

SECOND REGULAR SESSION

SENATE BILL NO. 532

89TH GENERAL ASSEMBLY

INTRODUCED BY SENATORS WIGGINS AND McKENNA.

Pre-filed December 1, 1997, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

L2507.011

AN ACT

To repeal sections 195.211, 195.222, 195.223, 195.420 and 568.050, RSMo 1994, and section 195.400, RSMo Supp. 1997, and to enact in lieu thereof seven new sections for the purpose of addressing the methamphetamine problem, with penalty provisions.

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

Section A. Sections 195.211, 195.222, 195.223, 195.420 and 568.050, RSMo 1994, and section 195.400, RSMo Supp. 1997, are repealed and seven new sections enacted in lieu thereof, to be known as sections 195.211, 195.222, 195.223, 195.400, 195.420, 568.050 and 1, to read as follows:

195.211. 1. Except as authorized by sections 195.005 to 195.425 **and except as provided in section 195.222**, it is unlawful for any person to distribute, deliver, manufacture, produce or attempt to distribute, deliver, manufacture or produce a controlled substance or to possess with intent to distribute, deliver, manufacture, or produce a controlled substance.

2. Any person who violates this section with respect to any controlled substance except five grams or less of marijuana is guilty of a class B felony.

3. Any person who violates this section with respect to distributing or delivering not more than five grams of marijuana is guilty of a class C felony.

195.222. 1. A person commits the crime of trafficking drugs in the first degree if, except as authorized by sections 195.005 to 195.425, he distributes, delivers, manufactures, produces or

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

attempts to distribute, deliver, manufacture or produce more than thirty grams of a mixture or substance containing a detectable amount of heroin. Violations of this subsection shall be punished as follows:

(1) If the quantity involved is more than thirty grams but less than ninety grams the person shall be sentenced to the authorized term of imprisonment for a class A felony;

(2) If the quantity involved is ninety grams or more the person shall be sentenced to the authorized term of imprisonment for a class A felony which term shall be served without probation or parole.

2. A person commits the crime of trafficking drugs in the first degree if, except as authorized by sections 195.005 to 195.425, he distributes, delivers, manufactures, produces or attempts to distribute, deliver, manufacture or produce more than one hundred fifty grams of a mixture or substance containing a detectable amount of 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 salts and their 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 foregoing substances. Violations of this subsection shall be punished as follows:

(1) If the quantity involved is more than one hundred fifty grams but less than four hundred fifty grams the person shall be sentenced to the authorized term of imprisonment for a class A felony;

(2) If the quantity involved is four hundred fifty grams or more the person shall be sentenced to the authorized term of imprisonment for a class A felony which term shall be served without probation or parole.

3. A person commits the crime of trafficking drugs in the first degree if, except as authorized by sections 195.005 to 195.425, he distributes, delivers, manufactures, produces or attempts to distribute, deliver, manufacture or produce more than two grams of a mixture or substance described in subsection 2 of this section which contains cocaine base. Violations of this subsection shall be punished as follows:

(1) If the quantity involved is more than two grams but less than six grams the person shall be sentenced to the authorized term of imprisonment for a class A felony;

(2) If the quantity involved is six grams or more the person shall be sentenced to the authorized term of imprisonment for a class A felony which term shall be served without probation or parole.

4. A person commits the crime of trafficking drugs in the first degree if, except as authorized by sections 195.005 to 195.425, he distributes, delivers, manufactures, produces or attempts to distribute, deliver, manufacture or produce more than five hundred milligrams of a mixture or substance containing a detectable amount of lysergic acid diethylamide

(LSD). Violations of this subsection shall be punished as follows:

(1) If the quantity involved is more than five hundred milligrams but less than one gram the person shall be sentenced to the authorized term of imprisonment for a class A felony;

(2) If the quantity involved is one gram or more the person shall be sentenced to the authorized term of imprisonment for a class A felony which term shall be served without probation or parole.

5. A person commits the crime of trafficking drugs in the first degree if, except as authorized by sections 195.005 to 195.425, he distributes, delivers, manufactures, produces or attempts to distribute, deliver, manufacture or produce more than thirty grams of a mixture or substance containing a detectable amount of phencyclidine (PCP). Violations of this subsection shall be punished as follows:

(1) If the quantity involved is more than thirty grams but less than ninety grams the person shall be sentenced to the authorized term of imprisonment for a class A felony;

(2) If the quantity involved is ninety grams or more the person shall be sentenced to the authorized term of imprisonment for a class A felony which term shall be served without probation or parole.

6. A person commits the crime of trafficking drugs in the first degree if, except as authorized by sections 195.005 to 195.425, he distributes, delivers, manufactures, produces or attempts to distribute, deliver, manufacture or produce more than four grams of phencyclidine. Violations of this subsection shall be punished as follows:

(1) If the quantity involved is more than four grams but less than twelve grams the person shall be sentenced to the authorized term of imprisonment for a class A felony;

(2) If the quantity involved is twelve grams or more the person shall be sentenced to the authorized term of imprisonment for a class A felony which term shall be served without probation or parole.

7. A person commits the crime of trafficking drugs in the first degree if, except as authorized by sections 195.005 to 195.425, he distributes, delivers, manufactures, produces or attempts to distribute, deliver, manufacture or produce more than thirty kilograms of a mixture or substance containing marijuana. Violations of this subsection shall be punished as follows:

(1) If the quantity involved is more than thirty kilograms but less than one hundred kilograms the person shall be sentenced to the authorized term of imprisonment for a class A felony;

(2) If the quantity involved is one hundred kilograms or more the person shall be sentenced to the authorized term of imprisonment for a class A felony which term shall be served without probation or parole.

8. A person commits the crime of trafficking drugs in the first degree if, except as authorized by sections 195.005 to 195.425, he distributes[,] **or** delivers, [manufactures,

produces] or attempts to distribute[,] or deliver[, manufacture or produce] more than [one hundred fifty] **twenty** grams of any material, compound, mixture or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system: amphetamine, its salts, optical isomers and salts of its optical isomers; methamphetamine, its salts, isomers and salts of its isomers; phenmetrazine and its salts; or methylphenidate. Violations of this subsection shall be punished as follows:

(1) If the quantity involved is more than [one hundred fifty] **twenty** grams but less than [four hundred fifty] **sixty** grams the person shall be sentenced to the authorized term of imprisonment for a class A felony;

(2) If the quantity involved is [four hundred fifty] **sixty** grams or more the person shall be sentenced to the authorized term of imprisonment for a class A felony which term shall be served without probation or parole.

9. A person commits the crime of trafficking drugs in the first degree if, except as authorized by sections 195.005 to 195.425, such person manufactures or produces, or attempts to manufacture or produce, any quantity of any material, compound, mixture or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system: amphetamine, its salts, optical isomers and salts of its optical isomers; methamphetamine, its salts, isomers and salts of its isomers; phenmetrazine and its salts; or methylphenidate. Violations of this subsection shall be punished as follows:

(1) If the quantity involved is less than sixty grams, the person shall be sentenced to the authorized term of imprisonment for a class A felony;

(2) If the quantity involved is sixty grams or more or if the location of the offense was within two thousand feet of a school or public housing as defined in section 195.214 or section 195.218 or within a motor vehicle, or any structure or building which contains rooms furnished for the accommodation or lodging of guests, and kept, used, maintained, advertised, or held out to the public as a place where sleeping accommodations are sought for pay or compensation to transient guests or permanent guests, the person shall be sentenced to the authorized term of imprisonment for a class A felony which term shall be served without probation or parole.

195.223. 1. A person commits the crime of trafficking drugs in the second degree if, except as authorized by sections 195.005 to 195.425, he possesses or has under his control, purchases or attempts to purchase, or brings into this state more than thirty grams of a mixture or substance containing a detectable amount of heroin. Violations of this subsection shall be punished as follows:

(1) If the quantity involved is more than thirty grams but less than ninety grams the person shall be guilty of a class B felony;

(2) If the quantity involved is ninety grams or more the person shall be guilty of a class

A felony.

2. A person commits the crime of trafficking drugs in the second degree if, except as authorized by sections 195.005 to 195.425, he possesses or has under his control, purchases or attempts to purchase, or brings into this state more than one hundred fifty grams of a mixture or substance containing a detectable amount of 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 salts and their 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 foregoing substances. Violations of this subsection shall be punished as follows:

(1) If the quantity involved is more than one hundred fifty grams but less than four hundred fifty grams the person shall be guilty of a class B felony;

(2) If the quantity involved is four hundred fifty grams or more the person shall be guilty of a class A felony.

3. A person commits the crime of trafficking drugs in the second degree if, except as authorized by sections 195.005 to 195.425, he possesses or has under his control, purchases or attempts to purchase, or brings into this state more than two grams of a mixture or substance described in subsection 2 of this section which contains cocaine base. Violations of this subsection shall be punished as follows:

(1) If the quantity involved is more than two grams but less than six grams the person shall be guilty of a class B felony;

(2) If the quantity involved is six grams or more the person shall be guilty of a class A felony.

4. A person commits the crime of trafficking drugs in the second degree if, except as authorized by sections 195.005 to 195.425, he possesses or has under his control, purchases or attempts to purchase, or brings into this state more than five hundred milligrams of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD). Violations of this subsection shall be punished as follows:

(1) If the quantity involved is more than five hundred milligrams but less than one gram the person shall be guilty of a class B felony;

(2) If the quantity involved is one gram or more the person shall be guilty of a class A felony.

5. A person commits the crime of trafficking drugs in the second degree if, except as authorized by sections 195.005 to 195.425, he possesses or has under his control, purchases or attempts to purchase, or brings into this state more than thirty grams of a mixture or substance containing a detectable amount of phencyclidine (PCP). Violations of this subsection shall be punished as follows:

(1) If the quantity involved is more than thirty grams but less than ninety grams the person shall be guilty of a class B felony;

(2) If the quantity involved is ninety grams or more the person shall be guilty of a class A felony.

6. A person commits the crime of trafficking drugs in the second degree if, except as authorized by sections 195.005 to 195.425, he possesses or has under his control, purchases or attempts to purchase, or brings into this state more than four grams of phencyclidine. Violations of this subsection shall be punished as follows:

(1) If the quantity involved is more than four grams but less than twelve grams the person shall be guilty of a class B felony;

(2) If the quantity involved is twelve grams or more the person shall be guilty of a class A felony.

7. A person commits the crime of trafficking drugs in the second degree if, except as authorized by sections 195.005 to 195.425, he possesses or has under his control, purchases or attempts to purchase, or brings into this state more than thirty kilograms or more of a mixture or substance containing marijuana. Violations of this subsection shall be punished as follows:

(1) If the quantity involved is more than thirty kilograms but less than one hundred kilograms the person shall be guilty of a class B felony;

(2) If the quantity involved is one hundred kilograms or more the person shall be guilty of a class A felony.

8. A person commits the class A felony of trafficking drugs in the second degree if, except as authorized by sections 195.005 to 195.425, he possesses or has under his control, purchases or attempts to purchase, or brings into this state more than five hundred marijuana plants.

9. A person commits the crime of trafficking drugs in the second degree if, except as authorized by sections 195.005 to 195.425, he possesses or has under his control, purchases or attempts to purchase, or brings into this state more than **[one hundred fifty] twenty** grams of any material, compound, mixture or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system: amphetamine, its salts, optical isomers and salts of its optical isomers; methamphetamine, its salts, isomers and salts of its isomers; phenmetrazine and its salts; or methylphenidate. Violations of this subsection shall be punished as follows:

(1) If the quantity involved is more than **[one hundred fifty] twenty** grams but less than **[four hundred fifty] sixty** grams the person shall be guilty of a class B felony;

(2) If the quantity involved is **[four hundred fifty grams or more] sixty grams or more but less than two hundred fifty grams**, the person shall be guilty of a class A felony;

(3) If the quantity involved is two hundred fifty grams or more, the person shall be guilty of a class A felony and the term of imprisonment shall be served without

probation or parole.

195.400. 1. As used in sections 195.400 to 195.425 the term "person" means any individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

2. Any manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes any of the following substances to any person shall submit to the department of health a report, as prescribed by the department of health, of all such transactions:

- (1) Anthranilic acid, **its esters** and its salts;
- (2) Benzyl cyanide;
- (3) Ergotamine and its salts;
- (4) Ergonovine and its salts;
- (5) N-Acetylanthranilic acid, **its esters** and its salts;
- (6) Phenylacetic acid, **its esters** and its salts;
- (7) Piperidine and its salts;
- (8) 3,4,-Methylenedioxyphenyl-2-propanone;
- (9) Acetic anhydride;
- (10) Acetone;
- (11) Benzyl Chloride;
- (12) Ethyl ether;
- (13) Hydriodic acid;
- (14) Potassium permanganate;
- (15) 2-Butanone (or Methyl Ethyl Ketone or MEK);
- (16) Toluene;
- (17) Ephedrine, its salts, optical isomers, and salts of optical isomers;
- (18) Norpseudoephedrine, its salts, optical isomers, and salts of optical isomers;
- (19) Phenylpropanolamine, its salts, optical isomers, and salts of optical isomers;
- (20) Pseudoephedrine, its salts, optical isomers, and salts of optical isomers;
- (21) Methylamine and its salts;
- (22) Ethylamine and its salts;
- (23) **[Propionic] Propionic** anhydride;
- (24) **[Insosafrole (Isosafrole)] Isosafrole**;
- (25) Safrole;
- (26) Piperonal;
- (27) N-Methylephedrine, its salts, optical isomers and salts of optical isomers;
- (28) N-Methylpseudoephedrine, its salts, optical isomers and salts of optical isomers;
- (29) Benzaldehyde;
- (30) Nitroethane;

(31) [Acetic anhydride;

(32)] Methyl Isobutyl Ketone (MIBK);

[(33) Hydriotic acid] **(32) Sulfuric acid;**

(33) Hydrochloric acid (including hydrogen chloride gas);

(34) Iodine;

(35) Red phosphorous.

3. The chemicals listed or to be listed in the schedule in subsection 2 of this section are included by whatever official, common, usual, chemical, or trade name designated.

4. The department of health by rule or regulation may add substances to or delete substances from subsection 2 of this section in the manner prescribed under section 195.017, if such substance is a component of or may be used to produce a controlled substance.

5. Any manufacturer, wholesaler, retailer or other person shall, prior to selling, transferring, or otherwise furnishing any substance listed in subsection 2 of this section to a person within this state, require such person to give proper identification. For the purposes of this section "proper identification" means:

(1) A motor vehicle operator's license or other official state-issued identification which contains a photograph of the person and includes the residential or mailing address of the person, other than a post office box number;

(2) The motor vehicle license number of any motor vehicle operated by the person;

(3) A letter of authorization from the business to which any of the substances listed in subsection 2 of this section are being transferred, which shall include the address of the business and business license number if the business is required to have a license number;

(4) A full description of how the substance is to be used; and

(5) The signature of the person to whom such substances are transferred. The person selling, transferring, or otherwise furnishing any substance listed in subsection 2 of this section shall affix his signature, to the document which evidences that a sale or transfer has been made, as a witness to the signature and proper identification of the person purchasing such substance.

6. Any manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes any substance listed in subsection 2 of this section to a person shall, not less than twenty-one days prior to the delivery of the substance, submit a report of the transaction as prescribed by the department of health, which shall include the proper identification information. The department of health may allow the submission of such reports on a monthly basis with respect to repeated, regular transactions between a person who furnishes such substances and the person to whom such substances are delivered, if the department determines that either:

(1) A pattern of regular supply of the substance exists between the manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes such substance

and the person to whom such substance is delivered; or

(2) The person to whom such substance is delivered has established a record of utilization of the substance for lawful purposes.

7. This section shall not apply to any of the following:

(1) Any pharmacist, pharmacy, or other authorized person who sells or furnishes a substance listed in subsection 2 of this section upon the prescription or order of a physician, dentist, podiatrist or veterinarian;

(2) Any physician, optometrist, dentist, podiatrist or veterinarian who administers, dispenses or furnishes a substance listed in subsection 2 of this section to his patients within the scope of his professional practice. Such administration or dispensing shall be recorded in the patient record;

(3) Any sale, transfer, furnishing or receipt of any drug which contains any substance listed in subsection 2 of this section and which is lawfully sold, transferred, or furnished over the counter without a prescription pursuant to the federal Food, Drug and Cosmetic Act of regulations adopted thereunder.

8. (1) Any violation of subsection 5 of this section shall be a class D felony.

(2) Any person subject to subsection 6 of this section who does not submit a report as required or who knowingly submits a report with false or fictitious information shall be guilty of a class D felony and subject to a fine not exceeding ten thousand dollars.

(3) Any person who is found guilty a second time of not submitting a report as required in subsection 6 of this section or who knowingly submits such a report with false or fictitious information shall be guilty of a class C felony and subject to a fine not exceeding one hundred thousand dollars.

195.420. 1. [It is unlawful for any person to possess chemicals listed in subsection 2 of section 195.400 with the intent to manufacture, compound, convert, produce, process, prepare, test, or otherwise alter that chemical to create a controlled substance or a controlled substance analogue in violation of sections 195.005 to 195.425.

2. A person who violates this section is guilty of a class D felony.] **No person shall possess precursor chemicals, solvents or liquids with the intent to manufacture, compound, convert, produce process, prepare, test or otherwise alter the material or substance to create a controlled substance or a controlled substance analog in violation of sections 195.005 to 195.425.**

2. Any person who violates the provisions of subsection 1 of this section is guilty of a class B felony.

568.050. 1. A person commits the crime of endangering the welfare of a child in the second degree if:

(1) He with criminal negligence acts in a manner that creates a substantial risk to the life,

body or health of a child less than seventeen years old; or

(2) He knowingly encourages, aids or causes a child less than seventeen years old to engage in any conduct which causes or tends to cause the child to come within the provisions of paragraph (d) of subdivision (2) of subsection 1 or subdivision (3) of subsection 1 of section 211.031, RSMo; or

(3) Being a parent, guardian or other person legally charged with the care or custody of a child less than seventeen years old, he recklessly fails or refuses to exercise reasonable diligence in the care or control of such child to prevent him from coming within the provisions of paragraph (c) of subdivision (1) of subsection 1 or paragraph (d) of subdivision (2) of subsection 1 or subdivision (3) of subsection 1 of section 211.031, RSMo; or

(4) He knowingly encourages, aids or causes a child less than seventeen years of age to enter into any room, building or other structure which is a public nuisance as defined in section 195.130, RSMo; or

(5) He knowingly encourages, aids or causes a child less than seventeen years of age to engage in any conduct which violates the provisions of chapter 195, RSMo.

2. Nothing in this section shall be construed to mean the welfare of a child is endangered for the sole reason that he is being provided nonmedical remedial treatment recognized and permitted under the laws of this state.

3. **Except as provided in subsection 4 of this section**, endangering the welfare of a child in the second degree is a class A misdemeanor unless the offense is committed as part of a ritual or ceremony, in which case the crime is a class D felony.

4. Any person who violates the provisions of subdivision (5) of subsection 1 of this section is guilty of a class D felony.

Section 1. 1. The department of natural resources may provide the resources and personnel to assist in the cleanup and disposal of the toxic chemicals found in any place where methamphetamines were manufactured or produced.

2. The department of natural resources may recover the costs of such clean up and disposal from the parties responsible for the manufacture or production of methamphetamines.

3. The department of natural resources may adopt such rules as are necessary for the implementation and operation of this section.

4. No rule or portion of a rule promulgated pursuant to the authority of this section shall become effective unless it has been promulgated pursuant to the provisions of chapter 536, RSMo.

5. There is hereby created in the state treasury the "Methamphetamine Cleanup Fund", which shall contain any funds designated for the methamphetamine cleanup, including, but not limited to, funds derived from private gifts and grants as well as federal and state grants, payments and appropriations. The provisions of section

33.080, RSMo, to the contrary notwithstanding, moneys in the fund shall not lapse.

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