

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. 1835

By: Williams

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8 COMMITTEE SUBSTITUTE

9 An Act relating to public health and safety; amending
10 63 O.S. 2011, Section 2-402, as amended by Section
11 10, Chapter 228, O.S.L. 2012 (63 O.S. Supp. 2012,
12 Section 2-402), which relates to the Uniform
13 Controlled Dangerous Substances Act; modifying
14 certain penalties; making certain acts unlawful;
15 providing penalties; and providing an effective date.

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

17 SECTION 1. AMENDATORY 63 O.S. 2011, Section 2-402, as
18 amended by Section 10, Chapter 228, O.S.L. 2012 (63 O.S. Supp. 2012,
19 Section 2-402), is amended to read as follows:

20 Section 2-402. A. 1. It shall be unlawful for any person
21 knowingly or intentionally to possess a controlled dangerous
22 substance unless such substance was obtained directly, or pursuant
23 to a valid prescription or order from a practitioner, while acting
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1 in the course of his or her professional practice, or except as
2 otherwise authorized by this act.

3 2. It shall be unlawful for any person to purchase any
4 preparation excepted from the provisions of the Uniform Controlled
5 Dangerous Substances Act pursuant to Section 2-313 of this title in
6 an amount or within a time interval other than that permitted by
7 Section 2-313 of this title.

8 3. It shall be unlawful for any person or business to sell,
9 market, advertise or label any product containing ephedrine, its
10 salts, optical isomers, or salts of optical isomers, for the
11 indication of stimulation, mental alertness, weight loss, appetite
12 control, muscle development, energy or other indication which is not
13 approved by the pertinent federal OTC Final Monograph, Tentative
14 Final Monograph, or FDA-approved new drug application or its legal
15 equivalent. In determining compliance with this requirement, the
16 following factors shall be considered:

- 17 a. the packaging of the product,
- 18 b. the name of the product, and
- 19 c. the distribution and promotion of the product,
20 including verbal representations made at the point of
21 sale.

22 B. Any person who violates this section with respect to:
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1 1. Any Schedule I or II substance, except marihuana or a
2 substance included in subsection D of Section 2-206 of this title,
3 is guilty of a felony punishable by imprisonment for not less than
4 two (2) years nor more than ten (10) years and by a fine not
5 exceeding Five Thousand Dollars (\$5,000.00). A second or subsequent
6 violation of this section with respect to Schedule I or II
7 substance, except marijuana or a substance included in subsection D
8 of Section 2-206 of this title, is a felony punishable by
9 imprisonment for not less than four (4) years nor more than twenty
10 (20) years and by a fine not exceeding Ten Thousand Dollars
11 (\$10,000.00);

12 2. Any Schedule III, IV or V substance, ~~marihuana~~, a substance
13 included in subsection D of Section 2-206 of this title, or any
14 preparation excepted from the provisions of the Uniform Controlled
15 Dangerous Substances Act is guilty of a misdemeanor punishable by
16 confinement for not more than one (1) year and by a fine not
17 exceeding One Thousand Dollars (\$1,000.00);

18 3. Any Schedule III, IV or V substance, ~~marijuana~~, a substance
19 included in subsection D of Section 2-206 of this title, or any
20 preparation excepted from the provisions of the Uniform Controlled
21 Dangerous Substances Act and who, during the period of any court-
22 imposed probationary term or within ten (10) years of the date
23 following the completion of the execution of any sentence or
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1 deferred judgment for a violation of this section, commits a second
2 or subsequent violation of this section shall, upon conviction, be
3 guilty of a felony punishable by imprisonment in the custody of the
4 Department of Corrections for not less than two (2) years nor more
5 than ten (10) years and by a fine not exceeding Five Thousand
6 Dollars (\$5,000.00); ~~or~~

7 4. Any Schedule III, IV or V substance, ~~marijuana~~, a substance
8 included in subsection D of Section 2-206 of this title, or any
9 preparation excepted from the provisions of the Uniform Controlled
10 Dangerous Substances Act and who, ten (10) or more years following
11 the date of completion of the execution of any sentence or deferred
12 judgment for a violation of this section, commits a second or
13 subsequent violation of this section shall, upon conviction, be
14 guilty of a felony punishable by imprisonment in the custody of the
15 Department of Corrections for not less than one (1) year nor more
16 than five (5) years and by a fine not exceeding Five Thousand
17 Dollars (\$5,000.00); or

18 5. Any marijuana shall, upon conviction for a first or second
19 offense, be guilty of a misdemeanor punishable by imprisonment in
20 the county jail for a term of not more than one (1) year and by a
21 fine not exceeding One Thousand Dollars (\$1,000.00). Any third or
22 subsequent conviction occurring during the period of any court-
23 imposed probationary term or within ten (10) years of the date

1 following the completion of the execution of any sentence or
2 deferred judgment for a violation of this section shall result in a
3 felony punishable by imprisonment in the custody of the Department
4 of Corrections for not less than two (2) years nor more than five
5 (5) years and by a fine not exceeding Five Thousand Dollars
6 (\$5,000.00). Any third or subsequent conviction occurring ten (10)
7 or more years following the date of completion of the execution of
8 any sentence or deferred judgment for a violation of this section
9 shall result in a felony punishable by imprisonment in the custody
10 of the Department of Corrections for not less than one (1) year nor
11 more than three (3) years and by a fine not exceeding Five Thousand
12 Dollars (\$5,000.00).

13 C. Any person who violates any provision of this section by
14 possessing or purchasing a controlled dangerous substance from any
15 person, in or on, or within one thousand (1,000) feet of the real
16 property comprising a public or private elementary or secondary
17 school, public vocational school, public or private college or
18 university, or other institution of higher education, recreation
19 center or public park, including state parks and recreation areas,
20 or in the presence of any child under twelve (12) years of age,
21 shall be guilty of a felony and punished by:

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

6 2. For a second or subsequent offense, a term of imprisonment
7 not exceeding three times that authorized by the appropriate
8 provision of this section and the person shall serve a minimum of
9 ninety percent (90%) of the sentence received prior to becoming
10 eligible for state correctional institution earned credits toward
11 the completion of said sentence, and imposition of a fine not
12 exceeding Ten Thousand Dollars (\$10,000.00).

13 D. Any person convicted of any offense described in this
14 section shall, in addition to any fine imposed, pay a special
15 assessment trauma-care fee of One Hundred Dollars (\$100.00) to be
16 deposited into the Trauma Care Assistance Revolving Fund created in
17 Section 1-2530.9 of this title.

18 SECTION 2. This act shall become effective November 1, 2013.
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20 COMMITTEE REPORT BY: COMMITTEE ON PUBLIC SAFETY, dated 02/28/2013 -
21 DO PASS, As Amended.
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