

<DateSubmitted>

HOUSE OF REPRESENTATIVES
CONFERENCE COMMITTEE REPORT

Mr. President:
Mr. Speaker:

The Conference Committee, to which was referred

HB1100

By: Mize of the House and Bice of the Senate

Title: Public health and safety; Uniform Controlled Dangerous Substances Act; modifying elements of certain prohibited acts; effective date.

Together with Engrossed Senate Amendments thereto, beg leave to report that we have had the same under consideration and herewith return the same with the following recommendations:

1. That the Senate recede from its amendment; and
2. That the attached Conference Committee Substitute be adopted.

Respectfully submitted,

SENATE CONFEREES

Bice _____

Daniels _____

Jech _____

Coleman _____

Brooks _____

Floyd _____

Shaw _____

Matthews _____

1 STATE OF OKLAHOMA

2 1st Session of the 57th Legislature (2019)

3 CONFERENCE COMMITTEE
4 SUBSTITUTE
5 FOR ENGROSSED
6 HOUSE BILL NO. 1100

By: Mize and Dunnington of the
House

7 and

8 Bice of the Senate

9
10 CONFERENCE COMMITTEE SUBSTITUTE

11 An Act relating to public health and safety; amending
12 63 O.S. 2011, Section 2-401, as last amended by
13 Section 1, Chapter 130, O.S.L. 2018 (63 O.S. Supp.
14 2018, Section 2-401), which relates to the Uniform
15 Controlled Dangerous Substances Act; modifying
16 elements of certain prohibited acts; making certain
17 acts unlawful; providing list of factors necessary to
18 prove intent for certain prohibited act; clarifying
19 penalty provisions for second and subsequent
20 convictions; deleting elements and penalty provisions
21 of certain prohibited act; modifying scope of certain
22 prohibited act; providing an exception; defining
23 term; modifying penalties for certain prohibited act;
24 updating language; deleting certain definition;
updating internal statutory references; and providing
an effective date.

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

1 SECTION 1. AMENDATORY 63 O.S. 2011, Section 2-401, as
2 last amended by Section 1, Chapter 130, O.S.L. 2018 (63 O.S. Supp.
3 2018, Section 2-401), is amended to read as follows:

4 Section 2-401. A. Except as authorized by the Uniform
5 Controlled Dangerous Substances Act, it shall be unlawful for any
6 person:

7 1. To distribute, or dispense, ~~transport with intent to~~
8 ~~distribute or dispense, possess with intent to manufacture,~~
9 ~~distribute, or dispense,~~ a controlled dangerous substance or to
10 solicit the use of or use the services of a person less than
11 eighteen (18) years of age to cultivate, distribute or dispense a
12 controlled dangerous substance;

13 2. To create, or distribute, ~~transport with intent to~~
14 ~~distribute or dispense, or possess with intent to distribute,~~ a
15 counterfeit controlled dangerous substance; ~~or~~

16 3. To distribute any imitation controlled substance as defined
17 by Section 2-101 of this title, except when authorized by the Food
18 and Drug Administration of the United States Department of Health
19 and Human Services;

20 4. To manufacture or distribute any synthetic controlled
21 substance, except when authorized by the Food and Drug
22 Administration of the United States Department of Health and Human
23 Services; or

24

1 5. To transport with intent to distribute or dispense or
2 possess with intent to manufacture, distribute or dispense a
3 controlled dangerous substance, or to transport with intent to
4 distribute or dispense or possess with intent to distribute, a
5 counterfeit controlled dangerous substance, or to possess with
6 intent to distribute a synthetic controlled substance. In order to
7 prove intent to distribute, dispense or manufacture pursuant to the
8 offenses listed in this paragraph, the evidence must include a
9 quantity of a controlled dangerous substance inconsistent with
10 personal use and evidence of intent to distribute which must be
11 sufficient to rule out any reasonable hypothesis other than intent
12 to distribute. Such evidence must include at a minimum at least two
13 of the following factors:

- 14 a. the person possesses the means to weigh a controlled
15 substance,
- 16 b. the person possesses wire or electronic communications
17 or notes indicating drug sales by the person,
- 18 c. the person possesses materials primarily used for
19 separating and packaging controlled substances,
- 20 d. the person is unlawfully in immediate possession or
21 physical control of a firearm at the time of
22 possession of the controlled substance,
- 23 e. the person is unlawfully in immediate possession or
24 physical control of at least two other controlled

1 substances in amounts that are inconsistent with
2 personal use, and

3 f. the person has in his or her immediate possession or
4 physical control cash in excess of Five Hundred
5 Dollars (\$500.00).

6 B. Any person who violates the provisions of subsection A of
7 this section with respect to:

8 1. A substance classified in Schedule I or II, except for
9 marijuana, upon conviction, shall be guilty of ~~transporting or~~
10 ~~possessing with an intent to distribute a controlled dangerous~~
11 ~~substance,~~ a felony, and shall be sentenced to a term of
12 imprisonment in the custody of the Department of Corrections for not
13 more than seven (7) years and a fine of not more than One Hundred
14 Thousand Dollars (\$100,000.00), which shall be in addition to other
15 punishment provided by law and shall not be imposed in lieu of other
16 punishment. A second conviction for the violation of provisions of
17 this paragraph within ten (10) years of the date following the
18 completion of the execution of the prior sentence is a felony
19 punishable by a term of imprisonment in the custody of the
20 Department of Corrections for not more than fourteen (14) years. A
21 third or subsequent conviction for the violation of the provisions
22 of this paragraph within ten (10) years of the date following the
23 completion of the execution of the prior sentences is a felony
24

1 punishable by a term of imprisonment in the custody of the
2 Department of Corrections for not more than twenty (20) years;

3 2. Any other controlled dangerous substance classified in
4 Schedule III, IV, V or marijuana, upon conviction, shall be guilty
5 of a felony and shall be sentenced to a term of imprisonment in the
6 custody of the Department of Corrections for not more than five (5)
7 years and a fine of not more than Twenty Thousand Dollars
8 (\$20,000.00), which shall be in addition to other punishment
9 provided by law and shall not be imposed in lieu of other
10 punishment. A second conviction for the violation of the provisions
11 of this paragraph within ten (10) years of the date following the
12 completion of the execution of the prior sentence is a felony
13 punishable by a term of imprisonment in the custody of the
14 Department of Corrections for not more than ten (10) years. A third
15 or subsequent conviction for the violation of the provisions of this
16 paragraph within ten (10) years of the date following the completion
17 of the execution of the prior sentences is a felony punishable by a
18 term of imprisonment in the custody of the Department of Corrections
19 for not more than fifteen (15) years; or

20 3. An imitation controlled substance as defined by Section 2-
21 101 of this title, upon conviction, shall be guilty of a misdemeanor
22 and shall be sentenced to a term of imprisonment in the county jail
23 for a period of not more than one (1) year and a fine of not more
24 than One Thousand Dollars (\$1,000.00). A person convicted of a

1 second or subsequent violation of the provisions of this paragraph
2 within ten (10) years of the date following the completion of the
3 execution of the prior sentence shall be guilty of a felony and
4 shall be sentenced to a term of imprisonment in the custody of the
5 Department of Corrections for not more than two (2) years and a fine
6 of not more than Five Thousand Dollars (\$5,000.00), which shall be
7 in addition to other punishment provided by law and shall not be
8 imposed in lieu of other punishment.

9 C. 1. ~~Except when authorized by the Food and Drug~~
10 ~~Administration of the United States Department of Health and Human~~
11 ~~Services, it shall be unlawful for any person to manufacture or~~
12 ~~distribute a controlled substance or synthetic controlled substance.~~

13 2. ~~Any person convicted of violating the provisions of~~
14 ~~paragraph 1 of this subsection with respect to distributing a~~
15 ~~controlled substance is guilty of a felony and shall be punished by~~
16 ~~imprisonment in the custody of the Department of Corrections for a~~
17 ~~term not to exceed ten (10) years and a fine of not more than~~
18 ~~Twenty-five Thousand Dollars (\$25,000.00), which shall be in~~
19 ~~addition to other punishment provided by law and shall not be~~
20 ~~imposed in lieu of other punishment.~~

21 3. ~~A second conviction for the violation of the provisions of~~
22 ~~paragraph 1 of this subsection with respect to distributing a~~
23 ~~controlled substance is a felony punishable by imprisonment in the~~
24 ~~custody of the Department of Corrections for a term not less than~~

1 ~~two (2) years nor more than twenty (20) years. A third or~~
2 ~~subsequent conviction for the violation of the provisions of this~~
3 ~~paragraph is a felony punishable by imprisonment in the custody of~~
4 ~~the Department of Corrections for a term not less than ten (10)~~
5 ~~years nor more than life.~~

6 ~~4. Any person convicted of violating the provisions of~~
7 ~~paragraph 1 of this subsection with respect to manufacturing a~~
8 ~~controlled substance is guilty of a felony and shall be punished by~~
9 ~~imprisonment in the custody of the Department of Corrections for a~~
10 ~~term not to exceed ten (10) years and a fine of not more than~~
11 ~~Twenty five Thousand Dollars (\$25,000.00), which shall be in~~
12 ~~addition to other punishment provided by law and shall not be~~
13 ~~imposed in lieu of other punishment.~~

14 ~~5. A second conviction for the violation of the provisions of~~
15 ~~paragraph 1 of this subsection with respect to manufacturing a~~
16 ~~controlled substance is a felony punishable by imprisonment in the~~
17 ~~custody of the Department of Corrections for a term not less than~~
18 ~~two (2) years nor more than twenty (20) years. A third or~~
19 ~~subsequent conviction for the violation of the provisions of this~~
20 ~~paragraph is a felony punishable by imprisonment in the custody of~~
21 ~~the Department of Corrections for a term not less than ten (10)~~
22 ~~years nor more than life.~~

23 ~~D.~~ Convictions for violations of the provisions of this section
24 shall be subject to the statutory provisions for suspended or

1 deferred sentences, or probation as provided in Section 991a of
2 Title 22 of the Oklahoma Statutes.

3 ~~E.~~ D. Any person who is at least eighteen (18) years of age and
4 who violates the provisions of this section by using or soliciting
5 the use of services of a person less than eighteen (18) years of age
6 to distribute, dispense, transport with intent to distribute or
7 dispense or cultivate a controlled dangerous substance or by
8 distributing a controlled dangerous substance to a person under
9 eighteen (18) years of age, or in the presence of a person under
10 twelve (12) years of age, is punishable by:

11 1. For a first violation of this ~~section~~ subsection, a term of
12 imprisonment in the custody of the Department of Corrections for not
13 less than two (2) years nor more than ten (10) years;

14 2. For a second violation of this ~~section~~ subsection within ten
15 (10) years of the date following the completion of the execution of
16 the prior sentence, a term of imprisonment in the custody of the
17 Department of Corrections for not less than four (4) years nor more
18 than twenty (20) years; or

19 3. For a third or subsequent violation of this ~~section~~
20 subsection within ten (10) years of the date following the
21 completion of the execution of the prior sentences, a term of
22 imprisonment in the custody of the Department of Corrections for not
23 less than ten (10) years nor more than life.

24

1 ~~F.~~ E. Any person who violates any provision of this section by
2 transporting with intent to distribute or dispense, distributing or
3 possessing with intent to distribute a controlled dangerous
4 substance to a person, or violation of subsection ~~G~~ F of this
5 section, in or on, or within two thousand (2,000) feet of the real
6 property comprising a public or private elementary or secondary
7 school, public vocational school, public or private college or
8 university, or other institution of higher education, recreation
9 center or public park, including state parks and recreation areas,
10 ~~public housing project,~~ or child care facility as defined by Section
11 402 of Title 10 of the Oklahoma Statutes, during hours of operation
12 of the aforementioned locations, shall be punished by:

13 1. For a first offense, a term of imprisonment in the custody
14 of the Department of Corrections, or by the imposition of a fine or
15 by both, not exceeding twice that authorized by the appropriate
16 provision of this section; or

17 2. For a second or subsequent violation of this ~~section~~
18 subsection within ten (10) years of the date following the
19 completion of the execution of the prior sentence, a term of
20 imprisonment in the custody of the Department of Corrections, or by
21 the imposition of a fine or by both, not exceeding thrice that
22 authorized by the appropriate provision of this section.

23 Convictions for second and subsequent violations of the provisions
24

1 of this section shall not be subject to statutory provisions of
2 suspended sentences, deferred sentences or probation.

3 For purposes of this subsection, median strips or the green
4 space dividing roads, streets and highways shall not be considered a
5 portion of the public park.

6 As used in this subsection, "hours of operation" shall include
7 all extracurricular activities sanctioned or authorized by the
8 public or private elementary or secondary school or public
9 vocational school.

10 ~~G.~~ F. 1. Except as authorized by the Uniform Controlled
11 Dangerous Substances Act, it shall be unlawful for any person to
12 manufacture or attempt to manufacture any controlled dangerous
13 substance or possess any substance listed in Section 2-322 of this
14 title or any substance containing any detectable amount of
15 pseudoephedrine or its salts, optical isomers or salts of optical
16 isomers, iodine or its salts, optical isomers or salts of optical
17 isomers, hydriodic acid, sodium metal, lithium metal, anhydrous
18 ammonia, phosphorus, or organic solvents with the intent to use that
19 substance to manufacture a controlled dangerous substance.

20 2. Any person violating the provisions of this subsection with
21 respect to the unlawful manufacturing or attempting to unlawfully
22 manufacture any controlled dangerous substance, except for
23 marijuana, or possessing any substance listed in this subsection or
24 Section 2-322 of this title, upon conviction, is guilty of a felony

1 and shall be punished by imprisonment in the custody of the
2 Department of Corrections for not ~~less than seven (7)~~ more than ten
3 (10) years ~~nor more than life~~ and by a fine of not ~~less than Fifty~~
4 ~~Thousand Dollars (\$50,000.00)~~ more than Twenty-five Thousand Dollars
5 (\$25,000.00), which shall be in addition to other punishment
6 provided by law and shall not be imposed in lieu of other
7 punishment. The possession of any amount of anhydrous ammonia in an
8 unauthorized container shall be prima facie evidence of intent to
9 use such substance to manufacture a controlled dangerous substance.
10 A second violation of this subsection within ten (10) years of the
11 date following the completion of the execution of the prior
12 sentences is punishable by a term of imprisonment in the custody of
13 the Department of Corrections for a term of not more than fifteen
14 (15) years. A third or subsequent violation of this subsection
15 within ten (10) years of the date following the completion of the
16 execution of the prior sentences is punishable by a term of
17 imprisonment in the custody of the Department of Corrections for a
18 term of not more than twenty (20) years.

19 3. Any person violating the provisions of this subsection with
20 respect to the unlawful manufacturing or attempting to unlawfully
21 manufacture any controlled dangerous substance in the following
22 amounts:

23 a. one (1) kilogram or more of a mixture or substance
24 containing a detectable amount of heroin,

1 b. five (5) kilograms or more of a mixture or substance
2 containing a detectable amount of:

3 (1) coca leaves, except coca leaves and extracts of
4 coca leaves from which cocaine, ecgonine, and
5 derivatives of ecgonine or their salts have been
6 removed,

7 (2) cocaine, its salts, optical and geometric
8 isomers, and salts of isomers,

9 (3) ecgonine, its derivatives, their salts, isomers,
10 and salts of isomers, or

11 (4) any compound, mixture, or preparation which
12 contains any quantity of any of the substances
13 referred to in divisions (1) through (3) of this
14 subparagraph,

15 c. fifty (50) grams or more of a mixture or substance
16 described in division (2) of subparagraph b of this
17 paragraph which contains cocaine base,

18 d. one hundred (100) grams or more of phencyclidine (PCP)
19 or one (1) kilogram or more of a mixture or substance
20 containing a detectable amount of phencyclidine (PCP),

21 e. ten (10) grams or more of a mixture or substance
22 containing a detectable amount of lysergic acid
23 diethylamide (LSD),
24

1 f. four hundred (400) grams or more of a mixture or
2 substance containing a detectable amount of N-phenyl-
3 N-[1-(2-phenylethyl)-4-piperidinyl] propanamide or one
4 hundred (100) grams or more of a mixture or substance
5 containing a detectable amount of any analogue of N-
6 phenyl-N-[1-(2-phenylethyl)-4-piperidinyl]
7 propanamide,

8 g. one thousand (1,000) kilograms or more of a mixture or
9 substance containing a detectable amount of ~~marihuana~~
10 marijuana or one thousand ~~(1000)~~ or more ~~marihuana~~
11 marijuana plants regardless of weight, or

12 h. fifty (50) grams or more of methamphetamine, its
13 salts, isomers, and salts of its isomers or five
14 hundred (500) grams or more of a mixture or substance
15 containing a detectable amount of methamphetamine, its
16 salts, isomers, or salts of its isomers,

17 upon conviction, is guilty of aggravated manufacturing a controlled
18 dangerous substance punishable by imprisonment for not less than
19 twenty (20) years nor more than life and by a fine of not less than
20 Fifty Thousand Dollars (\$50,000.00), which shall be in addition to
21 other punishment provided by law and shall not be imposed in lieu of
22 other punishment. Any person convicted of a violation of the
23 provisions of this paragraph shall be required to serve a minimum of
24 eighty-five percent (85%) of the sentence received prior to becoming

1 eligible for state correctional earned credits towards the
2 completion of the sentence or eligible for parole.

3 4. Any sentence to the custody of the Department of Corrections
4 for any violation of paragraph 3 of this subsection shall not be
5 subject to statutory provisions for suspended sentences, deferred
6 sentences, or probation. A person convicted of a second or
7 subsequent violation of the provisions of paragraph 3 of this
8 subsection shall be punished as a habitual offender pursuant to
9 Section 51.1 of Title 21 of the Oklahoma Statutes and shall be
10 required to serve a minimum of eighty-five percent (85%) of the
11 sentence received prior to becoming eligible for state correctional
12 earned credits or eligibility for parole.

13 5. Any person who has been convicted of manufacturing or
14 attempting to manufacture methamphetamine pursuant to the provisions
15 of this subsection and who, after such conviction, purchases or
16 attempts to purchase, receive or otherwise acquire any product,
17 mixture, or preparation containing any detectable quantity of base
18 pseudoephedrine or ephedrine shall, upon conviction, be guilty of a
19 felony punishable by imprisonment in the custody of the Department
20 of Corrections for a term in the range of twice the minimum term
21 provided for in paragraph 2 of this subsection.

22 H. G. Any person convicted of any offense described in the
23 Uniform Controlled Dangerous Substances Act may, in addition to the
24 fine imposed, be assessed an amount not to exceed ten percent (10%)

1 of the fine imposed. Such assessment shall be paid into a revolving
2 fund for enforcement of controlled dangerous substances created
3 pursuant to Section 2-506 of this title.

4 ~~I.~~ H. Any person convicted of any offense described in this
5 section shall, in addition to any fine imposed, pay a special
6 assessment trauma-care fee of One Hundred Dollars (\$100.00) to be
7 deposited into the Trauma Care Assistance Revolving Fund created in
8 Section ~~1-2522~~ 1-2530.9 of this title.

9 ~~J.~~ ~~For purposes of this section, "public housing project" means~~
10 ~~any dwelling or accommodations operated as a state or federally~~
11 ~~subsidized multifamily housing project by any housing authority,~~
12 ~~nonprofit corporation or municipal developer or housing projects~~
13 ~~created pursuant to the Oklahoma Housing Authorities Act.~~

14 ~~K.~~ I. When a person is found guilty of a violation of the
15 provisions of this section, the court shall order, in addition to
16 any other penalty, the defendant to pay a one-hundred-dollar
17 assessment to be deposited in the Drug Abuse Education and Treatment
18 Revolving Fund created in Section 2-503.2 of this title, upon
19 collection.

20 ~~L.~~ J. Any person convicted of a second or subsequent felony
21 violation of the provisions of this section, except for paragraphs 1
22 ~~and, 2 and 3~~ of subsection B of this section, ~~paragraphs 2, 3, 4 and~~
23 ~~5 of subsection C of this section,~~ paragraphs 1, ~~2,~~ and 3 of
24 subsection ~~E~~ D of this section ~~and,~~ paragraphs 1 and 2 of subsection

1 ~~F~~ E of this section and paragraph 2 of subsection F of this section,
2 shall be punished as a habitual offender pursuant to Section 51.1 of
3 Title 21 of the Oklahoma Statutes.

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

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6 57-1-8939 GRS 05/13/19
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