

SHORT TITLE: Uniform controlled dangerous substances; State Bureau of Narcotics and Dangerous Drugs Control; clarifying ephedrine; specifying brand names which are exempt; modifying language; effective date.

STATE OF OKLAHOMA

2nd Session of the 45th Legislature (1996)

SENATE BILL NO. 1102

By: Helton

AS INTRODUCED

An Act relating to uniform controlled dangerous substances; amending 63 O.S. 1991, Section 2-101, as amended by Section 4, Chapter 52, O.S.L. 1994 (63 O.S. Supp. 1995, Section 2-101), which relates to the Uniform Controlled Dangerous Substances Act; modifying and adding definitions; amending 63 O.S. 1991, Section 2-103, which relates to powers of director; granting authority to appoint fiscal director; amending 63 O.S. 1991, Section 2-105, which relates to duty of officers; correcting reference to the Director of the State Bureau of Narcotics and Dangerous Drugs Control; amending 63 O.S. 1991, Section 2-201, which relates to authority to control; modifying language; amending 63 O.S. 1991, Section 2-206, as amended by Section 2, Chapter 140, O.S.L. 1994 (63 O.S. Supp. 1995, Section 2-206), which relates to Schedule II drugs; authorizing certain use and possession of methadone; providing penalty for violation of certain condition for possession of methadone; amending 63 O.S. 1991, Section 2-210, as amended by Section 1, Chapter 147, O.S.L. 1995 (63 O.S. Supp. 1995, Section 2-210), which relates to Schedule IV drugs; deleting exception relating to ephedrine; specifying substances which are exempt; providing procedure to request certain exemption; requiring certain considerations; allowing release of brand name products which are exempt from certain drug schedule; amending 63 O.S. 1991, Section 2-301, which relates to rules and regulations; conforming language; amending 63 O.S. 1991, Section 2-302, which relates to registration requirements; including home care agencies, hospices and home care services in registration requirement; amending 63 O.S. 1991, Section 2-303, which relates to registration for distribution of certain substances; providing certain fee for home care agencies, hospices and home care services; amending 63 O.S. 1991, Section 2-304, as amended by Section 1, Chapter 285, O.S.L. 1993 (63 O.S. Supp. 1995, Section 2-304), which relates to suspension of registration; authorizing limited or condition registrations; specifying conditions; authorizing administrative penalty for federal, state and Bureau violations; amending 63 O.S. 1991, Section 2-305, which relates to order to show cause; modifying time for hearing; amending 63 O.S. 1991, Section 2-306, which relates to transmission of copies of conviction; clarifying name; amending 63 O.S. 1991, Section 2-307, which relates to records

of registrants; modifying reference; amending 63 O.S. 1991, Section 2-309, which relates to prescriptions; authorizing facsimile under certain conditions; amending 63 O.S. 1991, Section 2-312, as amended by Section 5, Chapter 52, O.S.L. 1994 (63 O.S. Supp. 1995, Section 2-312), which relates to authority to prescribe; changing professional status recognition term; amending 63 O.S. 1991, Section 2-401, as last amended by Section 2, Chapter 307, O.S.L. 1994 (63 O.S. Supp. 1995, Section 2-401), which relates to penalties; differentiating crime of soliciting minor from actual prohibited acts; amending 63 O.S. 1991, Section 2-407, which relates to certain penalties; criminalizing alteration of certain prescription information; criminalizing manufacture of certain forms; adding fine; amending 63 O.S. 1991, Section 2-407.1, which relates to disturbance of certain processes and intoxication; adding paint, glue and gasoline to list of inhalants; amending 63 O.S. 1991, Section 2-411, which relates to general penalty; increasing penalty; amending 63 O.S. 1991, Section 2-415, as amended by Section 1, Chapter 21, O.S.L. 1993 (63 O.S. Supp. 1995, Section 2-415), which relates to fines; including pharmaceutical substances violations; providing penalties; amending 63 O.S. 1991, Section 2-509, as amended by Section 2, Chapter 335, O.S.L. 1994 (63 O.S. Supp. 1995, Section 2-509), which relates to eradication of certain plants; excepting bureau agents for certain notification; amending 63 O.S. 1991, Section 2-511, which relates to judicial review; modifying language; repealing 63 O.S. 1991, Section 2-106.1, which relates to lease of sea plane; and providing an effective date.

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

SECTION 1. AMENDATORY 63 O.S. 1991, Section 2-101, as amended by Section 4, Chapter 52, O.S.L. 1994 (63 O.S. Supp. 1995, Section 2-101), is amended to read as follows:

Section 2-101. As used in the Uniform Controlled Dangerous Substances Act, Section 2-101 et seq. of this title:

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

- a. a practitioner (or, in his presence, by his authorized agent), or
- b. the patient or research subject at the direction and in the presence of the practitioner;

2. "Addict" means a person who habitually uses one or more controlled dangerous substances to such an extent as to create a tolerance for such drug, and who does not have a medical need for such drug, and who is so addicted to the use of such drug as to have lost the power of self-control with reference to the addiction;

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

~~3.~~ 4. "Board" means the Advisory Board to the Director of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control;

4. ~~5.~~ "Bureau of Narcotics and Dangerous Drugs" means the Bureau of Narcotics and Dangerous Drugs, United States Department of Justice;

~~5.~~ 6. "Coca leaves" includes cocaine and any compound, manufacture, salt, derivative, mixture or preparation of coca leaves, except derivatives of coca leaves which do not contain cocaine or ecgonine;

~~6.~~ 7. ~~"Commissioner" or~~ "Director" means the Director of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control;

~~7.~~ 8. "Control" means to add, remove or change the placement of a drug, substance or immediate precursor under the Uniform Controlled Dangerous Substances Act;

~~8.~~ 9. "Controlled dangerous substance" means a drug, substance or immediate precursor in Schedules I through V of the Uniform Controlled Dangerous Substances Act, Section 2-101 et seq. of this title;

~~9.~~ 10. "Counterfeit prescription form" means a printed form that is the same or similar to a prescription form or an official prescription form, and that was manufactured, printed, duplicated, forged, or altered without the knowledge or permission of a licensed prescribing practitioner;

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

~~10.~~ 12. "Deliver" or "delivery" means the actual, constructive or attempted transfer from one person to another of a controlled dangerous substance, whether or not there is an agency relationship;

~~11.~~ 13. "Dispense" means to deliver a controlled dangerous substance to an ultimate user or human research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling or compounding necessary to prepare the substance for such distribution.

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

~~12.~~ 14. "Distribute" means to deliver other than by administering or dispensing a controlled dangerous substance;

~~13.~~ 15. "Distributor" means a person who distributes;

~~14.~~ 16. "Drug" means articles recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals; articles (other than food) intended to affect the structure or any function of the body of man or other animals; and articles intended for use as a component of any article specified in this paragraph; but does not include devices or their components, parts or accessories;

~~15.~~ 17. "Drug-dependent person" means a person who is using a controlled dangerous substance and who is in a state of psychic or physical dependence, or both, arising from administration of that controlled dangerous substance on a continuous basis. Drug dependence is characterized by behavioral and other responses which include a strong compulsion to take the substance on a continuous basis in order to experience its psychic effects, or to avoid the discomfort of its absence;

~~16.~~ 18. "Home care agency" means any sole proprietorship, partnership, association, corporation, or other organization which administers, offers, or provides home care services, for a fee or pursuant to a contract for such services, to clients in their place of residence;

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

20. "Hospice" means a centrally administered, nonprofit or profit, medically directed, nurse-coordinated program located in a municipality with a population in excess of twenty-five thousand (25,000) which provides a continuum of home and inpatient care for

the terminally ill patient and the patient's family. Such term shall also include a centrally administered, nonprofit or profit, medically directed, nurse-coordinated program located in a municipality with a population of less than twenty-five thousand (25,000) if such program is licensed pursuant to the provisions of this act. A hospice program offers palliative and supportive care to meet the special needs arising out of the physical, emotional and spiritual stresses which are experienced during the final stages of illness and during dying and bereavement. This care is available twenty-four (24) hours a day, seven (7) days a week, and is provided on the basis of need, regardless of ability to pay. "Class A" Hospice refers to Medicare certified hospices. "Class B" refers to all other providers of hospice services;

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

- a. statements made by an owner or by any other person in control of the substance concerning the nature of the substance, or its use or effect,
- b. statements made to the recipient that the substance may be resold for inordinate profit,

- c. whether the substance is packaged in a manner normally used for illicit controlled substances,
- d. evasive tactics or actions utilized by the owner or person in control of the substance to avoid detection by law enforcement authorities,
- e. prior convictions, if any, of an owner, or any other person in control of the object, under state or federal law related to controlled substances or fraud, and
- f. the proximity of the substances to controlled dangerous substances;

~~17.~~ 22. "Immediate precursor" means a substance which the Director has found to be and by regulation designates as being the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used, or likely to be used, in the manufacture of a controlled dangerous substance, the control of which is necessary to prevent, curtail or limit such manufacture;

~~18.~~ 23. "Laboratory" means a laboratory approved by the Director as proper to be entrusted with the custody of controlled dangerous substances and the use of controlled dangerous substances for scientific and medical purposes and for purposes of instruction;

~~19.~~ 24. "Manufacture" means the production, preparation, propagation, compounding or processing of a controlled dangerous substance, either directly or indirectly by extraction from substances of natural or synthetic origin, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis. "Manufacturer" includes any person who packages, repackages or labels any container of any controlled dangerous

substance, except practitioners who dispense or compound prescription orders for delivery to the ultimate consumer;

~~20.~~ 25. "Marihuana" means all parts of the plant cannabis sativa L., whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture or preparation of such plant, its seeds or resin, but shall not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil or cake, or the sterilized seed of such plant which is incapable of germination;

~~21.~~ 26. "Medical purpose" means an intention to utilize a controlled dangerous substance for physical or mental treatment, diagnosis or for the prevention of a disease condition not in violation of any state or federal law and not for the purpose of satisfying physiological or psychological dependence or other abuse;

~~22.~~ 27. "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

- a. opium, coca leaves and opiates,
- b. a compound, manufacture, salt, derivative or preparation of opium, coca leaves or opiates,
- c. cocaine, its salts, optical and geometric isomers, and salts of isomers,
- d. ecgonine, its derivatives, their salts, isomers and salts of isomers, and
- e. a substance, and any compound, manufacture, salt, derivative or preparation thereof, which is chemically

identical with any of the substances referred to in subparagraphs a through d of this paragraph, except that the words "narcotic drug" as used in Section 2-101 et seq. of this title shall not include decocainized coca leaves or extracts of coca leaves, which extracts do not contain cocaine or ecgonine;

~~23.~~ 28. "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having such addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under the Uniform Controlled Dangerous Substances Act, the dextrorotatory isomer of 3-methoxy-n-methyl-morphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms;

~~24.~~ 29. "Opium poppy" means the plant of the species *Papaver somniferum* L., except the seeds thereof;

~~25.~~ 30. "Peace officer" means a police officer, sheriff, deputy sheriff, district attorney's investigator, investigator from the Office of the Attorney General, or any other person elected or appointed by law to enforce any of the criminal laws of this state or of the United States;

~~26.~~ 31. "Person" means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity;

~~27.~~ 32. "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing;

~~28.~~ 33. "Practitioner" means:

- a. a physician, dentist, podiatrist, optometrist, veterinarian, scientific investigator or other person licensed, registered or otherwise permitted to

- distribute, dispense, conduct research with respect to, use for scientific purposes or administer a controlled dangerous substance in the course of professional practice or research in this state, or
- b. a pharmacy, hospital, laboratory or other institution licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to, use for scientific purposes or administer a controlled dangerous substance in the course of professional practice or research in this state;

~~29.~~ 34. "Production" includes the manufacture, planting, cultivation, growing or harvesting of a controlled dangerous substance;

~~30.~~ 35. "State" means the State of Oklahoma or any other state of the United States;

~~31.~~ 36. "Ultimate user" means a person who lawfully possesses a controlled dangerous substance for his own use or for the use of a member of his household or for administration to an animal owned by him or by a member of his household;

~~32.~~ 37. "Drug paraphernalia" means all equipment, products and materials of any kind which are used or intended for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body, a controlled dangerous substance in violation of the Uniform Controlled Dangerous Substances Act. It includes, but is not limited to:

- a. kits used or intended for use in planting, propagating, cultivating, growing or harvesting of any

- species of plant which is a controlled dangerous substance or from which a controlled dangerous substance can be derived,
- b. kits used or intended for use in manufacturing, compounding, converting, producing, processing or preparing controlled dangerous substances,
 - c. isomerization devices used or intended for use in increasing the potency of any species of plant which is a controlled dangerous substance,
 - d. testing equipment used or intended for use in identifying, or in analyzing the strength, effectiveness or purity of controlled dangerous substances,
 - e. scales and balances used or intended for use in weighing or measuring controlled dangerous substances,
 - f. diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, used or intended for use in cutting controlled dangerous substances,
 - g. separation gins and sifters used or intended for use in removing twigs and seeds from, or in otherwise cleaning or refining, marihuana,
 - h. blenders, bowls, containers, spoons and mixing devices used or intended for use in compounding controlled dangerous substances,
 - i. capsules, balloons, envelopes and other containers used or intended for use in packaging small quantities of controlled dangerous substances,

- j. containers and other objects used or intended for use in parenterally injecting controlled dangerous substances into the human body,
- k. hypodermic syringes, needles and other objects used or intended for use in parenterally injecting controlled dangerous substances into the human body, and
- l. objects used or intended for use in ingesting, inhaling or otherwise introducing marihuana, cocaine, hashish or hashish oil into the human body, such as:
 - (1) metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens, hashish heads or punctured metal bowls,
 - (2) water pipes,
 - (3) carburetion tubes and devices,
 - (4) smoking and carburetion masks,
 - (5) roach clips: meaning objects used to hold burning material, such as a marihuana cigarette, that has become too small or too short to be held in the hand,
 - (6) miniature cocaine spoons and cocaine vials,
 - (7) chamber pipes,
 - (8) carburetor pipes,
 - (9) electric pipes,
 - (10) air-driven pipes,
 - (11) chillums,
 - (12) bongs, or
 - (13) ice pipes or chillers.

Provided however, drug paraphernalia shall not include separation gins intended for use in preparing tea or spice, clamps

used for constructing electrical equipment, water pipes designed for ornamentation or pipes designed for smoking tobacco;

~~33.~~ 38. "Synthetic controlled substance" means a substance that is not a controlled dangerous substance, but a substance that produces a like or similar physiological or psychological effect on the human central nervous system that currently has no accepted medical use in treatment in the United States and has a potential for abuse. The court or authority concerned with establishing that the substance is a synthetic controlled substance should consider, in addition to all other factors, the following factors as related to "representations made" in determining whether the substance is a synthetic controlled substance:

- a. statements made by an owner or by any other person in control of the substance concerning the nature of the substance, its use or effect,
- b. statements made to the recipient that the substance may be resold for an inordinate profit,
- c. prior convictions, if any, of an owner or any person in control of the substance, under state or federal law related to controlled dangerous substances, and
- d. the proximity of the substance to any controlled dangerous substance;

~~34.~~ 39. "Tetrahydrocannabinols" means all substances that have been chemically synthesized to emulate the tetrahydrocannabinols of marihuana;

~~35.~~ 40. "Isomer" means the optical isomer, except as used in subsection C of Section 2-204 of this title and paragraph 4 of subsection A of Section 2-206 of this title. As used in subsection C of Section 2-204 of this title, "isomer" means the optical, positional or geometric isomer. As used in paragraph 4 of

subsection A of Section 2-206 of this title, the term "isomer" means the optical or geometric isomer; and

~~36.~~ 41. "Hazardous materials" means materials, whether solid, liquid or gas, which are toxic to human, animal, aquatic or plant life, and the disposal of which materials is controlled by state or federal guidelines.

SECTION 2. AMENDATORY 63 O.S. 1991, Section 2-103, is amended to read as follows:

Section 2-103. A. The Director shall be appointed by the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control Commission. The Director of Narcotics and Dangerous Drugs Control on January 1, 1984, shall be initially appointed as Director. The succeeding Director shall, at the time of his appointment, have a Bachelor's Degree from an accredited college or university and at least five (5) years' experience in drug law enforcement. The Director may appoint necessary assistants, agents, and other personnel to perform the work of the office and may prescribe their titles and duties and fix their compensation pursuant to Merit System rules. The Director may appoint an employee to the position of Public Information/Education Officer and may appoint an employee to the position of Fiscal/Officer Director. Said position shall be unclassified and exempt from the rules and procedures of the Office of Personnel Management, except leave regulations. The office of the Director shall be located at a suitable place in Oklahoma City, Oklahoma.

B. Agents appointed by the Director shall have the powers of peace officers generally, except that the Director may appoint special agents for specific investigatory assignments, who do not meet the age and educational requirements outlined herein and the salary provision outlined herein shall not apply to these special

agents. Agents shall be at least twenty-one (21) years of age and shall have sixty (60) hours' college credit from an accredited college or university and two (2) years' law enforcement experience, or a Bachelor's Degree, or at least four (4) years' drug enforcement experience. Each entering agent shall be required to serve one (1) year in a probationary status as a prerequisite to being placed on permanent status.

C. Agents appointed pursuant to the provisions of this section shall have the responsibility of investigating alleged violations and shall have the authority to arrest those suspected of having violated the provisions of the Uniform Controlled Dangerous Substances Act.

D. A commissioned employee of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control shall be entitled to receive upon retirement by reason of length of service, the continued custody and possession of the sidearm and badge carried by such employee immediately prior to retirement.

E. A commissioned employee of the Bureau may be entitled to receive, upon retirement by reason of disability, the continued custody and possession of the sidearm and badge carried by such employee immediately prior to retirement upon written approval of the Director.

F. Custody and possession of the sidearm and badge of a commissioned employee killed in the line of duty may be awarded by the Director to the spouse or next of kin of the deceased employee.

SECTION 3. AMENDATORY 63 O.S. 1991, Section 2-105, is amended to read as follows:

Section 2-105. It shall be the duty of all departments, officers, agencies, and employees of the state to cooperate with the ~~Commissioner~~ Director of the State Bureau of Narcotics and Dangerous

Drugs Control in carrying out the functions of his office. The State Medical Examiner shall promptly report to the office of the ~~Commissioner~~ Director all deaths occurring within the state which were the result or probable result of abuse of a controlled dangerous substance.

SECTION 4. AMENDATORY 63 O.S. 1991, Section 2-201, is amended to read as follows:

Section 2-201. A. The ~~Commissioner~~ Director shall administer the provisions of this act except as otherwise provided.

B. The Board of Pharmacy by rule may classify new products determined to have a potential for abuse as controlled dangerous substances after notice and hearing; provided that such rule shall be submitted to the next regular session of the Legislature, and such rule shall remain in force and effect unless a concurrent resolution of disapproval is passed. Hearings shall be conducted by the Board of Pharmacy or such officers, agents or employees as the Board of Pharmacy may designate for the purpose. The Board of Pharmacy shall give appropriate notice of the proposed classification and of the time and place for a hearing. The rule so promulgated shall become effective on a date fixed by the Board of Pharmacy. Such rule may be amended or repealed in the same manner as provided for its adoption. Proceedings pursuant to this subsection shall be governed by the Administrative Procedures Act. A new substance controlled pursuant to this subsection shall be subject to the same regulatory provisions of this act applicable to the Schedule of substances to which it is classified.

C. The ~~Commissioner~~ Director may recommend to the Legislature the addition, deletion or rescheduling of a substance.

D. In considering whether to make a recommendation or issue an order under this section, the ~~Commissioner~~ Director or the Board of Pharmacy, as the case may be, shall consider the following:

1. Its actual or relative potential for abuse;
2. Scientific evidence of its pharmacological effect, if known;
3. State of current scientific knowledge regarding the substance;
4. Its history and current pattern of abuse;
5. The scope, duration, and significance of abuse;
6. What, if any, risk there is to the public health;
7. Its psychic or physiological dependence liability; and
8. Whether the substance is an immediate precursor or principal compound of a substance already controlled under this article.

E. Substances which are precursors of a controlled precursor shall not be subject to control solely because they are precursors of the controlled precursor.

F. In addition to the filing requirements of the Administrative Procedures Act, copies of orders issued under this section shall, during the time the Legislature is not in session, be filed with the Chairman and Vice Chairman of the State Legislative Council's Judiciary Committee.

G. The Board of Pharmacy shall exclude any nonnarcotic substance from a schedule if such substance may, under the Federal Food, Drug and Cosmetic Act and the law of this state; be lawfully sold over the counter without a prescription.

SECTION 5. AMENDATORY 63 O.S. 1991, Section 2-206, as amended by Section 2, Chapter 140, O.S.L. 1994 (63 O.S. Supp. 1995, Section 2-206), is amended to read as follows:

Section 2-206. The controlled substances listed in this section are included in Schedule II.

A. Any of the following substances except those narcotic drugs listed in other schedules whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:

1. Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate.

2. Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph 1 of this subsection, but not including the isoquinoline alkaloids of opium.

3. Opium poppy and poppy straw.

4. Coca leaves except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed; cocaine, its salts, optical and geometric isomers, and salts of isomers; ecgonine, its derivatives, their salts, isomers and salts of isomers; or any compound, mixture or preparation which contains any quantity of any of the substances referred to in this paragraph.

B. Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters and ethers, when the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

1. Alphaprodine-i
2. Anileridine-i
3. Bezitramide-i
4. Dihydrocodeine-i
5. Diphenoxylate-i
6. Fentanyl-i
7. Isomethadone-i

8. Levomethorphan;i
9. Levorphanol;i
10. Metazocine;i
11. Methadone;i
12. Methadone - Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;i
13. Moramide - Intermediate, 2-methyl-3-morpholino-1, 1-diphenyl-propane-carboxylic acid;i
14. Pethidine. Meperidine;i
15. Pethidine - Intermediate - A, 4-cyano-1-methyl-4-phenylpiperidine;i
16. Pethidine - Intermediate - B, ethyl-4-phenylpiperidine-4-carboxylate;i
17. Pethidine - Intermediate - C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;i
18. Phenazocine;i
19. Piminodine;i
20. Racemethorphan;i
21. Racemorphan;i
22. Etorphine Hydrochloride salt only;i
23. Alfentanil hydrochloride;i or
24. Levo-alphaacetylmethadol.

C. Where methadone is prescribed, administered or dispensed by a practitioner properly authorized to treat addicts, or otherwise lawfully obtained or possessed by a person, the person shall not possess any methadone beyond the date stamped or typed on the label of the container of the methadone, nor shall any person possess methadone except in the container in which it was originally administered or dispensed to the person, and the container must include a label showing the name of the prescribing physician or

practitioner, the identity of methadone, the name of the ultimate user, the date when the methadone is to be administered or used or consumed by the named ultimate user as shown on the label, and a warning on the label of the methadone container that only the ultimate user must use, consume or administer the methadone. Any person who violates this subsection is guilty of a felony and shall be punished by imprisonment in the custody of the Department of Corrections for not less than one (1) year nor more than five (5) years, or by a fine not exceeding Five Thousand Dollars (\$5,000.00), or by both such fine and imprisonment.

D. Any substance which contains any quantity of:

1. Methamphetamine, including its salts, isomers, and salts of isomers~~;~~ or
2. Amphetamine, its salts, optical isomers, and salts of its optical isomers.

~~D.~~ E. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation, which contains any quantity of the following substances having stimulant or depressant effect on the central nervous system:

1. Phenmetrazine and its salts~~;~~ i
2. Methylphenidate~~;~~ i
3. Amobarbital~~;~~ i
4. Pentobarbital~~;~~ i
5. Secobarbital~~;~~ or
6. Tetrahydrocannabinols.

SECTION 6. AMENDATORY 63 O.S. 1991, Section 2-210, as amended by Section 1, Chapter 147, O.S.L. 1995 (63 O.S. Supp. 1995, Section 2-210), is amended to read as follows:

Section 2-210. The controlled substances listed in this section are included in Schedule IV.

A. Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant or depressant effect on the central nervous system:

1. Chloral betaine+i
2. Chloral hydrate+i
3. Ethchlorvynol+i
4. Ethinamate+i
5. Meprobamate+i
6. Paraldehyde+i
7. Petrichloral+i
8. Diethylpropion+i
9. Phentermine+i
10. Pemoline+i
11. Chlordiazepoxide+i
12. Chlordiazepoxide and its salts, but not including chlordiazepoxide hydrochloride and clidinium bromide or chlordiazepoxide and water-soluble esterified estrogens+i
13. Diazepam+i
14. Oxazepam+i
15. Clorazepate+i
16. Flurazepam and its salts+i
17. Clonazepam+i
18. Barbital+i
19. Mebutamate+i
20. Methohexital+i
21. Methylphenobarbital+i
22. Phenobarbital+i
23. Fenfluramine+i
24. Pentazocine+i

25. ~~Dextropropoxyphene;~~i

26. ~~Butorphanol;~~i

27. ~~Alprazolam;~~i

28. ~~Halazepam;~~i

29. ~~Lorazepam;~~i

30. ~~Prazepam;~~i

31. ~~Temazepam;~~i

32. ~~Triazolam;~~i

33. ~~Carisoprodol;~~i or

34. Ephedrine, its salts, optical isomers, and salts of optical isomers as the only active ingredient, or in combination with other active ingredients ~~unless the combination product is:~~

- ~~a. in compliance with the pertinent federal OTC Tentative Final Monograph or Final Monograph as to dosage, labeling, and ingredient formulation, or~~
- ~~b. the drug product is marketed pursuant to a federal Food and Drug Administration-approved new drug application or its equivalent.~~

B. 1. The following nonnarcotic substances, which may, under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301), be lawfully sold over the counter without a prescription, are excluded from all schedules of controlled substances under this title:

- a. Breathe-Aid,
- b. BronCare,
- c. Bronchial Congestion,
- d. Bronkaid Tablets,
- e. Bronkaid Dual Action Caplets,
- f. Bronkotabs,
- g. Bronkolixir,
- h. NeoRespin,

- i. Pazo Hemorrhoid Ointment and Suppositories,
- j. Primatene Tablets,
- k. Primatene "Dual Action" Formula,
- l. Quelidrine,
- m. Resp, and
- n. Vatronal Nose Drops.

2. At the request of any person, the Director may exempt any other drug product containing ephedrine from being included as a Schedule IV controlled substance if such product:

- a. is labeled and marketed in a manner consistent with the pertinent OTC tentative final or final monograph issued by the FDA, and
- b. is manufactured and distributed for legitimate medicinal use and in a manner that reduces or eliminates the likelihood of abuse.

3. In making a determination regarding a drug product, the Director, after notice and hearing, shall consider the following:

- a. the history and current pattern of abuse,
- b. the name and labeling of the product,
- c. the intended manner of distribution, advertising and promotion of the product, and
- d. other factors as may be relevant to and consistent with the public health and safety.

4. The hearing shall be held in accordance with the Oklahoma Administrative Procedures Act.

5. A list of current drug products meeting exemption requirements under this subsection may be obtained from the Bureau upon written request.

C. The Board of Pharmacy may except by rule any compound, mixture, or preparation containing any depressant substance listed

in subsection A of this section from the application of all or any part of the Uniform Controlled Dangerous Substances Act, Section 2-101 et seq. of this title, if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a depressant effect on the central nervous system.

SECTION 7. AMENDATORY 63 O.S. 1991, Section 2-301, is amended to read as follows:

Section 2-301. The ~~Commissioner~~ Director is authorized to promulgate rules ~~and regulations~~ relating to the registration and control of the manufacture, distribution, dispensing, prescribing, administering or use for scientific purposes of controlled dangerous substances within this state. All proceedings before the office of ~~Commissioner~~ Director shall be governed by the Administrative Procedures Act.

SECTION 8. AMENDATORY 63 O.S. 1991, Section 2-302, is amended to read as follows:

Section 2-302. A. Every person who manufactures, distributes, dispenses, prescribes, administers or uses for scientific purposes any controlled dangerous substance, within this state, or who proposes to engage in the manufacture, distribution, dispensing, prescribing, administering or use for scientific purposes of any controlled dangerous substance, within this state, shall obtain a registration issued by the ~~Commissioner~~ Director in accordance with the rules and regulations promulgated by him. Persons registered by the ~~Commissioner~~ Director under Section 2-101 et seq. of this title to manufacture, distribute, dispense, or conduct research with

controlled dangerous substances may possess, manufacture, distribute, dispense, or conduct research with those substances to the extent authorized by their registration and in conformity with the other provisions of this article.

Manufacturers, distributors, home care agencies, hospices, home care services, and scientific researchers shall obtain a registration annually. Other practitioners shall obtain a registration for a period to be determined by the Director that will be for a period not less than one (1) year nor more than three (3) years.

B. Every trainer or handler of a canine controlled dangerous substances detector who, in the ordinary course of their profession, desires to possess any controlled dangerous substance, annually, shall obtain a registration issued by the ~~Commissioner~~ Director for a fee of Thirty-five Dollars (\$35.00). Such persons shall be subject to all applicable provisions of Section 2-101 et seq. of this title and such applicable rules and regulations promulgated by the Director for those individuals identified in subparagraph a of paragraph 28 of Section 2-101 of this title. Persons registered by the ~~Commissioner~~ Director pursuant to this subsection may possess controlled dangerous substances to the extent authorized by their registration and in conformity with the other provisions of this article.

C. The following persons shall not be required to register and may lawfully possess controlled dangerous substances under the provisions of Section 2-101 et seq. of this title:

1. An agent, or an employee thereof, of any registered manufacturer, distributor, dispenser or user for scientific purposes of any controlled dangerous substance if such agent is acting in the usual course of his business or employment;

2. Any person lawfully acting under the direction of a person authorized to administer controlled dangerous substances under Section 2-312 of this title;

3. A common or contract carrier or warehouseman, or an employee thereof, whose possession of any controlled dangerous substance is in the usual course of his business or employment;

4. An ultimate user or a person in possession of any controlled dangerous substance pursuant to a lawful order of a practitioner;

5. An individual pharmacist acting in the usual course of his employment with a pharmacy registered under this act;

6. A nursing home licensed by this state; and

7. Registered nurses and licensed practical nurses.

D. The ~~Commissioner~~ Director may, by regulation, waive the requirement for registration and/or fee for registration of certain manufacturers, distributors, dispensers, prescribers, administrators, or users for scientific purposes if he finds it consistent with the public health and safety.

E. A separate registration shall be required at each principal place of business or professional practice where the applicant manufactures, distributes, dispenses, prescribes, administers, or uses for scientific purposes controlled dangerous substances.

F. The ~~Commissioner~~ Director is authorized to inspect the establishment of a registrant or applicant for registration in accordance with the rules and regulations promulgated by him.

G. No person engaged in a profession or occupation for which a license to engage in such activity is provided by law shall be registered under this act unless such person holds a valid license of his profession or occupation.

H. Registrations shall be issued on the first day of November of each year. Registrations may be issued at other times, however, upon certification of the professional licensing board.

I. The licensing boards of all professions and occupations to which the use of controlled dangerous substances is incidental shall furnish a current list not later than the first day of October of each year of the persons holding valid licenses. All such persons except persons exempt from registration requirements under subsection C of this section shall be subject to the registration requirements of Section 2-101 et seq. of this title.

SECTION 9. AMENDATORY 63 O.S. 1991, Section 2-303, is amended to read as follows:

Section 2-303. A. The Director of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control shall register an applicant to manufacture, distribute, dispense, prescribe, administer or use for scientific purposes controlled dangerous substances included in Schedules I through V of Section 2-101 et seq. of this title unless he determines that the issuance of such registration is inconsistent with the public interest. In determining the public interest, the following factors shall be considered:

1. Maintenance of effective controls against diversion of particular controlled dangerous substances and any Schedule I or II substance compounded therefrom into other than legitimate medical, scientific or industrial channels, including examination of the fitness of his employees or agents to handle dangerous substances;

2. Compliance with applicable state and local law;

3. Prior conviction record of applicant under federal or state laws relating to the manufacture, distribution or dispensing of such substances;

4. Furnishing by the applicant false or fraudulent material information in any application filed under Section 2-101 et seq. of this title;

5. Past experience in the manufacture, distribution, dispensing, prescribing, administering or use for scientific purposes of controlled dangerous substances, and the existence in the establishment of effective controls against diversion;

6. Denial, suspension or revocation of the applicant's federal registration to manufacture, distribute or dispense controlled dangerous substances as authorized by federal law; and

7. Such other factors as may be relevant to and consistent with the public health and safety.

Nothing herein shall be deemed to require individual licensed pharmacists to register under the provisions of this act.

B. Registration granted under subsection A of this section shall not entitle a registrant to manufacture, distribute, dispense, prescribe, administer or use for scientific purposes controlled dangerous substances in Schedule I or II other than those specified in the registration.

C. Practitioners shall be registered to dispense, prescribe, administer or use for scientific purposes substances in Schedules II through V if they are authorized to carry on their respective activities under the laws of this state. A registration application by a practitioner who wishes to conduct research with Schedule I substances shall be accompanied by evidence of the applicant's federal registration to conduct such activity and shall be referred to the Medical Research Commission for advice. The Medical Research Commission shall promptly advise the Director concerning the qualifications of each practitioner requesting such registration. Registration for the purpose of bona fide research or of use for

scientific purposes with Schedule I substances by a practitioner deemed qualified by the Medical Research Commission may be denied only on a ground specified in subsection A of Section 2-304 of this title or if there are reasonable grounds to believe that the applicant will abuse or unlawfully transfer such substances or fail to safeguard adequately his supply of such substances against diversion from legitimate medical or scientific use.

D. 1. The Director shall initially permit persons to register who own or operate any establishment engaged in the manufacture, distribution, dispensing, prescribing, administering or use for scientific purposes of any controlled dangerous substances prior to the effective date of this act and who are registered or licensed by the state. Fees for registration under this section shall be as follows:

Practitioners	\$35.00	per year of registration
<u>Home Care Agencies,</u>		
<u>Hospices &</u>		
<u>Home Care Services</u>	<u>\$35.00</u>	<u>annually</u>
Distributors	\$50.00	annually
Manufacturers	\$100.00	annually

2. A registrant shall be required to pay double the amount of the above-listed fee for any renewal of registration received more than sixty (60) days late.

3. A Ten Dollar (\$10.00) fee shall be charged for a duplicate registration certificate.

E. Compliance by manufacturers and distributors with the provisions of the Federal Controlled Substances Act, 21 U.S.C., Section 801 et seq., respecting registration, excluding fees, shall be deemed sufficient to qualify for registration under this act.

SECTION 10. AMENDATORY 63 O.S. 1991, Section 2-304, as amended by Section 1, Chapter 285, O.S.L. 1993 (63 O.S. Supp. 1995, Section 2-304), is amended to read as follows:

Section 2-304. A. A registration, pursuant to Section 2-303 of this title, to manufacture, distribute, dispense, prescribe, administer or use for scientific purposes a controlled dangerous substance shall be limited, conditioned, denied, suspended or revoked by the Director upon a finding that the registrant:

1. Has materially falsified any application filed pursuant to this act or required by this act;

2. Has been ~~convicted of~~ found guilty of, entered a plea of guilty, or entered a plea of nolo contendere to a misdemeanor relating to any substance defined herein as a controlled dangerous substance or any felony under the laws of any ~~this~~ state or the United States;

3. Has had his federal registration retired, suspended, or revoked by a competent federal authority and is no longer authorized by federal law to manufacture, distribute, dispense, prescribe, administer or use for scientific purposes controlled dangerous substances;

4. Has failed to maintain effective controls against the diversion of controlled dangerous substances to unauthorized persons or entities;

5. Has prescribed, dispensed or administered a controlled dangerous substance from schedules other than those specified in his state or federal registration;

6. Has had a restriction, suspension, revocation, ~~or~~ limitation, condition, or probation placed on his professional license or certificate or practice as a result of a proceeding pursuant to the general statutes;

7. ~~Has~~ Is abusing or, within the past five (5) years, has
abused or excessively used drugs or controlled dangerous substances;

8. Has prescribed, sold, administered, or ordered any
controlled substance for an immediate family member, himself or
herself; provided that this shall not apply to a medical emergency
when no other doctor is available to respond to the emergency;

9. Has possessed, used, prescribed, dispensed or administered
drugs or controlled dangerous substances for other than legitimate
medical or scientific purposes or for purposes outside the normal
course of his professional practice; ~~or~~

~~9.~~ 10. Has been under the influence of alcohol or another
intoxicating substance which adversely affected the central nervous
system, vision, hearing or other sensory or motor functioning to
such degree the person was impaired during the performance of his
job; or

11. Has violated any federal law relating to any controlled
substances, any provision of the Uniform Controlled Dangerous
Substances Act, Section 2-101 et seq. of this title, or any rules of
the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control.

B. In the event the Director suspends or revokes a registration
granted under Section 2-303 of this title, all controlled dangerous
substances owned or possessed by the registrant pursuant to such
registration at the time of denial or suspension or the effective
date of the revocation order, as the case may be, may in the
discretion of the Director be impounded and preserved. No
disposition may be made of substances impounded and preserved until
the time for taking an appeal has elapsed or until all appeals have
been concluded unless a court, upon application therefor, orders the
sale of perishable substances and the deposit of the proceeds of the
sale with the court. Upon a revocation order becoming final, all

such controlled dangerous substances shall be forfeited to the state.

C. The Drug Enforcement Administration shall promptly be notified of all orders suspending or revoking registration and all forfeitures of controlled dangerous substances.

D. In lieu of or in addition to any other remedies available to the Director, if a finding is made that a registrant has committed any act ~~provided for in paragraphs 1, 4, 5, 7 or 8 of subsection A of this section~~ in violation of federal law relating to any controlled substance, any provision of the Uniform Controlled Dangerous Substances Act, Section 2-101 et seq. of this title, or any rules of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, the Director is hereby authorized to assess an administrative penalty not to exceed Two Thousand Dollars (\$2,000.00) for each such act.

SECTION 11. AMENDATORY 63 O.S. 1991, Section 2-305, is amended to read as follows:

Section 2-305. A. Before denying, suspending or revoking a registration or refusing a renewal of registration, the Director shall serve upon the applicant or registrant an order to show cause why registration should not be denied, revoked or suspended or why the renewal should not be refused. The order to show cause shall contain a statement of the basis therefor and shall call upon the applicant or registrant to appear before the appropriate person or agency at a time and place ~~within~~ at least thirty (30) days after the date of service of the order, but in the case of a denial or renewal of registration the show cause order shall be served ~~within~~ at least thirty (30) days before the expiration of the registration. These proceedings shall be conducted in accordance with the Administrative Procedures Act without regard to any criminal

prosecution or other proceeding. Proceedings to refuse renewal of registration shall not abate the existing registration which shall remain in effect pending the outcome of the administrative hearing.

B. The Director shall suspend, without an order to show cause, any registration simultaneously with the institution of proceedings under Section 2-304 of this title, if he finds there is imminent danger to the public health or safety which warrants this action. The suspension shall continue in effect until the conclusion of the proceedings, including judicial review thereof, unless sooner withdrawn by the Director or dissolved by a court of competent jurisdiction.

SECTION 12. AMENDATORY 63 O.S. 1991, Section 2-306, is amended to read as follows:

Section 2-306. On the conviction of any person of the violation of any provision of this act, a certified copy of the judgment of conviction shall be sent by the clerk of the court to the ~~Commissioner~~ Director and to the board or officer, if any, by whom the convicted defendant has been licensed or registered to practice his profession or to carry on his business.

SECTION 13. AMENDATORY 63 O.S. 1991, Section 2-307, is amended to read as follows:

Section 2-307. Persons registered to manufacture, distribute, or dispense controlled dangerous substances under this act shall keep records and maintain inventories in conformance with the record-keeping and inventory requirements of federal law and with the additional rules the ~~Commissioner~~ Director issues.

SECTION 14. AMENDATORY 63 O.S. 1991, Section 2-309, is amended to read as follows:

Section 2-309. A. 1. Except for dosages medically required for a period not to exceed forty-eight (48) hours which are

administered by or on direction of a practitioner, other than a pharmacist, or medication dispensed directly by a practitioner, other than a pharmacist, to an ultimate user, no controlled dangerous substance included in Schedule II, which is a prescription drug as determined under regulation promulgated by the Board of Pharmacy, may be dispensed without the written prescription of a practitioner; provided, that, in emergency situations, as prescribed by the Board of Pharmacy by regulation, such drug may be dispensed upon oral prescription reduced promptly to writing and filed by the pharmacist in a manner to be prescribed by rules and regulations of the Director.

2. The transmission of written prescription by practitioner to dispensing pharmacy by facsimile is permitted only under the following conditions:

a. for Schedule II drugs, the original prescription must be presented and verified against the facsimile at the time the substances are actually dispensed, and the original document must be properly annotated and retained for filing, and

b. for drugs in Schedules III and IV, a facsimile copy of a written, signed prescription transmitted directly by the prescribing practitioner to the pharmacy can serve as an original prescription except:

(1) home infusion pharmacy may consider the facsimile to be a "written prescription" as required by this section and as required by Title 21 U.S.C., Section 829(a). The facsimile copy of the prescription shall be retained as an original prescription, and it must contain all the information required by this section and 21 CFR

Section 1306.05(a), including date issued, the patient's full name and address, and the practitioner's name, address, DEA registration number, and signature. The exception to the regulations for home infusion/IV therapy is intended to facilitate the means by which home infusion pharmacies obtain prescriptions for patients requiring the frequently modified parenteral controlled release administration of narcotic substances, but does not extend to the dispensing of oral dosage units of controlled substances, and

(2) the same exception is granted to patients in Long Term Care facilities (LTCF), which are filled by and delivered to the facility by a dispensing pharmacy.

3. Prescriptions shall be retained in conformity with the requirements of this section and Section 2-307 of this title. No prescription for a Schedule II substance may be refilled.

B. 1. Except for dosages medically required for a period not to exceed forty-eight (48) hours which are administered by or on direction of a practitioner, other than a pharmacist, or medication dispensed directly by a practitioner, other than a pharmacist, to an ultimate user, no controlled dangerous substance included in Schedule III or IV, which is a prescription drug as determined under regulation promulgated by the Board of Pharmacy, may be dispensed without a written or oral prescription.

2. A written or oral prescription for a controlled dangerous substance in Schedule III or IV may not be filled or refilled more than six (6) months after the date thereof or be refilled more than

five times after the date of the prescription, unless renewed by the practitioner.

C. No controlled dangerous substance included in Schedule V may be distributed or dispensed other than for a legitimate medical or scientific purpose.

D. Except for dosages medically required for a period not to exceed forty-eight (48) hours which are administered by or on direction of a practitioner, other than a pharmacist, or medication dispensed directly by a practitioner, other than a pharmacist, to an ultimate user, tincture opium camphorated, commonly known as paregoric, may not be dispensed without a written or oral prescription. The refilling of a prescription for paregoric shall be unlawful unless permission is granted by the prescriber, either written or oral.

E. Whenever it appears to the Director that a drug not considered to be a prescription drug under existing state law or regulation of the Board of Pharmacy should be so considered because of its abuse potential, he shall so advise the Board of Pharmacy and furnish to him all available data relevant thereto.

F. "Prescription", as used herein, means a written or oral order by a practitioner to a pharmacist for a controlled dangerous substance for a particular patient, which specifies the date of its issue, and the full name and address of the patient; if the controlled dangerous substance is prescribed for an animal, the species of the animal; the name and quantity of the controlled dangerous substance prescribed; the directions for use; the name and address of the owner of the animal and, if written, the signature of the practitioner.

G. No person shall solicit, dispense, receive or deliver any controlled dangerous substance through the mail, unless the ultimate

user is personally known to the practitioner and circumstances clearly indicate such method of delivery is in the best interest of the health and welfare of the ultimate user.

SECTION 15. AMENDATORY 63 O.S. 1991, Section 2-312, as amended by Section 5, Chapter 52, O.S.L. 1994 (63 O.S. Supp. 1995, Section 2-312), is amended to read as follows:

Section 2-312. A. A ~~physician, podiatrist, optometrist or a dentist~~ practitioner who has complied with the registration requirements of Section 2-101 et seq. of this title in good faith and in the course of his professional practice only may prescribe and administer controlled dangerous substances, or he may cause the same to be administered by medical or paramedical personnel acting under his direction and supervision, and only may dispense controlled dangerous substances pursuant to the provisions of Sections 355 through 355.2 of Title 59 of the Oklahoma Statutes.

B. A veterinarian who has complied with the registration requirements of Section 2-101 et seq. of this title in good faith and in the course of his professional practice only, and not for use by a human being, may prescribe, administer, and dispense controlled dangerous substances and he may cause them to be administered by an assistant or orderly under his direction and supervision.

SECTION 16. AMENDATORY 63 O.S. 1991, Section 2-401, as last amended by Section 2, Chapter 307, O.S.L. 1994 (63 O.S. Supp. 1995, Section 2-401), is amended to read as follows:

Section 2-401. A. Except as authorized by the Uniform Controlled Dangerous Substances Act, Section 2-101 et seq. of this title, it shall be unlawful for any person:

1. To distribute, dispense, transport with intent to distribute or dispense, ~~or solicit the use of or use the services of a person less than eighteen (18) years of age to cultivate, distribute or~~

~~dispense~~ a controlled dangerous substance or possess with intent to cultivate, manufacture, distribute, or dispense, a controlled dangerous substance;

2. To solicit the use of or used the services of a person less than eighteen (18) years of age to cultivate, manufacture, distribute, or dispense a controlled dangerous substance;

3. To create, distribute, transport with intent to distribute or dispense, or possess with intent to distribute, a counterfeit controlled dangerous substance; or

~~3.~~ 4. To distribute any imitation controlled substance as defined by Section 2-101 of this title, except when authorized by the Food and Drug Administration of the United States Department of Health and Human Services.

B. Any person who violates the provisions of this section with respect to:

1. A substance classified in Schedule I or II which is a narcotic drug or lysergic acid diethylamide (LSD), upon conviction, shall be guilty of a felony and shall be sentenced to a term of imprisonment for not less than five (5) years nor more than life and a fine of not more than One Hundred Thousand Dollars (\$100,000.00). Said sentence shall not be subject to statutory provisions for suspended sentences, deferred sentences, or probation except when the conviction is for a first offense;

2. Any other controlled dangerous substance classified in Schedule I, II, III, or IV, upon conviction, shall be guilty of a felony and shall be sentenced to a term of imprisonment for not less than two (2) years nor more than life and a fine of not more than Twenty Thousand Dollars (\$20,000.00). Said sentence shall not be subject to statutory provisions for suspended sentences, deferred

sentences, or probation except when the conviction is for a first offense;

3. A substance classified in Schedule V, upon conviction, shall be guilty of a felony and shall be sentenced to a term of imprisonment for not more than five (5) years and a fine of not more than One Thousand Dollars (\$1,000.00);

4. An imitation controlled substance as defined by Section 2-101 of this title, upon conviction, shall be guilty of a misdemeanor and shall be sentenced to a term of imprisonment in the county jail for a period of not more than one (1) year and a fine of not more than One Thousand Dollars (\$1,000.00). A person convicted of a second violation of the provisions of this paragraph shall be guilty of a felony and shall be sentenced to a term of imprisonment for not more than five (5) years and a fine of not more than Five Thousand Dollars (\$5,000.00); or

5. Except when authorized by the Food and Drug Administration of the United States Department of Health and Human Services, it shall be unlawful for any person to manufacture, distribute, or possess with intent to distribute a synthetic controlled substance. Any person convicted of violating the provisions of this paragraph is guilty of a felony and shall be punished by imprisonment in the State Penitentiary for a term not to exceed life and a fine of not more than Twenty-five Thousand Dollars (\$25,000.00). A second or subsequent conviction for the violation of the provisions of this paragraph is a felony punishable by imprisonment in the State Penitentiary for a term not less than ten (10) years and more than life and a fine of not more than One Hundred Thousand Dollars (\$100,000.00).

C. Any person convicted of a second or subsequent felony violation of the provisions of this section, except for paragraphs 4

and 5 of subsection B of this section or subsection E of this section, shall be punished by a term of imprisonment twice that otherwise authorized and by twice the fine otherwise authorized. Convictions for second or subsequent violations of the provisions of this section shall not be subject to statutory provisions for suspended sentences, deferred sentences, or probation.

D. Any person who is at least eighteen (18) years of age and who violates the provisions of this section by using or soliciting the use of services of a person less than eighteen (18) years of age to distribute, dispense, transport with intent to distribute or dispense or cultivate a controlled dangerous substance or by distributing a controlled dangerous substance to a person under eighteen (18) years of age is punishable by twice the fine and by twice the imprisonment otherwise authorized.

E. Any person who violates any provision of this section by transporting with intent to distribute or dispense, distributing or possessing with intent to distribute a controlled dangerous substance to a person, in or on, or within one thousand (1,000) feet of the real property comprising a public or private elementary or secondary school, public vocational school, public or private college or university, or other institution of higher education, recreation center or public park, including state parks and recreation areas, or public housing project shall be punished by:

1. For a first offense, a term of imprisonment, or by the imposition of a fine or by both, not exceeding twice that authorized by the appropriate provision of this section and shall serve a minimum of fifty percent (50%) of the sentence received prior to becoming eligible for state correctional institution earned credits toward the completion of said sentence; or

2. For a second or subsequent offense, a term of imprisonment not exceeding three times that authorized by the appropriate provision of this section and shall serve a minimum of ninety percent (90%) of the sentence received prior to becoming eligible for state correctional institution earned credits toward the completion of said sentence.

F. Except as authorized by the Uniform Controlled Dangerous Substances Act, it shall be unlawful for any person to manufacture or attempt to manufacture any controlled dangerous substance. Any person violating the provisions of this section with respect to the unlawful manufacturing or attempting to unlawfully manufacture any controlled dangerous substance, upon conviction, is guilty of a felony and shall be punished by imprisonment in the State Penitentiary for not less than twenty (20) years nor more than life and by a fine of not less than Fifty Thousand Dollars (\$50,000.00).

Said sentence shall not be subject to statutory provisions for suspended sentences, deferred sentences, or probation. A person convicted of a second or subsequent violation of the provisions of this subsection shall be required to serve at least ten (10) years of such person's sentence before becoming eligible for parole or any early release from incarceration.

Any person convicted of any offense described in this section may, in addition to the fine imposed, be assessed an amount not to exceed ten percent (10%) of the fine imposed. Such assessment shall be paid into a revolving fund for enforcement of controlled dangerous substances created pursuant to Section 2-506 of this title.

G. For purposes of this section, "public housing project" means any dwelling or accommodations operated as a state or federally subsidized multifamily housing project by any housing authority,

nonprofit corporation or municipal developer or housing projects created pursuant to the Oklahoma Housing Authority Act, Section 1051 et seq. of this title.

SECTION 17. AMENDATORY 63 O.S. 1991, Section 2-407, is amended to read as follows:

Section 2-407. A. No person shall obtain or attempt to obtain any preparation excepted from the provisions of the Uniform Controlled Dangerous Substances Act pursuant to Section 2-313 of this title in a manner inconsistent with the provisions of paragraph 1 of subsection B of Section 2-313 of this title, or a controlled dangerous substance or procure or attempt to procure the administration of a controlled dangerous substance:

1. By fraud, deceit, misrepresentation, or subterfuge;

2. By the forgery ~~or~~ of, alteration of, adding any information to, or changing any information on a prescription or of any written order;

3. By the concealment of a material fact; or

4. By the use of a false name or the giving of a false address.

B. Except as authorized by this act, a person shall not manufacture, create, deliver, or possess with intent to manufacture, create, deliver, or possess a prescription form, an original prescription form, or a counterfeit prescription form. This shall not apply to the legitimate manufacture or delivery of prescription forms, or a person acting as an authorized agent of the practitioner.

C. Information communicated to a physician in an effort unlawfully to procure a controlled dangerous substance, or unlawfully to procure the administration of any such drug, shall not be deemed a privileged communication.

~~C.~~ D. Any person who violates this section is guilty of a felony punishable by imprisonment in the custody of the Department of Corrections for not more than ten (10) years, by a fine of not more than Ten Thousand Dollars (\$10,000.00), or by both such fine and imprisonment. A second or subsequent offense under this section is a felony punishable by imprisonment in the custody of the Department of Corrections for not less than four (4) nor more than twenty (20) years, by a fine of not more than Twenty Thousand Dollars (\$20,000.00), or by both such fine and imprisonment.

~~D.~~ E. Convictions for second or subsequent violations of this section shall not be subject to statutory provisions for suspended sentences, deferred sentences, or probation.

SECTION 18. AMENDATORY 63 O.S. 1991, Section 2-407.1, is amended to read as follows:

Section 2-407.1 A. For the purpose of inducing intoxication or distortion or disturbance of the auditory, visual, muscular, or mental process, no person shall ingest, use, or possess any compound, liquid, or chemical which contains ethylchloride, butyl nitrite, isobutyl nitrite, secondary butyl nitrite, tertiary butyl nitrite, amyl nitrite, isopropyl nitrite, isopentyl nitrite, or mixtures containing butyl nitrite, isobutyl nitrite, secondary butyl nitrite, tertiary butyl nitrite, amyl nitrite, isopropyl nitrite, isopentyl nitrite, or any of their esters, isomers, or analogues, paint, glue, gasoline, or any other similar compound.

B. No person shall possess, buy, sell, or otherwise transfer any substance specified in subsection A of this section for the purpose of inducing or aiding any other person to inhale or ingest such substance or otherwise violate the provisions of this section.

C. The provisions of subsections A and B of this section shall not apply to:

1. The possession and use of a substance specified in subsection A of this section which is used as part of the care or treatment by a licensed physician of a disease, condition or injury or pursuant to a prescription of a licensed physician; and

2. The possession of a substance specified in subsection A of this section which is used as part of a known manufacturing process or industrial operation when the possessor has obtained a permit from the State Department of Health.

D. The State Board of Health shall promulgate rules ~~and regulations~~ establishing procedures for the application, form and issuance of a permit to legitimate manufacturing and industrial applicants as provided for in subsection C of this section.

E. Any person convicted of violating any provision of subsection A or B of this section shall be guilty of a misdemeanor punishable by imprisonment in the county jail not to exceed ninety (90) days or by the imposition of a fine not to exceed Five Hundred Dollars (\$500.00), or by both such imprisonment and fine. Each violation shall be considered a separate offense.

SECTION 19. AMENDATORY 63 O.S. 1991, Section 2-411, is amended to read as follows:

Section 2-411. Any person who violates any provision of ~~this act~~ the Uniform Controlled Substances Act, Section 2-101 et seq. of this title not subject to a specific penalty provision is guilty of a misdemeanor punishable by ~~confinement~~ imprisonment in the county jail for not more than one (1) year, or by a fine of not more than ~~Five Hundred Dollars (\$500.00)~~ One Thousand Dollars (\$1,000.00), or by both such fine and imprisonment.

SECTION 20. AMENDATORY 63 O.S. 1991, Section 2-415, as amended by Section 1, Chapter 21, O.S.L. 1993 (63 O.S. Supp. 1995, Section 2-415), is amended to read as follows:

Section 2-415. A. The provisions of the Trafficking in Illegal Drugs Act, Section 2-414 et seq. of this title, shall apply to persons convicted of violations with respect to the following substances:

1. Marihuana;
2. Cocaine or coca leaves;
3. Heroin;
4. Amphetamine or methamphetamine;
5. Lysergic acid diethylamide (LSD);
6. Phencyclidine (PCP); ~~or~~
7. Cocaine base, commonly known as "crack" or "rock"; or
8. Pharmaceutical controlled dangerous substances, schedules I, II, III, IV.

B. Except as otherwise authorized by the Uniform Controlled Dangerous Substances Act, Section 2-101 et seq. of this title, it shall be unlawful for any person to:

1. Knowingly distribute, manufacture, bring into this state or possess a controlled substance specified in subsection A of this section in the quantities specified in subsection C of this section; or

2. Possess any controlled substance with the intent to manufacture a controlled substance specified in subsection A of this section in quantities specified in subsection C of this section; or

3. Use or solicit the use of services of a person less than eighteen (18) years of age to distribute or manufacture a controlled dangerous substance specified in subsection A of this section in quantities specified in subsection C of this section.

Violation of this section shall be known as "trafficking in illegal drugs".

Any person who commits the conduct described in paragraph 1, 2 or 3 of this subsection and represents the quantity of the controlled substance to be an amount described in subsection C of this section shall be punished under the provisions appropriate for the amount of controlled substance represented, regardless of the actual amount.

C. In the case of a violation of the provisions of subsection B of this section, involving:

1. Marihuana:

- a. twenty-five (25) pounds or more of a mixture or substance containing a detectable amount of marihuana, such violation shall be punishable by a fine of not less than Twenty-five Thousand Dollars (\$25,000.00) and not more than One Hundred Thousand Dollars (\$100,000.00), or
- b. one thousand (1,000) pounds or more of a mixture or substance containing a detectable amount of marihuana, such violation shall be punishable by a fine of not less than One Hundred Thousand Dollars (\$100,000.00) and not more than Five Hundred Thousand Dollars (\$500,000.00);

2. Cocaine or coca leaves:

- a. twenty-eight (28) grams or more of a mixture or substance containing a detectable amount of cocaine or coca leaves, such violation shall be punishable by a fine of not less than Twenty-five Thousand Dollars (\$25,000.00) and not more than One Hundred Thousand Dollars (\$100,000.00), or
- b. three hundred (300) grams or more of a mixture or substance containing a detectable amount of cocaine or

coca leaves, such violation shall be punishable by a fine of not less than One Hundred Thousand Dollars (\$100,000.00) and not more than Five Hundred Thousand Dollars (\$500,000.00);

3. Heroin:

- a. ten (10) grams or more of a mixture or substance containing a detectable amount of heroin, such violation shall be punishable by a fine of not less than Twenty-five Thousand Dollars (\$25,000.00) and not more than Fifty Thousand Dollars (\$50,000.00), or
- b. twenty-eight (28) grams or more of a mixture or substance containing a detectable amount of heroin, such violation shall be punishable by a fine of not less than Fifty Thousand Dollars (\$50,000.00) and not more than Five Hundred Thousand Dollars (\$500,000.00);

4. Amphetamine or methamphetamine:

- a. twenty (20) grams or more of a mixture or substance containing a detectable amount of amphetamine or methamphetamine, such violation shall be punishable by a fine of not less than Twenty-five Thousand Dollars (\$25,000.00) and not more than Two Hundred Thousand Dollars (\$200,000.00), or
- b. two hundred (200) grams or more of a mixture or substance containing a detectable amount of amphetamine or methamphetamine, such violation shall be punishable by a fine of not less than Fifty Thousand Dollars (\$50,000.00) and not more than Five Hundred Thousand Dollars (\$500,000.00);

5. Lysergic acid diethylamide (LSD):

- a. if the quantity involved is not less than fifty (50) dosage units and not more than one thousand (1,000) dosage units, such violation shall be punishable by a fine of not less than Fifty Thousand Dollars (\$50,000.00) and not more than One Hundred Thousand Dollars (\$100,000.00), or
- b. if the quantity involved is more than one thousand (1,000) dosage units, such violation shall be punishable by a fine of not less than One Hundred Thousand Dollars (\$100,000.00) and not more than Two Hundred Fifty Thousand Dollars (\$250,000.00);

6. Phencyclidine (PCP):

- a. one (1) ounce or more of a substance containing a mixture or substance containing a detectable amount of phencyclidine (PCP), such violation shall be punishable by a fine of not less than Twenty Thousand Dollars (\$20,000.00) and not more than Fifty Thousand Dollars (\$50,000.00), or
- b. eight (8) ounces or more of a substance containing a mixture or substance containing a detectable amount of phencyclidine (PCP), such violation shall be punishable by a fine of not less than Fifty Thousand Dollars (\$50,000.00) and not more than Two Hundred Fifty Thousand Dollars (\$250,000.00); ~~and~~

7. Cocaine base:

- a. five (5) grams or more of a mixture or substance described in paragraph 2 of this subsection which contains cocaine base, such violation shall be punishable by a fine of not less than Twenty-five

Thousand Dollars (\$25,000.00) and not more than One Hundred Thousand Dollars (\$100,000.00), or

- b. fifty (50) grams or more of a mixture or substance described in paragraph 2 of this subsection which contains cocaine base, such violation shall be punishable by a fine of not less than One Hundred Thousand Dollars (\$100,000.00) and not more than Five Hundred Thousand Dollars (\$500,000.00); and

8. Any pharmaceutical controlled dangerous substances, schedules I, II, III, or IV:

- a. at least one thousand (1,000) or more units, one (1) unit being equal to one (1) tablet, capsule, milliliter, or cubic centimeter, of any pharmaceutical controlled dangerous substance, Schedules I, II, III, or IV, such violation shall be punishable by a fine of not less than Twenty-five Thousand Dollars (\$25,000.00) and not more than Fifty Thousand Dollars (\$50,000.00).
- b. at least five thousand (5,000) or more units, one (1) unit being equal to one (1) tablet, capsule, milliliter, or cubic centimeter, of any pharmaceutical controlled dangerous substance, schedules I, II, III, or IV, such violation shall be punishable by a fine of not less than Fifty Thousand Dollars (\$50,000.00) and not more than One Hundred Thousand Dollars (\$100,000.00).

D. Any person who violates the provisions of this section with respect to a controlled substance specified in subsection A of this section in a quantity specified in subsection C of this section

shall, in addition to any fines specified by this section, be punishable by a term of imprisonment as follows:

1. Not less than twice the term of imprisonment provided for in Section 2-401 of this title;

2. If the person has previously been convicted of one violation of this section or has been previously convicted of a felony violation of the Uniform Controlled Dangerous Substances Act arising from separate and distinct transactions, not less than three times the term of imprisonment provided for in Section 2-401 of this title; and

3. If the person has previously been convicted of two or more violations of this section or any provision of the Uniform Controlled Dangerous Substances Act which constitutes a felony, or a combination of such violations arising out of separate and distinct transactions, life without parole.

The terms of imprisonment specified in this subsection shall not be subject to statutory provisions for suspension, deferral or probation, or state correctional institution earned credits accruing from and after November 1, 1989, except for the achievement earned credits authorized by subsection F of Section 138 of Title 57 of the Oklahoma Statutes. To qualify for such achievement credits, such inmates must also be in compliance with the standards for Class level 2 behavior, as defined in subsection C of Section 138 of Title 57 of the Oklahoma Statutes.

Persons convicted of violations of this section shall not be eligible for appeal bonds.

SECTION 21. AMENDATORY 63 O.S. 1991, Section 2-509, as amended by Section 2, Chapter 335, O.S.L. 1994 (63 O.S. Supp. 1995, Section 2-509), is amended to read as follows:

Section 2-509. A. All species of plants from which controlled dangerous substances in Schedules I and II may be derived are hereby declared inimical to health and welfare of the public, and the intent of the Legislature is to control and eradicate these species of the plants in the State of Oklahoma.

B. It shall be unlawful for any person to cultivate or produce, or to knowingly permit the cultivation, production, or wild growing of any species of such plants, on any lands owned or controlled by such person, and it is hereby declared the duty of every such person to destroy all such plants found growing on lands owned or controlled by him.

C. 1. Whenever any peace officer of the state, except agents from the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, shall receive information that any species of any such plants has been found growing on any private lands in the ~~State of Oklahoma~~ this state, ~~he~~ the officer shall notify the sheriff and county commissioners of the county wherein ~~such~~ the plants are found growing. Within five (5) days of receipt of such notice, the county commissioners shall notify the owner or person in possession of such lands that such plants have been found growing on the said lands and that the same must be destroyed or eradicated within fifteen (15) days. When the fifteen (15) days have elapsed, the reporting peace officer shall cause an investigation to be made of the aforesaid lands, and if any such plants be found growing thereon, the commissioners shall cause the same to be destroyed or eradicated by either cutting and burning or by applications of herbicides approved for such purpose by the Department of Agriculture.

2. Whenever any such plants are destroyed or eradicated by order of the commissioners as provided herein, the cost of the same shall, if the work or labor be furnished by the commissioners, be

taxed against the lands whereon the work was performed, and shall be a lien upon such land in all manner and respects as a lien of judgment, if the owner is charged with a violation of subsection B of this section. If the violation of subsection B of this section is by a person other than the owner of the land, without the knowledge of the owner, the costs shall be paid by the initiating law enforcement agency.

D. Knowingly violating the provisions of subsection B of this section is hereby declared, as to the owner, or person in possession of such lands, to be a felony and punishable as such by a fine of not to exceed Fifty Thousand Dollars (\$50,000.00) and imprisonment in the State Penitentiary for not less than two (2) years nor more than life. Any person convicted of a second or subsequent violation of subsection B of this section is punishable by a term of imprisonment twice that otherwise authorized and by twice the fine otherwise authorized. Said sentence shall not be subject to statutory provisions for suspended sentences, deferred sentences, or probation, except when the conviction is for a first offense.

E. It shall be the duty of any peace officer of the State of Oklahoma who receives information of such plants growing in the State of Oklahoma, to make notice, in writing, to the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control and the future destruction or eradication of the annual growth of such plants shall be supervised by the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control. Any destruction or eradication of the annual growth of such plants supervised by the Bureau shall be by cutting and burning the same or by destruction and eradication through applications of herbicides approved for such purpose by the Department of Agriculture.

F. Any application of herbicides authorized by this section shall be made pursuant to the provisions of Section 2-505 of this title.

G. In lieu of the eradication procedures provided for in subsections B and C of this section, all species of plants from which controlled dangerous substances in Schedules I and II of the Uniform Controlled Dangerous Substances Act may be derived, may be disposed of pursuant to the provisions of subsection C of Section 2-505 of this title.

SECTION 22. AMENDATORY 63 O.S. 1991, Section 2-511, is amended to read as follows:

Section 2-511. Judicial review of final determinations, findings, and conclusions of the ~~Commissioner~~ Director under this act shall be in the manner provided by the Administrative Procedures Act. A revocation or suspension of a registration based on the revocation or suspension of a professional or occupational license shall be final and conclusive where judicial review is available with respect to the revocation or suspension of the professional or occupational license.

SECTION 23. REPEALER 63 O.S. 1991, Section 2-106.1, is hereby repealed.

SECTION 24. This act shall become effective November 1, 1996.

45-2-1778 NP