STATE OF OKLAHOMA

2nd Session of the 57th Legislature (2020)

SENATE BILL 1839 By: Montgomery

AS INTRODUCED

An Act relating to cosmetic procedures; creating the Oklahoma Cosmetic Procedures Licensing Act; defining terms; requiring license or certificate to perform certain acts; providing limitations; providing exception to licensure or certification; providing for laser hair removal certification; directing State Commissioner of Health to promulgate rules; providing requirements for certain certificates for laser hair removal; providing for permanent cosmetic coloring and cosmetic tattooing licensure; directing Commissioner to promulgate rules; providing certain requirements; prohibiting operation of facility without license; requiring separate licensure for each facility; providing exceptions; providing for expiration of licenses and certificates; requiring certain disclosures; requiring posting of warning sign; providing requirement for facility operator compliance; prohibiting false or misleading material or advertisements; providing for administrative fine and suspension, revocation or denial of license; amending 21 O.S. 2011, Section 842.3, which relates to body piercing and tattooing; providing exception for licenses or certificates issued under the Oklahoma Cosmetic Procedures Licensing Act; amending 63 O.S. 2011, Section 2-101, as last amended by Section 16, Chapter 428, O.S.L. 2019 (63 O.S. Supp. 2019, Section 2-101), which relates to the Uniform Controlled Dangerous Substances Act; modifying definition; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 200.1 of Title 59, unless there is created a duplication in numbering, reads as follows:

Sections 1 through 10 of this act shall be known and may be cited as the "Oklahoma Cosmetic Procedures Licensing Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 200.2 of Title 59, unless there is created a duplication in numbering, reads as follows:

As used in this act:

1. "Cosmetic tattooing" means the process by which the skin is marked or colored to form indelible marks, figures or decorative designs for cosmetic, nonmedical purposes by inserting or ingraining an indelible pigment into or onto the skin, microblading or microneedling;

2. "Laser hair removal" means the use of a laser or intense pulsed light device for nonablative hair removal procedures;

3. "Laser hair removal facility" means a business location that provides laser hair removal;

4. "Laser or intense pulsed light device" means a device approved by the State Department of Health and the United States Food and Drug Administration for laser hair removal;

5. "Microblading" means microblading of the eyebrow as a form of cosmetic tattoo artistry where ink is deposited superficially in

the upper three layers of the epidermis using a handheld or machine powered tool made up of needles known as a microblade to improve or create eyebrow definition, to cover gaps of lost or missing hair, to extend the natural eyebrow pattern, or to create a full construction if the eyebrows have little to no hair;

6. "Microneedling" means the minimally invasive cosmetic procedure utilizing fine, sterile needles to puncture the skin for the purpose of treating skin concerns through collagen production;

7. "Nonablative hair removal procedure" means a hair removal procedure using a laser or intense pulsed light device that does not remove the epidermis;

8. "Operator" means the owner of a laser hair removal facility, an agent of an owner or an independent contractor of a laser hair removal facility; and

9. "Permanent cosmetic coloring" means tattooing for the purpose of simulating hair or makeup, such as permanent eyeliner, lip color, eyebrows and eyeshadow.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 200.3 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. A person may not perform or attempt to perform laser hair removal, permanent cosmetic coloring and cosmetic tattooing unless the person holds the appropriate license or certificate issued by the State Department of Health.

B. A license or certificate under this act only authorizes a person to perform nonablative cosmetic laser hair removal, permanent cosmetic coloring and cosmetic tattooing. The license or certificate does not authorize the person to diagnose, treat or offer to treat any client for any illness, disease, injury, defect or deformity of the human body. The license or certificate holder shall specifically disclose this limitation in writing to all clients and prospective clients.

C. A health professional licensed under another law is not required to hold a certificate under this act to perform laser hair removal if the performance of laser hair removal is within the scope of that professional's practice as determined by the professional's licensing board.

D. This act does not apply to a physician or any person under the supervision of a physician who is licensed to practice medicine in this state.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 200.4 of Title 59, unless there is created a duplication in numbering, reads as follows:

Certificates for laser hair removal shall be issued by the State Department of Health. The Commissioner shall promulgate rules regulating laser hair removal certificates, which shall include, but not be limited to, the following:

1. An applicant for a laser hair removal professional certificate must:

a. be certified by a recognized certifying entity approved by the State Department of Health,

b. meet the requirements for a senior laser hair removal technician certificate under paragraph 2 of this section, and

c. pass an examination required by the Department;

2. An applicant for a senior laser hair removal technician certificate must:

a. meet the requirements for a laser hair removal technician certificate under paragraph 3 of this section, and

b. have supervised at least one hundred laser hair removal procedures, as audited by a certified laser hair removal professional;

3. An applicant for a laser hair removal technician certificate must:

a. meet the requirements for a laser hair removal apprentice-in-training certificate under paragraph 4 of this section, and

b. have performed at least one hundred laser hair removal procedures under the direct supervision of a laser

hair removal technician or certified laser hair removal professional;

4. An applicant for a laser hair removal apprentice-in-training certificate must:

a. have at least twenty-four (24) hours of training in safety, laser physics, skin typing, skin reactions, treatment protocols, burns, eye protection, emergencies and posttreatment protocols,

b. work directly under the supervision of a senior laser hair removal technician or certified laser hair removal professional, and

c. be at least eighteen (18) years of age;

5. Except as provided in paragraph 6 of this section, a laser hair removal facility shall have a laser hair removal professional or a licensed health care professional present to supervise the laser hair removal procedures performed at the facility during the facility's operating hours; and

6. A laser hair removal facility may continue to perform laser hair removal procedures after the facility's certified laser hair removal professional resigns from the facility if a senior laser hair removal technician is present to perform or supervise each procedure. No later than forty-five (45) days after the date the facility's certified laser hair removal professional leaves the facility:

a. the facility's senior laser hair removal technician must become certified as a laser hair removal professional, or

b. the facility must hire a new certified laser hair removal professional.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 200.5 of Title 59, unless there is created a duplication in numbering, reads as follows:

Licenses for permanent cosmetic coloring or cosmetic tattooing shall be issued by the State Department of Health. The Commissioner shall promulgate rules regulating cosmetic coloring and cosmetic tattooing, which shall include, but not be limited to:

1. Temporary and permanent licensure;

2. Equipment setup and requirements;

3. Procedures for sanitary procedures;

4. Hand washing and general health;

5. Site preparation and application; and

6. Education and training.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 200.6 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. A person shall not operate a facility offering laser hair removal, permanent cosmetic coloring or cosmetic tattooing, unless

the person holds a license issued under this act to operate the facility.

B. A separate license is required for each facility.

C. This section does not apply to:

1. A facility owned or operated by a physician for the practice of medicine;

2. A licensed hospital; or

3. A clinic owned or operated by a licensed hospital.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 200.7 of Title 59, unless there is created a duplication in numbering, reads as follows:

Licenses or certificates issued under this act shall expire two (2) years from the date of issuance and may be renewed.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 200.8 of Title 59, unless there is created a duplication in numbering, reads as follows:

A facility offering laser hair removal, permanent cosmetic coloring or cosmetic tattooing shall:

1. Give each customer a written statement outlining the relevant risks associated with each procedure and any other notices required by the State Department of Health; and

2. Post a warning sign as prescribed by the State Department of Health in a conspicuous location, readily visible to a person entering the facility. The sign must provide a toll-free telephone

number and email address for the Department and inform the customer that the customer may contact the Department.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 200.9 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. A facility operator offering laser hair removal, permanent cosmetic coloring or cosmetic tattooing is responsible for compliance with the requirements under this act and rules promulgated by the State Commissioner of Health.

B. A facility offering laser hair removal, permanent cosmetic coloring or cosmetic tattooing shall not claim, advertise or distribute false or misleading material or advertisements regarding services offered at the facility.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 209 of Title 59, unless there is created a duplication in numbering, reads as follows:

The State Department of Health may impose an administrative fine not to exceed Five Thousand Dollars ($5,000.00) per violation per day, and may suspend, revoke or deny the license of the facility, or may impose both such administrative fine and suspension, revocation or denial for any such violation.

SECTION 11. AMENDATORY 21 O.S. 2011, Section 842.3, is amended to read as follows:

Section 842.3. A. All body piercing operators, tattoo operators and artists shall be prohibited from performing body piercing or tattooing unless licensed in the appropriate category by the State Department of Health. The State ~~Board~~ Commissioner of Health shall promulgate rules regulating body piercing and tattooing which shall include, but not be limited to:

1. Artist temporary and permanent licensure;

2. Facility operator temporary and permanent licensure;

3. Body piercing and tattoo facility requirements;

4. Equipment setup and requirements;

5. Procedures for sanitary body piercing and tattooing;

6. Forms to be completed prior to performing body piercing and tattooing including, but not limited to, applications and parental consent forms;

7. Hand washing and general health;

8. Body piercing and tattoo site preparation and application;

9. Procedure following body piercing and tattoo application;

10. Limits and prohibitions concerning body piercing and tattooing;

11. Facility inspection documents including, but not limited to, equipment inspection;

12. Administrative fines structure;

13. Education and training; and

14. A surety bond in the principal sum of One Hundred Thousand Dollars ($100,000.00) to be in a form approved by the Attorney General and filed in the Office of the Secretary of State for all body piercing and tattoo operators.

B. A city or county may adopt any regulations that do not conflict with, or are more comprehensive than, the provisions of this section or with the rules promulgated by the ~~Department~~ Commissioner. This section does not limit the ability of a city or county to require an applicant to obtain any further business licenses or permits that the city or county deems appropriate.

C. 1. The State Department of Health shall not grant or issue a license to a body piercing or tattoo operator if the place of business of the body piercing or tattoo operator is within one thousand (1,000) feet of a church, school, or playground.

2. The provisions of this subsection shall not apply to the renewal of licenses or to new applications for locations where body piercing or tattoo operators are licensed at the time the application is filed with the Department.

3. As used in this subsection:

a. "church" means an establishment, other than a private dwelling, where religious services are usually conducted,

b. "school" means an establishment, other than a private dwelling, where the usual processes of education are usually conducted, and

c. "playground" means a place, other than grounds at a private dwelling, that is provided by the public or members of a community for recreation.

D. A body piercing or tattoo operator applying for license renewal or for a new license to perform at an existing body piercing or tattoo place of business shall pay a certification fee established by the ~~Department~~ Commissioner by rule to determine if the exemptions provided for in paragraph 2 of subsection C of this section apply.

E. A body piercing or tattoo operator applying for license renewal or for a new license under subsection C of this section shall publish notice of the license application or renewal at least once a week for three (3) consecutive weeks in a newspaper of general circulation nearest to the proposed location of the business and most likely to give notice to interested citizens of the county, city, and community in which the applicant proposes to engage in business. The publication shall identify the exact location at which the proposed business is to be operated.

F. The State Department of Health may notify the district attorney of any violation of Section 842.1 of this title or rules promulgated pursuant thereto and, in addition to any criminal

penalty imposed, the Department may impose an administrative fine not to exceed Five Thousand Dollars ($5,000.00) per violation per day, and may suspend, revoke or deny the license of the establishment, or may impose both such administrative fine and suspension, revocation or denial for any such violation.

G. This section shall not apply to persons licensed or certified pursuant to this act.

SECTION 12. AMENDATORY 63 O.S. 2011, Section 2-101, as last amended by Section 16, Chapter 428, O.S.L. 2019 (63 O.S. Supp. 2019, Section 2-101), is amended to read as follows:

Section 2-101. As used in the Uniform Controlled Dangerous Substances Act:

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

a. a practitioner (or, in the presence of the practitioner, by the authorized agent of the practitioner), or

b. the patient or research subject at the direction and in the presence of the practitioner;

2. "Agent" means a peace officer appointed by and who acts on behalf of the Director of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control or an authorized person who acts on behalf

of or at the direction of a person who manufactures, distributes, dispenses, prescribes, administers or uses for scientific purposes controlled dangerous substances but does not include a common or contract carrier, public warehouser or employee thereof, or a person required to register under the Uniform Controlled Dangerous Substances Act;

3. "Board" means the Advisory Board to the Director of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control;

4. "Bureau" means the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control;

5. "Coca leaves" includes cocaine and any compound, manufacture, salt, derivative, mixture or preparation of coca leaves, except derivatives of coca leaves which do not contain cocaine or ecgonine;

6. "Commissioner" or "Director" means the Director of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control;

7. "Control" means to add, remove or change the placement of a drug, substance or immediate precursor under the Uniform Controlled Dangerous Substances Act;

8. "Controlled dangerous substance" means a drug, substance or immediate precursor in Schedules I through V of the Uniform Controlled Dangerous Substances Act or any drug, substance or immediate precursor listed either temporarily or permanently as a federally controlled substance. Any conflict between state and

federal law with regard to the particular schedule in which a substance is listed shall be resolved in favor of state law;

9. "Counterfeit substance" means a controlled substance which, or the container or labeling of which without authorization, bears the trademark, trade name or other identifying marks, 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;

10. "Deliver" or "delivery" means the actual, constructive or attempted transfer from one person to another of a controlled dangerous substance or drug paraphernalia, whether or not there is an agency relationship;

11. "Dispense" means to deliver a controlled dangerous substance to an ultimate user or human 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 such distribution. "Dispenser" is a practitioner who delivers a controlled dangerous substance to an ultimate user or human research subject;

12. "Distribute" means to deliver other than by administering or dispensing a controlled dangerous substance;

13. "Distributor" means a commercial entity engaged in the distribution or reverse distribution of narcotics and dangerous drugs and who complies with all regulations promulgated by the

federal Drug Enforcement Administration and the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control;

14. "Drug" means articles:

a. recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them,

b. intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals,

c. other than food, intended to affect the structure or any function of the body of man or other animals, and

d. intended for use as a component of any article specified in this paragraph;

provided, however, the term "drug" does not include devices or their components, parts or accessories;

15. "Drug-dependent person" means a person who is using a controlled dangerous substance and who is in a state of psychic or physical dependence, or both, arising from administration of that controlled dangerous substance on a continuous basis. Drug dependence is characterized by behavioral and other responses which include a strong compulsion to take the substance on a continuous basis in order to experience its psychic effects, or to avoid the discomfort of its absence;

16. "Home care agency" means any sole proprietorship, partnership, association, corporation, or other organization which administers, offers, or provides home care services, for a fee or pursuant to a contract for such services, to clients in their place of residence;

17. "Home care services" means skilled or personal care services provided to clients in their place of residence for a fee;

18. "Hospice" means a centrally administered, nonprofit or profit, medically directed, nurse-coordinated program which provides a continuum of home and inpatient care for the terminally ill patient and the patient's family. Such term shall also include a centrally administered, nonprofit or profit, medically directed, nurse-coordinated program if such program is licensed pursuant to the provisions of the Uniform Controlled Dangerous Substances Act. A hospice program offers palliative and supportive care to meet the special needs arising out of the physical, emotional and spiritual stresses which are experienced during the final stages of illness and during dying and bereavement. This care is available twenty-four (24) hours a day, seven (7) days a week, and is provided on the basis of need, regardless of ability to pay. "Class A" Hospice refers to Medicare certified hospices. "Class B" refers to all other providers of hospice services;

19. "Imitation controlled substance" means a substance that is not a controlled dangerous substance, which by dosage unit

appearance, color, shape, size, markings or by representations made, would lead a reasonable person to believe that the substance is a controlled dangerous substance. In the event the appearance of the dosage unit is not reasonably sufficient to establish that the substance is an "imitation controlled substance", the court or authority concerned should consider, in addition to all other factors, the following factors as related to "representations made" in determining whether the substance is an "imitation controlled substance":

a. statements made by an owner or by any other person in control of the substance concerning the nature of the substance, or its use or effect,

b. statements made to the recipient that the substance may be resold for inordinate profit,

c. whether the substance is packaged in a manner normally used for illicit controlled substances,

d. evasive tactics or actions utilized by the owner or person in control of the substance to avoid detection by law enforcement authorities,

e. prior convictions, if any, of an owner, or any other person in control of the object, under state or federal law related to controlled substances or fraud, and

f. the proximity of the substances to controlled dangerous substances;

20. "Immediate precursor" means a substance which the Director has found to be and by regulation designates as being the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used, or likely to be used, in the manufacture of a controlled dangerous substance, the control of which is necessary to prevent, curtail or limit such manufacture;

21. "Laboratory" means a laboratory approved by the Director as proper to be entrusted with the custody of controlled dangerous substances and the use of controlled dangerous substances for scientific and medical purposes and for purposes of instruction;

22. "Manufacture" means the production, preparation, propagation, compounding or processing of a controlled dangerous substance, either directly or indirectly by extraction from substances of natural or synthetic origin, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis. "Manufacturer" includes any person who packages, repackages or labels any container of any controlled dangerous substance, except practitioners who dispense or compound prescription orders for delivery to the ultimate consumer;

23. "Marijuana" means all parts of the plant Cannabis sativa L., whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt,

derivative, mixture or preparation of such plant, its seeds or resin, but shall not include:

a. the mature stalks of such plant or fiber produced from such stalks,

b. oil or cake made from the seeds of such plant, including cannabidiol derived from the seeds of the marijuana plant,

c. any other compound, manufacture, salt, derivative, mixture or preparation of such mature stalks (except the resin extracted therefrom), including cannabidiol derived from mature stalks, fiber, oil or cake,

d. the sterilized seed of such plant which is incapable of germination,

e. for any person participating in a clinical trial to administer cannabidiol for the treatment of severe forms of epilepsy pursuant to Section 2-802 of this title, a drug or substance approved by the federal Food and Drug Administration for use by those participants,

f. for any person or the parents, legal guardians or caretakers of the person who have received a written certification from a physician licensed in this state that the person has been diagnosed by a physician as having Lennox-Gastaut Syndrome, Dravet Syndrome, also

known as Severe Myoclonic Epilepsy of Infancy, or any other severe form of epilepsy that is not adequately treated by traditional medical therapies, spasticity due to multiple sclerosis or due to paraplegia, intractable nausea and vomiting, appetite stimulation with chronic wasting diseases, the substance cannabidiol, a nonpsychoactive cannabinoid, found in the plant Cannabis sativa L. or any other preparation thereof, that has a tetrahydrocannabinol concentration of not more than three-tenths of one percent (0.3%) and that is delivered to the patient in the form of a liquid,

g. any federal Food and Drug Administration-approved cannabidiol drug or substance, or

h. industrial hemp, from the plant Cannabis sativa L. and any part of such plant, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than three-tenths of one percent (0.3%) on a dry weight basis which shall not be grown anywhere in the State of Oklahoma but may be shipped to Oklahoma pursuant to the provisions of subparagraph e or f of this paragraph;

24. "Medical purpose" means an intention to utilize a controlled dangerous substance for physical or mental treatment, for

diagnosis, or for the prevention of a disease condition not in violation of any state or federal law and not for the purpose of satisfying physiological or psychological dependence or other abuse;

25. "Mid-level practitioner" means an Advanced Practice Registered Nurse as defined and within parameters specified in Section 567.3a of Title 59 of the Oklahoma Statutes, or a certified animal euthanasia technician as defined in Section 698.2 of Title 59 of the Oklahoma Statutes, or an animal control officer registered by the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control under subsection B of Section 2-301 of this title within the parameters of such officer's duty under Sections 501 through 508 of Title 4 of the Oklahoma Statutes;

26. "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, coca leaves and opiates,

b. a compound, manufacture, salt, derivative or preparation of opium, coca leaves or opiates,

c. cocaine, its salts, optical and geometric isomers, and salts of isomers,

d. ecgonine, its derivatives, their salts, isomers and salts of isomers, and

e. a substance, and any compound, manufacture, salt, derivative or preparation thereof, which is chemically identical with any of the substances referred to in subparagraphs a through d of this paragraph, except that the words "narcotic drug" as used in Section 2-101 et seq. of this title shall not include decocainized coca leaves or extracts of coca leaves, which extracts do not contain cocaine or ecgonine;

27. "Opiate" or "opioid" means any Schedule II, III, IV or V substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having such addiction-forming or addiction-sustaining liability. The terms do not include, unless specifically designated as controlled under the Uniform Controlled Dangerous Substances Act, the dextrorotatory isomer of 3-methoxy-n-methyl-morphinan and its salts (dextromethorphan). The terms do include the racemic and levorotatory forms;

28. "Opium poppy" means the plant of the species Papaver somniferum L., except the seeds thereof;

29. "Peace officer" means a police officer, sheriff, deputy sheriff, district attorney's investigator, investigator from the Office of the Attorney General~~,~~ or any other person elected or appointed by law to enforce any of the criminal laws of this state or of the United States;

30. "Person" means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity;

31. "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing;

32. "Practitioner" means:

a. (1) a medical doctor or osteopathic physician,

(2) a dentist,

(3) a podiatrist,

(4) an optometrist,

(5) a veterinarian,

(6) a physician assistant or Advanced Practice Registered Nurse under the supervision of a licensed medical doctor or osteopathic physician,

(7) a scientific investigator, or

(8) any other person,

licensed, registered or otherwise permitted to prescribe, distribute, dispense, conduct research with respect to, use for scientific purposes or administer a controlled dangerous substance in the course of professional practice or research in this state, or

b. a pharmacy, hospital, laboratory or other institution licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect

to, use for scientific purposes or administer a controlled dangerous substance in the course of professional practice or research in this state;

33. "Production" includes the manufacture, planting, cultivation, growing or harvesting of a controlled dangerous substance;

34. "State" means the State of Oklahoma or any other state of the United States;

35. "Ultimate user" means a person who lawfully possesses a controlled dangerous substance for the person's own use or for the use of a member of the person's household or for administration to an animal owned by the person or by a member of the person's household;

36. "Drug paraphernalia" means all equipment, products and materials of any kind which are used, intended for use, or fashioned specifically 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 dangerous substance in violation of the Uniform Controlled Dangerous Substances Act including, but not limited to:

a. kits used, intended for use, or fashioned specifically for use in planting, propagating, cultivating, growing

or harvesting of any species of plant which is a controlled dangerous substance or from which a controlled dangerous substance can be derived,

b. kits used, intended for use~~,~~ or fashioned specifically for use in manufacturing, compounding, converting, producing, processing or preparing controlled dangerous substances,

c. isomerization devices used, intended for use, or fashioned specifically for use in increasing the potency of any species of plant which is a controlled dangerous substance,

d. testing equipment used, intended for use, or fashioned specifically for use in identifying, or in analyzing the strength, effectiveness or purity of controlled dangerous substances,

e. scales and balances used, intended for use, or fashioned specifically for use in weighing or measuring controlled dangerous substances,

f. diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, used, intended for use, or fashioned specifically for use in cutting controlled dangerous substances,

g. separation gins and sifters used, intended for use, or fashioned specifically for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana,

h. blenders, bowls, containers, spoons and mixing devices used, intended for use, or fashioned specifically for use in compounding controlled dangerous substances,

i. capsules, balloons, envelopes and other containers used, intended for use, or fashioned specifically for use in packaging small quantities of controlled dangerous substances,

j. containers and other objects used, intended for use, or fashioned specifically for use in parenterally injecting controlled dangerous substances into the human body,

k. hypodermic syringes, needles and other objects used, intended for use, or fashioned specifically for use in parenterally injecting controlled dangerous substances into the human body,

l. objects used, intended for use, or fashioned specifically for use in ingesting, inhaling or otherwise introducing marijuana, cocaine, hashish or hashish oil into the human body, such as:

(1) metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens, hashish heads or punctured metal bowls,

(2) water pipes,

(3) carburetion tubes and devices,

(4) smoking and carburetion masks,

(5) roach clips, meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand,

(6) miniature cocaine spoons and cocaine vials,

(7) chamber pipes,

(8) carburetor pipes,

(9) electric pipes,

(10) air-driven pipes,

(11) chillums,

(12) bongs, or

(13) ice pipes or chillers,

m. all hidden or novelty pipes, and

n. any pipe that has a tobacco bowl or chamber of less than one-half (1/2) inch in diameter in which there is any detectable residue of any controlled dangerous substance as defined in this section or any other substances not legal for possession or use;

provided, however, the term "drug paraphernalia" shall not include separation gins intended for use in preparing tea or spice, clamps used for constructing electrical equipment, water pipes designed for ornamentation in which no detectable amount of an illegal substance is found or pipes designed and used solely for smoking tobacco, traditional pipes of an American Indian tribal religious ceremony, or antique pipes that are thirty (30) years of age or older;

37. a. "Synthetic controlled substance" means a substance:

(1) the chemical structure of which is substantially similar to the chemical structure of a controlled dangerous substance in Schedule I or II,

(2) which has a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant or hallucinogenic effect on the central nervous system of a controlled dangerous substance in Schedule I or II, or

(3) with respect to a particular person, which such person represents or intends to have a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the

central nervous system of a controlled dangerous substance in Schedule I or II.

b. The designation of gamma butyrolactone or any other chemical as a precursor, pursuant to Section 2-322 of this title, does not preclude a finding pursuant to subparagraph a of this paragraph that the chemical is a synthetic controlled substance.

c. "Synthetic controlled substance" does not include:

(1) a controlled dangerous substance,

(2) any substance for which there is an approved new drug application,

(3) with respect to a particular person any substance, if an exemption is in effect for investigational use, for that person under the provisions of Section 505 of the Federal Food, Drug and Cosmetic Act, Title 21 of the United States Code, Section 355, to the extent conduct with respect to such substance is pursuant to such exemption, or

(4) any substance to the extent not intended for human consumption before such an exemption takes effect with respect to that substance.

d. Prima facie evidence that a substance containing salvia divinorum has been enhanced, concentrated or

chemically or physically altered shall give rise to a rebuttable presumption that the substance is a synthetic controlled substance;

38. "Tetrahydrocannabinols" means all substances that have been chemically synthesized to emulate the tetrahydrocannabinols of marijuana;

39. "Isomer" means the optical isomer, except as used in subsections C and F of Section 2-204 of this title and paragraph 4 of subsection A of Section 2-206 of this title. As used in subsections C and F of Section 2-204 of this title, "isomer" means the optical, positional or geometric isomer. As used in paragraph 4 of subsection A of Section 2-206 of this title, the term "isomer" means the optical or geometric isomer;

40. "Hazardous materials" means materials, whether solid, liquid or gas, which are toxic to human, animal, aquatic or plant life, and the disposal of which materials is controlled by state or federal guidelines;

41. "Anhydrous ammonia" means any substance that exhibits cryogenic evaporative behavior and tests positive for ammonia;

42. "Acute pain" means pain, whether resulting from disease, accidental or intentional trauma or other cause, that the practitioner reasonably expects to last only a short period of time. "Acute pain" does not include chronic pain, pain being treated as

part of cancer care, hospice or other end-of-life care, or pain being treated as part of palliative care;

43. "Chronic pain" means pain that persists beyond the usual course of an acute disease or healing of an injury. "Chronic pain" may or may not be associated with an acute or chronic pathologic process that causes continuous or intermittent pain over months or years;

44. "Initial prescription" means a prescription issued to a patient who:

a. has never previously been issued a prescription for the drug or its pharmaceutical equivalent in the past year, or

b. requires a prescription for the drug or its pharmaceutical equivalent due to a surgical procedure or new acute event and has previously had a prescription for the drug or its pharmaceutical equivalent within the past year.

When determining whether a patient was previously issued a prescription for a drug or its pharmaceutical equivalent, the practitioner shall consult with the patient and review the medical record and prescription monitoring information of the patient;

45. "Patient-provider agreement" means a written contract or agreement that is executed between a practitioner and a patient,

prior to the commencement of treatment for chronic pain using an opioid drug as a means to:

a. explain the possible risk of development of physical or psychological dependence in the patient and prevent the possible development of addiction,

b. document the understanding of both the practitioner and the patient regarding the patient-provider agreement of the patient,

c. establish the rights of the patient in association with treatment and the obligations of the patient in relation to the responsible use, discontinuation of use, and storage of opioid drugs, including any restrictions on the refill of prescriptions or the acceptance of opioid prescriptions from practitioners,

d. identify the specific medications and other modes of treatment, including physical therapy or exercise, relaxation or psychological counseling, that are included as a part of the patient-provider agreement,

e. specify the measures the practitioner may employ to monitor the compliance of the patient including, but not limited to, random specimen screens and pill counts, and

f. delineate the process for terminating the agreement, including the consequences if the practitioner has

reason to believe that the patient is not complying with the terms of the agreement. Compliance with the "consent items" shall constitute a valid, informed consent for opioid therapy. The practitioner shall be held harmless from civil litigation for failure to treat pain if the event occurs because of nonadherence by the patient with any of the provisions of the patient-provider agreement;

46. "Serious illness" means a medical illness or physical injury or condition that substantially affects quality of life for more than a short period of time. "Serious illness" includes, but is not limited to, Alzheimer's disease or related dementias, lung disease, cancer, heart failure, renal failure, liver failure or chronic, unremitting or intractable pain such as neuropathic pain; and

47. "Surgical procedure" means a procedure that is performed for the purpose of structurally altering the human body by incision or destruction of tissues as part of the practice of medicine. This term includes the diagnostic or therapeutic treatment of conditions or disease processes by use of instruments such as lasers<u>, except the use of nonablative lasers under this act</u>, ultrasound, ionizing, radiation, scalpels, probes or needles that cause localized alteration or transportation of live human tissue by cutting, burning, vaporizing, freezing, suturing, probing or manipulating by

closed reduction for major dislocations or fractures, or otherwise altering by any mechanical, thermal, light-based, electromagnetic or chemical means.

SECTION 13. This act shall become effective November 1, 2020.

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