

1 STATE OF OKLAHOMA

2 1st Session of the 54th Legislature (2013)

3 HOUSE BILL 1106

By: Brown

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5
6 AS INTRODUCED

7 An Act relating to public health and safety; amending
8 63 O.S. 2011, Sections 2-101, as amended by Section
9 1, Chapter 80, O.S.L. 2012 and 2-401, as amended by
10 Section 4, Chapter 206, O.S.L. 2012 (63 O.S. Supp.
11 2012, Sections 2-101 and 2-401), which relate to the
Uniform Controlled Dangerous Substances Act; adding
12 definition; reorganizing definitions; modifying scope
13 of certain prohibited act; and providing an effective
14 date.

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

16 SECTION 1. AMENDATORY 63 O.S. 2011, Section 2-101, as
17 amended by Section 1, Chapter 80, O.S.L. 2012 (63 O.S. Supp. 2012,
18 Section 2-101), is amended to read as follows:

19 Section 2-101. As used in the Uniform Controlled Dangerous
20 Substances Act:

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

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 warehouse or employee thereof, or a person
13 required to register under the Uniform Controlled Dangerous
14 Substances Act;

15 3. "Anhydrous ammonia" means any substance that exhibits
16 cryogenic evaporative behavior and tests positive for ammonia;

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

19 ~~4.~~ 5. "Bureau" means the Oklahoma State Bureau of Narcotics and
20 Dangerous Drugs Control;

21 ~~5.~~ 6. "Coca leaves" includes cocaine and any compound,
22 manufacture, salt, derivative, mixture or preparation of coca
23 leaves, except derivatives of coca leaves which do not contain
24 cocaine or ecgonine;

1 ~~6.~~ 7. "Commissioner" or "Director" means the Director of the
2 Oklahoma State Bureau of Narcotics and Dangerous Drugs Control;

3 ~~7.~~ 8. "Control" means to add, remove or change the placement of
4 a drug, substance or immediate precursor under the Uniform
5 Controlled Dangerous Substances Act;

6 ~~8.~~ 9. "Controlled dangerous substance" means a drug, substance
7 or immediate precursor in Schedules I through V of the Uniform
8 Controlled Dangerous Substances Act, ~~Section 2-101 et seq. of this~~
9 ~~title;~~

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

16 ~~10.~~ 11. "Deliver" or "delivery" means the actual, constructive
17 or attempted transfer from one person to another of a controlled
18 dangerous substance or drug paraphernalia, whether or not there is
19 an agency relationship;

20 ~~11.~~ 12. "Dispense" means to deliver a controlled dangerous
21 substance to an ultimate user or human research subject by or
22 pursuant to the lawful order of a practitioner, including the
23 prescribing, administering, packaging, labeling or compounding
24 necessary to prepare the substance for such distribution;

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

3 ~~12.~~ 13. "Distribute" means to deliver other than by
4 administering or dispensing a controlled dangerous substance;

5 ~~13.~~ 14. "Distributor" means a commercial entity engaged in the
6 distribution or reverse distribution of narcotics and dangerous
7 drugs and who complies with all regulations promulgated by the
8 federal Drug Enforcement Administration and the Oklahoma State
9 Bureau of Narcotics and Dangerous Drugs Control;

10 ~~14.~~ 15. "Drug" means articles:

- 11 a. recognized in the official United States
12 Pharmacopoeia, official Homeopathic Pharmacopoeia of
13 the United States, or official National Formulary, or
14 any supplement to any of them,
15 b. intended for use in the diagnosis, cure, mitigation,
16 treatment or prevention of disease in man or other
17 animals,
18 c. other than food, intended to affect the structure or
19 any function of the body of man or other animals, and
20 d. intended for use as a component of any article
21 specified in this paragraph;

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

24

1 ~~15.~~ 16. "Drug-dependent person" means a person who is using a
2 controlled dangerous substance and who is in a state of psychic or
3 physical dependence, or both, arising from administration of that
4 controlled dangerous substance on a continuous basis. Drug
5 dependence is characterized by behavioral and other responses which
6 include a strong compulsion to take the substance on a continuous
7 basis in order to experience its psychic effects, or to avoid the
8 discomfort of its absence;

9 ~~16.~~ 17. "Drug paraphernalia" means all equipment, products and
10 materials of any kind which are used, intended for use, or fashioned
11 specifically for use in planting, propagating, cultivating, growing,
12 harvesting, manufacturing, compounding, converting, producing,
13 processing, preparing, testing, analyzing, packaging, repackaging,
14 storing, containing, concealing, injecting, ingesting, inhaling or
15 otherwise introducing into the human body, a controlled dangerous
16 substance in violation of the Uniform Controlled Dangerous
17 Substances Act including, but not limited to:

- 18 a. kits used, intended for use, or fashioned specifically
19 for use in planting, propagating, cultivating, growing
20 or harvesting of any species of plant which is a
21 controlled dangerous substance or from which a
22 controlled dangerous substance can be derived,
- 23 b. kits used, intended for use, or fashioned specifically
24 for use in manufacturing, compounding, converting,

1 producing, processing or preparing controlled
2 dangerous substances,

3 c. isomerization devices used, intended for use, or
4 fashioned specifically for use in increasing the
5 potency of any species of plant which is a controlled
6 dangerous substance,

7 d. testing equipment used, intended for use, or fashioned
8 specifically for use in identifying, or in analyzing
9 the strength, effectiveness or purity of controlled
10 dangerous substances,

11 e. scales and balances used, intended for use, or
12 fashioned specifically for use in weighing or
13 measuring controlled dangerous substances,

14 f. diluents and adulterants, such as quinine
15 hydrochloride, mannitol, mannite, dextrose and
16 lactose, used, intended for use, or fashioned
17 specifically for use in cutting controlled dangerous
18 substances,

19 g. separation gins and sifters used, intended for use, or
20 fashioned specifically for use in removing twigs and
21 seeds from, or in otherwise cleaning or refining,
22 marihuana,

- 1 h. blenders, bowls, containers, spoons and mixing devices
2 used, intended for use, or fashioned specifically for
3 use in compounding controlled dangerous substances,
- 4 i. capsules, balloons, envelopes and other containers
5 used, intended for use, or fashioned specifically for
6 use in packaging small quantities of controlled
7 dangerous substances,
- 8 j. containers and other objects used, intended for use,
9 or fashioned specifically for use in parenterally
10 injecting controlled dangerous substances into the
11 human body,
- 12 k. hypodermic syringes, needles and other objects used,
13 intended for use, or fashioned specifically for use in
14 parenterally injecting controlled dangerous substances
15 into the human body,
- 16 l. objects used, intended for use, or fashioned
17 specifically for use in ingesting, inhaling or
18 otherwise introducing marihuana, cocaine, hashish or
19 hashish oil into the human body, such as:
- 20 (1) metal, wooden, acrylic, glass, stone, plastic or
21 ceramic pipes with or without screens, permanent
22 screens, hashish heads or punctured metal bowls,
- 23 (2) water pipes,
- 24 (3) carburetion tubes and devices,

- 1 (4) smoking and carburetion masks,
2 (5) roach clips, meaning objects used to hold burning
3 material, such as a marihuana cigarette, that has
4 become too small or too short to be held in the
5 hand,
6 (6) miniature cocaine spoons and cocaine vials,
7 (7) chamber pipes,
8 (8) carburetor pipes,
9 (9) electric pipes,
10 (10) air-driven pipes,
11 (11) chillums,
12 (12) bongs, or
13 (13) ice pipes or chillers,
14 m. all hidden or novelty pipes, and
15 n. any pipe that has a tobacco bowl or chamber of less
16 than one-half (1/2) inch in diameter in which there is
17 any detectable residue of any controlled dangerous
18 substance as defined in this section or any other
19 substances not legal for possession or use; provided,
20 however, the term "drug paraphernalia" shall not
21 include separation gins intended for use in preparing
22 tea or spice, clamps used for constructing electrical
23 equipment, water pipes designed for ornamentation in
24 which no detectable amount of an illegal substance is

1 found or pipes designed and used solely for smoking
2 tobacco, traditional pipes of an American Indian
3 tribal religious ceremony, or antique pipes that are
4 thirty (30) years of age or older;

5 18. "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;

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

14 ~~17.~~ 20. "Home care services" means skilled or personal care
15 services provided to clients in their place of residence for a fee;

16 ~~18.~~ 21. "Hospice" means a centrally administered, nonprofit or
17 profit, medically directed, nurse-coordinated program which provides
18 a continuum of home and inpatient care for the terminally ill
19 patient and the patient's family. Such term shall also include a
20 centrally administered, nonprofit or profit, medically directed,
21 nurse-coordinated program if such program is licensed pursuant to
22 the provisions of this act. A hospice program offers palliative and
23 supportive care to meet the special needs arising out of the
24 physical, emotional and spiritual stresses which are experienced

1 during the final stages of illness and during dying and bereavement.
2 This care is available twenty-four (24) hours a day, seven (7) days
3 a week, and is provided on the basis of need, regardless of ability
4 to pay. "Class A" Hospice refers to Medicare certified hospices.
5 "Class B" refers to all other providers of hospice services;

6 ~~19.~~ 22. "Imitation controlled substance" means a substance that
7 is not a controlled dangerous substance, which by dosage unit
8 appearance, color, shape, size, markings or by representations made,
9 would lead a reasonable person to believe that the substance is a
10 controlled dangerous substance. In the event the appearance of the
11 dosage unit is not reasonably sufficient to establish that the
12 substance is an "imitation controlled substance", the court or
13 authority concerned should consider, in addition to all other
14 factors, the following factors as related to "representations made"
15 in determining whether the substance is an "imitation controlled
16 substance":

- 17 a. statements made by an owner or by any other person in
18 control of the substance concerning the nature of the
19 substance, or its use or effect,
- 20 b. statements made to the recipient that the substance
21 may be resold for inordinate profit,
- 22 c. whether the substance is packaged in a manner normally
23 used for illicit controlled substances,

24

- 1 d. evasive tactics or actions utilized by the owner or
2 person in control of the substance to avoid detection
3 by law enforcement authorities,
4 e. prior convictions, if any, of an owner, or any other
5 person in control of the object, under state or
6 federal law related to controlled substances or fraud,
7 and
8 f. the proximity of the substances to controlled
9 dangerous substances;

10 ~~20.~~ 23. "Immediate precursor" means a substance which the
11 Director has found to be and by regulation designates as being the
12 principal compound commonly used or produced primarily for use, and
13 which is an immediate chemical intermediary used, or likely to be
14 used, in the manufacture of a controlled dangerous substance, the
15 control of which is necessary to prevent, curtail or limit such
16 manufacture;

17 24. "Isomer" means the optical isomer, except as used in
18 subsection C of Section 2-204 of this title and paragraph 4 of
19 subsection A of Section 2-206 of this title. As used in subsection
20 C of Section 2-204 of this title, "isomer" means the optical,
21 positional or geometric isomer. As used in paragraph 4 of
22 subsection A of Section 2-206 of this title, the term "isomer" means
23 the optical or geometric isomer;
24

1 ~~21.~~ 25. "Laboratory" means a laboratory approved by the
2 Director as proper to be entrusted with the custody of controlled
3 dangerous substances and the use of controlled dangerous substances
4 for scientific and medical purposes and for purposes of instruction;

5 ~~22.~~ 26. "Manufacture" means the production, preparation,
6 propagation, compounding or processing of a controlled dangerous
7 substance, either directly or indirectly by extraction from
8 substances of natural or synthetic origin, or independently by means
9 of chemical synthesis or by a combination of extraction and chemical
10 synthesis. "Manufacturer" includes any person who packages,
11 repackages or labels any container of any controlled dangerous
12 substance, except practitioners who dispense or compound
13 prescription orders for delivery to the ultimate consumer;

14 ~~23.~~ 27. "Marihuana" means all parts of the plant Cannabis
15 sativa L., whether growing or not; the seeds thereof; the resin
16 extracted from any part of such plant; and every compound,
17 manufacture, salt, derivative, mixture or preparation of such plant,
18 its seeds or resin, but shall not include the mature stalks of such
19 plant, fiber produced from such stalks, oil or cake made from the
20 seeds of such plant, any other compound, manufacture, salt,
21 derivative, mixture or preparation of such mature stalks (except the
22 resin extracted therefrom), fiber, oil or cake, or the sterilized
23 seed of such plant which is incapable of germination;

24

1 ~~24.~~ 28. "Medical purpose" means an intention to utilize a
2 controlled dangerous substance for physical or mental treatment, for
3 diagnosis, or for the prevention of a disease condition not in
4 violation of any state or federal law and not for the purpose of
5 satisfying physiological or psychological dependence or other abuse;

6 ~~25.~~ 29. "Mid-level practitioner" means an advanced practice
7 nurse as defined and within parameters specified in Section 567.3a
8 of Title 59 of the Oklahoma Statutes, or a certified animal
9 euthanasia technician as defined in Section 698.2 of Title 59 of the
10 Oklahoma Statutes, or an animal control officer registered by the
11 Oklahoma State Bureau of Narcotics and Dangerous Drugs Control under
12 subsection B of Section 2-301 of this title within the parameters of
13 such officer's duty under Sections 501 through 508 of Title 4 of the
14 Oklahoma Statutes;

15 ~~26.~~ 30. "Narcotic drug" means any of the following, whether
16 produced directly or indirectly by extraction from substances of
17 vegetable origin, or independently by means of chemical synthesis,
18 or by a combination of extraction and chemical synthesis:

- 19 a. opium, coca leaves and opiates,
- 20 b. a compound, manufacture, salt, derivative or
21 preparation of opium, coca leaves or opiates,
- 22 c. cocaine, its salts, optical and geometric isomers, and
23 salts of isomers,

- 1 d. ecgonine, its derivatives, their salts, isomers and
2 salts of isomers, and
- 3 e. a substance, and any compound, manufacture, salt,
4 derivative or preparation thereof, which is chemically
5 identical with any of the substances referred to in
6 subparagraphs a through d of this paragraph, except
7 that the words "narcotic drug" as used in Section 2-
8 101 et seq. of this title shall not include
9 decocainized coca leaves or extracts of coca leaves,
10 which extracts do not contain cocaine or ecgonine;

11 ~~27.~~ 31. "Opiate" means any substance having an addiction-
12 forming or addiction-sustaining liability similar to morphine or
13 being capable of conversion into a drug having such addiction-
14 forming or addiction-sustaining liability. It does not include,
15 unless specifically designated as controlled under the Uniform
16 Controlled Dangerous Substances Act, the dextrorotatory isomer of 3-
17 methoxy-n-methyl-morphinan and its salts (dextromethorphan). It
18 does include its racemic and levorotatory forms;

19 ~~28.~~ 32. "Opium poppy" means the plant of the species *Papaver*
20 *somniferum* L., except the seeds thereof;

21 ~~29.~~ 33. "Peace officer" means a police officer, sheriff, deputy
22 sheriff, district attorney's investigator, investigator from the
23 Office of the Attorney General, or any other person elected or
24

1 appointed by law to enforce any of the criminal laws of this state
2 or of the United States;

3 ~~30.~~ 34. "Person" means an individual, corporation, government
4 or governmental subdivision or agency, business trust, estate,
5 trust, partnership or association, or any other legal entity;

6 ~~31.~~ 35. "Poppy straw" means all parts, except the seeds, of the
7 opium poppy, after mowing;

8 ~~32.~~ 36. "Practitioner" means:

- 9 a. (1) a medical doctor or osteopathic physician,
10 (2) a dentist,
11 (3) a podiatrist,
12 (4) an optometrist,
13 (5) a veterinarian,
14 (6) a physician assistant under the supervision of a
15 licensed medical doctor or osteopathic physician,
16 (7) a scientific investigator, or
17 (8) any other person,
18 licensed, registered or otherwise permitted to
19 prescribe, distribute, dispense, conduct research with
20 respect to, use for scientific purposes or administer
21 a controlled dangerous substance in the course of
22 professional practice or research in this state, or
23 b. a pharmacy, hospital, laboratory or other institution
24 licensed, registered or otherwise permitted to

1 distribute, dispense, conduct research with respect
2 to, use for scientific purposes or administer a
3 controlled dangerous substance in the course of
4 professional practice or research in this state;

5 ~~33.~~ 37. "Production" includes the manufacture, planting,
6 cultivation, growing or harvesting of a controlled dangerous
7 substance;

8 ~~34.~~ 38. "State" means the State of Oklahoma or any other state
9 of the United States;

10 39. a. "Synthetic controlled substance" means a substance:

11 (1) the chemical structure of which is substantially
12 similar to the chemical structure of a controlled
13 dangerous substance in Schedule I or II of
14 Section 2-204 or 2-206 of this title,

15 (2) which has a stimulant, depressant, or
16 hallucinogenic effect on the central nervous
17 system that is substantially similar to or
18 greater than the stimulant, depressant or
19 hallucinogenic effect on the central nervous
20 system of a controlled dangerous substance in
21 Schedule I or II of Section 2-204 or 2-206 of
22 this title, or

23 (3) with respect to a particular person, which such
24 person represents or intends to have a stimulant,

1 depressant, or hallucinogenic effect on the
2 central nervous system that is substantially
3 similar to or greater than the stimulant,
4 depressant, or hallucinogenic effect on the
5 central nervous system of a controlled dangerous
6 substance in Schedule I or II of Section 2-204 or
7 2-206 of this title.

8 b. The designation of gamma butyrolactone or any other
9 chemical as a precursor, pursuant to Section 2-322 of
10 this title, does not preclude a finding pursuant to
11 subparagraph a of this paragraph that the chemical is
12 a synthetic controlled substance.

13 c. "Synthetic controlled substance" does not include:

14 (1) a controlled dangerous substance,

15 (2) any substance for which there is an approved new
16 drug application,

17 (3) with respect to a particular person any
18 substance, if an exemption is in effect for
19 investigational use, for that person under the
20 provisions of Section 505 of the Federal Food,
21 Drug and Cosmetic Act, Title 21 of the United
22 States Code, Section 355, to the extent conduct
23 with respect to such substance is pursuant to
24 such exemption, or

1 (4) any substance to the extent not intended for
2 human consumption before such an exemption takes
3 effect with respect to that substance.

4 d. Prima facie evidence that a substance containing
5 salvia divinorum has been enhanced, concentrated or
6 chemically or physically altered shall give rise to a
7 rebuttable presumption that the substance is a
8 synthetic controlled substance;

9 40. "Synthetic drug product" means any product that contains a
10 substance defined as a controlled substance under subsections C and
11 D of Section 2-204 of this title. Products approved by the Food and
12 Drug Administration of the United States Department of Health and
13 Human Services for human consumption are not synthetic drug
14 products;

15 41. "Tetrahydrocannabinols" means all substances that have been
16 chemically synthesized to emulate the tetrahydrocannabinols of
17 marihuana; and

18 ~~35.~~ 42. "Ultimate user" means a person who lawfully possesses a
19 controlled dangerous substance for the person's own use or for the
20 use of a member of the person's household or for administration to
21 an animal owned by the person or by a member of the person's
22 household;

23 ~~36. "Drug paraphernalia" means all equipment, products and~~
24 ~~materials of any kind which are used, intended for use, or fashioned~~

~~specifically for use in planting, propagating, cultivating, growing,
harvesting, manufacturing, compounding, converting, producing,
processing, preparing, testing, analyzing, packaging, repackaging,
storing, containing, concealing, injecting, ingesting, inhaling or
otherwise introducing into the human body, a controlled dangerous
substance in violation of the Uniform Controlled Dangerous
Substances Act including, but not limited to:~~

- ~~a. kits used, intended for use, or fashioned specifically
for use in planting, propagating, cultivating, growing
or harvesting of any species of plant which is a
controlled dangerous substance or from which a
controlled dangerous substance can be derived,~~
- ~~b. kits used, intended for use, or fashioned specifically
for use in manufacturing, compounding, converting,
producing, processing or preparing controlled
dangerous substances,~~
- ~~c. isomerization devices used, intended for use, or
fashioned specifically for use in increasing the
potency of any species of plant which is a controlled
dangerous substance,~~
- ~~d. testing equipment used, intended for use, or fashioned
specifically for use in identifying, or in analyzing
the strength, effectiveness or purity of controlled
dangerous substances,~~

- 1 e. ~~scales and balances used, intended for use, or~~
2 ~~fashioned specifically for use in weighing or~~
3 ~~measuring controlled dangerous substances,~~
- 4 f. ~~diluents and adulterants, such as quinine~~
5 ~~hydrochloride, mannitol, mannite, dextrose and~~
6 ~~lactose, used, intended for use, or fashioned~~
7 ~~specifically for use in cutting controlled dangerous~~
8 ~~substances,~~
- 9 g. ~~separation gins and sifters used, intended for use, or~~
10 ~~fashioned specifically for use in removing twigs and~~
11 ~~seeds from, or in otherwise cleaning or refining,~~
12 ~~marihuana,~~
- 13 h. ~~blenders, bowls, containers, spoons and mixing devices~~
14 ~~used, intended for use, or fashioned specifically for~~
15 ~~use in compounding controlled dangerous substances,~~
- 16 i. ~~capsules, balloons, envelopes and other containers~~
17 ~~used, intended for use, or fashioned specifically for~~
18 ~~use in packaging small quantities of controlled~~
19 ~~dangerous substances,~~
- 20 j. ~~containers and other objects used, intended for use,~~
21 ~~or fashioned specifically for use in parenterally~~
22 ~~injecting controlled dangerous substances into the~~
23 ~~human body,~~
- 24

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

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

- 9 ~~(1) metal, wooden, acrylic, glass, stone, plastic or~~
10 ~~ceramic pipes with or without screens, permanent~~
11 ~~screens, hashish heads or punctured metal bowls,~~
- 12 ~~(2) water pipes,~~
- 13 ~~(3) carburetion tubes and devices,~~
- 14 ~~(4) smoking and carburetion masks,~~
- 15 ~~(5) roach clips, meaning objects used to hold burning~~
16 ~~material, such as a marihuana cigarette, that has~~
17 ~~become too small or too short to be held in the~~
18 ~~hand,~~
- 19 ~~(6) miniature cocaine spoons and cocaine vials,~~
- 20 ~~(7) chamber pipes,~~
- 21 ~~(8) carburetor pipes,~~
- 22 ~~(9) electric pipes,~~
- 23 ~~(10) air-driven pipes,~~
- 24 ~~(11) chillums,~~

1 ~~(12) bongs, or~~

2 ~~(13) ice pipes or chillers,~~

3 ~~m. all hidden or novelty pipes, and~~

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

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

16 37. a. ~~"Synthetic controlled substance" means a substance:~~

17 ~~(1) the chemical structure of which is substantially~~
18 ~~similar to the chemical structure of a controlled~~
19 ~~dangerous substance in Schedule I or II,~~

20 ~~(2) which has a stimulant, depressant, or~~
21 ~~hallucinogenic effect on the central nervous~~
22 ~~system that is substantially similar to or~~
23 ~~greater than the stimulant, depressant or~~
24 ~~hallucinogenic effect on the central nervous~~

1 ~~system of a controlled dangerous substance in~~
2 ~~Schedule I or II, or~~

3 ~~(3) with respect to a particular person, which such~~
4 ~~person represents or intends to have a stimulant,~~
5 ~~depressant, or hallucinogenic effect on the~~
6 ~~central nervous system that is substantially~~
7 ~~similar to or greater than the stimulant,~~
8 ~~depressant, or hallucinogenic effect on the~~
9 ~~central nervous system of a controlled dangerous~~
10 ~~substance in Schedule I or II.~~

11 ~~b. The designation of gamma butyrolactone or any other~~
12 ~~chemical as a precursor, pursuant to Section 2-322 of~~
13 ~~this title, does not preclude a finding pursuant to~~
14 ~~subparagraph a of this paragraph that the chemical is~~
15 ~~a synthetic controlled substance.~~

16 ~~c. "Synthetic controlled substance" does not include:~~

17 ~~(1) a controlled dangerous substance,~~
18 ~~(2) any substance for which there is an approved new~~
19 ~~drug application,~~
20 ~~(3) with respect to a particular person any~~
21 ~~substance, if an exemption is in effect for~~
22 ~~investigational use, for that person under the~~
23 ~~provisions of Section 505 of the Federal Food,~~
24 ~~Drug and Cosmetic Act, Title 21 of the United~~

1 ~~States Code, Section 355, to the extent conduct~~
2 ~~with respect to such substance is pursuant to~~
3 ~~such exemption, or~~

4 ~~(4) any substance to the extent not intended for~~
5 ~~human consumption before such an exemption takes~~
6 ~~effect with respect to that substance.~~

7 ~~d. Prima facie evidence that a substance containing~~
8 ~~salvia divinorum has been enhanced, concentrated or~~
9 ~~chemically or physically altered shall give rise to a~~
10 ~~rebuttable presumption that the substance is a~~
11 ~~synthetic controlled substance;~~

12 ~~38. "Tetrahydrocannabinols" means all substances that have been~~
13 ~~chemically synthesized to emulate the tetrahydrocannabinols of~~
14 ~~marihuana;~~

15 ~~39. "Isomer" means the optical isomer, except as used in~~
16 ~~subsection C of Section 2-204 of this title and paragraph 4 of~~
17 ~~subsection A of Section 2-206 of this title. As used in subsection~~
18 ~~C of Section 2-204 of this title, "isomer" means the optical,~~
19 ~~positional or geometric isomer. As used in paragraph 4 of~~
20 ~~subsection A of Section 2-206 of this title, the term "isomer" means~~
21 ~~the optical or geometric isomer;~~

22 ~~40. "Hazardous materials" means materials, whether solid,~~
23 ~~liquid or gas, which are toxic to human, animal, aquatic or plant~~
24

1 ~~life, and the disposal of which materials is controlled by state or~~
2 ~~federal guidelines; and~~

3 ~~41. "Anhydrous ammonia" means any substance that exhibits~~
4 ~~eryogenic evaporative behavior and tests positive for ammonia.~~

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

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

11 1. To distribute, dispense, transport with intent to distribute
12 or dispense, possess with intent to manufacture, distribute, or
13 dispense, a controlled dangerous substance or to solicit the use of
14 or use the services of a person less than eighteen (18) years of age
15 to cultivate, distribute or dispense a controlled dangerous
16 substance;

17 2. To create, distribute, transport with intent to distribute
18 or dispense, or possess with intent to distribute, a counterfeit
19 controlled dangerous substance; or

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

24

1 B. Any person who violates the provisions of this section with
2 respect to:

3 1. A substance classified in Schedule I or II which is a
4 narcotic drug, lysergic acid diethylamide (LSD), gamma
5 butyrolactone, gamma hydroxyvalerate, gamma valerolactone, 1,4
6 butanediol, or gamma-hydroxybutyric acid as defined in Sections 2-
7 204 and 2-208 of this title, upon conviction, shall be guilty of a
8 felony and shall be sentenced to a term of imprisonment for not less
9 than five (5) years nor more than life and a fine of not more than
10 One Hundred Thousand Dollars (\$100,000.00), which shall be in
11 addition to other punishment provided by law and shall not be
12 imposed in lieu of other punishment. Any sentence to the custody of
13 the Department of Corrections shall not be subject to statutory
14 provisions for suspended sentences, deferred sentences, or probation
15 except when the conviction is for a first offense;

16 2. Any other controlled dangerous substance classified in
17 Schedule I, II, III, or IV, upon conviction, shall be guilty of a
18 felony and shall be sentenced to a term of imprisonment for not less
19 than two (2) years nor more than life and a fine of not more than
20 Twenty Thousand Dollars (\$20,000.00), which shall be in addition to
21 other punishment provided by law and shall not be imposed in lieu of
22 other punishment. Any sentence to the custody of the Department of
23 Corrections shall not be subject to statutory provisions for
24

1 suspended sentences, deferred sentences, or probation except when
2 the conviction is for a first offense;

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

9 4. An imitation controlled substance as defined by Section 2-
10 101 of this title, upon conviction, shall be guilty of a misdemeanor
11 and shall be sentenced to a term of imprisonment in the county jail
12 for a period of not more than one (1) year and a fine of not more
13 than One Thousand Dollars (\$1,000.00). A person convicted of a
14 second violation of the provisions of this paragraph shall be guilty
15 of a felony and shall be sentenced to a term of imprisonment for not
16 more than five (5) years and a fine of not more than Five Thousand
17 Dollars (\$5,000.00), which shall be in addition to other punishment
18 provided by law and shall not be imposed in lieu of other
19 punishment.

20 C. 1. Except when authorized by the Food and Drug
21 Administration of the United States Department of Health and Human
22 Services, it shall be unlawful for any person to manufacture,
23 cultivate, distribute, or possess with intent to distribute a
24 synthetic controlled substance or synthetic drug product.

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

7 3. A second or subsequent conviction for the violation of the
8 provisions of this paragraph is a felony punishable as a habitual
9 offender pursuant to Section 51.1 of Title 21 of the Oklahoma
10 Statutes.

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

15 D. 1. Any person convicted of a second or subsequent felony
16 violation of the provisions of this section, except for paragraph 4
17 of subsection B of this section, shall be punished as a habitual
18 offender pursuant to Section 51.1 of Title 21 of the Oklahoma
19 Statutes.

20 2. In addition, the violator shall be fined twice the fine
21 otherwise authorized, which shall be in addition to other punishment
22 provided by law and shall not be imposed in lieu of other
23 punishment.

24

1 3. Convictions for second or subsequent violations of the
2 provisions of this section shall not be subject to statutory
3 provisions for suspended sentences, deferred sentences, or
4 probation.

5 E. Any person who is at least eighteen (18) years of age and
6 who violates the provisions of this section by using or soliciting
7 the use of services of a person less than eighteen (18) years of age
8 to distribute, dispense, transport with intent to distribute or
9 dispense or cultivate a controlled dangerous substance or by
10 distributing a controlled dangerous substance to a person under
11 eighteen (18) years of age, is punishable by twice the fine and by
12 twice the imprisonment otherwise authorized.

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

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

7 2. For a second or subsequent offense, a term of imprisonment
8 as provided for a habitual offender pursuant to Section 51.1 of
9 Title 21 of the Oklahoma Statutes. In addition, the violator shall
10 serve eighty-five percent (85%) of the sentence received prior to
11 becoming eligible for state correctional institution earned credits
12 toward the completion of the sentence or eligibility for parole.

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

23 2. Any person violating the provisions of this subsection with
24 respect to the unlawful manufacturing or attempting to unlawfully

1 manufacture any controlled dangerous substance, or possessing any
2 substance listed in this subsection or Section 2-322 of this title,
3 upon conviction, is guilty of a felony and shall be punished by
4 imprisonment for not less than seven (7) years nor more than life
5 and by a fine of not less than Fifty Thousand Dollars (\$50,000.00),
6 which shall be in addition to other punishment provided by law and
7 shall not be imposed in lieu of other punishment. The possession of
8 any amount of anhydrous ammonia in an unauthorized container shall
9 be prima facie evidence of intent to use such substance to
10 manufacture a controlled dangerous substance.

11 3. Any person violating the provisions of this subsection with
12 respect to the unlawful manufacturing or attempting to unlawfully
13 manufacture any controlled dangerous substance in the following
14 amounts:

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

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

19 (1) coca leaves, except coca leaves and extracts of
20 coca leaves from which cocaine, ecgonine, and
21 derivatives of ecgonine or their salts have been
22 removed,

23 (2) cocaine, its salts, optical and geometric
24 isomers, and salts of isomers,

1 (3) ecgonine, its derivatives, their salts, isomers,
2 and salts of isomers, or

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

7 c. fifty (50) grams or more of a mixture or substance
8 described in division (2) of subparagraph b of this
9 paragraph which contains cocaine base,

10 d. one hundred (100) grams or more of phencyclidine (PCP)
11 or 1 kilogram or more of a mixture or substance
12 containing a detectable amount of phencyclidine (PCP),

13 e. ten (10) grams or more of a mixture or substance
14 containing a detectable amount of lysergic acid
15 diethylamide (LSD),

16 f. four hundred (400) grams or more of a mixture or
17 substance containing a detectable amount of N-phenyl-
18 N-[1-(2-phenylethyl)-4-piperidinyl] propanamide or 100
19 grams or more of a mixture or substance containing a
20 detectable amount of any analogue of N-phenyl-N-[1-(2-
21 phenylethyl)-4-piperidinyl] propanamide,

22 g. one thousand (1,000) kilograms or more of a mixture or
23 substance containing a detectable amount of marihuana
24

1 or one thousand (1000) or more marihuana plants
2 regardless of weight, or

3 h. fifty (50) grams or more of methamphetamine, its
4 salts, isomers, and salts of its isomers or 500 grams
5 or more of a mixture or substance containing a
6 detectable amount of methamphetamine, its salts,
7 isomers, or salts of its isomers,

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

18 4. Any sentence to the custody of the Department of Corrections
19 for any violation of paragraph 3 of this subsection shall not be
20 subject to statutory provisions for suspended sentences, deferred
21 sentences, or probation. A person convicted of a second or
22 subsequent violation of the provisions of paragraph 3 of this
23 subsection shall be punished as a habitual offender pursuant to
24 Section 51.1 of Title 21 of the Oklahoma Statutes and shall be

1 required to serve a minimum of eighty-five percent (85%) of the
2 sentence received prior to becoming eligible for state correctional
3 earned credits or eligibility for parole.

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

13 H. Any person convicted of any offense described in the Uniform
14 Controlled Dangerous Substances Act may, in addition to the fine
15 imposed, be assessed an amount not to exceed ten percent (10%) of
16 the fine imposed. Such assessment shall be paid into a revolving
17 fund for enforcement of controlled dangerous substances created
18 pursuant to Section 2-506 of this title.

19 I. Any person convicted of any offense described in this
20 section shall, in addition to any fine imposed, pay a special
21 assessment trauma-care fee of One Hundred Dollars (\$100.00) to be
22 deposited into the Trauma Care Assistance Revolving Fund created in
23 Section ~~1-2522~~ 1-2530.9 of this title.

24

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

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

12 SECTION 3. This act shall become effective November 1, 2013.

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