WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1971

ENROLLED
COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 38

(By Mr. Poffenbarger)
ORIGINAL SPONSOR

PASSED MARCH 12, 1971

In Effect Ninety Days From Passage

FILED IN THE OFFICE
JOHN D. ROCKEFELLER, IV
SECRETARY OF STATE
THIS DATE 4-2-71
AN ACT to repeal articles eight, eight-a and eight-b, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to enact in lieu thereof a new chapter of said code, designated chapter sixty-a, relating to narcotics, marihuana and drugs generally; providing for the adoption of the uniform controlled substances act; establishing criminal offenses; and providing criminal penalties.

Be it enacted by the Legislature of West Virginia:

That articles eight, eight-a and eight-b, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-
one, as amended, be repealed and a new chapter of said code enacted in lieu thereof, designated chapter sixty-a, to read as follows:

CHAPTER 60A. UNIFORM CONTROLLED SUBSTANCES ACT.

ARTICLE 1. DEFINITIONS.


1 As used in this act:

2 (a) "Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:

3 (1) a practitioner (or, in his presence, by his authorized agent), or

4 (2) the patient or research subject at the direction and in the presence of the practitioner.

5 (b) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. It does not include a common or contract carrier, public warehouseman, or employee of the carrier or warehouseman.
(c) "Bureau" means the "Bureau of Narcotics and Dangerous Drugs, United States Department of Justice," or its successor agency.

(d) "Controlled substance" means a drug, substance, or immediate precursor in Schedules I through V of article two.

(e) "Counterfeit substance" means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person who in fact manufactured, distributed, or dispensed the substance.

(f) "Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship.

(g) "Dispense" means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding
necessary to prepare the substance for that delivery.

(h) "Dispenser" means a practitioner who dispenses.

(i) "Distribute" means to deliver other than by administering or dispensing a controlled substance.

(j) "Distributor" means a person who distributes.

(k) "Drug" means (1) substances recognized as drugs in the official "United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary," or any supplement to any of them; (2) substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals; (3) substances (other than food) intended to affect the structure or any function of the body of man or animals; and (4) substances intended for use as a component of any article specified in clause (1), (2), or (3) of this subdivision. It does not include devices or their components, parts, or accessories.

(1) "Immediate precursor" means a substance which the "West Virginia Board of Pharmacy" (hereinafter in this act referred to as the state board of pharmacy) has found to be and by rule designates as being the
principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail, or limit manufacture.

(m) “Manufacture” means the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation or compounding of a controlled substance by an individual for his own use or the preparation, compounding, packaging, or labeling of a controlled substance:

(1) by a practitioner as an incident to his administering or dispensing of a controlled substance in the course of his professional practice, or

(2) by a practitioner, or by his authorized agent under
his supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale.

(n) "Marihuana" means all parts of the plant "Cannabis sativa L.," whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil 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 therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

(o) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate.
(2) Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in clause (1) of this subdivision, but not including the isoquinoline alkaloids of opium.

(3) Opium poppy and poppy straw.

(4) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.

(p) "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under Section 201, article two of this act, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its
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120 salts (dextromethorphan). It does include its racemic
121 and levorotatory forms.
122 (q) “Opium poppy” means the plant of the species
123 “Papaver somniferum L.,” except its seeds.
124 (r) “Person” means individual, corporation, govern-
125 ment or governmental subdivision or agency, business
126 trust, estate, trust, partnership, or association, or any
127 other legal entity.
128 (s) “Poppy straw” means all parts, except the seeds,
129 of the opium poppy, after mowing.
130 (t) “Practitioner” means:
131 (1) A physician, dentist, veterinarian, scientific investi-
132 gator, or other person licensed, registered, or other-
133 wise permitted to distribute, dispense, conduct research
134 with respect to, or to administer a controlled substance
135 in the course of professional practice or research in
136 this state.
137 (2) A pharmacy, hospital, or other institution licensed,
138 registered, or otherwise permitted to distribute, dispense,
139 conduct research with respect to, or to administer a
controlled substance in the course of professional practice or research in this state.

(u) "Production" includes the manufacture, planting, cultivation, growing, or harvesting of a controlled substance.

(v) "State," when applied to a part of the United States, includes any state, district, commonwealth, territory, insular possession thereof, and any area subject to the legal authority of the United States of America.

(w) "Ultimate user" means a person who lawfully possesses a controlled substance for his own use or for the use of a member of his household or for administering to an animal owned by him or by a member of his household.

ARTICLE 2. STANDARDS AND SCHEDULES.

§60A-2-201. Authority to control.

(a) The state board of pharmacy shall administer this act and may add substances to or delete or reschedule all substances enumerated in the schedules in Sections 204, 206, 208, 210, or 212, pursuant to the provisions of article three, chapter twenty-nine-a of this code. In mak-
ing a determination regarding a substance, the state board of pharmacy shall consider the following:

(1) the actual or relative potential for abuse;

(2) the scientific evidence of its pharmacological effect, if known;

(3) the state of current scientific knowledge regarding the substance;

(4) the history and current pattern of abuse;

(5) the scope, duration, and significance of abuse;

(6) the risk to the public health;

(7) the potential of the substance to produce psychic or physiological dependence liability; and

(8) whether the substance is an immediate precursor of a substance already controlled under this article.

(b) After considering the factors enumerated in subsection (a), the state board of pharmacy shall make findings with respect thereto and issue a rule controlling the substance if it finds the substance has a potential for abuse.

(c) If the state board of pharmacy designates a substance as an immediate precursor, substances which are
precursors of the controlled precursor shall not be subject to control solely because they are precursors of the controlled precursor.

(d) If any substance is designated, rescheduled, or deleted as a controlled substance under federal law and notice thereof is given to the state board of pharmacy, the said board shall similarly control the substance under this act after the expiration of thirty days from publication in the “Federal Register” of a final order designating a substance as a controlled substance or rescheduling or deleting a substance, unless within that thirty-day period, the state board of pharmacy objects to inclusion, rescheduling, or deletion. In that case, the state board of pharmacy shall publish the reasons for objection and afford all interested parties an opportunity to be heard. At the conclusion of the hearing, the state board of pharmacy shall publish its decision, which shall be final unless altered by statute. Upon publication of objection to inclusion, rescheduling, or deletion under this act by the state board of pharmacy, control under this act is stayed until the state board of pharmacy publishes its
decision. Each such publication shall be published as a Class I-O legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be each county of the state.

(e) Authority to control under this section does not extend to distilled spirits, wine, malt beverages, or tobacco as those terms are defined or used in other chapters of this code nor to any nonnarcotic substance if such substance may under the "Federal Food, Drug and Cosmetic Act" and the law of this state be lawfully sold over the counter without a prescription.


The controlled substances listed or to be listed in the schedules in Sections 204, 206, 208, 210, and 212 are included by whatever official, common, usual, chemical, or trade name designated.

§60A-2-203. Schedule I Tests.

The state board of pharmacy shall place a substance in Schedule I if it finds that the substance:

(1) has high potential for abuse; and
(2) has no accepted medical use in treatment in the United States or lacks accepted safety for use in treatment under medical supervision.

§60A-2-204. Schedule I.

(a) The controlled substances listed in this section are included in Schedule I.

(b) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

(1) Acetylmethadol;
(2) Allylprodine;
(3) Alphacetylmethadol;
(4) Alphameprodine;
(5) Alphamethadol;
(6) Benzethidine;
(7) Betacetylmethadol;
(8) Betameprodine;
(9) Betamethadol;
(10) Betaprodine;
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18  (11) Clonitazene;
19  (12) Dextromoramide;
20  (13) Dextrophan;
21  (14) Diampromide;
22  (15) Diethylthiambutene;
23  (16) Dimenoxadol;
24  (17) Dimephtanol;
25  (18) Dimethylthiambutene;
26  (19) Dioxaphetyl butyrate;
27  (20) Dipipanone;
28  (21) Ethylmethylthiambutene;
29  (22) Etonitazene;
30  (23) Etoxeridine;
31  (24) Furethidine;
32  (25) Hydroxyperidine;
33  (26) Ketobemidone;
34  (27) Levomoramide;
35  (28) Levophenacylmorphan;
36  (29) Morpheridine;
37  (30) Noracymethadol;
38  (31) Norlevorphanol;
Normethadone;
Norpipanone;
Phenadoxone;
Phenampramide;
Phenomorphan;
Phenoperidine;
Piritramide;
Proheptazine;
Properidine;
Racemoramide;
Trimeperidine.

(c) Any of the following opium derivatives, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Acetorphine;
(2) Acetyldihydrocodeine;
(3) Benzylmorphine;
(4) Codeine methylbromide;
(5) Codeine-N-Oxide;
(6) Cyprenorphine;
(7) Desomorphine;
(8) Dihydromorphine;
(9) Etorphine;
(10) Heroin;
(11) Hydromorphinol;
(12) Methyldesorphine;
(13) Methyldihydromorphine;
(14) Morphine methylbromide;
(15) Morphine methylsulfonate;
(16) Morphine-N-Oxide;
(17) Myrophine;
(18) Nicocodeine;
(19) Nicomorphine;
(20) Normorphine;
(21) Phoclodine;
(22) Thebacon.

(d) Any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of
these salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) 3,4-methylenedioxy amphetamine;
(2) 5-methoxy-3,4-methylenedioxy amphetamine;
(3) 3,4,5-trimethoxy amphetamine;
(4) Bufotenine;
(5) Diethyltryptamine;
(6) Dimethyltryptamine;
(7) 4-methyl-2,5-dimethoxylamphetamine;
(8) Ibogaine;
(9) Lysergic acid diethylamide;
(10) Marihuana;
(11) Mescaline;
(12) Peyote;
(13) N-ethyl-3-piperidyl benzilate;
(14) N-methyl-3-piperidyl benzilate;
(15) Psilocybin;
(16) Psilocyn;
(17) Tetrahydrocannabinols.

§60A-2-205. Schedule II Tests.

The state board of pharmacy shall place a substance
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2 in Schedule II if it finds that:

3 (1) the substance has high potential for abuse;

4 (2) the substance has currently accepted medical use

5 in treatment in the United States, or currently accepted

6 medical use with severe restrictions; and

7 (3) the abuse of the substance may lead to severe

8 psychic or physical dependence.

§60A-2-206. Schedule II.

1 (a) The controlled substances listed in this section

2 are included in Schedule II.

3 (b) Any of the following substances, except those

4 narcotic drugs listed in other schedules, whether pro-

5 duced directly or indirectly by extraction from sub-

6 stances of vegetable origin, or independently by means

7 of chemical synthesis, or by combination of extraction

8 and chemical synthesis:

9 (1) Opium and opiate, and any salt, compound, de-

10 rivative, or preparation of opium or opiate.

11 (2) Any salt, compound, isomer, derivative, or prepara-

12 tion thereof which is chemically equivalent or identi-

13 cal with any of the substances referred to in subdivision
(1), but not including the isoquinoline alkaloids of opium.

(3) Opium poppy and poppy straw.

(4) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions which do not contain cocaine or ecgonine.

(c) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

(1) Alphaprodine;

(2) Anileridine;

(3) Bezitramide;

(4) Dihydrocodeine;

(5) Diphenoxylate;

(6) Fentanyl;

(7) Isomethadone;

(8) Levomethorphan;

(9) Levorphanol;
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35  (10) Metazocine;
36  (11) Methadone;
37  (12) Methadone—Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;
39  (13) Moramide—Intermediate, 2-methyl-3-morpholino-1, 1-diphenyl-propane-carboxylic acid;
41  (14) Pethidine;
42  (15) Pethidine—Intermediate—A, 4-cyano-1-methyl-4-phenylpiperidine;
44  (16) Pethidine—Intermediate—B, ethyl-4-phenylpiperidine-4-carboxylate;
46  (17) Pethidine—Intermediate—C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;
48  (18) Phenazocine;
49  (19) Piminodine;
50  (20) Racemethorphan;
51  (21) Racemorphan.

§60A-2-207. Schedule III Tests.

1 The state board of pharmacy shall place a substance in Schedule III if it finds that:

2 (1) the substance has a potential for abuse less than

3 the substances listed in Schedule I and II;
21  §60A-2-208. Schedule III.

(a) The controlled substances listed in this section are included in Schedule III.

(b) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system:

(1) Amphetamine, its salts, optical isomers, and salts of its optical isomers;

(2) Phenmetrazine and its salts;

(3) Any substance which contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers;

(4) Methylphenidate.

(c) Unless listed in another schedule, any material, compound, mixture, or preparation which contains any
quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

1. Any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid, except those substances which are specifically listed in other schedules;

2. Chlorhexadol;

3. Glutethimide;

4. Lysergic acid;

5. Lysergic acid amide;

6. Methyprylon;

7. Phencyclidine;

8. Sulfondiethymethane;

9. Sulfonethylmethane;

10. Sulfonmethane.

(d) Nalorphine.

(e) Any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:

1. Not more than 1.8 grams of codeine, or any of
its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

(2) Not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(3) Not more than 300 milligrams of dihydrocodeinone, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;

(4) Not more than 300 milligrams of dihydrocodeinone, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(5) Not more than 1.8 grams of dihydrocodeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(6) Not more than 300 milligrams of ethylmorphine,
or any of its salts, per 100 milliliters or not more than 15
milligrams per dosage unit, with one or more ingredients
in recognized therapeutic amounts;

(7) Not more than 500 milligrams of opium per 100
milliliters or per 100 grams, or not more than 25 milli-
grams per dosage unit, with one or more active, non-
narcotic ingredients in recognized therapeutic amounts;

(8) Not more than 50 milligrams of morphine, or any
of its salts, per 100 milliliters or per 100 grams with one
or more active, nonnarcotic ingredients in recognized
therapeutic amounts.

(f) The state board of pharmacy may except by rule
any compound, mixture, or preparation containing any
stimulant or depressant substance listed in subsections
(b) and (c) from the application of all or any part of
this act if the compound, mixture, or preparation contains
one or more active medicinal ingredients not having a
stimulant or depressant effect on the central nervous
system, and if the admixtures are included therein in
combinations, quantity, proportion, or concentration that
vitiate the potential for abuse of the substances which
have a stimulant or depressant effect on the central nervous system.

§60A-2-209. Schedule IV Tests.

The state board of pharmacy shall place a substance in Schedule IV if it finds that:

(1) the substance has a low potential for abuse relative to substances in Schedule III;

(2) the substance has currently accepted medical use in treatment in the United States; and

(3) abuse of the substance may lead to limited physical dependence or psychological dependence relative to the substances in Schedule III.

§60A-2-210. Schedule IV.

(a) The controlled substances listed in this section are included in Schedule IV.

(b) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

(1) Barbital;

(2) Chloral betaine;
(3) Chloral hydrate;
(4) Ethchlorvynol;
(5) Ethinamate;
(6) Methohexital;
(7) Meprobamate;
(8) Methylphenobarbital;
(9) Paraldehyde;
(10) Petrichloral;
(11) Phenobarbital.

(c) The state board of pharmacy may except by rule any compound, mixture, or preparation containing any depressant substances listed in subsection (b) from the application of all or any part of this act if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a depressant effect on the central nervous system.
§60A-2-211. Schedule V Tests.

1 The state board of pharmacy shall place a substance in Schedule V if it finds that:

3 (1) the substance has low potential for abuse relative to the controlled substances listed in Schedule IV;

5 (2) the substance has currently accepted medical use in treatment in the United States, and

7 (3) the substance has limited physical dependence or psychological dependence liability relative to the controlled substances listed in Schedule IV.

§60A-2-212. Schedule V.

1 (a) The controlled substances listed in this section are included in Schedule V.

3 (b) Any compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, which also contains one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation, valuable medicinal qualities other than those possessed by the narcotic drug alone:
10  (1) Not more than 200 milligrams of codeine, or any
11  of its salts, per 100 milliliters or per 100 grams;
12  (2) Not more than 100 milligrams of dihydrocodeine, or
13  any of its salts, per 100 milliliters or per 100 grams;
14  (3) Not more than 100 milligrams of ethylmorphine,
15  or any of its salts, per 100 milliliters or per 100 grams;
16  (4) Not more than 2.5 milligrams of diphenoxylate and
17  not less than 25 micrograms of atropine sulfate per dosage
18  unit;
19  (5) Not more than 100 milligrams of opium per 100
20  milliliters or per 100 grams.

§60A-2-213. Republishing of schedules.

1 The state board of pharmacy shall review and cause
2 to be printed the schedules semiannually for two years
3 from the effective date of this act, and thereafter an-
4 nually; which schedules shall be made available to the
5 public.

ARTICLE 3. REGULATION OF MANUFACTURE, DISTRIBUTION
AND DISPENSING OF CONTROLLED SUBSTANCES.

§60A-3-301. Rules.

1 The state board of pharmacy shall promulgate rules
2 and charge reasonable fees relating to the registration and
control of the manufacture and distribution of controlled substances within this state, and each department, board, or agency of this state which licenses or registers practitioners authorized to dispense any controlled substance shall promulgate rules and charge reasonable fees relating to the registration and control of the dispensing of controlled substances within this state by those practitioners licensed or registered by such department, board, or agency.

§60A-3-302. Registration requirements.

(a) Every person who manufactures, distributes, or dispenses any controlled substance within this state or who proposes to engage in the manufacture, distribution, or dispensing of any controlled substance within this state, must obtain annually a registration issued by the state board of pharmacy or the appropriate department, board, or agency, as the case may be, as specified in Section 301, in accordance with its rules.

(b) Persons registered by said state board of pharmacy or said appropriate department, board, or agency, as the case may be, under this act to manufacture, distribute, dispense, or conduct research with controlled substances
may possess, manufacture, distribute, dispense, or conduct research with those substances to the extent authorized by their registration and in conformity with the other provisions of this article.

(c) The following persons need not register and may lawfully possess controlled substances under this act:

1. an agent or employee of any registered manufacturer, distributor, or dispenser of any controlled substance if he is acting in the usual course of his business or employment;

2. a common or contract carrier or warehouseman, or an employee thereof, whose possession of any controlled substance is in the usual course of business or employment;

3. an ultimate user or a person in possession of any controlled substance pursuant to a lawful order of a practitioner or in lawful possession of a Schedule V substance.

(d) The said state board of pharmacy or said appropriate department, board, or agency, as the case may be, may waive by rule the requirement for registration of
certain manufacturers, distributors, or dispensers if it finds it consistent with the public health and safety.

(e) A separate registration is required at each principal place of business or professional practice where the applicant manufactures, distributes, or dispenses controlled substances.

(f) The said state board of pharmacy or said appropriate department, board, or agency, as the case may be, may inspect the establishment of a registrant or applicant for registration in accordance with the rule of said state board of pharmacy or said appropriate department, board, or agency, as the case may be.

§60A-3-303. Registration.

(a) The state board of pharmacy shall register an applicant to manufacture or distribute controlled substances included in Schedules I, II, III, IV, and V unless it determines that the issuance of that registration would be inconsistent with the public interest. In determining the public interest, the state board of pharmacy shall consider the following factors:
(1) maintenance of effective controls against diversion of controlled substances into other than legitimate medical, scientific, or industrial channels;
(2) compliance with applicable state and local law;
(3) any convictions of the applicant under any federal or state laws relating to any controlled substance;
(4) past experience in the manufacture or distribution of controlled substances, and the existence in the applicant's establishment of effective controls against diversion;
(5) furnishing by the applicant of false or fraudulent material in any application filed under this act;
(6) suspension or revocation of the applicant's federal registration to manufacture, distribute, or dispense controlled substances as authorized by federal law; and
(7) any other factors relevant to and consistent with the public health and safety.
(b) Registration under subsection (a) does not entitle a registrant to manufacture and distribute controlled substances in Schedule I or II other than those specified in the registration.
(c) Practitioners must be registered to dispense any controlled substances or to conduct research with controlled substances in Schedules II through V if they are authorized to dispense or conduct research under the law of this state. The appropriate department, board, or agency, as specified in Section 301, need not require separate registration under this article for practitioners engaging in research with non-narcotic controlled substances in Schedules II through V where the registrant is already registered under this article in another capacity. Practitioners registered under federal law to conduct research with Schedule I substances may conduct research with Schedule I substances within this state upon furnishing the appropriate department, board, or agency evidence of that federal registration.

(d) Compliance by manufacturers and distributors with the provisions of the federal law respecting registration (excluding fees) entitles them to be registered under this act.

§60A-3-304. Suspension or revocation of registration.

(a) A registration under Section 303 to manufacture, distribute, or dispense a controlled substance may be sus-
pended or revoked by the said state board of pharmacy or said appropriate department, board, or agency, as the case may be, upon a finding that the registrant:

(1) has furnished false or fraudulent material information in any application filed under this act;

(2) has been convicted of a felony under any state or federal law relating to any controlled substance; or

(3) has had his federal registration suspended or revoked to manufacture, distribute, or dispense controlled substances.

(b) The said state board of pharmacy or said appropriate department, board, or agency, as the case may be, may limit suspension or revocation of a registration to the particular controlled substance with respect to which grounds for suspension or revocation exist.

(c) If the said state board of pharmacy or said appropriate department, board, or agency, as the case may be, suspends or revokes a registration, all controlled substances owned or possessed by the registrant at the time of suspension or the effective date of the revocation order may be placed under seal. No disposition may be made
of substances under seal until the time for taking an
appeal has elapsed or until all appeals have been con-
cluded unless a court, upon application therefor, orders
the sale of perishable substances and the deposit of the
proceeds of the sale with the court. Upon a revocation
order becoming final, all controlled substances may be
forfeited to the state.

(d) The said state board of pharmacy or said appro-
priate department, board, or agency, as the case may
be, shall promptly notify the bureau of all orders suspend-
ing or revoking registration and all forfeitures of con-
trolled substances.

§60A-3-305. Order to show cause.

(a) Before denying, suspending, or revoking a regis-
tration, or refusing a renewal of registration, the said
state board of pharmacy or said appropriate department,
board, or agency, as the case may be, shall serve upon
the applicant or registrant an order to show cause why
registration should not be denied, suspended, or revoked,
or why the renewal should not be refused. The order to
show cause shall contain a statement of the basis there-
for and shall call upon the applicant or registrant to appear before the said state board of pharmacy or said appropriate department, board, or agency, as the case may be, at a time and place not less than thirty days after the date of service of the order, but in the case of a denial or renewal of registration the show cause order shall be served not later than thirty days before the expiration of the registration. These proceedings shall be conducted in accordance with article five, chapter twenty-nine-a of this code without regard to any criminal prosecution or other proceeding. Proceedings to refuse renewal of registration shall not abate the existing registration which shall remain in effect pending the outcome of the administrative hearing.

(b) The said state board of pharmacy or said appropriate department, board, or agency, as the case may be, may suspend, without an order to show cause, any registration simultaneously with the institution of proceedings under Section 304, or where renewal of registration is refused, if it finds that there is an imminent danger to the public health or safety which warrants this action.
The suspension shall continue in effect until the conclusion of the proceedings, including judicial review thereof, unless sooner withdrawn by the said state board of pharmacy or said appropriate department, board, or agency, as the case may be, or dissolved by a court of competent jurisdiction.

§60A-3-306. Records of registrants.

1. Persons registered to manufacture, distribute, or dispense controlled substances under this act shall keep records and maintain inventories in conformance with the record-keeping and inventory requirements of federal law and with any additional rules the said state board of pharmacy of said appropriate department, board, or agency, as the case may be, issues.

§60A-3-307. Order forms.

1. Controlled substances in Schedules I and II shall be distributed by a registrant to another registrant only pursuant to an order form. Compliance with the provisions of federal law respecting order forms shall be deemed compliance with this section.
§60A-3-308. Prescriptions.

1 (a) Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, no controlled substance in Schedule II may be dispensed without the written prescription of a practitioner.

2 (b) In emergency situations, as defined by rule of the said appropriate department, board, or agency, Schedule II drugs may be dispensed upon oral prescription of a practitioner, reduced promptly to writing and filed by the pharmacy. Prescription shall be retained in conformity with the requirements of Section 306. No prescription for a Schedule II substance may be refilled.

3 (c) Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, a controlled substance included in Schedule III or IV, which is a prescription drug as determined under appropriate state or federal statute, shall not be dispensed without a written or oral prescription of a practitioner. The prescription shall not be filled or refilled more than six months after the date thereof or be refilled more than five times, unless renewed by the practitioner.
(d) A controlled substance included in Schedule V shall not be distributed or dispensed other than for a medical purpose.

ARTICLE 4. OFFENSES AND PENALTIES.

§60A-4-401. Prohibited Acts A—Penalties.

1. (a) Except as authorized by this act, it is unlawful for any person to manufacture, deliver, or possess with intent to manufacture or deliver, a controlled substance.

2. (1) Any person who violates this subsection with respect to:

   (i) a controlled substance classified in Schedule I or II which is a narcotic drug, is guilty of a felony and upon conviction may be imprisoned in the penitentiary for not less than one year nor more than fifteen years, or fined not more than twenty-five thousand dollars, or both;

   (ii) Any other controlled substance classified in Schedule I, II, or III, is guilty of a felony and upon conviction may be imprisoned in the penitentiary for not less than one year nor more than five years, or fined not more than fifteen thousand dollars, or both;

   (iii) a substance classified in Schedule IV, is guilty
of a felony and upon conviction may be imprisoned in
the penitentiary for not less than one year nor more
than three years, or fined not more than ten thousand
dollars, or both;
(iv) a substance classified in Schedule V, is guilty of
a misdemeanor and upon conviction may be confined in
the county jail for not less than six months nor more
than one year, or fined not more than five thousand dol-
lars, or both.
(b) Except as authorized by this act, it is unlawful
for any person to create, deliver, or possess with intent
to deliver, a counterfeit substance.
(1) Any person who violates this subsection with re-
spect to:
(i) a counterfeit substance classified in Schedule I or
II which is a narcotic drug, is guilty of a felony and upon
conviction may be imprisoned in the penitentiary for
not less than one year nor more than fifteen years, or
fined not more than twenty-five thousand dollars, or both;
(ii) any other counterfeit substance classified in
Schedule I, II, or III, is guilty of a felony and upon con-
viction may be imprisoned in the penitentiary for not
less than one year nor more than five years, or fined not
more than fifteen thousand dollars, or both;
(iii) a counterfeit substance classified in Schedule IV,
is guilty of a felony and upon conviction may be im-
prisoned in the penitentiary for not less than one year
nor more than three years, or fined not more than ten
thousand dollars, or both;
(iv) a counterfeit substance classified in Schedule V,
is guilty of a misdemeanor and upon conviction may
be confined in the county jail for not less than six months
nor more than one year, or fined not more than five
thousand dollars, or both.
(c) It is unlawful for any person knowingly or inten-
tionally to possess a controlled substance unless the sub-
stance was obtained directly from, or pursuant to, a valid
prescription or order of a practitioner while acting in
the course of his professional practice, or except as oth-
erwise authorized by this act. Any person who violates
this subsection is guilty of a misdemeanor, and dispo-
sition may be made under Section 407, subject to the
limitations specified in said Section 407, or upon convic-

tion such person may be confined in the county jail not

less than ninety days nor more than six months, or fined

not more than one thousand dollars, or both: Provided,

That notwithstanding any other provision of this act

to the contrary, any first offense for possession of less

than 15 grams of marihuana shall be disposed of under

said Section 407.

§60A-4-402. Prohibited Acts B—Penalties.

(a) It is unlawful for any person:

(1) who is subject to Article 3 to distribute or dispense

a controlled substance in violation of Section 308;

(2) who is a registrant, to manufacture a controlled

substance not authorized by his registration, or to dis-

tribute or dispense a controlled substance not authorized

by his registration to another registrant or other authoriz-

ed person;

(3) to refuse or fail to make, keep, or furnish any rec-

dord, notification, order form, statement, invoice, or in-

formation required under this act;
(4) to refuse an entry into any premises for any inspection authorized by this act; or

(5) knowingly to keep or maintain any store, shop, warehouse, dwelling, building, vehicle, boat, aircraft, or other structure or place, which is resorted to by persons using controlled substances in violation of this act for the purpose of using these substances, or which is used for keeping or selling them in violation of this act.

(b) Any person who violates this section is guilty of a misdemeanor and upon conviction may be confined in the county jail for not less than six months nor more than one year, or fined not more than twenty-five thousand dollars, or both.

(c) Notwithstanding any other provision of this act to the contrary, any first offense for distributing less than 15 grams of marihuana without any remuneration shall be disposed of under Section 407.

§60A-4-403. Prohibited Acts C—Penalties.

(a) It is unlawful for any person knowingly or intentionally:

(1) to distribute as a registrant a controlled substance
4 classified in Schedule I or II, except pursuant to an order
5 form as required by Section 307 of this act;
6 (2) to use in the course of the manufacture or distribu-
7 tion of a controlled substance a registration number
8 which is fictitious, suspended, revoked, or issued to an-
9 other person;
10 (3) to acquire or obtain possession of a controlled sub-
11 stance by misrepresentation, fraud, forgery, deception,
12 or subterfuge;
13 (4) to furnish false or fraudulent material information
14 in, or omit any material information from, any applica-
15 tion, report, or other document required to be kept or
16 filed under this act, or any record required to be kept by
17 this act; or
18 (5) to make, distribute, or possess any punch, die,
19 plate, stone, or other thing designed to print, imprint, or
20 reproduce the trademark, trade name, or other identify-
21 ing mark, imprint, or device of another or any likeness of
22 any of the foregoing upon any drug or container or
23 labeling thereof so as to render the drug a counterfeit
24 substance.
(b) Any person who violates this section is guilty of a felony and upon conviction may be imprisoned in the penitentiary for not less than one year nor more than four years, or fined not more than thirty thousand dollars, or both.

§60A-4-404. Penalties under other laws.

Any penalty imposed for violation of this act is in addition to, and not in lieu of, any civil or administrative penalty or sanction otherwise authorized by law.

§60A-4-405. Bar to prosecution.

If a violation of this act is a violation of a federal law or the law of another state, a conviction or acquittal under federal law or the law of another state for the same act is a bar to prosecution in this state.

§60A-4-406. Distribution to persons under age eighteen.

Any person eighteen years of age or over who violates Section 401(a) by distributing a controlled substance listed in Schedule I or II which is a narcotic drug to a person under eighteen years of age who is at least three years his junior is punishable by the fine authorized by Section 401(a)(1)(i), by a term of imprisonment of up
to twice that authorized by Section 401(a) (1) (i), or by both. Any person eighteen years of age or over who violates Section 401(a) by distributing any other controlled substance listed in Schedules I, II, III, IV, and V to a person under eighteen years of age who is at least three years his junior is punishable by the fine authorized by Section 401(a) (1) (ii), (iii), or (iv), by a term of imprisonment up to twice that authorized by Section 401(a) (1) (ii), (iii), or (iv), or both.

§60A-4-407. Conditional discharge for possession as first offense.

Whenever any person who has not previously been convicted of any offense under this act or under any statute of the United States or of any state relating to narcotic drugs, marihuana, or stimulant, depressant, or hallucinogenic drugs, pleads guilty to or is found guilty of possession of a controlled substance under Section 401(c), the court, without entering a judgment of guilt and with the consent of the accused, may defer further proceedings and place him on probation upon terms and conditions. Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as
otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge the person and dismiss the proceedings against him. Discharge and dismissal under this section shall be without adjudication of guilt and is not a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime, including the additional penalties imposed for second or subsequent convictions under Section 408. The effect of such dismissal and discharge shall be to restore such person in contemplation of law to the status he occupied prior to such arrest and trial. No person as to whom such dismissal and discharge have been effected shall be thereafter held to be guilty of perjury, false swearing, or otherwise giving a false statement by reason of his failure to disclose or acknowledge such arrest or trial in response to any inquiry made of him for any purpose. There may be only one discharge and dismissal under this section with respect to any person.

After a period of not less than six months which shall begin to run immediately upon the expiration of a term
of probation imposed upon any person under this act, such person may apply to the court for an order to ex-punge from all official records all recordations of his arrest, trial, and conviction, pursuant to this section. If the court determines after a hearing that such person during the period of such probation and during the period of time prior to his application to the court under this section has not been guilty of any serious or re-peated violation of the conditions of such probation, it shall enter such order.

§60A-4-408. Second or subsequent offenses.

(a) Any person convicted of a second or subsequent offense under this act may be imprisoned for a term up to twice the term otherwise authorized, fined an amount up to twice that otherwise authorized, or both. When a term of imprisonment is doubled under Section 406, such term of imprisonment shall not be further increased for such offense under this subsection (a), even though such term of imprisonment is for a second or subsequent offense.

(b) For purposes of this section, an offense is con-
sidered a second or subsequent offense, if, prior to his conviction of the offense, the offender has at any time been convicted under this act or under any statute of the United States or of any state relating to narcotic drugs, marihuana, depressant, stimulant, or hallucinogenic drugs.

(c) This section does not apply to offenses under Section 401(c).

ARTICLE 5. ENFORCEMENT AND ADMINISTRATIVE PROVISIONS.


(a) Any member of the department of public safety, any sheriff, any deputy sheriff and any municipal police officer may in the enforcement of the provisions of this act:

(1) carry firearms;

(2) execute and serve search warrants, arrest warrants, subpoenas, and summonses issued under the authority of this state;

(3) make arrests without warrant for any offense under this act committed in his presence, or if he has probable cause to believe that the person to be arrested
has committed or is committing a violation of this act which may constitute a felony;

(4) make seizures of property pursuant to this act; or

(5) perform such other law enforcement duties as said state board of pharmacy or said appropriate department, board or agency, as specified in Section 301, designates.

(b) All officers, agents, inspectors, and representatives of the said state board of pharmacy and of the said appropriate department, board, or agency, as specified in Section 301, and members of the department of public safety may execute and serve administrative warrants issued incident to the enforcement of the provisions of this act. Any such officer, agent, inspector, and representative of the said state board of pharmacy and of the said appropriate department, board, or agency, as specified in said Section 301, may:

(1) execute and serve subpoenas and summonses issued under the authority of this state;

(2) make arrests without warrant for any offense under this act committed in his presence, or if he has
probable cause to believe that the person to be arrested
has committed or is committing a violation of this act
which may constitute a felony; or
(3) make seizures of property pursuant to this act.
(c) All prosecuting attorneys and the attorney gen-
eral, or any of their assistants, shall assist in the enforce-
ment of all provisions of this act and shall cooperate with
all agencies charged with the enforcement of the laws
of the United States, of this state, and of all other states
relating to controlled substances.
§60A-5-502. Administrative inspections and warrants.
(a) Issuance and execution of administrative inspec-
tion warrants shall be as follows:
(1) A judge of any court of record in this state having
criminal jurisdiction, and upon proper oath or affirma-
tion showing probable cause, may issue warrants for the
purpose of conducting administrative inspections author-
ized by this act or rules hereunder, and seizures of prop-
erty appropriate to the inspections. For purposes of the
issuance of administrative inspection warrants, probable
cause exists upon showing a valid public interest in the
11 effective enforcement of this act or rules hereunder, 
12 sufficient to justify administrative inspection of the area, 
13 premises, building, or conveyance in the circumstances 
14 specified in the application for the warrant; 
15 (2) A warrant shall issue only upon an affidavit of a 
16 designated officer or employee having knowledge of the 
17 facts alleged, sworn to before the judge and establishing 
18 the grounds for issuing the warrant. If the judge is satis-
19 fied that grounds for the application exist or that there 
20 is probable cause to believe they exist, he shall issue a 
21 warrant identifying the area, premises, building, or con-
22 veyance to be inspected, the purpose of the inspection, 
23 and, if appropriate, the type of property to be inspected, 
24 if any. The warrant shall: 
25 (i) state the grounds for its issuance and the name of 
26 each person whose affidavit has been taken in support 
27 thereof; 
28 (ii) be directed to a person authorized by Section 501 
29 to execute it; 
30 (iii) command the person to whom it is directed to 
31 inspect the area, premises, building, or conveyance identi-
fied for the purpose specified and, if appropriate, direct
the seizure of the property specified;
(iv) identify the item or types of property to be seized,
if any;
(v) direct that it be served during normal business
hours and designate the judge to whom it shall be re-
turned;
(3) A warrant issued pursuant to this section must be
executed and returned within ten days of its date unless,
upon a showing of a need for additional time, the court
orders otherwise. If property is seized pursuant to a
warrant, a copy shall be given to the person from whom
or from whose premises the property is taken, together
with a receipt for the property taken. The return of the
warrant shall be made promptly, accompanied by a writ-
ten inventory of any property taken. The inventory shall
be made in the presence of the person executing the
warrant and of the person from whose possession or
premises the property was taken, if present, or in the
presence of at least one credible person other than the
person executing the warrant. A copy of the inventory
shall be delivered to the person from whom or from whose premises the property was taken and to the applicant for the warrant;

(4) The judge who has issued a warrant shall attach thereto a copy of the return and all papers returnable in connection therewith and file them with the clerk of the court.

(b) Administrative inspections of controlled premises shall be made in accordance with the following provisions:

(1) For purposes of this section only, “controlled premises” means:

(i) places where persons registered or exempted from registration requirements under this act are required to keep records; and

(ii) places including factories, warehouses, establishments, and conveyances in which persons registered or exempted from registration requirements under this act are permitted to hold, manufacture, compound, process, sell, deliver, or otherwise dispose of any controlled substance.
(2) When authorized by an administrative inspection warrant issued pursuant to subsection (a), any person authorized in subsection (b), Section 501 of this article to execute and serve the same, upon presenting the warrant and appropriate credentials to the owner, operator, or agent in charge, may enter controlled premises for the purpose of conducting an administrative inspection.

(3) When authorized by an administrative inspection warrant, any such person may:

(i) inspect and copy records required by this act to be kept;

(ii) inspect, within reasonable limits and in a reasonable manner, controlled premises and all pertinent equipment, finished and unfinished material, containers and labeling found therein, and, except as provided in subsection (b) (5), all other things therein, including records, files, papers, processes, controls, and facilities bearing on violation of this act; and

(iii) inventory any stock of any controlled substance therein and obtain samples thereof;
(4) This section does not prevent the inspection without a warrant of books and records pursuant to an administrative subpoena issued in accordance with any pertinent provision of this code, nor does it prevent entries and administrative inspections, including seizures of property, without a warrant:

(i) if the owner, operator, or agent in charge of the controlled premises consents;

(ii) in situations presenting imminent danger to health or safety;

(iii) in situations involving inspection of conveyances if there is reasonable cause to believe that the mobility of the conveyance makes it impracticable to obtain a warrant;

(iv) in any other exceptional or emergency circumstance where time or opportunity to apply for a warrant is lacking; or,

(v) in all other situations in which a warrant is not constitutionally required;

(5) An inspection authorized by this section shall not extend to financial data, sales data, other than shipment
§60A-5-503. Injunctions.

1. (a) The courts of record of this state have and may exercise jurisdiction to restrain or enjoin violations of this act.

2. (b) The defendant may demand trial by jury for an alleged violation of an injunction or restraining order under this section.

§60A-5-504. Cooperative arrangements and confidentiality.

1. (a) The state board of pharmacy and the appropriate departments, boards, and agencies, as specified in Section 301, shall cooperate with federal and other state agencies in discharging their responsibilities concerning traffic in controlled substances and in suppressing the abuse of controlled substances. To this end, they may:

2. (1) arrange for the exchange of information among governmental officials concerning the use and abuse of controlled substances;

3. (2) coordinate and cooperate in training programs concerning controlled substance law enforcement at local and state levels;
(3) cooperate with the bureau by establishing a centralized unit to accept, catalogue, file, and collect statistics, including records of drug dependent persons and other controlled substance law offenders within the state, and make the information available for federal, state, and local law enforcement purposes. They shall not furnish the name or identity of a patient or research subject whose identity could not be obtained under subsection (c); and

(4) conduct programs of eradication aimed at destroying wild or illicit growth of plant species from which controlled substances may be extracted.

(b) Results, information, and evidence received from the bureau relating to the regulatory functions of this act, including results of inspections conducted by it may be relied and acted upon by the state board of pharmacy in the exercise of its regulatory functions under this act.

(c) A practitioner engaged in medical practice or research is not required or compelled to furnish the name or identity of a patient or research subject to the state board of pharmacy or to the appropriate department, board, or agency by which he is licensed or registered.
as specified in Section 301, nor may he be compelled in any state or local civil, criminal, administrative, legislative, or other proceedings to furnish the name or identity of an individual that the practitioner is obligated to keep confidential.

(d) No mental health organization or hospital shall be compelled in any state or local civil, criminal, administrative, legislative or other proceeding to furnish the name or identity of any person voluntarily requesting treatment for or rehabilitation from addiction to or dependency upon the use of a controlled substance as defined in article one of this chapter.

§60A-5-505. Forfeitures.

(a) The following are subject to forfeiture:

(1) all controlled substances which have been manufactured, distributed, dispensed, or acquired in violation of this act;

(2) all raw materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this act;
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(3) all property which is used, or intended for use, as a container for property described in subdivision (1) or (2);

(4) all conveyances, including aircraft, vehicles, or vessels, which are used, or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of property described in subdivision (1) or (2), but:

(i) no conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this act;

(ii) no conveyance is subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted without his knowledge or consent;

(iii) a conveyance is not subject to forfeiture for a violation of Section 401(c); and,

(iv) a forfeiture of a conveyance encumbered by a
bona fide security interest is subject to the interest of
the secured party if he neither had knowledge of nor
consented to the act or omission.

(5) all books, records, and research products and ma-
terials, including formulas, microfilm, tapes, and data
which are used, or intended for use, in violation of this
act.

(b) Property subject to forfeiture under this act may
be seized by any person granted enforcement powers
under this act in subsections (a) and (b), Section 501 of
this act (hereinafter in this section referred to as the
“appropriate person”) upon process issued by any court
of record having jurisdiction over the property. Seizure
without process may be made if:

(1) the seizure is incident to an arrest or a search
under a search warrant or an inspection under an ad-
ministrative inspection warrant;

(2) the property subject to seizure has been the sub-
ject of a prior judgment in favor of the state in a criminal
injunction or forfeiture proceeding based upon this act;

(3) the appropriate person has probable cause to be-
lieve that the property is directly or indirectly dangerous
to health or safety; or

(4) the appropriate person has probable cause to be-
lieve that the property was used or is intended to be
used in violation of this act.

(c) In the event of seizure pursuant to subsection (b),
proceedings under subsection (d) shall be instituted
promptly.

(d) Property taken or detained under this section shall
not be subject to replevin, but is deemed to be in the
custody of the appropriate person subject only to the
orders and decrees of the court having jurisdiction over
the forfeiture proceedings. When property is seized under
this act, the appropriate person may:

(1) place the property under seal;

(2) remove the property to a place designated by him;

or

(3) require the appropriate administrative agency to
take custody of the property and remove it to an appro-
priate location for disposition in accordance with law.
(e) When property is forfeited under this act the appropriate person may:

(1) retain it for official use;

(2) sell that which is not required to be destroyed by law and which is not harmful to the public. The proceeds shall be used for payment of all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising, and court costs;

(3) require the appropriate administrative agency to take custody of the property and remove it for disposition in accordance with law; or

(4) forward it to the bureau for disposition.

(f) Controlled substances listed in Schedule I which are possessed, transferred, sold, or offered for sale in violation of this act are contraband and shall be seized and summarily forfeited to the state. Controlled substances listed in Schedule I, which are seized or come into the possession of the state, the owners of which are unknown, are contraband and shall be summarily forfeited to the state.
(g) Species of plants from which controlled substances in Schedules I and II may be derived which have been planted or cultivated in violation of this act, or of which the owners or cultivators are unknown, or which are wild growths, may be seized and summarily forfeited to the state.

(h) The failure, upon demand by the appropriate person, or his authorized agent, of the person in occupancy or in control of land or premises upon which the species of plants are growing or being stored, to produce an appropriate registration, or proof that he is the holder thereof, constitutes authority for the seizure and forfeiture of the plants.

§60A-5-506. Burden of proof; liabilities.

(a) It is not necessary for the state to negate any exemption or exception in this act in any complaint, information, indictment, or other pleading or in any trial, hearing, or other proceeding under this act. The burden of proof of any exemption or exception is upon the person claiming it.

(b) In the absence of proof that a person is the duly
authorized holder of an appropriate registration or order
form issued under this act, he is presumed not to be the
holder of the registration or form. The burden of proof
is upon him to rebut the presumption.

(c) No liability is imposed by this act upon any au-
thorized state, county, or municipal officer, engaged in the
lawful performance of his duties.


All final determinations, findings, and conclusions of
the said state board of pharmacy or the appropriate de-
partment, board, or agency, as specified in Section 301,
made under this act after hearing are final and con-
cclusive decisions of the matters involved. Any person
aggrieved by the decision may obtain review of the de-
cision pursuant to the provisions of articles five and six,
chapter twenty-nine-a of this code.

§60A-5-508. Education and research.

(a) The said state board of pharmacy and the ap-
propriate departments, boards, and agencies, as specified
in Section 301, and the division on alcoholism and drug
abuse in the department of mental health (all herein-
after in this section referred to as "such agencies"), shall carry out educational programs designed to prevent and deter misuse and abuse of controlled substances. In connection with these programs they may:

(1) promote better recognition of the problems of misuse and abuse of controlled substances within the regulated industry and among interested groups and organizations;

(2) assist the regulated industry and interested groups and organizations in contributing to the reduction of misuse and abuse of controlled substances;

(3) consult with interested groups and organizations to aid them in solving administrative and organizational problems;

(4) evaluate procedures, projects, techniques, and controls conducted or proposed as part of educational programs on misuse and abuse of controlled substances;

(5) disseminate the results of research on misuse and abuse of controlled substances to promote a better public understanding of what problems exist and what can be done to combat them; and
(6) assist in the education and training of state and local law enforcement officials in their efforts to control misuse and abuse of controlled substances.

(b) Such agencies shall encourage research on misuse and abuse of controlled substances. In connection with the research, and in furtherance of the enforcement of this act, such agencies may:

(1) establish methods to assess accurately the effects of controlled substances and identify and characterize those with potential for abuse;

(2) make studies and undertake programs of research to:

(i) develop new or improved approaches, techniques, systems, equipment, and devices to strengthen the enforcement of this act;

(ii) determine patterns of misuse and abuse of controlled substances and the social effects thereof; and,

(iii) improve methods for preventing, predicting, understanding, and dealing with the misuse and abuse of controlled substances; and,

(3) enter into contracts with public agencies, institu-
tions of higher education, and private organizations or individuals for the purpose of conducting research, demonstrations, or special projects which bear directly on misuse and abuse of controlled substances.

(c) Such agencies may enter into contracts for educational and research activities without performance bonds.

(d) Such agencies may authorize persons engaged in research on the use and effects of controlled substances to withhold the names and other identifying characteristics of individuals who are the subjects of the research. Persons who obtain this authorization are not compelled in any civil, criminal, administrative, legislative, or other proceeding to identify the individuals who are the subjects of research for which the authorization was obtained.

(e) Such agencies may authorize the possession and distribution of controlled substances by persons engaged in research. Persons who obtain this authorization are exempt from state prosecution for possession and dis-
tribution of controlled substances to the extent of the authorization.

ARTICLE 6. MISCELLANEOUS PROVISIONS.

§60A-6-601. Pending proceedings.

1 (a) The provisions of this act shall govern and control as to any offenses committed in violation thereof on and after the effective date of this act, and the provisions of articles eight, eight-a and eight-b, chapter sixteen of this code shall govern and control as to any offenses committed in violation of said articles, or any of them, prior to the effective date of this act, with like effect as to such prior offenses as if said articles had not been repealed and this act had not been enacted: Provided, That if the offense being prosecuted is similar to one set out in article four of this act, then the penalties under article four apply if they are less than those under prior law.

(b) Civil seizures of forfeitures and injunctive proceedings commenced prior to the effective date of this act are not affected by this act.

(c) All administrative proceedings pending under
prior laws which are superseded by this act shall be continued and brought to a final determination in accord with the laws and rules in effect prior to the effective date of the act. Any substance controlled under prior law which is not listed within Schedules I through V, is automatically controlled without further proceedings and shall be listed in the appropriate schedule.

(d) The state board of pharmacy or the appropriate departments, boards, and agencies, as specified in Section 301, shall initially permit persons to register who own or operate any establishment engaged in the manufacture, distribution, or dispensing of any controlled substance prior to the effective date of this act and who are registered or licensed by the state.

(e) This act applies to violations of law, seizures, and forfeiture, injunctive proceedings, administrative proceedings, and investigations which occur following its effective date.

§60A-6-602. Continuation of orders and rules.

Any orders and rules promulgated under any law affected by this act and in effect on the effective date of
this act and not in conflict with it continue in effect until
modified, superseded or repealed.

§60A-6-603. Uniformity of interpretation.

1 This act shall be so applied and construed as to effec-
tuate its general purpose to make uniform the law with
respect to the subject of this act among those states
which enact it.

§60A-6-604. Short title.

1 This act may be cited as the Uniform Controlled Sub-
stances Act.

§60A-6-605. Severability.

1 If any provision of this act or the application thereof
to any person or circumstance is held invalid, such in-
validity shall not affect other provisions or applications
of the act, and to this end the provisions of this act are
hereby declared to be severable.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

To take effect 90 days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within approved this the 1st day of April, 1971.

Governor
PRESENTED TO THE
GOVERNOR

Date  3/17/71  
Time  11:50 a.m.

RECEIVED

APR 2 11 58 PH '71

OFFICE OF THE SECRETARY OF STATE OF WEST VIRGINIA