

PHARMACY BOARD LAWS
AS OF THE 2019 LEGISLATIVE SESSION

TITLE 50, CHAPTER 32
CONTROLLED SUBSTANCES

This version of the Montana Code Annotated is provided as a tool for board members and department staff. In case of inconsistencies, the text in the West Publishing hardbound copy or the MCA online version from Legislative Services is the official rule text and will prevail.

CHAPTER 32

CONTROLLED SUBSTANCES

Chapter Commissioners' Note

The Uniform Controlled Substances Act is designed to supplant the Uniform Narcotic Drug Act, adopted by the National Conference of Commissioners on Uniform State Laws in 1933, and the Model State Drug Abuse Control Act, relating to depressant, stimulant, and hallucinogenic drugs, promulgated in 1966. With the enactment of the new Federal narcotic and dangerous drug law, the "Comprehensive Drug Abuse Prevention and Control Act of 1970" (Public Law 91-513, short title "Controlled Substances Act" [21 U.S.C.A. § 801, et seq.]), it is necessary that the States update and revise their narcotic, marihuana, and dangerous drug laws.

This Uniform Act was drafted to achieve uniformity between the laws of the several States and those of the Federal government. It has been designed to complement the new Federal narcotic and dangerous drug legislation and provide an interlocking trellis of Federal and State law to enable government at all levels to control more effectively the drug abuse problem.

The exploding drug abuse problem in the past ten years has reached epidemic proportions. No longer is the problem confined to a few major cities or to a particular economic group. Today it encompasses almost every nationality, race, and economic level. It has moved from the major urban areas into the suburban and even rural communities, and has manifested itself in every State in the Union.

Much of this major increase in drug use and abuse is attributable to the increased mobility of our citizens and their affluence. As modern American society becomes increasingly mobile, drugs clandestinely manufactured or illegally diverted from legitimate channels in one part of a State are easily transported for sale to another part of that State or even to another State. Nowhere is this mobility manifested with greater impact than in the legitimate pharmaceutical industry. The lines of distribution of the products of this major national industry cross in and out of a State innumerable times during the manufacturing or distribution processes. To assure the continued free movement of controlled substances between States, while at the same time securing such States against drug diversion from legitimate sources, it becomes critical to approach not only the control of illicit and legitimate traffic in these substances at the national and international levels, but also to approach this problem at the State and local level on a uniform basis.

A main objective of this Uniform Act is to create a coordinated and codified system of drug control, similar to that utilized at the Federal level, which classifies all narcotics, marihuana, and dangerous drugs subject to control into five schedules, with each schedule having its own criteria for drug placement. This classification system will enable the agency charged with implementing it to add, delete, or reschedule substances based upon new scientific findings and the abuse potential of the substance.

Another objective of this Act is to establish a closed regulatory system for the legitimate handlers of controlled drugs in order better to prevent illicit drug diversion. This system will require that these individuals register with a designated State agency, maintain records, and make biennial inventories of all controlled drug stocks.

The Act sets out the prohibited activities in detail, but does not prescribe specific fines or sentences, this being left to the discretion of the individual States. It further provides innovative law enforcement tools to improve investigative efforts and provides for interim education and training programs relating to the drug abuse problem.

The Uniform Act updates and improves existing State laws and insures legislative and administrative flexibility to enable the States to cope with both present and future drug problems. It is recognized that law enforcement may not be the ultimate solution to the drug abuse problem. It is hoped that present research efforts will be continued and vigorously expanded, particularly as they relate to the development of rehabilitation, treatment, and educational programs for addicts, drug dependent persons, and potential drug abusers.

Chapter Compiler's Comments

Deviation From Uniform Act: Although Montana law on controlled substances is based extensively on the Uniform Controlled Substances Act, some sections of Montana law are not based on the Uniform Act. Likewise, some sections of the Uniform Act were not adopted. The sections not based on the uniform law are 50-32-233, 50-32-305, 50-32-313, and 50-32-401 through 50-32-405. The uniform law sections not adopted in Montana are 401 through 409, 501, 503 through 507, 601, 602, and 604 through 607. Under each section of Montana law, the corresponding section of uniform law is listed in a compiler's comment with the catchline "source".

Severability Clause: Section 30, Ch. 412, L. 1973, was a severability clause.

Chapter Cross-References

Dangerous drugs, Title 45, ch. 9.

Model Drug Paraphernalia Act, Title 45, ch. 10, part 1.

Regulation of drugs and drug devices, Title 50, ch. 31, part 3.

Chapter Administrative Rules

Title 24, chapter 174, subchapter 14, ARM Dangerous Drug Act.

Chapter Law Review Articles

Cutting Off the Building Blocks to Methamphetamine Production: A Global Solution to Methamphetamine Abuse, Grau, 30 Hous. J. Int'l L. 157 (2007).

Maximizing the Value of Electronic Prescription Monitoring Programs, Brushwood, 31 J. L. Med. & Ethics 41 (2003).

Reinterpreting the Controlled Substances Act: Predictions for the Effect on Pain Relief, Werth, 20 Behavioral Sci. & L. 287 (2002).

Prescription Drug Control Under the Federal Controlled Substances Act: A Web of Administrative, Civil, and Criminal Law Controls, Behr, 45 Wash. U.J. Urb. & Contemp. L. 41 (1994).

Part 1 General Provisions

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 other means, to the body of a patient or research subject by:

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

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

(2) (a) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser.

(b) The term does not include a common or contract carrier, public warehouse operator, or employee of the carrier or warehouse operator.

(3) "Board" means the board of pharmacy provided for in 2-15-1733.

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

(5) "Counterfeit substance" means a dangerous drug or the container or labeling of a dangerous drug without authorization that bears the trademark, trade name, or other identifying mark, imprint, number, or device or a likeness 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 set forth in Title 50, chapter 32, part 2.

(7) (a) "Dangerous drug analogue" means any material, compound, mixture, or preparation that is structurally related to or chemically derived from any dangerous drug in Schedules I through V set forth in Title 50, chapter 32, part 2, or that is expressly or impliedly represented to produce or does produce a physiological effect similar to or greater than the effect of a dangerous drug in Schedules I through V.

(b) The term does not include any material, compound, mixture, or preparation that is currently listed as a dangerous drug in Schedules I through V set forth in Title 50, chapter 32, part 2, or in an

administrative rule, that is approved for use by the United States food and drug administration, or that is otherwise specifically excepted from Title 50, chapter 32, part 2.

(8) "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.

(9) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(10) "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.

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

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

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

(14) "Drug" has the same meaning as provided in 37-7-101.

(15) "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.

(16) "Immediate precursor" means a substance that the board finds to be and by rule designates as being the principal compound commonly used or produced primarily for use and 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.

(17) (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 the packaging or repackaging of the drug or labeling or relabeling of its container.

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

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

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

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

(19) "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 a salt, compound, derivative, or preparation of opium or opiate;

(b) a salt, compound, isomer, derivative, or preparation of a salt, compound, isomer, or derivative that is chemically equivalent or identical with any of the drugs referred to in subsection (19)(a), but not including the isoquinoline alkaloids of opium;

(c) opium poppy and poppy straw; or

(d) coca leaves and a salt, compound, derivative, or preparation of coca leaves and a salt, compound, isomer, derivative, or preparation 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 that do not contain cocaine or ecgonine.

(20) "Opiate" means 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. 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). The term does include its racemic and levorotatory forms.

(21) "Opium poppy" means the plant of the species Papaver somniferum L., except its seeds.

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

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

(24) "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;

(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.

(25) "Prescription" means an order given individually for the person for whom prescribed, directly from the prescriber to the furnisher or indirectly to the furnisher, by means of an order signed by the prescriber and bearing the name and address of the prescriber, the prescriber's license classification, the name of the patient, the name and quantity of the drug or drugs prescribed, the directions for use, and the date of its issue. These stipulations apply to written, electronically transmitted, and telephoned prescriptions.

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

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

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

History: En. Sec. 1, Ch. 412, L. 1973; amd. Sec. 1, Ch. 350, L. 1974; amd. Sec. 1, Ch. 382, L. 1975; amd. Sec. 6, Ch. 187, L. 1977; R.C.M. 1947, 54-301; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 12, Ch. 379, L. 1981; amd. Sec. 1, Ch. 155, L. 1983; amd. Sec. 1, Ch. 247, L. 1983; amd. Sec. 1, Ch. 198, L. 1995; amd. Sec. 15, Ch. 388, L. 2001; amd. Sec. 158, Ch. 483, L. 2001; amd. Sec. 5, Ch. 135, L. 2013.

Compiler's Comments

2013 Amendment: Chapter 135 inserted definition of dangerous drug analogue; and made minor changes in style. Amendment effective October 1, 2013.

2001 Amendments — Composite Section: Chapter 388 in definition of drug substituted "has the same meaning as provided in 37-7-101" for "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 humans or animals;

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

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

(b) Drug does not include a device or its components, parts, or accessories"; substituted definition of prescription for former definition that read: "'Prescription" has the meaning that it has in 37-7-101"; and made minor changes in style. Amendment effective October 1, 2001.

Chapter 483 in definition of department substituted reference to department of labor and industry for reference to department of commerce and substituted "part 17" for "part 18"; and made minor changes in style. Amendment effective July 1, 2001.

1995 Amendment: Chapter 198 in definition of practitioner inserted (c) concerning a physician licensed to practice medicine or a dentist licensed to practice dentistry in another state; and made minor changes in style.

Applicability: Section 2, Ch. 198, L. 1995, provided: "[This act] applies to prescriptions written on and after October 1, 1995."

1983 Amendments: Chapter 155 inserted (14) defining "hashish".

Chapter 247, in (3), substituted "board of pharmacy" for "board of pharmacists".

1981 Amendments: Chapter 274 substituted "department of commerce" for "department of professional and occupational licensing" in (8); and changed internal references to the department and the board.

Chapter 379 substituted "drug enforcement administration" for "bureau of narcotics and dangerous drugs" in (4); deleted a reference to the official Homeopathic Pharmacopoeia in (13)(a)(i).
Source: Section 101, Uniform Controlled Substances Act.

Cross-References

Board of Pharmacy, Title 37, ch. 7, part 2.

Case Notes

Hashish Not Marijuana — Definitions Harmonized: A medical marijuana card that was issued pursuant to the former Medical Marijuana Act as set forth in 50-46-101 through 50-46-210 (now repealed) did not entitle the defendant to possess hashish, which is specifically differentiated in 50-32-101. The Act was clear and unambiguous on its face, and the District Court's interpretation appropriately harmonized the statutes. *St. v. Pirello*, 2012 MT 155, 365 Mont. 399, 282 P.3d 662.

Ingestion of Dangerous Drugs Considered Constructive Possession When Accompanied by Evidence of Knowing and Voluntary Possession: The state sought to revoke a juvenile youth's probation on grounds that the youth's urinalysis tested positive for methamphetamines, opiates, and marijuana. The youth argued that once the drugs were ingested, the youth no longer had dominion or control over them and thus could not be considered to be in possession of drugs. In a case of first impression, the Supreme Court considered whether constructive possession can be proved by a positive urinalysis. The court agreed with the youth that once a substance is ingested and then assimilated into a person's bloodstream, the person who ingested it ceases to exercise dominion and control over the substance, but the court also concluded that the presence of an illegal substance in the body constitutes circumstantial evidence of prior possession of that substance, if even for a short time. However, based on statutory definitions, the presence of a dangerous drug in one's body, standing alone, is insufficient to sustain a conviction for possession of dangerous drugs because possession also requires proof that the drug was knowingly or voluntarily ingested. Thus, the presence of a controlled substance in a person's blood or urine constitutes sufficient circumstantial evidence to prove prior possession beyond a reasonable doubt only when accompanied by other corroborating evidence of knowing and voluntary possession, such as admission of drug use. Here, the youth admitted using methamphetamine, which provided direct evidence that the youth knowingly and voluntarily possessed methamphetamine as charged. However, the youth made no admission of using opiates or marijuana, so there was no corroborating evidence to support the positive urinalysis for those substances. Thus, the determination that the youth illegally possessed opiates and marijuana was reversed. In re R.L.H., 2005 MT 177, 327 M 520, 116 P3d 791 (2005).

Hashish Not Dangerous Drug: The information, filed prior to the 1983 amendment of this section, charged the defendant with possession of more than 1 gram of hashish in violation of 45-9-102(1). Section 45-9-102(1) refers to the definition of dangerous drug in this section. This section did not, prior to the 1983 amendment, define hashish. Charging an individual with the possession of hashish, without mentioning its derivation from marijuana, does not charge that individual with a crime. The District Court properly dismissed the information, and the Supreme Court affirmed. *St. v. Kelman*, 199 M 481, 649 P2d 1292, 39 St. Rep. 1545 (1982).

Possession of Each Drug in Schedules a Separate Crime: It was proper for the County Attorney to charge defendant with three counts for possession of three prohibited drugs. The Legislature intended to provide a distinct crime for each of the drugs listed in the schedules. *St. v. Meader*, 184 M 32, 601 P2d 386 (1979); see also *St. v. Meadors*, 177 M 100, 580 P2d 903 (1978).

Failure to Republish Schedule: Failure of the Board and the Department to revise and republish schedules as required by 50-32-209 did not result in the decriminalization of dangerous drugs. The Legislature intended the original five schedules to be effective until the Board of Pharmacists (now Board of Pharmacy) and the Department of Health and Environmental Sciences (now Department of Public Health and Human Services) carry out their statutory duty. *St. v. Meader*, 184 M 32, 601 P2d 386 (1979).

Finding Marijuana Hallucinogenic — Unnecessary: Marijuana is grouped with hallucinogenic drugs, but this does not call for the trier of fact to make a specific finding as to its hallucinogenic capabilities. The Legislature has made that determination. The determination for the trier of fact is whether the substance introduced at trial is in fact marijuana, as defined by 50-32-101. *St. v. Petko*, 177 M 229, 581 P2d 425 (1978), followed in *St. v. Farnsworth*, 240 M 328, 783 P2d 1365, 46 St. Rep. 2165 (1989).

Definitions — Application to Montana Dangerous Drug Act: Montana does not have two separate drug acts in force; sections 54-301 through 54-327, R.C.M. 1947 (now in Title 50, ch. 32), were intended

to amend and be included as part of Montana Dangerous Drug Act, and definitions found in this section apply to Title 45, ch. 9, MCA. State ex rel. Lance v. District Court, 168 M 297, 542 P2d 1211 (1975).

Federal Drug Law Not to Preempt Montana Drug Law: Federal Controlled Substances Act, 21 U.S.C. § 903, does not preempt Montana law on narcotic drugs, Title 54, R.C.M. 1947 (now Title 45, ch. 9, and Title 50, ch. 32, MCA). State ex rel. Lance v. District Court, 168 M 297, 542 P2d 1211 (1975).

50-32-102. Uniformity of construction. This chapter shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among those other states which enact it.

History: En. Sec. 28, Ch. 412, L. 1973; R.C.M. 1947, 54-326.

Compiler's Comments

Source: Section 603, Uniform Controlled Substances Act.

50-32-103. Board to administer chapter. (1) The board shall administer this chapter and may add drugs to or delete or reschedule all drugs enumerated in the schedules in 50-32-222, 50-32-224, 50-32-226, 50-32-229, or 50-32-232 pursuant to the rulemaking procedures of the Montana Administrative Procedure Act.

(2) The board shall promulgate rules for its administration which are not inconsistent with this chapter and specifically shall levy and the department shall collect reasonable registration fees relating to the registration and control of the manufacture, distribution, and dispensing of dangerous drugs within the state. The maximum fee for any registration shall not exceed \$100 per year.

History: En. Secs. 2, 15, Ch. 412, L. 1973; amd. Secs. 2, 5, Ch. 350, L. 1974; R.C.M. 1947, 54-302(part), 54-315.

Commissioners' Note

The Act vests the authority to administer its provisions in the appropriate person or agency within the State. The "appropriate" person or agency may be one or more persons, or one or more agencies, or a combination. The enacting State should designate that person or agency which has the means to implement, enforce, and regulate the provisions of the Act. For example, authority could be vested in the Office of the Attorney General, a Department of Health, a Division of Public Safety, or such other agency within the State responsible for regulating and enforcing the drug laws. An alternative might be a division of authority whereby one agency might be responsible for controlling drugs under this Article, another agency might be designated to regulate the legitimate industry under Article III, and still another agency might be charged with enforcement. In any event, the ultimate authority for determining the appropriate person or agency is vested in the enacting State.

To bring a substance under control through the administrative procedures, the designated State authority will make findings with respect to the eight criteria hereinafter enumerated and issue an order controlling the given substance, if it has a potential for abuse. To avoid potential State Constitutional problems, as well as allegations of improper legislative delegation of authority, a procedure has been set out which will require substances controlled by Federal laws to be controlled under the State law after the designated authority is notified and after the expiration of thirty days from the date of publication in the Federal Register of a final order controlling the substance under Federal law. However, the designated authority in the State may object to inclusion of the substance under this Act. It must give public notice of its objections and afford an opportunity for any interested party to be heard on the matter. The designated authority makes a final decision based upon that hearing, which is considered final unless specifically acted upon in a contrary manner by the legislature. If the designated authority publicly objects to inclusion of a substance under the controls of this Act, control is automatically stayed pending the outcome of the hearing and the designated authority's final decision. Once a final decision is rendered controlling the substance, the stay automatically terminates and the substance is deemed controlled under this Act.

The eight criteria to be considered with regard to a substance are as follows:

Section 201 [see compiler's comment] sets out the criteria to be considered for the control and classification of drugs into the several schedules. These criteria consist of the degree of their abuse potential, known effect, harmfulness and level of accepted medical use. All controlled substances are contained in either Schedule I, II, III, IV or V. This classification achieves one of the main objectives of the Uniform Act, which is to create a coordinated, codified system of drug control and regulation.

The Act recognizes that some States have had more stringent laws relating to substances than did the former Federal laws. The Uniform Act follows the federal Controlled Substances Act and lists all of the controlled substances in five schedules which are identical with the Federal law. The Uniform Act is not intended to prevent a State from adding or removing substances from the schedules, or from reclassifying substances from one schedule to another, provided the procedures specified in Section 201 are followed.

(1) Its actual or relative potential for abuse—

These are the criteria which will be used most often to control drugs and will provide the basis for the greatest controversy. The term "potential for abuse" is found in the definition of a "depressant or stimulant drug" in the Drug Control Amendments of 1965 (21 U.S.C. 201(v)) and is characterized further in the regulations (21 CFR 166.2(e)) promulgated under those regulations as follows:

"The Director of the Bureau of Narcotics and Dangerous Drugs may determine that a substance has a potential for abuse because of its depressant or stimulant effect on the central nervous system or its hallucinogenic effect if:

"(1) There is evidence that individuals are taking the drug or drugs containing such a substance in amounts sufficient to create a hazard to their health or to the safety of other individuals or of the community; or

"(2) There is significant diversion of the drug or drugs containing such a substance from legitimate drug channels; or

"(3) Individuals are taking the drug or drugs containing such a substance on their own initiative rather than on the basis of medical advice from a practitioner licensed by law to administer such drugs in the course of his professional practice; or

"(4) The drug or drugs containing such a substance are new drugs so related in their action to a drug or drugs already listed as having a potential for abuse to make it likely that the drug will have the same potentiality for abuse as such drugs, thus making it reasonable to assume that there may be significant diversions from legitimate channels, significant use contrary to or without medical advice, or that it has a substantial capability of creating hazards to the health of the user or to the safety of the community."

These regulations follow and extend the suggestions contained in House Report No. 130, 89th Congress, First Session, page 7 (1965).

The report went further in its discussion of the "potential" aspect of the term. It stated that it did not intend that potential for abuse be determined on the basis of "isolated or occasional non-therapeutic purposes." The House Interstate and Foreign Commerce Committee felt that there must exist "a substantial potential for the occurrence of significant diversions from legitimate channels, significant use by individuals contrary to professional advice, or substantial capability of creating hazards to the health of the user or the safety of the community." (at page 7)

There are two points that should be emphasized in this definition. First, the House Committee was speaking of "potential" rather than "actual" abuse. In considering a drug for control, it would not be necessary to show that abuse presently exists but only that there are indications of a potential for abuse. This is borne out by the Committee's statement that "the Secretary of Health, Education, and Welfare should not be required to wait until a number of lives have been destroyed or substantial problems have already arisen before designating a drug as subject to controls of the bill." (at page 7). Thus, the incidence of present abuse is not the test which must be applied. The test is a determination of future or potential abuse. The second point of emphasis is that in speaking of "substantial" potential the term "substantial" means more than a mere scintilla of isolated abuse, but less than a preponderance. Therefore, documentation that, say, several hundred thousand dosage units of a drug have been diverted would be "substantial" evidence of abuse despite the fact that tens of millions of dosage units of that drug are legitimately used in the same time period. The normal way in which such diversion is shown is by accountability audits of the legitimate sources of distribution, such as manufacturers, wholesalers, pharmacies and doctors.

Misuse of a drug in suicides and attempted suicides, as well as injuries resulting from unsupervised use also would be regarded as indicative of a drug's potential for abuse.

(2) Scientific evidence of its pharmacological effects—

The state of knowledge with respect to the uses of a specific drug are, of course, major considerations, e. g., it is vital to know whether or not a drug has an hallucinogenic effect if it is to be controlled because of that effect.

(3) The statement of current scientific knowledge regarding the substance—

Criteria (2) and (3) are closely related. However, (2) is primarily interested in pharmacological effects and (3) deals with all scientific knowledge with respect to the substance.

(4) Its history and current pattern of abuse—

To determine whether or not a drug should be controlled, the designated State authority must know the pattern of abuse of that substance, including the social, economic and ecological characteristics of the segments of the population involved in such abuse.

(5) The scope, duration, and significance of abuse—

Not only must the designated State authority know the pattern of abuse, but it must know whether the abuse is widespread. It must also know whether it is a passing fad, like smoking banana peels, or whether it is a significant chronic abuse problem like heroin addiction. In reaching this decision, the State authority should consider the economics of regulation and enforcement attendant to such a decision. In addition, it should be aware of the social significance and impact of such a decision upon those people, especially the young, that would be affected by it.

(6) What, if any, risk there is to the public health—

The designated State authority must have been the best available knowledge of the pharmacological properties of any drug under consideration. If a drug creates no danger to the public health, it would be inappropriate to control the drug under this Act.

(7) Its psychic or physiological dependence liability—

There must be an assessment of the extent to which a drug is physically addictive or psychologically habit forming, if such information is known.

(8) Whether the substance is an immediate precursor of a substance already controlled—

This criterion allows inclusion of immediate precursors on this basis alone into the appropriate schedule and thus safeguards against possibilities of clandestine manufacture.

The overall intent of this Section is to create reasonable flexibility within the Uniform Act so that, as new substances are discovered or found to have an abuse potential, they can speedily be brought under control without constant resort to the legislature. Such flexibility will allow the laws to keep in step with new trends in drug abuse and new scientific information. States should consider establishing a Scientific Advisory Committee consisting of leading medical and pharmaceutical professionals to advise the appropriate person or agency on control of substances.

This Section [§ 301] will permit a State to cover the costs of actual registration and control by charging reasonable fees. However, the Section does not permit a State to charge exorbitant fees as a means of fully implementing the regulatory provisions of the Act and thereby avoiding the need for additional State appropriations.

Compiler's Comments

Source — Montana Codification: Sections 201(part), 301, Uniform Controlled Substances Act. See also 50-32-104 and 50-32-201 through 50-32-205 wherein Montana codified other parts of Section 201 of the Uniform Act. The commissioners' notes under 50-32-103 are the complete commissioners' notes to Sections 201 and 301 of the Uniform Act.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Board of Pharmacy, Title 37, ch. 7, part 2.

Administrative Rules

ARM 24.174.401 Fee schedule.

Title 24, chapter 174, subchapter 14, ARM Dangerous Drug Act.

50-32-104. Board's authority limited. Authority to control under 50-32-103 does not extend to distilled spirits, liquor, wine, malt beverages, beer, porter, ale, stout, or tobacco.

History: En. Sec. 2, Ch. 412, L. 1973; amd. Sec. 2, Ch. 350, L. 1974; R.C.M. 1947, 54-302(5).

Commissioners' Note

The Act vests the authority to administer its provisions in the appropriate person or agency within the State. The "appropriate" person or agency may be one or more persons, or one or more agencies, or a combination. The enacting State should designate that person or agency which has the means to

implement, enforce, and regulate the provisions of the Act. For example, authority could be vested in the Office of the Attorney General, a Department of Health, a Division of Public Safety, or such other agency within the State responsible for regulating and enforcing the drug laws. An alternative might be a division of authority whereby one agency might be responsible for controlling drugs under this Article, another agency might be designated to regulate the legitimate industry under Article III, and still another agency might be charged with enforcement. In any event, the ultimate authority for determining the appropriate person or agency is vested in the enacting State.

To bring a substance under control through the administrative procedures, the designated State authority will make findings with respect to the eight criteria hereinafter enumerated and issue an order controlling the given substance, if it has a potential for abuse. To avoid potential State Constitutional problems, as well as allegations of improper legislative delegation of authority, a procedure has been set out which will require substances controlled by Federal laws to be controlled under the State law after the designated authority is notified and after the expiration of thirty days from the date of publication in the Federal Register of a final order controlling the substance under Federal law. However, the designated authority in the State may object to inclusion of the substance under this Act. It must give public notice of its objections and afford an opportunity for any interested party to be heard on the matter. The designated authority makes a final decision based upon that hearing, which is considered final unless specifically acted upon in a contrary manner by the legislature. If the designated authority publicly objects to inclusion of a substance under the controls of this Act, control is automatically stayed pending the outcome of the hearing and the designated authority's final decision. Once a final decision is rendered controlling the substance, the stay automatically terminates and the substance is deemed controlled under this Act.

The eight criteria to be considered with regard to a substance are as follows:

Section 201 [see compiler's comment] sets out the criteria to be considered for the control and classification of drugs into the several schedules. These criteria consist of the degree of their abuse potential, known effect, harmfulness and level of accepted medical use. All controlled substances are contained in either Schedule I, II, III, IV or V. This classification achieves one of the main objectives of the Uniform Act, which is to create a coordinated, codified system of drug control and regulation.

The Act recognizes that some States have had more stringent laws relating to substances than did the former Federal laws. The Uniform Act follows the Federal Controlled Substances Act and lists all of the controlled substances in five schedules which are identical with the Federal law. The Uniform Act is not intended to prevent a State from adding or removing substances from the schedules, or from reclassifying substances from one schedule to another, provided the procedures specified in Section 201 are followed.

(1) Its actual or relative potential for abuse—

These are the criteria which will be used most often to control drugs and will provide the basis for the greatest controversy. The term "potential for abuse" is found in the definition of a "depressant or stimulant drug" in the Drug Control Amendments of 1965 (21 U.S.C. 201(v)) and is characterized further in the regulations (21 CFR 166.2(e)) promulgated under those regulations as follows:

"The Director of the Bureau of Narcotics and Dangerous Drugs may determine that a substance has a potential for abuse because of its depressant or stimulant effect on the central nervous system or its hallucinogenic effect if:

"(1) There is evidence that individuals are taking the drug or drugs containing such a substance in amounts sufficient to create a hazard to their health or to the safety of other individuals or of the community; or

"(2) There is significant diversion of the drug or drugs containing such a substance from legitimate drug channels; or

"(3) Individuals are taking the drug or drugs containing such a substance on their own initiative rather than on the basis of medical advice from a practitioner licensed by law to administer such drugs in the course of his professional practice; or

"(4) The drug or drugs containing such a substance are new drugs so related in their action to a drug or drugs already listed as having a potential for abuse to make it likely that the drug will have the same potentiality for abuse as such drugs, thus making it reasonable to assume that there may be significant diversions from legitimate channels, significant use contrary to or without medical advice, or that it has a substantial capability of creating hazards to the health of the user or to the safety of the community."

These regulations follow and extend the suggestions contained in House Report No. 130, 89th Congress, First Session, page 7 (1965).

The report went further in its discussion of the "potential" aspect of the term. It stated that it did not intend that potential for abuse be determined on the basis of "isolated or occasional non-therapeutic purposes." The House Interstate and Foreign Commerce Committee felt that there must exist "a substantial potential for the occurrence of significant diversions from legitimate channels, significant use by individuals contrary to professional advice, or substantial capability of creating hazards to the health of the user or the safety of the community." (at page 7)

There are two points that should be emphasized in this definition. First, the House Committee was speaking of "potential" rather than "actual" abuse. In considering a drug for control, it would not be necessary to show that abuse presently exists but only that there are indications of a potential for abuse. This is borne out by the Committee's statement that "the Secretary of Health, Education, and Welfare should not be required to wait until a number of lives have been destroyed or substantial problems have already arisen before designating a drug as subject to controls of the bill." (at page 7). Thus, the incidence of present abuse is not the test which must be applied. The test is a determination of future or potential abuse. The second point of emphasis is that in speaking of "substantial" potential the term "substantial" means more than a mere scintilla of isolated abuse, but less than a preponderance. Therefore, documentation that, say, several hundred thousand dosage units of a drug have been diverted would be "substantial" evidence of abuse despite the fact that tens of millions of dosage units of that drug are legitimately used in the same time period. The normal way in which such diversion is shown is by accountability audits of the legitimate sources of distribution, such as manufacturers, wholesalers, pharmacies and doctors.

Misuse of a drug in suicides and attempted suicides, as well as injuries resulting from unsupervised use also would be regarded as indicative of a drug's potential for abuse.

(2) Scientific evidence of its pharmacological effects—

The state of knowledge with respect to the uses of a specific drug are, of course, major considerations, e. g., it is vital to know whether or not a drug has an hallucinogenic effect if it is to be controlled because of that effect.

(3) The statement of current scientific knowledge regarding the substance—

Criteria (2) and (3) are closely related. However, (2) is primarily interested in pharmacological effects and (3) deals with all scientific knowledge with respect to the substance.

(4) Its history and current pattern of abuse—

To determine whether or not a drug should be controlled, the designated State authority must know the pattern of abuse of that substance, including the social, economic and ecological characteristics of the segments of the population involved in such abuse.

(5) The scope, duration, and significance of abuse—

Not only must the designated State authority know the pattern of abuse, but it must know whether the abuse is widespread. It must also know whether it is a passing fad, like smoking banana peels, or whether it is a significant chronic abuse problem like heroin addiction. In reaching this decision, the State authority should consider the economics of regulation and enforcement attendant to such a decision. In addition, it should be aware of the social significance and impact of such a decision upon those people, especially the young, that would be affected by it.

(6) What, if any, risk there is to the public health—

The designated State authority must have been the best available knowledge of the pharmacological properties of any drug under consideration. If a drug creates no danger to the public health, it would be inappropriate to control the drug under this Act.

(7) Its psychic or physiological dependence liability—

There must be an assessment of the extent to which a drug is physically addictive or psychologically habit forming, if such information is known.

(8) Whether the substance is an immediate precursor of a substance already controlled—

This criterion allows inclusion of immediate precursors on this basis alone into the appropriate schedule and thus safeguards against possibilities of clandestine manufacture.

The overall intent of this Section is to create reasonable flexibility within the Uniform Act so that, as new substances are discovered or found to have an abuse potential, they can speedily be brought under control without constant resort to the legislature. Such flexibility will allow the laws to keep in step with new trends in drug abuse and new scientific information. States should consider establishing a

Scientific Advisory Committee consisting of leading medical and pharmaceutical professionals to advise the appropriate person or agency on control of substances.

Compiler's Comments

Source: Section 201(part), Uniform Controlled Substances Act. See also 50-32-103 and 50-32-201 through 50-32-205 wherein Montana codified other parts of Section 201 of the Uniform Act. The commissioners' note under 50-32-104 is the complete commissioners' note to Section 201 of the Uniform Act.

Cross-References

Control of liquor, beer, and wine, Title 16, ch. 3.

50-32-105. Board to conduct educational programs. (1) The board shall carry out educational programs designed to prevent and deter misuse and abuse of dangerous drugs.

(2) In connection with these programs, it may:

(a) promote better recognition of the problems of misuse and abuse of dangerous drugs within the regulated industry and among interested groups and organizations;

(b) assist the regulated industry and interested groups and organizations in contributing to the reduction of misuse and abuse of dangerous drugs;

(c) consult with interested groups and organizations to aid them in solving administrative and organizational problems;

(d) evaluate procedures, projects, techniques, and controls conducted or proposed as part of educational programs on misuse and abuse of dangerous drugs;

(e) disseminate the results of research on misuse and abuse of dangerous drugs to promote a better public understanding of what problems exist and what can be done to combat them; and

(f) assist in the education and training of state and local law enforcement officials in their efforts to control misuse and abuse of dangerous drugs.

History: En. Sec. 23, Ch. 412, L. 1973; amd. Sec. 11, Ch. 350, L. 1974; R.C.M. 1947, 54-323(1).

Commissioners' Note

[Sections 50-32-105 and 50-32-106], setting out the education and research provisions, [are] designed to make it clear that education and research are an integral part of the total law enforcement effort. Broad language is used in order to provide maximum latitude.

Of primary importance are subsections [(3) and (4) of 50-32-106] authorizing persons engaged in legitimate research to withhold the identities of research subjects and allowing the State to authorize possession and distribution of controlled substances. These provisions will tie into proposed Federal law and will allow legitimate researchers to carry on much needed research without fear of exposing either themselves or their research subjects to criminal prosecution.

It should be noted that a grant of Federal immunity would preempt any State grant or denial of immunity. However, the converse would not be true, and a researcher in possession of controlled substances under a State grant of immunity could be prosecuted under Federal law if the Federal government elected not to confer immunity. However, it is unlikely that this situation will arise.

Compiler's Comments

Source: Section 508(part), Uniform Controlled Substances Act. See also 50-32-106 wherein Montana codified part of Section 508 of the Uniform Act. The commissioners' note under 50-32-105 is the complete commissioners' note to Section 508 of the Uniform Act.

Cross-References

Teachers required to complete course in drug and alcohol abuse, 20-25-603.

50-32-106. Board to encourage research. (1) The board shall encourage research on misuse and abuse of dangerous drugs.

(2) In connection with the research and in furtherance of the enforcement of this chapter, it may:

(a) establish methods to assess accurately the effects of dangerous drugs and identify and characterize those with potential for abuse;

(b) make studies and undertake programs of research to:

(i) develop new or improved approaches, techniques, systems, equipment, and devices to strengthen the enforcement of this chapter;
(ii) determine patterns of misuse and abuse of dangerous drugs and the social effects thereof;
and
(iii) improve methods for preventing, predicting, understanding, and dealing with the misuse and abuse of dangerous drugs; and

(c) request the department to enter into contracts with public agencies, institutions of higher education, and private organizations or individuals for the purpose of conducting research, demonstrations, or special projects which bear directly on misuse and abuse of dangerous drugs.

(3) The board may authorize persons engaged in research on the use and effects of dangerous drugs to withhold the names and other identifying characteristics of individuals who are the subjects of the research. Persons who obtain this authorization are not compelled in any civil, criminal, administrative, legislative, or other proceeding to identify the individuals who are the subjects of research for which the authorization was obtained.

(4) The board may authorize the possession and distribution of dangerous drugs by persons engaged in research. Persons who obtain this authorization are exempt from state prosecution for possession and distribution of dangerous drugs to the extent of the authorization.

History: En. Sec. 23, Ch. 412, L. 1973; amd. Sec. 11, Ch. 350, L. 1974; R.C.M. 1947, 54-323(2) thru (4).

Commissioners' Note

[See commissioners' note to 50-32-105.]

Compiler's Comments

Source: Section 508(part), Uniform Controlled Substances Act. See also 50-32-105 wherein Montana codified part of Section 508 of the Uniform Controlled Substances Act. The commissioners' note under 50-32-105 is the complete commissioners' note to Section 508 of the Uniform Act.

Part 2 Scheduling of Dangerous Drugs

Part Compiler's Comments

Source of 1983 Amendments: The updated list of controlled substances is from Parts 1308.11 through 1308.15 of the Code of Federal Regulations.

Part Cross-References

Regulation of dispensing of drugs by practitioners, Title 37, ch. 2, part 1.

Offenses involving dangerous drugs, Title 45, ch. 9.

Part Administrative Rules

ARM 24.174.1412 Additions, deletions, and rescheduling of dangerous drugs.

Part Case Notes

Possession of Each Drug in Schedules a Separate Crime: It was proper for the County Attorney to charge defendant with three counts for possession of three prohibited drugs. The Legislature intended to provide a distinct crime for each of the drugs listed in the schedules. *St. v. Meader*, 184 M 32, 601 P2d 386 (1979).

Failure to Republish Schedule: Failure of the Board and the Department to revise and republish schedules as required by 50-32-209 did not result in the decriminalization of dangerous drugs. The Legislature intended the original five schedules to be effective until the Board of Pharmacists and the Department of Health and Environmental Sciences (now Department of Public Health and Human Services) carry out their statutory duty. *St. v. Meader*, 184 M 32, 601 P2d 386 (1979), followed in *St. v. Briner*, 253 M 158, 831 P2d 1365, 49 St. Rep. 402 (1992).

50-32-201. General criteria to be considered. In making a determination regarding a drug, the board shall consider the following:

- (1) the actual or relative potential for abuse;
- (2) the scientific evidence of its pharmacological effect, if known;

- (3) the state of current scientific knowledge regarding the drug;
- (4) the history and current pattern of abuse;
- (5) the scope, duration, and significance of abuse;
- (6) the risk to the public health;
- (7) the potential of the drug to produce psychic or physiological dependence liability; and
- (8) whether the drug is an immediate precursor of a drug already controlled under this chapter.

History: En. Sec. 2, Ch. 412, L. 1973; amd. Sec. 2, Ch. 350, L. 1974; R.C.M. 1947, 54-302(part).

Commissioners' Note

The Act vests the authority to administer its provisions in the appropriate person or agency within the State. The "appropriate" person or agency may be one or more persons, or one or more agencies, or a combination. The enacting State should designate that person or agency which has the means to implement, enforce, and regulate the provisions of the Act. For example, authority could be vested in the Office of the Attorney General, a Department of Health, a Division of Public Safety, or such other agency within the State responsible for regulating and enforcing the drug laws. An alternative might be a division of authority whereby one agency might be responsible for controlling drugs under this Article, another agency might be designated to regulate the legitimate industry under Article III, and still another agency might be charged with enforcement. In any event, the ultimate authority for determining the appropriate person or agency is vested in the enacting State.

To bring a substance under control through the administrative procedures, the designated State authority will make findings with respect to the eight criteria hereinafter enumerated and issue an order controlling the given substance, if it has a potential for abuse. To avoid potential State Constitutional problems, as well as allegations of improper legislative delegation of authority, a procedure has been set out which will require substances controlled by Federal laws to be controlled under the State law after the designated authority is notified and after the expiration of thirty days from the date of publication in the Federal Register of a final order controlling the substance under Federal law. However, the designated authority in the State may object to inclusion of the substance under this Act. It must give public notice of its objections and afford an opportunity for any interested party to be heard on the matter. The designated authority makes a final decision based upon that hearing, which is considered final unless specifically acted upon in a contrary manner by the legislature. If the designated authority publicly objects to inclusion of a substance under the controls of this Act, control is automatically stayed pending the outcome of the hearing and the designated authority's final decision. Once a final decision is rendered controlling the substance, the stay automatically terminates and the substance is deemed controlled under this Act.

The eight criteria to be considered with regard to a substance are as follows:

Section 201 [see compiler's comment] sets out the criteria to be considered for the control and classification of drugs into the several schedules. These criteria consist of the degree of their abuse potential, known effect, harmfulness and level of accepted medical use. All controlled substances are contained in either Schedule I, II, III, IV or V. This classification achieves one of the main objectives of the Uniform Act, which is to create a coordinated, codified system of drug control and regulation.

The Act recognizes that some States have had more stringent laws relating to substances than did the former Federal laws. The Uniform Act follows the Federal Controlled Substances Act and lists all of the controlled substances in five schedules which are identical with the Federal law. The Uniform Act is not intended to prevent a State from adding or removing substances from the schedules, or from reclassifying substances from one schedule to another, provided the procedures specified in Section 201 are followed.

- (1) Its actual or relative potential for abuse—

These are the criteria which will be used most often to control drugs and will provide the basis for the greatest controversy. The term "potential for abuse" is found in the definition of a "depressant or stimulant drug" in the Drug Control Amendments of 1965 (21 U.S.C. 201(v)) and is characterized further in the regulations (21 CFR 166.2(e)) promulgated under those regulations as follows:

"The Director of the Bureau of Narcotics and Dangerous Drugs may determine that a substance has a potential for abuse because of its depressant or stimulant effect on the central nervous system or its hallucinogenic effect if:

"(1) There is evidence that individuals are taking the drug or drugs containing such a substance in amounts sufficient to create a hazard to their health or to the safety of other individuals or of the community; or

"(2) There is significant diversion of the drug or drugs containing such a substance from legitimate drug channels; or

"(3) Individuals are taking the drug or drugs containing such a substance on their own initiative rather than on the basis of medical advice from a practitioner licensed by law to administer such drugs in the course of his professional practice; or

"(4) The drug or drugs containing such a substance are new drugs so related in their action to a drug or drugs already listed as having a potential for abuse to make it likely that the drug will have the same potentiality for abuse as such drugs, thus making it reasonable to assume that there may be significant diversions from legitimate channels, significant use contrary to or without medical advice, or that it has a substantial capability of creating hazards to the health of the user or to the safety of the community."

These regulations follow and extend the suggestions contained in House Report No. 130, 89th Congress, First Session, page 7 (1965).

The report went further in its discussion of the "potential" aspect of the term. It stated that it did not intend that potential for abuse be determined on the basis of "isolated or occasional non-therapeutic purposes." The House Interstate and Foreign Commerce Committee felt that there must exist "a substantial potential for the occurrence of significant diversions from legitimate channels, significant use by individuals contrary to professional advice, or substantial capability of creating hazards to the health of the user or the safety of the community." (at page 7)

There are two points that should be emphasized in this definition. First, the House Committee was speaking of "potential" rather than "actual" abuse. In considering a drug for control, it would not be necessary to show that abuse presently exists but only that there are indications of a potential for abuse. This is borne out by the Committee's statement that "the Secretary of Health, Education, and Welfare should not be required to wait until a number of lives have been destroyed or substantial problems have already arisen before designating a drug as subject to controls of the bill." (at page 7). Thus, the incidence of present abuse is not the test which must be applied. The test is a determination of future or potential abuse. The second point of emphasis is that in speaking of "substantial" potential the term "substantial" means more than a mere scintilla of isolated abuse, but less than a preponderance. Therefore, documentation that, say, several hundred thousand dosage units of a drug have been diverted would be "substantial" evidence of abuse despite the fact that tens of millions of dosage units of that drug are legitimately used in the same time period. The normal way in which such diversion is shown is by accountability audits of the legitimate sources of distribution, such as manufacturers, wholesalers, pharmacies and doctors.

Misuse of a drug in suicides and attempted suicides, as well as injuries resulting from unsupervised use also would be regarded as indicative of a drug's potential for abuse.

(2) Scientific evidence of its pharmacological effects—

The state of knowledge with respect to the uses of a specific drug are, of course, major considerations, e. g., it is vital to know whether or not a drug has an hallucinogenic effect if it is to be controlled because of that effect.

(3) The statement of current scientific knowledge regarding the substance—

Criteria (2) and (3) are closely related. However, (2) is primarily interested in pharmacological effects and (3) deals with all scientific knowledge with respect to the substance.

(4) Its history and current pattern of abuse—

To determine whether or not a drug should be controlled, the designated State authority must know the pattern of abuse of that substance, including the social, economic and ecological characteristics of the segments of the population involved in such abuse.

(5) The scope, duration, and significance of abuse—

Not only must the designated State authority know the pattern of abuse, but it must know whether the abuse is widespread. It must also know whether it is a passing fad, like smoking banana peels, or whether it is a significant chronic abuse problem like heroin addiction. In reaching this decision, the State authority should consider the economics of regulation and enforcement attendant to such a decision. In addition, it should be aware of the social significance and impact of such a decision upon those people, especially the young, that would be affected by it.

(6) What, if any, risk there is to the public health—

The designated State authority must have been the best available knowledge of the pharmacological properties of any drug under consideration. If a drug creates no danger to the public health, it would be inappropriate to control the drug under this Act.

(7) Its psychic or physiological dependence liability—

There must be an assessment of the extent to which a drug is physically addictive or psychologically habit forming, if such information is known.

(8) Whether the substance is an immediate precursor of a substance already controlled—

This criterion allows inclusion of immediate precursors on this basis alone into the appropriate schedule and thus safeguards against possibilities of clandestine manufacture.

The overall intent of this Section is to create reasonable flexibility within the Uniform Act so that, as new substances are discovered or found to have an abuse potential, they can speedily be brought under control without constant resort to the legislature. Such flexibility will allow the laws to keep in step with new trends in drug abuse and new scientific information. States should consider establishing a Scientific Advisory Committee consisting of leading medical and pharmaceutical professionals to advise the appropriate person or agency on control of substances.

Compiler's Comments

Source: Section 201(part), Uniform Controlled Substances Act. See also 50-32-103, 50-32-104, and 50-32-202 through 50-32-205 wherein Montana codified other parts of Section 201 of the Uniform Act. The commissioners' note under 50-32-201 is the complete commissioners' note to Section 201 of the Uniform Act.

50-32-202. Designation of drug as dangerous drug. After considering the factors enumerated in 50-32-201, the board shall make findings with respect thereto, and if it finds the drug has a potential for abuse, it shall designate such drug a dangerous drug in the manner set forth in the Montana Administrative Procedure Act.

History: En. Sec. 2, Ch. 412, L. 1973; amd. Sec. 2, Ch. 350, L. 1974; R.C.M. 1947, 54-302(2).

Commissioners' Note

[See commissioners' note to 50-32-201.]

Compiler's Comments

Source: Section 201(part), Uniform Controlled Substances Act. See also 50-32-103, 50-32-104, 50-32-201, and 50-32-203 through 50-32-205 wherein Montana codified other parts of Section 201 of the Uniform Act. The commissioners' note under 50-32-201 is the complete commissioners' note to Section 201 of the Uniform Act.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

50-32-203. Effect of rescheduling under federal law. If any drug is designated, rescheduled, or deleted as a "controlled substance" under federal law and notice thereof is given to the board, the board shall similarly control the drug under this chapter after the expiration of 30 days from publication in the Federal Register of a final order designating a drug as a "controlled substance" or rescheduling or deleting a drug unless, within that 30-day period, the board objects to inclusion, rescheduling, or deletion. In that case, the board shall cause the reasons for objection to be published and afford all interested parties an opportunity to be heard. At the conclusion of the hearing, the department shall publish the board's decision which shall be final unless altered thereafter by the board or by statute. Upon publication of objection to inclusion, rescheduling, or deletion under this chapter by the board, control under this chapter is stayed until the board's decision is published.

History: En. Sec. 2, Ch. 412, L. 1973; amd. Sec. 2, Ch. 350, L. 1974; R.C.M. 1947, 54-302(4).

Commissioners' Note

[See commissioners' note to 50-32-201.]

Compiler's Comments

Source: Section 201(part), Uniform Controlled Substances Act. See also 50-32-103, 50-32-104, 50-32-201, 50-32-202, 50-32-204, and 50-32-205 wherein Montana codified other parts of Section 201 of

the Uniform Act. The commissioners' note under 50-32-201 is the complete commissioners' note to Section 201 of the Uniform Act.

50-32-204. Immediate precursors. If the board designates a drug as an immediate precursor, drugs which are precursors of the controlled precursor shall not be subject to control solely because they are precursors of the controlled precursor.

History: En. Sec. 2, Ch. 412, L. 1973; amd. Sec. 2, Ch. 350, L. 1974; R.C.M. 1947, 54-302(3).

Commissioners' Note

[See commissioners' note to 50-32-201.]

Compiler's Comments

Source: Section 201(part), Uniform Controlled Substances Act. See also 50-32-103, 50-32-104, 50-32-201 through 50-32-203, and 50-32-205 wherein Montana codified other parts of Section 201 of the Uniform Act. The commissioners' note under 50-32-201 is the complete commissioners' note to Section 201 of the Uniform Act.

Cross-References

Criminal possession of precursors to dangerous drugs, 45-9-107.

50-32-205. Nonprescription drugs not to be scheduled. The board shall exclude any nonnarcotic drug from a schedule if the drug may, under the Federal Food, Drug, and Cosmetic Act, be lawfully sold over the counter without a prescription.

History: En. Sec. 2, Ch. 412, L. 1973; amd. Sec. 2, Ch. 350, L. 1974; R.C.M. 1947, 54-302(6); amd. Sec. 5, Ch. 472, L. 1989; amd. Sec. 1, Ch. 61, L. 2009.

Commissioners' Note

[See commissioners' note to 50-32-201.]

Compiler's Comments

2009 Amendment: Chapter 61 after "Cosmetic Act" deleted "and 50-31-307(2)(b) of the Montana Food, Drug, and Cosmetic Act". Amendment effective March 25, 2009.

1989 Amendment: Corrected internal reference; and made minor change in phraseology. Amendment effective April 8, 1989.

Source: Section 201(part), Uniform Controlled Substances Act. See also 50-32-103, 50-32-104, and 50-32-201 through 50-32-204 wherein Montana codified other parts of Section 201 of the Uniform Act. The commissioners' note under 50-32-201 is the complete commissioners' note to Section 201 of the Uniform Act.

Case Notes

Sale of Over-the-Counter Nasal Products — No Exclusion of Methamphetamine: Barker was convicted of possession of methamphetamine but sought postconviction relief based on the argument that because over-the-counter nasal products contain methamphetamine, the Board of Pharmacy had wrongly failed to exclude the drug from a schedule. The Supreme Court concluded that the District Court did not err when it failed to grant Barker's petition for postconviction relief because Barker could not demonstrate that either state or federal law allows the over-the-counter sale of the drug itself. The Supreme Court also noted that this same argument had been rejected in *U.S. v. Caperell*, 938 F2d 975 (9th Cir. 1991). *St. v. Barker*, 257 M 31, 847 P2d 300, 50 St. Rep. 147 (1993).

50-32-206. Use of names of scheduled drugs. The dangerous drugs listed or to be listed in the schedules in 50-32-222, 50-32-224, 50-32-226, 50-32-229, and 50-32-232 are included by whatever official, common, usual, chemical, or trade name designated.

History: En. Sec. 3, Ch. 412, L. 1973; amd. Sec. 3, Ch. 350, L. 1974; R.C.M. 1947, 54-303.

Compiler's Comments

Source: Section 202, Uniform Controlled Substances Act.

50-32-207. Order forms for drugs in Schedules I and II. Dangerous drugs in Schedules I and II shall be distributed by a registrant to another registrant only pursuant to an order form. Compliance with the provisions of federal law respecting order forms shall be deemed compliance with this section unless the board prescribes particular forms to be used.

History: En. Sec. 21, Ch. 412, L. 1973; R.C.M. 1947, 54-321.

Commissioners' Note

This Section requires order forms for the distribution of any Schedule I or II substances. It, too, is tied into the proposed Federal system and compliance with the Federal order form requirements should be sufficient to fulfill any State order form requirements. Thus, economic waste resulting from duplication will again be avoided.

Compiler's Comments

Source: Section 307, Uniform Controlled Substances Act.

50-32-208. Prescription and medical requirements for scheduled drugs — penalty. (1) (a) No dangerous drug in Schedule II may be dispensed without the written or electronic prescription of a practitioner.

(b) In emergency situations, as defined by rule of the board, Schedule II drugs may be dispensed upon a practitioner's oral prescription reduced promptly to writing and filed by the pharmacy. Prescriptions must be retained in conformity with the requirements of 50-32-309. A prescription for a Schedule II drug may not be refilled.

(2) A dangerous drug included in Schedule III or IV, which is a prescription drug as determined under the federal or Montana food, drug, and cosmetic acts, may not be dispensed without a written, electronic, or oral prescription of a practitioner. The prescription may not be filled or refilled more than 6 months after the date of the prescription or be refilled more than five times unless renewed by the practitioner.

(3) A dangerous drug included in Schedule V may not be distributed or dispensed other than for a medical purpose.

(4) A person who violates the provisions of this section is guilty of a misdemeanor and upon conviction may be fined an amount not to exceed \$1,000 or be imprisoned in the county jail for a term not to exceed 1 year, or both fined and imprisoned.

History: En. Sec. 22, Ch. 412, L. 1973; amd. Sec. 10, Ch. 350, L. 1974; R.C.M. 1947, 54-322; amd. Sec. 13, Ch. 37, L. 1979; amd. Sec. 13, Ch. 379, L. 1981; amd. Sec. 3, Ch. 206, L. 2015.

Commissioners' Note

This Section draws on existing State and Federal law with the exception that emergency provisions have been added with regard to the filling of oral prescriptions. This was done in recognition of common accepted practice between physicians and pharmacists.

Compiler's Comments

2015 Amendment: Chapter 206 in (1)(a) and (2) inserted "electronic"; and made minor changes in style. Amendment effective April 8, 2015.

1981 Amendment: Added (5) providing a penalty.

Source: Section 308, Uniform Controlled Substances Act.

Cross-References

Regulation by Board of Pharmacy of sale of drugs and medicine, 37-7-201.

Regulation of prescriptions, Title 37, ch. 7, part 4.

50-32-209. Republication of schedules. The board shall revise and the department shall republish additions, deletions, or other changes to the schedules of dangerous drugs at times determined by the board. For the purposes of this section, the mandate to republish additions, deletions, or other changes is satisfied by publication in the Administrative Rules of Montana pursuant to Title 2, chapter 4.

History: En. Sec. 14, Ch. 412, L. 1973; amd. Sec. 4, Ch. 350, L. 1974; R.C.M. 1947, 54-314; amd. Sec. 14, Ch. 379, L. 1981; amd. Sec. 1, Ch. 113, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 113 in first sentence, after "republish", inserted "additions, deletions, or other changes to" and at end substituted "at times determined by the board" for "annually"; in second sentence, after "republish", inserted "additions, deletions, or other changes"; and made minor changes in style. Amendment effective March 20, 1997.

Saving Clause: Section 9, Ch. 113, L. 1997, was a saving clause.

1981 Amendment: Added the last sentence of the section relating to publication in the administrative rules.

Source: The first sentence was derived from Section 213, Uniform Controlled Substances Act.

Administrative Rules

ARM 24.174.1412 Additions, deletions, and rescheduling of dangerous drugs.

Case Notes

Failure to Republish Schedules: Failure to revise and republish schedules did not result in the decriminalization of dangerous drugs. The Legislature did not intend the Board of Pharmacists to have the power, by inaction, to decriminalize the possession of all types of drugs and substances. The Legislature intended the original five schedules to be effective until the Board and the Department of Health and Environmental Sciences (now Department of Public Health and Human Services) carry out their statutory duty. *St. v. Meader*, 184 M 32, 601 P2d 386 (1979), followed in *St. v. Briner*, 253 M 158, 831 P2d 1365, 49 St. Rep. 402 (1992).

50-32-210 through 50-32-220 reserved.

50-32-221. Criteria for placement of drug in Schedule I. The board shall place a drug in Schedule I if it finds that the drug:

(1) has high potential for abuse; and

(2) has no accepted medical use in treatment in the United States or lacks accepted safety for use in treatment under medical supervision.

History: En. Sec. 4, Ch. 412, L. 1973; R.C.M. 1947, 54-304.

Commissioners' Note

Based upon these criteria, hallucinogenic substances and certain narcotic substances are included in the same schedule ([50-32-222]). This is primarily because both groups of drugs have no accepted use in the United States and both have a high potential for abuse. However, hallucinogenic substances in Schedule I are not treated [in the Uniform Act] in the same manner for penalty purposes as narcotic substances. (See Prohibited Acts A, Section 401 [not adopted in Montana].)

Experimental substances found to have a potential for abuse in early testing will also be included in Schedule I. When those substances are accepted by the Federal Food and Drug Administration as being safe and effective, they will then be considered to have an accepted medical use for treatment in the United States, and thus, will be eligible to be shifted to an appropriate schedule based upon the criteria set out in [50-32-223, 50-32-225, 50-32-228, and 50-32-231].

Compiler's Comments

Source: Section 203, Uniform Controlled Substances Act.

50-32-222. Specific dangerous drugs included in Schedule I. Schedule I consists of the drugs and other substances, by whatever official, common, usual, chemical, or brand name designated, listed in this section.

(1) Opiates. Unless specifically excepted or listed in another schedule, any of the following are opiates, including isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of those isomers, esters, ethers, and salts is possible within the specific chemical designation:

(a) acetyl-alpha-methylfentanyl, also known as

N-(1-(1-methyl-2-phenethyl)-4-piperidinyl)-N-phenylacetamide;

(b) acetylmethadol, also known as 4-(dimethylamino)-1-ethyl-2,2-diphenylpentyl acetate or methadyl acetate;

(c) allylprodine, also known as 1-methyl-4-phenyl-3-(prop-2-en-1-yl)piperidin-4-yl propanoate;

(d) alphacetylmethadol, except levo-alphacetylmethadol, also known as levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM;

(e) alphameprodine;

(f) alphamethadol;

(g) alpha-methylfentanyl, also known as (N-[1-(alpha-methyl-beta-phenyl)ethyl-4-piperidyl] propionanilide; 1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine);

(h) alpha-methylthiofentanyl, also known as N-[1-methyl-2-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide;

(i) benzethidine;

(j) betacetylmethadol;

(k) beta-hydroxyfentanyl, also known as N-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-N-phenylpropanamide;

(l) beta-hydroxy-3-methylfentanyl, also known as N-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl]-N-phenylpropanamide;

(m) betameprodine;

(n) betamethadol;

(o) betaprodine;

(p) clonitazene;

(q) dextromoramide;

(r) diampromide;

(s) diethylthiambutene;

(t) difenoxin;

(u) dimenoxadol;

(v) dimepheptanol;

(w) dimethylthiambutene;

(x) dioxaphetyl butyrate;

(y) dipipanone;

(z) ethylmethylthiambutene;

(aa) etonitazene;

(bb) etoxeridine;

(cc) furethidine;

(dd) hydroxypethidine;

(ee) ketobemidone;

(ff) levomoramide;

(gg) levophenacetylmorphan;

(hh) 3-methylfentanyl, also known as N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide;

(ii) 3-methylthiofentanyl, also known as N-[3-methyl-1-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide;

(jj) morpheridine;

(kk) MPPP, also known as desmethylprodine and (1-methyl-4-phenyl-4-propionoxypiperidine);

(ll) noracymethadol;

(mm) norlevorphanol;

(nn) normethadone;

(oo) norpipanone;

(pp) para-fluorofentanyl, also known as N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4-piperidinyl]propanamide;

(qq) PEPAP, also known as (1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine);

(rr) phenadoxone;

(ss) phenampromide;

(tt) phenomorphan;

(uu) phenoperidine;

(vv) piritramide;

(ww) proheptazine;

(xx) properidine;

(yy) propiram;

- (zz) racemoramide;
- (aaa) thiofentanyl, also known as N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidinyl]-propanamide;
- (bbb) tilidine; and
- (ccc) trimeperidine.

(2) For the purposes of subsection (1)(hh), the term "isomer" includes the optical, positional, and geometric isomers.

(3) Opium derivatives. Unless specifically excepted or listed in another schedule, any of the following are opium derivatives, including salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (a) acetorphine;
- (b) acetyldihydrocodeine;
- (c) benzylmorphine;
- (d) codeine methylbromide;
- (e) codeine-N-oxide;
- (f) cyprenorphine;
- (g) desomorphine;
- (h) dihydromorphine;
- (i) drotebanol;
- (j) etorphine, except hydrochloride salt;
- (k) heroin;
- (l) hydromorphanol;
- (m) methyldesorphine;
- (n) methyldihydromorphine;
- (o) morphine methylbromide;
- (p) morphine methylsulfonate;
- (q) morphine-N-oxide;
- (r) myrophine;
- (s) nicocodeine;
- (t) nicomorphine;
- (u) normorphine;
- (v) pholcodine; and
- (w) thebacon.

(4) Hallucinogenic substances. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following is a hallucinogenic substance, including salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (a) alpha-ethyltryptamine, also known as etryptamine, monase, alpha-ethyl-1H-indole-3-ethanamine, 3-(2-aminobutyl) indole, alpha-ET, and AET;
- (b) alpha-methyltryptamine, also known as AMT;
- (c) 4-bromo-2,5-dimethoxyamphetamine, also known as 4-bromo-2,5-dimethoxy-alpha-methylphenethylamine, and 4-bromo-2,5-DMA;
- (d) 4-bromo-2,5-dimethoxyphenethylamine, also known as 2-(4-bromo-2,5-dimethoxyphenyl)-1-aminoethane, alpha-desmethyl DOB, and 2C-B, Nexus;
- (e) 2,5-dimethoxyamphetamine, also known as 2,5-dimethoxy-alpha-methylphenethylamine and 2,5-DMA;
- (f) 2,5-dimethoxy-4-(N)-propylthiophenethylamine, also known as 2C-T-7;
- (g) 3,4-methylenedioxyamphetamine;
- (h) 2,5-dimethoxy-4-ethylamphetamine, also known as DOET;
- (i) 5-methoxy-N,N-diisopropyltryptamine, also known as 5-MeO-DIPT;
- (j) 5-methoxy-N,N-dimethyltryptamine, also known as 5-MeO-DMT;
- (k) 4-methoxyamphetamine, also known as 4-methoxy-alpha-methylphenethylamine;
- (l) 5-methoxy-3,4-methylenedioxyamphetamine;
- (m) 4-methyl-2,5-dimethoxyamphetamine, also known as 4-methyl-2,5-dimethoxy-alpha-methylphenethylamine, DOM, and STP;
- (n) 3,4-methylenedioxymethamphetamine, also known as MDMA;

(o) 3,4-methylenedioxy-N-ethylamphetamine, also known as N-ethyl-alpha-methyl-3,4(methylenedioxy)phenethylamine, N-ethyl MDA, MDE, and MDEA;

(p) N-hydroxy-3,4-methylenedioxyamphetamine, also known as N-hydroxy-alpha-methyl-3,4(methylenedioxy)phenethylamine and N-hydroxy MDA;

(q) 3,4,5-trimethoxyamphetamine;

(r) bufotenine, also known as 3-(beta-dimethylaminoethyl)-5-hydroxyindole, 3-(2-dimethylaminoethyl)-5-indolol, N,N-dimethylserotonin, 5-hydroxy-N,N-dimethyltryptamine, and mappine;

(s) diethyltryptamine, also known as N,N-diethyltryptamine and DET;

(t) dimethyltryptamine, also known as DMT;

(u) hashish;

(v) ibogaine, also known as 7-ethyl-6,6beta,7,8,9,10,12,13-octahydro-2-methoxy-6,9-methano-5H-pyrido [1', 2':1,2] azepine [5,4-b] indole and tabernanthe iboga;

(w) lysergic acid diethylamide, also known as LSD;

(x) marijuana;

(y) mescaline;

(z) parahexyl, also known as 3-hexyl-1-hydroxy-7,8,9,10-tetrahydro-6,8,9-trimethyl-6H-dibenzo[b,d]pyran and synhexyl;

(aa) peyote, meaning all parts of the plant presently classified botanically as *lophophora williamsii* lemaire, whether growing or not; the seed of the plant; any extract from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seed, or extracts;

(bb) N-ethyl-3-piperidyl benzilate;

(cc) N-methyl-3-piperidyl benzilate;

(dd) psilocybin;

(ee) psilocyn;

(ff) tetrahydrocannabinols, including synthetic equivalents of the substances contained in the plant or in the resinous extractives of cannabis, or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity, such as those listed in subsections (4)(ff)(i) through (4)(ff)(iii). Because nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered, are included in the category as follows:

(i) delta 1 (delta 9) cis or trans tetrahydrocannabinol and its optical isomers;

(ii) delta 6 cis or trans tetrahydrocannabinol and its optical isomers; and

(iii) delta 3,4 cis or trans tetrahydrocannabinol and its optical isomers;

(gg) ethylamine analog of phencyclidine, also known as N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl)ethylamine, N-(1-phenylcyclohexyl)ethylamine, cyclohexamine, and PCE;

(hh) pyrrolidine analog of phencyclidine, also known as 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, and PHP;

(ii) thiophene analog of phencyclidine, also known as 1-[1-(2-thienyl)-cyclohexyl]-piperidine, 2-thienyl analog of phencyclidine, TPCP, and TCP;

(jj) 1-[1-(2-thienyl)cyclohexyl]pyrrolidine, also known as TCPy;

(kk) synthetic cannabinoids, including:

(i) unless specifically excepted or listed in another schedule, any chemical compound chemically synthesized from or structurally similar to any material, compound, mixture, or preparation that contains any quantity of a synthetic cannabinoid found in any of the following chemical groups, or any of those groups that contain synthetic cannabinoid salts, isomers, or salts of isomers, whenever the existence of those salts, isomers, or salts of isomers is possible within the specific chemical designation, including all synthetic cannabinoid chemical analogs in the following groups:

(A) naphthoylindoles, whether or not substituted in the indole ring to any extent or the naphthyl ring to any extent;

(B) naphthylmethylindoles, whether or not substituted in the indole ring to any extent or the naphthyl ring to any extent;

(C) naphthoylpyrroles, whether or not substituted in the pyrrole ring to any extent or the naphthyl ring to any extent;

(D) naphthylmethylenes, whether or not substituted in the indene ring to any extent or the naphthyl ring to any extent;

(E) acetylindoles, whether or not substituted in the indole ring to any extent or the acetyl group to any extent;

(F) cyclohexylphenols, whether or not substituted in the cyclohexyl ring to any extent or the phenyl ring to any extent;

(G) dibenzopyrans, whether or not substituted in the cyclohexyl ring to any extent or the phenyl ring to any extent; and

(H) benzoylindoles, whether or not substituted in the indole ring to any extent or the phenyl ring to any extent;

(ii) any compound that has been demonstrated to have agonist binding activity at one or more cannabinoid receptors or is a chemical analog or isomer of a compound that has been demonstrated to have agonist binding activity at one or more cannabinoid receptors;

(iii) 1-pentyl-3-(1-naphthoyl)indole (also known as JWH-018);

(iv) (6aR,10aR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol (also known as HU-210 or 1,1-dimethylheptyl-11-hydroxy-delta8-tetrahydrocannabinol);

(v) 2-(3-hydroxycyclohexyl)-5-(2-methyloctan-2-yl)phenol (also known as CP-47,497), and the dimethylhexyl, dimethyloctyl, and dimethylnonyl homologues of CP-47,497;

(vi) 1-butyl-3-(1-naphthoyl)indole (also known as JWH-073);

(vii) 1-(2-(4-(morpholinyl)ethyl))-3-(1-naphthoyl) indole (also known as JWH-200);

(viii) 1-pentyl-3-(2-methoxyphenylacetyl)indole (also known as JWH-250);

(ix) 1-hexyl-3-(1-naphthoyl)indole (also known as JWH-019);

(x) 1-pentyl-3-(4-chloro-1-naphthoyl)indole (also known as JWH-398);

(xi) JWH-081: 1-pentyl-3-(4-methoxy-1-naphthoyl)indole, also known as 4-methoxynaphthalen-1-yl-(1-pentylindol-3-yl)methanone;

(xii) the following substances, except where contained in cannabis or cannabis resin, namely tetrahydro derivatives of cannabinol and 3-alkyl homologues of cannabinol or of its tetrahydro derivatives:

(A) [2,3-Dihydro-5-methyl-3-(4-morpholinylmethyl)pyrrolo [1,2,3-de]-1,4-benzoxazin-6-yl]-1-naphthalenylmethanone (also known as WIN-55,212-2);

(B) 3-dimethylheptyl-11-hydroxyhexahydrocannabinol (also known as HU-243); or

(C) [9-hydroxy-6-methyl-3-[5-phenylpentan-2-yl]oxy-5,6,6a,7,8,9,10,10a-octahydrophenanthridin-1-yl]acetate;

(II) *Salvia divinorum*, also known as salvinorin A (2S,4aR,6aR,7R,9S,10aS,10bR)-9-(acetyloxy)-2-(3-furanyl)dodecahydro-6a,10b-dimethyl-4, 10-dioxo-2H-naphtho[2,1-c] pyran-7-carboxylic acid methyl ester;

(mm) substituted cathinones, including any compound, except bupropion or compounds listed in another schedule, structurally derived from 2-amino-1-phenyl-1-propanone by modification in any of the following ways:

(i) by substitution in the phenyl ring to any extent with alkyl, alkoxy, alkylendioxy, haloalkyl, hydroxyl, or halide substituents, whether or not further substituted in the phenyl ring by one or more other univalent substituents;

(ii) by substitution at the 3-position with an alkyl substituent;

(iii) by substitution at the nitrogen atom with alkyl or dialkyl groups, or by inclusion of the nitrogen atom in a cyclic structure; and

(iv) any lengthening of the propanone chain between carbons 1 and 2 to any extent with alkyl groups, whether further substituted or not;

(nn) any compound not listed in this code, in an administrative rule regulating controlled substances or approved for use by the United States food and drug administration that is structurally derived from 2-amino-1-phenyl-1-propane by modification in any of the following ways:

(i) by substitution in the phenyl ring to any extent with alkyl, alkoxy, alkylendioxy, haloalkyl, or halide substituents, whether or not further substituted in the phenyl ring by one or more other univalent substituents;

(ii) by substitution at the 3-position with an alkyl substituent;

(iii) by substitution at the nitrogen atom with alkyl or dialkyl groups, or by inclusion of the nitrogen atom in a cyclic structure; and

(iv) any lengthening of the propane chain between carbons 1 and 2 to any extent with alkyl groups, whether further substituted or not.

(5) (a) For the purposes of subsection (4), the term "isomer" includes the optical, positional, and geometric isomers.

(b) Subsection (4)(kk) does not apply to synthetic cannabinoids approved by the United States food and drug administration and obtained by a lawful prescription through a licensed pharmacy. The department of public health and human services shall adopt a rule listing the approved cannabinoids and shall update the rule as necessary to keep the list current.

(6) Depressants. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances is a depressant having a depressant effect on the central nervous system, including salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:

(a) gamma-hydroxybutyric acid, also known as gamma-hydroxybutyrate, 4-hydroxybutyrate, 4-hydroxybutanoic acid, sodium oxybate, sodium oxybutyrate, and GHB;

(b) mecloqualone; and

(c) methaqualone.

(7) Stimulants. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances is a stimulant having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

(a) aminorex, also known as aminoxaphen, 2-amino-5-phenyl-2-oxazoline, and 4,5-dihydro-5-phenyl-2-oxazolamine;

(b) cathinone, also known as 2-amino-1-phenyl-1-propanone, alpha-aminopropiophenone, 2-aminopropiophenone, and norephedrone;

(c) fenethylamine;

(d) methcathinone, also known as 2-(methylamino)-propionophenone, alpha-(methylamino)propionophenone, 2-(methylamino)-1-phenylpropan-1-one, alpha-N-methylaminopropionophenone, monomethylpropion, ephedrone, N-methylcathinone, methylcathinone, AL-464, AL-422, AL-463, and UR1432, including its salts, optical isomers, and salts of optical isomers;

(e) 4-Methylaminorex (cis isomer), also known as U4Euh, McN-422;

(f) (levo-dextro) cis-4-methylaminorex, also known as (levo-dextro) cis-4, 5-dihydro-4-methyl-5-phenyl-2-oxazolamine;

(g) N-benzylpiperazine, also known as 1-benzylpiperazine or BZP;

(h) N-ethylamphetamine; and

(i) N,N-dimethylamphetamine, also known as N,N-alpha-trimethyl-benzeneethanamine and N,N-alpha-trimethylphenethylamine.

(8) Substances subject to emergency scheduling. Any material, compound, mixture, or preparation that contains any quantity of the following substances is included in this category:

(a) N-[1-benzyl-4-piperidyl]-N-phenylpropanamide (benzylfentanyl), its optical isomers, salts, and salts of isomers); and

(b) N-[1-(2-thienyl)methyl-4-piperidyl]-N-phenylpropanamide (thienylfentanyl), its optical isomers, salts, and salts of isomers).

(9) If prescription or administration is authorized by the Federal Food, Drug and Cosmetic Act, then any material, compound, mixture, or preparation containing tetrahydrocannabinols listed in subsection (4) must automatically be rescheduled from Schedule I to the same schedule it is placed in by the United States drug enforcement administration.

(10) Dangerous drug analogues. Unless specifically excepted or listed in another schedule, this designation includes any material, compound, mixture, or preparation defined in 50-32-101 as a dangerous drug analogue.

History: En. Sec. 5, Ch. 412, L. 1973; R.C.M. 1947, 54-305; amd. Sec. 1, Ch. 320, L. 1979; amd. Sec. 1, Ch. 141, L. 1983; amd. Sec. 1, Ch. 36, L. 1991; amd. Sec. 2, Ch. 113, L. 1997; amd. Sec. 7, Ch. 156, L. 2011; amd. Sec. 6, Ch. 135, L. 2013; amd. Sec. 29, Ch. 3, L. 2019; amd. Sec. 1, Ch. 134, L. 2019.

Compiler's Comments

2019 Amendments — Composite Section: Chapter 3 in (4)(h) before "DOET" deleted "is". Amendment effective October 1, 2019.

Chapter 134 in (9) at end substituted "the same schedule it is placed in by the United States drug enforcement administration" for "Schedule II". Amendment effective April 12, 2019.

2013 Amendment: Chapter 135 in (1)(a), (1)(b), (1)(c), and (1)(kk) inserted aliases; inserted (4)(b), (4)(f), (4)(i), (4)(j), (4)(u), (4)(mm), and (4)(nn) adding AMT, 2C-T-7, 5-MeO-DIPT, 5-MeO-DMT, hashish, substituted cathinones, and compounds structurally derived from 2-amino-1-phenyl-1-propane as Schedule I hallucinogenic substances; inserted (4)(kk)(i) and (4)(kk)(ii) concerning synthetic cannabinoid analogues; deleted former (4)(kk)(xi) through (4)(kk)(xv) (see 2013 Session Law for former text); inserted (6)(a) adding GHB as a Schedule I depressant; inserted (7)(e) and (7)(g) adding 4-Methylaminorex and BZP as Schedule I stimulants; inserted (10) adding dangerous drug analogues as Schedule I substances; and made minor changes in style. Amendment effective October 1, 2013.

2011 Amendment: Chapter 156 inserted (4)(gg) regarding synthetic cannabinoids; inserted (4)(hh) regarding *Salvia divinorum*; inserted (5)(b) related to synthetic cannabinoids approved by U.S. food and drug administration; and made minor changes in style. Amendment effective April 8, 2011.

1997 Amendment: Chapter 113 at end of (1)(d) inserted exception clause; inserted (1)(h) concerning alpha-methylthiofentanyl; in (1)(k), (1)(l), (1)(hh), (1)(ii), (1)(pp), and (1)(aaa) inserted aliases; inserted (2) concerning isomers; at end of (3)(j) inserted "except hydrochloride salt"; deleted former (3)(a) through (3)(bb) (see 1997 Session Law for text); inserted (4)(a) through (4)(ff) listing hallucinogenic substances; inserted (5) concerning isomers; deleted former (5)(a) and (5)(b) that read: "(a) fenethyllyline; and

(b) n-ethylamphetamine"; inserted (7)(a) through (7)(g) listing stimulants; inserted (8) concerning substances subject to emergency scheduling; deleted former (6) that read: "(6) For purposes of subsection (3) only, the term "isomer" includes the optical, position, and geometric isomers"; and made minor changes in style. Amendment effective March 20, 1997.

Saving Clause: Section 9, Ch. 113, L. 1997, was a saving clause.

Source: The 1997 amendments make this section generally analogous to the listing of Schedule I drugs published by the U.S. Food and Drug Administration at 21 CFR 1308.11.

1991 Amendment: Inserted (1)(a), (1)(j), (1)(k), (1)(gg), (1)(hh), (1)(jj), (1)(oo), (1)(pp), and (1)(zz) and deleted sufentanil in schedule of opiates; inserted (3)(b), (3)(f), (3)(n), (3)(p), and (3)(q) in schedule of hallucinogenic substances; and in (4) schedule of depressants inserted methaqualone.

1983 Amendment: In introduction, substituted present language (see 1983 Session Law) for "The dangerous drugs listed in this section are included in Schedule I:"; at beginning of (1), inserted "Opiates. Unless specifically excepted or listed in another schedule,;" in middle of (1), deleted "unless specifically excepted" after "ethers"; added (1)(f), (1)(p), (1)(pp), (1)(rr), and (1)(ss) to list of opiates; in (1)(m), deleted "dextrorphan"; at beginning of (2), inserted "Opium derivatives. Unless specifically excepted or listed in another schedule,;" in middle of (2), deleted "unless specifically excepted" after "salts of isomers"; added to list of opium derivatives reference to drotebanol; in (2)(v), substituted "pholcodine" for "phoclodine"; at beginning of (3), inserted "Hallucinogenic substances. Unless specifically excepted or listed in another schedule,;" in middle of (3), substituted "substances" for "drugs"; deleted "unless specifically excepted" after "salts of isomers"; in (3)(g), substituted "4-methyl-2,5-dimethoxy-amphetamine" for "4-methyl 1-2, 5-dimethoxylamphetamine"; added (3)(s), (3)(t), (3)(u), (3)(v), and (3)(w) to list of hallucinogenic substances; inserted (4) through (6) relating to depressants, stimulants, and isomers; in (7), inserted "listed in subsection (3)" after "tetrahydrocannabinols"; and made minor phraseology changes.

Source: Section 204, Uniform Controlled Substances Act.

Cross-References

Criminal distribution of dangerous drugs, 45-9-101.

Criminal distribution of imitation dangerous drugs, 45-9-112.

Administrative Rules

ARM 24.174.1412 Additions, deletions, and rescheduling of dangerous drugs.

50-32-223. Criteria for placement of drug in Schedule II. The board shall place a drug in Schedule II if it finds that:

- (1) the drug has high potential for abuse;
- (2) the drug has currently accepted medical use in treatment in the United States or currently accepted medical use with severe restrictions; and

(3) the abuse of the drug may lead to severe psychic or physical dependence.

History: En. Sec. 6, Ch. 412, L. 1973; R.C.M. 1947, 54-306.

Compiler's Comments

Source: Section 205, Uniform Controlled Substances Act.

50-32-224. Specific dangerous drugs included in Schedule II. Schedule II consists of the drugs and other substances, by whatever official, common, usual, chemical, or brand name designated, listed in this section.

(1) Substances, vegetable origin or chemical synthesis. Unless specifically excepted or listed in another schedule, any of the following substances, 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, are included in this category:

(a) opium and opiate and any salt, compound, derivative, or preparation of opium or opiate, excluding apomorphine, thebaine-derived butorphanol, dextrorphan, nalbuphine, nalmefene, naloxone, naltrexone, and naloxegol and their respective salts, but including the following:

- (i) raw opium;
- (ii) opium extracts;
- (iii) opium fluid;
- (iv) powdered opium;
- (v) granulated opium;
- (vi) tincture of opium;
- (vii) codeine;
- (viii) dihydroetorphine;
- (ix) ethylmorphine;
- (x) etorphine hydrochloride;
- (xi) hydrocodone;
- (xii) hydromorphone;
- (xiii) metopon;
- (xiv) morphine;
- (xv) oripavine;
- (xvi) oxycodone;
- (xvii) oxymorphone; and
- (xviii) thebaine;

(b) any salt, compound, derivative, or preparation of them that is chemically equivalent or identical with any of the substances referred to in subsection (1)(a), except that these substances do not include the isoquinoline alkaloids of opium;

(c) opium poppy and poppy straw;

(d) coca leaves and any salt, compound, derivative, or preparation of coca leaves, including cocaine and ecgonine and their salts, isomers, derivatives, and salts of isomers, and derivatives, and any salt, compound, derivative, or preparation of them that is chemically equivalent or identical with any of these substances, except that these substances do not include decocainized coca leaves or extraction of coca leaves, which extractions do not contain cocaine or ecgonine; and

(e) concentrate of poppy straw, the crude extract of poppy straw in either liquid, solid, or powder form that contains the phenanthrene alkaloids of the opium poppy.

(2) Opiates. Unless specifically excepted or listed in another schedule, any of the following are opiates, including isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of those isomers, esters, ethers, and salts is possible within the specific chemical designation, dextrorphan and levopropoxyphene excepted:

- (a) alfentanil;
- (b) alphaprodine;
- (c) anileridine;
- (d) bezitramide;
- (e) bulk dextropropoxyphene (nondosage forms);
- (f) carfentanil;
- (g) dihydrocodeine;

- (h) diphenoxylate;
- (i) fentanyl;
- (j) isomethadone;
- (k) levo-alpha-acetylmethadol, also known as levo-alpha-acetylmethadol, levomethadyl acetate, and LAAM;
- (l) levomethorphan;
- (m) levorphanol;
- (n) metazocine;
- (o) methadone;
- (p) methadone-intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;
- (q) moramide-intermediate, 2-methyl-3-morpholino-1, 1-diphenylpropane-carboxylic acid;
- (r) pethidine, also known as meperidine;
- (s) pethidine-intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine;
- (t) pethidine-intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate;
- (u) pethidine-intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;
- (v) phenazocine;
- (w) piminodine;
- (x) racemethorphan;
- (y) racemorphan;
- (z) remifentanil;
- (aa) sufentanil;
- (bb) tapentadol; and
- (cc) thiafentanil.

(3) Stimulants. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances is a stimulant having a stimulant effect on the central nervous system:

- (a) amphetamine, its salts, optical isomers, and salts of its optical isomers;
- (b) phenmetrazine and its salts;
- (c) lisdexamfetamine, its salts, isomers, and salts of its isomers;
- (d) methamphetamine, its salts, isomers, and salts of its isomers; and
- (e) methylphenidate.

(4) Depressants. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances is a depressant having a depressant effect on the central nervous system, including salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (a) amobarbital;
- (b) glutethimide;
- (c) pentobarbital;
- (d) phencyclidine; and
- (e) secobarbital.

(5) Hallucinogenic substances include the following:

- (a) dronabinol in oral solution in a drug product approved for marketing by the United States food and drug administration;
- (b) nabilone, also known as (levo-dextro)-trans-3-(1, 1-dimethylheptyl)-6,6-alpha,7,8,10,10-alpha-hexahydro-1-hydroxy-6,6-dimethyl-9H-dibenzo[b, d]pyran-9-one.

(6) Immediate precursors. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances is an immediate precursor:

- (a) 4-Anilino-N-phenethyl-4-piperidine (ANPP);
- (b) phenylacetone, an immediate precursor to amphetamine and methamphetamine, also known as phenyl-2-propanone, P2P, benzyl methyl ketone, and methyl benzyl ketone; and
- (c) 1-phenylcyclohexylamine and 1-piperidinocyclohexanecarbonitrile (PCC), immediate precursors to phencyclidine (PCP).

History: En. Sec. 7, Ch. 412, L. 1973; R.C.M. 1947, 54-307; amd. Sec. 2, Ch. 141, L. 1983; amd. Sec. 2, Ch. 36, L. 1991; amd. Sec. 3, Ch. 113, L. 1997; amd. Sec. 7, Ch. 135, L. 2013; amd. Sec. 2, Ch. 134, L. 2019.

Commissioners' Note

Schedule II now includes only those substances principally considered as Class "A" narcotic drugs, i. e., narcotics dispensed only upon written prescription. It is contemplated that if stringent control of a nonnarcotic substance is required, the substance could be administratively added to Schedule II based upon the criteria set out in [50-32-223].

Compiler's Comments

2019 Amendment: Chapter 134 in (1)(a) near end inserted "naloxegol"; inserted (2)(cc) concerning thiafentanil; in (5)(a) substituted "in oral solution in a drug product approved for marketing by the United States food and drug administration" for former description of dronabinol (see 2019 Session Law for former text); and made minor changes in style. Amendment effective April 12, 2019.

2013 Amendment: Chapter 135 inserted (1)(a)(viii) and (1)(a)(xv) adding dihydroetorphine and oripavine as Schedule II substances; inserted (2)(z) and (2)(bb) adding remifentanil and tapentadol as Schedule II opiates; inserted (3)(c) adding lisdexamfetamine as a Schedule II stimulant; inserted (6)(a) adding ANPP as a Schedule II immediate precursor substance; and made minor changes in style. Amendment effective October 1, 2013.

1997 Amendment: Chapter 113 at end of (1) inserted "are included in this category"; in (1)(a), after "apomorphine", inserted "thebaine-derived butorphanol" and after "nalbuphine" inserted "nalmefene"; at end of (1)(a)(iii) deleted "extracts"; in (1)(d), after "coca leaves", inserted "including cocaine and ecgonine and their salts, isomers, derivatives, and salts of isomers, and derivatives"; inserted (2)(f) concerning carfentanil; inserted (2)(k) concerning levo-alphaacetylmethadol; inserted (4)(b) concerning glutethimide; deleted former (5) (see 1997 Session Law for text); in (5), at end of introductory clause, inserted "include the following"; at end of (5)(a) and (5)(b) inserted aliases; inserted (6) concerning immediate precursors; and made minor changes in style. Amendment effective March 20, 1997.

Saving Clause: Section 9, Ch. 113, L. 1997, was a saving clause.

Source: The 1997 amendments make this section generally analogous to the listing of Schedule II drugs published by the U.S. Food and Drug Administration at 21 CFR 1308.12.

1991 Amendment: In (2) schedule of opiates inserted alfentanil and sufentanil; in (4) schedule of depressants deleted methaqualone; and inserted (6) schedule of hallucinogenic substances.

1983 Amendment: In introduction, substituted "Schedule II consists of the drugs and other substances, by whatever official, common, usual, chemical, or brand name designated, listed in this section" for "The dangerous drugs listed in this section are included in Schedule II."; at beginning of (1), inserted "Substances, vegetable origin or chemical synthesis. Unless specifically excepted or listed in another schedule, "; in middle of (1), substituted "substances" for "drugs, except those narcotic drugs listed in other schedules, "; in (1)(a), after "opium or opiate" inserted phrase beginning ", excluding apomorphine"; inserted (1)(a)(i) through (1)(a)(xvi) listing opiates and compounds, derivatives, or preparations thereof; in (1)(b), deleted "isomer" after "compound"; substituted "substances" for "drugs"; substituted "(1)(a) of this section" for "(a)"; substituted "except that these substances do not include" for "but not including"; in (1)(d), substituted "substances" for "drugs"; substituted "except that these substances do not include" for "but not including"; substituted "extraction of coca leaves, which extractions" for "extractions"; inserted (1)(e) relating to poppy straw; at beginning of (2), inserted "Opiates. Unless specifically excepted or listed in another schedule, "; in middle of (2), inserted "esters, and ethers" after "isomers, "; at end of (2), inserted ", dextrophan and levopropoxyphene excepted"; in (2)(n), inserted "(meperidine)"; inserted (2)(v) "bulk dextropropoxyphene (nondosage forms)"; at beginning of (3), inserted "Stimulants. Unless specifically excepted or listed in another schedule, "; in middle of (3), substituted "substances" for "drugs"; after "having a" deleted "potential for abuse associated with a"; at beginning of (3)(c), deleted "any drug which contains any quantity of"; inserted (4) and (5) relating to depressants and immediate precursors; and made minor phraseology changes.

Source: Section 206, Uniform Controlled Substances Act.

Cross-References

Criminal distribution of dangerous drugs, 45-9-101.

Criminal distribution of imitation dangerous drugs, 45-9-112.

Administrative Rules

ARM 24.174.1412 Additions, deletions, and rescheduling of dangerous drugs.

50-32-225. Criteria for placement of drug in Schedule III. The board shall place a drug in Schedule III if it finds that:

- (1) the drug has a potential for abuse less than the drugs listed in Schedules I and II;
- (2) the drug has currently accepted medical use in treatment in the United States; and
- (3) abuse of the drug may lead to moderate or low physical dependence or high psychological dependence.

History: En. Sec. 8, Ch. 412, L. 1973; R.C.M. 1947, 54-308.

Commissioners' Note

Schedule III includes two categories of drugs—those narcotic drugs formerly considered Class "B" narcotics, and stimulant and depressant drugs formerly included under both the Model State Drug Abuse Control Act and the Federal Drug Abuse Control Amendments of 1965.

Subsection [(3) of 50-32-226], which includes the former Class "B" narcotic drugs, reflects two changes. First, all calculations have been shifted from the historic apothecary system of measurement to the metric system to bring them in line with the general movement by many scientific groups and industries, including the pharmaceutical industry, to the metric system. Second, all dosage-strength calculations have been adjusted to correspond to the more modern 5 cc. teaspoon as a unit dose rather than the historic 3.69 cc. teaspoon size, upon which all previous calculations were made.

Compiler's Comments

Source: Section 207, Uniform Controlled Substances Act.

50-32-226. Specific dangerous drugs included in Schedule III. Schedule III consists of the drugs and other substances, by whatever official, common, usual, chemical, or brand name designated, listed in this section.

(1) Stimulants. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances is a stimulant having a stimulant effect on the central nervous system, including salts, isomers (whether optical, position, or geometric), and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (a) benzphetamine;
- (b) chlorphentermine;
- (c) clortermine; and
- (d) phendimetrazine.

(2) Depressants. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances is a depressant having a depressant effect on the central nervous system:

(a) any compound, mixture, or preparation containing amobarbital, secobarbital, or pentobarbital or any salt of any of these drugs and one or more other active medicinal ingredients that are not listed in any schedule;

(b) any suppository dosage form containing amobarbital, secobarbital, or pentobarbital or any salt of any of these drugs approved by the United States food and drug administration for marketing only as a suppository;

(c) any substance that contains any quantity of a derivative of barbituric acid or any salt of barbituric acid;

- (d) aprobarbital;
- (e) butabarbital, also known as secbutabarbital;
- (f) butalbital;
- (g) butobarbital, also known as butethal;
- (h) chlorhexadol;
- (i) embutramide;
- (j) gamma hydroxybutyric acid preparations;

(k) ketamine, its salts, isomers, and salts of its isomers, also known as (±)-2-(2-chlorophenyl)-2-(methylamino)cyclohexanone;

(l) lysergic acid;

(m) lysergic acid amide;

(n) methyprylon;

(o) sulfondiethylmethane;

(p) sulfonethylmethane;

(q) sulfonmethane;

(r) talbutal;

(s) tiletamine and zolazepam or any of their salts. A trade or other name for a tiletamine-zolazepam combination product is telazol. A trade or other name for tiletamine is 2-(ethylamino)-2-(2-thienyl)-cyclohexanone. A trade or other name for zolazepam is 4-(2-fluorophenyl)-6,8-dihydro-1,3,8-trimethylpyrazolo-[3,4-e] [1,4]-diazepin-7(1H)-one, flupyrazapon.

(t) thiamylal;

(u) thiopental; and

(v) vinbarbital.

(3) Nalorphine.

(4) Narcotic drugs. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation containing any of the following is a narcotic drug, including its salts calculated as the free anhydrous base or alkaloid in the following limited quantities:

(a) not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

(b) not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(c) not more than 1.8 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(d) not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(e) not more than 500 milligrams of opium per 100 milliliters or per 100 grams or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(f) not more than 50 milligrams of morphine per 100 milliliters or per 100 grams, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts; or

(g) any material, compound, mixture, or preparation containing buprenorphine.

(5) Anabolic steroids. The term "anabolic steroid" means any drug or hormonal substance, chemically and pharmacologically related to testosterone, other than estrogens, progestins, and corticosteroids, that promotes muscle growth. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation containing any quantity of the following substances is an anabolic steroid, including salts, isomers, and salts of isomers whenever the existence of those salts of isomers is possible within the specific chemical designation:

(a) androstenedione, also known as 5-alpha-androstan-3,17-dione;

(b) 1-androstenediol, also known as 3-beta,17-beta-dihydroxy-5-alpha-androst-1-ene; or 3-alpha,17-beta-dihydroxy-5-alpha-androst-1-ene;

(c) 1-androstenedione, also known as 5-alpha-androst-1-en-3,17-dione;

(d) 3-alpha,17-beta-dihydroxy-5-alpha-androstane;

(e) 3-beta,17-beta-dihydroxy-5-alpha-androstane;

(f) 4-androstenediol, also known as 3-beta,17-beta-dihydroxy-androst-4-ene;

(g) 4-androstenedione, also known as androst-4-en-3,17-dione;

(h) 4-dihydrotestosterone, also known as 17-beta-hydroxyandrostan-3-one;

(i) 4-hydroxy-19-nortestosterone, also known as 4,17-beta-dihydroxy-estr-4-en-3-one;

(j) 4-hydroxytestosterone, 4,17-beta-dihydroxy-androst-4-en-3-one;

(k) 5-androstenediol, also known as 3-beta,17-beta-dihydroxy-androst-5-ene;

(l) 5-androstenedione, also known as androst-5-en-3,17-dione;

(m) 13-beta-ethyl-17-beta-hydroxygon-4-en-3-one;

(n) 17-alpha-methyl-3-alpha,17-beta-dihydroxy-5-alpha-androstane;

(o) 17-alpha-methyl-3-beta, 17-beta-dihydroxy-5-alpha-androstane;

(p) 17-alpha-methyl-3-beta, 17-beta-dihydroxyandrost-4-ene;

(q) 17-alpha-methyl-4-hydroxynandrolone, also known as 17-alpha-methyl-4-hydroxy-17-beta-hydroxyestr-4-en-3-one;

(r) 17-alpha-methyl-delta, 1-dihydrotestosterone, also known as 17-beta-hydroxy-17-alpha-methyl-5-alpha-androst-1-en-3-one, 17-alpha-methyl-1 testosterone;

(s) 19-nor-4-androstenediol, also known as 3-beta-17-beta-dihydroxyestr-4-ene; or 3-alpha-17-beta-dihydroxyestr-4-ene;

(t) 19-nor-4-androstenedione, also known as estr-4-en-3,17-dione;

(u) 19-nor-5-androstenediol, also known as 3-beta,17-beta-dihydroxyestr-5-ene; or 3-alpha,17-beta-dihydroxyestr-5-ene;

(v) 19-nor-5-androstenedione, also known as estr-5-en-3,17-dione;

(w) calusterone, also known as 7-beta, 17-alpha-dimethyl-17-beta-hydroxyandrost-4-en-3-one);

(x) 19-Nor-4,9(10)-androstadienedione, also known as estra-4,9(10)-diene-3,17-dione;

(y) bolasterone, also known as (7-alpha-dimethyl)-17-beta-hydroxyandrost-4-ene-3-one;

(z) boldenone, also known as 17-beta-hydroxyandrost-1,4,-diene-3-one;

(aa) boldione, also known as androsta-1,4-diene-3,17-dione;

(bb) chlorotestosterone, also known as 4-chlorotestosterone;

(cc) clostebol;

(dd) delta-1-dihydrotestosterone, also known as (17-beta-hydroxy-5-alpha-androst-1-en-3-one), 1-testosterone;

(ee) dehydrochloromethyltestosterone, also known as 4-chloro-17-beta-hydroxy-17-alpha-methylandrost-1,4-dien-3-one;

(ff) desoxymethyltestosterone, also known as 17-alpha-methyl-5-alpha-androst-2-en-17-beta-ol;

(gg) dihydrochloromethyltestosterone;

(hh) dihydrotestosterone, also known as 4-dihydrotestosterone;

(ii) drostanolone, also known as 17-beta-hydroxy-2-alpha-methyl-5-alpha-androstan-3-one;

(jj) ethylestrenol, also known as 17-alpha-ethyl-17-beta-hydroxyestr-4-ene;

(kk) fluoxymesterone, also known as 9-fluoro-17-alpha-methyl-11-beta, 17-beta-dihydroxyandrost-4-en-3-one;

(ll) formebolone, also known as 2-formyl-17-alpha-methyl-11-alpha,17-beta-dihydroxyandrost-1,4-dien-3-one or formebolone;

(mm) furazabol, also known as 17-alpha-methyl-17-beta-hydroxyandrostano-[2,3-c]-furazan;

(nn) mestanolone, also known as 17-alpha-methyl-17-beta-hydroxy-5-alpha-androstan-3-one;

(oo) mesterolone, also known as 1-alpha-methyl-17-beta-hydroxy-(5-alpha)-androstan-3-one;

(pp) methandienone, also known as 17-alpha-methyl-17-beta-hydroxyandrost-1,4-diene-3-one;

(qq) methandranone;

(rr) methandriol, also known as 17-alpha-methyl-3-beta,17-beta-dihydroxyandrost-5-one;

(ss) methandrostenolone, also known as (17-beta)-17-hydroxy-17-methylandrosta-1,4-dien-3-one;

(tt) methasterone, also known as 2-alpha-17-alpha-dimethyl-5-alpha-androstan-17-beta-ol-3-one;

(uu) methenolone, also known as 1-methyl-17-beta-hydroxy-5-alpha-androst-1-en-3-one;

(vv) methyldienolone, also known as 17-alpha-methyl-17-beta-hydroxyestra-4,9(10)-dien-3-one;

(ww) methyltestosterone, also known as 17-alpha-methyl-17-beta-hydroxyandrost-4-en-3-one;

(xx) methyltrienolone, also known as 17-alpha-methyl-17-beta-hydroxyestra-4,9,11-trien-3-one;

(yy) mibolerone, also known as 17-alpha,17-alpha-dimethyl-17-beta-hydroxyestr-4-en-3-one;

(zz) nandrolone, also known as 17-beta-hydroxyestr-4-en-3-one;

(aaa) norbolethone, also known as 13-beta,17-alpha-diethyl-17-beta-hydroxygon-4-en-3-one;

(bbb) norclostebol, also known as 4-chloro-17-beta-hydroxyestr-4-en-3-one;

(ccc) norethandrolone, also known as 17-alpha-ethyl-17-beta-hydroxyestr-4-en-3-one;

(ddd) normethandrolone, also known as 17-alpha-methyl-17-beta-hydroxyestr-4-en-3-one;

(eee) oxandrolone, also known as 17-alpha-methyl-17-beta-hydroxy-2-oxa-(5-alpha)-androstan-3-one;

(fff) oxymestronone, also known as 17-alpha-methyl-4,17-beta-dihydroxyandrost-4-en-3-one;

(ggg) oxymetholone, also known as 17-alpha-methyl-2-hydroxymethylene-17-beta-hydroxy-(5-alpha)-androstan-3-one;

(hhh) prostanazol, also known as 17-beta-hydroxy-5-alpha-androstano[3,2-c]pyrazole;
(iii) stanolone;
(jjj) stanozolol, also known as 17-alpha-methyl-17-beta-hydroxy-(5-alpha)-androst-2-eno-(3,2-c)-pyrazole;
(kkk) stenbolone, also known as 17-beta-hydroxy-2-methyl-5-alpha-androst-1-en-3-one;
(lll) talbutal, also known as 5-(1-methylpropyl)-5-(2-propenyl)-2,4,6(1H,3H,5H)-pyrimidinetrione;
(mmm) testolactone, also known as 13-hydroxy-3-oxo-13,17-secoandrost-1,4-dien-17-oic acid lactone;
(nnn) testosterone, also known as 17-beta-hydroxyandrost-4-en-3-one;
(ooo) trenbolone, also known as 17-beta-hydroxyestr-4,9,11-trien-3-one; or
(ppp) tetrahydrogestrinone, also known as
13-beta,17-alpha-diethyl-17-beta-hydroxygon-4,9,11-trien-3-one.

(6) Hallucinogenic substances include dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a United States food and drug administration-approved drug product, also known as (6-alpha-R-trans)-6-alpha,7,8,10-alpha-tetrahydro-6,6,9-trimethyl-3-pentyl-6H-dibenzo[b,d]pyran-1-ol or (-)-delta-9-(trans)-tetrahydrocannabinol.

(7) Anticonvulsant substances include perampanel.

History: En. Sec. 9, Ch. 412, L. 1973; R.C.M. 1947, 54-309(1) thru (4); amd. Sec. 3, Ch. 141, L. 1983; amd. Sec. 3, Ch. 36, L. 1991; amd. Sec. 4, Ch. 42, L. 1991; amd. Sec. 4, Ch. 113, L. 1997; amd. Sec. 1, Ch. 108, L. 2007; amd. Sec. 8, Ch. 135, L. 2013; amd. Sec. 3, Ch. 134, L. 2019.

Commissioners' Note

Schedule III includes two categories of drugs—those narcotic drugs formerly considered Class "B" narcotics, and stimulant and depressant drugs formerly included under both the Model State Drug Abuse Control Act and the Federal Drug Abuse Control Amendments of 1965.

Subsection [(3)], which includes the former Class "B" narcotic drugs, reflects two changes. First, all calculations have been shifted from the historic apothecary system of measurement to the metric system to bring them in line with the general movement by many scientific groups and industries, including the pharmaceutical industry, to the metric system. Second, all dosage-strength calculations have been adjusted to correspond to the more modern 5 cc. teaspoon as a unit dose rather than the historic 3.69 cc. teaspoon size, upon which all previous calculations were made.

Compiler's Comments

2019 Amendment: Chapter 134 deleted former (4)(c) and (4)(d) that read: "(c) not more than 300 milligrams of dihydrocodeinone (hydrocodone) per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;

(d) not more than 300 milligrams of dihydrocodeinone (hydrocodone) per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts"; inserted (5)(tt) and (5)(hhh) adding methasterone and prostanazol as Schedule III anabolic steroids; inserted (6) regarding hallucinogenic substances and alternative names; inserted (7) regarding anticonvulsant substances; and made minor changes in style. Amendment effective April 12, 2019.

2013 Amendment: Chapter 135 inserted (2)(d), (2)(e), (2)(f), (2)(g), (2)(i), (2)(j), (2)(k), (2)(r), (2)(t), (2)(u), and (2)(v) adding additional depressants in the list of Schedule III dangerous drugs; inserted (5)(a) through (5)(y), (5)(aa), (5)(dd) through (5)(ff), (5)(mm) and (5)(nn), (5)(uu), (5)(ww), (5)(zz), (5)(aaa), (5)(ccc), (5)(iii), (5)(jjj), and (5)(nnn) adding additional anabolic steroids to the list of Schedule III dangerous drugs; in (5) inserted aliases; and made minor changes in style. Amendment effective October 1, 2013.

2007 Amendment: Chapter 108 inserted (4)(i) relating to buprenorphine; and made minor changes in style. Amendment effective March 30, 2007.

1997 Amendment: Chapter 113 inserted (2)(a) and (2)(b) concerning certain unscheduled compounds or suppository dosage; deleted former (2)(c) concerning glutethimide; at end of (2)(k) inserted last three sentences concerning trade names; deleted former (2)(k) and (2)(l) (see 1997 Session Law for text); in (4)(c), after "dihydrocodeinone", inserted "(hydrocodone)"; in (4)(d), after "dihydrocodeinone" inserted "(hydrocodone)"; in (5) inserted first full sentence defining anabolic steroid and at beginning of second sentence inserted "Unless specifically excepted or listed in another schedule" and at end, after "containing", substituted "any quantity of the following substances is an anabolic steroid, including salts, isomers, and salts of isomers whenever the existence of those salts of isomers is possible within the

specific chemical designation" for "an anabolic steroid, including but not limited to the following"; deleted former (5)(a) through (5)(d) (see 1997 Session Law for text); inserted (5)(b) providing: "(b) chlorotestosterone, also known as 4-chlortestosterone"; inserted (5)(d) through (5)(f), (5)(i), (5)(k), (5)(l), (5)(q), and (5)(y) (see 1997 Session Law for text); deleted former (5)(h) that read: "(h) dihydromesterone"; deleted former (5)(k) and (5)(l) that read: "(k) formyldienolone;

(l) 4-hydroxy-19-nortestosterone"; substituted (5)(p) concerning methyltestosterone for "17-methyltestosterone"; deleted former (5)(r) that read: "(r) methyltrienolone"; deleted former (5)(t) that read: "(t) norbolethone"; deleted former (5)(v) that read: "(v) normethandrolone"; deleted former (5)(z) that read: "(z) quinbolone"; deleted (5)(cc) that read: "(cc) stenbolone"; and made minor changes in style. Amendment effective March 20, 1997.

Saving Clause: Section 9, Ch. 113, L. 1997, was a saving clause.

Source: The 1997 amendments make this section generally analogous to the listing of Schedule III drugs published by the U.S. Food and Drug Administration at 21 CFR 1308.13.

1991 Amendments: Chapter 36 in (2) schedule of depressants inserted tiletamine and zolazepam or any of their salts.

Chapter 42 inserted (5) schedule of anabolic steroids.

1983 Amendment: In introduction, substituted present language (see 1983 Session Law) for "The dangerous drugs listed in this section are included in Schedule III.:"; inserted (1) relating to stimulants; at beginning of (2), substituted "Depressants. Unless specifically excepted or" for "unless"; in middle of (2), substituted "substances" for "drugs"; after "having" deleted "a potential for abuse associated with"; in (2)(a), substituted "substance" for "drug"; after "salt" substituted "thereof" for "of a derivative of barbituric acid, except those drugs which are specifically listed in other schedules"; deleted former (1)(g), which read: "phencyclidine"; inserted (2)(j) and (2)(k) relating to items containing amobarbital, secobarbital, or pentobarbital; at beginning of (4), inserted "Narcotic drugs. Unless specifically excepted or listed in another schedule, "; in middle of (4), after "containing" deleted "limited quantities of"; at end of (4), inserted "calculated as the free anhydrous base or alkaloid in the following limited quantities"; in (4)(a) and (4)(b), after "codeine" deleted "or any of its salts"; in (4)(c) and (4)(d), after "dihydrocodeinone" deleted "or any of its salts"; in (4)(e), after "dihydrocodeine" deleted "or any of its salts"; in (4)(f), after "ethylmorphine" deleted "or any of its salts" and inserted "active, nonnarcotic" before "ingredients"; in (4)(h), after "morphine" deleted "or any of its salts"; and made minor phraseology changes.

Source: Section 208(part), Uniform Controlled Substances Act. See also 50-32-227 wherein Montana codified part of Section 208 of the Uniform Act.

Cross-References

Criminal distribution of dangerous drugs, 45-9-101.

Criminal distribution of imitation dangerous drugs, 45-9-112.

Administrative Rules

ARM 24.174.1412 Additions, deletions, and rescheduling of dangerous drugs.

50-32-227. Board authorized to exempt certain compounds, mixtures, or preparations from Schedule III. The board may except by rule any compound, mixture, or preparation containing any stimulant or depressant drug listed in 50-32-226(1) and (2) from the application of all or any part of this chapter if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the drugs which have a stimulant or depressant effect on the central nervous system.

History: En. Sec. 9, Ch. 412, L. 1973; R.C.M. 1947, 54-309(5).

Compiler's Comments

Source: Section 208(part), Uniform Controlled Substances Act. See also 50-32-226 wherein Montana codified part of Section 208 of the Uniform Act.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-32-228. Criteria for placement of drug in Schedule IV. The board shall place a drug in Schedule IV if it finds that:

- (1) the drug has a low potential for abuse relative to drugs in Schedule III;
- (2) the drug has currently accepted medical use in treatment in the United States; and
- (3) abuse of the drug may lead to limited physical dependence or psychological dependence

relative to the drugs in Schedule III.

History: En. Sec. 10, Ch. 412, L. 1973; R.C.M. 1947, 54-310.

Compiler's Comments

Source: Section 209, Uniform Controlled Substances Act.

50-32-229. Specific dangerous drugs included in Schedule IV. Schedule IV consists of the drugs and other substances, by whatever official, common, usual, chemical, or brand name designated, listed in this section.

(1) Narcotic drugs. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic is a drug, including its salts calculated as the free anhydrous base or alkaloid in the following limited quantities:

(a) not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit;

(b) butorphanol;

(c) dextropropoxyphene (alpha-(+)-4-dimethylamino-1,2-diphenyl-3-methyl-2-propionoxybutane);

(d) difenoxin 1mg/25ug AtSO4/du;

(e) pentazocine; and

(f) tramadol (2-[(dimethylamino)methyl]-1-(3-methoxyphenyl)cyclohexanol).

(2) Depressants. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances is a depressant, including salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:

(a) alprazolam;

(b) barbital;

(c) bromazepam;

(d) camazepam;

(e) chloral betaine;

(f) chloral hydrate;

(g) chlordiazepoxide;

(h) clobazam;

(i) clonazepam;

(j) clorazepate;

(k) clotiazepam;

(l) cloxazolam;

(m) delorazepam;

(n) diazepam;

(o) dichloralphenazone;

(p) estazolam;

(q) ethchlorvynol;

(r) ethinamate;

(s) ethyl loflazepate;

(t) fludiazepam;

(u) flunitrazepam;

(v) flurazepam;

(w) fospropofol, also known as lusedra;

(x) halazepam;

(y) haloxazolam;

(z) ketazolam;

(aa) lopraxolam;

(bb) lorazepam;

- (cc) lormetazepam;
- (dd) mebutamate;
- (ee) medazepam;
- (ff) meprobamate;
- (gg) methohexital;
- (hh) methylphenobarbital, also known as mephobarbital;
- (ii) midazolam;
- (jj) nimetazepam;
- (kk) nitrazepam;
- (ll) nordiazepam;
- (mm) oxazepam;
- (nn) oxazolam;
- (oo) paraldehyde;
- (pp) petrichloral;
- (qq) phenobarbital;
- (rr) pinazepam;
- (ss) prazepam;
- (tt) quazepam;
- (uu) temazepam;
- (vv) tetrazepam;
- (ww) triazolam;
- (xx) zaleplon;
- (yy) zolpidem; and
- (zz) zopiclone.

(3) Fenfluramine. Any material, compound, mixture, or preparation that contains any quantity of fenfluramine, including its salts, isomers (whether optical, position, or geometric), and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible.

(4) Stimulants. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances is a stimulant having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

- (a) cathine, also known as (+)-norpseudoephedrine;
- (b) diethylpropion;
- (c) fencamfamin;
- (d) fenproporex;
- (e) mazindol;
- (f) mefenorex;
- (g) modafinil;
- (h) pemoline, including organometallic complexes and chelates thereof;
- (i) phentermine;
- (j) pipradrol;
- (k) sibutramine; and
- (l) SPA ((-)-1-dimethylamino-1,2-diphenylethane).

(5) Ephedrine.

(a) Except as provided in subsection (5)(b), any material, compound, mixture, or preparation that contains any quantity of ephedrine having a stimulant effect on the central nervous system, including its salts, enantiomers (optical isomers), and salts of enantiomers (optical isomers) when ephedrine is the only active medicinal ingredient or is used in combination with therapeutically insignificant quantities of another active medicinal ingredient.

(b) Ephedrine does not include materials, compounds, mixtures, or preparations labeled in compliance with the Dietary Supplement Health and Education Act of 1994, 21 U.S.C. 321, et seq., that contain only natural ephedra alkaloids or extracts of natural ephedra alkaloids.

(c) Ephedrine may be immediately accessible for use by a licensed physician in a patient care area if it is under the physician's direct supervision.

(6) Other substances. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of carisoprodol, including its salts, isomers, and salts of isomers.

- (7) Hypnotic substances include suvorexant.
- (8) Anorexiants include lorcaserin.
- (9) Gastrointestinal substances include eluxadoline.
- (10) General anesthetic substances include alfaxalone.

History: En. Sec. 11, Ch. 412, L. 1973; R.C.M. 1947, 54-311(1), (2); amd. Sec. 14, Ch. 37, L. 1979; amd. Sec. 4, Ch. 141, L. 1983; amd. Sec. 4, Ch. 36, L. 1991; amd. Sec. 1, Ch. 103, L. 1997; amd. Sec. 5, Ch. 113, L. 1997; amd. Sec. 1, Ch. 253, L. 1999; amd. Sec. 9, Ch. 135, L. 2013; amd. Sec. 4, Ch. 134, L. 2019.

Commissioners' Note

Schedule IV contains certain tranquilizing drugs and long-acting barbiturates. All substances contained in the schedule must be dispensed on prescription.

Compiler's Comments

2019 Amendment: Chapter 134 inserted (1)(f) adding tramadol as a Schedule IV narcotic drug; inserted (7) providing that hypnotic substances include suvorexant; inserted (8) providing that anorexiants include lorcaserin; inserted (9) providing that gastrointestinal substances include eluxadoline; inserted (10) providing that general anesthetic substances include alfaxalone; and made minor changes in style. Amendment effective April 12, 2019.

2013 Amendment: Chapter 135 inserted (1)(b), (1)(d), and (1)(e) adding butorphanol, difenoxin, and pentazocine as Schedule IV narcotic drugs; inserted (2)(o), (2)(w), (2)(xx), and (2)(zz) adding dichloralphenazone, fospropofol, zaleplon, and zopiclone as Schedule IV depressants; inserted (4)(g) and (4)(k) adding modafinil and sibutramine as Schedule IV stimulants; in (4)(a) inserted alias; in (6) after "contains any quantity of" substituted "carisoprodol" for "pentazocine" and at end inserted "isomers, and salts of isomers"; and made minor changes in style. Amendment effective October 1, 2013.

1999 Amendment: Chapter 253 inserted (5)(c) allowing immediate accessibility of ephedrine by licensed physician for patient care; and made minor changes in style. Amendment effective April 5, 1999.

1997 Amendments: Chapter 103 inserted (5) concerning ephedrine.

Chapter 113 inserted (2)(vv) concerning zolpidem; and made minor changes in style. Amendment effective March 20, 1997.

Preamble: The preamble attached to Ch. 103, L. 1997, provided: "WHEREAS, the Legislature finds it appropriate to address the availability and sale of "look-alike" or "act-alike" drugs, which are over-the-counter substances that both look and act like illegal stimulants; and

WHEREAS, the Legislature considers "look-alike" or "act-alike" drugs to be dangerous because those drugs not only have an effect on the body similar to illegal stimulants, such as amphetamines, but they are relatively inexpensive and readily available for purchase by anyone of any age; and

WHEREAS, ephedrine is an over-the-counter stimulant drug sold primarily in convenience stores and truck stops as a bronchodilator in the treatment of asthma, but it is also a drug with a history of abuse and growing misuse among young people; and

WHEREAS, ephedrine is the primary ingredient in the illicit manufacture of a Schedule II prescription drug, methamphetamine, and an illegal and highly addictive drug, methcathinone; and

WHEREAS, the Legislature finds it appropriate to place single entity ephedrine products in the schedule of dangerous drugs to limit their sale to legitimate, medically related prescription sale only."

Sources: Chapter 103, L. 1997, is based on Act 570 of the Illinois Controlled Substances Act.

The 1997 amendment in Ch. 113 makes this section generally analogous to the listing of Schedule IV drugs published by the U.S. Food and Drug Administration at 21 CFR 1308.14.

Saving Clause: Section 9, Ch. 113, L. 1997, was a saving clause.

1991 Amendment: In (2) schedule of depressants inserted bromazepam, camazepam, clobazam, clonazepam, clonazepam, delorazepam, estazolam, ethyl loflazepam, fludiazepam, flunitrazepam, haloxazolam, ketazolam, loperazolam, lorazepam, lorazepam, medazepam, midazolam, nimetazepam, nitrazepam, nordiazepam, oxazolam, pinazepam, quazepam, tetrazepam, and triazolam; and in (4) schedule of stimulants inserted cathine, fencamfamin, fenproporex, and mephorex.

1983 Amendment: In introduction, substituted present language (see 1983 Session Law) for "The following dangerous drugs are included in Schedule IV.:"; inserted (1) relating to narcotic drugs; at beginning of (2), inserted "Depressants. Unless specifically excepted or listed in another schedule.,"; in middle of (2), after "following" substituted "substances, including . . . chemical designation" for "drugs having a potential for abuse associated with a depressant effect on the central nervous system"; added to list of depressants references to alprazolam, chlordiazepoxide, clonazepam, diazepam, halazepam, lorazepam, mebutamate, oxazepam, prazepam, and temazepam; in (2)(q), inserted "(mephobarbital)";

inserted (3), (4), and (5) relating to fenfluramine, stimulants, and other substances; and made minor phraseology changes.

Source: Section 210(part), Uniform Controlled Substances Act. See also 50-32-230 wherein Montana codified part of Section 210 of the Uniform Act.

Cross-References

Criminal distribution of dangerous drugs, 45-9-101.

Criminal distribution of imitation dangerous drugs, 45-9-112.

Administrative Rules

ARM 24.174.1412 Additions, deletions, and rescheduling of dangerous drugs.

50-32-230. Board authorized to exempt certain compounds, mixtures, or preparations from Schedule IV. The board may except by rule any compound, mixture, or preparation containing any depressant drug listed in 50-32-229 from the application of all or any part of this chapter if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a depressant effect on the central nervous system and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the drugs which have a depressant effect on the central nervous system.

History: En. Sec. 11, Ch. 412, L. 1973; R.C.M. 1947, 54-311(3).

Commissioners' Note

Schedule IV contains certain tranquilizing drugs and long-acting barbiturates. All substances contained in the schedule must be dispensed on prescription.

Compiler's Comments

Source: Section 210(part), Uniform Controlled Substances Act. See also 50-32-229 wherein Montana codified part of Section 210 of the Uniform Act.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-32-231. Criteria for placement of drug in Schedule V. The board shall place a drug in Schedule V if it finds that:

- (1) the drug has low potential for abuse relative to the controlled drugs listed in Schedule IV;
- (2) the drug has currently accepted medical use in treatment in the United States; and
- (3) the drug has limited physical dependence or psychological dependence liability relative to the dangerous drugs listed in Schedule IV.

History: En. Sec. 12, Ch. 412, L. 1973; R.C.M. 1947, 54-312.

Compiler's Comments

Source: Section 211, Uniform Controlled Substances Act.

50-32-232. Specific dangerous drugs included in Schedule V. Schedule V consists of the drugs and other substances, by whatever official, common, usual, chemical, or brand name designated, listed in this section.

(1) Narcotic drugs containing nonnarcotic active medicinal ingredients. Any compound, mixture, or preparation containing any of the following is a narcotic drug, including its salts, calculated as the free anhydrous base or alkaloid in limited quantities as set forth in subsections (1)(a) through (1)(f), which include one or more nonnarcotic, active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by narcotic drugs alone:

- (a) not more than 200 milligrams of codeine per 100 milliliters or per 100 grams;
- (b) not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams;
- (c) not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams;
- (d) not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;

(e) not more than 100 milligrams of opium per 100 milliliters or per 100 grams; and
(f) not more than 0.5 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

(2) Stimulants. Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of pyrovalerone is a stimulant having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers.

(3) Depressants. Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances is a depressant having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers:

(a) lacosamide, also known as (R)-2-acetoamido-N-benzyl-3-methoxy-propionamide or vimpat;
and

(b) pregabalin, also known as (S)-3-(aminomethyl)-5-methylhexanoic acid or lyrica.

(4) Approved cannabidiol drugs. A drug product in finished dosage formulation that has been approved by the United States food and drug administration that contains cannabidiol, also known as (2-[1R-3-methyl-6R-(1-methylethenyl)-2-cyclohexen-1-yl]-5-pentyl-1,3-benzenediol), derived from cannabis and no more than 0.1% (w/w) residual tetrahydrocannabinols.

(5) Anticonvulsant substances include the following:

(a) ezogabine; and

(b) brivaracetam.

History: En. Sec. 13, Ch. 412, L. 1973; R.C.M. 1947, 54-313; amd. Sec. 15, Ch. 37, L. 1979; amd. Sec. 5, Ch. 141, L. 1983; amd. Sec. 5, Ch. 36, L. 1991; amd. Sec. 6, Ch. 113, L. 1997; amd. Sec. 2, Ch. 108, L. 2007; amd. Sec. 10, Ch. 135, L. 2013; amd. Sec. 5, Ch. 134, L. 2019.

Commissioners' Note

While it is contemplated that Schedule V drugs will be sold on a restricted over-the-counter sale basis for a valid medical purpose, this Section is not intended to supersede prescription requirements in those States where such substances cannot be sold except on a prescription-only status.

While this Schedule only contains narcotic drugs formerly considered as Class "X" (exempt over-the-counter drugs), the criteria set out in [50-32-231] are broad enough to include other over-the-counter preparations which meet those criteria and are in need of some limited form of control.

The comments to [50-32-226(3)] relating to the metric system and the dosage-strength calculations apply equally as well to Schedule V.

Compiler's Comments

2019 Amendment: Chapter 134 inserted (4) adding approved cannabidiol drugs as Schedule V drugs; inserted (5) regarding anticonvulsant substances including ezogabine and brivaracetam; and made minor changes in style. Amendment effective April 12, 2019.

2013 Amendment: Chapter 135 inserted (3) adding certain depressants to the list of substances classified as Schedule V dangerous drugs. Amendment effective October 1, 2013.

2007 Amendment: Chapter 108 deleted former (1) that read: "(1) Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing buprenorphine and its salts is included in this category"; and made minor changes in style. Amendment effective March 30, 2007.

1997 Amendment: Chapter 113 inserted (1) concerning narcotic drugs; deleted former (2) and (3) that read: "(2) Buprenorphine.

(3) Propylhexedrine"; inserted (3) concerning stimulants; deleted (4) that read: "(4) Pyrovalerone"; adjusted subsection references; and made minor changes in style. Amendment effective March 20, 1997.

Saving Clause: Section 9, Ch. 113, L. 1997, was a saving clause.

1991 Amendment: In (2) substituted "buprenorphine" for "loperamide"; in (3) inserted propylhexedrine; and in (4) inserted pyrovalerone.

1983 Amendment: In introduction, substituted present language (see 1983 Session Law) for "The following dangerous drugs are included in Schedule V:"; at beginning of (1), inserted "Narcotic drugs containing nonnarcotic active medicinal ingredients."; near beginning of first complete sentence relating to any compound, mixture, or preparation, after "containing" deleted "limited quantities of"; after "drugs" substituted "or its salts . . . which include" for "which also contains"; in (1)(a), after "codeine" deleted "or any of its salts"; inserted (1)(b) relating to dihydrocodeine, (1)(c) relating to ethylmorphine, (1)(e) relating

to opium, and (1)(f) relating to difenoxin; inserted (2) relating to loperamide; and made minor phraseology changes.

Source: Section 212, Uniform Controlled Substances Act.

Deviation From Uniform Controlled Substances Act: This section specifically eliminated subsections (b)(2), (b)(3), and (b)(5) of the uniform law.

Cross-References

Criminal distribution of dangerous drugs, 45-9-101.

Criminal distribution of imitation dangerous drugs, 45-9-112.

Administrative Rules

ARM 24.174.1412 Additions, deletions, and rescheduling of dangerous drugs.

50-32-233. Exempt anabolic steroid products. The following anabolic steroid-containing compounds, mixtures, or preparations are exempt from this chapter:

- (1) androgyn L.A.;
- (2) andro-estro 90-4;
- (3) depandrogyn;
- (4) DEPO-T.E.;
- (5) deptestrogen;
- (6) duomone;
- (7) duratestrin;
- (8) duo-span II;
- (9) estratest;
- (10) estratest HS;
- (11) pan estra test;
- (12) premarin with methyltestosterone;
- (13) synovex H pellets in process;
- (14) synovex H pellets in process granulation;
- (15) test-estro cypionates;
- (16) testagen;
- (17) testosterone cyp 50 estradiol cyp 2;
- (18) testosterone, cypionate-estradiol, cypionate injection;
- (19) testosterone, enanthate-estradiol, valerate injection; and
- (20) tilapia sex reversal feed (investigational).

History: En. Sec. 7, Ch. 113, L. 1997.

Compiler's Comments

Saving Clause: Section 9, Ch. 113, L. 1997, was a saving clause.

Effective Date: Section 10, Ch. 113, L. 1997, provided: "[This act] is effective on passage and approval". Approved March 20, 1997.

Part 3 Annual Registration

Part Compiler's Comments

Preamble: The preamble attached to Ch. 273, L. 1999, provided: "WHEREAS, Title 50, chapter 32, MCA, requires the Department of Commerce to administer a program under rules adopted by the Board of Pharmacy providing for the registration of persons and institutions that may manufacture, distribute, or administer dangerous drugs; and

WHEREAS, it is the registration system under Title 50, chapter 32, part 3, MCA, that allows hospitals, physicians, and other persons and health care institutions that have legitimate uses for dangerous drugs to possess or administer those drugs; and

WHEREAS, section 50-32-101(12), MCA, provides for a category of a possessor of dangerous drugs known as a "distributor", who is a person or facility that receives dangerous drugs from one registered source and makes them available to another person who is also registered under the law; and

WHEREAS, institutions, such as hospitals and other health care facilities, that do not themselves prescribe or administer dangerous drugs but do receive those drugs from one source and make them available to a physician to administer to a patient are registered pursuant to Title 50, chapter 32, part 3, MCA, as a "distributor", as defined in section 50-32-101(12), MCA; and

WHEREAS, Montana is seeing the development of new and expanding types of health care facilities intended to fill the growing needs of a category of patients who require surgery but do not require hospitalization and who may therefore have surgery performed at an ambulatory surgical facility, soon to be called an "outpatient center for surgical services" pursuant to the terms of Senate Bill No. 116; and

WHEREAS, few if any of the existing ambulatory surgical facilities have themselves been registered for the possession of dangerous drugs because most existing facilities are operationally connected to hospitals or physicians who already have a registration issued by the Department of Commerce; and

WHEREAS, the rules adopted by the Board of Pharmacy pursuant to section 50-32-103(2), MCA, and administered by the Department of Commerce do not provide for the registration of ambulatory surgical facilities or outpatient centers for surgical services as distributors or any other class of registered entity; and

WHEREAS, the registration of ambulatory surgical facilities or outpatient centers for surgical services to allow the facilities or centers to make drugs available for preoperation, operation, and postoperation surgical purposes will provide health care consumers with greater options for the performance of outpatient surgery; and

WHEREAS, the registration of ambulatory surgical facilities or outpatient centers for surgical services will not increase the possibility that dangerous drugs will be used by unauthorized persons because an ambulatory surgical facility or outpatient center for surgical services must still receive those drugs from a registered distributor and because physicians or other persons registered to administer or prescribe drugs will still need to administer or prescribe the drugs possessed by an ambulatory surgical facility or outpatient facility for surgical services."

Part Administrative Rules

Title 24, chapter 174, subchapter 14, ARM Dangerous Drug Act.

50-32-301. Annual registration required for manufacturer, distributor, or dispenser. (1) Every person who manufactures, distributes, or dispenses any dangerous drug within this state must obtain annually a registration issued by the department in accordance with board rules.

(2) Persons registered by the board under this chapter to manufacture, distribute, dispense, or conduct research with dangerous drugs may possess, manufacture, distribute, dispense, or conduct research with those drugs to the extent authorized by their registration and in conformity with the other provisions of this chapter.

History: En. Sec. 16, Ch. 412, L. 1973; amd. Sec. 6, Ch. 350, L. 1974; amd. Sec. 1, Ch. 291, L. 1975; R.C.M. 1947, 54-316(1), (2); amd. Sec. 15, Ch. 379, L. 1981.

Commissioners' Note

This Section requires any person who engages in, or intends to engage in, the manufacture, distribution, or dispensing of controlled substances to be registered by the State. Practitioners who administer, as that term is defined in [50-32-101(1)], or who prescribe, will be required to register; however, under [other] sections they may be exempt from the record-keeping requirements. By registering every individual dealing with controlled substances, the State will know who is responsible for a substance and who is dealing in these substances. The tighter registration requirements imposed by this Section are designed to close the gaps in State laws and thus eliminate many of these sources of diversion, both actual and potential.

Common and contract carriers, warehousemen, ultimate users, and agents of registrants are specifically exempted from the registration requirements since to require otherwise would be extremely burdensome and afford little increase in protection against diversion.

Annual registration is called for so that a licensee can be screened and the registration lists purified should the need arise. In addition, the annual registration requirement will be a form of check on persons authorized to deal in controlled substances.

Compiler's Comments

1981 Amendment: Deleted "on or after January 1, 1974" after "state must" in (1).

Source: Section 302(part), Uniform Controlled Substances Act. See also 50-32-302 through 50-32-304 wherein Montana codified other parts of Section 302 of the Uniform Act. The commissioners' note under 50-32-301 is the complete commissioners' note to Section 302 of the Uniform Act.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Administrative Rules

ARM 24.174.402 Dangerous drug fee schedule.

ARM 24.174.1401 Requirements for registration.

ARM 24.174.1402 Renewals.

ARM 24.174.1403 Application forms.

50-32-302. Exceptions to registration requirement. The following persons need not register and may lawfully possess dangerous drugs under this chapter:

(1) an agent or employee of any registered manufacturer, distributor, or dispenser of any dangerous drug if the agent or employee is acting in the usual course of business or employment;

(2) a common or contract carrier or warehouse operator or an employee of the carrier or warehouse operator, whose possession of any dangerous drug is in the usual course of business or employment;

(3) an ultimate user or a person in possession of any dangerous drug pursuant to a lawful order of a practitioner or in lawful possession of a Schedule V drug;

(4) officers and employees of the state, or a political subdivision of the state while acting in the course of their official duties.

History: En. Sec. 16, Ch. 412, L. 1973; amd. Sec. 6, Ch. 350, L. 1974; amd. Sec. 1, Ch. 291, L. 1975; R.C.M. 1947, 54-316(3); amd. Sec. 1846, Ch. 56, L. 2009.

Commissioners' Note

[See commissioners' note to 50-32-301.]

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Source: Section 302(part), Uniform Controlled Substances Act. See also 50-32-301, 50-32-303, and 50-32-304 wherein Montana codified other parts of Section 302 of the Uniform Act. The commissioners' note under 50-32-301 is the complete commissioners' note to Section 302 of the Uniform Act.

50-32-303. Waiver of registration requirement for practitioners licensed by federal government. The board shall waive the requirement for registration of practitioners, other than pharmacies, who are registered or licensed by the federal government to dispense dangerous drugs.

History: En. Sec. 16, Ch. 412, L. 1973; amd. Sec. 6, Ch. 350, L. 1974; amd. Sec. 1, Ch. 291, L. 1975; R.C.M. 1947, 54-316(4).

Commissioners' Note

[See commissioners' note to 50-32-301.]

Compiler's Comments

Source: Section 302(part), Uniform Controlled Substances Act. See also 50-32-301, 50-32-302, and 50-32-304 wherein Montana codified other parts of Section 302 of the Uniform Act. The commissioners' note under 50-32-301 is the complete commissioners' note to Section 302 of the Uniform Act.

50-32-304. Waiver of registration requirement when in public interest. The board may waive by rule the requirement for registration of certain manufacturers, distributors, or dispensers if it finds it consistent with the public health and safety.

History: En. Sec. 16, Ch. 412, L. 1973; amd. Sec. 6, Ch. 350, L. 1974; amd. Sec. 1, Ch. 291, L. 1975; R.C.M. 1947, 54-316(5).

Commissioners' Note

[See commissioners' note to 50-32-301.]

Compiler's Comments

Source: Section 302(part), Uniform Controlled Substances Act. See also 50-32-301 through 50-32-303 wherein Montana codified other parts of Section 302 of the Uniform Act. The commissioners' note under 50-32-301 is the complete commissioners' note to Section 302 of the Uniform Act.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-32-305. Separate registration required. A separate registration is required at each principal place of business or professional practice where the applicant manufactures, distributes, or dispenses dangerous drugs.

History: En. Sec. 16, Ch. 412, L. 1973; amd. Sec. 6, Ch. 350, L. 1974; amd. Sec. 1, Ch. 291, L. 1975; R.C.M. 1947, 54-316(6).

Compiler's Comments

Section Not Part of Uniform Act: This section is not part of the Uniform Controlled Substances Act.

50-32-306. Criteria for registration of manufacturers and distributors. (1) The board shall register an applicant to manufacture or distribute dangerous drugs included in 50-32-222, 50-32-224, 50-32-226, 50-32-229, and 50-32-232 unless it determines that the issuance of that registration would be inconsistent with the public interest.

(2) In determining the public interest, the board shall consider the following factors:

(a) maintenance of effective controls against diversion of dangerous drugs into other than legitimate medical, scientific, or industrial channels;

(b) compliance with applicable state and local law;

(c) any convictions of the applicant under any federal and state laws relating to any dangerous drug;

(d) past experience in the manufacture or distribution of dangerous drugs and the existence in the applicant's establishment of effective controls against diversion;

(e) furnishing by the applicant of false or fraudulent material in any application filed under this chapter;

(f) suspension or revocation of the applicant's federal registration to manufacture, distribute, or dispense dangerous drugs as authorized by federal law; and

(g) any other factors relevant to and consistent with the public health and safety.

(3) Compliance by manufacturers and distributors with the provisions of the federal law respecting registration (excluding fees) entitles them to be registered under this chapter.

History: En. Sec. 17, Ch. 412, L. 1973; amd. Sec. 7, Ch. 350, L. 1974; R.C.M. 1947, 54-317(1), (4).

Commissioners' Note

[Sections 50-32-306 through 50-32-308 set] out the criteria under which a State authority registers persons to engage in the various activities concerning controlled substances. There is required a showing by the applicant of the maintenance of adequate safeguards against diversion, of compliance with State and local laws, and of his previous experience in the manufacture or distribution of such substances. These criteria are almost identical to those which the Attorney General must consider in registering an applicant under the Federal Controlled Substances Act except for antitrust considerations, which were not considered applicable to the State control procedures. Thus, any particular applicant need meet only one set of criteria for both Federal and State registration.

In addition, registration under the Federal Controlled Substances Act will be deemed sufficient for registration under State law. Since the criteria for Federal and State registration are virtually identical, nothing would be served by requiring a registrant under Federal law to go through a similar procedure in registering under State law. Wasteful duplication would be the only result. Under the proposed system, a single form will suffice to register an applicant under both State and Federal law.

Practitioners are to be registered to prescribe or dispense substances in Schedules II through V, comprising all substances with recognized medical uses, if they are authorized to prescribe or dispense under the laws of the State. If those practitioners wish to conduct research in nonnarcotic substances in Schedules II through V, the State authority has within its discretion the right to require, or not require, a separate registration. It is felt that such permissive language will be most beneficial to those States who wish to keep close tabs on all those individuals who conduct research within their borders.

Practitioners who are registered under Federal law to conduct research with respect to Schedule I substances are permitted to conduct that research in a State solely upon notification to the appropriate State authority of a valid Federal registration.

Compiler's Comments

Source: Section 303(part), Uniform Controlled Substances Act. See also 50-32-307 and 50-32-308 wherein Montana codified other parts of Section 303 of the Uniform Act. The commissioners' note under 50-32-306 is the complete commissioners' note to Section 303 of the Uniform Act.

Administrative Rules

ARM 24.174.1401 Requirements for registration.

50-32-307. Manufacture and distribution limited by registration. Registration under 50-32-306 does not entitle a registrant to manufacture and distribute dangerous drugs in Schedule I or II other than those specified in the registration.

History: En. Sec. 17, Ch. 412, L. 1973; amd. Sec. 7, Ch. 350, L. 1974; R.C.M. 1947, 54-317(2).

Commissioners' Note

[See commissioners' note to 50-32-306.]

Compiler's Comments

Source: Section 303(part), Uniform Controlled Substances Act. See also 50-32-306 and 50-32-308 wherein Montana codified other parts of Section 303 of the Uniform Act. The commissioners' note under 50-32-306 is the complete commissioners' note to Section 303 of the Uniform Act.

50-32-308. Criteria for registration of practitioners. (1) Practitioners shall be registered to dispense any dangerous drugs or to conduct research with dangerous drugs in Schedules II through V if they are authorized to dispense or conduct research under the laws of this state. The board need not require separate registration for practitioners engaging in research with nonnarcotic dangerous drugs in Schedules II through V where the registrant is already registered under this chapter in another capacity.

(2) Practitioners registered under federal law to conduct research with Schedule I drugs may conduct research with Schedule I drugs within this state upon furnishing the board evidence of that federal registration.

History: En. Sec. 17, Ch. 412, L. 1973; amd. Sec. 7, Ch. 350, L. 1974; R.C.M. 1947, 54-317(3).

Commissioners' Note

[See commissioners' note to 50-32-306.]

Compiler's Comments

Source: Section 303(part), Uniform Controlled Substances Act. See also 50-32-306 and 50-32-307 wherein Montana codified other parts of Section 303 of the Uniform Act. The commissioners' note under 50-32-306 is the complete commissioners' note to Section 303 of the Uniform Act.

Administrative Rules

ARM 24.174.1401 Requirements for registration.

50-32-309. Registrants to maintain records and inventories. Persons registered to manufacture, distribute, or dispense dangerous drugs under this chapter shall keep records and maintain inventories in conformance with the recordkeeping and inventory requirements of federal law and with any additional rules the board issues.

History: En. Sec. 20, Ch. 412, L. 1973; R.C.M. 1947, 54-320.

Commissioners' Note

This Section, which requires registrants to prepare inventories and records of all stocks of Schedule I through V substances, ties into the proposed Federal system and should prove to be more than adequate for State record-keeping purposes. By tying the State and Federal systems together, different "paper" requirements will be avoided and wasteful duplication eliminated. However, if a State sees a need for any additional recordkeeping or inventory requirements, this provision provides the appropriate State agency with the authority to promulgate those rules.

This Section is also intended to exempt those individuals exempted by Federal law from recordkeeping and inventory requirements.

Compiler's Comments

Source: Section 306, Uniform Controlled Substances Act.

Cross-References

Prescription requirements, 50-32-208.

Administrative Rules

ARM 24.174.1404 Required records.

50-32-310. Inspections authorized. The board may have the establishment of a registrant or applicant for registration inspected.

History: En. Sec. 16, Ch. 412, L. 1973; amd. Sec. 6, Ch. 350, L. 1974; amd. Sec. 1, Ch. 291, L. 1975; R.C.M. 1947, 54-316(7).

Commissioners' Note

The purpose of this Section is to codify certain recent United States Supreme Court decisions, in particular *Camara v. Municipal Court of the City and County of San Francisco*, 387 U.S. 523 (1967), *See v. City of Seattle*, 387 U.S. 541 (1967), and *Colonnade Catering Corp. v. U. S.*, 397 U.S. 72 (1970), with regard to inspection warrants. [See, also, *Kramer Grocery v. U. S.*, 1968, 294 F.Supp. 65; *U. S. v. Stinack Sales Co.*, 1968, 387 F.2d 849.] The Section sets out in very careful terms the procedures and restrictions for obtaining and using an administrative inspection warrant. This is of vital importance to the States since they are involved in the regulation of the legitimate drug industry and must have the ability to inspect records, books and premises if access to them is denied. By having a carefully delineated code section dealing with administrative inspection warrants, law enforcement officers will be more certain of what is needed to obtain them and the courts can apply a uniform standard. Perhaps even more important, the industry being inspected will have more certainty as to its rights and obligations in this area.

It should be noted that the Supreme Court, in *Camara v. Municipal Court* spoke of the requirement of "probable cause" for issuance of an administrative inspection warrant. But the Court was not, however, speaking in terms of criminal probable cause, which would require a specific knowledge of the condition of the particular building to be inspected. Instead, rejecting the criminal probable cause argument, it required merely a valid public interest in the effective enforcement of a particular public health or safety act which justified the intrusion contemplated.

Although this Section codifies the Court's view for administrative inspection warrants, it in no way affects criminal probable cause as that phrase is defined under present criminal statutes or case law.

Finally, it should be noted that while Section 402(a)(4) [not adopted in Montana] makes it a violation of the Act to refuse entry into any premises for inspection, it is contemplated that such inspection will have been authorized under the rules set out in this Section.

Compiler's Comments

Source — Montana Changes: Section 502, Uniform Controlled Substances Act. The Montana inspection provision of 50-32-310 simply authorizes an administrative inspection, while the Uniform Act provides at great length for procedures for obtaining such warrants.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.
Searches and seizures, Art. II, sec. 11, Mont. Const.

Law Review Articles

The Constitutionality of Civil Inspections, 21 Mont. L. Rev. 195 (Spring 1960).

50-32-311. Revocation or suspension of registration. (1) A registration under 50-32-301 to manufacture, distribute, or dispense a dangerous drug may be suspended or revoked by the board upon a finding that the registrant has:

(a) furnished false or fraudulent material information in any application filed under this chapter;
(b) been convicted of a felony under any state or federal law relating to any dangerous drug or controlled substance; or
(c) had the registrant's federal registration suspended or revoked to manufacture, distribute, or dispense controlled substances.

(2) The board may limit revocation or suspension of a registration to the particular dangerous drug with respect to which grounds for revocation or suspension exist.

(3) If the board suspends or revokes a registration, all dangerous drugs owned or possessed by the registrant at the time of suspension or the effective date of the revocation order may be placed under seal. A disposition may not be made of drugs under seal until the time for taking an appeal has elapsed or until all appeals have been concluded unless a court, upon application, orders the sale of perishable drugs and the deposit of the proceeds of the sale with the court. Upon a revocation order becoming final, all dangerous drugs may be forfeited to the state.

(4) The board shall promptly cause the bureau to be notified of all orders suspending or revoking registration and all forfeitures of dangerous drugs.

History: En. Sec. 18, Ch. 412, L. 1973; amd. Sec. 8, Ch. 350, L. 1974; R.C.M. 1947, 54-318; amd. Sec. 1847, Ch. 56, L. 2009.

Commissioners' Note

This Section sets out the grounds upon which a State authority may revoke or suspend a registration. Subsection [(1)] sets out the criteria upon which a registration can be revoked or suspended during the year in which that particular registration is in force. In denial of registration renewal situations for manufacturers or distributors, the criteria in this subsection should not be used. Instead, the State authority should apply the broader criteria set out in [50-32-306] relating to initial registration.

Subsection [(2)] allows the State authority in its discretion to limit the revocation or suspension of a registration to a particular substance rather than revoking or suspending the whole registration. This will be especially effective where, for example, a manufacturer committed a criminal violation, but certain mitigating circumstances militate against removing his full registration. Instead, his right to manufacture a particular substance could be suspended or revoked. This would put him out of the business of manufacturing in the substance or schedule in which he committed the violation, but would not totally remove his livelihood.

Subsection [(3)] relates to forfeitures of controlled substances where the registrant who has the right to possess those substances has his registration revoked. This Section has purposely been drafted to be permissive rather than mandatory. Thus, for example, if the registration of a sole medical practitioner or a community pharmacy in a small town were revoked, the State authority could in its discretion allow the revoked registrant to sell those substances to a new owner-registrant so that the inhabitants of the particular town would not have to go without needed pharmaceutical supplies.

Upon a final order of revocation of a registration, the State must promptly notify the Federal Bureau of Narcotics and Dangerous Drugs. Such a provision is necessary since revocation of a State registration is grounds for denial, suspension, or revocation of a Federal registration.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Source: Section 304, Uniform Controlled Substances Act.

50-32-312. Procedure for denial, suspension, revocation of, or refusal to renew registration. (1)

Before denying, suspending, or revoking a registration or refusing a renewal of registration, the board shall serve upon the applicant or registrant an order to show cause why registration should not be denied, revoked, or suspended or why the renewal should not be refused. The order to show cause shall contain a statement of the basis therefor and shall require the applicant or registrant to appear before the board at a time and place not less than 30 days after the date of service of the order, but in the case of a denial of renewal of registration, the show cause order shall be served not later than 30 days before the expiration of the registration. These proceedings shall be conducted without regard to any criminal prosecution or other proceeding. Proceedings to refuse renewal of registration do not abate the existing registration, which remains in effect pending the outcome of the administrative hearing.

(2) The board may suspend, without an order to show cause, any registration simultaneously with the institution of proceedings under 50-32-311 or whenever renewal of registration is refused if it finds that there is an imminent danger to the public health or safety which warrants such action. The suspension continues in effect until the conclusion of the proceedings, including judicial review thereof, unless sooner withdrawn by the board or dissolved by a court of competent jurisdiction.

History: En. Sec. 19, Ch. 412, L. 1973; amd. Sec. 9, Ch. 350, L. 1974; amd. Sec. 7, Ch. 187, L. 1977; R.C.M. 1947, 54-319.

Commissioners' Note

This Section requires the State authority to serve upon a registrant an order to show cause why his registration should not be revoked or suspended or his registration renewal refused prior to taking such action. The order will contain enough information to fully apprise the registrant of the charges against him and will be served at least 30 days before his current registration expires. All proceedings will be conducted under appropriate administrative procedures. If, during the pendency of an administrative hearing to deny a renewal registration, the registration runs out, this Section keeps the old registration in force until the administrative hearing is completed.

Subsection [(2)] allows the State authority, in cases of imminent danger to the public health or safety, to suspend the registration simultaneously with the institution of proceedings to revoke, suspend, or refuse a renewal. Such an emergency situation can occur when, for example, a practitioner, knowing that action is being taken to revoke his registration, begins to buy and divert large quantities of controlled substances. Rather than having to wait until all administrative proceedings have been completed and allow substantial diversion of these substances, the State authority may act immediately to suspend the registration. It may then place all controlled substances under seal until the administrative hearing is completed.

Compiler's Comments

Source: Section 305, Uniform Controlled Substances Act.

Cross-References

Contested case procedure, Title 2, ch. 4, part 6.
Judicial review, Title 2, ch. 4, part 7.

50-32-313. Practitioner's failure to register a misdemeanor. Practitioners who fail or refuse to register as required by this chapter shall be guilty of a misdemeanor and upon conviction therefor may be fined not to exceed \$1,000, imprisoned in the county jail not to exceed 1 year, or both.

History: En. Sec. 29, Ch. 412, L. 1973; R.C.M. 1947, 54-327.

Compiler's Comments

Section Not Part of Uniform Act: This section is not part of the Uniform Controlled Substances Act.

50-32-314. Board to adopt rules for registration of outpatient center for surgical services. (1)

The board shall adopt rules to provide for the registration of any outpatient center for surgical services pursuant to this part. The rules must categorize the outpatient center for surgical services as a "distributor" pursuant to 50-32-101(13) or other category of registrant as determined by the board.

(2) If the board determines that an outpatient center for surgical services requires the services of a pharmacist in order to be registered, the board shall allow that center to use the services of a consulting pharmacist to satisfy the obligation imposed by the board.

(3) This section does not affect any existing registration requirement pursuant to this part for persons providing dangerous drugs to an outpatient center for surgical services or persons administering dangerous drugs within or as the result of procedures performed at an outpatient center for surgical services.

History: En. Sec. 1, Ch. 273, L. 1999; amd. Sec. 42, Ch. 502, L. 2007; amd. Sec. 11, Ch. 135, L. 2013.

Compiler's Comments

2013 Amendment: Chapter 135 in (1) in second sentence substituted "50-32-101(13)" for "50-32-101(12)". Amendment effective October 1, 2013.

2007 Amendment: Chapter 502 throughout section substituted "outpatient center for surgical services" for "ambulatory surgical facilities"; in (2) near middle after "allow" substituted "that center" for "those facilities"; and made minor changes in style. Amendment effective October 1, 2007.

Saving Clause: Section 52, Ch. 502, L. 2007, was a saving clause.

Effective Date: Section 3, Ch. 273, L. 1999, provided that this section is effective on passage and approval. Approved April 6, 1999.

Section Not Part of Uniform Act: This section is not part of the Uniform Controlled Substances Act.

Part 4

Transfer of Precursors to Controlled Substances

50-32-401. Report required for precursor to controlled substance. (1) A manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes any of the following substances to a person in this state shall submit a report to the department of justice detailing all transactions:

- (a) phenyl-2-propanone;
- (b) methylamine;
- (c) d-lysergic acid;
- (d) ergotamine tartrate;
- (e) diethyl malonate;
- (f) malonic acid;
- (g) ethyl malonate;
- (h) barbituric acid; and
- (i) piperidine.

(2) The department of justice may adopt, amend, or repeal rules in accordance with the Montana Administrative Procedure Act that add or delete substances on the list of regulated substances in subsection (1) if the substance is a precursor to a dangerous drug as defined in 50-32-101.

(3) This section does not apply to any of the following:

- (a) a pharmacist or other authorized person who sells or furnishes the substance upon the prescription of a physician, dentist, podiatrist, or veterinarian;
- (b) a physician, dentist, podiatrist, or veterinarian who administers or furnishes the substance to patients;
- (c) a manufacturer or wholesaler licensed by the board of pharmacy who sells, transfers, or otherwise furnishes the substance to a licensed pharmacist, physician, dentist, podiatrist, or veterinarian;
- (d) transfers of the substances listed in subsection (1) within any college or university to an employee or student of the college or university for the purpose of teaching or research authorized by the college or university.

History: En. Sec. 1, Ch. 227, L. 1979; amd. Sec. 1, Ch. 247, L. 1983; amd. Sec. 1848, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1983 Amendment: In (3)(c), substituted "board of pharmacy" for "board of pharmacists".

Statement of Intent: The statement of intent adopted with Ch. 227, L. 1979, provided: "Those substances listed in section 1 can be procured from most commercial chemical warehouses just as numerous other chemicals can be obtained. However, those substances listed in section 1 can be used in

the manufacture of several different dangerous drugs, including amphetamine, methamphetamine and phencyclidine. The intent of the legislation requiring reporting is to monitor commercial sales of those chemicals that can be readily used to produce dangerous drugs. Two purposes will be served by mandatory reporting. First of all, it will deter those who do not have a legitimate need for the chemicals from making purchases, knowing that the purchase will be reported. Secondly, by monitoring the sales the Department of Justice will be "tipped" to large purchases by illegitimate purchasers thereby preventing the possible manufacture and consumption of a controlled drug."

Incorporation Into Existing Law: Sections 50-32-401 through 50-32-405 were enacted without any codification instructions. The apparent intent of the Legislature was that they become part of the Title 50, ch. 32, and the Code Commissioner has codified them accordingly. This arrangement may affect other sections in ch. 32, including 50-32-103. See 1-11-103(4).

Section Not Part of Uniform Act: This section is not part of the Uniform Controlled Substances Act.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Administrative Rules

ARM 23.12.701 Precursors to dangerous drugs.

50-32-402. Reports required — exceptions. (1) Except as provided in subsection (2), a manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes any substance regulated pursuant to 50-32-401 to a person in this state must, within 72 hours, submit a report of the transaction to the department of justice.

(2) The department may authorize the submission of the reports on a monthly basis for repeated, regular transactions between the furnisher and the recipient involving the same substance, if the department determines:

(a) a pattern of regular supply of the substance exists as between the manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes the substance and the recipient of the substance; and

(b) the recipient has established a record of use of the substance for lawful purposes.

History: En. Sec. 2, Ch. 227, L. 1979.

Compiler's Comments

Section Not Part of Uniform Act: This section is not part of the Uniform Controlled Substances Act.

Cross-References

Department of Justice, Title 2, ch. 15, part 20.

50-32-403. Common reporting form. (1) The department of justice must provide a common reporting form for the report required under 50-32-401.

(2) The form must contain the following information:

(a) name of the substance;

(b) quantity of the substance sold, transferred, or furnished;

(c) the date the substance was sold, transferred, or furnished;

(d) the name and address of the person buying or receiving the substance; and

(e) the name and address of the manufacturer, wholesaler, or retailer.

History: En. Sec. 3, Ch. 227, L. 1979.

Compiler's Comments

Section Not Part of Uniform Act: This section is not part of the Uniform Controlled Substances Act.

Cross-References

Department of Justice, Title 2, ch. 15, part 20.

50-32-404. Loss, theft, or other discrepancy to be reported. (1) The theft or loss of a substance regulated in accordance with 50-32-401 must be reported to the department of justice within 3 days after the theft or loss is discovered.

(2) Any difference between the quantity received of any substance regulated as provided in 50-32-401 and the quantity shipped must be reported to the department of justice within 3 days of the discovery of the discrepancy.

(3) A report made pursuant to this section shall also include the name of the common carrier or person who transported the substance and the date of shipment.

History: En. Sec. 4, Ch. 227, L. 1979.

Compiler's Comments

Section Not Part of Uniform Act: This section is not part of the Uniform Controlled Substances Act.

Cross-References

Department of Justice, Title 2, ch. 15, part 20.

50-32-405. Violation — penalties. (1) A person commits the offense of failure to report distribution of a precursor to a controlled substance if the person purposely or knowingly fails to report the sale, transfer, or other furnishing of a substance regulated by 50-32-401.

(2) A person convicted of failing to report the distribution of a precursor to a controlled substance shall be fined not more than \$10,000 or be imprisoned in the state prison for not more than 10 years, or both.

History: En. Sec. 5, Ch. 227, L. 1979; amd. Sec. 20, Ch. 432, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 432 in (1) and (2) after "report" substituted "distribution" for "sale or transfer"; and made minor changes in style. Amendment effective October 1, 1999.

Section Not Part of Uniform Act: This section is not part of the Uniform Controlled Substances Act.

Part 5

Regulation of Ephedrine and Pseudoephedrine

Part Compiler's Comments

Effective Date: Section 9, Ch. 572, L. 2005, provided that this part is effective July 1, 2005.

50-32-501. Restricted possession, purchase, or other transfer of ephedrine or pseudoephedrine — exceptions — penalties. (1) Except as provided in subsection (2), a person may not purchase, receive, or otherwise acquire more than 9 grams within any 30-day period or more than 3.6 grams per day of any product, mixture, or preparation containing any detectable quantity of ephedrine or pseudoephedrine, any of their salts or optical isomers, or salts of their optical isomers.

(2) This section does not apply to any quantity of a product, mixture, or preparation dispensed pursuant to a valid prescription or as provided in 50-32-502.

(3) Possession of more than 9 grams of a drug product containing any detectable quantity of ephedrine or pseudoephedrine, their salts or optical isomers, or salts of their optical isomers constitutes a rebuttable presumption of the intent to use the product as a precursor to methamphetamine or another controlled substance.

(4) The rebuttable presumption in subsection (3) does not apply to:

(a) a retail distributor of drug products;

(b) a wholesale drug distributor, or its agents, licensed by the board of pharmacy;

(c) a manufacturer of drug products or its agents;

(d) a pharmacist licensed by the board of pharmacy; or

(e) a licensed health care professional possessing the drug products in the course of carrying out the profession.

(5) A person who knowingly or negligently violates any provision of this section is guilty of a misdemeanor and shall be punished by a fine of not less than \$100 or more than \$500 and by imprisonment in the county jail for not more than 1 year.

History: En. Sec. 1, Ch. 572, L. 2005; amd. Sec. 1, Ch. 251, L. 2015.

Compiler's Comments

2015 Amendment: Chapter 251 in (1) inserted "or more than 3.6 grams per day"; and made minor changes in style. Amendment effective January 1, 2016.

50-32-502. Restricted sale and access to ephedrine or pseudoephedrine products — exceptions — penalties. (1) The retail sale of a product that contains any detectable quantity of ephedrine or pseudoephedrine, their salts or optical isomers, or salts of their optical isomers may be made only in a pharmacy licensed pursuant to Title 37, chapter 7, or a retail establishment that is certified by the department of justice pursuant to subsection (2).

(2) (a) If there is not a licensed community pharmacy within a county, then a retail establishment may apply to the department of justice for certification as an establishment that is allowed to sell products that contain any detectable quantity of ephedrine or pseudoephedrine, their salts or optical isomers, or salts of their optical isomers.

(b) The department of justice shall adopt rules to establish criteria for the certification of retail establishments with the intent to limit the available supply of ephedrine and pseudoephedrine to prevent the manufacture of methamphetamine.

(c) The department of justice may certify a retail establishment based on the criteria adopted by rule.

(3) Except as provided in subsection (5), a licensed pharmacy or certified retail establishment provided for in subsection (1) that dispenses, sells, or distributes products containing ephedrine or pseudoephedrine shall:

(a) display the products containing ephedrine or pseudoephedrine behind the store counter in an area that is not accessible to customers or in a locked case so that a customer is required to ask an employee of the licensed pharmacy or certified retail establishment for assistance in purchasing the product;

(b) limit sales to packages containing no more than a total of 3.6 grams base weight;

(c) require the person purchasing, receiving, or otherwise acquiring any product, mixture, or preparation containing ephedrine or pseudoephedrine to produce a valid driver's license or other form of valid government-issued photo identification and sign a record of sale or acquisition that includes the type of identification presented, including the identification number and issuing governmental entity, the time and date of the transaction, the name and address of the person purchasing or acquiring the ephedrine or pseudoephedrine, and the name of the ephedrine or pseudoephedrine product sold, including the number of grams contained in the product;

(d) require the purchaser to sign the record of sale or acquisition, acknowledging:

(i) that the record may be kept in written or electronic form;

(ii) an understanding of the applicable sales limit; and

(iii) that providing false statements or misrepresentations may subject the purchaser to criminal penalties under 18 U.S.C. 1001; and

(e) take action as necessary to ensure that a person does not purchase or acquire more than 3.6 grams per day of ephedrine or pseudoephedrine from the licensed pharmacy or certified retail establishment provided for in subsection (1) or more than 9 grams in any 30-day period. The limits apply to the total amount of base ephedrine or pseudoephedrine contained in the products and not to the overall weight of the products.

(4) A licensed pharmacy or certified retail establishment provided for in subsection (1) that dispenses, sells, or distributes products containing ephedrine or pseudoephedrine shall maintain all records made under subsection (3) and enter the records into the recordkeeping and monitoring system provided for in 50-32-503. Each record must be maintained by the licensed pharmacy or certified retail establishment provided for in subsection (1) for 2 years.

(5) This section does not apply to:

(a) any quantity of a product, mixture, or preparation dispensed pursuant to a valid prescription;

(b) the sale of a single package containing no more than 60 milligrams of ephedrine or pseudoephedrine to an individual;

(c) a product that the board, upon application by a manufacturer, exempts from this section by rule because the product has been formulated in a manner as to effectively prevent the conversion of the active ingredient into methamphetamine or its salts or precursors; or

(d) any product or precursor dispensed pursuant to a prescription.

(6) (a) A person who negligently violates any provision of this section is punishable by a fine of not more than \$500.

(b) A person who knowingly violates any provision of this section is guilty of a misdemeanor and shall be punished by a fine of not less than \$100 or more than \$500 and by imprisonment in the county jail for not more than 10 days.

(7) This section supersedes and preempts any rule, regulation, code, or ordinance of any political subdivision or other unit of local government that attempts to regulate the sale or purchase of compounds, mixtures, or preparations containing any detectable quantity of ephedrine or pseudoephedrine, their salts or optical isomers, or salts of their optical isomers.

History: En. Sec. 2, Ch. 572, L. 2005; amd. Sec. 2, Ch. 251, L. 2015.

Compiler's Comments

2015 Amendment: Chapter 251 in (3)(b) substituted "3.6 grams base weight" for "9 grams"; in (3)(c) before "driver's license" inserted "valid", before "photo identification" inserted "valid government-issued", inserted "type of identification presented, including the identification number and issuing governmental entity, the time and date", after "name" inserted "and address", and at end substituted "name of the ephedrine or pseudoephedrine product sold, including the number of grams contained in the product" for "number of grams of the product, mixture, or preparation purchased or acquired"; inserted (3)(d) regarding the purchaser's signed acknowledgment; in (3)(e) in first sentence substituted "3.6 grams per day" for "9 grams" and inserted "or more than 9 grams" and inserted last sentence concerning the limits; in (4) substituted "and enter the records into the recordkeeping and monitoring system provided for in 50-32-503" for "in a secure, centralized location" and deleted former last sentence that read: "The licensed pharmacy or certified retail establishment provided for in subsection (1) shall provide access to sales records by law enforcement officials"; in (5)(b) substituted current text concerning ephedrine or pseudoephedrine for "products containing ephedrine or pseudoephedrine that are in liquid, liquid capsule, or gel capsule form if ephedrine or pseudoephedrine is not the only active ingredient"; inserted (5)(d) concerning a product dispensed pursuant to a prescription; inserted (6)(a) providing for a fine; in (6)(b) after "knowingly" deleted "or negligently" and substituted "10 days" for "1 year"; inserted (7) concerning preemption; and made minor changes in style. Amendment effective January 1, 2016.

50-32-503. Electronic recordkeeping and monitoring system. (1) The department of justice shall provide for the state's participation in a real-time electronic recordkeeping and monitoring system for the sale of ephedrine or pseudoephedrine. The system must:

(a) be approved by the department of justice and provided at no charge to the state, law enforcement, or participating pharmacies and certified retail establishments;

(b) provide at no charge to participating pharmacies and certified retail establishments appropriate training, 24-hour online support, and a toll-free telephone help line that is staffed 24 hours a day;

(c) be able to communicate in real time with similar systems operated in other states and the District of Columbia and similar systems containing information submitted by more than one state;

(d) comply with information exchange standards adopted by the national information exchange model;

(e) include a stop sales alert that:

(i) provides notification that completion of a sale would result in the purchaser violating the quantity limits set forth in this part;

(ii) includes an override function that may be used by a pharmacy or certified retail establishment under the circumstances set forth in subsection (2); and

(iii) records each instance in which the override function is utilized;

(f) record the following:

- (i) the date and time of a transaction;
- (ii) the name, address, date of birth, and photo identification number of the purchaser, the type of identification used, and the issuing governmental entity;
- (iii) the number of packages purchased, the total number of grams of ephedrine or pseudoephedrine per package, and the name of the compound, mixture, or preparation containing ephedrine or pseudoephedrine; and
- (iv) the signature of the purchaser or a unique number connecting the transaction to a paper signature retained at the retail premises;
- (g) ensure that submitted data is retained within the system for at least 2 years from the date of submission; and
- (h) be accessible by law enforcement.

(2) (a) A pharmacy or certified retail establishment may not complete a sale if the system generates a stop sales alert unless the individual dispensing the ephedrine, pseudoephedrine, or related compound has a reasonable fear of imminent bodily harm if the sale is not completed.

(b) In the event of a mechanical or electronic interruption of the system, the pharmacy or certified retail establishment shall maintain a written log of sales of ephedrine and pseudoephedrine until the system is restored. The information written in the log must be transmitted to the system as soon as practicable after the system is restored.

(3) The following entities may not be required to participate in the electronic system and may not be required to maintain a written log:

(a) licensed manufacturers that manufacture and lawfully distribute products in the channels of commerce;

(b) wholesalers that lawfully distribute products in the channels of commerce;

(c) inpatient pharmacies of health care facilities licensed in this state;

(d) licensed long-term health care facilities;

(e) government-operated health care clinics, departments, or centers;

(f) physicians who dispense drugs pursuant to state law;

(g) pharmacies located in correctional facilities; and

(h) government-operated or industry-operated medical facilities serving the employees of the state or local or federal government.

(4) The department of justice, a law enforcement agency of the state, or a federal agency conducting a criminal investigation involving the manufacture of methamphetamine consistent with state or federal law may access data, records, and reports regarding the sale of ephedrine or pseudoephedrine. In addition, the information may be accessed if relevant to proceedings in a court, investigatory grand jury, or special grand jury.

(5) All data, records, and reports related to the sale of ephedrine or pseudoephedrine to retail customers and any abstracts of the data, records, and reports that are in the possession of the department of justice pursuant to this section are confidential and exempt from disclosure under Title 2, chapter 6.

(6) An entity operating the system or a pharmacy or certified retail establishment that sells a product containing ephedrine or pseudoephedrine may not use or disclose information collected or contained in the system or a written log for any purpose other than to:

(a) ensure compliance with this section or the federal Combat Methamphetamine Epidemic Act of 2005, Public Law 109-177;

(b) comply with the United States government or its political subdivision for law enforcement purposes under state or federal law; or

(c) facilitate a product recall necessary to protect the public health and safety.

(7) (a) A pharmacy or certified retail establishment that releases in good faith confidential information to federal, state, or local law enforcement or to a person acting on the behalf of law enforcement or that utilizes the system in accordance with this section is immune from civil liability for the release of the information or for acts or omissions in utilizing the system under this section unless the release or the act or omission constitutes gross negligence or intentional, wanton, or willful misconduct.

(b) The civil immunity provisions of subsection (7)(a) do not apply to a person employed by or an entity operated by the state or a political subdivision of the state.

History: En. Sec. 3, Ch. 251, L. 2015.

Compiler's Comments

Effective Date: Section 5, Ch. 251, L. 2015, provided: "[This act] is effective January 1, 2016."

Part 6

Help Save Lives From Overdose Act

Part Compiler's Comments

Effective Date: Section 19, Ch. 253, L. 2017, provided: "[This act] is effective on passage and approval." Approved May 3, 2017.

Preamble: The preamble attached to Ch. 253, L. 2017, provided: "WHEREAS, according to data from the United States Centers for Disease Control and Prevention (CDC), more than 28,000 deaths in the United States in 2014 involved opioid-related overdoses. In 2015, nationwide overdose deaths involving opioids rose to more than 33,000. The CDC also reports that deaths involving heroin have more than tripled since 2010, with more than 10,500 persons dying in 2014 and almost 13,000 dying in 2015. More than 60% of the opioid-related overdose deaths in 2015 were attributed to primarily illicit opioids, including heroin, to synthetic opioids other than methadone, or to a mixture of the two. The CDC calls opioid-related deaths a national epidemic; and

WHEREAS, many opioid-related overdose deaths could be prevented by the timely administration of an opioid antagonist, such as naloxone hydrochloride. Naloxone is a prescription medication that, when administered to a person experiencing an opioid-related overdose, restores the person to consciousness and normal breathing. Naloxone has been in use for more than 30 years and is virtually always effective when administered correctly. Furthermore, naloxone is nonaddictive and has no potential for abuse; and

WHEREAS, treatment of a suspected opioid-related drug overdose must be performed by someone other than the person overdosing, and, for this reason, the United States Food and Drug Administration labels naloxone for third-party administration. Naloxone can be successfully administered outside of a clinical setting or facility by friends, family members, or bystanders who have received minimal training in overdose recognition and naloxone administration; and

WHEREAS, it is common for a family member or friend to be the first one to find a person who is experiencing a drug overdose. It is also common for first responders, such as law enforcement officers or firefighters, to be among the first persons on the scene of a reported drug overdose. Studies show widespread success in preventing deaths from opioid-related overdoses through timely administration of naloxone. It is imperative, therefore, that persons who are in a position to render timely assistance to an overdose victim have immediate access to naloxone when it is needed; and

WHEREAS, overdose education and naloxone distribution programs that train family members, friends, and others in a position to assist someone experiencing an opioid-related overdose can effectively reduce opioid overdose death rates. Moreover, naloxone distribution for administration by nonmedical experts can be highly cost-effective; and

WHEREAS, an opioid-related overdose is a medical emergency. After the administration of naloxone, it is critical to summon emergency medical assistance. However, persons who witness an overdose are sometimes reluctant to call 9-1-1 for fear of being arrested and prosecuted for a crime. Thirty-six states and the District of Columbia have passed laws providing limited immunity to persons who call for help when someone has experienced an opioid-related overdose; and

WHEREAS, numerous state and national public health and other organizations support increased access to naloxone, including the American Medical Association, the American Society of Addiction Medicine, the American Pharmacists Association, the United States Conference of Mayors, the National Governors Association, the federal Office of National Drug Control Policy, the American Public Health Association, the Harm Reduction Coalition, the National Association of State Alcohol and Drug Abuse Directors, the American Association of Poison Control Centers, and state and local law enforcement and other organizations representing first responders."

50-32-601. Short title. This part may be cited as the "Help Save Lives From Overdose Act".
History: En. Sec. 1, Ch. 253, L. 2017.

50-32-602. Purpose. The purposes of this part are to:

(1) save the lives of persons who have experienced an opioid-related drug overdose by providing the broadest possible access to lifesaving opioid antagonist medication;

(2) facilitate the availability and use of opioid antagonist medication by providing professional, civil, and criminal immunity to persons who prescribe, dispense, distribute, or administer an opioid antagonist; and

(3) encourage persons to seek medical treatment in an opioid-related drug overdose situation by providing immunity from prosecution for certain criminal offenses for persons who seek or receive the medical treatment.

History: En. Sec. 2, Ch. 253, L. 2017.

50-32-603. Definitions. As used in this part, the following definitions apply:

(1) "Administer" means to apply an opioid antagonist to the body of another person by injection, inhalation, ingestion, auto-injector, or another means.

(2) "Department" means the department of public health and human services provided for in 2-15-2201.

(3) "Dispense" or "dispensing" has the meaning provided in 37-7-101.

(4) "Distribute" has the meaning provided in 37-7-101.

(5) "Eligible recipient" means:

(a) a person who is at risk of experiencing an opioid-related drug overdose;

(b) a family member, friend, or other person who is in a position to assist a person who is at risk of experiencing an opioid-related drug overdose;

(c) a first responder or a first responder entity;

(d) a harm reduction organization or its representative;

(e) the Montana state crime laboratory or its representative;

(f) a person who, on behalf of or at the direction of a law enforcement agency or officer, may process, store, handle, test, transport, or possess a suspected or confirmed opioid;

(g) a probation, parole, or detention officer;

(h) a county or other local public health department or its representative; or

(i) a veterans' organization or its representative.

(6) "First responder" means a paid or volunteer firefighter, law enforcement officer, or other authorized person who responds to an emergency in a professional or volunteer capacity. The term does not include an ECP, also known as an emergency care provider, as defined in 37-3-102.

(7) "Harm reduction organization" means an organization that provides direct assistance and services, including but not limited to counseling, screening, and drug treatment, to persons at risk of experiencing an opioid-related drug overdose.

(8) "Law enforcement officer" means a person who is a peace officer as defined in 46-1-202 or any other agent of a criminal justice agency as defined in 44-5-103.

(9) "Medical practitioner" has the meaning provided in 37-2-101.

(10) "Opioid antagonist" means a drug that binds to opioid receptors and blocks or inhibits the effects of opioids acting on those receptors. The term includes naloxone hydrochloride and any other similarly acting drug approved by the United States food and drug administration.

(11) "Opioid-related drug overdose" means an acute condition evidenced by symptoms, including but not limited to physical illness, pinpoint pupils, coma, decreased level of consciousness, or respiratory depression, resulting from the consumption or use of an opioid or another substance with which an opioid is combined.

(12) "Standing order" means a written document prepared by a medical practitioner that authorizes an eligible recipient to acquire, distribute, or administer medication without a person-specific prescription.

(13) "State medical officer" means a physician licensed to practice medicine under Title 37, chapter 3, who is employed by the department to, among other things, provide advice and expertise to the department on medical policy and issues of public health importance.

History: En. Sec. 3, Ch. 253, L. 2017.

50-32-604. Statewide standing orders for opioid antagonist. (1) The state medical officer may prescribe on a statewide basis an opioid antagonist by one or more standing orders to eligible recipients.

(2) A standing order must specify, at a minimum:

(a) the opioid antagonist formulations and means of administration that are approved for dispensing;

(b) the eligible recipients to whom the opioid antagonist may be dispensed;

(c) any training that is required for an eligible recipient to whom the opioid antagonist is dispensed;

(d) the circumstances under which an eligible recipient may distribute or administer the opioid antagonist; and

(e) the timeline for renewing and updating the standing order.

History: En. Sec. 4, Ch. 253, L. 2017.

50-32-605. Prescribing and dispensing authority for opioid antagonist. A medical practitioner may prescribe, directly, by a standing order, or by a collaborative practice agreement, or dispense, as permitted under 37-2-104, an opioid antagonist to an eligible recipient. The medical practitioner shall document the reasons for which the opioid antagonist was prescribed or dispensed.

History: En. Sec. 5, Ch. 253, L. 2017.

50-32-606. Designation of patient — instruction. (1) A prescription issued pursuant to 50-32-604 or 50-32-605 must designate the eligible recipient as the patient, regardless of the eligible recipient's status as an individual, organization, agency, or other entity. Except as provided in 50-32-605, the prescription must be dispensed by a licensed pharmacy.

(2) A licensed pharmacy or medical practitioner dispensing an opioid antagonist shall provide the patient with basic instruction and information, the content of which must be developed by the department and made publicly available on the department's website, concerning recognition of the signs and symptoms of an opioid-related drug overdose, indications for the administration of an opioid antagonist, administration technique, and the need for immediate and long-term followup to the administration of the opioid antagonist, including calling 9-1-1.

(3) An eligible recipient described in 50-32-603(5)(c) through (5)(i) who distributes an opioid antagonist pursuant to 50-32-607 shall:

(a) fulfill the basic instruction and information requirements set forth in subsection (2); and

(b) develop protocol for:

(i) instructing and training the eligible recipient's employees or other authorized personnel that is consistent with the instruction and information developed by the department under subsection (2); and

(ii) the storage, maintenance, and location of the opioid antagonist.

History: En. Sec. 6, Ch. 253, L. 2017.

50-32-607. Authorization for possession and administration of opioid antagonist — reporting.

(1) An eligible recipient to whom an opioid antagonist is prescribed, dispensed, or distributed pursuant to 50-32-604 through 50-32-606 and who has received the instruction and information provided for in 50-32-606 may do any of the following:

(a) possess and store the opioid antagonist. The storage of an opioid antagonist is not subject to pharmacy practice laws or other requirements that apply to the storage of drugs or medications.

(b) in good faith, administer or direct another person to administer the opioid antagonist to a person who is experiencing an actual or reasonably perceived opioid-related drug overdose; or

(c) distribute the opioid antagonist to a person who is an eligible recipient under 50-32-603(5)(a) or (5)(b).

(2) An eligible recipient to whom an opioid antagonist is dispensed pursuant to 50-32-604 through 50-32-606 shall report, if required by the department, information regarding the dispensing, distribution, and administration of the opioid antagonist.

History: En. Sec. 7, Ch. 253, L. 2017.

50-32-608. Professional conduct — immunity. (1) A prescription issued pursuant to 50-32-604 or 50-32-605 is considered to have been issued for a legitimate medical purpose in the usual course of a professional practice.

(2) Except for injury or damages arising from gross negligence, willful or wanton misconduct, or an intentional tort:

(a) a medical practitioner or licensed pharmacist may not be subject to disciplinary action or civil or criminal liability for injury resulting from the prescribing or dispensing of an opioid antagonist pursuant to 50-32-604 through 50-32-606 to an eligible recipient; and

(b) an eligible recipient may not be subject to disciplinary action or civil or criminal liability for injury resulting from distributing an opioid antagonist pursuant to 50-32-606 and 50-32-607.

(3) A medical practitioner, eligible recipient, emergency care provider, or other person is not liable and may not be subject to disciplinary action as a result of any injury arising from the administration of an opioid antagonist to another person whom the medical practitioner, eligible recipient, emergency care provider, or other person believes in good faith to be suffering from an opioid-related drug overdose, unless the injury arises from an act or omission that is the result of gross negligence, willful or wanton misconduct, or an intentional tort.

(4) The provisions of 50-32-601 through 50-32-607 do not establish a duty or standard of care with respect to the decision of whether to prescribe, dispense, distribute, or administer an opioid antagonist.

History: En. Sec. 8, Ch. 253, L. 2017.

50-32-609. Good Samaritan protections. (1) The provisions of 45-5-626, 45-9-102, 45-9-107, and 45-10-103 do not apply to:

(a) a person who, acting in good faith, seeks medical assistance for another person who is experiencing an actual or reasonably perceived drug-related overdose if the evidence supporting an arrest, charge, or prosecution was obtained as a result of the person's seeking medical assistance for another person; or

(b) a person who experiences a drug-related overdose and is in need of medical assistance if the evidence supporting an arrest, charge, or prosecution was obtained as a result of the drug-related overdose and the need for medical assistance.

(2) The provisions of 45-9-102, 45-9-107, and 45-10-103 do not apply to a pregnant woman seeking or receiving evaluation, treatment, or support services for a substance use disorder.

(3) A person's pretrial release, probation, furlough, supervised release, or parole may not be revoked based on an incident for which the person would be immune from arrest, charge, or prosecution under this section.

(4) A person's act of providing first aid or other medical assistance to a person who is experiencing an actual or reasonably perceived drug-related overdose may be used as a mitigating factor in a criminal prosecution for which immunity is not provided under this section.

(5) This section may not be construed to:

(a) bar the admissibility of evidence obtained in connection with the investigation and prosecution of other crimes or violations committed by a person who otherwise qualified for limited immunity under this section;

(b) limit, modify, or remove immunity from liability currently available to public entities, public employees, or prosecutors or by law; or

(c) create a new cause of action or other source of criminal liability for a pregnant woman with a substance use disorder who does not seek or receive evaluation, treatment, or support services for a substance use disorder.

History: En. Sec. 9, Ch. 253, L. 2017; amd. Sec. 1, Ch. 265, L. 2019.

Compiler's Comments

2019 Amendment: Chapter 265 in (1)(a) at end substituted "or" for "and"; inserted (2) providing a safe harbor from certain drug crimes for pregnant women seeking dependency treatment; inserted (5)(c) that reads: "create a new cause of action or other source of criminal liability for a pregnant woman with a substance use disorder who does not seek or receive evaluation, treatment, or support services for a substance use disorder"; and made minor changes in style. Amendment effective July 1, 2019.

50-32-610. Grants. The department may apply for and award grants to further the purposes outlined in 50-32-601 through 50-32-607.

History: En. Sec. 10, Ch. 253, L. 2017.

50-32-611. Rulemaking. The department may adopt rules regarding opioid antagonist instruction, training, and reporting, as provided for in 50-32-606 and 50-32-607.

History: En. Sec. 11, Ch. 253, L. 2017.