

1 STATE OF OKLAHOMA

2 1st Session of the 53rd Legislature (2011)

3 HOUSE BILL 1904

By: Jackson

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5
6 AS INTRODUCED

7 An Act relating to public health and safety; amending
8 63 O.S. 2001, Section 2-101, as last amended by
9 Section 1, Chapter 251, O.S.L. 2006 (63 O.S. Supp.
10 2010, Section 2-101), which relates to the Uniform
11 Controlled Dangerous Substances Act; modifying drug
12 paraphernalia definition; and providing an effective
13 date.

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

15 SECTION 1. AMENDATORY 63 O.S. 2001, Section 2-101, as
16 last amended by Section 1, Chapter 251, O.S.L. 2006 (63 O.S. Supp.
17 2010, Section 2-101), is amended to read as follows:

18 Section 2-101. As used in the Uniform Controlled Dangerous
19 Substances Act, Section 2-101 et seq. of this title:

20 1. "Administer" means the direct application of a controlled
21 dangerous substance, whether by injection, inhalation, ingestion or
22 any other means, to the body of a patient, animal or research
23 subject by:
24

1 a. a practitioner (or, in the presence of the
2 practitioner, by the authorized agent of the
3 practitioner), or

4 b. the patient or research subject at the direction and
5 in the presence of the practitioner;

6 2. "Agent" means a peace officer appointed by and who acts in
7 behalf of the Director of the Oklahoma State Bureau of Narcotics and
8 Dangerous Drugs Control or an authorized person who acts on behalf
9 of or at the direction of a person who manufactures, distributes,
10 dispenses, prescribes, administers or uses for scientific purposes
11 controlled dangerous substances but does not include a common or
12 contract carrier, public warehouser or employee thereof, or a person
13 required to register under the Uniform Controlled Dangerous
14 Substances Act;

15 3. "Board" means the Advisory Board to the Director of the
16 Oklahoma State Bureau of Narcotics and Dangerous Drugs Control;

17 4. "Bureau" means the Oklahoma State Bureau of Narcotics and
18 Dangerous Drugs Control;

19 5. "Coca leaves" includes cocaine and any compound,
20 manufacture, salt, derivative, mixture or preparation of coca
21 leaves, except derivatives of coca leaves which do not contain
22 cocaine or ecgonine;

23 6. "Commissioner" or "Director" means the Director of the
24 Oklahoma State Bureau of Narcotics and Dangerous Drugs Control;

1 7. "Control" means to add, remove or change the placement of a
2 drug, substance or immediate precursor under the Uniform Controlled
3 Dangerous Substances Act;

4 8. "Controlled dangerous substance" means a drug, substance or
5 immediate precursor in Schedules I through V of the Uniform
6 Controlled Dangerous Substances Act, Section 2-101 et seq. of this
7 title;

8 9. "Counterfeit substance" means a controlled substance which,
9 or the container or labeling of which without authorization, bears
10 the trademark, trade name or other identifying marks, imprint,
11 number or device or any likeness thereof of a manufacturer,
12 distributor or dispenser other than the person who in fact
13 manufactured, distributed or dispensed the substance;

14 10. "Deliver" or "delivery" means the actual, constructive or
15 attempted transfer from one person to another of a controlled
16 dangerous substance or drug paraphernalia, whether or not there is
17 an agency relationship;

18 11. "Dispense" means to deliver a controlled dangerous
19 substance to an ultimate user or human research subject by or
20 pursuant to the lawful order of a practitioner, including the
21 prescribing, administering, packaging, labeling or compounding
22 necessary to prepare the substance for such distribution.

23 "Dispenser" is a practitioner who delivers a controlled dangerous
24 substance to an ultimate user or human research subject;

1 12. "Distribute" means to deliver other than by administering
2 or dispensing a controlled dangerous substance;

3 13. "Distributor" means a commercial entity engaged in the
4 distribution or reverse distribution of narcotics and dangerous
5 drugs and who complies with all regulations promulgated by the
6 federal Drug Enforcement Administration and the Oklahoma State
7 Bureau of Narcotics and Dangerous Drugs Control;

8 14. "Drug" means articles:

9 a. recognized in the official United States

10 Pharmacopoeia, official Homeopathic Pharmacopoeia of
11 the United States, or official National Formulary, or
12 any supplement to any of them,

13 b. intended for use in the diagnosis, cure, mitigation,
14 treatment or prevention of disease in man or other
15 animals,

16 c. other than food, intended to affect the structure or
17 any function of the body of man or other animals, and

18 d. intended for use as a component of any article
19 specified in this paragraph;

20 provided, however, the term "drug" does not include devices or their
21 components, parts or accessories;

22 15. "Drug-dependent person" means a person who is using a
23 controlled dangerous substance and who is in a state of psychic or
24 physical dependence, or both, arising from administration of that

1 controlled dangerous substance on a continuous basis. Drug
2 dependence is characterized by behavioral and other responses which
3 include a strong compulsion to take the substance on a continuous
4 basis in order to experience its psychic effects, or to avoid the
5 discomfort of its absence;

6 16. "Home care agency" means any sole proprietorship,
7 partnership, association, corporation, or other organization which
8 administers, offers, or provides home care services, for a fee or
9 pursuant to a contract for such services, to clients in their place
10 of residence;

11 17. "Home care services" means skilled or personal care
12 services provided to clients in their place of residence for a fee;

13 18. "Hospice" means a centrally administered, nonprofit or
14 profit, medically directed, nurse-coordinated program which provides
15 a continuum of home and inpatient care for the terminally ill
16 patient and the patient's family. Such term shall also include a
17 centrally administered, nonprofit or profit, medically directed,
18 nurse-coordinated program if such program is licensed pursuant to
19 the provisions of this act. A hospice program offers palliative and
20 supportive care to meet the special needs arising out of the
21 physical, emotional and spiritual stresses which are experienced
22 during the final stages of illness and during dying and bereavement.
23 This care is available twenty-four (24) hours a day, seven (7) days
24 a week, and is provided on the basis of need, regardless of ability

1 to pay. "Class A" Hospice refers to Medicare certified hospices.

2 "Class B" refers to all other providers of hospice services;

3 19. "Imitation controlled substance" means a substance that is
4 not a controlled dangerous substance, which by dosage unit
5 appearance, color, shape, size, markings or by representations made,
6 would lead a reasonable person to believe that the substance is a
7 controlled dangerous substance. In the event the appearance of the
8 dosage unit is not reasonably sufficient to establish that the
9 substance is an "imitation controlled substance", the court or
10 authority concerned should consider, in addition to all other
11 factors, the following factors as related to "representations made"
12 in determining whether the substance is an "imitation controlled
13 substance":

14 a. statements made by an owner or by any other person in
15 control of the substance concerning the nature of the
16 substance, or its use or effect,

17 b. statements made to the recipient that the substance
18 may be resold for inordinate profit,

19 c. whether the substance is packaged in a manner normally
20 used for illicit controlled substances,

21 d. evasive tactics or actions utilized by the owner or
22 person in control of the substance to avoid detection
23 by law enforcement authorities,

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- 1 e. prior convictions, if any, of an owner, or any other
2 person in control of the object, under state or
3 federal law related to controlled substances or fraud,
4 and
5 f. the proximity of the substances to controlled
6 dangerous substances;

7 20. "Immediate precursor" means a substance which the Director
8 has found to be and by regulation designates as being the principal
9 compound commonly used or produced primarily for use, and which is
10 an immediate chemical intermediary used, or likely to be used, in
11 the manufacture of a controlled dangerous substance, the control of
12 which is necessary to prevent, curtail or limit such manufacture;

13 21. "Laboratory" means a laboratory approved by the Director as
14 proper to be entrusted with the custody of controlled dangerous
15 substances and the use of controlled dangerous substances for
16 scientific and medical purposes and for purposes of instruction;

17 22. "Manufacture" means the production, preparation,
18 propagation, compounding or processing of a controlled dangerous
19 substance, either directly or indirectly by extraction from
20 substances of natural or synthetic origin, or independently by means
21 of chemical synthesis or by a combination of extraction and chemical
22 synthesis. "Manufacturer" includes any person who packages,
23 repackages or labels any container of any controlled dangerous
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1 substance, except practitioners who dispense or compound
2 prescription orders for delivery to the ultimate consumer;

3 23. "Marihuana" means all parts of the plant *Cannabis sativa*
4 L., whether growing or not; the seeds thereof; the resin extracted
5 from any part of such plant; and every compound, manufacture, salt,
6 derivative, mixture or preparation of such plant, its seeds or
7 resin, but shall not include the mature stalks of such plant, fiber
8 produced from such stalks, oil or cake made from the seeds of such
9 plant, any other compound, manufacture, salt, derivative, mixture or
10 preparation of such mature stalks (except the resin extracted
11 therefrom), fiber, oil or cake, or the sterilized seed of such plant
12 which is incapable of germination;

13 24. "Medical purpose" means an intention to utilize a
14 controlled dangerous substance for physical or mental treatment, for
15 diagnosis, or for the prevention of a disease condition not in
16 violation of any state or federal law and not for the purpose of
17 satisfying physiological or psychological dependence or other abuse;

18 25. "Mid-level practitioner" means an advanced practice nurse
19 as defined and within parameters specified in Section 567.3a of
20 Title 59 of the Oklahoma Statutes, or a certified animal euthanasia
21 technician as defined in Section 698.2 of Title 59 of the Oklahoma
22 Statutes, or an animal control officer registered by the Oklahoma
23 State Bureau of Narcotics and Dangerous Drugs Control under
24 subsection B of Section 2-301 of this title within the parameters of

1 such officer's duty under Sections 501 through 508 of Title 4 of the
2 Oklahoma Statutes;

3 26. "Narcotic drug" means any of the following, whether
4 produced directly or indirectly by extraction from substances of
5 vegetable origin, or independently by means of chemical synthesis,
6 or by a combination of extraction and chemical synthesis:

- 7 a. opium, coca leaves and opiates,
- 8 b. a compound, manufacture, salt, derivative or
9 preparation of opium, coca leaves or opiates,
- 10 c. cocaine, its salts, optical and geometric isomers, and
11 salts of isomers,
- 12 d. ecgonine, its derivatives, their salts, isomers and
13 salts of isomers, and
- 14 e. a substance, and any compound, manufacture, salt,
15 derivative or preparation thereof, which is chemically
16 identical with any of the substances referred to in
17 subparagraphs a through d of this paragraph, except
18 that the words "narcotic drug" as used in Section 2-
19 101 et seq. of this title shall not include
20 decocainized coca leaves or extracts of coca leaves,
21 which extracts do not contain cocaine or ecgonine;

22 27. "Opiate" means any substance having an addiction-forming or
23 addiction-sustaining liability similar to morphine or being capable
24 of conversion into a drug having such addiction-forming or

1 addiction-sustaining liability. It does not include, unless
2 specifically designated as controlled under the Uniform Controlled
3 Dangerous Substances Act, the dextrorotatory isomer of 3-methoxy-n-
4 methyl-morphinan and its salts (dextromethorphan). It does include
5 its racemic and levorotatory forms;

6 28. "Opium poppy" means the plant of the species *Papaver*
7 *somniferum* L., except the seeds thereof;

8 29. "Peace officer" means a police officer, sheriff, deputy
9 sheriff, district attorney's investigator, investigator from the
10 Office of the Attorney General, or any other person elected or
11 appointed by law to enforce any of the criminal laws of this state
12 or of the United States;

13 30. "Person" means an individual, corporation, government or
14 governmental subdivision or agency, business trust, estate, trust,
15 partnership or association, or any other legal entity;

16 31. "Poppy straw" means all parts, except the seeds, of the
17 opium poppy, after mowing;

18 32. "Practitioner" means:

- 19 a. (1) a medical doctor or osteopathic physician,
20 (2) a dentist,
21 (3) a podiatrist,
22 (4) an optometrist,
23 (5) a veterinarian,

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1 (6) a physician assistant under the supervision of a
2 licensed medical doctor or osteopathic physician,
3 (7) a scientific investigator, or
4 (8) any other person,

5 licensed, registered or otherwise permitted to
6 prescribe, distribute, dispense, conduct research with
7 respect to, use for scientific purposes or administer
8 a controlled dangerous substance in the course of
9 professional practice or research in this state, or

10 b. a pharmacy, hospital, laboratory or other institution
11 licensed, registered or otherwise permitted to
12 distribute, dispense, conduct research with respect
13 to, use for scientific purposes or administer a
14 controlled dangerous substance in the course of
15 professional practice or research in this state;

16 33. "Production" includes the manufacture, planting,
17 cultivation, growing or harvesting of a controlled dangerous
18 substance;

19 34. "State" means the State of Oklahoma or any other state of
20 the United States;

21 35. "Ultimate user" means a person who lawfully possesses a
22 controlled dangerous substance for the person's own use or for the
23 use of a member of the person's household or for administration to
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1 an animal owned by the person or by a member of the person's
2 household;

3 36. "Drug paraphernalia" means all equipment, products and
4 materials of any kind which are used, intended for use, or fashioned
5 specifically for use in planting, propagating, cultivating, growing,
6 harvesting, manufacturing, compounding, converting, producing,
7 processing, preparing, testing, analyzing, packaging, repackaging,
8 storing, containing, concealing, injecting, ingesting, inhaling or
9 otherwise introducing into the human body, a controlled dangerous
10 substance in violation of the Uniform Controlled Dangerous
11 Substances Act including, but not limited to:

- 12 a. kits used, intended for use, or fashioned specifically
13 for use in planting, propagating, cultivating, growing
14 or harvesting of any species of plant which is a
15 controlled dangerous substance or from which a
16 controlled dangerous substance can be derived,
- 17 b. kits used, intended for use, or fashioned specifically
18 for use in manufacturing, compounding, converting,
19 producing, processing or preparing controlled
20 dangerous substances,
- 21 c. isomerization devices used, intended for use, or
22 fashioned specifically for use in increasing the
23 potency of any species of plant which is a controlled
24 dangerous substance,

- 1 d. testing equipment used, intended for use, or fashioned
2 specifically for use in identifying, or in analyzing
3 the strength, effectiveness or purity of controlled
4 dangerous substances,
- 5 e. scales and balances used, intended for use, or
6 fashioned specifically for use in weighing or
7 measuring controlled dangerous substances,
- 8 f. diluents and adulterants, such as quinine
9 hydrochloride, mannitol, mannite, dextrose and
10 lactose, used, intended for use, or fashioned
11 specifically for use in cutting controlled dangerous
12 substances,
- 13 g. separation gins and sifters used, intended for use, or
14 fashioned specifically for use in removing twigs and
15 seeds from, or in otherwise cleaning or refining,
16 marihuana,
- 17 h. blenders, bowls, containers, spoons and mixing devices
18 used, intended for use, or fashioned specifically for
19 use in compounding controlled dangerous substances,
- 20 i. capsules, balloons, envelopes and other containers
21 used, intended for use, or fashioned specifically for
22 use in packaging small quantities of controlled
23 dangerous substances,
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1 j. containers and other objects used, intended for use,
2 or fashioned specifically for use in parenterally
3 injecting controlled dangerous substances into the
4 human body,

5 k. hypodermic syringes, needles and other objects used,
6 intended for use, or fashioned specifically for use in
7 parenterally injecting controlled dangerous substances
8 into the human body,

9 l. objects used, intended for use, or fashioned
10 specifically for use in ingesting, inhaling or
11 otherwise introducing marihuana, cocaine, hashish or
12 hashish oil into the human body, such as:

13 (1) metal, wooden, acrylic, glass, stone, plastic or
14 ceramic pipes with or without screens, permanent
15 screens, hashish heads or punctured metal bowls,

16 (2) water pipes,

17 (3) carburation tubes and devices,

18 (4) smoking and carburation masks,

19 (5) roach clips, meaning objects used to hold burning
20 material, such as a marihuana cigarette, that has
21 become too small or too short to be held in the
22 hand,

23 (6) miniature cocaine spoons and cocaine vials,

24 (7) chamber pipes,

- 1 (8) carburetor pipes,
2 (9) electric pipes,
3 (10) air-driven pipes,
4 (11) chillums,
5 (12) bonges, ~~or~~
6 (13) ice pipes or chillers, or
7 (14) blunt wraps, wraps or cigar wraps, meaning
8 individual tobacco wrappers that are made wholly
9 or in part from tobacco, including reconstituted
10 tobacco, whether in the form of tobacco leaf,
11 sheet or tube, if such wrap is designed to be
12 sold to individuals,

13 m. all hidden or novelty pipes, and

14 n. any pipe that has a tobacco bowl or chamber of less
15 than one-half (1/2) inch in diameter in which there is
16 any detectable residue of any controlled dangerous
17 substance as defined in this section or any other
18 substances not legal for possession or use;

19 provided, however, the term "drug paraphernalia" shall not include
20 separation gins intended for use in preparing tea or spice, clamps
21 used for constructing electrical equipment, water pipes designed for
22 ornamentation in which no detectable amount of an illegal substance
23 is found or pipes designed and used solely for smoking tobacco,
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1 traditional pipes of an American Indian tribal religious ceremony,
2 or antique pipes that are thirty (30) years of age or older;

3 37. "Synthetic controlled substance" means a substance, whether
4 synthetic or naturally occurring, that is not a controlled dangerous
5 substance, but which produces a like or similar physiological or
6 psychological effect on the human central nervous system that
7 currently has no accepted medical use in treatment in the United
8 States and has a potential for abuse. The court or authority
9 concerned with establishing that the substance is a synthetic
10 controlled substance should consider, in addition to all other
11 factors, the following factors as related to "representations made"
12 in determining whether the substance is a synthetic controlled
13 substance:

- 14 a. statements made by an owner or by any other person in
15 control of the substance concerning the nature of the
16 substance, its use or effect,
- 17 b. statements made to the recipient that the substance
18 may be resold for an inordinate profit,
- 19 c. prior convictions, if any, of an owner or any person
20 in control of the substance, under state or federal
21 law related to controlled dangerous substances, and
- 22 d. the proximity of the substance to any controlled
23 dangerous substance.

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1 Prima facie evidence that a substance containing salvia divinorum
2 has been enhanced, concentrated or chemically or physically altered
3 shall give rise to a rebuttable presumption that the substance is a
4 synthetic controlled substance;

5 38. "Tetrahydrocannabinols" means all substances that have been
6 chemically synthesized to emulate the tetrahydrocannabinols of
7 marihuana;

8 39. "Isomer" means the optical isomer, except as used in
9 subsection C of Section 2-204 of this title and paragraph 4 of
10 subsection A of Section 2-206 of this title. As used in subsection
11 C of Section 2-204 of this title, "isomer" means the optical,
12 positional or geometric isomer. As used in paragraph 4 of
13 subsection A of Section 2-206 of this title, the term "isomer" means
14 the optical or geometric isomer;

15 40. "Hazardous materials" means materials, whether solid,
16 liquid or gas, which are toxic to human, animal, aquatic or plant
17 life, and the disposal of which materials is controlled by state or
18 federal guidelines; and

19 41. "Anhydrous ammonia" means any substance that exhibits
20 cryogenic evaporative behavior and tests positive for ammonia.

21 SECTION 2. This act shall become effective November 1, 2011.

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23 53-1-5623 GRS 12/30/10

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