

CHAPTER 152

PROHIBITED DRUGS

Sec.		Sec.	
152.01	Definitions.	152.12	Doctors may prescribe.
152.02	Schedules of controlled substances; administration of chapter.	152.13	Duties of state board of pharmacy.
152.09	Prohibited acts.	152.15	Violations; penalties.
152.10	Sales, persons eligible.	152.151	Report to legislature.
152.101	Manufacturers, records.	152.18	Discharge and di. nissal.
152.11	Written or oral prescriptions, requisites.	152.19	Forfeitures.
		152.20	Penalties under other laws.

**152.01 DEFINITIONS.** Subdivision 1. **Words, terms, and phrases.** Unless the language or context clearly indicates that a different meaning is intended, the following words, terms, and phrases, for the purposes of this chapter, shall be given the meanings subjoined to them.

Subd. 2. **Drug.** The term "drug" includes all medicines and preparations recognized in the United States pharmacopoeia or national formulary and any substance or mixture of substances intended to be used for the cure, mitigation, or prevention of disease of either man or other animals.

Subd. 3. MS 1967 [ Repealed, 1969 c 933 s 22 ]

Subd. 3. **Administer.** "Administer" means to deliver by, or pursuant to the lawful order of a practitioner a single dose of a controlled substance to a patient or research subject by injection, inhalation, ingestion, or by any other immediate means.

Subd. 4. MS 1967 [ Repealed, 1969 c 933 s 22 ]

Subd. 4. **Controlled substance.** "Controlled substance" means a drug, substance, or immediate precursor in Schedules I through V of section 152.02. The term shall not include distilled spirits, wine, malt beverages, intoxicating liquors or tobacco.

Subd. 5. [ Repealed, 1971 c 937 s 22 ]

Subd. 6. **Pharmacist intern.** The term "pharmacist intern" means a natural person, a graduate of the college of pharmacy, University of Minnesota, or other pharmacy college, approved by the board, or a person satisfactorily progressing toward the degree in pharmacy required for licensure, registered by the state board of pharmacy, for the purpose of obtaining practical experience as a requirement for licensure as a pharmacist or a qualified applicant, awaiting licensure.

Subd. 7. "Manufacturing", in places other than a pharmacy, means and includes the production, quality control, and standardization by mechanical, physical, chemical, or pharmaceutical means, packing, repacking, tableting, encapsulating, labeling, relabeling, filling, or by other process, of drugs.

Subd. 8. **Dispense.** "Dispense" means to deliver one or more doses of a controlled substance in a suitable container, properly labeled, for subsequent administration to, or use by a patient or research subject.

Subd. 9. **Marijuana.** "Marijuana" means all parts of the plant *Cannabis sativa* L., including all agronomical varieties, whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin, but shall not include the mature stalks of such plant, fiber from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks, except the resin extracted therefrom, fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination.

Subd. 10. **Narcotic drug.** "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

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

(3) A substance, and any compound, manufacture, salt, derivative, or preparation thereof, which is chemically identical with any of the substances referred to in clauses (1) and (2), except that the words "narcotic drug" as used in this chapter shall not include decocainized coca leaves or extracts of coca leaves, which extracts do not contain cocaine or ecgonine.

Subd. 11. **Opiate.** "Opiate" means any dangerous substance having an addiction forming or addiction sustaining liability similar to morphine or being capable of conversion into a drug having such addiction forming or addiction sustaining liability.

Subd. 12. **Opium poppy.** "Opium poppy" means the plant of the species *Papaver somniferum* L., except the seeds thereof.

Subd. 13. **Person.** "Person" includes every individual, copartnership, corporation or association of one or more individuals.

Subd. 14. **Poppy straw.** "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

Subd. 15. **Immediate precursor.** "Immediate precursor" means a substance which the state board of pharmacy has found to be and by regulation designates as being the principal compound commonly used or produced for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail, or limit such manufacture.

Subd. 16. **Small amount.** "Small amount" as applied to marijuana means 1.5 ounces avoirdupois or less. This provision shall not apply to the resinous form of marijuana.

Subd. 17. **Appropriate state agency.** "Appropriate agency" means either the bureau of criminal apprehension, the state board of pharmacy, state highway patrol, county sheriffs and their deputies, or city police departments in municipalities containing 25,000 or more inhabitants.

[ 1921 c 190 s 2,5,7; 1939 c 102 s 2; 1967 c 408 s 1,2; 1971 c 937 s 1-11; Ex1971 c 38 s 1; Ex1971 c 48 s 17; 1973 c 693 s 1 ] (3899-2, 3899-5, 3899-7, 3906-12)

152.02 MS 1967 [ Repealed, 1969 c 933 s 22 ]

**152.02 SCHEDULES OF CONTROLLED SUBSTANCES; ADMINISTRATION OF CHAPTER.** Subdivision 1. There are established five schedules of controlled substances, to be known as Schedules I, II, III, IV, and V. Such schedules shall initially consist of the substances listed in this section by whatever official name, common or usual name, chemical name, or trade name designated.

Subd. 2. The following items are listed in Schedule I:

(1) Any of the following substances, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of such isomers, esters, ethers and salts is possible within the specific chemical designation: Acetylmethadol; Allylprodine; Alphacetylmethadol; Alphameprodine; Alphamethadol; Benzethidine; Betacetylmethadol; Betameprodine; Betamethadol; Betaprodine; Clonitazene; Dextromoramide; Dextrorphan; Diampromide; Diethylambutene; Dimenoxadol; Dimepheptanol; Dimethylambutene; Dioxaphetyl butyrate; Dipipanone; Ethylmethylthiambutene; Etonitazene; Etoxadine; Furethidine; Hydroxypethidine; Ketobemidone; Levomoramide; Levophenacymorphan; Morpheridine; Noracymethadol; Norlevorphanol; Normethadone; Norpipanone; Phenadoxone; Phenampromide; Phenomorphan; Phenoperidine; Piritramide; Proheptazine; Propriidine; Racemoramide; Trimeperidine.

(2) Any of the following opium derivatives, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation: Acetorphine; Acetyldihydrocodeine; Acetylcodeine; Benzylmorphine; Codeine methylbromide; Codeine-N-Oxide; Cyrenorphine; Desomorphine; Dihydromorphine; Etorphine; Heroin; Hydromorphinol; Methyl-desorphine; Methylhydromorphine; Morphine methylbromide; Morphine methylsulfonate; Morphine-N-Oxide; Myrophine; Nicocodeine; Nicomorphine; Normorphine; Pholcodine; Thebacon.

(3) Any material, compound, mixture or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of such salts, isomers, and salts

of isomers is possible within the specific chemical designation: 3,4-methylenedioxy amphetamine; 4-bromo-2,5-dimethoxyamphetamine; 2,5-dimethoxyamphetamine; 4-methoxyamphetamine; 5-methoxy-3, 4-methylenedioxy amphetamine; Bufotenine; Diethyltryptamine; Dimethyltryptamine; 3,4,5-trimethoxy amphetamine; 4-methyl-2, 5-dimethoxyamphetamine; Ibogaine; Lysergic acid diethylamide; marijuana; Mescaline; N-ethyl-3-piperidyl benzilate; N-methyl-3-piperidyl benzilate; Psilocybin; Psilocyn; Tetrahydrocannabinols 1-1-(2-thienyl) cyclohexyl piperidine.

(4) Peyote, providing the listing of peyote as a controlled substance in schedule I does not apply to the nondrug use of peyote in bona fide religious ceremonies of the Native American Church, and members of the Native American Church are exempt from registration. Any person who manufactures peyote for or distributes peyote to the Native American Church, however, is required to obtain federal registration annually and to comply with all other requirements of law.

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

Mecloqualone.

Subd. 3. The following items are listed in Schedule II:

(1) Unless specifically excepted or unless listed in another schedule, any of the following substances whether produced directly or indirectly by extraction from substances of vegetable origin or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(a) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, including the following: raw opium, opium extracts, opium fluidextracts, powdered opium, granulated opium, tincture of opium, apomorphine, codeine, ethylmorphine, hydrocodone, hydromorphone, metopon, morphine, oxycodone, oxymorphone, thebaine.

(b) Any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in clause (a), except that these substances shall 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, and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, except that the substances shall not include decocainized coca leaves or extraction of coca leaves, which extractions do not contain cocaine or ecgonine.

(2) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters and ethers, unless specifically excepted, or unless listed in another schedule, whenever the existence of such isomers, esters, ethers and salts is possible within the specific chemical designation: Alphaprodine; Anileridine; Bezitramide; Dihydrocodeine; Dihydromorphinone; Diphenoxylate; Fentanyl; Isomethadone; Levomethorphan; Levorphanol; Metazocine; Methadone; Methadone - Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenylbutane; Moramide - Intermediate, 2-methyl-3-morpholino-1, 1-diphenyl-propane-carboxylic acid; Pethidine; Pethidine - Intermediate - A, 4-cyano-1-methyl-4-phenylpiperidine; Pethidine - Intermediate - B, ethyl-4-phenylpiperidine-4-carboxylate; Pethidine - Intermediate - C, 1-methyl-4-phenylpiperidine-4-carboxylic acid; Phenazocine; Piminodine; Racemethorphan; Racemorphan.

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

(a) Amphetamine, its salts, optical isomers, and salts of its optical isomers;

(b) Methamphetamine, its salts, isomers, and salts of its isomers;

(c) Phenmetrazine and its salts;

(d) Methylphenidate.

(4) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following

substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (a) Methaqualone
- (b) Amobarbital
- (c) Secobarbital
- (d) Pentobarbital.

Subd. 4. The following items are listed in Schedule III:

(1) Any material, compound, mixture, or preparation which contains any quantity of Amphetamine, its salts, optical isomers, and salts of its optical isomers; Phenmetrazine and its salts; Methamphetamine, its salts, isomers, and salts of isomers; Methpyphenidate; and which is required by federal law to be labeled with the symbol prescribed by 21 Code of Federal Regulations Section 1302.03 and in effect on February 1, 1976 designating that the drug is listed as a Schedule III controlled substance under federal law.

(2) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

(a) Any compound, mixture, or preparation containing amobarbital, secobarbital, pentobarbital or any salt thereof and one or more other active medicinal ingredients which are not listed in any schedule.

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

(c) Any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid, except those substances which are specifically listed in other schedules: Chlorhexadol; Glutethimide; Lysergic acid; Lysergic acid amide; Methpyrlyon; Phencyclidine; Sulfondiethylmethane; Sulfonethylmethane; Sulfonmethane.

(3) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system:

- (a) Benzphetamine
  - (b) Chlorphentermine
  - (c) Clortermine
  - (d) Mazindol
  - (e) Phendimetrazine.
- (4) Nalorphine.

(5) Any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:

(a) Not more than 1.80 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 1.80 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts.

(c) Not more than 300 milligrams of dihydrocodeinone 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 per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts.

(e) Not more than 1.80 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts.

# MINNESOTA STATUTES 1976

## 152.02 PROHIBITED DRUGS

2292

(f) Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts.

(g) 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, non-narcotic ingredients in recognized therapeutic amounts.

(h) Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams with one or more active, non-narcotic ingredients in recognized therapeutic amounts.

Subd. 5. The following items are listed in Schedule IV: Barbital; Chloral betaine; Chloral hydrate; Chlordiazepoxide; Clonazepam; Clorazepate; Diazepam; Diethylpropion; Ethchlorvynol; Ethinamate; Fenfluramine; Flurazepam; Mebutamate; Methohexital; Meprobamate except when in combination with the following drugs in the following or lower concentrations: conjugated estrogens, 0.4 mg; tridihexethyl chloride, 25mg; pentaerythritol tetranitrate, 20 mg; Methylphenobarbital; Oxazepam; Paraldehyde; Pemoline; Petrichloral; Phenobarbital; and Phentermine.

Subd. 6. The following items are listed in Schedule V: Any compound, mixture, or preparation containing any of the following limited quantities of narcotic drugs, which shall include one or more non-narcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone;

(1) Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams.

(2) Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams.

(3) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit.

(4) Not more than 15 milligrams of anhydrous morphine per 100 milliliters or per 100 grams.

Subd. 7. The board of pharmacy is authorized to regulate and define additional substances which contain quantities of a substance possessing abuse potential in accordance with the following criteria:

(1) The board of pharmacy shall place a substance in Schedule I if it finds that the substance has: A high potential for abuse, no currently accepted medical use in the United States, and a lack of accepted safety for use under medical supervision.

(2) The board of pharmacy shall place a substance in Schedule II if it finds that the substance has: A high potential for abuse, currently accepted medical use in the United States, or currently accepted medical use with severe restrictions, and that abuse may lead to severe psychological or physical dependence.

(3) The board of pharmacy shall place a substance in Schedule III if it finds that the substance has: A potential for abuse less than the substances listed in Schedules I and II, currently accepted medical use in treatment in the United States, and that abuse may lead to moderate or low physical dependence or high psychological dependence.

(4) The board of pharmacy shall place a substance in Schedule IV if it finds that the substance has: A low potential for abuse relative to the substances in Schedule III, currently accepted medical use in treatment in the United States, and that abuse may lead to limited physical dependence or psychological dependence relative to the substances in Schedule III.

(5) The board of pharmacy shall place a substance in Schedule V if it finds that the substance has: A low potential for abuse relative to the substances listed in Schedule IV, currently accepted medical use in treatment in the United States, and limited physical dependence and/or psychological dependence liability relative to the substances listed in Schedule IV.

Subd. 8. The state board of pharmacy may, by regulation, add substances to or delete or reschedule substances listed in this section. The state board of pharmacy, after consulting with the advisory council on controlled substances, shall annually, on or before May 1 of each year, conduct a review of the placement of controlled substances in the various schedules.

In making a determination regarding a substance, the board of pharmacy shall consider the following: The actual or relative potential for abuse, the scientific evidence of its pharmacological effect, if known, the state of current scientific knowledge regarding the substance, the history and current pattern of abuse, the scope, duration, and significance of abuse, the risk to public health, the potential of the substance to produce psychic or physiological dependence liability, and whether the substance is an immediate precursor of a substance already controlled under this section. The state board of pharmacy may include any non-narcotic drug authorized by federal law for medicinal use in a schedule only if such drug must, under either federal or state law or regulation, be sold only on prescription.

Subd. 9. The state board of pharmacy may by regulation except any compound, mixture, or preparation containing any stimulant or depressant substance listed in subdivision 4, clauses (1) and (2) or in subdivisions 5 and 6 from the application of all or any part of Laws 1971, Chapter 937, 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; provided, that such admixtures shall be included therein in such combinations, quantity, proportion, or concentration as to vitiate the potential for abuse of the substances which do have a stimulant or depressant effect on the central nervous system.

Subd. 10. Dextromethorphan shall not be deemed to be included in any schedule by reason of the enactment of Laws 1971, Chapter 937, unless controlled pursuant to the foregoing provisions of this section.

Subd. 11. The state board of pharmacy shall appoint an advisory council on controlled substances consisting of not more than 13 members, who shall serve without compensation, to advise it in the administration of this chapter.

Commencing July 1, 1973, six members shall be appointed for a one year term and seven members shall be appointed for a two year term. Thereafter, members shall be appointed for two year terms. Four of the members of the council shall be physicians as designated by the state board of medical examiners. One of the members of the council shall be a pharmacologist, one of the members of the council shall be a pharmacist, and the remainder shall be from among the following: correction or law enforcement officers, judges, representatives of drug treatment or counseling facilities, former drug abusers, education, and students. The members of the council shall select a chairman from among their membership, who may call meetings of the council when deemed appropriate, and shall call meetings of the council when requested to do so by any four members of the council.

Subd. 12. If any substance is designated, rescheduled, or deleted as a controlled substance under federal law and notice thereof is given to the state board of pharmacy, the state board of pharmacy shall similarly control the substance under Laws 1973, Chapter 693 after the expiration of 30 days from publication in the federal register of a final order designating a substance as a controlled substance or rescheduling or deleting a substance. Such order shall be filed pursuant to section 15.0413. If within that 30 day period, the state board of pharmacy objects to inclusion, rescheduling, or deletion, it shall publish the reasons for objection and afford all interested parties an opportunity to be heard. At the conclusion of the hearing, the state board of pharmacy shall publish its decision, which shall be subject to the provisions of Minnesota Statutes 1971, Chapter 15.

In exercising the authority granted by Laws 1971, Chapter 937, the state board of pharmacy shall be subject to the provisions of Minnesota Statutes 1969, Chapter 15. The state board of pharmacy shall provide copies of any proposed rule under Laws 1971, Chapter 937, to the advisory council on controlled substances at least 30 days prior to any hearing required by Minnesota Statutes 1969, Section 15.0412, Subdivision 4. The state board of pharmacy shall consider the recommendations of the advisory council on controlled substances, which may be made prior to or at the hearing.

Subd. 13. The state board of pharmacy and the advisory council on controlled substances shall study the implementation of Laws 1971, Chapter 937 in relation to the problems of drug abuse in Minnesota and shall report to the legislature annually on or before December 1, their recommendations concerning amendments to Laws 1971, Chapter 937.

[ 1971 c 937 s 12; 1973 c 693 s 2-4; 1976 c 338 s 1-4 ]

- 152.03 [ Repealed, 1969 c 933 s 22 ]  
 152.04 [ Repealed, 1969 c 933 s 22 ]  
 152.041 [ Repealed, 1971 c 937 s 22 ]  
 152.05 [ Repealed, 1969 c 933 s 22 ]  
 152.06 [ Repealed, 1969 c 933 s 22 ]  
 152.07 [ Repealed, 1969 c 933 s 22 ]  
 152.08 [ Repealed, 1969 c 933 s 22 ]

**152.09 PROHIBITED ACTS.** Subdivision 1. Except as otherwise provided in this chapter, it shall be unlawful for any person, firm, or corporation to

(1) manufacture, sell, give away, barter, deliver, exchange or distribute; or possess with intent to manufacture, sell, give away, barter, deliver, exchange or distribute, a controlled substance.

(2) possess a controlled substance, except when such possession is for his own use and is authorized by law.

Subd. 2. It shall be unlawful for any person to procure, attempt to procure, possess or have in his control a controlled substance by any of the following means:

(1) fraud, deceit, misrepresentation or subterfuge;

(2) using a false name or giving false credit;

(3) falsely assuming the title of, or falsely representing any person to be, a manufacturer, wholesaler, pharmacist, physician, doctor of osteopathy licensed to practice medicine, dentist, podiatrist, veterinarian, or other authorized person for the purpose of obtaining a controlled substance.

[ 1939 c 102 s 1; 1955 c 185 s 1; 1967 c 408 s 4; 1971 c 937 s 13; 1973 c 693 s 5 ]  
 (3906-11)

**152.10 SALES, PERSONS ELIGIBLE.** No person other than a licensed pharmacist, assistant pharmacist or pharmacist intern under the supervision of a pharmacist shall sell a stimulant or depressant drug and then only as provided in sections 152.09 to 152.12.

[ 1939 c 102 s 3; 1967 c 408 s 5 ] (3906-13)

**152.101 MANUFACTURERS, RECORDS.** Subdivision 1. Every person engaged in manufacturing, compounding, processing, selling, delivering or otherwise disposing of any controlled substance shall, upon July 1, 1971, May 1, 1973, and every second year thereafter, prepare a complete and accurate record of all stocks of each controlled substance on hand and shall keep such record for two years. When additional controlled substances are designated after July 1, 1971, a similar record must be prepared upon the effective date of their designation. On and after July 1, 1971, every person manufacturing, compounding or processing any controlled substance shall prepare and keep, for not less than two years, a complete and accurate record of the kind and quantity of each drug manufactured, compounded or processed and the date of such manufacture, compounding, or processing; and every person selling, delivering, or otherwise disposing of any controlled substance shall prepare or obtain, and keep for not less than two years, a complete and accurate record of the kind and quantity of each such controlled substance received, sold, delivered, or otherwise disposed of, the name and address from whom it was received and to whom it was sold, delivered or otherwise disposed of, and the date of such transaction. The form of such records shall be prescribed by the state board of pharmacy.

Subd. 2. This section shall not apply to a licensed doctor of medicine, a doctor of osteopathy duly licensed to practice medicine, a licensed doctor of dentistry, a licensed doctor of podiatry, or licensed doctor of veterinary medicine in the course of his professional practice, unless such practitioner regularly engages in dispensing any such drugs to his patients for which the patients are charged, either separately or together with charges for other professional services.

Subd. 3. This section shall not apply to a person engaged in bona fide research conducted under an exemption granted under applicable federal law.

[ 1967 c 408 s 6; 1971 c 937 s 14; 1973 c 693 s 6 ]

**152.11 WRITTEN OR ORAL PRESCRIPTIONS, REQUISITES.** Subdivision 1. No person may dispense a controlled substance included in Schedule II of section 152.02 without a prescription written by a doctor of medicine, a doctor of osteopathy licensed to practice medicine, a doctor of dental surgery, a doctor of dental medicine, a doctor of podiatry, or a doctor of veterinary medicine, lawfully practicing his profession in this state. Provided that in emergency situations, as authorized by federal law, such drug may be dispensed upon oral prescription reduced promptly to writing and filed by the pharmacist. Such prescriptions shall be retained in conformity with section 152.101. No prescription for a Schedule II substance may be refilled.

For the purposes of Laws 1971, Chapter 937, a written prescription or oral prescription, which shall be reduced to writing, for a controlled substance in Schedules II, III, IV or V is void unless (1) it is written in ink and contains the name and address of the person for whose use it is intended; (2) it states the amount of the controlled substance to be compounded or dispensed, with directions for its use; (3) if a written prescription, it contains the signature, address and federal registry number of the prescriber and a designation of the branch of the healing art pursued by the prescriber; and if an oral prescription, the name and address of the prescriber and a designation of his branch of the healing art; and (4) it shows the date when signed by the prescriber, or the date of acceptance in the pharmacy if an oral prescription. Every licensed pharmacist who compounds any such prescription shall retain such prescription in a file for a period of not less than two years, open to inspection by any officer of the state, county, or municipal government, whose duty it is to aid and assist with the enforcement of this chapter. Every such pharmacist shall distinctly label the container with the directions contained in the prescription for the use thereof.

Subd. 2. No person may dispense a controlled substance included in Schedules III or IV of section 152.02 without a written or oral prescription from a doctor of medicine, a doctor of osteopathy licensed to practice medicine, a doctor of dental surgery, a doctor of dental medicine, a doctor of podiatry, or a doctor of veterinary medicine, lawfully practicing his profession in this state. Such prescription may not be dispensed or refilled except with the written or verbal consent of the prescriber, and in no event more than six months after the date on which such prescription was issued and no such prescription may be refilled more than five times.

[ 1939 c 102 s 4; 1939 c 193 s 4; 1955 c 185 s 2; 1967 c 408 s 7; 1971 c 937 s 15; 1973 c 693 s 7 ] (3906-14)

**152.12 DOCTORS MAY PRESCRIBE.** Subdivision 1. A licensed doctor of medicine, a doctor of osteopathy, duly licensed to practice medicine, a doctor of dental surgery, or a doctor of dental medicine, or a licensed doctor of podiatry, and in the course of his professional practice only, may prescribe, administer, and dispense a controlled substance included in Schedules II through V of section 152.02, or he may cause the same to be administered by a nurse, an intern or an assistant under his direction and supervision.

Subd. 2. A licensed doctor of veterinary medicine, in good faith, and in the course of his professional practice only, and not for use by a human being, may prescribe, administer, and dispense a controlled substance included in Schedules II through V of section 152.02, and he may cause the same to be administered by an assistant under his direction and supervision.

Subd. 3. Any qualified person may use controlled substances in the course of a bona fide research project but cannot administer or dispense such drugs to human beings unless such drugs are prescribed, dispensed and administered by a person lawfully authorized to do so. Every person who engages in research involving the use of such substances shall apply annually for registration by the state board of pharmacy provided that such registration shall not be required if the person is covered by and has complied with federal laws covering such research projects.

Subd. 4. Nothing in this chapter shall prohibit the sale to, or the possession of, a controlled substance in Schedules II, III, IV or V by: Registered drug wholesalers, registered manufacturers, registered pharmacies, or any licensed hospital or other licensed institutions wherein sick and injured persons are cared for or treated, or bona fide hospitals wherein animals are treated; or by licensed pharmacists, licensed doctors of medicine, doctors of osteopathy duly licensed to practice medicine, licensed doctors of dental surgery, licensed doctors of dental medicine, licensed doctors of podiatry, or licensed doctors of veterinary medicine when such practitioners use controlled substances within the course of their professional practice only.



Nothing in this chapter shall prohibit the possession of a controlled substance in Schedules II, III, IV or V by an employee or agent of a registered drug wholesaler, registered manufacturer, or registered pharmacy, while acting in the course of his employment, or by a patient of a licensed doctor of medicine, a doctor of osteopathy duly licensed to practice medicine, or a licensed doctor of dental surgery, a licensed doctor of dental medicine, or by the owner of an animal for which a controlled substance has been prescribed by a licensed doctor of veterinary medicine, when such controlled substances are dispensed according to law.

Subd. 5. Nothing in this chapter shall prohibit an analytical laboratory from conducting an anonymous analysis service when such laboratory is registered by the Federal Drug Enforcement Administration, nor prohibit the possession of a controlled substance by an employee or agent of such analytical laboratory while acting in the course of his or her employment.

[ 1939 c 102 s 5; 1967 c 408 s 8; 1971 c 937 s 16; 1973 c 693 s 8,9; 1974 c 369 s 2 ] (3906-15)

**152.13 DUTIES OF STATE BOARD OF PHARMACY.** It shall be the duty of the state board to enforce the provisions of this chapter, and the power and authority of the board, as now defined by the laws of this state, are hereby extended so as to be commensurate with the duties hereby imposed.

[ 1921 c 190 s 10; 1967 c 408 s 9 ] (3899-10)

**152.14** [ Repealed, 1969 c 933 s 22 ]

**152.15 VIOLATIONS; PENALTIES.** Subdivision 1. MS 1967 [ Repealed, 1969 c 933 s 22 ]

Subdivision 1. Any person who violates section 152.09, subdivision 1, clause (1) with respect to:

(1) A controlled substance classified in Schedule I or II which is a narcotic drug, is guilty of a crime and upon conviction may be imprisoned for not more than 15 years or fined not more than \$25,000, or both for a first violation, and for a second or subsequent violation, upon conviction, shall be imprisoned for not less than one year nor more than 30 years or fined not more than \$50,000, or both;

(2) Any other controlled substance classified in Schedule I, II, or III, is guilty of a crime and upon conviction may be imprisoned for not more than five years, fined not more than \$15,000, or both for a first violation, and for a second or subsequent violation, upon conviction, shall be imprisoned for not less than one year nor more than ten years or fined not more than \$30,000, or both;

(3) A substance classified in Schedule IV, is guilty of a crime and upon conviction may be imprisoned for not more than three years, fined not more than \$10,000, or both for a first violation, and for a second or subsequent violation, upon conviction, shall be imprisoned for not less than six months nor more than six years or fined not more than \$20,000, or both;

(4) A substance classified in Schedule V, is guilty of a crime and upon conviction may be imprisoned for not more than one year, fined not more than \$1,000, or both;

(5) The distribution of a small amount of marijuana for no remuneration, shall be treated as provided in subdivision 2, clause (5).

Subd. 2. Any person who violates section 152.09, subdivision 1, clause (2), with respect to:

(1) A controlled substance classified in Schedule I or II which is a narcotic drug, is guilty of a crime and upon conviction may be imprisoned for not more than five years or fined not more than \$5,000, or both;

(2) Any other controlled substance classified in Schedule I, II, or III, except small amounts of marijuana, is guilty of a crime and upon conviction may be imprisoned for not more than three years, fined not more than \$3,000, or both;

(3) A substance classified in Schedule IV, is guilty of a crime and upon conviction may be imprisoned for not more than three years, fined not more than \$3,000, or both;

(4) A substance classified in Schedule V, is guilty of a crime and upon conviction may be imprisoned for not more than one year, fined not more than \$1,000, or both; provided, however, that any person convicted under this section of possessing a sub-

# MINNESOTA STATUTES 1976

2297

PROHIBITED DRUGS 152.151

stance classified under Schedule V, and placed on probation may be required to take part in a drug education program as specified by the court;

(5) A small amount of marijuana is guilty of a petty misdemeanor punishable by a fine of up to \$100 and participation in a drug education program unless the court enters a written finding that such a program is inappropriate, said program being approved by an area mental health board with a curriculum approved by the state alcohol and drug abuse authority. A subsequent violation of this clause within two years is a misdemeanor, and a person so convicted shall be required to participate in a chemical dependency evaluation and treatment if so indicated by the evaluation. Upon a first conviction under this section the courts shall forward a report of said conviction to the department of public safety which shall make and maintain a private, nonpublic, record for a period not to exceed two years from the date of conviction. The private, nonpublic record shall be solely for use by the courts in determining the penalties which attach upon conviction under this section.

Additionally a person who is the owner of a private motor vehicle, or the driver of the motor vehicle if the owner is not present, and who possesses on his person or knowingly keeps or allows to be kept in a motor vehicle within the area of the vehicle normally occupied by the driver or passengers more than .05 ounce of marijuana is guilty of a misdemeanor. This area of the vehicle shall not include the trunk of the motor vehicle when such vehicle is equipped with a trunk or another area of the vehicle not normally occupied by the driver or passengers if the vehicle is not equipped with a trunk. A utility or glove compartment shall be deemed to be within the area occupied by the driver and passengers.

(6) In any case in which a defendant is convicted of a petty misdemeanor under the provisions of clause (5) and willfully and intentionally fails to comply with the sentence imposed, said defendant shall be guilty of a misdemeanor.

(7) Compliance with the terms of any sentence imposed for violation of clause (5) before conviction under clause (6) shall be an absolute defense.

Subd. 2a. No municipality may enact, prosecute under or otherwise enforce any ordinance or regulation applicable by its terms to the manufacture, sale, giving away, barter, delivery, exchange, distribution or possession of marijuana, which ordinance or regulation provides for the imposition of civil or criminal penalties or liabilities greater than those provided by state law for the same act, occurrence or event.

Subd. 3. Any person who violates section 152.09, subdivision 2, is guilty of a crime and upon conviction may be imprisoned for not more than four years, or fined not more than \$30,000, or both.

Subd. 4. Any person 18 years of age or over who violates section 152.09, subdivision 1, clause (1), by distributing a controlled substance listed in Schedules I or II which is a narcotic drug to a person under 18 years of age who is at least three years his junior is punishable by the fine authorized by section 152.15, subdivision 1, clause (1), by a term of imprisonment of up to twice that authorized by section 152.15, subdivision 1, clause (1), or by both. Any person 18 years of age or over who violates section 152.09, subdivision 1, by distributing any other controlled substance listed in Schedules I, II, III, IV, and V, except marijuana, to a person under 18 years of age who is at least three years his junior is punishable by the fine authorized by section 152.15, subdivision 1, clauses (2), (3), or (4), by a term of imprisonment up to twice that authorized by section 152.15, subdivision 1, clauses (2), (3), or (4), or both.

Subd. 5. Any person convicted of a second or subsequent offense under Laws 1971, Chapter 937, except as provided in subdivision 1, clauses (1), (2), (3) and (5) may be imprisoned for a term up to twice the term otherwise authorized, fined an amount up to twice that otherwise authorized, or both.

[ 1905 c 42; 1909 c 85 s 2; 1921 c 190 s 11; 1939 c 102 s 6; 1967 c 408 s 10; 1971 c 937 s 17; 1973 c 693 s 10-13; 1976 c 42 s 1,2 ] (3899-11, 3906-16, 5810)

**152.151 REPORT TO LEGISLATURE.** The state alcohol and drug authority shall build into the drug education program required by section 152.15, subdivision 2, proper evaluation and report directly each legislative session to the legislative standing committees having jurisdiction over the subject matter.

[ 1976 c 42 s 3 ]

**152.16** [ Repealed, 1967 c 408 s 11 ]

**152.17** [ Repealed, 1971 c 937 s 22 ]

**152.18 DISCHARGE AND DISMISSAL.** Subdivision 1. If any person is found guilty of a violation of section 152.09, subdivision 1, clause (2) after trial or upon a plea of guilty, the court may, without entering a judgment of guilty and with the consent of such person, defer further proceedings and place him on probation upon such reasonable conditions as it may require and for a period, not to exceed the maximum term of imprisonment provided for such violation. The court may give the person the opportunity to attend and participate in an appropriate program of education regarding the nature and effects of alcohol and drug abuse as a stipulation of probation. Upon violation of a condition of the probation, the court may enter an adjudication of guilt and proceed as otherwise provided. The court may, in its discretion, dismiss the proceedings against such person and discharge him from probation before the expiration of the maximum period prescribed for such person's probation. If during the period of his probation such person does not violate any of the conditions of the probation, then upon expiration of such period the court shall discharge such person and dismiss the proceedings against him. Discharge and dismissal hereunder shall be without court adjudication of guilt, but a nonpublic record thereof shall be retained by the department of public safety solely for the purpose of use by the courts in determining the merits of subsequent proceedings against such person. The court shall forward a record of any discharge and dismissal hereunder to the department of public safety who shall make and maintain the nonpublic record thereof as hereinbefore provided. Such discharge or dismissal shall not be deemed a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime or for any other purpose.

Subd. 2. Upon the dismissal of such person and discharge of the proceedings against him pursuant to subdivision 1, such person may apply to the district court in which the trial was had for an order to expunge from all official records, other than the nonpublic record retained by the department of public safety pursuant to subdivision 1, all recordation relating to arrest, indictment or information, trial and dismissal and discharge pursuant to subdivision 1. If the court determines, after hearing, that such person was discharged and the proceedings against him dismissed, it shall enter such order. The effect of the order shall be to restore the person, in the contemplation of the law, to the status he occupied before such arrest or indictment or information. No person as to whom such an order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failure to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made for him for any purpose.

[ 1971 c 937 s 18; 1973 c 693 s 14 ]

**152.19 FORFEITURES.** Subdivision 1. The following are subject to forfeiture:

- (1) All controlled substances which have been manufactured, distributed, dispensed or acquired in violation of this chapter;
- (2) All raw materials, moneys, products and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this chapter;
- (3) All property which is used, or intended for use, as a primary container for property described in clauses (1) or (2);
- (4) All conveyances, including aircraft, vehicles or vessels, which are used, or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of property described in clauses (1) or (2) having a retail value of \$100 or more, but:
  - (a) No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter.
  - (b) No conveyance is subject to forfeiture under this section unless the owner thereof is privy to a violation of this chapter, or that the use of the conveyance in such violation otherwise occurred with his knowledge or consent.
  - (c) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party unless he had knowledge of or consented to the act or omission upon which the forfeiture is based.

# MINNESOTA STATUTES 1976

2299

PROHIBITED DRUGS 152.19

(d) All books, records, and research products and materials, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this chapter.

Subd. 2. Property subject to forfeiture under this chapter, may be seized by the appropriate state agency upon process issued by any court having jurisdiction over the property. Seizure without process may be made if:

- (1) The seizure is incident to an arrest or a search under a search warrant;
- (2) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding based upon this chapter;
- (3) The appropriate state agency has probable cause to believe that the property is directly or indirectly dangerous to health or safety and the delay occasioned by the necessity to obtain process would result in the removal or destruction of the property; or
- (4) The appropriate state agency has probable cause to believe that the property was used or is intended to be used in violation of this chapter and the delay occasioned by the necessity to obtain process would result in the removal or destruction of the property.

Subd. 3. In the event of a conviction for a gross misdemeanor or a misdemeanor, any conveyance seized pursuant to subdivision 1, clause (4) of this section or any moneys seized pursuant to subdivision 1, clause (2) of this section, shall be returned to the person legally entitled thereto.

Subd. 4. Property taken or detained under this section shall not be subject to replevin, but is deemed to be in the custody of the appropriate state agency subject only to the orders and decrees of the court having jurisdiction over the forfeiture proceedings. When property is seized under this chapter, the appropriate state agency may:

- (1) Place the property under seal;
- (2) Remove the property to a place designated by it; or
- (3) In the case of controlled substances, require the state board of pharmacy to take custody of the property and remove it to an appropriate location for disposition in accordance with law.

Subd. 5. Property shall be forfeited after a conviction deemed to be a felony according to the following procedure:

(1) A separate complaint shall be filed against the property describing it, charging its use in the specified violation, and specifying the time and place of its unlawful use.

(2) If the person arrested is acquitted, the court shall dismiss the complaint against any property seized pursuant to the preceding subdivisions and order the property returned to the persons legally entitled to it.

(3) If after conviction the court finds that the property, or any part thereof, was used in any violation as specified in the complaint, it shall order that the property unlawfully used be sold, destroyed, or disposed of by the appropriate state agency in the following manner:

(a) Sell that which is not required to be destroyed by law and which is not harmful to the public;

(b) Require the commissioner of administration to take custody of the property and remove it for disposition in accordance with law; or

(c) Forward it to the federal bureau of narcotics and dangerous drugs.

(4) Proceeds from the sale of forfeited property, after payment of seizure, storage, and sale expenses and satisfaction of valid liens against the property, shall be forwarded to the state drug abuse authority for distribution of half of the net proceeds among licensed hospitals and licensed drug treatment facilities of this state for the care and treatment of patients with drug related physical and psychological disorders, and licensed drug analysis centers. The remaining half of net proceeds shall be returned to the appropriate state agency.

Subd. 6. Controlled substances listed in Schedule I that are possessed, transferred, sold, or offered for sale in violation of this chapter, are contraband and shall be seized and summarily forfeited to the state. Controlled substances listed in Schedule I

# MINNESOTA STATUTES 1976

## 152.20 PROHIBITED DRUGS

2300

which are seized or come into the possession of the state, the owners of which are unknown, are contraband and shall be summarily forfeited to the state.

Subd. 7. Species of plants from which controlled substances in Schedules I and II may be derived which have been planted or cultivated in violation of Laws 1971, Chapter 937, or of which the owners or cultivators are unknown, or which are wild growths, may be seized and summarily forfeited to the state.

Subd. 8. The failure, upon demand by the appropriate state agency, or its authorized agent, of the person in occupancy or in control of land or premises upon which the species of plants are growing or being stored, to produce an appropriate registration, or proof that he is the holder thereof, constitutes authority for the seizure and forfeiture of the plants.

[ 1971 c 937 s 19; 1973 c 693 s 15-18; 1974 c 406 s 24 ]

**152.20 PENALTIES UNDER OTHER LAWS.** Any penalty imposed for violation of Laws 1971, Chapter 937 is in addition to, and not in lieu of, any civil or administrative penalty or sanction otherwise authorized by law.

[ 1971 c 937 s 20 ]