

## LEGISLATIVE BILL 537

Approved by the Governor February 8, 1988

Introduced by Dierks, 40; Rupp, 22; Conway, 17;  
Remmers, 1; Abboud, 12

AN ACT relating to drugs and narcotics; to amend section 28-401, Reissue Revised Statutes of Nebraska, 1943; to define controlled substance analogue; and to repeal the original section.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 28-401, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

28-401. As used in this article, unless the context otherwise requires:

(1) Administer shall mean the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by: (a) A practitioner or, in his or her presence, by his or her authorized agent; or (b) the patient or research subject at the direction and in the presence of the practitioner;

(2) Agent shall mean an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. ~~It does~~ Agent shall not include a common or contract carrier, public warehouse keeper, or employee of the carrier or warehouse keeper;

(3) Administration shall mean the Drug Enforcement Administration, United States Department of Justice;

(4) Controlled substance shall mean a drug, substance, or immediate precursor in Schedules I to V of section 28-405. ~~The term~~ Controlled substance shall not include distilled spirits, wine, malt beverages, tobacco, or any nonnarcotic substance if such substance may, under the Federal Food, Drug, and Cosmetic Act and the law of this state, be lawfully sold over the counter without a prescription;

(5) Counterfeit substance shall mean a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number, or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person or

persons who in fact manufactured, distributed, or dispensed such substance and which thereby falsely purports or is represented to be the product of, or to have been distributed by, such other manufacturer, distributor, or dispenser;

(6) Department shall mean the Department of Health; ~~of this state;~~

(7) Division of Drug Control shall mean the personnel of the Nebraska State Patrol who are assigned to enforce the provisions of this article;

(8) Bureau of Examining Boards shall mean personnel of the department responsible for the enforcement of the provisions of this article in the areas assigned to it by the provisions of this article;

(9) Dispense shall mean to deliver a controlled substance to an ultimate user or a research subject by, or pursuant to the lawful order or prescription of, a physician, dentist, veterinarian, or other medical practitioner licensed under the laws of this state to prescribe drugs, including the packaging, labeling, or compounding necessary to prepare the substance for such delivery. Dispenser shall mean the apothecary, pharmacist, or other practitioner, duly licensed, who dispenses a controlled substance to an ultimate user or a research subject;

(10) Distribute shall mean to deliver other than by administering or dispensing a controlled substance. Distributor shall mean a person who so distributes a controlled substance;

(11) Prescribe shall mean the act of a physician, surgeon, dentist, veterinarian, or other medical practitioner licensed under the laws of this state in issuing an order, prescription, or direction to a pharmacist or pharmacy to dispense a drug as required by the laws of this state;

(12) Drug shall mean (a) articles recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, official National Formulary, or any supplement to any of them, (b) substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man human beings or animals, and (c) substances intended for use as a component of any article specified in subdivision (a) or (b) of this subdivision, but does shall not include devices or their components, parts, or accessories;

(13) Deliver or delivery shall mean the actual, constructive, or attempted transfer from one person to another of a controlled substance, whether or

not there is an agency relationship;

(14) Marijuana shall mean all parts of the plant of the genus Cannabis, whether growing or not, the seeds thereof, and every compound, manufacture, salt, derivative, mixture, or preparation of such plant or its seeds, but shall not include the mature stalks of such plant, hashish, tetrahydrocannabinols extracted or isolated from the 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, or the sterilized seed of such plant which is incapable of germination. Where When the weight of marijuana is referred to in this article, it shall mean its weight at or about the time it is seized or otherwise comes into the possession of law enforcement authorities, whether cured or uncured at that time;

(15) Manufacture shall mean the production, preparation, propagation, compounding, or processing of a controlled substance, either directly or indirectly by extraction from substances of natural origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes shall include any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does manufacture shall not include the preparation or compounding of a controlled substance by an individual for his or her own use or the preparation, compounding, packaging, or labeling of a controlled substance: (a) By a practitioner as an incident to his or her prescribing, administering, or dispensing of a controlled substance in the course of his or her professional practice; or (b) by a practitioner, or by his or her authorized agent under his or her supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale;

(16) Narcotic drug shall mean any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis: (a) Opium, opium poppy and poppy straw, coca leaves, and opiates; (b) a compound, manufacture, salt, derivative, or preparation of opium, coca leaves, or opiates; or (c) a substance and any compound, manufacture, salt, derivative, or preparation thereof which is chemically equivalent to or identical with any of the substances referred to in subdivisions (a) and (b) of this

subdivision, except that the words narcotic drug as used in this article shall not include decocainized coca leaves or extracts of coca leaves, which extracts do not contain cocaine or ecgonine, or isoquinoline alkaloids of opium;

(17) Opiate shall mean 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~~ Opiate shall not include the dextrorotatory isomer of 3-methoxy-n methylmorphinan and its salts. ~~It does~~ Opiate shall include its racemic and levorotatory forms;

(18) Opium poppy shall mean the plant of the species *Papaver somniferum* L., except the seeds thereof;

(19) Poppy straw shall mean all parts, except the seeds, of the opium poppy after mowing;

(20) Person shall mean any corporation, association, partnership, or one or more individuals;

(21) Practitioner shall mean a physician, dentist, veterinarian, pharmacist, scientific investigator, pharmacy, or hospital, licensed, registered, or otherwise permitted to distribute, dispense, prescribe, conduct research with respect to, or administer a controlled substance in the course of professional practice or research in this state, or other person licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or administer a controlled substance in the course of professional practice or research in this state;

(22) Production shall include the manufacture, planting, cultivation, or harvesting of a controlled substance;

(23) Immediate precursor shall mean a substance which is the principal compound commonly used or produced primarily for use and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail, or limit such manufacture;

(24) State shall mean the State of Nebraska;

(25) Ultimate user shall mean a person who lawfully possesses a controlled substance for his or her own use, for the use of a member of his or her household, or for administration to an animal owned by him or her or by a member of his or her household;

(26) Physician shall mean a person authorized by law to practice medicine in this state and any other

person authorized by law to treat sick and injured human beings in this state;

(27) Dentist shall mean a person authorized by law to practice dentistry in this state;

(28) Veterinarian shall mean a person authorized by law to practice veterinary medicine in this state;

(29) Hospital shall mean an institution for the care and treatment of sick and injured human beings and approved by the department;

(30) Podiatrist shall mean a person authorized by law to practice podiatry and who has graduated from an accredited school of podiatry in or since 1935;

(31) Apothecary shall mean a licensed pharmacist as defined by the laws of this state and, **where when** the context so requires, the owner of the store or other place of business where drugs are compounded or dispensed by a licensed pharmacist, but nothing in this subdivision shall be construed as conferring on a person who is not registered nor licensed as a pharmacist any authority, right, or privilege that is not granted to him or her by the pharmacy laws of this state;

(32) Nothing contained in this article shall be construed as authority for a practitioner to perform an act for which he or she is not authorized by the laws of this state;

(33) Cooperating individual shall mean any person, other than a commissioned law enforcement officer, who acts on behalf of, at the request of, or as agent for a law enforcement agency for the purpose of gathering or obtaining evidence of offenses punishable under sections 28-401 to 28-438;

(34) Hashish or concentrated cannabis shall mean: (a) The separated resin, whether crude or purified, obtained from a plant of the genus cannabis; or (b) any material, preparation, mixture, compound, or other substance which contains ten percent or more by weight of tetrahydrocannabinols;

(35) Exceptionally hazardous drug shall mean (a) a narcotic drug, (b) thiophene analog of phencyclidine, (c) phencyclidine, (d) amobarbital, (e) secobarbital, or (f) pentobarbital; **and**

(36) Imitation controlled substance shall mean a substance which is not a controlled substance but which, by way of express or implied representations and consideration of other relevant factors including those specified in section 28-445, would lead a reasonable person to believe the substance is a controlled

substance. A placebo or registered investigational drug manufactured, distributed, possessed, or delivered in the ordinary course of practice or research by a health care professional shall not be deemed to be an imitation controlled substance; and

(37) Controlled substance analogue shall mean a substance (a) the chemical structure of which is substantially similar to the chemical structure of a Schedule I or Schedule II controlled substance as provided in section 28-405 or (b) which has a stimulant, depressant, analgesic, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, analgesic, or hallucinogenic effect on the central nervous system of a Schedule I or Schedule II controlled substance as provided in section 28-405. A controlled substance analogue shall, to the extent intended for human consumption, be treated as a controlled substance under Schedule I of section 28-405 for purposes of this article. Controlled substance analogue shall not include (i) a controlled substance, (ii) any substance considered generally recognized as safe and effective within the meaning of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301 et seq., (iii) any substance for which there is an approved new drug application, or (iv) with respect to a particular person, any substance if an exemption is in effect for investigational use for that person, under section 505 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 355, to the extent conduct with respect to such substance is pursuant to such exemption.

Sec. 2. That original section 28-401, Reissue Revised Statutes of Nebraska, 1943, is repealed.