

SECOND REGULAR SESSION

SENATE BILL NO. 641

97TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR EMERY.

Pre-filed December 19, 2013, and ordered printed.

TERRY L. SPIELER, Secretary.

4962S.011

AN ACT

To repeal section 195.010, RSMo, and to enact in lieu thereof one new section relating to controlled substances.

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

Section A. Section 195.010, RSMo, is repealed and one new section
2 enacted in lieu thereof, to be known as section 195.010, 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;

19 (4) "Attorney for the state", any prosecuting attorney, circuit attorney, or

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

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

157 a. Statements by an owner or by anyone in control of the object concerning
158 its use;

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

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

- 164 d. The proximity of the object to controlled substances or imitation
165 controlled substances;
- 166 e. The existence of any residue of controlled substances or imitation
167 controlled substances on the object;
- 168 f. Direct or circumstantial evidence of the intent of an owner, or of anyone
169 in control of the object, to deliver it to persons who he knows, or should
170 reasonably know, intend to use the object to facilitate a violation of sections
171 195.005 to 195.425; the innocence of an owner, or of anyone in control of the
172 object, as to direct violation of sections 195.005 to 195.425 shall not prevent a
173 finding that the object is intended for use, or designed for use as drug
174 paraphernalia;
- 175 g. Instructions, oral or written, provided with the object concerning its
176 use;
- 177 h. Descriptive materials accompanying the object which explain or depict
178 its use;
- 179 i. National or local advertising concerning its use;
- 180 j. The manner in which the object is displayed for sale;
- 181 k. Whether the owner, or anyone in control of the object, is a legitimate
182 supplier of like or related items to the community, such as a licensed distributor
183 or dealer of tobacco products;
- 184 l. Direct or circumstantial evidence of the ratio of sales of the object to the
185 total sales of the business enterprise;
- 186 m. The existence and scope of legitimate uses for the object in the
187 community;
- 188 n. Expert testimony concerning its use;
- 189 o. The quantity, form or packaging of the product, substance or material
190 in relation to the quantity, form or packaging associated with any legitimate use
191 for the product, substance or material;
- 192 (18) "Federal narcotic laws", the laws of the United States relating to
193 controlled substances;
- 194 (19) "Hospital", a place devoted primarily to the maintenance and
195 operation of facilities for the diagnosis, treatment or care, for not less than
196 twenty-four hours in any week, of three or more nonrelated individuals suffering
197 from illness, disease, injury, deformity or other abnormal physical conditions; or
198 a place devoted primarily to provide, for not less than twenty-four consecutive
199 hours in any week, medical or nursing care for three or more nonrelated

200 individuals. The term "hospital" does not include convalescent, nursing, shelter
201 or boarding homes as defined in chapter 198;

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

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

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

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

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

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

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

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

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

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

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

234 (22) "Laboratory", a laboratory approved by the department of health and
235 senior services as proper to be entrusted with the custody of controlled substances

236 but does not include a pharmacist who compounds controlled substances to be
237 sold or dispensed on prescriptions;

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

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

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

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

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

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

270 (a) Opium, opiate, and any derivative, of opium or opiate, including their
271 isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever

272 the existence of the isomers, esters, ethers, and salts is possible within the
273 specific chemical designation. The term does not include the isoquinoline
274 alkaloids of opium;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

332 (38) "Sale", includes barter, exchange, or gift, or offer therefor, and each
333 such transaction made by any person, whether as principal, proprietor, agent,
334 servant or employee;

335 (39) "State" when applied to a part of the United States, includes any
336 state, district, commonwealth, territory, insular possession thereof, and any area
337 subject to the legal authority of the United States of America;

338 (40) "Synthetic cannabinoid", includes unless specifically excepted or
339 unless listed in another schedule, any natural or synthetic material, compound,
340 mixture, or preparation that contains any quantity of a substance that is a
341 cannabinoid receptor agonist, including but not limited to any substance listed
342 in paragraph (ll) of subdivision (4) of subsection 2 of section 195.017 and any
343 analogues[,]; homologues; isomers, whether optical, positional, or geometric;

344 esters; ethers; salts; and salts of isomers, esters, and ethers, whenever the
345 existence of the isomers, esters, ethers, or salts is possible within the specific
346 chemical designation, however, it shall not include any approved pharmaceutical
347 authorized by the United States Food and Drug Administration;

348 (41) "Ultimate user", a person who lawfully possesses a controlled
349 substance or an imitation controlled substance for [his] **such person's** own use
350 or for the use of a member of [his] **such person's** household **or immediate**
351 **family, regardless of whether they live in the same household,** or for
352 administering to an animal owned by [him] **such person** or by a member of [his]
353 **such person's** household. **For purposes of this section, the phrase**
354 **"immediate family" means a husband, wife, parent, child, sibling,**
355 **stepparent, stepchild, stepbrother, stepsister, grandparent, or**
356 **grandchild;**

357 (42) "Wholesaler", a person who supplies drug paraphernalia or controlled
358 substances or imitation controlled substances that he himself has not produced
359 or prepared, on official written orders, but not on prescriptions.

Bill ✓

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