

3 Senate Bill No. 2294

4 SENATE BILL NO. 2294 - By: Lerblance of the Senate and Morrissette
5 of the House.

6 An Act relating to public health and safety; amending 63
7 O.S. 2001, Section 2-402, as last amended by Section 1,
8 Chapter 306, O.S.L. 2009 (63 O.S. Supp. 2009, Section 2-
9 402), which relates to penalties for possession of a
10 controlled dangerous substance; making gender neutral;
11 modifying certain marijuana offense; and providing an
12 effective date.

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

14 SECTION 1. AMENDATORY 63 O.S. 2001, Section 2-402, as
15 last amended by Section 1, Chapter 306, O.S.L. 2009 (63 O.S. Supp.
16 2009, Section 2-402), is amended to read as follows:

17 Section 2-402. A. 1. It shall be unlawful for any person
18 knowingly or intentionally to possess a controlled dangerous
19 substance unless such substance was obtained directly, or pursuant
20 to a valid prescription or order from a practitioner, while acting
21 in the course of his or her professional practice, or except as
22 otherwise authorized by ~~this act~~ Section 2-101 et seq. of this
23 title.

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

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

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

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

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

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

1 substance, except marijuana or a substance included in subsection D
2 of Section 2-206 of this title, is a felony punishable by
3 imprisonment for not less than four (4) years nor more than twenty
4 (20) years and by a fine not exceeding Ten Thousand Dollars
5 (\$10,000.00); or

6 2. Any Schedule III, IV or V substance, marihuana, a substance
7 included in subsection D of Section 2-206 of this title, or any
8 preparation excepted from the provisions of the Uniform Controlled
9 Dangerous Substances Act is guilty of a misdemeanor punishable by
10 confinement for not more than one (1) year and by a fine not
11 exceeding One Thousand Dollars (\$1,000.00). A second or subsequent
12 violation of this section with respect to any Schedule III, IV or V
13 substance, ~~marijuana~~, a substance included in subsection D of
14 Section 2-206 of this title, or any preparation excepted from the
15 provisions of the Uniform Controlled Dangerous Substances Act is a
16 felony punishable by imprisonment for not less than two (2) years
17 nor more than ten (10) years and by a fine not exceeding Five
18 Thousand Dollars (\$5,000.00). A second or subsequent violation of
19 this section with respect to one ounce or less of marijuana shall be
20 a misdemeanor punishable by confinement for not more than one (1)
21 year and by a fine not exceeding One Thousand Dollars (\$1000.00).

22 C. Any person who violates any provision of this section by
23 possessing or purchasing a controlled dangerous substance from any

1 person, in or on, or within one thousand (1,000) feet of the real
2 property comprising a public or private elementary or secondary
3 school, public vocational school, public or private college or
4 university, or other institution of higher education, recreation
5 center or public park, including state parks and recreation areas,
6 or in the presence of any child under twelve (12) years of age,
7 shall be guilty of a felony and punished by:

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

15 2. For a second or subsequent offense, a term of imprisonment
16 not exceeding three times that authorized by the appropriate
17 provision of this section and the person shall serve a minimum of
18 ninety percent (90%) of the sentence received prior to becoming
19 eligible for state correctional institution earned credits toward
20 the completion of said sentence, and imposition of a fine not
21 exceeding Ten Thousand Dollars (\$10,000.00).

22 D. Any person convicted of any offense described in this
23 section shall, in addition to any fine imposed, pay a special

1 assessment trauma-care fee of One Hundred Dollars (\$100.00) to be
2 deposited into the Trauma Care Assistance Revolving Fund created in
3 Section 1-2522 of this title.

4 SECTION 2. This act shall become effective November 1, 2010.

5 COMMITTEE REPORT BY: COMMITTEE ON PUBLIC SAFETY & HOMELAND SECURITY,
6 dated 2-16-10 - DO PASS, As Coauthored.