

LEGISLATIVE BILL 276

Approved by the Governor February 20, 1978

Introduced by Fowler, 27

AN ACT to amend section 28-401, Revised Statutes Supplement, 1977, relating to the Uniform Controlled Substances Act; to define a term; to require corroboration of testimony of cooperating individuals; and to repeal the original section.

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

Section 1. That section 28-401, Revised Statutes Supplement, 1977, be amended to read as follows:

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

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

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

(3) Bureau shall mean the Bureau of Narcotics and Dangerous Drugs, United States Department of Justice;

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

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

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

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

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

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

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

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

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

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

(13) Deliver or delivery shall mean the actual, constructive, or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship;

(14) Marijuana shall mean all parts of the plant *Cannabis sativa* L., 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 produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks, except the resin extracted therefrom, fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination; and, where the weight of marijuana is referred to in this article it shall mean its weight at or about the time it is seized or otherwise comes into the possession of law enforcement authorities, whether cured or uncured at that time;

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

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

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

(17) Opiate shall mean any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having such addiction-forming or addiction-sustaining liability. It does not include the dextrorotatory isomer of 3-methoxy-n methylmorphinan and its salts. It does include its racemic and levorotatory forms;

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

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

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

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

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

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

(24) State shall mean the State of Nebraska;

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

of his household;

(26) Physician shall mean a person authorized by law to practice medicine in this state and any other person authorized by law to treat sick and injured human beings in this state;

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

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

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

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

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

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

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

Sec. 2. No conviction for an offense punishable under sections 28-401 to 28-438 shall be based solely upon the uncorroborated testimony of a cooperating individual.

Sec. 3. That original section 28-401, Revised Statutes Supplement, 1977, is repealed.