ENGROSSED HOUSE
BILL NO. 2176

By: Nance, Roan, McCarter, Armes, Blackwell, Smithson, Young, Trebilcock, Staggs, Peters, Tibbs, Newport, Braddock, Lamons, Askins, Balkman, Boren, Brannon, Calvey, Carey, Covey, Dank, Deutschendorf, DeWitt, Dorman, Easley, Greenwood, Harrison, Liotta, McClain, Miller (Ray), Paulk, Peterson (Pam), Piatt, Roggow, Sweeden, Taylor, Tyler, Vaughn and Walker of the House

and

Wilkerson of the Senate

An Act relating to controlled dangerous substances; creating the Trooper Nik Green Act; amending 22 O.S. 2001, Section 1105, which relates to defendants discharged on giving bail; clarifying release procedure for certain persons; providing a rebuttable presumption under certain circumstances; amending 63 O.S. 2001, Section 2-212, which relates to Schedule V of the Uniform Controlled Dangerous Substances Act; adding pseudoephedrine to Schedule V; providing procedures prior to sale of certain products; establishing amount of product that may be acquired within certain period of time; providing exceptions; providing for rule promulgation; providing for the removal of drug product under certain circumstances; amending Section 1, Chapter 288, O.S.L. 2002, as amended by Section 3, Chapter 133, O.S.L. 2003 (63 O.S. Supp. 2003, Section 2-332) which relates to the Precursor Substances Act; decreasing amount of drug product that may be possessed; modifying penalty; amending 63 O.S. 2001, Section 2-401, as last amended by Section 2, Chapter 437, O.S.L. 2003 (63 O.S. Supp. 2003, Section 2-401), which relates to prohibited acts and penalties; expanding list of prohibited substances; making certain actions unlawful; providing a presumption to defraud or cause deceitful results in certain test; defining term; providing penalty; providing for noncodification; providing for codification; and declaring an emergency.

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

SECTION 1. NEW LAW A new section of law not to be codified in the Oklahoma Statutes reads as follows:

Sections 1 through 7 of this act shall be known and may be cited as the "Trooper Nik Green Act".

SECTION 2. AMENDATORY 22 O.S. 2001, Section 1105, is amended to read as follows:

Section 1105. A. Except as otherwise provided by this section, upon the allowance of bail and the execution of the requisite recognizance, bond, or undertaking to the state, the magistrate, judge, or court, shall, if the defendant is in custody, make and sign an order for discharge. The court, in its discretion, may prescribe by court rule the conditions under which the court clerk or deputy court clerk, or the sheriff or deputy sheriff, may prepare and execute an order of release on behalf of the court.

B. No police officer or sheriff may release a person arrested for a violation of an ex parte or final protective order as provided in Sections 60.2 and 60.3 of this title, or arrested for an act constituting domestic abuse as specified in Section 644 of Title 21 of the Oklahoma Statutes, or arrested for any act constituting domestic abuse, stalking or harassment as defined by Section 60.1 of this title without the violator appearing before a magistrate, judge or court. The magistrate, judge or court shall determine bond and other conditions of release as necessary for the protection of the alleged victim.

C. No police officer or sheriff may release a person arrested for any violation of subsection G of Section 2-401 of Title 63 of the Oklahoma Statutes, without the violator appearing before a magistrate, judge, or court. In determining bond and other conditions of release, the magistrate, judge, or court shall consider any evidence that the person is in any manner dependent upon a controlled dangerous substance or has a pattern of regular, illegal use of any controlled dangerous substance. A rebuttable presumption that no conditions of release on bond would assure the

safety of the community or any person therein shall arise if the state shows by a preponderance of the evidence:

1. The person was arrested for a violation of subsection G of Section 2-401 of Title 63 of the Oklahoma Statutes, relating to manufacturing or attempting to manufacture a controlled dangerous substance, or possessing any of the substances listed in subsection G of Section 2-401 of Title 63 of the Oklahoma Statutes with the intent to manufacture a controlled dangerous substance; and

2. The person is in any manner dependent upon a controlled dangerous substance or has a pattern of regular illegal use of a controlled dangerous substance, and the violation referred to in paragraph 1 of this subsection was committed or attempted in order to maintain or facilitate the dependence or pattern of illegal use in any manner.

SECTION 3. AMENDATORY 63 O.S. 2001, Section 2-212, is amended to read as follows:

Section 2-212. A. The controlled substances listed in this section are included in Schedule V.

1. Any compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, which also contains one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation, valuable medicinal qualities other than those possessed by the narcotic drug alone:

~~1. Not~~

a. not more than two hundred (200) milligrams of codeine, or any of its salts, per one hundred (100) milliliters or per one hundred (100) grams~~.~~

~~2. Not~~,

b. not more than one hundred (100) milligrams of dihydrocodeine, or any of its salts, per one hundred (100) milliliters or per one hundred (100) grams~~.~~

~~3. Not~~,

c. not more than one hundred (100) milligrams of ethylmorphine, or any of its salts, per one hundred (100) milliliters or per one hundred (100) grams~~.~~

~~4. Not~~,

d. not more than two and five-tenths (2.5) milligrams of diphenoxylate and not less than twenty-five (25) micrograms of atropine sulfate per dosage unit~~.~~

~~5. Not~~, or

e. not more than one hundred (100) milligrams of opium per one hundred (100) milliliters or per one hundred (100) grams.

2. Any compound, mixture, or preparation containing any detectable quantity of pseudoephedrine, its salts or optical isomers, or salts of optical isomers. If any compound, mixture, or preparation as specified in this paragraph is dispensed, sold, or distributed in a pharmacy:

a. it shall be dispensed, sold, or distributed only by a licensed pharmacist or a licensed pharmacy technician, and

b. any person purchasing, receiving, or otherwise acquiring any compound, mixture, or preparation shall produce a photo identification showing the date of birth of the person and shall sign a written log or receipt showing the date of the transaction, name of the person, and the amount of the compound, mixture, or preparation.

No person shall purchase, receive, or otherwise acquire more than nine (9) grams of any product, mixture, or preparation within any thirty-day period.

B. The Schedule, as specified in paragraph 2 of subsection A, shall not apply to any compounds, mixtures, or preparations which

are in liquid, liquid capsule, or gel capsule form if pseudoephedrine is not the only active ingredient.

C. The Director of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, by rule, may exempt other products from this Schedule which the Director finds are not used in the illegal manufacture of methamphetamine or other controlled dangerous substances. A manufacturer of a drug product may apply for removal of the product from the Schedule if the product is determined by the Director to have been formulated in such a way as to effectively prevent the conversion of the active ingredient into methamphetamine.

SECTION 4. AMENDATORY Section 1, Chapter 288, O.S.L. 2002, as amended by Section 3, Chapter 133, O.S.L. 2003 (63 O.S. Supp. 2003, Section 2-332), is amended to read as follows:

Section 2-332. A. It shall be unlawful for a person to knowingly and unlawfully possess a drug product containing ephedrine, pseudoephedrine or phenylpropanolamine, or their salts, isomers or salts of isomers with intent to use the product as a precursor to manufacture methamphetamine or another controlled substance.

B. Except as provided in this subsection, possession of a drug product containing more than ~~twenty-four (24)~~ nine (9) grams of ephedrine, pseudoephedrine or phenylpropanolamine, or their salts, isomers or salts of isomers shall constitute a rebuttable presumption of the intent to use the product as a precursor to methamphetamine or another controlled substance. The rebuttable presumption established by this subsection shall not apply to the following persons who are lawfully possessing drug products in the course of legitimate business:

1. A retail distributor of drug products or wholesaler;

2. A wholesale drug distributor, or its agents, licensed by the Board of Pharmacy;

3. A manufacturer of drug products, or its agents, licensed by the Board of Pharmacy;

4. A pharmacist licensed by the Board of Pharmacy; and

5. A licensed healthcare professional possessing the drug products in the course of carrying out his profession.

C. A violation of this section shall be a felony punishable ~~by imprisonment in the State Penitentiary for a term of not more than five (5) years~~ as provided for in subsection G of Section 2-401 of this title.

D. Any wholesaler, manufacturer, or distributor of drug products containing pseudoephedrine or phenylpropanolamine, or their salts, isomers, or salts of isomers shall obtain a registration annually from the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control. Any such wholesaler, manufacturer, or distributor shall keep complete records of all transactions involving such drug products including the names of all parties involved in the transaction and amount of the drug products involved. The records shall be kept readily retrievable and separate from all other invoices or records of transactions not involving such drug products, and shall be maintained for not less than three (3) years.

E. As used in this section:

1. "Manufacturer" means any person within this state who produces, compounds, packages, or in any manner initially prepares for sale or use any drug product described in subsection D of this section, or any such person in another state if they cause the products to be compounded, packaged, or transported into this state;

2. "Wholesaler" means any person within this state or another state, other than a manufacturer, who sells, transfers, or in any manner furnishes a drug product described in subsection A of this section to any other person in this state for the purpose of being resold;

3. “Distributor” means any person within this state or another state, other than a manufacturer or wholesaler, who sells, delivers, transfers, or in any manner furnishes a drug product described in subsection A of this section to any person who is not the ultimate user or consumer of the product; and

4. “Readily retrievable” means available for inspection without prior notice at the registration address if that address is within the State of Oklahoma. If the registration address is in a state other than Oklahoma, it means records must be furnished within three (3) working days by courier, facsimile, mail or electronic mail.

F. Any substances possessed without a registration as provided in subsection D of this section shall be subject to forfeiture upon conviction for a violation of this section.

G. In addition to any administrative penalties provided by law, any violation of this section shall be a misdemeanor, punishable upon conviction by a fine only in an amount not more than Ten Thousand Dollars ($10,000.00).

SECTION 5. AMENDATORY 63 O.S. 2001, Section 2-401, as last amended by Section 2, Chapter 437, O.S.L. 2003 (63 O.S. Supp. 2003, Section 2-401), is amended to read as follows:

Section 2-401. A. Except as authorized by the Uniform Controlled Dangerous Substances Act 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. 1. 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.

2. 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.

3. 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.

4. 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. 1. 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.

2. 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.

3. 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, or violation of ~~subparagraph~~ subsection G of this section, 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, public housing project, or child care facility as defined by Section 402 of Title 10 of the Oklahoma Statutes 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, phosphorus, 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~~ one (1) kilogram or more of a mixture or substance containing a detectable amount of heroin,

b. ~~5~~ five (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 ~~slats~~ salts of isomers, or

(4) any compound, mixture, or preparation which contains any quantity of any of the substances referred to in ~~subparagraphs~~ divisions (1) through (3) of this ~~paragraph~~ subparagraph,

c. ~~50~~ fifty (50) grams or more of a mixture or substance described in ~~subparagraph~~ division (2) of ~~paragraph~~ subparagraph b of this paragraph which contains cocaine base,

d. ~~100~~ one hundred (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~~ ten (10) grams or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD),

f. ~~400~~ four hundred (400) grams or more of a mixture or substance containing a detectable amount of N-phenyl-N-[1-(2-pheylethy)-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~~ one thousand (1,000) 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~~ fifty (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. 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. 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.

J. When a person is found guilty of a violation of the provisions of this section, the court shall order, in addition to any other penalty, the defendant to pay a one-hundred-dollar assessment to be deposited in the Drug Abuse Education and Treatment Revolving Fund created in Section 2-503.2 of ~~Title 63 of the Oklahoma Statutes~~ this title, upon collection.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 7002 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. It is unlawful for a person to:

1. Sell, give away, distribute, or market human or synthetic urine in this state or transport human or synthetic urine into this

state with the intent of using the urine to defraud or cause deceitful results in a urine, drug, or alcohol screening test;

2. Attempt to foil or defeat a urine, drug, or alcohol screening test by the substitution or spiking of a urine sample;

3. Advertise for sale any product designed to foil or defeat a urine, drug, or alcohol screening test;

4. Adulterate a urine or other bodily fluid sample with the intent to defraud or cause deceitful results in a urine, drug, or alcohol screening test;

5. Possess adulterants which are intended to be used to adulterate a urine or other bodily fluid sample for the purpose of defrauding or causing deceitful results in a urine, drug, or alcohol screening test; or

6. Sell or market an adulterant with the intent by the seller or marketer that the product be used to adulterate a urine or other bodily fluid sample for the purpose of defrauding or causing deceitful results in a urine, drug, or alcohol screening test.

B. Intent to defraud or cause deceitful results in a urine, drug, or alcohol screening test is presumed if:

1. A heating element or any other device used to thwart a drug screening test accompanies the sale, giving, distribution, or marketing of urine; or

2. Instructions that provide a method for thwarting a drug screening test accompany the sale, giving, distribution, or marketing of urine.

C. As used in this section, “adulterant” means a substance that is not expected to be in human urine or a substance expected to be present in human urine but that is at a concentration so high that it is not consistent with human urine, including, but not limited to:

1. Bleach;

2. Chromium;

3. Creatinine;

4. Detergent;

5. Glutaraldehyde;

6. Glutaraldehyde/squalene;

7. Hydrochloric acid;

8. Hydroiodic acid;

9. Iodine;

10. Nitrite;

11. Peroxidase;

12. Potassium dichromate;

13. Potassium nitrite;

14. Pyridinium chlorochromate; and

15. Sodium nitrite.

D. Any person convicted of violating any of the provisions of subsection A of this section 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 or a fine of not more than One Thousand Dollars ($1,000.00), or both such imprisonment and fine.

SECTION 7. 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 House of Representatives the 18th day of February, 2004.

_____
Presiding Officer of the House of Representatives

Passed the Senate the ____ day of _____, 2004.

_____
Presiding Officer of the Senate