

STATE OF OKLAHOMA

1st Session of the 49th Legislature (2003)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 786

By: Shurden of the Senate

and

Miller (Ray) of the House

COMMITTEE SUBSTITUTE

(Controlled dangerous substances - manufacture -
property to be inspected and cleaned - prohibiting
occupancy -
emergency)

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

SECTION 1. AMENDATORY 63 O.S. 2001, Section 2-401, as amended by Section 23, Chapter 22, O.S.L. 2002 (63 O.S. Supp. 2002, 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.

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 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 as a habitual offender pursuant to Section 51.1 of Title 21 of the Oklahoma Statutes. In addition the violator shall be fined an amount 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.

D. Any person convicted of a second or subsequent felony violation of the provisions of this section, except for paragraph 4 of subsection B of this section, shall be punished as a habitual offender pursuant to Section 51.1 of Title 21 of the Oklahoma

Statutes. In addition the violator shall be fined 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.

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.

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 as provided for a habitual offender pursuant to Section 51.1 of

Title 21 of the Oklahoma Statutes. In addition the violator shall serve eighty-five percent (85%) of the sentence received prior to becoming eligible for state correctional institution earned credits toward the completion of said sentence or eligibility for parole.

G. 1. 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, hydriodic acid, sodium metal, lithium metal, anhydrous ammonia, or organic solvents with the intent to use that substance to manufacture a controlled dangerous substance.

2. Any person violating the provisions of this subsection 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 seven (7) 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. 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 prima facie evidence of intent to use such substance to manufacture a controlled dangerous substance.

3. Any person violating the provisions of this subsection with respect to the unlawful manufacturing or attempting to unlawfully manufacture any controlled dangerous substance in the following amounts:

- a. 1 kilogram or more of a mixture or substance containing a detectable amount of heroin,
- b. 5 kilograms or more of a mixture or substance containing a detectable amount of:
 - (1) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed,
 - (2) cocaine, its salts, optical and geometric isomers, and salts of isomers,
 - (3) ecgonine, its derivatives, their salts, isomers, and salts of isomers, or
 - (4) any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subparagraphs (1) through (3) of this paragraph,
- c. 50 grams or more of a mixture or substance described in subparagraph (2) of paragraph b which contains cocaine base,
- d. 100 grams or more of phencyclidine (PCP) or 1 kilogram or more of a mixture or substance containing a detectable amount of phencyclidine (PCP),
- e. 10 grams or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD),
- f. 400 grams or more of a mixture or substance containing a detectable amount of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide or 100 grams or more of a mixture or substance containing a detectable amount of any analogue of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide,

- g. 1000 kilograms or more of a mixture or substance containing a detectable amount of marihuana or 1000 or more marihuana plants regardless of weight, or
- h. 50 grams or more of methamphetamine, its salts, isomers, and salts of its isomers or 500 grams or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers,

upon conviction, is guilty of aggravated manufacturing a controlled dangerous substance punishable 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. Any person convicted of a violation of the provisions of this paragraph shall be required to serve a minimum of eighty-five percent (85%) of the sentence received prior to becoming eligible for state correctional earned credits towards the completion of the sentence or eligible for parole.

4. Any sentence to the custody of the Department of Corrections for any violation of paragraph 3 of this subsection 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 paragraph 3 of this subsection shall be punished as a habitual offender pursuant to Section 51.1 of Title 21 of the Oklahoma Statutes and shall be required to serve a minimum of eighty-five percent (85%) of the sentence received prior to becoming eligible for state correctional earned credits or eligibility for parole.

H. 1. Any person convicted of manufacturing any controlled dangerous substance shall be liable for any costs of cleanup and

inspection resulting from any substance or residue found in any property used to manufacture any controlled dangerous substance.

2. All property used to manufacture methamphetamine shall be prohibited from being occupied, rented, or sold until such property is cleaned and inspected for contamination. The State Department of Health and the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control shall each assess the extent of contamination by performing independent inspections. The Bureau shall clean the property and the defendant, if any, shall pay all associated costs as ordered by the court. The inspection and clean up shall include, but not be limited to:

- a. determining if the property was used for methamphetamine production, and the list of any chemicals that may have been used,
- b. airing out the property before and during cleanup,
- c. removing all unnecessary, visibly contaminated or odor saturated items and disposing of such items, including furnishings, wall coverings, carpet or floor coverings, and other contaminated items, unless such items can be appropriately cleaned and decontaminated,
- d. cleaning all surfaces using methods for proper decontamination and using appropriate personal protection,
- e. cleaning ventilation systems,
- f. cleaning or checking water, plumbing and waste systems,
- g. perform a toxicology inspection and sufficient testing for air quality and toxic chemical contamination on significant surfaces that may come in contact with children or other persons,
- h. check for contamination of adjacent dwellings, buildings, soil, and storage areas, and

i. perform hazardous waste decontamination of the entire structure based upon toxicology testing and chemicals detected.

3. If any mercury or lead substances were used or suspected of being used in the production of methamphetamine or any controlled dangerous substance, the property shall be tested for soil and groundwater contamination in addition to complete structural decontamination.

4. Upon the proper cleanup and decontamination of any property used to manufacture a controlled dangerous substance, the State Department of Health shall issue a certificate of inspection when the property is suitable for occupancy.

I. 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, notwithstanding any maximum assessment allowable in Section 2-506 of this title. Such assessment shall be paid into a revolving fund for enforcement of controlled dangerous substances created pursuant to Section 2-506 of this title.

~~I.~~ J. 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. AMENDATORY 63 O.S. 2001, Section 2-560, is amended to read as follows:

Section 2-560. Any person who engages in manufacturing any controlled dangerous substance within two thousand (2,000) feet of the real property comprising a family child care home, a child care center, a large family child care home or part-day child care program, as those terms are defined by Section 402 of Title 10 of the Oklahoma Statutes, shall be liable for treble damages for any

loss or harm caused thereby and for any costs of cleanup and inspection resulting from any substance or residue found in any property used to manufacture any controlled dangerous substance.

All property used to manufacture methamphetamine shall be prohibited from being occupied, rented, or sold until such property is cleaned and inspected for contamination. The State Department of Health and the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control shall each assess the extent of contamination by performing independent inspections. The Bureau shall clean the property and the defendant, if any, shall pay all associated costs as ordered by the court. The inspection and clean up shall include, but not be limited to:

1. Determining if the property was used for methamphetamine production, and the list of any chemicals that may have been used;
2. Airing out the property before and during cleanup;
3. Removing all unnecessary, visibly contaminated or odor saturated items and disposing of such items, including furnishings, wall coverings, carpet or floor coverings, and other contaminated items, unless such items can be appropriately cleaned and decontaminated;
4. Cleaning all surfaces using methods for proper decontamination and using appropriate personal protection;
5. Cleaning ventilation systems;
6. Cleaning or checking water, plumbing and waste systems;
7. Perform a toxicology inspection and sufficient testing for air quality and toxic chemical contamination on significant surfaces that may come in contact with children or other persons;
8. Check for contamination of adjacent dwellings, buildings, soil, and storage areas; and
9. Perform hazardous waste decontamination of the entire structure based upon toxicology testing and chemicals detected.

If any mercury or lead substances were used or suspected of being used in the production of methamphetamine or any controlled dangerous substance, the property shall be tested for soil and groundwater contamination in addition to complete structural decontamination.

Upon the proper cleanup and decontamination of any property used to manufacture a controlled dangerous substance, the State Department of Health shall issue a certificate of inspection when the property is suitable for occupancy.

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.

49-1-6568

SD

03/19/03