

An Act

ENROLLED HOUSE
BILL NO. 2821

By: Sullivan, Roan and
Blackwell of the House

and

Corn and Lamb of the Senate

An Act relating to Oklahoma State Bureau of Narcotics and Dangerous Drugs Control; amending 63 O.S. 2001, Sections 2-103, as last amended by Section 51, Chapter 1, O.S.L. 2007, 2-106.1, 2-110, 2-201, 2-301, as amended by Section 3, Chapter 338, O.S.L. 2003, 2-306, 2-307, Section 2, Chapter 288, O.S.L. 2002, as amended by Section 4, Chapter 133, O.S.L. 2003 and 2-511 (63 O.S. Supp. 2007, Sections 2-103, 2-301 and 2-333), which relate to the Uniform Controlled Dangerous Substances Act; modifying appointment power and duties of the Director of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control; updating agency designation; exempting property from certain provisions of the Oklahoma Surplus Property Act; allowing certain Bureau attorneys to carry weapons; prohibiting attorneys from being eligible to participate in certain retirement system; deleting employee classification status provisions; authorizing establishment of employee performance recognition program; authorizing expenditure of funds for certain purposes; providing monetary limitations for recognition awards; authorizing establishment of employee benefit program; authorizing expenditure of funds for distribution of certain materials; deleting references to Commissioner; expanding scope of recoverable damages to include certain entities; authorizing certain funds be used for drug education programs; amending 63 O.S. 2001, Section 683.6, as amended by Section 7, Chapter 329, O.S.L. 2003 (63 O.S. Supp. 2007, Section 683.6), which relates to the Oklahoma Emergency Management Act of 2003; modifying membership of the Emergency Management Advisory

Council; providing for codification; and declaring an emergency.

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

SECTION 1. AMENDATORY 63 O.S. 2001, Section 2-103, as last amended by Section 51, Chapter 1, O.S.L. 2007 (63 O.S. Supp. 2007, 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 the 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, other than the salaries established in subsection A of Section 2-103a of this title, pursuant to Merit System rules. The Director may appoint employees to the positions of Public Information/Education Officer, Training Officer, Program Administrator, Grants Administrator, Criminal Analysts, Legal Secretary, and Typist Clerk/Spanish Transcriptionists. Said positions 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. 1. Agents appointed by the Director shall have the powers of peace officers generally; provided, the Director may appoint special agents, who shall be unclassified employees of the state, to meet specific investigatory need. Special agents shall not be required to meet the age and educational requirements as specified in this section.

2. Agents appointed on and after November 1, 1998, shall be at least twenty-one (21) years of age and shall have a Bachelor's Degree from an accredited college or university.

3. Each entering agent, with the exception of special agents, 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.

G. Custody and possession of the sidearm and badge of a commissioned employee who dies while employed at the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control may be awarded by the Director to the spouse or next of kin of the deceased employee.

H. Any Director appointed on or after July 1, 2003, shall be eligible to participate in either the Oklahoma Public Employees Retirement System or in the Oklahoma Law Enforcement Retirement System and shall make an irrevocable election in writing to participate in one of the two retirement systems.

SECTION 2. AMENDATORY 63 O.S. 2001, Section 2-106.1, is amended to read as follows:

Section 2-106.1 The Oklahoma State Bureau of Narcotics and Dangerous Drugs Control is hereby authorized to lease the seaplane owned by said Bureau. Said lease shall not be subject to the provisions of Section 85.5 of Title 74 of the Oklahoma Statutes and

shall not have to be approved by the ~~Office~~ Department of ~~Public~~ Affairs Central Services.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-106.2 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. The Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, pursuant to rules promulgated by the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control Commission, is hereby authorized to:

1. Make available for sale used vehicles, used equipment and forfeited property to any federal, state, county, or municipal agency, trust authority or public school district;

2. Sell at public auction any used vehicles, used equipment and any property forfeited to the Bureau; and

3. Donate or transfer title to any surplus property as defined in Section 62.2 of Title 74 of the Oklahoma Statutes, or property forfeited to the Bureau, to any law enforcement agency of any political subdivision of the State of Oklahoma. The use of such donated equipment shall be limited to valid and authorized law enforcement efforts by the receiving agency.

B. Any property subject to this section shall be exempted from the provisions set forth in Section 62.3 of Title 74 of the Oklahoma Statutes.

SECTION 4. AMENDATORY 63 O.S. 2001, Section 2-110, is amended to read as follows:

Section 2-110. The Director of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control may employ attorneys, who shall be unclassified employees of the state, or contract with attorneys, as needed. These attorneys may advise the Director, the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control Commission and Bureau personnel on all legal matters and shall appear for and represent the Director, the Commission and Bureau personnel in all administrative hearings and all litigation or other proceedings which may arise in the discharge of their duties. At the request of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control Commission, such attorney shall assist the district attorney in prosecuting charges of violators of the Uniform

Controlled Dangerous Substances Act or any felony relating to or arising from a violation of the Uniform Controlled Dangerous Substances Act. Provided, if Attorneys for the Bureau who have been certified by the Council on Law Enforcement Education and Training to carry a concealed weapon or have been issued a concealed handgun license pursuant to the provisions of the Oklahoma Self-Defense Act shall be allowed to carry weapons pursuant to paragraph 3 of subsection A of Section 1272 of Title 21 of the Oklahoma Statutes. These attorneys, pursuant to this provision, shall not be considered eligible to participate in the Oklahoma Law Enforcement Retirement System. If a conflict of interest would be created by such attorney representing the Director, the Commission or Bureau personnel, additional counsel may be hired upon approval of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control Commission. ~~Any classified employee who is serving in an attorney position which is subject to the Merit System of Personnel Administration on the effective date of this act shall have the option of retaining such classified status. An incumbent who chooses to remain in the classified service shall be subject to all provisions and conditions of the Merit System of Personnel Administration. An incumbent who chooses to change status from classified to unclassified shall so indicate in writing. All future appointees to such positions shall be in the unclassified service.~~

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-111 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. The Oklahoma State Bureau of Narcotics and Dangerous Drugs Control is authorized to establish an employee performance recognition program that encourages outstanding job performance and productivity within the Bureau. The Bureau is authorized to expend funds for:

1. The purchase of recognition awards to be presented to members of work units or individual employees having exceptional job performance records or other significant contributions to the operation of the Bureau;

2. The purchase of recognition awards to be presented to nonemployees of the Bureau in recognition of exemplary service or assistance to the Bureau and law enforcement; and

3. A formal ceremony or banquet where the awards may be presented.

B. Recognition awards may consist of distinctive wearing apparel, service pins, plaques, writing pens, or other distinguished awards of a value not exceeding One Hundred Fifty Dollars (\$150.00) per award to recognize the achievement of the work unit or individual employee. In addition to recognition awards, the Bureau may establish an employee benefit program not exceeding Five Thousand Dollars (\$5,000.00) each fiscal year for cash awards to recognize outstanding performance in the workplace by Bureau employees.

C. To better educate and foster relations as to the Bureau and its mission towards drug reduction, the Bureau may expend funds not exceeding Ten Thousand Dollars (\$10,000.00) each fiscal year for the purpose of distributing educational, demand-reduction and commemorative materials bearing the seal of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control to nonemployees. Donated items, federal grant money and seizure funds shall not count toward this amount.

SECTION 6. AMENDATORY 63 O.S. 2001, 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~~ Chair and ~~Vice Chairman~~ Vice Chair 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 7. AMENDATORY 63 O.S. 2001, Section 2-301, as amended by Section 3, Chapter 338, O.S.L. 2003 (63 O.S. Supp. 2007, Section 2-301), is amended to read as follows:

Section 2-301. A. 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.

B. The ~~Commissioner~~ Director shall promulgate rules relating to the training, certification and registration of animal control officers for the purpose of authorizing such individuals to purchase, possess and administer controlled dangerous substances for animal control within this state and operating under the parameters of Sections 501 through 508 of Title 4 of the Oklahoma Statutes. In promulgating such rules, the ~~Commissioner~~ Director shall cooperate with any federal, state or local entity with jurisdiction over the euthanasia of animals.

SECTION 8. AMENDATORY 63 O.S. 2001, 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 or her profession or to carry on his or her business.

SECTION 9. AMENDATORY 63 O.S. 2001, 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 10. AMENDATORY Section 2, Chapter 288, O.S.L. 2002, as amended by Section 4, Chapter 133, O.S.L. 2003 (63 O.S. Supp. 2007, Section 2-333), is amended to read as follows:

Section 2-333. A. It shall be unlawful for any person to knowingly sell, transfer, distribute, or dispense any product containing ephedrine, pseudoephedrine or phenylpropanolamine, or their salts, isomers or salts of isomers if the person knows that

the purchaser will use the product as a precursor to manufacture methamphetamine or another controlled illegal substance or if the person sells, transfers, distributes or dispenses the product with reckless disregard as to how the product will be used.

B. A violation of this section shall be a felony punishable by imprisonment in the State Penitentiary for a term of not more than ten (10) years.

C. Any person who sells, transfers, distributes, dispenses, or in any manner furnishes any product containing pseudoephedrine or phenylpropanolamine, or their salts, isomers, or salts of isomers in a negligent manner, with knowledge or reason to know that the product will be used as a precursor to manufacture methamphetamine or any other illegal controlled substance, or with reckless disregard as to how the product will be used, shall be liable for all damages, whether directly or indirectly caused by the sale, transfer, distribution, dispensation, or furnishing.

1. Such damages may include, but are not limited to, any and all costs of detecting, investigating, and cleaning up or remediating clandestine or other unlawfully operated or maintained laboratories where controlled dangerous substances are manufactured, any and all costs of prosecuting criminal cases arising from such manufacture, and any and all consequential and punitive damages otherwise allowed by law.

2. A civil action to recover damages against persons, corporations or other entities violating this subsection may be brought only by the Attorney General, the Director of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control or by any district attorney in whose jurisdiction such person may be shown to have committed such violation. Any funds recovered from such an action shall be used for payment or reimbursement of costs arising from investigating or prosecuting criminal or civil cases involving the manufacture of controlled dangerous substances, for drug education programs, or for payment or reimbursement of remediating contaminated methamphetamine laboratory sites.

D. Violation of subsection A or C of this section shall be considered to affect at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon the individuals may be unequal and is subject to the provisions of Section 2 of Title 50

of the Oklahoma Statutes and Section 1397 of Title 12 of the Oklahoma Statutes.

SECTION 11. AMENDATORY 63 O.S. 2001, 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 12. AMENDATORY 63 O.S. 2001, Section 683.6, as amended by Section 7, Chapter 329, O.S.L. 2003 (63 O.S. Supp. 2007, Section 683.6), is amended to read as follows:

Section 683.6 A. There is hereby created an Emergency Management Advisory Council. The members of the Council shall be composed of the Governor, who shall serve as chair of the Council, and the following department heads:

1. The Director of the Oklahoma Department of Emergency Management;
2. The Commissioner of Public Safety;
3. The Adjutant General;
4. The State Commissioner of Health;
5. The Commissioner of the ~~State~~ Oklahoma Department of Agriculture, Food, and Forestry;
6. The Director of the Department of Human Services;
7. The Director of the Department of Transportation;
8. The Director of the Oklahoma Water Resources Board;
9. The State Fire Marshal;
10. The Department of Environmental Quality; ~~and~~

11. The Oklahoma ~~Sheriff's~~ Sheriffs' Association; and

12. The Director of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control,

who shall serve without additional compensation.

B. The Council shall advise the Governor and the Director on all matters pertaining to emergency management.

C. 1. There is hereby created the State Hazard Mitigation Team, composed of the administrative heads of the following agencies or their designees:

- a. Oklahoma Department of Emergency Management, who shall serve as the Team Coordinator,
- b. Oklahoma Water Resources Board,
- c. Oklahoma Climatological Survey,
- d. Oklahoma Conservation Commission,
- e. ~~Oklahoma~~ Corporation Commission,
- f. Oklahoma Department of Commerce,
- g. ~~Oklahoma~~ Department of Environmental Quality,
- h. ~~Oklahoma~~ Department of Human Services,
- i. ~~Oklahoma~~ State Department of Health,
- j. ~~Oklahoma~~ Department of Transportation,
- k. Oklahoma Department of Agriculture, Food, and Forestry or Secretary of the Oklahoma Department of Agriculture, Food, and Forestry,
- l. ~~Oklahoma~~ Department of Wildlife Conservation,
- m. Oklahoma Historical Society,
- n. Oklahoma Insurance ~~Commission~~ Department,

- o. Association of County Commissioners of Oklahoma,
- p. Oklahoma Municipal League,
- q. State Fire Marshal, and
- r. Oklahoma Department of Labor.

2. Depending on the circumstances, the Team Coordinator may request participation of the heads of any other state agencies as deemed appropriate.

3. The Team Coordinator shall also request that a representative of the United States Army Corps of Engineers be appointed by the administrative head of the Tulsa District to participate on the Team.

4. The Team Coordinator shall also request a representative of the U.S. Department of Housing and Urban Development be appointed by the administrative head of the Oklahoma City office to participate on the team.

5. The State Hazard Mitigation Team will meet as determined by the Team Coordinator to review and recommend updates to the State Comprehensive All-hazard Mitigation Plan, and shall have those additional responsibilities as provided by the Team Coordinator, including, but not limited to, the review and recommendation for loan and grant application under the Oklahoma Flood Hazard Mitigation Program.

SECTION 13. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the House of Representatives the 19th day of May, 2008.

David Derby

Presiding Officer of the House of Representatives

Passed the Senate the 22nd day of May, 2008.

Susan Paddock

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Governor this 23rd
day of May, 2008,
at 2:00 o'clock P M.

By: *[Signature]*

Approved by the Governor of the State of Oklahoma the 3rd day of
June, 2008, at 11:20 o'clock P M.

[Signature]
Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Secretary of State this
5th day of June, 2008,
at 2:35 o'clock P. M.

By: *M. L. Lacey*