distribute, a counterfeit controlled dangerous substance; or

3. To distribute any imitation controlled substance as defined by Section 2-101 of this title, except when authorized by the Food and Drug Administration of the United States Department of Health and Human Services.

B. Any person who violates the provisions of this section with respect to:

1. A substance classified in Schedule I or II which is a narcotic drug or lysergic acid diethylamide (LSD), upon conviction, shall be guilty of a felony and shall be sentenced to a term of imprisonment for not less than five (5) years nor more than life and a fine of not more than One Hundred Thousand Dollars ($100,000.00), which shall be in addition to other punishment provided by law and shall not be imposed in lieu of other punishment. Any sentence to the custody of the Department of Corrections shall not be subject to statutory provisions for suspended sentences, deferred sentences, or probation except when the conviction is for a first offense;

2. Any other controlled dangerous substance classified in Schedule I, II, III, or IV, upon conviction, shall be guilty of a felony and shall be sentenced to a term of imprisonment for not less than two (2) years nor more than life and a fine of not more than Twenty Thousand Dollars ($20,000.00), which shall be in addition to other punishment provided by law and shall not be imposed in lieu of other punishment. Any sentence to the custody of the Department of Corrections shall not be subject to statutory provisions for suspended sentences, deferred sentences, or probation except when the conviction is for a first offense;

3. A substance classified in Schedule V, upon conviction, shall be guilty of a felony and shall be sentenced to a term of imprisonment for not more than five (5) years and a fine of not more than One Thousand Dollars ($1,000.00), which shall be in addition to other punishment provided by law and shall not be imposed in lieu of other punishment; or

4. An imitation controlled substance as defined by Section 2-101 of this title, upon conviction, shall be guilty of a misdemeanor and shall be sentenced to a term of imprisonment in the county jail for a period of not more than one (1) year and a fine of not more than One Thousand Dollars ($1,000.00). A person convicted of a second violation of the provisions of this paragraph shall be guilty of a felony and shall be sentenced to a term of imprisonment for not more than five (5) years and a fine of not more than Five Thousand Dollars ($5,000.00), which shall be in addition to other punishment provided by law and shall not be imposed in lieu of other punishment~~; or~~.

~~5.~~ C. Except when authorized by the Food and Drug Administration of the United States Department of Health and Human Services, it shall be unlawful for any person to manufacture, distribute, or possess with intent to distribute a synthetic controlled substance. Any person convicted of violating the provisions of this paragraph is guilty of a felony and shall be punished by imprisonment in the ~~state penitentiary~~ State Penitentiary for a term not to exceed life and a fine of not more

than Twenty-five Thousand Dollars ($25,000.00), which shall be in addition to other punishment provided by law and shall not be imposed in lieu of other punishment. A second or subsequent conviction for the violation of the provisions of this paragraph is a felony punishable by imprisonment in the State Penitentiary for a term of not less than ten (10) years nor more than life and a fine of not more than One Hundred Thousand Dollars ($100,000.00), which shall be in addition to other punishment provided by law and shall not be imposed in lieu of other punishment.

~~C.~~ D. Any person convicted of a second or subsequent felony violation of the provisions of this section, except for ~~paragraphs~~ paragraph 4 ~~and 5~~ of subsection B of this section or ~~subsection E~~ subsections C, F or G of this section, shall be punished by a term of imprisonment twice that otherwise authorized and by twice the fine otherwise authorized, which shall be in addition to other punishment provided by law and shall not be imposed in lieu of other punishment. Convictions for second or subsequent violations of the provisions of this section shall not be subject to statutory provisions for suspended sentences, deferred sentences, or probation.

~~D.~~ E. Any person who is at least eighteen (18) years of age and who violates the provisions of this section by using or soliciting the use of services of a person less than eighteen (18) years of age to distribute, dispense, transport with intent to distribute or dispense or cultivate a controlled dangerous substance or by distributing a controlled dangerous substance to a person under eighteen (18) years of age is punishable by twice the fine and by twice the imprisonment otherwise authorized.

~~E.~~ F. Any person who violates any provision of this section by transporting with intent to distribute or dispense, distributing or possessing with intent to distribute a controlled dangerous substance to a person, in or on, or within two thousand (2,000) feet of the real property comprising a public or private elementary or secondary school, public vocational school, public or private college or university, or other institution of higher education, recreation center or public park, including state parks and recreation areas, or public housing project shall be punished by:

1. For a first offense, a term of imprisonment, or by the imposition of a fine or by both, not exceeding twice that authorized by the appropriate provision of this section and shall serve a minimum of fifty percent (50%) of the sentence received prior to becoming eligible for state correctional institution earned credits toward the completion of said sentence; or

2. For a second or subsequent offense, a term of imprisonment not exceeding three times that authorized by the appropriate provision of this section and shall serve a minimum of ninety percent (90%) of the sentence received prior to becoming eligible for state correctional institution earned credits toward the completion of said sentence.

~~F.~~ G. Except as authorized by the Uniform Controlled Dangerous Substances Act, it shall be unlawful for any person to manufacture

or attempt to manufacture any controlled dangerous substance or possess any substance listed in Section 2-322 of this title or any substance containing any detectable amount of pseudoephedrine or its salts, optical isomers or salts of optical isomers, iodine or its salts, optical isomers or salts of optical isomers, hydriatic acid, sodium metal, lithium metal, anhydrous ammonia, or ether with the intent to use that substance to manufacture a controlled dangerous substance. Any person violating the provisions of this section with respect to the unlawful manufacturing or attempting to unlawfully manufacture any controlled dangerous substance, or possessing any substance listed in this subsection or Section 2-322 of this title, upon conviction, is guilty of a felony and shall be punished by imprisonment in the State Penitentiary for not less than twenty (20) years nor more than life and by a fine of not less than Fifty Thousand Dollars ($50,000.00), which shall be in addition to other punishment provided by law and shall not be imposed in lieu of other punishment. ~~To be charged with possession with intent to use a substance to manufacture a controlled dangerous substance,~~ The possession of any amount of anhydrous ammonia in an unauthorized container or the possession of three or more of the substances listed in this subsection shall be ~~present~~ prima facie evidence of intent to use such substance to manufacture a controlled dangerous substance.

Any sentence to the custody of the Department of Corrections shall not be subject to statutory provisions for suspended sentences, deferred sentences, or probation. A person convicted of a second or subsequent violation of the provisions of this subsection shall be required to serve at least ten (10) years of such person's sentence before becoming eligible for parole or any early release from incarceration.

Any person convicted of any offense described in this section may, in addition to the fine imposed, be assessed an amount not to exceed ten percent (10%) of the fine imposed. Such assessment shall be paid into a revolving fund for enforcement of controlled dangerous substances created pursuant to Section 2-506 of this title.

~~G.~~ H. For purposes of this section, "public housing project" means any dwelling or accommodations operated as a state or federally subsidized multifamily housing project by any housing authority, nonprofit corporation or municipal developer or housing projects created pursuant to the Oklahoma Housing Authorities Act.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1715 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. Except for necessary repairs to anhydrous ammonia equipment conducted by a registered distributor, supplier, dealer or the owner of such equipment or designee of said owner, it is unlawful for any person to tamper with or attempt to tamper with any anhydrous ammonia equipment, container or storage device. Any person violating this provision shall, upon conviction, be guilty of a felony punishable by imprisonment in the State Penitentiary for a term not exceeding five (5) years, or by a fine of not more than

Five Thousand Dollars ($5,000.00), or by both such fine and imprisonment. "Tampering" for purposes of this section means any unauthorized adjustment, opening, removal, transfer, alteration, change or interference with any part of the anhydrous ammonia equipment, container or storage device.

B. Theft of any amount of anhydrous ammonia is a felony punishable by imprisonment for not less than two (2) years nor more than ten (10) years in the State Penitentiary, or by a fine not exceeding Ten Thousand Dollars ($10,000.00), or by both such fine and imprisonment.

C. Any person who commits or attempts theft of anhydrous ammonia or who unlawfully tampers with or attempts to unlawfully tamper with any anhydrous ammonia equipment, container or storage device, and as a result of such unlawful conduct is injured shall be barred from commencing any civil action against the following persons:

1. Any owners of anhydrous ammonia or anhydrous ammonia equipment, containers or storage devices;

2. Any persons responsible for the installation, repair or operation of anhydrous ammonia equipment, containers or storage devices;

3. Any persons lawfully selling, transporting, transferring, or delivering anhydrous ammonia or anhydrous ammonia equipment, containers or storage devices;

4. Any persons purchasing or storing anhydrous ammonia for agricultural purposes; or

5. Any persons operating anhydrous ammonia equipment or using anhydrous ammonia for agricultural purposes.

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 22nd day of May, 2000.

President of the Senate

Passed the House of Representatives the 23rd day of May, 2000.

Speaker of the House of Representatives