

## LEGISLATIVE BILL 382

Approved by the Governor May 6, 2005

Introduced by Jensen, 20

AN ACT relating to public health and welfare; to amend sections 71-168, 71-1,146.01, 71-1,147.35, 71-374, 71-375, 71-5402, 71-5403, and 71-5404, Reissue Revised Statutes of Nebraska, sections 28-401, 28-405, 28-414, 28-1437, and 71-1,142, Revised Statutes Supplement, 2004, and section 2, Legislative Bill 306, Ninety-ninth Legislature, First Session, 2005; to provide for electronic transmission of prescriptions; to define, redefine, and eliminate terms; to change provisions relating to controlled substances, dispensing, compounding, and destroying certain drugs, and drug product selection; to provide an exception to mandatory reporting requirements for pharmacist interns; to change provisions relating to the Board of Cosmetology; to provide for relabeling and redispensing of certain prescription drugs and devices; to change provisions relating to criminal background checks required of certain professionals; to harmonize provisions; to provide operative dates; to repeal the original sections; and to declare an emergency.

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

Section 1. Section 28-401, Revised Statutes Supplement, 2004, is amended to read:

28-401. As used in the Uniform Controlled Substances Act, unless the context otherwise requires:

(1) Administer shall mean to directly apply a controlled substance by injection, inhalation, ingestion, or any other means to the body of a patient or research subject;

(2) Agent shall mean an authorized person who acts on behalf of or at the direction of another person but shall not include a common or contract carrier, public warehouse keeper, or employee of a carrier or warehouse keeper;

(3) Administration shall mean the Drug Enforcement Administration, United States Department of Justice;

(4) Controlled substance shall mean a drug, biological, substance, or immediate precursor in Schedules I to V of section 28-405. Controlled substance shall not include distilled spirits, wine, malt beverages, tobacco, or any nonnarcotic substance if such substance may, under the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301 et seq., as such act existed on January 1, 2003, and the law of this state, be lawfully sold over the counter without a prescription;

(5) Counterfeit substance shall mean a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number, or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person or persons who in fact manufactured, distributed, or dispensed such substance and which thereby falsely purports or is represented to be the product of, or to have been distributed by, such other manufacturer, distributor, or dispenser;

(6) Department shall mean the Department of Health and Human Services Regulation and Licensure;

(7) Division of Drug Control shall mean the personnel of the Nebraska State Patrol who are assigned to enforce the Uniform Controlled Substances Act;

(8) Dispense shall mean to deliver a controlled substance to an ultimate user or a research subject pursuant to a medical order issued by a practitioner authorized to prescribe, including the packaging, labeling, or compounding necessary to prepare the controlled substance for such delivery;

(9) Distribute shall mean to deliver other than by administering or dispensing a controlled substance;

(10) Prescribe shall mean to issue a medical order;

(11) Drug shall mean (a) articles recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, official National Formulary, or any supplement to any of them, (b) substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in human beings or animals, and (c) substances intended for use as a component of any article specified in subdivision (a) or (b) of this subdivision, but shall not include devices or their components, parts, or

accessories;

(12) Deliver or delivery shall mean the actual, constructive, or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship;

(13) Marijuana shall mean all parts of the plant of the genus *cannabis*, whether growing or not, the seeds thereof, and every compound, manufacture, salt, derivative, mixture, or preparation of such plant or its seeds, but shall not include the mature stalks of such plant, hashish, tetrahydrocannabinols extracted or isolated from the plant, fiber produced 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, or the sterilized seed of such plant which is incapable of germination. When the weight of marijuana is referred to in the Uniform Controlled Substances Act, it shall mean its weight at or about the time it is seized or otherwise comes into the possession of law enforcement authorities, whether cured or uncured at that time;

(14) Manufacture shall mean the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, either directly or indirectly, by extraction from substances of natural origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and shall include any packaging or repackaging of the substance or labeling or relabeling of its container. Manufacture shall not include the preparation or compounding of a controlled substance by an individual for his or her own use, except for the preparation or compounding of components or ingredients used for or intended to be used for the manufacture of methamphetamine, or the preparation, compounding, conversion, packaging, or labeling of a controlled substance: (a) By a practitioner as an incident to his or her prescribing, administering, or dispensing of a controlled substance in the course of his or her professional practice; or (b) by a practitioner, or by his or her authorized agent under his or her supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale;

(15) Narcotic drug shall mean any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis: (a) Opium, opium poppy and poppy straw, coca leaves, and opiates; (b) a compound, manufacture, salt, derivative, or preparation of opium, coca leaves, or opiates; or (c) a substance and any compound, manufacture, salt, derivative, or preparation thereof which is chemically equivalent to or identical with any of the substances referred to in subdivisions (a) and (b) of this subdivision, except that the words narcotic drug as used in the Uniform Controlled Substances Act shall not include decocainized coca leaves or extracts of coca leaves, which extracts do not contain cocaine or ecgonine, or isoquinoline alkaloids of opium;

(16) Opiate shall mean any 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. Opiate shall not include the dextrorotatory isomer of 3-methoxy-n methylmorphinan and its salts. Opiate shall include its racemic and levorotatory forms;

(17) Opium poppy shall mean the plant of the species *Papaver somniferum* L., except the seeds thereof;

(18) Poppy straw shall mean all parts, except the seeds, of the opium poppy after mowing;

(19) Person shall mean any corporation, association, partnership, limited liability company, or one or more individuals;

(20) Practitioner shall mean a physician, physician assistant, dentist, veterinarian, pharmacist, podiatrist, optometrist, certified nurse midwife, advanced practice registered nurse, certified registered nurse anesthetist, scientific investigator, pharmacy, hospital, or any other person licensed, registered, or otherwise permitted to distribute, dispense, prescribe, conduct research with respect to, or administer a controlled substance in the course of practice or research in this state, including an emergency medical service as defined in section 71-5175;

(21) Production shall include the manufacture, planting, cultivation, or harvesting of a controlled substance;

(22) Immediate precursor shall mean a substance which is the principal compound commonly used or produced primarily 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;

(23) State shall mean the State of Nebraska;

(24) Ultimate user shall mean a person who lawfully possesses a controlled substance for his or her own use, for the use of a member of his or her household, or for administration to an animal owned by him or her or by a member of his or her household;

(25) Hospital shall have the same meaning as in section 71-419;

(26) Cooperating individual shall mean any person, other than a commissioned law enforcement officer, who acts on behalf of, at the request of, or as agent for a law enforcement agency for the purpose of gathering or obtaining evidence of offenses punishable under the Uniform Controlled Substances Act;

(27) Hashish or concentrated cannabis shall mean: (a) The separated resin, whether crude or purified, obtained from a plant of the genus cannabis; or (b) any material, preparation, mixture, compound, or other substance which contains ten percent or more by weight of tetrahydrocannabinols;

(28) Exceptionally hazardous drug shall mean (a) a narcotic drug, (b) thiophene analog of phencyclidine, (c) phencyclidine, (d) amobarbital, (e) secobarbital, or (f) pentobarbital;

(29) Imitation controlled substance shall mean a substance which is not a controlled substance but which, by way of express or implied representations and consideration of other relevant factors including those specified in section 28-445, would lead a reasonable person to believe the substance is a controlled substance. A placebo or registered investigational drug manufactured, distributed, possessed, or delivered in the ordinary course of practice or research by a health care professional shall not be deemed to be an imitation controlled substance;

(30) (a) Controlled substance analogue shall mean a substance (i) the chemical structure of which is substantially similar to the chemical structure of a Schedule I or Schedule II controlled substance as provided in section 28-405 or (ii) which has a stimulant, depressant, analgesic, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, analgesic, or hallucinogenic effect on the central nervous system of a Schedule I or Schedule II controlled substance as provided in section 28-405. A controlled substance analogue shall, to the extent intended for human consumption, be treated as a controlled substance under Schedule I of section 28-405 for purposes of the Uniform Controlled Substances Act; and

(b) Controlled substance analogue shall not include (i) a controlled substance, (ii) any substance generally recognized as safe and effective within the meaning of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301 et seq., as such act existed on January 1, 2003, (iii) any substance for which there is an approved new drug application, or (iv) with respect to a particular person, any substance if an exemption is in effect for investigational use for that person, under section 505 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 355, as such section existed on January 1, 2003, to the extent conduct with respect to such substance is pursuant to such exemption;

(31) Anabolic steroid shall mean any drug or hormonal substance, chemically and pharmacologically related to testosterone (other than estrogens, progestins, and corticosteroids), that promotes muscle growth and includes any controlled substance in Schedule III(d) of section 28-405. Anabolic steroid shall not include any anabolic steroid which is expressly intended for administration through implants to cattle or other nonhuman species and has been approved by the Secretary of Health and Human Services for such administration, but if any person prescribes, dispenses, or distributes such a steroid for human use, such person shall be considered to have prescribed, dispensed, or distributed an anabolic steroid within the meaning of this subdivision;

(32) Chart order shall mean an order for a controlled substance issued by a practitioner for a patient who is in the hospital where the chart is stored or for a patient receiving detoxification treatment or maintenance treatment pursuant to section 28-412. Chart order shall not include a prescription;

(33) Medical order shall mean a prescription, a chart order, or an order for pharmaceutical care issued by a practitioner;

(34) Prescription shall mean an order for a controlled substance issued by a practitioner. Prescription shall not include a chart order;

(35) Registrant shall mean any person who has a controlled substances registration issued by the state or the administration;

(36) Reverse distributor shall mean a person whose primary function is to act as an agent for a pharmacy, wholesaler, manufacturer, or other entity by receiving, inventorying, and managing the disposition of outdated, expired, or otherwise nonsaleable controlled substances; ~~and~~

(37) Signature shall mean the name, word, or mark of a person written in his or her own hand with the intent to authenticate a writing or other form of communication or a digital signature which complies with section 86-611 or an electronic signature;

(38) Facsimile shall mean a copy generated by a system that encodes a document or photograph into electrical signals, transmits those signals over telecommunications lines, and reconstructs the signals to create an exact duplicate of the original document at the receiving end;

(39) Electronic signature shall have the definition found in section 86-621; and

(40) Electronic transmission shall mean transmission of information in electronic form. Electronic transmission may include computer-to-computer transmission or computer-to-facsimile transmission.

Sec. 2. Section 28-405, Revised Statutes Supplement, 2004, 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) Levophenacylmorphan;
- (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,  
propionanilide,  
N-(1-(alpha-methyl-beta-phenyl)ethyl-4-piperidyl)  
1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine;
- (45) Tilidine;
- (46) 3-Methylfentanyl,  
its optical  
N-(3-methyl-1-(2-phenylethyl)-4-piperidyl)-N-phenylpropanamide,

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) PEPAP (1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine), its optical isomers, salts, and salts of isomers;

(49) Acetyl-alpha-methylfentanyl (N-(1-(1-methyl-2-phenethyl)-4-piperidinyl)-N-phenylacetamide), its optical isomers, salts, and salts of isomers;

(50) Alpha-methylthiofentanyl (N-(1-methyl-2-(2-thienyl)ethyl-4-piperidinyl)-N-phenylpropanamide), its optical isomers, salts, and salts of isomers;

(51) Benzylfentanyl (N-(1-benzyl-4-piperidyl)-N-phenylpropanamide), its optical isomers, salts, and salts of isomers;

(52) Beta-hydroxyfentanyl (N-(1-(2-hydroxy-2-phenethyl)-4-piperidinyl)-N-phenylpropanamide), its optical isomers, salts, and salts of isomers;

(53) Beta-hydroxy-3-methylfentanyl (other name: N-(1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl)-N-phenylpropanamide), its optical and geometric isomers, salts, and salts of isomers;

(54) 3-methylthiofentanyl (N-(3-methyl-1-(2-thienyl)ethyl-4-piperidinyl)-N-phenylpropanamide), 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) Thiofentanyl (N-phenyl-N-(1-(2-thienyl)ethyl-4-piperidinyl)-propanamide), its optical isomers, salts, and salts of isomers; and

(57) Para-fluorofentanyl (N-(4-fluorophenyl)-N-(1-(2-phenethyl)-4-piperidinyl)propanamide), 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) azepero (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-piperidyl benzilate;

(21) Thiophene analog of phencyclidine. Trade and other names shall include, but are not limited to: 1-(1-(2-thienyl)-cyclohexyl)-piperidine; 2-thienyl analog of phencyclidine; TPCP; 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;

(28) 4-bromo-2,5-dimethoxyphenethylamine. Some trade or other names: 2-(4-bromo-2,5-dimethoxyphenyl)-1-aminoethane; alpha-desmethyl DOB; 2C-B; and Nexus;

(29) Alpha-ethyltryptamine. Some trade or other names: etryptamine; Monase; alpha-ethyl-1H-indole-3-ethanamine; 3-(2-aminobutyl) indole; alpha-ET; and AET;

(30) 2,5-dimethoxy-4-ethylamphet-amine; and DOET; and

(31) 1-(1-(2-thienyl)cyclohexyl)pyrrolidine; and TCPy;

(32) Alpha-methyltryptamine, which is also known as AMT; and

(33) 5-Methoxy-N, N-diisopropyltryptamine, which is also known as 5-MeO-DIPT.

(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;  
 (2) Methaqualone; and  
 (3) Gamma-hydroxybutyric acid. Some other names include: GHB; gamma-hydroxybutyrate; 4-hydroxybutyrate; 4-hydroxybutanoic acid; sodium oxybate; and sodium oxybutyrate.

(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;  
 (2) N-ethylamphetamine;  
 (3) Aminorex; aminoxaphen; 2-amino-5-phenyl-2-oxazoline; and 4,5-dihydro-5-phenyl-2-oxazolamine;  
 (4) Cathinone; 2-amino-1-phenyl-1-propanone; alpha-aminopropiophenone; 2-aminopropiophenone; and norephedrone;  
 (5) Methcathinone, its salts, optical isomers, and salts of optical isomers. Some other names: 2-(methylamino)-propionophenone; alpha-(methylamino)propionophenone; 2-(methylamino)-1-phenylpropan-1-one; alpha-N-methylaminopropiophenone; methylcathinone; monomethylpropion; ephedrone; N-methylcathinone; AL-464; AL-422; AL-463; and UR1432;  
 (6) (+/-)cis-4-methylaminorex; and (+/-)cis-4,5-dihydro-4-methyl-5-phenyl-2-oxazolamine; and  
 (7) N,N-dimethylamphetamine; N,N-alpha-trimethyl-benzeneethanamine; and N,N-alpha-trimethylphenethylamine.

(f) 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, thebaine-derived butorphanol, dextrorphan, nalbuphine, nalmeferne, naloxone, and naltrexone and their salts, but including the following:

(i) Raw opium;  
 (ii) Opium extracts;  
 (iii) Opium fluid;  
 (iv) Powdered opium;  
 (v) Granulated opium;  
 (vi) Tincture of opium;  
 (vii) Codeine;  
 (viii) Ethylmorphine;  
 (ix) Etorphine hydrochloride;  
 (x) Hydrocodone;  
 (xi) Hydromorphone;  
 (xii) Metopon;  
 (xiii) Morphine;  
 (xiv) Oxycodone;  
 (xv) Oxymorphone;  
 (xvi) Thebaine; and  
 (xvii) Dihydroetorphine;

(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 phenanthrene 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 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-diphenylpropane-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 propoxyphene in nondosage forms;
- (23) Sufentanil;
- (24) Alfentanil;
- (25) Levo-alpha-acetylmethadol which is also known as levo-alpha-acetylmethadol, levomethadyl acetate, and LAAM;
- (26) Carfentanil; and
- (27) Remifentanil.

(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:

(+/-)-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) Clortermine; 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;

(12) Any drug product containing gamma-hydroxybutyric acid, including its salts, isomers, and salts of isomers, for which an application is approved under section 505 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 355, as such section existed on July 20, 2002;

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

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

(c) Unless specifically excepted or unless listed in another schedule:

(1) 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:

(i) 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;

(ii) 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;

(iii) 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;

(iv) 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;

(v) 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;

(vi) 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;

(vii) 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

(viii) 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; and

(2) Any material, compound, mixture, or preparation containing any of the following narcotic drug or its salts, as set forth below:

(i) Buprenorphine.

(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-chlortestosterone);
- (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.

#### 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;
- (48) Zolpidem;
- (49) Dichloralphenazone; and
- (50) Zaleplon.

(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;
- (10) Mefenorex;
- (11) Modafinil; and
- (12) Sibutramine.

(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 in manufactured dosage forms; 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 September 1, 2001; 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 September 1, 2001, 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 28-448 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.

#### Schedule V

(a) 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.

(b) Unless specifically exempted or excluded 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: Pyrovalerone.

Sec. 3. Section 28-414, Revised Statutes Supplement, 2004, is amended to read:

28-414. (1)(a) Except as otherwise provided in this subsection or section 28-412 or when administered directly by a practitioner to an ultimate user, a controlled substance listed in Schedule II of section 28-405 shall not be dispensed without the written prescription bearing the signature of a practitioner authorized to prescribe. No medical order for a controlled substance listed in Schedule II of section 28-405 shall be filled more than six months from the date of issuance. A prescription for a controlled substance listed in Schedule II of section 28-405 shall not be refilled.

(b) In emergency situations as defined by rule and regulation of the department, a controlled substance listed in Schedule II of section 28-405 may be dispensed pursuant to ~~an authorized transmitted copy~~ a facsimile of a

written, signed prescription bearing the word "emergency" or pursuant to an oral prescription reduced to writing in accordance with subdivision (3)(b) of this section, except for the prescribing practitioner's signature, and bearing the word "emergency". and filed by a pharmacist.

(c) In nonemergency situations:

(i) A controlled substance listed in Schedule II of section 28-405 may be dispensed pursuant to ~~an authorized transmitted copy~~ a facsimile of a written, signed prescription if the original written, signed prescription is presented to the pharmacist for review before the controlled substance is dispensed, except as provided in subdivision (1)(c)(ii) or (1)(c)(iii) of this section;

(ii) A narcotic drug listed in Schedule II of section 28-405 may be dispensed pursuant to ~~an authorized transmitted copy~~ a facsimile of a written, signed prescription (A) to be compounded for direct parenteral administration to a patient for the purpose of home infusion therapy or (B) for administration to a patient in a hospice licensed under the Health Care Facility Licensure Act or certified under Title XVIII of the federal Social Security Act, as such title existed on May 1, 2001, and bearing the words "hospice patient";

(iii) A controlled substance listed in Schedule II of section 28-405 may be dispensed pursuant to ~~an authorized transmitted copy~~ a facsimile of a written, signed prescription for administration to a resident of a long-term care facility; and

(iv) For purposes of subdivisions (1)(c)(ii) and (1)(c)(iii) of this section, ~~an authorized transmitted copy~~ a facsimile of a written, signed prescription shall serve as the original written prescription and shall be maintained in accordance with subdivision (3)(a) of this section.

(d)(i) A prescription for a controlled substance listed in Schedule II of section 28-405 may be partially filled if the pharmacist does not supply the full quantity prescribed and he or she makes a notation of the quantity supplied on the face of the prescription. The remaining portion of the prescription may be filled within seventy-two hours of the first partial filling. The pharmacist shall notify the prescribing practitioner if the remaining portion of the prescription is not or cannot be filled within such period. No further quantity may be supplied after such period without a new written, signed prescription.

(ii) A prescription for a controlled substance listed in Schedule II of section 28-405 written for a patient in a long-term care facility or for a patient with a medical diagnosis documenting a terminal illness may be partially filled. Such prescription shall bear the words "terminally ill" or "long-term care facility patient" on its face. If there is any question whether a patient may be classified as having a terminal illness, the pharmacist shall contact the prescribing practitioner prior to partially filling the prescription. Both the pharmacist and the prescribing practitioner have a corresponding responsibility to assure that the controlled substance is for a terminally ill patient. For each partial filling, the dispensing pharmacist shall record on the back of the prescription or on another appropriate record, uniformly maintained and readily retrievable, the date of the partial filling, quantity dispensed, remaining quantity authorized to be dispensed, and the identification of the dispensing pharmacist. The total quantity of controlled substances listed in Schedule II which is dispensed in all partial fillings shall not exceed the total quantity prescribed. A prescription for a Schedule II controlled substance for a patient in a long-term care facility or a patient with a medical diagnosis documenting a terminal illness is valid for sixty days from the date of issuance or until discontinuance of the prescription, whichever occurs first.

(2)(a) Except as otherwise provided in this subsection or when administered directly by a practitioner to an ultimate user, a controlled substance listed in Schedule III, IV, or V of section 28-405 shall not be dispensed without a written or oral medical order. Such medical order is valid for six months after the date of issuance. Authorization from a practitioner authorized to prescribe is required to refill a prescription for a controlled substance listed in Schedule III, IV, or V of section 28-405. Such prescriptions shall not be refilled more than five times within six months after the date of issuance. Original prescription information for any controlled substance listed in Schedule III, IV, or V of section 28-405 may be transferred between pharmacies for purposes of refill dispensing pursuant to section 71-1,146.02.

(b) A controlled substance listed in Schedule III, IV, or V of section 28-405 may be dispensed pursuant to ~~an authorized transmitted copy~~ a facsimile of a written, signed prescription. The ~~authorized transmitted copy~~ facsimile of a written, signed prescription shall serve as the original

written prescription for purposes of this subsection and shall be maintained in accordance with the provisions of subdivision (3)(c) of this section.

(c) A prescription for a controlled substance listed in Schedule III, IV, or V of section 28-405 may be partially filled if (i) each partial filling is recorded in the same manner as a refilling, (ii) the total quantity dispensed in all partial fillings does not exceed the total quantity prescribed, and (iii) each partial filling is dispensed within six months after the prescription was issued.

(3)(a) Prescriptions for all controlled substances listed in Schedule II of section 28-405 shall be kept in a separate file by the dispensing practitioner and shall be maintained for a minimum of five years. The practitioner shall make all such files readily available to the department and law enforcement for inspection without a search warrant.

(b) All prescriptions for controlled substances listed in Schedule II of section 28-405 shall contain the name and address of the patient, the name and address of the prescribing practitioner, the Drug Enforcement Administration number of the prescribing practitioner, the date of issuance, and the prescribing practitioner's signature. The practitioner filling such prescription shall write the date of filling and his or her own signature on the face of the prescription. If the prescription is for an animal, it shall also state the name and address of the owner of the animal and the species of the animal.

(c) Prescriptions for all controlled substances listed in Schedule III, IV, or V of section 28-405 shall be filed separately from other prescriptions in a single file by the dispensing practitioner and shall be maintained for a minimum of five years. The practitioner shall make all such files readily available to the department and law enforcement for inspection without a search warrant.

(d) All prescriptions for controlled substances listed in Schedule III, IV, or V of section 28-405 shall contain the name and address of the patient, the name and address of the prescribing practitioner, the Drug Enforcement Administration number of the prescribing practitioner, the date of issuance, and for written prescriptions, the prescribing practitioner's signature. If the prescription is for an animal, it shall also state the owner's name and address and species of the animal.

(e) A registrant who is the owner of a controlled substance may transfer:

(i) Any controlled substance listed in Schedule I or II of section 28-405 to another registrant as provided by law or by rule and regulation of the department; and

(ii) Any controlled substance listed in Schedule III, IV, or V of section 28-405 to another registrant if such owner complies with subsection (4) of section 28-411.

(f)(i) The owner of any stock of controlled substances may cause such controlled substances to be destroyed pursuant to this subdivision when the need for such substances ceases. Complete records of controlled substances destruction pursuant to this subdivision shall be maintained by the registrant for five years from the date of destruction.

(ii) When the owner is a registrant:

(A) Controlled substances listed in Schedule II, III, IV, or V of section 28-405 may be destroyed by a pharmacy inspector, by a reverse distributor, or by the federal Drug Enforcement Administration. Upon destruction, any forms required by the administration to document such destruction shall be completed; ~~or~~

(B) Liquid controlled substances in opened containers which originally contained fifty milliliters or less or compounded liquid controlled substances within the facility where they were compounded may be destroyed if witnessed by two members of the healing arts and recorded in accordance with subsection (4) of section 28-411; or

(C) Solid controlled substances in opened unit-dose containers or which have been adulterated within a hospital where they were to be administered to patients at such hospital may be destroyed if witnessed by two members of the healing arts and recorded in accordance with subsection (4) of section 28-411.

(iii) When the owner is a patient, such owner may transfer the controlled substances to a pharmacy for immediate destruction by two responsible parties acting on behalf of the pharmacy, one of whom must be a member of the healing arts.

(iv) When the owner is a resident of a long-term care facility or hospital, the long-term care facility or hospital shall assure that controlled substances are destroyed as follows:

(A) If the controlled substance is listed in Schedule II or III of

section 28-405, the destruction shall be witnessed by an employee pharmacist or a consultant pharmacist and a member of the healing arts; or

(B) If the controlled substance is listed in Schedule IV or V of section 28-405, the destruction shall be witnessed by an employee pharmacist or a consultant pharmacist and another responsible adult.

(g) Before dispensing any controlled substance listed in Schedule II, III, IV, or V of section 28-405, the dispensing practitioner shall affix a label to the container in which the controlled substance is dispensed. Such label shall bear the name and address of the pharmacy or dispensing practitioner, the name of the patient, the date of filling, the consecutive number of the prescription under which it is recorded in the practitioner's prescription files, the name of the prescribing practitioner, and the directions for use of the controlled substance. Unless the prescribing practitioner writes "do not label" or words of similar import on the original written prescription or so designates in an oral prescription, such label shall also bear the name of the controlled substance.

(4) For purposes of this section, long-term +

~~(a) Authorized transmitted copy means a paper copy of a written, signed medical order issued by a practitioner authorized to prescribe which is produced by an electronic or electromagnetic transmission or other means as authorized by rule and regulation of the department upon recommendation of the Board of Pharmacy, and~~

~~(b) Long-term care facility has the same meaning as long-term care hospital in section 71-422 and includes an intermediate care facility for the mentally retarded as defined in section 71-421.~~

Sec. 4. Section 28-1437, Revised Statutes Supplement, 2004, is amended to read:

28-1437. (1) It shall be unlawful for any person knowingly or intentionally to possess or to acquire or obtain or to attempt to acquire or obtain by means of misrepresentation, fraud, forgery, deception, or subterfuge possession of any drug substance not classified as a controlled substance under the Uniform Controlled Substances Act, but which can only be lawfully distributed, under federal statutes in effect on April 16, 1996, upon the written or oral order of a practitioner authorized to prescribe such substances.

(2) Such substances as referred to in subsection (1) of this section shall be known as legend drug substances, which shall be defined as including all drug substances not classified as controlled substances under the Uniform Controlled Substances Act, but which require a written or oral prescription from a practitioner authorized to prescribe such substances and which may only be lawfully dispensed by a duly licensed pharmacist, in accordance with the provisions of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 301 to 392, in effect on April 16, 1996.

(3) A prescription for a legend drug may be transmitted by the practitioner or the practitioner's agent to a pharmacy by facsimile equipment. ~~The facsimile or electronic transmission.~~ Except as otherwise provided in section 28-414 for prescriptions for Schedule II, III, IV, or V controlled substances, the facsimile or electronic transmission shall serve as the original written prescription for purposes of this subsection.

Sec. 5. Section 71-168, Reissue Revised Statutes of Nebraska, is amended to read:

71-168. (1) The department shall enforce the Uniform Licensing Law and for that purpose shall make necessary investigations. Every credentialed person listed under subsection (4) of this section and every member of a professional board shall furnish the department such evidence as he or she may have relative to any alleged violation which is being investigated.

(2) Every credentialed person listed under subsection (4) of this section shall report to the department the name of every person without a credential that he or she has reason to believe is engaged in practicing any profession for which a credential is required by the Uniform Licensing Law. The department may, along with the Attorney General and other law enforcement agencies, investigate such reports or other complaints of unauthorized practice. The professional board may issue an order to cease and desist the unauthorized practice of such profession as a measure to obtain compliance with the applicable credentialing requirements by the person prior to referral of the matter to the Attorney General for action. Practice of such profession without a credential after receiving a cease and desist order is a Class III felony.

(3) Any credentialed person listed under subsection (4) of this section who is required to file a report of loss or theft of a controlled substance to the federal Drug Enforcement Administration shall provide a copy of such report to the department.

(4) Every credentialed person regulated under the Advanced Practice Registered Nurse Act, the Emergency Medical Services Act, the Licensed Practical Nurse-Certified Act, the Nebraska Certified Nurse Midwifery Practice Act, the Nebraska Cosmetology Act, the Nurse Practice Act, the Occupational Therapy Practice Act, the Uniform Controlled Substances Act, the Uniform Licensing Law except pharmacist interns, the Wholesale Drug Distributor Licensing Act, or sections 71-3702 to 71-3715, 71-4701 to 71-4719, or 71-6053 to 71-6068 shall, within thirty days of an occurrence described in this subsection, report to the department in such manner and form as the department may require by rule and regulation whenever he or she:

(a) Has first-hand knowledge of facts giving him or her reason to believe that any person in his or her profession has committed acts indicative of gross incompetence, a pattern of negligent conduct as defined in subdivision (5)(e) of section 71-147, or unprofessional conduct, may be practicing while his or her ability to practice is impaired by alcohol, controlled substances, narcotic drugs, or physical, mental, or emotional disability, or has otherwise violated such regulatory provisions governing the practice of the profession;

(b) Has first-hand knowledge of facts giving him or her reason to believe that any person in another profession regulated under such regulatory provisions has committed acts indicative of gross incompetence or may be practicing while his or her ability to practice is impaired by alcohol, controlled substances, narcotic drugs, or physical, mental, or emotional disability. The requirement to file a report under subdivision (a) or (b) of this subsection shall not apply (i) to the spouse of the person, (ii) to a practitioner who is providing treatment to such person in a practitioner-patient relationship concerning information obtained or discovered in the course of treatment unless the treating practitioner determines that the condition of the person may be of a nature which constitutes a danger to the public health and safety by the person's continued practice, or (iii) when a credentialed person who is chemically impaired enters the Licensee Assistance Program authorized by section 71-172.01 except as provided in such section; or

(c) Has been the subject of any of the following actions:

(i) Loss of privileges in a hospital or other health care facility due to alleged incompetence, negligence, unethical or unprofessional conduct, or physical, mental, or chemical impairment or the voluntary limitation of privileges or resignation from staff of any health care facility when that occurred while under formal or informal investigation or evaluation by the facility or a committee of the facility for issues of clinical competence, unprofessional conduct, or physical, mental, or chemical impairment;

(ii) Loss of employment due to alleged incompetence, negligence, unethical or unprofessional conduct, or physical, mental, or chemical impairment;

(iii) Adverse judgments, settlements, or awards arising out of professional liability claims, including settlements made prior to suit, or adverse action by an insurance company affecting professional liability coverage. The department may define by rule and regulation what constitutes a settlement that would be reportable when a credentialed person refunds or reduces a fee or makes no charge for reasons related to a patient or client complaint other than costs;

(iv) Denial of a credential or other form of authorization to practice by any state, territory, or jurisdiction, including any military or federal jurisdiction, due to alleged incompetence, negligence, unethical or unprofessional conduct, or physical, mental, or chemical impairment;

(v) Disciplinary action against any credential or other form of permit he or she holds taken by another state, territory, or jurisdiction, including any federal or military jurisdiction, the settlement of such action, or any voluntary surrender of or limitation on any such credential or other form of permit;

(vi) Loss of membership in a professional organization due to alleged incompetence, negligence, unethical or unprofessional conduct, or physical, mental, or chemical impairment; or

(vii) Conviction of any misdemeanor or felony in this or any other state, territory, or jurisdiction, including any federal or military jurisdiction.

(5) A report made to the department under this section shall be confidential and treated in the same manner as complaints and investigative files under subsection (7) of section 71-168.01. Any person making a report to the department under this section except those self-reporting shall be completely immune from criminal or civil liability of any nature, whether direct or derivative, for filing a report or for disclosure of documents,

records, or other information to the department under this section. Persons who are members of committees established under sections 25-12,123, 71-2046 to 71-2048, and 71-7901 to 71-7903 or witnesses before such committees shall not be required to report such activities. Any person who is a witness before a committee established under such sections shall not be excused from reporting matters of first-hand knowledge that would otherwise be reportable under this section only because he or she attended or testified before such committee. Documents from original sources shall not be construed as immune from discovery or use in actions under subsection (4) of this section.

Sec. 6. Section 71-1,142, Revised Statutes Supplement, 2004, is amended to read:

71-1,142. For purposes of sections 71-1,142 to 71-1,151 and elsewhere in the Uniform Licensing Law, unless the context otherwise requires:

(1) Practice of pharmacy means (a) the interpretation, evaluation, and implementation of a medical order, (b) the dispensing of drugs and devices, (c) drug product selection, (d) the administration of drugs or devices, (e) drug utilization review, (f) patient counseling, (g) the provision of pharmaceutical care, and (h) the responsibility for compounding and labeling of dispensed or repackaged drugs and devices, proper and safe storage of drugs and devices, and maintenance of proper records. The active practice of pharmacy means the performance of the functions set out in this subdivision by a pharmacist as his or her principal or ordinary occupation;

(2) Administer means to directly apply a drug or device by injection, inhalation, ingestion, or other means to the body of a patient or research subject;

(3) Administration means the act of (a) administering, (b) keeping a record of such activity, and (c) observing, monitoring, reporting, and otherwise taking appropriate action regarding desired effect, side effect, interaction, and contraindication associated with administering the drug or device;

(4) Board means the Board of Pharmacy;

(5) Caregiver means any person acting as an agent on behalf of a patient or any person aiding and assisting a patient;

(6) Chart order means an order for a drug or device issued by a practitioner for a patient who is in the hospital where the chart is stored or for a patient receiving detoxification treatment or maintenance treatment pursuant to section 28-412. Chart order does not include a prescription;

(7) Compounding means ~~preparing, mixing, or assembling a drug or device~~ the preparation of components into a drug product (a) as the result of a practitioner's medical order or initiative occurring in the course of practice based upon the relationship between the practitioner, patient, and pharmacist or (b) for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale or dispensing. Compounding includes ~~preparing~~ the preparation of drugs or devices in anticipation of receiving medical orders based upon routine, regularly observed prescribing patterns;

(8) Delegated dispensing means the practice of pharmacy by which one or more pharmacists have jointly agreed, on a voluntary basis, to work in conjunction with one or more persons pursuant to sections 71-1,147.42 to 71-1,147.64 under a protocol which provides that such person may perform certain dispensing functions authorized by the pharmacist or pharmacists under certain specified conditions and limitations;

(9) Deliver or delivery means to actually, constructively, or attempt to transfer a drug or device from one person to another, whether or not for consideration;

(10) Department means the Department of Health and Human Services Regulation and Licensure;

(11) Device means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component, part, or accessory, which is prescribed by a practitioner and dispensed by a pharmacist or other person authorized by law to do so;

(12) Dialysis drug or device distributor means a manufacturer or wholesaler who provides dialysis drugs, solutions, supplies, or devices, to persons with chronic kidney failure for self-administration at the person's home or specified address, pursuant to a prescription;

(13) Dialysis drug or device distributor worker means a person working for a dialysis drug or device distributor with a delegated dispensing permit who has completed the approved training and has demonstrated proficiency to perform the task or tasks of assembling, labeling, or delivering drugs or devices pursuant to a prescription;

(14) Dispense or dispensing means interpreting, evaluating, and

implementing a medical order, including preparing and delivering a drug or device to a patient or caregiver in a suitable container appropriately labeled for subsequent administration to, or use by, a patient. Dispensing includes (a) dispensing incident to practice, (b) dispensing pursuant to a delegated dispensing permit, (c) dispensing pursuant to a medical order, and (d) any transfer of a prescription drug or device to a patient or caregiver other than by administering;

(15) Distribute means to deliver a drug or device, other than by administering or dispensing;

(16) Facility means a health care facility as defined in section 71-413;

(17) Hospital has the same meaning as in section 71-419;

(18) Person means an individual, corporation, partnership, limited liability company, association, or other legal entity;

(19) Labeling means the process of preparing and affixing a label to any drug container or device container, exclusive of the labeling by a manufacturer, packer, or distributor of a nonprescription drug or commercially packaged legend drug or device. Any such label shall include all information required by federal and state law or regulation;

(20) Medical order means a prescription, a chart order, or an order for pharmaceutical care issued by a practitioner;

(21) Pharmaceutical care means the provision of drug therapy for the purpose of achieving therapeutic outcomes that improve a patient's quality of life. Such outcomes include (a) the cure of disease, (b) the elimination or reduction of a patient's symptomatology, (c) the arrest or slowing of a disease process, or (d) the prevention of a disease or symptomatology. Pharmaceutical care includes the process through which the pharmacist works in concert with the patient and his or her caregiver, physician, or other professionals in designing, implementing, and monitoring a therapeutic plan that will produce specific therapeutic outcomes for the patient;

(22) Pharmacist means any person who is licensed by the State of Nebraska to practice pharmacy;

(23) Pharmacy has the same meaning as in section 71-425;

(24) Drugs, medicines, and medicinal substances means (a) articles recognized in the official United States Pharmacopoeia, the Homeopathic Pharmacopoeia of the United States, the official National Formulary, or any supplement to any of them, (b) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of diseases in humans or animals, (c) articles, except food, intended to affect the structure or any function of the body of a human or an animal, (d) articles intended for use as a component of any articles specified in subdivision (a), (b), or (c) of this subdivision, except any device or its components, parts, or accessories, and (e) prescription drugs or devices as defined in subdivision (31) of this section;

(25) Patient counseling means the verbal communication by a pharmacist, pharmacist intern, or practitioner, in a manner reflecting dignity and the right of the patient to a reasonable degree of privacy, of information to the patient or caregiver in order to improve therapeutic outcomes by maximizing proper use of prescription drugs and devices and also includes the duties set out in section 71-1,147.35;

(26) Pharmacist in charge means a pharmacist who is designated on a pharmacy license or designated by a hospital as being responsible for the practice of pharmacy in the pharmacy for which a pharmacy license is issued and who works within the physical confines of such pharmacy for a majority of the hours per week that the pharmacy is open for business averaged over a twelve-month period or thirty hours per week, whichever is less;

(27) Pharmacist intern means a person who meets the requirements of section 71-1,144;

(28) Pharmacy technician means an individual at least eighteen years of age who is a high school graduate or officially recognized by the State Department of Education as possessing the equivalent degree of education, who has never been convicted of any drug-related misdemeanor or felony, and who, under the written control procedures and guidelines of an employing pharmacy, may perform those functions which do not require professional judgment and which are subject to verification to assist a pharmacist in the practice of pharmacy;

(29) Practitioner means an advanced practice registered nurse, certified registered nurse anesthetist, certified nurse midwife, dentist, optometrist, physician assistant, physician, podiatrist, or veterinarian;

(30) Prescribe means to issue a medical order;

(31) Prescription drug or device or legend drug or device means (a) a drug or device which is required under federal law to be labeled with one of the following statements prior to being dispensed or delivered: (i) Caution:

Federal law prohibits dispensing without prescription; (ii) Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian; or (iii) "Rx Only" or (b) a drug or device which is required by any applicable federal or state law to be dispensed pursuant only to a prescription or chart order or which is restricted to use by practitioners only;

(32) Prescription means an order for a drug or device issued by a practitioner for a specific patient, for emergency use, or for use in immunizations. Prescription does not include a chart order;

(33) Nonprescription drugs means nonnarcotic medicines or drugs which may be sold without a medical order and which are prepackaged for use by the consumer and labeled in accordance with the requirements of the laws and regulations of this state and the federal government;

(34) Public health clinic worker means a person in a public health clinic with a delegated dispensing permit who has completed the approved training and has demonstrated proficiency to perform the task of dispensing authorized refills of oral contraceptives pursuant to a written prescription;

(35) Public health clinic means the department, any county, city-county, or multicounty health department, or any private not-for-profit family planning clinic licensed as a health clinic as defined in section 71-416;

(36) Signature means the name, word, or mark of a person written in his or her own hand with the intent to authenticate a writing or other form of communication or a digital signature which complies with section 86-611 or an electronic signature;

(37) Supervision means the immediate personal guidance and direction by the licensed pharmacist on duty in the facility of the performance by a pharmacy technician of authorized activities or functions subject to verification by such pharmacist, except that when a pharmacy technician performs authorized activities or functions to assist a pharmacist on duty in the facility when the prescribed drugs or devices will be administered by a licensed staff member or consultant or by a licensed physician assistant to persons who are patients or residents of a facility, the activities or functions of such pharmacy technician shall only be subject to verification by a pharmacist on duty in the facility;

(38) Verification means the confirmation by a supervising pharmacist of the accuracy and completeness of the acts, tasks, or functions undertaken by a pharmacy technician to assist the pharmacist in the practice of pharmacy;

(39) Written control procedures and guidelines means the document prepared and signed by the pharmacist in charge and approved by the board which specifies the manner in which basic levels of competency of pharmacy technicians employed by the pharmacy are determined, the manner in which supervision is provided, the manner in which the functions of pharmacy technicians are verified, the maximum ratio of pharmacy technicians to one pharmacist used in the pharmacy, and guidelines governing the use of pharmacy technicians and the functions which they may perform; ~~and~~

(40) Medical gas distributor means a person who dispenses medical gases to a patient or ultimate user but does not include a person who manufactures medical gases or a person who distributes, transfers, delivers, dispenses, or sells medical gases to a person other than a patient or ultimate user;

(41) Facsimile means a copy generated by a system that encodes a document or photograph into electrical signals, transmits those signals over telecommunications lines, and reconstructs the signals to create an exact duplicate of the original document at the receiving end;

(42) Electronic signature has the same definition found in section 86-621; and

(43) Electronic transmission means transmission of information in electronic form. Electronic transmission may include computer-to-computer transmission or computer-to-facsimile transmission.

Sec. 7. Section 71-1,146.01, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,146.01. (1) All medical orders shall be valid for the period stated in the medical order, except that (a) if the medical order is for a controlled substance listed in section 28-405, such period shall not exceed six months from the date of issuance at which time the medical order shall expire and (b) if the medical order is for a drug or device which is not a controlled substance listed in section 28-405 or is an order issued by a practitioner for pharmaceutical care, such period shall not exceed twelve months from the date of issuance at which time the medical order shall expire.

(2) Prescription drugs or devices may only be dispensed by a pharmacist or pharmacist intern pursuant to a medical order, by an individual dispensing pursuant to a delegated dispensing permit, or as otherwise provided

in section 71-1,143. Notwithstanding any other provision of law to the contrary, a pharmacist or a pharmacist intern may dispense drugs or devices pursuant to a medical order or an individual dispensing pursuant to a delegated dispensing permit may dispense drugs or devices pursuant to a medical order. Sections 71-1,142 to 71-1,151 shall not be construed to require any pharmacist or pharmacist intern to dispense any drug or device pursuant to any medical order. A pharmacist or pharmacist intern shall retain the professional right to refuse to dispense.

(3) Except as otherwise provided in section 28-414, a practitioner or ~~his or her~~ the practitioner's agent may transmit a medical order to a pharmacist or pharmacist intern by the following means: (a) In writing, (b) orally, ~~or (c) any means which produces an authorized transmitted copy. For purposes of this subsection, authorized transmitted copy means a paper copy of a written, signed medical order produced by electronic or electromagnetic transmission or other means authorized by rule and regulation of the department upon recommendation of the board~~ (c) by facsimile or electronic transmission of a medical order signed by the practitioner, or (d) by facsimile or electronic transmission of a medical order which is not signed by the practitioner. Such order shall be treated the same as an oral medical order.

(4) Except as otherwise provided in section 28-414, any medical order transmitted by facsimile or electronic transmission shall (a) be transmitted by the practitioner or the practitioner's agent directly to a pharmacist or pharmacist intern in a licensed pharmacy of the patient's choice. No intervening person shall be permitted access to the medical order to alter such order or the licensed pharmacy chosen by the patient. Such medical order may be transmitted through a third-party intermediary who shall facilitate the transmission of the order from the practitioner or practitioner's agent to the pharmacy, (b) identify the transmitter's telephone number or other suitable information necessary to contact the transmitter for written or oral confirmation, the time and date of the transmission, the identity of the pharmacy intended to receive the transmission, and other information as required by law, and (c) serve as the original medical order if all other requirements of this subsection are satisfied. Medical orders transmitted by electronic transmission shall be signed by the practitioner either with an electronic signature or a digital signature.

(5) The pharmacist shall exercise professional judgment regarding the accuracy, validity, and authenticity of any medical order transmitted by facsimile or electronic transmission.

Sec. 8. Section 71-1,147.35, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,147.35. (1)(a) Prior to the dispensing or the delivery of a drug or device pursuant to a medical order to a patient or caregiver, a pharmacist shall in all care settings conduct a prospective drug utilization review. Such prospective drug utilization review shall involve monitoring the patient-specific medical history described in subdivision (b) of this subsection and available to the pharmacist at the practice site for:

- (i) Therapeutic duplication;
- (ii) Drug-disease contraindications;
- (iii) Drug-drug interactions;
- (iv) Incorrect drug dosage or duration of drug treatment;
- (v) Drug-allergy interactions; and
- (vi) Clinical abuse or misuse.

(b) A pharmacist conducting a prospective drug utilization review shall ensure that a reasonable effort is made to obtain from the patient, his or her caregiver, or his or her practitioner and to record and maintain records of the following information to facilitate such review:

- (i) The name, address, telephone number, date of birth, and gender of the patient;
- (ii) The patient's history of significant disease, known allergies, and drug reactions and a comprehensive list of relevant drugs and devices used by the patient; and
- (iii) Any comments of the pharmacist relevant to the patient's drug therapy.

(c) The assessment of data on drug use in any prospective drug utilization review shall be based on predetermined standards, approved by the department upon the recommendation of the board.

(2)(a) Prior to the dispensing or delivery of a drug or device pursuant to a prescription, the pharmacist shall ensure that a verbal offer to counsel the patient or caregiver is made. The counseling of the patient or caregiver by the pharmacist shall be on elements which, in the exercise of the pharmacist's professional judgment, the pharmacist deems significant for the

patient. Such elements may include, but need not be limited to, the following:

- (i) The name and description of the prescribed drug or device;
- (ii) The route of administration, dosage form, dose, and duration of therapy;
- (iii) Special directions and precautions for preparation, administration, and use by the patient or caregiver;
- (iv) Common side effects, adverse effects or interactions, and therapeutic contraindications that may be encountered, including avoidance, and the action required if such effects, interactions, or contraindications occur;
- (v) Techniques for self-monitoring drug therapy;
- (vi) Proper storage;
- (vii) Prescription refill information; and
- (viii) Action to be taken in the event of a missed dose.

(b) The patient counseling provided for in this subsection shall be provided in person whenever practical or by the utilization of telephone service which is available at no cost to the patient or caregiver.

(c) Patient counseling shall be appropriate to the individual patient and shall be provided to the patient or caregiver.

(d) Written information may be provided to the patient or caregiver to supplement the patient counseling provided for in this subsection but shall not be used as a substitute for such patient counseling. If written information is provided, it shall also include all information found on the prescription label.

(e) This subsection shall not be construed to require a pharmacist to provide patient counseling when:

- (i) The patient or caregiver refuses patient counseling;
- (ii) The pharmacist, in his or her professional judgment, determines that patient counseling may be detrimental to the patient's care or to the relationship between the patient and his or her practitioner;
- (iii) The patient is a patient or resident of a health care facility or health care service licensed under the Health Care Facility Licensure Act to whom prescription drugs or devices are administered by a licensed or certified staff member or consultant or a certified physician's assistant; or
- (iv) The practitioner authorized to prescribe drugs or devices specifies that there shall be no patient counseling unless he or she is contacted prior to such patient counseling. The prescribing practitioner shall specify such prohibition in an oral ~~medical order~~ prescription or in writing on the face of a written ~~medical order~~ prescription, including any ~~medical order~~ prescription which results in an authorized transmitted copy is received by facsimile or electronic transmission. The pharmacist shall note "Contact Before Counseling" on the face of the prescription if such is communicated orally by the prescribing practitioner. ~~For purposes of this subdivision, authorized transmitted copy means a paper copy of a written, signed medical order produced by electronic or electromagnetic transmission or other means authorized by rule and regulation of the department upon recommendation of the board.~~

Sec. 9. Section 71-374, Reissue Revised Statutes of Nebraska, is amended to read:

71-374. (1) ~~Except as provided in subsection (2) of this section~~ Until October 1, 2005, the board shall be composed of eleven members. On and after October 1, 2005, the board shall be composed of twelve members. The board shall include ~~including~~ two school owners, one esthetician, one licensed instructor, two laypersons, one cosmetologist who is a salon owner and who is not a school owner, one electrologist who is not a licensed cosmetologist, one nail technician, and two cosmetologists who are not school owners, and one practitioner of body art as provided in this section. The professional members shall be licensed in Nebraska and maintain such license as well as their establishment licenses in good standing. No members of the board who are school owners, salon owners, electrologists, nail technicians, instructors, ~~or~~ cosmetologists, or practitioners of body art may be affiliated with the same establishment.

(2) ~~By October 1, 1999, the State Board of Health shall appoint one nail technician for a five-year term. The initial nail technician member must be eligible for licensure and obtain a nail technician license by January 1, 2000, to remain eligible to serve on the board.~~

~~(3) By October 1, 2002 2005, the State Board of Health shall appoint one esthetician practitioner of body art for a five-year term.~~

~~(4)~~ (3) Members of the board shall be appointed by the State Board of Health from among nominees submitted by professional associations and other interested parties. A person may nominate himself or herself.

~~(5)~~ (4) The State Board of Health may remove a member of the board for physical or mental incapacity to carry out the duties of a board member, for continued neglect of duty, for incompetency, for acting beyond the individual member's scope of authority, for malfeasance in office, for any cause for which a professional license in the profession involved may be suspended or revoked under the Nebraska Cosmetology Act, or for a lack of licensure in the profession involved.

~~(6)~~ (5) Vacancies on the board shall be filled in the same manner as original appointments for the remainder of the unexpired term only.

~~(7)~~ (6) Members of the board, ~~other than the initial members~~ unless otherwise specifically provided, shall serve for five-year terms, and no member shall serve for more than two consecutive terms excluding any partial term for which he or she may have been appointed.

Sec. 10. Section 71-375, Reissue Revised Statutes of Nebraska, is amended to read:

71-375. (1) Until October 1, ~~1999~~ 2005, any ~~five~~ six members of the board shall constitute a quorum for routine business, except that for matters requiring professional judgment of competency or standards of professional conduct, a quorum shall consist of any ~~four~~ five professional members.

(2) On and after October 1, ~~1999~~ 2005, any ~~six~~ seven members of the board shall constitute a quorum for routine business, except that for matters requiring professional judgment of competency or standards of professional conduct, a quorum shall consist of any ~~five~~ six professional members.

(3) The board shall meet at least twice a year and more often at the call of the chairperson or (a) until October 1, ~~1999~~ 2005, any ~~four~~ five members or (b) on and after October 1, ~~1999~~ 2005, any ~~five~~ six members.

(4) The board shall select officers from among its members, including a chairperson, vice-chairperson, and secretary.

(5) Members of the board shall be paid for their expenses as provided in sections 81-1174 to 81-1177 and shall in addition receive a per diem of fifty dollars.

Sec. 11. Section 71-5402, Reissue Revised Statutes of Nebraska, is amended to read:

71-5402. For purposes of the Nebraska Drug Product Selection Act, unless the context otherwise requires:

~~(1) Authorized transmitted copy means a paper copy of a written, signed medical order issued by a practitioner authorized to prescribe which is produced by an electronic or electromagnetic transmission or other means as authorized by rule and regulation of the department upon recommendation of the board;~~

~~(2)~~ Bioequivalent means drug products: (a) That are legally marketed under regulations promulgated by the federal Food and Drug Administration; (b) that are the same dosage form of the identical active ingredients in the identical amounts as the drug product prescribed; (c) that comply with compendial standards and are consistent from lot to lot with respect to (i) purity of ingredients, (ii) weight variation, (iii) uniformity of content, and (iv) stability; and (d) for which the federal Food and Drug Administration has established bioequivalent standards or has determined that no bioequivalence problems exist;

~~(3)~~ (2) Board means the Board of Pharmacy;

~~(4)~~ (3) Brand name means the proprietary or trade name selected by the manufacturer, distributor, or packager for a drug product and placed upon the labeling of such product at the time of packaging;

~~(5)~~ (4) Chemically equivalent means drug products that contain amounts of the identical therapeutically active ingredients in the identical strength, quantity, and dosage form and that meet present compendial standards;

~~(6)~~ (5) Department means the Department of Health and Human Services Regulation and Licensure;

~~(7)~~ (6) Drug product means any drug or device as defined in section 71-1,142;

~~(8)~~ (7) Drug product select means to dispense, without the practitioner's express authorization, an equivalent drug product in place of the brand-name drug product contained in a medical order of such practitioner;

~~(9)~~ (8) Equivalent means drug products that are both chemically equivalent and bioequivalent;

~~(10)~~ (9) Generic name means the official title of a drug or drug combination as determined by the United States Adopted Names Council and accepted by the federal Food and Drug Administration of those drug products having the same active chemical ingredients in the same strength and quantity;

~~(11)~~ (10) Medical order has the definition found in section 71-1,142;

~~(12)~~ (11) Pharmacist means a pharmacist licensed under the Uniform Licensing Law; and

~~(13)~~ (12) Practitioner has the definition found in section 71-1,142. Sec. 12. Section 71-5403, Reissue Revised Statutes of Nebraska, is amended to read:

71-5403. (1) A pharmacist may drug product select except when:

(a) A practitioner designates that drug product selection is not permitted by specifying in his or her own handwriting on the face of the prescription or by telephonic, facsimile, or electronic ~~communication~~ transmission that there shall be no drug product selection. For written prescriptions, the practitioner shall specify in his or her own handwriting on the prescription the phrase "no drug product selection", "dispense as written", "brand medically necessary", or "no generic substitution" or the notation "N.D.P.S.", "D.A.W.", or "B.M.N." or words or notations of similar import to indicate that drug product selection is not permitted. The pharmacist shall note "N.D.P.S." or "No Drug Product Selection" on the face of the prescription to indicate that drug product selection is not permitted if such is communicated orally by the prescribing practitioner; or

(b) A patient or designated representative or caregiver of such patient instructs otherwise.

(2) A pharmacist shall not drug product select a drug product unless:

(a) The drug product, if it is in solid dosage form, has been marked with an identification code or monogram directly on the dosage unit;

(b) The drug product has been labeled with an expiration date;

(c) The manufacturer, distributor, or packager of the drug product provides reasonable services, as determined by the board, to accept the return of drug products that have reached their expiration date; and

(d) The manufacturer, distributor, or packager maintains procedures for the recall of unsafe or defective drug products.

Sec. 13. Section 71-5404, Reissue Revised Statutes of Nebraska, is amended to read:

71-5404. (1) Whenever a drug product has been prescribed with the notation that no drug product selection is permitted for a patient who has a contract whereunder he or she is reimbursed for the cost of health care, directly or indirectly, the party that has contracted to reimburse the patient, directly or indirectly, shall make reimbursements on the basis of the price of the brand-name drug product and not on the basis of the equivalent drug product, unless the contract specifically requires generic reimbursement under the Code of Federal Regulations.

(2) A prescription drug or device when dispensed shall bear upon the label the name of the drug or device in the container unless the practitioner writes do not label or words of similar import on the prescription or so designates orally or by authorized transmitted copy in writing which may be transmitted by facsimile or electronic transmission.

(3) Nothing in this section shall (a) require a pharmacy to charge less than its established minimum price for the filling of any prescription or (b) prohibit any hospital from developing, using, and enforcing a formulary.

Sec. 14. (1) Prescription drugs or devices which have been delivered to a community health center for dispensing to a patient of such health center pursuant to a valid prescription, but which are not dispensed or administered to such patient, may be delivered to a pharmacist or pharmacy under contract with the community health center for relabeling and redispensing to another patient of such health center pursuant to a valid prescription, except that:

(a) The decision to accept delivery of the drug or device for relabeling and redispensing shall rest solely with the contracting pharmacist or pharmacy;

(b) The drug or device shall have been in the control of the community health center at all times;

(c) The drug or device shall be in the original and unopened labeled container with a tamper-evident seal intact. Such container shall bear the expiration date or calculated expiration date and lot number; and

(d) The relabeling and redispensing is not otherwise prohibited by law.

(2) For purposes of this section:

(a) Administer has the definition found in section 71-1,142;

(b) Calculated expiration date has the definition found in section 71-1,147.53;

(c) Community health center means a community health center established pursuant to the Health Centers Consolidation Act of 1996, 42 U.S.C. 201 et seq., as such act existed on the operative date of this section;

(d) Deliver or delivery has the definition found in section 71-1,142;

(e) Dispense or dispensing has the definition found in section 71-1,142;

(f) Prescription has the definition found in section 71-1,142; and

(g) Prescription drug or device has the definition found in section 71-1,142.

(3) The Department of Health and Human Services Regulation and Licensure, in consultation with the Board of Pharmacy, may adopt and promulgate rules and regulations to carry out this section.

Sec. 15. Original section 2, Legislative Bill 306, Ninety-ninth Legislature, First Session, 2005, is amended to read:

An applicant for an initial license to practice a profession which is authorized to prescribe controlled substances ~~as determined by the department~~ shall be subject to a criminal background check. The applicant shall submit with the application a full set of fingerprints which shall be forwarded to the Nebraska State Patrol to be submitted to the Federal Bureau of Investigation for a national criminal history record information check. The applicant shall authorize release of the results of the national criminal history record information check to the department. The applicant shall pay the actual cost of the fingerprinting and criminal background check. This section shall not apply to dentists who are applicants for temporary practice rights under subdivision (5) of section 71-183.01 or to physicians and surgeons who are applicants for temporary practice rights under subdivision (17) of section 71-1,103.

Sec. 16. Sections 15 and 17 of this act become operative three calendar months after the adjournment of this legislative session. The other sections of this act become operative on their effective date.

Sec. 17. Original section 2, Legislative Bill 306, Ninety-ninth Legislature, First Session, 2005, is repealed.

Sec. 18. Original sections 71-168, 71-1,146.01, 71-1,147.35, 71-374, 71-375, 71-5402, 71-5403, and 71-5404, Reissue Revised Statutes of Nebraska, and sections 28-401, 28-405, 28-414, 28-1437, and 71-1,142, Revised Statutes Supplement, 2004, are repealed.

Sec. 19. Since an emergency exists, this act takes effect when passed and approved according to law.