

STATE OF OKLAHOMA

1st Session of the 50th Legislature (2005)

FLOOR SUBSTITUTE

FOR

SENATE BILL NO. 625

By: Lerblance of the Senate

and

Harrison of the House

FLOOR SUBSTITUTE

[ penalties - decreasing felony penalty for certain  
offense - removing mandatory minimum sentence for  
certain offenses -  
emergency ]

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

SECTION 1. AMENDATORY 59 O.S. 2001, Section 1512, is amended to read as follows:

Section 1512. A. Rule Making Power. The Administrator shall have the same authority to adopt, amend and repeal rules as is conferred upon ~~him~~ the Administrator by paragraph (e) of subsection (1), and subsections (2) and (3) of Section 6-104 of Title 14A of the Oklahoma Statutes, as applicable, and such rules shall have the same effect as provided in subsection (4) of Section 6-104 thereunder. In addition, the Administrator may adopt, amend and repeal such other rules as are necessary for the enforcement of the provisions of Section 1501 et seq. of this title and consistent with all its provisions.

B. Administrative Enforcement. Compliance with the provisions of this act may be enforced by the Administrator who may exercise, for such purpose, all the powers enumerated in Part 1 of Article 6, Title 14A of the Oklahoma Statutes, in the same manner as in

relation to consumer credit transactions under that act, as well as those powers conferred in this act.

C. Criminal Penalties. 1. Any person who engages in the business of operating a pawn shop without first securing the license prescribed by this act shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not in excess of One Thousand Dollars (\$1,000.00), by confinement in the county jail for not more than six (6) months or by both.

2. Any person selling or pledging property to a pawnbroker who uses false or altered identification or a false declaration of ownership as related to the provisions of Section 1515 of this title if the value of the property, as determined by the amount received for the pawn ticket, is less than Five Hundred Dollars (\$500.00), shall be guilty of a misdemeanor, upon conviction, punishable by a fine in an amount not exceeding One Thousand Dollars (\$1,000.00) or by imprisonment in the county jail for a term not more than one (1) year, or by both such fine and imprisonment; if the value of the property, as determined by the amount received for the pawn ticket, is Five Hundred Dollars (\$500.00) or more but less than One Thousand Dollars (\$1,000.00) the person shall be guilty of a felony, and upon conviction shall be punished, punishable by imprisonment in the county jail for a term not more than one (1) year or imprisonment in the county jail for one or more nights or weekends pursuant to Section 991a of Title 22 of the Oklahoma Statutes, in the discretion of the court, or by a fine in an amount not exceeding Five Thousand Dollars (\$5,000.00), or by both such fine and imprisonment; and if the value of the property, as determined by the amount received for the pawn ticket, is One Thousand Dollars (\$1,000.00) or more the person shall be guilty of a felony, upon conviction, punishable by imprisonment in the State Penitentiary custody of the Department of Corrections for a term not to exceed more than five (5) years or in the county jail not to exceed one (1) year, or by a fine in an

amount not to exceed Five Hundred Dollars (\$500.00) exceeding Five Thousand Dollars (\$5,000.00), or by both such imprisonment and fine.

3. Any person selling or pledging two or more pieces of property to a pawn broker who uses false or altered identification of ownership or a false declaration of ownership as related to the provisions of Section 1515 of this title, the total sum of which, as determined by the amount received for the pawn ticket, is One Thousand Dollars (\$1,000.00) or more even though each separate pledge is made for less than One Thousand Dollars (\$1,000.00), all in pursuance of a common scheme or plan to cheat and defraud, shall be guilty of a felony, upon conviction, punishable by imprisonment in the custody of the Department of Corrections for a term not more than five (5) years, or by a fine in an amount not exceeding Five Thousand Dollars (\$5,000.00), or by both such imprisonment and fine.

4. Any person who fails to repay a pawnbroker the full amount received from a pawn or buy transaction after being officially notified by a peace officer that the goods he pledged or sold in that transaction were stolen or embezzled shall be guilty of a misdemeanor ~~and, upon conviction shall be punished,~~ punishable by imprisonment in the county jail for a term not ~~to exceed~~ more than six (6) months, or by a fine in an amount not ~~to exceed~~ exceeding Five Hundred Dollars (\$500.00), or by both such fine and imprisonment.

D. Private Enforcement. 1. If any person engages in the business of operating a pawnshop without first securing the license prescribed by this act, or if any pawnbroker contracts for, charges or receives a pawn finance charge in excess of that authorized by this act, the pawn transaction shall be void and the customer is not obligated to pay either the amount financed or the pawn finance charge in connection with the transaction, and upon the customer's demand, the pawnbroker shall be obligated to return to the customer, as a refund, all amounts paid in connection with the transaction by

the customer and the pledged goods delivered to the pawnbroker in connection with the pawn transaction or their value if the goods cannot be returned. If a customer is entitled to a refund under this section and a pawnbroker liable to the customer refuses to make the refund within a reasonable time after demand, the customer shall have an action against the pawnbroker and in the case of a successful action to enforce such liability, the costs of the action together with attorney's fees as determined by the court shall be awarded to the customer.

2. A pawnbroker who fails to disclose information to a customer entitled to the information under this act is liable to that person in an amount equal to the sum of:

- a. twice the amount of the pawn finance charge in connection with the transaction, or One Hundred Dollars (\$100.00), whichever is greater; and
- b. in the case of a successful action to enforce the liability under paragraph 1 of this subsection, the costs of the action together with reasonable attorneys' fees as determined by the court.

SECTION 2. AMENDATORY 63 O.S. 2001, Section 2-402, as amended by Section 3, Chapter 396, O.S.L. 2004 (63 O.S. Supp. 2004, Section 2-402), is amended to read as follows:

Section 2-402. A. 1. It shall be unlawful for any person knowingly or intentionally to possess a controlled dangerous substance unless such substance was obtained directly, or pursuant to a valid prescription or order from a practitioner, while acting in the course of his professional practice, or except as otherwise authorized by this act.

2. It shall be unlawful for any person to purchase any preparation excepted from the provisions of the Uniform Controlled Dangerous Substances Act, ~~Section 2-101 et seq. of this title,~~ pursuant to Section 2-313 of this title in an amount or within a

time interval other than that permitted by Section 2-313 of this title.

3. It shall be unlawful for any person or business to sell, market, advertise or label any product containing ephedrine, its salts, optical isomers, or salts of optical isomers, for the indication of stimulation, mental alertness, weight loss, appetite control, muscle development, energy or other indication which is not approved by the pertinent federal OTC Final Monograph, Tentative Final Monograph, or FDA-approved new drug application or its legal equivalent. In determining compliance with this requirement, the following factors shall be considered:

- a. the packaging of the product,
- b. the name of the product, and
- c. the distribution and promotion of the product, including verbal representations made at the point of sale.

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

1. Any Schedule I or II substance, except marihuana or a substance included in subsection D of Section 2-206 of this title, is guilty of a felony punishable by imprisonment for not ~~less than two (2) years nor~~ more than ten (10) years with it being presumed that the offender shall be sentenced to treatment, probation or both, unless the court determines by a preponderance of the evidence that such sentence would threaten the safety of the community. A second or subsequent violation of this section with respect to Schedule I or II substance, except marihuana or a substance included in subsection D of Section 2-206 of this title, is a felony punishable by imprisonment for not ~~less than four (4) years nor~~ more than twenty (20) years; or

2. Any Schedule III, IV or V substance, marihuana, a substance included in subsection D of Section 2-206 of this title, or any preparation excepted from the provisions of the Uniform Controlled

Dangerous Substances Act is guilty of a misdemeanor punishable by confinement for not more than one (1) year. A second or subsequent violation of this section with respect to any Schedule III, IV or V substance, marihuana, a substance included in subsection D of Section 2-206 of this title, or any preparation excepted from the provisions of the Uniform Controlled Dangerous Substances Act is a felony punishable by imprisonment for not ~~less than two (2) years~~ ~~nor~~ more than ten (10) years with it being presumed that the offender shall be sentenced to treatment, probation or both, unless the court determines by a preponderance of the evidence that such sentence would threaten the safety of the community.

C. Any person who violates any provision of this section by possessing or purchasing a controlled dangerous substance from any person, in or on, or within one thousand (1,000) 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 in the presence of any child under twelve (12) years of age, shall be guilty of a felony and 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. In addition, the person 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 the person 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.

D. Any person convicted of any offense described in this section shall, in addition to any fine imposed, pay a special assessment trauma-care fee of One Hundred Dollars (\$100.00) to be deposited into the Trauma Care Assistance Revolving Fund created in Section ~~1-2522~~ 1-2530.9 of this title.

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.

50-1-1594

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