

1 STATE OF OKLAHOMA

2 1st Session of the 52nd Legislature (2009)

3 HOUSE BILL 1707

By: Derby

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5  
6 AS INTRODUCED

7 An Act relating to public health and safety; amending  
8 63 O.S. 2001, Sections 2-402, as amended by Section  
9 3, Chapter 396, O.S.L. 2004 and 2-410, as amended by  
10 Section 1, Chapter 308, O.S.L. 2008 (63 O.S. Supp.  
11 2008, Sections 2-402 and 2-410), which relate to the  
12 Uniform Controlled Dangerous Substances Act;  
13 modifying certain penalties to include imposition of  
14 a fine; providing time limitation for use of prior  
15 conviction records; and providing an effective date.

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

17 SECTION 1. AMENDATORY 63 O.S. 2001, Section 2-402, as  
18 amended by Section 3, Chapter 396, O.S.L. 2004 (63 O.S. Supp. 2008,  
19 Section 2-402), is amended to read as follows:

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

1           2. It shall be unlawful for any person to purchase any  
2 preparation excepted from the provisions of the Uniform Controlled  
3 Dangerous Substances Act, Section 2-101 et seq. of this title,  
4 pursuant to Section 2-313 of this title in an amount or within a  
5 time interval other than that permitted by Section 2-313 of this  
6 title.

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

- 16           a. the packaging of the product,
- 17           b. the name of the product, and
- 18           c. the distribution and promotion of the product,  
19                 including verbal representations made at the point of  
20                 sale.

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

- 22           1. Any Schedule I or II substance, except marihuana or a  
23 substance included in subsection D of Section 2-206 of this title,  
24 is guilty of a felony punishable by imprisonment for not less than

1 two (2) years nor more than ten (10) years and by a fine not  
2 exceeding Five Thousand Dollars (\$5,000.00). A second or subsequent  
3 violation of this section with respect to Schedule I or II  
4 substance, except marijuana or a substance included in subsection D  
5 of Section 2-206 of this title, is a felony punishable by  
6 imprisonment for not less than four (4) years nor more than twenty  
7 (20) years and by a fine not exceeding Ten Thousand Dollars  
8 (\$10,000.00); or

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

22 C. Any person who violates any provision of this section by  
23 possessing or purchasing a controlled dangerous substance from any  
24 person, in or on, or within one thousand (1,000) feet of the real

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

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

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

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

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

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

1 disabilities imposed by law upon conviction of a crime. Discharge  
2 and dismissal under this section may occur only once with respect to  
3 any person.

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

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

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

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22 52-1-5436 GRS 12/30/08

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