

1 STATE OF OKLAHOMA

2 1st Session of the 56th Legislature (2017)

3 SENATE BILL 256

By: Bergstrom

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5
6 AS INTRODUCED

7 An Act relating to crime and punishment; amending 63
8 O.S. 2011, Section 2-402, as last amended by State
9 Question No. 780, Initiative Petition No. 404,
10 Section 3, and as adopted November 8, 2016, which
11 relates to prohibited acts and penalties; making
12 certain offenses a felony; prescribing penalties;
13 making certain possession a felony; directing
14 jurisdiction; ordering certain assessment program;
15 directing certain repayment; stating certain
16 preclusions; providing an effective date; and
17 declaring an emergency.

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

19 SECTION 1. AMENDATORY 63 O.S. 2011, Section 2-402, as
20 last amended by State Question 780, Initiative Petition No. 404,
21 Section 3, and as adopted November 8, 2016, is amended to read as
22 follows:

23 Section 2-402. A. 1. It shall be unlawful for any person
24 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. 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 C. 1. Any person who violates this section with respect to any
2 Schedule I or II substance, except marijuana or a substance included
3 in subsection D of Section 2-206 of this title and has two (2) or
4 more prior convictions for any felony violations of the Uniform
5 Controlled Dangerous Substances Act or misdemeanor possessions of
6 Schedule I or II substance, except marijuana or a substance included
7 in subsection D of Section 2-206 of this title, or a combination
8 thereof, is guilty of a felony punishable by imprisonment for not
9 more than five (5) years and by a fine not exceeding Five Thousand
10 Dollars (\$5,000.00);

11 2. Any person who violates this section with respect to any
12 Schedule I or II substance, except marijuana or a substance included
13 in subsection D of Section 2-206 of this title and has four (4) or
14 more prior convictions for any felony violations of the Uniform
15 Controlled Dangerous Substances Act or misdemeanor possessions of
16 Schedule I or II substance, except marijuana or a substance included
17 in subsection D of Section 2-206 of this title, or a combination
18 thereof, is guilty of a felony punishable by imprisonment for not
19 more than ten (10) years and by a fine not exceeding Ten Thousand
20 Dollars (\$10,000.00);

21 3. Any person who violates this section with respect to any
22 Schedule I or II substance, except marijuana or a substance included
23 in subsection D of Section 2-206 of this title and has six (6) or
24 more prior convictions for any felony violations of the Uniform

1 Controlled Dangerous Substances Act or misdemeanor possessions of
2 Schedule I or II substance, except marijuana or a substance included
3 in subsection D of Section 2-206 of this title, or a combination
4 thereof, is guilty of a felony punishable by imprisonment for not
5 less than four (4) years nor more than fifteen (15) years and by a
6 fine not exceeding Ten Thousand Dollars (\$10,000.00).

7 D. Any person who violates any provision of this section by
8 possessing or purchasing a controlled dangerous substance from any
9 person, in or on, or within five hundred (500) feet of the real
10 property comprising a public or private elementary or secondary
11 school, public vocational school, public or private college or
12 university, or other institution of higher education, recreation
13 center or public park, including state parks and recreation areas,
14 or in the presence of any child under twelve (12) years of age,
15 shall be guilty of a felony and punished by:

16 1. For a first offense, a term of imprisonment and the
17 imposition of a fine not exceeding twice that authorized by the
18 appropriate provision of this section.

19 2. For a second or subsequent offense, a term of imprisonment
20 and the imposition of a fine not exceeding three times that
21 authorized by the appropriate provision of this section.

22 E. Any person convicted of any offense described in this
23 section shall, in addition to any fine imposed, pay a special
24 assessment trauma-care fee of One Hundred Dollars (\$100.00) to be

1 deposited into the Trauma Care Assistance Revolving Fund created in
2 Section 1-2530.9 of this title.

3 F. In any case in which a defendant is charged with possession
4 of a controlled dangerous substance within any municipality with a
5 municipal court other than a court of record, the charge shall be
6 presented to the county's district attorney and filed with the
7 district court of the county within which the municipality is
8 located.

9 G. Any person who is found guilty of a violation of the
10 provisions of this section or receives a deferred sentence shall be
11 ordered to participate in a drug substance abuse evaluation and
12 assessment program offered by a certified assessment agency or
13 certified assessor for the purpose of evaluating and assessing the
14 receptivity to treatment and prognosis of the person and shall
15 follow all recommendations made in the assessment and evaluation for
16 treatment. The court shall order the person to reimburse the agency
17 or assessor for the evaluation and assessment. Payment shall be
18 remitted by the defendant or on behalf of the defendant by any third
19 party; provided, no state-appropriated funds are utilized. The fee
20 for an evaluation and assessment shall be determined by the
21 Department of Mental Health and Substance Abuse Services. The
22 evaluation and assessment shall be conducted at a certified
23 assessment agency, the office of a certified assessor or at another
24 location as ordered by the court. No person, agency or facility

1 operating an evaluation and assessment program certified by the
2 Department of Mental Health and Substance Abuse Services shall
3 solicit or refer any person evaluated and assessed pursuant to this
4 section for any treatment program or substance abuse service in
5 which such person, agency or facility has a vested interest;
6 however, this provision shall not be construed to prohibit the court
7 from ordering participation in or any person from voluntarily
8 utilizing a treatment program or substance abuse service offered by
9 such person, agency or facility. Any evaluation and assessment
10 report submitted to the court pursuant to the provisions of this
11 subsection shall be handled in a manner which will keep such report
12 confidential from the general public's review. Nothing contained in
13 this subsection shall be construed to prohibit the court from
14 ordering judgment and sentence in the event the defendant fails or
15 refuses to comply with an order of the court to obtain the
16 evaluation and assessment required by this subsection. Nothing
17 contained in this subsection shall be construed to prohibit the
18 court from ordering judgment and sentence and any other sanction
19 authorized by law for failure or refusal to comply with an order of
20 the court.

21 SECTION 2. This act shall become effective July 1, 2017.

22 SECTION 3. It being immediately necessary for the preservation
23 of the public peace, health or safety, an emergency is hereby
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1 declared to exist, by reason whereof this act shall take effect and
2 be in full force from and after its passage and approval.

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