



## **H.B. 195**

127th General Assembly  
(As Introduced)

**Reps. Core, J. McGregor, Evans, Bubp, Combs, Adams, Stebelton, Fende**

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### **BILL SUMMARY**

- Provides that the prescription-related exemption from the drug possession offenses only applies if the prescription was a "lawful prescription," defined as a prescription that is issued by a licensed health care practitioner authorized to prescribe drugs, that is not altered or forged, and that was not obtained by means of deception or by theft.
- Decreases the penalty for the offense of deception to obtain a dangerous drug if the drug involved is a "dangerous drug" and a higher penalty does not otherwise apply.
- Increases the penalty for the offense of deception to obtain a dangerous drug if the amount of the drug involved equals or exceeds the bulk amount.

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### **CONTENT AND OPERATION**

#### **Possession of drugs**

Current law, generally, prohibits any person from knowingly obtaining, possessing, or using a controlled substance. Depending on the substance and amount involved, the penalty for a violation of this prohibition ranges from a minor misdemeanor to a felony of the first degree. (R.C. 2925.11.)

However, under current law there are several exceptions to the prohibition against obtaining, possessing, or using a controlled substance. One of these exceptions is for any person who obtained the controlled substance pursuant to a prescription issued by a licensed health professional authorized to prescribe drugs. (See **COMMENT** for the other exceptions.) The bill modifies this exception so that it only applies if the prescription is a "lawful prescription." (R.C. 2925.11(B)(4).)

The bill defines a "lawful prescription" as meaning a prescription that is issued by a licensed health care practitioner authorized to prescribe drugs, that is not altered or forged, and that was not obtained by means of deception or by theft in violation of the theft statute (R.C. 2925.01(KK)).<sup>1</sup>

### **Deception to obtain a dangerous drug**

#### **Current law**

Current law, unchanged by the bill, prohibits a person, by deception, (1) from procuring the administration of, a prescription for, or the dispensing of, a dangerous drug or (2) from possessing an uncompleted preprinted prescription blank used for writing a prescription for a dangerous drug.<sup>2</sup> A violation of either of these prohibitions is the offense of deception to obtain a dangerous drug.

Under current law, deception to obtain a dangerous drug is a felony of the fourth degree with no preference for or against a prison term if the drug involved is a compound, mixture, preparation, or substance included in Schedule I or II, with the exception of marihuana. Deception to obtain a dangerous drug is a felony of the fifth degree with no preference for or against a prison term if the drug involved is a dangerous drug or a compound, mixture, preparation, or substance included in Schedule III, IV, or V or is marihuana. (R.C. 2925.22(A) and (B).)

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<sup>1</sup> "Deception" means knowingly deceiving another or causing another to be deceived by any false or misleading representation, by withholding information, by preventing another from acquiring information, or by any other conduct, act, or omission that creates, confirms, or perpetuates a false impression in another, including a false impression as to law, value, state of mind, or other objective or subjective fact (referencing R.C. 2913.01(A)).

<sup>2</sup> "Dangerous drug" means any of the following: (1) any drug to which either of the following applies: (a) under the "Federal Food, Drug, and Cosmetic Act," the drug is required to bear a label containing the legend "Caution: Federal law prohibits dispensing without prescription" or "Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian" or any similar restrictive statement, or the drug may be dispensed only upon a prescription, or (b) under R.C. Chapter 3715. or 3719., the drug may be dispensed only upon a prescription, (2) any drug that contains a Schedule V controlled substance and that is exempt from R.C. Chapter 3719. or to which that chapter does not apply, (3) any drug intended for administration by injection into the human body other than through a natural orifice of the human body (R.C. 2925.01, referencing R.C. 4729.01(F)).

**The bill**

The bill changes the penalty for the offense of deception to obtain a dangerous drug as follows (R.C. 2925.22(B)):

Drug involved	Penalty	
Dangerous drug, unless a different penalty applies as provided in the following rows	Generally	M2 ( <i>added by the bill</i> )
	The offender previously has been convicted of or pleaded guilty to a drug abuse offense	M1 ( <i>added by the bill</i> )
Compound, mixture, preparation, or substance included in Schedule I or II, except marihuana	Generally	F4 with no preference for or against a prison term ( <i>same as current law</i> )
	Amount of drug involved equals or exceeds the bulk amount but is less than five times the bulk amount or the amount of the drug involved that could be obtained pursuant to the prescription would equal or exceed the bulk amount but would be less than five times the bulk amount	F3, with a presumption for a prison term ( <i>added by the bill</i> )
	Amount of drug involved equals or exceeds 5 times the bulk amount but is less than 50 times the bulk amount or the amount of the drug involved that could be obtained pursuant to the prescription would equal or exceed 5 times the bulk amount but would be less than 50 times the bulk amount	F2, with a presumption for a prison term ( <i>added by the bill</i> )
	Amount of drug involved equals or exceeds 50 times the bulk amount or the amount of the drug involved that could be obtained pursuant to the prescription would equal or exceed 50 times the bulk amount	F1, with a presumption for a prison term ( <i>added by the bill</i> )

Drug involved	Penalty	
Compound, mixture, preparation, or substance included in Schedule III, IV, or V or is marihuana	Generally	F5, with no preference for or against a prison term ( <i>same as current law</i> )
	Amount of drug involved equals or exceeds the bulk amount but is less than five times the bulk amount or the amount of the drug involved that could be obtained pursuant to the prescription would equal or exceed the bulk amount but would be less than five times the bulk amount	F4, with no preference for or against a prison term ( <i>added by the bill</i> )
	Amount of drug involved equals or exceeds 5 times the bulk amount but is less than 50 times the bulk amount or the amount of the drug involved that could be obtained pursuant to the prescription would equal or exceed 5 times the bulk amount but would be less than 50 times the bulk amount	F3, with a presumption of a prison term ( <i>added by the bill</i> )
	Amount of drug involved equals or exceeds 50 times the bulk amount or the amount of the drug involved that could be obtained pursuant to the prescription would equal or exceed 50 times the bulk amount	F2, with a presumption for a prison term ( <i>added by the bill</i> )

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## COMMENT

The drug possession offenses also do not apply to the following persons (R.C. 2925.11(B)(1), (2), and (3)):

(1) Manufacturers, licensed health professionals authorized to prescribe drugs, pharmacists, owners of pharmacies, and other persons whose conduct was

in accordance with R.C. Chapters 3719., 4715., 4723., 4729., 4730., 4731., and 4741.;

(2) If the offense involves an anabolic steroid, any person who is conducting or participating in a research project involving the use of an anabolic steroid if the project has been approved by the U.S. FDA;

(3) Any person who sells, offers for sale, prescribes, dispenses, or administers for livestock or other nonhuman species an anabolic steroid that is expressly intended for administration through implants to livestock or other nonhuman species and approved for that purpose under the "Federal Food, Drug, and Cosmetic Act," and is sold, offered for sale, prescribed, dispensed, or administered for that purpose in accordance with that act.

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## **HISTORY**

<b>ACTION</b>	<b>DATE</b>
Introduced	5-01-07

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