

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 54th Legislature (2013)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 1677

By: Blackwell

7
8 COMMITTEE SUBSTITUTE

9 [public health and safety - Uniform Controlled
10 Dangerous Substances Act - increasing assessment
11 amount for persons convicted of certain offenses -
12 effective date]

13
14
15
16 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

17 SECTION 1. AMENDATORY 63 O.S. 2011, Section 2-401, as
18 amended by Section 4, Chapter 206, O.S.L. 2012 (63 O.S. Supp. 2012,
19 Section 2-401), is amended to read as follows:

20 Section 2-401. A. Except as authorized by the Uniform
21 Controlled Dangerous Substances Act, it shall be unlawful for any
22 person:

1 1. To distribute, dispense, transport with intent to distribute
2 or dispense, possess with intent to manufacture, distribute, or
3 dispense, a controlled dangerous substance or to solicit the use of
4 or use the services of a person less than eighteen (18) years of age
5 to cultivate, distribute or dispense a controlled dangerous
6 substance;

7 2. To create, distribute, transport with intent to distribute
8 or dispense, or possess with intent to distribute, a counterfeit
9 controlled dangerous substance; or

10 3. To distribute any imitation controlled substance as defined
11 by Section 2-101 of this title, except when authorized by the Food
12 and Drug Administration of the United States Department of Health
13 and Human Services.

14 B. Any person who violates the provisions of this section with
15 respect to:

16 1. A substance classified in Schedule I or II which is a
17 narcotic drug, lysergic acid diethylamide (LSD), gamma
18 butyrolactone, gamma hydroxyvalerate, gamma valerolactone, 1,4
19 butanediol, or gamma-hydroxybutyric acid as defined in Sections 2-
20 204 and 2-208 of this title, upon conviction, shall be guilty of a
21 felony and shall be sentenced to a term of imprisonment for not less
22 than five (5) years nor more than life and a fine of not more than
23 One Hundred Thousand Dollars (\$100,000.00), which shall be in
24

1 addition to other punishment provided by law and shall not be
2 imposed in lieu of other punishment. Any sentence to the custody of
3 the Department of Corrections shall not be subject to statutory
4 provisions for suspended sentences, deferred sentences, or probation
5 except when the conviction is for a first offense;

6 2. Any other controlled dangerous substance classified in
7 Schedule I, II, III, or IV, upon conviction, shall be guilty of a
8 felony and shall be sentenced to a term of imprisonment for not less
9 than two (2) years nor more than life and a fine of not more than
10 Twenty Thousand Dollars (\$20,000.00), which shall be in addition to
11 other punishment provided by law and shall not be imposed in lieu of
12 other punishment. Any sentence to the custody of the Department of
13 Corrections shall not be subject to statutory provisions for
14 suspended sentences, deferred sentences, or probation except when
15 the conviction is for a first offense;

16 3. A substance classified in Schedule V, upon conviction, shall
17 be guilty of a felony and shall be sentenced to a term of
18 imprisonment for not more than five (5) years and a fine of not more
19 than One Thousand Dollars (\$1,000.00), which shall be in addition to
20 other punishment provided by law and shall not be imposed in lieu of
21 other punishment; or

22 4. An imitation controlled substance as defined by Section 2-
23 101 of this title, upon conviction, shall be guilty of a misdemeanor

24

1 and shall be sentenced to a term of imprisonment in the county jail
2 for a period of not more than one (1) year and a fine of not more
3 than One Thousand Dollars (\$1,000.00). A person convicted of a
4 second violation of the provisions of this paragraph shall be guilty
5 of a felony and shall be sentenced to a term of imprisonment for not
6 more than five (5) years and a fine of not more than Five Thousand
7 Dollars (\$5,000.00), which shall be in addition to other punishment
8 provided by law and shall not be imposed in lieu of other
9 punishment.

10 C. 1. Except when authorized by the Food and Drug
11 Administration of the United States Department of Health and Human
12 Services, it shall be unlawful for any person to manufacture,
13 cultivate, distribute, or possess with intent to distribute a
14 synthetic controlled substance.

15 2. Any person convicted of violating the provisions of this
16 paragraph is guilty of a felony and shall be punished by
17 imprisonment for a term not to exceed life and a fine of not more
18 than Twenty-five Thousand Dollars (\$25,000.00), which shall be in
19 addition to other punishment provided by law and shall not be
20 imposed in lieu of other punishment.

21 3. A second or subsequent conviction for the violation of the
22 provisions of this paragraph is a felony punishable as a habitual
23
24

1 offender pursuant to Section 51.1 of Title 21 of the Oklahoma
2 Statutes.

3 4. In addition, the violator shall be fined an amount not more
4 than One Hundred Thousand Dollars (\$100,000.00), which shall be in
5 addition to other punishment provided by law and shall not be
6 imposed in lieu of other punishment.

7 D. 1. Any person convicted of a second or subsequent felony
8 violation of the provisions of this section, except for paragraph 4
9 of subsection B of this section, shall be punished as a habitual
10 offender pursuant to Section 51.1 of Title 21 of the Oklahoma
11 Statutes.

12 2. In addition, the violator shall be fined twice the fine
13 otherwise authorized, which shall be in addition to other punishment
14 provided by law and shall not be imposed in lieu of other
15 punishment.

16 3. Convictions for second or subsequent violations of the
17 provisions of this section shall not be subject to statutory
18 provisions for suspended sentences, deferred sentences, or
19 probation.

20 E. Any person who is at least eighteen (18) years of age and
21 who violates the provisions of this section by using or soliciting
22 the use of services of a person less than eighteen (18) years of age
23 to distribute, dispense, transport with intent to distribute or
24

1 dispense or cultivate a controlled dangerous substance or by
2 distributing a controlled dangerous substance to a person under
3 eighteen (18) years of age, is punishable by twice the fine and by
4 twice the imprisonment otherwise authorized.

5 F. Any person who violates any provision of this section by
6 transporting with intent to distribute or dispense, distributing or
7 possessing with intent to distribute a controlled dangerous
8 substance to a person, or violation of subsection G of this section,
9 in or on, or within two thousand (2,000) feet of the real property
10 comprising a public or private elementary or secondary school,
11 public vocational school, public or private college or university,
12 or other institution of higher education, recreation center or
13 public park, including state parks and recreation areas, public
14 housing project, or child care facility as defined by Section 402 of
15 Title 10 of the Oklahoma Statutes, shall be punished by:

16 1. For a first offense, a term of imprisonment, or by the
17 imposition of a fine or by both, not exceeding twice that authorized
18 by the appropriate provision of this section and shall serve a
19 minimum of fifty percent (50%) of the sentence received prior to
20 becoming eligible for state correctional institution earned credits
21 toward the completion of the sentence; or

22 2. For a second or subsequent offense, a term of imprisonment
23 as provided for a habitual offender pursuant to Section 51.1 of
24

1 Title 21 of the Oklahoma Statutes. In addition, the violator shall
2 serve eighty-five percent (85%) of the sentence received prior to
3 becoming eligible for state correctional institution earned credits
4 toward the completion of the sentence or eligibility for parole.

5 G. 1. Except as authorized by the Uniform Controlled Dangerous
6 Substances Act, it shall be unlawful for any person to manufacture
7 or attempt to manufacture any controlled dangerous substance or
8 possess any substance listed in Section 2-322 of this title or any
9 substance containing any detectable amount of pseudoephedrine or its
10 salts, optical isomers or salts of optical isomers, iodine or its
11 salts, optical isomers or salts of optical isomers, hydriodic acid,
12 sodium metal, lithium metal, anhydrous ammonia, phosphorus, or
13 organic solvents with the intent to use that substance to
14 manufacture a controlled dangerous substance.

15 2. Any person violating the provisions of this subsection with
16 respect to the unlawful manufacturing or attempting to unlawfully
17 manufacture any controlled dangerous substance, or possessing any
18 substance listed in this subsection or Section 2-322 of this title,
19 upon conviction, is guilty of a felony and shall be punished by
20 imprisonment for not less than seven (7) years nor more than life
21 and by a fine of not less than Fifty Thousand Dollars (\$50,000.00),
22 which shall be in addition to other punishment provided by law and
23 shall not be imposed in lieu of other punishment. The possession of
24

1 any amount of anhydrous ammonia in an unauthorized container shall
2 be prima facie evidence of intent to use such substance to
3 manufacture a controlled dangerous substance.

4 3. Any person violating the provisions of this subsection with
5 respect to the unlawful manufacturing or attempting to unlawfully
6 manufacture any controlled dangerous substance in the following
7 amounts:

8 a. one (1) kilogram or more of a mixture or substance
9 containing a detectable amount of heroin,

10 b. five (5) kilograms or more of a mixture or substance
11 containing a detectable amount of:

12 (1) coca leaves, except coca leaves and extracts of
13 coca leaves from which cocaine, ecgonine, and
14 derivatives of ecgonine or their salts have been
15 removed,

16 (2) cocaine, its salts, optical and geometric
17 isomers, and salts of isomers,

18 (3) ecgonine, its derivatives, their salts, isomers,
19 and salts of isomers, or

20 (4) any compound, mixture, or preparation which
21 contains any quantity of any of the substances
22 referred to in divisions (1) through (3) of this
23 subparagraph,

24

- 1 c. fifty (50) grams or more of a mixture or substance
2 described in division (2) of subparagraph b of this
3 paragraph which contains cocaine base,
4 d. one hundred (100) grams or more of phencyclidine (PCP)
5 or 1 kilogram or more of a mixture or substance
6 containing a detectable amount of phencyclidine (PCP),
7 e. ten (10) grams or more of a mixture or substance
8 containing a detectable amount of lysergic acid
9 diethylamide (LSD),
10 f. four hundred (400) grams or more of a mixture or
11 substance containing a detectable amount of N-phenyl-
12 N-[1-(2-phenylethyl)-4-piperidinyl] propanamide or 100
13 grams or more of a mixture or substance containing a
14 detectable amount of any analogue of N-phenyl-N-[1-(2-
15 phenylethyl)-4-piperidinyl] propanamide,
16 g. one thousand (1,000) kilograms or more of a mixture or
17 substance containing a detectable amount of marihuana
18 or one thousand (1000) or more marihuana plants
19 regardless of weight, or
20 h. fifty (50) grams or more of methamphetamine, its
21 salts, isomers, and salts of its isomers or 500 grams
22 or more of a mixture or substance containing a
23
24

1 detectable amount of methamphetamine, its salts,
2 isomers, or salts of its isomers,
3 upon conviction, is guilty of aggravated manufacturing a controlled
4 dangerous substance punishable by imprisonment for not less than
5 twenty (20) years nor more than life and by a fine of not less than
6 Fifty Thousand Dollars (\$50,000.00), which shall be in addition to
7 other punishment provided by law and shall not be imposed in lieu of
8 other punishment. Any person convicted of a violation of the
9 provisions of this paragraph shall be required to serve a minimum of
10 eighty-five percent (85%) of the sentence received prior to becoming
11 eligible for state correctional earned credits towards the
12 completion of the sentence or eligible for parole.

13 4. Any sentence to the custody of the Department of Corrections
14 for any violation of paragraph 3 of this subsection shall not be
15 subject to statutory provisions for suspended sentences, deferred
16 sentences, or probation. A person convicted of a second or
17 subsequent violation of the provisions of paragraph 3 of this
18 subsection shall be punished as a habitual offender pursuant to
19 Section 51.1 of Title 21 of the Oklahoma Statutes and shall be
20 required to serve a minimum of eighty-five percent (85%) of the
21 sentence received prior to becoming eligible for state correctional
22 earned credits or eligibility for parole.

23
24

1 5. Any person who has been convicted of manufacturing or
2 attempting to manufacture methamphetamine pursuant to the provisions
3 of this subsection and who, after such conviction, purchases or
4 attempts to purchase, receive or otherwise acquire any product,
5 mixture, or preparation containing any detectable quantity of base
6 pseudoephedrine or ephedrine shall, upon conviction, be guilty of a
7 felony punishable by imprisonment in the custody of the Department
8 of Corrections for a term in the range of twice the minimum term
9 provided for in paragraph 2 of this subsection.

10 H. Any person convicted of any offense described in the Uniform
11 Controlled Dangerous Substances Act may, in addition to the fine
12 imposed, be assessed an amount of not to exceed less than ten
13 percent (10%) but not to exceed the entire amount of the fine
14 imposed. Such assessment shall be paid into a revolving fund for
15 enforcement of controlled dangerous substances created pursuant to
16 Section 2-506 of this title. The court shall not waive the
17 assessment in its entirety. However, if the court determines that a
18 reduction in the assessment is warranted, the court shall equally
19 apply the same percentage reduction to the fine owed by the
20 defendant.

21 I. 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
24

1 deposited into the Trauma Care Assistance Revolving Fund created in
2 Section ~~1-2522~~ 1-2530.9 of this title.

3 J. For purposes of this section, "public housing project" means
4 any dwelling or accommodations operated as a state or federally
5 subsidized multifamily housing project by any housing authority,
6 nonprofit corporation or municipal developer or housing projects
7 created pursuant to the Oklahoma Housing Authorities Act.

8 K. When a person is found guilty of a violation of the
9 provisions of this section, the court shall order, in addition to
10 any other penalty, the defendant to pay a one-hundred-dollar
11 assessment to be deposited in the Drug Abuse Education and Treatment
12 Revolving Fund created in Section 2-503.2 of this title, upon
13 collection.

14 SECTION 2. This act shall become effective November 1, 2013.

15
16 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS AND BUDGET, dated
17 02/27/2013 - DO PASS, As Amended.

18
19
20
21
22
23
24

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.