

[Third Reprint]

SENATE, No. 1428

STATE OF NEW JERSEY
211th LEGISLATURE

INTRODUCED MARCH 29, 2004

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SYNOPSIS

Upgrades unlawful possession and distribution of prescription legend drugs.

CURRENT VERSION OF TEXT

As amended by the General Assembly on May 16, 2005.

(Sponsorship Updated As Of: 6/21/2005)

1 AN ACT concerning prescription legend drugs and amending
2 N.J.S.2C:35-2 ¹[,]and¹ P.L.1999, c.90 ¹[and supplementing Title
3 2C of the New Jersey Statutes]¹.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. N.J.S.2C:35-2 is amended to read as follows:
9 2C:35-2. Definitions. As used in this chapter:

10 "Administer" means the direct application of a controlled dangerous
11 substance or controlled substance analog, whether by injection,
12 inhalation, ingestion, or any other means, to the body of a patient or
13 research subject by: (1) a practitioner (or, in his presence, by his
14 lawfully authorized agent), or (2) the patient or research subject at the
15 lawful direction and in the presence of the practitioner.

16 "Agent" means an authorized person who acts on behalf of or at the
17 direction of a manufacturer, distributor, or dispenser but does not
18 include a common or contract carrier, public warehouseman, or
19 employee thereof.

20 "Controlled dangerous substance" means a drug, substance, or
21 immediate precursor in Schedules I through V, any substance the
22 distribution of which is specifically prohibited in N.J.S.2C:35-3, in
23 section 3 of P.L.1997, c.194 (C.2C:35-5.2) or in section 5 of
24 P.L.1997,c. 194 (C.2C:35-5.3) and any drug or substance which, when
25 ingested, is metabolized or otherwise becomes a controlled dangerous
26 substance in the human body. When any statute refers to controlled
27 dangerous substances, or to a specific controlled dangerous substance,
28 it shall also be deemed to refer to any drug or substance which, when
29 ingested, is metabolized or otherwise becomes a controlled dangerous
30 substance or the specific controlled dangerous substance, and to any
31 substance that is an immediate precursor of a controlled dangerous
32 substance or the specific controlled dangerous substance. The term
33 shall not include distilled spirits, wine, malt beverages, as those terms
34 are defined or used in R.S.33:1-1 et seq., or tobacco and tobacco
35 products. The term, wherever it appears in any law or administrative
36 regulation of this State, shall include controlled substance analogs.

37 "Controlled substance analog" means a substance that has a
38 chemical structure substantially similar to that of a controlled
39 dangerous substance and that was specifically designed to produce an
40 effect substantially similar to that of a controlled dangerous substance.

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SJU committee amendments adopted October 14, 2004.

² Assembly floor amendments adopted March 14, 2005.

³ Assembly floor amendments adopted May 16, 2005.

1 The term shall not include a substance manufactured or distributed in
2 conformance with the provisions of an approved new drug application
3 or an exemption for investigational use within the meaning of section
4 505 of the "Federal Food, Drug and Cosmetic Act," 52 Stat. 1052 (21
5 U.S.C. s.355).

6 "Counterfeit substance" means a controlled dangerous substance or
7 controlled substance analog which, or the container or labeling of
8 which, without authorization, bears the trademark, trade name, or
9 other identifying mark, imprint, number or device, or any likeness
10 thereof, of a manufacturer, distributor, or dispenser other than the
11 person or persons who in fact manufactured, distributed or dispensed
12 such substance and which thereby falsely purports or is represented to
13 be the product of, or to have been distributed by, such other
14 manufacturer, distributor, or dispenser.

15 "Deliver" or "delivery" means the actual, constructive, or attempted
16 transfer from one person to another of a controlled dangerous
17 substance or controlled substance analog, whether or not there is an
18 agency relationship.

19 "Dispense" means to deliver a controlled dangerous substance or
20 controlled substance analog to an ultimate user or research subject by
21 or pursuant to the lawful order of a practitioner, including the
22 prescribing, administering, packaging, labeling, or compounding
23 necessary to prepare the substance for that delivery. "Dispenser"
24 means a practitioner who dispenses.

25 "Distribute" means to deliver other than by administering or
26 dispensing a controlled dangerous substance or controlled substance
27 analog. "Distributor" means a person who distributes.

28 "Drugs" means (a) substances recognized in the official United
29 States Pharmacopoeia, official Homeopathic Pharmacopoeia of the
30 United States, or official National Formulary, or any supplement to
31 any of them; and (b) substances intended for use in the diagnosis, cure,
32 mitigation, treatment, or prevention of disease in man or other animals;
33 and (c) substances (other than food) intended to affect the structure or
34 any function of the body of man or other animals; and (d) substances
35 intended for use as a component of any article specified in subsections
36 (a), (b) and (c) of this section; but does not include devices or their
37 components, parts or accessories.

38 "Drug or alcohol dependent person" means a person who as a result
39 of using a controlled dangerous substance or controlled substance
40 analog or alcohol has been in a state of psychic or physical
41 dependence, or both, arising from the use of that controlled dangerous
42 substance or controlled substance analog or alcohol on a continuous
43 or repetitive basis. Drug or alcohol dependence is characterized by
44 behavioral and other responses, including but not limited to a strong
45 compulsion to take the substance on a recurring basis in order to

1 experience its psychic effects, or to avoid the discomfort of its
2 absence.

3 ¹["Drug manufacturing business or wholesale drug business" means
4 a business required to file a completed registration statement with the
5 State Department of Health and Senior Services pursuant to P.L.1961,
6 c.52 (C.24:6B-1 et. seq.) or any other law. "Drug manufacturing
7 business" means the business of creating, making or producing drugs
8 by compounding, growing or other process. This definition shall
9 include persons engaged in the drug manufacturing business who do
10 not maintain a manufacturing location in this State but who do operate
11 distribution depots or warehouses of such business in this State.
12 "Wholesale drug business" means the business of supplying drugs to
13 persons other than the ultimate consumer.]¹

14 "Hashish" means the resin extracted from any part of the plant
15 Genus Cannabis L. and any compound, manufacture, salt, derivative,
16 mixture, or preparation of such resin.

17 "Manufacture" means the production, preparation, propagation,
18 compounding, conversion or processing of a controlled dangerous
19 substance or controlled substance analog, either directly or by
20 extraction from substances of natural origin, or independently by
21 means of chemical synthesis, or by a combination of extraction and
22 chemical synthesis, and includes any packaging or repackaging of the
23 substance or labeling or relabeling of its container, except that this
24 term does not include the preparation or compounding of a controlled
25 dangerous substance or controlled substance analog by an individual
26 for his own use or the preparation, compounding, packaging, or
27 labeling of a controlled dangerous substance: (1) by a practitioner as
28 an incident to his administering or dispensing of a controlled
29 dangerous substance or controlled substance analog in the course of
30 his professional practice, or (2) by a practitioner (or under his
31 supervision) for the purpose of, or as an incident to, research,
32 teaching, or chemical analysis and not for sale.

33 "Marijuana" means all parts of the plant Genus Cannabis L.,
34 whether growing or not; the seeds thereof, and every compound,
35 manufacture, salt, derivative, mixture, or preparation of such plant or
36 its seeds, except those containing resin extracted from such plant; but
37 shall not include the mature stalks of such plant, fiber produced from
38 such stalks, oil or cake made from the seeds of such plant, any other
39 compound, manufacture, salt, derivative, mixture, or preparation of
40 such mature stalks, fiber, oil, or cake, or the sterilized seed of such
41 plant which is incapable of germination.

42 "Narcotic drug" means any of the following, whether produced
43 directly or indirectly by extraction from substances of vegetable origin,
44 or independently by means of chemical synthesis, or by a combination
45 of extraction and chemical synthesis:

46 (a) Opium, coca leaves, and opiates;

1 (b) A compound, manufacture, salt, derivative, or preparation of
2 opium, coca leaves, or opiates;

3 (c) A substance (and any compound, manufacture, salt, derivative,
4 or preparation thereof) which is chemically identical with any of the
5 substances referred to in subsections (a) and (b), except that the words
6 "narcotic drug" as used in this act shall not include decocainized coca
7 leaves or extracts of coca leaves, which extracts do not contain
8 cocaine or ecogine.

9 "Opiate" means any dangerous substance having an
10 addiction-forming or addiction-sustaining liability similar to morphine
11 or being capable of conversion into a drug having such
12 addiction-forming or addiction-sustaining liability. It does not include,
13 unless specifically designated as controlled pursuant to the provisions
14 of section 3 of P.L.1970, c.226 (C.24:21-3), the dextrorotatory isomer
15 of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan).
16 It does include its racemic and levorotatory forms.

17 "Opium poppy" means the plant of the species *Papaver somniferum*
18 L., except the seeds thereof.

19 "Person" means any corporation, association, partnership, trust,
20 other institution or entity or one or more individuals.

21 "Plant" means an organism having leaves and a readily observable
22 root formation, including, but not limited to, a cutting having roots, a
23 rootball or root hairs.

24 "Poppy straw" means all parts, except the seeds, of the opium
25 poppy, after mowing.

26 "Practitioner" means a physician, dentist, veterinarian, scientific
27 investigator, laboratory, pharmacy, hospital or other person licensed,
28 registered, or otherwise permitted to distribute, dispense, conduct
29 research with respect to, or administer a controlled dangerous
30 substance or controlled substance analog in the course of professional
31 practice or research in this State.

32 (a) "Physician" means a physician authorized by law to practice
33 medicine in this or any other state and any other person authorized by
34 law to treat sick and injured human beings in this or any other state.

35 (b) "Veterinarian" means a veterinarian authorized by law to
36 practice veterinary medicine in this State.

37 (c) "Dentist" means a dentist authorized by law to practice dentistry
38 in this State.

39 (d) "Hospital" means any federal institution, or any institution for
40 the care and treatment of the sick and injured, operated or approved
41 by the appropriate State department as proper to be entrusted with the
42 custody and professional use of controlled dangerous substances or
43 controlled substance analogs.

44 (e) "Laboratory" means a laboratory to be entrusted with the
45 custody of narcotic drugs and the use of controlled dangerous
46 substances or controlled substance analogs for scientific, experimental

1 and medical purposes and for purposes of instruction approved by the
2 State Department of Health and Senior Services.

3 "Production" includes the manufacture, planting, cultivation,
4 growing, or harvesting of a controlled dangerous substance or
5 controlled substance analog.

6 "Immediate precursor" means a substance which the State
7 Department of Health and Senior Services has found to be and by
8 regulation designates as being the principal compound commonly used
9 or produced primarily for use, and which is an immediate chemical
10 intermediary used or likely to be used in the manufacture of a
11 controlled dangerous substance or controlled substance analog, the
12 control of which is necessary to prevent, curtail, or limit such
13 manufacture.

14 "Residential treatment facility" means any facility licensed and
15 approved by the Department of Health and Senior Services and which
16 is approved by any county probation department for the inpatient
17 treatment and rehabilitation of drug or alcohol dependent persons.

18 "Schedules I, II, III, IV, and V" are the schedules set forth in
19 sections 5 through 8 of P.L.1970, c.226 (C.24:21-5 through 24:21-8)
20 and in section 4 of P.L.1971, c.3 (C.24:21-8.1) and as modified by any
21 regulations issued by the Commissioner of Health and Senior Services
22 pursuant to his authority as provided in section 3 of P.L.1970, c.226
23 (C.24:21-3).

24 "State" means the State of New Jersey.

25 "Ultimate user" means a person who lawfully possesses a controlled
26 dangerous substance or controlled substance analog for his own use
27 or for the use of a member of his household or for administration to an
28 animal owned by him or by a member of his household.

29 "Prescription legend drug" means any drug which under federal or
30 State law requires dispensing by prescription or order of a licensed
31 physician, veterinarian or dentist and is required to bear the statement
32 ¹["Caution:Federal law prohibits dispensing without a prescription"]
33 "Rx only" or similar wording indicating that such drug may be sold or
34 dispensed only upon the prescription of a licensed medical
35 practitioner¹ and is not a controlled dangerous substance or
36 stramonium preparation.

37 "Stramonium preparation" means a substance prepared from any
38 part of the stramonium plant in the form of a powder, pipe mixture,
39 cigarette, or any other form with or without other ingredients.

40 "Stramonium plant" means the plant *Datura Stramonium* Linne,
41 including *Datura Tatula* Linne.
42 (cf: P.L.1999, c.376, s.1).

43

44 2. Section 8 of P. L. 1999, c. 90 (C. 2C:35-10.5) is amended to
45 reads as follows:

46 8. Prescription legend drugs. a. ¹["Except as authorized by sections

1 9 through 15 of P.L.1970, c.226 (C.24:21-9 through 24:21-15) a] A¹
2 person who knowingly ¹:

3 (1)¹ distributes a prescription legend drug or stramonium
4 preparation in an amount of ¹[at least 5] ²[four] ³[six²] four³ or
5 fewer dosage units¹ ³[²within a 24 hour period²]³ unless lawfully
6 prescribed or administered by a licensed physician, veterinarian ¹[or],¹
7 dentist ¹or other practitioner authorized by law to prescribe
8 medication¹ is [a disorderly person] ¹[guilty of a crime of the third
9 degree. Notwithstanding the provisions of subsection b. of
10 N.J.S.2C:43-3, a fine of up to \$200,000 may be imposed] a disorderly
11 person¹:

12 ¹(2) distributes for pecuniary gain or possesses or has under his
13 control with intent to distribute for pecuniary gain a prescription
14 legend drug or stramonium preparation in an amount of four or fewer
15 dosage units unless lawfully prescribed or administered by a licensed
16 physician, veterinarian, dentist or other practitioner authorized by law
17 to prescribe medication is guilty of a crime of the fourth degree:

18 (3) distributes or possesses or has under his control with intent to
19 distribute a prescription legend drug or stramonium preparation in an
20 amount of at least five but fewer than 100 dosage units unless lawfully
21 prescribed or administered by a licensed physician, veterinarian, dentist
22 or other practitioner authorized by law to prescribe medication is
23 guilty of a crime of the third degree. Notwithstanding the provisions
24 of subsection b. of N.J.S.2C:43-3, a fine of up to \$200,000 may be
25 imposed; or

26 (4) distributes or possesses or has under his control with intent to
27 distribute a prescription legend drug or stramonium preparation in an
28 amount of 100 or more dosage units unless lawfully prescribed or
29 administered by a licensed physician, veterinarian, dentist or other
30 practitioner authorized by law to prescribe medication is guilty of a
31 crime of the second degree. Notwithstanding the provisions of
32 subsection b. of N.J.S.2C:43-3, a fine of up to \$300,000 may be
33 imposed.¹

34 ³Notwithstanding the above, a violation of paragraph (1) or (3) of
35 this subsection shall be deemed a de minimis infraction subject to
36 dismissal pursuant to N.J.S. 2C:2-11 if the person demonstrates that
37 the conduct involved no more than six dosage units distributed within
38 a 24 hour period, that the prescription legend drug or stramonium
39 preparation was lawfully prescribed for or administered to that person
40 by a licensed physician, veterinarian, dentist or other practitioner
41 authorized by law to prescribe medication, and that the person
42 intended for the amount he distributed to be solely for the recipient's
43 personal use.³

44 b. A person who uses any prescription legend drug or stramonium
45 preparation for a purpose other than treatment of sickness or injury as
46 lawfully prescribed or administered by a licensed physician ¹,

1 veterinarian, dentist or other practitioner authorized by law to
2 prescribe medication¹ is [a disorderly person] ¹[guilty of a crime of
3 the fourth degree] a disorderly person¹.

4 c. A defendant may be convicted for a violation of subsection b.
5 if the State proves that the defendant manifested symptoms or
6 reactions caused by the use of prescription legend drugs or
7 stramonium preparation. The State need not prove which specific
8 prescription legend drug or stramonium preparation defendant used.

9 d. A person who obtains or attempts to obtain possession of a
10 prescription legend drug or stramonium preparation by forgery or
11 deception is [a disorderly person] guilty of a crime of the fourth
12 degree. Nothing in this section shall be deemed to preclude or limit a
13 prosecution for theft as defined in chapter 20 of Title C of the New
14 Jersey Statutes.

15 e. A person who ¹[unlawfully] knowingly¹ possesses ¹[or has
16 under his control with intent to distribute], actually or constructively¹:

17 (1) a prescription legend drug or stramonium preparation in an
18 amount of ¹[at least 5 but fewer than 100] four or fewer ¹dosage
19 units ¹unless lawfully prescribed or administered by a licensed
20 physician, veterinarian, dentist or other practitioner authorized by law
21 to prescribe medication¹ is ¹[guilty of a crime of the third degree.
22 Notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, a
23 fine of up to \$200,000 may be imposed] a disorderly person¹; ¹or¹

24 (2) a prescription legend drug or stramonium preparation in an
25 amount of ¹[over 100 dosage units is guilty of a crime of the second
26 degree. Notwithstanding the provisions of subsection a. of
27 N.J.S.2C:43-3, a fine of up to \$300,000 may be imposed] five or more
28 dosage units unless lawfully prescribed or administered by a licensed
29 physician, veterinarian, dentist or other practitioner authorized by law
30 to prescribe medication is guilty of a crime of the fourth degree¹.

31 ³Notwithstanding the above, a violation of this subsection shall be
32 deemed a de minimis infraction subject to dismissal pursuant to N.J.S.
33 2C:2-11 if the person demonstrates that he unlawfully received no
34 more than six dosage units within a 24 hour period, that the
35 prescription legend drug or stramonium preparation was lawfully
36 prescribed for or administered to the person from whom he had
37 received it, and that the person possessed the prescription legend drug
38 or stramonium preparation for solely for his personal use.³

39 ¹f. Where the degree of the offense for violation of this section
40 depends on the number of dosage units of the prescription legend drug
41 or stramonium preparation, the number of dosage units involved shall
42 be determined by the trier of fact. Where the indictment or accusation
43 so provides, the number of dosage units involved in individual acts of
44 distribution or possession with intent to distribute may be aggregated
45 in determining the grade of the offense, whether distribution is to the

1 same person or several persons, provided that each individual act of
2 distribution or possession with intent to distribute was committed
3 within the applicable statute of limitations.

4 g. Subsections a. and e. of this section shall not apply to: a licensed
5 pharmacy, licensed pharmacist, researcher, wholesaler, distributor,
6 manufacturer, warehouseman or his representative acting within the
7 line and scope of his employment; a physician, veterinarian, dentist or
8 other practitioner authorized by law to prescribe medication; a nurse
9 acting under the direction of a physician; or a common carrier or
10 messenger when transporting such prescription legend drug or
11 stramonium preparation in the same unbroken package in which the
12 prescription legend drug or stramonium preparation was delivered to
13 him for transportation.¹

14 (cf: P.L.1999,c.90, s.8)

15

16

17 ¹[3. (New section) a. It shall be unlawful for a drug manufacturing
18 business or wholesale drug business to fail to maintain the records and
19 inventories required to be available for inspection and copying by
20 federal, State or local law enforcement agencies pursuant to law or
21 regulations.

22 b. A violation of this section is a crime of the third degree, except
23 that, notwithstanding the provisions of subsection b. of N.J.S.2C:43-3,
24 a fine of up to \$200,000.00 may be imposed.]¹

25

26 ¹[4.] 3.¹ This act shall take effect immediately.