

## Committee Substitute for House Bill No. 1404

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 1404 -- By NANCE and PAULK of the House and SNYDER of the Senate.

An Act relating to the Uniform Controlled Dangerous Substances Act; amending 63 O.S. 1991, Section 2-401, as last amended by Section 529, Chapter 133, O.S.L. 1997 (63 O.S. Supp. 1998, Section 2-401), which relates to prohibited acts; modifying circumstances constituting prohibited conduct; amending 63 O.S. 1991, Section 2-327, which relates to exception for certain substances; stating certain conduct will not fall under exemption; providing an effective date; 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 529, Chapter 133, O.S.L. 1997 (63 O.S. Supp. 1998, 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, or 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 or possess with intent to manufacture, distribute, or dispense, a controlled dangerous substance or possess any substance listed in Section 2-322 of this title with the intent to use that substance to manufacture 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. The fine for a violation of this paragraph shall be 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, with or without postimprisonment supervision, 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. The fine for a violation of this paragraph shall be 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, with or without postimprisonment supervision, 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. The fine for a violation of this paragraph shall be 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;

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. The fine for a second violation of this paragraph shall be 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. 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. The fine shall

not be 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. The fine for a second or subsequent violation of this paragraph shall be 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. Any person convicted of a second or subsequent felony violation of the provisions of this section, except for paragraphs 4 and 5 of subsection B of this section, shall be subject to 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. 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 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 Section 2-322 of this title with the intent to use that substance to manufacture a controlled dangerous substance, upon conviction, is guilty of a felony. The fine for a violation of this paragraph shall be 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.

Any sentence to the custody of the Department of Corrections, with or without postimprisonment supervision, shall not be subject to statutory provisions for suspended sentences, deferred sentences, or probation.

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.

SECTION 2. AMENDATORY 63 O.S. 1991, Section 2-327, is amended to read as follows:

Section 2-327. Sections 4 2-322 through 8 2-326 of this ~~act~~ title shall not apply to the sale or transfer of a nonnarcotic product that includes a precursor substance defined in Section 4 2-322 of this ~~act~~ title, if the product may be sold lawfully with a prescription or over the counter without a prescription pursuant to the Federal Food, Drug and Cosmetic Act, 21 U.S.C. Section 301 et seq., or a rule adopted pursuant thereto. Further, this act shall not apply to common carriers in the transaction of business as common carriers. This section shall not create an exemption for any person who has knowledge that a product sold over the counter is intended to be used to manufacture amphetamine or methamphetamine.

SECTION 3. This act shall become effective July 1, 1999.

SECTION 4. 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.

COMMITTEE REPORT BY: COMMITTEE ON CRIMINAL JUSTICE, dated 2-16-99 -- DO PASS, As Coauthored.