

ACT 590

AN ACT to Enact the Uniform Controlled Substances Act; and for Other Purposes.

Be It Enacted by the General Assembly of the State of Arkansas:

SECTION 1. As used in this Act:

(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:

(1) a practitioner or

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

(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 II of this Act.

(e) "Counterfeit substance" means a 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 dis-

penser 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 in exchange for money or anything of value, 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 subsection. It does not include devices or their components, parts, or accessories.

(l) "Immediate precursor" means a substance

which the Commissioner 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, 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 2 of this Article, the dextrorotatory isomer of 3-methoxy-n-methyl-morphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms.

(q) "Opium poppy" means the plant of the species *Papaver somniferum* L., except its seeds.

(r) "Person" means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

(s) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

(t) "Practitioner" means:

(1) A physician, dentist, veterinarian, scientific investigator, or other person licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of professional practice or research in this State.

(2) A pharmacy, hospital or other institution licensed, registered, or otherwise permitted to distribute, dispense, 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.

(x) "Commissioner" shall mean the Narcotic and Toxic Substances Control Commissioner.

ARTICLE II

SECTION 1. (a) The Commissioner shall administer this Act and may add substances to or delete or reschedule all substances enumerated in the schedules in Sections 4, 6, 8, 10, or 12 of this Article, pursuant to the procedures of the Administrative Procedures Act. In making a determination regarding a substance, the Commissioner 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 Commissioner 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 Commissioner 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 Commissioner, the Commissioner shall similarly control the substance under this Act after the expiration of 30 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 30 day period, the Commissioner objects to inclusion, rescheduling, or deletion. In that case, the Commissioner shall publish the reasons for objection and afford all interested parties an opportunity to be heard. At the conclusion of the hearing, the Commissioner shall publish his decision, which shall be final unless altered by statute. Upon publication of objection to inclusion, rescheduling, or deletion under this Act by the Commissioner, control under this Act is stayed until the Commissioner publishes his decision.

(e) Authority to control under this Section does not extend to distilled spirits, wine, malt beverages, or tobacco.

SECTION 2. The controlled substances listed or to be listed in the schedules in Sections 4, 6, 8, 10, and 12 of this Article are included by whatever official, common, usual, chemical or trade name designated.

SECTION 3. The Commissioner shall place a substance in Schedule I if he 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.

SECTION 4. (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;
- (11) Clonitazene;
- (12) Dextromoramide;
- (13) Dextrorphan;
- (14) Diampromide;
- (15) Diethylthiambutene;
- (16) Dimenoxadol;

- (17) Dimepheptanol;
- (18) Dimethylthiambutene;
- (19) Dioxaphetylbutyrate;
- (20) Dipipanone;
- (21) Ethylmethylthiambutene;
- (22) Etonitazene;
- (23) Etoxidine;
- (24) Furethidine;
- (25) Hydroxypethidine;
- (26) Ketobemidone;
- (27) Levomoramide;
- (28) Levophenacymorphan;
- (29) Morpheridine;
- (30) Noracymethadol;
- (31) Norlevorphanol;
- (32) Normethadone;
- (33) Norpipanone;
- (34) Phenadoxone;
- (35) Phenampromide;
- (36) Phenomorphan;
- (37) Phenoperidine;
- (38) Piritramide;
- (39) Proheptazine;
- (40) Properidine;

- (41) Racemoramide;
- (42) 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) Hydromorphanol;
- (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.

SECTION 5. The Commissioner shall place a substance in Schedule II if he finds that:

- (1) the substance has high potential for abuse;
- (2) the substance has currently accepted medical use in treatment in the United States, or currently accepted medical use with severe restrictions; and
- (3) the abuse of the substance may lead to severe psychic or physical dependence.

SECTION 6. (a) The controlled substances listed in this Section are included in Schedule II.

(b) Any of the following substances, except those narcotic drugs listed in other schedules, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by 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 paragraph (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;
- (10) Metazocine;
- (11) Methadone;
- (12) Methadone — Intermediate, 4-cyano-2-dimethylamino—4, 4-diphenyl butane;
- (13) Moramide—Intermediate, 2-methyl-3-morpholino-1, 1-diphenyl-propane-carboxylic acid:
- (14) Pethidine;
- (15) Pethidine — Intermediate — A, 4-cyano-1-methyl-4-phenylpiperidine;
- (16) Pethidine—Intermediate—B, ethyl-4-phenylpiperidine-4-carboxylate;

- (17) Pethidine — Intermediate — C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;
- (18) Phenazocine;
- (19) Piminodine;
- (20) Racemethorphan;
- (21) Racemorphan.

SECTION 7. The Commissioner shall place a substance in Schedule III if he finds that:

- (1) the substance has a potential for abuse less than the substances listed in Schedules I and II;
- (2) the substance has currently accepted medical use in treatment in the United States; and
- (3) abuse of the substance may lead to moderate or low physical dependence or high psychological dependence.

SECTION 8. (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) Sulfondiethylmethane;
- (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, non-narcotic 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, non-narcotic 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 milligrams per dosage unit, with one or more active, nonnarcotic 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 Commissioner 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.

SECTION 9. The Commissioner shall place a substance in Schedule IV if he 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.

SECTION 10. (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 Commissioner may except by rule any compound, mixture, or preparation containing any depressant substance 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.

SECTION 11. The Commissioner shall place a substance in Schedule V if he finds that:

- (1) the substance has low potential for abuse relative to the controlled substances listed in Schedule IV;
- (2) the substance has currently accepted medical use in treatment in the United States; and
- (3) the substance has limited physical dependence or psychological dependence liability relative to the controlled substances listed in Schedule IV.

SECTION 12. (a) The controlled substances listed in this Section are included in Schedule V.

(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:

(1) Not more than 200 milligrams of codeine, or any of its salts, per 100 milliliters or per 100 grams;

(2) Not more than 100 milligrams of dihydrocodeine, or any of its salts, per 100 milliliters or per 100 grams;

(3) Not more than 100 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or per 100 grams;

(4) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;

(5) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams.

SECTION 13. The Commissioner shall revise and republish the schedules semi-annually for two years from the effective date of this Act, and thereafter annually.

ARTICLE III

SECTION 1. Controlled substances in Schedule I and II shall be distributed by a practitioner to another practitioner only pursuant to an order form. Compliance with the provisions of Federal law respecting order forms shall be deemed compliance with this Section.

SECTION 2. (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.

(b) In emergency situations, as defined by rule of the Commissioner, Schedule II drugs may be dispensed upon oral prescription of a practitioner, reduced promptly to writing and filed by the pharmacy. Prescriptions shall be retained in conformity with the requirements of Sections 6 of this Article. No prescription for a Schedule II substance may be refilled.

(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, shall not be dispensed without a written or oral prescription of a practitioner. The prescription shall not be filled or refilled more than 6 months after the date thereof or be refilled more than 5 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 IV

SECTION 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.

(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 crime and upon conviction may be imprisoned for not more than fifteen (15) years or fined not more than \$25,000, or both;

(ii) any other controlled substance classified in Schedule I, II, or III, is guilty of a crime and upon conviction may be imprisoned for not more than five years, fined not more than \$15,000 or both;

(iii) a substance classified in Schedule IV, is guilty of a crime and upon conviction may be imprisoned for not more than 3 years, fined not more than \$10,000.00, or both;

(iv) a substance classified in Schedule V, is guilty of a crime and upon conviction may be imprisoned for not more than one year, fined not more than \$5,000, 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.

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

(i) a counterfeit substance classified in Schedule I or II which is a narcotic drug, is guilty of a crime and upon conviction may be imprisoned for not more than 15 years, fined not more than \$25,000, or both;

(ii) any other counterfeit substance classified in Schedule I, II, or III, is guilty of a crime and upon conviction may be imprisoned for not more than 5 years, fined not more than \$15,000, or both;

(iii) a counterfeit substance classified in Schedule

IV, is guilty of a crime and upon conviction may be imprisoned for not more than 3 years, fined nor more than \$10,000, or both;

(iv) a counterfeit substance classified in Schedule V, is guilty of a crime and upon conviction may be imprisoned for not more than one year, fined not more than \$5,000, or both.

(c) It is unlawful for any person knowingly or intentionally to possess a controlled substance unless the substance 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 otherwise authorized by this Act. Any person who violates this subsection is guilty of a misdemeanor. Provided, any person who is convicted of a third or subsequent offense for violation of this subsection shall be guilty of a felony and shall be subject to imprisonment in the Penitentiary for not less than two (2) nor more than five (5) years.

SECTION 2. (a) It is unlawful for any person:

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

(2) to manufacture a controlled substance not otherwise authorized by the laws of this State, or to distribute or dispense a controlled substance not authorized by the laws of this State;

(3) to refuse or fail to make, keep or furnish any record, notification, order form, statement, invoice or information 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 crime and upon conviction may be imprisoned for not more than one year, fined not more than \$25,000, or both.

SECTION 3. (a) It is unlawful for any person knowingly or intentionally:

(1) to distribute as a registrant a controlled substance classified in Schedules I or II, except pursuant to an order form as required by Section 1 of Article III of this Act;

(2) to acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge;

(3) to furnish false or fraudulent material information in, or omit any material information from, any application, report, or other document required to be kept or filed under this Act, or any record required to be kept by this Act; or

(4) to make, distribute, or possess any punch, die, plate, stone or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any drug or container or

labeling thereof so as to render the drug a counterfeit substance.

(b) Any person who violates this Section is guilty of a crime and upon conviction may be imprisoned for not more than 4 years, or fined not more than \$30,000, or both.

SECTION 4. 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.

SECTION 5. 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.

SECTION 6. Any person 18 years of age or over who violates Section 1(a) of this Article by distributing a controlled substance listed in Schedules I or II which is a narcotic drug to a person under 18 years of age who is at least 3 years his junior is punishable by the fine authorized by Section 1(a) 1(i), of this Article, by a term of imprisonment of up to twice that authorized by Section 1(a)(1)(i) of this Article or by both. Any person 18 years of age or over who violates Section 1(a), of this Article by distributing any other controlled substance listed in Schedules I, II, III, IV, and V to a person under 18 years of age who is at least 3 years his junior is punishable by the fine authorized by Section 1(a) (1) (ii), (iii), or (iv), of this Article by a term of imprisonment up to twice that authorized by Sections 1(a)(1)(ii), (iii), or (iv) of this Article, or both.

SECTION 7. 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 1(c) of this Article, 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 a second or subsequent convictions under Section 8 of this Article. There may be only one discharge and dismissal under this Section with respect to any person.

SECTION 8. (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.

(b) For purposes of this Section, an offense is considered 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 1(c) of this Article.

ARTICLE V

SECTION 1. (a) Any officer or employee of the Department of Public Safety designated by the Commissioner may:

(1) carry firearms in the performance of his official duties;

(2) execute and serve search warrants, arrest warrants, administrative inspection 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 other law enforcement duties as the Commissioner designates.

SECTION 2. (a) Issuance and execution of administrative inspection warrants shall be as follows:

(1) A judge of a court of record, within his jurisdiction, and upon proper oath or affirmation showing probable cause, may issue warrants for the purpose of conducting administrative inspections authorized by this Act or rules hereunder, and seizures of property appropriate to the inspections. For purposes of the issuance of administrative inspection warrants, probable

cause exists from showing a valid public interest in the effective enforcement of this Act or rules hereunder, sufficient to justify administrative inspection of the area, premises, building or conveyance in the circumstances specified in the application for the warrant;

(2) A warrant shall issue only upon an affidavit of a designated officer or employee having knowledge of the facts alleged, sworn to before the judge or magistrate and establishing the grounds for issuing the warrant. If the judge or magistrate is satisfied that grounds for the application exist or that there is probable cause to believe they exist, he shall issue a warrant identifying the area, premises, building, or conveyance to be inspected, the purpose of the inspection, and, if appropriate, the type of property to be inspected, if any. The warrant shall:

(i) state the grounds for its issuance and the name of each person whose affidavit has been taken in support thereof;

(ii) be directed to a person authorized by Section 1 of this Section to execute it;

(iii) command the person to whom it is directed to inspect the area, premises, building, or conveyance identified 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 or magistrate to whom it shall be returned;

(3) A warrant issued pursuant to this Section must be executed and returned within 10 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 written 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 or magistrate 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 Circuit Court of the county in which the inspection was made.

(b) The Commissioner may make administrative inspections of controlled premises in accordance with the following provisions:

(1) For purposes of this Section only, "controlled premises" means:

(i) places where persons are required by State law 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) an officer or employee designated by the Commissioner 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, an officer or employee designated by the Commissioner 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, 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 convey-

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

SECTION 3. (a) The trial courts of this State may exercise jurisdiction to restrain or enjoin violations of this Act.

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

SECTION 4. (a) The Commissioner shall cooperate with Federal and other State agencies in discharging its responsibilities concerning traffic in controlled substances and in suppressing the abuse of controlled substances. To this end, he may:

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

(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. He 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 Commissioner 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 Commissioner 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.

SECTION 5. (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, import-

ing, or exporting any controlled substance in violation of this Act;

(3) all property which is used, or intended for use, as a container for property described in paragraphs (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 paragraph (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 1(c) of Article IV; 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 materials, 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 the Board upon process issued by any circuit court 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 administrative inspection warrant;

(2) the property subject to seizure has been the subject of a prior judgment in favor of the State in a criminal injunction or forfeiture proceeding based upon this Act;

(3) the Commissioner has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(4) the Commissioner has probable cause to believe 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 Commissioner subject only to the orders and decrees of the circuit court. When property is seized under this Act, the Commissioner may:

(1) place the property under seal;

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

(3) require the Commissioner to take custody of the property and remove it to an appropriate location for disposition in accordance with law.

(e) When property is forfeited under this Act the Commissioner 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 proceedings 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 Commissioner 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 that 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 Commissioner, 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 porof that he is the holder therof, constitutes authority for the seizure and forfeiture of the plants.

SECTION 6. (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 his to rebut the presumption.

(c) No liability is imposed by this Act upon any authorized State, county or municipal officer, engaged in the lawful performance of his duties.

SECTION 7. All final determinations, findings and conclusions of the Commissioner under this Act are final and conclusive decisions of the matters involved. Any person aggrieved by the decision may obtain review of the decision in the circuit court of the county. Findings of fact by the Commissioner if supported by substantial evidence, are conclusive.

SECTION 8. (a) The Commissioner shall carry out educational programs designed to prevent and deter misuse and abuse of controlled substances. In connection with these programs he may:

(1) promote better recognition of the problems of misuse and abuse of controlled substances within the reg-

ulated 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) The Commissioner shall encourage research on misuse and abuse of controlled substances. In connection with the research, and in furtherance of the enforcement of this Act, it 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, institutions 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) The Commissioner may enter into contracts for educational and research activities without performance bonds.

(d) The Commissioner 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) The Commissioner 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 distribution of controlled substances to the extent of the authorization.

ARTICLE VI

SECTION 1. (a) Prosecution for any violation of law occurring prior to the effective date of this Act is

not affected or abated by this Act. If the offense being prosecuted is similar to one set out in Article IV of this Act, then the penalties under Article IV apply if they are less than those under prior law.

(b) Civil seizures or 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) This Act applies to violations of law, seizures and forfeiture, injunctive proceedings, administrative proceedings and investigations which occur following its effective date.

SECTION 2. 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.

SECTION 3. This Act shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this Act among those States which enact it.

SECTION 4. This Act may be cited as the Uniform Controlled Substances Act.

SECTION 5. Nothing contained in this Act shall

be construed to affecting the licensing or regulation of pharmacists or pharmacies in this State by the State Board of Pharmacy. Nothing in this Act shall be deemed to prohibit the sale of non-narcotic proprietary drugs if such drugs may under the Federal Food, Drug and Cosmetic Act, or the Arkansas Food, Drug and Cosmetic Act, be lawfully sold over the counter without a prescription.

SECTION 6. There is hereby established in the Department of Public Safety the Narcotic and Toxic Substances Control Division which shall be headed by a Commissioner. Such Commissioner shall be appointed by the Governor with the advice and consent of the Senate and shall serve at the pleasure of the Governor. Such Commissioner shall have the duties and responsibilities set out in this Act and such other powers and duties as may be prescribed by law.

SECTION 7. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 8. All laws and parts of laws in conflict herewith are hereby repealed.

SECTION 9. It is hereby found and determined by the General Assembly that there is an increasing problem of drug abuse in the State of Arkansas and that in order to protect the public health and safety immediate steps must be taken to enact a comprehensive and uniform narcotics and controlled drugs act and the

immediate passage of this act is necessary to accomplish this purpose; therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force from and after its passage and approval.

APPROVED: April 7, 1971.

*(Acts 591 Through 598 Are Appropriation Acts and
Will Be Found in Volume I)*

ACT 599

AN ACT to Amend Section 2 of Act 496 of 1965 [Ark. Stats. 22-143]; to Provide the Method of Establishing the Salary of the Executive Secretary of the Judicial Department; to Establish the Retirement Benefits of Said Executive Secretary; and for Other Purposes.

Be It Enacted by the General Assembly of the State of Arkansas:

SECTION 1. That Section 2 of Act 496 of 1965, the same being Section 22-143 of the Arkansas Statutes (1969 P.P. Supp.), is hereby amended to read as follows:

“Section 2. There shall be an office for the administration of the non-judicial business of the judicial department under the direction of an executive secretary who shall be appointed by the Chief Justice of the Supreme Court with the approval of the Judicial Council