

STATE OF OKLAHOMA

2nd Session of the 56th Legislature (2018)

HOUSE BILL 2735

By: Rosecrants

AS INTRODUCED

An Act relating to public health and safety; amending 63 O.S. 2011, Section 2-101, as last amended by Section 1, Chapter 43, O.S.L. 2017 (63 O.S. Supp. 2017, Section 2-101), which relates to the Uniform Controlled Dangerous Substances Act; modifying scope of certain definition to authorize growth of industrial hemp; 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 1, Chapter 43, O.S.L. 2017 (63 O.S. Supp. 2017, 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 on
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,

- 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 any person participating in a clinical trial to
22 administer cannabidiol for the treatment of severe
23 forms of epilepsy pursuant to Section 2-802 of this
24 title, a drug or substance approved by the federal

Food and Drug Administration for use by those participants,

- f. for any person or the parents, legal guardians or caretakers of the person who have received a written certification from a physician licensed in this state that the person has been diagnosed by a physician as having Lennox-Gastaut Syndrome, Dravet Syndrome, also known as Severe Myoclonic Epilepsy of Infancy, or any other severe form of epilepsy that is not adequately treated by traditional medical therapies, spasticity due to multiple sclerosis or due to paraplegia, intractable nausea and vomiting, appetite stimulation with chronic wasting diseases, the substance cannabidiol, a nonpsychoactive cannabinoid, found in the plant *Cannabis sativa* L. or any other preparation thereof, that has a tetrahydrocannabinol concentration of not more than three-tenths of one percent (0.3%) and that is delivered to the patient in the form of a liquid,
- g. any federal Food and Drug Administration-approved cannabidiol drug or substance, or
- h. industrial hemp, from the plant *Cannabis sativa* L. and any part of such plant, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more

1 than three-tenths of one percent (3/10 of 0.1%) on a
2 dry weight basis which ~~shall not~~ may be grown and
3 cultivated anywhere in the State of Oklahoma ~~but~~;
4 provided, however, the growth and cultivation of
5 industrial hemp may only take place in accordance with
6 an agricultural pilot program established by the State
7 Department of Agriculture for the purpose of studying
8 the growth, cultivation or marketing of industrial
9 hemp and may be shipped to Oklahoma pursuant to the
10 provisions of subparagraph e or f of this paragraph;

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

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

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

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

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

1 Dangerous Substances Act, the dextrorotatory isomer of 3-methoxy-n-
2 methyl-morphinan and its salts (dextromethorphan). It does include
3 its racemic and levorotatory forms;

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

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

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

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

16 32. "Practitioner" means:

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

(8) any other person,
licensed, registered or otherwise permitted to
prescribe, distribute, dispense, conduct research with
respect to, use for scientific purposes or administer
a controlled dangerous substance in the course of
professional practice or research in this state, or
b. a pharmacy, hospital, laboratory or other institution
licensed, registered or otherwise permitted to
distribute, dispense, conduct research with respect
to, use for scientific purposes or administer a
controlled dangerous substance in the course of
professional practice or research in this state;

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

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

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

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

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

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

- e. scales and balances used, intended for use, or fashioned specifically for use in weighing or measuring controlled dangerous substances,
- f. diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, used, intended for use, or fashioned specifically for use in cutting controlled dangerous substances,
- g. separation gins and sifters used, intended for use, or fashioned specifically for use in removing twigs and seeds from, or in otherwise cleaning or refining, marihuana,
- h. blenders, bowls, containers, spoons and mixing devices used, intended for use, or fashioned specifically for use in compounding controlled dangerous substances,
- i. capsules, balloons, envelopes and other containers used, intended for use, or fashioned specifically for use in packaging small quantities of controlled dangerous substances,
- j. containers and other objects used, intended for use, or fashioned specifically for use in parenterally injecting controlled dangerous substances into the human body,

- 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 1. 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 subsections C and F of Section 2-204 of this title and paragraph 4
17 of subsection A of Section 2-206 of this title. As used in
18 subsections C and F of Section 2-204 of this title, "isomer" means
19 the optical, positional or geometric isomer. As used in paragraph 4
20 of subsection A of Section 2-206 of this title, the term "isomer"
21 means 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 cryogenic evaporative behavior and tests positive for ammonia.

5 SECTION 2. This act shall become effective November 1, 2018.

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