

FIRST REGULAR SESSION

HOUSE BILL NO. 822

93RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES NOLTE (Sponsor), SKAGGS, SATER, SMITH (118),
WILSON (119), PHILLIPS AND EMERY (Co-sponsors).

Read 1st time March 17, 2005 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

2119L.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Section A. Section 195.010, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 195.010, to read as follows: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 195.425, unless the context otherwise requires, mean:

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

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

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

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

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

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

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

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, substances and materials of any kind
82 which are used, intended for use, or designed for use, in planting, propagating, cultivating,
83 growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing,
84 storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the
85 human body a controlled substance or an imitation controlled substance in violation of sections
86 195.005 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 (m) Substances used, intended for use, or designed for use in the manufacture of a
133 controlled substance;
134 **(n) Any bronchial inhaler devices used for purposes other than administering any**
135 **FDA approved drug or prescription drug;**
136
137 In determining whether an object, product, substance or material is drug paraphernalia, a court
138 or other authority should consider, in addition to all other logically relevant factors, the
139 following:
140 (a) Statements by an owner or by anyone in control of the object concerning its use;
141 (b) Prior convictions, if any, of an owner, or of anyone in control of the object, under any
142 state or federal law relating to any controlled substance or imitation controlled substance;
143 (c) The proximity of the object, in time and space, to a direct violation of sections
144 195.005 to 195.425;
145 (d) The proximity of the object to controlled substances or imitation controlled
146 substances;
147 (e) The existence of any residue of controlled substances or imitation controlled
148 substances on the object;
149 (f) Direct or circumstantial evidence of the intent of an owner, or of anyone in control
150 of the object, to deliver it to persons who he knows, or should reasonably know, intend to use
151 the object to facilitate a violation of sections 195.005 to 195.425; the innocence of an owner, or
152 of anyone in control of the object, as to direct violation of sections 195.005 to 195.425 shall not
153 prevent a finding that the object is intended for use, or designed for use as drug paraphernalia;
154 (g) Instructions, oral or written, provided with the object concerning its use;
155 (h) Descriptive materials accompanying the object which explain or depict its use;
156 (i) National or local advertising concerning its use;
157 (j) The manner in which the object is displayed for sale;
158 (k) Whether the owner, or anyone in control of the object, is a legitimate supplier of like
159 or related items to the community, such as a licensed distributor or dealer of tobacco products;

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

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

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

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

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

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

210 (23) "Manufacture", the production, preparation, propagation, compounding or
211 processing of drug paraphernalia or of a controlled substance, or an imitation controlled
212 substance, either directly or by extraction from substances of natural origin, or independently by
213 means of chemical synthesis, or by a combination of extraction and chemical synthesis, and
214 includes any packaging or repackaging of the substance or labeling or relabeling of its container.
215 This term does not include the preparation or compounding of a controlled substance or an
216 imitation controlled substance or the preparation, compounding, packaging or labeling of a
217 narcotic or dangerous drug:

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

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

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

231 (25) "Methamphetamine precursor drug", any drug containing ephedrine,

232 pseudoephedrine, phenylpropanolamine, or any of their salts, optical isomers, or salts of optical
233 isomers;

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

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

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

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

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

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

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

252 (28) "Opiate", any substance having an addiction-forming or addiction-sustaining
253 liability similar to morphine or being capable of conversion into a drug having addiction-forming
254 or addiction-sustaining liability. The term includes its racemic and levorotatory forms. It does
255 not include, unless specifically controlled under section 195.017, the dextrorotatory isomer of
256 3-methoxy-n-methyl-morphinan and its salts (dextromethorphan);

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

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

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

263 (32) "Pharmacist", a licensed pharmacist as defined by the laws of this state, and where
264 the context so requires, the owner of a store or other place of business where controlled
265 substances are compounded or dispensed by a licensed pharmacist; but nothing in sections
266 195.005 to 195.425 shall be construed as conferring on a person who is not registered nor
267 licensed as a pharmacist any authority, right or privilege that is not granted to him by the

268 pharmacy laws of this state;

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

270 (34) "Possessed" or "possessing a controlled substance", a person, with the knowledge
271 of the presence and nature of a substance, has actual or constructive possession of the substance.

272 A person has actual possession if he has the substance on his person or within easy reach and
273 convenient control. A person who, although not in actual possession, has the power and the
274 intention at a given time to exercise dominion or control over the substance either directly or
275 through another person or persons is in constructive possession of it. Possession may also be
276 sole or joint. If one person alone has possession of a substance possession is sole. If two or
277 more persons share possession of a substance, possession is joint;

278 (35) "Practitioner", a physician, dentist, optometrist, podiatrist, veterinarian, scientific
279 investigator, pharmacy, hospital or other person licensed, registered or otherwise permitted by
280 this state to distribute, dispense, conduct research with respect to or administer or to use in
281 teaching or chemical analysis, a controlled substance in the course of professional practice or
282 research in this state, or a pharmacy, hospital or other institution licensed, registered, or
283 otherwise permitted to distribute, dispense, conduct research with respect to or administer a
284 controlled substance in the course of professional practice or research;

285 (36) "Production", includes the manufacture, planting, cultivation, growing, or
286 harvesting of drug paraphernalia or of a controlled substance or an imitation controlled
287 substance;

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

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

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

295 (40) "Ultimate user", a person who lawfully possesses a controlled substance or an
296 imitation controlled substance for his own use or for the use of a member of his household or for
297 administering to an animal owned by him or by a member of his household;

298 (41) "Wholesaler", a person who supplies drug paraphernalia or controlled substances
299 or imitation controlled substances that he himself has not produced or prepared, on official
300 written orders, but not on prescriptions.