

STATE OF OKLAHOMA

1st Session of the 57th Legislature (2019)

SENATE BILL NO. 787

By: Hicks

AS INTRODUCED

An Act relating to controlled dangerous substances; amending 63 O.S. 2011, Section 2-402, as last amended by Section 1, Chapter 220, O.S.L. 2016 (63 O.S. Supp. 2018, Section 2-402), which relates to penalties for prohibited acts; directing certain action by law enforcement officers for certain violations; updating statutory reference; updating statutory language; and providing an effective date.

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

SECTION 1. AMENDATORY 63 O.S. 2011, Section 2-402, as last amended by Section 1, Chapter 220, O.S.L. 2016 (63 O.S. Supp. 2018, Section 2-402), is amended to read as follows:

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

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

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

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

20 B. Any person who violates this section with respect to:

21 1. Any Schedule I or II substance, except marijuana or a
22 substance included in subsection D of Section 2-206 of this title,
23 is guilty of a felony punishable by imprisonment for not more than
24 five (5) years and by a fine not exceeding Five Thousand Dollars

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

12 2. Any Schedule III, IV or V substance, marijuana, 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
24 deferred judgment for a violation of this section, commits a second

1 or subsequent violation of this section shall, upon conviction, be
2 guilty of a felony punishable by imprisonment in the custody of the
3 Department of Corrections for not less than one (1) year nor more
4 than five (5) years and by a fine not exceeding Five Thousand
5 Dollars (\$5,000.00); or

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

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

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

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

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

22 E. Any law enforcement officer who comes in contact with a
23 person in violation of paragraph 2 of subsection B of this section
24 shall take the name, address and any other pertinent information

1 that the officer deems necessary and shall issue to him or her a
2 written citation containing a notice to answer the charge against
3 him or her in the appropriate court within ten (10) calendar days
4 after the alleged violation. The officer, upon receiving the
5 written promise of the alleged violator to answer as specified in
6 the citation, shall release the person and shall not transport the
7 person into custody unless there has violation of another provision
8 of law.

9 SECTION 2. This act shall become effective November 1, 2019.

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