

BE IT ENACTED BY THE PEOPLE OF THE STATE OF MISSOURI:

Section 195.010 (24) RSMO shall be deleted and replaced by a new paragraph. The existing 195.010 (24) RSMO is shown below with portions to be deleted shown in brackets and portions to be added shown underlined>.

195.010 **Definitions.**—The following words and phrases as used in sections 195.005 to 195.425, unless the context otherwise requires, mean:

- (1) **"Addict"**, A person who habitually uses one or more controlled substance to such an extent as to create a tolerance for such drugs, and who does not have a medical need for such drugs, or who is so far addicted to the use of such drugs as to have lost the power of self-control with reference to his addiction;
- (2) **"Administer"**, to apply a controlled substance, whether by injection, inhalation, ingestion, or any other means, directly 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;
- (3) **"Agent"**, an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. The term does not include a common or contact carrier, public warehouseman, or employee of the carrier or warehouseman while acting in the usual and lawful course of the carrier's or warehouseman's business;
- (4) **"Attorney for the state"**, any prosecuting attorney, circuit attorney, or attorney general authorized to investigate, commence and prosecute an action under sections 195.005 to 195.425;
- (5) **"Controlled substance"**, a drug, substance, or immediate precursor in Schedules I through V listed in \*sections 195.005 to 195.425;
- (6) **"Controlled substance analogue"**, a substance the chemical structure of which is substantially similar to the chemical structure of a controlled substance in Schedule I or II and:
  - (a) Which has a stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance included in Schedule I or II; or
  - (b) With respect to a particular individual, which that individual represents or intends to have a stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance included in Schedule I or II. The term does not include a controlled substance; any substance for which there is an approved new drug application; any substance for which an exemption is in effect for investigational use, for a particular person, under Section 505 of the federal Food, Drug and Cosmetic Act (21 U.S.C. 355) to the extent conduct with respect to the substance is pursuant to the exemption; or any substance to the extent not intended for human consumption before such an exemption takes effect with respect to the substance;
- (7) **"Counterfeit substance"**, 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 who in fact manufactured, distributed, or dispensed the substance;
- (8) **"Delivery"** or **"delivery"**, the actual, constructive, or attempted transfer from one person to another of drug paraphernalia or of a controlled substance, whether or not there is an agency relationship, and includes a sale;
- (9) **"Dentist"**, a person authorized by law to practice dentistry in this state;
- (10) **"Depressant or stimulant substance"**:
  - (a) A drug containing any quantity of barbituric acid or any of the salts of barbituric acid or any derivative of barbituric acid which has been designated by the United States Secretary of Health and Human Services as habit forming under 21 U.S.C. 352(d);
  - (b) A drug containing any quantity of:
    - a. Amphetamine or any of its isomers;
    - b. Any salt of amphetamine or any salt of an isomer of amphetamine; or
    - c. Any substance the United States Attorney General, after investigation, has found to be, and by regulation designated as habit forming because of its stimulant effect on the central nervous system;
  - (c) Lysergic acid diethylamide; or
  - (d) Any drug containing any quantity of a substance that the United States Attorney General, after investigation, has found to have, and by regulation designated as having, a potential for abuse because of its depressant or stimulant effect on the central nervous system or its hallucinogenic effect;
- (11) **"Dispense"**, to deliver a narcotic or controlled 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 substance for delivery. **"Dispenser"** means a practitioner who dispenses;
- (12) **"Distribute"**, to deliver other than by administering or dispensing a controlled substance;
- (13) **"Distributor"**, a person who distributes;
- (14) **"Drug"**:
  - (a) Substances recognized as drugs in the official United States Pharmacopoeia, Official Homeopathic Pharmacopoeia, Official 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 humans or animals;
  - (c) Substances, other than food, intended to affect the structure or any function of the body of humans or animals; and
  - (d) Substances intended for use as a component of any article specified in this subdivision. It does not include devices or their components, parts or accessories;
- (15) **"Drug-dependent person"**, a person who is using a controlled substance and who is in a state of psychic or physical dependence, or both, arising from the use of such substance on a continuous basis. Drug dependence is characterized by behavioral and other responses which include a strong compulsion to take the substance on a continuous basis in order to experience its psychic effects or to avoid the discomfort caused by its absence;
- (16) **"Drug enforcement agency"**, the Drug Enforcement Administration in the United States Department of Justice, or its successor agency;
- (17) **"Drug paraphernalia"**, all equipment, products and materials of any kind which are used, intended for use, or designed for use, in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance or an imitation controlled substance in violation of sections 195.005 to 195.425. It includes, but is not limited to:
  - (a) Kits used, intended for use, or designed for use in the planting, propagating, cultivating, growing, or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived;
  - (b) Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances or imitation controlled substances;
  - (c) Isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant which is a controlled substance or an imitation controlled substance;
  - (d) Testing equipment used, intended for use, or designed for use in identifying, or in analyzing the strength, effectiveness or purity of controlled substances or imitation controlled substances;
  - (e) Scales and balances used, intended for use in weighing or measuring controlled substances or imitation controlled substances;
  - (f) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose, and lactose, used intended for use, or designed for use in cutting controlled substances or imitation controlled substances;
  - (g) Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from, or otherwise cleaning or refining, marijuana;

- (h) Blenders, bowls, containers, spoons and mixing devices used, intended for use, or designed for use in compounding controlled substances or imitation controlled substances;
- (i) Capsules, balloons, envelopes, and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances or imitation controlled substances;
- (j) Containers and other objects used, intended for use, or designed for use in storing or concealing controlled substances or imitation controlled substances;
- (k) Hypodermic syringes, needles and other objects used, intended for use, or designed for use in parenterally injecting controlled substances or imitation controlled substances into the human body;
- (l) Objects used, intended for use, or designed for use in ingesting inhaling or otherwise introducing marijuana, cocaine, hashish, or hashish oil into the human body, such as:
  - a. Metal, wooden, acrylic, stone, plastic or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;
  - b. Water pipes;
  - c. Carburetion tubes and devices;
  - d. Smoking and carburetion masks;
  - e. Roach clips meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand;
  - f. Miniature cocaine spoons and cocaine vials;
  - g. Chamber pipes;
  - h. Carburetor pipes;
  - i. Electric pipes;
  - j. Air-driven pipes;
  - k. Chillums;
  - l. Bongs;
  - m. Ice pipes or chillers;

In determining whether an object is drug paraphernalia, a court or other authority should consider, in addition to all other logically relevant factors, the following:

- (a) Statements by an owner or by anyone in control of the object concerning its use;
  - (b) Prior convictions, if any, of an owner, or of anyone in control of the object, under any state or federal law relating to any controlled substance or imitation controlled substance;
  - (c) The proximity of the object, in time and space, to a direct violation of sections 195.005 to 195.425;
  - (d) The proximity of the object to controlled substances or imitation controlled substances;
  - (e) The existence of any residue of controlled substance or imitation controlled substances on the object;
  - (f) Direct or circumstantial evidence of the intent of an owner, or anyone in control of the object, to deliver it to persons who he knows, or should reasonably know, intend to use the object to facilitate a violation of sections 195.005 to 195.425; the innocence of an owner, or of anyone in control of the object, as to direct violation of sections 195.005 to 195.425 shall not prevent a finding that the object is intended for use, or designed for use as drug paraphernalia;
  - (g) Instructions, oral or written, provided with the object concerning its use;
  - (h) Descriptive materials accompanying the object which explain or depict its use;
  - (i) National or local advertising concerning its use;
  - (j) The manner in which the object is displayed for sale;
  - (k) Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;
  - (l) Direct or circumstantial evidence for the ratio of sales of the object to the total sales of the business enterprise;
  - (m) The existence and scope of legitimate uses for the object in the community;
  - (n) expert testimony concerning its use;
- (18) **"Federal narcotic laws"**, the laws of the United States relating to controlled substances;
- (19) **"Hospital"**, a place devoted primarily to the maintenance and operation of facilities for the diagnosis, treatment or care, for not less than twenty-four hours in any week, of three or more nonrelated individuals suffering from illness, disease, injury, deformity or other abnormal physical conditions; or a place devoted primarily to provide, for not less than twenty-four consecutive hours in any week, medical or nursing care for three or more nonrelated individuals. The term "hospital" does not include convalescent, nursing, shelter, or boarding homes as defined in chapter 198, RSMo;
- (20) **"Immediate precursor"**, a substance which:
- (a) The state department of health has found to be and by rule designates as being the principal compound commonly used or produced primarily for use in the manufacture of a controlled substance;
  - (b) Is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance; and
  - (c) The control of which is necessary to prevent, curtail, or limit the manufacture of a controlled substance;
- (21) **"Imitation controlled substance"**, a substance which is not a controlled substance, which by dosage unit appearance (including color, shape, size and markings), or by representations made, would lead a reasonable person to believe that the substance is a controlled substance. In determining whether or not the substance is an "imitation controlled substance" the court or authority concerned should consider, in addition to all other logically relevant factors, the following:
- (a) Whether the substance was approved by the Federal Food and Drug Administration for over-the-counter (nonprescription or nonlegend) and was sold in the federal Food and Drug Administration approved package, with the federal Food and Drug Administration approved labeling information;
  - (b) Statements made by an owner or by anyone else in control of the substance concerning the nature of the substance, or its use or effect;
  - (c) Whether the substance is packaged in a manner normally used for illicit controlled substances;
  - (d) Prior convictions, if any, under state or federal law related to controlled substances or fraud;
  - (e) The proximity of the substances to controlled substances;
  - (f) Whether the consideration tendered in exchange for the noncontrolled substance substantially exceeds the reasonable value of the substance considering the actual chemical composition of the substance, and where applicable, the price at which over-the-counter substances of like chemical composition sell. An imitation controlled substance does not include a placebo or registered investigational drug either of which was manufactured, distributed, possessed or delivered in the ordinary course of professional practice or research;
- (22) **"Laboratory"**, a laboratory approved by the department of health as proper to be entrusted with the custody of controlled substances but does not include a pharmacist who compounds controlled substances to be sold or dispensed on prescriptions;
- (23) **"Manufacture"**, the production, preparation, propagation, compounding or processing of drug paraphernalia or of a controlled substance, or an imitation controlled substance, either directly or 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. This term does not include the preparation or compounding of a controlled substance or an imitation controlled substance or the preparation, compounding, packaging or labeling of a narcotic or dangerous drug:
- (a) By a practitioner as an incident to his administering or dispensing of a controlled substance or of an imitation controlled substance in the course of his professional practice, or
  - (b) By a practitioner or his authorized agent under his supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale;

(24) **"Marijuana"**, all parts of the plant [genus] species Cannabis Sativa [in any species or form thereof, including, but not limited to Cannabis Sativa L., Cannabis Indica, Cannabis

Americana, Cannabis Ruderalis, and Cannabis Gigantea,] belonging to the subspecies indica or any Cannabis containing over 0.5 % tetrahydrocannabinol by dry weight, whether growing or not, the seeds thereof, the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds, any other compound, manufacture, salt derivative, mixture or preparation of the mature stalks (except resin extracted therefrom), fiber, oil or cake, or the sterilized seed of the plant which is incapable of germination. It does not include any part of the plant species Cannabis Sativa belonging to the subspecies sativa and having a concentration of tetrahydrocannabinol of equal to or less than 0.5% by dry weight.

(25) "Narcotic drug", 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 analysis:

(a) Opium, opiate, or any derivative of opium or opiate, including their isomers, esters and ethers, whenever the existence of the isomers, esters, ethers, and salts is possible within the specific chemical designation. The term does not include isoquinoline alkaloids of opium;

(b) Coca leaves, but not including extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

(c) Cocaine, or any salt, isomer, or salt of isomer thereof;

(d) Ecgonine, or any derivative, salt, isomer, or salt of isomer thereof;

(e) Any compound mixture or preparation containing any quantity of any substance referred to in paragraphs (a) to (d) of this subdivision;

(26) "Official written order", an order written on a form provided for that purpose by the United States Commissioner of Narcotics, under any laws of the United States making provisions therefore, if such order forms are authorized and required by federal law, and if no such order form is provided, then on an official form provided for that purpose by the department of health;

(27) "Opiate", any substance 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. The term includes its racemic and levorotatory forms. It does not include, unless specifically controlled under section 195.017, the dextrorotatory isomer of 3-methoxy-n-methyl-morphinan and its salts (dextromethorphan);

(28) "Opium poppy", the plant of the species *Papaver somniferum* L., except its seeds;

(29) "Person", an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, joint venture, association, or any other legal commercial entity;

(30) "Pharmacist", a licensed pharmacist as defined by the laws of this state, and where the context so requires, the owner of a store or other place of business where controlled substances are compounded or dispensed by a licensed pharmacist; but nothing in sections 195.005 to 195.425 shall be construed to as conferring on a person who is not registered or not licensed as a pharmacist, any authority, right or privilege that is not granted to him by the pharmacy laws of this state;

(31) "Poppy straw", all parts, except the seeds, of the opium poppy, after mowing;

(32) "Possessed" or "possessing of a controlled substance", a person with the knowledge of the presence and nature of a substance, has actual or constructive possession of the substance. A person has actual possession if he has the substance on his person or within easy reach and convenient control. A person who, although not in actual control, has the power and intention to exercise at a given time to exercise dominion or control over the substance either directly or through another person or persons in constructive possession of it. If one person alone has possession of a substance possession is sole. If two or more persons share possession of a substance, possession is joint;

(33) "Practitioner", a physician, dentist, optometrist, podiatrist, veterinarian, scientific investigator, pharmacy, hospital or other person licensed, registered or otherwise permitted by this state to distribute, dispense, conduct research with respect to or administer to use in teaching or chemical analysis, a controlled substance in the course of professional practice or research in this state, or a pharmacy, hospital or other institution 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;

(34) "Production", includes the manufacture, planting, cultivation, growing, or harvesting of drug paraphernalia or of a controlled substance or an imitation controlled substance or an imitation controlled substance;

(35) "Registry Number", the number assigned to each person under the federal controlled substances laws;

(36) "Sale", includes, barter, exchange, or gift or offer therefore, and each such transaction made by any person, whether as principal, proprietor, agent, servant, or employee;

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

(38) "Ultimate User", a person who lawfully possesses a controlled substance or an imitation controlled substance for his own use or for the use of a member of his household or for administering to an animal owned by him or his household;

(39) "Wholesaler", a person who supplies drug paraphernalia or controlled substances or imitation controlled substances that he himself has not produced or prepared, on official written orders, but not on prescriptions.