

1 STATE OF OKLAHOMA

2 2nd Session of the 52nd Legislature (2010)

3 SENATE BILL 2294

By: Lerblance

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5
6 AS INTRODUCED

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

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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.

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). A second or subsequent violation of
22 this section with respect to one ounce or less of marijuana shall be
23 a misdemeanor punishable by confinement for not more than one (1)
24 year and by a fine not exceeding One Thousand Dollars (\$1000.00).

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

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

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

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

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

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