

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

38

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COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 38

(MR. POFFENBARGER, *original sponsor*)

[Passed March 12, 1971; in effect ninety days from passage.]

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one, as amended, be repealed and a new chapter of said code enacted in lieu thereof, designated chapter sixty-a, to read as follows: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.

§60A-1-101. Definitions.

1. As used in this act:

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

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

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

10 (b) "Agent" means an authorized person who acts on
11 behalf of or at the direction of a manufacturer, distri-
12 butor, or dispenser. It does not include a common or con-
13 tract carrier, public warehouseman, or employee of the
14 carrier or warehouseman.

15 (c) "Bureau" means the "Bureau of Narcotics and
16 Dangerous Drugs, United States Department of Justice,"
17 or its successor agency.

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

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

28 (f) "Deliver" or "delivery" means the actual, con-
29 structive, or attempted transfer from one person to an-
30 other of a controlled substance, whether or not there is
31 an agency relationship.

32 (g) "Dispense" means to deliver a controlled substance
33 to an ultimate user or research subject by or pursuant to
34 the lawful order of a practitioner, including the prescrib-
35 ing, administering, packaging, labeling, or compounding

36 necessary to prepare the substance for that delivery.

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

38 (i) "Distribute" means to deliver other than by ad-
39 ministering or dispensing a controlled substance.

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

41 (k) "Drug" means (1) substances recognized as drugs
42 in the official "United States Pharmacopoeia, official
43 Homeopathic Pharmacopoeia of the United States, or
44 official National Formulary," or any supplement to any of
45 them; (2) substances intended for use in the diagnosis,
46 cure, mitigation, treatment, or prevention of disease in
47 man or animals; (3) substances (other than food) in-
48 tended to affect the structure or any function of the
49 body of man or animals; and (4) substances intended
50 for use as a component of any article specified in clause
51 (1), (2), or (3) of this subdivision. It does not include
52 devices or their components, parts, or accessories.

53 (1) "Immediate precursor" means a substance which
54 the "West Virginia Board of Pharmacy" (hereinafter in
55 this act referred to as the state board of pharmacy)
56 has found to be and by rule designates as being the

57 principal compound commonly used or produced pri-
58 marily for use, and which is an immediate chemical inter-
59 mediary used or likely to be used in the manufacture of
60 a controlled substance, the control of which is necessary
61 to prevent, curtail, or limit manufacture.

62 (m) "Manufacture" means the production, preparation,
63 propagation, compounding, conversion, or processing of
64 a controlled substance, either directly or indirectly by
65 extraction from substances of natural origin, or inde-
66 pendently by means of chemical synthesis, or by a com-
67 bination of extraction and chemical synthesis, and in-
68 cludes any packaging or repackaging of the substance or
69 labeling or relabeling of its container, except that this
70 term does not include the preparation or compounding
71 of a controlled substance by an individual for his own
72 use or the preparation, compounding, packaging, or label-
73 ing of a controlled substance:

74 (1) by a practitioner as an incident to his administer-
75 ing or dispensing of a controlled substance in the course
76 of his professional practice, or

77 (2) by a practitioner, or by his authorized agent under

78 his supervision, for the purpose of, or as an incident to,
79 research, teaching, or chemical analysis and not for
80 sale.

81 (n) "Marihuana" means all parts of the plant "Cannabis
82 sativa L.," whether growing or not; the seeds thereof;
83 the resin extracted from any part of the plant; and every
84 compound, manufacture, salt, derivative, mixture, or pre-
85 paration of the plant, its seeds, or resin. It does not in-
86 clude the mature stalks of the plant, fiber produced
87 from the stalks, oil or cake made from the seeds of the
88 plant, any other compound, manufacture, salt, derivative,
89 mixture, or preparation of the mature stalks (except
90 the resin extracted therefrom), fiber, oil, or cake, or
91 the sterilized seed of the plant which is incapable of
92 germination.

93 (o) "Narcotic drug" means any of the following,
94 whether produced directly or indirectly by extraction
95 from substances of vegetable origin, or independently by
96 means of chemical synthesis, or by a combination of ex-
97 traction and chemical synthesis:

98 (1) Opium and opiate, and any salt, compound, deriva-
99 tive, or preparation of opium or opiate.

100 (2) Any salt, compound, isomer, derivative, or prep-
101 aration thereof which is chemically equivalent or iden-
102 tical with any of the substances referred to in clause
103 (1) of this subdivision, but not including the isoquinoline
104 alkaloids of opium.

105 (3) Opium poppy and poppy straw.

106 (4) Coca leaves and any salt, compound, derivative,
107 or preparation of coca leaves, and any salt, compound,
108 isomer, derivative, or preparation thereof which is chemi-
109 cally equivalent or identical with any of these sub-
110 stances, but not including decocainized coca leaves or
111 extractions of coca leaves which do not contain cocaine
112 or ecgonine.

113 (p) "Opiate" means any substance having an addiction-
114 forming or addiction-sustaining liability similar to mor-
115 phine or being capable of conversion into a drug having
116 addiction-forming or addiction-sustaining liability. It does
117 not include, unless specifically designated as controlled
118 under Section 201, article two of this act, the dextrorota-
119 tory isomer of 3-methoxy-n-methylmorphinan and its

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

140 controlled substance in the course of professional prac-
141 tice or research in this state.

142 (u) "Production" includes the manufacture, planting,
143 cultivation, growing, or harvesting of a controlled sub-
144 stance.

145 (v) "State," when applied to a part of the United
146 States, includes any state, district, commonwealth, terri-
147 tory, insular possession thereof, and any area subject to
148 the legal authority of the United States of America.

149 (w) "Ultimate user" means a person who lawfully
150 possesses a controlled substance for his own use or for
151 the use of a member of his household or for administer-
152 ing to an animal owned by him or by a member of his
153 household.

ARTICLE 2. STANDARDS AND SCHEDULES.

§60A-2-201. Authority to control.

1 (a) The state board of pharmacy shall administer this
2 act and may add substances to or delete or reschedule
3 all substances enumerated in the schedules in Sections
4 204, 206, 208, 210, or 212, pursuant to the provisions of
5 article three, chapter twenty-nine-a of this code. In mak-

6 ing a determination regarding a substance, the state
7 board of pharmacy shall consider the following:

8 (1) the actual or relative potential for abuse;

9 (2) the scientific evidence of its pharmacological ef-
10 fect, if known;

11 (3) the state of current scientific knowledge regard-
12 ing the substance;

13 (4) the history and current pattern of abuse;

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

15 (6) the risk to the public health;

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

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

20 (b) After considering the factors enumerated in sub-
21 section (a), the state board of pharmacy shall make
22 findings with respect thereto and issue a rule controlling
23 the substance if it finds the substance has a potential
24 for abuse.

25 (c) If the state board of pharmacy designates a sub-
26 stance as an immediate precursor, substances which are

27 precursors of the controlled precursor shall not be sub-
28 ject to control solely because they are precursors of the
29 controlled precursor.

30 (d) If any substance is designated, rescheduled, or de-
31 leted as a controlled substance under federal law and
32 notice thereof is given to the state board of pharmacy,
33 the said board shall similarly control the substance under
34 this act after the expiration of thirty days from publication
35 in the "Federal Register" of a final order designating a
36 substance as a controlled substance or rescheduling or
37 deleting a substance, unless within that thirty-day
38 period, the state board of pharmacy objects to inclusion,
39 rescheduling, or deletion. In that case, the state board
40 of pharmacy shall publish the reasons for objection and
41 afford all interested parties an opportunity to be heard.
42 At the conclusion of the hearing, the state board of phar-
43 macy shall publish its decision, which shall be final un-
44 less altered by statute. Upon publication of objection to
45 inclusion, rescheduling, or deletion under this act by
46 the state board of pharmacy, control under this act is
47 stayed until the state board of pharmacy publishes its

48 decision. Each such publication shall be published as a
49 Class I-O legal advertisement in compliance with the
50 provisions of article three, chapter fifty-nine of this code,
51 and the publication area for such publication shall be
52 each county of the state.

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

§60A-2-202. Nomenclature.

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

§60A-2-203. Schedule I Tests.

1 The state board of pharmacy shall place a substance in
2 Schedule I if it finds that the substance:
3 (1) has high potential for abuse; and

4 (2) has no accepted medical use in treatment in the
5 United States or lacks accepted safety for use in treat-
6 ment under medical supervision.

§60A-2-204. Schedule I.

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

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

8 (1) Acetylmethadol;

9 (2) Allylprodine;

10 (3) Alphacetylmethadol;

11 (4) Alphameprodine;

12 (5) Alphamethadol;

13 (6) Benzethidine;

14 (7) Betacetylmethadol;

15 (8) Betameprodine;

16 (9) Betamethadol;

17 (10) Betaprodine;

- 18 (11) Clonitazene;
- 19 (12) Dextromoramide;
- 20 (13) Dextrophan;
- 21 (14) Diampromide;
- 22 (15) Diethylthiambutene;
- 23 (16) Dimenoxadol;
- 24 (17) Dimepheptanol;
- 25 (18) Dimethylthiambutene;
- 26 (19) Dioxaphetyl butyrate;
- 27 (20) Dipipanone;
- 28 (21) Ethylmethylthiambutene;
- 29 (22) Etonitazene;
- 30 (23) Etoxeridine;
- 31 (24) Furethidine;
- 32 (25) Hydroxypethidine;
- 33 (26) Ketobemidone;
- 34 (27) Levomoramide;
- 35 (28) Levophenacymorphan;
- 36 (29) Morpheridine;
- 37 (30) Noracymethadol;
- 38 (31) Norlevorphanol;

39 (32) Normethadone;

40 (33) Norpipanone;

41 (34) Phenadoxone;

42 (35) Phenampromide;

43 (36) Phenomorphan;

44 (37) Phenoperidine;

45 (38) Piritramide;

46 (39) Proheptazine;

47 (40) Properidine;

48 (41) Racemoramide;

49 (42) Trimeperidine.

50 (c) Any of the following opium derivatives, their salts,
51 isomers and salts of isomers, unless specifically excepted,
52 whenever the existence of these salts, isomers, and salts
53 of isomers is possible within the specific chemical desig-
54 nation:

55 (1) Acetorphine;

56 (2) Acetyldihydrocodeine;

57 (3) Benzylmorphine;

58 (4) Codeine methylbromide;

59 (5) Codeine-N-Oxide;

- 60 (6) Cyprenorphine;
- 61 (7) Desomorphine;
- 62 (8) Dihydromorphine;
- 63 (9) Etorphine;
- 64 (10) Heroin;
- 65 (11) Hydromorphenol;
- 66 (12) Methyldesorphine;
- 67 (13) Methyldihydromorphine;
- 68 (14) Morphine methylbromide;
- 69 (15) Morphine methylsulfonate;
- 70 (16) Morphine-N-Oxide;
- 71 (17) Myrophine;
- 72 (18) Nicocodeine;
- 73 (19) Nicomorphine;
- 74 (20) Normorphine;
- 75 (21) Phoclodine;
- 76 (22) Thebacon.
- 77 (d) Any material, compound, mixture, or preparation
- 78 which contains any quantity of the following hallucino-
- 79 genic substances, their salts, isomers, and salts of isomers,
- 80 unless specifically excepted, whenever the existence of

81 these salts, isomers, and salts of isomers is possible
82 within the specific chemical designation:

- 83 (1) 3,4-methylenedioxy amphetamine;
- 84 (2) 5-methoxy-3,4-methylenedioxy amphetamine;
- 85 (3) 3,4,5-trimethoxy amphetamine;
- 86 (4) Bufotenine;
- 87 (5) Diethyltryptamine;
- 88 (6) Dimethyltryptamine;
- 89 (7) 4-methyl-2,5-dimethoxylamphetamine;
- 90 (8) Ibogaine;
- 91 (9) Lysergic acid diethylamide;
- 92 (10) Marihuana;
- 93 (11) Mescaline;
- 94 (12) Peyote;
- 95 (13) N-ethyl-3-piperidyl benzilate;
- 96 (14) N-methyl-3-piperidyl benzilate;
- 97 (15) Psilocybin;
- 98 (16) Psilocyn;
- 99 (17) Tetrahydrocannabinols.

§60A-2-205. Schedule II Tests.

1 The state board of pharmacy shall place a substance

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

14 (1), but not including the isoquinoline alkaloids of opium.

15 (3) Opium poppy and poppy straw.

16 (4) Coca leaves and any salt, compound, derivative, or
17 preparation of coca leaves, and any salt, compound, de-
18 rivative, or preparation thereof which is chemically
19 equivalent or identical with any of these substances, but
20 not including decocainized coca leaves or extractions
21 which do not contain cocaine or ecgonine.

22 (c) Any of the following opiates, including their
23 isomers, esters, ethers, salts, and salts of isomers, when-
24 ever the existence of these isomers, esters, ethers, and
25 salts is possible within the specific chemical designation:

26 (1) Alphaprodine;

27 (2) Anileridine;

28 (3) Bezitramide;

29 (4) Dihydrocodeine;


30 (5) Diphenoxylate;

31 (6) Fentanyl;

32 (7) Isomethadone;

33 (8) Levomethorphan;

34 (9) Levorphanol;

- 
- 35 (10) Metazocine;
36 (11) Methadone;
37 (12) Methadone—Intermediate, 4-cyano-2-dimethyl-
38 mino-4, 4-diphenyl butane;
39 (13) Moramide—Intermediate, 2-methyl-3-morpholino-
40 1, 1-diphenyl-propane-carboxylic acid;
41 (14) Pethidine;
42 (15) Pethidine—Intermediate—A, 4-cyano-1-methyl-4-
43 phenylpiperidine;
44 (16) Pethidine—Intermediate—B, ethyl-4-phenylpiper-
45 idine-4-carboxylate;
46 (17) Pethidine—Intermediate—C, 1-methyl-4-phenylpi-
47 peridine-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
2 in Schedule III if it finds that:
3 (1) the substance has a potential for abuse less than
4 the substances listed in Schedule I and II;

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

7 (3) abuse of the substance may lead to moderate or
8 low physical dependence or high psychological depen-
9 dence.

§60A-2-208. Schedule III.

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

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

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

9 (2) Phenmetrazine and its salts;

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

13 (4) Methylphenidate.

14 (c) Unless listed in another schedule, any material,
15 compound, mixture, or preparation which contains any

16 quantity of the following substances having a potential for
17 abuse associated with a depressant effect on the central
18 nervous system:

19 (1) Any substance which contains any quantity of a
20 derivative of barbituric acid, or any salt of a derivative
21 of barbituric acid, except those substances which are
22 specifically listed in other schedules;

23 (2) Chlorhexadol;

24 (3) Glutethimide;

25 (4) Lysergic acid;

26 (5) Lysergic acid amide;

27 (6) Methyprylon;

28 (7) Phencyclidine;

29 (8) Sulfondiethylmethane;

30 (9) Sulfonethylmethane;

31 (10) Sulfonmethane.

32 (d) Nalorphine.

33 (e) Any material, compound, mixture, or preparation
34 containing limited quantities of any of the following nar-
35 cotic drugs, or any salts thereof:

36 (1) Not more than 1.8 grams of codeine, or any of

37 its salts, per 100 milliliters or not more than 90 milli-
 38 grams per dosage unit, with an equal or greater quantity
 39 of an isoquinoline alkaloid of opium;

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

44 (3) Not more than 300 milligrams of dihydrocodeinone,
 45 or any of its salts, per 100 milliliters or not more than
 46 15 milligrams per dosage unit, with a fourfold or greater
 47 quantity of an isoquinoline alkaloid of opium;

48 (4) Not more than 300 milligrams of dihydrocodein-
 49 one, or any of its salts, per 100 milliliters or not more
 50 than 15 milligrams per dosage unit, with one or more
 51 active, nonnarcotic ingredients in recognized therapeutic
 52 amounts;

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

57 (6) Not more than 300 milligrams of ethylmorphine,

58 or any of its salts, per 100 milliliters or not more than 15
59 milligrams per dosage unit, with one or more ingredients
60 in recognized therapeutic amounts;

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

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

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

79 have a stimulant or depressant effect on the central
80 nervous system.

§60A-2-209. Schedule IV Tests.

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

3 (1) the substance has a low potential for abuse rela-
4 tive to substances in Schedule III;

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

7 (3) abuse of the substance may lead to limited physi-
8 cal dependence or psychological dependence relative to
9 the substances in Schedule III.

§60A-2-210. Schedule IV.

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

3 (b) Any material, compound, mixture, or preparation
4 which contains any quantity of the following substances
5 having a potential for abuse associated with a depres-
6 sant effect on the central nervous system:

7 (1) Barbital;

8 (2) Chloral betaine;

9 (3) Chloral hydrate;

10 (4) Ethchlorvynol;

11 (5) Ethinamate;

12 (6) Methohexital;

13 (7) Meprobamate;

14 (8) Methylphenobarbital;

15 (9) Paraldehyde;

16 (10) Petrichloral;

17 (11) Phenobarbital.

18 (c) The state board of pharmacy may except by rule
19 any compound, mixture, or preparation containing any
20 depressant substances listed in subsection (b) from the
21 application of all or any part of this act if the compound,
22 mixture, or preparation contains one or more active
23 medicinal ingredients not having a depressant effect on
24 the central nervous system, and if the admixtures are
25 included therein in combinations, quantity, proportion,
26 or concentration that vitiate the potential for abuse of
27 the substances which have a depressant effect on the
28 central nervous system.

§60A-2-211. Schedule V Tests.

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

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

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

7 (3) the substance has limited physical dependence or
8 psychological dependence liability relative to the con-
9 trolled substances listed in Schedule IV.

§60A-2-212. Schedule V.

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

3 (b) Any compound, mixture, or preparation contain-
4 ing limited quantities of any of the following narcotic
5 drugs, which also contains one or more nonnarcotic active
6 medicinal ingredients in sufficient proportion to confer
7 upon the compound, mixture, or preparation, valuable
8 medicinal qualities other than those possessed by the
9 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

3 control of the manufacture and distribution of controlled
4 substances within this state, and each department, board,
5 or agency of this state which licenses or registers practi-
6 tioners authorized to dispense any controlled substance
7 shall promulgate rules and charge reasonable fees re-
8 lating to the registration and control of the dispensing
9 of controlled substances within this state by those practi-
10 tioners licensed or registered by such department, board,
11 or agency.

§60A-3-302. Registration requirements.

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

9 (b) Persons registered by said state board of pharmacy
10 or said appropriate department, board, or agency, as
11 the case may be, under this act to manufacture, distribute,
12 dispense, or conduct research with controlled substances

13 may possess, manufacture, distribute, dispense, or con-
14 duct research with those substances to the extent authoriz-
15 ed by their registration and in conformity with the other
16 provisions of this article.

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

19 (1) an agent or employee of any registered manu-
20 facturer, distributor, or dispenser of any controlled sub-
21 stance if he is acting in the usual course of his business
22 or employment;

23 (2) a common or contract carrier or warehouseman,
24 or an employee thereof, whose possession of any con-
25 trolled substance is in the usual course of business or
26 employment;

27 (3) an ultimate user or a person in possession of any
28 controlled substance pursuant to a lawful order of a
29 practitioner or in lawful possession of a Schedule V
30 substance.

31 (d) The said state board of pharmacy or said appro-
32 priate department, board, or agency, as the case may be,
33 may waive by rule the requirement for registration of

34 certain manufacturers, distributors, or dispensers if it
35 finds it consistent with the public health and safety.

36 (e) A separate registration is required at each prin-
37 cipal place of business or professional practice where
38 the applicant manufactures, distributes, or dispenses con-
39 trolled substances.

40 (f) The said state board of pharmacy or said appro-
41 priate department, board, or agency, as the case may be,
42 may inspect the establishment of a registrant or applicant
43 for registration in accordance with the rule of said
44 state board of pharmacy or said appropriate depart-
45 ment, board, or agency, as the case may be.

§60A-3-303. Registration.

1 (a) The state board of pharmacy shall register an
2 applicant to manufacture or distribute controlled sub-
3 stances included in Schedules I, II, III, IV, and
4 V unless it determines that the issuance of that reg-
5 istration would be inconsistent with the public
6 interest. In determining the public interest, the state
7 board of pharmacy shall consider the following fac-
8 tors:

9 (1) maintenance of effective controls against diversion
10 of controlled substances into other than legitimate medi-
11 cal, scientific, or industrial channels;

12 (2) compliance with applicable state and local law;

13 (3) any convictions of the applicant under any federal
14 or state laws relating to any controlled substance;

15 (4) past experience in the manufacture or distribution
16 of controlled substances, and the existence in the ap-
17 plicant's establishment of effective controls against diver-
18 sion;

19 (5) furnishing by the applicant of false or fraudulent
20 material in any application filed under this act;

21 (6) suspension or revocation of the applicant's federal
22 registration to manufacture, distribute, or dispense con-
23 trolled substances as authorized by federal law; and

24 (7) any other factors relevant to and consistent with
25 the public health and safety.

26 (b) Registration under subsection (a) does not entitle
27 a registrant to manufacture and distribute controlled
28 substances in Schedule I or II other than those specified
29 in the registration.

30 (c) Practitioners must be registered to dispense any
31 controlled substances or to conduct research with con-
32 trolled substances in Schedules II through V if they are
33 authorized to dispense or conduct research under the law
34 of this state. The appropriate department, board, or agen-
35 cy, as specified in Section 301, need not require separate
36 registration under this article for practitioners engaging
37 in research with non-narcotic controlled substances in
38 Schedules II through V where the registrant is already
39 registered under this article in another capacity. Prac-
40 titioners registered under federal law to conduct research
41 with Schedule I substances may conduct research with
42 Schedule I substances within this state upon furnishing
43 the appropriate department, board, or agency evidence
44 of that federal registration.

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

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

1 (a) A registration under Section 303 to manufacture,
2 distribute, or dispense a controlled substance may be sus-

3 pended or revoked by the said state board of pharmacy
4 or said appropriate department, board, or agency, as the
5 case may be, upon a finding that the registrant:

6 (1) has furnished false or fraudulent material infor-
7 mation in any application filed under this act;

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

10 (3) has had his federal registration suspended or re-
11 voked to manufacture, distribute, or dispense controlled
12 substances.

13 (b) The said state board of pharmacy or said appro-
14 priate department, board, or agency, as the case may be,
15 may limit suspension or revocation of a registration to
16 the particular controlled substance with respect to which
17 grounds for suspension or revocation exist.

18 (c) If the said state board of pharmacy or said appro-
19 priate department, board, or agency, as the case may be,
20 suspends or revokes a registration, all controlled sub-
21 stances owned or possessed by the registrant at the time
22 of suspension or the effective date of the revocation order
23 may be placed under seal. No disposition may be made

24 of substances under seal until the time for taking an
25 appeal has elapsed or until all appeals have been con-
26 cluded unless a court, upon application therefor, orders
27 the sale of perishable substances and the deposit of the
28 proceeds of the sale with the court. Upon a revocation
29 order becoming final, all controlled substances may be
30 forfeited to the state.

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

§60A-3-305. Order to show cause.

1 (a) Before denying, suspending, or revoking a regis-
2 tration, or refusing a renewal of registration, the said
3 state board of pharmacy or said appropriate department,
4 board, or agency, as the case may be, shall serve upon
5 the applicant or registrant an order to show cause why
6 registration should not be denied, suspended, or revoked,
7 or why the renewal should not be refused. The order to
8 show cause shall contain a statement of the basis there-

9 for and shall call upon the applicant or registrant to
10 appear before the said state board of pharmacy or said
11 appropriate department, board, or agency, as the case
12 may be, at a time and place not less than thirty days
13 after the date of service of the order, but in the case of a
14 denial or renewal of registration the show cause order
15 shall be served not later than thirty days before the
16 expiration of the registration. These proceedings shall
17 be conducted in accordance with article five, chapter
18 twenty-nine-a of this code without regard to any criminal
19 prosecution or other proceeding. Proceedings to refuse
20 renewal of registration shall not abate the existing regis-
21 tration which shall remain in effect pending the out-
22 come of the administrative hearing.

23 (b) The said state board of pharmacy or said appro-
24 priate department, board, or agency, as the case may be,
25 may suspend, without an order to show cause, any regis-
26 tration simultaneously with the institution of proceedings
27 under Section 304, or where renewal of registration is
28 refused, if it finds that there is an imminent danger
29 to the public health or safety which warrants this action.

30 The suspension shall continue in effect until the conclu-
 31 sion of the proceedings, including judicial review thereof,
 32 unless sooner withdrawn by the said state board of phar-
 33 macy or said appropriate department, board, or agency,
 34 as the case may be, or dissolved by a court of competent
 35 jurisdiction.

§60A-3-306. Records of registrants.

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

§60A-3-307. Order forms.

1 Controlled substances in Schedules I and II shall be
 2 distributed by a registrant to another registrant only
 3 pursuant to an order form. Compliance with the provi-
 4 sions of federal law respecting order forms shall be deem-
 5 ed compliance with this section.

§60A-3-308. Prescriptions.

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

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

12 (c) Except when dispensed directly by a practitioner,
13 other than a pharmacy, to an ultimate user, a controlled
14 substance included in Schedule III or IV, which is a
15 prescription drug as determined under appropriate state
16 or federal statute, shall not be dispensed without a writ-
17 ten or oral prescription of a practitioner. The prescription
18 shall not be filled or refilled more than six months after
19 the date thereof or be refilled more than five times,
20 unless renewed by the practitioner.

21 (d) A controlled substance included in Schedule V
 22 shall not be distributed or dispensed other than for a
 23 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
 2 for any person to manufacture, deliver, or possess with
 3 intent to manufacture or deliver, a controlled substance.

4 (1) Any person who violates this subsection with
 5 respect to:

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

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

16 (iii) a substance classified in Schedule IV, is guilty

17 of a felony and upon conviction may be imprisoned in
18 the penitentiary for not less than one year nor more
19 than three years, or fined not more than ten thousand
20 dollars, or both;

21 (iv) a substance classified in Schedule V, is guilty of
22 a misdemeanor and upon conviction may be confined in
23 the county jail for not less than six months nor more
24 than one year, or fined not more than five thousand dol-
25 lars, or both.

26 (b) Except as authorized by this act, it is unlawful
27 for any person to create, deliver, or possess with intent
28 to deliver, a counterfeit substance.

29 (1) Any person who violates this subsection with re-
30 spect to:

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

36 (ii) any other counterfeit substance classified in
37 Schedule I, II, or III, is guilty of a felony and upon con-

38 viction may be imprisoned in the penitentiary for not
 39 less than one year nor more than five years, or fined not
 40 more than fifteen thousand dollars, or both;

41 (iii) a counterfeit substance classified in Schedule IV,
 42 is guilty of a felony and upon conviction may be im-
 43 prisoned in the penitentiary for not less than one year
 44 nor more than three years, or fined not more than ten
 45 thousand dollars, or both;

46 (iv) a counterfeit substance classified in Schedule V,
 47 is guilty of a misdemeanor and upon conviction may
 48 be confined in the county jail for not less than six months
 49 nor more than one year, or fined not more than five
 50 thousand dollars, or both.

51 (c) It is unlawful for any person knowingly or inten-
 52 tionally to possess a controlled substance unless the sub-
 53 stance was obtained directly from, or pursuant to, a valid
 54 prescription or order of a practitioner while acting in
 55 the course of his professional practice, or except as oth-
 56 erwise authorized by this act. Any person who violates
 57 this subsection is guilty of a misdemeanor, and dispo-
 58 sition may be made under Section 407, subject to the

59 limitations specified in said Section 407, or upon convic-
60 tion such person may be confined in the county jail not
61 less than ninety days nor more than six months, or fined
62 not more than one thousand dollars, or both: *Provided*,
63 That notwithstanding any other provision of this act
64 to the contrary, any first offense for possession of less
65 than 15 grams of marihuana shall be disposed of under
66 said Section 407.

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

1 (a) It is unlawful for any person:

2 (1) who is subject to Article 3 to distribute or dispense
3 a controlled substance in violation of Section 308;

4 (2) who is a registrant, to manufacture a controlled
5 substance not authorized by his registration, or to dis-
6 tribute or dispense a controlled substance not authorized
7 by his registration to another registrant or other authoriz-
8 ed person;

9 (3) to refuse or fail to make, keep, or furnish any rec-
10 ord, notification, order form, statement, invoice, or in-
11 formation required under this act;

12 (4) to refuse an entry into any premises for any in-
13 spection authorized by this act; or

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

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

25 (c) Notwithstanding any other provision of this act
26 to the contrary, any first offense for distributing less than
27 15 grams of marihuana without any remuneration shall
28 be disposed of under Section 407.

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

1 (a) It is unlawful for any person knowingly or in-
2 tentiously:

3 (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 distri-
7 bution 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.

25 (b) Any person who violates this section is guilty of a
 26 felony and upon conviction may be imprisoned in the
 27 penitentiary for not less than one year nor more than
 28 four years, or fined not more than thirty thousand dollars,
 29 or both.

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

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

§60A-4-405. Bar to prosecution.

1 If a violation of this act is a violation of a federal law
 2 or the law of another state, a conviction or acquittal un-
 3 der federal law or the law of another state for the same
 4 act is a bar to prosecution in this state.

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

1 Any person eighteen years of age or over who violates
 2 Section 401(a) by distributing a controlled substance
 3 listed in Schedule I or II which is a narcotic drug to a
 4 person under eighteen years of age who is at least three
 5 years his junior is punishable by the fine authorized by
 6 Section 401(a)(1)(i), by a term of imprisonment of up

7 to twice that authorized by Section 401(a) (1) (i), or by
8 both. Any person eighteen years of age or over who vio-
9 lates Section 401(a) by distributing any other controlled
10 substance listed in Schedules I, II, III, IV, and V to a per-
11 son under eighteen years of age who is at least three
12 years his junior is punishable by the fine authorized by
13 Section 401(a) (1) (ii), (iii), or (iv), by a term of imprison-
14 ment up to twice that authorized by Section 401(a) (1) (ii),
15 (iii), or (iv), or both.

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

1 Whenever any person who has not previously been
2 convicted of any offense under this act or under any
3 statute of the United States or of any state relating to
4 narcotic drugs, marihuana, or stimulant, depressant, or
5 hallucinogenic drugs, pleads guilty to or is found guilty
6 of possession of a controlled substance under Section
7 401(c), the court, without entering a judgment of guilt
8 and with the consent of the accused, may defer further
9 proceedings and place him on probation upon terms and
10 conditions. Upon violation of a term or condition, the
11 court may enter an adjudication of guilt and proceed as

12 otherwise provided. Upon fulfillment of the terms and
13 conditions, the court shall discharge the person and dis-
14 miss the proceedings against him. Discharge and dis-
15 missal under this section shall be without adjudication
16 of guilt and is not a conviction for purposes of this sec-
17 tion or for purposes of disqualifications or disabilities
18 imposed by law upon conviction of a crime, including the
19 additionl penalties imposed for second or subsequent
20 convictions under Section 408. The effect of such dis-
21 missal and discharge shall be to restore such person in
22 contemplation of law to the status he occupied prior to
23 such arrest and trial. No person as to whom such dismis-
24 sal and discharge have been effected shall be thereafter
25 held to be guilty of perjury, false swearing, or otherwise
26 giving a false statement by reason of his failure to dis-
27 close or acknowledge such arrest or trial in response
28 to any inquiry made of him for any purpose. There may
29 be only one discharge and dismissal under this section
30 with respect to any person.

31 After a period of not less than six months which shall
32 begin to run immediately upon the expiration of a term

33 of probation imposed upon any person under this act,
34 such person may apply to the court for an order to ex-
35 punge from all official records all recordations of his
36 arrest, trial, and conviction, pursuant to this section. If
37 the court determines after a hearing that such person
38 during the period of such probation and during the
39 period of time prior to his application to the court under
40 this section has not been guilty of any serious or re-
41 peated violation of the conditions of such probation, it
42 shall enter such order.

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

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

10 (b) For purposes of this section, an offense is con-

11 sidered a second or subsequent offense, if, prior to his
 12 conviction of the offense, the offender has at any time
 13 been convicted under this act or under any statute of the
 14 United States or of any state relating to narcotic drugs,
 15 marihuana, depressant, stimulant, or hallucinogenic drugs.
 16 (c) This section does not apply to offenses under Sec-
 17 tion 401(c).

**ARTICLE 5. ENFORCEMENT AND ADMINISTRATIVE PROVI-
 SIONS.**

§60A-5-501. Powers of enforcement personnel.

1 (a) Any member of the department of public safety,
 2 any sheriff, any deputy sheriff and any municipal police
 3 officer may in the enforcement of the provisions of this
 4 act:
 5 (1) carry firearms;
 6 (2) execute and serve search warrants, arrest war-
 7 rants, subpoenas, and summonses issued under the au-
 8 thority of this state;
 9 (3) make arrests without warrant for any offense
 10 under this act committed in his presence, or if he has
 11 probable cause to believe that the person to be arrested

12 has committed or is committing a violation of this act
13 which may constitute a felony;

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

15 (5) perform such other law enforcement duties as
16 said state board of pharmacy or said appropriate depart-
17 ment, board or agency, as specified in Section 301, desig-
18 nates.

19 (b) All officers, agents, inspectors, and representatives
20 of the said state board of pharmacy and of the said ap-
21 propriate department, board, or agency, as specified in
22 Section 301, and members of the department of public
23 safety may execute and serve administrative warrants
24 issued incident to the enforcement of the provisions of
25 this act. Any such officer, agent, inspector, and repre-
26 sentative of the said state board of pharmacy and of the
27 said appropriate department, board, or agency, as speci-
28 fied in said Section 301, may:

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

31 (2) make arrests without warrant for any offense
32 under this act committed in his presence, or if he has

33 probable cause to believe that the person to be arrested
 34 has committed or is committing a violation of this act
 35 which may constitute a felony; or

36 (3) make seizures of property pursuant to this act.

37 (c) All prosecuting attorneys and the attorney gen-
 38 eral, or any of their assistants, shall assist in the enforce-
 39 ment of all provisions of this act and shall cooperate with
 40 all agencies charged with the enforcement of the laws
 41 of the United States, of this state, and of all other states
 42 relating to controlled substances.

§60A-5-502. Administrative inspections and warrants.

1 (a) Issuance and execution of administrative inspec-
 2 tion warrants shall be as follows:

3 (1) A judge of any court of record in this state having
 4 criminal jurisdiction, and upon proper oath or affirma-
 5 tion showing probable cause, may issue warrants for the
 6 purpose of conducting administrative inspections author-
 7 ized by this act or rules hereunder, and seizures of prop-
 8 erty appropriate to the inspections. For purposes of the
 9 issuance of administrative inspection warrants, probable
 10 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-

32 fied for the purpose specified and, if appropriate, direct
33 the seizure of the property specified;

34 (iv) identify the item or types of property to be seized,
35 if any;

36 (v) direct that it be served during normal business
37 hours and designate the judge to whom it shall be re-
38 turned;

39 (3) A warrant issued pursuant to this section must be
40 executed and returned within ten days of its date unless,
41 upon a showing of a need for additional time, the court
42 orders otherwise. If property is seized pursuant to a
43 warrant, a copy shall be given to the person from whom
44 or from whose premises the property is taken, together
45 with a receipt for the property taken. The return of the
46 warrant shall be made promptly, accompanied by a writ-
47 ten inventory of any property taken. The inventory shall
48 be made in the presence of the person executing the
49 warrant and of the person from whose possession or
50 premises the property was taken, if present, or in the
51 presence of at least one credible person other than the
52 person executing the warrant. A copy of the inventory

53 shall be delivered to the person from whom or from
54 whose premises the property was taken and to the ap-
55 plicant for the warrant;

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

60 (b) Administrative inspections of controlled premises
61 shall be made in accordance with the following provi-
62 sions:

63 (1) For purposes of this section only, "controlled
64 premises" means:

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

68 (ii) places including factories, warehouses, establish-
69 ments, and conveyances in which persons registered or
70 exempted from registration requirements under this act
71 are permitted to hold, manufacture, compound, process,
72 sell, deliver, or otherwise dispose of any controlled sub-
73 stance.

74 (2) When authorized by an administrative inspection
 75 warrant issued pursuant to subsection (a), any person
 76 authorized in subsection (b), Section 501 of this article
 77 to execute and serve the same, upon presenting the
 78 warrant and appropriate credentials to the owner, oper-
 79 ator, or agent in charge, may enter controlled premises
 80 for the purpose of conducting an administrative inspec-
 81 tion.

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

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

86 (ii) inspect, within reasonable limits and in a reason-
 87 able manner, controlled premises and all pertinent equip-
 88 ment, finished and unfinished material, containers and
 89 labeling found therein, and, except as provided in sub-
 90 section (b) (5), all other things therein, including records,
 91 files, papers, processes, controls, and facilities bearing on
 92 violation of this act; and

93 (iii) inventory any stock of any controlled substance
 94 therein and obtain samples thereof;

95 (4) This section does not prevent the inspection with-
96 out a warrant of books and records pursuant to an admin-
97 istrative subpoena issued in accordance with any perti-
98 nent provision of this code, nor does it prevent entries
99 and administrative inspections, including seizures of prop-
100 erty, without a warrant:

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

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

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

109 (iv) in any other exceptional or emergency circum-
110 stance where time or opportunity to apply for a warrant
111 is lacking; or,

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

114 (5) An inspection authorized by this section shall not
115 extend to financial data, sales data, other than shipment

116 data, or pricing data unless the owner, operator, or agent
117 in charge of the controlled premises consents in writing.

§60A-5-503. Injunctions.

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

4 (b) The defendant may demand trial by jury for an al-
5 leged violation of an injunction or restraining order
6 under this section.

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

1 (a) The state board of pharmacy and the appropriate
2 departments, boards, and agencies, as specified in Section
3 301, shall cooperate with federal and other state agencies
4 in discharging their responsibilities concerning traffic in
5 controlled substances and in suppressing the abuse of
6 controlled substances. To this end, they may:

7 (1) arrange for the exchange of information among
8 governmental officials concerning the use and abuse of
9 controlled substances;

10 (2) coordinate and cooperate in training programs con-
11 cerning controlled substance law enforcement at local
12 and state levels;

13 (3) cooperate with the bureau by establishing a cen-
14 tralized unit to accept, catalogue, file, and collect statistics,
15 including records of drug dependent persons and other
16 controlled substance law offenders within the state, and
17 make the information available for federal, state, and
18 local law enforcement purposes. They shall not furnish
19 the name or identity of a patient or research subject whose
20 identity could not be obtained under subsection (c); and

21 (4) conduct programs of eradication aimed at destroy-
22 ing wild or illicit growth of plant species from which
23 controlled substances may be extracted.

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

29 (c) A practitioner engaged in medical practice or re-
30 search is not required or compelled to furnish the name
31 or identity of a patient or research subject to the state
32 board of pharmacy or to the appropriate department,
33 board, or agency by which he is licensed or registered,

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34 as specified in Section 301, nor may he be compelled in
35 any state or local civil, criminal, administrative, legisla-
36 tive, or other proceedings to furnish the name or identity
37 of an individual that the practitioner is obligated to
38 keep confidential.

39 (d) No mental health organization or hospital shall
40 be compelled in any state or local civil, criminal, admin-
41 istrative, legislative or other proceeding to furnish the
42 name or identity of any person voluntarily requesting
43 treatment for or rehabilitation from addiction to or de-
44 pendency upon the use of a controlled substance as defined
45 in article one of this chapter.

§60A-5-505. Forfeitures.

1 (a) The following are subject to forfeiture:

2 (1) all controlled substances which have been manu-
3 factured, distributed, dispensed, or acquired in violation
4 of this act;

5 (2) all raw materials, products, and equipment of any
6 kind which are used, or intended for use, in manufactur-
7 ing, compounding, processing, delivering, importing, or
8 exporting any controlled substance in violation of this
9 act;

10 (3) all property which is used, or intended for use,
11 as a container for property described in subdivision (1)
12 or (2);

13 (4) all conveyances, including aircraft, vehicles, or
14 vessels, which are used, or intended for use, to transport,
15 or in any manner to facilitate the transportation, for the
16 purpose of sale or receipt of property described in sub-
17 division (1) or (2), but:

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

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

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

30 (iv) a forfeiture of a conveyance encumbered by a

31 bona fide security interest is subject to the interest of
32 the secured party if he neither had knowledge of nor
33 consented to the act or omission.

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

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

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

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

51 (3) the appropriate person has probable cause to be-

52 lieve that the property is directly or indirectly dangerous
53 to health or safety; or

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

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

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

66 (1) place the property under seal;

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

68 or

69 (3) require the appropriate administrative agency to
70 take custody of the property and remove it to an appro-
71 priate location for disposition in accordance with law.

72 (e) When property is forfeited under this act the ap-
73 propriate person may:

74 (1) retain it for official use;

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

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

84 (4) forward it to the bureau for disposition.

85 (f) Controlled substances listed in Schedule I which
86 are possessed, transferred, sold, or offered for sale in
87 violation of this act are contraband and shall be seized
88 and summarily forfeited to the state. Controlled sub-
89 stances listed in Schedule I, which are seized or come
90 into the possession of the state, the owners of which are
91 unknown, are contraband and shall be summarily for-
92 feited to the state.

93 (g) Species of plants from which controlled substances
94 in Schedules I and II may be derived which have been
95 planted or cultivated in violation of this act, or of which
96 the owners or cultivators are unknown, or which are
97 wild growths, may be seized and summarily forfeited
98 to the state.

99 (h) The failure, upon demand by the appropriate per-
100 son, or his authorized agent, of the person in occupancy
101 or in control of land or premises upon which the species
102 of plants are growing or being stored, to produce an
103 appropriate registration, or proof that he is the holder
104 thereof, constitutes authority for the seizure and for-
105 feiture of the plants.

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

1 (a) It is not necessary for the state to negate any ex-
2emption or exception in this act in any complaint, in-
3formation, indictment, or other pleading or in any trial,
4hearing, or other proceeding under this act. The burden
5of proof of any exemption or exception is upon the per-
6son claiming it.

7 (b) In the absence of proof that a person is the duly

8 authorized holder of an appropriate registration or order
9 form issued under this act, he is presumed not to be the
10 holder of the registration or form. The burden of proof
11 is upon him to rebut the presumption.

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

§60A-5-507. Judicial review.

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

§60A-5-508. Education and research.

1 (a) The said state board of pharmacy and the ap-
2 propriate departments, boards, and agencies, as specified
3 in Section 301, and the division on alcoholism and drug
4 abuse in the department of mental health (all herein-

5 after in this section referred to as "such agencies"), shall
6 carry out educational programs designed to prevent and
7 deter misuse and abuse of controlled substances. In
8 connection with these programs they may:

9 (1) promote better recognition of the problems of mis-
10 use and abuse of controlled substances within the regu-
11 lated industry and among interested groups and organi-
12 zations;

13 (2) assist the regulated industry and interested groups
14 and organizations in contributing to the reduction of mis-
15 use and abuse of controlled substances;

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

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

22 (5) disseminate the results of research on misuse and
23 abuse of controlled substances to promote a better pub-
24 lic understanding of what problems exist and what can
25 be done to combat them; and

26 (6) assist in the education and training of state and
27 local law enforcement officials in their efforts to con-
28 trol misuse and abuse of controlled substances.

29 (b) Such agencies shall encourage research on mis-
30 use and abuse of controlled substances. In connection
31 with the research, and in furtherance of the enforcement
32 of this act, such agencies may:

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

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

38 (i) develop new or improved approaches, techniques,
39 systems, equipment, and devices to strengthen the en-
40 forcement of this act;

41 (ii) determine patterns of misuse and abuse of con-
42 trolled substances and the social effects thereof; and,

43 (iii) improve methods for preventing, predicting, un-
44 derstanding, and dealing with the misuse and abuse of
45 controlled substances; and,

46 (3) enter into contracts with public agencies, institu-

47 tions of higher education, and private organizations or
48 individuals for the purpose of conducting research, demon-
49 strations, or special projects which bear directly on mis-
50 use and abuse of controlled substances.

51 (c) Such agencies may enter into contracts for ed-
52 ucational and research activities without performance
53 bonds.

54 (d) Such agencies may authorize persons engaged in
55 research on the use and effects of controlled substances
56 to withhold the names and other identifying characteris-
57 tics of individuals who are the subjects of the research.
58 Persons who obtain this authorization are not compelled
59 in any civil, criminal, administrative, legislative, or other
60 proceeding to identify the individuals who are the sub-
61 jects of research for which the authorization was ob-
62 tained.

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

67 tribution of controlled substances to the extent of the
68 authorization.

ARTICLE 6. MISCELLANEOUS PROVISIONS.

§60A-6-601. Pending proceedings.

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

14 (b) Civil seizures of forfeitures and injunctive pro-
15 ceedings commenced prior to the effective date of this
16 act are not affected by this act.

17 (c) All administrative proceedings pending under

18 prior laws which are superseded by this act shall be
19 continued and brought to a final determination in accord
20 with the laws and rules in effect prior to the effective
21 date of the act. Any substance controlled under prior
22 law which is not listed within Schedules I through V,
23 is automatically controlled without further proceedings
24 and shall be listed in the appropriate schedule.

25 (d) The state board of pharmacy or the appropriate
26 departments, boards, and agencies, as specified in Sec-
27 tion 301, shall initially permit persons to register who
28 own or operate any establishment engaged in the manu-
29 facture, distribution, or dispensing of any controlled
30 substance prior to the effective date of this act and who
31 are registered or licensed by the state.

32 (e) This act applies to violations of law, seizures, and
33 forfeiture, injunctive proceedings, administrative proceed-
34 ings, and investigations which occur following its effec-
35 tive date.

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

1 Any orders and rules promulgated under any law
2 affected by this act and in effect on the effective date of

3 this act and not in conflict with it continue in effect until
4 modified, superseded or repealed.

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

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

§60A-6-604. Short title.

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

§60A-6-605. Severability.

1 If any provision of this act or the application thereof
2 to any person or circumstance is held invalid, such in-
3 validity shall not affect other provisions or applications
4 of the act, and to this end the provisions of this act are
5 hereby declared to be severable.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Russell G. Ball
Chairman Senate Committee

Phyllis Reutledge
Chairman House Committee

Originated in the Senate.

To take effect 90 days from passage.

Howard Meyer
Clerk of the Senate

C. A. Blankenship
Clerk of the House of Delegates

Ed Robertson
President of the Senate

Lewis N. McManus
Speaker House of Delegates

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

Arch A. Moore Jr.
Governor

PRESENTED TO THE
GOVERNOR

Date 3/17/71
Time 11:50 A.M.

RECEIVED

APR 2 11 58 PM '71

OFFICE OF
SECRETARY OF STATE
STATE OF WEST VIRGINIA