

LEGISLATIVE BILL 113

Approved by the Governor April 17, 2001

Introduced by Brown, 6; Brashear, 4; Kristensen, 37; Schrock, 38

AN ACT relating to the Uniform Controlled Substances Act; to amend sections 28-417, 28-418, 28-427, 28-432, 28-433, 28-437, and 28-438, Reissue Revised Statutes of Nebraska, and section 28-405, Revised Statutes Supplement, 2000; to prohibit certain sales and possession of ephedrine, pseudoephedrine, and phenylpropanolamine; to require labeling for food and dietary supplements; to provide requirements for sales of crystalline iodine; to prohibit possession of anhydrous ammonia as prescribed; to provide penalties; to create funds and provide duties; to require registration of manufacturers and wholesale distributors; to provide for fees; to change controlled substance schedules; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Food or dietary supplements containing ephedrine as described in subdivision (g)(3) of Schedule IV of section 28-405 shall be packaged with a prominent label securely affixed to each package that legibly states:

(1) The total amount in milligrams of ephedrine or ephedrine group alkaloids in a serving or dosage unit and a dose limitation of not more than twenty-five milligrams of ephedrine or ephedrine alkaloids;

(2) The amount of the food or dietary supplement that constitutes a serving or dosage unit;

(3) That the maximum recommended twenty-four-hour serving or dosage for an adult human is one hundred milligrams;

(4) That consumption of more than the recommended serving or dosage for the food or dietary supplement, or that consumption of a serving or dosage at a more frequent interval than recommended, may increase the risk of adverse effects; and

(5) The following warning:

WARNING: Not intended for use by anyone under the age of 18. Do not use this product if you are pregnant or nursing. Consult a health care professional before using this product if you have heart disease, thyroid disease, diabetes, high blood pressure, depression or other psychiatric condition, glaucoma, difficulty in urinating, prostate enlargement, or seizure disorder, if you are using a monoamine oxidase inhibitor (MAOI) or any other prescription drug, or if you are using an over-the-counter drug containing ephedrine, pseudoephedrine, or phenylpropanolamine (ingredients found in certain allergy, asthma, cough/cold, and weight control products). Discontinue use and call a health care professional immediately if you experience rapid heartbeat, dizziness, severe headache, shortness of breath, or other similar symptoms.

Sec. 2. Any person who sells crystalline iodine to another person shall require photo identification of the purchaser and shall maintain a written record for a period of five years after the sale, including the date of the sale, the name, address, and date of birth of the purchaser, and the quantity purchased.

Sec. 3. No person shall sell, distribute, or otherwise transfer any product containing ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers, if the person knows that the transferee will use the product as an immediate precursor to any controlled substance. No person shall unlawfully sell, transfer, or distribute such a product with reckless disregard as to how the product will be used. Any person who violates this section is guilty of a Class III misdemeanor.

Sec. 4. No person shall possess anhydrous ammonia with the intent to manufacture methamphetamine. Any person who violates this section is guilty of a Class IV felony.

Sec. 5. No person shall possess ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers, with the intent to manufacture methamphetamine. Any person who violates this section is guilty of a Class IV felony.

Sec. 6. The Nebraska State Patrol may develop and maintain a program to inform retailers about illicit methamphetamine production, distribution, and use in Nebraska and devise procedures and forms for retailers to use in reporting to the patrol suspicious purchases, thefts, or

other transactions involving any products under the retailers' control which contain ephedrine, pseudoephedrine, phenylpropanolamine, or ephedra. Reporting under this section shall be voluntary. Retailers reporting information to the patrol in good faith shall be immune from civil liability.

Sec. 7. (1) Any manufacturer or wholesale distributor, as indicated on the product label in conformance with the Federal Food, Drug, and Cosmetic Act, as the act existed on the effective date of this act, who sells food products or dietary supplements containing ephedrine as described in subdivision (g)(3) of Schedule IV of section 28-405 for resale in this state shall register with the department for each product line containing ephedrine sold for resale in this state. The department shall register the manufacturer or wholesale distributor upon application and payment of a one-thousand-dollar application fee. The registration shall expire twelve months after issuance and shall be renewed for a twelve-month period upon payment of a one-thousand-dollar renewal fee. The registration shall be subject to revocation for violations of the Uniform Controlled Substances Act. The requirements to register and to pay a fee shall terminate upon the federal Food and Drug Administration's publication in the Federal Register of a final rule establishing good manufacturing practices for dietary supplements or five years after the effective date of this act, whichever date occurs first.

(2) Any manufacturer or wholesale distributor, as indicated on the product label in conformance with the Federal Food, Drug, and Cosmetic Act, as the act existed on the effective date of this act, who sells food products or dietary supplements described in subsection (1) of this section for resale in this state without being registered shall be subject to a civil penalty of five thousand dollars and any such food products and dietary supplements shall be seized and destroyed upon the finding of a violation of this section. The department, in conjunction with the Attorney General, the Nebraska State Patrol, and local law enforcement agencies, shall have authority to make inspections and investigations to enforce the registration requirements of this section. In addition, the department may seek injunctive relief for suspected violations of this section.

(3) The department shall remit fees collected under this section to the State Treasurer for credit to the Ephedra Registration Fund. The fund is created. The department shall use the fund to administer the provisions of this section. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 8. The Methamphetamine Awareness and Education Fund is created. The Nebraska Commission on Law Enforcement and Criminal Justice shall use the fund to support projects relating to educating retailers and the public on the dangers of methamphetamine. The commission may accept contributions, gifts, grants, and bequests for such purposes and remit them to the State Treasurer for credit to the fund. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 9. (1) Any drug products containing phenylpropanolamine, pseudoephedrine, or their salts, optical isomers, or salts of such optical isomers may be sold without a prescription only if they are:

(a) Labeled and marketed in a manner consistent with the pertinent OTC Tentative Final or Final Monograph;

(b) Manufactured and distributed for legitimate medicinal use in a manner that reduces or eliminates the likelihood of abuse; and

(c) Packaged as follows:

(i) Except for liquids, sold in package sizes of not more than three grams of pseudoephedrine base or three grams of phenylpropanolamine base, in blister packs, each blister containing not more than two dosage units, or if the use of blister packs is technically infeasible, in unit dose packets or pouches; and

(ii) For liquids, sold in package sizes of not more than three grams of pseudoephedrine base or three grams of phenylpropanolamine base.

(2) Any person who sells drug products in violation of this section may be subject to a civil penalty of fifty dollars per day, and for a second or any subsequent violation, the penalty may be one hundred dollars per day. Any such drug products shall be seized and destroyed upon the finding of a violation of this section. The department, in conjunction with the Attorney General, the Nebraska State Patrol, and local law enforcement agencies, shall have authority to make inspections and investigations to enforce this section. In addition, the department may seek injunctive relief for suspected violations of this section.

Sec. 10. Section 28-405, Revised Statutes Supplement, 2000, is

amended to read:

28-405. The following are the schedules of controlled substances referred to in the Uniform Controlled Substances Act:

Schedule I

(a) Any of the following opiates, 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: (1) Acetylmethadol; (2) allylprodine; (3) alphacetylmethadol, except levo-alphacetylmethadol which is also known as levo-alpha-acetylmethadol, levomethadyl acetate, and LAAM; (4) alphameprodine; (5) alphamethadol; (6) benzethidine; (7) betacetylmethadol; (8) betameprodine; (9) betamethadol; (10) betaprodine; (11) clonitazene; (12) dextromoramide; (13) difenoxin; (14) diampromide; (15) diethylthiambutene; (16) dimenoxadol; (17) dimepheptanol; (18) dimethylthiambutene; (19) dioxaphetyl butyrate; (20) dipipanone; (21) ethylmethylthiambutene; (22) etonitazene; (23) etoxeridine; (24) furethidine; (25) hydroxypethidine; (26) ketobemidone; (27) levomoramide; (28) levophenacilmorphan; (29) morpheridine; (30) noracymethadol; (31) norlevorphanol; (32) normethadone; (33) norpipanone; (34) phenadoxone; (35) phenampromide; (36) phenomorphan; (37) phenoperidine; (38) piritramide; (39) proheptazine; (40) properidine; (41) propiram; (42) racemoramide; (43) trimeperidine; (44) alpha-methylfentanyl, N-(1-(alpha-methyl-beta-phenyl)ethyl-4-piperidyl) propionanilide, 1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine; (45) tilidine; (46) 3-Methylfentanyl, N-(3-methyl-1-(2-phenylethyl)-4-piperidyl)-N-phenylpropanamide, its optical and geometric isomers, salts, and salts of isomers; (47) 1-methyl-4-phenyl-4-propionoxypiperidine (MPPP), its optical isomers, salts, and salts of isomers; (48) 1-(2-phenylethyl)-4-phenyl-4-acetyloxypiperidine (PEPAP), its optical isomers, salts, and salts of isomers; (49) N-(1-(1-methyl-2-phenyl)ethyl-4-piperidyl)-N-phenylacetamide (acetyl-alpha-methylfentanyl), its optical isomers, salts, and salts of isomers; (50) N-(1-(1-methyl-2-(2-thienyl)ethyl-4-piperidyl)-N-phenylpropanamide (alpha-methylthiofentanyl), its optical isomers, salts, and salts of isomers; (51) N-(1-benzyl-4-piperidyl)-N-phenylpropanamide (benzylfentanyl), its optical isomers, salts, and salts of isomers; (52) N-(1-(2-hydroxy-2-phenyl)ethyl-4-piperidyl)-N-phenylpropanamide (beta-hydroxyfentanyl), its optical isomers, salts, and salts of isomers; (53) N-(3-methyl-1-(2-hydroxy-2-phenyl)ethyl-4-piperidyl)-N-phenylpropanamide (beta-hydroxy-3-methylfentanyl), its optical and geometric isomers, salts, and salts of isomers; (54) N-(3-methyl-1-(2-(2-thienyl)ethyl-4-piperidyl)-N-phenylpropanamide (3-methylthiofentanyl), its optical and geometric isomers, salts, and salts of isomers; (55) N-(1-(2-thienyl)methyl-4-piperidyl)-N-phenylpropanamide (thenylfentanyl), its optical isomers, salts, and salts of isomers; (56) N-(1-(2-(2-thienyl)ethyl-4-piperidyl)-N-phenylpropanamide (thiofentanyl), its optical isomers, salts, and salts of isomers; and (57) N-(1-(2-phenylethyl)-4-piperidyl)-N-(4-fluorophenyl)-propanamide (para-fluorofentanyl), its optical isomers, salts, and salts of isomers.

(b) 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: (1) Acetorphine; (2) acetyldihydrocodeine; (3) benzylmorphine; (4) codeine methylbromide; (5) codeine-N-Oxide; (6) cyprenorphine; (7) desomorphine; (8) dihydromorphine; (9) drotebanol; (10) etorphine, except hydrochloride salt; (11) heroin; (12) hydromorphenol; (13) methyldesorphine; (14) methyldihydromorphine; (15) morphine methylbromide; (16) morphine methylsulfonate; (17) morphine-N-Oxide; (18) myrophine; (19) nicocodeine; (20) nicomorphine; (21) normorphine; (22) pholcodine; and (23) thebacon.

(c) 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, and, for purposes of this subdivision only, isomer shall include the optical, position, and geometric isomers: (1) Bufotenine. Trade and other names shall include, but are not limited to: 3-(B-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; N, N-dimethylserotonin; 5-hydroxy-N, N-dimethyltryptamine; and mappine; (2) diethyltryptamine. Trade and other names shall include, but are not limited to: N, N-diethyltryptamine; and DET; (3) dimethyltryptamine. Trade and other names shall include, but are not limited to: DMT; (4) 4-bromo-2, 5-dimethoxyamphetamine. Trade and other names shall include, but are not limited to: 4-bromo-2, 5-dimethoxy-a-methylphenethylamine; and 4-bromo-2,

5-DMA; (5) 4-methoxyamphetamine. Trade and other names shall include, but are not limited to: 4-methoxy-a-methyl-phenethylamine; and paramethoxyamphetamine, PMA; (6) 4-methyl-2, 5-dimethoxyamphetamine. Trade and other names shall include, but are not limited to: 4-methyl-2, 5-dimethoxy-a-methylphenethylamine; DOM; and STP; (7) 5-methoxy-N-N, dimethyltryptamine; (8) ibogaine. Trade and other names shall include, but are not limited to: 7-ethyl-6,6B,7,8,9,10,12,13-octahydro-2-methoxy-6, 9-methano-5H-pyrido (1',2':1,2) azepino (5,4-b) indole; and tabernanthe iboga; (9) lysergic acid diethylamide; (10) marijuana; (11) mescaline; (12) peyote. Peyote shall mean all parts of the plant presently classified botanically as *Lophophora williamsii* Lemaire, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts, derivative, mixture, or preparation of such plant or its seeds or extracts; (13) psilocybin; (14) psilocyn; (15) tetrahydrocannabinols, including, but not limited to, synthetic equivalents of the substances contained in the plant or in the resinous extractives of cannabis, sp. or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following: Delta 1 cis or trans tetrahydrocannabinol and their optical isomers, excluding dronabinol in sesame oil and encapsulated in a soft gelatin capsule in a drug product approved by the federal Food and Drug Administration; Delta 6 cis or trans tetrahydrocannabinol and their optical isomers; and Delta 3,4 cis or trans tetrahydrocannabinol and its optical isomers. Since nomenclature of these substances is not internationally standardized, compounds of these structures shall be included regardless of the numerical designation of atomic positions covered; (16) 3,4-methylenedioxy amphetamine; (17) 5-methoxy-3, 4-methylenedioxy amphetamine; (18) 3,4,5-trimethoxy amphetamine; (19) N-ethyl-3-piperidyl benzilate; (20) N-methyl-3-peperidyl benzilate; (21) thiophene analog of phencyclidine. Trade and other names shall include, but are not limited to: 1-(1-(2-thienyl)-cyclohexyl)-piperidine; 2-thienylanalog of phencyclidine; TCP; and TCP; (22) 2,5-dimethoxyamphetamine. Trade and other names shall include, but are not limited to: 2,5-dimethoxy-a-methylphenethylamine; and 2,5-DMA; (23) hashish or concentrated cannabis; (24) Parahexyl. Trade and other names shall include, but are not limited to: 3-Hexyl-1-hydroxy-7,8,9,10-tetrahydro-6,6, 9-trimethyl-6H-dibenzo(b,d)pyran; and synhexyl; (25) Ethylamine analog of phencyclidine. Trade and other names shall include, but are not limited to: N-ethyl-1-phenylcyclohexylamine; (1-phenylcyclohexyl)ethylamine; N-(1-phenylcyclohexyl)ethylamine; cyclohexamine; and PCE; (26) Pyrrolidine analog of phencyclidine. Trade and other names shall include, but are not limited to: 1-(1-phenylcyclohexyl)-pyrrolidine; PCPy; and PHP; (27) 3,4-methylenedioxymethamphetamine (MDMA), its optical, positional, and geometric isomers, salts, and salts of isomers; and (28) Phenethylamine. Trade and other names shall include, but are not limited to: 4-bromo-2,5-dimethoxyphenethylamine; 2-CB; Venus; Bromo; Eroxy; and Nexus.

(d) 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: (1) Mecloqualone; and (2) methaqualone.

(e) 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, including its salts, isomers, and salts of isomers: (1) Fenethylamine; and (2) N-ethylamphetamine.

(f) Gamma hydroxy butyrate (GHB).

(g) Any controlled substance analogue to the extent intended for human consumption.

Schedule II

(a) Any of the following substances except those narcotic drugs listed in other schedules whether produced directly or indirectly by extraction from substances of vegetable origin, independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:

(1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, excluding apomorphine, buprenorphine, nalbuphine, nalmefene, naloxone, and naltrexone and their salts, but including the following: (i) Raw opium; (ii) opium extracts; (iii) opium fluid extracts; (iv) powdered opium; (v) granulated opium; (vi) tincture of opium; (vii) codeine; (viii) ethylmorphine; (ix) etorphine hydrochloride; (x) dihydrocodeinone which is also known as hydrocodone; (xi) hydromorphone; (xii) metopon; (xiii) morphine; (xiv) oxycodone; (xv) oxymorphone; and (xvi)

thebaine;

(2) Any salt, compound, derivative, or preparation thereof which is chemically equivalent to or identical with any of the substances referred to in subdivision (1) of this subdivision, except that these substances shall not include the isoquinoline alkaloids of opium;

(3) Opium poppy and poppy straw;

(4) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, derivative, or preparation thereof which is chemically equivalent to or identical with any of these substances, including cocaine and its salts, optical isomers, and salts of optical isomers, except that the substances shall not include decocainized coca leaves or extractions which do not contain cocaine or ecgonine; and

(5) Concentrate of poppy straw, the crude extract of poppy straw in either liquid, solid, or powder form which contains the phenanthrine alkaloids of the opium poppy.

(b) Unless specifically excepted or unless in another schedule any of the following opiates, including their isomers, esters, ethers, salts, and salts of their isomers, esters, and ethers whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation, dextrorphan and levopropoxyphene excepted: (1) Alphaprodine; (2) anileridine; (3) bezitramide; (4) diphenoxylate; (5) fentanyl; (6) isomethadone; (7) levomethorphan; (8) levorphanol; (9) metazocine; (10) methadone; (11) methadone-Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane; (12) moramide-Intermediate, 2-methyl-3-morpholino-1, 1-diphenyl-propane-carboxylic acid; (13) pethidine or meperidine; (14) pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine; (15) pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate; (16) pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid; (17) phenazocine; (18) piminodine; (19) racemethorphan; (20) racemorphan; (21) dihydrocodeine; (22) bulk dextropropoxyphene in nondosage forms; (23) sufentanil; (24) alfentanil; and (25) levo-alpha-acetylmethadol which is also known as levo-alpha-acetylmethadol, levomethadyl acetate, and LAAM.

(c) 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: (1) Amphetamine, its salts, optical isomers, and salts of its optical isomers; (2) phenmetrazine and its salts; (3) methamphetamine, its salts, isomers, and salts of its isomers; and (4) methylphenidate.

(d) 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, including their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designations: (1) Amobarbital; (2) secobarbital; (3) pentobarbital; (4) phencyclidine; and (5) glutethimide.

(e) Hallucinogenic substances known as: (1) Nabilone. Another name for nabilone is (+)-trans-3-(1,1-dimethylheptyl)-6,6a,7,8,10,10a-hexahydro-1-hydroxy-6,6-dimethyl-9H-dibenzo(b,d)pyran-9-one.

(f) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances: (1) Immediate precursor to amphetamine and methamphetamine: Phenylacetone. Trade and other names shall include, but are not limited to: Phenyl-2-propanone; P2P; benzyl methyl ketone; and methyl benzyl ketone; or (2) immediate precursors to phencyclidine, PCP: (i) 1-phenylcyclohexylamine; or (ii) 1-piperidinocyclohexanecarbonitrile, PCC.

Schedule III

(a) 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, including their salts, isomers, whether optical, position, or geometric, and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation: (1) Benzphetamine; (2) chlorphentermine; (3) chlortermine; and (4) phendimetrazine.

(b) 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: (1) 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 of this section; (2) chlorhexadol; (3) lysergic acid; (4) lysergic acid amide; (5) methyprylon; (6) sulfondiethylmethane; (7) sulfonethylmethane; (8) sulfonmethane; (9)

nalorphine; (10) 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; (11) 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; and (12) tiletamine and zolazepam or any salt thereof. Trade or other names for a tiletamine-zolazepam combination product shall include, but not be limited to: telazol. Trade or other names for tiletamine shall include, but not be limited to: 2-(ethylamino)-2-(2-thienyl)-cyclohexanone. Trade or other names for zolazepam shall include, but not be limited to: 4-(2-fluorophenyl)-6,8-dihydro-1,3,8-trimethylpyrazolo-(3,4-e) (1,4)-diazepin-7(1H)-one, and flupyzapone.

(c) Any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

(1) Not more than one and eight-tenths grams of codeine per one hundred milliliters or not more than ninety milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

(2) Not more than one and eight-tenths grams of codeine per one hundred milliliters or not more than ninety milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(3) Not more than three hundred milligrams of dihydrocodeinone which is also known as hydrocodone per one hundred milliliters or not more than fifteen milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;

(4) Not more than three hundred milligrams of dihydrocodeinone which is also known as hydrocodone per one hundred milliliters or not more than fifteen milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(5) Not more than one and eight-tenths grams of dihydrocodeine per one hundred milliliters or not more than ninety milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(6) Not more than three hundred milligrams of ethylmorphine per one hundred milliliters or not more than fifteen milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(7) Not more than five hundred milligrams of opium per one hundred milliliters or per one hundred grams, or not more than twenty-five milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts; and

(8) Not more than fifty milligrams of morphine per one hundred milliliters or per one hundred grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(d) Any anabolic steroid, which shall include any material, compound, mixture, or preparation containing any quantity of the following substances, including its salts, isomers, and salts of isomers whenever the existence of such salts of isomers is possible within the specific chemical designation: (1) Boldenone; (2) chlorotestosterone (4-chlorotestosterone); (3) clostebol; (4) dehydrochlormethyltestosterone; (5) dihydrotestosterone (4-dihydrotestosterone); (6) drostanolone; (7) ethylestrenol; (8) fluoxymesterone; (9) formebolone (formebolone); (10) mesterolone; (11) methandienone; (12) methandranone; (13) methandriol; (14) methandrostenolone; (15) methenolone; (16) methyltestosterone; (17) mibolerone; (18) nandrolone; (19) norethandrolone; (20) oxandrolone; (21) oxymesterone; (22) oxymetholone; (23) stanolone; (24) stanozolol; (25) testolactone; (26) testosterone; (27) trenbolone; and (28) any salt, ester, or isomer of a drug or substance described or listed in this subdivision if the salt, ester, or isomer promotes muscle growth.

(e) Hallucinogenic substances known as: (1) Dronabinol, synthetic, in sesame oil and encapsulated in a soft gelatin capsule in a Food and Drug Administration approved drug product. Some other names for dronabinol are (6aR-trans)-6a,7,8,10a-tetrahydro-6,6,9-trimethyl-3-pentyl-6H-dibenzo(b,d)pyran-1-ol or (-)-delta-9-(trans)-tetrahydrocannabinol.

(f) Ketamine, its salts, isomers, and salts of isomers. Some other names for ketamine: (+)-2-(2-chlorophenyl)-2-(methylamino)-cyclohexanone.

Schedule IV

(a) Any material, compound, mixture, or preparation which contains any quantity of the following substances, including their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of

isomers is possible within the specific chemical designation: (1) Barbital; (2) chloral betaine; (3) chloral hydrate; (4) chlordiazepoxide, but not including librax (chlordiazepoxide hydrochloride and clindinium bromide) or menrium (chlordiazepoxide and water soluble esterified estrogens); (5) clonazepam; (6) clorazepate; (7) diazepam; (8) ethchlorvynol; (9) ethinamate; (10) flurazepam; (11) mebutamate; (12) meprobamate; (13) methohexital; (14) methylphenobarbital; (15) oxazepam; (16) paraldehyde; (17) petrichloral; (18) phenobarbital; (19) prazepam; (20) alprazolam; (21) bromazepam; (22) camazepam; (23) clobazam; (24) clotiazepam; (25) cloxazolam; (26) delorazepam; (27) estazolam; (28) ethyl loflazepate; (29) fludiazepam; (30) flunitrazepam; (31) halazepam; (32) haloxazolam; (33) ketazolam; (34) loprazolam; (35) lorazepam; (36) lormetazepam; (37) medazepam; (38) nimetazepam; (39) nitrazepam; (40) nordiazepam; (41) oxazolam; (42) pinazepam; (43) temazepam; (44) tetrazepam; (45) triazolam; (46) midazolam; (47) quazepam; and (48) zolpidem.

(b) Any material, compound, mixture, or preparation which contains any quantity of the following substance, including its salts, isomers, whether optical, position, or geometric, and salts of such isomers, whenever the existence of such salts, isomers, and salts of isomers is possible: Fenfluramine.

(c) 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, including their salts, isomers, whether optical, position, or geometric, and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation: (1) Diethylpropion; (2) phentermine; (3) pemoline, including organometallic complexes and chelates thereof; (4) mazindol; (5) pipradrol; (6) SPA,((-)-1-dimethylamino-1,2-diphenylethane); (7) cathine. Another name for cathine is ((+)-norpseudoephedrine); (8) fencamfamin; (9) fenproporex; and (10) mefenorex.

(d) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following narcotic drugs, or their salts or isomers calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below: (1) Propoxyphene; and (2) not more than one milligram of difenoxin and not less than twenty-five micrograms of atropine sulfate per dosage unit.

(e) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substance, including its salts: Pentazocine.

(f) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substance, including its salts, isomers, and salts of such isomers: Butorphanol.

(g)(1) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substance, including its salts, optical isomers, and salts of such optical isomers: Ephedrine.

(2) The following drug products containing ephedrine, its salts, optical isomers, and salts of such optical isomers are excepted from subdivision (g)(1) of Schedule IV if they may lawfully be sold over the counter without a prescription under the Federal Food, Drug, and Cosmetic Act, as the act existed on the effective date of this act; are labeled and marketed in a manner consistent with the pertinent OTC Tentative Final or Final Monograph; are manufactured and distributed for legitimate medicinal use in a manner that reduces or eliminates the likelihood of abuse; and are not marketed, advertised, or represented in any manner for the indication of stimulation, mental alertness, euphoria, ecstasy, a buzz or high, heightened sexual performance, or increased muscle mass:

- (A) Primatene Tablets;
- (B) Bronkaid Dual Action Caplets; and
- (C) Pazo Hemorrhoidal Ointment.

(3) Food and dietary supplements described in 21 U.S.C. 321, as such section existed on the effective date of this act, containing ephedrine, including its salts, optical isomers, and salts of such optical isomers, are excepted from subdivision (g)(1) of Schedule IV if:

(A) They are labeled in a manner consistent with section 1 of this act and bear the statements: "This statement has not been evaluated by the Food and Drug Administration. This product is not intended to diagnose, treat, cure, or prevent any disease.";

(B) Any dosage form of the food or dietary supplements (i) does not contain any hydrochloride or sulfate salts of ephedrine alkaloids, (ii) does

not contain more than twenty-five milligrams of ephedrine alkaloids, and (iii) does not contain ephedrine alkaloids in excess of five percent of the total capsule weight;

(C) They are not marketed, advertised, or represented in any manner for the indication of stimulation, mental alertness, euphoria, ecstasy, a buzz or high, heightened sexual performance, or increased muscle mass; and

(D) Analysis of the product is provided to the department to ensure that the product meets the requirements of subdivision (g)(3)(B) of Schedule IV. if they may lawfully be sold over the counter without a prescription under the Federal Food, Drug, and Cosmetic Act, are labeled and marketed in a manner consistent with the pertinent OTC Tentative Final or Final Monograph, are manufactured and distributed for legitimate medicinal use in a manner that reduces or eliminates the likelihood of abuse, and are not marketed, advertised, or labeled for the indication of stimulation, mental alertness, weight loss, muscle enhancement, appetite control, or energy.

(A) Solid oral dosage forms, including soft gelatin capsules, that combine active ingredients in the following ranges for each dosage unit:

(i) Not less than one hundred milligrams nor more than one hundred thirty milligrams of theophylline and not less than twelve and five-tenths milligrams nor more than twenty-four milligrams of ephedrine,

(ii) Not less than sixty milligrams nor more than one hundred milligrams of theophylline, not less than twelve and five-tenths milligrams nor more than twenty-four milligrams of ephedrine, and not less than two hundred milligrams nor more than four hundred milligrams of guaifenesin,

(iii) Not less than twelve and five-tenths milligrams nor more than twenty-five milligrams of ephedrine and not less than two hundred milligrams nor more than four hundred milligrams of guaifenesin; and

(iv) Not more than eight milligrams of phenobarbital in combination with the ingredients of subdivision (g)(2)(A)(i) or (g)(2)(A)(ii) of Schedule IV;

(B) Liquid oral dosage forms that combine active ingredients in the following ranges for each five-milliliter dose:

(i) Not more than forty-five milligrams of theophylline, not more than thirty-six milligrams of ephedrine, not more than one hundred milligrams of guaifenesin, and not more than twelve milligrams of phenobarbital; and

(ii) Not more than five milligrams of phenylephrine, not more than five milligrams of ephedrine, not more than two milligrams of chlorpheniramine, not more than ten milligrams of dextromethorphan, not more than forty milligrams of ammonium chloride, and not more than five one-thousandths of a milligram of ipecac fluid extract; and

(C) Anorectal preparations containing less than five percent ephedrine.

Schedule V

(a) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drug and its salts: (1) Buprenorphine.

(b) Any compound, mixture, or preparation containing any of the following limited quantities of narcotic drugs or salts calculated as the free anhydrous base or alkaloid, which shall 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 the narcotic drug alone:

(1) Not more than two hundred milligrams of codeine per one hundred milliliters or per one hundred grams;

(2) Not more than one hundred milligrams of dihydrocodeine per one hundred milliliters or per one hundred grams;

(3) Not more than one hundred milligrams of ethylmorphine per one hundred milliliters or per one hundred grams;

(4) Not more than two and five-tenths milligrams of diphenoxylate and not less than twenty-five micrograms of atropine sulfate per dosage unit;

(5) Not more than one hundred milligrams of opium per one hundred milliliters or per one hundred grams; and

(6) Not more than five-tenths milligram of difenoxin and not less than twenty-five micrograms of atropine sulfate per dosage unit.

Sec. 11. Section 28-417, Reissue Revised Statutes of Nebraska, is amended to read:

28-417. (1) It shall be unlawful for any person:

(a) To omit, remove, alter, or obliterate a symbol required by the ~~Federal Controlled Dangerous Substances Act~~ federal Controlled Substances Act, as the act existed on the effective date of this act, or required by the laws of this state;

(b) To alter, deface, or remove any label affixed to a package of

narcotic drugs;

(c) To refuse or fail to make, keep, or furnish any record, notification, order form, statement, invoice, or information required under ~~this article the Uniform Controlled Substances Act~~;

(d) To refuse any entry into any premises for inspection authorized by ~~this article the act~~;

(e) To keep or maintain any store, shop, warehouse, dwelling house, building, vehicle, boat, aircraft, or any place whatever which such person knows or should know is resorted to by persons using controlled substances in violation of ~~this article the Uniform Controlled Substances Act~~ for the purpose of using such substances or which is used for the keeping or selling of the same in violation of ~~this article the act~~;

(f) To whom or for whose use any controlled substance has been prescribed, sold, or dispensed by a practitioner or the owner of any animal for which any such substance has been prescribed, sold, or dispensed by a veterinarian to possess it in a container other than which it was delivered to him or her by the practitioner; or

(g) To be under the influence of any controlled substance for a purpose other than the treatment of a sickness or injury as prescribed or administered by a person duly authorized by law to treat sick and injured human beings. In a prosecution under this subdivision, it shall not be necessary for the state to prove that the accused was under the influence of any specific controlled substance, but it shall be sufficient for a conviction under this subdivision for the state to prove that the accused was under the influence of some controlled substance by proving that the accused did manifest physical and physiological symptoms or reactions caused by the use of any controlled substance.

(2) Any person who violates this section shall be guilty of a Class III misdemeanor.

Sec. 12. Section 28-418, Reissue Revised Statutes of Nebraska, is amended to read:

28-418. (1) It shall be unlawful for any person knowingly or intentionally:

(a) Who is a registrant to distribute a controlled substance classified in Schedule I or II of section 28-405 in the course of his or her legitimate business except pursuant to an order form as required by section 28-413;

(b) To use in the course of the manufacture or distribution of a controlled substance a registration number which is fictitious, revoked, suspended, or issued to another person;

(c) To acquire or obtain or to attempt to acquire or obtain possession of a controlled substance by theft, misrepresentation, fraud, forgery, deception, or subterfuge;

(d) To furnish false or fraudulent material information in or omit any material information from any application, report, or other document required to be kept or filed under ~~this article the Uniform Controlled Substances Act~~ or any record required to be kept by ~~this article the act~~;

(e) To make, distribute, or possess any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any drug or container or labeling thereof so as to render such drug a counterfeit controlled substance;

(f) Who is subject to sections 28-406 to 28-414 to distribute or dispense a controlled substance in violation of section 28-414;

(g) Who is a registrant to manufacture a controlled substance not authorized by his or her registration or to distribute or dispense a controlled substance not authorized by his or her registration to another registrant or authorized person;

(h) To possess a false or forged prescription for a controlled substance, except that this subdivision shall not apply to law enforcement officials, practitioners, or attorneys in the performance of their official lawful duties; or

(i) To communicate information to a practitioner in an effort to unlawfully procure a controlled substance, the administration of a controlled substance, or a prescription for a controlled substance.

(2) Any person who violates this section shall be guilty of a Class IV felony.

Sec. 13. Section 28-427, Reissue Revised Statutes of Nebraska, is amended to read:

28-427. Any penalty imposed for violation of ~~this article the Uniform Controlled Substances Act~~ shall be in addition to, and not in lieu of, any civil or administrative penalty or sanction authorized by law. A

conviction or acquittal under federal law or the law of another state having a substantially similar law shall be a bar to prosecution in this state for the same act. ~~Should~~ If any person ~~be~~ is convicted for violation of ~~this article the Uniform Controlled Substances Act~~, in addition to any penalty imposed by the court, the court may order that such person make restitution to any law enforcement agency for reasonable expenditures made in the purchase of any controlled substances from such person or his or her agent as part of the investigation leading to such conviction.

Sec. 14. Section 28-432, Reissue Revised Statutes of Nebraska, is amended to read:

28-432. (1) It shall not be necessary for the state to negate any exemption or exception set forth in ~~this article the Uniform Controlled Substances Act~~ in any complaint, information, indictment, or other pleading or in any trial, hearing, or other proceeding under the provisions of ~~this article the act~~, and the burden of proof of any such exemption or exception shall be upon the person claiming its benefit.

(2) In the absence of proof that a person is the duly authorized holder of an appropriate registration or order form issued under the ~~provisions of this article, he~~ Uniform Controlled Substances Act, the person shall be presumed not to be the holder of such registration or form, and the burden of proof shall be upon him or her to rebut such presumption.

Sec. 15. Section 28-433, Reissue Revised Statutes of Nebraska, is amended to read:

28-433. All final determinations, findings, and conclusions of the department under ~~this article the Uniform Controlled Substances Act~~ shall be final and conclusive decisions of the matters involved, except that any person aggrieved by such decision may appeal the decision, and the appeal shall be in accordance with the Administrative Procedure Act.

Sec. 16. Section 28-437, Reissue Revised Statutes of Nebraska, is amended to read:

28-437. ~~This article~~ The Uniform Controlled Substances Act shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of ~~this article the act~~ among those states which enact it.

Sec. 17. Section 28-438, Reissue Revised Statutes of Nebraska, is amended to read:

28-438. ~~This article~~ Sections 28-401 to 28-438 and sections 1 to 9 of this act shall be known and may be cited as the Uniform Controlled Substances Act.

Sec. 18. Original sections 28-417, 28-418, 28-427, 28-432, 28-433, 28-437, and 28-438, Reissue Revised Statutes of Nebraska, and section 28-405, Revised Statutes Supplement, 2000, are repealed.