Mr. President:
Mr. Speaker:

The Conference Committee, to which was referred

HB1100

By: Mize of the House and Bice of the Senate

Title: Public health and safety; Uniform Controlled Dangerous Substances Act; modifying elements of certain prohibited acts; effective date.

Together with Engrossed Senate Amendments thereto, beg leave to report that we have had the same under consideration and herewith return the same with the following recommendations:

1. That the Senate recede from its amendment; and
2. That the attached Conference Committee Substitute be adopted.

Respectfully submitted,
HB1100 CCR (A)

**HOUSE CONFEREES**

Crosswhite Hader, Denise  
Gann, Tom

Hasenbeck, Toni  
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Bice
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House Action _________________ Date _________ Senate Action _________________ Date _________
AUTHOR(s)/COAUTHOR(s) CURRENTLY IN THE QUEUE for HB1100

As of 5/15/2019 3:38:12 PM

Add as coauthor Representative Steagall
STATE OF OKLAHOMA

1st Session of the 57th Legislature (2019)

CONFERENCE COMMITTEE

SUBSTITUTE

FOR ENGROSSED

HOUSE BILL NO. 1100

By: Mize and Dunnington of the House

and

Bice of the Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to public health and safety; amending 63 O.S. 2011, Section 2-401, as last amended by Section 1, Chapter 130, O.S.L. 2018 (63 O.S. Supp. 2018, Section 2-401), which relates to the Uniform Controlled Dangerous Substances Act; modifying elements of certain prohibited acts; making certain acts unlawful; providing list of factors necessary to prove intent for certain prohibited act; clarifying penalty provisions for second and subsequent convictions; deleting elements and penalty provisions of certain prohibited act; modifying scope of certain prohibited act; providing an exception; defining term; modifying penalties for certain prohibited act; updating language; deleting certain definition; updating internal statutory references; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:
SECTION 1. AMENDATORY 63 O.S. 2011, Section 2-401, as last amended by Section 1, Chapter 130, O.S.L. 2018 (63 O.S. Supp. 2018, Section 2-401), is amended to read as follows:

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

1. To distribute or dispense, transport with intent to distribute or dispense, possess with intent to manufacture, distribute, or dispense, a controlled dangerous substance or to 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;

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

3. 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;

4. To manufacture or distribute any synthetic controlled substance, except when authorized by the Food and Drug Administration of the United States Department of Health and Human Services; or
5. To transport with intent to distribute or dispense or possess with intent to manufacture, distribute or dispense a controlled dangerous substance, or to transport with intent to distribute or dispense or possess with intent to distribute, a counterfeit controlled dangerous substance, or to possess with intent to distribute a synthetic controlled substance. In order to prove intent to distribute, dispense or manufacture pursuant to the offenses listed in this paragraph, the evidence must include a quantity of a controlled dangerous substance inconsistent with personal use and evidence of intent to distribute which must be sufficient to rule out any reasonable hypothesis other than intent to distribute. Such evidence must include at a minimum at least two of the following factors:

   a. the person possesses the means to weigh a controlled substance,

   b. the person possesses wire or electronic communications or notes indicating drug sales by the person,

   c. the person possesses materials primarily used for separating and packaging controlled substances,

   d. the person is unlawfully in immediate possession or physical control of a firearm at the time of possession of the controlled substance,

   e. the person is unlawfully in immediate possession or physical control of at least two other controlled
substances in amounts that are inconsistent with personal use, and

f. the person has in his or her immediate possession or physical control cash in excess of Five Hundred Dollars ($500.00).

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

1. A substance classified in Schedule I or II, except for marijuana, upon conviction, shall be guilty of transporting or possessing with an intent to distribute a controlled dangerous substance, a felony, and shall be sentenced to a term of imprisonment in the custody of the Department of Corrections for not more than seven (7) years and a fine of not more than One Hundred Thousand Dollars ($100,000.00), which shall be in addition to other punishment provided by law and shall not be imposed in lieu of other punishment. A second conviction for the violation of provisions of this paragraph within ten (10) years of the date following the completion of the execution of the prior sentence is a felony punishable by a term of imprisonment in the custody of the Department of Corrections for not more than fourteen (14) years. A third or subsequent conviction for the violation of the provisions of this paragraph within ten (10) years of the date following the completion of the execution of the prior sentences is a felony
punishable by a term of imprisonment in the custody of the
Department of Corrections for not more than twenty (20) years;

2. Any other controlled dangerous substance classified in
Schedule III, IV, V or marijuana, upon conviction, shall be guilty
of a felony and shall be sentenced to a term of imprisonment in the
custody of the Department of Corrections for not more than five (5)
years and a fine of not more than Twenty Thousand Dollars
($20,000.00), which shall be in addition to other punishment
provided by law and shall not be imposed in lieu of other
punishment. A second conviction for the violation of the provisions
of this paragraph within ten (10) years of the date following the
completion of the execution of the prior sentence is a felony
punishable by a term of imprisonment in the custody of the
Department of Corrections for not more than ten (10) years. A third
or subsequent conviction for the violation of the provisions of this
paragraph within ten (10) years of the date following the completion
of the execution of the prior sentences is a felony punishable by a
term of imprisonment in the custody of the Department of Corrections
for not more than fifteen (15) years; or

3. 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 or subsequent violation of the provisions of this paragraph within ten (10) years of the date following the completion of the execution of the prior sentence shall be guilty of a felony and shall be sentenced to a term of imprisonment in the custody of the Department of Corrections for not more than two (2) years and a fine of not more than Five Thousand Dollars ($5,000.00), which shall be in addition to other punishment provided by law and shall not be imposed in lieu of other punishment.

C. 1. 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 or distribute a controlled substance or synthetic controlled substance.

   2. Any person convicted of violating the provisions of paragraph 1 of this subsection with respect to distributing a controlled substance is guilty of a felony and shall be punished by imprisonment in the custody of the Department of Corrections for a term not to exceed ten (10) years and a fine of not more than Twenty-five Thousand Dollars ($25,000.00), which shall be in addition to other punishment provided by law and shall not be imposed in lieu of other punishment.

   3. A second conviction for the violation of the provisions of paragraph 1 of this subsection with respect to distributing a controlled substance is a felony punishable by imprisonment in the custody of the Department of Corrections for a term not less than
two (2) years nor more than twenty (20) years. A third or subsequent conviction for the violation of the provisions of this paragraph is a felony punishable by imprisonment in the custody of the Department of Corrections for a term not less than ten (10) years nor more than life.

4. Any person convicted of violating the provisions of paragraph 1 of this subsection with respect to manufacturing a controlled substance is guilty of a felony and shall be punished by imprisonment in the custody of the Department of Corrections for a term not to exceed ten (10) years and a fine of not more than Twenty-five Thousand Dollars ($25,000.00), which shall be in addition to other punishment provided by law and shall not be imposed in lieu of other punishment.

5. A second conviction for the violation of the provisions of paragraph 1 of this subsection with respect to manufacturing a controlled substance is a felony punishable by imprisonment in the custody of the Department of Corrections for a term not less than two (2) years nor more than twenty (20) years. A third or subsequent conviction for the violation of the provisions of this paragraph is a felony punishable by imprisonment in the custody of the Department of Corrections for a term not less than ten (10) years nor more than life.

D. Convictions for violations of the provisions of this section shall be subject to the statutory provisions for suspended or
deferred sentences, or probation as provided in Section 991a of Title 22 of the Oklahoma Statutes.

E. 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, or in the presence of a person under twelve (12) years of age, is punishable by:

1. For a first violation of this section subsection, a term of imprisonment in the custody of the Department of Corrections for not less than two (2) years nor more than ten (10) years;

2. For a second violation of this section subsection within ten (10) years of the date following the completion of the execution of the prior sentence, a term of imprisonment in the custody of the Department of Corrections for not less than four (4) years nor more than twenty (20) years; or

3. For a third or subsequent violation of this section subsection within ten (10) years of the date following the completion of the execution of the prior sentences, a term of imprisonment in the custody of the Department of Corrections for not less than ten (10) years nor more than life.
F. 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, or violation of subsection G F of this
section, in or on, or within two thousand (2,000) 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,
public housing project, or child care facility as defined by Section
402 of Title 10 of the Oklahoma Statutes, during hours of operation
of the aforementioned locations, shall be punished by:

1. For a first offense, a term of imprisonment in the custody
of the Department of Corrections, or by the imposition of a fine or
by both, not exceeding twice that authorized by the appropriate
 provision of this section; or

2. For a second or subsequent violation of this section
subsection within ten (10) years of the date following the
completion of the execution of the prior sentence, a term of
imprisonment in the custody of the Department of Corrections, or by
the imposition of a fine or by both, not exceeding thrice that
authorized by the appropriate provision of this section.

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

For purposes of this subsection, median strips or the green
space dividing roads, streets and highways shall not be considered a
portion of the public park.

As used in this subsection, "hours of operation" shall include
all extracurricular activities sanctioned or authorized by the
public or private elementary or secondary school or public
vocational school.

G. F. 1. 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 or possess any substance listed in Section 2-322 of this
title or any substance containing any detectable amount of
pseudoephedrine or its salts, optical isomers or salts of optical
isomers, iodine or its salts, optical isomers or salts of optical
isomers, hydriodic acid, sodium metal, lithium metal, anhydrous
ammonia, phosphorus, or organic solvents with the intent to use that
substance to manufacture a controlled dangerous substance.

2. Any person violating the provisions of this subsection with
respect to the unlawful manufacturing or attempting to unlawfully
manufacture any controlled dangerous substance, except for
marijuana, or possessing any substance listed in this subsection or
Section 2-322 of this title, upon conviction, is guilty of a felony
and shall be punished by imprisonment in the custody of the Department of Corrections for not less than seven (7) more than ten (10) years nor more than life and by a fine of not less than Fifty Thousand Dollars ($50,000.00) more than Twenty-five Thousand Dollars ($25,000.00), which shall be in addition to other punishment provided by law and shall not be imposed in lieu of other punishment. The possession of any amount of anhydrous ammonia in an unauthorized container shall be prima facie evidence of intent to use such substance to manufacture a controlled dangerous substance. A second violation of this subsection within ten (10) years of the date following the completion of the execution of the prior sentences is punishable by a term of imprisonment in the custody of the Department of Corrections for a term of not more than fifteen (15) years. A third or subsequent violation of this subsection within ten (10) years of the date following the completion of the execution of the prior sentences is punishable by a term of imprisonment in the custody of the Department of Corrections for a term of not more than twenty (20) years.

3. Any person violating the provisions of this subsection with respect to the unlawful manufacturing or attempting to unlawfully manufacture any controlled dangerous substance in the following amounts:

   a. one (1) kilogram or more of a mixture or substance containing a detectable amount of heroin,
b. five (5) kilograms or more of a mixture or substance containing a detectable amount of:

(1) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed,

(2) cocaine, its salts, optical and geometric isomers, and salts of isomers,

(3) ecgonine, its derivatives, their salts, isomers, and salts of isomers, or

(4) any compound, mixture, or preparation which contains any quantity of any of the substances referred to in divisions (1) through (3) of this subparagraph,

c. fifty (50) grams or more of a mixture or substance described in division (2) of subparagraph b of this paragraph which contains cocaine base,

d. one hundred (100) grams or more of phencyclidine (PCP) or one (1) kilogram or more of a mixture or substance containing a detectable amount of phencyclidine (PCP),

e. ten (10) grams or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD),
f. four hundred (400) grams or more of a mixture or substance containing a detectable amount of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide or one hundred (100) grams or more of a mixture or substance containing a detectable amount of any analogue of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide,


g. one thousand (1,000) kilograms or more of a mixture or substance containing a detectable amount of marihuana or one thousand (1000) or more marihuana plants regardless of weight, or


h. fifty (50) grams or more of methamphetamine, its salts, isomers, and salts of its isomers or five hundred (500) grams or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers,

upon conviction, is guilty of aggravated manufacturing a controlled dangerous substance punishable by imprisonment 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), which shall be in addition to other punishment provided by law and shall not be imposed in lieu of other punishment. Any person convicted of a violation of the provisions of this paragraph shall be required to serve a minimum of eighty-five percent (85%) of the sentence received prior to becoming
eligible for state correctional earned credits towards the completion of the sentence or eligible for parole.

4. Any sentence to the custody of the Department of Corrections for any violation of paragraph 3 of this subsection 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 paragraph 3 of this subsection shall be punished as a habitual offender pursuant to Section 51.1 of Title 21 of the Oklahoma Statutes and shall be required to serve a minimum of eighty-five percent (85%) of the sentence received prior to becoming eligible for state correctional earned credits or eligibility for parole.

5. Any person who has been convicted of manufacturing or attempting to manufacture methamphetamine pursuant to the provisions of this subsection and who, after such conviction, purchases or attempts to purchase, receive or otherwise acquire any product, mixture, or preparation containing any detectable quantity of base pseudoephedrine or ephedrine shall, upon conviction, be guilty of a felony punishable by imprisonment in the custody of the Department of Corrections for a term in the range of twice the minimum term provided for in paragraph 2 of this subsection.

H. G. Any person convicted of any offense described in the Uniform Controlled Dangerous Substances Act 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.

I. H. Any person convicted of any offense described in this
section shall, in addition to any fine imposed, pay a special
assessment trauma-care fee of One Hundred Dollars ($100.00) to be
deposited into the Trauma Care Assistance Revolving Fund created in
Section 1-2522 1-2530.9 of this title.

J. 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 Authorities Act.

K. I. When a person is found guilty of a violation of the
provisions of this section, the court shall order, in addition to
any other penalty, the defendant to pay a one-hundred-dollar
assessment to be deposited in the Drug Abuse Education and Treatment
Revolving Fund created in Section 2-503.2 of this title, upon
collection.

L. J. Any person convicted of a second or subsequent felony
violation of the provisions of this section, except for paragraphs 1
and 2 and 3 of subsection B of this section, paragraphs 2, 3, 4 and
5 of subsection C of this section, paragraphs 1, 2 and 3 of
subsection E D of this section and paragraphs 1 and 2 of subsection

shall be punished as a habitual offender pursuant to Section 51.1 of Title 21 of the Oklahoma Statutes.

SECTION 2. This act shall become effective November 1, 2019.

57-1-8939 GRS 05/13/19