

1 STATE OF OKLAHOMA

2 2nd Session of the 55th Legislature (2016)

3 SENATE BILL 1168

By: Holt

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5
6 AS INTRODUCED

7 An Act relating to controlled substances; amending 63
8 O.S. 2011, Section 2-101, as last amended by Section
9 2, Chapter 203, O.S.L. 2015 (63 O.S. Supp. 2015,
10 Section 2-101), which relates to definitions; adding
11 definition; and providing an effective date.

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

13 SECTION 1. AMENDATORY 63 O.S. 2011, Section 2-101, as
14 last amended by Section 2, Chapter 203, O.S.L. 2015 (63 O.S. Supp.
15 2015, Section 2-101), is amended to read as follows:

16 Section 2-101. As used in the Uniform Controlled Dangerous
17 Substances Act:

18 1. "Administer" means the direct application of a controlled
19 dangerous substance, whether by injection, inhalation, ingestion or
20 any other means, to the body of a patient, animal or research
21 subject by:

- 22 a. a practitioner (or, in the presence of the
23 practitioner, by the authorized agent of the
24 practitioner), or

1 b. the patient or research subject at the direction and
2 in the presence of the practitioner;

3 2. "Agent" means a peace officer appointed by and who acts in
4 behalf of the Director of the Oklahoma State Bureau of Narcotics and
5 Dangerous Drugs Control or an authorized person who acts on behalf
6 of or at the direction of a person who manufactures, distributes,
7 dispenses, prescribes, administers or uses for scientific purposes
8 controlled dangerous substances but does not include a common or
9 contract carrier, public warehouser or employee thereof, or a person
10 required to register under the Uniform Controlled Dangerous
11 Substances Act;

12 3. "Board" means the Advisory Board to the Director of the
13 Oklahoma State Bureau of Narcotics and Dangerous Drugs Control;

14 4. "Bureau" means the Oklahoma State Bureau of Narcotics and
15 Dangerous Drugs Control;

16 5. "Coca leaves" includes cocaine and any compound,
17 manufacture, salt, derivative, mixture or preparation of coca
18 leaves, except derivatives of coca leaves which do not contain
19 cocaine or ecgonine;

20 6. "Commissioner" or "Director" means the Director of the
21 Oklahoma State Bureau of Narcotics and Dangerous Drugs Control;

22 7. "Control" means to add, remove or change the placement of a
23 drug, substance or immediate precursor under the Uniform Controlled
24 Dangerous Substances Act;

1 8. "Controlled dangerous substance" means a drug, substance or
2 immediate precursor in Schedules I through V of the Uniform
3 Controlled Dangerous Substances Act or any drug, substance or
4 immediate precursor listed either temporarily or permanently as a
5 federally controlled substance. Any conflict between state and
6 federal law with regard to the particular schedule in which a
7 substance is listed shall be resolved in favor of state law;

8 9. "Counterfeit substance" means a controlled substance which,
9 or the container or labeling of which without authorization, bears
10 the trademark, trade name or other identifying marks, imprint,
11 number or device or any likeness thereof of a manufacturer,
12 distributor or dispenser other than the person who in fact
13 manufactured, distributed or dispensed the substance;

14 10. "Deliver" or "delivery" means the actual, constructive or
15 attempted transfer from one person to another of a controlled
16 dangerous substance or drug paraphernalia, whether or not there is
17 an agency relationship;

18 11. "Dispense" means to deliver a controlled dangerous
19 substance to an ultimate user or human research subject by or
20 pursuant to the lawful order of a practitioner, including the
21 prescribing, administering, packaging, labeling or compounding
22 necessary to prepare the substance for such distribution.

23 "Dispenser" is a practitioner who delivers a controlled dangerous
24 substance to an ultimate user or human research subject;

1 12. "Distribute" means to deliver other than by administering
2 or dispensing a controlled dangerous substance;

3 13. "Distributor" means a commercial entity engaged in the
4 distribution or reverse distribution of narcotics and dangerous
5 drugs and who complies with all regulations promulgated by the
6 federal Drug Enforcement Administration and the Oklahoma State
7 Bureau of Narcotics and Dangerous Drugs Control;

8 14. "Drug" means articles:

9 a. recognized in the official United States

10 Pharmacopoeia, official Homeopathic Pharmacopoeia of
11 the United States, or official National Formulary, or
12 any supplement to any of them,

13 b. intended for use in the diagnosis, cure, mitigation,
14 treatment or prevention of disease in man or other
15 animals,

16 c. other than food, intended to affect the structure or
17 any function of the body of man or other animals, and

18 d. intended for use as a component of any article
19 specified in this paragraph;

20 provided, however, the term "drug" does not include devices or their
21 components, parts or accessories;

22 15. "Drug-dependent person" means a person who is using a
23 controlled dangerous substance and who is in a state of psychic or
24 physical dependence, or both, arising from administration of that

1 controlled dangerous substance on a continuous basis. Drug
2 dependence is characterized by behavioral and other responses which
3 include a strong compulsion to take the substance on a continuous
4 basis in order to experience its psychic effects, or to avoid the
5 discomfort of its absence;

6 16. "Home care agency" means any sole proprietorship,
7 partnership, association, corporation, or other organization which
8 administers, offers, or provides home care services, for a fee or
9 pursuant to a contract for such services, to clients in their place
10 of residence;

11 17. "Home care services" means skilled or personal care
12 services provided to clients in their place of residence for a fee;

13 18. "Hospice" means a centrally administered, nonprofit or
14 profit, medically directed, nurse-coordinated program which provides
15 a continuum of home and inpatient care for the terminally ill
16 patient and the patient's family. Such term shall also include a
17 centrally administered, nonprofit or profit, medically directed,
18 nurse-coordinated program if such program is licensed pursuant to
19 the provisions of this act. A hospice program offers palliative and
20 supportive care to meet the special needs arising out of the
21 physical, emotional and spiritual stresses which are experienced
22 during the final stages of illness and during dying and bereavement.
23 This care is available twenty-four (24) hours a day, seven (7) days
24 a week, and is provided on the basis of need, regardless of ability

1 to pay. "Class A" Hospice refers to Medicare certified hospices.
2 "Class B" refers to all other providers of hospice services;

3 19. "Imitation controlled substance" means a substance that is
4 not a controlled dangerous substance, which by dosage unit
5 appearance, color, shape, size, markings or by representations made,
6 would lead a reasonable person to believe that the substance is a
7 controlled dangerous substance. In the event the appearance of the
8 dosage unit is not reasonably sufficient to establish that the
9 substance is an "imitation controlled substance", the court or
10 authority concerned should consider, in addition to all other
11 factors, the following factors as related to "representations made"
12 in determining whether the substance is an "imitation controlled
13 substance":

- 14 a. statements made by an owner or by any other person in
15 control of the substance concerning the nature of the
16 substance, or its use or effect,
- 17 b. statements made to the recipient that the substance
18 may be resold for inordinate profit,
- 19 c. whether the substance is packaged in a manner normally
20 used for illicit controlled substances,
- 21 d. evasive tactics or actions utilized by the owner or
22 person in control of the substance to avoid detection
23 by law enforcement authorities,

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- 1 e. prior convictions, if any, of an owner, or any other
2 person in control of the object, under state or
3 federal law related to controlled substances or fraud,
4 and
5 f. the proximity of the substances to controlled
6 dangerous substances;

7 20. "Immediate precursor" means a substance which the Director
8 has found to be and by regulation designates as being the principal
9 compound commonly used or produced primarily for use, and which is
10 an immediate chemical intermediary used, or likely to be used, in
11 the manufacture of a controlled dangerous substance, the control of
12 which is necessary to prevent, curtail or limit such manufacture;

13 21. "Laboratory" means a laboratory approved by the Director as
14 proper to be entrusted with the custody of controlled dangerous
15 substances and the use of controlled dangerous substances for
16 scientific and medical purposes and for purposes of instruction;

17 22. "Manufacture" means the production, preparation,
18 propagation, compounding or processing of a controlled dangerous
19 substance, either directly or indirectly by extraction from
20 substances of natural or synthetic origin, or independently by means
21 of chemical synthesis or by a combination of extraction and chemical
22 synthesis. "Manufacturer" includes any person who packages,
23 repackages or labels any container of any controlled dangerous
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1 substance, except practitioners who dispense or compound
2 prescription orders for delivery to the ultimate consumer;

3 23. "Marihuana" means all parts of the plant *Cannabis sativa*
4 *L.*, whether growing or not; the seeds thereof; the resin extracted
5 from any part of such plant; and every compound, manufacture, salt,
6 derivative, mixture or preparation of such plant, its seeds or
7 resin, but shall not include:

- 8 a. the mature stalks of such plant or fiber produced from
9 such stalks,
- 10 b. oil or cake made from the seeds of such plant,
11 including cannabidiol derived from the seeds of the
12 marihuana plant,
- 13 c. any other compound, manufacture, salt, derivative,
14 mixture or preparation of such mature stalks (except
15 the resin extracted therefrom), including cannabidiol
16 derived from mature stalks, fiber, oil or cake,
- 17 d. the sterilized seed of such plant which is incapable
18 of germination,
- 19 e. for persons eighteen (18) years of age or younger
20 participating in a clinical trial to administering
21 cannabidiol for the treatment of severe forms of
22 epilepsy pursuant to Section 4 of this act, a drug or
23 substance approved by the federal Food and Drug
24 Administration for use by those participants,

- 1 f. for persons eighteen (18) years of age or younger, or
2 the parents, legal guardians, or caretakers of the
3 person, who have received a written certification from
4 a physician licensed in this state that the person has
5 been diagnosed by a physician as having Lennox-Gastaut
6 Syndrome, Dravet Syndrome, also known as Severe
7 Myoclonic Epilepsy of Infancy, or any other severe
8 form of epilepsy that is not adequately treated by
9 traditional medical therapies, the substance
10 cannabidiol, a nonpsychoactive cannabinoid, found in
11 the plant Cannabis sativa L. or any other preparation
12 thereof, that has a tetrahydrocannabinol concentration
13 of not more than three-tenths of one percent (0.3%)
14 and that is delivered to the patient in the form of a
15 liquid, or
- 16 g. industrial hemp, from the plant Cannabis sativa L. and
17 any part of such plant, whether growing or not, with a
18 delta-9 tetrahydrocannabinol concentration of not more
19 than three-tenths of one percent (0.3%) on a dry
20 weight basis which shall not be grown anywhere in the
21 State of Oklahoma but may be shipped to Oklahoma
22 pursuant to the provisions of subparagraph e or f of
23 this paragraph;
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1 24. "Medical purpose" means an intention to utilize a
2 controlled dangerous substance for physical or mental treatment, for
3 diagnosis, or for the prevention of a disease condition not in
4 violation of any state or federal law and not for the purpose of
5 satisfying physiological or psychological dependence or other abuse;

6 25. "Mid-level practitioner" means an advanced practice nurse
7 as defined and within parameters specified in Section 567.3a of
8 Title 59 of the Oklahoma Statutes, or a certified animal euthanasia
9 technician as defined in Section 698.2 of Title 59 of the Oklahoma
10 Statutes, or an animal control officer registered by the Oklahoma
11 State Bureau of Narcotics and Dangerous Drugs Control under
12 subsection B of Section 2-301 of this title within the parameters of
13 such officer's duty under Sections 501 through 508 of Title 4 of the
14 Oklahoma Statutes;

15 26. "Narcotic drug" means any of the following, whether
16 produced directly or indirectly by extraction from substances of
17 vegetable origin, or independently by means of chemical synthesis,
18 or by a combination of extraction and chemical synthesis:

- 19 a. opium, coca leaves and opiates,
- 20 b. a compound, manufacture, salt, derivative or
21 preparation of opium, coca leaves or opiates,
- 22 c. cocaine, its salts, optical and geometric isomers, and
23 salts of isomers,

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- 1 d. ecgonine, its derivatives, their salts, isomers and
2 salts of isomers, and
- 3 e. a substance, and any compound, manufacture, salt,
4 derivative or preparation thereof, which is chemically
5 identical with any of the substances referred to in
6 subparagraphs a through d of this paragraph, except
7 that the words "narcotic drug" as used in Section 2-
8 101 et seq. of this title shall not include
9 decocainized coca leaves or extracts of coca leaves,
10 which extracts do not contain cocaine or ecgonine;

11 27. "Opiate" means any substance having an addiction-forming or
12 addiction-sustaining liability similar to morphine or being capable
13 of conversion into a drug having such addiction-forming or
14 addiction-sustaining liability. It does not include, unless
15 specifically designated as controlled under the Uniform Controlled
16 Dangerous Substances Act, the dextrorotatory isomer of 3-methoxy-n-
17 methyl-morphinan and its salts (dextromethorphan). It does include
18 its racemic and levorotatory forms;

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

21 29. "Peace officer" means a police officer, sheriff, deputy
22 sheriff, district attorney's investigator, investigator from the
23 Office of the Attorney General, or any other person elected or
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1 appointed by law to enforce any of the criminal laws of this state
2 or of the United States;

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

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

8 32. "Practitioner" means:

- 9 a. (1) a medical doctor or osteopathic physician,
10 (2) a dentist,
11 (3) a podiatrist,
12 (4) an optometrist,
13 (5) a veterinarian,
14 (6) a physician assistant under the supervision of a
15 licensed medical doctor or osteopathic physician,
16 (7) a scientific investigator, or
17 (8) any other person,
18 licensed, registered or otherwise permitted to
19 prescribe, distribute, dispense, conduct research with
20 respect to, use for scientific purposes or administer
21 a controlled dangerous substance in the course of
22 professional practice or research in this state, or
23 b. a pharmacy, hospital, laboratory or other institution
24 licensed, registered or otherwise permitted to

1 distribute, dispense, conduct research with respect
2 to, use for scientific purposes or administer a
3 controlled dangerous substance in the course of
4 professional practice or research in this state;

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

8 34. "Recovery and recovery support" shall have the same meaning
9 provided by Section 1-103 of Title 43A of the Oklahoma Statutes;

10 ~~34.~~ 35. "State" means the State of Oklahoma or any other state
11 of the United States;

12 ~~35.~~ 36. "Ultimate user" means a person who lawfully possesses a
13 controlled dangerous substance for the person's own use or for the
14 use of a member of the person's household or for administration to
15 an animal owned by the person or by a member of the person's
16 household;

17 ~~36.~~ 37. "Drug paraphernalia" means all equipment, products and
18 materials of any kind which are used, intended for use, or fashioned
19 specifically for use in planting, propagating, cultivating, growing,
20 harvesting, manufacturing, compounding, converting, producing,
21 processing, preparing, testing, analyzing, packaging, repackaging,
22 storing, containing, concealing, injecting, ingesting, inhaling or
23 otherwise introducing into the human body, a controlled dangerous
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1 substance in violation of the Uniform Controlled Dangerous
2 Substances Act including, but not limited to:

- 3 a. kits used, intended for use, or fashioned specifically
4 for use in planting, propagating, cultivating, growing
5 or harvesting of any species of plant which is a
6 controlled dangerous substance or from which a
7 controlled dangerous substance can be derived,
- 8 b. kits used, intended for use, or fashioned specifically
9 for use in manufacturing, compounding, converting,
10 producing, processing or preparing controlled
11 dangerous substances,
- 12 c. isomerization devices used, intended for use, or
13 fashioned specifically for use in increasing the
14 potency of any species of plant which is a controlled
15 dangerous substance,
- 16 d. testing equipment used, intended for use, or fashioned
17 specifically for use in identifying, or in analyzing
18 the strength, effectiveness or purity of controlled
19 dangerous substances,
- 20 e. scales and balances used, intended for use, or
21 fashioned specifically for use in weighing or
22 measuring controlled dangerous substances,
- 23 f. diluents and adulterants, such as quinine
24 hydrochloride, mannitol, mannite, dextrose and

1 lactose, used, intended for use, or fashioned
2 specifically for use in cutting controlled dangerous
3 substances,

4 g. separation gins and sifters used, intended for use, or
5 fashioned specifically for use in removing twigs and
6 seeds from, or in otherwise cleaning or refining,
7 marihuana,

8 h. blenders, bowls, containers, spoons and mixing devices
9 used, intended for use, or fashioned specifically for
10 use in compounding controlled dangerous substances,

11 i. capsules, balloons, envelopes and other containers
12 used, intended for use, or fashioned specifically for
13 use in packaging small quantities of controlled
14 dangerous substances,

15 j. containers and other objects used, intended for use,
16 or fashioned specifically for use in parenterally
17 injecting controlled dangerous substances into the
18 human body,

19 k. hypodermic syringes, needles and other objects used,
20 intended for use, or fashioned specifically for use in
21 parenterally injecting controlled dangerous substances
22 into the human body,

23 l. objects used, intended for use, or fashioned
24 specifically for use in ingesting, inhaling or

1 otherwise introducing marihuana, cocaine, hashish or
2 hashish oil into the human body, such as:

3 (1) metal, wooden, acrylic, glass, stone, plastic or
4 ceramic pipes with or without screens, permanent
5 screens, hashish heads or punctured metal bowls,

6 (2) water pipes,

7 (3) carburetion tubes and devices,

8 (4) smoking and carburetion masks,

9 (5) roach clips, meaning objects used to hold burning
10 material, such as a marihuana cigarette, that has
11 become too small or too short to be held in the
12 hand,

13 (6) miniature cocaine spoons and cocaine vials,

14 (7) chamber pipes,

15 (8) carburetor pipes,

16 (9) electric pipes,

17 (10) air-driven pipes,

18 (11) chillums,

19 (12) bonges, or

20 (13) ice pipes or chillers,

21 m. all hidden or novelty pipes, and

22 n. any pipe that has a tobacco bowl or chamber of less
23 than one-half (1/2) inch in diameter in which there is
24 any detectable residue of any controlled dangerous

1 substance as defined in this section or any other
2 substances not legal for possession or use;
3 provided, however, the term "drug paraphernalia" shall not include
4 separation gins intended for use in preparing tea or spice, clamps
5 used for constructing electrical equipment, water pipes designed for
6 ornamentation in which no detectable amount of an illegal substance
7 is found or pipes designed and used solely for smoking tobacco,
8 traditional pipes of an American Indian tribal religious ceremony,
9 or antique pipes that are thirty (30) years of age or older;

10 ~~37.~~

11 38. a. "Synthetic controlled substance" means a substance:

- 12 (1) the chemical structure of which is substantially
13 similar to the chemical structure of a controlled
14 dangerous substance in Schedule I or II,
15 (2) which has a stimulant, depressant, or
16 hallucinogenic effect on the central nervous
17 system that is substantially similar to or
18 greater than the stimulant, depressant or
19 hallucinogenic effect on the central nervous
20 system of a controlled dangerous substance in
21 Schedule I or II, or
22 (3) with respect to a particular person, which such
23 person represents or intends to have a stimulant,
24 depressant, or hallucinogenic effect on the

1 central nervous system that is substantially
2 similar to or greater than the stimulant,
3 depressant, or hallucinogenic effect on the
4 central nervous system of a controlled dangerous
5 substance in Schedule I or II.

6 b. The designation of gamma butyrolactone or any other
7 chemical as a precursor, pursuant to Section 2-322 of
8 this title, does not preclude a finding pursuant to
9 subparagraph a of this paragraph that the chemical is
10 a synthetic controlled substance.

11 c. "Synthetic controlled substance" does not include:

- 12 (1) a controlled dangerous substance,
13 (2) any substance for which there is an approved new
14 drug application,
15 (3) with respect to a particular person any
16 substance, if an exemption is in effect for
17 investigational use, for that person under the
18 provisions of Section 505 of the Federal Food,
19 Drug and Cosmetic Act, Title 21 of the United
20 States Code, Section 355, to the extent conduct
21 with respect to such substance is pursuant to
22 such exemption, or
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1 (4) any substance to the extent not intended for
2 human consumption before such an exemption takes
3 effect with respect to that substance.

4 d. Prima facie evidence that a substance containing
5 salvia divinorum has been enhanced, concentrated or
6 chemically or physically altered shall give rise to a
7 rebuttable presumption that the substance is a
8 synthetic controlled substance;

9 ~~38.~~ 39. "Tetrahydrocannabinols" means all substances that have
10 been chemically synthesized to emulate the tetrahydrocannabinols of
11 marihuana;

12 ~~39.~~ 40. "Isomer" means the optical isomer, except as used in
13 subsections C and F of Section 2-204 of this title and paragraph 4
14 of subsection A of Section 2-206 of this title. As used in
15 subsections C and F of Section 2-204 of this title, "isomer" means
16 the optical, positional or geometric isomer. As used in paragraph 4
17 of subsection A of Section 2-206 of this title, the term "isomer"
18 means the optical or geometric isomer;

19 ~~40.~~ 41. "Hazardous materials" means materials, whether solid,
20 liquid or gas, which are toxic to human, animal, aquatic or plant
21 life, and the disposal of which materials is controlled by state or
22 federal guidelines; and

23 ~~41.~~ 42. "Anhydrous ammonia" means any substance that exhibits
24 cryogenic evaporative behavior and tests positive for ammonia.

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SECTION 2. This act shall become effective November 1, 2016.

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