

CHAPTER 152

DRUGS, CONTROLLED SUBSTANCES

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DEFINITIONS AND SCHEDULES OF CONTROLLED SUBSTANCES

152.01 DEFINITIONS.

Subdivision 1. **Words, terms, and phrases.** Unless the language or context clearly indicates that a different meaning is intended, the following words, terms, and phrases, for the purposes of this chapter, shall be given the meanings subjoined to them.

Subd. 2. **Drug.** The term "drug" includes all medicines and preparations recognized in the United States Pharmacopoeia or National Formulary and any substance or mixture of substances intended to be used for the cure, mitigation, or prevention of disease of either humans or other animals.

Subd. 3. MS 1967 [Repealed, 1969 c 933 s 22]

Subd. 3. **Administer.** "Administer" means to deliver by, or pursuant to the lawful order of a practitioner a single dose of a controlled substance to a patient or research subject by injection, inhalation, ingestion, or by any other immediate means.

Subd. 3a. **Cocaine.** "Cocaine" means coca leaves and any salt, compound, derivative, or preparation of coca leaves, including cocaine and ecgonine, the salts and isomers of cocaine and ecgonine, and the salts of their isomers and any salt, compound, derivative, or preparation thereof that is chemically equivalent or identical with any of those substances, except decocainized coca leaves or extraction of coca leaves, which extractions do not contain cocaine or ecgonine.

Subd. 4. MS 1967 [Repealed, 1969 c 933 s 22]

Subd. 4. **Controlled substance.** "Controlled substance" means a drug, substance, or immediate precursor in Schedules I through V of section 152.02. The term shall not include distilled spirits, wine, malt beverages, intoxicating liquors or tobacco.

Subd. 5. [Repealed, 1971 c 937 s 22]

Subd. 5a. **Hallucinogen.** "Hallucinogen" means any hallucinogen listed in section 152.02, subdivision 2, clause (3), or Minnesota Rules, part 6800.4210, item C, except marijuana and Tetrahydrocannabinols.

Subd. 6. **Pharmacist intern.** The term "pharmacist intern" means a natural person, a graduate of the college of pharmacy, University of Minnesota, or other pharmacy college, approved by the board, or a person satisfactorily progressing toward the degree in pharmacy required for licensure, registered by the state board of pharmacy, for the purpose of obtaining practical experience as a requirement for licensure as a pharmacist or a qualified applicant, awaiting licensure.

Subd. 7. **Manufacture.** "Manufacture," in places other than a pharmacy, means and includes the production, cultivation, quality control, and standardization by mechanical, physical, chemical, or pharmaceutical means, packing, repacking, tableting, encapsulating, labeling, relabeling, filling, or by other process, of drugs.

Subd. 8. **Dispense.** "Dispense" means to deliver one or more doses of a controlled substance in a suitable container, properly labeled, for subsequent administration to, or use by a patient or research subject.

Subd. 9. **Marijuana.** "Marijuana" means all parts of the plant of any species of the genus *Cannabis*, including all agronomical varieties, whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin, but shall not include the mature stalks of such plant, fiber 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, except the resin extracted therefrom, fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination.

Subd. 9a. **Mixture.** "Mixture" means a preparation, compound, mixture, or substance containing a controlled substance, regardless of purity.

Subd. 10. **Narcotic drug.** "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

- (1) Opium, coca leaves, and opiates;
- (2) A compound, manufacture, salt, derivative, or preparation of opium, coca leaves, or opiates;
- (3) A substance, and any compound, manufacture, salt, derivative, or preparation thereof, which is chemically identical with any of the substances referred to in clauses (1) and (2), except that the words "narcotic drug" as used in this chapter shall not include decocainized coca leaves or extracts of coca leaves, which extracts do not contain cocaine or ecgonine.

Subd. 11. **Opiate.** "Opiate" means any dangerous 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.

Subd. 12. **Opium poppy.** "Opium poppy" means the plant of the species *Papaver somniferum* L., except the seeds thereof.

Subd. 12a. **Park zone.** "Park zone" means an area designated as a public park by the federal government, the state, a local unit of government, a park district board, or a park and recreation board in a city of the first class. "Park zone" includes the area within 300 feet or one city block, whichever distance is greater, of the park boundary.

Subd. 13. **Person.** "Person" includes every individual, copartnership, corporation or association of one or more individuals.

Subd. 14. **Poppy straw.** "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

Subd. 14a. **School zone.** "School zone" means:

(1) any property owned, leased, or controlled by a school district or an organization operating a nonpublic school, as defined in section 123B.41, subdivision 9, where an elementary, middle, secondary school, secondary vocational center or other school providing educational services in grade one through grade 12 is located, or used for educational purposes, or where extracurricular or cocurricular activities are regularly provided;

(2) the area surrounding school property as described in clause (1) to a distance of 300 feet or one city block, whichever distance is greater, beyond the school property; and

(3) the area within a school bus when that bus is being used to transport one or more elementary or secondary school students.

Subd. 15. **Immediate precursor.** "Immediate precursor" means a substance which the state board of pharmacy has found to be and by rule designates as being the principal compound commonly used or produced 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.

Subd. 15a. **Sell.** "Sell" means:

(1) to sell, give away, barter, deliver, exchange, distribute or dispose of to another, or to manufacture; or

(2) to offer or agree to perform an act listed in clause (1); or

(3) to possess with intent to perform an act listed in clause (1).

Subd. 16. **Small amount.** "Small amount" as applied to marijuana means 42.5 grams or less. This provision shall not apply to the resinous form of marijuana.

Subd. 16a. **Subsequent controlled substance conviction.** Notwithstanding section 152.18, subdivision 1, a "subsequent controlled substance conviction" means that before commission of the offense for which the person is convicted under this chapter, the person received a disposition for a felony-level offense under section 152.18, subdivision 1, was convicted in Minnesota of a felony violation of this chapter or a felony-level attempt or conspiracy to violate this chapter, or was convicted elsewhere for conduct that would have been a felony under this chapter if committed in Minnesota. An earlier disposition for a felony-level offense under section 152.18, subdivision 1, or an earlier conviction is not relevant if ten years have elapsed since discharge from sentence or stay of adjudication.

Subd. 17. [Repealed, 1994 c 636 art 2 s 69]

Subd. 18. **Drug paraphernalia.** (a) Except as otherwise provided in paragraph (b), "drug paraphernalia" means all equipment, products, and materials of any kind, except those items used in conjunction with permitted uses of controlled substances under this chapter or the Uniform Controlled Substances Act, which are knowingly or intentionally used primarily in (1) manufacturing a controlled substance, (2) injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance, (3) testing the strength, effectiveness, or purity of a controlled substance, or (4) enhancing the effect of a controlled substance.

(b) "Drug paraphernalia" does not include the possession, manufacture, delivery, or sale of hypodermic needles or syringes in accordance with section 151.40, subdivision 2.

Subd. 19. **Public housing zone.** "Public housing zone" means any public housing project or development administered by a local housing agency, plus the area within 300 feet of the property's boundary, or one city block, whichever distance is greater.

Subd. 20. **Unlawfully.** "Unlawfully" means selling or possessing a controlled substance in a manner not authorized by law.

Subd. 21. **Orphan drug.** "Orphan drug" means a drug for a disease or condition which is rare in the United States and has been designated as an orphan drug by the

Secretary of Health and Human Services as provided in the Orphan Drug Act, Public Law Number 92-414, as amended.

Subd. 22. **Drug treatment facility.** "Drug treatment facility" means any facility in which a residential rehabilitation program licensed under Minnesota Rules, parts 9530.4100 to 9530.4450, is located, and includes any property owned, leased, or controlled by the facility.

History: (3899-2, 3899-5, 3899-7, 3906-12) 1921 c 190 s 2,5,7; 1939 c 102 s 2; 1967 c 408 s 1,2; 1971 c 937 s 1-11; Ex1971 c 38 s 1; Ex1971 c 48 s 17; 1973 c 693 s 1; 1979 c 157 s 1; 1981 c 37 s 2; 1981 c 295 s 1; 1982 c 557 s 1; 1982 c 642 s 22; 1985 c 248 s 70; 1986 c 444; 1987 c 298 s 1; 1989 c 290 art 3 s 1-7; 1991 c 279 s 1,2; 1992 c 359 s 1-3; 1993 c 82 s 1; 1997 c 239 art 4 s 1,2; 1998 c 397 art 11 s 3; 1999 c 98 s 1

152.02 MS 1967 [Repealed, 1969 c 933 s 22]

152.02 SCHEDULES OF CONTROLLED SUBSTANCES; ADMINISTRATION OF CHAPTER.

Subdivision 1. **Five schedules.** There are established five schedules of controlled substances, to be known as Schedules I, II, III, IV, and V. Such schedules shall initially consist of the substances listed in this section by whatever official name, common or usual name, chemical name, or trade name designated.

Subd. 2. **Schedule I.** The following items are listed in Schedule I:

(1) Any of the following substances, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of such isomers, esters, ethers and salts is possible within the specific chemical designation: Acetylmethadol; Allylprodine; Alphacetylmethadol; Alphameprodine; Alphamethadol; Benzethidine; Betacetylmethadol; Betameprodine; Betamethadol; Betaprodine; Clonitazene; Dextromoramide; Dextrophan; Diampromide; Diethylambutene; Dimenoxadol; Dimepheptanol; Dimethylambutene; Dioxaphetyl butyrate; Dipipanone; Ethylmethylthiambutene; Etonitazene; Etoxidine; Furethidine; Hydroxypethidine; Ketobemidone; Levomoramide; Levophenacymorphan; Morphidine; Noracymethadol; Norlevorphanol; Normethadone; Norpipanone; Phenadoxone; Phenampromide; Phenomorphan; Phenoperidine; Piriramide; Proheptazine; Propripidine; Racemoramide; Trimeperidine.

(2) Any of the following opium derivatives, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation: Acetorphine; Acetyldihydrocodeine; Acetylcodeine; Benzylmorphine; Codeine methylbromide; Codeine-N-Oxide; Cyprenorphine; Desomorphine; Dihydromorphine; Etorphine; Heroin; Hydromorphinol; Methyl-desorphine; Methylhydromorphine; Morphine methylbromide; Morphine methylsulfonate; Morphine-N-Oxide; Myrophine; Nicocodeine; Nicomorphine; Normorphine; Pholcodine; Thebacon.

(3) Any material, compound, mixture or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation: 3,4-methylenedioxy amphetamine; 4-bromo-2,5-dimethoxyamphetamine; 2,5-dimethoxyamphetamine; 4-methoxyamphetamine; 5-methoxy-3, 4-methylenedioxy amphetamine; Bufotenine; Diethyltryptamine; Dimethyltryptamine; 3,4,5-trimethoxy amphetamine; 4-methyl-2, 5-dimethoxyamphetamine; Ibogaine; Lysergic acid diethylamide; marijuana; Mescaline; N-ethyl-3-piperidyl benzilate; N-methyl-3-piperidyl benzilate; Psilocybin; Psilocyn; Tetrahydrocannabinols; 1-(1-(2-thienyl) cyclohexyl) piperidine; n-ethyl-1-phenyl-cyclohexylamine; 1-(1-phenylcyclohexyl) pyrrolidine.

(4) Peyote, providing the listing of peyote as a controlled substance in schedule I does not apply to the nondrug use of peyote in bona fide religious ceremonies of the American Indian Church, and members of the American Indian Church are exempt from registration. Any person who manufactures peyote for or distributes peyote to the

American Indian Church, however, is required to obtain federal registration annually and to comply with all other requirements of law.

(5) Unless specifically excepted or unless listed in another schedule, any material compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

Mecloqualone;

Flunitrazepam.

(6) Unless specifically excepted or unless listed in another schedule, any material compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

Cathinone;

Methcathinone.

Subd. 3. Schedule II. The following items are listed in Schedule II:

(1) Unless specifically excepted or unless listed in another schedule, any of the following substances whether produced directly or indirectly by extraction from substances of vegetable origin or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(a) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, including the following: raw opium, opium extracts, opium fluid extracts, powdered opium, granulated opium, tincture of opium, apomorphine, codeine, ethylmorphine, hydrocodone, hydromorphone, metopon, morphine, oxycodone, oxymorphone, thebaine.

(b) Any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in clause (a), except that these substances shall not include the isoquinoline alkaloids of opium.

(c) Opium poppy and poppy straw.

(d) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, including cocaine and ecgonine, the salts and isomers of cocaine and ecgonine, and the salts of their isomers.

(e) Any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in clause (d), except that the substances shall not include decocainized coca leaves or extraction of coca leaves, which extractions do not contain cocaine or ecgonine.

(2) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters and ethers, unless specifically excepted, or unless listed in another schedule, whenever the existence of such isomers, esters, ethers and salts is possible within the specific chemical designation: Alfentanil; Alphaprodine; Anileridine; Bezitramide; Dihydrocodeine; Dihydromorphinone; Diphenoxylate; Fentanyl; Isomethadone; Levomethorphan; Levorphanol; Metazocine; Methadone; Methadone - Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenylbutane; Moramide - Intermediate, 2-methyl-3-morpholino-1, 1-diphenyl-propane-carboxylic acid; Pethidine; Pethidine - Intermediate - A, 4-cyano-1-methyl-4-phenylpiperidine; Pethidine - Intermediate - B, ethyl-4-phenylpiperidine-4-carboxylate; Pethidine - Intermediate - C, 1-methyl-4-phenylpiperidine-4-carboxylic acid; Phenazocine; Piminodine; Racemethorphan; Racemorphan.

(3) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system:

(a) Amphetamine, its salts, optical isomers, and salts of its optical isomers;

- (b) Methamphetamine, its salts, isomers, and salts of its isomers;
- (c) Phenmetrazine and its salts;
- (d) Methylphenidate.

(4) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (a) Methaqualone
- (b) Amobarbital
- (c) Secobarbital
- (d) Pentobarbital
- (e) Phencyclidine
- (f) Phencyclidine immediate precursors:
 - (i) 1-phenylcyclohexylamine
 - (ii) 1-piperidinocyclohexanecarbonitrile.

Subd. 4. **Schedule III.** The following items are listed in Schedule III:

(1) Any material, compound, mixture, or preparation which contains any quantity of Amphetamine, its salts, optical isomers, and salts of its optical isomers; Phenmetrazine and its salts; Methamphetamine, its salts, isomers, and salts of isomers; Methylphenidate; and which is required by federal law to be labeled with the symbol prescribed by 21 Code of Federal Regulations Section 1302.03 and in effect on February 1, 1976 designating that the drug is listed as a Schedule III controlled substance under federal law.

(2) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

(a) Any compound, mixture, or preparation containing amobarbital, secobarbital, pentobarbital or any salt thereof and one or more other active medicinal ingredients which are not listed in any schedule.

(b) Any suppository dosage form containing amobarbital, secobarbital, pentobarbital, or any salt of any of these drugs and approved by the food and drug administration for marketing only as a suppository.

(c) Any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid, except those substances which are specifically listed in other schedules: Chlorhexadol; Glutethimide; Lysergic acid; Lysergic acid amide; Methyprylon; Sulfondiethylmethane; Sulfonethylmethane; Sulfonmethane.

(d) Gamma hydroxybutyrate, any salt, compound, derivative, or preparation of gamma hydroxybutyrate, including any isomers, esters, and ethers and salts of isomers, esters, and ethers of gamma hydroxybutyrate whenever the existence of such isomers, esters, and salts is possible within the specific chemical designation.

(3) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system:

- (a) Benzphetamine
 - (b) Chlorphentermine
 - (c) Clortermine
 - (d) Mazindol
 - (e) Phendimetrazine.
- (4) Nalorphine.

(5) Any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:

(a) Not more than 1.80 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium.

(b) Not more than 1.80 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(c) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium.

(d) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(e) Not more than 1.80 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(f) Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(g) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(h) Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

Subd. 5. Schedule IV. (a) The following items are listed in Schedule IV: Anabolic substances; Barbital; Butorphanol; Carisoprodol; Chloral betaine; Chloral hydrate; Chlordiazepoxide; Clonazepam; Clorazepate; Diazepam; Diethylpropion; Ethchlorvynol; Ethinamate; Fenfluramine; Flurazepam; Mebutamate; Methohexital; Meprobamate except when in combination with the following drugs in the following or lower concentrations: conjugated estrogens, 0.4 mg; tridihexethyl chloride, 25mg; pentaerythritol tetranitrate, 20 mg; Methylphenobarbital; Oxazepam; Paraldehyde; Pemoline; Petrichloral; Phenobarbital; and Phentermine.

(b) For purposes of this subdivision, "anabolic substances" means the naturally occurring androgens or derivatives of androstane (androsterone and testosterone); testosterone and its esters, including, but not limited to, testosterone propionate, and its derivatives, including, but not limited to, methyltestosterone and growth hormones, except that anabolic substances are not included if they are: (1) expressly intended for administration through implants to cattle or other nonhuman species; and (2) approved by the United States Food and Drug Administration for that use.

Subd. 6. Schedule V. The following items are listed in Schedule V: Any compound, mixture, or preparation containing any of the following limited quantities of narcotic drugs, which shall include one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone;

(1) Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams.

(2) Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams.

(3) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit.

(4) Not more than 15 milligrams of anhydrous morphine per 100 milliliters or per 100 grams.

Subd. 7. **Board of pharmacy; regulation of substances.** The board of pharmacy is authorized to regulate and define additional substances which contain quantities of a substance possessing abuse potential in accordance with the following criteria:

(1) The board of pharmacy shall place a substance in Schedule I if it finds that the substance has: A high potential for abuse, no currently accepted medical use in the United States, and a lack of accepted safety for use under medical supervision.

(2) The board of pharmacy shall place a substance in Schedule II if it finds that the substance has: A high potential for abuse, currently accepted medical use in the United States, or currently accepted medical use with severe restrictions, and that abuse may lead to severe psychological or physical dependence.

(3) The board of pharmacy shall place a substance in Schedule III if it finds that the substance has: A potential for abuse less than the substances listed in Schedules I and II, currently accepted medical use in treatment in the United States, and that abuse may lead to moderate or low physical dependence or high psychological dependence.

(4) The board of pharmacy shall place a substance in Schedule IV if it finds that the substance has: A low potential for abuse relative to the substances in Schedule III, currently accepted medical use in treatment in the United States, and that abuse may lead to limited physical dependence or psychological dependence relative to the substances in Schedule III.

(5) The board of pharmacy shall place a substance in Schedule V if it finds that the substance has: A low potential for abuse relative to the substances listed in Schedule IV, currently accepted medical use in treatment in the United States, and limited physical dependence and/or psychological dependence liability relative to the substances listed in Schedule IV.

Subd. 8. **Add, delete, or reschedule substances.** The state board of pharmacy may, by rule, add substances to or delete or reschedule substances listed in this section. The state board of pharmacy, after consulting with the advisory council on controlled substances, shall annually, on or before May 1 of each year, conduct a review of the placement of controlled substances in the various schedules.

In making a determination regarding a substance, the board of pharmacy shall consider the following: The actual or relative potential for abuse, the scientific evidence of its pharmacological effect, if known, the state of current scientific knowledge regarding the substance, the history and current pattern of abuse, the scope, duration, and significance of abuse, the risk to public health, the potential of the substance to produce psychic or physiological dependence liability, and whether the substance is an immediate precursor of a substance already controlled under this section. The state board of pharmacy may include any nonnarcotic drug authorized by federal law for medicinal use in a schedule only if such drug must, under either federal or state law or rule, be sold only on prescription.

Subd. 9. **Except substances by rule.** The state board of pharmacy may by rule except any compound, mixture, or preparation containing any stimulant or depressant substance listed in subdivision 4, clauses (1) and (2) or in subdivisions 5 and 6 from the application of all or any part of this chapter, if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system; provided, that such admixtures shall be included therein in such combinations, quantity, proportion, or concentration as to vitiate the potential for abuse of the substances which do have a stimulant or depressant effect on the central nervous system.

Subd. 10. **Dextromethorphan.** Dextromethorphan shall not be deemed to be included in any schedule by reason of the enactment of Laws 1971, chapter 937, unless controlled pursuant to the foregoing provisions of this section.

Subd. 11. [Repealed, 1993 c 337 s 20]

Subd. 12. **Coordination of controlled substance regulation with federal law.** If any substance is designated, rescheduled, or deleted as a controlled substance under federal law and notice thereof is given to the state board of pharmacy, the state board of pharmacy shall similarly control the substance under this chapter, after the expiration of 30 days from publication in the Federal Register of a final order designating a substance as a controlled substance or rescheduling or deleting a substance. Such order shall be filed with the secretary of state. If within that 30-day period, the state board of pharmacy objects to inclusion, rescheduling, or deletion, it shall publish the reasons for objection and afford all interested parties an opportunity to be heard. At the conclusion of the hearing, the state board of pharmacy shall publish its decision, which shall be subject to the provisions of chapter 14.

In exercising the authority granted by this chapter, the state board of pharmacy shall be subject to the provisions of chapter 14. The state board of pharmacy shall provide copies of any proposed rule under this chapter to the advisory council on controlled substances at least 30 days prior to any hearing required by section 14.14, subdivision 1. The state board of pharmacy shall consider the recommendations of the advisory council on controlled substances, which may be made prior to or at the hearing.

Subd. 13. **Implementation study.** Annually, the state board of pharmacy shall study the implementation of this chapter in relation to the problems of drug abuse in Minnesota.

History: 1971 c 937 s 12; 1973 c 693 s 2-4; 1976 c 338 s 1-4; 1979 c 157 s 2-4; 1979 c 243 s 2; 1982 c 424 s 130; 1983 c 260 s 39,40; 1985 c 248 s 70; 1987 c 14 s 1; 1987 c 298 s 2; 1987 c 384 art 2 s 40; 1989 c 230 s 1; 1994 c 465 art 1 s 20-22; 1996 c 408 art 11 s 2; 1997 c 7 art 2 s 21; 1997 c 187 art 5 s 21; 1997 c 239 art 4 s 3,4; 1999 c 163 s 1

NOTE: The amendment to subdivision 5 by Laws 1997, chapter 239, article 4, section 4, relating to the listing of carisoprodol in schedule IV is effective August 1, 2001, and applies to acts committed on or after that date. Laws 1997, chapter 239, article 4, section 15, as amended by Laws 1998, chapter 367, article 4, section 7; Laws 1999, chapter 9, section 1; and Laws 2000, chapter 262, section 1.

CONTROLLED SUBSTANCE CRIMES

152.021 CONTROLLED SUBSTANCE CRIME IN THE FIRST DEGREE.

Subdivision 1. **Sale crimes.** A person is guilty of controlled substance crime in the first degree if:

(1) on one or more occasions within a 90-day period the person unlawfully sells one or more mixtures of a total weight of ten grams or more containing cocaine, heroin, or methamphetamine;

(2) on one or more occasions within a 90-day period the person unlawfully sells one or more mixtures of a total weight of 50 grams or more containing a narcotic drug other than cocaine, heroin, or methamphetamine;

(3) on one or more occasions within a 90-day period the person unlawfully sells one or more mixtures of a total weight of 50 grams or more containing amphetamine, phencyclidine, or hallucinogen or, if the controlled substance is packaged in dosage units, equaling 200 or more dosage units; or

(4) on one or more occasions within a 90-day period the person unlawfully sells one or more mixtures of a total weight of 50 kilograms or more containing marijuana or Tetrahydrocannabinols, or one or more mixtures of a total weight of 25 kilograms or more containing marijuana or Tetrahydrocannabinols in a school zone, a park zone, a public housing zone, or a drug treatment facility.

Subd. 2. **Possession crimes.** A person is guilty of a controlled substance crime in the first degree if:

(1) the person unlawfully possesses one or more mixtures of a total weight of 25 grams or more containing cocaine, heroin, or methamphetamine;

(2) the person unlawfully possesses one or more mixtures of a total weight of 500 grams or more containing a narcotic drug other than cocaine, heroin, or methamphetamine;

(3) the person unlawfully possesses one or more mixtures of a total weight of 500 grams or more containing amphetamine, phencyclidine, or hallucinogen or, if the controlled substance is packaged in dosage units, equaling 500 or more dosage units; or

(4) the person unlawfully possesses one or more mixtures of a total weight of 100 kilograms or more containing marijuana or Tetrahydrocannabinols.

Subd. 2a. **Manufacture crimes.** Notwithstanding subdivision 1, sections 152.022, subdivision 1, 152.023, subdivision 1, and 152.024, subdivision 1, a person is guilty of controlled substance crime in the first degree if the person manufactures any amount of methamphetamine.

Subd. 3. **Penalty.** (a) A person convicted under subdivisions 1 to 2a may be sentenced to imprisonment for not more than 30 years or to payment of a fine of not more than \$1,000,000, or both.

(b) If the conviction is a subsequent controlled substance conviction, a person convicted under subdivisions 1 to 2a shall be committed to the commissioner of corrections for not less than four years nor more than 40 years and, in addition, may be sentenced to payment of a fine of not more than \$1,000,000.

(c) In a prosecution under subdivision 1 involving sales by the same person in two or more counties within a 90-day period, the person may be prosecuted for all of the sales in any county in which one of the sales occurred.

History: 1989 c 290 art 3 s 8; 1990 c 602 art 7 s 1; 1991 c 279 s 3; 1992 c 359 s 4,5; 1993 c 326 art 13 s 5; 1995 c 244 s 1; 1997 c 239 art 4 s 5,6; 1998 c 367 art 4 s 1

152.022 CONTROLLED SUBSTANCE CRIME IN THE SECOND DEGREE.

Subdivision 1. **Sale crimes.** A person is guilty of controlled substance crime in the second degree if:

(1) on one or more occasions within a 90-day period the person unlawfully sells one or more mixtures of a total weight of three grams or more containing cocaine, heroin, or methamphetamine;

(2) on one or more occasions within a 90-day period the person unlawfully sells one or more mixtures of a total weight of ten grams or more containing a narcotic drug other than cocaine, heroin, or methamphetamine;

(3) on one or more occasions within a 90-day period the person unlawfully sells one or more mixtures of a total weight of ten grams or more containing amphetamine, phencyclidine, or hallucinogen or, if the controlled substance is packaged in dosage units, equaling 50 or more dosage units;

(4) on one or more occasions within a 90-day period the person unlawfully sells one or more mixtures of a total weight of 25 kilograms or more containing marijuana or Tetrahydrocannabinols;

(5) the person unlawfully sells any amount of a schedule I or II narcotic drug to a person under the age of 18, or conspires with or employs a person under the age of 18 to unlawfully sell the substance; or

(6) the person unlawfully sells any of the following in a school zone, a park zone, a public housing zone, or a drug treatment facility:

(i) any amount of a schedule I or II narcotic drug, or lysergic acid diethylamide (LSD);

(ii) one or more mixtures containing methamphetamine or amphetamine; or

(iii) one or more mixtures of a total weight of five kilograms or more containing marijuana or Tetrahydrocannabinols.

Subd. 2. **Possession crimes.** A person is guilty of controlled substance crime in the second degree if:

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(1) the person unlawfully possesses one or more mixtures of a total weight of six grams or more containing cocaine, heroin, or methamphetamine;

(2) the person unlawfully possesses one or more mixtures of a total weight of 50 grams or more containing a narcotic drug other than cocaine, heroin, or methamphetamine;

(3) the person unlawfully possesses one or more mixtures of a total weight of 50 grams or more containing amphetamine, phencyclidine, or hallucinogen or, if the controlled substance is packaged in dosage units, equaling 100 or more dosage units; or

(4) the person unlawfully possesses one or more mixtures of a total weight of 50 kilograms or more containing marijuana or Tetrahydrocannabinols.

Subd. 3. **Penalty.** (a) A person convicted under subdivision 1 or 2 may be sentenced to imprisonment for not more than 25 years or to payment of a fine of not more than \$500,000, or both.

(b) If the conviction is a subsequent controlled substance conviction, a person convicted under subdivision 1 or 2 shall be committed to the commissioner of corrections for not less than three years nor more than 40 years and, in addition, may be sentenced to payment of a fine of not more than \$500,000.

(c) In a prosecution under subdivision 1 involving sales by the same person in two or more counties within a 90-day period, the person may be prosecuted for all of the sales in any county in which one of the sales occurred.

History: 1989 c 290 art 3 s 9; 1990 c 602 art 7 s 2; 1991 c 199 art 1 s 53; 1991 c 279 s 4; 1992 c 359 s 6,7; 1993 c 326 art 3 s 1; art 13 s 6; 1995 c 244 s 2; 1997 c 239 art 4 s 7,8; 1998 c 367 art 4 s 2

152.023 CONTROLLED SUBSTANCE CRIME IN THE THIRD DEGREE.

Subdivision 1. **Sale crimes.** A person is guilty of controlled substance crime in the third degree if:

(1) the person unlawfully sells one or more mixtures containing a narcotic drug;

(2) on one or more occasions within a 90-day period the person unlawfully sells one or more mixtures containing phencyclidine or hallucinogen, it is packaged in dosage units, and equals ten or more dosage units;

(3) the person unlawfully sells one or more mixtures containing a controlled substance classified in schedule I, II, or III, except a schedule I or II narcotic drug, to a person under the age of 18;

(4) the person conspires with or employs a person under the age of 18 to unlawfully sell one or more mixtures containing a controlled substance listed in schedule I, II, or III, except a schedule I or II narcotic drug; or

(5) on one or more occasions within a 90-day period the person unlawfully sells one or more mixtures of a total weight of five kilograms or more containing marijuana or Tetrahydrocannabinols.

Subd. 2. **Possession crimes.** A person is guilty of controlled substance crime in the third degree if:

(1) on one or more occasions within a 90-day period the person unlawfully possesses one or more mixtures of a total weight of three grams or more containing cocaine, heroin, or methamphetamine;

(2) on one or more occasions within a 90-day period the person unlawfully possesses one or more mixtures of a total weight of ten grams or more containing a narcotic drug other than cocaine, heroin, or methamphetamine;

(3) on one or more occasions within a 90-day period the person unlawfully possesses one or more mixtures containing a narcotic drug, it is packaged in dosage units, and equals 50 or more dosage units;

(4) on one or more occasions within a 90-day period the person unlawfully possesses any amount of a schedule I or II narcotic drug or five or more dosage units

of lysergic acid diethylamide (LSD) in a school zone, a park zone, a public housing zone, or a drug treatment facility;

(5) on one or more occasions within a 90-day period the person unlawfully possesses one or more mixtures of a total weight of ten kilograms or more containing marijuana or Tetrahydrocannabinols; or

(6) the person unlawfully possesses one or more mixtures containing methamphetamine or amphetamine in a school zone, a park zone, a public housing zone, or a drug treatment facility.

Subd. 3. **Penalty.** (a) A person convicted under subdivision 1 or 2 may be sentenced to imprisonment for not more than 20 years or to payment of a fine of not more than \$250,000, or both.

(b) If the conviction is a subsequent controlled substance conviction, a person convicted under subdivision 1 or 2 shall be committed to the commissioner of corrections for not less than two years nor more than 30 years and, in addition, may be sentenced to payment of a fine of not more than \$250,000.

(c) In a prosecution under subdivision 1 or 2 involving sales or acts of possession by the same person in two or more counties within a 90-day period, the person may be prosecuted in any county in which one of the sales or acts of possession occurred.

History: 1989 c 290 art 3 s 10; 1990 c 602 art 7 s 3,4; 1991 c 199 art 1 s 54; 1991 c 279 s 5; 1992 c 359 s 8; 1993 c 326 art 3 s 2; art 13 s 7; 1995 c 244 s 3; 1997 c 239 art 4 s 9-11; 1998 c 367 art 4 s 3

152.024 CONTROLLED SUBSTANCE CRIME IN THE FOURTH DEGREE.

Subdivision 1. **Sale crimes.** A person is guilty of controlled substance crime in the fourth degree if:

(1) the person unlawfully sells one or more mixtures containing a controlled substance classified in schedule I, II, or III, except marijuana or Tetrahydrocannabinols;

(2) the person unlawfully sells one or more mixtures containing a controlled substance classified in schedule IV or V to a person under the age of 18;

(3) the person conspires with or employs a person under the age of 18 to unlawfully sell a controlled substance classified in schedule IV or V; or

(4) the person unlawfully sells any amount of marijuana or Tetrahydrocannabinols in a school zone, a park zone, a public housing zone, or a drug treatment facility, except a small amount for no remuneration.

Subd. 2. **Possession crimes.** A person is guilty of controlled substance crime in the fourth degree if:

(1) the person unlawfully possesses one or more mixtures containing phencyclidine or hallucinogen, it is packaged in dosage units, and equals ten or more dosage units; or

(2) the person unlawfully possesses one or more mixtures containing a controlled substance classified in schedule I, II, or III, except marijuana or Tetrahydrocannabinols, with the intent to sell it.

Subd. 3. **Penalty.** (a) A person convicted under subdivision 1 or 2 may be sentenced to imprisonment for not more than 15 years or to payment of a fine of not more than \$100,000, or both.

(b) If the conviction is a subsequent controlled substance conviction, a person convicted under subdivision 1 or 2 shall be committed to the commissioner of corrections or to a local correctional authority for not less than one year nor more than 30 years and, in addition, may be sentenced to payment of a fine of not more than \$100,000.

History: 1989 c 290 art 3 s 11; 1990 c 602 art 7 s 5; 1991 c 279 s 6; 1993 c 326 art 13 s 8; 1995 c 244 s 4; 1997 c 239 art 4 s 12

152.025 CONTROLLED SUBSTANCE CRIME IN THE FIFTH DEGREE.

Subdivision 1. **Sale crimes.** A person is guilty of controlled substance crime in the fifth degree if:

- (1) the person unlawfully sells one or more mixtures containing marijuana or Tetrahydrocannabinols, except a small amount of marijuana for no remuneration; or
- (2) the person unlawfully sells one or more mixtures containing a controlled substance classified in schedule IV.

Subd. 2. **Possession and other crimes.** A person is guilty of controlled substance crime in the fifth degree if:

- (1) the person unlawfully possesses one or more mixtures containing a controlled substance classified in schedule I, II, III, or IV, except a small amount of marijuana; or
- (2) the person procures, attempts to procure, possesses, or has control over a controlled substance by any of the following means:
 - (i) fraud, deceit, misrepresentation, or subterfuge;
 - (ii) using a false name or giving false credit; or
 - (iii) falsely assuming the title of, or falsely representing any person to be, a manufacturer, wholesaler, pharmacist, physician, doctor of osteopathy licensed to practice medicine, dentist, podiatrist, veterinarian, or other authorized person for the purpose of obtaining a controlled substance.

Subd. 3. **Penalty.** (a) A person convicted under subdivision 1 or 2 may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both.

(b) If the conviction is a subsequent controlled substance conviction, a person convicted under subdivision 1 or 2 shall be committed to the commissioner of corrections or to a local correctional authority for not less than six months nor more than ten years and, in addition, may be sentenced to payment of a fine of not more than \$20,000.

History: 1989 c 290 art 3 s 12; 1990 c 602 art 7 s 6; 1992 c 359 s 9; 1993 c 326 art 13 s 9; 1995 c 244 s 5

152.026 MANDATORY SENTENCES.

A defendant convicted and sentenced to a mandatory sentence under sections 152.021 to 152.025 is not eligible for probation, parole, discharge, or supervised release until that person has served the full term of imprisonment as provided by law, notwithstanding sections 242.19, 243.05, 609.12, and 609.135. "Term of imprisonment" has the meaning given in section 244.01, subdivision 8.

History: 1989 c 290 art 3 s 13; 1993 c 326 art 13 s 10

152.0261 IMPORTING CONTROLLED SUBSTANCES ACROSS STATE BORDERS.

Subdivision 1. **Felony.** A person who crosses a state or international border into Minnesota while in possession of an amount of a controlled substance that constitutes a first degree controlled substance crime under section 152.021, subdivision 2, is guilty of importing controlled substances and may be sentenced as provided in subdivision 3.

Subd. 1a. **Use of person under 18 to import.** A person who conspires with or employs a person under the age of 18 to cross a state or international border into Minnesota while that person or the person under the age of 18 is in possession of an amount of a controlled substance that constitutes a controlled substance crime under sections 152.021 to 152.025, with the intent to obstruct the criminal justice process, is guilty of importing controlled substances and may be sentenced as provided in subdivision 3.

Subd. 2. **Jurisdiction.** A violation of this section may be charged, indicted, and tried in any county, but not more than one county, into or through which the actor has brought the controlled substance.

Subd. 3. **Penalty.** A person convicted of violating this section is guilty of a felony and may be sentenced to imprisonment for not more than 35 years or to payment of a fine of not more than \$1,250,000, or both.

History: 1990 c 602 art 7 s 7; 1998 c 367 art 4 s 4,5

152.027 OTHER CONTROLLED SUBSTANCE OFFENSES.

Subdivision 1. **Sale of schedule V controlled substance.** A person who unlawfully sells one or more mixtures containing a controlled substance classified in schedule V may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than \$3,000, or both.

Subd. 2. **Possession of schedule V controlled substance.** A person who unlawfully possesses one or more mixtures containing a controlled substance classified in schedule V may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than \$3,000, or both. The court may order that a person who is convicted under this subdivision and placed on probation be required to take part in a drug education program as specified by the court.

Subd. 3. **Possession of marijuana in a motor vehicle.** A person is guilty of a misdemeanor if the person is the owner of a private motor vehicle, or is the driver of the motor vehicle if the owner is not present, and possesses on the person, or knowingly keeps or allows to be kept within the area of the vehicle normally occupied by the driver or passengers, more than 1.4 grams of marijuana. This area of the vehicle does not include the trunk of the motor vehicle if the vehicle is equipped with a trunk, or another area of the vehicle not normally occupied by the driver or passengers if the vehicle is not equipped with a trunk. A utility or glove compartment is deemed to be within the area occupied by the driver and passengers.

Subd. 4. **Possession or sale of small amounts of marijuana.** (a) A person who unlawfully sells a small amount of marijuana for no remuneration, or who unlawfully possesses a small amount of marijuana is guilty of a petty misdemeanor punishable by a fine of up to \$200 and participation in a drug education program unless the court enters a written finding that a drug education program is inappropriate. The program must be approved by an area mental health board with a curriculum approved by the state alcohol and drug abuse authority.

(b) A person convicted of an unlawful sale under paragraph (a) who is subsequently convicted of an unlawful sale under paragraph (a) within two years is guilty of a misdemeanor and shall be required to participate in a chemical dependency evaluation and treatment if so indicated by the evaluation.

(c) A person who is convicted of a petty misdemeanor under paragraph (a) who willfully and intentionally fails to comply with the sentence imposed, is guilty of a misdemeanor. Compliance with the terms of the sentence imposed before conviction under this paragraph is an absolute defense.

History: 1989 c 290 art 3 s 14

DRIVER'S LICENSE REVOCATION

152.0271 NOTICE OF DRUG CONVICTIONS; DRIVER'S LICENSE REVOCATION.

When a person is convicted of violating a provision of sections 152.021 to 152.027, the sentencing court shall determine whether the person unlawfully sold or possessed the controlled substance while driving a motor vehicle. If so, the court shall notify the commissioner of public safety of its determination and order the commissioner to revoke the person's driver's license for 30 days. If the person does not have a driver's license or if the person's driver's license is suspended or revoked at the time of the conviction, the commissioner shall delay the issuance or reinstatement of the person's driver's license for 30 days after the person applies for the issuance or reinstatement of the license. Upon receipt of the court's order, the commissioner is authorized to take the licensing action without a hearing.

History: 1993 c 347 s 1

PERMISSIVE INFERENCE OF POSSESSION

152.028 PERMISSIVE INFERENCE OF KNOWING POSSESSION.

Subdivision 1. **Residences.** The presence of a controlled substance in open view in a room, other than a public place, under circumstances evincing an intent by one or more of the persons present to unlawfully mix, compound, package, or otherwise prepare for sale the controlled substance permits the factfinder to infer knowing possession of the controlled substance by each person in close proximity to the controlled substance when the controlled substance was found. The permissive inference does not apply to any person if:

- (1) one of them legally possesses the controlled substance; or
- (2) the controlled substance is on the person of one of the occupants.

Subd. 2. **Passenger automobiles.** The presence of a controlled substance in a passenger automobile permits the factfinder to infer knowing possession of the controlled substance by the driver or person in control of the automobile when the controlled substance was in the automobile. This inference may only be made if the defendant is charged with violating section 152.021, 152.022, 152.023, or 152.0261. The inference does not apply:

- (1) to a duly licensed operator of an automobile who is at the time operating it for hire in the lawful and proper pursuit of the operator's trade;
- (2) to any person in the automobile if one of them legally possesses a controlled substance; or
- (3) when the controlled substance is concealed on the person of one of the occupants.

History: 1989 c 290 art 3 s 15; 1990 c 602 art 7 s 8

SCHOOL, PARK, AND PUBLIC HOUSING ZONES

152.029 PUBLIC INFORMATION; SCHOOL ZONES, PARK ZONES, PUBLIC HOUSING ZONES, AND DRUG TREATMENT FACILITIES.

The attorney general shall disseminate information to the public relating to the penalties for committing controlled substance crimes in park zones, school zones, public housing zones, and drug treatment facilities. The attorney general shall draft a plain language version of sections 152.022 and 152.023 and relevant provisions of the sentencing guidelines, that describes in a clear and coherent manner using words with common and everyday meanings the content of those provisions. The attorney general shall publicize and disseminate the plain language version as widely as practicable, including distributing the version to school boards, local governments, and administrators and occupants of drug treatment facilities and public housing.

History: 1989 c 290 art 3 s 16; 1991 c 279 s 7; 1997 c 239 art 4 s 13

152.03 [Repealed, 1969 c 933 s 22]

152.04 [Repealed, 1969 c 933 s 22]

152.041 [Repealed, 1971 c 937 s 22]

152.05 [Repealed, 1969 c 933 s 22]

152.06 [Repealed, 1969 c 933 s 22]

152.07 [Repealed, 1969 c 933 s 22]

152.08 [Repealed, 1969 c 933 s 22]

152.09 [Repealed, 1989 c 290 art 3 s 37]

DRUG PARAPHERNALIA

152.092 POSSESSION OF DRUG PARAPHERNALIA PROHIBITED.

It is unlawful for any person knowingly or intentionally to use or to possess drug paraphernalia. Any violation of this section is a petty misdemeanor.

History: 1982 c 557 s 2

152.093 MANUFACTURE OR DELIVERY OF DRUG PARAPHERNALIA PROHIBITED.

It is unlawful for any person knowingly or intentionally to deliver drug paraphernalia or knowingly or intentionally to possess or manufacture drug paraphernalia for delivery. Any violation of this section is a misdemeanor.

History: 1982 c 557 s 3

152.094 DELIVERY OF DRUG PARAPHERNALIA TO A MINOR PROHIBITED.

Any person 18 years of age or older who violates section 152.093 by knowingly or intentionally delivering drug paraphernalia to a person under 18 years of age who is at least three years younger is guilty of a gross misdemeanor.

History: 1982 c 557 s 4; 1986 c 444

152.095 ADVERTISEMENT OF DRUG PARAPHERNALIA PROHIBITED.

It is unlawful for any person knowingly or intentionally to place in any newspaper, magazine, handbill, or other publication any advertisement or promotion for the sale of drug paraphernalia. A violation of this section is a misdemeanor.

History: 1982 c 557 s 5

CONSPIRACIES

152.096 CONSPIRACIES PROHIBITED.

Subdivision 1. **Prohibited acts; penalties.** Any person who conspires to commit any act prohibited by this chapter, except possession or distribution for no remuneration of a small amount of marijuana as defined in section 152.01, subdivision 16, is guilty of a felony and upon conviction may be imprisoned, fined, or both, up to the maximum amount authorized by law for the act the person conspired to commit.

Subd. 2. **Conviction of coconspirator not required.** A person liable under this section may be charged with and convicted of conspiracy although the person or persons with whom that person conspired have not been convicted or have been convicted of some other crime based on the same act.

History: 1982 c 557 s 6; 1986 c 444; 1989 c 290 art 3 s 17

SIMULATED CONTROLLED SUBSTANCES

152.097 SIMULATED CONTROLLED SUBSTANCES.

Subdivision 1. **Prohibition.** It is unlawful for any person knowingly to manufacture, sell, transfer or deliver or attempt to sell, transfer or deliver a noncontrolled substance upon:

(a) The express representation that the noncontrolled substance is a narcotic or nonnarcotic controlled substance; or

(b) The express representation that the substance is of such nature or appearance that the recipient of the delivery will be able to sell, transfer or deliver the substance as a controlled substance; or

(c) Under circumstances which would lead a reasonable person to believe that the substance was a controlled substance. Any of the following factors shall constitute relevant evidence:

(i) The noncontrolled substance was packaged in a manner normally used for the illegal delivery of controlled substances; or

(ii) The delivery or attempted delivery included an exchange of or demand for money or other valuable property as consideration for delivery of the noncontrolled substance, and the amount of the consideration was substantially in excess of the reasonable value of the noncontrolled substance; or

(iii) The physical appearance of the noncontrolled substance is substantially identical to a specified controlled substance.

Subd. 2. **No defense.** In any prosecution under this section, it is no defense that the accused believed the noncontrolled substance to actually be a controlled substance.

Subd. 3. **Exemption.** This section does not apply to the prescribing and dispensing of placebos by licensed practitioners and licensed pharmacists.

Subd. 4. **Penalty.** A person who violates this section may be sentenced to imprisonment for not more than three years or to payment of a fine of not more than \$20,000, or both. Sentencing for a conviction for attempting to sell, transfer, or deliver a noncontrolled substance in violation of this section is governed by section 609.17, subdivision 4.

History: 1982 c 599 s 1; 1989 c 290 art 3 s 18

PRECURSORS OF CONTROLLED SUBSTANCES

152.0971 TERMS.

Subdivision 1. **Terms.** For purposes of sections 152.0971 to 152.0974, the following terms have the meanings given.

Subd. 1a. **Authorized agent.** An "authorized agent" is an individual representing a business who is responsible for the disbursement or custody of precursor substances.

Subd. 2. **Furnish.** "Furnish" means to sell, transfer, deliver, send, or supply a precursor substance by any other means.

Subd. 2a. **Purchaser.** A "purchaser" is a manufacturer, wholesaler, retailer, or any other person in this state who receives or seeks to receive a precursor substance.

Subd. 2b. **Receive.** "Receive" means to purchase, receive, collect, or otherwise obtain a precursor substance from a supplier.

Subd. 3. **Supplier.** A "supplier" is a manufacturer, wholesaler, retailer, or any other person in this or any other state who furnishes a precursor substance to another person in this state.

History: 1990 c 565 s 22; 1993 c 326 art 3 s 3-6

152.0972 PRECURSORS OF CONTROLLED SUBSTANCES.

Subdivision 1. **Precursor substances.** The following precursors of controlled substances are "precursor substances":

- (1) phenyl-2-propanone;
- (2) methylamine;
- (3) ethylamine;
- (4) d-lysergic acid;
- (5) ergotamine tartrate;
- (6) diethyl malonate;
- (7) malonic acid;
- (8) hydriodic acid;
- (9) ethyl malonate;
- (10) barbituric acid;

- (11) piperidine;
- (12) n-acetylanthranilic acid;
- (13) pyrrolidine;
- (14) phenylacetic acid;
- (15) anthranilic acid;
- (16) ephedrine;
- (17) pseudoephedrine;
- (18) norpseudoephedrine;
- (19) phenylpropanolamine;
- (20) propionic anhydride;
- (21) isosafrole;
- (22) safrole;
- (23) piperonal;
- (24) thionylchloride;
- (25) benzyl cyanide;
- (26) ergonovine maleate;
- (27) n-methylephedrine;
- (28) n-ethylpseudoephedrine;
- (29) n-methylpseudoephedrine;
- (30) chloroephedrine;
- (31) chlorpseudoephedrine; and
- (32) any substance added to this list by rule adopted by the state board of pharmacy.

Subd. 2. **Adoption of rules.** The state board of pharmacy may adopt rules under chapter 14 that add a substance to the list in subdivision 1, if the substance is a precursor to a controlled substance, or delete a substance from the list. A rule adding or deleting a substance is effective only until December 31 of the year following the calendar year during which the rule was adopted.

History: 1990 c 565 s 23; 1993 c 326 art 3 s 7

152.0973 REPORT OF TRANSACTION.

Subdivision 1. **Predelivery notice.** A supplier who furnishes a precursor substance to a person in this state shall, not less than 21 days before delivery of the substance, submit to the bureau of criminal apprehension a report of the transaction that includes the identification information specified in subdivision 3.

Subd. 1a. **Report of precursor substances received from out of state.** A purchaser of a precursor substance from outside of Minnesota shall, not less than 21 days before taking possession of the substance, submit to the bureau of criminal apprehension a report of the transaction that includes the identification information specified in subdivision 3.

Subd. 2. **Regular reports.** The bureau may authorize a purchaser or supplier to submit the reports on a monthly basis with respect to repeated, regular transactions between the supplier and the purchaser involving the same substance if the superintendent of the bureau of criminal apprehension determines that:

- (1) a pattern of regular supply of the precursor substance exists between the supplier and the purchaser of the substance; or
- (2) the purchaser has established a record of utilizing the precursor substance for lawful purposes.

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Subd. 2a. **Report of missing precursor substance.** A supplier or purchaser who discovers a discrepancy between the quantity of precursor substance shipped and the quantity of precursor substance received shall report the discrepancy to the bureau of criminal apprehension within three days of knowledge of the discrepancy. The report must include:

- (1) the complete name and address of the purchaser;
- (2) the type of precursor substance missing;
- (3) whether the precursor substance is missing due to theft, loss, or shipping discrepancy;
- (4) the method of delivery used;
- (5) the name of the common carrier or person who transported the substance; and
- (6) the date of shipment.

Subd. 3. **Proper identification.** A report submitted by a supplier or purchaser under this section must include:

- (1) the purchaser's driver's license number or state identification number and residential or mailing address other than a post office box number taken from the purchaser's driver's license or state identification card, if the purchaser is not an authorized agent;
- (2) the motor vehicle license number of the motor vehicle operated by the purchaser at the time of sale, if the purchaser is not an authorized agent;
- (3) a complete description of how the precursor substance will be used, if the purchaser is not an authorized agent;
- (4) a letter of authorization from the business for which the precursor substance is being furnished, including the state tax identification number and address of the business, a full description of how the precursor substance is to be used, and the signature of the authorized agent for the purchaser;
- (5) the signature of the supplier as a witness to the signature and identification of the purchaser;
- (6) the type and quantity of the precursor substance;
- (7) the method of delivery used; and
- (8) the complete name and address of the supplier.

Subd. 4. **Retention of records.** A supplier shall retain a copy of reports filed under subdivisions 1, 2, and 2a for five years. A purchaser shall retain a copy of reports filed under subdivisions 1a and 2a for five years.

Subd. 5. **Inspections.** All records relating to sections 152.0971 to 152.0974 shall be open to inspection by the bureau of criminal apprehension during regular business hours.

Subd. 6. **Penalties.** (a) A person who does not submit a report as required by this section is guilty of a misdemeanor.

(b) A person who knowingly submits a report required by this section with false or fictitious information is guilty of a gross misdemeanor.

(c) A person who is convicted a second or subsequent time of violating paragraph (a) is guilty of a gross misdemeanor if the subsequent offense occurred after the earlier conviction.

History: 1990 c 565 s 24; 1993 c 326 art 3 s 8-14

152.0974 EXCEPTIONS.

Sections 152.0971 to 152.0974 do not apply to:

- (1) a pharmacist or other authorized person who sells or furnishes a precursor substance on the prescription of a physician, dentist, podiatrist, or veterinarian;

(2) a physician, dentist, podiatrist, or veterinarian who administers or furnishes a precursor substance to patients;

(3) a manufacturer or wholesaler licensed by the state board of pharmacy who sells, transfers, or otherwise furnishes a precursor substance to a licensed pharmacy, physician, dentist, podiatrist, or veterinarian; or

(4) the furnishing or receipt of a drug that contains ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine and is lawfully furnished over the counter without a prescription under the federal Food, Drug, and Cosmetic Act, United States Code, title 21, chapter 9, or regulations adopted under that act.

History: 1990 c 565 s 25

SALES AND RECORDS

152.10 SALES, PERSONS ELIGIBLE.

No person other than a licensed pharmacist, assistant pharmacist or pharmacist intern under the supervision of a pharmacist shall sell a stimulant or depressant drug and then only as provided in sections 152.021 to 152.12.

History: (3906-13) 1939 c 102 s 3; 1967 c 408 s 5; 1991 c 199 art 2 s 1

152.101 MANUFACTURERS, RECORDS.

Subdivision 1. **Preparation of record.** Every person engaged in manufacturing, compounding, processing, selling, delivering or otherwise disposing of any controlled substance shall, upon July 1, 1971, May 1, 1973, and every second year thereafter, prepare a complete and accurate record of all stocks of each controlled substance on hand and shall keep such record for two years. When additional controlled substances are designated after July 1, 1971, a similar record must be prepared upon the effective date of their designation. On and after July 1, 1971, every person manufacturing, compounding or processing any controlled substance shall prepare and keep, for not less than two years, a complete and accurate record of the kind and quantity of each drug manufactured, compounded or processed and the date of such manufacture, compounding, or processing; and every person selling, delivering, or otherwise disposing of any controlled substance shall prepare or obtain, and keep for not less than two years, a complete and accurate record of the kind and quantity of each such controlled substance received, sold, delivered, or otherwise disposed of, the name and address from whom it was received and to whom it was sold, delivered or otherwise disposed of, and the date of such transaction. The form of such records shall be prescribed by the state board of pharmacy.

Subd. 2. **Application to doctors.** This section shall not apply to a licensed doctor of medicine, a doctor of osteopathy duly licensed to practice medicine, a licensed doctor of dentistry, a licensed doctor of podiatry, or licensed doctor of veterinary medicine in the course of that doctor's professional practice, unless such practitioner regularly engages in dispensing any such drugs to the practitioner's patients for which the patients are charged, either separately or together with charges for other professional services.

Subd. 3. **Research exception.** This section shall not apply to a person engaged in bona fide research conducted under an exemption granted under applicable federal law.

History: 1967 c 408 s 6; 1971 c 937 s 14; 1973 c 693 s 6; 1986 c 444

PRESCRIPTIONS

152.11 WRITTEN OR ORAL PRESCRIPTIONS, REQUISITES.

Subdivision 1. **Written prescription requirement for schedule II controlled substances.** No person may dispense a controlled substance included in Schedule II of

section 152.02 without a prescription written by a doctor of medicine, a doctor of osteopathy licensed to practice medicine, a doctor of dental surgery, a doctor of dental medicine, a doctor of podiatry, or a doctor of veterinary medicine, lawfully licensed to prescribe in this state, or a state bordering Minnesota, and having a current federal drug enforcement administration registration number. Provided that in emergency situations, as authorized by federal law, such drug may be dispensed upon oral prescription reduced promptly to writing and filed by the pharmacist. Such prescriptions shall be retained in conformity with section 152.101. No prescription for a Schedule II substance may be refilled.

For the purposes of this chapter, a written prescription or oral prescription, which shall be reduced to writing, for a controlled substance in schedule II, III, IV or V is void unless (1) it is written in ink and contains the name and address of the person for whose use it is intended; (2) it states the amount of the controlled substance to be compounded or dispensed, with directions for its use; (3) if a written prescription, it contains the signature, address and federal registry number of the prescriber and a designation of the branch of the healing art pursued by the prescriber; and if an oral prescription, the name and address of the prescriber and a designation of the prescriber's branch of the healing art; and (4) it shows the date when signed by the prescriber, or the date of acceptance in the pharmacy if an oral prescription. Every licensed pharmacist who compounds any such prescription shall retain such prescription in a file for a period of not less than two years, open to inspection by any officer of the state, county, or municipal government, whose duty it is to aid and assist with the enforcement of this chapter. Every such pharmacist shall distinctly label the container with the directions contained in the prescription for the use thereof.

Subd. 2. Written or oral prescription requirement for schedule III or IV controlled substances. No person may dispense a controlled substance included in schedule III or IV of section 152.02 without a written or oral prescription from a doctor of medicine, a doctor of osteopathy licensed to practice medicine, a doctor of dental surgery, a doctor of dental medicine, a doctor of podiatry, or a doctor of veterinary medicine, lawfully licensed to prescribe in this state or a state bordering Minnesota, and having a current federal drug enforcement administration registration number. Such prescription may not be dispensed or refilled except with the written or verbal consent of the prescriber, and in no event more than six months after the date on which such prescription was issued and no such prescription may be refilled more than five times.

Subd. 2a. Federal registration number exemption. A prescription need not bear a federal drug enforcement administration registration number that authorizes the prescriber to prescribe controlled substances if the drug prescribed is not a controlled substance in schedule II, III, IV, or V. No person shall impose a requirement inconsistent with this subdivision.

Subd. 2b. Restriction on release of federal registration number. No person or entity may offer for sale, sell, lease, or otherwise release a federal drug enforcement administration registration number for any reason, except for drug enforcement purposes authorized by this chapter and the federal controlled substances registration system. For purposes of this section, an entity includes a state governmental agency or regulatory board, a health plan company as defined under section 62Q.01, subdivision 4, a managed care organization as defined under section 62Q.01, subdivision 5, or any other entity that maintains prescription data.

Subd. 2c. Restriction on use of federal registration number. No entity may use a federal drug enforcement administration registration number to identify or monitor the prescribing practices of a prescriber to whom that number has been assigned, except for drug enforcement purposes authorized by this chapter and the federal controlled substances registration system. For purposes of this section, an entity includes a health plan company as defined under section 62Q.01, subdivision 4, a managed care organization as defined under section 62Q.01, subdivision 5, or any other entity that maintains prescription data.

Subd. 3. **Dispensing orphan drugs.** For the purpose of subdivisions 1 and 2, nothing shall prohibit the dispensing of orphan drugs prescribed by a person practicing in and licensed by another state as a physician, dentist, veterinarian, or podiatrist; who has a current federal drug enforcement administration registration number; and who may legally prescribe Schedule II, III, IV, or V controlled substances in that state.

History: (3906-14) 1939 c 102 s 4; 1939 c 193 s 4; 1955 c 185 s 2; 1967 c 408 s 7; 1971 c 937 s 15; 1973 c 693 s 7; 1986 c 444; 1993 c 82 s 2; 1994 c 465 art 1 s 23; 1995 c 66 s 1,2; 1998 c 316 s 1-3

NOTE: Subdivisions 2a, 2b, and 2c, as added by Laws 1998, chapter 316, sections 1 to 3, are effective 24 months after the date on which a unique health identifier is adopted or established under United States Code, title 42, sections 1320d to 1320d-8 (1996 and subsequent amendments). Laws 1998, chapter 316, section 4.

152.12 DOCTORS MAY PRESCRIBE.

Subdivision 1. **Prescribing, dispensing, administering controlled substances in schedules II through V.** A licensed doctor of medicine, a doctor of osteopathy, duly licensed to practice medicine, a doctor of dental surgery, or a doctor of dental medicine, or a licensed doctor of podiatry, and in the course of professional practice only, may prescribe, administer, and dispense a controlled substance included in Schedules II through V of section 152.02, may cause the same to be administered by a nurse, an intern or an assistant under the direction and supervision of the doctor, and may cause a person who is an appropriately certified and licensed health care professional to prescribe and administer the same within the expressed legal scope of the person's practice as defined in Minnesota Statutes.

Subd. 2. **Doctor of veterinary medicine.** A licensed doctor of veterinary medicine, in good faith, and in the course of professional practice only, and not for use by a human being, may prescribe, administer, and dispense a controlled substance included in schedules II through V of section 152.02, and may cause the same to be administered by an assistant under the direction and supervision of the doctor.

Subd. 3. **Research project use of controlled substances.** Any qualified person may use controlled substances in the course of a bona fide research project but cannot administer or dispense such drugs to human beings unless such drugs are prescribed, dispensed and administered by a person lawfully authorized to do so. Every person who engages in research involving the use of such substances shall apply annually for registration by the state board of pharmacy provided that such registration shall not be required if the person is covered by and has complied with federal laws covering such research projects.

Subd. 4. **Sale of controlled substances not prohibited for certain persons and entities.** Nothing in this chapter shall prohibit the sale to, or the possession of, a controlled substance in schedule II, III, IV or V by: Registered drug wholesalers, registered manufacturers, registered pharmacies, or any licensed hospital or other licensed institutions wherein sick and injured persons are cared for or treated, or bona fide hospitals wherein animals are treated; or by licensed pharmacists, licensed doctors of medicine, doctors of osteopathy duly licensed to practice medicine, licensed doctors of dental surgery, licensed doctors of dental medicine, licensed doctors of podiatry, or licensed doctors of veterinary medicine when such practitioners use controlled substances within the course of their professional practice only.

Nothing in this chapter shall prohibit the possession of a controlled substance in schedule II, III, IV or V by an employee or agent of a registered drug wholesaler, registered manufacturer, or registered pharmacy, while acting in the course of employment, or by a patient of a licensed doctor of medicine, a doctor of osteopathy duly licensed to practice medicine, or a licensed doctor of dental surgery, a licensed doctor of dental medicine, or by the owner of an animal for which a controlled substance has been prescribed by a licensed doctor of veterinary medicine, when such controlled substances are dispensed according to law.

Subd. 5. **Analytical laboratory not prohibited from providing anonymous analysis service.** Nothing in this chapter shall prohibit an analytical laboratory from conducting

an anonymous analysis service when such laboratory is registered by the Federal Drug Enforcement Administration, nor prohibit the possession of a controlled substance by an employee or agent of such analytical laboratory while acting in the course of employment.

History: (3906-15) 1939 c 102 s 5; 1967 c 408 s 8; 1971 c 937 s 16; 1973 c 693 s 8,9; 1974 c 369 s 2; 1986 c 444; 1988 c 440 s 3

152.125 INTRACTABLE PAIN.

Subdivision 1. **Definition.** For purposes of this section, "intractable pain" means a pain state in which the cause of the pain cannot be removed or otherwise treated with the consent of the patient and in which, in the generally accepted course of medical practice, no relief or cure of the cause of the pain is possible, or none has been found after reasonable efforts. Reasonable efforts for relieving or curing the cause of the pain may be determined on the basis of, but are not limited to, the following:

(1) when treating a nonterminally ill patient for intractable pain, evaluation by the attending physician and one or more physicians specializing in pain medicine or the treatment of the area, system, or organ of the body perceived as the source of the pain; or

(2) when treating a terminally ill patient, evaluation by the attending physician who does so in accordance with the level of care, skill, and treatment that would be recognized by a reasonably prudent physician under similar conditions and circumstances.

Subd. 2. **Prescription and administration of controlled substances for intractable pain.** Notwithstanding any other provision of this chapter, a physician may prescribe or administer a controlled substance in schedules II to V of section 152.02 to an individual in the course of the physician's treatment of the individual for a diagnosed condition causing intractable pain. No physician shall be subject to disciplinary action by the board of medical practice for appropriately prescribing or administering a controlled substance in schedules II to V of section 152.02 in the course of treatment of an individual for intractable pain, provided the physician keeps accurate records of the purpose, use, prescription, and disposal of controlled substances, writes accurate prescriptions, and prescribes medications in conformance with chapter 147.

Subd. 3. **Limits on applicability.** This section does not apply to:

(1) a physician's treatment of an individual for chemical dependency resulting from the use of controlled substances in schedules II to V of section 152.02;

(2) the prescription or administration of controlled substances in schedules II to V of section 152.02 to an individual whom the physician knows to be using the controlled substances for nontherapeutic purposes;

(3) the prescription or administration of controlled substances in schedules II to V of section 152.02 for the purpose of terminating the life of an individual having intractable pain; or

(4) the prescription or administration of a controlled substance in schedules II to V of section 152.02 that is not a controlled substance approved by the United States Food and Drug Administration for pain relief.

Subd. 4. **Notice of risks.** Prior to treating an individual for intractable pain in accordance with subdivision 2, a physician shall discuss with the individual the risks associated with the controlled substances in schedules II to V of section 152.02 to be prescribed or administered in the course of the physician's treatment of an individual, and document the discussion in the individual's record.

History: 1997 c 124 s 1

152.13 DUTIES OF STATE BOARD OF PHARMACY.

It shall be the duty of the state board to enforce the provisions of this chapter, and the power and authority of the board, as now defined by the laws of this state, are hereby extended so as to be commensurate with the duties hereby imposed.

History: (3899-10) 1921 c 190 s 10; 1967 c 408 s 9

152.135 RESTRICTIONS ON SALES, MARKETING, AND POSSESSION OF EPHEDRINE.

Subdivision 1. **Prescription status for ephedrine.** Except as provided in this section, a material, compound, mixture, or preparation that contains any quantity of ephedrine, a salt of ephedrine, an optical isomer of ephedrine, or a salt of an optical isomer of ephedrine, may be dispensed only upon the prescription of a duly licensed practitioner authorized by the laws of the state to prescribe prescription drugs.

Subd. 2. **Exceptions.** (a) A drug product containing ephedrine, its salts, optical isomers, and salts of optical isomers is exempt from subdivision 1 if the drug product:

(1) may be lawfully sold over the counter without a prescription under the federal Food, Drug, and Cosmetic Act, United States Code, title 21, section 321, et seq.;

(2) is labeled and marketed in a manner consistent with the pertinent OTC Tentative Final or Final Monograph;

(3) is manufactured and distributed for legitimate medicinal use in a manner that reduces or eliminates the likelihood of abuse;

(4) is not marketed, advertised, or labeled for the indication of stimulation, mental alertness, weight loss, muscle enhancement, appetite control, or energy; and

(5) is in solid oral dosage forms, including soft gelatin caplets, that combine 400 milligrams of guaifenesin and 25 milligrams of ephedrine per dose, according to label instructions; or is an anorectal preparation containing not more than five percent ephedrine.

(b) Subdivisions 1 and 3 shall not apply to products containing ephedra or ma huang and lawfully marketed as dietary supplements under federal law.

Subd. 3. **Mismarketing of ephedrine prohibited.** The marketing, advertising, or labeling of a product containing ephedrine, a salt of ephedrine, an optical isomer of ephedrine, or a salt of an optical isomer of ephedrine for the indication of stimulation, mental alertness, weight loss, appetite control, or energy, is prohibited. In determining compliance with this subdivision, the following factors may be considered:

(1) the packaging of the drug product;

(2) the name and labeling of the product;

(3) the manner of distribution, advertising, and promotion of the product;

(4) verbal representations made concerning the product; and

(5) the duration, scope, and significance of abuse or misuse of the product.

Subd. 4. **Possession for illicit purposes prohibited.** It is unlawful for a person to possess ephedrine, pseudoephedrine, or phenylpropanolamine or their salts, optical isomers, or salts of optical isomers with the intent to use the product as a precursor to an illegal substance.

Subd. 5. **Sales for illicit purposes prohibited.** It is unlawful for a person to sell, distribute, or otherwise make available a product containing ephedrine, pseudoephedrine, or phenylpropanolamine or their salts, optical isomers, or salts of optical isomers if the person knows or reasonably should know that the product will be used as a precursor to an illegal substance.

Subd. 6. **Penalty.** A person who violates this section is guilty of a misdemeanor.

History: 1998 c 367 art 4 s 6

152.14 [Repealed, 1969 c 933 s 22]

152.15 Subdivision 1. [Repealed, 1969 c 933 s 22]

Subdivision 1. [Repealed, 1989 c 290 art 3 s 37]

Subd. 2. [Repealed, 1989 c 290 art 3 s 37]

Subd. 2a. [Repealed, 1989 c 290 art 3 s 37]

Subd. 2b. [Repealed, 1989 c 290 art 3 s 37]

Subd. 3. [Repealed, 1989 c 290 art 3 s 37]

Subd. 4. [Repealed, 1987 c 330 s 4]

Subd. 4a. [Repealed, 1989 c 290 art 3 s 37]

Subd. 5. [Repealed, 1989 c 290 art 3 s 37]

MISCELLANEOUS PROVISIONS

152.151 [Repealed, 1996 c 310 s 1]

152.152 STAYED SENTENCE LIMITED.

If a person is convicted under section 152.021, 152.022, or 152.023, and the sentencing guidelines grid calls for a presumptive prison sentence for the offense, the court may stay imposition or execution of the sentence only as provided in this section. The sentence may be stayed based on amenability to probation only if the offender presents adequate evidence to the court that the offender has been accepted by, and can respond to, a treatment program that has been approved by the commissioner of human services. The court may impose a sentence that is a mitigated dispositional departure on any other ground only if the court includes as a condition of probation incarceration in a local jail or workhouse.

History: 1989 c 290 art 3 s 20

152.16 [Repealed, 1967 c 408 s 11]

152.17 [Repealed, 1971 c 937 s 22]

152.18 DISCHARGE AND DISMISSAL.

Subdivision 1. **Deferring prosecution for certain first time drug offenders.** If any person who has not previously participated in or completed a diversion program authorized under section 401.065 or who has not previously been placed on probation without a judgment of guilty and thereafter been discharged from probation under this section is found guilty of a violation of section 152.024, subdivision 2, 152.025, subdivision 2, or 152.027, subdivision 2, 3, or 4, for possession of a controlled substance, after trial or upon a plea of guilty, and the court determines that the violation does not qualify as a subsequent controlled substance conviction under section 152.01, subdivision 16a, the court may, without entering a judgment of guilty and with the consent of the person, defer further proceedings and place the person on probation upon such reasonable conditions as it may require and for a period, not to exceed the maximum sentence provided for the violation. The court may give the person the opportunity to attend and participate in an appropriate program of education regarding the nature and effects of alcohol and drug abuse as a stipulation of probation. Upon violation of a condition of the probation, the court may enter an adjudication of guilt and proceed as otherwise provided. The court may, in its discretion, dismiss the proceedings against the person and discharge the person from probation before the expiration of the maximum period prescribed for the person's probation. If during the period of probation the person does not violate any of the conditions of the probation, then upon expiration of the period the court shall discharge the person and dismiss the proceedings against that person. Discharge and dismissal under this subdivision shall be without court adjudication of guilt, but a not public record of it shall be retained by the bureau of criminal apprehension for the purpose of use by the courts in determining the merits of subsequent proceedings against the person. The not public record may also be opened only upon court order for purposes of a criminal investigation, prosecution, or sentencing. Upon request by law enforcement, prosecution, or corrections authorities, the bureau shall notify the requesting party of the existence of the not public record and the right to seek a court order to open it pursuant to this section. The court shall forward a record of any discharge and dismissal under this subdivision to the bureau which shall make and maintain the not public record of it as provided under this subdivision. The discharge or dismissal shall not be deemed a conviction for

purposes of disqualifications or disabilities imposed by law upon conviction of a crime or for any other purpose.

For purposes of this subdivision, "not public" has the meaning given in section 13.02, subdivision 8a.

Subd. 2. [Repealed, 1996 c 408 art 9 s 10]

Subd. 3. **Expungement of certain marijuana offenses.** Any person who has been found guilty of a violation of section 152.09 with respect to a small amount of marijuana which violation occurred prior to April 11, 1976, and whose conviction would have been a petty misdemeanor under the provisions of section 152.15, subdivision 2, clause (5) in effect on April 11, 1978, but whose conviction was for an offense more serious than a petty misdemeanor under laws in effect prior to April 11, 1976, may petition the court in which the person was convicted to expunge from all official records, other than the nonpublic record retained by the department of public safety pursuant to section 152.15, subdivision 2, clause (5), all recordation relating to the person's arrest, indictment or information, trial and conviction of an offense more serious than a petty misdemeanor. The court, upon being satisfied that a small amount was involved in the conviction, shall order all the recordation expunged. No person as to whom an order has been entered pursuant to this subdivision shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of the person's failure to recite or acknowledge conviction of an offense greater than a petty misdemeanor, unless possession of marijuana is material to a proceeding.

History: 1971 c 937 s 18; 1973 c 693 s 14; 1978 c 639 s 1; 1986 c 444; 1989 c 290 art 3 s 21; 1992 c 569 s 13; 1993 c 326 art 13 s 11; 1995 c 226 art 2 s 2; 1996 c 408 art 9 s 2

152.19 [Repealed, 1988 c 665 s 17]

152.20 PENALTIES UNDER OTHER LAWS.

Any penalty imposed for violation of this chapter is in addition to, and not in lieu of, any civil or administrative penalty or sanction otherwise authorized by law.

History: 1971 c 937 s 20; 1989 c 290 art 3 s 22

152.205 LOCAL REGULATIONS.

Sections 152.01, subdivision 18, and 152.092 to 152.095 do not preempt enforcement or preclude adoption of municipal or county ordinances prohibiting or otherwise regulating the manufacture, delivery, possession, or advertisement of drug paraphernalia.

History: 1982 c 557 s 11; 1988 c 665 s 1

152.21 THC THERAPEUTIC RESEARCH ACT.

Subdivision 1. **Findings and purpose.** The legislature finds that scientific literature indicates promise for delta-9-tetrahydro-cannabinol (THC), the active component of marijuana, in alleviating certain side effects of cancer chemotherapy under strictly controlled medical circumstances.

The legislature also finds that further research and strictly controlled experimentation regarding the therapeutic use of THC is necessary and desirable. The intent of this section is to establish an extensive research program to investigate and report on the therapeutic effects of THC under strictly controlled circumstances in compliance with all federal laws and regulations promulgated by the federal Food and Drug Administration, the national institute on drug abuse and the drug enforcement administration. The intent of the legislature is to allow this research program the greatest possible access to qualified cancer patients residing in Minnesota who meet protocol requirements. The establishment of this research program is not intended in any manner whatsoever to condone or promote the illicit recreational use of marijuana.

Subd. 2. **Definitions.** For purposes of this section, the following terms shall have the meanings given.

(a) "Commissioner" means the commissioner of health.

(b) "Marijuana" means marijuana as defined in section 152.01, subdivision 9, and delta-9-tetrahydro-cannabinol (THC), tetrahydrocannabinols or a chemical derivative of tetrahydrocannabinols, and all species of the genus *Cannabis*.

(c) "Principal investigator" means the individual responsible for the medical and scientific aspects of the research, development of protocol, and contacting and qualifying the clinical investigators in the state.

(d) "Clinical investigators" means those individuals who conduct the clinical trials.

(e) "Sponsor" means that individual or organization who, acting on behalf of the state, has the total responsibility for the state program.

Subd. 3. **Research grant.** The commissioner of health shall grant funds to the principal investigator selected by the commissioner pursuant to subdivision 4 for the purpose of conducting a research program under a protocol approved by the FDA regarding the therapeutic use of oral THC and other dosage forms, if available, according to the guidelines and requirements of the federal food and drug administration, the drug enforcement administration and the national institute on drug abuse. The commissioner shall ensure that the research principal investigator complies with the requirements of subdivision 5. The commissioner may designate the principal investigator as the sponsor.

Subd. 4. **Principal investigator.** Within three months of April 25, 1980, the commissioner shall, in consultation with a representative chosen by the state board of pharmacy and a representative chosen by the state board of medical examiners, select a person or research organization to be the principal investigator of the research program.

Subd. 5. **Duties.** The principal investigator shall:

(1) Apply to the Food and Drug Administration for a notice of "Claimed Investigational Exemption for a New Drug (IND)" pursuant to the Federal Food, Drug and Cosmetic Act, United States Code, title 21, section 301, et seq., and shall comply with all applicable laws and regulations of the federal food and drug administration, the drug enforcement administration, and the national institute on drug abuse in establishing the program;

(2) Notify every oncologist in the state of the program, explain the purposes and requirements of the program to them, provide on request each of them with a copy of the approved protocol which shall include summaries of current papers in medical journals reporting on research concerning the safety, efficacy and appropriate use of THC in alleviating the nausea and emetic effects of cancer chemotherapy, and provide on request each of them with a bibliography of other articles published in medical journals;

(3) Allow each oncologist (clinical investigator) in the state who meets or agrees to meet all applicable federal requirements for investigational new drug research and who so requests to be included in the research program as a clinical investigator to conduct the clinical trials;

(4) Provide explanatory information and assistance to each clinical investigator in understanding the nature of therapeutic use of THC within program requirements, including the Informed Consent Document contained in the protocol, informing and counseling patients involved in the program regarding the appropriate use and the effects of therapeutic use of THC;

(5) Apply to contract with the national institute on drug abuse for receipt of dosage forms of THC, fully characterized as to contents and delivery to the human system, pursuant to regulations promulgated by the national institute on drug abuse, and the federal food and drug administration. The principal investigator shall ensure

delivery of the THC dosages to clinical investigators as needed for participation in the program;

(6) Conduct the research program in compliance with federal laws and regulations promulgated by the federal food and drug administration, the drug enforcement administration, the national institute on drug abuse, and the purposes and provisions of this section;

(7) Submit periodic reports as determined by the commissioner on the numbers of oncologists and patients involved in the program and the results of the program;

(8) Submit reports on intermediate or final research results, as appropriate, to the major scientific journals in the United States; and

(9) Otherwise comply with the provisions of this section.

Subd. 6. Exemption from criminal sanctions. For the purposes of this section, the following are not violations under this chapter:

(1) use or possession of THC, or both, by a patient in the research program;

(2) possession, prescribing use of, administering, or dispensing THC, or any combination of these actions, by the principal investigator or by any clinical investigator; and

(3) possession or distribution of THC, or both, by a pharmacy registered to handle schedule I substances which stores THC on behalf of the principal investigator or a clinical investigator.

THC obtained and distributed pursuant to this section is not subject to forfeiture under sections 609.531 to 609.5316.

For the purposes of this section, THC is removed from schedule I contained in section 152.02, subdivision 2, and inserted in schedule II contained in section 152.02, subdivision 3.

Subd. 7. Citation. This section may be cited as the "THC Therapeutic Research Act."

History: 1980 c 614 s 93; 1988 c 665 s 2; 1989 c 290 art 3 s 23; 1997 c 7 art 2 s 22