

1 ENGROSSED SENATE
2 BILL NO. 990

By: Paddack of the Senate

3 and

4 Derby of the House

5
6 [controlled dangerous substances - Uniform
7 Controlled Dangerous Substances Act - definitions -
8 powers of Director - effective date -
9 emergency]

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

11 SECTION 1. AMENDATORY 63 O.S. 2011, Section 2-201, is
12 amended to read as follows:

13 Section 2-201. A. The Director of the Oklahoma State Bureau of
14 Narcotics and Dangerous Drugs Control shall administer the
15 provisions of ~~this act~~ the Uniform Controlled Dangerous Substances
16 Act except as otherwise provided.

17 B. The Board of Pharmacy by rule may classify new products
18 determined to have a potential for abuse as controlled dangerous
19 substances after notice and hearing; provided that such rule shall
20 be submitted to the next regular session of the Legislature, and
21 such rule shall remain in force and effect unless a concurrent
22 resolution of disapproval is passed. Hearings shall be conducted by
23 the Board, ~~of Pharmacy~~ or such officers, agents or employees as the
24 Board ~~of Pharmacy~~ may designate for the purpose. The Board ~~of~~

1 ~~Pharmacy~~ shall give appropriate notice of the proposed
2 classification and of the time and place for a hearing. The rule so
3 promulgated shall become effective on a date fixed by the Board ~~of~~
4 ~~Pharmacy~~. Such rule may be amended or repealed in the same manner
5 as provided for its adoption. Proceedings pursuant to this
6 subsection shall be governed by the Administrative Procedures Act.
7 A new substance controlled pursuant to this subsection shall be
8 subject to the same regulatory provisions of ~~this act~~ the Uniform
9 Controlled Dangerous Substances Act applicable to the ~~Schedule~~
10 schedule of substances to which it is classified.

11 C. The Director may recommend to the Legislature the addition,
12 deletion or rescheduling of a substance.

13 D. 1. The Director may seek an injunction from the district
14 court of Oklahoma County to prohibit the commercial sale of a
15 specific chemical or substance not otherwise scheduled as a
16 controlled dangerous substance pursuant to Sections 2-204 through 2-
17 212 of this title, if it clearly appears from specific facts, after
18 a hearing before the district court, that the following criteria
19 exist:

20 a. there is a current or imminent danger to the public
21 health and safety, and

22 b. there is a history and current pattern of abuse,
23 including actual abuse, diversion from legitimate
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1 channels, and/or clandestine importation, manufacture,
2 or distribution.

3 2. If granted, the injunction will expire upon a legislative
4 action that has the force and effect of law at the next regular
5 legislative session. If no legislative action is taken, the
6 injunction shall expire automatically on sine die for the next
7 regular legislative session. If the Legislature considers
8 legislation to schedule a substance or substances and does not
9 approve such legislation, that substance or substances shall not be
10 the subject of a subsequent injunction as authorized by this
11 subsection. An injunction allowed to expire or that is terminated
12 by legislative action shall not be renewed. Any order of injunction
13 entered pursuant to this section may be superseded at any time
14 during the period set forth above, whereupon a legislative action is
15 taken either approving or disapproving the listing of the subject
16 chemical or substance as a scheduled controlled dangerous substance.

17 3. Any action by the Director to seek an injunction pursuant to
18 this section must be preceded by one publication in a newspaper of
19 general circulation in the state and by the posting on the website
20 of the Oklahoma State Bureau of Narcotics and Dangerous Drugs
21 Control of a copy of the Director's notice of intent to seek
22 injunction. The notice shall contain the following information:

23 a. identification of the substance(s) and/or chemical(s)
24 to be affected,

1 b. a short and plain statement indicating the basis for
2 seeking the injunction, and

3 c. the location and date of hearing.

4 4. Any notice of hearing pursuant to this section shall be
5 issued at least thirty (30) days prior to any hearing. Any order of
6 injunction issued pursuant to this section shall be enforceable
7 anywhere within the State of Oklahoma to prohibit the commercial
8 sale of the identified substance(s) and/or chemical(s). Any
9 violation of an order issued pursuant to this section after
10 receiving notice of the order may be punished as contempt of court
11 subject to the penalties otherwise prescribed by law.

12 E. In considering whether to make a recommendation or issue an
13 order under this section, the Director or the Board of Pharmacy, as
14 the case may be, shall consider the following:

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

1 ~~E.~~ F. Substances which are precursors of a controlled precursor
2 shall not be subject to control solely because they are precursors
3 of the controlled precursor.

4 ~~F.~~ G. Authority to control under this section does not extend
5 to distilled spirits, wine, malt beverages or tobacco.

6 H. In addition to the filing requirements of the Administrative
7 Procedures Act, copies of orders issued under this section shall,
8 during the time the Legislature is not in session, be ~~filed with~~
9 provided to the ~~Chair and Vice Chair~~ Chairs of the ~~State Legislative~~
10 ~~Council's~~ Judiciary ~~Committee~~ Committees of the Senate and the House
11 of Representatives.

12 ~~G.~~ I. The Board of Pharmacy shall exclude any nonnarcotic
13 substance from a schedule if such substance may, under the Federal
14 Food, Drug and Cosmetic Act and the law of this state, be lawfully
15 sold over the counter without a prescription.

16 SECTION 2. This act shall become effective July 1, 2012.

17 SECTION 3. It being immediately necessary for the preservation
18 of the public peace, health and safety, an emergency is hereby
19 declared to exist, by reason whereof this act shall take effect and
20 be in full force from and after its passage and approval.

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1 Passed the Senate the 7th day of March, 2012.

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3 _____
4 Presiding Officer of the Senate

5 Passed the House of Representatives the ____ day of _____,
6 2012.

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8 _____
9 Presiding Officer of the House
10 of Representatives