

S T A T E O F N E W Y O R K

5260--B

2011-2012 Regular Sessions

I N S E N A T E

May 3, 2011

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

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
13 medication or device from any person authorized to dispense such
14 prescription medication or device.
15 3. "PRESCRIPTION FORM" MEANS AN OFFICIAL STATE PRESCRIPTION FORM
16 AUTHORIZED BY A STATE FOR USE BY HEALTH PRACTITIONERS AUTHORIZED TO
17 WRITE PRESCRIPTIONS.

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

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

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

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

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

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

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

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

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

29 (D) A PERSON ACTING IN GOOD FAITH, WHO REASONABLY BELIEVES THAT HE OR
30 SHE IS ASSISTING ANOTHER PERSON TO OBTAIN A PRESCRIPTION, PRESCRIPTION
31 MEDICATION OR DEVICE THAT HAS BEEN LAWFULLY PRESCRIBED TO THAT OTHER
32 PERSON; OR

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

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

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

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

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

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

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

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

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

53 2. commits the crime of criminal diversion of prescription medications
54 and prescriptions in the fourth degree, and has previously been
55 convicted of the crime of criminal diversion of prescription medications
56 and prescriptions [in the fourth degree]; OR

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

45 S 178.30 CRIMINAL DIVERSION OF PRESCRIPTION MEDICATIONS AND
46 PRESCRIPTIONS IN THE FIRST DEGREE.

47 A PERSON IS GUILTY OF CRIMINAL DIVERSION OF PRESCRIPTION MEDICATIONS
48 AND PRESCRIPTIONS IN THE FIRST DEGREE WHEN HE OR SHE COMMITS THE CRIME
49 OF CRIMINAL DIVERSION OF PRESCRIPTION MEDICATIONS OR PRESCRIPTIONS IN
50 THE FIFTH DEGREE ON FIVE OR MORE OCCASIONS OVER A NINETY DAY PERIOD, AND
51 IS:

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

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

55 CRIMINAL DIVERSION OF PRESCRIPTION MEDICATIONS AND PRESCRIPTIONS IN
56 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 PROCURE-
MENT 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-CONT-
ROLLED 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 ACTUAL KNOWLEDGE THAT:

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

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

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

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

1 3. PRESENTS OR SUBMITS A PRESCRIPTION FOR A NON-CONTROLLED SUBSTANCE
2 PRESCRIPTION MEDICATION OR DEVICE TO, OR RECEIVES A NON-CONTROLLED
3 SUBSTANCE PRESCRIPTION MEDICATION OR DEVICE FROM, A DULY LICENSED PHAR-
4 MACIST OR OTHER PERSON AUTHORIZED TO DISPENSE SUCH PRESCRIPTION MEDICA-
5 TION OR DEVICE, WITH ACTUAL KNOWLEDGE THAT:

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

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

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

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

16 FRAUDULENT PRESCRIPTION, DISPENSING AND PROCUREMENT OF NON-CONTROLLED
17 SUBSTANCE PRESCRIPTION MEDICATIONS AND DEVICES IN THE THIRD DEGREE IS A
18 CLASS D FELONY.

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

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

25 1. BEING A DULY LICENSED PHYSICIAN OR OTHER PERSON AUTHORIZED TO ISSUE
26 A PRESCRIPTION, ISSUES A WRITTEN, ELECTRONIC OR ORAL PRESCRIPTION FOR A
27 NON-CONTROLLED SUBSTANCE PRESCRIPTION MEDICATION OR DEVICE, OR DISPENSES
28 A NON-CONTROLLED SUBSTANCE PRESCRIPTION MEDICATION OR DEVICE:

29 (A) WITH ACTUAL KNOWLEDGE THAT THE PERSON FOR WHOM THE PRESCRIPTION IS
30 ISSUED, OR TO WHOM THE MEDICATION IS DISPENSED, HAS NO MEDICAL NEED FOR
31 THE MEDICATION OR DEVICE THAT IS BEING PRESCRIBED; OR

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

34 2. BEING A DULY LICENSED PHARMACIST OR OTHER PERSON AUTHORIZED TO
35 DISPENSE A PRESCRIPTION MEDICATION OR DEVICE, DISPENSES A NON-CONTROLLED
36 SUBSTANCE PRESCRIPTION MEDICATION OR DEVICE, WITH ACTUAL KNOWLEDGE THAT:

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

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

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

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

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

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

53 A PERSON IS GUILTY OF FRAUDULENT PRESCRIPTION, DISPENSING AND PROCURE-
54 MENT OF NON-CONTROLLED SUBSTANCE PRESCRIPTION MEDICATIONS AND DEVICES IN
55 THE FIRST DEGREE WHEN HE OR SHE, BEING EITHER A DULY LICENSED PHYSICIAN
56 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 MEDI-

1 CATIONS AND DEVICES, OR TO ANY EMPLOYEE OF THE SAME ACTING WITHIN THE
2 SCOPE OF HIS OR HER EMPLOYMENT; OR

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

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

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

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

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

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

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

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

31 UNLAWFUL POSSESSION OF NON-CONTROLLED SUBSTANCE PRESCRIPTION MEDICA-
32 TIONS AND DEVICES IN THE FIFTH DEGREE IS A CLASS A MISDEMEANOR.

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

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

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

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

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

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

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

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

54 A PERSON IS GUILTY OF UNLAWFUL POSSESSION OF NON-CONTROLLED SUBSTANCE
55 PRESCRIPTION MEDICATIONS AND DEVICES IN THE THIRD DEGREE WHEN HE OR SHE
56 KNOWINGLY AND UNLAWFULLY POSSESSES ONE OR MORE NON-CONTROLLED SUBSTANCE

1 PRESCRIPTION MEDICATIONS AND DEVICES WHICH WERE NOT LAWFULLY PRESCRIBED
2 TO HIM OR HER; AND

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

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

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

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

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

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

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

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

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

25 A PERSON IS GUILTY OF UNLAWFUL POSSESSION OF NON-CONTROLLED SUBSTANCE
26 PRESCRIPTION MEDICATIONS AND DEVICES IN THE FIRST 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 ONE HUNDRED THOUSAND DOLLARS; OR

32 2. HE OR SHE POSSESSES TEN 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 FIRST DEGREE IS A CLASS B FELONY.

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