

1 STATE OF OKLAHOMA

2 1st Session of the 51st Legislature (2007)

3 CONFERENCE COMMITTEE
4 SUBSTITUTE
5 FOR ENGROSSED
6 HOUSE BILL NO. 1297

By: Derby of the House

and

Crain of the Senate

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8
9 CONFERENCE COMMITTEE SUBSTITUTE

10 An Act relating to public health and safety; amending
11 12 O.S. 2001, Section 66, as amended by Section 1,
12 Chapter 468, O.S.L. 2002 (12 O.S. Supp. 2006, Section
13 66), which relates to bonds for actions filed by the
14 state or state department; expanding scope of certain
15 exception relating to costs; amending 63 O.S. 2001,
16 Sections 2-206, as amended by Section 2, Chapter 283,
17 O.S.L. 2005 and 2-210, as amended by Section 1,
18 Chapter 52, O.S.L. 2002 (63 O.S. Supp. 2006, Sections
19 2-206 and 2-210), which relate to Schedules II and IV
20 controlled substances; expanding list of certain
21 controlled substances; modifying name of certain
22 substance; amending 63 O.S. 2001, Section 2-506, as
23 last amended by Section 3, Chapter 537, O.S.L. 2004
24 (63 O.S. Supp. 2006, Section 2-506), which relates to
procedures for seizing property and forfeiture
proceedings; authorizing the deposit of certain
currency in certain interest-bearing account;
providing for the return or forfeiture of interest
earned on certain currency; prohibiting assessment of
filing fees on certain actions; clarifying use of
certain phrase; and declaring an emergency.

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

2 SECTION 1. AMENDATORY 12 O.S. 2001, Section 66, as
3 amended by Section 1, Chapter 468, O.S.L. 2002 (12 O.S. Supp. 2006,
4 Section 66), is amended to read as follows:

5 Section 66. A. Whenever an action is filed in any of the
6 courts of this state where the State of Oklahoma or any of its
7 departments or agencies, as defined in Section 152 of Title 51 of
8 the Oklahoma Statutes, is a party, no bonds or other obligation of
9 security shall be required from the state or from any party acting
10 under the direction of the state, either to prosecute, answer, or
11 appeal the action. The execution of a judgment or final order of
12 any judicial tribunal against the state or any of its departments or
13 agencies is automatically stayed without the execution of a
14 supersedeas bond until any appeal of such judgment or final order
15 has finally been determined.

16 In case of an adverse decision, such costs as by law are taxable
17 against the state, or against the party acting by its direction,
18 shall be paid out of the funds of the department under whose
19 direction the proceedings were instituted or defended.

20 B. Costs shall be paid to the court fund of the district court
21 in which an action is filed from the first funds collected in
22 satisfaction of any judgment obtained by this state or any party
23 acting under the direction of this state, except when the funds are
24 collected pursuant to a child support order ~~or~~, judgment, or

1 pursuant to any civil forfeiture action. No action filed by this
2 state or by any party acting under the direction of this state shall
3 be dismissed with unpaid costs of the action without the prior
4 notification of the district court clerk of the county in which the
5 action was filed.

6 SECTION 2. AMENDATORY 63 O.S. 2001, Section 2-206, as
7 amended by Section 2, Chapter 283, O.S.L. 2005 (63 O.S. Supp. 2006,
8 Section 2-206), is amended to read as follows:

9 Section 2-206. The controlled substances listed in this section
10 are included in Schedule II.

11 A. Any of the following substances except those narcotic drugs
12 listed in other schedules whether produced directly or indirectly by
13 extraction from substances of vegetable origin, or independently by
14 means of chemical synthesis, or by combination of extraction and
15 chemical synthesis:

16 1. Opium and opiate, and any salt, compound, derivative, or
17 preparation of opium or opiate;

18 2. Any salt, compound, isomer, derivative, or preparation
19 thereof which is chemically equivalent or identical with any of the
20 substances referred to in paragraph 1 of this subsection, but not
21 including the isoquinoline alkaloids of opium;

22 3. Opium poppy and poppy straw; or

23 4. Coca leaves except coca leaves and extracts of coca leaves
24 from which cocaine, ecgonine, and derivatives of ecgonine or their

1 salts have been removed; cocaine, its salts, optical and geometric
2 isomers, and salts of isomers; ecgonine, its derivatives, their
3 salts, isomers and salts of isomers; or any compound, mixture or
4 preparation which contains any quantity of any of the substances
5 referred to in this paragraph.

6 B. Any of the following opiates, including their isomers,
7 esters, ethers, salts, and salts of isomers, esters and ethers, when
8 the existence of these isomers, esters, ethers, and salts is
9 possible within the specific chemical designation:

- 10 1. Alphaprodine;
- 11 2. Anileridine;
- 12 3. Bezitramide;
- 13 4. Dihydrocodeine;
- 14 5. Diphenoxylate;
- 15 6. Fentanyl;
- 16 7. Isomethadone;
- 17 8. Levomethorphan;
- 18 9. Levorphanol;
- 19 10. Metazocine;
- 20 11. Methadone;
- 21 12. Methadone - Intermediate, 4-cyano-2-dimethylamino-4,
22 4-diphenyl butane;
- 23 13. Moramide - Intermediate, 2-methyl-3-morpholino-1,
24 1-diphenyl-propane-carboxylic acid;

- 1 14. Oxycodone;
- 2 15. Pethidine (Meperidine);
- 3 ~~15.~~ 16. Pethidine - Intermediate - A, 4-cyano-1-methyl-4-
- 4 phenylpiperidine;
- 5 ~~16.~~ 17. Pethidine - Intermediate - B, ethyl-4-phenylpiperidine-
- 6 4-carboxylate;
- 7 ~~17.~~ 18. Pethidine - Intermediate - C, 1-methyl-4-
- 8 phenylpiperidine-4-carboxylic acid;
- 9 ~~18.~~ 19. Phenazocine;
- 10 ~~19.~~ 20. Piminodine;
- 11 ~~20.~~ 21. Racemethorphan;
- 12 ~~21.~~ 22. Racemorphan;
- 13 ~~22.~~ 23. Etorphine Hydrochloride salt only;
- 14 ~~23.~~ 24. Alfentanil hydrochloride; or
- 15 ~~24.~~ 25. Levo-alphaacetylmethadol.
- 16 C. Any substance which contains any quantity of:
- 17 1. Methamphetamine, including its salts, isomers, and salts of
- 18 isomers; or
- 19 2. Amphetamine, its salts, optical isomers, and salts of its
- 20 optical isomers.
- 21 D. Unless specifically excepted or unless listed in another
- 22 schedule, any material, compound, mixture, or preparation, which
- 23 contains any quantity of the following substances having stimulant
- 24 or depressant effect on the central nervous system:

- 1 1. Phenmetrazine and its salts;
- 2 2. Methylphenidate;
- 3 3. Amobarbital;
- 4 4. Pentobarbital; or
- 5 5. Secobarbital.

6 SECTION 3. AMENDATORY 63 O.S. 2001, Section 2-210, as
7 amended by Section 1, Chapter 52, O.S.L. 2002 (63 O.S. Supp. 2006,
8 Section 2-210), is amended to read as follows:

9 Section 2-210. A. Any material, compound, mixture, or
10 preparation which contains any quantity of the following substances
11 having a potential for abuse associated with a stimulant or
12 depressant effect on the central nervous system:

- 13 1. Chloral betaine;
- 14 2. Chloral hydrate;
- 15 3. Ethchlorvynol;
- 16 4. Ethinamate;
- 17 5. Meprobamate;
- 18 6. Paraldehyde;
- 19 7. Petrichloral;
- 20 8. Diethylpropion;
- 21 9. Phentermine;
- 22 10. Pemoline;
- 23 11. Chlordiazepoxide;

- 1 12. Chlordiazepoxide and its salts, but not including
2 chlordiazepoxide hydrochloride and clidinium bromide or
3 chlordiazepoxide and water-soluble esterified estrogens;
- 4 13. Diazepam;
- 5 14. Oxazepam;
- 6 15. Clorazepate;
- 7 16. Flurazepam and its salts;
- 8 17. Clonazepam;
- 9 18. Barbital;
- 10 19. Mebutamate;
- 11 20. Methohexital;
- 12 21. Methylphenobarbital;
- 13 22. Phenobarbital;
- 14 23. Fenfluramine;
- 15 24. Pentazocine;
- 16 25. ~~Dextropropoxyphene~~ Propoxyphene;
- 17 26. Butorphanol;
- 18 27. Alprazolam;
- 19 28. Halazepam;
- 20 29. Lorazepam;
- 21 30. Prazepam;
- 22 31. Temazepam;
- 23 32. Triazolam;
- 24 33. Carisoprodol;

1 34. Ephedrine, its salts, optical isomers, and salts of optical
2 isomers as the only active ingredient, or in combination with other
3 active ingredients; or

4 35. Dichloralphenazone.

5 B. 1. The following nonnarcotic substances, which may, under
6 the Federal Food, Drug, and Cosmetic Act (21 U.S.C., Section 301),
7 be lawfully sold over the counter without a prescription, are
8 excluded from all schedules of controlled substances under this
9 title:

- 10 a. Breathe-Aid,
- 11 b. BronCare,
- 12 c. Bronchial Congestion,
- 13 d. Bronkaid Tablets,
- 14 e. Bronkaid Dual Action Caplets,
- 15 f. Bronkotabs,
- 16 g. Bronkolixir,
- 17 h. NeoRespin,
- 18 i. Pazo Hemorrhoid Ointment and Suppositories,
- 19 j. Primatene Tablets,
- 20 k. Primatene "Dual Action" Formula,
- 21 l. Quelidrine,
- 22 m. Resp, and
- 23 n. Vatronal Nose Drops.

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1 2. At the request of any person, the Director may exempt any
2 other drug product containing ephedrine from being included as a
3 Schedule IV controlled substance if such product:

- 4 a. is labeled and marketed in a manner consistent with
5 the pertinent ~~pertinent~~ OTC tentative final or final
6 monograph issued by the FDA, and
- 7 b. is manufactured and distributed for legitimate
8 medicinal use and in a manner that reduces or
9 eliminates the likelihood of abuse.

10 3. In making a determination regarding a drug product, the
11 Director, after notice and hearing, shall consider the following:

- 12 a. the history and current pattern of abuse,
- 13 b. the name and labeling of the product,
- 14 c. the intended manner of distribution, advertising and
15 promotion of the product, and
- 16 d. other factors as may be relevant to and consistent
17 with the public health and safety.

18 4. The hearing shall be held in accordance with the ~~Oklahoma~~
19 Administrative Procedures Act.

20 5. A list of current drug products meeting exemption
21 requirements under this subsection may be obtained from the Bureau
22 upon written request.

23 C. The Board of Pharmacy may except by rule any compound,
24 mixture, or preparation containing any depressant substance listed

1 in subsection A of this section from the application of all or any
2 part of the Uniform Controlled Dangerous Substances Act, Section 2-
3 101 et seq. of this title, if the compound, mixture, or preparation
4 contains one or more active medicinal ingredients not having a
5 depressant effect on the central nervous system, and if the
6 admixtures are included therein in combinations, quantity,
7 proportion, or concentration that vitiate the potential for abuse of
8 the substances which have a depressant effect on the central nervous
9 system.

10 SECTION 4. AMENDATORY 63 O.S. 2001, Section 2-506, as
11 last amended by Section 3, Chapter 537, O.S.L. 2004 (63 O.S. Supp.
12 2006, Section 2-506), is amended to read as follows:

13 Section 2-506. A. Any peace officer of this state shall seize
14 the following property:

15 1. Any property described in subsection A of Section 2-503 of
16 this title. Such property shall be held as evidence until a
17 forfeiture has been declared or release ordered, except for property
18 described in paragraphs 1, 2 and 3 of subsection A of Section 2-503
19 of this title, or in the case of money, coins, and currency,
20 deposited as provided in subsection E of Section 2-503 of this
21 title; provided, any money, coins and currency taken or detained
22 pursuant to this section may be deposited in an interest-bearing
23 account by or at the direction of the district attorney in the
24 office of the county treasurer if the district attorney determines

1 the currency is not to be held as evidence. All interest earned on
2 such monies shall be returned to the claimant or forfeited with the
3 money, coins and currency which was taken or detained as provided by
4 law;

5 2. Any property described in subsection B of Section 2-503 of
6 this title; or

7 3. Any property described in subsection C of Section 2-503 of
8 this title.

9 B. Notice of seizure and intended forfeiture proceeding shall
10 be filed in the office of the clerk of the district court for the
11 county wherein such property is seized and shall be given all owners
12 and parties in interest. Notwithstanding any other provision of
13 law, no filing fees shall be assessed by the court clerk for the
14 filing of any forfeiture action.

15 C. Notice shall be given by the agency seeking forfeiture
16 according to one of the following methods:

17 1. Upon each owner or party in interest whose right, title or
18 interest is of record in the Tax Commission, by mailing a copy of
19 the notice by certified mail to the address as given upon the
20 records of the Tax Commission;

21 2. Upon each owner or party in interest whose name and address
22 is known to the attorney in the office of the agency prosecuting the
23 action to recover unpaid fines, by mailing a copy of the notice by
24 registered mail to the last-known address; or

1 3. Upon all other owners or interested parties, whose addresses
2 are unknown, but who are believed to have an interest in the
3 property, by one publication in a newspaper of general circulation
4 in the county where the seizure was made.

5 D. Within forty-five (45) days after the mailing or publication
6 of the notice, the owner of the property and any other party in
7 interest or claimant may file a verified answer and claim to the
8 property described in the notice of seizure and of the intended
9 forfeiture proceeding.

10 E. If at the end of forty-five (45) days after the notice has
11 been mailed or published there is no verified answer on file, the
12 court shall hear evidence upon the fact of the unlawful use and
13 shall order the property forfeited to the state, if such fact is
14 proved.

15 F. If a verified answer is filed, the forfeiture proceeding
16 shall be set for hearing.

17 G. At a hearing in a proceeding against property described in
18 paragraphs 3 through 9 of subsection A or subsections B and C of
19 Section 2-503 of this title, the requirements set forth in said
20 paragraph or subsection, respectively, shall be satisfied by the
21 state by a preponderance of the evidence.

22 H. The claimant of any right, title, or interest in the
23 property may prove a lien, mortgage, or conditional sales contract
24 to be a bona fide or innocent ownership interest and that such

1 right, title, or interest was created without any knowledge or
2 reason to believe that the property was being, or was to be, used
3 for the purpose charged.

4 I. In the event of such proof, the court shall order the
5 property released to the bona fide or innocent owner, lien holder,
6 mortgagee or vendor if the amount due him is equal to, or in excess
7 of, the value of the property as of the date of the seizure, it
8 being the intention of this section to forfeit only the right, title
9 or interest of the purchaser.

10 J. If the amount due to such person is less than the value of
11 the property, or if no bona fide claim is established, the property
12 shall be forfeited to the state and sold under judgment of the
13 court, as on sale upon execution, and as provided for in Section 2-
14 508 of this title, except as otherwise provided for in Section 2-503
15 of this title.

16 K. Property taken or detained under this section shall not be
17 repleviable, but shall be deemed to be in the custody of the office
18 of the district attorney of the county wherein the property was
19 seized, subject only to the orders and decrees of the court or the
20 official having jurisdiction thereof; said official shall maintain a
21 true and accurate inventory and record of all such property seized
22 under the provisions of this section. The provisions of this
23 subsection shall not apply to property taken or detained by the
24 Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, the

1 Department of Public Safety, the Oklahoma State Bureau of
2 Investigation, the Alcoholic Beverage Laws Enforcement Commission,
3 the Department of Corrections or the Office of the Attorney General.
4 Property taken or detained by the Oklahoma State Bureau of Narcotics
5 and Dangerous Drugs Control, the Department of Public Safety, the
6 Oklahoma State Bureau of Investigation, the Alcoholic Beverage Laws
7 Enforcement Commission, the Department of Corrections or the Office
8 of the Attorney General shall be subject to the provisions of
9 subsections E and F of Section 2-503 of this title.

10 L. The proceeds of the sale of any property not taken or
11 detained by the Oklahoma State Bureau of Narcotics and Dangerous
12 Drugs Control, the Department of Public Safety, the Oklahoma State
13 Bureau of Investigation, the Alcoholic Beverage Laws Enforcement
14 Commission, the Department of Corrections or the Office of the
15 Attorney General shall be distributed as follows, in the order
16 indicated:

17 1. To the bona fide or innocent purchaser, conditional sales
18 vendor or mortgagee of the property, if any, up to the amount of his
19 interest in the property, when the court declaring the forfeiture
20 orders a distribution to such person;

21 2. To the payment of the actual expenses of preserving the
22 property and legitimate costs related to the civil forfeiture
23 proceedings. For purposes of this paragraph, the term "legitimate
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1 costs" shall not include court costs associated with any civil
2 forfeiture proceeding; and

3 3. The balance to a revolving fund in the office of the county
4 treasurer of the county wherein the property was seized, said fund
5 to be used as a revolving fund solely for enforcement of controlled
6 dangerous substances laws, drug abuse prevention and drug abuse
7 education, and maintained by the district attorney in his or her
8 discretion for those purposes with a yearly accounting to the board
9 of county commissioners in whose county the fund is established and
10 to the District Attorneys Council; provided, one hundred percent
11 (100%) of the balance of the proceeds of such sale of property
12 forfeited due to nonpayment of a fine imposed pursuant to the
13 provisions of Section 2-415 of this title shall be apportioned as
14 provided in Section 2-416 of this title. The revolving fund shall
15 be audited by the State Auditor and Inspector at least every two (2)
16 years in the manner provided in Section 171 of Title 19 of the
17 Oklahoma Statutes. Said audit shall include, but not be limited to,
18 a compliance audit. A district attorney may enter into agreements
19 with municipal, county or state agencies to return to such an agency
20 a percentage of proceeds of the sale of any property seized by the
21 agency and forfeited under the provisions of this section. The
22 District Attorneys Council shall adopt guidelines which ensure that
23 such agencies receive a reasonable percentage of such proceeds,
24 considering the relative contribution of each agency to the drug

1 enforcement and prosecution operations relating to the seizure. In
2 formulating said guidelines, the District Attorneys Council shall
3 examine federal guidelines on asset distribution and use said
4 guidelines as a basis for establishing guidelines for this state.
5 The Attorney General is hereby authorized to mediate disputes
6 between district attorneys and such agencies concerning the
7 application of said guidelines in particular instances. Any agency
8 that receives proceeds from an asset distribution shall maintain a
9 true and accurate record of all such assets.

10 M. Whenever any vehicle, airplane or vessel is forfeited under
11 the Uniform Controlled Dangerous Substances Act, the district court
12 of jurisdiction may order that the vehicle, airplane or vessel
13 seized may be retained by the state, county or city law enforcement
14 agency which seized the vehicle, airplane or vessel for its official
15 use.

16 N. If the court finds that the state failed to satisfy the
17 required showing provided for in subsection G of this section, the
18 court shall order the property released to the owner or owners.

19 O. Except as provided for in subsection Q of this section, a
20 bona fide or innocent owner, lien holder, mortgagee or vendor that
21 recovers property pursuant to this section shall not be liable for
22 storage fees.

23 P. Except as provided for in subsection Q of this section,
24 storage fees shall be paid by the agency which is processing the

1 seizure and forfeiture from funds generated by seizure and
2 forfeiture actions.

3 Q. The bona fide or innocent owner, lien holder, mortgagee or
4 vendor shall reclaim subject seized property within thirty (30) days
5 of written notice from the seizing agency. If such person fails to
6 reclaim the property within the thirty-day time period, then storage
7 fees may be assessed against their secured interest.

8 R. 1. At any hearing held relevant to this section, a report
9 of the findings of the laboratory of the Oklahoma State Bureau of
10 Investigation, the medical examiner's report of investigation or
11 autopsy report, or a laboratory report from a forensic laboratory
12 operated by the State of Oklahoma or any political subdivision
13 thereof, which has been made available to the accused by the office
14 of the district attorney or other party to the forfeiture at least
15 five (5) days prior to the hearing, with reference to all or part of
16 the evidence submitted, when certified as correct by the persons
17 making the report shall be received as evidence of the facts and
18 findings stated, if relevant and otherwise admissible in evidence.
19 If such report is deemed relevant by the forfeiture applicant or the
20 respondent, the court shall admit such report without the testimony
21 of the person making the report, unless the court, pursuant to this
22 subsection, orders such person to appear.

23 2. When any alleged controlled dangerous substance has been
24 submitted to the laboratory of the OSBI for analysis, and such

1 analysis shows that the submitted material is a controlled dangerous
2 substance, the distribution of which constitutes a felony under the
3 laws of this state, no portion of such substance shall be released
4 to any other person or laboratory except to the criminal justice
5 agency originally submitting the substance to the OSBI for analysis,
6 absent an order of a district court. The defendant shall
7 additionally be required to submit to the court a procedure for
8 transfer and analysis of the subject material to ensure the
9 integrity of the sample and to prevent the material from being used
10 in any illegal manner.

11 3. The court, upon motion of either party, shall order the
12 attendance of any person preparing a report submitted as evidence in
13 the hearing when it appears there is a substantial likelihood that
14 material evidence not contained in said report may be produced by
15 the testimony of any person having prepared a report. The hearing
16 shall be held and, if sustained, an order issued not less than five
17 (5) days prior to the time when the testimony shall be required.

18 4. If within five (5) days prior to the hearing or during a
19 hearing, a motion is made pursuant to this section requiring a
20 person having prepared a report to testify, the court may hear a
21 report or other evidence but shall continue the hearing until such
22 time notice of the motion and hearing is given to the person making
23 the report, the motion is heard, and, if sustained, the testimony
24 ordered can be given.

1 SECTION 5. It being immediately necessary for the preservation
2 of the public peace, health and safety, an emergency is hereby
3 declared to exist, by reason whereof this act shall take effect and
4 be in full force from and after its passage and approval.

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