

FIRST REGULAR SESSION

HOUSE BILL NO. 278

91ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES MYERS, BLACK, KING,
LUETKEMEYER AND LEGAN (Co-sponsors).

Read 1st time January 4, 2001, and 1000 copies ordered printed.

TED WEDEL, Chief Clerk

0869L.011

AN ACT

To repeal sections 195.010, 195.211 and 195.275, RSMo 2000, relating to drug regulations, and to enact in lieu thereof three new sections relating to the same subject, with penalty provisions.

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

Section A. Sections 195.010, 195.211 and 195.275, RSMo 2000, are repealed and three
2 new sections enacted in lieu thereof, to be known as sections 195.010, 195.211 and 195.275, to
3 read as follows:

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

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

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

9 (a) A practitioner (or, in his **or her** presence, by his **or her** authorized agent); or

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

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

- 15 (4) "Attorney for the state", any prosecuting attorney, circuit attorney, or attorney general
16 authorized to investigate, commence and prosecute an action under sections 195.005 to 195.425;
- 17 (5) "Controlled substance", a drug, substance, or immediate precursor in Schedules I
18 through V listed in sections 195.005 to 195.425;
- 19 (6) "Controlled substance analogue", a substance the chemical structure of which is
20 substantially similar to the chemical structure of a controlled substance in Schedule I or II and:
- 21 (a) Which has a stimulant, depressant, or hallucinogenic effect on the central nervous
22 system substantially similar to the stimulant, depressant, or hallucinogenic effect on the central
23 nervous system of a controlled substance included in Schedule I or II; or
- 24 (b) With respect to a particular individual, which that individual represents or intends
25 to have a stimulant, depressant, or hallucinogenic effect on the central nervous system
26 substantially similar to the stimulant, depressant, or hallucinogenic effect on the central nervous
27 system of a controlled substance included in Schedule I or II. The term does not include a
28 controlled substance; any substance for which there is an approved new drug application; any
29 substance for which an exemption is in effect for investigational use, for a particular person,
30 under Section 505 of the federal Food, Drug and Cosmetic Act (21 U.S.C. 355) to the extent
31 conduct with respect to the substance is pursuant to the exemption; or any substance to the extent
32 not intended for human consumption before such an exemption takes effect with respect to the
33 substance;
- 34 (7) "Counterfeit substance", a controlled substance which, or the container or labeling
35 of which, without authorization, bears the trademark, trade name, or other identifying mark,
36 imprint, number or device, or any likeness thereof, of a manufacturer, distributor, or dispenser
37 other than the person who in fact manufactured, distributed, or dispensed the substance;
- 38 (8) "Deliver" or "delivery", the actual, constructive, or attempted transfer from one
39 person to another of drug paraphernalia or of a controlled substance, or an imitation controlled
40 substance, whether or not there is an agency relationship, and includes a sale;
- 41 (9) "Dentist", a person authorized by law to practice dentistry in this state;
- 42 (10) "Depressant or stimulant substance":
- 43 (a) A drug containing any quantity of barbituric acid or any of the salts of barbituric acid
44 or any derivative of barbituric acid which has been designated by the United States Secretary of
45 Health and Human Services as habit forming under 21 U.S.C. 352(d);
- 46 (b) A drug containing any quantity of:
- 47 a. Amphetamine or any of its isomers;
- 48 b. Any salt of amphetamine or any salt of an isomer of amphetamine; or
- 49 c. Any substance the United States Attorney General, after investigation, has found to
50 be, and by regulation designated as, habit forming because of its stimulant effect on the central

51 nervous system;

52 (c) Lysergic acid diethylamide; or

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

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

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

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

64 (14) "Drug":

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

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

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

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

74 (15) "Drug-dependent person", a person who is using a controlled substance and who
75 is in a state of psychic or physical dependence, or both, arising from the use of such substance
76 on a continuous basis. Drug dependence is characterized by behavioral and other responses
77 which include a strong compulsion to take the substance on a continuous basis in order to
78 experience its psychic effects or to avoid the discomfort caused by its absence;

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

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

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

90 (b) Kits used, intended for use, or designed for use in manufacturing, compounding,
91 converting, producing, processing, or preparing controlled substances or imitation controlled
92 substances;

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

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

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

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

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

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

108 (i) Capsules, balloons, envelopes and other containers used, intended for use, or designed
109 for use in packaging small quantities of controlled substances or imitation controlled substances;

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

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

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

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

119 b. Water pipes;

120 c. Carburetion tubes and devices;

121 d. Smoking and carburetion masks;

122 e. Roach clips meaning objects used to hold burning material, such as a marijuana

123 cigarette, that has become too small or too short to be held in the hand;

124 f. Miniature cocaine spoons and cocaine vials;

125 g. Chamber pipes;

126 h. Carburetor pipes;

127 i. Electric pipes;

128 j. Air-driven pipes;

129 k. Chillums;

130 l. Bongs;

131 m. Ice pipes or chillers;

132

133 In determining whether an object is drug paraphernalia, a court or other authority should
134 consider, in addition to all other logically relevant factors, the following:

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

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

138 (c) The proximity of the object, in time and space, to a direct violation of sections
139 195.005 to 195.425;

140 (d) The proximity of the object to controlled substances or imitation controlled
141 substances;

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

144 (f) Direct or circumstantial evidence of the intent of an owner, or of anyone in control
145 of the object, to deliver it to persons who he **or she** knows, or should reasonably know, intend
146 to use the object to facilitate a violation of sections 195.005 to 195.425; the innocence of an
147 owner, or of anyone in control of the object, as to direct violation of sections 195.005 to 195.425
148 shall not prevent a finding that the object is intended for use, or designed for use as drug
149 paraphernalia;

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

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

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

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

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

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

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

- 159 (n) Expert testimony concerning its use;
- 160 (18) "Federal narcotic laws", the laws of the United States relating to controlled
161 substances;
- 162 (19) "Hospital", a place devoted primarily to the maintenance and operation of facilities
163 for the diagnosis, treatment or care, for not less than twenty-four hours in any week, of three or
164 more nonrelated individuals suffering from illness, disease, injury, deformity or other abnormal
165 physical conditions; or a place devoted primarily to provide, for not less than twenty-four
166 consecutive hours in any week, medical or nursing care for three or more nonrelated
167 individuals. The term "hospital" does not include convalescent, nursing, shelter or boarding
168 homes as defined in chapter 198, RSMo;
- 169 (20) "Immediate precursor", a substance which:
- 170 (a) The state department of health has found to be and by rule designates as being the
171 principal compound commonly used or produced primarily for use in the manufacture of a
172 controlled substance;
- 173 (b) Is an immediate chemical intermediary used or likely to be used in the manufacture
174 of a controlled substance; and
- 175 (c) The control of which is necessary to prevent, curtail or limit the manufacture of the
176 controlled substance;
- 177 (21) "Imitation controlled substance", a substance that is not a controlled substance,
178 which by dosage unit appearance (including color, shape, size and markings), or by
179 representations made, would lead a reasonable person to believe that the substance is a controlled
180 substance. In determining whether the substance is an "imitation controlled substance" the court
181 or authority concerned should consider, in addition to all other logically relevant factors, the
182 following:
- 183 (a) Whether the substance was approved by the federal Food and Drug Administration
184 for over-the-counter (nonprescription or nonlegend) sales and was sold in the federal Food and
185 Drug Administration approved package, with the federal Food and Drug Administration
186 approved labeling information;
- 187 (b) Statements made by an owner or by anyone else in control of the substance
188 concerning the nature of the substance, or its use or effect;
- 189 (c) Whether the substance is packaged in a manner normally used for illicit controlled
190 substances;
- 191 (d) Prior convictions, if any, of an owner, or anyone in control of the object, under state
192 or federal law related to controlled substances or fraud;
- 193 (e) The proximity of the substances to controlled substances;
- 194 (f) Whether the consideration tendered in exchange for the noncontrolled substance

195 substantially exceeds the reasonable value of the substance considering the actual chemical
196 composition of the substance and, where applicable, the price at which over-the-counter
197 substances of like chemical composition sell. An imitation controlled substance does not include
198 a placebo or registered investigational drug either of which was manufactured, distributed,
199 possessed or delivered in the ordinary course of professional practice or research;

200 (22) "Laboratory", a laboratory approved by the department of health as proper to be
201 entrusted with the custody of controlled substances but does not include a pharmacist who
202 compounds controlled substances to be sold or dispensed on prescriptions;

203 (23) "Manufacture", the production, preparation, propagation, compounding or
204 processing of drug paraphernalia or of a controlled substance, or an imitation controlled
205 substance, either directly or by extraction from substances of natural origin, or independently by
206 means of chemical synthesis, or by a combination of extraction and chemical synthesis, and
207 includes any packaging or repackaging of the substance or labeling or relabeling of its
208 container. This term does not include the preparation or compounding of a controlled substance
209 or an imitation controlled substance or the preparation, compounding, packaging or labeling of
210 a narcotic or dangerous drug:

211 (a) By a practitioner as an incident to his **or her** administering or dispensing of a
212 controlled substance or an imitation controlled substance in the course of his **or her** professional
213 practice, or

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

216 (24) "Marijuana", all parts of the plant genus Cannabis in any species or form thereof,
217 including, but not limited to Cannabis Sativa L., Cannabis Indica, Cannabis Americana,
218 Cannabis Ruderalis, and Cannabis Gigantea, whether growing or not, the seeds thereof, the resin
219 extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture,
220 or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant,
221 fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound,
222 manufacture, salt, derivative, mixture or preparation of the mature stalks (except the resin
223 extracted therefrom), fiber, oil or cake, or the sterilized seed of the plant which is incapable of
224 germination;

225 (25) "**Minimum prison term**", the time required to be served by the defendant
226 before he or she is eligible for probation, parole, conditional release or other early release
227 by the department of corrections;

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

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

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

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

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

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

241 [(26)] (27) "Official written order", an order written on a form provided for that purpose
242 by the United States Commissioner of Narcotics, under any laws of the United States making
243 provision therefor, if such order forms are authorized and required by federal law, and if no such
244 order form is provided, then on an official form provided for that purpose by the department of
245 health;

246 [(27)] (28) "Opiate", any substance having an addiction-forming or addiction-sustaining
247 liability similar to morphine or being capable of conversion into a drug having addiction-forming
248 or addiction-sustaining liability. The term includes its racemic and levorotatory forms. It does
249 not include, unless specifically controlled under section 195.017, the dextrorotatory isomer of
250 3-methoxy-n-methyl-morphinan and its salts (dextromethorphan);

251 [(28)] (29) "Opium poppy", the plant of the species *Papaver somniferum* L., except its
252 seeds;

253 [(29)] (30) "Person", an individual, corporation, government or governmental
254 subdivision or agency, business trust, estate, trust, partnership, joint venture, association, or any
255 other legal or commercial entity;

256 [(30)] (31) "Pharmacist", a licensed pharmacist as defined by the laws of this state, and
257 where the context so requires, the owner of a store or other place of business where controlled
258 substances are compounded or dispensed by a licensed pharmacist; but nothing in sections
259 195.005 to 195.425 shall be construed as conferring on a person who is not registered nor
260 licensed as a pharmacist any authority, right or privilege that is not granted to him **or her** by the
261 pharmacy laws of this state;

262 [(31)] (32) "Poppy straw", all parts, except the seeds, of the opium poppy, after mowing;

263 [(32)] (33) "Possessed" or "possessing a controlled substance", a person, with the
264 knowledge of the presence and nature of a substance, has actual or constructive possession of
265 the substance. A person has actual possession if he **or she** has the substance on his **or her**
266 person or within easy reach and convenient control. A person who, although not in actual

267 possession, has the power and the intention at a given time to exercise dominion or control over
268 the substance either directly or through another person or persons is in constructive possession
269 of it. Possession may also be sole or joint. If one person alone has possession of a substance
270 possession is sole. If two or more persons share possession of a substance, possession is joint;

271 [(33)] (34) "Practitioner", a physician, dentist, optometrist, podiatrist, veterinarian,
272 scientific investigator, pharmacy, hospital or other person licensed, registered or otherwise
273 permitted by this state to distribute, dispense, conduct research with respect to or administer or
274 to use in teaching or chemical analysis, a controlled substance in the course of professional
275 practice or research in this state, or a pharmacy, hospital or other institution licensed, registered,
276 or otherwise permitted to distribute, dispense, conduct research with respect to or administer a
277 controlled substance in the course of professional practice or research;

278 [(34)] (35) "Production", includes the manufacture, planting, cultivation, growing, or
279 harvesting of drug paraphernalia or of a controlled substance or an imitation controlled
280 substance;

281 [(35)] (36) "Registry number", the number assigned to each person registered under the
282 federal controlled substances laws;

283 [(36)] (37) "Sale", includes barter, exchange, or gift, or offer therefor, and each such
284 transaction made by any person, whether as principal, proprietor, agent, servant or employee;

285 [(37)] (38) "State" when applied to a part of the United States, includes any state, district,
286 commonwealth, territory, insular possession thereof, and any area subject to the legal authority
287 of the United States of America;

288 [(38)] (39) "Ultimate user", a person who lawfully possesses a controlled substance or
289 an imitation controlled substance for his **or her** own use or for the use of a member of his **or her**
290 household or for administering to an animal owned by him **or her** or by a member of his **or her**
291 household;

292 [(39)] (40) "Wholesaler", a person who supplies drug paraphernalia or controlled
293 substances or imitation controlled substances that he himself **or her herself** has not produced
294 or prepared, on official written orders, but not on prescriptions.

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

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

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

9 **4. Any person who violates this section with respect to the manufacture or**
10 **attempted manufacture of methamphetamine shall serve a minimum prison term of not less**
11 **than three years.**

12 **5. Any person who is a prior methamphetamine offender and who violates this**
13 **section with respect to the manufacture or attempted manufacture of methamphetamine**
14 **shall serve a minimum prison term of not less than five years.**

15 **6. Any person who is a persistent methamphetamine offender and who violates this**
16 **section with respect to the manufacture or attempted manufacture of methamphetamine**
17 **shall serve a minimum prison term of not less than ten years.**

18 **7. No person sentenced pursuant to subsection 4, 5 or 6 of this section shall be**
19 **granted a suspended imposition of sentence or a suspended execution of sentence. Any**
20 **sentence imposed pursuant to subsection 4, 5 or 6 of this section shall be served consecutive**
21 **to, not concurrent with, any sentence imposed for a violation of section 195.233, 195.246,**
22 **195.400 or 195.420 or section 570.030, RSMo.**

 195.275. 1. The following words or phrases as used in sections 195.005 to 195.425 have
2 the following meanings, unless the context otherwise requires:

3 (1) "Prior drug offender", one who has previously pleaded guilty to or has been found
4 guilty of any felony offense of the laws of this state, or of the United States, or any other state,
5 territory or district relating to controlled substances;

6 (2) "Persistent drug offender", one who has previously pleaded guilty to or has been
7 found guilty of two or more felony offenses of the laws of this state or of the United States, or
8 any other state, territory or district relating to controlled substances;

9 **(3) "Prior methamphetamine offender", one who has previously pleaded guilty to**
10 **or has been found guilty of a violation of section 195.211, which violation involved the**
11 **manufacture or attempted manufacture of methamphetamine;**

12 **(4) "Persistent methamphetamine offender", one who has previously pleaded guilty**
13 **to or has been found guilty of two or more violations of section 195.211, which violations**
14 **involved the manufacture or attempted manufacture of methamphetamine.**

15 2. Prior pleas of guilty and prior findings of guilty shall be pleaded and proven in the
16 same manner as required by section 558.021, RSMo.

17 3. The court shall not instruct the jury as to the range of punishment or allow the jury,
18 upon a finding of guilty, to assess and declare the punishment as part of its verdict in cases of
19 prior drug offenders or persistent drug offenders.

20 4. The provisions of sections 195.285 to 195.296 shall not be construed to affect and may
21 be used in addition to the sentencing provisions of sections 558.016 and 558.019, RSMo.