

SECOND REGULAR SESSION

# SENATE BILL NO. 1088

94TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR CLEMENS.

Read 1st time February 5, 2008, and ordered printed.

TERRY L. SPIELER, Secretary.

4803S.02I

## AN ACT

To repeal section 195.010, RSMo, and to enact in lieu thereof three new sections relating to restricted natural substances, with penalty provisions.

*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Section 195.010, RSMo, is repealed and three new sections  
2 enacted in lieu thereof, to be known as sections 195.010, 195.555, and 195.557,  
3 to read as follows:

195.010. The following words and phrases as used in sections 195.005 to  
2 195.425, unless the context otherwise requires, mean:

3 (1) "Addict", a person who habitually uses one or more controlled  
4 substances to such an extent as to create a tolerance for such drugs, and who does  
5 not have a medical need for such drugs, or who is so far addicted to the use of  
6 such drugs as to have lost the power of self-control with reference to his  
7 addiction;

8 (2) "Administer", to apply a controlled substance, whether by injection,  
9 inhalation, ingestion, or any other means, directly to the body of a patient or  
10 research subject by:

11 (a) A practitioner (or, in his presence, by his authorized agent); or

12 (b) The patient or research subject at the direction and in the presence of  
13 the practitioner;

14 (3) "Agent", an authorized person who acts on behalf of or at the direction  
15 of a manufacturer, distributor, or dispenser. The term does not include a common  
16 or contract carrier, public warehouseman, or employee of the carrier or  
17 warehouseman while acting in the usual and lawful course of the carrier's or  
18 warehouseman's business;

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

19 (4) "Attorney for the state", any prosecuting attorney, circuit attorney, or  
20 attorney general authorized to investigate, commence and prosecute an action  
21 under sections 195.005 to 195.425;

22 (5) "Controlled substance", a drug, substance, or immediate precursor in  
23 Schedules I through V listed in sections 195.005 to 195.425;

24 (6) "Controlled substance analogue", a substance the chemical structure  
25 of which is substantially similar to the chemical structure of a controlled  
26 substance in Schedule I or II and:

27 (a) Which has a stimulant, depressant, or hallucinogenic effect on the  
28 central nervous system substantially similar to the stimulant, depressant, or  
29 hallucinogenic effect on the central nervous system of a controlled substance  
30 included in Schedule I or II; or

31 (b) With respect to a particular individual, which that individual  
32 represents or intends to have a stimulant, depressant, or hallucinogenic effect on  
33 the central nervous system substantially similar to the stimulant, depressant, or  
34 hallucinogenic effect on the central nervous system of a controlled substance  
35 included in Schedule I or II. The term does not include a controlled substance;  
36 any substance for which there is an approved new drug application; any  
37 substance for which an exemption is in effect for investigational use, for a  
38 particular person, under Section 505 of the federal Food, Drug and Cosmetic Act  
39 (21 U.S.C. 355) to the extent conduct with respect to the substance is pursuant  
40 to the exemption; or any substance to the extent not intended for human  
41 consumption before such an exemption takes effect with respect to the substance;

42 (7) "Counterfeit substance", a controlled substance which, or the container  
43 or labeling of which, without authorization, bears the trademark, trade name, or  
44 other identifying mark, imprint, number or device, or any likeness thereof, of a  
45 manufacturer, distributor, or dispenser other than the person who in fact  
46 manufactured, distributed, or dispensed the substance;

47 (8) "Deliver" or "delivery", the actual, constructive, or attempted transfer  
48 from one person to another of drug paraphernalia or of a controlled substance, or  
49 an imitation controlled substance, whether or not there is an agency relationship,  
50 and includes a sale;

51 (9) "Dentist", a person authorized by law to practice dentistry in this  
52 state;

53 (10) "Depressant or stimulant substance":

54 (a) A drug containing any quantity of barbituric acid or any of the salts

55 of barbituric acid or any derivative of barbituric acid which has been designated  
56 by the United States Secretary of Health and Human Services as habit forming  
57 under 21 U.S.C. 352(d);

58 (b) A drug containing any quantity of:

59 a. Amphetamine or any of its isomers;

60 b. Any salt of amphetamine or any salt of an isomer of amphetamine; or

61 c. Any substance the United States Attorney General, after investigation,  
62 has found to be, and by regulation designated as, habit forming because of its  
63 stimulant effect on the central nervous system;

64 (c) Lysergic acid diethylamide; or

65 (d) Any drug containing any quantity of a substance that the United  
66 States Attorney General, after investigation, has found to have, and by regulation  
67 designated as having, a potential for abuse because of its depressant or stimulant  
68 effect on the central nervous system or its hallucinogenic effect;

69 (11) "Dispense", to deliver a narcotic or controlled dangerous drug to an  
70 ultimate user or research subject by or pursuant to the lawful order of a  
71 practitioner including the prescribing, administering, packaging, labeling, or  
72 compounding necessary to prepare the substance for such delivery. "Dispenser"  
73 means a practitioner who dispenses;

74 (12) "Distribute", to deliver other than by administering or dispensing a  
75 controlled substance;

76 (13) "Distributor", a person who distributes;

77 (14) "Drug":

78 (a) Substances recognized as drugs in the official United States  
79 Pharmacopoeia, Official Homeopathic Pharmacopoeia of the United States, or  
80 Official National Formulary, or any supplement to any of them;

81 (b) Substances intended for use in the diagnosis, cure, mitigation,  
82 treatment or prevention of disease in humans or animals;

83 (c) Substances, other than food, intended to affect the structure or any  
84 function of the body of humans or animals; and

85 (d) Substances intended for use as a component of any article specified in  
86 this subdivision. It does not include devices or their components, parts or  
87 accessories;

88 (15) "Drug-dependent person", a person who is using a controlled  
89 substance and who is in a state of psychic or physical dependence, or both, arising  
90 from the use of such substance on a continuous basis. Drug dependence is

91 characterized by behavioral and other responses which include a strong  
92 compulsion to take the substance on a continuous basis in order to experience its  
93 psychic effects or to avoid the discomfort caused by its absence;

94 (16) "Drug enforcement agency", the Drug Enforcement Administration in  
95 the United States Department of Justice, or its successor agency;

96 (17) "Drug paraphernalia", all equipment, products, substances and  
97 materials of any kind which are used, intended for use, or designed for use, in  
98 planting, propagating, cultivating, growing, harvesting, manufacturing,  
99 compounding, converting, producing, processing, preparing, storing, containing,  
100 concealing, injecting, ingesting, inhaling, or otherwise introducing into the human  
101 body a controlled substance or an imitation controlled substance in violation of  
102 sections 195.005 to 195.425. It includes, but is not limited to:

103 (a) Kits used, intended for use, or designed for use in planting,  
104 propagating, cultivating, growing or harvesting of any species of plant which is  
105 a controlled substance or from which a controlled substance can be derived;

106 (b) Kits used, intended for use, or designed for use in manufacturing,  
107 compounding, converting, producing, processing, or preparing controlled  
108 substances or imitation controlled substances;

109 (c) Isomerization devices used, intended for use, or designed for use in  
110 increasing the potency of any species of plant which is a controlled substance or  
111 an imitation controlled substance;

112 (d) Testing equipment used, intended for use, or designed for use in  
113 identifying, or in analyzing the strength, effectiveness or purity of controlled  
114 substances or imitation controlled substances;

115 (e) Scales and balances used, intended for use, or designed for use in  
116 weighing or measuring controlled substances or imitation controlled substances;

117 (f) Dilutents and adulterants, such as quinine hydrochloride, mannitol,  
118 mannite, dextrose and lactose, used, intended for use, or designed for use in  
119 cutting controlled substances or imitation controlled substances;

120 (g) Separation gins and sifters used, intended for use, or designed for use  
121 in removing twigs and seeds from, or in otherwise cleaning or refining,  
122 marijuana;

123 (h) Blenders, bowls, containers, spoons and mixing devices used, intended  
124 for use, or designed for use in compounding controlled substances or imitation  
125 controlled substances;

126 (i) Capsules, balloons, envelopes and other containers used, intended for

127 use, or designed for use in packaging small quantities of controlled substances or  
128 imitation controlled substances;

129 (j) Containers and other objects used, intended for use, or designed for use  
130 in storing or concealing controlled substances or imitation controlled substances;

131 (k) Hypodermic syringes, needles and other objects used, intended for use,  
132 or designed for use in parenterally injecting controlled substances or imitation  
133 controlled substances into the human body;

134 (l) Objects used, intended for use, or designed for use in ingesting,  
135 inhaling, or otherwise introducing marijuana, cocaine, hashish, or hashish oil into  
136 the human body, such as:

137 a. Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or  
138 without screens, permanent screens, hashish heads, or punctured metal bowls;

139 b. Water pipes;

140 c. Carburetion tubes and devices;

141 d. Smoking and carburetion masks;

142 e. Roach clips meaning objects used to hold burning material, such as a  
143 marijuana cigarette, that has become too small or too short to be held in the  
144 hand;

145 f. Miniature cocaine spoons and cocaine vials;

146 g. Chamber pipes;

147 h. Carburetor pipes;

148 i. Electric pipes;

149 j. Air-driven pipes;

150 k. Chillums;

151 l. Bongs;

152 m. Ice pipes or chillers;

153 (m) Substances used, intended for use, or designed for use in the  
154 manufacture of a controlled substance;

155 In determining whether an object, product, substance or material is drug  
156 paraphernalia, a court or other authority should consider, in addition to all other  
157 logically relevant factors, the following:

158 (a) Statements by an owner or by anyone in control of the object  
159 concerning its use;

160 (b) Prior convictions, if any, of an owner, or of anyone in control of the  
161 object, under any state or federal law relating to any controlled substance or  
162 imitation controlled substance;

163 (c) The proximity of the object, in time and space, to a direct violation of  
164 sections 195.005 to 195.425;

165 (d) The proximity of the object to controlled substances or imitation  
166 controlled substances;

167 (e) The existence of any residue of controlled substances or imitation  
168 controlled substances on the object;

169 (f) Direct or circumstantial evidence of the intent of an owner, or of  
170 anyone in control of the object, to deliver it to persons who he knows, or should  
171 reasonably know, intend to use the object to facilitate a violation of sections  
172 195.005 to 195.425; the innocence of an owner, or of anyone in control of the  
173 object, as to direct violation of sections 195.005 to 195.425 shall not prevent a  
174 finding that the object is intended for use, or designed for use as drug  
175 paraphernalia;

176 (g) Instructions, oral or written, provided with the object concerning its  
177 use;

178 (h) Descriptive materials accompanying the object which explain or depict  
179 its use;

180 (i) National or local advertising concerning its use;

181 (j) The manner in which the object is displayed for sale;

182 (k) Whether the owner, or anyone in control of the object, is a legitimate  
183 supplier of like or related items to the community, such as a licensed distributor  
184 or dealer of tobacco products;

185 (l) Direct or circumstantial evidence of the ratio of sales of the object to  
186 the total sales of the business enterprise;

187 (m) The existence and scope of legitimate uses for the object in the  
188 community;

189 (n) Expert testimony concerning its use;

190 (o) The quantity, form or packaging of the product, substance or material  
191 in relation to the quantity, form or packaging associated with any legitimate use  
192 for the product, substance or material;

193 (18) "Federal narcotic laws", the laws of the United States relating to  
194 controlled substances;

195 (19) "Hospital", a place devoted primarily to the maintenance and  
196 operation of facilities for the diagnosis, treatment or care, for not less than  
197 twenty-four hours in any week, of three or more nonrelated individuals suffering  
198 from illness, disease, injury, deformity or other abnormal physical conditions; or

199 a place devoted primarily to provide, for not less than twenty-four consecutive  
200 hours in any week, medical or nursing care for three or more nonrelated  
201 individuals. The term "hospital" does not include convalescent, nursing, shelter  
202 or boarding homes as defined in chapter 198, RSMo;

203 (20) "Immediate precursor", a substance which:

204 (a) The state department of health and senior services has found to be and  
205 by rule designates as being the principal compound commonly used or produced  
206 primarily for use in the manufacture of a controlled substance;

207 (b) Is an immediate chemical intermediary used or likely to be used in the  
208 manufacture of a controlled substance; and

209 (c) The control of which is necessary to prevent, curtail or limit the  
210 manufacture of the controlled substance;

211 (21) "Imitation controlled substance", a substance that is not a controlled  
212 substance, which by dosage unit appearance (including color, shape, size and  
213 markings), or by representations made, would lead a reasonable person to believe  
214 that the substance is a controlled substance. In determining whether the  
215 substance is an "imitation controlled substance" the court or authority concerned  
216 should consider, in addition to all other logically relevant factors, the following:

217 (a) Whether the substance was approved by the federal Food and Drug  
218 Administration for over-the-counter (nonprescription or nonlegend) sales and was  
219 sold in the federal Food and Drug Administration approved package, with the  
220 federal Food and Drug Administration approved labeling information;

221 (b) Statements made by an owner or by anyone else in control of the  
222 substance concerning the nature of the substance, or its use or effect;

223 (c) Whether the substance is packaged in a manner normally used for  
224 illicit controlled substances;

225 (d) Prior convictions, if any, of an owner, or anyone in control of the  
226 object, under state or federal law related to controlled substances or fraud;

227 (e) The proximity of the substances to controlled substances;

228 (f) Whether the consideration tendered in exchange for the noncontrolled  
229 substance substantially exceeds the reasonable value of the substance considering  
230 the actual chemical composition of the substance and, where applicable, the price  
231 at which over-the-counter substances of like chemical composition sell. An  
232 imitation controlled substance does not include a placebo or registered  
233 investigational drug either of which was manufactured, distributed, possessed or  
234 delivered in the ordinary course of professional practice or research;

235 (22) "Laboratory", a laboratory approved by the department of health and  
236 senior services as proper to be entrusted with the custody of controlled substances  
237 but does not include a pharmacist who compounds controlled substances to be  
238 sold or dispensed on prescriptions;

239 (23) "Manufacture", the production, preparation, propagation,  
240 compounding or processing of drug paraphernalia or of a controlled substance, or  
241 an imitation controlled substance, either directly or by extraction from substances  
242 of natural origin, or independently by means of chemical synthesis, or by a  
243 combination of extraction and chemical synthesis, and includes any packaging or  
244 repackaging of the substance or labeling or relabeling of its container. This term  
245 does not include the preparation or compounding of a controlled substance or an  
246 imitation controlled substance or the preparation, compounding, packaging or  
247 labeling of a narcotic or dangerous drug:

248 (a) By a practitioner as an incident to his administering or dispensing of  
249 a controlled substance or an imitation controlled substance in the course of his  
250 professional practice, or

251 (b) By a practitioner or his authorized agent under his supervision, for the  
252 purpose of, or as an incident to, research, teaching or chemical analysis and not  
253 for sale;

254 (24) "Marijuana", all parts of the plant genus *Cannabis* in any species or  
255 form thereof, including, but not limited to *Cannabis Sativa* L., *Cannabis Indica*,  
256 *Cannabis Americana*, *Cannabis Ruderalis*, and *Cannabis Gigantea*, whether  
257 growing or not, the seeds thereof, the resin extracted from any part of the plant;  
258 and every compound, manufacture, salt, derivative, mixture, or preparation of the  
259 plant, its seeds or resin. It does not include the mature stalks of the plant, fiber  
260 produced from the stalks, oil or cake made from the seeds of the plant, any other  
261 compound, manufacture, salt, derivative, mixture or preparation of the mature  
262 stalks (except the resin extracted therefrom), fiber, oil or cake, or the sterilized  
263 seed of the plant which is incapable of germination;

264 (25) "Methamphetamine precursor drug", any drug containing ephedrine,  
265 pseudoephedrine, phenylpropanolamine, or any of their salts, optical isomers, or  
266 salts of optical isomers;

267 (26) "Narcotic drug", any of the following, whether produced directly or  
268 indirectly by extraction from substances of vegetable origin, or independently by  
269 means of chemical synthesis, or by a combination of extraction and chemical  
270 analysis:

271 (a) Opium, opiate, and any derivative, of opium or opiate, including their  
272 isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever  
273 the existence of the isomers, esters, ethers, and salts is possible within the  
274 specific chemical designation. The term does not include the isoquinoline  
275 alkaloids of opium;

276 (b) Coca leaves, but not including extracts of coca leaves from which  
277 cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

278 (c) Cocaine or any salt, isomer, or salt of isomer thereof;

279 (d) Ecgonine, or any derivative, salt, isomer, or salt of isomer thereof;

280 (e) Any compound, mixture, or preparation containing any quantity of any  
281 substance referred to in paragraphs (a) to (d) of this subdivision;

282 (27) "Official written order", an order written on a form provided for that  
283 purpose by the United States Commissioner of Narcotics, under any laws of the  
284 United States making provision therefor, if such order forms are authorized and  
285 required by federal law, and if no such order form is provided, then on an official  
286 form provided for that purpose by the department of health and senior services;

287 (28) "Opiate", any substance having an addiction-forming or  
288 addiction-sustaining liability similar to morphine or being capable of conversion  
289 into a drug having addiction-forming or addiction-sustaining liability. The term  
290 includes its racemic and levorotatory forms. It does not include, unless  
291 specifically controlled under section 195.017, the dextrorotatory isomer of  
292 3-methoxy-n-methyl-morphinan and its salts (dextromethorphan);

293 (29) "Opium poppy", the plant of the species *Papaver somniferum* L.,  
294 except its seeds;

295 (30) "Over-the-counter sale", a retail sale licensed pursuant to chapter  
296 144, RSMo, of a drug other than a controlled substance;

297 (31) "Person", an individual, corporation, government or governmental  
298 subdivision or agency, business trust, estate, trust, partnership, joint venture,  
299 association, or any other legal or commercial entity;

300 (32) "Pharmacist", a licensed pharmacist as defined by the laws of this  
301 state, and where the context so requires, the owner of a store or other place of  
302 business where controlled substances are compounded or dispensed by a licensed  
303 pharmacist; but nothing in sections 195.005 to 195.425 shall be construed as  
304 conferring on a person who is not registered nor licensed as a pharmacist any  
305 authority, right or privilege that is not granted to him by the pharmacy laws of  
306 this state;

307 (33) "Poppy straw", all parts, except the seeds, of the opium poppy, after  
308 mowing;

309 (34) "Possessed" or "possessing a controlled substance", a person, with the  
310 knowledge of the presence and nature of a substance, has actual or constructive  
311 possession of the substance. A person has actual possession if he has the  
312 substance on his person or within easy reach and convenient control. A person  
313 who, although not in actual possession, has the power and the intention at a  
314 given time to exercise dominion or control over the substance either directly or  
315 through another person or persons is in constructive possession of it. Possession  
316 may also be sole or joint. If one person alone has possession of a substance  
317 possession is sole. If two or more persons share possession of a substance,  
318 possession is joint;

319 (35) "Practitioner", a physician, dentist, optometrist, podiatrist,  
320 veterinarian, scientific investigator, pharmacy, hospital or other person licensed,  
321 registered or otherwise permitted by this state to distribute, dispense, conduct  
322 research with respect to or administer or to use in teaching or chemical analysis,  
323 a controlled substance in the course of professional practice or research in this  
324 state, or a pharmacy, hospital or other institution licensed, registered, or  
325 otherwise permitted to distribute, dispense, conduct research with respect to or  
326 administer a controlled substance in the course of professional practice or  
327 research;

328 (36) "Production", includes the manufacture, planting, cultivation,  
329 growing, or harvesting of drug paraphernalia or of a controlled substance or an  
330 imitation controlled substance;

331 (37) "Registry number", the number assigned to each person registered  
332 under the federal controlled substances laws;

333 (38) **"Restricted natural substance", all parts of the plant datura**  
334 **stramonium, also known as jimson weed, whether growing or not, the**  
335 **seeds thereof, any extract from any part of such plant, and every**  
336 **compound, manufacture, salt derivative, mixture or preparation of such**  
337 **plant, its seeds or extracts, unless substances consistent with those**  
338 **found in such plants are present in formulations that the Food and**  
339 **Drug Administration of the Department of Health and Human Services**  
340 **has approved for distribution;**

341 (39) "Sale", includes barter, exchange, or gift, or offer therefor, and each  
342 such transaction made by any person, whether as principal, proprietor, agent,

343 servant or employee;

344 [(39)] (40) "State" when applied to a part of the United States, includes  
345 any state, district, commonwealth, territory, insular possession thereof, and any  
346 area subject to the legal authority of the United States of America;

347 [(40)] (41) "Ultimate user", a person who lawfully possesses a controlled  
348 substance or an imitation controlled substance for his own use or for the use of  
349 a member of his household or for administering to an animal owned by him or by  
350 a member of his household;

351 [(41)] (42) "Wholesaler", a person who supplies drug paraphernalia or  
352 controlled substances or imitation controlled substances that he himself has not  
353 produced or prepared, on official written orders, but not on prescriptions.

**195.555. 1. It is unlawful for any person to possess or have under  
2 his or her control a restricted natural substance except as provided in  
3 subsection 2 of this section.**

4 **2. It is not a violation of subsection 1 of this section for any  
5 person to own, possess, manage, or otherwise have control over land on  
6 which a restricted natural substance naturally grows unless such  
7 person knowingly plants or cultivates such restricted natural  
8 substance, or harvests such a substance for the purpose of any person  
9 drinking, inhaling or otherwise ingesting such restricted natural  
10 substance, or unless such person knowingly allows or authorizes  
11 another person to plant or cultivate such restricted natural substance,  
12 or to harvest such a substance on his or her land for the purpose of  
13 anyone drinking, inhaling or otherwise ingesting such restricted  
14 natural substance.**

15 **3. In making a determination as to whether a person has violated  
16 subsection 1 of this section, the court shall consider the following  
17 factors:**

18 **(1) Any statements made by the defendant regarding knowledge  
19 of the nature of the restricted natural substance, its use or effect;**

20 **(2) Any statements made by the defendant to another that such  
21 substance may be sold or resold for a profit;**

22 **(3) The proximity of the substance to any controlled substance;  
23 and**

24 **(4) Prior convictions, if any, of the defendant for violating any  
25 provision of this chapter.**

26 **4. Any person who violates the provisions of subsection 1 of this**

27 section, for a first offense is guilty of a class A misdemeanor. For a  
28 second or subsequent offense such person is guilty of a class D felony.

195.557. 1. It is unlawful for any person to distribute, deliver,  
2 manufacture, produce, cultivate or attempt to distribute, deliver,  
3 manufacture, produce, or cultivate a restricted natural substance, as  
4 defined in section 195.010, or to possess with intent to distribute,  
5 deliver, manufacture, produce, or cultivate a restricted natural  
6 substance.

7 2. For a first offense, any person who violates or attempts to  
8 violate this section with respect to any restricted natural substance is  
9 guilty of a class C felony. For a second or subsequent offense, any  
10 person who violates or attempts to violate this section with respect to  
11 any restricted natural substance is guilty of a class B felony.

✓

Bill

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