

SENATE BILL NO. 256—SENATORS HARDY, DENIS AND COPENING

MARCH 17, 2011

Referred to Committee on Health and Human Services

SUMMARY—Revises provisions relating to controlled substances.
(BDR 40-419)

FISCAL NOTE: Effect on Local Government: Increases or Newly
Provides for Term of Imprisonment in County or City
Jail or Detention Facility.
Effect on the State: 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; prohibiting certain acts relating to the cultivation of marijuana; requiring the State Board of Pharmacy to include on the list of schedule I controlled substances certain substances which are known as synthetic marijuana; revising provisions relating to the medical use of marijuana; providing civil and criminal penalties; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Section 1 of this bill prohibits a person from knowingly or intentionally manufacturing, growing, planting, cultivating, harvesting, drying, propagating or processing marijuana, except as specifically authorized for the medical use of marijuana. The severity of the punishment for a violation of **section 1** depends upon the number of marijuana plants involved in the violation. A person convicted of a violation of **section 1** is also required to pay all costs associated with any necessary cleanup and disposal.

Sections 5 and 6 of this bill include internal references to **section 1** of this bill to indicate that **section 1** will be codified in chapter 453 of NRS in proximity to similar offenses involving controlled substances, but **section 1** will not be treated in the same manner as those offenses for other purposes in NRS, such as being included in the list of crimes related to racketeering and being included in the definition of "immorality" for the purposes of certain provisions related to educational personnel.

Existing law provides that the limited and regulated use of marijuana by persons who suffer from certain medical conditions and who obtain a registry identification card through a program governed by the Health Division of the Department of Health and Human Services is exempt from prosecution under the



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laws of this State. (Chapter 453A of NRS) Under existing law, the Health Division may deny a registry identification card to, or revoke a card issued to, a person who has been convicted of knowingly or intentionally selling a controlled substance. (NRS 453A.210, 453A.225) **Sections 3 and 4** of this bill authorize the Health Division to deny a registry identification card to, or revoke a card issued to, a person who: (1) has been convicted of any felony; (2) has been convicted of a violent crime; (3) has been convicted of certain sexual offenses; or (4) is on probation or parole. **Section 7** of this bill provides that these requirements: (1) apply to applications for registry identification cards submitted on or after October 1, 2011, or designations of persons as primary caregivers submitted on or after that date; and (2) do not revoke a registry identification card issued before that date unless, on or after October 1, 2011, the person who holds the card is convicted of an offense which prohibits the issuance of a card to that person.

Existing law authorizes the State Board of Pharmacy to adopt regulations that add or delete substances from the schedules of controlled substances. (NRS 453.146) Existing law also provides that a person convicted of the unauthorized manufacturing, importing, transporting, selling or dispensing of a schedule I controlled substance is guilty of a category B felony and that the punishment depends on the number of prior offenses committed by the person. (NRS 453.321, 453.322) In addition, existing law provides that a person convicted of the unauthorized possession of a schedule I controlled substance is guilty of a category E felony if it is the person's first or second offense and a category D felony if it is the person's third or subsequent offense. (NRS 453.336) **Section 2** of this bill requires the Board to classify certain substances which are similar to marijuana as controlled substances included in schedule I.

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

Section 1. Chapter 453 of NRS is hereby amended by adding thereto a new section to read as follows:

1. A person shall not knowingly or intentionally manufacture, grow, plant, cultivate, harvest, dry, propagate or process marijuana, except as specifically authorized by the provisions of this chapter and chapter 453A of NRS.

2. Unless a greater penalty is provided in NRS 453.339, a person who violates subsection 1 shall be punished, if the quantity involved:

(a) Is 1 to 25 marijuana plants, for a gross misdemeanor.

(b) Is 26 to 75 marijuana plants, for a category E felony as provided in NRS 193.130.

(c) Is 76 to 100 marijuana plants, for a category D felony as provided in NRS 193.130.

(d) Is more than 100 marijuana plants, for a category C felony as provided in NRS 193.130.

3. In addition to the punishment imposed pursuant to subsection 2, the court shall order a person convicted of a violation of subsection 1 to pay all costs associated with any necessary cleanup and disposal related to the manufacturing,



growing, planting, cultivation, harvesting, drying, propagation or processing of the marijuana.

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 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.

6. The Board shall designate as a controlled substance included in schedule I any material, compound, mixture or preparation which contains any quantity of the following substances or their salts, isomers or salts of isomers, whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:



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(a) 1-pentyl-3-(1-naphthoyl)indole, which is also known as JWH-018.

(b) 1-butyl-3-(1-naphthoyl)indole, which is also known as JWH-073.

(c) 1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl)indole, which is also known as JWH-200.

(d) 5-(1,1-dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol, which is also known as CP-47,497.

(e) 5-(1,1-dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol, which is also known as cannabicyclohexanol or CP-47,497 C8 homologue.

Sec. 3. NRS 453A.210 is hereby amended to read as follows:

453A.210 1. The Division shall establish and maintain a program for the issuance of registry identification cards to persons who meet the requirements of this section.

2. Except as otherwise provided in subsections 3 and 5 and NRS 453A.225, the Division or its designee shall issue a registry identification card to a person who is a resident of this State and who submits an application on a form prescribed by the Division accompanied by the following:

(a) Valid, written documentation from the person's attending physician stating that:

(1) The person has been diagnosed with a chronic or debilitating medical condition;

(2) The medical use of marijuana may mitigate the symptoms or effects of that condition; and

(3) The attending physician has explained the possible risks and benefits of the medical use of marijuana;

(b) The name, address, telephone number, social security number and date of birth of the person;

(c) Proof satisfactory to the Division that the person is a resident of this State;

(d) The name, address and telephone number of the person's attending physician; and

(e) If the person elects to designate a primary caregiver at the time of application:

(1) The name, address, telephone number and social security number of the designated primary caregiver; and

(2) A written, signed statement from the person's attending physician in which the attending physician approves of the designation of the primary caregiver.

3. The Division or its designee shall issue a registry identification card to a person who is under 18 years of age if:

(a) The person submits the materials required pursuant to subsection 2; and



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(b) The custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age signs a written statement setting forth that:

(1) The attending physician of the person under 18 years of age has explained to that person and to the custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age the possible risks and benefits of the medical use of marijuana;

(2) The custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age consents to the use of marijuana by the person under 18 years of age for medical purposes;

(3) The custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age agrees to serve as the designated primary caregiver for the person under 18 years of age; and

(4) The custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age agrees to control the acquisition of marijuana and the dosage and frequency of use by the person under 18 years of age.

4. The form prescribed by the Division to be used by a person applying for a registry identification card pursuant to this section must be a form that is in quintuplicate. Upon receipt of an application that is completed and submitted pursuant to this section, the Division shall:

(a) Record on the application the date on which it was received;

(b) Retain one copy of the application for the records of the Division; and

(c) Distribute the other four copies of the application in the following manner:

(1) One copy to the person who submitted the application;

(2) One copy to the applicant's designated primary caregiver, if any;

(3) One copy to the Central Repository for Nevada Records of Criminal History; and

(4) One copy to:

(I) If the attending physician of the applicant is licensed to practice medicine pursuant to the provisions of chapter 630 of NRS, the Board of Medical Examiners; or

(II) If the attending physician of the applicant is licensed to practice osteopathic medicine pursuant to the provisions of chapter 633 of NRS, the State Board of Osteopathic Medicine.

➔ The Central Repository for Nevada Records of Criminal History shall report to the Division its findings as to the criminal history, if any, of an applicant within 15 days after receiving a copy of an



1 application pursuant to subparagraph (3) of paragraph (c). The
2 Board of Medical Examiners or the State Board of Osteopathic
3 Medicine, as applicable, shall report to the Division its findings as to
4 the licensure and standing of the applicant's attending physician
5 within 15 days after receiving a copy of an application pursuant to
6 subparagraph (4) of paragraph (c).

7 5. The Division shall verify the information contained in an
8 application submitted pursuant to this section and shall approve or
9 deny an application within 30 days after receiving the application.
10 The Division may contact an applicant, the applicant's attending
11 physician and designated primary caregiver, if any, by telephone to
12 determine that the information provided on or accompanying the
13 application is accurate. The Division may deny an application only
14 on the following grounds:

15 (a) The applicant failed to provide the information required
16 pursuant to subsections 2 and 3 to:

17 (1) Establish the applicant's chronic or debilitating medical
18 condition; or

19 (2) Document the applicant's consultation with an attending
20 physician regarding the medical use of marijuana in connection with
21 that condition;

22 (b) The applicant failed to comply with regulations adopted by
23 the Division, including, without limitation, the regulations adopted
24 by the Administrator pursuant to NRS 453A.740;

25 (c) The Division determines that the information provided by
26 the applicant was falsified;

27 (d) The Division determines that the attending physician of the
28 applicant is not licensed to practice medicine or osteopathic
29 medicine in this State or is not in good standing, as reported by the
30 Board of Medical Examiners or the State Board of Osteopathic
31 Medicine, as applicable;

32 (e) The Division determines that the applicant, or the applicant's
33 designated primary caregiver, if applicable ~~[-has]~~ :

34 (1) *Has been convicted of ~~knowingly or intentionally selling~~*
35 *~~a controlled substance;~~ a felony in this State or under the laws of*
36 *any state, territory or possession of the United States;*

37 (2) *Has been convicted of a crime involving the use or*
38 *threatened use of force or violence against a victim in this State or*
39 *any other state, territory or possession of the United States;*

40 (3) *Has been convicted of a sexual offense; or*

41 (4) *Is on parole or probation for a conviction obtained in*
42 *this State or in any other state, territory or possession of the*
43 *United States;*



(f) The Division has prohibited the applicant from obtaining or using a registry identification card pursuant to subsection 2 of NRS 453A.300;

(g) The Division determines that the applicant, or the applicant's designated primary caregiver, if applicable, has had a registry identification card revoked pursuant to NRS 453A.225; or

(h) In the case of a person under 18 years of age, the custodial parent or legal guardian with responsibility for health care decisions for the person has not signed the written statement required pursuant to paragraph (b) of subsection 3.

6. The decision of the Division to deny an application for a registry identification card is a final decision for the purposes of judicial review. Only the person whose application has been denied or, in the case of a person under 18 years of age whose application has been denied, the person's parent or legal guardian, has standing to contest the determination of the Division. A judicial review authorized pursuant to this subsection must be limited to a determination of whether the denial was arbitrary, capricious or otherwise characterized by an abuse of discretion and must be conducted in accordance with the procedures set forth in chapter 233B of NRS for reviewing a final decision of an agency.

7. A person whose application has been denied may not reapply for 6 months after the date of the denial, unless the Division or a court of competent jurisdiction authorizes reapplication in a shorter time.

8. Except as otherwise provided in this subsection, if a person has applied for a registry identification card pursuant to this section and the Division has not yet approved or denied the application, the person, and the person's designated primary caregiver, if any, shall be deemed to hold a registry identification card upon the presentation to a law enforcement officer of the copy of the application provided to him or her pursuant to subsection 4. A person may not be deemed to hold a registry identification card for a period of more than 30 days after the date on which the Division received the application.

9. As used in this section ~~["resident"]~~:

(a) ***"Resident"*** has the meaning ascribed to it in NRS 483.141.

(b) ***"Sexual offense" means any offense listed in NRS 213.107 or any offense committed in another state, territory or possession of the United States that, if committed in this State, would be an offense listed in NRS 213.107.***

Sec. 4. NRS 453A.225 is hereby amended to read as follows:

453A.225 1. If, at any time after the Division or its designee has issued a registry identification card to a person pursuant to paragraph (a) of subsection 1 of NRS 453A.220, the Division



determines, on the basis of official documents or records or other credible evidence, that the person:

(a) Provided falsified information on his or her application to the Division or its designee, as described in paragraph (c) of subsection 5 of NRS 453A.210; or

(b) Has been convicted of ~~knowingly or intentionally selling a controlled substance, as~~ *an offense* described in *subparagraph (1), (2) or (3) of* paragraph (e) of subsection 5 of NRS 453A.210,

the Division shall immediately revoke the registry identification card issued to that person and shall immediately revoke the registry identification card issued to that person's designated primary caregiver, if any.

2. If, at any time after the Division or its designee has issued a registry identification card to a person pursuant to paragraph (b) of subsection 1 of NRS 453A.220 or pursuant to NRS 453A.250, the Division determines, on the basis of official documents or records or other credible evidence, that the person has been convicted of ~~knowingly or intentionally selling a controlled substance, as~~ *an offense* described in *subparagraph (1), (2) or (3) of* paragraph (e) of subsection 5 of NRS 453A.210, the Division shall immediately revoke the registry identification card issued to that person.

3. Upon the revocation of a registry identification card pursuant to this section:

(a) The Division shall send, by certified mail, return receipt requested, notice to the person whose registry identification card has been revoked, advising the person of the requirements of paragraph (b); and

(b) The person shall return his or her registry identification card to the Division within 7 days after receiving the notice sent pursuant to paragraph (a).

4. The decision of the Division to revoke a registry identification card pursuant to this section is a final decision for the purposes of judicial review.

5. A person whose registry identification card has been revoked pursuant to this section may not reapply for a registry identification card pursuant to NRS 453A.210 for 12 months after the date of the revocation, unless the Division or a court of competent jurisdiction authorizes reapplication in a shorter time.

Sec. 5. NRS 207.360 is hereby amended to read as follows:

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

1. Murder;

2. Manslaughter, except vehicular manslaughter as described in NRS 484B.657;



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- 1 3. Mayhem;
- 2 4. Battery which is punished as a felony;
- 3 5. Kidnapping;
- 4 6. Sexual assault;
- 5 7. Arson;
- 6 8. Robbery;
- 7 9. Taking property from another under circumstances not
- 8 amounting to robbery;
- 9 10. Extortion;
- 10 11. Statutory sexual seduction;
- 11 12. Extortionate collection of debt in violation of
- 12 NRS 205.322;
- 13 13. Forgery;
- 14 14. Any violation of NRS 199.280 which is punished as a
- 15 felony;
- 16 15. Burglary;
- 17 16. Grand larceny;
- 18 17. Bribery or asking for or receiving a bribe in violation of
- 19 chapter 197 or 199 of NRS which is punished as a felony;
- 20 18. Battery with intent to commit a crime in violation of
- 21 NRS 200.400;
- 22 19. Assault with a deadly weapon;
- 23 20. Any violation of NRS 453.232, 453.316 to 453.3395,
- 24 inclusive, *except a violation of section 1 of this act*, or 453.375 to
- 25 453.401, inclusive;
- 26 21. Receiving or transferring a stolen vehicle;
- 27 22. Any violation of NRS 202.260, 202.275 or 202.350 which
- 28 is punished as a felony;
- 29 23. Any violation of subsection 2 or 3 of NRS 463.360 or
- 30 chapter 465 of NRS;
- 31 24. Receiving, possessing or withholding stolen goods valued
- 32 at \$250 or more;
- 33 25. Embezzlement of money or property valued at \$250 or
- 34 more;
- 35 26. Obtaining possession of money or property valued at \$250
- 36 or more, or obtaining a signature by means of false pretenses;
- 37 27. Perjury or subornation of perjury;
- 38 28. Offering false evidence;
- 39 29. Any violation of NRS 201.300 or 201.360;
- 40 30. Any violation of NRS 90.570, 91.230 or 686A.290, or
- 41 insurance fraud pursuant to NRS 686A.291;
- 42 31. Any violation of NRS 205.506, 205.920 or 205.930;
- 43 32. Any violation of NRS 202.445 or 202.446; or
- 44 33. Any violation of NRS 205.377.



Sec. 6. NRS 391.311 is hereby amended to read as follows:

391.311 As used in NRS 391.311 to 391.3197, inclusive, unless the context otherwise requires:

1. "Administrator" means any employee who holds a license as an administrator and who is employed in that capacity by a school district.

2. "Board" means the board of trustees of the school district in which a licensed employee affected by NRS 391.311 to 391.3197, inclusive, is employed.

3. "Demotion" means demotion of an administrator to a position of lesser rank, responsibility or pay and does not include transfer or reassignment for purposes of an administrative reorganization.

4. "Immorality" means:

(a) An act forbidden by NRS 200.366, 200.368, 200.400, 200.508, 201.180, 201.190, 201.210, 201.220, 201.230, 201.265, 201.540, 201.560, 207.260, 453.316 to 453.336, inclusive, *except an act forbidden by section 1 of this act*, 453.337, 453.338, 453.3385 to 453.3405, inclusive, 453.560 or 453.562; or

(b) An act forbidden by NRS 201.540 or any other sexual conduct or attempted sexual conduct with a pupil enrolled in an elementary or secondary school. As used in this paragraph, "sexual conduct" has the meaning ascribed to it in NRS 201.520.

5. "Postprobationary employee" means an administrator or a teacher who has completed the probationary period as provided in NRS 391.3197 and has been given notice of reemployment.

6. "Probationary employee" means an administrator or a teacher who is employed for the period set forth in NRS 391.3197.

7. "Superintendent" means the superintendent of a school district or a person designated by the board or superintendent to act as superintendent during the absence of the superintendent.

8. "Teacher" means a licensed employee the majority of whose working time is devoted to the rendering of direct educational service to pupils of a school district.

Sec. 7. 1. The amendatory provisions of section 3 of this act apply to a person who:

(a) Submits an application for a registry identification card pursuant to NRS 453A.210 on or after October 1, 2011.

(b) Is designated as the primary caregiver of a person:

(1) On an application for a registry identification card which is submitted by that person pursuant to NRS 453A.210 on or after October 1, 2011; or

(2) Pursuant to subparagraph (2) of paragraph (b) of subsection 1 of NRS 453A.230 or paragraph (b) of subsection 1 of NRS 453A.250 on or after October 1, 2011.



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2. The amendatory provisions of section 4 of this act apply to a person who holds a registry identification card only if:

(a) The registry identification card is issued to that person pursuant to paragraph (a) of subsection 1 of NRS 453A.220 and the person:

(1) Submits the application for that registry identification card pursuant to NRS 453A.210 on or after October 1, 2011; or

(2) Is convicted of an offense described in NRS 453A.210, as amended by section 4 of this act, on or after October 1, 2011.

(b) The registry identification card is issued to that person pursuant to paragraph (b) of subsection 1 of NRS 453A.220 and:

(1) The application in which the person is designated as the primary caregiver of a person is submitted pursuant to NRS 453A.210 on or after October 1, 2011;

(2) On or after October 1, 2011, the person is designated as the primary caregiver of a person pursuant to subparagraph (2) of paragraph (b) of subsection 1 of NRS 453A.230 or paragraph (b) of subsection 1 of NRS 453A.250; or

(3) The person is convicted of an offense described in NRS 453A.210, as amended by section 4 of this act, which occurred on or after October 1, 2011.

