

HOUSE BILL 130

INTRODUCED BY STOBIE, R. JENSEN, LORY, UNDERDAL,
C. SMITH, JONES, ASAY, JACOBSON, HAFLEY,
EUDAILY, DONALDSON, CURTISS, ELLISON, THOFT,
ABRAMS, HANSON, RAMIREZ, RYAN, HEMSTAD, HANNAH,
J. HAMMOND, MENAHAN, MCCALLUM, H. HAMMOND, SCHULTZ,
HOLLIDAY, ELLERD, DEVLIN, SWITZER, COMPTON, NORMAN,
HARRINGTON, WINSLOW, BENGTSON, E. SMITH, GAGE,
MANUEL, MUELLER, LYNCH, SALES, SEIFERT, GOODOVER,
KEYSER, J. BROWN, ADDY, J. JENSEN, IVERSON,
BERGENE, D. BROWN, DARKO, KENNERLY, MARKS,
FARRIS, SPAETH, PAVLOVICH, DAILY

IN THE HOUSE

January 8, 1983	Introduced and referred to Committee on Judiciary.
January 14, 1983	On motion by chief sponsor, Representatives Addy, J. Jensen, et al., were added as authors to the bill.
January 26, 1983	Committee recommend bill do pass as amended. Report adopted.
January 27, 1983	Bill printed and placed on members' desks.
January 28, 1983	Second reading, do pass as amended.
January 29, 1983	Correctly engrossed.
January 31, 1983	Third reading, passed. Transmitted to Senate.

IN THE SENATE

February 1, 1983	Introduced and referred to Committee on Judiciary.
March 4, 1983	Committee recommend bill be concurrent in as amended. Report adopted.

March 7, 1983	Second reading, pass consideration.
March 8, 1983	Statement of Intent attached. Second reading, concurred in as amended.
March 10, 1983	Third reading, concurred in. Ayes, 47; Noes, 0.

IN THE HOUSE

March 10, 1983	Returned to House with amendments and Statement of Intent.
March 30, 1983	Second reading, amendments concurred in.
March 31, 1983	Second reading, Statement of Intent concurred in. Third reading, amendments and Statement of Intent concurred in. Sent to enrolling. Reported correctly enrolled.

1 *House* BILL NO. *130* *Clyde B. Smith*
 2 INTRODUCED BY *Steve Jensen* *Loz Underdal*
 3 *John Almonte* *Harold J. Hennig* *Menahan* *Ray*
 4 *Bill* FOR AN ACT ENTITLED: "AN ACT TO PREVENT THE *Called*
 5 MANUFACTURE, POSSESSION, SALE, AND ADVERTISEMENT OF *Andin*
 6 IMITATION DANGEROUS DRUGS; AUTHORIZING THE BOARD OF PHARMACY *Further*
 7 TO ADOPT RULES; CREATING EXEMPTIONS; AND PROVIDING *Lyndy*
 8 PENALTIES; AMENDING SECTION 45-9-202, MCA." *Norman* *Benjamin*
 9 *Beck*
 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 NEW SECTION. Section 1. Definitions. As used in *E. Smith*
 12 [sections 2 through 7], the following definitions apply: *Sales*

13 (1) "Dangerous drug" has the meaning given to that
 14 term in 50-32-101.

15 (2) "Imitation dangerous drug" means a substance that
 16 is not a dangerous drug, which by dosage unit features,
 17 including the color, shape, size, and markings, or by
 18 express or implied representation appears to be a dangerous
 19 drug.

20 (3) "Manufacture" means the production, preparation,
 21 compounding, processing, encapsulating, packaging or
 22 repackaging, or labeling or relabeling of an imitation
 23 dangerous drug.

24 NEW SECTION. Section 2. Additional considerations of
 25 court to establish imitation dangerous drug. In addition to

1 those factors specified in [section 1(2)], the following may
 2 be considered by a court in determining whether a substance
 3 is an imitation dangerous drug:

4 (1) statements made by anyone in control of the
 5 substance concerning the nature of the substance or its uses
 6 or effects;

7 (2) statements made to a recipient that the substance
 8 may be resold for inordinate profit;

9 (3) whether the substance is packaged in a manner
 10 normally used for dangerous drugs;

11 (4) evasive tactics or actions used by the person in
 12 control of the substance to avoid detection by law
 13 enforcement authorities; or

14 (5) the proximity of the substance to dangerous drugs.

15 NEW SECTION. Section 3. Criminal sale of imitation
 16 dangerous drug — penalty. (1) A person commits the offense
 17 of criminal sale of an imitation dangerous drug to an adult
 18 if he sells, barter, exchanges, gives away, or offers to
 19 sell, barter, exchange, or give away any imitation dangerous
 20 drug to or for the use of a person 18 years of age or older.

21 (2) A person commits the offense of criminal sale of
 22 an imitation dangerous drug to a minor if he sells, barter,
 23 exchanges, gives away, or offers to sell, barter, exchange,
 24 or give away any imitation dangerous drug to or for the use
 25 of a person under 18 years of age.

INTRODUCED BILL

(3) A person convicted of criminal sale of an imitation dangerous drug to an adult shall be imprisoned in the state prison for a term of not less than 2 years or more than 5 years and may be fined not more than \$25,000, except as provided in 46-18-222.

(4) A person convicted of criminal sale of an imitation dangerous drug to a minor shall be imprisoned in the state prison for a term of not less than 2 years or more than 10 years and may be fined not more than \$50,000, except as provided in 46-18-222.

NEW SECTION. Section 4. Criminal possession of imitation dangerous drug — penalty. (1) A person commits the offense of criminal possession of an imitation dangerous drug if he possesses any imitation dangerous drug.

(2) A person convicted of criminal possession of an imitation dangerous drug is guilty of a misdemeanor and punishable by a fine not to exceed \$1,000 or imprisonment in the county jail for a term not to exceed 1 year or both such fine and imprisonment. A person convicted of a second or subsequent offense under this subsection is punishable by a fine not to exceed \$1,000 or imprisonment in the county jail for a term not to exceed 1 year or in the state prison for a term not to exceed 3 years or both such fine and imprisonment.

(3) A person under 18 years of age convicted of a

first violation under this section shall be presumed to be entitled to a deferred imposition of sentence.

NEW SECTION. Section 5. Criminal advertisement of imitation dangerous drug — penalty. (1) A person commits the offense of criminal advertisement of an imitation dangerous drug if he places in any newspaper, magazine, handbill, or other publication or posts or distributes any advertisement or solicitation to promote the manufacture, sale, exchange, or distribution of an imitation dangerous drug.

(2) A person convicted of criminal advertisement of an imitation dangerous drug under this section is punishable by a fine not to exceed \$100,000 or by imprisonment in the state prison for a term of not less than 5 years or more than 10 years or by both such fine and imprisonment.

NEW SECTION. Section 6. Criminal manufacture of imitation dangerous drug — penalty. (1) A person commits the offense of criminal manufacture of an imitation dangerous drug if he manufactures, prepares, or cultivates any imitation dangerous drug.

(2) A person convicted of criminal manufacture of an imitation dangerous drug under this section is punishable by a fine not to exceed \$100,000 or by imprisonment in the state prison for a term of not less than 5 years or more than 10 years or by both such fine and imprisonment, except

as provided in 46-18-222.

NEW SECTION. Section 7. Exemptions. (1) [Sections 3 and 4] do not apply to:

(a) a person authorized by rules adopted by the board of pharmacists to possess or sell imitation dangerous drugs;

(b) a person employed by or enrolled as a student in a college or university within the state who possesses imitation dangerous drugs for the purposes of teaching or research that are authorized by the college or university;

(c) law enforcement personnel selling or possessing imitation dangerous drugs while acting within the scope of their employment; and

(d) a person registered under the provisions of Title 50, chapter 32, part 3, who manufactures, sells, distributes, or possesses an imitation dangerous drug for use as a placebo, by that person or any other person so registered, in the course of professional practice or research.

(2) The board of pharmacists shall adopt, amend, or repeal rules in accordance with the Montana Administrative Procedure Act to authorize the possession or sale of imitation dangerous drugs whenever it determines that there is a legitimate need and that the drugs will be used for a lawful purpose.

Section 8. Section 45-9-202, MCA, is amended to read:

"45-9-202. Alternative sentencing authority. A person convicted of criminal possession of dangerous drugs ~~or imitation dangerous drugs~~, fraudulently obtaining dangerous drugs, or altering labels on dangerous drugs, if he is shown to be an excessive or habitual user of dangerous drugs, as defined in 50-32-101, either from the face of the record or by a presentence investigation, may, in lieu of imprisonment, be committed to the custody of any institution for rehabilitative treatment for not less than 6 months or more than 2 years."

NEW SECTION. Section 9. Codification instruction. Sections 1 through 7 are intended to be codified as an integral part of Title 45, chapter 9, and the provisions of Title 45, chapter 9, apply to sections 1 through 7.

NEW SECTION. Section 10. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

-End-

STATE OF MONTANA

REQUEST NO. 072-83

FISCAL NOTE

Form BD-15

In compliance with a written request received January 10, , 19 83 , there is hereby submitted a Fiscal Note for House Bill 130 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA).

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

House Bill 130 prevents the manufacture, possession, sale and advertisement of imitation dangerous drugs.

ASSUMPTIONS:

- 1) Use the Executive Budget for the prison program for the FY 84 and FY 85.
- 2) Population in the prison will be 725 inmates per year.
- 3) Cost per day at the Women's Prison Facility are not included.
- 4) The Board of Crime Control, after a random sample survey, approximates that there may be 167 cases for the sale and 194 cases for the possession of imitation drugs successfully prosecuted each year. Of those successful prosecutions, some 57 would be incarcerated.

FISCAL IMPACT:

The cost per day at the prison will be \$34.59 in FY 84 and \$35.31 in FY 85. If all 57 prisoners were incarcerated at the state prison, the cost would be \$719,645 in FY 84.

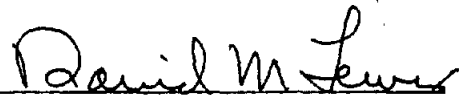
COMMENTS:

This legislation would also impact counties by increasing county costs for additional trials as well as jail costs for these individuals.

TECHNICAL NOTES:

According to a random sample conducted by the Board of Crime Control, no one was aware of any imitation dangerous drugs being manufactured in Montana. Also, most advertising originates out-of-state, however, material is readily available in Montana.

Continued



BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 1-15-83

Continued

Any reference to the Board of Pharmacy should be changed to Board of Pharmacists. No licensing provisions provided in proposed bill to manufacture, possess or sell imitation dangerous drugs. No funding is provided in bill. Board of Pharmacists not involved in exemptions under conditions in the bill.

FISCAL NOTE 3:Y/2

STATE OF MONTANA

219-83
REQUEST NO. _____

FISCAL NOTE

Form BD-15

In compliance with a written request received January 26, 19 83, there is hereby submitted a Fiscal Note for House Bill 130, Amended pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly. Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

House Bill 130, Amended, prevents the manufacture, possession, sale and advertisement of imitation dangerous drugs.

ASSUMPTIONS:

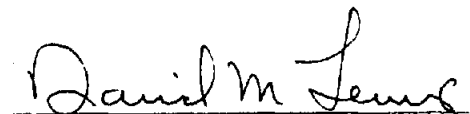
- 1) Use the Executive Budget for the prison program for the FY 84 and FY 85.
- 2) Population in the prison will be 725 inmates per year.
- 3) Cost per day at the Women's Prison Facility are not included.
- 4) The Board of Crime Control, after a random sample survey, approximates that there may be 167 cases for the sale and 194 cases for the possession of imitation drugs successfully prosecuted each year. Of those successful prosecutions, some 39 would be incarcerated in prison, based on the ratio of successful prosecutions (137) for possession of dangerous drugs in 1982 as compared to the number of persons (15) from this group that were sent to prison.
- 5) Assume the average prison sentence for sale and possession of imitation dangerous drugs to be the same as the average sentence for possession of dangerous drugs in 1982 or 3.4 years.
- 6) Assume sentences will be in the "Non-Dangerous" category and inmates will serve approximately 20% or 8 months of his sentence.
- 7) Assume this law will take affect October 1, 1982.

FISCAL IMPACT:

The cost per day at the prison will be \$34.59 in FY 84 and \$35.31 in FY 85. If all prisoners were incarcerated at the state prison, the cost would be \$251,118 in FY 84 and \$341,794 in FY 85.

LOCAL IMPACT:

This legislation would also impact counties by increasing county costs for additional trials as well as jail costs for these individuals.

Continued

BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 1-28-83

TECHNICAL NOTES:

According to a random sample conducted by the Board of Crime Control, no one was aware of any imitation dangerous drugs being manufactured in Montana. Also, most advertising originates out-of-state, however, material is readily available in Montana.

Any reference to the Board of Pharmacy should be changed to Board of Pharmacists. No licensing provisions provided in proposed bill to manufacture, possess or sell imitation dangerous drugs. No funding is provided in bill. Board of Pharmacists not involved in exemptions under conditions in the bill.

FISCAL NOTE 6:DD/2

STATE OF MONTANA

REQUEST NO. 507-83

FISCAL NOTE

Form BD-15

In compliance with a written request received March 25,, 19 83, there is hereby submitted a Fiscal Note for House Bill 130, Amended, pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly.

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

House Bill 130, amended, prevents the manufacture, possession, sale and advertisement of imitation dangerous drugs.

ASSUMPTIONS:

- 1) Use the Executive Budget for the prison program for the FY 84 and FY 85.
- 2) Population in the prison will be 725 inmates per year.
- 3) Cost per day at the Women's Prison Facility are not included.
- 4) The Department of Institutions approximates that two (2) individuals per year would be incarcerated.
- 5) The Board of Crime Control, after a random sample survey, approximates that there may be 167 cases for the sale and 194 cases for the possession of imitation drugs successfully prosecuted each year. Of those successful prosecutions, some 57 would be incarcerated.

FISCAL IMPACT:

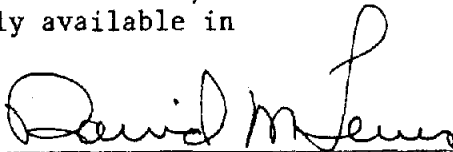
The cost per day at the prison will be \$34.59 in FY 84 and \$35.31 in FY 85. If two (2) individuals are incarcerated at the prison, the cost would be \$25,250 in FY 84. If the Board of Crime Control estimate is used the cost of incarcerating (57) more prisoners at the prison would be \$719,645 in FY 84 and it would increase by the number of future convictions.

COMMENTS:

This legislation would also impact counties by increasing county costs for additional trials as well as jail costs for these individuals.

TECHNICAL NOTES:

According to a random sample conducted by the Board of Crime Control, no one was aware of any imitation dangerous drugs being manufactured in Montana. Also, most advertising originates out-of-state, however, material is readily available in Montana.

Continued

BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 3-26-83

Continued

Any reference to the Board of Pharmacy should be changed to Board of Pharmacists. No licensing provisions provided in proposed bill to manufacture, possess or sell imitation dangerous drugs. No funding is provided in bill. Board of Pharmacists not involved in exemptions under conditions in the bill.

FISCAL NOTE 3:Y/4

Approved by Committee
on Judiciary

HOUSE BILL NO. 130

INTRODUCED BY STOBIE, R. JENSEN, LORY, UNDERDAL,

C. SMITH, JONES, ASAY, J. JACOBSON, HAFHEY,

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BERGENE, D. BROWN, DARKO, KENNERLY, MARKS,

FARRIS, SPAETH, PAVLOVICH, DAILY

A BILL FOR AN ACT ENTITLED: "AN ACT TO PREVENT THE
MANUFACTURE, POSSESSION, SALE, POSSESSION FOR SALE, AND
ADVERTISEMENT OF IMITATION DANGEROUS DRUGS; AUTHORIZING THE
BOARD OF PHARMACY PHARMACISTS TO ADOPT RULES; CREATING
EXEMPTIONS; AND PROVIDING PENALTIES; AMENDING SECTION
45-9-202, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Definitions. As used in
[sections 2 through 7 &], the following definitions apply:

(1) "Dangerous drug" has the meaning given to that
term in 50-32-101.

(2) "Imitation dangerous drug" means a substance that
is not a dangerous drug, ~~which-by-dosage-unit-features BUT~~
~~THAT IS EXPRESSLY OR IMPLIEDLY REPRESENTED TO BE A DANGEROUS~~
~~DRUG OR TO SIMULATE THE EFFECT OF A DANGEROUS DRUG AND THE~~
~~APPEARANCE OF WHICH,~~ including the color, shape, size, and
markings, ~~or-by-express-or-implied-representation-appears-to~~
~~be WOULD LEAD A REASONABLE PERSON TO BELIEVE THAT THE~~
~~SUBSTANCE IS~~ a dangerous drug.

~~(3)--"Manufacture"--means--the-production--preparation--~~
~~compounding--processing--encapsulating--packaging--or~~
~~repackaging--or--labeling--or--relabeling--of--an-imitation~~
~~dangerous-drug~~

NEW SECTION. ~~Section 2.~~ Additional considerations of
court-to-establish-imitation-dangerous-drugs--in-addition-to
those-factors-specified-in-[section-1(2)]--the-following-may
be--considered-by-a-court-in-determining-whether-a-substance
is-an-imitation-dangerous-drug

~~(1)--statements--made--by--anyone--in--control--of--the~~
~~substance-concerning-the-nature-of-the-substance-or-its-uses~~
~~or-effects;~~

~~(2)--statements--made-to-a-recipient-that-the-substance~~
~~may-be-resold-for-inordinate-profit;~~

~~(3)--whether-the-substance--is--packaged--in--a--manner~~
~~normally-used-for-dangerous-drugs;~~

~~(4)--evasive-tactics--or-actions-used-by-the-person-in~~

~~control--of--the--substance--to--avoid--detection---by---law
enforcement-authorities--or~~

~~{5}--the-proximity-of-the-substance-to-dangerous-drugs~~

NEW SECTION. Section 2. Criminal sale of imitation dangerous drug -- penalty. (1) A person commits the offense of criminal sale of an imitation dangerous drug to ~~an adult~~ if he KNOWINGLY OR PURPOSELY sells, barter, exchanges, gives away, or offers to sell, barter, exchange, or give away any imitation dangerous drug ~~to or for the use of a person 18 years of age or older.~~

~~{2}--A--person--commits--the--offense--of--criminal--sale--of
an-imitation-dangerous-drug-to-a-minor-if-he-sells,-barter,-
exchanges,-gives-away,-or-offers-to-sell,-barter,-exchange,-
or--give-away-any-imitation-dangerous-drug-to-or-for-the-use
of-a-person-under-18-years-of-age~~

~~{3}{2}~~ A person convicted of criminal sale of an imitation dangerous drug to ~~an adult~~ A PERSON 18 YEARS OF AGE OR OLDER shall be imprisoned in the state prison for a term of not ~~less than 2 years or~~ more than 5 years and may be fined not more than \$25,000 ~~except--as--provided--in 46-18-222.~~

~~{4}{3}~~ A person convicted of criminal sale of an imitation dangerous drug to a minor PERSON UNDER THE AGE OF 18 shall be imprisoned in the state prison for a term of not ~~less than 2 years or~~ more than 10 years and may be fined not

more than \$50,000 ~~except as provided in 46-18-222.~~

NEW SECTION. Section 3. Criminal possession of imitation dangerous drug WITH PURPOSE TO SELL -- penalty.

(1) A person commits the offense of criminal possession of an imitation dangerous drug WITH PURPOSE TO SELL if he possesses WITH PURPOSE TO SELL any imitation dangerous drug.

(2) A person convicted of criminal possession of an imitation dangerous drug ~~is--guilty--of--a--misdemeanor--and
punishable--by--a--fine--not--to--exceed--\$1,000--or--imprisonment--in
the--county--jail--for--a--term--not--to--exceed--1--year--or--both--such
fine--and--imprisonment--A--person--convicted--of--a--second--or
subsequent--offense--under--this--subsection--is--punishable--by--a
fine--not--to--exceed--\$1,000--or--imprisonment--in--the--county--jail
for--a--term--not--to--exceed--1--year--or--in--the--state--prison--for--a
term---not---to--exceed--3--years--or--both--such--fine--and
imprisonment~~ WITH PURPOSE TO SELL SHALL BE IMPRISONED IN THE STATE PRISON FOR A TERM OF NOT MORE THAN 5 YEARS AND MAY BE FINED NOT MORE THAN \$25,000.

~~{3}--A--person--under--18--years--of--age--convicted--of--a
first-violation-under-this-section--shall--be--presumed--to--be
entitled--to--a--deferred-imposition-of-sentence~~

NEW SECTION. Section 4. Criminal advertisement of imitation dangerous drug -- penalty. (1) A person commits the offense of criminal advertisement of an imitation dangerous drug if he KNOWINGLY OR PURPOSELY places in any

1 newspaper, magazine, handbill, or other publication or posts
2 or distributes any advertisement or solicitation to promote
3 the manufacture, sale, exchange, or distribution of an
4 imitation dangerous drug.

5 (2) A person convicted of criminal advertisement of an
6 imitation dangerous drug under this section is punishable by
7 a fine not to exceed \$100,000 or by imprisonment in the
8 state prison for a term of not less than 5 years or more
9 than 10 years or by both such fine and imprisonment.

10 ~~NEW SECTION. Section 6. Criminal manufacture of~~
11 ~~imitation dangerous drug. Penalty. (1) A person commits~~
12 ~~the offense of criminal manufacture of an imitation~~
13 ~~dangerous drug if he manufactures, prepares, or cultivates~~
14 ~~any imitation dangerous drug.~~

15 ~~(2) A person convicted of criminal manufacture of an~~
16 ~~imitation dangerous drug under this section is punishable by~~
17 ~~a fine not to exceed \$100,000 or by imprisonment in the~~
18 ~~state prison for a term of not less than 5 years or more~~
19 ~~than 10 years or by both such fine and imprisonment, except~~
20 ~~as provided in 46-18-222.~~

21 NEW SECTION. Section 5. Exemptions. (1) [Sections 3
22 and 2 THROUGH 4] do not apply to:

23 (a) a person authorized by rules adopted by the board
24 of pharmacists to possess WITH PURPOSE TO SELL or sell
25 imitation dangerous drugs;

1 ~~(b) a person employed by or enrolled as a student in a~~
2 ~~college or university within the state who possesses~~
3 ~~imitation dangerous drugs for the purposes of teaching or~~
4 ~~research that are authorized by the college or university;~~

5 ~~(c) law enforcement personnel selling or possessing~~
6 WITH PURPOSE TO SELL imitation dangerous drugs while acting
7 within the scope of their employment; and

8 ~~(d) a person registered under the provisions of~~
9 ~~Title 50, chapter 32, part 3, who manufactures, sells,~~
10 ~~distributes, or possesses WITH PURPOSE TO SELL an imitation~~
11 ~~dangerous drug for use as a placebo, by that person or any~~
12 ~~other person so registered, in the course of professional~~
13 ~~practice or research.~~

14 (2) The board of pharmacists shall adopt, amend, or
15 repeal rules in accordance with the Montana Administrative
16 Procedure Act to authorize the possession WITH PURPOSE TO
17 SELL or sale of imitation dangerous drugs whenever it
18 determines that there is a legitimate need and that the
19 drugs will be used for a lawful purpose.

20 Section 6. Section 45-9-202, MCA, is amended to read:

21 "45-9-202. Alternative sentencing authority. A person
22 convicted of criminal possession of dangerous drugs or
23 CRIMINAL SALE OF imitation dangerous drugs, CRIMINAL
24 POSSESSION OF DANGEROUS DRUGS WITH PURPOSE TO SELL,
25 fraudulently obtaining dangerous drugs, or altering labels

1 on dangerous drugs, if he is shown to be an excessive or
 2 habitual user of dangerous drugs, as defined in 50-32-101,
 3 either from the face of the record or by a presentence
 4 investigation, may, in lieu of imprisonment, be committed to
 5 the custody of any institution for rehabilitative treatment
 6 for not less than 6 months or more than 2 years."

7 NEW SECTION. Section 7. Codification instruction.
 8 Sections 1 through 7 2 are intended to be codified as an
 9 integral part of Title 45, chapter 9, and the provisions of
 10 Title 45, chapter 9, apply to sections 1 through 7 2.

11 NEW SECTION. Section 8. Severability. If a part of
 12 this act is invalid, all valid parts that are severable from
 13 the invalid part remain in effect. If a part of this act is
 14 invalid in one or more of its applications, the part remains
 15 in effect in all valid applications that are severable from
 16 the invalid applications.

-End-

HOUSE BILL NO. 130

INTRODUCED BY STOBIE, R. JENSEN, LORY, UNDERDAL,

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KEYSER, J. BROWN, ADDY, J. JENSEN, IVERSON,

BERGENE, D. BROWN, DARKO, KENNERLY, MARKS,

FARRIS, SPAETH, PAVLOVICH, DAILY

A BILL FOR AN ACT ENTITLED: "AN ACT TO PREVENT THE
 MANUFACTURE, ~~MANUFACTURE~~, POSSESSION, SALE, ~~POSSESSION FOR~~
 SALE, AND ADVERTISEMENT OF IMITATION DANGEROUS DRUGS;
 AUTHORIZING THE BOARD OF PHARMACY ~~PHARMACISTS~~ TO ADOPT
 RULES; CREATING EXEMPTIONS; AND PROVIDING PENALTIES;
 AMENDING SECTION 45-9-202, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

~~NEW SECTION~~ Section 1. Definitions. As used in
 [sections 2 through 7 ~~6 AND 45-9-202, MCA~~], the following
 definitions apply:

(1) "Dangerous drug" has the meaning given to that

term in 50-32-101.

(2) "Imitation dangerous drug" means a substance that
 is not a dangerous drug, which ~~by design and features~~ ~~BUT~~
~~THAT IS EXPRESSLY OR IMPLIEDLY REPRESENTED TO BE A DANGEROUS~~
~~DRUG OR TO SIMULATE THE EFFECT OF A DANGEROUS DRUG AND THE~~
~~APPEARANCE OF WHICH,~~ including the color, shape, size, and
 markings, or ~~by express or implied representation appears to~~
 be ~~WOULD LEAD A REASONABLE PERSON TO BELIEVE THAT THE~~
~~SUBSTANCE IS~~ a dangerous drug.

~~(3) "Manufacture" means the production, preparation,~~
~~compounding, processing, encapsulating, packaging, or~~
~~repackaging, or labeling or relabeling of an imitation~~
~~dangerous drug.~~

~~NEW SECTION~~ Section 2. ~~Additional considerations of~~
~~court to establish imitation dangerous drug. In addition to~~
~~those factors specified in [section 1(2)], the following may~~
~~be considered by a court in determining whether a substance~~
~~is an imitation dangerous drug:~~

~~(1) statements made by anyone in control of the~~
~~substance concerning the nature of the substance or its uses~~
~~or effects;~~

~~(2) statements made to a recipient that the substance~~
~~may be resold for inordinate profit;~~

~~(3) whether the substance is packaged in a manner~~
~~normally used for dangerous drugs;~~

~~(4) evasive tactics or actions used by the person in control of the substance to avoid detection by law enforcement authorities; or~~

~~(5) the proximity of the substance to dangerous drugs~~

NEW SECTION. Section 2. Criminal sale of imitation dangerous drug -- penalty. (1) A person commits the offense of criminal sale of an imitation dangerous drug to an adult if he ~~KNOWINGLY OR PURPOSELY~~ sells, barter, exchanges, gives away, or offers to sell, barter, exchange, or give away any imitation dangerous drug to or for the use of a person 18 years of age or older.

~~(2) A person commits the offense of criminal sale of an imitation dangerous drug to a minor if he sells, barter, exchanges, gives away, or offers to sell, barter, exchange, or give away any imitation dangerous drug to or for the use of a person under 18 years of age.~~

~~(3)(2)~~ A person convicted of criminal sale of an imitation dangerous drug to an adult A PERSON 18 YEARS OF AGE OR OLDER shall be imprisoned in the state prison for a term of not less than 2 years or more than 5 years and may be fined not more than \$25,000, except as provided in 46-18-222.

~~(4)(3)~~ A person convicted of criminal sale of an imitation dangerous drug to a minor PERSON UNDER THE AGE OF 18 shall be imprisoned in the state prison for a term of not

less than 2 years or more than 10 years and may be fined not more than \$50,000, except as provided in 46-18-222.

NEW SECTION. Section 3. Criminal possession of imitation dangerous drug WITH PURPOSE TO SELL -- penalty.

(1) A person commits the offense of criminal possession of an imitation dangerous drug WITH PURPOSE TO SELL if he possesses WITH PURPOSE TO SELL any imitation dangerous drug.

(2) A person convicted of criminal possession of an imitation dangerous drug ~~is guilty of a misdemeanor and punishable by a fine not to exceed \$1,000 or imprisonment in the county jail for a term not to exceed 1 year or both such fine and imprisonment.~~ A person convicted of a second or subsequent offense under this subsection is punishable by a fine not to exceed \$1,000 or imprisonment in the county jail for a term not to exceed 1 year or in the state prison for a term not to exceed 5 years or both such fine and imprisonment WITH PURPOSE TO SELL SHALL BE IMPRISONED IN THE STATE PRISON FOR A TERM OF NOT MORE THAN 5 YEARS AND MAY BE FINED NOT MORE THAN \$25,000.

~~(3) A person under 18 years of age convicted of a first violation under this section shall be presumed to be entitled to a deferred imposition of sentence.~~

NEW SECTION. Section 4. Criminal advertisement of imitation dangerous drug -- penalty. (1) A person commits the offense of criminal advertisement of an imitation

1 dangerous drug if he ~~KNOWINGLY OR PURPOSELY~~ places in any
2 newspaper, magazine, handbill, or other publication or posts
3 or distributes any advertisement or solicitation to promote
4 the manufacture, sale, exchange, or distribution of an
5 imitation dangerous drug.

6 (2) A person convicted of criminal advertisement of an
7 imitation dangerous drug under this section is punishable by
8 a fine not to exceed \$100,000 or by imprisonment in the
9 state prison for a term of not less than 5 years or more
10 than 10 years or by both such fine and imprisonment.

11 ~~NEW SECTION: Section 6. Criminal manufacture of~~
12 ~~imitation dangerous drug -- penalty. (1) A person commits~~
13 ~~the offense of criminal manufacture of an imitation~~
14 ~~dangerous drug if he manufactures, prepares, or cultivates~~
15 ~~any imitation dangerous drug.~~

16 ~~(2) A person convicted of criminal manufacture of an~~
17 ~~imitation dangerous drug under this section is punishable by~~
18 ~~a fine not to exceed \$100,000 or by imprisonment in the~~
19 ~~state prison for a term of not less than 5 years or more~~
20 ~~than 10 years or by both such fine and imprisonment, except~~
21 ~~as provided in 46-10-222.~~

22 THERE IS A NEW MCA SECTION THAT READS:

23 Section 5. Criminal manufacture of imitation dangerous
24 drug -- penalty. (1) A person commits the offense of
25 criminal manufacture of an imitation dangerous drug if he

1 knowingly or purposely manufactures, prepares, or cultivates
2 any imitation dangerous drug.

3 (2) A person convicted of criminal manufacture of an
4 imitation dangerous drug under this section is punishable by
5 a fine not to exceed \$100,000 or by imprisonment in the
6 state prison for a term of not more than 10 years or by both
7 such fine and imprisonment.

8 NEW SECTION. Section 6. Exemptions. (1) [Sections 3
9 and 2 THROUGH 4 5] do not apply to:

10 (a) a person authorized by rules adopted by the board
11 of pharmacists to possess WITH PURPOSE TO SELL or sell
12 imitation dangerous drugs;

13 ~~(b) a person employed by or enrolled as a student in a~~
14 ~~college or university within the state who possesses~~
15 ~~imitation dangerous drugs for the purposes of teaching or~~
16 ~~research that are authorized by the college or university;~~

17 ~~(c) (B) law enforcement personnel selling or possessing~~
18 WITH PURPOSE TO SELL imitation dangerous drugs while acting
19 within the scope of their employment; and

20 ~~(d) (C) a person registered under the provisions of~~
21 Title 50, chapter 32, part 3, who manufactures, sells,
22 distributes or possesses WITH PURPOSE TO SELL an imitation
23 dangerous drug for use as a placebo, by that person or any
24 other person so registered, in the course of professional
25 practice or research.

(2) The board of pharmacists shall adopt, amend, or repeal rules in accordance with the Montana Administrative Procedure Act to authorize the possession ~~WITH PURPOSE TO SELL~~ or sale of imitation dangerous drugs whenever it determines that there is a legitimate need and that the drugs will be used for a lawful purpose.

Section 7. Section 45-9-202, MCA, is amended to read:

"45-9-202. Alternative sentencing authority. A person convicted of criminal possession of dangerous drugs ~~as a CRIMINAL SALE OF imitation dangerous drugs, CRIMINAL POSSESSION OF IMITATION DANGEROUS DRUGS WITH PURPOSE TO SELL,~~ fraudulently obtaining dangerous drugs, or altering labels on dangerous drugs, if he is shown to be an excessive or habitual user of dangerous drugs, as defined in 50-32-101, either from the face of the record or by a presentence investigation, may, in lieu of imprisonment, be committed to the custody of any institution for rehabilitative treatment for not less than 6 months or more than 2 years."

~~NEW SECTION.~~ Section 8. Codification Instruction.

Sections 1 through 7 2 6 are intended to be codified as an integral part of Title 45, chapter 9, and the provisions of Title 45, chapter 9, apply to sections 1 through 7 2 6.

~~NEW SECTION.~~ Section 9. Severability. If a part of this act is invalid, all valid parts that are severable from

the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

-End-

March 4, 1983

SENATE STANDING COMMITTEE REPORT
(Judiciary)

That House Bill No. 130 be amended as follows:

1. Page 2.
Following: line 9.
Insert: "(3) "Person" includes any individual, business association,
partnership or corporation."
2. Page 3, line 21.
Strike: "\$25,000"
Insert: "\$50,000"
3. Page 4, line 19.
Strike: "\$25,000"
Insert: "\$50,000"
4. Page 4.
Following: line 22.

Insert: "(3) A person under 18 years of age convicted of a
first violation under this section shall be presumed
to be entitled to a deferred imposition of sentence."

1 STATEMENT OF INTENT

2 HOUSE BILL 130

3

4 A statement of intent is required for this bill because
5 it gives the Board of Pharmacy ~~PHARMACY~~ PHARMACISTS the power to
6 adopt rules authorizing persons to possess or sell imitation
7 dangerous drugs.

8 It is the intention of the Legislature that the Board
9 should, as it determines necessary, adopt rules authorizing
10 such persons as pharmacists, law enforcement officers and
11 physicians to possess or sell imitation dangerous drugs
12 while acting within the scope of their employment. The rules
13 should authorize possession for sale only by those persons
14 who have bona fide reasons for possession for sale and
15 should not purport to excuse otherwise criminal activity of
16 any type.

REFERENCE BILL

HB 130

HOUSE BILL NO. 130

INTRODUCED BY STOBIE, R. JENSEN, LORY, UNDERDAL,

C. SMITH, JONES, ASAY, J. JACOBSON, HAFLEY,

EUDAILY, DONALDSON, CURTISS, ELLISON, THOFT,

ABRAMS, HANSON, RAMIREZ, RYAN, HEMSTAD, HANNAH,

J. HAMMOND, MENAHAN, MCCALLUM, H. HAMMOND, SCHULTZ,

HOLLIDAY, ELLERD, DEVLIN, SWITZER, COMPTON, NORMAN,

HARRINGTON, WINSLOW, BENGTSON, E. SMITH, GAGE,

MANUEL, MUELLER, LYNCH, SALES, SEIFERT, GOODOVER,

KEYSER, J. BROWN, ADDY, J. JENSEN, IVERSON,

BERGENE, D. BROWN, DARKO, KENNERLY, MARKS,

FARRIS, SPAETH, PAVLOVICH, DAILY

A BILL FOR AN ACT ENTITLED: "AN ACT TO PREVENT THE
 MANUFACTURE, MANUFACTURE, POSSESSION, SALE, POSSESSION FOR
 SALE, AND ADVERTISEMENT OF IMITATION DANGEROUS DRUGS;
 AUTHORIZING THE BOARD OF PHARMACY PHARMACISTS TO ADOPT
 RULES; CREATING EXEMPTIONS; AND PROVIDING PENALTIES;
 AMENDING SECTION 45-9-202, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Definitions. As used in
 [sections 2 through 7 AND 45-9-202, MCA], the following
 definitions apply:

(1) "Dangerous drug" has the meaning given to that

term in 50-32-101.

(2) "Imitation dangerous drug" means a substance that
 is not a dangerous drug, which-by-dosage-unit-features BUT
 THAT IS EXPRESSLY OR IMPLIEDLY REPRESENTED TO BE A DANGEROUS
 DRUG OR TO SIMULATE THE EFFECT OF A DANGEROUS DRUG AND THE
 APPEARANCE OF WHICH, including the color, shape, size, and
 markings, or-by-express-or-implied-representation-appears-to
 be WOULD LEAD A REASONABLE PERSON TO BELIEVE THAT THE
 SUBSTANCE IS a dangerous drug.

(3) "PERSON" INCLUDES ANY INDIVIDUAL, BUSINESS
 ASSOCIATION, PARTNERSHIP, OR CORPORATION.

(4) "Manufacture" means the--production--preparation--
 compounding--processing--encapsulating--packaging--or
 repackaging--or--labeling--or--relabeling--of--an--imitation
 dangerous drug.

NEW SECTION. Section 2. Additional considerations of
 court-to-establish-imitation-dangerous-drugs--in-addition-to
 those-factors-specified-in-[section-2(2)]-the-following-may
 be-considered-by-a-court-in-determining-whether-a-substance
 is-an-imitation-dangerous-drug:

(i) statements--made--by--anyone--in--control--of--the
 substance--concerning--the--nature--of--the--substance--or--its--uses
 or-effects;

(ii) statements-made-to-a-recipient-that-the--substance
 may-be-resold-for-inordinate-profit;

~~{3}--whether--the--substance--is--packaged--in--a--manner
normally--used--for--dangerous--drugs~~

~~{4}--evasive--tactics--or--actions--used--by--the--person--in
control--of--the--substance--to--avoid--detection--by--law
enforcement--authorities--or~~

~~{5}--the--proximity--of--the--substance--to--dangerous--drugs~~

NEW SECTION. Section 2. Criminal sale of imitation dangerous drug -- penalty. (1) A person commits the offense of criminal sale of an imitation dangerous drug to an adult if he KNOWINGLY OR PURPOSELY sells, barter, exchange, gives away, or offers to sell, barter, exchange, or give away any imitation dangerous drug to or for the use of a person 18 years of age or older.

~~{2}--A--person--commits--the--offense--of--criminal--sale--of
an--imitation--dangerous--drug--to--a--minor--if--he--sells--barter--
exchange--gives--away--or--offers--to--sell--barter--exchange--
or--give--away--any--imitation--dangerous--drug--to--or--for--the--use
of--a--person--under--18--years--of--age~~

~~{3}{12}~~ A person convicted of criminal sale of an imitation dangerous drug to an adult A PERSON 18 YEARS OF AGE OR OLDER shall be imprisoned in the state prison for a term of not less than 2 years or more than 5 years and may be fined not more than \$25,000 or \$50,000 except as provided in 46-18-222.

~~{4}{31}~~ A person convicted of criminal sale of an

imitation dangerous drug to a minor PERSON UNDER THE AGE OF 18 shall be imprisoned in the state prison for a term of not less than 2 years or more than 10 years and may be fined not more than \$50,000 except as provided in 46-18-222.

NEW SECTION. Section 3. Criminal possession of imitation dangerous drug WITH PURPOSE TO SELL -- penalty. (1) A person commits the offense of criminal possession of an imitation dangerous drug WITH PURPOSE TO SELL if he possesses WITH PURPOSE TO SELL any imitation dangerous drug.

(2) A person convicted of criminal possession of an imitation dangerous drug is guilty of a misdemeanor and punishable by a fine not to exceed \$1,000 or imprisonment in the county jail for a term not to exceed 1 year or both such fine and imprisonment. A person convicted of a second or subsequent offense under this subsection is punishable by a fine not to exceed \$1,000 or imprisonment in the county jail for a term not to exceed 1 year or in the state prison for a term not to exceed 3 years or both such fine and imprisonment WITH PURPOSE TO SELL SHALL BE IMPRISONED IN THE STATE PRISON FOR A TERM OF NOT MORE THAN 5 YEARS AND MAY BE FINED NOT MORE THAN \$25,000 \$50,000.

~~{3}--A--person--under--18--years--of--age--convicted--of--a
first--violation--under--this--section--shall--be--presumed--to--be
entitled--to--a--deferred--imposition--of--sentence~~

{31} A PERSON UNDER 18 YEARS OF AGE CONVICTED OF A

1 FIRST VIOLATION UNDER THIS SECTION SHALL BE PRESUMED TO BE
 2 ENTITLED TO A DEFERRED IMPOSITION OF SENTENCE.

3 NEW SECTION. Section 4. Criminal advertisement of
 4 imitation dangerous drug -- penalty. (1) A person commits
 5 the offense of criminal advertisement of an imitation
 6 dangerous drug if he KNOWINGLY OR PURPOSELY places in any
 7 newspaper, magazine, handbill, or other publication or posts
 8 or distributes any advertisement or solicitation to promote
 9 the manufacture, sale, exchange, or distribution of an
 10 imitation dangerous drug.

11 (2) A person convicted of criminal advertisement of an
 12 imitation dangerous drug under this section is punishable by
 13 a fine not to exceed \$100,000 or by imprisonment in the
 14 state prison for a term of not less than 5 years or more
 15 than 10 years or by both such fine and imprisonment.

16 ~~NEW SECTION. Section 6. Criminal manufacture of~~
 17 ~~imitation dangerous drug -- penalty. (1) A person commits~~
 18 ~~the offense of criminal manufacture of an imitation~~
 19 ~~dangerous drug if he manufactures, prepares, or cultivates~~
 20 ~~any imitation dangerous drug.~~

21 ~~(2) A person convicted of criminal manufacture of an~~
 22 ~~imitation dangerous drug under this section is punishable by~~
 23 ~~a fine not to exceed \$100,000 or by imprisonment in the~~
 24 ~~state prison for a term of not less than 5 years or more~~
 25 ~~than 10 years or by both such fine and imprisonment, except~~

1 ~~as provided in 46-18-222.~~

2 THERE IS A NEW MCA SECTION THAT READS:

3 Section 5. Criminal manufacture of imitation dangerous
 4 drug -- penalty. (1) A person commits the offense of
 5 criminal manufacture of an imitation dangerous drug if he
 6 knowingly or purposely manufactures, prepares, or cultivates
 7 any imitation dangerous drug.

8 (2) A person convicted of criminal manufacture of an
 9 imitation dangerous drug under this section is punishable by
 10 a fine not to exceed \$100,000 or by imprisonment in the
 11 state prison for a term of not more than 10 years or by both
 12 such fine and imprisonment.

13 NEW SECTION. Section 6. Exemptions. (1) [Sections 3
 14 and 2 THROUGH 5] do not apply to:

15 (a) a person authorized by rules adopted by the board
 16 of pharmacists to possess WITH PURPOSE TO SELL or sell
 17 imitation dangerous drugs;

18 ~~(b) a person employed by or enrolled as a student in a~~
 19 ~~college or university within the state who possesses~~
 20 ~~imitation dangerous drugs for the purposes of teaching or~~
 21 ~~research that are authorized by the college or university;~~

22 ~~(c) (1)~~ law enforcement personnel selling or possessing
 23 WITH PURPOSE TO SELL imitation dangerous drugs while acting
 24 within the scope of their employment; and

25 ~~(d) (1)~~ a person registered under the provisions of

1 Title 50, chapter 32, part 3, who manufacture, sells,
2 distribute, or possesses WITH PURPOSE TO SELL an imitation
3 dangerous drug for use as a placebo, by that person or any
4 other person so registered, in the course of professional
5 practice or research.

6 (2) The board of pharmacists shall adopt, amend, or
7 repeal rules in accordance with the Montana Administrative
8 Procedure Act to authorize the possession WITH PURPOSE TO
9 SELL or sale of imitation dangerous drugs whenever it
10 determines that there is a legitimate need and that the
11 drugs will be used for a lawful purpose.

12 Section 7. Section 45-9-202, MCA, is amended to read:
13 "45-9-202. Alternative sentencing authority. A person
14 convicted of criminal possession of dangerous drugs ~~or~~
15 CRIMINAL SALE OF imitation dangerous drugs, CRIMINAL
16 POSSESSION OF IMITATION DANGEROUS DRUGS WITH PURPOSE TO
17 SELL, fraudulently obtaining dangerous drugs, or altering
18 labels on dangerous drugs, if he is shown to be an excessive
19 or habitual user of dangerous drugs, as defined in
20 50-32-101, either from the face of the record or by a
21 presentence investigation, may, in lieu of imprisonment, be
22 committed to the custody of any institution for
23 rehabilitative treatment for not less than 6 months or more
24 than 2 years."

25 NEW SECTION. Section 8. Codification Instruction.

1 Sections 1 through 7 ~~2 6~~ are intended to be codified as an
2 integral part of Title 45, chapter 9, and the provisions of
3 Title 45, chapter 9, apply to sections 1 through 7 ~~2 6~~.

4 NEW SECTION. Section 9. Severability. If a part of
5 this act is invalid, all valid parts that are severable from
6 the invalid part remain in effect. If a part of this act is
7 invalid in one or more of its applications, the part remains
8 in effect in all valid applications that are severable from
9 the invalid applications.

-End-