

Chapter: 195

Session: 2018 Regular Session

Topic: Controlled substances & “intoxicating substances” in DWI provisions

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Overview

This bill adds new drugs to the controlled substance schedules in chapter 152; prohibits minors from possessing kratom; and contains various DWI-related provisions.

Article 1

Overview

Controlled substance related changes.

Section

1 **Schedule I.** Adds bromadol to Schedule I of the controlled substance schedules. Schedule I drugs have a high potential for abuse, no currently accepted medical use in the United States, and a lack of accepted safety for use under medical supervision.

2 **Schedule IV.** Adds the following drugs to Schedule IV of the controlled substance schedules:

(1) pentazocine; and

(2) butorphanol (including its optical isomers).

Schedule IV drugs have a low potential for abuse relative to the substances in Schedule III and currently accepted medical use in treatment in the United States. Abuse of Schedule IV drugs may lead to limited physical dependence or psychological dependence relative to the substances in Schedule III.

Section

- 3** **Sale or possession of kratom.** Prohibits the sale of kratom to a person under the age of 18. Prohibits a person under the age of 18 from possessing kratom.

Article 2**Overview**

Substantive changes to DWI law; intoxicating substances.

In October 2017, the Minnesota Supreme Court decided *State v. Carson* which involved a person who drove a motor vehicle after inhaling, or “huffing,” a chemical used for cleaning electronic equipment. The court found that the definition of “hazardous substance” used in the driving while impaired statute referred to a list maintained by the commissioner of labor and industry in rules applying to occupational safety and health. The substance inhaled by the defendant did not appear on the list and the Supreme Court concluded that the defendant could not be convicted of driving under the influence. This bill replaces the term “hazardous substance” with the term “intoxicating substance” and defines the new term.

- 1** **Intoxicating substance.** Defines the term “intoxicating substance” as a drug or chemical, as defined in section 151.01, that impairs the central nervous system or impairs the human audio, visual, or mental processes. The definition excludes alcohol and controlled substances. Section 151.01 defines the term “drug” as:

all medicinal substances and preparations recognized by the United States Pharmacopoeia and National Formulary, or any revision thereof; biological products, other than blood or blood components; all substances and preparations intended for external and internal use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or other animals; and all substances and preparations, other than food, intended to affect the structure or any function of the bodies of humans or other animals. The term drug shall also mean any compound, substance, or derivative that is not approved for human consumption by the United States Food and Drug Administration or specifically permitted for human consumption under Minnesota law, and, when introduced into the body, induces an effect similar to that of a Schedule I or Schedule II controlled substance listed in section 152.02, subdivisions 2 and 3, or Minnesota Rules, parts 6800.4210 and 6800.4220, regardless of whether the substance is marketed for the purpose of human consumption.

Section 151.01 defines the term “chemical” as: “all medicinal or industrial substances, whether simple or compound, or obtained through the process of the science and art of chemistry, whether of organic or inorganic origin.”

- 2** **Driving while impaired crime; motor vehicle.** Establishes that it is a crime to drive, operate, or be in physical control of a motor vehicle while under the influence of an intoxicating substance when the person knows or has reason to know that the substance has the capacity to cause impairment. This section replaces the prohibition on driving, operating, or being in physical control of a motor vehicle while knowingly under the influence of a hazardous substance.

Section

3 **Repealer.** Repeals section 169A.03, subdivision 9 which contains the definition of “hazardous substance.”

Article 3

Makes conforming changes throughout statutes replacing the term “hazardous substance” with “intoxicating substance” and replaces the requirement that a person be knowingly under the influence of a substance with the requirement that the person knows or has reason to know that the substance has the capacity to cause impairment.