

## CHAPTER 138: DRUG OFFENSES

### Section

- 138.01 Definitions
- 138.02 Trafficking in controlled substances; gift of marihuana
- 138.03 Drug possession offenses
- 138.04 Possessing drug abuse instruments
- 138.05 Permitting drug abuse
- 138.06 Illegal cultivation of marihuana
- 138.07 Abusing harmful intoxicants
- 138.08 Illegal dispensing of drug samples
- 138.09 Federal prosecution bar to municipal prosecution
- 138.10 Nitrous oxide: improper dispensing or distribution; possession in a motor vehicle
- 138.11 Laboratory report required
- 138.12 Counterfeit controlled substances
- 138.13 Use, possession, or sale of drug paraphernalia
- 138.14 Controlled substance or prescription labels
- 138.15 Possession, sale and disposal of hypodermics
- 138.16 Controlled substance schedules
- 138.17 Unlawful furnishing of prescription to enable persons to be issued handicapped parking placards or license plates
- 138.18 Pseudoephedrine sales

### *Statutory reference:*

*Controlled substances, regulation of pharmacists and other professionals, see R.C. Chapters 3719 and 4729*

*Conviction of professionally licensed persons to be reported to licensing board, see R.C. § 2925.38*

*Criminal and civil forfeiture of property for felony drug abuse offenses, see R.C. Chapter 2981*

*Destruction of chemicals used to produce methamphetamine; preservation of samples, see R.C. § 2925.52*

*Driver's license suspension after certain drug convictions, see R.C. § 4510.07*

*Tampering with drugs, felony offense, see R.C. § 2925.24*

### § 138.01 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning. Words, terms and phrases and their derivatives used in this chapter which are not defined in this section shall have the meanings given to them in the Ohio Revised Code.

**ADMINISTER.** The direct application of a drug, whether by injection, inhalation, ingestion, or any other means to a person or an animal.

**ADULTERATE.** To cause a drug to be adulterated as described in R.C. § 3715.63.

**BULK AMOUNT.** Of a controlled substance means any of the following:

(1) For any compound, mixture, preparation, or substance included in Schedule I, Schedule II or Schedule III, with the exception of marihuana, cocaine, L.S.D., heroin, and hashish and except as provided in division (2) or (5) of this definition, whichever of the following is applicable:

(a) An amount equal to or exceeding ten grams or 25 unit doses of a compound, mixture, preparation, or substance that is or contains any amount of a Schedule I opiate or opium derivative;

(b) An amount equal to or exceeding ten grams of a compound, mixture, preparation, or substance that is or contains any amount of raw or gum opium;

(c) An amount equal to or exceeding 30 grams or ten unit doses of a compound, mixture, preparation, or substance that is or contains any amount of a Schedule I hallucinogen other than tetrahydrocannabinol or lysergic acid amide, or a Schedule I stimulant or depressant;

(d) An amount equal to or exceeding 20 grams or five times the maximum daily dose in the usual dose range specified in a standard pharmaceutical reference manual of a compound, mixture, preparation, or substance that is or contains any amount of a Schedule II opiate or opium derivative;

(e) An amount equal to or exceeding five grams or ten unit doses of a compound, mixture, preparation, or substance that is or contains any amount of phencyclidine;

(f) An amount equal to or exceeding 120 grams or 30 times the maximum daily dose in the usual dose range specified in a standard pharmaceutical reference manual of a compound, mixture, preparation, or substance that is or contains any amount of a Schedule II stimulant that is in a final dosage form manufactured by a person authorized by the Federal Food, Drug, and Cosmetic Act (21 U.S.C. §§ 301 et seq., as amended) and the federal drug abuse control laws, as defined in this section, that is or

contains any amount of a Schedule II depressant substance or a Schedule II hallucinogenic substance;

(g) An amount equal to or exceeding three grams of a compound, mixture, preparation, or substance that is or contains any amount of a Schedule II stimulant, or any of its salts or isomers, that is not in a final dosage form manufactured by a person authorized by the Federal Food, Drug, and Cosmetic Act (21 U.S.C. §§ 301 et seq., as amended) and the federal drug abuse control laws;

(2) An amount equal to or exceeding 120 grams or 30 times the maximum daily dose in the usual dose range specified in a standard pharmaceutical reference manual of a compound, mixture, preparation, or substance that is or contains any amount of a Schedule III or IV substance other than an anabolic steroid or a Schedule III opiate or opium derivative;

(3) An amount equal to or exceeding 20 grams or five times the maximum daily dose in the usual dose range specified in a standard pharmaceutical reference manual of a compound, mixture, preparation, or substance that is or contains any amount of a Schedule III opiate or opium derivative;

(4) An amount equal to or exceeding 250 milliliters or 250 grams of a compound, mixture, preparation, or substance that is or contains any amount of a Schedule V substance.

(5) An amount equal to or exceeding 200 solid dosage units, 16 grams, or 16 milliliters of a compound, mixture, preparation, or substance that is or contains any amount of a Schedule III anabolic steroid.

**CERTIFIED GRIEVANCE COMMITTEE.** A duly constituted and organized committee of the Ohio State Bar Association or of one or more local bar associations of the state that complies with the criteria set forth in Rule V, Section 6 of the Rules for the Government of the Bar of Ohio.

**COCAINE.** Any of the following:

(1) A cocaine salt, isomer, or derivative, a salt of a cocaine isomer or derivative, or the base form of cocaine.

(2) Coca leaves or a salt, compound, derivative, or preparation of coca leaves, including ecgonine, a salt, isomer, or derivative of ecgonine, or a salt of an isomer or derivative of ecgonine.

(3) A salt, compound, derivative, or preparation of a substance identified in division (1) or (2) of this definition that is chemically equivalent to or identical with any of those substances, except that the substances shall not include decocainized coca leaves or extraction of coca leaves if the extractions do not contain cocaine or ecgonine.

**COMMITTED IN THE VICINITY OF A JUVENILE.**

An offense is “committed in the vicinity of a juvenile” if the offender commits the offense within 100 feet of a juvenile or within the view of a juvenile, regardless of whether the offender knows the age of the juvenile, whether the offender knows the offense is being committed within 100 feet of or within view of the juvenile, or whether the juvenile actually views the commission of the offense.

**COMMITTED IN THE VICINITY OF A SCHOOL.**

An offense is “committed in the vicinity of a school” if the offender commits the offense on school premises, in a school building, or within 1,000 feet of the boundaries of any school premises, regardless of whether the offender knows the offense is being committed on school premises, in a school building, or within 1,000 feet of the boundaries of any school premises.

**CONTROLLED SUBSTANCE.** A drug, compound, mixture, preparation, or substance included in Schedule I, II, III, IV, or V of R.C. § 3719.41.

**CONTROLLED SUBSTANCE ANALOG.**

(1) The phrase means, except as provided in division (2) of this definition, a substance to which both of the following apply:

(a) The chemical structure of the substance is substantially similar to the structure of a controlled substance in Schedule I or II.

(b) One of the following applies regarding the substance:

1. The substance 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 substance in Schedule I or II.

2. With respect to a particular person, that person represents or intends the substance 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 substance in Schedule I or II.

(2) The phrase does not include any of the following:

(a) A controlled substance;

(b) Any substance for which there is an approved new drug application;

(c) With respect to a particular person, any substance if an exemption is in effect for investigational use for that person pursuant to federal law to the extent that

conduct with respect to that substance is pursuant to that exemption;

(d) Any substance to the extent it is not intended for human consumption before the exemption described in division (2)(c) of this definition takes effect with respect to that substance.

(3) A controlled substance analog, to the extent intended for human consumption, shall be treated for purposes of any provision of this Code or the Ohio Revised Code as a controlled substance in Schedule I.

**COUNTERFEIT CONTROLLED SUBSTANCE.** Any of the following:

(1) Any drug that bears, or whose container or label bears, a trademark, trade name, or other identifying mark used without authorization of the owner of rights to the trademark, trade name, or identifying mark.

(2) Any unmarked or unlabeled substance that is represented to be a controlled substance manufactured, processed, packed, or distributed by a person other than the person that manufactured, processed, packed, or distributed it.

(3) Any substance that is represented to be a controlled substance but is not a controlled substance or is a different controlled substance.

(4) Any substance other than a controlled substance that a reasonable person would believe to be a controlled substance because of its similarity in shape, size, and color, or its markings, labeling, packaging, distribution, or the price for which it is sold or offered for sale.

**CULTIVATE.** Includes planting, watering, fertilizing or tilling.

**DANGEROUS DRUG.** Any of the following:

(1) Any drug to which either of the following applies:

(a) Under the Federal Food, Drug, and Cosmetic Act, is required to bear a label containing the legend "Caution: Federal law prohibits dispensing without a 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 may be dispensed only upon a prescription.

(b) Under R.C. Chapter 3715 or 3719, 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.

**DECEPTION.** Has the same meaning as in R.C. § 2913.01.

**DISCIPLINARY COUNSEL.** The disciplinary counsel appointed by the Board of Commissioners on Grievances and Discipline of the Ohio Supreme Court under the Rules for the Government of the Bar of Ohio.

**DISPENSE.** Means to sell, leave with, give away, dispose of, or deliver.

**DISTRIBUTE.** Means to deal in, ship, transport or deliver, but does not include administering or dispensing a drug.

**DRUG.** Any of the following:

(1) Any article recognized in the official United States pharmacopeia, national formulary, or any supplement intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or other animals.

(2) Any other article intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or other animals.

(3) Any article, other than food, intended to affect the structure or any function of the body of humans or other animals.

(4) Any article intended for use as a component of any article specified in division (1), (2), or (3) above; but does not include devices or their components, parts, or accessories.

**DRUG ABUSE OFFENSE.** Any of the following:

(1) A violation of R.C. § 2913.02(A) that constitutes theft of drugs, or any violation of R.C. § 2925.02, 2925.03, 2925.04, 2925.041, 2925.05, 2925.06, 2925.11, 2925.12, 2925.13, 2925.22, 2925.23, 2925.24, 2925.31, 2925.32, 2925.36, or 2925.37.

(2) A violation of an existing or former law of a municipality, state or any other state or of the United States, that is substantially equivalent to any section listed in division (1) of this definition.

(3) An offense under an existing or former law of a municipality, state or any other state, or of the United States, of which planting, cultivating, harvesting, processing, making, manufacturing, producing, shipping, transporting, delivering, acquiring, possessing, storing, distributing, dispensing, selling, inducing another to use, administering to another, using, or otherwise dealing with a controlled substance is an element.

(4) A conspiracy to commit, attempt to commit, or complicity in committing or attempting to commit, any offense under division (1), (2), or (3) of this definition.

**DRUG DEPENDENT PERSON.** Any person who, by reason of the use of any drug of abuse, is physically and/or psychologically dependent upon the use of such drug to the detriment of the person's health or welfare.

**DRUG OF ABUSE.** Any controlled substance, any harmful intoxicant, and any dangerous drug, as defined in this section.

**FEDERAL DRUG ABUSE CONTROL LAWS.** The "Comprehensive Drug Abuse Prevention and Control Act of 1970," 21 U.S.C. §§ 801 et seq., as amended.

**FELONY DRUG ABUSE OFFENSE.** Any drug abuse offense that would constitute a felony under the laws of this state, any other state, or the United States.

**HARMFUL INTOXICANT.** Does not include beer or intoxicating liquor, but means any of the following:

(1) Any compound, mixture, preparation, or substance the gas, fumes, or vapor of which when inhaled can induce intoxication, excitement, giddiness, irrational behavior, depression, stupefaction, paralysis, unconsciousness, asphyxiation, or other harmful physiological effects, and includes but is not limited to any of the following:

(a) Any volatile organic solvent, plastic cement, model cement, fingernail polish remover, lacquer thinner, cleaning fluid, gasoline, or other preparation containing a volatile organic solvent.

(b) Any aerosol propellant.

(c) Any fluorocarbon refrigerant.

(d) Any anesthetic gas.

(2) Gamma Butyrolactone;

(3) 1,4 Butanediol.

**HASHISH.** The resin or a preparation of the resin contained in marihuana, whether in solid form or in a liquid concentrate, liquid extract, or liquid distillate form.

**HYPODERMIC.** A hypodermic syringe or needle, or other instrument or device for the injection of medication.

**JUVENILE.** A person under 18 years of age.

**LABORATORY.** A laboratory approved by the State Board of Pharmacy as proper to be entrusted with the custody of controlled substances and the use of controlled substances for scientific and clinical purposes and for purposes of instruction.

**LAWFUL PRESCRIPTION.** A prescription that is issued for a legitimate medical purpose by a licensed health professional authorized to prescribe drugs, that is not altered or forged, and that was not obtained by means of deception or by the commission of any theft offense.

**LICENSED HEALTH PROFESSIONAL AUTHORIZED TO PRESCRIBE DRUGS or PRESCRIBER.** An individual who is authorized by law to prescribe drugs or dangerous drugs or drug therapy related devices in the course of the individual's professional practice, including only the following:

(1) A dentist licensed under R.C. Chapter 4715.

(2) A clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner who holds a certificate to prescribe issued under R.C. § 4723.48.

(3) An optometrist licensed under R.C. Chapter 4725 to practice optometry under a therapeutic pharmaceutical agent's certificate.

(4) A physician authorized under R.C. Chapter 4731 to practice medicine and surgery, osteopathic medicine and surgery, or podiatric medicine and surgery.

(5) A physician assistant who holds a certificate to prescribe issued under R.C. Chapter 4730.

(6) A veterinarian licensed under R.C. Chapter 4741.

**L.S.D.** Lysergic acid diethylamide.

**MAJOR DRUG OFFENDER.** Has the same meaning as in R.C. § 2929.01.

**MANDATORY PRISON TERM.** Has the same meaning as in R.C. § 2929.01.

**MANUFACTURE.** To plant, cultivate, harvest, process, make, prepare, or otherwise engage in any part of the production of a drug, by propagation, extraction, chemical synthesis, or compounding, or any combination of the same, and includes packaging, repackaging, labeling, and other activities incident to production.

**MANUFACTURER.** A person who manufactures a controlled substance, as "manufacture" is defined by this section.

**MARIHUANA.** All parts of a plant of the genus cannabis, whether growing or not, the seeds of a plant of that type; the resin extracted from a part of a plant of that type; and every compound, manufacture, salt, derivative, mixture, or preparation of a plant of that type or of its seeds or resin. The term does not include the mature stalks of the plant, fiber produced from the stalks, oils or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the

mature stalks, except the resin extracted from the mature stalks, fiber, oil, or cake, or the sterilized seed of the plant that is incapable of germination. The term does not include hashish.

**METHAMPHETAMINE.** Methamphetamine, any salt, isomer, or salt of an isomer of methamphetamine, or any compound, mixture, preparation, or substance containing methamphetamine or any salt, isomer, or salt of an isomer of methamphetamine.

**MINOR DRUG POSSESSION OFFENSE.** Either of the following:

(1) A violation of R.C. § 2925.11 as it existed prior to July 1, 1996, or a substantially equivalent municipal ordinance.

(2) A violation of R.C. § 2925.11 as it exists on and after July 1, 1996, or a substantially equivalent municipal ordinance, that is a misdemeanor or a felony of the fifth degree.

**OFFICIAL WRITTEN ORDER.** An order written on a form provided for that purpose by the Director of the United States Drug Enforcement Administration, under any laws of the United States making provision for the order, if the order forms are authorized and required by federal law.

**PERSON.** Means any individual, corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership, association or other legal entity.

**PHARMACIST.** A person licensed under R.C. Chapter 4729 to engage in the practice of pharmacy.

**PHARMACY.** Except when used in a context that refers to the practice of pharmacy, means any area, room, rooms, place of business, department, or portion of any of the foregoing, where the practice of pharmacy is conducted.

**POSSESS or POSSESSION.** Having control over a thing or substance but may not be inferred solely from mere access to the thing or substance through ownership or occupation of the premises upon which the thing or substance is found.

**PRESCRIPTION.** A written, electronic or oral order for drugs or combination or mixtures of drugs to be used by a particular individual or for treating a particular animal, issued by a licensed health professional authorized to prescribe drugs.

**PRESUMPTION FOR A PRISON TERM or PRESUMPTION THAT A PRISON TERM SHALL BE IMPOSED.** A presumption as described in R.C. § 2929.13(D) that a prison term is a necessary sanction for a felony in order to comply with the purposes and principles of sentencing under R.C. § 2929.11.

**PROFESSIONAL LICENSE.** Any license, permit, certificate, registration, qualification, admission, temporary license, temporary permit, temporary certificate, or temporary registration that is described in R.C. § 2925.01(W)(1) through (W)(36) and that qualifies a person as a professionally licensed person.

**PROFESSIONALLY LICENSED PERSON.** Any of the following:

(1) A person who has obtained a license as a manufacturer of controlled substances or a wholesaler of controlled substances under R.C. Chapter 3719;

(2) A person who has received a certificate or temporary certificate as a certified public accountant or who has registered as a public accountant under R.C. Chapter 4701 and who holds an Ohio permit issued under that chapter;

(3) A person who holds a certificate of qualification to practice architecture issued or renewed and registered under R.C. Chapter 4703;

(4) A person who is registered as a landscape architect under R.C. Chapter 4703 or who holds a permit as a landscape architect issued under that chapter;

(5) A person licensed under R.C. Chapter 4707;

(6) A person who has been issued a certificate of registration as a registered barber under R.C. Chapter 4709;

(7) A person licensed and regulated to engage in the business of a debt pooling company by a legislative authority, under authority of R.C. Chapter 4710;

(8) A person who has been issued a cosmetologist's license, hair designer's license, manicurist's license, esthetician's license, natural hair stylist's license, managing cosmetologist's license, managing hair designer's license, managing manicurist's license, managing esthetician's license, managing natural hair stylist's license, cosmetology instructor's license, hair design instructor's license, manicurist instructor's license, esthetics instructor's license, natural hair style instructor's license, independent contractor's license, or tanning facility permit under R.C. Chapter 4713;

(9) A person who has been issued a license to practice dentistry, a general anesthesia permit, a conscious intravenous sedation permit, a limited resident's license, a limited teaching license, a dental hygienist's license, or a dental hygienist's teacher's certificate under R.C. Chapter 4715;

(10) A person who has been issued an embalmer's license, a funeral director's license, a funeral home license, or a crematory license, or who has been

registered for an embalmer's or funeral director's apprenticeship under R.C. Chapter 4717;

(11) A person who has been licensed as a registered nurse or practical nurse, or who has been issued a certificate for the practice of nurse-midwifery under R.C. Chapter 4723;

(12) A person who has been licensed to practice optometry or to engage in optical dispensing under R.C. Chapter 4725;

(13) A person licensed to act as a pawnbroker under R.C. Chapter 4727;

(14) A person licensed to act as a precious metals dealer under R.C. Chapter 4728;

(15) A person licensed as a pharmacist, a pharmacy intern, a wholesale distributor of dangerous drugs, or a terminal distributor of dangerous drugs under R.C. Chapter 4729;

(16) A person who is authorized to practice as a physician assistant under R.C. Chapter 4730;

(17) A person who has been issued a certificate to practice medicine and surgery, osteopathic medicine and surgery, a limited branch of medicine, or podiatry under R.C. Chapter 4731;

(18) A person licensed as a psychologist or school psychologist under R.C. Chapter 4732;

(19) A person registered to practice the profession of engineering or surveying under R.C. Chapter 4733;

(20) A person who has been issued a license to practice chiropractic under R.C. Chapter 4734;

(21) A person licensed to act as a real estate broker or real estate salesperson under R.C. Chapter 4735;

(22) A person registered as a registered sanitarian under R.C. Chapter 4736;

(23) A person licensed to operate or maintain a junkyard under R.C. Chapter 4737;

(24) A person who has been issued a motor vehicle salvage dealer's license under R.C. Chapter 4738;

(25) A person who has been licensed to act as a steam engineer under R.C. Chapter 4739;

(26) A person who has been issued a license or temporary permit to practice veterinary medicine or any of its branches, or who is registered as a graduate animal technician under R.C. Chapter 4741;

(27) A person who has been issued a hearing aid dealer's or fitter's license or trainee permit under R.C. Chapter 4747;

(28) A person who has been issued a class A, class B, or class C license or who has been registered as an investigator or security guard employee under R.C. Chapter 4749;

(29) A person licensed and registered to practice as a nursing home administrator under R.C. Chapter 4751;

(30) A person licensed to practice as a speech-language pathologist or audiologist under R.C. Chapter 4753;

(31) A person issued a license as an occupational therapist or physical therapist under R.C. Chapter 4755;

(32) A person who is licensed as a professional clinical counselor or professional counselor, licensed as a social worker or independent social worker, or registered as a social work assistant under R.C. Chapter 4757;

(33) A person issued a license to practice dietetics under R.C. Chapter 4759;

(34) A person who has been issued a license or limited permit to practice respiratory therapy under R.C. Chapter 4761;

(35) A person who has been issued a real estate appraiser certificate under R.C. Chapter 4763;

(36) A person who has been admitted to the bar by order of the Ohio Supreme Court in compliance with its prescribed and published rules.

**PUBLIC PREMISES.** Any hotel, restaurant, tavern, store, arena, hall, or other place of public accommodation, business, amusement, or resort.

**SALE.** Includes delivery, barter, exchange, transfer, or gift, or offer thereof, and each transaction of those natures made by any person, whether as principal, proprietor, agent, servant or employee.

**SAMPLE DRUG.** A drug or pharmaceutical preparation that would be hazardous to health or safety if used without the supervision of a licensed health professional authorized to prescribe drugs, or a drug of abuse, and that, at one time, had been placed in a container plainly marked as a sample by a manufacturer.

**SCHEDULE I, II, III, IV OR V.** Controlled substance Schedules I, II, III, IV, and V established pursuant to R.C. § 3719.41, as amended pursuant to R.C. § 3719.43 or 3719.44.

**SCHOOL.** Any school operated by a board of education, any community school established under R.C.

Chapter 3314, or any nonpublic school for which the State Board of Education prescribes minimum standards under R.C. § 3301.07, whether or not any instruction, extracurricular activities, or training provided by the school is being conducted at the time a criminal offense is committed.

**SCHOOL BUILDING.** Any building in which any of the instruction, extracurricular activities, or training provided by a school is conducted, whether or not any instruction, extracurricular activities, or training provided by the school is being conducted in the school building at the time a criminal offense is committed.

**SCHOOL PREMISES.** Either of the following:

(1) The parcel of real property on which any school is situated, whether or not any instruction, extracurricular activities, or training provided by the school is being conducted on the premises at the time a criminal offense is committed.

(2) Any other parcel of real property that is owned or leased by a board of education of a school, the governing authority of a community school established under R.C. Chapter 3314, or the governing body of a nonpublic school for which the State Board of Education prescribes minimum standards under R.C. § 3301.07 and on which some of the instruction, extracurricular activities, or training of the school is conducted, whether or not any instruction, extracurricular activities, or training provided by the school is being conducted on the parcel of real property at the time a criminal offense is committed.

**STANDARD PHARMACEUTICAL REFERENCE MANUAL.** The current edition, with cumulative changes if any, of any of the following reference works:

(1) The *National Formulary*.

(2) The *United States Pharmacopeia*, prepared by the authority of the United States Pharmacopeia Convention, Inc.

(3) Other standard references that are approved by the State Board of Pharmacy.

**THEFT OFFENSE.** Has the same meaning as in R.C. § 2913.01.

**UNIT DOSE.** An amount or unit of a compound, mixture, or preparation containing a controlled substance that is separately identifiable and in a form that indicates that it is the amount or unit by which the controlled substance is separately administered to or taken by an individual.

**WHOLESALE.** A person who, on official written orders other than prescriptions, supplies controlled substances that the person has not manufactured, produced or prepared personally and includes **WHOLESALE**

**DISTRIBUTOR OF DANGEROUS DRUGS**, which means a person engaged in the sale of dangerous drugs at wholesale and includes any agent or employee of that person authorized by that person to engage in the sale of dangerous drugs at wholesale.

(R.C. §§ 2925.01, 3719.01, 3719.011, 3719.013, 4729.01) (Rev. 2012)

### § 138.02 TRAFFICKING IN CONTROLLED SUBSTANCES; GIFT OF MARIHUANA.

(A) No person shall knowingly do any of the following:

(1) Sell or offer to sell a controlled substance;

(2) Prepare for shipment, ship, transport, deliver, prepare for distribution, or distribute a controlled substance, when the offender knows or has reasonable cause to believe that the controlled substance is intended for sale or resale by the offender or another person.

(B) This section does not apply to any of the following:

(1) Manufacturers, licensed health professionals authorized to prescribe drugs, pharmacists, owners of pharmacies, and other persons whose conduct is 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 United States Food and Drug Administration.

(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" (21 U.S.C. §§ 301 et seq., as amended), and is sold, offered for sale, prescribed, dispensed, or administered for that purpose in accordance with that Act.

(C) Whoever violates division (A) of this section is guilty of the following:

(1) Except as otherwise provided in divisions (C)(2) and (C)(3) of this section, trafficking in controlled substances is a felony to be prosecuted under appropriate state law.

(2) Except as otherwise provided in division (C)(3) of this section, if the offense involves a gift of 20 grams or less of marihuana, trafficking in marihuana is a minor misdemeanor upon a first offense and a misdemeanor of the third degree upon a subsequent offense.

(3) If the offense involves a gift of 20 grams or less of marihuana and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in marihuana is a misdemeanor of the third degree.

(D) In addition to any prison term authorized or required by division (C) of this section and R.C. §§ 2929.13 and 2929.14, and in addition to any other sanction imposed for the offense under this section or R.C. §§ 2929.11 through 2929.18, the court that sentences a person who is convicted of or pleads guilty to a violation of division (A) of this section shall do all of the following that are applicable regarding the offender:

(1) The court shall suspend for not less than six months nor more than five years the driver's or commercial driver's license or permit of any person who is convicted of or has pleaded guilty to a violation of this section.

(2) If the offender is a professionally licensed person, the court immediately shall comply with R.C. § 2925.38.

(E) (1) Notwithstanding any contrary provision of R.C. § 3719.21 and except as provided in R.C. § 2925.03(H), the Clerk of the Court shall pay any mandatory fine imposed pursuant to this section and any fine other than a mandatory fine that is imposed for a violation of this section pursuant to R.C. § 2929.18(A) or (B)(5) to the county, township, municipality, park district, as created pursuant to R.C. § 511.18 or 1545.04, or state law enforcement agencies in this state that primarily were responsible for or involved in making the arrest of, and in prosecuting, the offender. However, the Clerk shall not pay a mandatory fine so imposed to a law enforcement agency unless the agency has adopted a written internal control policy under division (E)(2) of this section that addresses the use of the fine moneys that it receives. Each agency shall use the mandatory fines so paid to subsidize the agency's law enforcement efforts that pertain to drug offenses, in accordance with the written internal control policy adopted by the recipient agency under division (E)(2) of this section.

(2) (a) Prior to receiving any fine moneys under division (E)(1) of this section or R.C. § 2925.42(B), a law enforcement agency shall adopt a written internal control policy that addresses the agency's use and disposition of all fine moneys so received and that provides for the keeping of detailed financial records of the receipts of those fine moneys, the general types of expenditures made out of those fine moneys, and the specific amount of each general type of expenditure. The policy shall not provide for or permit the identification of any specific expenditure that is made in an ongoing investigation. All financial records of the receipts of those fine moneys, the general type of expenditures made out of those fine moneys, and the specific amount of each general type of expenditure by an agency are public records open for inspection under R.C. § 149.43. Additionally, a written internal control policy

adopted under this division is such a public record, and the agency that adopted it shall comply with it.

(b) Each law enforcement agency that receives in any calendar year any fine moneys under division (E)(1) of this section or R.C. § 2925.42(B) shall prepare a report covering the calendar year that cumulates all of the information contained in all of the public financial records kept by the agency pursuant to division (E)(2)(a) of this section for that calendar year, and shall send a copy of the cumulative report, no later than the first day of March in the calendar year following the calendar year covered by the report, to the Attorney General. Each report received by the Attorney General is a public record open for inspection under R.C. § 149.43.

(3) As used in division (E) of this section:

**LAW ENFORCEMENT AGENCIES.** Includes but is not limited to the State Board of Pharmacy and the office of a prosecutor.

**PROSECUTOR.** Has the same meaning as in R.C. § 2935.01.

(F) As used in this section, **DRUG** includes any substance that is represented to be a drug. (R.C. § 2925.03) (Rev. 2012)

**Statutory reference:**

*Felony drug trafficking offenses, see R.C. § 2925.03(C)*

**§ 138.03 DRUG POSSESSION OFFENSES.**

(A) No person shall knowingly obtain, possess, or use a controlled substance.

(B) This section does not apply to any of the following:

(1) Manufacturers, licensed health professionals authorized to prescribe drugs, pharmacists, owners of pharmacies, and other persons whose conduct is 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 United States Food and Drug Administration.

(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.



(4) Any person who obtained the controlled substance pursuant to a prescription issued by a licensed health professional authorized to prescribe drugs.

(C) Whoever violates division (A) of this section is guilty of one of the following:

(1) Except as otherwise provided in divisions (C)(2), (C)(3), (C)(4), and (C)(5), if the drug involved in the violation is a compound, mixture, preparation, or substance included in Schedule I or II of R.C. § 3719.41, or is cocaine, L.S.D., heroin, or a compound, mixture or preparation containing such drugs, possession of drugs is a felony to be prosecuted under appropriate state law.

(2) If the drug involved is a compound, mixture, preparation, or substance included in Schedule III, IV, or V of R.C. § 3719.41, whoever violates division (A) of this section is guilty of possession of drugs. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in the following division, possession of drugs is a misdemeanor of the first degree or, if the offender previously has been convicted of a drug abuse offense, it is a felony to be prosecuted under appropriate state law.

(b) If the amount of the drug involved equals or exceeds the bulk amount, possession of drugs is a felony to be prosecuted under appropriate state law.

(3) If the drug involved in the violation is marihuana or a compound, mixture, preparation or substance containing marihuana other than hashish, whoever violates division (A) of this section is guilty of possession of marihuana. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in the following divisions, possession of marihuana is a minor misdemeanor.

(b) If the amount of the drug involved equals or exceeds 100 grams but is less than 200 grams, possession of marihuana is a misdemeanor of the fourth degree.

(c) If the amount of the drug involved equals or exceeds 200 grams, possession of marihuana is a felony to be prosecuted under appropriate state law.

(4) If the drug involved in the violation is hashish or a compound, mixture, preparation or substance containing hashish, whoever violates division (A) of this section is guilty of possession of hashish. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in the following divisions, possession of hashish is a minor misdemeanor.

(b) If the amount of the drug involved equals or exceeds five grams but is less than ten grams of hashish in a solid form or equals or exceeds one gram but is less than two grams of hashish in a liquid concentrate, liquid extract, or liquid distillate form, possession of hashish is a misdemeanor of the fourth degree.

(c) If the amount of the drug involved equals or exceeds ten grams of hashish in a solid form or equals or exceeds two grams of hashish in a liquid concentrate, liquid extract, or liquid distillate form, possession of hashish is a felony to be prosecuted under appropriate state law.

(5) As used in this division, *SPICE* means 1-Pentyl-3-(1-naphthoyl)indole, 1-Butyl-3-(1-naphthoyl)indole, 1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl)indole, 5-(1,1-dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol, or 5-(1,1-dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol. If the drug involved is spice or a compound, mixture, preparation, or substance containing spice, whoever violates division (A) of this section is guilty of possession of spice, a minor misdemeanor.

(D) Arrest or conviction for a minor misdemeanor violation of this section does not constitute a criminal record and need not be reported by the person so arrested or convicted in response to any inquiries about the person's criminal record, including any inquiries contained in any application for employment, license, or other right or privilege, or made in connection with the person's appearance as a witness.

(E) In addition to any prison term or jail term authorized or required by division (C) of this section and R.C. §§ 2929.13, 2929.14, 2929.22, 2929.24, and 2929.25, or any substantially equivalent municipal ordinance, and in addition to any other sanction that is imposed for the offense under this section, R.C. §§ 2929.11 through 2929.18, or R.C. §§ 2929.21 through 2929.28, or any substantially equivalent municipal ordinance, the court that sentences an offender who is convicted of or pleads guilty to a violation of division (A) of this section shall do the following if applicable regarding the offender:

(1) Notwithstanding any contrary provision of R.C. § 3719.21, the Clerk of Court shall pay a fine imposed for a violation of this section pursuant to R.C. § 2929.18(A) in accordance with and subject to the requirements of R.C. § 2925.03(F). The agency that receives the fine shall use the fine as specified in R.C. § 2925.03(F).

(2) The court shall suspend for not less than six months nor more than five years the offender's driver's or commercial driver's license or permit.

(3) If the offender is a professionally licensed person, in addition to any other sanction imposed for a

violation of this section, the court immediately shall comply with R.C. § 2925.38.

(R.C. § 2925.11) (Rev. 2012)

**Statutory reference:**

*Felony drug possession offenses, see R.C. § 2925.11(C)*

**§ 138.04 POSSESSING DRUG ABUSE INSTRUMENTS.**

(A) No person shall knowingly make, obtain, possess, or use any instrument, article, or thing the customary and primary purpose of which is for the administration or use of a dangerous drug, other than marihuana, when the instrument involved is a hypodermic or syringe, whether or not of crude or extemporized manufacture or assembly, and the instrument, article, or thing involved has been used by the offender to unlawfully administer or use a dangerous drug, other than marihuana, or to prepare a dangerous drug, other than marihuana, for unlawful administration or use.

(B) This section does not apply to 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.

(C) Whoever violates this section is guilty of possessing drug abuse instruments, a misdemeanor of the second degree. If the offender previously has been convicted of a drug abuse offense, violation of this section is a misdemeanor of the first degree.

(D) In addition to any other sanction imposed upon an offender for a violation of this section, the court shall suspend for not less than six months nor more than five years the offender's driver's or commercial driver's license or permit. If the offender is a professionally licensed person, in addition to any other sanction imposed for a violation of this section, the court immediately shall comply with R.C. § 2925.38.  
(R.C. § 2925.12) (Rev. 2007)

**§ 138.05 PERMITTING DRUG ABUSE.**

(A) No person who is the owner, operator, or person in charge of a locomotive, watercraft, aircraft, or other vehicle, as defined in R.C. § 4501.01, shall knowingly permit the vehicle to be used for the commission of a felony drug abuse offense.

(B) No person, who is the owner, lessee, or occupant, or who has custody, control, or supervision of premises, or real estate, including vacant land, shall knowingly permit his or her premises, or real estate, including vacant land, to be used for the commission of a felony drug abuse offense by another person.

(C) Whoever violates this section is guilty of permitting drug abuse.

(1) Except as provided in division (C)(2) of this section, permitting drug abuse is a misdemeanor of the first degree.

(2) Permitting drug abuse is a felony to be prosecuted under appropriate state law if the felony drug abuse offense in question is a violation of R.C. § 2925.02 or 2925.03.

(D) In addition to any prison term authorized or required by division (C) of this section and R.C. §§ 2929.13 and 2929.14, and in addition to any other sanction imposed for the offense under this section or R.C. §§ 2929.11 through 2929.18, the court that sentences a person who is convicted of or pleads guilty to a violation of division (A) of this section shall do all of the following that are applicable regarding the offender:

(1) The court shall suspend for not less than six months nor more than five years the offender's driver's or commercial driver's license or permit.

(2) If the offender is a professionally licensed person, in addition to any other sanction imposed for a violation of this section, the court immediately shall comply with R.C. § 2925.38.

(E) Notwithstanding any contrary provision of R.C. § 3719.21, the Clerk of Court shall pay a fine imposed for a violation of this section pursuant to R.C. § 2929.18(A) in accordance with and subject to the requirements of R.C. § 2925.03(F). The agency that receives the fine shall use the fine as specified in R.C. § 2925.03(F).

(F) Any premises or real estate that is permitted to be used in violation of division (B) of this section constitutes a nuisance subject to abatement pursuant to R.C. Chapter 3767.  
(R.C. § 2925.13) (Rev. 2004)

**§ 138.06 ILLEGAL CULTIVATION OF MARIHUANA.**

(A) No person shall knowingly cultivate marihuana.

(B) This section does not apply to any person listed in R.C. § 2925.03(B)(1), (B)(2) or (B)(3), or a substantially equivalent municipal ordinance, to the extent and under the circumstances described in that division.

(C) Whoever commits a violation of division (A) of this section is guilty of illegal cultivation of marihuana.

(1) Except as otherwise provided in the following divisions, illegal cultivation of marihuana is a minor misdemeanor or, if the offense was committed in the

vicinity of a school or in the vicinity of a juvenile, a misdemeanor of the fourth degree.

(2) If the amount of marihuana involved equals or exceeds 100 grams but is less than 200 grams, illegal cultivation of marihuana is a misdemeanor of the fourth degree or, if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, a misdemeanor of the third degree.

(3) If the amount of marihuana involved equals or exceeds 200 grams, illegal cultivation of marihuana is a felony to be prosecuted under appropriate state law.

(D) In addition to any prison term authorized or required by division (C) of this section and R.C. §§ 2929.13 and 2929.14, and in addition to any other sanction imposed for the offense under this section or R.C. §§ 2929.11 through 2929.18, the court that sentences a person who is convicted of or pleads guilty to a violation of division (A) of this section shall do all of the following that are applicable regarding the offender:

(1) The court shall suspend the offender's driver's or commercial driver's license or permit in accordance with R.C. § 2925.03(G). If an offender's driver's or commercial driver's license or permit is suspended in accordance with that division, the offender may request termination of, and the court may terminate, the suspension in accordance with that division.

(2) If the offender is a professionally licensed person, the court immediately shall comply with R.C. § 2925.38.

(E) Arrest or conviction for a minor misdemeanor violation of this section does not constitute a criminal record and need not be reported by the person so arrested or convicted in response to any inquiries about the person's criminal record, including any inquiries contained in any application for employment, license, or other right or privilege, or made in connection with the person's appearance as a witness.

(R.C. § 2925.04) (Rev. 2005)

**Statutory reference:**

*Illegal manufacturing of controlled substances, felony, see R.C. § 2925.04*

*Sale or use of drugs not approved by Food and Drug Administration, felony, see R.C. § 2925.09*

**§ 138.07 ABUSING HARMFUL INTOXICANTS.**

(A) Except for lawful research, clinical, medical, dental, or veterinary purposes, no person, with purpose to induce intoxication or similar physiological effects, shall obtain, possess, or use a harmful intoxicant.

(B) Whoever violates this section is guilty of abusing harmful intoxicants, a misdemeanor of the first degree. If

the offender previously has been convicted of a drug abuse offense, abusing harmful intoxicants is a felony to be prosecuted under appropriate state law.

(C) In addition to any other sanction imposed upon an offender for a violation of this section, the court shall suspend for not less than six months nor more than five years the offender's driver's or commercial driver's license or permit. If the offender is a professionally licensed person, in addition to any other sanction imposed for a violation of this section, the court immediately shall comply with R.C. § 2925.38.

(R.C. § 2925.31) (Rev. 2004)

**§ 138.08 ILLEGAL DISPENSING OF DRUG SAMPLES.**

(A) No person shall knowingly furnish a sample drug to another person.

(B) Division (A) of this section does not apply to manufacturers, wholesalers, pharmacists, owners of pharmacies, licensed health professionals authorized to prescribe drugs, and other persons whose conduct is in accordance with R.C. Chapters 3719, 4715, 4723, 4725, 4729, 4730, 4731, and 4741.

(C) (1) Whoever violates this section is guilty of illegal dispensing of drug samples.

(2) If the drug involved in the offense is a compound, mixture, preparation, or substance included in Schedule I or II of R.C. § 3719.41 with the exception of marihuana, illegal dispensing of drug samples is a felony to be prosecuted under appropriate state law.

(3) If the drug involved in the offense is a dangerous drug or a compound, mixture, preparation, or substance included in Schedule III, IV or V of R.C. § 3719.41, or is marihuana, the penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in the following division, illegal dispensing of drug samples is a misdemeanor of the second degree.

(b) If the offense was committed in the vicinity of a school or in the vicinity of a juvenile, illegal dispensing of drug samples is a misdemeanor of the first degree.

(D) In addition to any prison term authorized or required by division (C) of this section and R.C. §§ 2929.13 and 2929.14, and in addition to any other sanction imposed for the offense under this section or R.C. §§ 2929.11 through 2929.18, the court that sentences an offender who is convicted of or pleads guilty to a violation of division (A) of this section shall do both of the following:

(1) The court shall suspend for not less than six months nor more than five years the offender's driver's or commercial driver's license.

(2) If the offender is a professionally licensed person, in addition to any other sanction imposed for a violation of this section, the court immediately shall comply with R.C. § 2925.38.

(E) Notwithstanding any contrary provision of R.C. § 3719.21, the Clerk of Court shall pay a fine imposed for a violation of this section pursuant to R.C. § 2929.18(A) in accordance with and subject to the requirements of R.C. § 2925.03(F). The agency that receives the fine shall use the fine as specified in R.C. § 2925.03(F). (R.C. § 2925.36) (Rev. 2007)

*Statutory reference:*

*Felony offenses, see R.C. § 2925.36(C)(2)*

**§ 138.09 FEDERAL PROSECUTION BAR TO MUNICIPAL PROSECUTION.**

No person shall be prosecuted for a violation of this chapter if the person has been acquitted or convicted under the federal drug abuse control laws of the same act or omission which, it is alleged, constitutes a violation of this chapter.

(R.C. §§ 2925.50, 3719.19) (Rev. 2002)

**§ 138.10 NITROUS OXIDE: IMPROPER DISPENSING OR DISTRIBUTION; POSSESSION IN A MOTOR VEHICLE.**

*(A) Improper dispensing or distribution.*

(1) No person who dispenses or distributes nitrous oxide in cartridges shall fail to comply with either of the following:

(a) The record-keeping requirements established under division (A)(3) of this section.

(b) The labeling and transaction identification requirements established under division (A)(4) of this section.

(2) Whoever violates division (A)(1)(a) or (A)(1)(b) of this section is guilty of improperly dispensing or distributing nitrous oxide, a misdemeanor of the fourth degree.

(3) Beginning July 1, 2001, a person who dispenses or distributes nitrous oxide shall record each transaction involving the dispensing or distribution of the nitrous oxide on a separate card. The person shall require the purchaser to sign the card and provide a complete residence address. The person dispensing or distributing the nitrous oxide shall sign and date the card. The person shall retain the card recording a transaction for one year from the

date of the transaction. The person shall maintain the cards at the person's business address and make them available during normal business hours for inspection and copying by officers or employees of the State Board of Pharmacy or of other law enforcement agencies that are authorized to investigate violations of this code, R.C. Chapters 2925, 3719, or 4729, or federal drug abuse control laws. The cards used to record each transaction shall inform the purchaser of the following:

(a) That nitrous oxide cartridges are to be used only for purposes of preparing food;

(b) That inhalation of nitrous oxide can have dangerous health effects; and

(c) That it is a violation of state law to distribute or dispense cartridges of nitrous oxide to any person under age 21, punishable as a felony of the fifth degree.

(4) (a) Each cartridge of nitrous oxide dispensed or distributed in this municipality shall bear the following printed warning: "Nitrous oxide cartridges are to be used only for purposes of preparing food. Nitrous oxide cartridges may not be sold to persons under age 21. Do not inhale contents. Misuse can be dangerous to your health."

(b) Each time a person dispenses or distributes one or more cartridges of nitrous oxide, the person shall mark the packaging containing the cartridges with a label or other device that identifies the person who dispensed or distributed the nitrous oxide and the person's business address.

(R.C. § 2925.32(B)(4), (D)(2), (F), (G)) (Rev. 2001)

*(B) Possession in a motor vehicle.*

(1) As used in this section, **MOTOR VEHICLE**, **STREET** and **HIGHWAY** have the same meaning as in R.C. § 4511.01.

(2) Unless authorized by this code or by state law, no person shall possess an open cartridge of nitrous oxide in either of the following circumstances:

(a) While operating or being a passenger in or on a motor vehicle on a street, highway, or other public or private property open to the public for purposes of vehicular traffic or parking.

(b) While being in or on a stationary motor vehicle on a street, highway, or other public or private property open to the public for purposes of vehicular traffic or parking.

(3) Whoever violates this division (B) is guilty of possessing nitrous oxide in a motor vehicle, a misdemeanor of the fourth degree.

(R.C. § 2925.33) (Rev. 2002)

*Statutory reference:*

*Trafficking in harmful intoxicants, see R.C. § 2925.32*

**§ 138.11 LABORATORY REPORT REQUIRED.**

(A) (1) In any criminal prosecution for a violation of this chapter or R.C. Chapters 2925 or 3719, a laboratory report from the Bureau of Criminal Identification and Investigation or a laboratory operated by another law enforcement agency, or a laboratory established by or under the authority of an institution of higher education that has its main campus in this state and that is accredited by the Association of American Universities or the North Central Association of Colleges and Secondary Schools, primarily for the purpose of providing scientific service to law enforcement agencies, and signed by the person performing the analysis, stating that the substance that is the basis of the alleged offense has been weighed and analyzed and stating the findings as to the content, weight, and identity of the substance and that it contains any amount of a controlled substance and the number and description of unit dosages, is prima facie evidence of the content, identity, and weight or the existence and number of unit dosages of the substance. In any criminal prosecution for a violation of R.C. § 2925.041 or a violation of this chapter, R.C. Chapter 2925 or R.C. Chapter 3719 that is based on the possession of chemicals sufficient to produce a compound, mixture, preparation, or substance included in Schedule I, II, III, IV, or V, a laboratory report from the Bureau or from any laboratory that is operated or established as described in this division that is signed by the person performing the analysis, stating that the substances that are the basis of the alleged offense have been weighed and analyzed and stating the findings as to the content, weight, and identity of each of the substances, is prima facie evidence of the content, identity, and weight of the substances.

(2) Attached to that report shall be a copy of a notarized statement by the signer of the report giving the name of the signer and stating that the signer is an employee of the laboratory issuing the report and that performing the analysis is a part of the signer's regular duties, and giving an outline of the signer's education, training, and experience for performing an analysis of materials included under this section. The signer shall attest that scientifically accepted tests were performed with due caution, and that the evidence was handled in accordance with established and accepted procedures while in the custody of the laboratory.

(B) The prosecuting attorney shall serve a copy of the report on the attorney of record for the accused, or on the accused if the accused has no attorney, prior to any proceeding in which the report is to be used against the accused other than at a preliminary hearing or grand jury proceeding where the report may be used without having been previously served upon the accused.

(C) The report shall not be prima facie evidence of the contents, identity, and weight or the existence and number of unit dosages of the substance if the accused or the accused's attorney demands the testimony of the person signing the report, by serving the demand upon the

prosecuting attorney, within seven days from the accused or the accused's attorney's receipt of the report. The time may be extended by a trial judge in the interests of justice.

(D) Any report issued for use under this section shall contain notice of the right of the accused to demand, and the manner in which the accused shall demand, the testimony of the person signing the report.

(E) Any person who is accused of a violation of this chapter or R.C. Chapters 2925 or 3719 is entitled, upon written request made to the prosecuting attorney, to have a portion of the substance that is, or of each of the substances that are, the basis of the alleged violation preserved for the benefit of independent analysis performed by a laboratory analyst employed by the accused person, or, if the accused is indigent, by a qualified laboratory analyst appointed by the court. Such portion shall be a representative sample of the entire substance that is, or of each of the substances that are, the basis of the alleged violation and shall be of sufficient size, in the opinion of the court, to permit the accused's analyst to make a thorough scientific analysis concerning the identity of the substance or substances. The prosecuting attorney shall provide the accused's analyst with the sample portion at least 14 days prior to trial, unless the trial is to be held in a court not of record or unless the accused person is charged with a minor misdemeanor, in which case the prosecuting attorney shall provide the accused's analyst with the sample portion at least three days prior to trial. If the prosecuting attorney determines that such a sample portion cannot be preserved and given to the accused's analyst, the prosecuting attorney shall so inform the accused person, or the accused's attorney. In such a circumstance, the accused person is entitled, upon written request made to the prosecuting attorney, to have the accused's privately employed or court appointed analyst present at an analysis of the substance that is, or the substances that are, the basis of the alleged violation, and, upon further written request, to receive copies of all recorded scientific data that result from the analysis and that can be used by an analyst in arriving at conclusions, findings, or opinions concerning the identity of the substance or substances subject to the analysis.

(F) In addition to the rights provided under division (E) of this section, any person who is accused of a violation of this chapter or R.C. Chapters 2925 or 3719 that involves a bulk amount of a controlled substance, or any multiple thereof, or who is accused of a violation of R.C. § 2925.11 or a substantially equivalent municipal ordinance, other than a minor misdemeanor violation, that involves marijuana, is entitled, upon written request made to the prosecuting attorney, to have a laboratory analyst of the accused's choice, or, if the accused is indigent, a qualified laboratory analyst appointed by the court, present at a measurement or weighing of the substance that is the basis of the alleged violation. Also, the accused person is entitled, upon further written request, to receive copies of all recorded scientific data that result from the measurement or weighing and that can be used by an analyst in arriving at conclusions,

findings, or opinions concerning the weight, volume, or number of unit doses of the substance subject to the measurement or weighing.

(R.C. § 2925.51) (Rev. 2002)

(G) In addition to the financial sanctions authorized or required under R.C. §§ 2929.18 and 2929.28 and to any costs otherwise authorized or required under any provision of law, the court imposing sentence upon an offender who is convicted of or pleads guilty to a drug abuse offense may order the offender to pay to the state, municipal, or county law enforcement agencies that handled the investigation and prosecution all of the costs that the state, municipal corporation, or county reasonably incurred in having tests performed under this section or R.C. § 2925.51 or in any other manner on any substance that was the basis of, or involved in, the offense to determine whether the substance contained any amount of a controlled substance if the results of the tests indicate that the substance tested contained any controlled substance. No court shall order an offender under this section to pay the costs of tests performed on a substance if the results of the tests do not indicate that the substance tested contained any controlled substance. The court shall hold a hearing to determine the amount of costs to be imposed under this section. The court may hold the hearing as part of the sentencing hearing for the offender. (R.C. § 2925.511) (Rev. 2007)

#### § 138.12 COUNTERFEIT CONTROLLED SUBSTANCES.

(A) No person shall knowingly possess any counterfeit controlled substance.

(B) Whoever violates division (A) of this section shall be guilty of possession of counterfeit controlled substances, a misdemeanor of the first degree.

(C) Notwithstanding any contrary provision of R.C. § 3719.21, the Clerk of Court shall pay a fine imposed for a violation of this section pursuant to R.C. § 2929.18(A) in accordance with and subject to the requirements of R.C. § 2925.03(F). The agency that receives the fine shall use the fine as specified in R.C. § 2925.03(F). (R.C. § 2925.37(A), (G), (M)) (Rev. 1999)

##### *Statutory reference:*

*Trafficking and other felony counterfeit controlled substance offenses, see R.C. § 2925.37(H) through (K)*

#### § 138.13 USE, POSSESSION, OR SALE OF DRUG PARAPHERNALIA.

(A) As used in this section, **DRUG PARAPHERNALIA** means any equipment, product, or material of any kind that is used by the offender, intended by the offender for use, or designed for use, in propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing,

concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body, a controlled substance in violation of this chapter. The term includes but is not limited to any of the following equipment, products, or materials that are used by the offender, intended by the offender for use, or designed by the offender for use, in any of the following manners:

(1) A kit for propagating, cultivating, growing, or harvesting any species of a plant that is a controlled substance or from which a controlled substance can be derived.

(2) A kit for manufacturing, compounding, converting, producing, processing, or preparing a controlled substance.

(3) Any object, instrument, or device for manufacturing, compounding, converting, producing, processing, or preparing methamphetamine.

(4) An isomerization device for increasing the potency of any species of a plant that is a controlled substance.

(5) Testing equipment for identifying, or analyzing the strength, effectiveness, or purity of, a controlled substance.

(6) A scale or balance for weighing or measuring a controlled substance.

(7) A diluent or adulterant, such as quinine hydrochloride, mannitol, mannite, dextrose, or lactose, for cutting a controlled substance.

(8) A separation gin or sifter for removing twigs and seeds from, or otherwise cleaning or refining, marihuana.

(9) A blender, bowl, container, spoon, or mixing device for compounding a controlled substance.

(10) A capsule, balloon, envelope, or container for packaging small quantities of a controlled substance.

(11) A container or device for storing or concealing a controlled substance.

(12) A hypodermic syringe, needle, or instrument for parenterally injecting a controlled substance into the human body.

(13) An object, instrument, or device for ingesting, inhaling, or otherwise introducing into the human body, marihuana, cocaine, hashish, or hashish oil, such as a metal, wooden, acrylic, glass, stone, plastic, or ceramic pipe, with or without a screen, permanent screen, hashish head, or punctured metal bowl; water pipe; carburetion tube or device; smoking or carburetion mask; roach clip or similar object used to hold burning material, such as a

marihuana cigarette, that has become too small or too short to be held in the hand; miniature cocaine spoon, or cocaine vial; chamber pipe; carburetor pipe; electric pipe; air driver pipe; chillum; bong; or ice pipe or chiller.

(B) In determining if any equipment, product, or material is drug paraphernalia, a court or law enforcement officer shall consider, in addition to other relevant factors, the following:

(1) Any statement by the owner or by anyone in control of the equipment, product, or material, concerning its use.

(2) The proximity in time or space of the equipment, product, or material, or of the act relating to the equipment, product, or material, to a violation of any provision of this chapter or R.C. Chapter 2925.

(3) The proximity of the equipment, product, or material to any controlled substance.

(4) The existence of any residue of a controlled substance on the equipment, product, or material.

(5) Direct or circumstantial evidence of the intent of the owner, or of anyone in control, of the equipment, product, or material, to deliver it to any person whom he or she knows intends to use the equipment, product, or material to facilitate a violation of any provision of this chapter or R.C. Chapter 2925. A finding that the owner or anyone in control of the equipment, product, or material is not guilty of a violation of any other provision of this chapter or R.C. Chapter 2925 does not prevent a finding that the equipment, product, or material was intended or designed by the offender for use as drug paraphernalia.

(6) Any oral or written instruction provided with the equipment, product, or material concerning its use.

(7) Any descriptive material accompanying the equipment, product, or material and explaining or depicting its use.

(8) National or local advertising concerning the use of the equipment, product, or material.

(9) The manner and circumstances in which the equipment, product, or material is displayed for sale.

(10) Direct or circumstantial evidence of the ratio of the sales of the equipment, product, or material to the total sales of the business enterprise.

(11) The existence and scope of legitimate uses of the equipment, product, or material in the community.

(12) Expert testimony concerning the use of the equipment, product, or material.

(C) (1) No person shall knowingly use, or possess with purpose to use, drug paraphernalia.

(2) No person shall knowingly sell, or possess or manufacture with purpose to sell, drug paraphernalia, if he or she knows or reasonably should know that the equipment, product, or material will be used as drug paraphernalia.

(3) No person shall place an advertisement in any newspaper, magazine, handbill, or other publication that is published and printed and circulates primarily within this state, if he or she knows that the purpose of the advertisement is to promote the illegal sale in this municipality or in this state of the equipment, product, or material that the offender intended or designed for use as drug paraphernalia.

(D) This section does not apply to manufacturers, licensed health professionals authorized to prescribe drugs, pharmacists, owners of pharmacies, and other persons whose conduct is in accordance with R.C. Chapters 3719, 4715, 4723, 4729, 4730, 4731, and 4741. This section shall not be construed to prohibit the possession or use of a hypodermic as authorized by R.C. § 3719.172.

(E) Notwithstanding R.C. Chapter 2981, any drug paraphernalia that was used, possessed, sold, or manufactured in violation of this section shall be seized, after a conviction for that violation, shall be forfeited, and upon forfeiture shall be disposed of pursuant to R.C. § 2981.12(B).

(F) (1) Whoever violates division (C)(1) of this section is guilty of illegal use or possession of drug paraphernalia, a misdemeanor of the fourth degree.

(2) Except as provided in division (F)(3) of this section, whoever violates division (C)(2) of this section is guilty of dealing in drug paraphernalia, a misdemeanor of the second degree.

(3) Whoever violates division (C)(2) of this section by selling drug paraphernalia to a juvenile is guilty of selling drug paraphernalia to juveniles, a misdemeanor of the first degree.

(4) Whoever violates division (C)(3) of this section is guilty of illegal advertising of drug paraphernalia, a misdemeanor of the second degree.

(G) In addition to any other sanction imposed upon an offender for a violation of this section, the court shall suspend for not less than six months nor more than five years the offender's driver's or commercial driver's license or permit. If the offender is a professionally licensed person, in addition to any other sanction imposed for a violation of this section, the court immediately shall comply with R.C. § 2925.38.

(R.C. § 2925.14) (Rev. 2008)

**§ 138.14 CONTROLLED SUBSTANCE OR PRESCRIPTION LABELS.**

(A) Whenever a manufacturer sells a controlled substance, and whenever a wholesaler sells a controlled substance in a package the wholesaler has prepared, the manufacturer or wholesaler shall securely affix to each package in which the controlled substance is contained a label showing in legible English the name and address of the vendor and the quantity, kind and form of controlled substance contained therein. No person, except a pharmacist for the purpose of dispensing a controlled substance upon a prescription, shall alter, deface or remove any label so affixed.

(B) No person shall alter, deface or remove any label affixed pursuant to R.C. § 3719.08 as long as any of the original contents remain.  
(R.C. § 3719.08(A), (E))

(C) Whoever violates this section is guilty of a misdemeanor of the first degree. If the offender previously has been convicted of a violation of this section, or R.C. § 3719.07 or 3719.08, or a drug abuse offense, a violation of this section is a felony to be prosecuted under appropriate state law. If the violation involves the sale, offer to sell, or possession of a Schedule I or II controlled substance, with the exception of marihuana, and if the offender, as a result of the violation, is a major drug offender, then R.C. § 3719.99(D) applies.  
(R.C. § 3719.99(C)) (Rev. 1999)

**§ 138.15 POSSESSION, SALE AND DISPOSAL OF HYPODERMICS.**

(A) Possession of a hypodermic is authorized for the following:

(1) A manufacturer or distributor of, or dealer in hypodermics, or medication packaged in hypodermics, and any authorized agent or employee of that manufacturer, distributor or dealer, in the regular course of business;

(2) A terminal distributor of dangerous drugs, in the regular course of business;

(3) A person authorized to administer injections, in the regular course of the person's profession or employment;

(4) A person, when the hypodermic in his possession was lawfully obtained and is kept and used for the purpose of self-administration of insulin or other drug prescribed for the treatment of disease by a licensed health professional authorized to prescribe drugs;

(5) A person whose use of a hypodermic is for legal research, clinical, educational or medicinal purposes;

(6) A farmer, for the lawful administration of a drug to an animal;

(7) A person whose use of a hypodermic is for lawful professional, mechanical, trade or craft purposes.

(B) No manufacturer or distributor of, or dealer in, hypodermics or medication packaged in hypodermics, or their authorized agents or employees, and no terminal distributor of dangerous drugs, shall display any hypodermic for sale. No person authorized to possess a hypodermic pursuant to division (A) of this section shall negligently fail to take reasonable precautions to prevent any hypodermic in the person's possession from theft or acquisition by any unauthorized person.  
(R.C. § 3719.172(A), (B))

(C) Whoever violates division (B) of this section is guilty of a misdemeanor of the third degree. If the offender previously has been convicted of a violation of division (B) of this section, R.C. § 3719.05, 3719.06, 3719.13, 3719.172(B), or 3719.31, or a drug abuse offense, a violation of division (B) of this section is a misdemeanor of the first degree.  
(R.C. § 3719.99(E)) (Rev. 1999)

**Statutory reference:**

*Felony offenses, see R.C. § 3719.172(C) and (D)*

**§ 138.16 CONTROLLED SUBSTANCE SCHEDULES.**

Controlled Substance Schedules I, II, III, IV, and V, as established in R.C. § 3719.41 and amended by R.C. §§ 3719.43 and 3719.44, are hereby adopted by reference, and shall be treated as if set forth in full herein.  
(Rev. 1999)

**Statutory reference:**

*For comprehensive lists of drugs identified under each of the following Schedules, see R.C. § 3719.41, as amended by R.C. §§ 3719.43 and 3719.44:*

**Schedule I**

- (A) *Narcotics - opiates*
- (B) *Narcotics - opium derivatives*
- (C) *Hallucinogens*
- (D) *Depressants*
- (E) *Stimulants*

**Schedule II**

- (A) *Narcotics - opium and opium derivatives*
- (B) *Narcotics - opiates*
- (C) *Stimulants*
- (D) *Depressants*
- (E) *Hallucinogenic substances*
- (F) *Immediate precursors*



*Schedule III*

- (A) *Stimulants*
- (B) *Depressants*
- (C) *Narcotic antidotes*
- (D) *Narcotics - narcotic preparations*
- (E) *Anabolic steroids*
- (F) *Hallucinogenic substances*

*Schedule IV*

- (A) *Narcotic drugs*
- (B) *Depressants*
- (C) *Fenfluramine*
- (D) *Stimulants*
- (E) *Other substances*

*Schedule V*

- (A) *Narcotic drugs*
- (B) *Narcotics - narcotic preparations*
- (C) *Stimulants*

**§ 138.17 UNLAWFUL FURNISHING OF PRESCRIPTION TO ENABLE PERSONS TO BE ISSUED HANDICAPPED PARKING PLACARDS OR LICENSE PLATES.**

(A) No physician or chiropractor shall do either of the following:

(1) Furnish a person with a prescription in order to enable the person to be issued a removable windshield placard, temporary removable windshield placard, or license plates under R.C. § 4503.44, knowing that the person does not meet any of the criteria contained in R.C. § 4503.44(A)(1).

(2) Furnish a person with a prescription described in division (A)(1) of this section and knowingly misstate on the prescription the length of time the physician or chiropractor expects the person to have the disability that limits or impairs the person's ability to walk in order to enable the person to retain a placard issued under R.C. § 4503.44 for a period of time longer than that which would be estimated by a similar practitioner under the same or similar circumstances.

(R.C. §§ 4731.481, 4734.161) (Rev. 2001)

(B) Whoever violates this section is guilty of a misdemeanor of the first degree.

(R.C. §§ 4731.99(F), 4734.99(B))

***Cross-reference:***

*Parking privileges for persons with disabilities, see § 76.05*

**§ 138.18 PSEUDOEPHEDRINE SALES.**

(A) *Unlawful purchases.*

(1) As used in this section:

**CONSUMER PRODUCT.** Means any food or drink that is consumed or used by humans and any drug, including a drug that may be provided legally only pursuant to a prescription, that is intended to be consumed or used by humans.

**PSEUDOEPHEDRINE.** Means any material, compound, mixture, or preparation that contains any quantity of pseudoephedrine, any of its salts, optical isomers, or salts of optical isomers.

**PSEUDOEPHEDRINE PRODUCT.** Means a consumer product consisting of a single-ingredient preparation of pseudoephedrine in which pseudoephedrine is the active ingredient. The term does not include either of the following:

1. A consumer product containing pseudoephedrine that is in a liquid, liquid capsule, or gel capsule form;

2. A consumer product primarily intended for administration to children under 12 years of age, according to the label instructions, in solid dosage form, including chewable tablets, when individual dosage units do not exceed 15 milligrams of pseudoephedrine.

**RETAILER.** Means a place of business that offers consumer products for sale to the general public.

**SINGLE-INGREDIENT PREPARATION.** Means a compound, mixture, preparation, or substance that contains a single active ingredient.

**TERMINAL DISTRIBUTOR OF DANGEROUS DRUGS.** Has the same meaning as in R.C. § 4729.01.

(2) (a) No individual shall knowingly purchase, receive, or otherwise acquire more than nine grams of any pseudoephedrine product within a period of 30 consecutive days, unless the pseudoephedrine product is dispensed by a pharmacist pursuant to a valid prescription issued by a licensed health professional authorized to prescribe drugs and the conduct of the pharmacist and the licensed health professional authorized to prescribe drugs is in accordance with R.C. Chapter 3719, 4715, 4723, 4729, 4731, or 4741.

(b) It is not a violation of division (A)(2)(a) of this section for an individual to receive or accept more than nine grams of any pseudoephedrine product within a period of 30 consecutive days if the individual is an employee of a retailer or terminal distributor of dangerous drugs, and the employee receives or accepts from the retailer or terminal distributor of dangerous drugs the pseudoephedrine product in a sealed container in connection with manufacturing, warehousing, placement, stocking, bagging, loading, or unloading of the product.

(3) (a) No individual under 18 years of age shall knowingly purchase, receive, or otherwise acquire a pseudoephedrine product, unless the pseudoephedrine product is dispensed by a pharmacist pursuant to a valid prescription issued by a licensed health professional authorized to prescribe drugs and the conduct of the pharmacist and the licensed health professional authorized to prescribe drugs is in accordance with R.C. Chapter 3719, 4715, 4723, 4729, 4731, or 4741.

(b) Division (A)(3)(a) of this section does not apply to an individual under 18 years of age who purchases, receives, or otherwise acquires a pseudoephedrine product from any of the following:

1. A licensed health professional authorized to prescribe drugs or pharmacist who dispenses, sells, or otherwise provides the pseudoephedrine product to that individual and whose conduct is in accordance with R.C. Chapter 3719, 4715, 4723, 4729, 4731, or 4741;

2. A parent or guardian of that individual who provides the pseudoephedrine product to the individual;

3. A person, as authorized by that individual's parent or guardian, who dispenses, sells, or otherwise provides the pseudoephedrine product to the individual;

4. A retailer or terminal distributor of dangerous drugs who provides the pseudoephedrine product to that individual if the individual is an employee of the retailer or terminal distributor of dangerous drugs and the individual receives or accepts from the retailer or terminal distributor of dangerous drugs the pseudoephedrine product in a sealed container in connection with manufacturing, warehousing, placement, stocking, bagging, loading, or unloading of the product.

(4) No individual under 18 years of age shall knowingly show or give false information concerning the individual's name, age, or other identification for the purpose of purchasing, receiving, or otherwise acquiring a pseudoephedrine product.

(5) No individual shall knowingly fail to comply with the requirements of division (E)(3)(c) of this section.

(6) Whoever violates division (A)(2)(a) of this section is guilty of unlawful purchase of a pseudoephedrine product, a misdemeanor of the first degree.

(7) Whoever violates division (A)(3)(a) of this section is guilty of underage purchase of a pseudoephedrine product, a delinquent act that would be a misdemeanor of the fourth degree if it could be committed by an adult.

(8) Whoever violates division (A)(4) of this section is guilty of using false information to purchase a pseudoephedrine product, a delinquent act that would be a

misdemeanor of the first degree if it could be committed by an adult.

(9) Whoever violates division (A)(5) of this section is guilty of improper purchase of a pseudoephedrine product, a misdemeanor of the fourth degree. (R.C. § 2925.55) (Rev. 2007)

(B) *Unlawful retail sales.*

(1) (a) Except as provided in division (B)(1)(b) of this section, no retailer or terminal distributor of dangerous drugs or an employee of a retailer or terminal distributor of dangerous drugs shall knowingly sell, offer to sell, hold for sale, deliver, or otherwise provide to any individual within a period of 30 consecutive days an amount of pseudoephedrine product that is greater than nine grams.

(b) Division (B)(1)(a) of this section does not apply to any quantity of pseudoephedrine product dispensed by a pharmacist pursuant to a valid prescription issued by a licensed health professional authorized to prescribe drugs if the conduct of the pharmacist and the licensed health professional authorized to prescribe drugs is in accordance with R.C. Chapter 3719, 4715, 4723, 4729, 4731, or 4741.

(c) It is not a violation of division (B)(1)(a) of this section for a retailer, terminal distributor of dangerous drugs, or employee of either to provide to an individual more than nine grams of any pseudoephedrine product within a period of 30 consecutive days if the individual is an employee of the retailer or terminal distributor of dangerous drugs, and the employee receives or accepts from the retailer, terminal distributor of dangerous drugs, or employee the pseudoephedrine product in a sealed container in connection with manufacturing, warehousing, placement, stocking, bagging, loading, or unloading of the product.

(2) (a) Except as provided in division (B)(2)(b) of this section, no retailer or terminal distributor of dangerous drugs or an employee of a retailer or terminal distributor of dangerous drugs shall sell, offer to sell, hold for sale, deliver, or otherwise provide a pseudoephedrine product to an individual who is under 18 years of age.

(b) Division (B)(2)(a) of this section does not apply to any of the following:

1. A licensed health professional authorized to prescribe drugs or pharmacist who dispenses, sells, or otherwise provides a pseudoephedrine product to an individual under 18 years of age and whose conduct is in accordance with R.C. Chapter 3719, 4715, 4723, 4729, 4731, or 4741;

2. A parent or guardian of an individual under 18 years of age who provides a pseudoephedrine product to the individual;

3. A person who, as authorized by the individual's parent or guardian, dispenses, sells, or otherwise provides a pseudoephedrine product to an individual under 18 years of age;

4. The provision by a retailer, terminal distributor of dangerous drugs, or employee of either of a pseudoephedrine product in a sealed container to an employee of the retailer or terminal distributor of dangerous drugs who is under 18 years of age in connection with manufacturing, warehousing, placement, stocking, bagging, loading, or unloading of the product.

(3) No retailer or terminal distributor of dangerous drugs shall fail to comply with the requirements of division (E)(3)(b) of this section.

(4) Whoever violates division (B)(1)(a) of this section is guilty of unlawfully selling a pseudoephedrine product, a misdemeanor of the first degree.

(5) Whoever violates division (B)(2)(a) of this section is guilty of unlawfully selling a pseudoephedrine product to a minor, a misdemeanor of the fourth degree.

(6) Whoever violates division (B)(3) of this section is guilty of improper sale of a pseudoephedrine product, a misdemeanor of the second degree. (R.C. § 2925.56) (Rev. 2007)

(C) *Transaction scans.*

(1) As used in this division and division (D) of this section:

**CARD HOLDER.** Means any person who presents a driver's or commercial driver's license or an identification card to a seller, or an agent or employee of a seller, to purchase or receive any pseudoephedrine product from the seller, agent, or employee.

**IDENTIFICATION CARD.** Has the same meaning as in R.C. § 2927.021.

**SELLER.** Means a retailer or terminal distributor of dangerous drugs.

**TRANSACTION SCAN.** Means the process by which a seller or an agent or employee of a seller checks by means of a transaction scan device the validity of a driver's or commercial driver's license or an identification card that is presented as a condition for purchasing or receiving any pseudoephedrine product.

**TRANSACTION SCAN DEVICE.** Has the same meaning as in R.C. § 2927.021.

(2) (a) A seller or an agent or employee of a seller may perform a transaction scan by means of a transaction scan device to check the validity of a driver's or

commercial driver's license or identification card presented by a card holder as a condition for selling, giving away, or otherwise distributing to the card holder a pseudoephedrine product.

(b) If the information deciphered by the transaction scan performed under division (C)(2)(a) of this section fails to match the information printed on the driver's or commercial driver's license or identification card presented by the card holder, or if the transaction scan indicates that the information so printed is false or fraudulent, neither the seller nor any agent or employee of the seller shall sell, give away, or otherwise distribute any pseudoephedrine product to the card holder.

(c) Division (C)(2)(a) of this section does not preclude a seller or an agent or employee of a seller as a condition for selling, giving away, or otherwise distributing a pseudoephedrine product to the person presenting the document from using a transaction scan device to check the validity of a document other than a driver's or commercial driver's license or an identification card if the document includes a bar code or magnetic strip that may be scanned by the device.

(3) Rules adopted by the Registrar of Motor Vehicles under R.C. § 4301.61(C) apply to the use of transaction scan devices for purposes of this division (C) and division (D) of this section.

(4) (a) No seller or agent or employee of a seller shall electronically or mechanically record or maintain any information derived from a transaction scan, except the following:

1. The name and date of birth of the person listed on the driver's or commercial driver's license or identification card presented by a card holder;

2. The expiration date and identification number of the driver's or commercial driver's license or identification card presented by a card holder.

(b) No seller or agent or employee of a seller shall use the information that is derived from a transaction scan or that is permitted to be recorded and maintained under division (C)(4)(a) of this section except for purposes of division (D) of this section.

(c) No seller or agent or employee of a seller shall use a transaction scan device for a purpose other than the purpose specified in division (C)(2)(a) of this section.

(d) No seller or agent or employee of a seller shall sell or otherwise disseminate the information derived from a transaction scan to any third party, including but not limited to selling or otherwise disseminating that information for any marketing, advertising, or promotional activities, but a seller or agent or employee of a seller may

release that information pursuant to a court order or as specifically authorized by division (D) of this section or any other section of the Ohio Revised Code.

(5) Nothing in this division (C) or division (D) of this section relieves a seller or an agent or employee of a seller of any responsibility to comply with any other applicable state or federal laws or rules governing the sale, giving away, or other distribution of pseudoephedrine products.

(6) Whoever violates division (C)(2)(b) or (C)(4) of this section is guilty of engaging in an illegal pseudoephedrine product transaction scan, and the court may impose upon the offender a civil penalty of up to \$1,000 for each violation. The Clerk of the Court shall pay each collected civil penalty to the County Treasurer for deposit into the County Treasury.  
(R.C. § 2925.57) (Rev. 2007)

*(D) Affirmative defenses.*

(1) A seller or an agent or employee of a seller may not be found guilty of a charge of a violation of division (B) of this section in which the age of the purchaser or other recipient of a pseudoephedrine product is an element of the alleged violation if the seller, agent, or employee raises and proves as an affirmative defense that all of the following occurred:

(a) A card holder attempting to purchase or receive a pseudoephedrine product presented a driver's or commercial driver's license or an identification card.

(b) A transaction scan of the driver's or commercial driver's license or identification card that the card holder presented indicated that the license or card was valid.

(c) The pseudoephedrine product was sold, given away, or otherwise distributed to the card holder in reasonable reliance upon the identification presented and the completed transaction scan.

(2) In determining whether a seller or an agent or employee of a seller has proven the affirmative defense provided by division (D)(1) of this section, the trier of fact in the action for the alleged violation of division (B) of this section shall consider any written policy that the seller has adopted and implemented and that is intended to prevent violations of division (B) of this section. For purposes of division (D)(1)(c) of this section, the trier of fact shall consider that reasonable reliance upon the identification presented and the completed transaction scan may require a seller or an agent or employee of a seller to exercise reasonable diligence to determine, and that the use of a transaction scan device does not excuse a seller or an agent or employee of a seller from exercising reasonable diligence to determine, the following:

(a) Whether a person to whom the seller or agent or employee of a seller sells, gives away, or otherwise distributes a pseudoephedrine product is 18 years of age or older;

(b) Whether the description and picture appearing on the driver's or commercial driver's license or identification card presented by a card holder is that of the card holder.

(3) In any criminal action in which the affirmative defense provided by division (D)(1) of this section is raised, the Registrar of Motor Vehicles or a deputy registrar who issued an identification card under R.C. §§ 4507.50 through 4507.52 shall be permitted to submit certified copies of the records of that issuance in lieu of the testimony of the personnel of or contractors with the Bureau of Motor Vehicles in the action.  
(R.C. § 2925.58) (Rev. 2007)

*(E) Retailer's duties.*

(1) As used in this division and division (F) of this section:

**DRUG.** Has the same meaning as in R.C. § 4729.01.

**LICENSED HEALTH PROFESSIONAL AUTHORIZED TO PRESCRIBE DRUGS.** Has the same meaning as in R.C. § 4729.01.

**PHARMACIST.** Means a person licensed under R.C. Chapter 4729 to engage in the practice of pharmacy.

**PHARMACY.** Has the same meaning as in R.C. § 4729.01.

**PRESCRIBER.** Has the same meaning as in R.C. § 4729.01.

**PRESCRIPTION.** Has the same meaning as in R.C. § 4729.01.

**PROOF OF AGE.** Means a driver's license, a commercial driver's license, a military identification card, a passport, or an identification card issued under R.C. §§ 4507.50 through 4507.52 that shows a person is 18 years of age or older.

**TERMINAL DISTRIBUTOR OF DANGEROUS DRUGS.** Has the same meaning as in R.C. § 4729.01.

**WHOLESALE.** Has the same meaning as in R.C. § 3719.01.

(2) A retailer or terminal distributor of dangerous drugs that sells, offers to sell, holds for sale,

delivers, or otherwise provides a pseudoephedrine product to the public shall do all of the following:

(a) Segregate pseudoephedrine products from other merchandise so that no member of the public may procure or purchase such products without the direct assistance of a pharmacist or other authorized employee of the retailer or terminal distributor of dangerous drugs;

(b) With regard to each time a pseudoephedrine product is sold or otherwise provided:

1. Determine, by examination of a valid proof of age, that the purchaser or recipient is at least 18 years of age;

2. Make a reasonable attempt to ensure that no individual purchases or receives more than nine grams of pseudoephedrine products within a period of 30 consecutive days;

(c) Maintain a log book of pseudoephedrine product purchases, in accordance with division (E)(3) of this section.

(3) (a) As used in this division (E)(3), **LAW ENFORCEMENT OFFICIAL** means an officer or employee of any agency or authority of the United States, a state, a territory, a political division of a state or territory, or an Indian tribe, who is empowered by the law to investigate or conduct an official inquiry into a potential violation of law or prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law.

(b) A retailer or terminal distributor of dangerous drugs that sells, offers to sell, holds for sale, delivers, or otherwise provides a pseudoephedrine product to the public shall maintain a log book of all purchases of pseudoephedrine products. The log book may be maintained in a tangible format, in an electronic format, or in both a tangible format and an electronic format. As part of this requirement, the retailer or terminal distributor of dangerous drugs shall do all of the following:

1. Require each purchaser to sign an entry in the log book that is maintained in the electronic or tangible format;

2. Determine whether the name signed in the entry in the log book corresponds with the name on a government-issued identification card;

3. Retain the log book in a tangible format, in an electronic format, or in both a tangible format and an electronic format for a minimum of one year after the date of the last purchase recorded in the log book;

4. Include in the log book in the manner described in division (E)(3)(e) of this section or, in the alternative, post, in a conspicuous location, the

following statement: "Ohio law prohibits the over-the-counter purchase within any period of 30 consecutive days of more than nine grams of any consumer product in which pseudoephedrine is the only active ingredient. If you purchase a consumer product in which pseudoephedrine is the only active ingredient, you are required to sign a log book that may be accessible to law enforcement officers and to provide a government-issued identification card to verify your identity. Except in limited circumstances, the purchase within any period of 30 consecutive days of more than nine grams of any consumer product in which pseudoephedrine is the only active ingredient, and the purchase by any individual under 18 years of age of any consumer product in which pseudoephedrine is the only active ingredient, are subject to criminal prosecution or delinquency proceedings in accordance with Ohio law. Also, the provision of false information concerning an individual's name, age, or other identification for the purpose of acquiring any consumer product in which pseudoephedrine is the only active ingredient is subject to criminal prosecution or delinquency proceedings in accordance with Ohio law."

(c) Each purchaser of a pseudoephedrine product shall do all of the following:

1. Sign and print the purchaser's name and address in the log book;

2. Provide a government-issued identification card to the retailer or terminal distributor of dangerous drugs to verify the purchaser's identity.

(d) Information contained in the log book may not be used or disclosed except in the following circumstances:

1. In response to a court order or subpoena;

2. In response to a request from a law enforcement official to be used for law enforcement purposes.

(e) If a retailer or terminal distributor of dangerous drugs chooses to include the statement set forth in division (E)(3)(b)4. of this section in the log book maintained under division (E)(3)(b) of this section, the statement shall be set forth in the following manner:

1. If the log book is maintained in an electronic format, the statement shall be set forth in such a manner that it is presented on the viewing screen to each purchaser who is signing an entry in the log book before the purchaser may sign the entry.

2. If the log book is maintained in a tangible format, the statement shall be set forth on the cover of the log book and on each page of the log book.

(4) Prescriptions, orders, and records maintained pursuant to this section and stocks of

pseudoephedrine products shall be open for inspection to federal, state, county, and municipal officers, and employees of the State Board of Pharmacy whose duty it is to enforce the laws of this state or of the United States relating to controlled substances. Such prescriptions, orders, records, and stocks shall be open for inspection by the State Medical Board and its employees for purposes of enforcing R.C. Chapter 4731.

(R.C. § 3715.05) (Rev. 2007)

(F) *Theft or loss; reporting requirements.*

(1) Each retailer, terminal distributor of dangerous drugs, pharmacy, prescriber, or wholesaler that sells, offers to sell, holds for sale, delivers, or otherwise provides any pseudoephedrine product and that discovers the theft or loss of any pseudoephedrine product in an amount of more than nine grams per incident of theft or loss shall notify all of the following upon discovery of the theft or loss:

(a) The State Board of Pharmacy, by telephone immediately upon discovery of the theft or loss;

(b) Law enforcement authorities. If the incident is a theft and the theft constitutes a felony, the retailer, terminal distributor of dangerous drugs, pharmacy, prescriber, or wholesaler shall report the theft to the law enforcement authorities in accordance with R.C. § 2921.22.

(2) Within 30 days after making a report by telephone to the State Board of Pharmacy pursuant to division (F)(1)(a) of this section, a retailer, terminal distributor of dangerous drugs, pharmacy, prescriber, or wholesaler shall send a written report to the State Board of Pharmacy.

(3) The reports required under this section shall identify the product that was stolen or lost, the amount of the product stolen or lost, and the date and time of discovery of the theft or loss.

(R.C. § 3715.06) (Rev. 2007)