House BILL NO. 169

INTRODUCED BY ORR Klampe

A BILL FOR AN ACT ENTITLED: "AN ACT PERMITTING DISPENSING OF DANGEROUS DRUGS UPON A PRESCRIPTION OF A PHYSICIAN OR DENTIST LICENSED TO PRACTICE IN ANOTHER STATE; AMENDING SECTION 50-32-101, MCA; AND PROVIDING AN APPLICABILITY DATE."

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

Section 1. Section 50-32-101, MCA, is amended to read:

"**50-32-101. Definitions.** As used in this chapter, the following definitions apply:

(1) "Administer" means the direct application of a dangerous drug, whether by injection, inhalation, ingestion, or ~~any~~ other means, to the body of a patient or research subject by:

(a) a practitioner ~~(~~or by ~~his~~ the practitioner's authorized agent~~)~~; or

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

(2) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. ~~It~~ The term does not include a common or contract carrier, public ~~warehouseman~~ warehouse operator, or employee of the carrier or ~~warehouseman~~ warehouse operator.

(3) "Board" means the board of pharmacy provided for in 2-15-1843.

(4) "Bureau" means the drug enforcement administration, United States department of justice, or its successor agency.

(5) "Counterfeit substance" means a dangerous drug ~~which~~ that or the container or labeling of ~~which~~ a dangerous drug without authorization that bears the trademark, trade name, or other identifying mark, imprint, number, or device or ~~any~~ a likeness ~~thereof~~ of an identifying mark, imprint, number, or device of a manufacturer, distributor, or dispenser other than the person who in fact manufactured, distributed, or dispensed the drug.

(6) "Dangerous drug" means a drug, substance, or immediate precursor in Schedules I through V ~~hereinafter~~ set forth in part 2.

(7) "Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a dangerous drug, whether or not there is an agency relationship.

(8) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(9) "Dispense" means to deliver a dangerous drug to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the drug for that delivery.

(10) "Dispenser" means a practitioner who dispenses.

(11) "Distribute" means to deliver other than by administering or dispensing a dangerous drug.

(12) "Distributor" means a person who distributes.

(13) (a) "Drug" means:

(i) a substance recognized as a drug in the official United States Pharmacopoeia/National Formulary or any supplement to it;

(ii) a substance intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in ~~man~~ humans or animals;

(iii) a substance ~~(~~, other than food~~)~~, intended to affect the structure or ~~any~~ a function of the body of ~~man~~ humans or animals; and

(iv) a substance intended for use as a component of ~~any~~ an article specified in subsection (13)(a)(i), (13)(a)(ii), or (13)(a)(iii) ~~of this subsection~~.

(b) ~~"Drug"~~ Drug does not include a device or its components, parts, or accessories.

(14) "Hashish", as distinguished from marijuana, means the mechanically processed or extracted plant material that contains tetrahydrocannabinol (THC) and is composed of resin from the cannabis plant.

(15) "Immediate precursor" means a substance ~~which~~ that the board finds and by rule designates as being the principal compound commonly used or produced primarily for use and ~~which~~ that is an immediate chemical intermediary used or likely to be used in the manufacture of a dangerous drug, the control of which is necessary to prevent, curtail, or limit manufacture.

(16) (a) "Manufacture" means the production, preparation, propagation, compounding, conversion, or processing of a dangerous drug either directly or indirectly by extraction from substances of natural origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis and includes ~~any~~ the packaging or repackaging of the drug or labeling or relabeling of its container.

(b) ~~"Manufacture"~~ Manufacture does not include the preparation or compounding of a dangerous drug by an individual for ~~his own~~ personal use or the preparation, compounding, packaging, or labeling of

a dangerous drug:

(i) by a practitioner as an incident to ~~his~~ the administering or dispensing of a dangerous drug in the course of ~~his~~ a professional practice; or

(ii) by a practitioner or ~~his~~ the practitioner's authorized agent under ~~his~~ the practitioner's supervision for the purpose of or as an incident to research, teaching, or chemical analysis and not for sale.

(17) "Marijuana (marihuana)" means all plant material from the genus cannabis containing tetrahydrocannabinol (THC) or seeds of the genus capable of germination.

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

(a) opium and opiate and ~~any~~ a salt, compound, derivative, or preparation of opium or opiate;

(b) ~~any~~ a salt, compound, isomer, derivative, or preparation ~~thereof which~~ of a salt, compound, isomer, or derivative that is chemically equivalent or identical with any of the drugs referred to in subsection (18)(a) ~~of this section~~, but not including the isoquinoline alkaloids of opium;

(c) opium poppy and poppy straw; or

(d) coca leaves and ~~any~~ a salt, compound, derivative, or preparation of coca leaves and ~~any~~ a salt, compound, isomer, derivative, or preparation ~~thereof which~~ of a salt, compound, isomer, or derivative that is chemically equivalent or identical with any of these drugs, but not including decocainized coca leaves or extractions of coca leaves ~~which~~ that do not contain cocaine or ecgonine.

(19) "Opiate" means ~~any~~ a drug having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. ~~It~~ The term does not include, unless specifically designated as a dangerous drug under 50-32-202, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). ~~It~~ The term does include its racemic and levorotatory forms.

(20) "Opium poppy" means the plant of the species papaver somniferum l., except its seeds.

(21) "Person" means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, or any other legal entity.

(22) "Poppy straw" means all parts, except the seeds, of the opium poppy after mowing.

(23) "Practitioner" means:

(a) a physician, dentist, veterinarian, scientific investigator, or other person licensed, registered,

or otherwise permitted to distribute, dispense, or conduct research with respect to or to administer a dangerous drug in the course of professional practice or research in this state; ~~and~~

(b) a pharmacy or other institution licensed, registered, or otherwise permitted to distribute, dispense, or conduct research with respect to or to administer a dangerous drug in the course of professional practice or research in this state; and

(c) a physician licensed to practice medicine or a dentist licensed to practice dentistry in another state.

(24) ~~The term "prescription"~~ "Prescription" ~~is given~~ has the meaning that it has in 37-7-101.

(25) "Production" includes the manufacture, planting, cultivation, growing, or harvesting of a substance or drug regulated under the provisions of this chapter.

(26) "State", when applied to a part of the United States, includes ~~any~~ a state, district, commonwealth, territory, insular possession ~~thereof~~ of the United States, and any area subject to the legal authority of the United States of America.

(27) "Ultimate user" means a person who lawfully possesses a dangerous drug for ~~his own~~ personal use or for the use of a member of ~~his~~ the person's household or for administering to an animal owned by ~~him~~ the person or by a member of ~~his~~ the person's household."

NEW SECTION. **Section 2. Applicability.** [This act] applies to prescriptions written on and after October 1, 1995.

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APPROVED BY COM ON
HUMAN SERVICES & AGING

INTRODUCED BY ORR Klampe HOUSE BILL NO. 169

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(2) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. ~~It~~ The term does not include a common or contract carrier, public ~~warehouseman~~ warehouse operator, or employee of the carrier or ~~warehouseman~~ warehouse operator.

(3) "Board" means the board of pharmacy provided for in 2-15-1843.

(4) "Bureau" means the drug enforcement administration, United States department of justice, or its successor agency.

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(6) "Dangerous drug" means a drug, substance, or immediate precursor in Schedules I through V ~~hereinafter~~ set forth in part 2.

(7) "Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a dangerous drug, whether or not there is an agency relationship.

(8) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(9) "Dispense" means to deliver a dangerous drug to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the drug for that delivery.

(10) "Dispenser" means a practitioner who dispenses.

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(13) (a) "Drug" means:

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(16) (a) "Manufacture" means the production, preparation, propagation, compounding, conversion, or processing of a dangerous drug either directly or indirectly by extraction from substances of natural origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis and includes ~~any~~ the packaging or repackaging of the drug or labeling or relabeling of its container.

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(a) opium and opiate and ~~any~~ a salt, compound, derivative, or preparation of opium or opiate;

(b) ~~any~~ a salt, compound, isomer, derivative, or preparation ~~thereof which~~ of a salt, compound, isomer, or derivative that is chemically equivalent or identical with any of the drugs referred to in subsection (18)(a) ~~of this section~~, but not including the isoquinoline alkaloids of opium;

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(26) "State", when applied to a part of the United States, includes ~~any~~ a state, district, commonwealth, territory, insular possession ~~thereof~~ of the United States, and any area subject to the legal authority of the United States of America.

(27) "Ultimate user" means a person who lawfully possesses a dangerous drug for ~~his own~~ personal use or for the use of a member of ~~his~~ the person's household or for administering to an animal owned by ~~him~~ the person or by a member of ~~his~~ the person's household."

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(b) ~~any~~ a salt, compound, isomer, derivative, or preparation ~~thereof which~~ of a salt, compound, isomer, or derivative that is chemically equivalent or identical with any of the drugs referred to in subsection (18)(a) ~~of this section~~, but not including the isoquinoline alkaloids of opium;

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(c) opium poppy and poppy straw; or

(d) coca leaves and ~~any~~ a salt, compound, derivative, or preparation of coca leaves and ~~any~~ a salt, compound, isomer, derivative, or preparation ~~thereof which~~ of a salt, compound, isomer, or derivative that is chemically equivalent or identical with any of these drugs, but not including decocainized coca leaves or extractions of coca leaves ~~which~~ that do not contain cocaine or ecgonine.

(19) "Opiate" means ~~any~~ a drug having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. ~~It~~ The term does not include, unless specifically designated as a dangerous drug under 50-32-202, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). ~~It~~ The term does include its racemic and levorotatory forms.

(20) "Opium poppy" means the plant of the species papaver somniferum l., except its seeds.

(21) "Person" means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, or any other legal entity.

(22) "Poppy straw" means all parts, except the seeds, of the opium poppy after mowing.

(23) "Practitioner" means:

(a) a physician, dentist, veterinarian, scientific investigator, or other person licensed, registered,

or otherwise permitted to distribute, dispense, or conduct research with respect to or to administer a dangerous drug in the course of professional practice or research in this state; ~~and~~

(b) a pharmacy or other institution licensed, registered, or otherwise permitted to distribute, dispense, or conduct research with respect to or to administer a dangerous drug in the course of professional practice or research in this state; and

(c) a physician licensed to practice medicine or a dentist licensed to practice dentistry in another state.

(24) ~~The term "prescription"~~ "Prescription" ~~is given~~ has the meaning that it has in 37-7-101.

(25) "Production" includes the manufacture, planting, cultivation, growing, or harvesting of a substance or drug regulated under the provisions of this chapter.

(26) "State", when applied to a part of the United States, includes ~~any~~ a state, district, commonwealth, territory, insular possession ~~thereof~~ of the United States, and any area subject to the legal authority of the United States of America.

(27) "Ultimate user" means a person who lawfully possesses a dangerous drug for ~~his own~~ personal use or for the use of a member of ~~his~~ the person's household or for administering to an animal owned by ~~him~~ the person or by a member of ~~his~~ the person's household."

NEW SECTION. **Section 2. Applicability.** [This act] applies to prescriptions written on and after October 1, 1995.

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