

CHAPTER 424

FORMERLY SENATE BILL
 NO. 226 AS AMENDED BY
 SENATE AMENDMENT NOS.
 1 & 2 AND HOUSE AMENDMENT
 NOS. 1,3,4,5,6,&8

AN ACT TO AMEND TITLE 16, DELAWARE CODE, RELATING TO THE CONTROL OF DANGEROUS SUBSTANCES AND PRESCRIBING FOR SUCH VIOLATIONS; AND TO AMEND MISCELLANEOUS PROVISIONS OF CHAPTER 23, TITLE 11, DELAWARE CODE, RELATING TO SEIZURE AND FORFEITURE OF CERTAIN VEHICLES.

Be it enacted by the General Assembly of the State of Delaware:

Section 1. Chapters 47 and 49, Title 16, Delaware Code, are hereby amended by striking said Chapters in their entirety and substituting in lieu thereof a new Chapter 47 to read as follows:

**CHAPTER 47. UNIFORM CONTROLLED
 SUBSTANCES ACT
 SUBCHAPTER 1**

§ 4701. Definitions. As used in this Chapter:

(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, in his presence, by his authorized agent), 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 Subchapter II.

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

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

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

(h) “Dispenser” means a practitioner who dispenses.

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

(j) “Distributor” means a person who distributes.

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

(l) "Immediate precursor" means a substance which the Secretary 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) "Knowingly" means a person acts knowingly with respect to any delivery, possession, use or consumption with the meaning of this Chapter when he knows or is aware of such delivery, possession, use or consumption. His knowledge may be inferred by the trier of fact from the surrounding circumstances, considering whether a reasonable man in the defendant's circumstances would have had such knowledge. A prima facie case of knowledge is established upon the introduction of some evidence of the surrounding circumstances from which a reasonable juror might infer the defendant's knowledge.

(n) "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 delivery.

(o) "Marijuana" 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,

it 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, or 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.

(p) “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, derivate, 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.

(q) “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 4711 of this Chapter, the dextrotatory isomer of 3–methoxy-n-methyl-morphinan and its salts (dextromethorphan.) It does include its racemic and levrotatory forms.

(r) “Opium poppy” means that the plant of the species *Papaver somniferum* L., except its seeds.

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

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

(u) "Possession", in addition to its ordinary meaning, includes location in or about the defendant's person, premises, belongings, vehicle, or otherwise within his reasonable control.

(v) "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 his 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 their professional practice or research in this State.

(w) "Production" includes the manufacturing, planting, cultivating, growing, or harvesting of a controlled substance.

(x) "Secretary" means Secretary of the Department of Health and Social Services of the State of Delaware or his designee.

(y) "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.

(z) "Ultimate user" means a person who lawfully possesses a controlled substance for his own 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.

SUBCHAPTER II
STANDARDS AND SCHEDULES

Section 4711. Administration

The Secretary shall administer this Chapter.

Section 4712. Nomenclature

The controlled substances listed or to be listed in the schedules in Sections 4714, 4716, 4718, 4720, and 4722 are included by whatever official, common, usual, chemical, or trade name designated.

Section 4713. Schedule I Tests

The Secretary 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 4714. Schedule I.

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

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

- (1) Acetylmethadol;
- (2) Allylprodine;
- (3) Alphacetylmethadol;

- (4) Alphameprodine;
- (5) Alphamethadol;
- (6) Benzethidine;
- (7) Betacetylmethadol;
- (8) Betameprodine;
- (9) Betamethadol;
- (10) Betaprodine;
- (11) Clonitazene;
- (12) Dextromoramide;
- (13) Dextorphan;
- (14) Diampromide;
- (15) Diethylthiambutene;
- (16) Dimenoxadol;
- (17) Dimepheptanol;
- (18) Dimethylthiambutene;
- (19) Dioxaphetyl butyrate;
- (20) Dipipanone;
- (21) Ethylmethythiambutene;
- (22) Etonitazene;
- (23) Etoxidine;
- (24) Furethidine;
- (25) Hydroxpethidine;

- (26) Ketobemidone;
- (27) Levomoramide;
- (28) Levophenacymorphan;
- (29) Morpheridine;
- (30) Noracymethadol;
- (31) Norlevorphanol;
- (32) Normethadone;
- (33) Norpipanone;
- (34) Phenadoxone;
- (35) Phenarmpromide;
- (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) Hydromorphenol;
- (12) Methyldesorphine;
- (13) Methyldihydromorphine;
- (14) Morphine methylbromide;
- (15) Morphine methylsulfonate;
- (16) Morphine-N-Oxide;
- (17) Myrophine;
- (18) Nicocodeine;
- (19) Nicomorphine;
- (20) Normorphine;
- (21) Pholcodine;
- (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) Marijuana;
- (11) Mescaline;
- (12) Peyote;
- (13) N-ethyl-3-piperidyl benzilate;
- (14) N-methyl-3-piperidyl benzilate;
- (15) Psilocybin;
- (16) Psilocyn;
- (17) Tetrahydrocannabinols.

Section 4715. Schedule II Tests

The Secretary 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 4716. Schedule II

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

(d) 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 salt 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.

Section 4717. Schedule III Test

The Secretary 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 4718. Schedule III

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

(b) Unless specifically excepted or unless listed in another schedule, any compound, mixture, or preparation containing limited quantities of any stimulant drugs, or any salts, isomers, or salts of isomers thereof, and one or more active medicinal ingredients not having a stimulant effect on the central nervous system and in such combinations, quantity, proportion, or concentration that reduce the potential abuse of the substances which have a stimulant effect on the central nervous system.

(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) Glutehimide;
- (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, nonnarcotic ingredients in recognized therapeutic amounts;

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

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

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

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

(7) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 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 Secretary 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 Chapter 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 4719. Schedule IV Tests

The Secretary 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 4720. Schedule IV

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

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

- (1) Barbital;
- (2) Chloral betaine;
- (3) Chloral hydrate;
- (4) Ethchlorvynol;
- (5) Ethinamate;
- (6) Methohexital;
- (7) Meprobamate;
- (8) Methylphenobarital;
- (9) Paraldehyde;

(10) Petrichloral;

(11) Phenobarbital.

(c) The Secretary 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 Chapter 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 4721. Schedule V Tests

The Secretary 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 4722. Schedule V

(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 4723. Republishing of Schedules

The Secretary shall revise and republish the schedules semi-annually for 2 years from the effective date of this Chapter, and thereafter annually.

SUBCHAPTER III

REGULATION OF MANUFACTURE, DISTRIBUTION AND DISPENSING OF CONTROLLED SUBSTANCES

Section 4731. Rules

The Secretary 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 4732. Registration requirements

(a) Every person who manufactures, distributes, or dispenses any controlled substance within this State or who proposes to engage in the manufacture, distribution, or dispensing of any controlled substance within this State, must obtain annually a registration issued by the Secretary in accordance with his rules.

(b) Persons registered by the Secretary under this Chapter 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 subchapter.

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

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

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

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

(d) The Secretary may waive by rule the requirement for registration of certain manufacturers, distributors, or dispensers if he finds it consistent with the public health and safety.

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

(f) The Secretary or his representative may inspect the establishment of a registrant or applicant for registration in accordance with the Secretary's rule.

Section 4733. Registration

(a) The Secretary shall register an applicant to manufacture or distribute controlled substances included in Sections 4714, 4716, 4718, 4720, and 4722 unless he determines that the issuance of that registration would be inconsistent with the public interest. In determining the public interest, the Secretary shall consider the following factors:

(1) maintenance of effective controls against diversion of controlled substances into other than legitimate medical, scientific, or industrial channels;

- (2) compliance with applicable State and local law;
- (3) any convictions of the applicant under any Federal and State laws relating to any controlled substance;
- (4) past experience in the manufacture or distribution of controlled substances, and the existence in the applicant's establishment of effective controls against diversion;
- (5) furnishing by the applicant of false or fraudulent material in any application filed under this Chapter;
- (6) suspension or revocation of the applicant's Federal registration to manufacture, distribute, or dispense controlled substances as authorized by Federal Law; and
- (7) any other factors relevant to and consistent with the public health and safety.

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

(c) Practitioners must be registered to dispense any controlled substances or to conduct research with controlled substances in Schedules II through V if they are authorized to dispense or conduct research under the law of this State. The Secretary need not require separate registration under this subchapter for practitioners engaging in research with non-narcotic controlled substances in Schedules II through V where the registrant is already registered under this subchapter 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 Secretary evidence of that Federal registration.

(d) Compliance by manufacturers and distributors with the provisions of the Federal Law respecting registration (excluding fee) entitles them to be registered under this Chapter.

Section 4734. Revocation and suspension of registration

- (a) A registration under Section 4733 to manufacture,

distribute, or dispense a controlled substance may be suspended or revoked by the Secretary upon a finding that the registrant:

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

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

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

(b) The Secretary may limit revocation or suspension of a registration to the particular controlled substance with respect to which grounds for revocation or suspension exist.

(c) If the Secretary 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.

(d) The Secretary shall promptly notify the Bureau of all orders suspending or revoking registration and all forfeitures of controlled substances.

Section 4735. Order to show cause and subpoena

(a) Before denying, suspending or revoking a registration, or refusing a renewal of registration, the Secretary 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 Secretary at a time and place not less than 30 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 30 days before the expiration of the

registration. These proceedings shall be conducted in accordance with the procedures established by the Secretary without regard to any criminal prosecution or other proceeding. Proceedings to refuse renewal of registration shall not abate the existing registration which shall remain in effect pending the outcome of the administrative hearing.

(b) The Secretary may suspend, without an order to show cause, any registration simultaneously with the institution of proceedings under Section 4734 or where renewal of registration is refused, if he 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 Secretary or dissolved by a court of competent jurisdiction.

(c) Any person complained against under this subchapter may appear personally or by counsel at the hearing and produce any competent evidence in his behalf in answer to the alleged violation. The Secretary shall be authorized to administer oaths, examine witnesses and issue, in the name of the Department of Health and Social Services, notices of hearings or subpoenas requiring the testimony of witnesses and the production of books, records, or other documents relevant to any matter involved in such hearing; and subpoenas shall also be issued at the request of the applicant or person complained against. In case of contumacy or refusal to obey a notice of hearing or subpoena under this section, the Superior Court in the county in which the hearing is held shall have jurisdiction, upon application of the Secretary to issue an order requiring such person to appear and testify or produce evidence as the case may require.

(d) Any party in interest aggrieved by a decision of the Secretary to deny, suspend, revoke, refuse to renew registration under this subchapter may appeal such decision to Superior Court. Such appeal shall be on the record and the only question before said Court shall be whether the Secretary abused his discretion. When notified of an appeal under this section, the Secretary shall forward to Superior Court a certified and complete copy of the written transcripts or taped voice records of evidence adduced at the hearing before him together with a written copy of his findings and rulings, and his reasons therefor.

Section 4736. Records of registration

Persons registered to manufacture, distribute, or dispense controlled substances under this Chapter shall keep records and maintain inventories in conformance with the record-keeping and inventory requirements of Federal law and with any additional rules the Secretary issues.

Section 4737. 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 4738. Prescriptions

(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 Secretary, 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 4736. 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.

SUBCHAPTER IV

OFFENSE AND PENALTIES

Section 4751. Prohibited Acts A – penalties

Except as authorized by this Chapter, any person who manufactures, delivers, or possesses with intent to manufacture or deliver a controlled substance or a counterfeit controlled substance classified in Schedule I or II which is a narcotic drug, is guilty of a felony and upon conviction shall be fined not less than \$5,000 nor more than \$50,000 and imprisoned not more than 25 years.

Section 4752. Prohibited Acts B – penalties

Except as authorized by this Chapter, any person who manufactures, delivers, or possesses with intent to manufacture or deliver a controlled substance or a counterfeit controlled substance classified in Schedule I, II, III, IV, or V, which is not a narcotic drug, is guilty of a felony and upon conviction shall be fined not less than \$1,000 nor more than \$10,000 and imprisoned not more than 10 years.

Section 4753. Prohibited Acts C – penalties

It is unlawful for any person knowingly or intentionally to possess, use or consume a controlled substance or a counterfeit substance classified in Schedule I or II which is a narcotic drug 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 Chapter. Any person who violates this section is guilty of a misdemeanor and, upon conviction, shall be fined not more than \$3,000 and imprisoned not more than 5 years.

Section 4754. Prohibited Acts D – penalties

It is unlawful for any person knowingly or intentionally to possess, use or consume any controlled substance or counterfeit substance classified in Schedules I, II, III, IV, or V, not a narcotic drug 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 Chapter. Any person who violates this section is guilty of a misdemeanor and upon conviction shall be fined not more than \$500 and imprisoned not more than 2 years.

Section 4755. Prohibited Acts E – penalties

(a) It is unlawful for any person:

(1) who is subject to Subchapter III to distribute or dispense a controlled substance in violation of Section 4738;

(2) 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;

(3) to refuse or fail to make, keep or furnish any record, notification, order form, statement, invoice or information required under this Chapter;

(4) to refuse an entry into any premises for any inspection authorized by this Chapter;

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

(b) any person who violates this section is guilty of a misdemeanor and upon conviction shall be fined not more than \$3,000 or imprisoned not more than 10 years or both.

Section 4756. Prohibited Acts F – penalties

(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 4737 of this Chapter;

(2) 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;

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

(4) 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 Chapter, or any record required to be kept by this Chapter; or

(5) 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 misdemeanor and upon conviction shall be fined not more than \$3,000 or imprisoned not more than 10 years or both.

Section 4757. Hypodermic syringe or needle; delivering or possessing; exceptions

(a) No person shall deliver at retail or furnish to any person other than a practitioner, an instrument commonly known as a hypodermic syringe or an instrument commonly known as a hypodermic needle, or any instrument adapted for the use of narcotic drugs by subcutaneous injection, without a written order of a practitioner.

(b) Every person who disposes of or delivers at retail, or furnishes or gives away to any person the instruments described in subsection (a) of this section, upon the written order of a practitioner, shall, before delivering the same, enter into a book kept for that purpose the day of the delivery, the name, age and address of the purchaser, and a description of the instrument sold, disposed of, furnished, or given away.

(c) No person, except a practitioner or regular dealer in medical or surgical supplies, or their authorized agents or

employees shall possess an instrument described in subsection (a) of this section, without having in his possession a certificate from a physician certifying that the possession of such instrument is necessary for the treatment of an injury, deformity or disease then suffered by the person possessing the same.

(d) Any person who delivers, disposes of, or gives away any instrument commonly known as a hypodermic syringe, or an instrument commonly known as a hypodermic needle, or any instrument adapted for the use of narcotic drugs by subcutaneous injection, except in the manner prescribed in this section, shall be guilty of a misdemeanor and upon conviction shall be fined not more than \$3,000 or imprisoned not more than 10 years, or both.

Section 4758. Keeping drugs in original containers

(a) A person to whom or for whose use a controlled substance has been prescribed, delivered, or dispensed by a practitioner may lawfully possess it only in the original container in which it was delivered to him by the person delivering or dispensing the same.

(b) Any person who violates the provisions of Subsection (a) shall be guilty of a misdemeanor and upon conviction shall be fined not more than \$3,000 or imprisoned not more than 10 years, or both.

Section 4759. Penalties under other laws

Any penalty imprisoned for violation of this chapter is in addition to, and not in lieu of, any civil or administrative penalty or sanction otherwise authorized by law. Notwithstanding the fact that the crimes of consumption and use of drugs are reenacted in this chapter under section numbers different from previous statutes, nothing herein shall be deemed to prevent dismissal of charges of consumption and use of drugs pursuant to section 615 of Title 11.

Section 4760. Bar to prosecution

If a violation of this Chapter is a violation of a Federal law or the law of another State, or 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 4761. Distribution to persons under age 18

Except as authorized by this Chapter:

(a) Whoever knowingly distributed a controlled substance or counterfeit controlled substance listed in Schedules I or II which is a narcotic drug to a person under 18 years of age is guilty of a felony and upon conviction shall be imprisoned not more than 30 years and fined in such amount as the court in its discretion may determine.

(b) Whoever knowingly distributes any other controlled substance or counterfeit controlled substance which is a non-narcotic drug classified in Schedule I, II, III, IV or V to a person under 18 years of age is guilty of a felony and upon conviction shall be imprisoned for a term not more than 15 years and fined in such amount as the court in its discretion may determine.

Section 4762. Conviction of lesser offense

In any prosecution for any violation of the following sections of this Chapter, the defendant may be convicted under any of the following respective sections of this chapter in accordance with the table set forth below establishing lesser included offenses:

(a) The lesser included offenses under Section 4761 (a), are Sections 4761 (b), 4754, 4753, 4752, and 4751.

(b) The lesser included offenses under Section 4761 (b) are sections 4752 and 4754.

(c) The lesser included offenses under Section 4751 are Sections 4752, 4753 and 4754.

(d) The lesser included offense under Section 4752 is 4754.

(e) The lesser included offense under Section 4753 is 4754.

Section 4763. Additional reduced penalties

(a) **Previous Convictions.** In any case in which a defendant has previously been convicted of any offense under this Chapter, or under any statute of the United States or of any State relating

to narcotic drugs, marijuana, depressant, stimulant, hallucinogenic drugs or other controlled substances, the penalties set forth in Sections 4751 through 4761 shall be increased by adding the following respective additional years to the maximum terms of imprisonment.

(1) Subject to the provisions of sub-paragraph (iii), the additional maximum terms applicable to the following respective sections shall be increased in accordance with the following table so that the maximum term shall read respectively as follows:

- (A) Section 4754, not more than 7 years.
- (B) Section 4753, not more than 10 years.
- (C) Section 4752, not more than 15 years.
- (D) Section 4751, not more than 30 years.
- (E) Section 4761, (b) not more than 25 years.
- (F) Section 4761 (a) not more than 50 years.

(ii) Subject to the provisions of sub-paragraph (iii) the following minimum terms with respect to the following respective sections of this chapter are mandatory minimum terms of imprisonment and shall not be subject to suspension and no person shall be eligible for probation or parole during such portion of such minimum term:

- (A) Section 4752, three (3) years.
- (B) Section 4751, five (5) years.
- (C) Section 4761 (b), seven (7) years.
- (D) Section 4761 (a), ten (10) years.

(iii) In any prosecution for violation of Section 4751 or 4761 (a) where a defendant has previously been convicted of any offense under this Act, or under any statute of the United States or of any State relating to the delivery or possession with intent to deliver of a controlled substance or counterfeit substance classified

in Schedules I and II as a narcotic drug, the minimum term of imprisonment shall be 30 years and the maximum term for such conviction shall be 99 years, and 15 years of such minimum term shall be a mandatory minimum term of imprisonment and shall not be subject to suspension and no person shall be eligible for probation or parole during such portion of such minimum term.

(b) Mitigating circumstances and reduce penalties.

(i) In any prosecution for a violation of section 4752 or 4761 (b), such violation shall be deemed to be a misdemeanor and the maximum penalty shall be a fine of \$1,000.00 or 2 years imprisonment or both if all of the following elements are found to be present:

(A) that the defendant is under the age of 21 years; and

(B) that the defendant delivered a controlled substance or counterfeit substance other than a controlled substance or counterfeit substance classified in Schedule I or II as a narcotic drug; and

(C) that the transaction was an isolated incident and the defendant did not make a profit in the transaction or assist another in making a profit and that the defendant is not engaged in the business of delivering controlled or counterfeit substances; and

(D) that the delivery was made to one who was 15 years of age or older and had been acquainted with the defendant for a period of at least one year before any delivery took place.

(ii) In any prosecution for a violation of section 4754 the maximum penalty provided in this chapter shall be a fine of \$500.00 or 90 days imprisonment or both if all of the following elements are found to be present:

(A) that the defendant is under the age of 21 years; and

(B) that the defendant has used or consumed or had in his possession a controlled or counterfeit substance other than a controlled or counterfeit substance classified in Schedules I or II as a narcotic drug; and

(C) that the defendant is not engaged in the business of delivering controlled or counterfeit substances; and

(D) that the controlled or counterfeit substance was obtained from one whom the defendant reasonably believed was at the time under the age of 21 and did not make a profit or assist another in making a profit in the transaction and was not engaged in the business of delivering controlled or counterfeit substances and had been acquainted with the defendant for a period of at least one year before any delivery took place.

(iii) The burden shall be on the defendant to establish the foregoing mitigating circumstances by a preponderance of the evidence. At the option of the defendant the mitigating circumstances may be pleaded and presented to either (but not both): (A) the trier of fact, or (B) the Court at a hearing after conviction and prior to sentencing.

(iv) This subsection (b) of this section shall not be applicable if the defendant has any previous conviction within the meaning of subsection (a) of this section, and the penalties provided therein shall apply fully. A conviction for which the penalty is mitigated and reduced as herein provided shall nevertheless be deemed to be a previous conviction for purposes of subsection (a) of this section.

Section 4764. Conditional discharge for possession as first offense

Whenever any person who has not previously been convicted of any offense under this Chapter or under any statute of the United States or of any State relating to narcotic drugs, marijuana, or stimulant, depressant, hallucinogenic drugs or other controlled substances pleads guilty to or is found guilty of possession of a controlled substance under Section 4753 or 4754, 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, and shall simultaneously with said discharge and dismissal submit to the Attorney General of the State of Delaware

a written report specifying the name of the person and the nature of the proceedings against him, which report shall be retained by the Attorney General for further proceedings, if required. 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 4763.

There may be only one discharge and dismissal under this section with respect to any person.

Section 4765. Medical and/or psychiatric examination and/or treatment

After a conviction and prior to sentencing for violation of Section 4753 or Section 4754, or prior to conviction if the defendant consents, the Court may order the defendant to submit to a medical and/or psychiatric examination and/or treatment. The court may order such examination by the Department of Health and Social Services or by a private physician, hospital or clinic and the Court may make such order regarding the term and conditions of such examination and/or treatment and the payment therefor by the defendant as the Court in its discretion shall determine. The Department of Health and Social Services or the private physician, hospital or clinic shall report to the Court within such time as the Court shall order, not more than 90 days from the date of such order. After such report and upon conviction of such violation, the Court shall impose sentence or suspend sentence, and may impose probation and/or a requirement of future medical and/or psychiatric examination and/or treatment including hospitalization or out-patient care upon such terms and conditions, and for such period of time as the Court shall order.

SUBCHAPTER V

ENFORCEMENT AND ADMINISTRATIVE PROVISIONS

Section 4766. Powers of Enforcement Personnel

(a) Any officer or employee of the Secretary designated by the Secretary may:

(1) execute and serve administrative inspection warrants, subpoenas, and summonses issued under the authority of this State; or

(2) make seizures of property pursuant to this Chapter; or
(3) perform other law enforcement duties as the Secretary designates.

Section 4767. Administrative inspections and warrants

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

(1) Any person authorized to issue search warrants in this State, may, within his jurisdiction, and upon proper oath or affirmation showing probable cause, issue warrants for the purpose of conducting administrative inspections authorized by this Chapter 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 Chapter 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 justice of the peace and establishing the grounds for issuing the warrant. If the judge or justice of the peace 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 4766 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 justice of the peace 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 justice of the peace 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 prothonotary in the country in which the inspection was made.

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

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

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

(ii) places including factories, warehouses, establishments,

and conveyances in which persons registered or exempted from registration requirements under this Chapter 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 Secretary, 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 Secretary may:

(i) inspect and copy records required by this Chapter 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 Chapter; 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 conveyances if there is reasonable cause to believe that the mobility of the conveyance makes it impracticable to obtain a warrant;

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

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

(5) An inspection authorized by this Section shall not extend to financial data, sales data, other than shipment data, or pricing data unless the owner, operator, or agent in charge of the controlled premises consents in writing.

Section 4768. Cooperative arrangements and confidentiality

(a) The Secretary shall cooperate with Federal and other State agencies in discharging his 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 (it) 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 Chapter, including results of inspections conducted by it may be relied and

acted upon by the Secretary in the exercise of his regulatory functions under this Chapter.

(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 Secretary 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 4769. Forfeitures

(a) The following are subject to forfeiture:

(1) all controlled substances which are or have been manufactured, distributed, dispensed, acquired or possessed in violation of this chapter, or with respect to which there has been any act by any person in violation of this chapter;

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

(3) all property which is caused, or intended for use, as a container for property described in paragraphs (1) or (2);

(4) 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 Chapter.

(b) Property subject to forfeiture under this Chapter may be seized by the Secretary upon process issued by any Superior Court having jurisdiction over the property. Seizure without process may be made if:

(1) the seizure made is pursuant to Subchapter 1, Chapter 23, Title 11, 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 Chapter;

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

(4) the Secretary has probable cause to believe that the property was used or is intended to be used in violation of this Chapter.

(c) In the event of seizure pursuant to subsection (b), proceedings under subsection (d) and (i) 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 Secretary subject only to the orders and decrees of the Superior Court. When property is seized under this Chapter, the Secretary may:

(1) place the property under seal;

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

(3) require the Department of Health and Social Services 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 Chapter the Secretary may:

(1) retain it for official use;

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

(3) require the Department of Health and Social Services 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 Chapter 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 Chapter, 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 Secretary, or his authorized agent, of the person in occupancy or in control of land or premises upon which the species of plants are growing or being stored, to produce an appropriate registration, or proof that he is the holder thereof, constitutes authority for the seizure and forfeiture of the plants.

(i) Property seized pursuant to this section that is not summarily forfeited pursuant to subsection (f) shall be automatically forfeited to the State upon application to the Superior Court if, within 45 days of notification of seizure to all known parties having possessory interest in the seized property by registered mail to the last known post office address of the parties in interest and by publication in a newspaper of general circulation in this State, the person or persons claiming title to the seized property does not institute proceedings in the Superior Court to establish:

(1) that they have the lawful possessory interest in the seized property; and

(2) the property was unlawfully seized or not subject to forfeiture pursuant to this section.

Section 4770. Burden of proof; liabilities

(a) It is not necessary for the State to negate any exemption

or exception in this Chapter in any complaint, information, indictment or other pleading or in any trial, hearing, or other proceeding under this Chapter. The burden of going forward with the evidence to establish 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 Chapter, 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 Chapter upon any authorized State, county or municipal officer, engaged in the lawful performance of his duties.

Section 4771. Judicial Review

All final determinations, findings and conclusions of the Secretary under this Chapter are final and conclusive decisions of the matters involved. Any person aggrieved by the decision may obtain review of the decision in the Superior Court. Findings of fact by the Secretary, if supported by substantial evidence, are conclusive.

Section 4772. Education and research

(a) The Secretary 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 regulated industry and among interested groups and organizations;

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

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

(4) evaluate procedures, projects, techniques, and controls

conducted or proposed as part of educational programs on misuse and abuse of controlled substances;

(5) disseminate the results of research on misuse and abuse of controlled substances to promote a better public understanding of what problems exist and what can be done to combat them; and

(6) assist in the education and training of State and local law enforcement officials in their efforts to control misuse and abuse of controlled substances.

(b) The Secretary shall encourage research on misuse and abuse of controlled substances. In connection with the research, and in furtherance of the enforcement of this Chapter, he 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 Chapter;

(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 Secretary may enter into contracts for educational and research activities without performance bonds.

(d) The Secretary may authorize persons engaged in re-

search 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 Secretary 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.

SUBCHAPTER VI

MISCELLANEOUS

Section 4773. Pending proceedings

(a) Prosecution for any violation of law occurring prior to the effective date of this Chapter is not affected or abated by this Chapter. If the offense being prosecuted is similar to one set out in Subchapter IV of this Chapter, then the penalties under Subchapter 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 Chapter are not affected by this Chapter.

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

(d) The Secretary shall initially permit persons to register who own or operate any establishment engaged in the manufacture, distribution, or dispensing of any controlled substance prior to the effective date of this Chapter and who are registered or licensed by the State.

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

Section 4774. Continuation of rules

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

Section 4775. Uniformity of interpretation

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

Section 4776. Short title

This Chapter may be cited as the Uniform Controlled Substances Act.

Section 4777. Severability

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

Section 4778. Jurisdiction

The Superior Court of the State of Delaware shall have exclusive original jurisdiction of any violation of this Chapter, notwithstanding any other provisions of the Delaware Code to the contrary.

Section 4779. Authority of the Attorney General

Nothing in this Chapter shall be interpreted as limiting the authority or responsibility of the Attorney General of this State to enforce the laws of this State.

Section 2. Subchapter II, Chapter 23, Title 11, Delaware Code, is hereby amended by adding thereto a new section to read as follows:

2322A. Additional grounds for seizure

Whenever any vehicle as defined in this Subchapter is used or intended for use to transport or in any manner to facilitate the transportation of any controlled substance in violation of Subchapter IV, Chapter 47, Title 16, it shall forthwith be seized and taken into custody by the peace officer or officers having knowledge of the facts of such use, but:

(1) no vehicle 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 vehicle is a consenting party or privy to a violation of the Controlled Substance Act;

(2) no vehicle 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 vehicle is not subject to forfeiture for a violation of Sections 4753, 4754, 4757, and 4758 of Title 16; and

(4) a forfeiture of a vehicle encumbered by a bonafide security interest is subject to the interest of the secured party if he neither had knowledge of nor consented to the act or omission.

Section 3. Section 2321 of Title 11 is hereby amended by adding the word "vessels" after the word "bicycles" and before the word "and."

Section 4. Section 2322 of Title 11 is hereby amended by deleting the words and punctuation marks ", or in the commission of any act in violation of Chapter 47 of Title 16, relating to narcotic drugs, or in, "and" "or who has violated the provisions relating to narcotic drugs".

Section 5. Section 2325 of Title 11 is hereby amended by deleting the words and punctuation marks ", or in, or in

connection with, any violation of the laws relating to narcotic drugs” and “or violation of the law relating to narcotic drugs”.

Section 6. This Act shall take effect on the first day after the beginning of the seventh month following the date of its enactment.

Approved June 13, 1972.