

1 STATE OF OKLAHOMA

2 2nd Session of the 53rd Legislature (2012)

3 SENATE BILL 990

By: Paddack

4
5
6 AS INTRODUCED

7 An Act relating to controlled dangerous substances;
8 amending 63 O.S. 2011, Sections 2-101 and 2-201,
9 which relate to the Uniform Controlled Dangerous
10 Substances Act; modifying definitions; modifying
11 powers of certain director; providing certain
12 exclusions; updating language; providing an effective
13 date; and declaring an emergency.

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

15 SECTION 1. AMENDATORY 63 O.S. 2011, Section 2-101, is
16 amended to read as follows:

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

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

- 23 a. a practitioner (or, in the presence of the
24 practitioner, by the authorized agent of the
practitioner), or

1 b. the patient or research subject at the direction and
2 in the presence of the practitioner;

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

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

14 4. "Bureau" means the Oklahoma State Bureau of Narcotics and
15 Dangerous Drugs Control;

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

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

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

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

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

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

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

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

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

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

6 14. "Drug" means articles:

7 a. recognized in the official United States

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

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

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

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

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

20 15. "Drug-dependent person" means a person who is using a
21 controlled dangerous substance and who is in a state of psychic or
22 physical dependence, or both, arising from administration of that
23 controlled dangerous substance on a continuous basis. Drug
24 dependence is characterized by behavioral and other responses which

1 include a strong compulsion to take the substance on a continuous
2 basis in order to experience its psychic effects, or to avoid the
3 discomfort of its absence;

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

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

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

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

- 12 a. statements made by an owner or by any other person in
13 control of the substance concerning the nature of the
14 substance, or its use or effect,
- 15 b. statements made to the recipient that the substance
16 may be resold for inordinate profit,
- 17 c. whether the substance is packaged in a manner normally
18 used for illicit controlled substances,
- 19 d. evasive tactics or actions utilized by the owner or
20 person in control of the substance to avoid detection
21 by law enforcement authorities,
- 22 e. prior convictions, if any, of an owner, or any other
23 person in control of the object, under state or
24

1 federal law related to controlled substances or fraud,
2 and

3 f. the proximity of the substances to controlled
4 dangerous substances;

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

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

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

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

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

16 25. "Mid-level practitioner" means an advanced practice nurse
17 as defined and within parameters specified in Section 567.3a of
18 Title 59 of the Oklahoma Statutes, or a certified animal euthanasia
19 technician as defined in Section 698.2 of Title 59 of the Oklahoma
20 Statutes, or an animal control officer registered by the Oklahoma
21 State Bureau of Narcotics and Dangerous Drugs Control under
22 subsection B of Section 2-301 of this title within the parameters of
23 such officer's duty under Sections 501 through 508 of Title 4 of the
24 Oklahoma Statutes;

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

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

21 27. "Opiate" means any substance having an addiction-forming or
22 addiction-sustaining liability similar to morphine or being capable
23 of conversion into a drug having such addiction-forming or
24 addiction-sustaining liability. It does not include, unless

1 specifically designated as controlled under the Uniform Controlled
2 Dangerous Substances Act, the dextrorotatory isomer of 3-methoxy-n-
3 methyl-morphinan and its salts (dextromethorphan). It does include
4 its racemic and levorotatory forms;

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

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

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

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

17 32. "Practitioner" means:

- 18 a. (1) a medical doctor or osteopathic physician,
19 (2) a dentist,
20 (3) a podiatrist,
21 (4) an optometrist,
22 (5) a veterinarian,
23 (6) a physician assistant under the supervision of a
24 licensed medical doctor or osteopathic physician,

1 (7) a scientific investigator, or

2 (8) any other person,

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

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

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

17 34. "State" means the State of Oklahoma or any other state of
18 the United States;

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

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

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

1 the strength, effectiveness or purity of controlled
2 dangerous substances,

3 e. scales and balances used, intended for use, or
4 fashioned specifically for use in weighing or
5 measuring controlled dangerous substances,

6 f. diluents and adulterants, such as quinine
7 hydrochloride, mannitol, mannite, dextrose and
8 lactose, used, intended for use, or fashioned
9 specifically for use in cutting controlled dangerous
10 substances,

11 g. separation gins and sifters used, intended for use, or
12 fashioned specifically for use in removing twigs and
13 seeds from, or in otherwise cleaning or refining,
14 marihuana,

15 h. blenders, bowls, containers, spoons and mixing devices
16 used, intended for use, or fashioned specifically for
17 use in compounding controlled dangerous substances,

18 i. capsules, balloons, envelopes and other containers
19 used, intended for use, or fashioned specifically for
20 use in packaging small quantities of controlled
21 dangerous substances,

22 j. containers and other objects used, intended for use,
23 or fashioned specifically for use in parenterally
24

1 injecting controlled dangerous substances into the
2 human body,

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

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

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

14 (2) water pipes,

15 (3) carburetion tubes and devices,

16 (4) smoking and carburetion masks,

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

21 (6) miniature cocaine spoons and cocaine vials,

22 (7) chamber pipes,

23 (8) carburetor pipes,

24 (9) electric pipes,

1 (10) air-driven pipes,

2 (11) chillums,

3 (12) bonges, or

4 (13) ice pipes or chillers,

5 m. all hidden or novelty pipes, and

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

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

18 37. "Synthetic controlled substance" means a substance, whether
19 synthetic or naturally occurring, that is not a controlled dangerous
20 substance, but which produces a like or similar physiological or
21 psychological effect on the human central nervous system that
22 currently has no accepted medical use in treatment in the United
23 States and has a potential for abuse. The court or authority
24 concerned with establishing that the substance is a synthetic

1 controlled substance should consider, in addition to all other
2 factors, the following factors as related to "representations made"
3 in determining whether the substance is a synthetic controlled
4 substance:

- 5 a. statements made by an owner or by any other person in
6 control of the substance concerning the nature of the
7 substance, its use or effect,
- 8 b. statements made to the recipient that the substance
9 may be resold for an inordinate profit,
- 10 c. prior convictions, if any, of an owner or any person
11 in control of the substance, under state or federal
12 law related to controlled dangerous substances, and
- 13 d. the proximity of the substance to any controlled
14 dangerous substance.

15 Prima facie evidence that a substance containing salvia divinorum
16 has been enhanced, concentrated or chemically or physically altered
17 shall give rise to a rebuttable presumption that the substance is a
18 synthetic controlled substance;

19 38. "Tetrahydrocannabinols" means all substances that have been
20 chemically synthesized to emulate the tetrahydrocannabinols of
21 marihuana;

22 39. "Isomer" means the optical isomer, except as used in
23 subsection C of Section 2-204 of this title and paragraph 4 of
24 subsection A of Section 2-206 of this title. As used in subsection

1 C of Section 2-204 of this title, "isomer" means the optical,
2 positional or geometric isomer. As used in paragraph 4 of
3 subsection A of Section 2-206 of this title, the term "isomer" means
4 the optical or geometric isomer;

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

9 41. "Anhydrous ammonia" means any substance that exhibits
10 cryogenic evaporative behavior and tests positive for ammonia; and

11 42. "Potential for abuse" means a substance has properties as a
12 central nervous system stimulant or depressant or a hallucinogen
13 that creates a substantial likelihood of its being:

14 a. used in amounts that create a hazard to the user's
15 health or the safety of the community,

16 b. diverted from legal channels and distributed
17 illegally, or

18 c. taken on the user's own initiative rather than on
19 professional medical advice.

20 Potential for abuse can be based on a showing that these
21 activities are already taking place, or on a showing that the nature
22 and properties of the substance make it reasonable to assume that
23 there is a substantial likelihood the activities will take place.

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

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

7 B. The Board of Pharmacy by rule may classify new products
8 determined to have a potential for abuse as controlled dangerous
9 substances after notice and hearing; provided that such rule shall
10 be submitted to the next regular session of the Legislature, and
11 such rule shall remain in force and effect unless a concurrent
12 resolution of disapproval is passed. Hearings shall be conducted by
13 the Board of Pharmacy or such officers, agents or employees as the
14 Board of Pharmacy may designate for the purpose. The Board of
15 Pharmacy shall give appropriate notice of the proposed
16 classification and of the time and place for a hearing. The rule so
17 promulgated shall become effective on a date fixed by the Board of
18 Pharmacy. Such rule may be amended or repealed in the same manner
19 as provided for its adoption. Proceedings pursuant to this
20 subsection shall be governed by the Administrative Procedures Act.
21 A new substance controlled pursuant to this subsection shall be
22 subject to the same regulatory provisions of ~~this act~~ the Uniform
23 Controlled Dangerous Substances Act applicable to the ~~Schedule~~
24 schedule of substances to which it is classified.

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

3 D. The Director may make an emergency scheduling by placing a
4 synthetic substance, product or chemical into Schedule I, II, III,
5 IV or V, on a temporary basis, if the Director determines the action
6 is necessary to address or avoid a current or imminent danger to the
7 health and safety of the public, provided that the scheduling
8 assignment will expire at the end of the next regular legislative
9 session if not adopted as permanent. In making such a
10 determination, the Director shall consider the factors listed in
11 subsection E of this section. The Oklahoma State Bureau of
12 Narcotics and Dangerous Drugs Control shall provide appropriate
13 notice of the scheduling assignment and of the time and place for a
14 hearing. A person or entity wishing to challenge the scheduling
15 assignment may do so in a hearing conducted by the Bureau and held
16 in accordance with the procedures of the Administrative Procedures
17 Act. A synthetic substance, product or chemical controlled pursuant
18 to this subsection shall be subject to the same regulatory
19 provisions of the Uniform Controlled Dangerous Substances Act
20 applicable to the schedule of substances to which it is classified.
21 A person or entity may apply for registration with the Director
22 pursuant to Section 2-302 of this title in order to manufacture,
23 distribute, or dispense such a synthetic substance that has been
24 scheduled pursuant to this subsection.

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

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

14 ~~E.~~ F. Substances which are precursors of a controlled precursor
15 shall not be subject to control solely because they are precursors
16 of the controlled precursor.

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

19 H. In addition to the filing requirements of the Administrative
20 Procedures Act, copies of orders issued under this section shall,
21 during the time the Legislature is not in session, be ~~filed with~~
22 provided to the Chair and Vice Chair Chairs of the State Legislative
23 Council's Judiciary Committee Committees of the Oklahoma State
24 Senate and the Oklahoma House of Representatives.

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

5 SECTION 3. This act shall become effective July 1, 2012.

6 SECTION 4. It being immediately necessary for the preservation
7 of the public peace, health and safety, an emergency is hereby
8 declared to exist, by reason whereof this act shall take effect and
9 be in full force from and after its passage and approval.

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