First of 2 versions of this section

39-17-402. Definitions for this part and title 53, chapter 11, parts 3 and 4. [Effective until July 1, 2018. See the version effective on July 1, 2018.]

As used in this part and title 53, chapter 11, parts 3 and 4, unless the context otherwise requires:

(1) "Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:

(A) A practitioner or by the practitioner's authorized agent in the practitioner's presence; or

(B) The patient or research subject at the direction and in the presence of the practitioner;

(2) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. "Agent" does not include a common or contract carrier, public warehouseman, or employee of the carrier or warehouseman;

(3) "Bureau" means the United States drug enforcement administration, United States department of justice, or its successor agency, except when used as the Tennessee bureau of investigation;

(4) "Controlled substance" means a drug, substance, or immediate precursor in Schedules I through VII of §§ 39-17-403 - 39-17-416;

(5) "Counterfeit substance" means 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 who in fact manufactured, distributed, or dispensed the substance;

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

(7) "Dispense" means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for that delivery;

(8) "Dispenser" means a practitioner who dispenses;

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

(10) "Distributor" means a person who distributes;

(11) "Drug" means:

(A) Substances recognized as drugs in the United States Pharmacopoeia, official Homeopaths Pharmacopoeia of the United States, or 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 man or animal;

(C) Substances, other than food, intended to affect the structure or any function of the body of man or animal; and

(D) Substances intended for use as a component of any article specified in subdivision (11)(A), (B) or (C). "Drug" does not include devices or their components, parts, or accessories;

(12) "Drug paraphernalia" means all equipment, products and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body, a controlled substance as defined in subdivision (4). "Drug paraphernalia" includes, but is not limited to:

(A) Isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant that is a controlled substance;

(B) Testing equipment used, intended for use, or designed for use in identifying, or in analyzing the strength, effectiveness or purity of controlled substances; and

(C) Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing marijuana, marijuana concentrates, marijuana oil, cocaine, hashish, or hashish oil into the human body, such as:

(i) Metal, acrylic, glass, stone, or plastic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;

(ii) Water pipes;

(iii) Carburetion tubes and devices;

(iv) Smoking and carburetion masks;

(v) Chamber pipes;

(vi) Carburetor pipes;

(vii) Electric pipes;

(viii) Chillums;

(ix) Bongs; and

(x) Ice pipes or chillers;

(13) "Immediate methamphetamine precursor" means ephedrine, pseudoephedrine or phenylpropanolamine, or their salts, isomers or salts of isomers, or any drug or other product that contains a detectable quantity of ephedrine, pseudoephedrine or phenylpropanolamine, or their salts, isomers or salts of isomers;

(14) "Immediate precursor" means a substance that the commissioner of mental health and substance abuse services, upon the agreement of the commissioner of health, has found to be and by rule designates as being the principal compound commonly used or produced primarily for use, and that 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 manufacture;

(15) "Manufacture" means the production, preparation, propagation, compounding, conversion or processing of a controlled substance, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that "manufacture" does not include the preparation or compounding of a controlled substance by an individual for the individual's own use or the preparation, compounding, packaging, or labeling of a controlled substance by:

(A) A practitioner as an incident to administering or dispensing a controlled substance in the course of professional practice; or

(B) A practitioner, or an authorized agent under the practitioner's supervision, for the purpose of, or as an incident to, research, teaching or chemical analysis and not for sale;

(16) "Marijuana" means all parts of the plant cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, including concentrates and oils, its seeds or resin or any compound, mixture, or preparation which contains any quantity of these substances. The term "marijuana" does not include:

(A) Oil containing the substance cannabidiol, with less than nine-tenths of one percent (0.9%) of tetrahydrocannabinol, if:

(i) The bottle containing the oil is labeled by the manufacturer as containing cannabidiol in an amount less than nine-tenths of one percent (0.9%) of tetrahydrocannabinol; and

(ii) The person in possession of the oil retains:

(a) Proof of the legal order or recommendation from the issuing state; and

(b) Proof that the person or the person's immediate family member has been diagnosed with intractable seizures or epilepsy by a medical doctor or doctor of osteopathic medicine who is licensed to practice medicine in the state of Tennessee;

(B) Cannabis oil containing the substance cannabidiol, with less than six tenths of one percent (0.6%) of tetrahydrocannabinol, including the necessary seeds and plants, when manufactured, processed, transferred, dispensed, or possessed by a four-year public or private institution of higher education certified by the drug enforcement administration located in the state as part of a clinical research study on the treatment of intractable seizures, cancer, or other diseases;

(C) The mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, except the resin extracted from the mature stalks, fiber, oil or cake, or the sterilized seeds of the plant which are incapable of germination;

(D) Industrial hemp as defined in § 43-26-102; or

(E) A cannabidiol product approved as a prescription medication by the United States food and drug administration.

(17) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(A) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate;

(B) Any salt, compound, isomer, derivative, or preparation thereof that is chemically equivalent or identical with any of the substances referred to in subdivision (17)(A), but not including the isoquinoline alkaloids of opium;

(C) Opium poppy and poppy straw; and

(D) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, isomer, derivative, or preparation thereof that is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions of coca leaves that do not contain cocaine or ecgonine;

(18) "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. "Opiate" does not include, unless specifically designated as

controlled under § 39-17-403, the dextrorotatory isomer of 3-methozy-methyl-morphinan and its salts (dextromethorphan). "Opiate" does not include its racemic and levorotatory forms;

(19) "Opium poppy" means the plant of the species papaver somniferium 1, except its seeds;

(20) "Person" means an individual, corporation, governmental subdivision or agency, business trust, estate, trust, partnership or association or any other legal entity;

(21) "Pharmacist" means a licensed pharmacist as defined by the laws of this state, and where the context so requires, the owner of a store or other place of business where controlled substances are compounded or dispensed by a licensed pharmacist; but nothing in this part or title 53, chapter 11, parts 3 and 4 shall be construed as conferring on a person who is not registered or licensed as a pharmacist any authority, right or privilege that is not granted to that person by the pharmacy laws of this state;

(22) "Poppy straw" means all parts, except the seeds, of the opium poppy after mowing;

(23) "Practitioner" means:

(A) A physician, dentist, optometrist, veterinarian, scientific investigator or other person licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of professional practice or research in this state; or

(B) A pharmacy, hospital or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of professional practice or research in this state;

(24) "Production" includes the manufacturing, planting, cultivating, growing or harvesting of a controlled substance;

(25) "State," when applied to a part of the United States, includes any state, district, commonwealth, territory, insular possession thereof, and any area subject to the legal authority of the United States;

(26) "Ultimate user" means a person who lawfully possesses a controlled substance for the person's own use or for the use of a member of the person's household or for the administering to an animal owned by the person or by a member of the person's household; and

(27) "Wholesaler" means a person who supplies a controlled substance that the person has not produced or prepared, on official written orders, but not on prescriptions.

HISTORY: Acts 1989, ch. 591, § 1; 1993, ch. 295, § 8; 2005, ch. 18, § 9; 2010, ch. 1100, § 65; 2012, ch. 575, § 2; 2012, ch. 848, § 97; 2014, ch. 916, § 1; 2014, ch. 936, § 1; 2015, ch. 352, § 1; 2016, ch. 873, §§ 1, 2; 2016, ch. 1083, § 1; 2017, ch. 120, § 1.

For the preamble to the act concerning growing of industrial hemp, please refer to Acts 2014, ch. 916.

Acts 2014, ch. 936, § 2 provided that any physician conducting a clinical research study on the treatment of intractable seizures at a facility described in § 39-17-402(16)(A) shall report the results of such study, including information on the number of patients involved, the parameters of the study and the outcomes of each patient, to the commissioner of health, the speaker of the house of representatives and the speaker of the senate by January 15, 2018.

Acts 2014, ch. 936, § 3 provided that on July 1, 2018, the provision of Tennessee Code Annotated, Section 39-17-402, amended by Section 1 shall be revived with its language as it was in effect on April 9, 2014; provided, that such revival shall not repeal or delete any amendment to Section 39-17-402 by Public Chapter 916 of the Acts of 2014 [Senate Bill 2495/House Bill 2445].

The 2014 amendment by ch. 936 rewrote the definition of "Marijuana" which read: "'Marijuana' means all parts of the plant cannabis, whether growing or not; the seeds of the plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. "Marijuana" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, except the resin extracted from the mature stalks, fiber, oil, or cake, or the sterilized seeds of the plant which are incapable of germination;".

The 2015 amendment rewrote subdivision (A) of the definition of "Marijuana", which read: "Cannabis oil containing the substance cannabidiol, with less than nine tenths of one percent (0.9%) of tetrahydrocannabinol, when transferred, dispensed, possessed or administered as part of a clinical research study on the treatment of intractable seizures supervised by a physician practicing at a hospital or associated clinic affiliated with a university having a college or school of medicine."

The 2016 amendment by ch. 873, in the definition of "drug paraphernalia", inserted "marijuana concentrates, marijuana oil" in the introductory language of (C); and, in the definition of "marijuana", inserted "including concentrates and oils," following "or preparation of the plant," in the introductory language of (C).

The 2016 amendment by ch. 1083, in the definition of "marijuana", rewrote (B) which read: "Cannabis oil containing the substance cannabidiol, with less than nine tenths of one percent (0.9%) of tetrahydrocannabinol, including the necessary seeds and plants, when manufactured, processed, transferred, dispensed or possessed by a four-year public institution of higher

education located in any county having a population of not less than seventy-two thousand three hundred (72,300) nor more than seventy-two thousand four hundred (72,400) according to the 2010 federal census or any subsequent federal census as part of a clinical research study on the treatment of intractable seizures;".

The 2017 amendment added (E) in the definition of "marijuana".

Effective Dates.

Acts 2014, ch. 916, § 9. July 1, 2014; provided that for purposes of promulgating rules and regulations, the act shall take effect May 13, 2014.

Acts 2014, ch. 936, § 3. May 16, 2014, expiring June 30, 2018.

Acts 2015, ch. 352, § 2. May 4, 2015.

Acts 2016, ch. 873, § 3. July 1, 2016.

Acts 2016, ch. 1083, § 2. May 20, 2016.

Acts 2017, ch. 120, § 2. April 12, 2017.

Second of 2 versions of this section

39-17-402. Definitions for this part and title 53, chapter 11, parts 3 and 4. [Effective on July 1, 2018. See the version effective until July 1, 2018.].

As used in this part and title 53, chapter 11, parts 3 and 4, unless the context otherwise requires:

(1) "Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:

(A) A practitioner or by the practitioner's authorized agent in the practitioner's presence; or

(B) The patient or research subject at the direction and in the presence of the practitioner;

(2) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. "Agent" does not include a common or contract carrier, public warehouseman, or employee of the carrier or warehouseman;

(3) "Bureau" means the United States drug enforcement administration, United States department of justice, or its successor agency, except when used as the Tennessee bureau of investigation;

(4) "Controlled substance" means a drug, substance, or immediate precursor in Schedules I through VII of §§ 39-17-403 - 39-17-416;

(5) "Counterfeit substance" means 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 who in fact manufactured, distributed, or dispensed the substance;

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

(7) "Dispense" means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for that delivery;

(8) "Dispenser" means a practitioner who dispenses;

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

(10) "Distributor" means a person who distributes;

(11) "Drug" means:

(A) Substances recognized as drugs in the United States Pharmacopoeia, official Homeopaths Pharmacopoeia of the United States, or 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 man or animal;

(C) Substances, other than food, intended to affect the structure or any function of the body of man or animal; and

(D) Substances intended for use as a component of any article specified in subdivision (11)(A), (B) or (C). "Drug" does not include devices or their components, parts, or accessories;

(12) "Drug paraphernalia" means all equipment, products and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body, a controlled substance as defined in subdivision (4). "Drug paraphernalia" includes, but is not limited to:

(A) Isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant that is a controlled substance;

(B) Testing equipment used, intended for use, or designed for use in identifying, or in analyzing the strength, effectiveness or purity of controlled substances; and

(C) Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing marijuana, marijuana concentrates, marijuana oil, cocaine, hashish, or hashish oil into the human body, such as:

(i) Metal, acrylic, glass, stone, or plastic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;

(ii) Water pipes;

(iii) Carburetion tubes and devices;

(iv) Smoking and carburetion masks;

(v) Chamber pipes;

(vi) Carburetor pipes;

(vii) Electric pipes;

(viii) Chillums;

(ix) Bongs; and

(x) Ice pipes or chillers;

(13) "Immediate methamphetamine precursor" means ephedrine, pseudoephedrine or phenylpropanolamine, or their salts, isomers or salts of isomers, or any drug or other product that contains a detectable quantity of ephedrine, pseudoephedrine or phenylpropanolamine, or their salts, isomers or salts of isomers;

(14) "Immediate precursor" means a substance that the commissioner of mental health and substance abuse services, upon the agreement of the commissioner of health, has found to be and by rule designates as being the principal compound commonly used or produced primarily for use, and that 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 manufacture;

(15) "Manufacture" means the production, preparation, propagation, compounding, conversion or processing of a controlled substance, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that "manufacture" does not include the preparation or compounding of a controlled substance by an individual for the individual's own use or the preparation, compounding, packaging, or labeling of a controlled substance by:

(A) A practitioner as an incident to administering or dispensing a controlled substance in the course of professional practice; or

(B) A practitioner, or an authorized agent under the practitioner's supervision, for the purpose of, or as an incident to, research, teaching or chemical analysis and not for sale;

(16) (A) "Marijuana" means all parts of the plant cannabis, whether growing or not; the seeds of the plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, including concentrates and oils, its seeds or resin;

(B) "Marijuana" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, except the resin extracted from the mature stalks, fiber, oil, or cake, or the sterilized seeds of the plant which are incapable of germination;

(C) "Marijuana" also does not include industrial hemp, as defined in § 43-26-102;

(D) The term "marijuana" does not include oil containing the substance cannabidiol, with less than nine-tenths of one percent (0.9%) of tetrahydrocannabinol, if:

(i) The bottle containing the oil is labeled by the manufacturer as containing cannabidiol in an amount less than nine-tenths of one percent (0.9%) of tetrahydrocannabinol; and

(ii) The person in possession of the oil retains:

(a) Proof of the legal order or recommendation from the issuing state; and

(b) Proof that the person or the person's immediate family member has been diagnosed with intractable seizures or epilepsy by a medical doctor or doctor of osteopathic medicine who is licensed to practice medicine in the state of Tennessee; and

(E) The term "marijuana" does not include a cannabidiol product approved as a prescription medication by the United States food and drug administration.

(17) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(A) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate;

(B) Any salt, compound, isomer, derivative, or preparation thereof that is chemically equivalent or identical with any of the substances referred to in subdivision (17)(A), but not including the isoquinoline alkaloids of opium;

(C) Opium poppy and poppy straw; and

(D) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, isomer, derivative, or preparation thereof that is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions of coca leaves that do not contain cocaine or ecgonine;

(18) "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. "Opiate" does not include, unless specifically designated as controlled under § 39-17-403, the dextrorotatory isomer of 3-methozy-methyl-morphinan and its salts (dextromethorphan). "Opiate" does not include its racemic and levorotatory forms;

(19) "Opium poppy" means the plant of the species papaver somniferium 1, except its seeds;

(20) "Person" means an individual, corporation, governmental subdivision or agency, business trust, estate, trust, partnership or association or any other legal entity;

(21) "Pharmacist" means a licensed pharmacist as defined by the laws of this state, and where the context so requires, the owner of a store or other place of business where controlled substances are compounded or dispensed by a licensed pharmacist; but nothing in this part or title 53, chapter 11, parts 3 and 4 shall be construed as conferring on a person who is not registered or licensed as a pharmacist any authority, right or privilege that is not granted to that person by the pharmacy laws of this state;

(22) "Poppy straw" means all parts, except the seeds, of the opium poppy after mowing;

(23) "Practitioner" means:

(A) A physician, dentist, optometrist, veterinarian, scientific investigator or other person licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of professional practice or research in this state; or

(B) A pharmacy, hospital or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of professional practice or research in this state;

(24) "Production" includes the manufacturing, planting, cultivating, growing or harvesting of a controlled substance;

(25) "State," when applied to a part of the United States, includes any state, district, commonwealth, territory, insular possession thereof, and any area subject to the legal authority of the United States;

(26) "Ultimate user" means a person who lawfully possesses a controlled substance for the person's own use or for the use of a member of the person's household or for the administering to an animal owned by the person or by a member of the person's household; and

(27) "Wholesaler" means a person who supplies a controlled substance that the person has not produced or prepared, on official written orders, but not on prescriptions.

HISTORY: Acts 1989, ch. 591, § 1; 1993, ch. 295, § 8; 2005, ch. 18, § 9; 2010, ch. 1100, § 65; 2012, ch. 575, § 2; 2012, ch. 848, § 97; 2014, ch. 916, § 1; 2014 ch. 936, § 1; 2015, ch. 352, § 1; 2016, ch. 873, §§ 1, 2; 2017, ch. 120, § 1.

For the preamble to the act concerning growing of industrial hemp, please refer to Acts 2014, ch. 916.

Acts 2014, ch. 936, § 3 provided that on July 1, 2018, the provision of Tennessee Code Annotated, Section 39-17-402, amended by Section 1 shall be revived with its language as it was in effect on April 9, 2014; provided, that such revival shall not repeal or delete any amendment

to Section 39-17-402 by Public Chapter 916 of the Acts of 2014 [Senate Bill 2495/House Bill 2445].

Amendments.

The 2014 amendment by ch. 916 added the last sentence to the definition of "Marijuana".

The 2015 amendment rewrote (A) of the definition of "Marijuana" in the version of this section effective until July 1, 2018. That language has been added in the version of the section effective on July 1, 2018, as subdivision (D) of the definition of "Marijuana".

The 2016 amendment by ch. 873, in the definition of "drug paraphernalia", inserted "marijuana concentrates, marijuana oil" in the introductory language of (C); and, in the definition of "marijuana", inserted "including concentrates and oils," following "or preparation of the plant," in the introductory language of (C).

The 2017 amendment added (E) in the definition of "marijuana".

Effective Dates.

Acts 2014, ch. 916, § 9. July 1, 2014; provided that for purposes of promulgating rules and regulations, the act shall take effect May 13, 2014.

Acts 2015, ch. 352, § 2. May 4, 2015.

Acts 2016, ch. 873, § 3. July 1, 2016.

Acts 2017, ch. 120, § 2. April 12, 2017.