CHAPTER 235

HOUSE BILL NO. 1558
(Wilkie)

UNIFORM CONTROLLED SUBSTANCES ACT

AN ACT to establish a coordinated and codified system of drug control, to create a closed regulatory system for the legitimate handlers of controlled drugs, to prohibit certain activities relating to controlled drugs, to provide penalties for violations thereof, to amend and reenact section 19-01-02; subsection 9 of section 19-02.1-05; subsection 4 of section 19-02.1-01; subsection 1 of section 19-02.1-15; and section 19-02.1-20; of the North Dakota Century Code and to repeal chapter 19-03 of the North Dakota Century Code, relating to narcotics, and to repeal subsection 23 of section 19-02.1-01; subsections 15, 16, 17, 18, 19, 20, and 21 of section 19-02.1-02; subsection 4 of section 19-02.1-04; subsections 5 and 6 of section 19-02.1-05; and section 19-02.1-23 of the North Dakota Century Code relating to drugs.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. DEFINITIONS.) As used in this Act:

1. "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:

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

   b. the patient or research subject at the direction and in the presence of the practitioner.

2. "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.

3. "Bureau" means the Bureau of Narcotics and Dangerous Drugs, United States Department of Justice or its successor agency.

4. "Controlled substance" means a drug, substance, or immediate precursor in schedules I through V as set out in this Act.

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

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

7. "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.

8. "Dispenser" means a practitioner who dispenses.

9. "Distribute" means to deliver other than by administering or dispensing a controlled substance.

10. "Distributor" means a person who distributes.

11. "Drug" means

    a. 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;

    b. substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals;

    c. substances (other than food) intended to affect the structure or any function of the body of man or animals; and

    d. substances intended for use as a component of any article specified in subdivisions a, b, or c of this subsection. It does not include devices or their components, parts or accessories.

12. "Immediate Precursor" means a substance which the state laboratories department 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.

13. "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:

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

    b. 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.

14. "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 mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

15. "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:

    a. Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate.

    b. Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in subdivision a, but not including the isoquinoline

alkaloids of opium.

c. Opium poppy and poppy straw.

d. Coca leaves and any salt, compound, derivative or preparation of coca leaves, 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.

16. "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 Act, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms.

17. "Opium poppy" means the plant of the species Papaver somniferum L., except its seeds.

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

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

20. "Practitioner" means:

a. A physician, dentist, veterinarian, pharmacist, 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.

b. 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.

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

22. "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.

23. "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.

SECTION 2. AUTHORITY TO CONTROL.)

1. The North Dakota state laboratories department shall administer this Act and may add substances to or delete or reschedule all substances enumerated in the schedules in sections 5, 7, 9, 11 or 13 pursuant to the procedures of chapter 28-32 of the North Dakota Century Code. In making a determination regarding a substance, the state laboratories department shall consider the following:

   a. the actual or relative potential for abuse;

   b. the scientific evidence of its pharmacological effect, if known;

   c. the state of current scientific knowledge regarding the substance;

   d. the history and current pattern of abuse;

   e. the scope, duration, and significance of abuse;

   f. the risk to the public health;

   g. the potential of the substance to produce psychic or physiological dependence liability; and

   h. whether the substance is an immediate precursor of a substance already controlled under this Act.

2. After considering the factors enumerated in subsection 1, the state laboratories department shall make findings with respect thereto and issue a rule controlling the substance if it finds the substance has a potential for abuse.

3. If the state laboratories department 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.

4. If any substance is designated, rescheduled, or deleted as a controlled substance under federal law and notice thereof is given to the state health

department, the state laboratories department shall similarly control the substance under this Act after the expiration of thirty days from publication in the federal register of a final order designating a substance as a controlled substance or rescheduling, or deleting a substance, unless within that thirty day period, the state laboratories department objects to inclusion, rescheduling, or deletion. In that case, the state laboratories department shall publish the reasons for objection and afford all interested parties an opportunity to be heard. At the conclusion of the hearing, the state laboratories department shall publish its decision, which shall be final unless altered by statute. Upon publication of objection to inclusion, rescheduling, or deletion under this Act by the state laboratories department, control under this Act is stayed until the state health department publishes its decision.

5. Authority to control under this section does not extend to distilled spirits, wine, malt beverages, or tobacco as those terms are defined or used in title 5 of the North Dakota Century Code.

SECTION 3. NOMENCLATURE.) The controlled substances listed or to be listed in the schedules in sections 5, 7, 9, 11 and 13 are included by whatever official, common, usual, chemical, or trade name designated.

SECTION 4. SCHEDULE I TESTS.) The state laboratories department shall place a substance in schedule I if it finds that the substance:

1. has high potential for abuse; and

2. has no accepted medical use in treatment in the United States or lacks accepted safety for use in treatment under medical supervision.

SECTION 5. SCHEDULE I.)

1. The controlled substances listed in this section are included in schedule I.

2. 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:

   a. Acetylmethadol;
   b. Allylprodine;
   c. Alphacetylmethadol;
   d. Alphameprodine;

e. Alphamethadol;
f. Benzethidine;
g. Betacetylmethadol;
h. Betameprodine;
i. Betamethadol;
j. Betaprodine;
k. Clonitazene;
l. Dextromoramide;
m. Dextrorphan;
n. Diampromide;
o. Diethylthiambutene;
p. Dimenoxadol;
q. Dimepheptanol;
r. Dimethylthiambutene;
s. Dioxaphetyl butyrate;
t. Dipipanone;
u. Ethylmethylthiambutene;
v. Etonitazene;
w. Etoxeridine;
x. Furethidine;
y. Hydroxypethidine;
z. Ketobemidone;
aa. Levomoramide;
bb. Levophenacylmorphan;
cc. Morpheridine;
dd. Noracymethadol;
ee. Norlevorphanol;
ff. Normethadone;
gg. Norpipanone;
hh. Phenadoxone;
ii. Phenampromide;
jj. Phenomorphan;
kk. Phenoperidine;
ll. Piritramide;
mm. Proheptazine;
nn. Properidine;
oo. Racemoramide;
pp. Trimeperidine

3. 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:

a. Acetorphine;
b. Acetyldihydrocodeine;
c. Benzylmorphine;
d. Codeine methylbromide;
e. Codeine-n-oxide;
f. Cypremorphine;
g. Desomorphine;
h. Dihydromorphine;
i. Etorphine;

j. Heroin;
k. Hydromorphinol;
l. Methyldesorphine;
m. Methyldihydromorphine;
n. Morphine methylbromide;
o. Morphine methylsulfonate;
p. Morphine-n-oxide;
q. Myrophine;
r. Nicocodeine;
s. Nicomorphine;
t. Normorphine;
u. Pholcodine;
v. Thebacon;

4. 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:

a. 3,4-methylenedioxy amphetamine;
b. 5-methoxy-3, 4-methylenedioxy amphetamine;
c. 3,4,5-trimethoxy amphetamine;
d. Bufotenine;
e. Diethyltryptamine;
f. Dimethyltryptamine;
g. 4-methyl-2, 5-dimethoxylamphetamine;
h. Ibogaine;
i. Lysergic acid diethylamide;
j. Marihuana;
k. Mescaline;
l. Peyote;
m. N-ethyl-3-piperidyl benzilate;
n. N-methyl-3-piperidyl benzilate;
o. Psilocybin;
p. Psilocyn;
q. Tetrahydrocannabinols;

SECTION 6. SCHEDULE II TESTS.) The state laboratories department shall place a substance in Schedule II if it 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 7. SCHEDULE II.)

1. The controlled substances listed in this section are included in schedule II.

2. 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.

   a. Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate.

   b. Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph a, but not including the isoquinoline alkaloids of opium.

   c. Opium poppy and poppy straw.

   d. 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.

3. 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:

   a. Alphaprodine;
   b. Anileridine;
   c. Bezitramide;
   d. Dihydrocodeine;
   e. Diphenoxylate;
   f. Fentanyl;
   g. Isomethadone;
   h. Levomethorphan;
   i. Levorphanol;
   j. Metazocine;
   k. Methadone;
   l. Methadone - intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;
   m. Moramide - intermediate, 2-methyl-3-morpholino-1, 1-diphenyl-propane-carboxylic acid;
   n. Pethidine;
   o. Pethidine - intermediate - A, 4-cyano-1-methyl-4-phenylpiperidine;
   p. Pethidine - intermediate - B, ethyl-4-phenylpiperidine-4-carboxylate;

q. Pethidine - intermediate - C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;
r. Phenazocine;
s. Piminodine;
t. Racemethorphan;
u. Racemorphan.

SECTION 8. SCHEDULE III TESTS.) The state laboratories department shall place a substance in schedule III if it 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 9. SCHEDULE III.)

1. The controlled substances listed in this section are included in schedule III.

2. 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:

   a. Amphetamine, its salts, optical isomers, and salts of its optical isomers;

   b. Phenmetrazine and its salts;

   c. Any substance which contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers;

   d. Methylphenidate.

3. 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:

   a. 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;
   b. Chlorhexadol;
   c. Glutethimide;
   d. Lysergic acid;

e. Lysergic acid amide;
f. Methyprylon;
g. Phenyclidine;
h. Sulfondiethylmethane;
i. Sulfonethylmethane;
j. Sulfonmethane.

4. Nalorphine.

5. Any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:

a. Not more than 1.80 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;

b. Not more than 1.80 grams of codeine, or any of its salts per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

c. 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;

d. 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;

e. Not more than 1.80 grams of dihydrocodeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

f. 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;

g. 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;

h. 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.

6. The state laboratories department may except by rule any compound, mixture, or preparation containing any stimulant or depressant substance listed in subsection 2 and 3 of this section 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 10. SCHEDULE IV TESTS.) The state laboratories department shall place a substance in schedule IV if it finds that:

1. the substance has a low potential for abuse relative to substances in schedule III;

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

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

SECTION 11. SCHEDULE IV.)

1. The controlled substances listed in this section are included in schedule IV.

2. 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:

a. Barbital;
b. Chloral betaine;
c. Chloral hydrate;
d. Chordiazepoxide and its salts;
e. Diazepam;
f. Ethchlorvynol;
g. Ethinamate;
h. Methohexital;
i. Meprobamate;
j. Methylphenobarbital;
k. Paraldehyde;
l. Petrichloral;
m. Phenobarbital;

3. The state laboratories department may except by rule any compound, mixture, or preparation containing any depressant substance listed in subsection 2 of this section 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 12. SCHEDULE V TESTS.) The state laboratories department shall place a substance in schedule V if it 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 13. SCHEDULE V.)

1. The controlled substances listed in this section are included in schedule V.

2. 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:

   a. Not more than 200 milligrams of codeine, or any of its salts, per 100 milliliters or per 100 grams;

   b. Not more than 100 milligrams of dihydrocodeine, or any of its salts, per 100 milliliters or per 100 grams;

   c. Not more than 100 milligrams of ethylmorphine or any of its salts, per 100 milliliters or per 100 grams;

   d. Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;

   e. Not more than 100 milligrams of opium per 100 milliliters or per 100 grams.

SECTION 14. REPUBLISHING OF SCHEDULES.) The state labora-

tories department shall revise and republish the schedules semiannually for two years from the effective date of this Act, and thereafter annually.

SECTION 15. RULES.) The state laboratories department may promulgate rules and charge reasonable fees relating to the registration and control of the manufacture, distribution, and dispensing of controlled substances within this state.

SECTION 16. REGISTRATION REQUIREMENTS.)

1. Every person who manufactures, distributes, or dispenses any controlled substance within this state or who proposes to engage in the manufacture, distribution, or dispensing of any controlled substance within this state, must obtain annually a registration issued by the state laboratories department in accordance with its rules.

2. Persons registered by the state laboratories department under this Act to manufacture, distribute, dispense, or conduct research with controlled substances may possess, manufacture, distribute, dispense, or conduct research with those substances to the extent authorized by their registration and in conformity with the other provisions of this Act.

3. The following persons need not register and may lawfully possess controlled substances under this Act:

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

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

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

4. The state laboratories department may waive by rule the requirement for registration of certain manufacturers, distributors, or dispensers if it finds it consistent with the public health and safety.

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

6. The state laboratories department may inspect the establishment of a registrant or applicant for registration in accordance with the state health department rule.

SECTION 17. REGISTRATION.)

1. The state laboratories department shall register an applicant to manufacture or distribute controlled substances included in sections 5, 7, 9, 11, and 13 unless it determines that the issuance of that registration would be inconsistent with the public interest. In determining the public interest, the state laboratories department shall consider the following factors:

   a. maintenance of effective controls against diversion of controlled substances into other than legitimate medical, scientific, or industrial channels;

   b. compliance with applicable state and local laws;

   c. any convictions of the applicant under any federal and state laws relating to any controlled substance;

   d. past experience in the manufacture or distribution of controlled substances, and the existence in the applicant's establishment of effective controls against diversion;

   e. furnishing by the applicant of false or fraudulent material in any application filed under this Act;

   f. suspension or revocation of the applicant's federal registration to manufacture, distribute, or dispense controlled substances as authorized by federal law; and

   g. any other factors relevant to and consistent with the public health and safety.

2. Registration under subsection 1 of this section does not entitle a registrant to manufacture and distribute controlled substances in schedule I or II other than those specified in the registration.

3. Practitioners must be registered to dispense any controlled substances or to conduct research with controlled substances in schedules II through V if they are authorized to dispense or conduct research under the law of this state. The state laboratories department need not require separate registration under this Act for practitioners engaging in research with nonnarcotic controlled substances in schedules II through V where the registrant is already registered under

this Act in another capacity. Practitioners registered under federal law to conduct research with schedule I substances may conduct research with schedule I substances within this state upon furnishing the state health department evidence of that federal registration.

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

SECTION 18. REVOCATION AND SUSPENSION OF REGISTRATION.)

1. A registration under section 17 to manufacture, distribute, or dispense a controlled substance may be suspended or revoked by the state laboratories department upon a finding that the registrant:

   a. has furnished false or fraudulent material information in any application filed under this Act;

   b. has been convicted of a felony under any state or federal law relating to any controlled substance; or

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

2. The state laboratories department may limit revocation or suspension of a registration to the particular controlled substance with respect to which grounds for revocation or suspension exist.

3. If the state laboratories department suspends or revokes a registration, all controlled substances owned or possessed by the registrant at the time of suspension or the effective date of the revocation order may be placed under seal. No disposition may be made of substances under seal until the time for taking an appeal has elapsed or until all appeals have been concluded unless a court, upon application therefor, orders the sale of perishable substances and the deposit of the proceeds of the sale with the court. Upon a revocation order becoming final, all controlled substances may be forfeited to the state.

4. The state laboratories department shall promptly notify the bureau of all orders suspending or revoking registration and all forfeitures of controlled substances.

SECTION 19. ORDER TO SHOW CAUSE.)

1. Before denying, suspending or revoking a registration, or refusing a renewal of registration, the state laboratories department shall serve upon the applicant or registrant an order to show cause why registration should not be denied, revoked, or suspended, or why the renewal should not be refused. The order to show cause shall contain a statement of the basis therefor and shall call upon the applicant or registrant to appear before the state laboratories department at a time and place not less than thirty days after the date of service of the order, but in the case of a denial or renewal of registration the show cause order shall be served not later than thirty days before the expiration of the registration. These proceedings shall be conducted in accordance with the Administrative Agencies Practices Act as set out in chapter 28-32 of the North Dakota Century Code without regard to any criminal prosecution or other proceeding. Proceedings to refuse renewal of registration shall not abate the existing registration which shall remain in effect pending the outcome of the administrative hearing.

2. The state laboratories department may suspend, without an order to show cause, any registration simultaneously with the institution of proceedings under section 18, or where renewal of registration is refused, if it finds that there is an imminent danger to the public health or safety which warrants this action. The suspension shall continue in effect until the conclusion of the proceedings, including judicial review thereof, unless sooner withdrawn by the state laboratories department or dissolved by a court of competent jurisdiction.

SECTION 20. RECORDS OF REGISTRANTS.) Persons registered to manufacture, distribute, or dispense controlled substances under this Act shall keep records and maintain inventories in conformance with the record-keeping and inventory requirements of federal law and with any additional rules the state laboratories department issues.

SECTION 21. ORDER FORMS.) Controlled substances in schedule I and II shall be distributed by a registrant to another registrant only pursuant to an order form. Compliance with the provisions of federal law respecting order forms shall be deemed compliance with this section.

SECTION 22. PRESCRIPTIONS.)

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

2. In emergency situations, as defined by rule of the

state laboratories department, 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 section 20. No prescription for a schedule II substance may be refilled.

3. Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, a controlled substance included in schedule III or IV, which is a prescription drug as determined under this Act or chapter 19-02.1 of the North Dakota Century Code, shall not be dispensed without a written or oral prescription of a practitioner. The prescription shall not be filled or refilled more than six months after the date thereof or be refilled more than five times, unless renewed by the practitioner. Any oral prescription for such drugs shall be promptly reduced to writing by the pharmacist on a new prescription blank and shall be signed within seventy-two hours by the practitioner who issued the same.

4. A controlled substance included in schedule V shall not be distributed or dispensed other than for a medical purpose.

SECTION 23. PROHIBITED ACTS A - PENALTIES.)

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

   a. a controlled substance classified in schedules I or II which is a narcotic drug, is guilty of a crime and upon conviction may be imprisoned for not more than twenty years or fined not more than $10,000, or both;

   b. 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 ten years, or fined not more than $5,000, or both;

   c. a substance classified in schedule IV, is guilty of a crime and upon conviction may be imprisoned for not more than five years, or fined not more than $2,500, or both;

   d. 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 $1,000, or both.

2. Except as authorized by this Act, it is unlawful for any person to create, deliver, or possess with intent to deliver, a counterfeit substance. Any person who violates this subsection with respect to:

   a. 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 twenty years, fined not more than $10,000, or both;

   b. any other counterfeit substance classified in schedules I, II, or III, is guilty of a crime and upon conviction may be imprisoned for not more than ten years, fined not more than $5,000, or both;

   c. a counterfeit substance classified in schedule IV, is guilty of a crime and upon conviction may be imprisoned for not more than five years, fined not more than $2,500, or both;

   d. 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 $500, or both.

3. 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 crime and upon conviction may be imprisoned for not more than five years, fined not more than $2,500, or both; except that any person who violates this subsection regarding possession of marihuana, shall be guilty of a crime and upon conviction may be fined not more than $500 or imprisoned in the county jail or in the state penitentiary for not more than one year or both.

SECTION 24. PROHIBITED ACTS B - PENALTIES.)

1. It is unlawful for any person:

   a. who is subject to the provisions of sections 15 through 22 of this Act to distribute or dispense a controlled substance in violation of section 22;

   b. who is a registrant, to manufacture a controlled substance not authorized by his registration, or to distribute or dispense a controlled substance

not authorized by his registration to another registrant or other authorized person;

c. to refuse or fail to make, keep or furnish any record, notification, order form, statement, invoice or information required under this Act;

d. to refuse an entry into any premises for any inspection authorized by this Act; or

e. 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.

2. Any person who violates this section is guilty of a felony and upon conviction may be imprisoned for not more than one year, fined not more than $5,000, or both.

SECTION 25. PROHIBITED ACTS C - PENALTIES.)

1. It is unlawful for any person knowingly or intentionally:

a. to distribute as a registrant a controlled substance classified in schedules I or II, except pursuant to an order form as required by section 21 of this Act;

b. to use in the course of the manufacture or distribution of a controlled substance a registration number which is fictitious, revoked, suspended, or issued to another person;

c. to acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge;

d. 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

e. 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.

2. Any person who violates this section is guilty of a felony and upon conviction may be imprisoned for not more than one year, or fined not more than $500, or both.

SECTION 26. DISPOSING OF NEEDLES AND PARAPHERNALIA.) Any registrant who shall use, administer, dispense or cause to be used, administered or dispensed any drug or controlled substance in a manner requiring the use of any type of syringe, needle, eye dropper or other similar paraphernalia shall destroy and dispose of said syringe, needle, eye dropper, or other similar paraphernalia in a manner that will prevent its reuse by any person other than the registrant. The state laboratories department may promulgate rules and regulations setting out the specific manner in which the provisions of this section shall be carried out. Any registrant who shall violate the provisions of this section shall be guilty of a misdemeanor.

SECTION 27. PENALTIES UNDER OTHER LAWS.) Any penalty imposed for violation of this Act is in addition to, and not in lieu of, any civil or administrative penalty or sanction otherwise authorized by law.

SECTION 28. BAR TO PROSECUTION.) If a violation of this Act is a violation of a federal law or the law of another state, a conviction or acquittal under federal law or the law of another state for the same act is a bar to prosecution in this state.

SECTION 29. DISTRIBUTION TO PERSONS UNDER AGE 18.) Any person 18 years of age or over who violates subsection 1 of section 23 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 three years his junior is punishable by the fine authorized by subdivision a of subsection 1 of section 23, by a term of imprisonment of up to twice that authorized by subdivision a of subsection 1 of section 23 or by both. Any person 18 years of age or over who violates subsection 1 of section 23 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 three years his junior is punishable by the fine authorized by subdivisions b, c, and d of subsection 1 of section 23, by a term of imprisonment up to twice that authorized by subdivisions b, c, and d of subsection 1 of section 23, or both.

SECTION 30. CONDITIONAL DISCHARGE FOR POSSESSION AS FIRST OFFENSE.) Whenever any person who has not previously been convicted of any offense under this Act or under any statute of the United States or of any state relating to narcotic drugs, marihuana, or stimulant, depressant, or hallucinogenic drugs, pleads guilty to or is found guilty of possession of a controlled substance under subsection 3 of section 23, the court, without entering a judgment of guilt and with the consent of the accused, may defer further proceedings and place him on probation upon

terms and conditions. Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge the person and dismiss the proceedings against him. Discharge and dismissal under this section shall be without adjudication of guilt and is not a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime, including the additional penalties imposed for second or subsequent convictions under section 31. There may be only one discharge and dismissal under this section with respect to any person.

SECTION 31. SECOND OR SUBSEQUENT OFFENSES.)

1. 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.

2. For the 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.

3. This section does not apply to offenses under subsection 3 of section 23.

SECTION 32. POWERS OF ENFORCEMENT PERSONNEL - SEARCH WARRANTS.)

1. Any officer or employee of the state bureau of criminal identification and apprehension designated by the attorney general of this state may:

   a. carry firearms in the performance of his official duties;

   b. execute and serve search warrants, arrest warrants, administrative inspection warrants, subpoenas, and summonses issued under the authority of this state;

   c. 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;

   d. make seizures of property pursuant to this Act; or

e. perform other law enforcement duties as the attorney general designates.

2. A search warrant relating to offenses involving controlled dangerous substances may be issued and executed at any time of the day or night, if the judge or magistrate issuing the warrant so specifies in the warrant.

3. Any officer authorized to execute a search warrant, without notice of his authority and purpose, may break open an outer or inner door or window of a building, or any part of the building, or anything therein, if the judge or magistrate issuing the warrant has probable cause to believe that if such notice were to be given the property sought in the case may be easily and quickly destroyed or disposed of, or that danger to the life or limb of the officer or another may result, and has included in the warrant a direction that the officer executing it shall not be required to give such notice. Any officer acting under such warrant, as soon as practicable after entering the premises, shall identify himself and state the purpose of his entering the premises and his authority for doing so.

SECTION 33. ADMINISTRATIVE INSPECTIONS AND WARRANTS.)

1. Issuance and execution of administrative inspection warrants shall be as follows:

a. A district judge 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 upon showing a valid public interest in the effective enforcement of this Act or rules thereunder, sufficient to justify administrative inspection of the area, premises, building or conveyance in the circumstances specified in the application for the warrant;

b. 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:

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

(2) be directed to a person authorized to execute it;

(3) 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;

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

(5) direct that it be served during normal business hours and designate the judge or magistrate to whom it shall be returned;

c. A warrant issued pursuant to this section must be executed and returned within ten days of its date unless, upon a showing of a need for additional time, the court orders otherwise. If property is seized pursuant to a warrant, a copy shall be given to the person from whom or from whose premises the property is taken, together with a receipt for the property taken. The return of the warrant shall be made promptly, accompanied by a 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;

d. 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 district court for the county in which the inspection was made.

2. The state laboratories department may make administrative inspections of controlled premises in accordance with the following provisions:

a. For purposes of this section only, "controlled premises" means:

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

(2) 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.

b. When authorized by an administrative inspection warrant issued pursuant to subsection 1 of this section an officer or employee designated by the state laboratories department, 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.

c. When authorized by an administrative inspection warrant, an officer or employee designated by the state laboratories department may:

(1) inspect and copy records required by this Act to be kept;

(2) 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 subdivision e of subsection 2 of this section, all other things therein, including records, files, papers, processes, controls, and facilities bearing on violation of this Act; and

(3) inventory any stock of any controlled substance therein and obtain samples thereof;

d. This section does not prevent the inspection without a warrant of books and records pursuant to an administrative subpoena issued in accordance with section 28-32-09 of the North Dakota Century Code, nor does it prevent entries and administrative inspections, including seizures of property, without a warrant:

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

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

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

(4) in any other exceptional emergency circumstances where time or opportunity to apply for a warrant is lacking; or

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

e. 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 34. INJUNCTIONS.)

1. The district courts of this state shall have jurisdiction to restrain or enjoin violations of this Act.

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

SECTION 35. COOPERATIVE ARRANGEMENTS AND CONFIDENTIALITY.)

1. The state laboratories department 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, it may:

   a. arrange for exchange of information among governmental officials concerning the use and abuse of controlled substances;

   b. coordinate and cooperate in training programs concerning controlled substance law enforcement at local and state levels;

   c. 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. It shall not furnish the name or identity of a patient or research subject whose identity

could not be obtained under subsection 3; and

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

2. Results, information, and evidence received from the bureau relating to the regulatory functions of this Act, including results of inspections conducted by it may be relied and acted upon by the state health department in the exercise of its regulatory functions under this Act.

3. A practitioner engaged in medical practice or research is not required or compelled to furnish the name or identity of a patient or research subject to the state laboratories department 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 36. FORFEITURES.)

1. The following are subject to forfeiture:

a. all controlled substances which have been manufactured, distributed, dispensed or acquired in violation of this Act;

b. all raw materials, products and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this Act;

c. all property which is used, or intended for use, as a container for property described in subdivision a or b;

d. all conveyances, including aircraft, vehicles or vessels, which are used, or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of property described in subdivision a or b, but;

(1) 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;

(2) 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;

(3) a conveyance is not subject to forfeiture for a violation of subsection 3 of section 23 of this Act; and

(4) 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.

e. all books, records, and research products and materials, including formulas, micro-film, tapes, and data which are used, or intended for use, in violation of this Act.

2. Property subject to forfeiture under this Act may be seized by the state laboratories department upon process issued by any district court having jurisdiction over the property. Seizure without process may be made if:

a. the seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;

b. the property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceedings based upon this Act;

c. the state laboratories department has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

d. the state laboratories department has probable cause to believe that the property was used or is intended to be used in violation of this Act.

3. In the event of seizure pursuant to subsection 2 of this section, proceedings under subsection 4 of this section shall be instituted promptly.

4. Property taken or detained under this section shall not be subject to replevin, but is deemed to be in custody of the state laboratories department subject only to the orders and decrees of the district court having jurisdiction over the forfeiture proceedings as set out in subsection 2 of this section. When property is seized under this Act, the state laboratories

department may:

a. place the property under seal;

b. remove the property to a place designated by it; or

c. require the attorney general to take custody of the property and remove it to an appropriate location for disposition in accordance with law.

5. When property is forfeited under this Act the state laboratories department may:

a. retain it for official use;

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

c. require the attorney general to take custody of property and remove it for disposition in accordance with law; or

d. forward it to the bureau for disposition.

6. 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.

7. 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.

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

SECTION 37. BURDEN OF PROOF; LIABILITIES.)

1. 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;

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

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

SECTION 38. JUDICIAL REVIEW.) All final determinations, findings and conclusions of the state laboratories department 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 district court. Findings of fact by the state laboratories department, if supported by substantial evidence are conclusive.

SECTION 39. EDUCATION AND RESEARCH.)

1. The state laboratories department shall carry out educational programs designed to prevent and deter misuse of controlled substances. In connection with these programs it may:

   a. promote better recognition of the problems of misuse and abuse of controlled substances within the regulated industry and among interested groups and organizations;

   b. assist the regulated industry and interested groups and organizations in contributing to the reduction of misuse and abuse of controlled substances;

   c. consult with interested groups and organizations to aid them in solving administrative and organizations problems;

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

   e. 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,

f. assist in the educational and training of state and local law enforcement officials in their efforts to control misuse and abuse of controlled substances.

2. The state laboratories department 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:

a. establish methods to assess accurately the effects of controlled substances and identify and characterize those with potential for abuse;

b. make studies and undertake programs of research to:

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

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

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

c. enter 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.

3. The state laboratories department may enter into contracts for educational and research activities without performance bonds and without regard to statutory provisions affecting such contracts.

4. The state laboratories department 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.

5. The state laboratories department 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.

SECTION 40. PENDING PROCEEDINGS.)

1. 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 sections 23 through 30 of this Act, then the penalties under these sections apply if they are less than those under prior law.

2. Civil seizures or forfeitures and injunctive proceedings commenced prior to the effective date of this Act are not affected by this Act.

3. 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.

4. The state laboratories department shall initially permit persons to register who own or operate any establishment engaged in the manufacture, distribution, or dispensing of any controlled substance prior to the effective date of the Act and who are registered or licensed by the state.

5. This Act applies to violations of law, seizures and forfeiture, injunctive proceedings, administrative proceedings and investigations which occur following its effective date.

SECTION 41. CONTINUATION OF RULES.) Any orders and rules promulgated under any law affected by this Act in effect on the effective date of this Act and not in conflict with it continue in effect until modified, superseded or repealed.

SECTION 42. UNIFORMITY OF INTERPRETATION.) This Act shall be so applied and construed as to effectuate its general purpose and make uniform the law with respect to the subject of this Act among those states which enact it.

SECTION 43. SHORT TITLE.) This Act may be cited as the Uniform Controlled Substances Act.

SECTION 44. AMENDMENT.) Section 19-01-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-01-02. STATE LABORATORIES DEPARTMENT - STATE LABORATORIES COMMISSION - MEMBERS, DUTIES, MEETINGS, QUORUM.) The state laboratories department shall be maintained as one of the departments of the state. The management, control, and supervision of such department shall be placed in the state laboratories commission, which shall be composed of the governor, who shall act as chairman thereof, the state treasurer, and the attorney general. It shall meet whenever necessary, and at least once a month. The commission shall adopt rules and regulations as may be necessary for the full and complete enforcement of the regulatory laws of the state under its jurisdiction, but such rules and regulations shall not be inconsistent with the provisions of the Uniform Controlled Substances Act. The commission shall also establish, and may alter as the need arises, a fee schedule for private samples that are submitted to the department for laboratory analysis. A majority of the members of the commission shall constitute a quorum for the transaction of business.

SECTION 45. AMENDMENT.) Subsection 9 of section 19-02.1-05 of the 1969 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

9. Whenever in any proceedings under this section the condemnation of any equipment or conveyance or other thing, other than a drug, is decreed, the court shall allow the claim of any claimant, to the extent of such claimaint's interest, for remission or mitigation of such forfeiture if such claimant proves to the satisfaction of the court that:

   a. He has not committed or caused to be committed any prohibited act referred to in subsection 5 of this section or the Uniform Controlled Substances Act, and has no interest in any drug or controlled substance referred to therein;

   b. He has an interest in such equipment, or other thing as owner or lienor or otherwise, acquired by him in good faith; and

   c. He at no time had any knowledge or reason to believe that such equipment, conveyance, or other things was being or would be used in, or to facilitate, the violation of the laws of this state relating to depressant, stimulant or hallucinogenic drugs or counterfeit drugs.

SECTION 46. AMENDMENT.) Subsection 4 of section 19-02.1-01 of the 1969 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. "Drug" means:

a. Articles recognized in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, or any supplement to any of them:

b. Articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;

c. Articles, other than food, intended to affect the structure or any function of the body of man or other animals;

d. Articles intended for use as a component of any article specified in subdivisions a, b, or c, but does not include devices or their components, parts, or accessories. Provided, however, that "drug", for the purpose of this chapter, and as defined by this subsection, shall not include those controlled substances or drugs regulated by or under the authority of the Uniform Controlled Substances Act, with respect to such drugs, the Uniform Controlled Substances Act shall take precedence over and supplant the provisions of this chapter only so far as its authority and control is synonymous with the provisions of this chapter.

SECTION 47. AMENDMENT.) Subsection 1 of section 19-02.1-15 of the 1969 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-02.1-15. DRUGS LIMITED TO DISPENSING ON PRESCRIPTION.)

1. Except as authorized and provided in the Uniform Controlled Substances Act, a depressant, stimulant, or hallucinogenic drug; or a drug intended for use by man which is a habit-forming drug to which subsection 4 of section 19-02.1-14 applies; or a drug that, because of its toxicity or other potentiality for harmful effect, or the method of its use, or the collateral measures necessary to its use, is not safe for use except under the supervision of a practitioner; or a drug limited by an approved application under section 505 of the Federal Act or section 19-02.1-16 of this Code to use under the professional supervision of a practitioner, shall be dispensed by prescription of a practitioner, and such prescription shall not be refilled more than five times, nor shall it be filled or refilled after six months from the date on which such prescription was issued; except that nothing herein shall be construed as preventing a practitioner from issuing a new prescription for the same drug either in writing or orally. Any oral prescription for such drug shall be promptly reduced to writing by the pharmacist on a new prescription blank, and shall be signed within

seventy-two hours by the practitioner who issued the same.

SECTION 48. AMENDMENT.) Section 19-02.1-20 of the 1969 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-02.1-20. REGULATIONS - HEARINGS.) The authority to promulgate regulations for the efficient enforcement of this chapter is hereby vested in the state laboratories department. The department is hereby authorized to make the regulations promulgated under this chapter conform, in so far as practicable, with those promulgated under the federal act. Regulations shall conform and be consistent with the provisions of the Uniform Controlled Substances Act.

Hearings authorized or required by this chapter shall be conducted by the state laboratories director or such officer, agent, or employee as the state laboratories director may designate for the purpose. When promulgating any regulations contemplated by section 19-02.1-08, subsection 10 of section 19-02.1-10, section 19-02.1-11, subsections 4, 7, 8, 9, 14 and 17 of section 19-02.1-14, subsection 3 of section 19-02.1-15 or subsection 2 of section 19-02.1-19, the department shall follow the procedures provided for in chapter 28-32 of the North Dakota Century Code.

SECTION 49. REPEAL.) Chapter 19-03 of the North Dakota Century Code and the 1969 Supplement to the North Dakota Century Code, relating to narcotics, and subsection 23 of section 19-02.1-01; subsections 15, 16, 17, 18, 19, 20, and 21 of section 19-02.1-02; subsection 4 of section 19-02.1-04; subsections 5 and 6 of section 19-02.1-05; and section 19-02.1-23 of the 1969 Supplement to the North Dakota Century Code are hereby repealed.

Approved March 30, 1971