

STATE OF OKLAHOMA

1st Session of the 59th Legislature (2023)

SENATE BILL 1061

By: Weaver

AS INTRODUCED

An Act relating to controlled dangerous substances; amending 63 O.S. 2021, Section 2-402, as amended by Section 1, Chapter 220, O.S.L. 2016, which relates to prohibited acts; modifying applicability of certain violations and penalty; authorizing certain diversion programs; allowing adoption of certain ordinances; providing violation and penalty for certain subsequent offenses; requiring participation in certain assessment and evaluation; and providing an effective date.

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

SECTION 1. AMENDATORY 63 O.S. 2021, Section 2-402, as amended by Section 1, Chapter 220, O.S.L. 2016, is amended to read as follows:

Section 2-402. A. 1. It shall be unlawful for any person 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 otherwise authorized by this act.

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

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

- 15 a. the packaging of the product,
- 16 b. the name of the product, and
- 17 c. the distribution and promotion of the product,
18 including verbal representations made at the point of
19 sale.

20 B. Any person who violates this section with respect to:

21 1. Any Schedule I or II substance, except marijuana or a
22 substance included in subsection D of Section 2-206 of this title,
23 is guilty of a felony punishable by imprisonment for not more than
24 five (5) years and by a fine not exceeding Five Thousand Dollars

1 (\$5,000.00). A second violation of this section with respect to a
2 Schedule I or II substance, except marijuana or a substance included
3 in subsection D of Section 2-206 of this title, is a felony
4 punishable by imprisonment for not more than ten (10) years and by a
5 fine not exceeding Ten Thousand Dollars (\$10,000.00). A third or
6 subsequent violation of this section with respect to a Schedule I or
7 II substance, except marijuana or a substance included in subsection
8 D of Section 2-206 of this title, is a felony punishable by
9 imprisonment for not less than four (4) years nor more than fifteen
10 (15) years and by a fine not exceeding Ten Thousand Dollars
11 (\$10,000.00);

12 2. a. Any Schedule III, IV or V substance, ~~marijuana~~, a
13 substance included in subsection D of Section 2-206 of
14 this title, or any preparation excepted from the
15 provisions of the Uniform Controlled Dangerous
16 Substances Act for a first offense is guilty of a
17 misdemeanor punishable by confinement for not more
18 than one (1) year and by a fine not exceeding One
19 Thousand Dollars (\$1,000.00) and may be required to
20 complete a diversion program approved by the court.
21 Municipal courts may adopt ordinances consistent with
22 this paragraph.

23 b. Any person who commits an offense pursuant to the
24 provisions of this paragraph or has a conviction in a

1 municipal court for the violation of a municipal
2 ordinance prohibiting the offense provided for in this
3 paragraph within ten (10) years of the date following
4 the completion of the execution of such sentence or
5 deferred judgment who commits a second offense
6 pursuant to the provisions of this paragraph shall,
7 upon conviction, be guilty of a felony punishable by
8 imprisonment in the custody of the Department of
9 Corrections for not less than one (1) year nor more
10 than five (5) years and by a fine not to exceed Five
11 Thousand Dollars (\$5,000.00), shall participate in an
12 assessment and evaluation, and may be required to
13 complete a diversion program approved by the court;

14 3. Any Schedule III, IV or V substance, marijuana, a substance
15 included in subsection D of Section 2-206 of this title, or any
16 preparation excepted from the provisions of the Uniform Controlled
17 Dangerous Substances Act and who, during the period of any court-
18 imposed probationary term or within ten (10) years of the date
19 following the completion of the execution of any sentence or
20 deferred judgment for a violation of this section, commits a second
21 or subsequent violation of this section shall, upon conviction, be
22 guilty of a felony punishable by imprisonment in the custody of the
23 Department of Corrections for not less than one (1)
24 year nor more

1 than five (5) years and by a fine not exceeding Five Thousand
2 Dollars (\$5,000.00); or

3 4. Any Schedule III, IV or V substance, marijuana, a substance
4 included in subsection D of Section 2-206 of this title, or any
5 preparation excepted from the provisions of the Uniform Controlled
6 Dangerous Substances Act and who, ten (10) or more years following
7 the date of completion of the execution of any sentence or deferred
8 judgment for a violation of this section, commits a second or
9 subsequent violation of this section shall, upon conviction, be
10 guilty of a felony punishable by imprisonment in the custody of the
11 Department of Corrections for not less than one (1) year nor more
12 than five (5) years and by a fine not exceeding Five Thousand
13 Dollars (\$5,000.00).

14 C. Any person who violates any provision of this section by
15 possessing or purchasing a controlled dangerous substance from any
16 person, in or on, or within one thousand (1,000) feet of the real
17 property comprising a public or private elementary or secondary
18 school, public vocational school, public or private college or
19 university, or other institution of higher education, recreation
20 center or public park, including state parks and recreation areas,
21 or in the presence of any child under twelve (12) years of age,
22 shall be guilty of a felony and punished by:

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

6 2. For a second or subsequent offense, a term of imprisonment
7 not exceeding three times that authorized by the appropriate
8 provision of this section and the person shall serve a minimum of
9 ninety percent (90%) of the sentence received prior to becoming
10 eligible for state correctional institution earned credits toward
11 the completion of said sentence, and imposition of a fine not
12 exceeding Ten Thousand Dollars (\$10,000.00).

13 D. Any person convicted of any offense described in this
14 section shall, in addition to any fine imposed, pay a special
15 assessment trauma-care fee of One Hundred Dollars (\$100.00) to be
16 deposited into the Trauma Care Assistance Revolving Fund created in
17 Section 1-2530.9 of this title.

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

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