

THE HOUSE OF REPRESENTATIVES
Tuesday, February 24, 2009

House Bill No. 1707

HOUSE BILL NO. 1707 - By: DERBY of the House and CRAIN of the Senate.

An Act relating to public health and safety; amending 63 O.S. 2001, Sections 2-402, as amended by Section 3, Chapter 396, O.S.L. 2004 and 2-410, as amended by Section 1, Chapter 308, O.S.L. 2008 (63 O.S. Supp. 2008, Sections 2-402 and 2-410), which relate to the Uniform Controlled Dangerous Substances Act; modifying certain penalties to include imposition of a fine; providing time limitation for use of prior conviction records; and providing an effective date.

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

- 1 SECTION 1. AMENDATORY 63 O.S. 2001, Section 2-402, as amended by
2 Section 3, Chapter 396, O.S.L. 2004 (63 O.S. Supp. 2008, Section 2-402), is amended to
3 read as follows:
- 4 Section 2-402. A. 1. It shall be unlawful for any person knowingly or intentionally
5 to possess a controlled dangerous substance unless such substance was obtained directly,
6 or pursuant to a valid prescription or order from a practitioner, while acting in the course
7 of his professional practice, or except as otherwise authorized by this act.
- 8 2. It shall be unlawful for any person to purchase any preparation excepted from
9 the provisions of the Uniform Controlled Dangerous Substances Act, Section 2-101 et seq.
10 of this title, pursuant to Section 2-313 of this title in an amount or within a time interval
11 other than that permitted by Section 2-313 of this title.

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

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

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

13 1. Any Schedule I or II substance, except marihuana or a substance included in
14 subsection D of Section 2-206 of this title, is guilty of a felony punishable by
15 imprisonment for not less than two (2) years nor more than ten (10) years and by a fine
16 not exceeding Five Thousand Dollars (\$5,000.00). A second or subsequent violation of
17 this section with respect to Schedule I or II substance, except marijuana or a substance
18 included in subsection D of Section 2-206 of this title, is a felony punishable by
19 imprisonment for not less than four (4) years nor more than twenty (20) years and by a
20 fine not exceeding Ten Thousand Dollars (\$10,000.00); or

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

1 provisions of the Uniform Controlled Dangerous Substances Act is guilty of a
2 misdemeanor punishable by confinement for not more than one (1) year and by a fine not
3 exceeding One Thousand Dollars (\$1,000.00). A second or subsequent violation of this
4 section with respect to any Schedule III, IV or V substance, marijuana, a substance
5 included in subsection D of Section 2-206 of this title, or any preparation excepted from
6 the provisions of the Uniform Controlled Dangerous Substances Act is a felony
7 punishable by imprisonment for not less than two (2) years nor more than ten (10) years
8 and by a fine not exceeding Five Thousand Dollars (\$5,000.00).

9 C. Any person who violates any provision of this section by possessing or
10 purchasing a controlled dangerous substance from any person, in or on, or within one
11 thousand (1,000) feet of the real property comprising a public or private elementary or
12 secondary school, public vocational school, public or private college or university, or other
13 institution of higher education, recreation center or public park, including state parks
14 and recreation areas, or in the presence of any child under twelve (12) years of age, shall
15 be guilty of a felony and punished by:

16 1. For a first offense, a term of imprisonment, or by the imposition of a fine, or by
17 both, not exceeding twice that authorized by the appropriate provision of this section. In
18 addition, the person shall serve a minimum of fifty percent (50%) of the sentence received
19 prior to becoming eligible for state correctional institution earned credits toward the
20 completion of said sentence; or

21 2. For a second or subsequent offense, a term of imprisonment not exceeding three
22 times that authorized by the appropriate provision of this section and the person shall

1 serve a minimum of ninety percent (90%) of the sentence received prior to becoming
2 eligible for state correctional institution earned credits toward the completion of said
3 sentence, and imposition of a fine not exceeding Ten Thousand Dollars (\$10,000.00).

4 D. Any person convicted of any offense described in this section shall, in addition to
5 any fine imposed, pay a special assessment trauma-care fee of One Hundred Dollars
6 (\$100.00) to be deposited into the Trauma Care Assistance Revolving Fund created in
7 Section 1-2522 of this title.

8 SECTION 2. AMENDATORY 63 O.S. 2001, Section 2-410, as amended by
9 Section 1, Chapter 308, O.S.L. 2008 (63 O.S. Supp. 2008, Section 2-410), is amended to
10 read as follows:

11 Section 2-410. A. Whenever any person who has not previously been convicted of
12 any offense under this act or under any statute of the United States or of any state
13 relating to narcotic drugs, marijuana, or stimulant, depressant, or hallucinogenic drugs,
14 pleads guilty or nolo contendere to or is found guilty of a violation of the Uniform
15 Controlled Dangerous Substances Act, the court may, unless otherwise prohibited by law,
16 without entering a judgment of guilt and with the consent of such person, defer further
17 proceedings and place the person on probation upon such reasonable terms and
18 conditions as it may require including the requirement that such person cooperate in a
19 treatment and rehabilitation program of a state-supported or state-approved facility, if
20 available. Upon violation of a term or condition, the court may enter an adjudication of
21 guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions,
22 the court shall discharge such person and dismiss the proceedings against the person.

1 Discharge and dismissal under this section shall be without court adjudication of guilt
2 and shall not be deemed a conviction for purposes of this section or for purposes of
3 disqualifications or disabilities imposed by law upon conviction of a crime. Discharge
4 and dismissal under this section may occur only once with respect to any person.

5 B. Any expunged arrest or conviction shall not thereafter be regarded as an arrest
6 or conviction for purposes of employment, civil rights, or any statute, regulation, license,
7 questionnaire or any other public or private purpose; provided, that, any plea of guilty or
8 nolo contendere or finding of guilt to a violation of the Uniform Controlled Dangerous
9 Substances Act shall constitute a conviction of the offense for the purpose of the Uniform
10 Controlled Dangerous Substances Act or any other criminal statute under which the
11 existence of a prior conviction is relevant for a period of ten (10) years following the
12 completion of any court imposed probationary term; provided, the person has not, in the
13 meantime, been convicted of a misdemeanor involving moral turpitude or a felony.

14 C. The provisions of this section shall not apply to any person who pleads guilty or
15 nolo contendere to or is found guilty of a violation of the Trafficking in Illegal Drugs Act.

16 SECTION 3. This act shall become effective November 1, 2009.

17 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 02-23-09 - DO PASS,
18 As Coauthored.