

1 ENGROSSED SENATE
2 BILL NO. 108

By: Bergstrom and Standridge of
the Senate

3 and

4 Ford of the House

5
6 An Act relating to the Uniform Controlled Dangerous
7 Substances Act; amending 63 O.S. 2021, Section 2-402,
8 as amended by Section 3, State Question No. 780,
9 Initiative Petition No. 404, which relates to
10 prohibited acts and penalties; updating statutory
11 reference; providing for misdemeanor upon conviction;
12 authorizing the court to make certain orders under
13 certain circumstances; authorizing certain drug
14 testing requirement; authorizing the court to impose
15 certain punishment; requiring certain felony;
16 requiring certain felony change to a misdemeanor
17 under certain circumstances; prohibiting application
18 of certain provisions for possession of marijuana;
19 and providing an effective date.

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

23 SECTION 1. AMENDATORY 63 O.S. 2021, Section 2-402, as
24 amended by Section 3, State Question No. 780, Initiative Petition
No. 404, 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

1 otherwise authorized by ~~this act~~ Section 2-101 et seq. of this
2 title.

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. 1. Any person who violates this section is guilty of a
23 misdemeanor punishable by confinement for not more than one (1) year
24 and by a fine not exceeding One Thousand Dollars (\$1,000.00).

1 2. Any person who violates this section a second time within
2 ten (10) years, upon conviction, shall be guilty of a misdemeanor.
3 The court may, with the consent of the defendant, order the
4 defendant to complete a substance abuse assessment and evaluation
5 and to complete a diversion program for up to one (1) year following
6 the date of conviction in lieu of other punishments. At the
7 discretion of the court, the diversion program may include drug
8 testing as a requirement. If the defendant refuses or fails to
9 complete the assessment and evaluation or diversion program, the
10 court may impose punishment as provided for in paragraph 1 of this
11 subsection.

12 3. Any person who violates this section a third time within ten
13 (10) years shall, upon conviction, be guilty of a misdemeanor
14 punishable by a fine not exceeding One Thousand Dollars (\$1,000.00),
15 imprisonment in the county jail for a minimum of thirty (30) days,
16 or by both such fine and imprisonment. The court may, with the
17 consent of the defendant, order the defendant to complete a
18 substance abuse assessment and evaluation and to complete a
19 diversion program for up to three (3) years following the date of
20 conviction. At the discretion of the court, the diversion program
21 may include drug testing as a requirement. If the defendant refuses
22 or fails to complete the assessment and evaluation or diversion
23 program, the court may impose punishment as provided for in
24 paragraph 1 of this subsection.

4. a. Any person who violates this section a fourth time
within ten (10) years shall, upon conviction, be
guilty of a felony punishable by a fine not exceeding
Five Thousand Dollars (\$5,000.00), imprisonment in the
custody of the Department of Corrections for not less
than one (1) year nor more than five (5) years, or by
both such fine and imprisonment.

b. Upon a verdict or plea of guilty or upon a plea of nolo contendere, but before a judgment of guilt of a violation of this paragraph, the court may, without entering a judgment of guilt and with the consent of the defendant, defer further proceedings upon the specific conditions prescribed by the court not to exceed a three-year period. The court may, with the consent of the defendant, order the defendant to complete a substance abuse assessment and evaluation and to complete a diversion program for up to three

(3) years.

c. Upon successful completion of the court-ordered substance abuse assessment and evaluation and diversion program ordered by the court within the time prescribed, the felony charge shall be changed to a misdemeanor. If the defendant refuses or fails to complete the assessment and evaluation or diversion

program, the court may impose punishment as provided
for in subparagraph a of this paragraph.

5. The provisions of this subsection shall not apply for violations related to the possession of marijuana.

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

SECTION 2. This act shall become effective November 1, 2023.

Passed the Senate the 22nd day of March, 2023.

Presiding Officer of the Senate

Passed the House of Representatives the ____ day of _____,
2023.

Presiding Officer of the House
of Representatives