

ASSEMBLY BILL NO. 454—ASSEMBLYMAN PERKINS

MARCH 10, 1999

Referred to Committee on Judiciary

SUMMARY—Makes various changes concerning controlled substances. (BDR 40-581)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: Yes.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~[omitted material]~~ is material to be omitted.

AN ACT relating to controlled substances; revising the penalties for manufacturing or compounding certain controlled substances; authorizing peace officers to destroy materials or substances that they reasonably believe are hazardous waste at the time of seizure of certain substances; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE
AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 **Section 1.** Chapter 453 of NRS is hereby amended by adding thereto a
2 new section to read as follows:
3 ***1. Except as authorized by the provisions of NRS 453.011 to 453.552,***
4 ***inclusive, it is unlawful for a person to:***
5 ***(a) Manufacture or compound a controlled substance other than***
6 ***marihuana;***
7 ***(b) Possess a majority of the ingredients required to manufacture or***
8 ***compound a controlled substance other than marihuana, unless he is at***
9 ***a laboratory that is licensed to store such ingredients; or***
10 ***(c) Offer or attempt to do any act set forth in paragraph (a) or (b).***
11 ***2. Unless a greater penalty is provided in NRS 453.3385 or 453.3395,***
12 ***a person who violates the provisions of subsection 1 is guilty of a***
13 ***category B felony and shall be punished by imprisonment in the state***
14 ***prison for a minimum term of not less than 3 years and a maximum term***
15 ***of not more than 15 years, and may be further punished by a fine of not***
16 ***more than \$100,000.***
17 ***3. The court shall not grant probation to a person convicted pursuant***
18 ***to this section.***

Sec. 2. NRS 453.146 is hereby amended to read as follows:

453.146 1. The board shall administer the provisions of NRS 453.011 to 453.552, inclusive, *and section 1 of this act* and may add substances to or delete or reschedule all substances enumerated in schedules I, II, III, IV and V by regulation.

2. In making a determination regarding a substance, the board shall consider the following:

- (a) The actual or relative potential for abuse;
- (b) The scientific evidence of its pharmacological effect, if known;
- (c) The state of current scientific knowledge regarding the substance;
- (d) The history and current pattern of abuse;
- (e) The scope, duration and significance of abuse;
- (f) The risk to the public health;
- (g) The potential of the substance to produce psychic or physiological dependence liability; and
- (h) Whether the substance is an immediate precursor of a controlled substance.

3. The board may consider findings of the federal Food and Drug Administration or the Drug Enforcement Administration as prima facie evidence relating to one or more of the determinative factors.

4. After considering the factors enumerated in subsection 2 the board shall make findings with respect thereto and adopt a regulation controlling the substance if it finds the substance has a potential for abuse.

5. The board shall designate as a controlled substance a steroid or other product which is used to enhance athletic performance, muscle mass, strength or weight without medical necessity. The board may not designate as a controlled substance an anabolic steroid which is:

- (a) Expressly intended to be administered through an implant to cattle, poultry or other animals; and
- (b) Approved by the Food and Drug Administration for such use.

Sec. 3. NRS 453.321 is hereby amended to read as follows:

453.321 1. Except as authorized by the provisions of NRS 453.011 to 453.552, inclusive, it is unlawful for a person to ~~import, transport, manufacture, compound,~~ :

(a) Import, transport, sell, exchange, barter, supply, prescribe, dispense, give away or administer a controlled or counterfeit substance ;

(b) Manufacture or compound a counterfeit substance; or ~~to offer~~

(c) Offer or attempt to do any ~~such act.~~ *act set forth in paragraph (a) or (b).*

2. Unless a greater penalty is provided in NRS 453.333 or 453.334, if a person violates subsection 1 and the controlled substance is classified in schedule I or II, he is guilty of a category B felony and shall be punished:

1 (a) For the first offense, by imprisonment in the state prison for a
2 minimum term of not less than 1 year and a maximum term of not more
3 than 6 years, and may be further punished by a fine of not more than
4 \$20,000.

5 (b) For a second offense, or if, in the case of a first conviction under this
6 subsection, the offender has previously been convicted of an offense under
7 this section or of any offense under the laws of the United States or any
8 state, territory or district which, if committed in this state, would amount to
9 an offense under this section, by imprisonment in the state prison for a
10 minimum term of not less than 2 years and a maximum term of not more
11 than 10 years, and may be further punished by a fine of not more than
12 \$20,000.

13 (c) For a third or subsequent offense, or if the offender has previously
14 been convicted two or more times under this section or of any offense
15 under the laws of the United States or any state, territory or district which,
16 if committed in this state, would amount to an offense under this section, by
17 imprisonment in the state prison for a minimum term of not less than 3
18 years and a maximum term of not more than 15 years, and may be further
19 punished by a fine of not more than \$20,000 for each offense.

20 3. The court shall not grant probation to or suspend the sentence of a
21 person convicted under subsection 2 and punishable pursuant to paragraph
22 (b) or (c) of subsection 2.

23 4. Unless a greater penalty is provided in NRS 453.333 or 453.334, if a
24 person violates subsection 1, and the controlled substance is classified in
25 schedule III, IV or V, he shall be punished:

26 (a) For the first offense, for a category C felony as provided in NRS
27 193.130.

28 (b) For a second offense, or if, in the case of a first conviction of
29 violating this subsection, the offender has previously been convicted of
30 violating this section or of any offense under the laws of the United States
31 or any state, territory or district which, if committed in this state, would
32 amount to a violation of this section, for a category B felony by
33 imprisonment in the state prison for a minimum term of not less than 2
34 years and a maximum term of not more than 10 years, and may be further
35 punished by a fine of not more than \$15,000.

36 (c) For a third or subsequent offense, or if the offender has previously
37 been convicted two or more times of violating this section or of any offense
38 under the laws of the United States or any state, territory or district which,
39 if committed in this state, would amount to a violation of this section, for a
40 category B felony by imprisonment in the state prison for a minimum term
41 of not less than 3 years and a maximum term of not more than 15 years, and
42 may be further punished by a fine of not more than \$20,000 for each
43 offense.

1 5. The court shall not grant probation to or suspend the sentence of a
2 person convicted under subsection 4 and punishable pursuant to paragraph
3 (b) or (c) of subsection 4.

4 **Sec. 4.** NRS 453.326 is hereby amended to read as follows:

5 453.326 1. It is unlawful for a person:

6 (a) To refuse or fail to make, keep or furnish any record, notification,
7 order form, statement, invoice or information required under the provisions
8 of NRS 453.011 to 453.552, inclusive ~~H~~, *and section 1 of this act*;

9 (b) To refuse an entry into any premises for any inspection authorized
10 by the provisions of NRS 453.011 to 453.552, inclusive ~~H~~, *and section 1*
11 *of this act*; or

12 (c) Knowingly to keep or maintain any store, shop, warehouse, dwelling,
13 building, vehicle, boat, aircraft or other structure or place which is resorted
14 to by persons using controlled substances in violation of the provisions of
15 NRS 453.011 to 453.552, inclusive, *and section 1 of this act* for the
16 purpose of using these substances, or which is used for keeping or selling
17 them in violation of those sections.

18 2. A person who violates this section is guilty of a category C felony
19 and shall be punished as provided in NRS 193.130.

20 **Sec. 5.** NRS 453.3345 is hereby amended to read as follows:

21 453.3345 1. Unless a greater penalty is provided in NRS 453.333 or
22 453.334, and except as otherwise provided in NRS 193.169, any person
23 who violates NRS 453.321 or 453.323 ~~H~~ *or section 1 of this act*:

24 (a) On the grounds of a public or private school, a playground, public
25 swimming pool, recreational center for youths or a video arcade;

26 (b) On a campus of the University and Community College System of
27 Nevada;

28 (c) Within 1,000 feet of the perimeter of such a school ground or
29 campus, playground, pool, recreational center or arcade; or

30 (d) Within 1,000 feet of a school bus stop from 1 hour before school
31 begins until 1 hour after school ends during scheduled school days,
32 must be punished by imprisonment in the state prison for a term equal to
33 and in addition to the term of imprisonment prescribed by statute for the
34 crime. The sentence prescribed by this section runs consecutively with the
35 sentence prescribed by statute for the crime.

36 2. This section does not create a separate offense but provides an
37 additional penalty for the primary offense, whose imposition is contingent
38 upon the finding of the prescribed fact.

39 3. For the purposes of this section:

40 (a) "Playground" means any outdoor facility, intended for recreation,
41 open to the public and in any portion thereof containing one or more
42 apparatus intended for the recreation of children, such as a sliding board,
43 teeterboard, sandbox or swingset.

(b) "Recreational center for youths" means a recreational facility or gymnasium which regularly provides athletic, civic or cultural activities for persons under 18 years of age.

(c) "School bus" has the meaning ascribed to it in NRS 483.160.

(d) "Video arcade" means a facility legally accessible to persons under 18 years of age, intended primarily for the use of pinball and video machines for amusement and which contains a minimum of 10 such machines.

Sec. 6. NRS 453.3385 is hereby amended to read as follows:

453.3385 Except as otherwise authorized by the provisions of NRS 453.011 to 453.552, inclusive, a person who knowingly or intentionally sells, manufactures, delivers or brings into this state or who is knowingly or intentionally in actual or constructive possession of flunitrazepam, gamma-hydroxybutyrate, any substance for which flunitrazepam or gamma-hydroxybutyrate is an immediate precursor or any controlled substance which is listed in schedule I, except marihuana, or any mixture which contains any such controlled substance, shall be punished, *unless a greater penalty is provided pursuant to section 1 of this act*, if the quantity involved:

1. Is 4 grams or more, but less than 14 grams, for a category B felony by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 6 years and by a fine of not more than \$50,000.

2. Is 14 grams or more, but less than 28 grams, for a category B felony by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 15 years and by a fine of not more than \$100,000.

3. Is 28 grams or more, for a category A felony by imprisonment in the state prison:

(a) For life with the possibility of parole, with eligibility for parole beginning when a minimum of 10 years has been served; or

(b) For a definite term of 25 years, with eligibility for parole beginning when a minimum of 10 years has been served, and by a fine of not more than \$500,000.

Sec. 7. NRS 453.3395 is hereby amended to read as follows:

453.3395 Except as otherwise provided in NRS 453.011 to 453.552, inclusive, a person who knowingly or intentionally sells, manufactures, delivers or brings into this state or who is knowingly or intentionally in actual or constructive possession of any controlled substance which is listed in schedule II or any mixture which contains any such controlled substance shall be punished, *unless a greater penalty is provided pursuant to section 1 of this act*, if the quantity involved:

1 1. Is 28 grams or more, but less than 200 grams, for a category C
2 felony as provided in NRS 193.130 and by a fine of not more than \$50,000.

3 2. Is 200 grams or more, but less than 400 grams, for a category B
4 felony by imprisonment in the state prison for a minimum term of not less
5 than 2 years and a maximum term of not more than 10 years and by a fine
6 of not more than \$100,000.

7 3. Is 400 grams or more, for a category A felony by imprisonment in
8 the state prison:

9 (a) For life with the possibility of parole, with eligibility for parole
10 beginning when a minimum of 5 years has been served; or

11 (b) For a definite term of 15 years, with eligibility for parole beginning
12 when a minimum of 5 years has been served,
13 and by a fine of not more than \$250,000.

14 **Sec. 8.** NRS 453.348 is hereby amended to read as follows:

15 453.348 In any proceeding brought under NRS 453.316, 453.321,
16 453.333, 453.334, 453.337, 453.338 or 453.401, *or section 1 of this act*,
17 any previous convictions of the offender for a felony relating to controlled
18 substances must be alleged in the indictment or information charging the
19 primary offense, but the conviction may not be alluded to on the trial of the
20 primary offense nor may any evidence of the previous offense be produced
21 in the presence of the jury except as otherwise prescribed by law. If the
22 offender pleads guilty or guilty but mentally ill to or is convicted of the
23 primary offense but denies any previous conviction charged, the court shall
24 determine the issue after hearing all relevant evidence. A certified copy of a
25 conviction of a felony is prima facie evidence of the conviction.

26 **Sec. 9.** NRS 453.553 is hereby amended to read as follows:

27 453.553 1. In addition to any criminal penalty imposed for a
28 violation of the provisions of NRS 453.011 to 453.552, inclusive, *or*
29 *section 1 of this act*, any person who unlawfully sells, manufactures,
30 delivers or brings into this state, possesses for sale or participates in any
31 way in a sale of a controlled substance listed in schedule I, II or III is
32 subject to a civil penalty for each violation. This penalty must be recovered
33 in a civil action, brought in the name of the State of Nevada by the attorney
34 general or by any district attorney in a court of competent jurisdiction.

35 2. As used in this section and NRS 453.5531, 453.5532 and 453.5533:

36 (a) "Each violation" includes a continuous or repetitive violation arising
37 out of the same act.

38 (b) "Sell" includes exchange, barter, solicitation or receipt of an order,
39 transfer to another for sale or resale and any other transfer for any
40 consideration or a promise obtained directly or indirectly.

41 (c) "Substitute" means a substance which:

42 (1) Was manufactured by a person who at the time was not currently
43 registered with the Secretary of Health and Human Services; and

1 (2) Is an imitation of or intended for use as a substitute for a
2 substance listed in schedule I, II or III.

3 **Sec. 10.** NRS 52.395 is hereby amended to read as follows:

4 52.395 1. When any substance alleged to be a controlled substance,
5 dangerous drug or immediate precursor is seized from a defendant by a
6 peace officer, the law enforcement agency of which the officer is a member
7 may, with the prior approval of the prosecuting attorney, petition the
8 district court in the county in which the defendant is charged to secure
9 permission to destroy a part of the substance.

10 2. Upon receipt of a petition filed pursuant to subsection 1, the district
11 court shall order the substance to be accurately weighed and the weight
12 thereof accurately recorded. The prosecuting attorney or his representative
13 and the defendant or his representative must be allowed to inspect and
14 weigh the substance.

15 3. If after completion of the weighing process the defendant does not
16 knowingly and voluntarily stipulate to the weight of the substance, the
17 district court shall hold a hearing to make a judicial determination of the
18 weight of the substance. The defendant, his attorney and any other witness
19 the defendant may designate may be present and testify at the hearing.

20 4. After a determination has been made as to the weight of the
21 substance, the district court may order all of the substance destroyed except
22 that amount which is reasonably necessary to enable each interested party
23 to analyze the substance to determine the composition of the substance. The
24 district court shall order the remaining sample to be sealed and maintained
25 for analysis before trial.

26 5. If the substance is finally determined not to be a controlled
27 substance, dangerous drug or immediate precursor, *unless the substance*
28 *was destroyed pursuant to subsection 7*, the owner may file a claim against
29 the county to recover the reasonable value of the property destroyed
30 pursuant to this section.

31 6. The district court's finding as to the weight of a substance destroyed
32 pursuant to this section is admissible in any subsequent proceeding arising
33 out of the same transaction.

34 7. *If at the time that a peace officer seizes from a defendant a*
35 *substance believed to be a controlled substance, dangerous drug or*
36 *immediate precursor, the peace officer discovers any material or*
37 *substance that he reasonably believes is hazardous waste, the peace*
38 *officer may appropriately dispose of the material or substance without*
39 *securing the permission of a court.*

40 8. As used in this section:

41 (a) "Dangerous drug" has the meaning ascribed to it in NRS 454.201.

42 (b) *"Hazardous waste" has the meaning ascribed to it in NRS*

43 *459.430.*

1 (c) "Immediate precursor" has the meaning ascribed to it in NRS
2 453.086.

3 **Sec. 11.** NRS 207.360 is hereby amended to read as follows:

4 207.360 "Crime related to racketeering" means the commission of,
5 attempt to commit or conspiracy to commit any of the following crimes:

- 6 1. Murder;
- 7 2. Manslaughter;
- 8 3. Mayhem;
- 9 4. Battery which is punished as a felony;
- 10 5. Kidnaping;
- 11 6. Sexual assault;
- 12 7. Arson;
- 13 8. Robbery;
- 14 9. Taking property from another under circumstances not amounting to
15 robbery;
- 16 10. Extortion;
- 17 11. Statutory sexual seduction;
- 18 12. Extortionate collection of debt in violation of NRS 205.322;
- 19 13. Forgery;
- 20 14. Any violation of NRS 199.280 which is punished as a felony;
- 21 15. Burglary;
- 22 16. Grand larceny;
- 23 17. Bribery or asking for or receiving a bribe in violation of chapter
24 197 or 199 of NRS which is punished as a felony;
- 25 18. Battery with intent to commit a crime in violation of NRS 200.400;
- 26 19. Assault with a deadly weapon;
- 27 20. Any violation of NRS 453.232, 453.316 to 453.3395, inclusive, **or**
28 **section 1 of this act** or **NRS** 453.375 to 453.401, inclusive;
- 29 21. Receiving or transferring a stolen vehicle;
- 30 22. Any violation of NRS 202.260, 202.275 or 202.350 which is
31 punished as a felony;
- 32 23. Any violation of subsection 2 or 3 of NRS 463.360 or chapter 465
33 of NRS;
- 34 24. Receiving, possessing or withholding stolen goods valued at \$250
35 or more;
- 36 25. Embezzlement of money or property valued at \$250 or more;
- 37 26. Obtaining possession of money or property valued at \$250 or more,
38 or obtaining a signature by means of false pretenses;
- 39 27. Perjury or subornation of perjury;
- 40 28. Offering false evidence;
- 41 29. Any violation of NRS 201.300 or 201.360;
- 42 30. Any violation of NRS 90.570, 91.230, 686A.290 or 686A.291; or
- 43 31. Any violation of NRS 205.506, 205.920 or 205.930.

1 **Sec. 12.** The amendatory provisions of this act do not apply to
2 offenses that were committed before October 1, 1999.

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