

House File 296 - Enrolled

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AN ACT

RELATING TO CONTROLLED SUBSTANCES, INCLUDING BY TEMPORARILY DESIGNATING SUBSTANCES AS CONTROLLED SUBSTANCES, MODIFYING THE PENALTIES FOR IMITATION CONTROLLED SUBSTANCES AND CERTAIN CONTROLLED SUBSTANCES, MODIFYING THE CONTROLLED SUBSTANCES LISTED IN SCHEDULES I, III, AND IV, MODIFYING REQUIREMENTS FOR ELECTRONIC PRESCRIPTIONS, AND PROVIDING PENALTIES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

DIVISION I

TEMPORARY CONTROLLED SUBSTANCES

Section 1. Section 124.201, subsection 4, Code 2017, is amended to read as follows:

4. If any new substance is designated as a controlled substance under federal law and notice of the designation is given to the board, the board shall similarly designate as controlled the new substance under [this chapter](#) after the expiration of thirty days from publication in the federal

register of a final order designating a new substance as a controlled substance, unless within that thirty-day period the board objects to the new designation. In that case the board shall publish the reasons for objection and afford all interested parties an opportunity to be heard. At the conclusion of the hearing the board shall announce its decision. Upon publication of objection to a new substance being designated as a controlled substance under [this chapter](#) by the board, control under [this chapter](#) is stayed until the board publishes its decision. If a substance is designated as controlled by the board under [this subsection](#) the control shall be considered a temporary and if, within sixty days after the next regular session of the general assembly convenes, the general assembly has not made the corresponding changes in [this chapter](#), the temporary designation of control of the substance by the board shall be nullified amendment to the schedules of controlled substances in this chapter. If the board so designates a substance as controlled, which is considered a temporary amendment to the schedules of controlled substances in this chapter, and if the general assembly does not amend this chapter to enact the temporary amendment and make the enactment effective within two years from the date the temporary amendment first became effective, the temporary amendment is repealed by operation of law two years from the effective date of the temporary amendment. A temporary amendment repealed by operation of law is subject to section 4.13 relating to the construction of statutes and the application of a general savings provision.

## DIVISION II

### IMITATION CONTROLLED SUBSTANCES

Sec. 2. Section 124.101, Code 2017, is amended by adding the following new subsection:

NEW SUBSECTION. 15A. "*Imitation controlled substance*" means a substance which is not a controlled substance but which by color, shape, size, markings, and other aspects of dosage unit appearance, and packaging or other factors, appears to be or resembles a controlled substance. The board may designate a substance as an imitation controlled substance pursuant to the

board's rulemaking authority and in accordance with chapter 17A. "Imitation controlled substance" also means any substance determined to be an imitation controlled substance pursuant to section 124.101B.

**Sec. 3. NEW SECTION. 124.101B Factors indicating an imitation controlled substance.**

If a substance has not been designated as an imitation controlled substance by the board and if dosage unit appearance alone does not establish that a substance is an imitation controlled substance, the following factors may be considered in determining whether the substance is an imitation controlled substance:

1. The person in control of the substance expressly or impliedly represents that the substance has the effect of a controlled substance.

2. The person in control of the substance expressly or impliedly represents that the substance because of its nature or appearance can be sold or delivered as a controlled substance or as a substitute for a controlled substance.

3. The person in control of the substance either demands or receives money or other property having a value substantially greater than the actual value of the substance as consideration for delivery of the substance.

Sec. 4. Section 124.401, subsection 1, unnumbered paragraph 1, Code 2017, is amended to read as follows:

Except as authorized by [this chapter](#), it is unlawful for any person to manufacture, deliver, or possess with the intent to manufacture or deliver, a controlled substance, a counterfeit substance, ~~or a simulated controlled substance~~, or an imitation controlled substance, or to act with, enter into a common scheme or design with, or conspire with one or more other persons to manufacture, deliver, or possess with the intent to manufacture or deliver a controlled substance, a counterfeit substance, ~~or a simulated controlled substance~~, or an imitation controlled substance.

Sec. 5. Section 124.401, subsection 1, paragraph a, unnumbered paragraph 1, Code 2017, is amended to read as follows:

Violation of [this subsection](#), with respect to the following

controlled substances, counterfeit substances, ~~or~~ simulated controlled substances, or imitation controlled substances, is a class "B" felony, and notwithstanding section 902.9, subsection 1, paragraph "b", shall be punished by confinement for no more than fifty years and a fine of not more than one million dollars:

Sec. 6. Section 124.401, subsection 1, paragraph b, unnumbered paragraph 1, Code 2017, is amended to read as follows:

Violation of this subsection with respect to the following controlled substances, counterfeit substances, ~~or~~ simulated controlled substances, or imitation controlled substances is a class "B" felony, and in addition to the provisions of section 902.9, subsection 1, paragraph "b", shall be punished by a fine of not less than five thousand dollars nor more than one hundred thousand dollars:

Sec. 7. Section 124.401, subsection 1, paragraph c, unnumbered paragraph 1, Code 2017, is amended to read as follows:

Violation of this subsection with respect to the following controlled substances, counterfeit substances, ~~or~~ simulated controlled substances, or imitation controlled substances is a class "C" felony, and in addition to the provisions of section 902.9, subsection 1, paragraph "d", shall be punished by a fine of not less than one thousand dollars nor more than fifty thousand dollars:

Sec. 8. Section 124.401, subsection 1, paragraph c, subparagraph (8), Code 2017, is amended to read as follows:

(8) Any other controlled substance, counterfeit substance, ~~or~~ simulated controlled substance, or imitation controlled substance classified in schedule I, II, or III, except as provided in paragraph "d".

Sec. 9. Section 124.401, subsection 2, Code 2017, is amended to read as follows:

2. If the same person commits two or more acts which are in violation of subsection 1 and the acts occur in approximately the same location or time period so that the acts can be attributed to a single scheme, plan, or conspiracy, the acts may be considered a single violation and the weight of the

controlled substances, counterfeit substances, ~~or simulated controlled substances, or imitation controlled substances~~ involved may be combined for purposes of charging the offender.

Sec. 10. Section 124.401, subsection 5, unnumbered paragraph 1, Code 2017, is amended to read as follows:

It is unlawful for any person knowingly or intentionally to possess a controlled substance unless such substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of the practitioner's professional practice, or except as otherwise authorized by [this chapter](#). Any person who violates this subsection is guilty of a serious misdemeanor for a first offense. A person who commits a violation of [this subsection](#) and who has previously been convicted of violating [this chapter](#) or [chapter ~~124A~~, ~~124B~~, or 453B](#), or chapter 124A as it existed prior to July 1, 2017, is guilty of an aggravated misdemeanor. A person who commits a violation of [this subsection](#) and has previously been convicted two or more times of violating this chapter or [chapter ~~124A~~, ~~124B~~, or 453B](#), or chapter 124A as it existed prior to July 1, 2017, is guilty of a class "D" felony.

Sec. 11. Section 124.401A, Code 2017, is amended to read as follows:

**124.401A Enhanced penalty for manufacture or distribution to persons on certain real property.**

In addition to any other penalties provided in [this chapter](#), a person who is eighteen years of age or older who unlawfully manufactures with intent to distribute, distributes, or possesses with intent to distribute a substance or counterfeit substance listed in schedule I, II, or III, or a simulated or imitation controlled substance represented to be a controlled substance classified in schedule I, II, or III, to another person who is eighteen years of age or older in or on, or within one thousand feet of the real property comprising a public or private elementary or secondary school, public park, public swimming pool, public recreation center, or on a marked school bus, may be sentenced up to an additional term of confinement of five years.

Sec. 12. Section 124.401B, Code 2017, is amended to read as follows:

**124.401B Possession of controlled substances on certain real property — additional penalty.**

In addition to any other penalties provided in [this chapter](#) or another chapter, a person who unlawfully possesses a substance listed in schedule I, II, or III, or a simulated or imitation controlled substance represented to be a controlled substance classified in schedule I, II, or III, in or on, or within one thousand feet of the real property comprising a public or private elementary or secondary school, public park, public swimming pool, public recreation center, or on a marked school bus, may be sentenced to one hundred hours of community service work for a public agency or a nonprofit charitable organization. The court shall provide the offender with a written statement of the terms and monitoring provisions of the community service.

Sec. 13. Section 124.406, subsection 2, Code 2017, is amended to read as follows:

2. A person who is eighteen years of age or older who:

a. Unlawfully distributes or possesses with the intent to distribute a counterfeit substance listed in schedule I or II, or a simulated or imitation controlled substance represented to be a substance classified in schedule I or II, to a person under eighteen years of age commits a class "B" felony.

~~However, if the substance was distributed in or on, or within one thousand feet of, the real property comprising a public or private elementary or secondary school, public park, public swimming pool, public recreation center, or on a marked school bus, the person shall serve a minimum term of confinement of ten years.~~

b. Unlawfully distributes or possesses with intent to distribute a counterfeit substance listed in schedule III, or a simulated or imitation controlled substance represented to be any substance listed in schedule III, to a person under eighteen years of age who is at least three years younger than the violator commits a class "C" felony.

c. Unlawfully distributes a counterfeit substance listed in schedule IV or V, or a simulated or imitation controlled substance represented to be a substance listed in schedule IV or V, to a person under eighteen years of age who is at least

three years younger than the violator commits an aggravated misdemeanor.

Sec. 14. Section 124.415, Code 2017, is amended to read as follows:

**124.415 Parental and school notification — persons under eighteen years of age.**

A peace officer shall make a reasonable effort to identify a person under the age of eighteen discovered to be in possession of a controlled substance, counterfeit substance, ~~or~~ simulated controlled substance, or imitation controlled substance in violation of [this chapter](#), and if the person is not referred to juvenile court, the law enforcement agency of which the peace officer is an employee shall make a reasonable attempt to notify the person's custodial parent or legal guardian of such possession, whether or not the person is arrested, unless the officer has reasonable grounds to believe that such notification is not in the best interests of the person or will endanger that person. If the person is taken into custody, the peace officer shall notify a juvenile court officer who shall make a reasonable effort to identify the elementary or secondary school the person attends, if any, and to notify the superintendent of the school district, the superintendent's designee, or the authorities in charge of the nonpublic school of the taking into custody. A reasonable attempt to notify the person includes but is not limited to a telephone call or notice by first-class mail.

Sec. 15. NEW SECTION. **124.417 Imitation controlled substances — exceptions.**

It is not unlawful under this chapter for a person registered under section 124.302, to manufacture, deliver, or possess with the intent to manufacture or deliver, or to act with, one or more other persons to manufacture, deliver, or possess with the intent to manufacture or deliver an imitation controlled substance for use as a placebo by a registered practitioner in the course of professional practice or research.

Sec. 16. Section 124.502, subsection 1, paragraph a, Code 2017, is amended to read as follows:

a. A district judge or district associate judge, within the court's jurisdiction, and upon proper oath or affirmation

showing probable cause, may issue warrants for the purpose of conducting administrative inspections under [this chapter](#) or a related rule ~~or under [chapter 124A](#)~~. The warrant may also permit seizures of property appropriate to the inspections. For purposes of the issuance of administrative inspection warrants, probable cause exists upon showing a valid public interest in the effective enforcement of the statute or related rules, sufficient to justify administrative inspection of the area, premises, building, or conveyance in the circumstances specified in the application for the warrant.

Sec. 17. Section 155A.6, subsection 3, Code 2017, is amended to read as follows:

3. The board shall establish standards for pharmacist-intern registration and may deny, suspend, or revoke a pharmacist-intern registration for failure to meet the standards or for any violation of the laws of this state, another state, or the United States relating to prescription drugs, controlled substances, or nonprescription drugs, or for any violation of [this chapter](#) or [chapter 124](#), ~~[124A](#)~~, [124B](#), [126](#), [147](#), or [205](#), or any rule of the board.

Sec. 18. Section 155A.6A, subsection 5, Code 2017, is amended to read as follows:

5. The board may deny, suspend, or revoke the registration of, or otherwise discipline, a registered pharmacy technician for any violation of the laws of this state, another state, or the United States relating to prescription drugs, controlled substances, or nonprescription drugs, or for any violation of [this chapter](#) or [chapter 124](#), ~~[124A](#)~~, [124B](#), [126](#), [147](#), [205](#), or [272C](#), or any rule of the board.

Sec. 19. Section 155A.6B, subsection 5, Code 2017, is amended to read as follows:

5. The board may deny, suspend, or revoke the registration of a pharmacy support person or otherwise discipline the pharmacy support person for any violation of the laws of this state, another state, or the United States relating to prescription drugs, controlled substances, or nonprescription drugs, or for any violation of [this chapter](#) or [chapter 124](#), ~~[124A](#)~~, [124B](#), [126](#), [147](#), [205](#), or [272C](#), or any rule of the board.

Sec. 20. Section 155A.13A, subsection 5, paragraph d, Code



2017, is amended to read as follows:

d. Any violation of [this chapter](#) or [chapter 124](#), ~~124A~~, [124B](#), [126](#), or [205](#), or rule of the board.

Sec. 21. Section 155A.17, subsection 2, Code 2017, is amended to read as follows:

2. The board shall establish standards for drug wholesaler licensure and may define specific types of wholesaler licenses. The board may deny, suspend, or revoke a drug wholesale license for failure to meet the applicable standards or for a violation of the laws of this state, another state, or the United States relating to prescription drugs, devices, or controlled substances, or for a violation of [this chapter](#), [chapter 124](#), ~~124A~~, [124B](#), [126](#), or [205](#), or a rule of the board.

Sec. 22. Section 155A.42, subsection 4, Code 2017, is amended to read as follows:

4. The board may deny, suspend, or revoke a limited drug and device distributor's license for failure to meet the applicable standards or for a violation of the laws of this state, another state, or the United States relating to prescription drugs or controlled substances, or for a violation of [this chapter](#), [chapter 124](#), ~~124A~~, [124B](#), [126](#), [205](#), or [272C](#), or a rule of the board.

Sec. 23. REPEAL. Chapter 124A, Code 2017, is repealed.

### DIVISION III

#### CONTROLLED SUBSTANCES — PENALTIES

Sec. 24. Section 124.401, subsection 1, paragraph a, Code 2017, is amended by adding the following new subparagraph:

NEW SUBPARAGRAPH. (8) More than ten kilograms of a mixture or substance containing any detectable amount of those substances identified in section 124.204, subsection 9.

Sec. 25. Section 124.401, subsection 1, paragraph b, Code 2017, is amended by adding the following new subparagraph:

NEW SUBPARAGRAPH. (9) More than five kilograms but not more than ten kilograms of a mixture or substance containing any detectable amount of those substances identified in section 124.204, subsection 9.

Sec. 26. Section 124.401, subsection 1, paragraph c, Code 2017, is amended by adding the following new subparagraph:

NEW SUBPARAGRAPH. (7A) Five kilograms or less of a

mixture or substance containing any detectable amount of those substances identified in section 124.204, subsection 9.

Sec. 27. Section 124.401, subsection 1, paragraph d, Code 2017, is amended to read as follows:

d. Violation of [this subsection](#), with respect to any other controlled substances, counterfeit substances, ~~or simulated controlled substances classified in section 124.204, subsection 4, paragraph "a", or section 124.204, subsection 6, paragraph "i", or, or imitation controlled substances~~ classified in schedule IV or V is an aggravated misdemeanor. However, violation of [this subsection](#) involving fifty kilograms or less of marijuana or involving flunitrazepam is a class "D" felony.

#### DIVISION IV

##### ADDITIONAL CONTROLLED SUBSTANCES

Sec. 28. Section 124.204, subsection 9, Code 2017, is amended by adding the following new paragraphs:

NEW PARAGRAPH. p. N-(1-phenethylpiperidin-4-yl)-N-phenylfuran-2-carboxamide, its isomers, esters, ethers, salts and salts of isomers, esters and ethers. Other names: Furanyl fentanyl.

NEW PARAGRAPH. q. N-(1-phenethylpiperidin-4-yl)-N-phenylbutyramide, its isomers, esters, ethers, salts and salts of isomers, esters and ethers. Other names: Butyryl fentanyl.

NEW PARAGRAPH. r. N-[1-[2-hydroxy-2-(thiophen-2-yl)ethyl]piperidin-4-yl]-N-phenylpropionamide, its isomers, esters, ethers, salts and salts of isomers, esters and ethers. Other names: beta-hydroxythiofentanyl.

NEW PARAGRAPH. s. 3,4-Dichloro-N-[2-(dimethylamino)cyclohexyl]-N-methylbenzamide, its isomers, esters, ethers, salts and salts of isomers, esters and ethers. Other names: U-47700.

#### DIVISION V

##### ELECTRONIC PRESCRIPTIONS

Sec. 29. Section 155A.27, subsection 1, paragraph b, Code 2017, is amended by adding the following new subparagraph:

NEW SUBPARAGRAPH. (3) Notwithstanding paragraph "a", subparagraph (5), for prescriptions for drugs that are not controlled substances, if transmitted by an authorized agent, the electronic prescription shall not require the written

or electronic signature of the practitioner issuing the prescription.

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LINDA UPMEYER  
Speaker of the House

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JACK WHITVER  
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 296, Eighty-seventh General Assembly.

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CARMINE BOAL  
Chief Clerk of the House

Approved \_\_\_\_\_, 2017

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TERRY E. BRANSTAD  
Governor