

**EHB 2821**

1 THE STATE SENATE  
2 Monday, April 7, 2008

3 **ENGROSSED**

4 **House Bill No. 2821**

5 **As Amended**

6 ENGROSSED HOUSE BILL NO. 2821 - By: Sullivan and Roan of the House  
7 and Corn and Lamb of the Senate.

8 An Act relating to Oklahoma State Bureau of Narcotics  
9 and Dangerous Drugs Control; amending 63 O.S. 2001,  
10 Sections 2-103, as last amended by Section 51, Chapter  
11 1, O.S.L. 2007, 2-106.1, 2-110, 2-201, 2-301, as  
12 amended by Section 3, Chapter 338, O.S.L. 2003, 2-306,  
13 2-307, Section 2, Chapter 288, O.S.L. 2002, as amended  
14 by Section 4, Chapter 133, O.S.L. 2003 and 2-511 (63  
15 O.S. Supp. 2007, Sections 2-103, 2-301 and 2-333),  
16 which relate to the Uniform Controlled Dangerous  
17 Substances Act; modifying appointment power and duties  
18 of the Director of the Oklahoma State Bureau of  
19 Narcotics and Dangerous Drugs Control; updating agency  
20 designation; authorizing the sale, donation or  
21 transfer of certain property received by the Bureau;  
22 exempting property from certain provisions of the  
23 Oklahoma Surplus Property Act; allowing certain Bureau  
24 attorneys to carry weapons; prohibiting attorneys from  
25 being eligible to participate in certain retirement  
26 system; deleting employee classification status  
27 provisions; authorizing establishment of employee  
28 performance recognition program; authorizing  
29 expenditure of funds for certain purposes; providing  
30 monetary limitations for recognition awards;  
31 authorizing establishment of employee benefit program;  
32 authorizing expenditure of funds for distribution of  
33 certain materials; deleting references to  
34 Commissioner; expanding scope of recoverable damages  
35 to include certain entities; authorizing certain funds  
36 be used for drug education programs; amending 63 O.S.  
37 2001, Section 683.6, as amended by Section 7, Chapter  
38 329, O.S.L. 2003 (63 O.S. Supp. 2007, Section 683.6),  
39 which relates to the Oklahoma Emergency Management Act  
40 of 2003; modifying membership of the Emergency  
41 Management Advisory Council; providing for  
42 codification; and providing an effective date.

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

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

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

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

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

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

13          C. Agents appointed pursuant to the provisions of this section  
14 shall have the responsibility of investigating alleged violations  
15 and shall have the authority to arrest those suspected of having  
16 violated the provisions of the Uniform Controlled Dangerous  
17 Substances Act.

18          D. A commissioned employee of the Oklahoma State Bureau of  
19 Narcotics and Dangerous Drugs Control shall be entitled to receive  
20 upon retirement by reason of length of service, the continued  
21 custody and possession of the sidearm and badge carried by such  
22 employee immediately prior to retirement.

1           E. A commissioned employee of the Bureau may be entitled to  
2 receive, upon retirement by reason of disability, the continued  
3 custody and possession of the sidearm and badge carried by such  
4 employee immediately prior to retirement upon written approval of  
5 the Director.

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

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

13           H. Any Director appointed on or after July 1, 2003, shall be  
14 eligible to participate in either the Oklahoma Public Employees  
15 Retirement System or in the Oklahoma Law Enforcement Retirement  
16 System and shall make an irrevocable election in writing to  
17 participate in one of the two retirement systems.

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

20           Section 2-106.1 The Oklahoma State Bureau of Narcotics and  
21 Dangerous Drugs Control is hereby authorized to lease the seaplane  
22 owned by said Bureau. Said lease shall not be subject to the  
23 provisions of Section 85.5 of Title 74 of the Oklahoma Statutes and

1 shall not have to be approved by the ~~Office~~ Department of ~~Public~~  
2 ~~Affairs~~ Central Services.

3 SECTION 3. NEW LAW A new section of law to be codified  
4 in the Oklahoma Statutes as Section 2-106.2 of Title 63, unless  
5 there is created a duplication in numbering, reads as follows:

6 A. The Oklahoma State Bureau of Narcotics and Dangerous Drugs  
7 Control, pursuant to rules promulgated by the Oklahoma State Bureau  
8 of Narcotics and Dangerous Drugs Control Commission, is hereby  
9 authorized to:

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

13 2. Sell at public auction any used vehicles, used equipment and  
14 any property forfeited to the Bureau; and

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

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

1 SECTION 4. AMENDATORY 63 O.S. 2001, Section 2-110, is  
2 amended to read as follows:

3 Section 2-110. The Director of the Oklahoma State Bureau of  
4 Narcotics and Dangerous Drugs Control may employ attorneys, who  
5 shall be unclassified employees of the state, or contract with  
6 attorneys, as needed. These attorneys may advise the Director, the  
7 Oklahoma State Bureau of Narcotics and Dangerous Drugs Control  
8 Commission and Bureau personnel on all legal matters and shall  
9 appear for and represent the Director, the Commission and Bureau  
10 personnel in all administrative hearings and all litigation or other  
11 proceedings which may arise in the discharge of their duties. At  
12 the request of the Oklahoma State Bureau of Narcotics and Dangerous  
13 Drugs Control Commission, such attorney shall assist the district  
14 attorney in prosecuting charges of violators of the Uniform  
15 Controlled Dangerous Substances Act or any felony relating to or  
16 arising from a violation of the Uniform Controlled Dangerous  
17 Substances Act. Provided, if Attorneys for the Bureau who have been  
18 certified by the Council on Law Enforcement Education and Training  
19 to carry a concealed weapon or have been issued a concealed handgun  
20 license pursuant to the provisions of the Oklahoma Self-Defense Act  
21 shall be allowed to carry weapons pursuant to paragraph 3 of  
22 subsection A of Section 1272 of Title 21 of the Oklahoma Statutes.  
23 These attorneys, pursuant to this provision, shall not be considered

1 eligible to participate in the Oklahoma Law Enforcement Retirement  
2 System. If a conflict of interest would be created by such attorney  
3 representing the Director, the Commission or Bureau personnel,  
4 additional counsel may be hired upon approval of the Oklahoma State  
5 Bureau of Narcotics and Dangerous Drugs Control Commission. ~~Any~~  
6 ~~classified employee who is serving in an attorney position which is~~  
7 ~~subject to the Merit System of Personnel Administration on the~~  
8 ~~effective date of this act shall have the option of retaining such~~  
9 ~~classified status. An incumbent who chooses to remain in the~~  
10 ~~classified service shall be subject to all provisions and conditions~~  
11 ~~of the Merit System of Personnel Administration. An incumbent who~~  
12 ~~chooses to change status from classified to unclassified shall so~~  
13 ~~indicate in writing. All future appointees to such positions shall~~  
14 ~~be in the unclassified service.~~

15 SECTION 5. NEW LAW A new section of law to be codified  
16 in the Oklahoma Statutes as Section 2-111 of Title 63, unless there  
17 is created a duplication in numbering, reads as follows:

18 A. The Oklahoma State Bureau of Narcotics and Dangerous Drugs  
19 Control is authorized to establish an employee performance  
20 recognition program that encourages outstanding job performance and  
21 productivity within the Bureau. The Bureau is authorized to expend  
22 funds for:

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

5           2. The purchase of recognition awards to be presented to  
6 nonemployees of the Bureau in recognition of exemplary service or  
7 assistance to the Bureau and law enforcement; and

8           3. A formal ceremony or banquet where the awards may be  
9 presented.

10          B. Recognition awards may consist of distinctive wearing  
11 apparel, service pins, plaques, writing pens, or other distinguished  
12 awards of a value not exceeding One Hundred Fifty Dollars (\$150.00)  
13 per award to recognize the achievement of the work unit or  
14 individual employee. In addition to recognition awards, the Bureau  
15 may establish an employee benefit program not exceeding Five  
16 Thousand Dollars (\$5,000.00) each fiscal year for cash awards to  
17 recognize outstanding performance in the workplace by Bureau  
18 employees.

19          C. To better educate and foster relations as to the Bureau and  
20 its mission towards drug reduction, the Bureau may expend funds not  
21 exceeding Ten Thousand Dollars (\$10,000.00) each fiscal year for the  
22 purpose of distributing educational, demand-reduction and  
23 commemorative materials bearing the seal of the Oklahoma State

1 Bureau of Narcotics and Dangerous Drugs Control to nonemployees.  
2 Donated items, federal grant money and seizure funds shall not count  
3 toward this amount.

4 SECTION 6. AMENDATORY 63 O.S. 2001, Section 2-201, is  
5 amended to read as follows:

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

8 B. The Board of Pharmacy by rule may classify new products  
9 determined to have a potential for abuse as controlled dangerous  
10 substances after notice and hearing; provided that such rule shall  
11 be submitted to the next regular session of the Legislature, and  
12 such rule shall remain in force and effect unless a concurrent  
13 resolution of disapproval is passed. Hearings shall be conducted by  
14 the Board of Pharmacy or such officers, agents or employees as the  
15 Board of Pharmacy may designate for the purpose. The Board of  
16 Pharmacy shall give appropriate notice of the proposed  
17 classification and of the time and place for a hearing. The rule so  
18 promulgated shall become effective on a date fixed by the Board of  
19 Pharmacy. Such rule may be amended or repealed in the same manner  
20 as provided for its adoption. Proceedings pursuant to this  
21 subsection shall be governed by the Administrative Procedures Act.  
22 A new substance controlled pursuant to this subsection shall be

1 subject to the same regulatory provisions of this act applicable to  
2 the Schedule of substances to which it is classified.

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

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

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

18 E. Substances which are precursors of a controlled precursor  
19 shall not be subject to control solely because they are precursors  
20 of the controlled precursor.

21 F. In addition to the filing requirements of the Administrative  
22 Procedures Act, copies of orders issued under this section shall,  
23 during the time the Legislature is not in session, be filed with the

1 ~~Chairman~~ Chair and Vice ~~Chairman~~ Chair of the State Legislative  
2 Council's Judiciary Committee.

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

7 SECTION 7. AMENDATORY 63 O.S. 2001, Section 2-301, as  
8 amended by Section 3, Chapter 338, O.S.L. 2003 (63 O.S. Supp. 2007,  
9 Section 2-301), is amended to read as follows:

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

17 B. The ~~Commissioner~~ Director shall promulgate rules relating to  
18 the training, certification and registration of animal control  
19 officers for the purpose of authorizing such individuals to  
20 purchase, possess and administer controlled dangerous substances for  
21 animal control within this state and operating under the parameters  
22 of Sections 501 through 508 of Title 4 of the Oklahoma Statutes. In  
23 promulgating such rules, the ~~Commissioner~~ Director shall cooperate

1 with any federal, state or local entity with jurisdiction over the  
2 euthanasia of animals.

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

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

11 SECTION 9. AMENDATORY 63 O.S. 2001, Section 2-307, is  
12 amended to read as follows:

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

18 SECTION 10. AMENDATORY Section 2, Chapter 288, O.S.L.  
19 2002, as amended by Section 4, Chapter 133, O.S.L. 2003 (63 O.S.  
20 Supp. 2007, Section 2-333), is amended to read as follows:

21 Section 2-333. A. It shall be unlawful for any person to  
22 knowingly sell, transfer, distribute, or dispense any product  
23 containing ephedrine, pseudoephedrine or phenylpropanolamine, or

1 their salts, isomers or salts of isomers if the person knows that  
2 the purchaser will use the product as a precursor to manufacture  
3 methamphetamine or another controlled illegal substance or if the  
4 person sells, transfers, distributes or dispenses the product with  
5 reckless disregard as to how the product will be used.

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

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

18 1. Such damages may include, but are not limited to, any and  
19 all costs of detecting, investigating, and cleaning up or  
20 remediating clandestine or other unlawfully operated or maintained  
21 laboratories where controlled dangerous substances are manufactured,  
22 any and all costs of prosecuting criminal cases arising from such

1 manufacture, and any and all consequential and punitive damages  
2 otherwise allowed by law.

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

14 D. Violation of subsection A or C of this section shall be  
15 considered to affect at the same time an entire community or  
16 neighborhood, or any considerable number of persons, although the  
17 extent of the annoyance or damage inflicted upon the individuals may  
18 be unequal and is subject to the provisions of Section 2 of Title 50  
19 of the Oklahoma Statutes and Section 1397 of Title 12 of the  
20 Oklahoma Statutes.

21 SECTION 11. AMENDATORY 63 O.S. 2001, Section 2-511, is  
22 amended to read as follows:

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

9           SECTION 12.           AMENDATORY           63 O.S. 2001, Section 683.6, as  
10 amended by Section 7, Chapter 329, O.S.L. 2003 (63 O.S. Supp. 2007,  
11 Section 683.6), is amended to read as follows:

12           Section 683.6 A. There is hereby created an Emergency  
13 Management Advisory Council. The members of the Council shall be  
14 composed of the Governor, who shall serve as chair of the Council,  
15 and the following department heads:

16           1. The Director of the Oklahoma Department of Emergency  
17 Management;

18           2. The Commissioner of Public Safety;

19           3. The Adjutant General;

20           4. The Commissioner of Health;

21           5. The Commissioner of the State Department of Agriculture,  
22 Food, and Forestry;

23           6. The Director of the Department of Human Services;

1       7. The Director of the Department of Transportation;  
2       8. The Director of the Oklahoma Water Resources Board;  
3       9. The State Fire Marshal;  
4       10. The Department of Environmental Quality; ~~and~~  
5       11. The Oklahoma Sheriff's Association; and  
6       12. The Director of the Oklahoma State Bureau of Narcotics and  
7 Dangerous Drugs Control,  
8 who shall serve without additional compensation.

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

11       C. 1. There is hereby created the State Hazard Mitigation  
12 Team, composed of the administrative heads of the following agencies  
13 or their designees:

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

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

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

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

19           4.    The Team Coordinator shall also request a representative of  
20 the U.S. Department of Housing and Urban Development be appointed by  
21 the administrative head of the Oklahoma City office to participate  
22 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 13. This act shall become effective November 1, 2008.

9           COMMITTEE REPORT BY: COMMITTEE ON RULES, dated 4-2-08 - DO PASS, As  
10 Amended.