

LEGISLATIVE BILL 406

Approved by the Governor May 22, 1985

Introduced by Hoagland, 6; Pirsch, 10; Chizek, 31;
Withem, 14

AN ACT relating to crimes and offenses; to amend sections 28-101, 28-401, 28-405, and 28-416, Revised Statutes Supplement, 1984; to define a term; to change schedules of controlled substances; to eliminate a penalty; to prohibit certain acts relating to imitation controlled substances; to provide duties for the Revisor of Statutes; to provide penalties; to harmonize provisions; to repeal the original sections; and to declare an emergency.

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

Section 1. That section 28-101, Revised Statutes Supplement, 1984, be amended to read as follows:

28-101. Sections 28-101 to 28-1335 and section 5 of this act shall be known as the Nebraska Criminal Code.

Sec. 2. That section 28-401, Revised Statutes Supplement, 1984, be amended to read as follows:

28-401. As used in this article and section 5 of this act, unless the context otherwise requires:

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

(2) Agent shall mean an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. It does 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 trademark,

trade name, or other identifying mark, imprint, number, or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person or persons who in fact manufactured, distributed, or dispensed such substance and which thereby falsely purports or is represented to be the product of, or to have been distributed by, such other manufacturer, distributor, or dispenser;

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

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

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

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

of the genus Cannabis, whether growing or not; the seeds thereof; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, or its seeds, but shall not include the mature stalks of such plant, hashish, tetrahydrocannabinols extracted or isolated from the plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks or the sterilized seed of such plant which is incapable of germination; 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 or her own use or the preparation, compounding, packaging, or labeling of a controlled substance: (a) By a practitioner as an incident to his or her prescribing, administering, or dispensing of a controlled substance in the course of his or her professional practice, or (b) by a practitioner, or by his or her authorized agent under his or her supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale;

(16) Narcotic drug shall mean any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, 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 or her own use or for the use of a member of his or her household or for administration to an animal owned by him or her or by a member of his or her household;

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

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

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

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

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

(31) Apothecary shall mean a licensed pharmacist as defined by the laws of this state and, where the context so requires, the owner of the store or other place of business where drugs are compounded or dispensed by a

licensed pharmacist, but nothing in this subdivision shall be construed as conferring on a person who is not registered nor licensed as a pharmacist any authority, right, or privilege that is not granted to him or her by the pharmacy laws of this state;

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

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

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

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

(36) Imitation controlled substance shall mean a substance which is not a controlled substance but which, by way of express or implied representations and consideration of other relevant factors including those specified in section 5 of this act, would lead a reasonable person to believe the substance is a controlled substance. A placebo or registered investigational drug manufactured, distributed, possessed, or delivered in the ordinary course of practice or research by a health care professional shall not be deemed to be an imitation controlled substance.

Sec. 3. That section 28-405, Revised Statutes Supplement, 1984, be amended to read as follows:

28-405. The following are the schedules of controlled substances referred to in this article:

Schedule I

(a) Any of the following opiates, 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: (1) Acetylmethadol; (2) allylprodine; (3) alphacetylmethadol; (4) alphameprodine; (5) alphamethadol; (6) benzethidine; (7) betacetylmethadol; (8) betameprodine; (9) betamethadol; (10) betaprodine; (11) clonitazene; (12) dextromoramide; (13) difenoxin; (14) diampromide; (15) diethylthiambutene; (16) dimenoxadol; (17) dimepheptanol; (18)

dimethylthiambutene; (19) dioxaphetyl butyrate; (20) dipipanone; (21) ethylmethylthiambutene; (22) etonitazene; (23) etoxeridine; (24) furethidine; (25) hydroxypethidine; (26) ketobemidone; (27) levomoramide; (28) levophenacymorphan; (29) morpheridine; (30) noracymethadol; (31) norlevorphanol; (32) normethadone; (33) norpipanone; (34) phenadoxone; (35) phenampromide; (36) phenomorphan; (37) phenoperidine; (38) piritramide; (39) proheptazine; (40) properidine; (41) propiram; (42) racemoramide; and (43) trimeperidine.

(b) 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: (1) Acetorphine; (2) acetyldihydrocodeine; (3) benzylmorphine; (4) codeine methylbromide; (5) codeine-N-Oxide; (6) cyprenorphine; (7) desomorphine; (8) dihydromorphine; (9) drotebanol; (10) etorphine, except hydrochloride salt; (11) heroin; (12) hydromorphanol; (13) methyl-desorphine; (14) methyl-dihydromorphine; (15) morphine methylbromide; (16) morphine methylsulfonate; (17) morphine-N-Oxide; (18) myrophine; (19) nicocodeine; (20) nicomorphine; (21) normorphine; (22) pholcodine; and (23) thebacon.

(c) 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; and for purposes of this subdivision only, isomer shall include the optical, position, and geometric isomers: (1) Bufotenine; (2) diethyltryptamine; (3) dimethyltryptamine; (4) 4-bromo-2, 5-dimethoxyamphetamine; (5) 4-methoxyamphetamine or paramethoxyamphetamine; (6) 4-methyl-2, 5-dimethoxyamphetamine; (7) 5-methoxy-N,N, dimethyltryptamine; (8) ibogaine; (9) lysergic acid diethylamide; (10) marijuana; (11) mescaline; (12) peyote; (13) psilocybin; (14) psilocyn; (15) tetrahydrocannabinols; (16) 3,4-methylenedioxy amphetamine; (17) 5-methoxy-3, 4-methylenedioxy amphetamine; (18) 3,4,5-trimethoxy amphetamine; (19) N-ethyl-3-piperidyl benzilate; (20) N-methyl-3-piperidyl benzilate; (21) thiophene analog of phencyclidine; (22) 2,5-dimethoxyamphetamine; and (23) hashish or concentrated cannabis.

(d) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substance 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: (1) Mecloqualone.

Schedule II

(a) Any of the following substances except those narcotic drugs listed in other schedules whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:

(1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, excluding apomorphine, buprenorphine, nalbuphine, naloxone, and naltrexone and their salts, but including the following: (i) Raw opium; (ii) opium extracts; (iii) opium fluid extracts; (iv) powdered opium; (v) granulated opium; (vi) tincture of opium; (vii) codeine; (viii) ethylmorphine; (ix) etorphine hydrochloride; (x) hydrocodone; (xi) hydromorphone; (xii) metopon; (xiii) morphine; (xiv) oxycodone; (xv) oxymorphone; and (xvi) thebaine;

(2) Any salt, compound, derivative, or preparation thereof which is chemically equivalent to or identical with any of the substances referred to in subdivision (1) of this subdivision, except that these substances shall not include the isoquinoline alkaloids of opium;

(3) Opium poppy and poppy straw;

(4) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, derivative, or preparation thereof which is chemically equivalent to or identical with any of these substances, including cocaine and its salts and optical isomers and salts of optical isomers, except that the substances shall not include decocainized coca leaves or extractions which do not contain cocaine or ecgonine; and

(5) Concentrate of poppy straw, the crude extract of poppy straw in either liquid, solid, or powder form which contains the phenanthrine alkaloids of the opium poppy.

(b) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of their isomers, esters, ethers, and salts whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation: (1) Alphaprodine; (2) anileridine; (3) bezitramide; (4) diphenoxylate; (5) fentanyl; (6) isomethadone; (7) levomethorphan; (8) levorphanol; (9) metazocine; (10) methadone; (11) methadone-Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane; (12) moramide-Intermediate, 2-methyl-3-morpholino-1, 1-diphenyl-propane-carboxylic acid; (13) pethidine; (14) pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine; (15) pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate; (16)

pthidine-Intermediate-C,
 1-methyl-4-phenylpiperidine-4-carboxylic acid; (17)
 phenazocine; (18) piminodine; (19) racemethorphan; (20)
 racemorphan; and (21) dihydrocodeine.

(c) 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: (1) Amphetamine, its salts, optical isomers, and salts of its optical isomers; (2) phenmetrazine and its salts; (3) methamphetamine, its salts, isomers, and salts of isomers; and (4) methylphenidate.

(d) 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, including their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designations: (1) Amobarbital; (2) secobarbital; (3) pentobarbital; (4) methagualone; and (5) phencyclidine.

Schedule III

(a) 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, including their salts, isomers, whether optical, position, or geometric, and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation: (1) Benzphetamine; (2) chlorphentermine; (3) chlortermine; (4) mazindol; and (5) phendimetrazine.

(b) 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: (1) 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 of this section; (2) chlorhexadol; (3) glutethimide; (4) lysergic acid; (5) lysergic acid amide; (6) methyprylon; (7) sulfondiethylmethane; (8) sulfonethylmethane; (9) sulfonmethane; and (10) nalorphine.

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

(1) Not more than one and eight-tenths grams of codeine per one hundred milliliters or not more than ninety milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

(2) Not more than one and eight-tenths grams of codeine per one hundred milliliters or not more than ninety

milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(3) Not more than three hundred milligrams of dihydrocodeinone per one hundred milliliters or not more than fifteen milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;

(4) Not more than three hundred milligrams of dihydrocodeinone per one hundred milliliters or not more than fifteen milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(5) Not more than one and eight-tenths grams of dihydrocodeine per one hundred milliliters or not more than ninety milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(6) Not more than three hundred milligrams of ethylmorphine per one hundred milliliters or not more than fifteen milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(7) Not more than five hundred milligrams of opium per one hundred milliliters or per one hundred grams, or not more than twenty-five milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts; and

(8) Not more than fifty milligrams of morphine per one hundred milliliters or per one hundred grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

Schedule IV

(a) Any material, compound, mixture, or preparation which contains any quantity of the following substances, including their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation: (1) Barbital; (2) chloral betaine; (3) chloral hydrate; (4) chlordiazepoxide, but not including librax (chlordiazepoxide hydrochloride and clindinium bromide) or menrium (chlordiazepoxide and water soluble esterified estrogens); (5) clonazepam; (6) clorazepate; (7) diazepam; (8) ethchlorvynol; (9) ethinamate; (10) flurazepam; (11) mebutamate; (12) meprobamate; (13) methohexital; (14) methylphenobarbital; (15) oxazepam; (16) paraldehyde; (17) petrichloral; (18) phenobarbital; and (19) prazepam.

(b) Any material, compound, mixture, or preparation which contains any quantity of the following substance, including its salts, isomers, whether optical, position, or geometric, and salts of such isomers, whenever the existence of such salts, isomers, and salts of isomers is possible: (1) Fenfluramine.

(c) 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 their salts, isomers, whether optical, position, or geometric, and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation: (1) Diethylpropion, (2) phentermine, and (3) pemoline, including organometallic complexes and chelates thereof.

(d) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substance, including its salts: Dextropropoxyphene (Alpha-(+)-4-dimethylamino-1,2-diphenyl-3-methyl-2-propionoxybutane).

Schedule V

(a) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drug and its salts: (1) Buprenorphine.

(b) Any compound, mixture, or preparation containing any of the following limited quantities of narcotic drugs or salts thereof, 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 two hundred milligrams of codeine per one hundred milliliters or per one hundred grams;

(2) Not more than one hundred milligrams of dihydrocodeine per one hundred milliliters or per one hundred grams;

(3) Not more than one hundred milligrams of ethylmorphine per one hundred milliliters or per one hundred grams;

(4) Not more than two and five-tenths milligrams of diphenoxylate and not less than twenty-five micrograms of atrophine sulfate per dosage unit; and

(5) Not more than one hundred milligrams of opium per one hundred milliliters or per one hundred grams.

Sec. 4. That section 28-416, Revised Statutes Supplement, 1984, be amended to read as follows:

28-416. (1) Except as authorized by this article, it shall be unlawful for any person knowingly or intentionally: (a) To manufacture, distribute, deliver, dispense, or possess with intent to manufacture, distribute, deliver, or dispense, a controlled substance; or (b) to create, distribute, or possess with intent to distribute, a counterfeit controlled substance.

(2) Any person who violates subsection (1) of this section with respect to: (a) A controlled substance classified in Schedule I, II, or III of section 28-405 which is an exceptionally hazardous drug shall be guilty of a Class II felony; (b) any other controlled substance classified in Schedule I, II, or III of section 28-405, shall be guilty of a Class III felony; or (c) a controlled substance classified in Schedule IV or V of section 28-405, shall be guilty of a Class IV felony.

(3) A person knowingly or intentionally possessing a controlled substance, except marijuana, unless such substance was obtained directly, or pursuant to a valid prescription or order from a practitioner, while acting in the course of his professional practice, or except as otherwise authorized by this article, shall be guilty of a Class IV felony.

(4) Any person knowingly or intentionally possessing marijuana weighing more than one ounce, but not more than one pound shall be guilty of a Class IIIA misdemeanor.

(5) Any person knowingly or intentionally possessing marijuana weighing more than one pound shall be guilty of a Class IV felony.

(6) Any person knowingly or intentionally possessing marijuana weighing one ounce or less shall:

(a) For the first offense, be guilty of an infraction, receive a citation, be fined one hundred dollars, and be assigned to attend a course as prescribed in section 29-433 if the judge determines that attending such course is in the best interest of the individual defendant;

(b) For the second offense, be guilty of a Class IV misdemeanor, receive a citation, and be fined two hundred dollars and may be imprisoned not to exceed five days; and

(c) For the third and all subsequent offenses, be guilty of a Class IIIA misdemeanor, receive a citation, be fined three hundred dollars, and be imprisoned not to exceed seven days.

(7) If a person is placed on probation, as a condition of probation he or she shall satisfactorily attend and complete appropriate treatment and counseling on drug abuse conducted by one of the community mental health facilities as provided by Chapter 71, article 50, or other licensed drug treatment facility.

(8) Any person who knowingly or intentionally delivers, distributes, or dispenses a substance that he or she expressly or implicitly represents to be a controlled substance which is not in fact such a substance and which endangers the life of the person using the substance or which may cause bodily injury is guilty of a Class IV felony.

Sec. 5. (1) Any person who knowingly and

intentionally manufactures, distributes, delivers, or possesses with intent to distribute or deliver an imitation controlled substance shall:

(a) For the first offense, be guilty of a Class III misdemeanor; and

(b) For the second and all subsequent offenses, be guilty of a Class II misdemeanor.

(2) In determining whether a substance is an imitation controlled substance the court or other authority concerned shall consider all relevant factors, including but not limited to the following:

(a) Whether the substance is represented as having an effect similar to or the same as an illicit controlled substance;

(b) Whether the substance is represented by way of terminology which is deceptively similar to or the same as that describing a particular controlled substance;

(c) Whether the dosage unit price substantially exceeds the reasonable price of a similar dosage unit of like chemical composition sold over the counter with packaging and labeling approved by the federal Food and Drug Administration;

(d) Whether the substance is packaged in a manner and quantity similar to or the same as that commonly used for illicit controlled substances;

(e) Whether the dosage unit appearance of the substance is deceptively similar to that of a particular controlled substance; and

(f) Whether the substance is distributed to persons who represent it as a controlled substance, under circumstances which indicate the distributor knows, intends, or should know that his or her distributee is making or will make such representations.

(3) Any substance possessed, distributed, or delivered in violation of this section shall be subject to seizure and forfeiture as provided in section 28-431.

Sec. 6. The Revisor of Statutes shall place section 5 of this act in Chapter 28, article 4.

Sec. 7. That original sections 28-101, 28-401, 28-405, and 28-416, Revised Statutes Supplement, 1984, are repealed.

Sec. 8. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.