

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 59th Legislature (2023)

4 ENGROSSED SENATE

5 BILL NO. 108

By: Bergstrom and Standridge of
the Senate

6 and

7 Ford of the House

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

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

19 SECTION 1. AMENDATORY 63 O.S. 2021, Section 2-402, as
20 amended by Section 3, State Question No. 780, Initiative Petition
21 No. 404, is amended to read as follows:

22 Section 2-402. A. 1. It shall be unlawful for any person
23 knowingly or intentionally to possess a controlled dangerous
24 substance unless such substance was obtained directly, or pursuant

1 to a valid prescription or order from a practitioner, while acting
2 in the course of his or her professional practice, or except as
3 otherwise authorized by ~~this act~~ Section 2-101 et seq. of this
4 title.

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

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

- 19 a. the packaging of the product,
20 b. the name of the product, and
21 c. the distribution and promotion of the product,
22 including verbal representations made at the point of
23 sale.
24

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

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

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

1 or fails to complete the assessment and evaluation or diversion
2 program, the court may impose punishment as provided for in
3 paragraph 1 of this subsection.

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

11 b. Upon a verdict or plea of guilty or upon a plea of
12 nolo contendere, but before a judgment of guilt of a
13 violation of this paragraph, the court may, without
14 entering a judgment of guilt and with the consent of
15 the defendant, defer further proceedings upon the
16 specific conditions prescribed by the court not to
17 exceed a three-year period. The court may, with the
18 consent of the defendant, order the defendant to
19 complete a substance abuse assessment and evaluation
20 and to complete a diversion program for up to three
21 (3) years.

22 c. Upon successful completion of the court-ordered
23 substance abuse assessment and evaluation and
24 diversion program ordered by the court within the time

1 prescribed, the felony charge shall be changed to a
2 misdemeanor. If the defendant refuses or fails to
3 complete the assessment and evaluation or diversion
4 program, the court may impose punishment as provided
5 for in subparagraph a of this paragraph.

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

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

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

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15 COMMITTEE REPORT BY: COMMITTEE ON PUBLIC SAFETY, dated 04/11/2023 -
16 DO PASS.
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