

1 STATE OF OKLAHOMA

2 2nd Session of the 51st Legislature (2008)

3 COMMITTEE SUBSTITUTE

4 FOR

5 HOUSE BILL NO. 2821

6 By: Sullivan

7 COMMITTEE SUBSTITUTE

8 An Act relating to Oklahoma State Bureau of Narcotics
9 and Dangerous Drugs Control; amending 22 O.S. 2001,
10 Sections 1404 and 1409, which relate to the Oklahoma
11 Corrupt Organizations Prevention Act; authorizing
12 Director of the Oklahoma State Bureau of Narcotics
13 and Dangerous Drugs Control to institute civil or
14 criminal proceedings for violation of certain act;
15 directing civil penalties be deposited in certain
16 revolving fund; amending 63 O.S. 2001, Sections 2-
17 103, as last amended by Section 51, Chapter 1, O.S.L.
18 2007, 2-106, 2-106.1, 2-110, 2-201, 2-301, as amended
19 by Section 3, Chapter 338, O.S.L. 2003, 2-306, 2-307,
20 Section 2, Chapter 288, O.S.L. 2002, as amended by
21 Section 4, Chapter 133, O.S.L. 2003 and 2-511 (63
22 O.S. Supp. 2007, Sections 2-103, 2-301 and 2-333),
23 which relate to the Uniform Controlled Dangerous
24 Substances Act; modifying appointment power and
duties of the Director of the Oklahoma State Bureau
of Narcotics and Dangerous Drugs Control; updating
agency designation; authorizing the sale, donation or
transfer of certain property received by the Bureau;
exempting property from certain provisions of the
Oklahoma Surplus Property Act; allowing certain
Bureau attorneys to carry weapons; prohibiting
attorneys from being eligible to participate in
certain retirement system; deleting employee
classification status provisions; authorizing
establishment of employee performance recognition
program; authorizing expenditure of funds for certain
purposes; providing monetary limitations for
recognition awards; authorizing establishment of
employee benefit program; authorizing expenditure of
funds for distribution of certain materials; deleting

1 references to Commissioner; expanding scope of
2 recoverable damages to include certain entities;
3 authorizing certain funds be used for drug education
4 programs; amending 63 O.S. 2001, Section 683.6, as
5 amended by Section 7, Chapter 329, O.S.L. 2003 (63
6 O.S. Supp. 2007, Section 683.6), which relates to the
7 Oklahoma Emergency Management Act of 2003; modifying
8 membership of the Emergency Management Advisory
9 Council; providing for codification; and providing an
10 effective date.

11
12
13
14
15
16
17
18
19
20
21
22
23
24
BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 22 O.S. 2001, Section 1404, is
amended to read as follows:

Section 1404. A. Any person convicted of violating any
provision of Section 1403 of this title shall be punished by a term
of imprisonment of not less than ten (10) years and shall not be
eligible for a deferred sentence, probation, suspension, work
furlough, or release from confinement on any other basis until the
person has served one-half (1/2) of his or her sentence. A
violation of each of the provisions of Section 1403 of this title
shall be a separate offense.

B. In lieu of the fine authorized by the Oklahoma Corrupt
Organizations Prevention Act, any person convicted of violating any
provision of Section 1403 of this title, through which he derived
pecuniary value, or by which he caused personal injury, or property
damage or other loss, may be sentenced to pay a fine that does not

1 exceed three times the gross value gained or three times the gross
2 loss caused, whichever is greater, plus court costs and the costs of
3 investigation and prosecution reasonably incurred, less the value of
4 any property ordered forfeited pursuant to the provisions of
5 subsection A of Section 1405 of this title. The district court
6 shall hold a separate hearing to determine the amount of the fine
7 authorized by the provisions of this subsection.

8 C. No person shall institute any proceedings, civil or
9 criminal, pursuant to the provisions of this act, except the
10 Attorney General, the Director of the Oklahoma State Bureau of
11 Narcotics and Dangerous Drugs Control, any district attorney or any
12 district attorney appointed under the provisions of Section 215.9 of
13 Title 19 of the Oklahoma Statutes.

14 SECTION 2. AMENDATORY 22 O.S. 2001, Section 1409, is
15 amended to read as follows:

16 Section 1409. A. The Attorney General, the Director of the
17 Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, any
18 district attorney or any district attorney appointed under the
19 provisions of Section 215.9 of Title 19 of the Oklahoma Statutes may
20 institute civil proceedings against any person in an appropriate
21 district court seeking relief from conduct constituting a violation
22 of any provisions of Section ~~3~~ 1403 of ~~the Oklahoma Corrupt~~
23 ~~Organizations Prevention Act~~ this title with the right to a trial by
24 jury at the request of either party. If the plaintiff in such a

1 proceeding proves the alleged violation by a preponderance of the
2 evidence, the district court, after making due provisions for the
3 rights of innocent parties, may grant relief by entering any
4 appropriate order of judgment, including:

5 1. Ordering any defendant to divest himself of any interest in
6 any enterprise or any real property;

7 2. Imposing reasonable restrictions upon the future activities
8 or investments of any defendant, including prohibiting any defendant
9 from engaging in the same type of endeavor as the enterprise in
10 which he was engaged in violation of Section ~~3~~ 1403 of ~~the Oklahoma~~
11 ~~Corrupt Organizations Prevention Act~~ this title;

12 3. Ordering the dissolution or reorganization of any
13 enterprise;

14 4. Ordering the suspension or revocation of a license, permit,
15 or prior approval granted to any enterprise by an agency of the
16 state; or

17 5. Ordering the surrender of the charter of a corporation
18 organized pursuant to the laws of the state or the revocation of a
19 certificate authorizing a foreign corporation to conduct business
20 within the state.

21 In a proceeding initiated pursuant to the provisions of this
22 section, injunctive relief shall be granted in conformity with the
23 principles that govern the granting of relief from injury or
24 threatened injury in other cases, but no showing of special or

1 irreparable injury shall be required. Pending final determination
2 of a proceeding initiated pursuant to the provisions of this
3 section, a temporary restraining order or a preliminary injunction
4 may be issued upon a showing of immediate danger of significant
5 injury, including the possibility that any judgment for money
6 damages might be difficult to execute, and, in a proceeding
7 initiated by an aggrieved person, upon the execution of a bond in
8 the amount of ten percent (10%) of the value of the property against
9 injury for an injunction improvidently granted. If the district
10 court issues an injunction or grants other relief pursuant to the
11 provisions of this section, the plaintiff shall also recover costs,
12 including reasonable attorney fees and costs of investigation and
13 litigation reasonably incurred.

14 B. The civil penalty imposed pursuant to this section shall not
15 exceed One Hundred Thousand Dollars (\$100,000.00) with no offset for
16 the value of any property criminally forfeited or any fine imposed
17 pursuant to the Oklahoma Corrupt Organizations Prevention Act. This
18 amount shall be applied to the costs and expenses of investigation
19 and prosecution, and the balance, if any, shall be paid pursuant to
20 the provisions of the Oklahoma Corrupt Organizations Prevention Act.
21 Civil penalties imposed in cases brought on behalf of the Oklahoma
22 State Bureau of Narcotics and Dangerous Drugs Control shall be
23 deposited in the Bureau of Narcotics Revolving Fund, established
24 pursuant to Section 2-107 of Title 63 of the Oklahoma Statutes.

1 C. Upon the filing of a civil action pursuant to the provisions
2 of subsection A or B of this section, a district attorney shall
3 immediately notify the Attorney General of its filing. Upon timely
4 application, the Attorney General may intervene as a party in any
5 civil action or proceeding brought pursuant to subsection A or B of
6 this section if the Attorney General certifies that the action or
7 proceeding is of general public importance.

8 D. A final judgment or decree rendered against the defendant in
9 any civil or criminal proceeding pursuant to the provisions of the
10 Oklahoma Corrupt Organizations Prevention Act, shall estop the
11 defendant in any subsequent civil action or proceeding brought by
12 any person as to all matters as to which the judgment or decree
13 would be an estoppel as between the parties to a civil or criminal
14 proceeding.

15 E. A civil action or proceeding pursuant to the provisions of
16 the Oklahoma Corrupt Organizations Prevention Act may be commenced
17 at any time within five (5) years after the conduct made unlawful
18 pursuant to the provisions of Section 3 1403 of ~~the Oklahoma Corrupt~~
19 ~~Organizations Prevention Act~~ this title terminates or the cause of
20 action accrues. If a criminal proceeding or civil action or other
21 proceeding is brought by or intervention is granted to the state to
22 punish, prevent, or restrain any activity made unlawful pursuant to
23 the provisions of Section 3 1403 of ~~the Oklahoma Corrupt~~
24 ~~Organizations Prevention Act~~ this title, the running of the period

1 of limitations prescribed by this section with respect to any cause
2 of action of an aggrieved person, based in whole or in part upon any
3 matter complained of in any such prosecution, action, or proceeding
4 shall be suspended during the pendency of such prosecution, action,
5 or proceeding and for two (2) years following its termination.

6 F. Service of process in an action pursuant to the provisions
7 of this section may be made upon any person outside the state if the
8 person was a principal in any conduct constituting a violation of
9 the provisions of the Oklahoma Corrupt Organizations Prevention Act
10 in this state. The person shall be deemed to have thereby submitted
11 himself to the jurisdiction of the courts of this state for the
12 purposes of this section.

13 G. The application of any civil remedy pursuant to the
14 provisions of this section shall not preclude the application of any
15 other civil or criminal remedy pursuant to the provisions of the
16 Oklahoma Corrupt Organizations Prevention Act or any other provision
17 of law. Civil remedies pursuant to the provisions of this section
18 are supplemental and not mutually exclusive.

19 SECTION 3. AMENDATORY 63 O.S. 2001, Section 2-103, as
20 last amended by Section 51, Chapter 1, O.S.L. 2007 (63 O.S. Supp.
21 2007, Section 2-103), is amended to read as follows:

22 Section 2-103. A. The Director shall be appointed by the
23 Oklahoma State Bureau of Narcotics and Dangerous Drugs Control
24 Commission. The Director of Narcotics and Dangerous Drugs Control

1 on January 1, 1984, shall be initially appointed as Director. The
2 succeeding Director shall, at the time of the appointment, have a
3 Bachelor's Degree from an accredited college or university and at
4 least five (5) years' experience in drug law enforcement. The
5 Director may appoint necessary assistants, agents, and other
6 personnel to perform the work of the office and may prescribe their
7 titles and duties and fix their compensation, other than the
8 salaries established in subsection A of Section 2-103a of this
9 title, pursuant to Merit System rules. The Director may appoint
10 employees to the positions of Public Information/Education Officer,
11 Training Officer, Program Administrator, Grants Administrator,
12 Criminal Analysts, Legal Secretary, and Typist Clerk/Spanish
13 Transcriptionists. Said positions shall be unclassified and exempt
14 from the rules and procedures of the Office of Personnel Management,
15 except leave regulations. The office of the Director shall be
16 located at a suitable place in Oklahoma City, Oklahoma.

17 B. 1. Agents appointed by the Director shall have the powers
18 of peace officers generally; provided, the Director may appoint
19 special agents, who shall be unclassified employees of the state, to
20 meet specific investigatory need. Special agents shall not be
21 required to meet the age and educational requirements as specified
22 in this section.

23

24

1 2. Agents appointed on and after November 1, 1998, shall be at
2 least twenty-one (21) years of age and shall have a Bachelor's
3 Degree from an accredited college or university.

4 3. Each entering agent, with the exception of special agents,
5 shall be required to serve one (1) year in a probationary status as
6 a prerequisite to being placed on permanent status.

7 C. Agents appointed pursuant to the provisions of this section
8 shall have the responsibility of investigating alleged violations
9 and shall have the authority to arrest those suspected of having
10 violated the provisions of the Uniform Controlled Dangerous
11 Substances Act.

12 D. A commissioned employee of the Oklahoma State Bureau of
13 Narcotics and Dangerous Drugs Control shall be entitled to receive
14 upon retirement by reason of length of service, the continued
15 custody and possession of the sidearm and badge carried by such
16 employee immediately prior to retirement.

17 E. A commissioned employee of the Bureau may be entitled to
18 receive, upon retirement by reason of disability, the continued
19 custody and possession of the sidearm and badge carried by such
20 employee immediately prior to retirement upon written approval of
21 the Director.

22 F. Custody and possession of the sidearm and badge of a
23 commissioned employee killed in the line of duty may be awarded by
24 the Director to the spouse or next of kin of the deceased employee.

1 G. Custody and possession of the sidearm and badge of a
2 commissioned employee who dies while employed at the Oklahoma State
3 Bureau of Narcotics and Dangerous Drugs Control may be awarded by
4 the Director to the spouse or next of kin of the deceased employee.

5 H. Any Director appointed on or after July 1, 2003, shall be
6 eligible to participate in either the Oklahoma Public Employees
7 Retirement System or in the Oklahoma Law Enforcement Retirement
8 System and shall make an irrevocable election in writing to
9 participate in one of the two retirement systems.

10 SECTION 4. AMENDATORY 63 O.S. 2001, Section 2-106, is
11 amended to read as follows:

12 Section 2-106. A. The Director shall, in addition to other
13 powers and duties vested in him:

14 1. Cooperate with federal and other state agencies in
15 discharging his responsibilities concerning traffic in narcotics and
16 dangerous substances and in suppressing the abuse of dangerous
17 substances;

18 2. Arrange for the exchange of information between governmental
19 officials concerning the use and abuse of dangerous substances;

20 3. Coordinate and cooperate in training programs on dangerous
21 substances law enforcement at the local and state levels;

22 4. Cooperate with the Bureau of Narcotics and Dangerous Drugs
23 by establishing a centralized unit which will accept, catalogue,
24 file and collect statistics, including records of drug dependent

1 persons and other dangerous substance law offenders within the
2 state, and make such information available for federal, state and
3 local law enforcement purposes; and may collect and furnish
4 statistics for other appropriate purposes; and

5 5. Coordinate and cooperate in programs of eradication aimed at
6 destroying wild or illicit growth of plant species from which
7 controlled dangerous substances may be extracted.

8 B. Results, information and evidence received from the Bureau
9 of Narcotics and Dangerous Drugs relating to the regulatory
10 functions of this act, including results of inspections conducted by
11 that agency, may be relied upon and acted upon by the Director in
12 conformance with his regulatory functions under this act.

13 C. The Director is further authorized and directed to:

14 1. Coordinate and cooperate in educational programs designed to
15 prevent and deter misuse and abuse of controlled dangerous
16 substances;

17 2. Promote better recognition of the problems of misuse and
18 abuse of controlled dangerous substances within the regulated
19 industry and among interested groups and organizations;

20 3. Assist the regulated industry, interested groups and
21 organizations in contributing to the reduction of misuse and abuse
22 of controlled dangerous substances;

23 4. Consult with interested groups and organizations to aid them
24 in solving administrative and organizational problems;

1 5. Assist in evaluating procedures, projects, techniques and
2 controls conducted or proposed as part of educational programs on
3 misuse and abuse of controlled dangerous substances;

4 6. Disseminate the results of research on misuse and abuse of
5 controlled dangerous substances to promote a better public
6 understanding of what problems exist and what can be done to combat
7 them; ~~and~~

8 7. Assist in the education and training of state and local law
9 enforcement officials in their efforts to control misuse and abuse
10 of controlled dangerous substances-i

11 8. Conduct an annual seminar to be attended by selected law
12 enforcement officers in order to teach new techniques and advances
13 in the investigation of violations of the Uniform Controlled
14 Dangerous Substances Act-i; and

15 9. Supervise and direct agents appointed in the performance of
16 their function of enforcement of the provisions of this act.

17 D. The Director is further authorized and directed to:

18 1. Encourage research on misuse and abuse of controlled
19 dangerous substances;

20 2. Cooperate in establishing methods to assess accurately the
21 effects of controlled dangerous substances and to identify and
22 characterize controlled dangerous substances with potential for
23 abuse;

1 3. Cooperate in making studies and in undertaking programs of
2 research to:

3 a. develop new or improved approaches, techniques,
4 systems, equipment and devices to strengthen the
5 enforcement of this act⁺₁

6 b. determine patterns of misuse and abuse of controlled
7 dangerous substances and the social effects thereof⁺₁
8 and

9 c. improve methods for preventing, predicting,
10 understanding and dealing with the misuse and abuse of
11 controlled dangerous substances.

12 E. The Director may enter into contracts with public agencies,
13 institutions of higher education and private organizations or
14 individuals for the purpose of conducting research, demonstrations
15 or special projects which bear directly on misuse and abuse of
16 controlled dangerous substances.

17 F. The Director may enter into contracts for educational and
18 research activities without performance bonds.

19 G. The Director may authorize persons engaged in research or
20 scientific activities on the use and effects of dangerous substances
21 to withhold the names and other identifying characteristics of
22 persons who are the subjects of such research. Persons who obtain
23 this authorization may not be compelled in any state civil,
24 criminal, administrative, legislative or other proceeding to

1 identify the subjects of research for which such authorization was
2 obtained.

3 H. The Director may authorize the lawful possession,
4 distribution and use of controlled dangerous substances by persons
5 engaged in research or scientific activities; authorization for
6 possession of controlled dangerous substances may be extended to
7 persons engaged in a program of drug education or persons in the
8 performance of an official duty. Persons who obtain this
9 authorization shall be exempt from state prosecution for possession,
10 distribution or use of dangerous substances to the extent authorized
11 by the Director.

12 I. The Director is authorized to accept gifts, bequests,
13 devises, contributions and grants, public or private, including
14 federal funds or funds from any other source for use in furthering
15 the purpose of the office of the Director.

16 J. The Director is authorized to purchase or sell real
17 property, together with appurtenances, in the name of the Oklahoma
18 State Bureau of Narcotics and Dangerous Drugs Control upon approval
19 of the Oklahoma State Bureau of Narcotics and Dangerous Drugs
20 Control Commission.

21 K. The Director shall be in charge of all monies appropriated
22 for or deposited to the credit of the office of the Director and is
23 authorized to approve claims and payrolls as provided in Section
24 41.26 of Title 62 of the Oklahoma Statutes.

1 ~~K.~~ L. The Director shall have the authority of a peace officer
2 and is authorized to commission assistants of his office as peace
3 officers.

4 SECTION 5. AMENDATORY 63 O.S. 2001, Section 2-106.1, is
5 amended to read as follows:

6 Section 2-106.1 The Oklahoma State Bureau of Narcotics and
7 Dangerous Drugs Control is hereby authorized to lease the seaplane
8 owned by said Bureau. Said lease shall not be subject to the
9 provisions of Section 85.5 of Title 74 of the Oklahoma Statutes and
10 shall not have to be approved by the ~~Office~~ Department of ~~Public~~
11 ~~Affairs~~ Central Services.

12 SECTION 6. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 2-106.2 of Title 63, unless
14 there is created a duplication in numbering, reads as follows:

15 A. The Oklahoma State Bureau of Narcotics and Dangerous Drugs
16 Control, pursuant to rules promulgated by the Oklahoma State Bureau
17 of Narcotics and Dangerous Drugs Control Commission, is hereby
18 authorized to:

19 1. Make available for sale used vehicles, used equipment and
20 forfeited property to any federal, state, county, or municipal
21 agency, trust authority or public school district;

22 2. Sell at public auction any used vehicles, used equipment and
23 any property forfeited to the Bureau; and
24

1 3. Donate or transfer title to any surplus property as defined
2 in Section 62.2 of Title 74 of the Oklahoma Statutes, or property
3 forfeited to the Bureau, to any law enforcement agency of any
4 political subdivision of the State of Oklahoma. The use of such
5 donated equipment shall be limited to valid and authorized law
6 enforcement efforts by the receiving agency.

7 B. Any property subject to this section shall be exempted from
8 the provisions set forth in Section 62.3 of Title 74 of the Oklahoma
9 Statutes.

10 SECTION 7. AMENDATORY 63 O.S. 2001, Section 2-110, is
11 amended to read as follows:

12 Section 2-110. The Director of the Oklahoma State Bureau of
13 Narcotics and Dangerous Drugs Control may employ attorneys, who
14 shall be unclassified employees of the state, or contract with
15 attorneys, as needed. These attorneys may advise the Director, the
16 Oklahoma State Bureau of Narcotics and Dangerous Drugs Control
17 Commission and Bureau personnel on all legal matters and shall
18 appear for and represent the Director, the Commission and Bureau
19 personnel in all administrative hearings and all litigation or other
20 proceedings which may arise in the discharge of their duties. At
21 the request of the Oklahoma State Bureau of Narcotics and Dangerous
22 Drugs Control Commission, such attorney shall assist the district
23 attorney in prosecuting charges of violators of the Uniform
24 Controlled Dangerous Substances Act or any felony relating to or

1 arising from a violation of the Uniform Controlled Dangerous
2 Substances Act. Provided, if Attorneys for the Bureau who have been
3 certified by the Council on Law Enforcement Education and Training
4 to carry a concealed weapon or have been issued a concealed handgun
5 license pursuant to the provisions of the Oklahoma Self-Defense Act
6 shall be allowed to carry weapons pursuant to paragraph 3 of
7 subsection A of Section 1272 of Title 21 of the Oklahoma Statutes.
8 These attorneys, pursuant to this provision, shall not be considered
9 eligible to participate in the Oklahoma Law Enforcement Retirement
10 System. If a conflict of interest would be created by such attorney
11 representing the Director, the Commission or Bureau personnel,
12 additional counsel may be hired upon approval of the Oklahoma State
13 Bureau of Narcotics and Dangerous Drugs Control Commission. Any
14 classified employee who is serving in an attorney position which is
15 subject to the Merit System of Personnel Administration on the
16 effective date of this act shall have the option of retaining such
17 classified status. An incumbent who chooses to remain in the
18 classified service shall be subject to all provisions and conditions
19 of the Merit System of Personnel Administration. An incumbent who
20 chooses to change status from classified to unclassified shall so
21 indicate in writing. All future appointees to such positions shall
22 be in the unclassified service.

23

24

1 SECTION 8. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 63 of Title 2-111, unless there
3 is created a duplication in numbering, reads as follows:

4 A. The Oklahoma State Bureau of Narcotics and Dangerous Drugs
5 Control is authorized to establish an employee performance
6 recognition program that encourages outstanding job performance and
7 productivity within the Bureau. The Bureau is authorized to expend
8 funds for:

9 1. The purchase of recognition awards to be presented to
10 members of work units or individual employees having exceptional job
11 performance records or other significant contributions to the
12 operation of the Bureau;

13 2. The purchase of recognition awards to be presented to
14 nonemployees of the Bureau in recognition of exemplary service or
15 assistance to the Bureau and law enforcement; and

16 3. A formal ceremony or banquet where the awards may be
17 presented.

18 B. Recognition awards may consist of distinctive wearing
19 apparel, service pins, plaques, writing pens, or other distinguished
20 awards of a value not exceeding One Hundred Fifty Dollars (\$150.00)
21 per award to recognize the achievement of the work unit or
22 individual employee. In addition to recognition awards, the Bureau
23 may establish an employee benefit program not exceeding Five
24 Thousand Dollars (\$5,000.00) each fiscal year for cash awards to

1 recognize outstanding performance in the workplace by Bureau
2 employees.

3 C. To better educate and foster relations as to the Bureau and
4 its mission towards drug reduction, the Bureau may expend funds not
5 exceeding Ten Thousand Dollars (\$10,000.00) each fiscal year for the
6 purpose of distributing educational, demand-reduction and
7 commemorative materials bearing the seal of the Oklahoma State
8 Bureau of Narcotics and Dangerous Drugs Control to nonemployees.
9 Donated items, federal grant money and seizure funds shall not count
10 toward this amount.

11 SECTION 9. AMENDATORY 63 O.S. 2001, Section 2-201, is
12 amended to read as follows:

13 Section 2-201. A. The ~~Commissioner~~ Director shall administer
14 the provisions of this act except as otherwise provided.

15 B. The Board of Pharmacy by rule may classify new products
16 determined to have a potential for abuse as controlled dangerous
17 substances after notice and hearing; provided that such rule shall
18 be submitted to the next regular session of the Legislature, and
19 such rule shall remain in force and effect unless a concurrent
20 resolution of disapproval is passed. Hearings shall be conducted by
21 the Board of Pharmacy or such officers, agents or employees as the
22 Board of Pharmacy may designate for the purpose. The Board of
23 Pharmacy shall give appropriate notice of the proposed
24 classification and of the time and place for a hearing. The rule so

1 promulgated shall become effective on a date fixed by the Board of
2 Pharmacy. Such rule may be amended or repealed in the same manner
3 as provided for its adoption. Proceedings pursuant to this
4 subsection shall be governed by the Administrative Procedures Act.
5 A new substance controlled pursuant to this subsection shall be
6 subject to the same regulatory provisions of this act applicable to
7 the Schedule of substances to which it is classified.

8 C. The ~~Commissioner~~ Director may recommend to the Legislature
9 the addition, deletion or rescheduling of a substance.

10 D. In considering whether to make a recommendation or issue an
11 order under this section, the ~~Commissioner~~ Director or the Board of
12 Pharmacy, as the case may be, shall consider the following:

- 13 1. Its actual or relative potential for abuse;
- 14 2. Scientific evidence of its pharmacological effect, if known;
- 15 3. State of current scientific knowledge regarding the
16 substance;
- 17 4. Its history and current pattern of abuse;
- 18 5. The scope, duration, and significance of abuse;
- 19 6. What, if any, risk there is to the public health;
- 20 7. Its psychic or physiological dependence liability; and
- 21 8. Whether the substance is an immediate precursor or principal
22 compound of a substance already controlled under this article.

23
24

1 E. Substances which are precursors of a controlled precursor
2 shall not be subject to control solely because they are precursors
3 of the controlled precursor.

4 F. In addition to the filing requirements of the Administrative
5 Procedures Act, copies of orders issued under this section shall,
6 during the time the Legislature is not in session, be filed with the
7 ~~Chairman~~ Chair and Vice ~~Chairman~~ Chair of the State Legislative
8 Council's Judiciary Committee.

9 G. The Board of Pharmacy shall exclude any nonnarcotic
10 substance from a schedule if such substance may, under the Federal
11 Food, Drug and Cosmetic Act and the law of this state, be lawfully
12 sold over the counter without a prescription.

13 SECTION 10. AMENDATORY 63 O.S. 2001, Section 2-301, as
14 amended by Section 3, Chapter 338, O.S.L. 2003 (63 O.S. Supp. 2007,
15 Section 2-301), is amended to read as follows:

16 Section 2-301. A. The ~~Commissioner~~ Director is authorized to
17 promulgate rules and regulations relating to the registration and
18 control of the manufacture, distribution, dispensing, prescribing,
19 administering or use for scientific purposes of controlled dangerous
20 substances within this state. All proceedings before the ~~office of~~
21 ~~Commissioner~~ Director shall be governed by the Administrative
22 Procedures Act.

23 B. The ~~Commissioner~~ Director shall promulgate rules relating to
24 the training, certification and registration of animal control

1 officers for the purpose of authorizing such individuals to
2 purchase, possess and administer controlled dangerous substances for
3 animal control within this state and operating under the parameters
4 of Sections 501 through 508 of Title 4 of the Oklahoma Statutes. In
5 promulgating such rules, the ~~Commissioner~~ Director shall cooperate
6 with any federal, state or local entity with jurisdiction over the
7 euthanasia of animals.

8 SECTION 11. AMENDATORY 63 O.S. 2001, Section 2-306, is
9 amended to read as follows:

10 Section 2-306. On the conviction of any person of the violation
11 of any provision of this act, a certified copy of the judgment of
12 conviction shall be sent by the clerk of the court to the
13 ~~Commissioner~~ Director and to the board or officer, if any, by whom
14 the convicted defendant has been licensed or registered to practice
15 his or her profession or to carry on his or her business.

16 SECTION 12. AMENDATORY 63 O.S. 2001, Section 2-307, is
17 amended to read as follows:

18 Section 2-307. Persons registered to manufacture, distribute,
19 or dispense controlled dangerous substances under this act shall
20 keep records and maintain inventories in conformance with the
21 record-keeping and inventory requirements of federal law and with
22 the additional rules the ~~Commissioner~~ Director issues.

23

24

1 SECTION 13. AMENDATORY Section 2, Chapter 288, O.S.L.
2 2002, as amended by Section 4, Chapter 133, O.S.L. 2003 (63 O.S.
3 Supp. 2007, Section 2-333), is amended to read as follows:

4 Section 2-333. A. It shall be unlawful for any person to
5 knowingly sell, transfer, distribute, or dispense any product
6 containing ephedrine, pseudoephedrine or phenylpropanolamine, or
7 their salts, isomers or salts of isomers if the person knows that
8 the purchaser will use the product as a precursor to manufacture
9 methamphetamine or another controlled illegal substance or if the
10 person sells, transfers, distributes or dispenses the product with
11 reckless disregard as to how the product will be used.

12 B. A violation of this section shall be a felony punishable by
13 imprisonment in the State Penitentiary for a term of not more than
14 ten (10) years.

15 C. Any person who sells, transfers, distributes, dispenses, or
16 in any manner furnishes any product containing pseudoephedrine or
17 phenylpropanolamine, or their salts, isomers, or salts of isomers in
18 a negligent manner, with knowledge or reason to know that the
19 product will be used as a precursor to manufacture methamphetamine
20 or any other illegal controlled substance, or with reckless
21 disregard as to how the product will be used, shall be liable for
22 all damages, whether directly or indirectly caused by the sale,
23 transfer, distribution, dispensation, or furnishing.

24

1 1. Such damages may include, but are not limited to, any and
2 all costs of detecting, investigating, and cleaning up or
3 remediating clandestine or other unlawfully operated or maintained
4 laboratories where controlled dangerous substances are manufactured,
5 any and all costs of prosecuting criminal cases arising from such
6 manufacture, and any and all consequential and punitive damages
7 otherwise allowed by law.

8 2. A civil action to recover damages against persons,
9 corporations or other entities violating this subsection may be
10 brought only by the Attorney General, the Director of the Oklahoma
11 State Bureau of Narcotics and Dangerous Drugs Control or by any
12 district attorney in whose jurisdiction such person may be shown to
13 have committed such violation. Any funds recovered from such an
14 action shall be used for payment or reimbursement of costs arising
15 from investigating or prosecuting criminal or civil cases involving
16 the manufacture of controlled dangerous substances, for drug
17 education programs, or for payment or reimbursement of remediating
18 contaminated methamphetamine laboratory sites.

19 D. Violation of subsection A or C of this section shall be
20 considered to affect at the same time an entire community or
21 neighborhood, or any considerable number of persons, although the
22 extent of the annoyance or damage inflicted upon the individuals may
23 be unequal and is subject to the provisions of Section 2 of Title 50

24

1 of the Oklahoma Statutes and Section 1397 of Title 12 of the
2 Oklahoma Statutes.

3 SECTION 14. AMENDATORY 63 O.S. 2001, Section 2-511, is
4 amended to read as follows:

5 Section 2-511. Judicial review of final determinations,
6 findings, and conclusions of the ~~Commissioner~~ Director under this
7 act shall be in the manner provided by the Administrative Procedures
8 Act. A revocation or suspension of a registration based on the
9 revocation or suspension of a professional or occupational license
10 shall be final and conclusive where judicial review is available
11 with respect to the revocation or suspension of the professional or
12 occupational license.

13 SECTION 15. AMENDATORY 63 O.S. 2001, Section 683.6, as
14 amended by Section 7, Chapter 329, O.S.L. 2003 (63 O.S. Supp. 2007,
15 Section 683.6), is amended to read as follows:

16 Section 683.6 A. There is hereby created an Emergency
17 Management Advisory Council. The members of the Council shall be
18 composed of the Governor, who shall serve as chair of the Council,
19 and the following department heads:

- 20 1. The Director of the Oklahoma Department of Emergency
21 Management;
- 22 2. The Commissioner of Public Safety;
- 23 3. The Adjutant General;
- 24 4. The Commissioner of Health;

- 1 5. The Commissioner of the State Department of Agriculture,
2 Food, and Forestry;
- 3 6. The Director of the Department of Human Services;
- 4 7. The Director of the Department of Transportation;
- 5 8. The Director of the Oklahoma Water Resources Board;
- 6 9. The State Fire Marshal;
- 7 10. The Department of Environmental Quality; ~~and~~
- 8 11. The Oklahoma Sheriff's Association; and
- 9 12. The Director of the Oklahoma State Bureau of Narcotics and
10 Dangerous Drugs Control,

11 who shall serve without additional compensation.

12 B. The Council shall advise the Governor and the Director on
13 all matters pertaining to emergency management.

14 C. 1. There is hereby created the State Hazard Mitigation
15 Team, composed of the administrative heads of the following agencies
16 or their designees:

- 17 a. Oklahoma Department of Emergency Management, who shall
18 serve as the Team Coordinator,
- 19 b. Oklahoma Water Resources Board,
- 20 c. Oklahoma Climatological Survey,
- 21 d. Oklahoma Conservation Commission,
- 22 e. Oklahoma Corporation Commission,
- 23 f. Oklahoma Department of Commerce,
- 24 g. Oklahoma Department of Environmental Quality,

- 1 h. Oklahoma Department of Human Services,
- 2 i. Oklahoma Department of Health,
- 3 j. Oklahoma Department of Transportation,
- 4 k. Oklahoma Department of Agriculture, Food, and Forestry
- 5 or Secretary of the Oklahoma Department of
- 6 Agriculture, Food, and Forestry,
- 7 l. Oklahoma Department of Wildlife Conservation,
- 8 m. Oklahoma Historical Society,
- 9 n. Oklahoma Insurance Commission,
- 10 o. Association of County Commissioners of Oklahoma,
- 11 p. Oklahoma Municipal League,
- 12 q. State Fire Marshal, and
- 13 r. Oklahoma Department of Labor.

14 2. Depending on the circumstances, the Team Coordinator may
15 request participation of the heads of any other state agencies as
16 deemed appropriate.

17 3. The Team Coordinator shall also request that a
18 representative of the United States Army Corps of Engineers be
19 appointed by the administrative head of the Tulsa District to
20 participate on the Team.

21 4. The Team Coordinator shall also request a representative of
22 the U.S. Department of Housing and Urban Development be appointed by
23 the administrative head of the Oklahoma City office to participate
24 on the team.

1 5. The State Hazard Mitigation Team will meet as determined by
2 the Team Coordinator to review and recommend updates to the State
3 Comprehensive All-hazard Mitigation Plan, and shall have those
4 additional responsibilities as provided by the Team Coordinator,
5 including, but not limited to, the review and recommendation for
6 loan and grant application under the Oklahoma Flood Hazard
7 Mitigation Program.

8 SECTION 16. This act shall become effective November 1, 2008.

9

10 51-2-10534 GRS 03/04/08

11

12

13

14

15

16

17

18

19

20

21

22

23

24