

STATE OF OKLAHOMA

2nd Session of the 55th Legislature (2016)

HOUSE BILL 2835

By: Echols

AS INTRODUCED

An Act relating to public health and safety; amending 63 O.S. 2011, Section 2-101, as last amended by Section 2, Chapter 203, O.S.L. 2015 and Section 3, Chapter 203, O.S.L. 2015 (63 O.S. Supp. 2015, Sections 2-101 and 2-801), which relate to the Uniform Controlled Dangerous Substances Act; deleting age limitation for certain definitions; modifying exception to certain definition; and providing an effective date.

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

SECTION 1. AMENDATORY 63 O.S. 2011, Section 2-101, as last amended by Section 2, Chapter 203, O.S.L. 2015 (63 O.S. Supp. 2015, Section 2-101), is amended to read as follows:

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

1. "Administer" means the direct application of a controlled dangerous substance, whether by injection, inhalation, ingestion or any other means, to the body of a patient, animal or research 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 warehouser or employee thereof, or a person
13 required to register under the Uniform Controlled Dangerous
14 Substances Act;

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

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

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

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

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

4 8. "Controlled dangerous substance" means a drug, substance or
5 immediate precursor in Schedules I through V of the Uniform
6 Controlled Dangerous Substances Act or any drug, substance or
7 immediate precursor listed either temporarily or permanently as a
8 federally controlled substance. Any conflict between state and
9 federal law with regard to the particular schedule in which a
10 substance is listed shall be resolved in favor of state law;

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

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

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

1 necessary to prepare the substance for such distribution.

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

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

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

11 14. "Drug" means articles:

12 a. recognized in the official United States

13 Pharmacopoeia, official Homeopathic Pharmacopoeia of
14 the United States, or official National Formulary, or
15 any supplement to any of them,

16 b. intended for use in the diagnosis, cure, mitigation,
17 treatment or prevention of disease in man or other
18 animals,

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

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

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

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

16 18. "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. "Imitation controlled substance" means a substance that is
7 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

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

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

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

22. "Manufacture" means the production, preparation, propagation, compounding or processing of a controlled dangerous substance, either directly or indirectly by extraction from substances of natural or synthetic origin, or independently by means of chemical synthesis or by a combination of extraction and chemical

1 synthesis. "Manufacturer" includes any person who packages,
2 repackages or labels any container of any controlled dangerous
3 substance, except practitioners who dispense or compound
4 prescription orders for delivery to the ultimate consumer;

5 23. "Marihuana" means all parts of the plant Cannabis sativa
6 L., whether growing or not; the seeds thereof; the resin extracted
7 from any part of such plant; and every compound, manufacture, salt,
8 derivative, mixture or preparation of such plant, its seeds or
9 resin, but shall not include:

- 10 a. the mature stalks of such plant or fiber produced from
11 such stalks,
- 12 b. oil or cake made from the seeds of such plant,
13 including cannabidiol derived from the seeds of the
14 marihuana plant,
- 15 c. any other compound, manufacture, salt, derivative,
16 mixture or preparation of such mature stalks (except
17 the resin extracted therefrom), including cannabidiol
18 derived from mature stalks, fiber, oil or cake,
- 19 d. the sterilized seed of such plant which is incapable
20 of germination,
- 21 e. for ~~persons eighteen (18) years of age or younger~~ any
22 person participating in a clinical trial to
23 ~~administering~~ administer cannabidiol for the treatment
24 of severe forms of epilepsy pursuant to Section 4 of

1 this act, a drug or substance approved by the federal
2 Food and Drug Administration for use by those
3 participants,

- 4 f. for ~~persons eighteen (18) years of age or younger,~~ any
5 person or the parents, legal guardians, or caretakers
6 of the person, who have received a written
7 certification from a physician licensed in this state
8 that the person has been diagnosed by a physician as
9 having Lennox-Gastaut Syndrome, Dravet Syndrome, also
10 known as Severe Myoclonic Epilepsy of Infancy, or any
11 other severe form of epilepsy that is not adequately
12 treated by traditional medical therapies, Alzheimer's
13 disease, dementia or post-traumatic stress disorder,
14 the substance cannabidiol, a nonpsychoactive
15 cannabinoid, found in the plant Cannabis sativa L. or
16 any other preparation thereof, that has a
17 tetrahydrocannabinol concentration of not more than
18 three-tenths of one percent (0.3%) and that is
19 delivered to the patient in the form of a liquid, or
20 g. industrial hemp, from the plant Cannabis sativa L. and
21 any part of such plant, whether growing or not, with a
22 delta-9 tetrahydrocannabinol concentration of not more
23 than three-tenths of one percent (0.3%) on a dry
24 weight basis which shall not be grown anywhere in the

1 State of Oklahoma but may be shipped to Oklahoma
2 pursuant to the provisions of subparagraph e or f of
3 this paragraph;

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

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

18 26. "Narcotic drug" means any of the following, whether
19 produced directly or indirectly by extraction from substances of
20 vegetable origin, or independently by means of chemical synthesis,
21 or by a combination of extraction and chemical synthesis:

- 22 a. opium, coca leaves and opiates,
- 23 b. a compound, manufacture, salt, derivative or
- 24 preparation of opium, coca leaves or opiates,

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

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

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

29. "Peace officer" means a police officer, sheriff, deputy sheriff, district attorney's investigator, investigator from the

1 Office of the Attorney General, or any other person elected or
2 appointed by law to enforce any of the criminal laws of this state
3 or of the United States;

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

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

9 32. "Practitioner" means:

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

1 b. a pharmacy, hospital, laboratory or other institution
2 licensed, registered or otherwise permitted to
3 distribute, dispense, conduct research with respect
4 to, use for scientific purposes or administer a
5 controlled dangerous substance in the course of
6 professional practice or research in this state;

7 33. "Production" includes the manufacture, planting,
8 cultivation, growing or harvesting of a controlled dangerous
9 substance;

10 34. "State" means the State of Oklahoma or any other state of
11 the United States;

12 35. "Ultimate user" means a person who lawfully possesses a
13 controlled dangerous substance for the person's own use or for the
14 use of a member of the person's household or for administration to
15 an animal owned by the person or by a member of the person's
16 household;

17 36. "Drug paraphernalia" means all equipment, products and
18 materials of any kind which are used, intended for use, or fashioned
19 specifically for use in planting, propagating, cultivating, growing,
20 harvesting, manufacturing, compounding, converting, producing,
21 processing, preparing, testing, analyzing, packaging, repackaging,
22 storing, containing, concealing, injecting, ingesting, inhaling or
23 otherwise introducing into the human body, a controlled dangerous
24

1 substance in violation of the Uniform Controlled Dangerous
2 Substances Act including, but not limited to:

- 3 a. kits used, intended for use, or fashioned specifically
4 for use in planting, propagating, cultivating, growing
5 or harvesting of any species of plant which is a
6 controlled dangerous substance or from which a
7 controlled dangerous substance can be derived,
- 8 b. kits used, intended for use, or fashioned specifically
9 for use in manufacturing, compounding, converting,
10 producing, processing or preparing controlled
11 dangerous substances,
- 12 c. isomerization devices used, intended for use, or
13 fashioned specifically for use in increasing the
14 potency of any species of plant which is a controlled
15 dangerous substance,
- 16 d. testing equipment used, intended for use, or fashioned
17 specifically for use in identifying, or in analyzing
18 the strength, effectiveness or purity of controlled
19 dangerous substances,
- 20 e. scales and balances used, intended for use, or
21 fashioned specifically for use in weighing or
22 measuring controlled dangerous substances,
- 23 f. diluents and adulterants, such as quinine
24 hydrochloride, mannitol, mannite, dextrose and

1 lactose, used, intended for use, or fashioned
2 specifically for use in cutting controlled dangerous
3 substances,

4 g. separation gins and sifters used, intended for use, or
5 fashioned specifically for use in removing twigs and
6 seeds from, or in otherwise cleaning or refining,
7 marihuana,

8 h. blenders, bowls, containers, spoons and mixing devices
9 used, intended for use, or fashioned specifically for
10 use in compounding controlled dangerous substances,

11 i. capsules, balloons, envelopes and other containers
12 used, intended for use, or fashioned specifically for
13 use in packaging small quantities of controlled
14 dangerous substances,

15 j. containers and other objects used, intended for use,
16 or fashioned specifically for use in parenterally
17 injecting controlled dangerous substances into the
18 human body,

19 k. hypodermic syringes, needles and other objects used,
20 intended for use, or fashioned specifically for use in
21 parenterally injecting controlled dangerous substances
22 into the human body,

23 l. objects used, intended for use, or fashioned
24 specifically for use in ingesting, inhaling or

otherwise introducing marihuana, cocaine, hashish or hashish oil into the human body, such as:

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

m. all hidden or novelty pipes, and

n. any pipe that has a tobacco bowl or chamber of less than one-half (1/2) inch in diameter in which there is any detectable residue of any controlled dangerous

1 substance as defined in this section or any other
2 substances not legal for possession or use;
3 provided, however, the term "drug paraphernalia" shall not include
4 separation gins intended for use in preparing tea or spice, clamps
5 used for constructing electrical equipment, water pipes designed for
6 ornamentation in which no detectable amount of an illegal substance
7 is found or pipes designed and used solely for smoking tobacco,
8 traditional pipes of an American Indian tribal religious ceremony,
9 or antique pipes that are thirty (30) years of age or older;

10 37. 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,
14 (2) which has a stimulant, depressant, or
15 hallucinogenic effect on the central nervous
16 system that is substantially similar to or
17 greater than the stimulant, depressant or
18 hallucinogenic effect on the central nervous
19 system of a controlled dangerous substance in
20 Schedule I or II, or
21 (3) with respect to a particular person, which such
22 person represents or intends to have a stimulant,
23 depressant, or hallucinogenic effect on the
24 central nervous system that is substantially

1 similar to or greater than the stimulant,
2 depressant, or hallucinogenic effect on the
3 central nervous system of a controlled dangerous
4 substance in Schedule I or II.

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

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

- 11 (1) a controlled dangerous substance,
12 (2) any substance for which there is an approved new
13 drug application,
14 (3) with respect to a particular person any
15 substance, if an exemption is in effect for
16 investigational use, for that person under the
17 provisions of Section 505 of the Federal Food,
18 Drug and Cosmetic Act, Title 21 of the United
19 States Code, Section 355, to the extent conduct
20 with respect to such substance is pursuant to
21 such exemption, or
22 (4) any substance to the extent not intended for
23 human consumption before such an exemption takes
24 effect with respect to that substance.

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

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

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

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

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

22 SECTION 2. AMENDATORY Section 3, Chapter 203, O.S.L.
23 2015 (63 O.S. Supp. 2015, Section 2-801), is amended to read as
24 follows:

1 Section 2-801. As used in this act:

2 1. "Academic medical center" means a medical school and its
3 affiliated teaching hospitals and clinics in this state that:

- 4 a. operate a medical residency program for physicians,
5 and
- 6 b. conduct research that is overseen by the federal
7 Department of Health and Human Services and involves
8 human subjects;

9 2. "Approved source" means a provider approved by the United
10 States Food and Drug Administration which produces cannabidiol that:

- 11 a. has been manufactured and tested in a facility
12 approved or certified by the United States Food and
13 Drug Administration or similar national regulatory
14 agency in another country which has been approved by
15 the United States Food and Drug Administration, and
- 16 b. has been tested on animals to demonstrate preliminary
17 effectiveness and to ensure that it is safe to
18 administer to humans;

19 3. "Cannabidiol" means a nonpsychoactive cannabinoid found in
20 the plant Cannabis sativa L. or any other preparation thereof, that
21 has a tetrahydrocannabinol concentration of not more than three-
22 tenths of one percent (0.3%) and that is delivered to the patient in
23 the form of a liquid;
24

1 4. "Physician" means a doctor of medicine or doctor of
2 osteopathic medicine licensed by the State Board of Medical
3 Licensure and Supervision or the State Board of Osteopathic
4 Examiners; and

5 5. "Qualifying patient" means any person ~~eighteen (18) years of~~
6 ~~age or younger~~ who suffers from Lennox-Gastaut Syndrome, Dravet
7 Syndrome, also known as Severe Myoclonic Epilepsy of Infancy, or any
8 other form of refractory epilepsy that is not adequately treated by
9 traditional medical therapies.

10 SECTION 3. This act shall become effective November 1, 2016.

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