

# Public Health and Safety Code

## Table of Contents

Public Health and Safety Code .....	1
Uniform Controlled Dangerous Substances Act.....	3
Article 1. General Provisions.....	3
Section 2-101. Definitions .....	3
Section 2-102. Drug paraphernalia—Factors used in determining.....	11
Section 2-103. Definitions .....	12
Section 2-104. Narcotics Revolving Fund .....	12
Article 2. Standards and Schedules.....	13
Section 2-201. Reserved .....	13
Section 2-202. Nomenclature in schedules.....	13
Section 2-203. Schedule I characteristics .....	13
Section 2-204. Schedule I .....	13
Section 2-205. Schedule II characteristics .....	31
Section 2-206. Schedule II.....	31
Section 2-207. Schedule III characteristics.....	34
Section 2-208. Schedule III.....	34
Section 2-209. Schedule IV characteristics .....	38
Section 2-210. Schedule IV .....	38
Section 2-211. Schedule V characteristics.....	41
Section 2-212. Schedule V.....	42
Article 3. Regulation of Controlled Dangerous Substances .....	43
Section 2-313. Excepted Preparations—Conditions of Exemption.....	43
Section 2-314. Labels.....	45
Precursor Substances Act.....	45
Section 2-321. Short title .....	45
Section 2-322. Precursor substances—License or permit.....	45
Section 2-323. License to sell, transfer or otherwise furnish—Application—Records—Fee.....	46
Section 2-324. Permit to possess—Application—Regular report in lieu of permit .....	47
Section 2-325. Reserved .....	47
Section 2-326. Discovery of loss or theft—Disposal—Reports—Other duties .....	47
Section 2-327. Application of act—Sale or transfer of certain nonnarcotic products .....	48
Section 2-328. Violations—Penalties .....	48

Section 2-329. Drug cleanup fines—Disposition of fines collected.....	49
Section 2-330. Notification of seizure—Duty of law enforcement agencies .....	49
Section 2-331. Seizure of devices or precursor chemicals—Notice by peace officer to Bureau of Narcotics and Dangerous Drugs Control .....	50
Section 2-332. Possession of substances to be used as precursor to manufacture of methamphetamine or another controlled substance—Presumption—Exceptions— Penalty—Registration—Records.....	50
Section 2-333. Knowingly selling, transferring, distributing, or dispensing products to be used in the production of certain controlled substances—Penalty—Damages.....	51
Section 2-341. Pharmacy electronic drug tracking service.....	52
Article 4. Offenses and Penalties .....	53
Section 2-401. Prohibited Acts A—Penalties.....	53
Section 2-402. Prohibited Acts B—Penalties .....	56
Section 2-403. Prohibited Acts C—Penalties .....	58
Section 2-404. Reserved .....	58
Section 2-405. Prohibited acts E—Penalties .....	58
Section 2-406. Reserved .....	59
Section 2-407. Prohibited acts G—Penalties.....	59
Section 2-407.1. Certain substances causing intoxication, distortion or disturbances of auditory, visual, muscular or mental processes prohibited—Exemptions—Penalties.....	59
Section 2-408. Offering, soliciting, attempting, endeavoring or conspiring to commit offense— Penalties .....	60
Section 2-409. Additional penalties.....	60
Section 2-410. Conditional release for first offense—Effect of expungement—Persons not covered by section .....	60
Section 2-411. General penalty clause.....	61
Section 2-412. Second or subsequent offenses .....	61
Drug Dealer Liability Act .....	61
Section 2-421. Short title .....	61
Section 2-422. Definitions .....	61
Section 2-423. Liability for civil damages.....	63
Section 2-424. Persons who may bring action—Persons liable—Damages recoverable.....	63
Section 2-425. Individual drug users who may bring action—Persons liable for damages—Damages recoverable .....	64
Section 2-426. Third party payment of damages—Defense under contract of insurance— Indemnification—Prohibition.....	65
Section 2-427. Drug market target community—Level of offense .....	65
Section 2-428. Joinder of parties—Judgments .....	65

Section 2-429. Comparative responsibility—Burden and standard of proof.....	66
Section 2-430. Right of contribution—Recovery by plaintiff .....	66
Section 2-431. Proof of participation in illegal drug market—Standard of proof—Prima facie evidence of participation.....	66
Section 2-432. Attachment of assets—Execution of judgment—Exempt property—Property seized by forfeiture .....	66
Section 2-433. Limitation of action—Accrual of cause of action—Tolling .....	67
Section 2-434. Legal representation of the Choctaw Nation—Stay of action .....	67
Section 2-435. Interfamily tort immunity not altered .....	67
Article 5. Enforcement and Administration.....	67
Section 2-501. Powers of enforcement personnel.....	68
Section 2-502. Inspections .....	68
Section 2-503. Property subject to forfeiture .....	69
Section 2-503.1. Transactions involving proceeds derived from illegal drug activity prohibited— Penalties .....	71
Section 2-503.2. Assessment for violation of acts—Drug Abuse Education and Treatment .....	72
Section 2-504. Seizure of property .....	73
Section 2-505. Summary forfeiture of certain substances .....	73
Section 2-506. Seizure of property—Notice of seizure and intended forfeiture proceeding—Verified answer and claim to property—Hearing—Evidence and proof—Proceeds of sale.....	73
Section 2-507. Itemization and submission for destruction.....	76
Section 2-508. Disposition of seized property .....	76
Section 2-509. Eradication—Penalties—Prohibition of suspended or deferred sentences or probation .....	79
Section 2-510. Defenses—Descriptions .....	79
Article 6. Reserved.....	80
Article 7. Reserved.....	80
Article 8. Miscellaneous Provisions .....	80
Section 2-801. Definitions .....	80
Section 2-802. Additional Unlawful Acts Enumerated .....	81

## **Uniform Controlled Dangerous Substances Act**

### **Article 1. General Provisions**

#### **Section 2-101. Definitions**

A. Section 2-101 through Section 2-510 of this title shall be known and may be cited as the “Uniform Controlled Dangerous Substances Act”.

B. As used in the Uniform Controlled Dangerous Substances Act:

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 the presence of the practitioner, by the authorized agent of the practitioner), or

b. the patient or research subject at the direction and in the presence of the practitioner;

2. “Agent” means a peace officer 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 warehouse or employee thereof, or a person required to register under the Uniform Controlled Dangerous Substances Act;

3. “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;

4. “Control” means to add, remove or change the placement of a drug, substance or immediate precursor under the Uniform Controlled Dangerous Substances Act;

5. “Controlled dangerous substance” means a drug, substance or immediate precursor in Schedules I through V of the Uniform Controlled Dangerous Substances Act or any drug, substance, or immediate precursor listed either temporarily or permanently as a federally controlled substance. Any conflict between Choctaw Nation and federal law with regard to the particular schedule in which a substance is listed shall be resolved in favor of Choctaw Nation law;

6. “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;

7. “Deliver” or “delivery” means the actual, constructive or attempted transfer from one person to another of a controlled dangerous substance or drug paraphernalia, whether or not there is an agency relationship;

8. “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.

9. “Dispenser” is a practitioner who delivers a controlled dangerous substance to an ultimate user or human research subject;

10. “Distribute” means to deliver other than by administering or dispensing a controlled dangerous substance;

11. “Distributor” means a commercial entity engaged in the distribution or reverse distribution of narcotics and dangerous drugs and who complies with all regulations promulgated by the federal Drug Enforcement Administration and the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control;

12. “Drug” means articles:

a. 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,

b. intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals,

c. other than food, intended to affect the structure or any function of the body of man or other animals, and

d. intended for use as a component of any article specified in this paragraph;

provided, however, the term “drug” does not include devices or their components, parts or accessories;

13. “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;

14. “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;

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

16. “Hospice” means a centrally administered, nonprofit or profit, medically directed, nurse-coordinated program 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 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;

17. “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;

18. “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;

19. “Marihuana” or “marijuana” 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;

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

21. “Mid-level practitioner” means an advanced practice nurse, or a certified animal euthanasia technician, or an animal control officer registered by the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control within the parameters of such officer’s duty;

22. “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. “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. “Opium poppy” means the plant of the species *Papaver somniferum* L., except the seeds thereof;

25. “Peace officer” means a law enforcement officer of the Choctaw Nation of Oklahoma including any 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 the State of Oklahoma or of the United States;

26. “Person” means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity;

27. “Poppy straw” means all parts, except the seeds, of the opium poppy, after mowing;

28. “Practitioner” means:

a. (1) a medical doctor or osteopathic physician,

(2) a dentist,

(3) a podiatrist,

(4) an optometrist,

(5) a veterinarian,

(6) a physician assistant under the supervision of a licensed medical doctor or osteopathic physician,

(7) a scientific investigator, or

(8) any other person,

licensed, registered or otherwise permitted to prescribe, 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 the Choctaw Nation of Oklahoma, 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 the Choctaw Nation of Oklahoma;

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

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

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

32. "Drug paraphernalia" means all equipment, products and materials of any kind which are used, intended for use, or fashioned specifically 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 including, but not limited to:

a. kits used, intended for use, or fashioned specifically 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, intended for use, or fashioned specifically for use in manufacturing, compounding, converting, producing, processing or preparing controlled dangerous substances,

c. isomerization devices used, intended for use, or fashioned specifically for use in increasing the potency of any species of plant which is a controlled dangerous substance,

d. testing equipment used, intended for use, or fashioned specifically for use in identifying, or in analyzing the strength, effectiveness or purity of controlled dangerous substances,

e. scales and balances used, intended for use, or fashioned specifically for use in weighing or measuring controlled dangerous substances,

f. diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, used, intended for use, or fashioned specifically for use in cutting controlled dangerous substances,

g. separation gins and sifters used, intended for use, or fashioned specifically for use in removing twigs and seeds from, or in otherwise cleaning or refining, marihuana,

h. blenders, bowls, containers, spoons and mixing devices used, intended for use, or fashioned specifically for use in compounding controlled dangerous substances,

i. capsules, balloons, envelopes and other containers used, intended for use, or fashioned specifically for use in packaging small quantities of controlled dangerous substances,

j. containers and other objects used, intended for use, or fashioned specifically for use in parenterally injecting controlled dangerous substances into the human body,

k. hypodermic syringes, needles and other objects used, intended for use, or fashioned specifically for use in parenterally injecting controlled dangerous substances into the human body,

l. objects used, intended for use, or fashioned specifically 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,

m. all hidden or novelty pipes, and

n. any pipe that has a tobacco bowl or chamber of less than one-half (1/2) inch in diameter in which there is any detectable residue of any controlled dangerous substance as defined in this section or any

other substances not legal for possession or use;

provided, however, the term “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 in which no detectable amount of an illegal substance is found or pipes designed and used solely for smoking tobacco, traditional pipes of an American Indian tribal religious ceremony, or antique pipes that are thirty (30) years of age or older;

33. a. “Synthetic controlled substance” means a substance:

(1) the chemical structure of which is substantially similar to the chemical structure of a controlled dangerous substance in Schedule I or II,

(2) which has a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant or hallucinogenic effect on the central nervous system of a controlled dangerous substance in Schedule I or II, or

(3) with respect to a particular person, which such person represents or intends to have a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled dangerous substance in Schedule I or II.

b. The designation of gamma butyrolactone or any other chemical as a precursor, pursuant to Section 2-322 of this title, does not preclude a finding pursuant to subparagraph a of this paragraph that the chemical is a synthetic controlled substance.

c. “Synthetic controlled substance” does not include:

(1) a controlled dangerous substance,

(2) any substance for which there is an approved new drug application,

(3) with respect to a particular person any substance, if an exemption is in effect for investigational use, for that person under the provisions of Section 505 of the Federal Food, Drug and Cosmetic Act, Title 21 of the United States Code, Section 355, to the extent conduct with respect to such substance is pursuant to such exemption, or

(4) any substance to the extent not intended for human consumption before such an exemption takes effect with respect to that substance.

d. Prima facie evidence that a substance containing salvia divinorum has been enhanced, concentrated or chemically or physically altered shall give rise to a rebuttable presumption that the substance is a synthetic controlled substance;

34. “Tetrahydrocannabinols” means all substances that have been chemically synthesized to emulate the tetrahydrocannabinols of marihuana;

35. “Isomer” means the optical isomer, except as used in subsections C and F of Section 2-204 of this

title and paragraph 4 of subsection A of Section 2-206 of this title. As used in subsections C and F 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;

36. “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; and

37. “Anhydrous ammonia” means any substance that exhibits cryogenic evaporative behavior and tests positive for ammonia.

### **Section 2-102. Drug paraphernalia—Factors used in determining**

In determining whether an object is “drug paraphernalia”, a court or jury shall consider, in addition to all other logically relevant factors, the following:

1. Statements by an owner or by anyone in control of the object concerning its use;
2. The proximity of the object, in time and space, to a direct violation of the Uniform Controlled Dangerous Substances Act;
3. The proximity of the object to controlled dangerous substances;
4. The existence of any residue of controlled dangerous substances on the object;
5. Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to any person who intends to use the object to facilitate a violation of the Uniform Controlled Dangerous Substances Act. The innocence of an owner, or of anyone in control of the object, as to a direct violation of this act shall not prevent a finding that the object is intended for use, or fashioned specifically for use, as drug paraphernalia;
6. Instructions, oral or written, provided with the object which either state directly or imply that the object is to be used for the consumption of controlled substances;
7. Descriptive materials accompanying the object which explain or depict its use as an object for the consumption of controlled substances;
8. The manner in which the object is displayed for sale;
9. Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;
10. Direct or circumstantial evidence of the ratio of sales of the object or objects to the total sales of the business enterprise;
11. The existence and scope of legitimate uses for the object in the community; and

12. Expert testimony concerning its use.

### **Section 2-103. Definitions**

A. As used in this section:

1. "Glass tube" means an object which meets all of the following requirements:

a. a hollow glass cylinder, either open or closed at either end,

b. not less than two (2) nor more than seven (7) inches in length,

c. not less than one-eighth (1/8) inch nor more than three-fourths (3/4) inch in diameter,

d. may be used to facilitate, or intended or designed to facilitate, violations of the Uniform Controlled Dangerous Substances Act including, but not limited to, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, and concealing controlled substances and injecting, ingesting, inhaling, or otherwise introducing controlled substances into the human body, and

e. sold individually, or in connection with another object such as a novelty holder, flower vase, or pen. The foregoing descriptions are intended to be illustrative and not exclusive;

2. "Patron" means a person who enters a business for the purpose of purchasing or viewing as a shopper, merchandise offered for sale at the business; and

3. "Retailer" means a person, corporation, or partnership primarily engaged in the sale of consumable goods and services including, but not limited to, food and gasoline, at retail to the general public. A retailer shall not include any person, corporation, or partnership that sells specialized laboratory equipment for research or educational purposes.

B. It shall be unlawful for a retailer to offer for retail sale to any patron a glass tube, as defined in subsection A of this section.

C. A retailer, or an employee of the retailer, who willfully and knowingly violates the provisions of subsection B of this section shall, upon conviction, be guilty of a misdemeanor punishable by incarceration for not more than one (1) year, or by a fine of not less than One Thousand Dollars (\$1,000.00), or by both such fine and imprisonment.

D. The provisions of this section shall not be construed to prohibit the sale of cigars packaged by the manufacturer in containers or tubes made of glass to facilitate the sale of the item and not for another purpose prohibited by law.

### **Section 2-104. Narcotics Revolving Fund**

There is hereby created a revolving fund for the Choctaw Nation Department of Public Safety to be

designated the “Narcotics Revolving Fund”. The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of any monies received from the sale of surplus and confiscated property, gifts, bequests, devises, contributions and receipts from any other source unless otherwise provided by statute, law, or regulation of the Choctaw Nation or of the federal government. All monies accruing to the credit of said fund are hereby appropriated and may be budgeted and expended by the Department of Public Safety for general operations of the agency or for purposes relating to drug education and information in the Choctaw Nation.

## **Article 2. Standards and Schedules**

### **Section 2-201. Reserved**

### **Section 2-202. Nomenclature in schedules**

The schedules provided by this act include the controlled dangerous substances listed or to be listed by whatever official name, common or usual name, chemical name, or trade name designated.

### **Section 2-203. Schedule I characteristics**

Schedule I includes substances with the following characteristics:

1. High potential for abuse;
2. No accepted medical use in the United States or lacks accepted safety for use in treatment under medical supervision.

### **Section 2-204. Schedule I**

The controlled substances listed in this section are included in Schedule I.

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

1. Acetylmethadol;
2. Allylprodine;
3. Alphacetylmethadol;
4. Alphameprodine;
5. Alphamethadol;

6. Benzethidine;
7. Betacetylmethadol;
8. Betameprodine;
9. Betamethadol;
10. Betaprodine;
11. Clonitazene;
12. Dextromoramide;
13. Dextrorphan (except its methyl ether);
14. Diampromide;
15. Diethylthiambutene;
16. Dimenoxadol;
17. Dimepheptanol;
18. Dimethylthiambutene;
19. Dioxaphetyl butyrate;
20. Dipipanone;
21. Ethylmethylthiambutene;
22. Etonitazene;
23. Etoxidine;
24. Furethidine;
25. Hydroxypethidine;
26. Ketobemidone;
27. Levomoramide;
28. Levophenacymorphan;
29. Morpheridine;

30. Noracymethadol;
31. Norlevorphanol;
32. Normethadone;
33. Norpipanone;
34. Phenadoxone;
35. Phenampromide;
36. Phenomorphan;
37. Phenoperidine;
38. Piritramide;
39. Proheptazine;
40. Properidine;
41. Racemoramide; or
42. Trimeperidine.

B. Any of the following opium derivatives, their salts, isomers, and salts of isomers, unless specifically excepted, when the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

1. Acetorphine;
2. Acetyldihydrocodeine;
3. Benzylmorphine;
4. Codeine methylbromide;
5. Codeine-N-Oxide;
6. Cyprenorphine;
7. Desomorphine;
8. Dihydromorphine;
9. Etorphine;

10. Heroin;
11. Hydromorphenol;
12. Methyldesorphine;
13. Methylhydromorphone;
14. Morphine methylbromide;
15. Morphine methylsulfonate;
16. Morphine-N-Oxide;
17. Myrophine;
18. Nicocodeine;
19. Nicomorphine;
20. Normorphine;
21. Phoclodine; or
22. Thebacon.

C. Any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers, and salts of isomers, unless specifically excepted, when the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

1. Methcathinone;
2. 3, 4-methylenedioxy amphetamine;
3. 3, 4-methylenedioxy methamphetamine;
4. 5-methoxy-3, 4-methylenedioxy amphetamine;
5. 3, 4, 5-trimethoxy amphetamine;
6. Bufotenine;
7. Diethyltryptamine;
8. Dimethyltryptamine;

9. 4-methyl-2, 5-dimethoxyamphetamine;
10. Ibogaine;
11. Lysergic acid diethylamide;
12. Marihuana;
13. Mescaline;
14. N-benzylpiperazine;
15. N-ethyl-3-piperidyl benzilate;
16. N-methyl-3-piperidyl benzilate;
17. Psilocybin;
18. Psilocyn;
19. 2, 5 dimethoxyamphetamine;
20. 4 Bromo-2, 5-dimethoxyamphetamine;
21. 4 methoxyamphetamine;
22. Cyclohexamine;
23. Salvia Divinorum;
24. Salvinorin A;
25. Thiophene Analog of Phencyclidine. Also known as: 1-(1-(2-thienyl) cyclohexyl) piperidine; 2-Thienyl Analog of Phencyclidine; TCP, TCP;
26. Phencyclidine (PCP);
27. Pyrrolidine Analog for Phencyclidine. Also known as 1-(1-Phenylcyclohexyl) - Pyrrolidine, PCPy, PHP;
28. 1-(3-trifluoromethylphenyl) piperazine;
29. Flunitrazepam;
30. B-hydroxy-amphetamine;
31. B-ketoamphetamine;

32. 2,5-dimethoxy-4-nitroamphetamine;
33. 2,5-dimethoxy-4-bromophenethylamine;
34. 2,5-dimethoxy-4-chlorophenethylamine;
35. 2,5-dimethoxy-4-iodoamphetamine;
36. 2,5-dimethoxy-4-iodophenethylamine;
37. 2,5-dimethoxy-4-methylphenethylamine;
38. 2,5-dimethoxy-4-ethylphenethylamine;
39. 2,5-dimethoxy-4-fluorophenethylamine;
40. 2,5-dimethoxy-4-nitrophenethylamine;
41. 2,5-dimethoxy-4-ethylthio-phenethylamine;
42. 2,5-dimethoxy-4-isopropylthio-phenethylamine;
43. 2,5-dimethoxy-4-propylthio-phenethylamine;
44. 2,5-dimethoxy-4-cyclopropylmethylthio-phenethylamine;
45. 2,5-dimethoxy-4-tert-butylthio-phenethylamine;
46. 2,5-dimethoxy-4-(2-fluoroethylthio)-phenethylamine;
47. 5-methoxy-N, N-dimethyltryptamine;
48. N-methyltryptamine;
49. A-ethyltryptamine;
50. A-methyltryptamine;
51. N, N-diethyltryptamine;
52. N, N-diisopropyltryptamine;
53. N, N-dipropyltryptamine;
54. 5-methoxy-a-methyltryptamine;
55. 4-hydroxy-N, N-diethyltryptamine;

56. 4-hydroxy-N, N-diisopropyltryptamine;
57. 5-methoxy-N, N-diisopropyltryptamine;
58. 4-hydroxy-N-isopropyl-N-methyltryptamine;
59. 3,4-Methylenedioxyamfetamine (Methylone);
60. 3,4-Methylenedioxypropionamfetamine (MDPV);
61. 4-Methylamfetamine (Mephedrone);
62. 4-methoxyamfetamine;
63. 4-Fluoramfetamine;
64. 3-Fluoramfetamine;
65. 1-(8-bromobenzo 1,2-b;4,5-b' difuran-4-yl)-2-aminopropane;
66. 2,5-Dimethoxy-4-chloroamfetamine;
67. 4-Methylethamfetamine;
68. Pyrovalerone;
69. N,N-diallyl-5-methoxytryptamine;
70. 3,4-Methylenedioxy-N-ethylamfetamine (Ethylone);
71. B-keto-N-Methylbenzodioxolylbutanamine (Butylone);
72. B-keto-Methylbenzodioxolylpentanamine (Pentylone);
73. Alpha-Pyrrolidinopentiophenone;
74. 4-Fluoroamfetamine;
75. Pentredone;
76. 4'-Methyl-a-pyrrolidinohexaphenone;
77. 2,5-dimethoxy-4-(n)-propylphenethylamine;
78. 2,5-dimethoxyphenethylamine;
79. 1,4-Dibenzylpiperazine;

80. N,N-Dimethylamphetamine;
81. 4-Fluoromethamphetamine;
82. 4-Chloro-2,5-dimethoxy-N-(2-methoxybenzyl)phenethylamine (25C-NBOMe);
83. 4-Iodo-2,5-dimethoxy-N-(2-methoxybenzyl)phenethylamine (25I-NBOMe);
84. 4-Bromo-2,5-dimethoxy-N-(2-methoxybenzyl)phenethylamine (25B-NBOMe); or
85. 1-(4-Fluorophenyl)piperazine.

D. Unless specifically excepted or unless listed in a different 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. Fenethylline;
2. Mecloqualone;
3. N-ethylamphetamine;
4. Methaqualone;
5. Gamma-Hydroxybutyric Acid, also known as GHB, gamma-hydroxybutyrate, 4-hydroxybutyrate, 4-hydroxybutanoic acid, sodium oxybate, and sodium oxybutyrate;
6. Gamma-Butyrolactone (GBL) as packaged, marketed, manufactured or promoted for human consumption, with the exception of legitimate food additive and manufacturing purposes;
7. Gamma Hydroxyvalerate (GHV) as packaged, marketed, or manufactured for human consumption, with the exception of legitimate food additive and manufacturing purposes;
8. Gamma Valerolactone (GVL) as packaged, marketed, or manufactured for human consumption, with the exception of legitimate food additive and manufacturing purposes; or
9. 1,4 Butanediol (1,4 BD or BDO) as packaged, marketed, manufactured, or promoted for human consumption with the exception of legitimate manufacturing purposes.

E. 1. The following industrial uses of Gamma-Butyrolactone, Gamma Hydroxyvalerate, Gamma Valerolactone, or 1,4 Butanediol are excluded from all schedules of controlled substances under this title:

- a. pesticides,
- b. photochemical etching,
- c. electrolytes of small batteries or capacitors,

- d. viscosity modifiers in polyurethane,
- e. surface etching of metal coated plastics,
- f. organic paint disbursements for water soluble inks,
- g. pH regulators in the dyeing of wool and polyamide fibers,
- h. foundry chemistry as a catalyst during curing,
- i. curing agents in many coating systems based on urethanes and amides,
- j. additives and flavoring agents in food, confectionary, and beverage products,
- k. synthetic fiber and clothing production,
- l. tetrahydrofuran production,
- m. gamma butyrolactone production,
- n. polybutylene terephthalate resin production,
- o. polyester raw materials for polyurethane elastomers and foams,
- p. coating resin raw material, and
- q. as an intermediate in the manufacture of other chemicals and pharmaceuticals.

2. At the request of any person, the Director may exempt any other product containing Gamma-Butyrolactone, Gamma Hydroxyvalerate, Gamma Valerolactone, or 1,4 Butanediol from being included as a Schedule I controlled substance if such product is labeled, marketed, manufactured and distributed for legitimate industrial use in a manner that reduces or eliminates the likelihood of abuse.

3. In making a determination regarding an industrial 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 procedures of the Administrative Procedures Act.

F. Any material, compound, mixture, or preparation, whether produced directly or indirectly from a

substance of vegetable origin or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, that contains any quantity of the following substances, or that contains any of their salts, isomers, and salts of isomers when the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

1. JWH-004;
2. JWH-007;
3. JWH-009;
4. JWH-015;
5. JWH-016;
6. JWH-018;
7. JWH-019;
8. JWH-020;
9. JWH-030;
10. JWH-046;
11. JWH-047;
12. JWH-048;
13. JWH-049;
14. JWH-050;
15. JWH-070;
16. JWH-071;
17. JWH-072;
18. JWH-073;
19. JWH-076;
20. JWH-079;
21. JWH-080;
22. JWH-081;

23. JWH-082;
24. JWH-094;
25. JWH-096;
26. JWH-098;
27. JWH-116;
28. JWH-120;
29. JWH-122;
30. JWH-145;
31. JWH-146;
32. JWH-147;
33. JWH-148;
34. JWH-149;
35. JWH-150;
36. JWH-156;
37. JWH-167;
38. JWH-175;
39. JWH-180;
40. JWH-181;
41. JWH-182;
42. JWH-184;
43. JWH-185;
44. JWH-189;
45. JWH-192;
46. JWH-193;

47. JWH-194;
48. JWH-195;
49. JWH-196;
50. JWH-197;
51. JWH-198;
52. JWH-199;
53. JWH-200;
54. JWH-201;
55. JWH-202;
56. JWH-203;
57. JWH-204;
58. JWH-205;
59. JWH-206;
60. JWH-207;
61. JWH-208;
62. JWH-209;
63. JWH-210;
64. JWH-211;
65. JWH-212;
66. JWH-213;
67. JWH-234;
68. JWH-235;
69. JWH-236;
70. JWH-237;

- 71. JWH-239;
- 72. JWH-240;
- 73. JWH-241;
- 74. JWH-242;
- 75. JWH-243;
- 76. JWH-244;
- 77. JWH-245;
- 78. JWH-246;
- 79. JWH-248;
- 80. JWH-249;
- 81. JWH-250;
- 82. JWH-251;
- 83. JWH-252;
- 84. JWH-253;
- 85. JWH-262;
- 86. JWH-292;
- 87. JWH-293;
- 88. JWH-302;
- 89. JWH-303;
- 90. JWH-304;
- 91. JWH-305;
- 92. JWH-306;
- 93. JWH-307;
- 94. JWH-308;

- 95. JWH-311;
- 96. JWH-312;
- 97. JWH-313;
- 98. JWH-314;
- 99. JWH-315;
- 100. JWH-316;
- 101. JWH-346;
- 102. JWH-348;
- 103. JWH-363;
- 104. JWH-364;
- 105. JWH-365;
- 106. JWH-367;
- 107. JWH-368;
- 108. JWH-369;
- 109. JWH-370;
- 110. JWH-371;
- 111. JWH-373;
- 112. JWH-386;
- 113. JWH-387;
- 114. JWH-392;
- 115. JWH-394;
- 116. JWH-395;
- 117. JWH-397;
- 118. JWH-398;

119. JWH-399;
120. JWH-400;
121. JWH-412;
122. JWH-413;
123. JWH-414;
124. JWH-415;
125. CP-55, 940;
126. CP-47, 497;
127. HU-210;
128. HU-211;
129. WIN-55, 212-2;
130. AM-2201;
131. AM-2233;
132. JWH-018 adamantyl-carboxamide;
133. AKB48;
134. JWH-122 N-(4-pentenyl)analog;
135. MAM2201;
136. URB597;
137. URB602;
138. URB754;
139. UR144;
140. XLR11;
141. A-796,260;
142. STS-135;

- 143. AB-FUBINACA;
- 144. AB-PINACA;
- 145. PB-22;
- 146. AKB48 N-5-Fluoropentyl;
- 147. AM1248;
- 148. FUB-PB-22;
- 149. ADB-FUBINACA;
- 150. BB-22;
- 151. 5-Fluoro PB-22; or
- 152. 5-Fluoro AKB-48.

G. In addition to those substances listed in subsection F of this section, unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of a synthetic cannabinoid found to be in any of the following chemical groups:

1. Naphthoylindoles: any compound containing a 3-(1-naphthoyl)indole structure with or without substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, benzyl, halobenzyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or (tetrahydropyran-4-yl)methyl group, whether or not further substituted on the indole ring to any extent, and whether or not substituted on the naphthyl ring to any extent. Naphthoylindoles include, but are not limited to:

- a. 1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl)indole (JWH-200),
- b. 1-(5-fluoropentyl)-3-(1-naphthoyl)indole (AM2201),
- c. 1-pentyl-3-(1-naphthoyl)indole (JWH-018),
- d. 1-butyl-3-(1-naphthoyl)indole (JWH-073),
- e. 1-pentyl-3-(4-methoxy-1-naphthoyl)indole (JWH-081),
- f. 1-propyl-2-methyl-3-(1-naphthoyl)indole (JWH-015),
- g. 1-hexyl-3-(1-naphthoyl)indole (JWH-019),
- h. 1-pentyl-3-(4-methyl-1-naphthoyl)indole (JWH-122),

- i. 1-pentyl-3-(4-ethyl-1-naphthoyl)indole (JWH-210),
- j. 1-pentyl-3-(4-chloro-1-naphthoyl)indole (JWH-398),
- k. 1-pentyl-2-methyl-3-(1-naphthoyl)indole (JWH-007),
- l. 1-pentyl-3-(7-methoxy-1-naphthoyl)indole (JWH-164),
- m. 1-pentyl-2-methyl-3-(4-methoxy-1-naphthoyl)indole (JWH-098),
- n. 1-pentyl-3-(4-fluoro-1-naphthoyl)indole (JWH-412),
- o. 1-[1-(N-methyl-2-piperidinyl)methyl]-3-(1-naphthoyl)indole (AM-1220),
- p. 1-(5-fluoropentyl)-3-(4-methyl-1-naphthoyl)indole (MAM-2201), or
- q. 1-(4-cyanobutyl)-3-(1-naphthoyl)indole (AM-2232);

2. Naphthylmethylindoles: any compound containing a 1H-indol-3-yl-(1-naphthyl)methane structure with or without substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, benzyl, halobenzyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or (tetrahydropyran-4-yl)methyl group, whether or not further substituted on the indole ring to any extent, and whether or not substituted on the naphthyl ring to any extent. Naphthylmethylindoles include, but are not limited to, (1-pentylindol-3-yl)(1-naphthyl)methane (JWH-175);

3. Naphthoylpyrroles: any compound containing a 3-(1-naphthoyl)pyrrole structure with or without substitution at the nitrogen atom of the pyrrole ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, benzyl, halobenzyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or (tetrahydropyran-4-yl)methyl group, whether or not further substituted on the pyrrole ring to any extent, and whether or not substituted on the naphthyl group to any extent. Naphthoylpyrroles include, but are not limited to:

- a. 1-hexyl-2-phenyl-4-(1-naphthoyl)pyrrole (JWH-147),
- b. 1-pentyl-5-(2-methylphenyl)-3-(1-naphthoyl)pyrrole (JWH-370),
- c. 1-pentyl-3-(1-naphthoyl)pyrrole (JWH-030), or
- d. 1-hexyl-5-phenyl-3-(1-naphthoyl)pyrrole (JWH-147);

4. Naphthylideneindenes: any compound containing a naphthylideneindene structure with or without substitution at the 3-position of the indene ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, benzyl, halobenzyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or (tetrahydropyran-4-yl)methyl group, whether or not further substituted on the indene group to any

extent, and whether or not substituted on the naphthyl group to any extent. Naphthylmethylenes include, but are not limited to, (1-[(3-pentyl)-1H-inden-1-ylidene)methyl]naphthalene (JWH-176);

5. Phenylacetylindoles: any compound containing a 3-phenylacetylindole structure with or without substitution at the nitrogen atom of the indole ring by alkyl, haloalkyl, cyanoalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, benzyl, halobenzyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or (tetrahydropyran-4-yl)methyl group, whether or not further substituted on the indole ring to any extent, and whether or not substituted on the phenyl ring to any extent. Phenylacetylindoles include, but are not limited to:

- a. 1-pentyl-3-(2-methoxyphenylacetyl)indole (JWH-250),
- b. 1-(2-cyclohexylethyl)-3-(2-methoxyphenylacetyl)indole (RCS-8),
- c. 1-pentyl-3-(2-chlorophenylacetyl)indole (JWH-203),
- d. 1-Pentyl-3-(2-methylphenylacetyl)indole (JWH-251),
- e. 1-pentyl-3-(4-methoxyphenylacetyl)indole (JWH-201), or
- f. 1-pentyl-3-(3-methoxyphenylacetyl)indole (JWH-302);

6. Cyclohexylphenols: any compound containing a 2-(3-hydroxycyclohexyl)phenol structure with or without substitution at the 5-position of the phenolic ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, benzyl, halobenzyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or (tetrahydropyran-4-yl)methyl group, and whether or not further substituted on the cyclohexyl ring to any extent. Cyclohexylphenols include, but are not limited to:

- a. 5-(1,1-dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (CP-47,497),
- b. 5-(1,1-dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (cannabicyclohexanol; CP-47,497 C8 homologue), or
- c. 5-(1,1-dimethylheptyl)-2-[(1R,2R)-5-hydroxy-2-(3-hydroxypropyl)cyclohexyl]-phenol (CP 55,490);

7. Benzoylindoles: any compound containing a 3-(1-benzoyl)indole structure with or without substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, benzyl, halobenzyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or (tetrahydropyran-4-yl)methyl group, whether or not further substituted on the indole ring to any extent, and whether or not substituted on the phenyl group to any extent. Benzoylindoles include, but are not limited to:

- a. 1-pentyl-3-(4-methoxybenzoyl)indole (RCS-4),
- b. 1-[2-(4-morpholinyl)ethyl]-2-methyl-3-(4-methoxybenzoyl)indole (Pravadoline or WIN 48, 098),

c. 1-(5-fluoropentyl)-3-(2-iodobenzoyl)indole (AM-694),

d. 1-pentyl-3-(2-iodobenzoyl)indole (AM-679), or

e. 1-[1-(N-methyl-2-piperidinyl)methyl]-3-(2-iodobenzoyl)indole (AM-2233);

8. Cyclopropoylindoles: Any compound containing a 3-(cyclopropoyl)indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, benzyl, halobenzyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or (tetrahydropyran-4-yl)methyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the cyclopropoyl ring to any extent. Cyclopropoylindoles include, but are not limited to:

a. 1-pentyl-3-(2,2,3,3-tetramethylcyclopropoyl)indole (UR-144),

b. 1-(5-chloropentyl)-3-(2,2,3,3-tetramethylcyclopropoyl)indole (5Cl-UR-144), or

c. 1-(5-fluoropentyl)-3-(2,2,3,3-tetramethylcyclopropoyl)indole (XLR11);

9. Indole Amides: Any compound containing a 1H-Indole-3-carboxamide structure with substitution at either nitrogen atom of the indazole ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, benzyl, halobenzyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or (tetrahydropyran-4-yl)methyl group, whether or not substituted at the carboxamide group by an adamantyl, 1-naphthyl, or phenol group, and whether or not further substituted in the indole, adamantyl, naphthyl, or phenyl rings to any extent. Indole Amides include, but are not limited to:

a. N-(1-adamantyl)-1-pentyl-1H-indole-3-carboxamide (2NE1), or

b. N-(1-adamantyl)-1-(5-fluoropentyl)-1H-indole-3-carboxamide (STS-135); and

10. Modified by Replacement: any compound defined in this subsection that is modified by replacement of a carbon with nitrogen in the indole, naphthyl, or indene ring.

### **Section 2-205. Schedule II characteristics**

Schedule II includes substances with the following characteristics:

1. High potential for abuse;

2. Currently accepted medical use in the United States, or currently accepted medical use with severe restrictions; and

3. The abuse of the substance may lead to severe psychic or physical dependence.

### **Section 2-206. Schedule II**

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; or
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;
2. Anileridine;
3. Bezitramide;
4. Dihydrocodeine;
5. Diphenoxylate;
6. Fentanyl;
7. Hydromorphone;
8. Isomethadone;
9. Levomethorphan;
10. Levorphanol;
11. Metazocine;
12. Methadone;

13. Methadone - Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;
14. Moramide - Intermediate, 2-methyl-3-morpholino-1, 1-diphenyl-propane-carboxylic acid;
15. Oxycodone;
16. Oxymorphone;
17. Pethidine (Meperidine);
18. Pethidine - Intermediate - A, 4-cyano-1-methyl-4-phenylpiperidine;
19. Pethidine - Intermediate - B, ethyl-4-phenylpiperidine-4-carboxylate;
20. Pethidine - Intermediate - C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;
21. Phenazocine;
22. Piminodine;
23. Racemethorphan;
24. Racemorphan;
25. Etorphine Hydrochloride salt only;
26. Alfentanil hydrochloride;
27. Levo-alphaacetylmethadol;
28. Codeine;
29. Hydrocodone;
30. Morphine;
31. Remifentanil;
32. Sufentanil; or
33. Tapentadol.

C. Any substance which contains any quantity of:

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

3. Nabilone; or

4. Lisdexamfetamine.

D. 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;

2. Methylphenidate;

3. Amobarbital;

4. Pentobarbital; or

5. Secobarbital.

### **Section 2-207. Schedule III characteristics**

Schedule III includes substances with the following characteristics:

1. A potential for abuse less than the substances listed in Schedules I and II;

2. Currently accepted medical use in treatment in the United States; and

3. Abuse may lead to moderate or low physical dependence or high psychological dependence.

### **Section 2-208. Schedule III**

The controlled substances listed in this section are included in Schedule III.

A. Unless listed in another schedule, any material, compound, mixture, or preparation, which contains any quantity of the following substances or any other substance having a potential for abuse associated with a stimulant or depressant effect on the central nervous system:

1. Any drug product containing gamma-hydroxybutyric acid, including its salts, isomers, and salts of isomers, for which an application has been approved under Section 505 of the Federal Food, Drug, and Cosmetic Act;

2. Any material, compound, mixture, or preparation which contains any quantity of the following hormonal substances or steroids, including their salts, isomers, esters and salts of isomers and esters, when the existence of these salts, isomers, esters, and salts of isomers and esters is possible within the specific chemical designation:

- a. Boldenone,
- b. Chlorotestosterone,
- c. Clostebol,
- d. Dehydrochlormethyltestosterone,
- e. Dihydrotestosterone,
- f. Drostanolone,
- g. Ethylestrenol,
- h. Fluoxymesterone,
- i. Formebolone,
- j. Mesterolone,
- k. Methandienone,
- l. Methandranone,
- m. Methandriol,
- n. Methandrostenolone,
- o. Methenolone,
- p. Methyltestosterone, except as provided in subsection E of this section,
- q. Mibolerone,
- r. Nandrolone,
- s. Norethandrolone,
- t. Oxandrolone,
- u. Oxymesterone,
- v. Oxymetholone,
- w. Stanolone,
- x. Stanozolol,

- y. Testolactone,
- z. Testosterone, except as provided in subsection E of this section, and
  - aa. Trenbolone;
- 3. Any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid;
- 4. Benzphetamine and its salts;
- 5. Buprenorphine;
- 6. Butalbital/acetaminophen/caffeine;
- 7. Chlorhexadol;
- 8. Chlorphentermine and its salts;
- 9. Clortermine;
- 10. Glutethimide;
- 11. Hydrocodone with another active ingredient;
- 12. Ketamine, its salts, isomers, and salts of isomers;
- 13. Lysergic acid;
- 14. Lysergic acid amide;
- 15. Mazindol;
- 16. Methyprylon;
- 17. Phendimetrazine;
- 18. Phenylacetone (P2P);
- 19. Sulfondiethylmethane;
- 20. Sulfonethylmethane;
- 21. Sulfonmethane;
- 22. Tetrahydrocannabinols;
- 23. 1-Phenylcyclohexylamine; or

24. 1-Piperidinocyclohexanecarbonitrile (PCC).

Livestock implants as regulated by the Federal Food and Drug Administration shall be exempt.

B. Nalorphine.

C. Unless listed in another schedule, any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:

1. Not more than one and eight-tenths (1.8) grams of codeine or any of its salts, per one hundred (100) milliliters or not more than ninety (90) milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;
2. Not more than one and eight-tenths (1.8) grams of codeine or any of its salts, per one hundred (100) milliliters or not more than ninety (90) milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;
3. Not more than one and eight-tenths (1.8) grams of dihydrocodeine or any of its salts, per one hundred (100) milliliters or not more than ninety (90) milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;
4. Not more than three hundred (300) milligrams of ethylmorphine or any of its salts, per one hundred (100) milliliters or not more than fifteen (15) milligrams per dosage unit, with one or more ingredients in recognized therapeutic amounts;
5. Not more than five hundred (500) milligrams of opium per one hundred (100) milliliters or per one hundred (100) grams, or not more than twenty-five (25) milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts; or
6. Not more than fifty (50) milligrams of morphine or any of its salts, per one hundred (100) milliliters or per one hundred (100) grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

D. The Board of Pharmacy may except by rule any compound, mixture, or preparation containing any stimulant or depressant substance listed in subsections A and B of this section from the application of all or any part of the Uniform Controlled Dangerous Substances Act if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a stimulant or 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 stimulant or depressant effect on the central nervous system.

E. The following hormonal substances or steroids are exempt from classification as Schedule III controlled dangerous substances:

1. Estratest, containing 1.25 mg esterified estrogens and 2.5 mg methyltestosterone;
2. Estratest HS, containing 0.625 mg esterified estrogens and 1.25 mg methyltestosterone;

3. Premarin with Methyltestosterone, containing 1.25 mg conjugated estrogens and 10.0 mg methyltestosterone;
4. Premarin with Methyltestosterone, containing 0.625 mg conjugated estrogens and 5.0 mg methyltestosterone;
5. Testosterone Cypionate — Estradiol Cypionate injection, containing 50 mg/ml Testosterone Cypionate; and
6. Testosterone Enanthate — Estradiol Valerate injection, containing 90 mg/ml Testosterone Enanthate and 4 mg/ml Estradiol Valerate.

#### **Section 2-209. Schedule IV characteristics**

Schedule IV includes substances with the following characteristics:

1. Low potential for abuse relative to substances listed in Schedule III;
2. Currently accepted medical use in treatment in use in the United States; and
3. Abuse of the substance may lead to limited physical dependence or psychological dependence relative to the substances listed in Schedule III.

#### **Section 2-210. 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;
2. Chloral hydrate;
3. Ethchlorvynol;
4. Ethinamate;
5. Meprobamate;
6. Paraldehyde;
7. Petrichloral;
8. Diethylpropion;

9. Phentermine;
10. Pemoline;
11. Chlordiazepoxide;
12. Chlordiazepoxide and its salts, but not including chlordiazepoxide hydrochloride and clidinium bromide or chlordiazepoxide and water-soluble esterified estrogens;
13. Diazepam;
14. Oxazepam;
15. Clorazepate;
16. Flurazepam and its salts;
17. Clonazepam;
18. Barbitol;
19. Mebutamate;
20. Methohexital;
21. Methylphenobarbital;
22. Phenobarbital;
23. Fenfluramine;
24. Pentazocine;
25. Propoxyphene;
26. Butorphanol;
27. Alprazolam;
28. Halazepam;
29. Lorazepam;
30. Prazepam;
31. Temazepam;
32. Triazolam;

33. Carisoprodol;
34. Dichloralphenazone;
35. Estazolam;
36. Eszopiclone;
37. Midazolam;
38. Modafinil;
39. Zaleplon;
40. Zolpidem;
41. Tramadol; or
42. Bromazepam.

B. 1. The following nonnarcotic substances, which may, under the Federal Food, Drug, and Cosmetic Act (21 U.S.C., Section 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 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 2-211. Schedule V characteristics**

Schedule V includes substances with the following characteristics:

1. Low potential for abuse relative to the controlled substances listed in Schedule IV;

2. Currently accepted medical use in treatment in the United States; and

3. Limited physical dependence or psychological dependence liability relative to the controlled substances listed in Schedule IV.

## **Section 2-212. Schedule V**

A. The controlled substances listed in this section are included in Schedule V.

1. Any compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, which also contains one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation, valuable medicinal qualities other than those possessed by the narcotic drug alone:

a. not more than two hundred (200) milligrams of codeine, or any of its salts, per one hundred (100) milliliters or per one hundred (100) grams,

b. not more than one hundred (100) milligrams of dihydrocodeine, or any of its salts, per one hundred (100) milliliters or per one hundred (100) grams,

c. not more than one hundred (100) milligrams of ethylmorphine, or any of its salts, per one hundred (100) milliliters or per one hundred (100) grams,

d. not more than two and five-tenths (2.5) milligrams of diphenoxylate and not less than twenty-five (25) micrograms of atropine sulfate per dosage unit, or

e. not more than one hundred (100) milligrams of opium per one hundred (100) milliliters or per one hundred (100) grams.

2. Any compound, mixture, or preparation containing any detectable quantity of base pseudoephedrine or ephedrine, its salts or optical isomers, or salts of optical isomers. If any compound, mixture, or preparation as specified in this paragraph is dispensed, sold, or distributed in a pharmacy:

a. it shall be dispensed, sold, or distributed only by, or under the supervision of, a licensed pharmacist or a registered pharmacy technician,

b. a service charge not to exceed the purchase price of the product, mixture or preparation may be assessed and collected by the licensed pharmacist or registered pharmacy technician at the point of sale from the person seeking to purchase, receive or otherwise acquire a pseudoephedrine product or products. Upon receipt of payment of the service charge, the licensed pharmacist or registered pharmacy technician shall access the methamphetamine offender registry and verify whether the person is an individual who is listed on the methamphetamine offender registry. Upon verification that the person is an individual who is not listed on the methamphetamine offender registry, the service charge shall be deducted from the total purchase price of the pseudoephedrine product or products. Upon verification that the person is an individual who is listed on the methamphetamine offender registry, the person shall be prohibited from purchasing the pseudoephedrine product or products and shall be required to forfeit the service charge previously collected by the licensed pharmacist or registered pharmacy technician. Any pharmacy that requires the assessment and collection of a service charge for pseudoephedrine products shall post a clear and conspicuous sign at each public entrance to the place of business and at each register within the pharmacy that provides notice to customers of the pharmacy that a service charge shall be assessed and collected for pseudoephedrine products and, upon verification that the

person is listed on the methamphetamine offender registry, the service charge shall be forfeited and retained by the pharmacy, and

c. any person who is not an individual listed on the methamphetamine offender registry that is purchasing, receiving, or otherwise acquiring any compound, mixture, or preparation shall produce a driver license, passport, military identification, or other state-issued identification card and shall sign a written or electronic log, receipt, or other program or mechanism approved by the Oklahoma Bureau of Narcotics and Dangerous Drugs Control, showing:

- (1) the date and time of the transaction,
- (2) name, address and date of birth of the purchaser,
- (3) driver license number, passport, military identification, or state-issued identification number and state of residence of the purchaser,
- (4) name and initials of the pharmacist or pharmacy technician conducting the transaction,
- (5) the product being sold, and
- (6) total quantity, in grams, of base pseudoephedrine or ephedrine purchased.

No person shall purchase, receive, or otherwise acquire more than three and six-tenths (3.6) grams of any product, mixture, or preparation per day or more than seven and two-tenths (7.2) grams of any product, mixture, or preparation within any thirty-day period, or sixty (60) grams of any product, mixture, or preparation within a twelve-month period. Once a person has purchased, received or otherwise acquired the daily limit of three and six-tenths (3.6) grams of any product, mixture or preparation, the person shall be prohibited from purchasing, receiving or otherwise acquiring any additional product, mixture or preparation containing any detectable quantity of base pseudoephedrine or ephedrine for a period of not less than seventy-two (72) hours following the last permitted purchase. The requirements of this paragraph shall not apply to any quantity of such product, mixture or preparation dispensed pursuant to a valid prescription. There shall be no protocol or procedure mandated by any individual or corporate entity that interferes with the professional duty of a pharmacist to counsel and evaluate the appropriate pharmaceutical needs of a patient and the exercise of the professional judgment of a pharmacist as to whether it is appropriate to dispense medication as set forth in this paragraph or otherwise.

3. Any compound, mixture, or preparation containing any detectable quantity of pregabalin.

### **Article 3. Regulation of Controlled Dangerous Substances**

#### **Section 2-313. Excepted Preparations—Conditions of Exemption**

A. Except as otherwise in this act specifically provided, this act shall not apply to the following cases:

1. Prescribing, administering, dispensing, or selling at retail not more than one of any of the following medicinal preparations that contain in thirty (30) milliliters or, if a solid or semisolid preparation, in one (1) avoirdupois ounce:

a. not more than one hundred sixty (160) milligrams of opium;

b. not more than twenty (20) milligrams of morphine or of any of its salts; or

c. not more than eighty (80) milligrams of codeine or any of its salts.

2. Prescribing, administering, dispensing, or selling at retail of liniments, ointments, and other preparations, that are susceptible of external use only and that contain narcotic drugs in such combinations as to prevent their being readily extracted from such liniments, ointments, or preparations, except that this act shall apply to all liniments, ointments and other preparations that contain coca leaves in any quantity or combination.

B. The exemptions authorized by subparagraphs 1 and 2 of subsection A of this section shall be subject to all of the conditions set out in this subsection. The exemptions authorized by subparagraph 3 of subsection A of this section shall not, however, be subject to the conditions set out in subparagraphs 1, 2 or 3 of this subsection, but shall be subject to subparagraph 4 of this subsection.

1. No person shall prescribe, administer, dispense, or distribute under the exemptions of this section, to any one person, or for the use of any one person or animal, any preparation or preparations included within this section, when he knows, or can by reasonable diligence ascertain, that such prescribing, administering, dispensing or distributing will provide the persons to whom or for whose use, or the owner of the animal for the use of which such preparation is prescribed, administered, dispensed, or distributed, within any forty-eight (48) consecutive hours, with more than three hundred twenty (320) milligrams of opium, or more than forty (40) milligrams of morphine or any of its salts, or more than one hundred sixty (160) milligrams of codeine or any of its salts, or will provide such person or the owner of such animal, within forty-eight (48) consecutive hours, with more than one preparation exempted by this section from the operation of this act.

2. This act shall not apply to any compound, mixture or preparation which contains not more than one (1) drachm of paregoric per thirty (30) milliliters.

3. The medicinal preparation, or the liniment, ointment, or other preparation susceptible of external use only, prescribed, administered, dispensed, or distributed, shall contain, in addition to the narcotic drug in it, some drug or drugs conferring upon it medicinal qualities other than those possessed by the narcotic drug alone. Such preparation shall be prescribed, administered, dispensed, and distributed in good faith as a medicine, and not for the purpose of evading the provisions of this act.

4. The provisions of Section 2-314 of this title shall apply to the preparations referred to in subsection A of this section. Nothing in this section shall be construed to limit the kind and quantity of any narcotic drug that may be prescribed, administered, dispensed, or distributed to any person or for the use of any person or animal when it is prescribed, administered, dispensed, or distributed in compliance with the general provisions of this act.

## **Section 2-314. Labels**

A. Whenever a manufacturer or wholesaler distributes a controlled dangerous substance in a container prepared by him, he shall securely affix to each individual container in which that substance is contained a label showing in legible English the name and address of the vendor and the quantity, kind, and form of substance contained therein.

B. Whenever a pharmacist dispenses any controlled dangerous substance, he shall affix to each immediate container in which such substance is dispensed the prescription number, the date dispensed, the patient's name, the name of the doctor, name and address of the pharmacy for which he is lawfully acting; or, if the patient is an animal, the name of the owner of the animal and words "for veterinary use only".

C. Whenever a practitioner dispenses any controlled dangerous substance, he or she shall affix to each immediate container in which such substance is dispensed a label showing date dispensed, his or her name, his or her address, his or her state registration number, name of the patient, or, if the patient is an animal, the name of the owner of the animal.

D. No person except a pharmacist for the purpose of filling a prescription shall alter, deface, or remove any label so affixed.

## **Precursor Substances Act**

### **Section 2-321. Short title**

Sections 2-321 through 2-329 of this act shall constitute a part of the Uniform Controlled Dangerous Substances Act and shall be known and may be cited as the "Precursor Substances Act".

### **Section 2-322. Precursor substances—License or permit**

No person or business shall possess, sell, manufacture, transfer, or otherwise furnish any of the following precursor substances without first having a permit or license issued by the Director of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, except as provided in Title 63, Section 2-327 of the Oklahoma Statutes:

1. D-Lysergic acid;
2. Ergotamine and its salts;
3. Ergonovine and its salts;
4. Methylamine;
5. Ethylamine;
6. Phenyl-2-Propanone;

7. Phenylacetic acid and its salts;
8. Ephedrine, its salts, optical isomers and salts of optical isomers;
9. Norpseudoephedrine, its salts, optical isomers, and salts of optical isomers;
10. Phenylpropanolamine, its salts, optical isomers and salts of optical isomers;
11. Benzyl cyanide;
12. N-methylephedrine, its salts, optical isomers and salts of optical isomers;
13. Pseudoephedrine, its salts, optical isomers and salts of optical isomers;
14. Chloroephedrine, its salts, optical isomers and salts of optical isomers;
15. Piperidine and its salts;
16. Pyrrolidine and its salts;
17. Propionic anhydride;
18. Isosafrole;
19. Safrole;
20. Piperonal; and
21. Red Phosphorus.

**Section 2-323. License to sell, transfer or otherwise furnish—Application—Records—Fee**

A. A manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes any precursor substance defined in Section 2-322 of this act must first obtain a license annually from the Director of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control.

B. The procedure for obtaining a license to sell, transfer, manufacture, purchase for resale, or otherwise furnish a precursor substance shall be as determined by the Oklahoma Statutes and by rules and regulations of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control.

C. A licensee shall make an accurate and legible record of any transaction of precursor substances and maintain such record together with the following records for a period of at least two (2) years:

1. Inventory on hand;
2. Purchase receipts;

3. Manufacturing records including the date and quantity of any precursor substance manufactured, the quantity of precursor substances used in manufacturing any other substance or product, and the inventory on hand of precursor substances after the manufacturing of any other substance or product;
4. Copies of the Oklahoma Bureau of Narcotics purchase permits or written authorization waiving the permit requirement, as provided by subsection D of Section 2-324 of this title; and
5. Records of substance disposal.

**Section 2-324. Permit to possess—Application—Regular report in lieu of permit**

A. Any person or business having a legitimate need for using precursor substances defined in Section 2-322 of this act, shall apply in person to the Director of Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, or his designee, for a permit to possess such substances each time said substance is obtained.

B. The person or business having a legitimate need for using precursor substances shall provide the information as required to the Director of Oklahoma Bureau of Narcotics and Dangerous Drugs Control, or his designee, to receive a permit for possession of precursor substances:

C. The permit shall consist of three parts, including:

1. A copy to be retained by the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control;
2. A copy to be retained by the manufacturer, wholesaler, retailer, or other person furnishing precursor substances; and
3. A copy to be attached to the container of the precursor substances and to be kept with the substances at all times.

D. The Director of Oklahoma State Bureau of Narcotics and Dangerous Drugs Control may authorize in writing any person or business to submit a comprehensive monthly report in lieu of the permit required by this section, if the Director determines that the recipient has established a record of utilization of the substance solely for a lawful purpose.

**Section 2-325. Reserved**

**Section 2-326. Discovery of loss or theft—Disposal—Reports—Other duties**

A. Any person or business, licensed or permitted, who discovers a loss or theft of, or disposes of a substance listed in Section 2-322 of this act shall:

1. Submit a report of the loss, theft, or disposal to the Director of the Oklahoma Bureau of Narcotics and Dangerous Drugs Control no later than the third business day after the date the manufacturer, wholesaler, retailer, or other person discovers the loss or theft, or after the actual disposal; and

2. Include the amount of loss, theft, or disposal in the report. Any disposal of precursor substances must be done in accordance with the rules and regulations of the United States Environmental Protection Administration and shall be performed at the expense of the permit or license holder.

B. A manufacturer, wholesaler, retailer, or other person who sells, transfers, possesses, uses, or otherwise furnishes any precursor substance shall:

1. Maintain records as specified in Section 2-323 of this act;
2. Permit agents of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control to conduct on-site audits, inspect inventory on hand and inspect all records made in accordance with this act at any reasonable time; and
3. Cooperate with the audit, and the full and complete inspection or copying of any records.

### **Section 2-327. Application of act—Sale or transfer of certain nonnarcotic products**

Sections 2-322 through 2-326 of this title shall not apply to the sale or transfer of a nonnarcotic product that includes a precursor substance defined in Section 2-322 of this title, if the product may be sold lawfully with a prescription or over the counter without a prescription pursuant to the Federal Food, Drug and Cosmetic Act, 21 U.S.C. Section 301 et seq., or a rule adopted pursuant thereto. Further, this act shall not apply to common carriers in the transaction of business as common carriers. This section shall not create an exemption for any person who has knowledge that a product sold over the counter is intended to be used to manufacture amphetamine or methamphetamine.

### **Section 2-328. Violations—Penalties**

A. A person or business who manufactures, sells, transfers, furnishes, or receives a precursor substance defined in Section 2-322 of this title commits an offense if the person:

1. Does not comply with the requirements of Section 2-322, 2-323 or 2-326 of this title; or
2. Knowingly makes a false statement in a report or record required by Section 2-323 or 2-326 of this title.

B. Except as provided by subsection C of this section, an offense under subsection A of this section is a misdemeanor and punishable by imprisonment for a term not to exceed one year or by a fine not to exceed Five Thousand Dollars (\$5,000.00).

C. A person who manufactures, sells, transfers, or otherwise furnishes a precursor substance defined in Section 2-322 of this title commits an offense if the person manufactures, sells, transfers, or furnishes the substance with the knowledge or intent that the recipient shall use the substance to unlawfully manufacture a controlled substance or a controlled substance analog.

D. A second or subsequent violation of subsection A of this section shall be a felony punishable by imprisonment for a term of not more than three (3) years or by a fine not to exceed Five Thousand Dollars (\$5,000.00), or by both such fine and imprisonment. Any imprisonment imposed shall not run concurrent with other imprisonment sentences for violations of other provisions of this title of the Choctaw Nation Statutes.

E. A person who is required by Section 2-322 or 2-324 of this title to have a permit for precursor substances commits an offense if the person:

1. Purchases, obtains, or possesses a precursor substance without having first obtained a permit;
2. Has in his possession or immediate control a precursor substance with no attached permit;
3. Knowingly makes a false statement in an application or report required by Section 2-324 or 2-326 of this title; or
4. Manufacturer, sells, transfers, or otherwise furnishes any person or business a precursor substance defined in Section 2-322 of this title, who does not have a permit.

F. An offense under subsection C or E of this section is a felony punishable by for a term of not more than three (3) years or by a fine not to exceed Five Thousand Dollars (\$5,000.00), or by both such fine and imprisonment. Any imprisonment imposed shall not run concurrent with other imprisonment sentences for violations of other provisions of this title of the Choctaw Nation Statutes.

#### **Section 2-329. Drug cleanup fines—Disposition of fines collected**

A. In addition to any fine or imprisonment imposed under Section 2-328 of this title, the following drug cleanup fine may be imposed:

1. Up to Ten Thousand Dollars (\$10,000.00) for violations described in subsection A of Section 2-328 of this title or Section 2-401 of this title; and
2. Up to Ten Thousand Dollars (\$10,000.00) for violations described in subsections C, D or E of Section 2-328 of this title.

B. All fines collected under this section shall be transferred to the Bureau of Narcotics Revolving Fund, pursuant to Section 2-107 of this title.

#### **Section 2-330. Notification of seizure—Duty of law enforcement agencies**

A. Every law enforcement agency in the Choctaw Nation shall notify the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control within ten (10) days of any officer of such agency seizing:

1. Any precursor chemical, as defined in the Precursor Substances Act, used or allegedly used, in full or in part, to manufacture any controlled substance; and

2. Any drug paraphernalia relating to an illegal laboratory, including but not limited to any glassware, instruments, devices, utensils or other objects or equipment used or allegedly used, in full or in part, to manufacture any controlled substance.

B. The Bureau may promulgate rules and forms to facilitate the required notification pursuant to this section.

**Section 2-331. Seizure of devices or precursor chemicals—Notice by peace officer to Bureau of Narcotics and Dangerous Drugs Control**

It shall be the duty of any peace officer of the Choctaw Nation who seizes any glassware, instruments, devices, utensils or precursor chemicals, as defined by Section 2-322 of this title, which have been used or were intended to be used in the illicit manufacturing of any controlled dangerous substance, in full or in part, to make notice of the seizure in writing to the Oklahoma Bureau of Narcotics and Dangerous Drugs Control.

**Section 2-332. Possession of substances to be used as precursor to manufacture of methamphetamine or another controlled substance—Presumption—Exceptions— Penalty— Registration—Records**

A. It shall be unlawful for a person to knowingly and unlawfully possess a drug product containing ephedrine, pseudoephedrine or phenylpropanolamine, or their salts, isomers or salts of isomers with intent to use the product as a precursor to manufacture methamphetamine or another controlled substance.

B. Except as provided in this subsection, possession of a drug product containing more than nine (9) grams of ephedrine, pseudoephedrine or phenylpropanolamine, or their salts, isomers or salts of isomers shall constitute a rebuttable presumption of the intent to use the product as a precursor to methamphetamine or another controlled substance. The rebuttable presumption established by this subsection shall not apply to the following persons who are lawfully possessing drug products in the course of legitimate business:

1. A retail distributor of drug products or wholesaler;
2. A wholesale drug distributor, or its agents, licensed by the Oklahoma Board of Pharmacy;
3. A manufacturer of drug products, or its agents, licensed by the Oklahoma Board of Pharmacy;
4. A pharmacist licensed by the Oklahoma Board of Pharmacy; and
5. A licensed healthcare professional possessing the drug products in the course of carrying out his or her profession.

C. A violation of this section shall be a felony punishable as provided for in subsection G of Section 2-401 of this title.

D. Any wholesaler, manufacturer, or distributor of drug products containing pseudoephedrine or phenylpropanolamine, or their salts, isomers, or salts of isomers shall obtain a registration annually from the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control. Any such wholesaler, manufacturer, or distributor shall keep complete records of all transactions involving such drug products including the names of all parties involved in the transaction and amount of the drug products involved. The records shall be kept readily retrievable and separate from all other invoices or records of transactions not involving such drug products, and shall be maintained for not less than three (3) years.

E. As used in this section:

1. “Manufacturer” means any person within the Choctaw Nation who produces, compounds, packages, or in any manner initially prepares for sale or use any drug product described in subsection D of this section, or any such person in another state if they cause the products to be compounded, packaged, or transported into the Choctaw Nation of Oklahoma;

2. “Wholesaler” means any person within the Choctaw Nation, the State of Oklahoma, or any other state, other than a manufacturer, who sells, transfers, or in any manner furnishes a drug product described in subsection A of this section to any other person in the Choctaw Nation for the purpose of being resold;

3. “Distributor” means any person within Choctaw Nation, the State of Oklahoma, or any other state, other than a manufacturer or wholesaler, who sells, delivers, transfers, or in any manner furnishes a drug product described in subsection A of this section to any person who is not the ultimate user or consumer of the product; and

4. “Readily retrievable” means available for inspection without prior notice at the registration address if that address is within the Choctaw Nation of Oklahoma. If the registration address is outside the Choctaw Nation of Oklahoma, it means records must be furnished within three (3) working days by courier, facsimile, mail or electronic mail.

F. Any substances possessed without a registration as provided in subsection D of this section shall be subject to forfeiture upon conviction for a violation of this section.

G. In addition to any administrative penalties provided by law, any violation of this section shall be a misdemeanor, punishable upon conviction by a fine only in an amount not more than Five Thousand Dollars (\$5,000.00).

**Section 2-333. Knowingly selling, transferring, distributing, or dispensing products to be used in the production of certain controlled substances—Penalty—Damages**

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 for a term of not more than

three (3) 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 prosecuting attorney or an attorney employed or retained by the Choctaw Nation. 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.

### **Section 2-341. Pharmacy electronic drug tracking service**

A. Any pharmacy that dispenses, sells or distributes any compound mixture or preparation containing any detectable quantity of base pseudoephedrine or ephedrine, its salts or optical isomers, or salts of optical isomers shall maintain an electronic record of the sale. The electronic record of the sale shall include the following information:

1. Name and address of the purchaser;
2. Date of birth of the purchaser;
3. Type of identification and number;
4. Date and time of the purchase;
5. Name and quantity of base pseudoephedrine or ephedrine purchased in grams, but not the overall weight of the products; and
6. Name, initials and registration number of the licensed pharmacist or registered pharmacy technician.

If the electronic tracking service is not able to record the identification type and identification number of the purchaser, the licensed pharmacist or a registered pharmacy technician shall write the identification type and number on the order. The electronic record shall also be maintained in a manner that allows for the determination of the equivalent number of packages purchased and total quantity of base ephedrine or pseudoephedrine purchased.

B. Each pharmacy in the Choctaw Nation shall have in place and operational all equipment necessary to access and use a real-time electronic methamphetamine precursor tracking service which is approved by the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control.

C. Before completing the sale of an over-the-counter product containing pseudoephedrine or ephedrine, a pharmacy shall electronically submit the required information to the electronic methamphetamine precursor tracking service. The pharmacy shall not complete the sale of the product if the electronic methamphetamine precursor tracking service generates a stop-sale alert.

D. Absent intentional violation of this act, any pharmacy utilizing the electronic methamphetamine precursor tracking service in accordance with this section shall not be civilly liable as a result of any act or omission in carrying out the duties required by this section. Such pharmacies shall also be immune from liability to any third party unless the pharmacy has violated a provision of this section in relation to a claim brought for such violation. The provisions of this section shall not apply to a person who obtains the product or products pursuant to a valid prescription.

E. The information entered, stored and maintained by the electronic methamphetamine precursor tracking service shall be confidential and shall only be accessed by law enforcement officials, health care professionals and licensed pharmacists for the purpose of controlling the sale of methamphetamine precursors.

F. If a pharmacy selling an over-the-counter product containing pseudoephedrine or ephedrine experiences mechanical or electronic failure of the electronic tracking service and is unable to comply with the provisions of this section, the pharmacy shall maintain a written log until such time as the pharmacy is able to comply with the electronic tracking service requirements.

G. A person who violates any of the provisions of this section shall, upon conviction, be guilty of a misdemeanor punishable by a fine of not more than One Thousand Dollars (\$1,000.00). If the person convicted is a licensed pharmacist or registered pharmacy technician, the violation shall be reported to the Oklahoma State Board of Pharmacy for review and appropriate action.

## **Article 4. Offenses and Penalties**

### **Section 2-401. Prohibited Acts A—Penalties**

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

1. To distribute, 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, 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.

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, lysergic acid diethylamide (LSD), gamma butyrolactone, gamma hydroxyvalerate, gamma valerolactone, 1,4 butanediol, or gamma-hydroxybutyric acid as defined in Sections 2-204 and 2-208 of this title, 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 three (3) years and a fine of not more than Ten Thousand Dollars (\$10,000.00), which shall be in addition to other punishment provided by law and shall not be imposed in lieu of other punishment. Any 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 three (3) years and a fine of not more than Ten Thousand Dollars (\$10,000.00), which shall be in addition to other punishment provided by law and shall not be imposed in lieu of other punishment. Any 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 two (2) years and a fine of not more than One Thousand Dollars (\$1,000. 00), which shall be in addition to other punishment provided by law and shall not be imposed in lieu of other punishment; or

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 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 three (3) 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, cultivate, distribute, or possess with intent to distribute a synthetic controlled substance.

2. Any person convicted of violating the provisions of this paragraph is guilty of a felony and shall be punished by imprisonment for a term not to exceed three (3) years and a fine of not more than Ten

Thousand Dollars (\$10,000.00), which shall be in addition to other punishment provided by law and shall not be imposed in lieu of other punishment.

3. Any person who commits a second or subsequent violation of the provisions of this paragraph may be prosecuted and punished as a habitual offender pursuant to Section 51 of the Choctaw Nation Criminal Code.

D. 1. Any person who commits a second or subsequent felony violation of the provisions of this section, except for paragraph 4 of subsection B of this section, shall be prosecuted and punished as a habitual offender pursuant to Section 51 of the Choctaw Nation Criminal Code.

2. 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.

E. 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 guilty of a felony and shall be punished by imprisonment for a term not to exceed three (3) years and a fine of not more than Ten Thousand Dollars (\$10,000.00), or by both fine and imprisonment. A prosecution under this section may be in addition to, and not in lieu of, the prosecution for any other crime enumerated in this act.

F. 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 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, is guilty of a felony and shall be punished by a term of imprisonment not to exceed three (3) years, or by the imposition of a fine not to exceed Ten Thousand Dollars (\$10,000.00), or by both fine and imprisonment. A prosecution under this section may be in addition to, and not in lieu of, the prosecution for any other crime enumerated in this act.

G. 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, 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 for not less than three (3) years and by a fine of not less than Five Thousand Dollars (\$5,000.00) nor more than Ten Thousand Dollars (\$10,000.00), 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 prosecution under this section may be in addition to, and not in lieu of, the prosecution for any other crime enumerated in this act.

4. 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 for a term of imprisonment not to exceed three (3) years, or by the imposition of a fine not to exceed Ten Thousand Dollars (\$10,000.00), or by both fine and imprisonment. A prosecution under this section may be in addition to, and not in lieu of, the prosecution for any other crime enumerated in this act.

H. Any person convicted of any offense described in the Uniform Controlled Dangerous Substances Act may, in addition to the fine imposed, be assessed an additional fine not to exceed ten percent (10%) of the original fine imposed. Such additional fine shall be paid by the court clerk into a revolving fund created pursuant to Section 2-104 of this title.

I. For purposes of this section, “public housing project” means any dwelling or accommodations operated as a tribal, state, or federally subsidized multifamily housing project by any housing authority, nonprofit corporation or municipal developer.

#### **Section 2-402. Prohibited Acts B—Penalties**

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.

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

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

a. the packaging of the product,

b. the name of the product, and

c. the distribution and promotion of the product, including verbal representations made at the point of

sale.

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

1. Any Schedule I or II substance, except marihuana or a substance included in subsection D of Section 2-206 of this title, is guilty of a felony punishable by imprisonment for not less than two (2) years nor more than three (3) years and by a fine not exceeding Five Thousand Dollars (\$5,000.00). Any person who commits a second or subsequent violation of the provisions of this paragraph may be prosecuted and punished as a habitual offender pursuant to Section 51 of the Choctaw Nation Criminal Code;

2. Any Schedule III, IV or V substance, marihuana, a substance included in subsection D of Section 2-206 of this title, or any preparation excepted from the provisions of the Uniform Controlled Dangerous Substances Act is guilty of a misdemeanor punishable by confinement for not more than one (1) year and by a fine not exceeding One Thousand Dollars (\$1,000.00);

3. Any Schedule III, IV or V substance, marijuana, a substance included in subsection D of Section 2-206 of this title, or any preparation excepted from the provisions of the Uniform Controlled Dangerous Substances Act and who, during the period of any court-imposed probationary term or within ten (10) years of the date following the completion of the execution of any sentence or deferred judgment for a violation of this section, commits a second or subsequent violation of this section shall, upon conviction, be guilty of a felony punishable by imprisonment for not less than two (2) years nor more than three (3) years and by a fine not exceeding Five Thousand Dollars (\$5,000.00); or

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

C. Any person who violates any provision of this section by possessing or purchasing a controlled dangerous substance from any 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 tribal, state, or federal owned parks and recreation areas, or in the presence of any child under twelve (12) years of age, shall be guilty of a felony.

1. Any person convicted of violating the provisions of this paragraph shall be punished by imprisonment for not less than two (2) years nor more than three (3) years, or by a fine of up to Ten Thousand Dollars (\$10,000.00), or by both fine and imprisonment, which shall be in addition to other punishment provided by law and shall not be imposed in lieu of other punishment.

2. Any person who commits a second or subsequent violation of the provisions of this paragraph may be prosecuted and punished as a habitual offender pursuant to Section 51 of the Choctaw Nation Criminal Code.

### **Section 2-403. Prohibited Acts C—Penalties**

A. Any person found guilty of larceny, burglary or theft of controlled dangerous substances is guilty of a felony punishable by imprisonment for a period not to exceed three (3) years. Any person who commits a second or subsequent violation of the provisions of this paragraph may be prosecuted and punished as a habitual offender pursuant to Section 51 of the Choctaw Nation Criminal Code. Convictions for second or subsequent violations of this subsection shall not be subject to statutory provisions for suspended sentences, deferred sentences or probation.

B. Any person found guilty of robbery or attempted robbery of controlled dangerous substances from a practitioner, manufacturer, distributor or agent thereof as defined in Section 2-101 of this title is guilty of a felony punishable by imprisonment for a period of not less than three (3) years, and such sentence shall not be subject to statutory provisions for suspended sentences, deferred sentences or probation. Any person who commits a second or subsequent violation of the provisions of this paragraph may be prosecuted and punished as a habitual offender pursuant to Section 51 of the Choctaw Nation Criminal Code. Convictions for second or subsequent offenses of this subsection shall not be subject to statutory provisions for suspended sentences, deferred sentences or probation.

### **Section 2-404. Reserved**

### **Section 2-405. Prohibited acts E—Penalties**

A. No person shall use tincture of opium, tincture of opium camphorated, or any derivative thereof, by the hypodermic method, either with or without a medical prescription therefor.

B. No person shall use drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled dangerous substance in violation of the Uniform Controlled Dangerous Substances Act, except those persons holding an unrevoked license in the professions of podiatry, dentistry, medicine, nursing, optometry, osteopathy, veterinary medicine or pharmacy.

C. No person shall deliver, sell, possess or manufacture drug paraphernalia knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled dangerous substance in violation of the Uniform Controlled Dangerous Substances Act.

D. Any person eighteen (18) years of age or over who violates subsection C of this section by delivering or selling drug paraphernalia to a person under eighteen (18) years of age shall, upon conviction, be guilty of a felony.

E. Any person who violates subsections A, B or C of this section shall, upon conviction, be guilty of a misdemeanor and punished by imprisonment for not more than one (1) year or by a fine of not more than One Thousand Dollars (\$1,000.00), or both such fine and imprisonment.

## **Section 2-406. Reserved**

## **Section 2-407. Prohibited acts G—Penalties**

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 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, or 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.

D. Any person who violates this section is guilty of a felony punishable by imprisonment for not more than three (3) years, by a fine of not more than Ten Thousand Dollars (\$10,000.00), or by both such fine and imprisonment. Any person who commits a second or subsequent violation of the provisions of this paragraph may be prosecuted and punished as a habitual offender pursuant to Section 51 of the Choctaw Nation Criminal Code.

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 2-407.1. Certain substances causing intoxication, distortion or disturbances of auditory, visual, muscular or mental processes prohibited—Exemptions—Penalties**

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, 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 Oklahoma State Department of Health.

D. The Oklahoma 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 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 2-408. Offering, soliciting, attempting, endeavoring or conspiring to commit offense—Penalties**

Any person who offers, solicits, attempts, endeavors, or conspires to commit any offense defined in the Uniform Controlled Dangerous Substances Act, Section 2-101 et seq. of this title shall be subject to the penalty prescribed for the offense, the commission of which was the object of the offer, solicitation, attempt, endeavor or conspiracy.

**Section 2-409. Additional penalties**

Any penalty imposed for violation of this title shall be in addition to, and not in lieu of, any civil or administrative penalty or sanction authorized by law.

**Section 2-410. Conditional release for first offense—Effect of expungement—Persons not covered by section**

A. Whenever any person who has not previously been convicted of any offense under this act or under any statute of the United States or of any state or of another Indian tribe relating to narcotic drugs, marijuana, or stimulant, depressant, or hallucinogenic drugs, pleads guilty or nolo contendere to or is

found guilty of a violation of the Uniform Controlled Dangerous Substances Act, the court may, unless otherwise prohibited by law, without entering a judgment of guilt and with the consent of such person, defer further proceedings and place the person on probation upon such reasonable terms and conditions as it may require including the requirement that such person cooperate in a treatment and rehabilitation program, if available. Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge such person and dismiss the proceedings against the person. Discharge and dismissal under this section shall be without court adjudication of guilt and shall not be deemed a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime. Discharge and dismissal under this section may occur only once with respect to any person.

B. Any expunged arrest or conviction shall not thereafter be regarded as an arrest or conviction for purposes of employment, civil rights, or any statute, regulation, license, questionnaire or any other public or private purpose; provided, that, any plea of guilty or nolo contendere or finding of guilt to a violation of the Uniform Controlled Dangerous Substances Act shall constitute a conviction of the offense for the purpose of the Uniform Controlled Dangerous Substances Act or any other criminal statute under which the existence of a prior conviction is relevant for a period of ten (10) years following the completion of any court imposed probationary term; provided, the person has not, in the meantime, been convicted of a misdemeanor involving moral turpitude or a felony.

#### **Section 2-411. General penalty clause**

Any person who violates any provision of this act not subject to a specific penalty provision is guilty of a misdemeanor punishable by imprisonment for not more than one (1) year, or by a fine of not more than One Thousand Dollars (\$1,000.00), or by both such fine and imprisonment.

#### **Section 2-412. Second or subsequent offenses**

An offense shall be considered a second or subsequent offense under this act, if, prior to his or her conviction of the offense, the offender has at any time been convicted of an offense or offenses under this act, under any statute of the United States, or of any state, or of another Indian tribe relating to narcotic drugs, marihuana, depressant, stimulant, or hallucinogenic drugs, as defined by this act.

### **Drug Dealer Liability Act**

#### **Section 2-421. Short title**

Section 2-421 through Section 2-435 of this title shall be known and may be cited as the “Drug Dealer Liability Act”.

#### **Section 2-422. Definitions**

As used in the Drug Dealer Liability Act:

1. "Illegal drug" means a drug whose distribution is a violation of Choctaw Nation law;
2. "Illegal drug market" means the support system of illegal drug-related operations, from production to retail sales, through which an illegal drug reaches the user;
3. "Illegal drug market target community" is the area described under Section 2-427 of this act;
4. "Individual drug user" means the individual whose illegal drug use is the basis of an action brought under this act;
5. "Level one offense" means possession of one quarter ( $\frac{1}{4}$ ) ounce or more, but less than four (4) ounces, or distribution of less than one (1) ounce of a specified illegal drug, or possession of one (1) pound or twenty-five plants or more, but less than four (4) pounds or fifty plants, or distribution of less than one (1) pound of marijuana;
6. "Level two offense" means possession of four (4) ounces or more, but less than eight (8) ounces, or distribution of one (1) ounce or more, but less than two (2) ounces, of a specified illegal drug, or possession of four (4) pounds or more or fifty plants or more, but less than eight (8) pounds or seventy-five plants, or distribution of more than one (1) pound but less than ten (10) pounds of marijuana;
7. "Level three offense" means possession of eight (8) ounces or more, but less than sixteen (16) ounces, or distribution of two (2) ounces or more, but less than four (4) ounces, of a specified illegal drug or possession of eight (8) pounds or more or seventy-five plants or more, but less than sixteen (16) pounds or one hundred plants, or distribution of more than five (5) pounds but less than ten (10) pounds of marijuana;
8. "Level four offense" means possession of sixteen (16) ounces or more or distribution of four (4) ounces or more of a specified illegal drug or possession of sixteen (16) pounds or more or one hundred plants or more or distribution of ten (10) pounds or more of marijuana;
9. "Participate in the illegal drug market" means to distribute, possess with an intent to distribute, commit an act intended to facilitate the marketing or distribution of, or agree to distribute, possess with an intent to distribute, or commit an act intended to facilitate the marketing and distribution of an illegal drug. "Participate in the illegal drug market" does not include the purchase or receipt of an illegal drug for personal use only;
10. "Person" means an individual, a governmental entity, corporation, firm, trust, partnership, or incorporated or unincorporated association, existing under or authorized by the laws of the Choctaw Nation of Oklahoma, the State of Oklahoma or of another state, or the United States, or a foreign country;
11. "Period of illegal drug use" means, in relation to the individual drug user, the time of first use by an individual of an illegal drug to the accrual of the cause of action. The period of illegal drug use is presumed to commence two (2) years before the cause of action accrues unless the defendant proves otherwise by clear and convincing evidence;

12. “Place of illegal drug activity” means, in relation to the individual drug user, each county in which the individual possesses or uses an illegal drug or in which the individual resides, attends school, or is employed during the period of the illegal drug use of the individual, unless the defendant proves otherwise by clear and convincing evidence;

13. “Place of participation” means, in relation to a defendant in an action brought under the Drug Dealer Liability Act, each county in which the person participates in the illegal drug market or in which the person resides, attends school, or is employed during the period of the participation in the illegal drug market by the person; and

14. “Specified illegal drug” means cocaine, heroin, or methamphetamine and any other drug the distribution of which is a violation of state law.

### **Section 2-423. Liability for civil damages**

A. A person who knowingly participates in the illegal drug market within the Choctaw Nation of Oklahoma is liable for civil damages as provided in the Drug Dealer Liability Act. A person may recover damages under this act for injury resulting from use of an illegal drug by that person.

B. A law enforcement officer or agency, the Choctaw Nation, or a person acting at the direction of a law enforcement officer or agency of the Choctaw Nation is not liable for participating in the illegal drug market, if the participation is in furtherance of an official investigation.

### **Section 2-424. Persons who may bring action—Persons liable—Damages recoverable**

A. One or more of the following persons may bring an action for damages caused by use of an illegal drug by an individual:

1. A parent, legal guardian, child, spouse, or sibling of the individual drug user;
2. An individual who was exposed to an illegal drug in utero;
3. An employer of the individual drug user; and
4. A medical facility, insurer, governmental entity, employer, or other entity that funds a drug treatment program or employee assistance program for the individual drug user or that otherwise expended money on behalf of the individual drug user.

B. A person entitled to bring an action under this section may seek damages from one or more of the following:

1. A person who knowingly distributed, or knowingly participated in the chain of distribution of, an illegal drug that was actually used by the individual drug user;
2. A person who knowingly participated in the illegal drug market if:

- a. the place of the illegal drug activity by the individual drug user is within the illegal drug market target community of the defendant,
- b. the participation of the defendant in the illegal drug market was connected with the same type of illegal drug used by the individual user, and
- c. the defendant participated in the illegal drug market at any time during the illegal drug use of the individual user.

C. A person entitled to bring an action under this section may recover all of the following damages:

1. Economic damages including, but not limited to, the cost of treatment and rehabilitation, medical expenses, loss of economic or educational potential, loss of productivity, absenteeism, support expenses, accidents or injury, funeral expenses, and any other pecuniary loss proximately caused by the illegal drug use;
2. Noneconomic damages, including, but not limited to, physical and emotional pain, suffering, physical impairment, emotional distress, mental anguish, disfigurement, loss of enjoyment, loss of companionship, services and consortium, and other nonpecuniary losses proximately caused by an individual's use of an illegal drug;
3. Exemplary damages;
4. Reasonable attorney fees; and
5. Cost of suit, including but not limited to, reasonable expenses for expert testimony.

**Section 2-425. Individual drug users who may bring action—Persons liable for damages—Damages recoverable**

A. An individual drug user shall not bring an action for damages caused by the use of an illegal drug, except as otherwise provided in this subsection. An individual drug user may bring an action for damages caused by the use of an illegal drug only if all of the following conditions are met:

1. The individual personally discloses to narcotics enforcement authorities, more than six (6) months before filing the action, all the information known to the individual regarding their source of illegal drugs;
2. The individual has not used an illegal drug within the six (6) months before filing the action; and
3. The individual continues to remain free of the use of an illegal drug throughout the pendency of the action.

B. A person entitled to bring an action under this section may seek damages only from a person who distributed, or is in the chain of distribution of, an illegal drug that was actually used by the individual drug user.

C. A person entitled to bring an action under this section may recover only the following damages:

1. Economic damages, including but not limited to the cost of treatment, rehabilitation, and medical expenses, loss of economic or educational potential, loss of productivity, absenteeism, accidents or injury, and other pecuniary loss proximately caused by the person's illegal drug use;
2. Reasonable attorney fees; and
3. Costs of suit, including but not limited to reasonable expenses for expert testimony.

**Section 2-426. Third party payment of damages—Defense under contract of insurance—Indemnification—Prohibition**

A third party shall not pay damages awarded under the Drug Dealer Liability Act, or provide a defense or money for a defense, on behalf of an insured under a contract of insurance or indemnification.

**Section 2-427. Drug market target community—Level of offense**

A person whose participation in the illegal drug market constitutes the following level offense shall be considered to have the following illegal drug market target community:

1. For a level one offense, the county in which the place of participation of the defendant is situated;
2. For a level two offense, the target community described in paragraph 1 of this section along with all counties with a border contiguous to that target community;
3. For a level three offense, the target community described in paragraph 2 of this section plus all counties with a border contiguous to that target community; and
4. For a level four offense, the state.

**Section 2-428. Joinder of parties—Judgments**

A. Two or more persons may join in one action under this act as plaintiffs if their respective actions have at least one place of illegal drug activity in common and if any portion of the period of illegal drug use overlaps with the period of illegal drug use for every other plaintiff.

B. Two or more persons may be joined in one action under the Drug Dealer Liability Act as defendants if those persons are liable to at least one plaintiff.

C. A plaintiff need not be interested in obtaining and a defendant need not be interested in defending against all the relief demanded. Judgment may be given for one or more plaintiffs according to their respective liabilities.

**Section 2-429. Comparative responsibility—Burden and standard of proof**

- A. An action by an individual drug user is governed by the principles of comparative responsibility. Comparative responsibility attributed to the plaintiff does not bar recovery but diminishes the award of compensatory damages proportionally, according to the measure of responsibility attributed to the plaintiff.
- B. The burden of proving the comparative responsibility of the plaintiff is on the defendant, which shall be shown by clear and convincing evidence.
- C. Comparative responsibility shall not be attributed to a plaintiff who is not an individual drug user.

**Section 2-430. Right of contribution—Recovery by plaintiff**

A person subject to liability under this act has a right of action for contribution against another person subject to liability under the Drug Dealer Liability Act. Contribution may be enforced either in the original action or by a separate action brought for that purpose. A plaintiff may seek recovery in accordance with this act and existing law against a person whom a defendant has asserted a right of contribution.

**Section 2-431. Proof of participation in illegal drug market—Standard of proof—Prima facie evidence of participation**

- A. Proof of participation in the illegal drug market in an action brought under the Drug Dealer Liability Act shall be shown by clear and convincing evidence. Except as otherwise provided in this act, other elements of the cause of action shall be shown by a preponderance of the evidence.
- B. A person against whom recovery is sought who has a criminal conviction pursuant to the drug laws of the Choctaw Nation, or of the State of Oklahoma, or the Comprehensive Drug Abuse Prevention and Control Act of 1970 (Public Law 91-513, 84 Stat. 1236, codified at 21 U.S.C., Section 801 et seq.) is estopped from denying participation in the illegal drug market. Such a conviction is also prima facie evidence of the participation of the person in the illegal drug market during the two (2) years preceding the date of an act giving rise to a conviction.
- C. The absence of criminal drug conviction of a person against whom recovery is sought does not bar an action against that person.

**Section 2-432. Attachment of assets—Execution of judgment—Exempt property—Property seized by forfeiture**

- A. A plaintiff under the Drug Dealer Liability Act, subject to subsection C of this section, may request an ex parte prejudgment attachment order from the court against all assets of a defendant sufficient to satisfy a potential award. If attachment is instituted, a defendant is entitled to an immediate hearing. Attachment may be lifted if the defendant demonstrates that the assets will be available for a potential award or if the defendant posts a bond sufficient to cover a potential award.

B. A person against whom a judgment has been rendered under the Drug Dealer Liability Act is not eligible to exempt any property, of whatever kind, from process to levy or process to execute on the judgment.

C. Any assets sought to satisfy a judgment under the Drug Dealer Liability Act that are named in a forfeiture section or have been seized for forfeiture by any tribal, state, or federal agency may not be used to satisfy a judgment unless and until the assets have been released following the conclusion of the forfeiture action or released by the agency that seized the assets.

### **Section 2-433. Limitation of action—Accrual of cause of action—Tolling**

A. Except as otherwise provided in this section, a claim under the Drug Dealer Liability Act shall not be brought more than two (2) years after the cause of action accrues. A cause of action accrues under the Drug Dealer Liability Act when a person who may recover has reason to know of the harm from illegal drug use that is the basis for the cause of action and has reason to know that the illegal drug use is the cause of the harm.

B. For a plaintiff, the statute of limitations under this section is tolled when the individual potential plaintiff is incapacitated by the use of an illegal drug to the extent that the individual cannot reasonably be expected to seek recovery under this act or as otherwise provided for by law. For a defendant, the statute of limitations under this section is tolled until six (6) months after the individual potential defendant is convicted of a criminal drug offense as otherwise provided for by law.

C. The statute of limitations under the Drug Dealer Liability Act for a claim based on participation in the illegal drug market that occurred prior to the effective date of the Drug Dealer Liability Act does not begin to run until July 1, 2014

### **Section 2-434. Legal representation of the Choctaw Nation—Stay of action**

A. A prosecuting attorney may represent the Choctaw Nation in an action under the Drug Dealer Liability Act.

B. On motion by a governmental agency involved in a drug investigation or prosecution, an action brought under this act shall be stayed until the completion of the criminal investigation or prosecution that gave rise to the motion for the stay of the action.

### **Section 2-435. Interfamily tort immunity not altered**

The provisions of the Drug Dealer Liability Act are not intended to alter the law regarding interfamily tort immunity.

## **Article 5. Enforcement and Administration**

## **Section 2-501. Powers of enforcement personnel**

Any peace officer may:

1. Carry firearms;
2. Execute search warrants, arrest warrants, subpoenas, and summonses issued under the authority of the Choctaw Nation of Oklahoma;
3. Make an arrest without warrant of any person the officer has probable cause for believing has committed any felony under the Uniform Controlled Dangerous Substances Act or a violation of Section 2-402 of this title;
4. Make seizures of property pursuant to the provisions of the Uniform Controlled Dangerous Substances Act; and
5. Perform such other lawful duties as are required to carry out the provisions of the Uniform Controlled Dangerous Substances Act.

## **Section 2-502. Inspections**

A. Prescriptions, orders, and records, required by this act, and stock of substances specified in this act shall be open for inspection only to specifically designated or assigned peace officers, whose duty it is to enforce the laws of the Choctaw Nation of Oklahoma relating to controlled dangerous substances. No officer having knowledge by virtue of his office of any such prescription, order or record shall divulge such knowledge, except in connection with a prosecution or proceeding in court or before a licensing or registration board or officer, to which prosecution or proceeding the person to whom such prescriptions, orders, or records relate is a party.

B. Any peace officer or agency charged with administration of this act is authorized to make administrative inspections of controlled premises in accordance with the following provisions:

1. For purposes of this act only, “controlled premises” means:
  - a. places where persons registered or exempted from registration requirements under this act are required to keep records; and
  - b. places including factories, warehouses, establishments, and conveyances where persons registered or exempted from registration requirements under this act are permitted to hold, manufacture, compound, process, sell, deliver, or otherwise dispose of any controlled dangerous substance.
2. This section shall not be construed to prevent the inspection of books and records pursuant to the provisions of this act; nor shall this section be construed to prevent entries and administrative inspections at reasonable times without a warrant:
  - a. with the consent of the owner, operator, or agent in charge of the controlled premises;

- b. in situations presenting imminent danger to health or safety;
  - c. in situations involving inspection of conveyances where there is reasonable cause to believe that the mobility of the conveyance makes it impracticable to obtain a warrant;
  - d. in any other exceptional or emergency circumstance where time or opportunity to apply for a warrant is lacking; and
  - e. in all other situations where a warrant is not constitutionally required.
3. Except when the owner, operator, or agent in charge of the controlled premises so consents in writing, no inspection authorized by this section shall extend to:
- a. financial data;
  - b. sales data other than shipment data; or
  - c. pricing data.

### **Section 2-503. Property subject to forfeiture**

A. The following shall be subject to forfeiture:

1. All controlled dangerous substances and synthetic controlled substances which have been manufactured, distributed, dispensed, acquired, concealed or possessed in violation of the Uniform Controlled Dangerous Substances Act;
2. All raw materials, products and equipment of any kind and all drug paraphernalia as defined by the Uniform Controlled Dangerous Substances Act, which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing or exporting, injecting, ingesting, inhaling, or otherwise introducing into the human body any controlled dangerous substance or synthetic controlled substance in violation of the provisions of the Uniform Controlled Dangerous Substances Act;
3. All property which is used, or intended for use, as a container for property described in paragraphs 1, 2, 5 and 6 of this subsection;
4. All conveyances, including aircraft, vehicles, vessels, or farm implements which are used to transport, conceal, or cultivate for the purpose of distribution as defined in the Uniform Controlled Dangerous Substances Act, or which are used in any manner to facilitate the transportation or cultivation for the purpose of sale or receipt of property described in paragraphs 1 or 2 of this subsection or when the property described in paragraphs 1 or 2 of this subsection is unlawfully possessed by an occupant thereof, except that:
  - a. no conveyance used by a person as a common carrier in the transaction of business as a common carrier shall be forfeited under the provisions of the Uniform Controlled Dangerous Substances Act unless it shall appear that the owner or other person in charge of such conveyance was a consenting party or privy to a violation of the Uniform Controlled Dangerous Substances Act, and

b. no conveyance shall be forfeited under the provisions of this section by reason of any act or omission established by the owner thereof to have been committed or omitted without the knowledge or consent of such owner, and if the act is committed by any person other than such owner the owner shall establish further that the conveyance was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States, or of any state;

5. All books, records and research, including formulas, microfilm, tapes and data which are used in violation of the Uniform Controlled Dangerous Substances Act;

6. All things of value furnished, or intended to be furnished, in exchange for a controlled dangerous substance in violation of the Uniform Controlled Dangerous Substances Act, all proceeds traceable to such an exchange, and all monies, negotiable instruments, and securities used, or intended to be used, to facilitate any violation of the Uniform Controlled Dangerous Substances Act;

7. All monies, coin and currency found in close proximity to any amount of forfeitable substances, to forfeitable drug manufacturing or distribution paraphernalia or to forfeitable records of the importation, manufacture or distribution of substances, which are rebuttably presumed to be forfeitable under the Uniform Controlled Dangerous Substances Act. The burden of proof is upon claimants of the property to rebut this presumption;

8. All real property, including any right, title, and interest in the whole of any lot or tract of land and any appurtenance or improvement thereto, which is used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, a violation of the Uniform Controlled Dangerous Substances Act which is punishable by imprisonment for more than one (1) year, except that no property right, title or interest shall be forfeited pursuant to this paragraph, by reason of any act or omission established by the owner thereof to have been committed or omitted without the knowledge or consent of that owner; and

9. All weapons possessed, used or available for use in any manner to facilitate a violation of the Uniform Controlled Dangerous Substances Act.

B. Any property or thing of value of a person is subject to forfeiture if it is established by a preponderance of the evidence that such property or thing of value was acquired by such person during the period of the violation of the Uniform Controlled Dangerous Substances Act or within a reasonable time after such period and there was no likely source for such property or thing of value other than the violation of the Uniform Controlled Dangerous Substances Act.

C. All items forfeited in this section shall be forfeited under the procedures established in Section 2-506 of this title. Whenever any item is forfeited pursuant to this section, the district court shall order that such item, money, or monies derived from the sale of such item be deposited by the law enforcement agency which seized the item in the revolving fund provided for in Section 2-104 of this title.

D. All raw materials used or intended to be used by persons to unlawfully manufacture or attempt to manufacture any controlled dangerous substance in violation of the Uniform Controlled Dangerous Substances Act shall be summarily forfeited pursuant to the provisions of Section 2-505 of this title.

E. All property taken or detained under this section shall not be repleviable, but shall remain in the

custody of the law enforcement agency subject only to the orders and decrees of a court of competent jurisdiction. The Director of the Department of Public Safety shall follow the procedures outlined in Section 2-506 of this title dealing with notification of seizure, intent of forfeiture, final disposition procedures, and release to innocent claimants with regard to all property included in this section detained by the Department of Public Safety. Property taken or detained by the Department of Public Safety shall be disposed of or sold pursuant to the provisions of Section 2-508 of this title. Any money, coins, and currency, taken or detained pursuant to this section may be deposited in an interest bearing account by or at the direction of the tribal treasurer if the Department of Public Safety determines the currency is not to be held as evidence. All interest earned on such monies shall be returned to the claimant or forfeited with the money, coins, and currency which was taken or detained as provided by law.

F. The proceeds of any forfeiture of items seized by the Department of Public Safety shall be distributed as follows:

1. To the bona fide or innocent purchaser, conditional sales vendor or mortgagee of the property, if any, up to the amount of his interest in the property, when the court declaring a forfeiture orders a distribution to such person; and
2. The balance to the revolving fund established pursuant to Section 2-104 of this title, provided the Department may enter into agreements with municipal, county, state or federal law enforcement agencies, or other tribal agencies with CLEET-certified law enforcement officers, assisting in the forfeiture or underlying criminal investigation, to return to such an agency a percentage of said proceeds.

G. Any agency that acquires seized or forfeited property or money shall maintain a true and accurate inventory and record of all such property seized pursuant to this section.

**Section 2-503.1. Transactions involving proceeds derived from illegal drug activity prohibited—  
Penalties**

A. It is unlawful for any person knowingly or intentionally to receive or acquire proceeds and to conceal such proceeds, or engage in transactions involving proceeds, known to be derived from any violation of the Uniform Controlled Dangerous Substances Act, Section 2-101 et seq. of this title, or of any statute of the United States relating to controlled dangerous substances as defined by the Uniform Controlled Dangerous Substances Act, Section 2-101 et seq. of this title. This subsection does not apply to any transaction between an individual and the counsel of the individual necessary to preserve the right to representation of the individual, as guaranteed by the Indian Civil Right Act and by the Sixth Amendment of the United States Constitution. However, this exception does not create any presumption against or prohibition of the right of the Choctaw Nation to seek and obtain forfeiture of any proceeds derived from a violation of the Uniform Controlled Dangerous Substances Act, Section 2-101 et seq. of this title, or of any statute of the United States relating to controlled dangerous substances as defined by the Uniform Controlled Dangerous Substances Act, Section 2-101 et seq. of this title.

B. It is unlawful for any person knowingly or intentionally to give, sell, transfer, trade, invest, conceal, transport, or maintain an interest in or otherwise make available anything of value which that person knows is intended to be used for the purpose of committing or furthering the commission of any

violation of the Uniform Controlled Dangerous Substances Act, Section 2-101 et seq. of this title, or of any statute of the United States relating to controlled dangerous substances as defined by the Uniform Controlled Dangerous Substances Act, Section 2-101 et seq. of this title.

C. It is unlawful for any person knowingly or intentionally to direct, plan, organize, initiate, finance, manage, supervise, or facilitate the transportation or transfer of proceeds known to be derived from any violation of the Uniform Controlled Dangerous Substances Act, Section 2-101 et seq. of this title, or of any statute of the United States relating to controlled dangerous substances as defined by the Uniform Controlled Dangerous Substances Act, Section 2-101 et seq. of this title.

D. It is unlawful for any person knowingly or intentionally to conduct a financial transaction involving proceeds derived from a violation of the Uniform Controlled Dangerous Substances Act, Section 2-101 et seq. of this title, or of any statute of the United States relating to controlled dangerous substances as defined by the Uniform Controlled Dangerous Substances Act, Section 2-101 et seq. of this title, when the transaction is designed in whole or in part to conceal or disguise the nature, location, source, ownership, or control of the proceeds known to be derived from a violation of the Uniform Controlled Dangerous Substances Act, Section 2-101 et seq. of this title, or of any statute of the United States relating to controlled dangerous substances as defined by the Uniform Controlled Dangerous Substances Act, Section 2-101 et seq. of this title, or to avoid a transaction reporting requirement under state or federal law.

E. Any person convicted of violating any of the provisions of this section is guilty of a felony and may be punished by imprisonment for not less than two (2) years nor more than three (3) years or by a fine of not more than Ten Thousand Dollars (\$10,000.00) or by both said imprisonment and fine.

### **Section 2-503.2. Assessment for violation of acts—Drug Abuse Education and Treatment**

A. 1. Every person convicted of a violation of the Uniform Controlled Dangerous Substances Act shall be assessed for each offense a sum of not less than One Hundred Dollars (\$100.00) nor more than Three Thousand Dollars (\$3,000.00).

2. The assessment shall be mandatory and in addition to and not in lieu of any fines, restitution costs, other assessments, or forfeitures authorized or required by law for the offense. The assessment required by this section shall not be subject to any order of suspension. The court shall order either a lump sum payment or establish a payment schedule.

3. Failure of the offender to comply with the payment schedule shall be considered contempt of court.

4. For purposes of collection, the assessment order shall not expire until paid in full, nor shall the assessment order be limited by the term of imprisonment prescribed by law for the offense, nor by any term of imprisonment imposed against the offender, whether suspended or actually served.

B. The assessment provided for in subsection A of this section shall be collected by the court clerk as provided for collection of fines and costs. When assessment payments are collected by the court clerk pursuant to court order, the funds shall be deposited into the revolving fund created by Section 2-104 of this title.

### **Section 2-504. Seizure of property**

Any peace officer of the Choctaw Nation of Oklahoma shall seize property subject to forfeiture under this act when:

1. The seizure is incident to arrest or search warrant;
2. The property has been the subject of a prior judgment in favor of the Choctaw Nation in an injunction or forfeiture proceeding under this act;
3. Probable cause exists to believe the property is dangerous to health or safety; or
4. Probable cause exists to believe the property has been used, or will be used, in violation of this act.

### **Section 2-505. Summary forfeiture of certain substances**

A. All controlled substances in Schedule I of Section 2-101 et seq. of this title and all controlled substances in Schedules II, III, IV, and V that are not in properly labeled containers in accordance with this act that are possessed, transferred, sold, or offered for sale in violation of this act are deemed contraband and shall be seized and summarily forfeited.

B. All hazardous materials and all property contaminated with hazardous materials described in paragraph 2 of subsection A of Section 2-503 of this title, used or intended to be used by persons to unlawfully manufacture or attempt to manufacture any controlled dangerous substance, shall be summarily forfeited to the Choctaw Nation and submitted for prompt destruction.

C. Species of plants from which controlled substances in Schedules I or II of the Uniform Controlled Dangerous Substances Act, Section 2-101 et seq. of this title, may be derived which have been planted or cultivated in violation of the Uniform Controlled Dangerous Substances Act, or of which the owners or cultivators are unknown, or which are wild growths, may be seized by peace officers, summarily forfeited, and, in lieu of the eradication procedures contained in Section 2-509 of this title, promptly cut and burned where seized or destroyed by applications of herbicides. Spraying shall be limited to the chemical glyphosate and shall be applied directly to the plants by hand spraying from portable ground-based spray units or by using equipment affixed to rotary-wing aircraft. Any application of glyphosate using rotary-wing aircraft shall employ equipment and methods capable of spot spraying and under no circumstances shall broadcast or other mass spraying methods be employed.

### **Section 2-506. Seizure of property—Notice of seizure and intended forfeiture proceeding—Verified answer and claim to property—Hearing—Evidence and proof—Proceeds of sale**

A. Any peace officer of the Choctaw Nation of Oklahoma shall seize the following property:

1. Any property described in subsection A of Section 2-503 of this title. Such property shall be held as evidence until a forfeiture has been declared or release ordered, except for property described in paragraphs 1, 2 and 3 of subsection A of Section 2-503 of this title, or in the case of money, coins, and currency, deposited as provided in subsection E of Section 2-503 of this title; provided, any money,

coins and currency taken or detained pursuant to this section may be deposited in an interest-bearing account by or at the direction of the prosecuting attorney through procedures established by the tribal treasurer if the prosecuting attorney determines the currency is not to be held as evidence. All interest earned on such monies shall be returned to the claimant or forfeited with the money, coins and currency which was taken or detained as provided by law;

2. Any property described in subsection B of Section 2-503 of this title; or

3. Any property described in subsection C of Section 2-503 of this title.

B. Notice of seizure and intended forfeiture proceeding shall be filed with the Court Clerk for the Choctaw Nation District Court and shall be given all owners and parties in interest. Notwithstanding any other provision of law, no filing fees shall be assessed by the court clerk for the filing of any forfeiture action.

C. Notice shall be given by the agency seeking forfeiture according to one of the following methods:

1. Upon each owner or party in interest whose right, title or interest is of record in the Oklahoma Tax Commission, by mailing a copy of the notice by certified mail to the address as given upon the records of the Oklahoma Tax Commission;

2. Upon each owner or party in interest whose name and address is known to the prosecuting attorney to recover unpaid fines, by mailing a copy of the notice by registered mail to the last-known address; or

3. Upon all other owners or interested parties, whose addresses are unknown, but who are believed to have an interest in the property, by one publication in a newspaper of general circulation in the county of the State of Oklahoma where the seizure was made.

D. Within forty-five (45) days after the mailing or publication of the notice, the owner of the property and any other party in interest or claimant may file a verified answer and claim to the property described in the notice of seizure and of the intended forfeiture proceeding.

E. If at the end of forty-five (45) days after the notice has been mailed or published there is no verified answer on file, the court shall hear evidence upon the fact of the unlawful use and shall order the property forfeited to the Choctaw Nation, if such fact is proved.

F. If a verified answer is filed, the forfeiture proceeding shall be set for hearing.

G. At a hearing in a proceeding against property described in paragraphs 3 through 9 of subsection A or subsections B and C of Section 2-503 of this title, the requirements set forth in said paragraph or subsection, respectively, shall be satisfied by the Choctaw Nation by a preponderance of the evidence.

H. The claimant of any right, title, or interest in the property may prove a lien, mortgage, or conditional sales contract to be a bona fide or innocent ownership interest and that such right, title, or interest was created without any knowledge or reason to believe that the property was being, or was to be, used for the purpose charged.

I. In the event of such proof, the court shall order the property released to the bona fide or innocent

owner, lien holder, mortgagee or vendor if the amount due him is equal to, or in excess of, the value of the property as of the date of the seizure, it being the intention of this section to forfeit only the right, title or interest of the purchaser.

J. If the amount due to such person is less than the value of the property, or if no bona fide claim is established, the property shall be forfeited to the Choctaw Nation and sold under judgment of the court, as on sale upon execution, and as provided for in Section 2-503 of this title.

K. If the court finds that the Choctaw Nation failed to satisfy the required showing provided for in subsection G of this section, the court shall order the property released to the owner or owners.

L. Except as provided for in subsection N of this section, a bona fide or innocent owner, lien holder, mortgagee or vendor that recovers property pursuant to this section shall not be liable for storage fees.

M. Except as provided for in subsection N of this section, storage fees shall be paid by the Department of Public Safety from funds generated by seizure and forfeiture actions.

N. The bona fide or innocent owner, lien holder, mortgagee or vendor shall reclaim subject seized property within thirty (30) days of written notice from the Department of Public Safety. If such person fails to reclaim the property within the thirty-day time period, then storage fees may be assessed against their secured interest.

O. 1. At any hearing held relevant to this section, a report of the findings of the laboratory of the Oklahoma State Bureau of Investigation, the medical examiner's report of investigation or autopsy report, or a laboratory report from a forensic laboratory operated or contracted by the Choctaw Nation, which has been made available to the accused by the prosecuting attorney at least five (5) days prior to the hearing, with reference to all or part of the evidence submitted, when certified as correct by the persons making the report shall be received as evidence of the facts and findings stated, if relevant and otherwise admissible in evidence. If such report is deemed relevant by the forfeiture applicant or the respondent, the court shall admit such report without the testimony of the person making the report, unless the court, pursuant to this subsection, orders such person to appear.

2. When any alleged controlled dangerous substance has been submitted to the laboratory of the Oklahoma State Bureau of Investigation or any other laboratory operated or contracted by the Choctaw Nation of Oklahoma for analysis, and such analysis shows that the submitted material is a controlled dangerous substance, the distribution of which constitutes a felony under the laws of the Choctaw Nation of Oklahoma, no portion of such substance shall be released to any other person or laboratory except to the criminal justice agency originally submitting the substance to the Oklahoma State Bureau of Investigation or other laboratory operated or contracted by the Choctaw Nation of Oklahoma for analysis, absent an order of the district court. The defendant shall additionally be required to submit to the court a procedure for transfer and analysis of the subject material to ensure the integrity of the sample and to prevent the material from being used in any illegal manner.

3. The court, upon motion of either party, shall order the attendance of any person preparing a report submitted as evidence in the hearing when it appears there is a substantial likelihood that material evidence not contained in said report may be produced by the testimony of any person having prepared a report. The hearing shall be held and, if sustained, an order issued not less than five (5) days prior to the time when the testimony shall be required.

4. If within five (5) days prior to the hearing or during a hearing, a motion is made pursuant to this section requiring a person having prepared a report to testify, the court may hear a report or other evidence but shall continue the hearing until such time notice of the motion and hearing is given to the person making the report, the motion is heard, and, if sustained, the testimony ordered can be given.

#### **Section 2-507. Itemization and submission for destruction**

Any peace officer of the Choctaw Nation of Oklahoma seizing any of the property described in paragraphs 1 and 2 of subsection A of Section 2-503 of this title shall cause a written inventory to be made and maintain custody of the same until all legal actions have been exhausted unless such property has been placed in lawful custody of a court or tribal, state, or federal law enforcement agency or unless otherwise provided by law. After all legal actions have been exhausted with respect to such property, the property shall be surrendered by the court, law enforcement agency or person having custody of the same to the Oklahoma State Bureau of Investigation or such other agency or contractor of the Choctaw Nation of Oklahoma to be destroyed as provided in Section 2-508 of this title. For property submitted to the Oklahoma State Bureau of Investigation, the property shall be accompanied with a written inventory on forms to be furnished by the Oklahoma State Bureau of Investigation.

#### **Section 2-508. Disposition of seized property**

A. Except as otherwise provided, all property described in paragraphs 1 and 2 of subsection A of Section 2-503 of this title which is seized or surrendered pursuant to the provisions of the Uniform Controlled Dangerous Substances Act shall be destroyed. The destruction shall be done by or at the direction of the Choctaw Nation Department of Public Safety, who shall have the discretion prior to destruction to preserve samples of the substance for testing. Any such property submitted to the Oklahoma Bureau of Narcotics and Dangerous Drugs Control to which it deems to be of use for investigative training, educational, or analytical purposes may be retained by the Oklahoma Bureau of Narcotics and Dangerous Drugs Control in lieu of destruction.

B. 1. With respect to controlled dangerous substances seized or surrendered pursuant to the provisions of the Uniform Controlled Dangerous Substances Act, peace officers shall have the authority to destroy seized controlled dangerous substances when the amount seized in a single incident exceeds ten (10) pounds. The destroying agency shall:

a. photograph the seized substance with identifying case numbers or other means of identification,

b. prepare a report describing the seized substance prior to the destruction, and

c. retain at least one (1) pound of the substance randomly selected from the seized substance for the purpose of evidence.

2. If a defendant or suspect is known to the destroying agency, the destroying agency shall give at least seven (7) days' written notice to the defendant, suspect or counsel for the defendant or suspect of:

a. the date, the time, and the place where the photographing will take place and notice of the right to

attend the photographing, and

b. the right to obtain samples of the controlled dangerous substance for independent testing and use as evidence.

3. The written notice shall also inform the defendant, suspect or counsel for the defendant or suspect that the destroying agency must be notified in writing within seven (7) days from receipt of the notice of the intent of the suspect or defendant to obtain random samples and make arrangements for the taking of samples. The samples for the defendant or suspect must be taken by a person licensed by the Drug Enforcement Administration. If the defendant or counsel for the defendant fails to notify the destroying agency in writing of an intent to obtain samples and fails to make arrangements for the taking of samples, a sample taken pursuant to subparagraph d of paragraph 1 of this subsection shall be made available upon request of the defendant or suspect.

The representative samples, the photographs, the reports, and the records made under this section and properly identified shall be admissible in any court or administrative proceeding for any purposes for which the seized substance itself would have been admissible.

C. All other property not otherwise provided for in the Uniform Controlled Dangerous Substances Act which has come into the possession of the Department of Public Safety or a prosecuting attorney may be disposed of by order of the district court when no longer needed in connection with any litigation. If the owner of the property is unknown to the agency or to the prosecuting attorney, the agency or the prosecuting attorney shall hold the property for at least six (6) months prior to filing a petition for disposal with the district court except for laboratory equipment which may be forfeited when no longer needed in connection with litigation, unless the property is perishable. The prosecuting attorney shall file a petition in the district court requesting the authority to:

1. Conduct a sale of the property; or
2. Convert title of the property to the Department of Public Safety for the purposes provided for in subsection E, F or G of this section.

The prosecuting attorney shall attach to the petition:

- a. a list describing the property, including all identifying numbers and marks, if any,
- b. the date the property came into the possession of the Department of Public Safety or prosecuting attorney, and
- c. the name and address of the owner, if known.

For any item having an apparent value in excess of One Hundred Dollars (\$100.00), but less than Five Hundred Dollars (\$500.00), the notice of the hearing of the petition for the sale of the property, except laboratory equipment used in the processing, manufacturing or compounding of controlled dangerous substances in violation of the provisions of the Uniform Controlled Dangerous Substances Act, shall be given to every known owner, as set forth in the petition, by first-class mail to the last-known address of the owner at least ten (10) days prior to the date of the hearing. An affidavit of notice being sent shall be filed with the court by the prosecuting attorney. For items in excess of Five Hundred Dollars (\$500.00),

a notice of the hearing of the petition for the sale of said property shall be delivered to every known owner as set forth in the petition by certified mail. Notice of a hearing on a petition for forfeiture or sale of laboratory equipment used in the processing, manufacturing or compounding of controlled dangerous substances in violation of the Uniform Controlled Dangerous Substances Act shall not be required.

The notice shall contain a brief description of the property, and the location and date of the hearing. In addition, notice of the hearing shall be posted in three public places in the county of the State of Oklahoma where the property was seized, one such place being the county courthouse at the regular place assigned for the posting of legal notices. At the hearing, if no owner appears and establishes ownership of the property, the court may enter an order authorizing the Director to donate the property pursuant to subsection E, F or G of this section, to sell the property at a public auction to the highest bidder, or to convert title of the property to the Department of Public Safety for the purposes provided for in subsection E, F or G of this section after at least ten (10) days of notice has been given by publication in one issue of a legal newspaper of the county of the State of Oklahoma where the property was seized. If the property is offered for sale at public auction and no bid is received that exceeds fifty percent (50%) of the value of the property, such value to be announced prior to the sale, the Director or prosecuting attorney may refuse to sell the item pursuant to any bid received. The prosecuting attorney shall make a return of the sale and, when confirmed by the court, the order confirming the sale shall vest in the purchaser title to the property so purchased.

D. The money received from the sale of property shall be transferred to the revolving fund provided for in 2-104 of this title.

E. Any property, including but not limited to uncontaminated laboratory equipment used in the processing, manufacturing or compounding of controlled dangerous substances in violation of the provisions of the Uniform Controlled Dangerous Substances Act, upon a court order, may be donated for classroom or laboratory use by the Department of Public Safety to any school of the Choctaw Nation, any public secondary school or technology center school in the State of Oklahoma or any institution of higher education within the Oklahoma State System of Higher Education.

F. Any vehicle or firearm which has come into the possession and title vested in the Department of Public Safety may be transferred, donated or offered for lease to any sheriff's office, campus police department, or municipal police department in the Choctaw Nation of Oklahoma on an annual basis to assist with the enforcement of the provisions of the Uniform Controlled Dangerous Substances Act. The Department of Public Safety shall promulgate rules, regulations and procedures for leasing vehicles and firearms. No fully automatic weapons will be subject to the leasing agreement. All firearms leased may be utilized only by C.L.E.E.T. certified officers who have received training in the type and class of weapon leased. Every lessee shall be required to submit an annual report to the Department of Public Safety stating the condition of all leased property. A lease agreement may be renewed annually at the option of the Department of Public Safety. Upon termination of a lease agreement, the property shall be returned to the Department of Public Safety for sale or other disposition. All funds derived from lease agreements or other disposition of property no longer useful to law enforcement shall be deposited in the revolving fund created pursuant to Section 2-104 of this title.

G. Any agreement may also provide for the granting of title to any property being transferred as the parties deem appropriate. If the transfer of property is to a school district, a written agreement shall be entered into with the superintendent of the school district. No weapons may be transferred to a school district.

**Section 2-509. Eradication—Penalties—Prohibition of suspended or deferred sentences or probation**

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 Tribal Council is to control and eradicate these species of the plants in the Choctaw Nation 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. Knowingly violating the provisions of subsection B or subsection G 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 not to exceed Ten Thousand Dollars (\$10,000.00) and imprisonment for not less than two (2) years nor more than three (3) years. The fine provided for in this subsection shall be in addition to other punishments provided by law and shall not be in lieu of other punishment. Any person who commits a second or subsequent violation of the provisions of this paragraph may be prosecuted and punished as a habitual offender pursuant to Section 51 of the Choctaw Nation Criminal Code. Any 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 Choctaw Nation who receives information of such plants growing in the Choctaw Nation or in the State of Oklahoma, to make notice, in writing, to the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control.

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.

H. 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 by cooking, burning, or extracting and converting or attempting to extract and convert marihuana or marihuana oil into hashish, hashish oil or hashish powder.

**Section 2-510. Defenses—Descriptions**

A. An exemption or exception set forth in this act shall constitute an affirmative defense. Such affirmative defense shall be in accordance with the presentation of an alibi defense prescribed in the Choctaw Nation Code of Criminal Procedure.

B. In any prosecution for a violation of any of the provisions of this act relating to a controlled

dangerous substance named in any of the schedules set out in the act, it shall be sufficient in any indictment or information to allege a general description of the controlled dangerous substance and the schedule wherein listed without other specific description. Upon a trial under such indictment or information, it shall be sufficient to prove that the controlled dangerous substance is one listed within a particular schedule without further identification.

## **Article 6. Reserved**

## **Article 7. Reserved**

## **Article 8. Miscellaneous Provisions**

### **Section 2-801. Definitions**

1. “Dangerous drug”, “prescription drug”, or “Rx Only” means a drug which:
  - a. under federal law, is required, prior to being dispensed or delivered, to be labeled with one of the following statements:
    - (1) “Caution: Federal law prohibits dispensing without prescription”,
    - (2) “Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian”, or
    - (3) “Rx Only”, or
  - b. is required by any applicable federal or state law or regulation to be dispensed on prescription only or is restricted to use by licensed practitioners only;
2. “Person” means an individual, partnership, limited liability company, corporation or association, unless the context otherwise requires;
3. “Prescription” means and includes any order for drug or medical supplies written or signed, or transmitted by word of mouth, telephone or other means of communication by:
  - a. a licensed practitioner of allopathic or osteopathic medicine, dentistry, podiatry, optometry, or veterinary medicine, or
  - b. under the supervision of an Oklahoma licensed physician, an Oklahoma licensed advanced practice nurse or an Oklahoma licensed physician assistant, or
  - c. an Oklahoma licensed wholesaler or distributor; and
4. “Wholesaler” or “distributor” means a person engaged in the business of distributing dangerous drugs or medicines at wholesale to pharmacies, hospitals, practitioners, government agencies or other lawful drug outlets permitted to sell or use drugs or medicines.

## **Section 2-802. Additional Unlawful Acts Enumerated**

A. It shall be unlawful for any person, firm or business entity to:

1. Forge or increase the quantity of any prescription drug, or to present a prescription bearing forged, fictitious or altered information or to possess any drug secured by such forged, fictitious or altered prescription;
2. Sell, offer for sale, barter or give away any unused quantity of drugs obtained by prescription, except as authorized by law;
3. Possess dangerous drugs without a valid prescription or a valid license to possess such drugs; unless otherwise provided by law;
4. Possess, sell, offer for sale, barter or give away any quantity of dangerous drugs not listed as a scheduled drug pursuant to Sections 2-201 through 2-212 of this title when obtained by a prescription bearing forged, fictitious or altered information.

B. A first violation of this section shall constitute a misdemeanor and upon conviction shall be punishable by imprisonment for a term not more than one (1) year and a fine in an amount not more than One Thousand Dollars (\$1,000.00).

C. A second violation of this section shall constitute a felony and upon conviction shall be punishable by imprisonment for a term not exceeding three (3) years and a fine in an amount not more than Five Thousand Dollars (\$5,000.00).