

5260--C

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I N   S E N A T E

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Introduced by Sens. HANNON, GALLIVAN, SALAND -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Codes in accordance with Senate Rule 6, sec. 8 -- reported favorably from said committee, ordered to first and second report, amended on second report, ordered to a third reading, and to be reprinted as amended, retaining its place in the order of third reading

AN ACT to amend the penal law, in relation to criminal diversion of prescription medications and prescriptions, establishing the offense of fraudulent prescription, dispensing and procurement of non-controlled substance prescription medications and devices, and establishing the offense of unlawful possession of non-controlled substance prescription medications and devices

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

1     Section 1. Section 178.00 of the penal law, as added by chapter 81 of  
2     the laws of 1995, is amended to read as follows:  
3     S 178.00 Criminal diversion of prescription medications and  
4     prescriptions; definitions.  
5     The following definitions are applicable to this article:  
6     1. "Prescription medication or device" means any article for which a  
7     prescription is required in order to be lawfully sold, delivered or  
8     distributed by any person authorized by law to engage in the practice of  
9     the profession of pharmacy.  
10    2. "Prescription" means a direction or authorization by means of a  
11    written prescription form, ELECTRONIC PRESCRIPTION or an oral  
12    prescription which permits a person to lawfully obtain a prescription

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets  
[ ] is old law to be omitted.

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1 medication or device from any person authorized to dispense such  
2 prescription medication or device.

3 3. "PRESCRIPTION FORM" MEANS AN OFFICIAL STATE PRESCRIPTION FORM  
4 AUTHORIZED BY A STATE FOR USE BY HEALTH PRACTITIONERS AUTHORIZED TO  
5 WRITE PRESCRIPTIONS.

6 4. "Criminal diversion act" means an act or acts in which a person  
7 knowingly:

8 (a) transfers or delivers, in exchange for anything of pecuniary  
9 value, a prescription medication or device with knowledge or reasonable  
10 grounds to know that the recipient has no medical need for it; or

11 (b) receives, in exchange for anything of pecuniary value, a  
12 prescription medication or device with knowledge or reasonable grounds  
13 to know that the seller or transferor is not authorized by law to sell  
14 or transfer such prescription medication or device; or

15 (c) RECEIVES, IN EXCHANGE FOR ANYTHING OF PECUNIARY VALUE, A  
16 PRESCRIPTION MEDICATION OR DEVICE, PRESCRIPTION, OR PRESCRIPTION FORM  
17 FROM A LAW ENFORCEMENT OFFICER ACTING IN AN UNDERCOVER CAPACITY OR HIS  
18 OR HER AGENT, BELIEVING OR HAVING REASONABLE GROUND TO BELIEVE THAT THE  
19 OFFICER OR HIS OR HER AGENT IS SOMEONE WHO IS NOT AUTHORIZED BY LAW TO  
20 SELL OR TRANSFER SUCH PRESCRIPTION MEDICATION OR DEVICE, PRESCRIPTION,  
21 OR PRESCRIPTION FORM; OR

22 (D) transfers or delivers a prescription OR PRESCRIPTION FORM in  
23 exchange for anything of pecuniary value; or

24 [(d)] (E) receives a prescription OR PRESCRIPTION FORM in exchange for  
25 anything of pecuniary value.

26 S 2. Paragraph (c) of subdivision 1 of section 178.05 of the penal  
27 law, as added by chapter 81 of the laws of 1995, is amended and two new  
28 paragraphs (d) and (e) are added to read as follows:

29 (c) a person acting in good faith WHO IS seeking [treatment for a  
30 medical condition or assisting another person to obtain treatment for a  
31 medical condition] TO OBTAIN A PRESCRIPTION, PRESCRIPTION MEDICATION OR  
32 DEVICE THAT HAS BEEN LAWFULLY PRESCRIBED TO HIM OR HER, AND FOR WHICH HE  
33 OR SHE HAS A MEDICAL NEED; OR

34 (D) A PERSON ACTING IN GOOD FAITH, WHO REASONABLY BELIEVES THAT HE OR  
35 SHE IS ASSISTING ANOTHER PERSON TO OBTAIN A PRESCRIPTION, PRESCRIPTION  
36 MEDICATION OR DEVICE THAT HAS BEEN LAWFULLY PRESCRIBED TO THAT OTHER  
37 PERSON; OR

38 (E) A DULY REGISTERED MANUFACTURER OR WHOLESALE OF DRUGS, AS DEFINED  
39 IN ARTICLE ONE HUNDRED THIRTY-SEVEN OF THE EDUCATION LAW, ACTING IN GOOD  
40 FAITH IN THE LAWFUL COURSE OF HIS OR HER BUSINESS.

41 S 3. Section 178.10 of the penal law, as added by chapter 81 of the  
42 laws of 1995, is amended to read as follows:

43 S 178.10 Criminal diversion of prescription medications and  
44 prescriptions in the [fourth] FIFTH degree.

45 A person is guilty of criminal diversion of prescription medications  
46 and prescriptions in the [fourth] FIFTH degree when he or she commits a  
47 criminal diversion act.

48 Criminal diversion of prescription medications and prescriptions in  
49 the [fourth] FIFTH degree is a class A misdemeanor.

50 S 4. Section 178.15 of the penal law, as added by chapter 81 of the  
51 law of 1995, is amended to read as follows:

52 S 178.15 Criminal diversion of prescription medications and  
53 prescriptions in the [third] FOURTH degree.

54 A person is guilty of criminal diversion of prescription medications  
55 and prescriptions in the [third] FOURTH degree when he or she:

1 1. commits a criminal diversion act, and the value of the benefit  
2 exchanged is in excess of one thousand dollars; or

3 2. commits the crime of criminal diversion of prescription medications  
4 and prescriptions in the fourth degree, and has previously been  
5 convicted of the crime of criminal diversion of prescription medications  
6 and prescriptions [in the fourth degree]; OR

7 3. COMMITS THE CRIME OF CRIMINAL DIVERSION OF PRESCRIPTION MEDICATIONS  
8 AND PRESCRIPTIONS IN THE FIFTH DEGREE ON TWO OR MORE OCCASIONS OVER A  
9 THIRTY-FIVE DAY PERIOD.

10 Criminal diversion of prescription medications and prescriptions in  
11 the [third] FOURTH degree is a class E felony.

12 S 5. Section 178.20 of the penal law, as added by chapter 81 of the  
13 laws of 1995, is amended to read as follows:

14 S 178.20 Criminal diversion of prescription medications and  
15 prescriptions in the [second] THIRD degree.

16 A person is guilty of criminal diversion of prescription medications  
17 and prescriptions in the [second] THIRD degree when he or she:

18 1. commits a criminal diversion act, and the value of the benefit  
19 exchanged is in excess of three thousand dollars; OR

20 2. COMMITS THE CRIME OF CRIMINAL DIVERSION OF PRESCRIPTION MEDICATIONS  
21 AND PRESCRIPTIONS IN THE FIFTH DEGREE ON FOUR OR MORE OCCASIONS OVER A  
22 THIRTY-FIVE DAY PERIOD; OR

23 3. COMMITS THE CRIME OF CRIMINAL DIVERSION OF PRESCRIPTION MEDICA-  
24 TIONS AND PRESCRIPTIONS IN THE FIFTH DEGREE, AND IS:

25 (A) A PHYSICIAN OR OTHER PERSON AUTHORIZED TO ISSUE A PRESCRIPTION; OR

26 (B) A PHARMACIST OR OTHER PERSON AUTHORIZED TO DISPENSE PRESCRIPTION  
27 MEDICATIONS AND DEVICES.

28 Criminal diversion of prescription medications and prescriptions in  
29 the [second] THIRD degree is a class D felony.

30 S 6. Section 178.25 of the penal law, as added by chapter 81 of the  
31 laws of 1995, is amended to read as follows:

32 S 178.25 Criminal diversion of prescription medications and  
33 prescriptions in the [first] SECOND degree.

34 A person is guilty of criminal diversion of prescription medications  
35 and prescriptions in the [first] SECOND degree when he or she:

36 1. commits a criminal diversion act, and the value of the benefit  
37 exchanged is in excess of fifty thousand dollars; OR

38 2. COMMITS THE CRIME OF CRIMINAL DIVERSION OF PRESCRIPTION MEDICATIONS  
39 AND PRESCRIPTIONS IN THE FIFTH DEGREE ON SIX OR MORE OCCASIONS OVER A  
40 THIRTY-FIVE DAY PERIOD; OR

41 3. COMMITS THE CRIME OF CRIMINAL DIVERSION OF PRESCRIPTION MEDICATIONS  
42 AND PRESCRIPTIONS IN THE FIFTH DEGREE ON TWO OR MORE OCCASIONS OVER A  
43 NINETY DAY PERIOD, AND IS:

44 (A) A PHYSICIAN OR OTHER PERSON AUTHORIZED TO ISSUE A PRESCRIPTION; OR

45 (B) A PHARMACIST OR OTHER PERSON AUTHORIZED TO DISPENSE PRESCRIPTION  
46 MEDICATIONS AND DEVICES.

47 Criminal diversion of prescription medications and prescriptions in  
48 the [first] SECOND degree is a class C felony.

49 S 7. The penal law is amended by adding a new section 178.30 to read  
50 as follows:

51 S 178.30 CRIMINAL DIVERSION OF PRESCRIPTION MEDICATIONS AND  
52 PRESCRIPTIONS IN THE FIRST DEGREE.

53 A PERSON IS GUILTY OF CRIMINAL DIVERSION OF PRESCRIPTION MEDICATIONS  
54 AND PRESCRIPTIONS IN THE FIRST DEGREE WHEN HE OR SHE COMMITS THE CRIME  
55 OF CRIMINAL DIVERSION OF PRESCRIPTION MEDICATIONS OR PRESCRIPTIONS IN

THE FIFTH DEGREE ON FIVE OR MORE OCCASIONS OVER A NINETY DAY PERIOD, AND IS:

(A) A PHYSICIAN OR OTHER PERSON AUTHORIZED TO ISSUE A PRESCRIPTION; OR  
(B) A PHARMACIST OR OTHER PERSON AUTHORIZED TO DISPENSE PRESCRIPTION MEDICATIONS AND DEVICES.

CRIMINAL DIVERSION OF PRESCRIPTION MEDICATIONS AND PRESCRIPTIONS IN THE FIRST DEGREE IS A CLASS B FELONY.

S 8. The penal law is amended by adding a new article 179 to read as follows:

#### ARTICLE 179

FRAUDULENT PRESCRIPTION, DISPENSING AND PROCUREMENT OF  
NON-CONTROLLED SUBSTANCE PRESCRIPTION MEDICATIONS AND DEVICES  
SECTION 179.00 DEFINITIONS.

179.05 FRAUDULENT PRESCRIPTION, DISPENSING AND PROCUREMENT OF  
NON-CONTROLLED SUBSTANCE PRESCRIPTION MEDICATIONS AND  
DEVICES IN THE THIRD DEGREE.

179.10 FRAUDULENT PRESCRIPTION, DISPENSING AND PROCUREMENT OF  
NON-CONTROLLED SUBSTANCE PRESCRIPTION MEDICATIONS AND  
DEVICES IN THE SECOND DEGREE.

179.15 FRAUDULENT PRESCRIPTION, DISPENSING AND PROCUREMENT OF  
NON-CONTROLLED SUBSTANCE PRESCRIPTION MEDICATIONS AND  
DEVICES IN THE FIRST DEGREE.

S 179.00 DEFINITIONS.

THE FOLLOWING DEFINITIONS ARE APPLICABLE TO THIS ARTICLE:

1. "PRESCRIPTION MEDICATION OR DEVICE" MEANS ANY ARTICLE FOR WHICH A PRESCRIPTION IS REQUIRED IN ORDER TO BE LAWFULLY SOLD, DELIVERED OR DISTRIBUTED BY ANY PERSON AUTHORIZED BY LAW TO ENGAGE IN THE PRACTICE OF THE PROFESSION OF PHARMACY.

2. "PRESCRIPTION" MEANS A DIRECTION OR AUTHORIZATION BY MEANS OF A WRITTEN PRESCRIPTION FORM, AN ELECTRONIC PRESCRIPTION OR AN ORAL PRESCRIPTION WHICH PERMITS A PERSON TO LAWFULLY OBTAIN A PRESCRIPTION MEDICATION OR DEVICE FROM ANY PERSON AUTHORIZED TO DISPENSE SUCH PRESCRIPTION MEDICATION OR DEVICE.

3. "CONTROLLED SUBSTANCE" MEANS ANY SUBSTANCE LISTED IN SCHEDULE I, II, III, IV OR V OF SECTION THIRTY-THREE HUNDRED SIX OF THE PUBLIC HEALTH LAW OTHER THAN MARIHUANA, BUT INCLUDING CONCENTRATED CANNABIS AS DEFINED IN PARAGRAPH (A) OF SUBDIVISION FOUR OF SECTION THIRTY-THREE HUNDRED TWO OF SUCH LAW.

4. "DISPENSING" AND "DISPENSES" REFER TO THE DISPENSING OF A PRESCRIPTION MEDICATION OR DEVICE FROM OR WITHIN A PHARMACY, HOSPITAL, PHYSICIAN'S OFFICE, CLINIC OR OTHER PHARMACEUTICAL OR MEDICAL FACILITY.

S 179.05 FRAUDULENT PRESCRIPTION, DISPENSING AND PROCUREMENT OF  
NON-CONTROLLED SUBSTANCE PRESCRIPTION MEDICATIONS AND DEVICES  
IN THE THIRD DEGREE.

A PERSON IS GUILTY OF FRAUDULENT PRESCRIPTION, DISPENSING AND PROCUREMENT OF NON-CONTROLLED SUBSTANCE PRESCRIPTION MEDICATIONS AND DEVICES IN THE THIRD DEGREE WHEN HE OR SHE:

1. ISSUES A WRITTEN, ELECTRONIC OR ORAL PRESCRIPTION FOR A NON-CONTROLLED SUBSTANCE PRESCRIPTION MEDICATION OR DEVICE, AND IS NOT A DULY LICENSED PHYSICIAN OR OTHER PERSON AUTHORIZED TO ISSUE SUCH PRESCRIPTION; OR

2. DISPENSES A NON-CONTROLLED SUBSTANCE PRESCRIPTION MEDICATION OR DEVICE, WITH KNOWLEDGE OR REASONABLE GROUNDS TO KNOW THAT:

(A) THE PERSON FOR WHOM THE MEDICATION OR DEVICE HAS BEEN PRESCRIBED HAS NO MEDICAL NEED FOR SUCH MEDICATION OR DEVICE; OR

1 (B) NO PRESCRIPTION FOR SUCH MEDICATION OR DEVICE WAS ISSUED BY A DULY  
2 LICENSED PHYSICIAN OR OTHER PERSON AUTHORIZED TO ISSUE SUCH  
3 PRESCRIPTION; OR

4 (C) THE PRESCRIPTION FOR SUCH MEDICATION OR DEVICE WAS FORGED; OR

5 (D) THE PRESCRIPTION FOR SUCH MEDICATION OR DEVICE WAS ISSUED BY A  
6 DULY LICENSED PHYSICIAN OR OTHER PERSON AUTHORIZED TO ISSUE SUCH  
7 PRESCRIPTION WHO WAS ACTING OTHER THAN IN GOOD FAITH IN THE LAWFUL  
8 COURSE OF HIS OR HER PROFESSIONAL PRACTICE.

9 3. PRESENTS OR SUBMITS A PRESCRIPTION FOR A NON-CONTROLLED SUBSTANCE  
10 PRESCRIPTION MEDICATION OR DEVICE TO, OR RECEIVES A NON-CONTROLLED  
11 SUBSTANCE PRESCRIPTION MEDICATION OR DEVICE FROM, A DULY LICENSED PHAR-  
12 MACIST OR OTHER PERSON AUTHORIZED TO DISPENSE SUCH PRESCRIPTION MEDICA-  
13 TION OR DEVICE, WITH KNOWLEDGE OR REASONABLE GROUNDS TO KNOW THAT:

14 (A) THE PERSON FOR WHOM THE MEDICATION OR DEVICE HAS BEEN PRESCRIBED  
15 HAS NO MEDICAL NEED FOR SUCH MEDICATION OR DEVICE; OR

16 (B) THE PRESCRIPTION FOR SUCH MEDICATION OR DEVICE WAS NOT ISSUED BY A  
17 DULY LICENSED PHYSICIAN OR OTHER PERSON AUTHORIZED TO ISSUE SUCH  
18 PRESCRIPTION; OR

19 (C) THE PRESCRIPTION FOR SUCH MEDICATION OR DEVICE WAS FORGED; OR

20 (D) THE PRESCRIPTION FOR SUCH MEDICATION OR DEVICE WAS ISSUED BY A  
21 DULY LICENSED PHYSICIAN OR OTHER PERSON AUTHORIZED TO ISSUE SUCH  
22 PRESCRIPTION WHO WAS ACTING OTHER THAN IN GOOD FAITH IN THE LAWFUL  
23 COURSE OF HIS OR HER PROFESSIONAL PRACTICE.

24 FRAUDULENT PRESCRIPTION, DISPENSING AND PROCUREMENT OF NON-CONTROLLED  
25 SUBSTANCE PRESCRIPTION MEDICATIONS AND DEVICES IN THE THIRD DEGREE IS A  
26 CLASS D FELONY.

27 S 179.10 FRAUDULENT PRESCRIPTION, DISPENSING AND PROCUREMENT OF  
28 NON-CONTROLLED SUBSTANCE PRESCRIPTION MEDICATIONS AND DEVICES  
29 IN THE SECOND DEGREE.

30 A PERSON IS GUILTY OF FRAUDULENT PRESCRIPTION, DISPENSING AND PROCURE-  
31 MENT OF NON-CONTROLLED SUBSTANCE PRESCRIPTION MEDICATIONS AND DEVICES IN  
32 THE SECOND DEGREE WHEN HE OR SHE:

33 1. BEING A DULY LICENSED PHYSICIAN OR OTHER PERSON AUTHORIZED TO ISSUE  
34 A PRESCRIPTION, ISSUES A WRITTEN, ELECTRONIC OR ORAL PRESCRIPTION FOR A  
35 NON-CONTROLLED SUBSTANCE PRESCRIPTION MEDICATION OR DEVICE, OR DISPENSES  
36 A NON-CONTROLLED SUBSTANCE PRESCRIPTION MEDICATION OR DEVICE:

37 (A) WITH KNOWLEDGE OR REASONABLE GROUNDS TO KNOW THAT THE PERSON FOR  
38 WHOM THE PRESCRIPTION IS ISSUED, OR TO WHOM THE MEDICATION IS DISPENSED,  
39 HAS NO MEDICAL NEED FOR THE MEDICATION OR DEVICE THAT IS BEING  
40 PRESCRIBED; OR

41 (B) OTHER THAN IN GOOD FAITH IN THE LAWFUL COURSE OF HIS OR HER  
42 PROFESSIONAL PRACTICE; OR

43 2. BEING A DULY LICENSED PHARMACIST OR OTHER PERSON AUTHORIZED TO  
44 DISPENSE A PRESCRIPTION MEDICATION OR DEVICE, DISPENSES A NON-CONTROLLED  
45 SUBSTANCE PRESCRIPTION MEDICATION OR DEVICE:

46 (A) WITH KNOWLEDGE OR REASONABLE GROUNDS TO KNOW THAT:

47 (I) THE PERSON FOR WHOM THE MEDICATION OR DEVICE HAS BEEN PRESCRIBED  
48 HAS NO MEDICAL NEED FOR SUCH MEDICATION OR DEVICE; OR

49 (II) THE PRESCRIPTION FOR SUCH MEDICATION OR DEVICE WAS NOT ISSUED BY  
50 A DULY LICENSED PHYSICIAN OR OTHER PERSON AUTHORIZED TO ISSUE SUCH  
51 PRESCRIPTION; OR

52 (III) THE PRESCRIPTION FOR SUCH MEDICATION OR DEVICE WAS FORGED; OR

53 (IV) THE PRESCRIPTION FOR SUCH MEDICATION OR DEVICE WAS ISSUED BY A  
54 DULY LICENSED PHYSICIAN OR OTHER PERSON AUTHORIZED TO ISSUE SUCH  
55 PRESCRIPTION WHO WAS ACTING OTHER THAN IN GOOD FAITH IN THE LAWFUL  
56 COURSE OF HIS OR HER PROFESSIONAL PRACTICE; OR

(B) OTHER THAN IN GOOD FAITH, IN THE COURSE OF HIS OR HER LAWFUL PROFESSIONAL PRACTICE.

FRAUDULENT PRESCRIPTION, DISPENSING AND PROCUREMENT OF NON-CONTROLLED SUBSTANCE PRESCRIPTION MEDICATIONS AND DEVICES IN THE SECOND DEGREE IS A CLASS C FELONY.

S 179.15 FRAUDULENT PRESCRIPTION, DISPENSING AND PROCUREMENT OF NON-CONTROLLED SUBSTANCE PRESCRIPTION MEDICATIONS AND DEVICES IN THE FIRST DEGREE.

A PERSON IS GUILTY OF FRAUDULENT PRESCRIPTION, DISPENSING AND PROCUREMENT OF NON-CONTROLLED SUBSTANCE PRESCRIPTION MEDICATIONS AND DEVICES IN THE FIRST DEGREE WHEN HE OR SHE, BEING EITHER A DULY LICENSED PHYSICIAN OR OTHER PERSON AUTHORIZED TO ISSUE A PRESCRIPTION, OR A DULY LICENSED PHARMACIST OR OTHER PERSON AUTHORIZED TO DISPENSE A PRESCRIPTION MEDICATION OR DEVICE, COMMITS THE CRIME OF FRAUDULENT PRESCRIPTION, DISPENSING AND PROCUREMENT OF NON-CONTROLLED SUBSTANCE PRESCRIPTION MEDICATIONS AND DEVICES IN THE SECOND DEGREE ON TWO OR MORE OCCASIONS WITHIN A NINETY DAY PERIOD.

FRAUDULENT PRESCRIPTION, DISPENSING AND PROCUREMENT OF NON-CONTROLLED SUBSTANCE PRESCRIPTION MEDICATIONS AND DEVICES IN THE FIRST DEGREE IS A CLASS B FELONY.

S 9. Title M of the penal law is amended by adding a new article 219 to read as follows:

#### ARTICLE 219

#### UNLAWFUL POSSESSION OF NON-CONTROLLED SUBSTANCE PRESCRIPTION MEDICATIONS AND DEVICES

SECTION 219.00 DEFINITIONS.

219.05 LIMITATIONS ON APPLICATION OF ARTICLE.

219.10 UNLAWFUL POSSESSION OF NON-CONTROLLED SUBSTANCE PRESCRIPTION MEDICATIONS AND DEVICES IN THE FIFTH DEGREE.

219.15 UNLAWFUL POSSESSION OF NON-CONTROLLED SUBSTANCE PRESCRIPTION MEDICATIONS AND DEVICES IN THE FOURTH DEGREE.

219.20 UNLAWFUL POSSESSION OF NON-CONTROLLED SUBSTANCE PRESCRIPTION MEDICATIONS AND DEVICES IN THE THIRD DEGREE.

219.25 UNLAWFUL POSSESSION OF NON-CONTROLLED SUBSTANCE PRESCRIPTION MEDICATIONS AND DEVICES IN THE SECOND DEGREE.

219.30 UNLAWFUL POSSESSION OF NON-CONTROLLED SUBSTANCE PRESCRIPTION MEDICATIONS AND DEVICES IN THE FIRST DEGREE.

S 219.00 DEFINITIONS.

THE FOLLOWING DEFINITIONS ARE APPLICABLE TO THIS ARTICLE:

1. "PRESCRIPTION MEDICATION OR DEVICE" MEANS ANY ARTICLE FOR WHICH A PRESCRIPTION IS REQUIRED IN ORDER TO BE LAWFULLY SOLD, DELIVERED OR DISTRIBUTED BY ANY PERSON AUTHORIZED BY LAW TO ENGAGE IN THE PRACTICE OF THE PROFESSION OF PHARMACY.

2. "PRESCRIPTION" MEANS A DIRECTION OR AUTHORIZATION BY MEANS OF A WRITTEN PRESCRIPTION FORM, AN ELECTRONIC PRESCRIPTION OR AN ORAL PRESCRIPTION WHICH PERMITS A PERSON TO LAWFULLY OBTAIN A PRESCRIPTION MEDICATION OR DEVICE FROM ANY PERSON AUTHORIZED TO DISPENSE SUCH PRESCRIPTION MEDICATION OR DEVICE.

3. "CONTROLLED SUBSTANCE" MEANS ANY SUBSTANCE LISTED IN SCHEDULE I, II, III, IV OR V OF SECTION THIRTY-THREE HUNDRED SIX OF THE PUBLIC HEALTH LAW OTHER THAN MARIHUANA, BUT INCLUDING CONCENTRATED CANNABIS AS

DEFINED IN PARAGRAPH (A) OF SUBDIVISION FOUR OF SECTION THIRTY-THREE HUNDRED TWO OF SUCH LAW.

4. THE VALUE OF A PRESCRIPTION MEDICATION OR DEVICE SHALL BE EQUIVALENT TO THE FAIR MARKET VALUE OF SUCH MEDICATION OR DEVICE ON THE LAWFUL RETAIL MARKET, AT ABOUT THE TIME AND PLACE THAT THE CRIME IS COMMITTED.

S 219.05 LIMITATIONS ON APPLICATION OF ARTICLE.

THE PROVISIONS OF THIS ARTICLE RESTRICTING THE UNLAWFUL POSSESSION OF NON-CONTROLLED SUBSTANCE PRESCRIPTION MEDICATIONS AND DEVICES SHALL NOT APPLY:

1. TO COMMON CARRIERS OR TO WAREHOUSEMEN, WHILE ENGAGED IN LAWFULLY TRANSPORTING OR STORING SUCH NON-CONTROLLED SUBSTANCE PRESCRIPTION MEDICATIONS AND DEVICES, OR TO ANY EMPLOYEE OF THE SAME ACTING WITHIN THE SCOPE OF HIS OR HER EMPLOYMENT; OR

2. TO PUBLIC OFFICERS OR THEIR EMPLOYEES IN THE LAWFUL PERFORMANCE OF THEIR OFFICIAL DUTIES REQUIRING THE POSSESSION OR CONTROL OF SUCH NON-CONTROLLED SUBSTANCE PRESCRIPTION MEDICATIONS AND DEVICES; OR

3. TO TEMPORARY INCIDENTAL POSSESSION BY EMPLOYEES OR AGENTS OF PERSONS LAWFULLY ENTITLED TO POSSESS SUCH NON-CONTROLLED SUBSTANCE PRESCRIPTION MEDICATIONS AND DEVICES, OR BY PERSONS WHOSE POSSESSION IS FOR THE PURPOSE OF AIDING PUBLIC OFFICERS IN PERFORMING THEIR OFFICIAL DUTIES; OR

4. TO A DULY LICENSED PHYSICIAN, DULY LICENSED PHARMACIST OR OTHER PERSON AUTHORIZED TO POSSESS OR DISPENSE SUCH NON-CONTROLLED SUBSTANCE PRESCRIPTION MEDICATIONS AND DEVICES, ACTING IN GOOD FAITH IN THE LAWFUL COURSE OF HIS OR HER PROFESSION; OR

5. TO TEMPORARY INCIDENTAL POSSESSION BY A PERSON ACTING IN GOOD FAITH WHO REASONABLY BELIEVES THAT HE OR SHE IS ASSISTING ANOTHER PERSON TO OBTAIN A NON-CONTROLLED SUBSTANCE PRESCRIPTION MEDICATION OR DEVICE THAT HAS BEEN LAWFULLY PRESCRIBED TO THAT OTHER PERSON.

S 219.10 UNLAWFUL POSSESSION OF NON-CONTROLLED SUBSTANCE PRESCRIPTION MEDICATIONS AND DEVICES IN THE FIFTH DEGREE.

A PERSON IS GUILTY OF UNLAWFUL POSSESSION OF NON-CONTROLLED SUBSTANCE PRESCRIPTION MEDICATIONS AND DEVICES IN THE FIFTH DEGREE WHEN SUCH PERSON KNOWINGLY POSSESSES ONE OR MORE NON-CONTROLLED SUBSTANCE PRESCRIPTION MEDICATIONS OR DEVICES WHICH WERE NOT LAWFULLY PRESCRIBED TO HIM OR HER, UNDER CIRCUMSTANCES EVINCING AN INTENT TO SELL THE SAME; AND

1. THE AGGREGATE VALUE OF SUCH NON-CONTROLLED SUBSTANCE PRESCRIPTION MEDICATIONS AND DEVICES EXCEEDS TWO HUNDRED DOLLARS; OR

2. HE OR SHE POSSESSES TWENTY OR MORE PILLS, TABLETS OR CAPSULES OF SUCH NON-CONTROLLED SUBSTANCE PRESCRIPTION MEDICATIONS AND DEVICES.

UNLAWFUL POSSESSION OF NON-CONTROLLED SUBSTANCE PRESCRIPTION MEDICATIONS AND DEVICES IN THE FIFTH DEGREE IS A CLASS A MISDEMEANOR.

S 219.15 UNLAWFUL POSSESSION OF NON-CONTROLLED SUBSTANCE PRESCRIPTION MEDICATIONS AND DEVICES IN THE FOURTH DEGREE.

A PERSON IS GUILTY OF UNLAWFUL POSSESSION OF NON-CONTROLLED SUBSTANCE PRESCRIPTION MEDICATIONS AND DEVICES IN THE FOURTH DEGREE WHEN HE OR SHE KNOWINGLY AND UNLAWFULLY POSSESSES ONE OR MORE NON-CONTROLLED SUBSTANCE PRESCRIPTION MEDICATIONS AND DEVICES WHICH WERE NOT LAWFULLY PRESCRIBED TO HIM OR HER; AND

1. THE AGGREGATE VALUE OF SUCH NON-CONTROLLED SUBSTANCE PRESCRIPTION MEDICATIONS AND DEVICES EXCEEDS FIVE HUNDRED DOLLARS; OR

2. HE OR SHE POSSESSES FIFTY OR MORE PILLS, TABLETS OR CAPSULES OF SUCH NON-CONTROLLED SUBSTANCE PRESCRIPTION MEDICATIONS AND DEVICES; OR

1 3. HE OR SHE POSSESSES A NON-CONTROLLED SUBSTANCE PRESCRIPTION MEDICA-  
2 TION OR DEVICE WITH AN INTENT TO SELL IT; OR

3 4. HE OR SHE COMMITS THE CRIME OF UNLAWFUL POSSESSION OF NON-CONT-  
4 ROLLED PRESCRIPTION MEDICATIONS AND DEVICES IN THE FIFTH DEGREE, AND HAS  
5 PREVIOUSLY BEEN CONVICTED OF THE CRIME OF UNLAWFUL POSSESSION OF  
6 NON-CONTROLLED PRESCRIPTION MEDICATIONS AND DEVICES.

7 UNLAWFUL POSSESSION OF NON-CONTROLLED SUBSTANCE PRESCRIPTION MEDICA-  
8 TIONS AND DEVICES IN THE FOURTH DEGREE IS A CLASS E FELONY.

9 S 219.20 UNLAWFUL POSSESSION OF NON-CONTROLLED SUBSTANCE PRESCRIPTION  
10 MEDICATIONS AND DEVICES IN THE THIRD DEGREE.

11 A PERSON IS GUILTY OF UNLAWFUL POSSESSION OF NON-CONTROLLED SUBSTANCE  
12 PRESCRIPTION MEDICATIONS AND DEVICES IN THE THIRD DEGREE WHEN HE OR SHE  
13 KNOWINGLY AND UNLAWFULLY POSSESSES ONE OR MORE NON-CONTROLLED SUBSTANCE  
14 PRESCRIPTION MEDICATIONS AND DEVICES WHICH WERE NOT LAWFULLY PRESCRIBED  
15 TO HIM OR HER; AND

16 1. THE AGGREGATE VALUE OF SUCH NON-CONTROLLED SUBSTANCE PRESCRIPTION  
17 MEDICATIONS AND DEVICES EXCEEDS FIFTEEN HUNDRED DOLLARS; OR

18 2. HE OR SHE POSSESSES ONE HUNDRED FIFTY OR MORE PILLS, TABLETS OR  
19 CAPSULES OF SUCH NON-CONTROLLED SUBSTANCE PRESCRIPTION MEDICATIONS AND  
20 DEVICES.

21 UNLAWFUL POSSESSION OF NON-CONTROLLED SUBSTANCE PRESCRIPTION MEDICA-  
22 TIONS AND DEVICES IN THE THIRD DEGREE IS A CLASS D FELONY.

23 S 219.25 UNLAWFUL POSSESSION OF NON-CONTROLLED SUBSTANCE PRESCRIPTION  
24 MEDICATIONS AND DEVICES IN THE SECOND DEGREE.

25 A PERSON IS GUILTY OF UNLAWFUL POSSESSION OF NON-CONTROLLED SUBSTANCE  
26 PRESCRIPTION MEDICATIONS AND DEVICES IN THE SECOND DEGREE WHEN HE OR SHE  
27 KNOWINGLY AND UNLAWFULLY POSSESSES ONE OR MORE NON-CONTROLLED SUBSTANCE  
28 PRESCRIPTION MEDICATIONS AND DEVICES WHICH WERE NOT LAWFULLY PRESCRIBED  
29 TO HIM OR HER; AND

30 1. THE AGGREGATE VALUE OF SUCH NON-CONTROLLED SUBSTANCE PRESCRIPTION  
31 MEDICATIONS AND DEVICES EXCEEDS TEN THOUSAND DOLLARS; OR

32 2. HE OR SHE POSSESSES ONE THOUSAND OR MORE PILLS, TABLETS OR CAPSULES  
33 OF SUCH NON-CONTROLLED SUBSTANCE PRESCRIPTION MEDICATIONS AND DEVICES.

34 UNLAWFUL POSSESSION OF NON-CONTROLLED SUBSTANCE PRESCRIPTION MEDICA-  
35 TIONS AND DEVICES IN THE SECOND DEGREE IS A CLASS C FELONY.

36 S 219.30 UNLAWFUL POSSESSION OF NON-CONTROLLED SUBSTANCE PRESCRIPTION  
37 MEDICATIONS AND DEVICES IN THE FIRST DEGREE.

38 A PERSON IS GUILTY OF UNLAWFUL POSSESSION OF NON-CONTROLLED SUBSTANCE  
39 PRESCRIPTION MEDICATIONS AND DEVICES IN THE FIRST DEGREE WHEN HE OR SHE  
40 KNOWINGLY AND UNLAWFULLY POSSESSES ONE OR MORE NON-CONTROLLED SUBSTANCE  
41 PRESCRIPTION MEDICATIONS AND DEVICES WHICH WERE NOT LAWFULLY PRESCRIBED  
42 TO HIM OR HER; AND

43 1. THE AGGREGATE VALUE OF SUCH NON-CONTROLLED SUBSTANCE PRESCRIPTION  
44 MEDICATIONS AND DEVICES EXCEEDS ONE HUNDRED THOUSAND DOLLARS; OR

45 2. HE OR SHE POSSESSES TEN THOUSAND OR MORE PILLS, TABLETS OR CAPSULES  
46 OF SUCH NON-CONTROLLED SUBSTANCE PRESCRIPTION MEDICATIONS AND DEVICES.

47 UNLAWFUL POSSESSION OF NON-CONTROLLED SUBSTANCE PRESCRIPTION MEDICA-  
48 TIONS AND DEVICES IN THE FIRST DEGREE IS A CLASS B FELONY.

49 S 10. This act shall take effect on the ninetieth day after it shall  
50 have become a law.