

CHAPTER 226

(S. B. 274)

AN ACT relating to controlled substances.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS Chapter 218A is hereby established and a new section thereof created to read as follows:

This Act may be cited as the Kentucky Controlled Substances Act of 1972.

Section 2. A new section of Chapter 218A of the Kentucky Revised Statutes is created to read as follows.

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 by his authorized agent under his immediate supervision and pursuant to his order)

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

(2) "Controlled substance" means a drug, substance, or immediate precursor in Schedules I through V.

(3) "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 dispensor other than the person who in fact manufactured, distributed, or dispensed the substance.

(4) "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 packaging, labeling, or compounding necessary to prepare the substance for that delivery.

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

(6) "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, care 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 this subsection. It does not include devices or their components, parts, or accessories.

(7) "Immediate precursor" means a substance which is 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.

(8) "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 activities:

(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, or

(c) By a pharmacist as an incident to his dispensing of a controlled substance in the course of his professional practice.

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

from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

(10) "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 subsection (10)(a) of this section, 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, 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.

(11) "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 4 of this Act, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms.

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

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

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

(15) "Pharmacist" means a natural person licensed by this state to engage in the practice of the profession of pharmacy.

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

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

(18) "Sell" means to dispose of a controlled substance to another person for consideration or in furtherance of commercial distribution.

(19) "Traffic" means to manufacture, sell, transfer or possess with intent to sell a controlled substance.

(20) "Transfer" means to dispose of a controlled substance to another person without consideration and not in furtherance of commercial distribution.

(21) "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 animal owned by him or by a member of his household.

Section 3. A new section of Chapter 218A of the Kentucky Revised Statutes is created to read as follows:

(1) The State Board of Health shall administer this Act and may by regulation add substances to or delete or reschedule all substances enumerated in the schedules set forth in this Act. In making a determination regarding a substance, the State Board of Health may 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 Board of Health may adopt a regulation controlling the substance if it finds the substance has a potential for abuse.

(3) If any substance is designated, rescheduled, or deleted as a controlled substance under Federal law and notice thereof is given to the State Board of Health, the State Board of Health may similarly control the substance under this Act by regulation.

(4) The State Board of Health shall exclude any non-narcotic substance from a schedule if the substance may be lawfully sold over the counter without prescription under the provisions of the Federal Food, Drug and Cosmetic Act, or the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970, or the Kentucky Revised Statutes (for the purposes of this section the Kentucky Revised Statutes shall not include any regulations issued thereunder).

Section 4. A new section of Chapter 218A of the Kentucky Revised Statutes is created to read as follows:

The controlled substances listed or to be listed in the schedules provided for in this Act are included by whatever official, common, usual, chemical, or trade name designated.

Section 5. A new section of Chapter 218A of the Kentucky Revised Statutes is created to read as follows:

The State Board of Health 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 6. A new section of Chapter 218A of the Kentucky Revised Statutes is created to read as follows:

Unless otherwise rescheduled by regulation of the State Board of Health the controlled substances listed in this section are included in Schedule I:

(1) 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:

Acetylmethadol; Allylprodine; Alphacetylmethadol; Alpha-meprodine; Alphamethadol; Benzethidine; Betacetylmethadol; Betameprodine; Betamethadol; Betaprodine; Clonitazene; Dextromoramide; Dextrorphan; Diampropamide; Diethylthiambutene; Dimenoxadol; Dimepheptanol; Dimethylthiambutene; Dioxaphetylbutyrate; Dipipanone; Ethylmethylthiambutene; Etonitazene; Etoxeridine; Furethidine; Hydroxypethidine; Ketobemidone; Levomoramide; Levophenacylmorphan; Morpheridine; Noracymethadol; Norlevorphanol; Normethadone; Norpipanone; Phenadoxone; Phenampromide; Phenomorphan; Phenoperidine; Piritramide; Proheptazine; Properidine; Propiram; Racemoramide; Trimeperidine.

(2) 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) Cyprenorphine; (g) Desomorphine; (h) Dihydromorphine; (i) Etorphine; (j) Heroin; (k) Hydromorphenol; (l) Methyldesorphine; (m) Methyldihydromorphine; (n) Morphine methylbromide; (o) Morphine methylsulfonate; (p) Morphine-N-Oxide; (q) Myrophine; (r) Nicocodeine; (s) Nicomorphine; (t) Normorphine; (u) Phoclodine; (v) Thebacon.

(3) 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 amphe-

tamine; (d) Bufotenine; (e) Diethyltryptamine; (f) Dimethyltryptamine; (g) 4-methyl-2, 5-dimethoxyamphetamine; (h) Ibo-gaine; (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; (r) Hashish.

Section 7. A new section of Chapter 218A of the Kentucky Revised Statutes is created to read as follows:

The State Board of Health shall place a substance in Schedule II if it finds that:

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

Section 8. A new section of Chapter 218A of the Kentucky Revised Statutes is created to read as follows:

Unless otherwise rescheduled by regulation of the State Board of Health the controlled substances listed in this section are included in Schedule II:

(1) 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 subsection (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 cocoa leaves or extractions which do not contain cocaine or ecgonine.

(2) 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.

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

(c) Phenmetrazine and its salts;

(d) Methylphenidate.

Section 9. A new section of Chapter 218A of the Kentucky Revised Statutes is created to read as follows:

The State Board of Health 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 10. A new section of Chapter 218A of the Kentucky Revised Statutes is created to read as follows:

Unless otherwise rescheduled by regulation of the State Board of Health the controlled substances listed in this section are included in Schedule III:

(1) 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 or barbituric acid, or any salt of a derivative of barbituric acid; (b) Chlorhexadol; (c) Glutethimide; (d) Lysergic acid; (e) Lysergic acid amide; (f) Methyprylon; (g) Phencyclidine; (h) Sulfondiethylmethane; (i) Sulfonethylmethane; (j) Sulfonmethane.

(2) Nalorphine

(3) Pentazocine (parenteral or injectable form only)

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

(a) Not more than 1.8 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;

(b) 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;

(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 1.8 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;
- (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.
- (i) The State Board of Health may except by regulation any compound, mixture, or preparation containing any stimulant or depressant substance listed in subsection (1) 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 11. A new section of Chapter 218A of the Kentucky Revised Statutes is created to read as follows:

The State Board of Health 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 12. A new section of Chapter 218A of the Kentucky Revised Statutes is created to read as follows:

Unless otherwise rescheduled by regulation of the State Board of Health the controlled substances listed in this section are included in Schedule IV;

(1) 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) Chloral betaine; (b) Chloral hydrate; (c) Ethchlorvynol; (d) Ethinamate; (e) Meprobamate; (f) Paraldehyde; (g) Petrichloral.

(2) The State Board of Health may except by regulation any compound, mixture, or preparation containing any depressant substance listed in subsection (1) 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 13. A new section of Chapter 218A of the Kentucky Revised Statutes is created to read as follows:

The State Board of Health 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 14. A new section of Chapter 218A of the Kentucky Revised Statutes is created to read as follows:

Unless otherwise rescheduled by regulation of the State Board of Health the controlled substances listed in this section are included in Schedule V:

(1) 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.

Section 15. A new section of Chapter 218A of the Kentucky Revised Statutes is created to read as follows:

(1) No person shall traffic in any controlled substance except as authorized in this Act.

(2) No person shall possess any controlled substance except as authorized in this Act.

(3) No person shall dispense, prescribe, or administer any controlled substance except as authorized in this Act.

(4) (a) No person shall obtain or attempt to obtain a controlled substance, or procure or attempt to procure the administration of a controlled substance by fraud, deceit, misrepresentation, or subterfuge, or by the forgery or alteration of a prescription, or by the concealment of a material fact, or by the use of a false name or the giving of a false address.

(b) No person shall willfully make a false statement regarding any prescription, order, report, or record required by this Act.

(c) No person shall, for the purpose of obtaining a controlled substance, falsely assume the title of or represent himself to be a manufacturer, wholesaler, distributor, repacker, pharmacist, practitioner, or other authorized person.

(d) No person shall make or utter any false or forged prescription.

(e) No person shall affix any false or forged label to a package or receptacle containing any controlled substance.

(5) No person shall possess, manufacture, sell, dispense, prescribe, or administer any counterfeit substance.

(6) No person shall advertise through any media other than a professional or trade publication any controlled substance by either its "trade name" or by its generic or formulary name.

Section 16. A new section of Chapter 218A of the Kentucky Revised Statutes is created to read as follows:

(1) No person shall manufacture, compound, mix, cultivate, grow, or by any other process produce, or prepare controlled substances, and no person as a wholesaler shall supply the same, without having first obtained a license so to do from the State Department of Health. The State Board of Health may adopt regulations and set reasonable fees relating to the issuance and renewal of such licenses. All such licenses shall expire on June 30, following the date of issue, unless renewed. All such fees shall be deposited in a revolving fund to be used by the Department in carrying out the provisions of this Act.

(2) No person shall manufacture any controlled substance except under the direct supervision of a pharmacist.

Section 17. A new section of Chapter 218A of the Kentucky Revised Statutes is created to read as follows:

(1) No manufacturer's or wholesaler's license shall be issued pursuant to this Act unless the applicant therefor has furnished satisfactory proof:

(a) That the applicant is in compliance with all applicable federal and state laws and regulations relating to controlled substances and is of good moral character or, if the applicant be an association or corporation that the managing officers are of good moral character.

(b) That the applicant is equipped as to land, buildings, and security to properly carry on the business described in his application.

(2) No license shall be granted to any person who has been convicted of a misdemeanor involving any controlled substance or who has been convicted of any felony.

(3) The State Board of Health may suspend or revoke any license for cause.

Section 18. A new section of Chapter 218A of the Kentucky Revised Statutes is created to read as follows:

(1) A duly licensed manufacturer or wholesaler may sell and distribute controlled substances, other than samples, to any of the following persons:

(a) To a manufacturer, wholesaler, or pharmacy; (b) To a practitioner; (c) To the administrator in charge of a hospital, but only for use by or in that hospital.

(d) To a person in charge of a laboratory, but only for use in that laboratory for scientific and medical research purposes.

(e) To a person registered pursuant to the Federal Controlled Substance Laws.

(2) All sales and distributions shall be in accordance with the Federal Controlled Substances Laws, including the requirements governing the use of order forms.

(3) Possession of or control of controlled substances obtained as authorized by this section shall be lawful if in the regular course of business, occupation, profession, employment, or duty of the possessor.

Section 19. A new section of Chapter 218A of the Kentucky Revised Statutes is created to read as follows:

(1) Except when dispensed directly by a practitioner to an ultimate user, no controlled substance in Schedule II may be dispensed without the written prescription of a practitioner. No controlled substance in Schedule II shall be refilled. All prescriptions for controlled substances classified in Schedule II shall be maintained in a separate prescription file.

(2) Except when dispensed directly by a practitioner to an ultimate user, a controlled substance included in Schedule III, IV, and V, which is a prescription drug, shall not be dispensed

without a written or oral prescription by a practitioner. All oral prescriptions shall be dated and signed by the pharmacist. A pharmacist refilling any prescription shall record on the prescription the date, the quantity and his initials. 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 and a new prescription, written or oral shall be required.

(3) All written prescriptions for controlled substances shall be dated as of and signed by the practitioner on the date when issued and shall bear the full name and address of the patient and the name, address and registration number of the practitioner. All prescriptions for controlled substances shall be retained for a period of two years.

(4) The pharmacist filling a written or oral prescription for a controlled substance shall affix to the package a label showing the date of filling, the pharmacy name and address, the serial number of the prescription, the name of the patient, the name of the prescribing practitioner and directions for use and cautionary statements, if any, contained in such prescription or required by law.

Section 20. A new section of Chapter 218A of the Kentucky Revised Statutes is created to read as follows:

(1) Nonprescription medicinal preparations that contain in 100 milliliters, or as a solid or semi-solid preparation, in 100 grams, not more than 200 milligrams of codeine or its salts may be sold over-the-counter subject to the following conditions:

(a) That the medicinal preparation shall contain in addition to the codeine in it, some drug or drugs conferring upon it medicinal qualities other than those possessed by the codeine alone;

(b) That such preparation shall be dispensed or sold in good faith as a medicine, and not for the purpose of evading the provisions of this Act;

(c) That such preparation shall only be sold at retail without a prescription to a person at least eighteen years of age and only by a pharmacist. An employe may complete the actual cash or credit transaction or delivery.

(d) That such preparations shall not be displayed in areas of the pharmacy open to the public; and

(e) That no person shall purchase and no pharmacist or practitioner shall sell to the same person within a forty-eight hour period more than 120 milliliters of an exempt codeine preparation. Any person purchasing in excess of this limitation shall be deemed to be in illegal possession.

(2) All wholesalers, manufacturers, and repackers shall keep a separate exempt codeine registry showing the following:

- (a) Date,
- (b) Registration number of recipient,
- (c) Name of recipient,
- (d) Address,
- (e) Name of preparation, and
- (f) Quantity.

(3) All pharmacist and practitioners shall keep a separate exempt codeine registry showing the following:

- (a) Date,
- (b) Name of recipient,
- (c) Address,
- (d) Name of preparation,
- (e) Quantity, and
- (f) Pharmacist's or practitioner's name.

(4) Notwithstanding any other provision of this section, the State Board of Health may by regulation specifically prohibit any such codeine preparation from being sold over-the-counter due to actual or potential abuse.

Section 21. A new section of Chapter 218A of the Kentucky Revised Statutes is created to read as follows:

(1) Every practitioner who is authorized to administer or professionally use controlled substances, shall keep a record of such substances received by him, and a record of all such sub-

stances administered, dispensed, or professionally used by him otherwise than by prescription.

(2) Manufacturers and wholesalers shall keep records of all controlled substances compounded, mixed, cultivated, grown, or by any other process produced or prepared, and of all controlled substances received and disposed of by them.

(3) Pharmacists shall keep records of all controlled substances received and disposed of by them.

(4) The record of controlled substances received shall in every case show the date of receipt, the name and address of the person from whom received, and the kind and quantity of drugs received. The record of all controlled substances sold, administered, dispensed, or otherwise disposed of, shall show the date of selling, administering, or dispensing, the name and address of the person to whom, or for whose use, or the owner and species of animal for which the drugs were sold, administered or dispensed, and the kind and quantity. Every such record shall be kept for a period of two years. The keeping of a record under the Federal Controlled Substances Laws, containing substantially the same information as is specified herein, shall constitute compliance with this section. A copy of the detailed list of controlled substances lost, destroyed, or stolen shall be forwarded to the State Department of Health as soon as practical.

Section 22. A new section of Chapter 218A of the Kentucky Revised Statutes is created to read as follows:

A person to whom or for whose use any controlled substance has been prescribed, sold, or dispensed, by a practitioner or other person authorized under this Act, may lawfully possess it only in the container in which it was delivered to him by the person selling or dispensing the same.

Section 23. A new section of Chapter 218A of the Kentucky Revised Statutes is created to read as follows:

The provisions of this Act shall not apply to common carriers or to warehousemen, while engaged in lawfully transporting or storing such substances, or to any employe of the same acting within the scope of his employment; or to public officers or their employes in the performance of their official duties requiring pos-

session or control of controlled substances; or to temporary incidental possession by employes or agents of persons lawfully entitled to possession, or by persons whose possession is for the purpose of aiding public officers in performing their official duties.

Section 24. A new section of Chapter 218A of the Kentucky Revised Statutes is created to read as follows:

All controlled substances, the lawful possession of which is not established or the title to which cannot be ascertained, which have come into the custody of a peace officer, shall be forfeited and disposed of as follows:

(1) Except as otherwise provided in this section, the court having jurisdiction shall order such controlled substances forfeited and destroyed. A record of the place where said drugs were seized, of the kinds and quantities of drugs so destroyed, and of the time, place, and manner of destruction, shall be kept.

(2) The court by whom the forfeiture of controlled substances has been decreed may order the delivery of same to the State Department of Health for destruction. Practitioners, pharmacists, hospitals and nursing homes may voluntarily surrender controlled substances to the State Department of Health for destruction.

(3) The State Department of Health shall keep a record of all substances received and of all substances disposed of, showing the exact kinds, quantities, and forms of such substances, the persons from whom received and the time, place and manner of destruction.

Section 25. A new section of Chapter 218A of the Kentucky Revised Statutes is created to read as follows:

(1) Prescriptions, orders, and records, required by this Act, and stocks of controlled substances, shall be open for inspection only to federal, state, county, and municipal officers, whose duty it is to enforce the laws of this state or of the United States relating to controlled substances.

(2) No pharmacist, practitioner, manufacturer or wholesaler or other custodian of records, prescriptions or orders re-

quired by this Act shall refuse to permit the inspection thereof by any federal, state, county or municipal officer whose duty it is to enforce the laws of this state or of the United States relating to controlled substances.

Section 26. A new section of Chapter 218A of the Kentucky Revised Statutes is created to read as follows:

(1) It is hereby made the duty of all peace officers within this state, the State Police, the State Department of Health, their officers and agents, and of all city, county, and Commonwealth attorneys, and the Attorney General, within their respective jurisdictions, to enforce all provisions of this Act and cooperate with all agencies charged with the enforcement of the laws of the United States, of this state, and of all other states relating to controlled substances.

(2) For the purpose of enforcing the provisions of this Act, the designated agents of the State Department of Health shall have the full power and authority of peace officers in this state, including the power of arrest and the authority to bear arms, and shall have the power and authority to administer oaths, to enter upon premises at all times for the purpose of making inspections, to seize evidence, to interrogate all persons, to require the production of prescriptions, of books, papers, documents or other evidence, to employ special investigators, and to expend funds for the purpose of obtaining evidence.

(3) The Kentucky Board of Pharmacy, its agents and inspectors, shall have the same powers of inspection and enforcement as the State Department of Health.

(4) Designated agents of the State Department of Health and the Kentucky Board of Pharmacy are empowered to remove from the files of any pharmacy or other custodian any controlled substance prescription upon tendering a receipt therefor.

(5) Notwithstanding the existence or pursuit of any other remedy, civil or criminal, any law enforcement authority may maintain, in its own name, an action to restrain or enjoin any violation of this Act.

(6) It shall be the duty of the State Department of Health to make or cause to be made examinations of samples secured

under the provisions of this Act to determine whether or not any provision thereof has been violated.

Section 27. A new section of Chapter 218A of the Kentucky Revised Statutes is created to read as follows:

The State Board of Health shall adopt rules and regulations for carrying out the provisions of this Act.

Section 28. A new section of Chapter 218A of the Kentucky Revised Statutes is created to read as follows:

In any preliminary hearing, criminal trial, or other criminal proceeding involving an alleged violation of the controlled substance laws or regulations, evidence of information communicated to a peace officer by a confidential informant who is not a material witness to the guilt or innocence of the accused of the offense charged, shall be admissible on the issue of reasonable cause to make an arrest or search without requiring that the name or identity of the informant be disclosed if the judge or magistrate is satisfied, based upon evidence produced in open court out of the presence of the jury, that such information was received from a reliable informant and in his discretion does not require such disclosure.

Section 29. A new section of Chapter 218A of the Kentucky Revised Statutes is created to read as follows:

(1) The following are subject to forfeiture:

(a) all controlled substances which have been manufactured, distributed, dispensed, possessed, being held 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 subsections (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 subsection (a) or (b), but:

- .. (i) no conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this Section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this Act;
- .. (ii) no conveyance is subject to forfeiture under this Section by reason of any act or omission established by the owner thereof to have been committed or omitted without his knowledge or consent;
- .. (iii) a 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.
- (iv) the forfeiture provisions of (d) above shall not apply to any offense relating to marihuana.

(e) all books, records, and research products and materials, including formulas, microfilm, tapes, and date which are used, or intended for use, in violation of this Act.

(2) Property subject to forfeiture under this Act may be seized by any law enforcement agency upon process issued by any 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;

(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 proceeding based upon this Act;

(c) the law enforcement agency has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(d) the law enforcement agency has probable cause to believe that the property was used or is intended to be used in violation of this Act.

(3) Property taken or detained under this Section shall not be subject to replevin, but is deemed to be in the custody of the law enforcement agency subject only to the orders and decrees of the court having jurisdiction over the forfeiture proceedings.

When property is seized under this Act, the law enforcement agency may:

- (a) remove the property to a place designated by it; or
 - (b) take custody of the property and remove it to an appropriate location for disposition in accordance with law.
- (4) When property is forfeited under this Act the law enforcement agency 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. The balance shall be paid to the State Treasurer for deposit to the General Fund.
- (5) 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.
- (6) Species of plants from which controlled substances in Schedule 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 destroyed or forfeited to the State.
- (7) The failure, upon demand by the law enforcement agency 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 30. A new section of Chapter 218A of the Kentucky Revised Statutes is created to read as follows:

Information communicated to a practitioner in an effort unlawfully to procure a controlled substance, or unlawfully to pro-

cure the administration of any controlled substance, shall not be deemed a privileged communication.

Section 31. A new section of Chapter 218A of the Kentucky Revised Statutes is created to read as follows:

(1) Any person who knowingly and unlawfully traffics in or transfers a controlled substance classified in Schedule I or II which is a narcotic drug shall be guilty of a felony and shall for the first offense, be confined in the penitentiary for not less than 5 years nor more than 10 years or be fined not less than \$5,000 nor more than \$10,000, or both, and for each subsequent offense shall be confined in the penitentiary for not less than 10 years nor more than 20 years or be fined not less than \$10,000 nor more than \$20,000, or both.

(2) Any person who knowingly and unlawfully traffics in a controlled substance classified in Schedule I or II other than a narcotic drug, except marihuana, or in any controlled substance classified in Schedule III shall, for the first offense, be confined in the penitentiary for not less than 1 year nor more than 5 years or be fined not less than \$3,000 nor more than \$5,000, or both, and for each subsequent offense shall be confined in the penitentiary for not less than 5 nor more than 10 years or be fined not less than \$5,000 nor more than \$10,000, or both.

(3) Any person who knowingly and unlawfully traffics in any controlled substance classified in Schedule IV or V or transfers any controlled substance other than a narcotic drug, except marihuana, classified in Schedule I, II, or III shall, for the first offense, be confined in the county jail for not more than 1 year or by a fine of not more than \$500, or both, and for each subsequent offense shall be confined in the penitentiary for not less than one nor more than 5 years or be fined not less than \$3,000 nor more than \$5,000, or both.

(4) Any person who knowingly and unlawfully manufactures, sells, or possesses with intent to sell marihuana shall, for the first offense, be confined in the county jail for not more than 1 year or be fined not more than \$500, or both, and for each subsequent offense shall be confined in the penitentiary for not less than 1 nor more than 5 years or be fined not less than \$3,000 nor more than \$5,000, or both.

(5) Any person who knowingly and unlawfully possesses a controlled substance classified in Schedule I or II which is a narcotic drug shall be, for the first offense, confined in the penitentiary for not less than 1 year nor more than 5 years or be fined not less than \$3,000 nor more than \$5,000, or both and for each subsequent offense shall be confined in the penitentiary for not less than 5 years nor more than 10 years or be fined not less than \$5,000 nor more than \$10,000, or both.

(6) Except as otherwise provided in this subsection, any person who knowingly and unlawfully possesses any controlled substance classified in Schedule I, II, or III which is not a narcotic drug, except marihuana, or of any controlled substance classified in Schedule IV, or V, shall be confined in the county jail for not more than 1 year or be fined not more than \$500, or both.

(a) Any person found guilty of possession of any controlled substance pursuant to this subsection shall for a first offense, be ordered to a facility designated by the Commissioner of the Department of Mental Health where a program of treatment and rehabilitation not to exceed one year in duration shall be prescribed. The person ordered to the designated facility shall present himself for registration and initiation of a treatment program within five days of the date of sentencing. If, without good cause, the person fails to appear at the designated facility within the specified time, or if at any time during the program of treatment prescribed, the authorized clinical director of the facility finds that the person is unwilling to participate in his treatment and rehabilitation, the director shall notify the sentencing court. Upon receipt of notification, the court shall cause the person to be brought before it and may continue the order of treatment and rehabilitation, or may order confinement in the county jail for not more than one year or a fine of not more than \$500, or both. Upon discharge of the person from the facility by the Commissioner of the Department of Mental Health or his designee prior to the expiration of the one-year period or upon satisfactory completion of one year of treatment, the person shall be deemed finally discharged from sentence. The commissioner or his designee shall notify the sentencing court of the date of such discharge from the facility.

(b) The Commissioner of the Department of Mental Health

or his designee shall inform each court of the identity and location of the facility to which such person is sentenced.

(c) Transportation to the facility shall be provided by the court when the court finds the person unable to convey himself to the facility within five days of sentencing by reason of physical infirmity or financial incapability.

(d) The sentencing court shall immediately notify the designated facility of the sentence and its effective date.

(e) The Commissioner of Mental Health, or his designee, may authorize transfer of the person from the initially designated facility to another facility for therapeutic purposes. The sentencing court shall be notified of termination of treatment by the terminating facility.

(f) Responsibility for payment for treatment services rendered to persons pursuant to this section shall be as under the statutes pertaining to payment of patients and others for services rendered by the Department of Mental Health unless the person and the facility shall arrange otherwise.

(g) Any person found guilty of a subsequent offense of possession of controlled substances in violation of (6) of this section shall be confined in the county jail for not more than 1 year or be fined not more than \$500, or both.

(h) Prior to the imposition of sentence upon conviction of a second or subsequent offense, the court shall obtain a report of case progress and recommendations regarding further treatment from the facility at which the person was treated following his first conviction. If such material is not available, the court shall notify the Commissioner of the Department of Mental Health, and the commissioner shall cause the person to be examined by a psychiatrist employed by the department to evaluate his mental condition and to make recommendations regarding treatment and rehabilitation. The psychiatrist making the examination shall submit a written report of his findings and recommendations regarding treatment and rehabilitation to the court which shall make the report available to the prosecuting attorney and the attorney for the defendant. The court shall take such reports into consideration in determining sentence. The commissioner may decline to cause such examination to be made

if the number of psychiatrists on duty in the department is insufficient to spare one from his regular duties or if no such service may be purchased at regular departmental rates, in such event the commissioner shall notify the clerk of the court to that effect within three days after receipt of notification by the court:

(h) For purposes of this Section, an offense is considered a second or subsequent offense, if, prior to his conviction of the offense, the offender has at any time been convicted under this Act or under any statute of the United States or of any state relating to the substances classified as controlled substances.

(j) None of the provisions of this subsection shall be deemed to preclude the court from exercising its usual discretion with regard to ordering probation or conditional discharge.

(k) In the case of any person who has been convicted for the first time of possession of controlled substances, the court may set aside and void the conviction upon satisfactory completion of treatment, probation or other sentence, and issue to the person a certificate to that effect. A conviction voided under this subsection shall not be deemed a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime. Voiding of conviction under this subsection and dismissal may occur only once with respect to any person.

(7) Any person who knowingly and unlawfully possesses for his own use or transfers marihuana shall be confined in the county jail for not more than 90 days or be fined not more than \$250.

(a) Any person found guilty of violating (7) above may be ordered to a facility designated by the Commissioner of the Department of Mental Health where a program of education, treatment, and rehabilitation not to exceed ninety days in duration shall be prescribed. The person ordered to the designated facility shall present himself for registration and initiation of a treatment program within five days of the date of sentencing. If without good cause, the person fails to appear at the designated facility within the specified time, or if any time during the program of treatment prescribed, the authorized clinical director of the facility finds that the person is unwilling to participate in his treatment and rehabilitation, the director shall

notify the sentencing court. Upon receipt of notification, the court shall cause the person to be brought before it and may continue the order of treatment and rehabilitation, or may order confinement in the county jail for not more than ninety days or a fine of not more than \$250 or both. Upon discharge of the person from the facility by the Commissioner of the Department of Mental Health or his designee prior to the expiration of the ninety day period or upon satisfactory completion of ninety days of treatment, the person shall be deemed finally discharged from sentence. The Commissioner or his designee shall notify the sentencing court of the date of such discharge from the facility.

(b) The Commissioner of the Department of Mental Health or his designee shall inform each court of the identity and location of the facility to which a person sentenced by that court under this Act shall be initially ordered.

(c) In the case of a person ordered to a facility for treatment and rehabilitation pursuant to this Act, transportation to the facility shall be provided by the court when the court finds the person unable to convey himself to the facility within five days of sentencing by reason of physical infirmity or financial incapability.

(d) The sentencing court shall immediately notify the designated facility of the sentence and its effective date.

(e) The Commissioner of Mental Health, or his designee, may authorize transfer of the person from the initially designated facility to another facility for therapeutic purposes. The sentencing court shall be notified of termination of treatment by the terminating facility.

(f) Responsibility for payment for treatment services rendered to persons pursuant to this section shall be as under the statutes pertaining to payment by patients and others for services rendered by the Department of Mental Health unless the person and the facility shall arrange otherwise.

(g) None of the provisions of this Act shall be deemed to preclude the court from exercising its usual discretion with regard to ordering probation or conditional discharge.

(h) In the case of any person who has been convicted of

possession of controlled substances in the third degree, the court may set aside and void the conviction upon satisfactory completion of treatment, probation or other sentence, and issue to the person a certificate to that effect. A conviction voided under this subsection shall not be deemed a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime.

(8) Any person who violates any provision of subsection (3), (4), or (5) of Section 16 of this Act with respect to a controlled substance classified in Schedules I, II, or III shall be guilty of a felony and shall be punished by confinement in the penitentiary for not less than 1 year nor more than 5 years, or by a fine of not less than \$3,000 nor more than \$5,000, or both.

(9) Any person who violates any provision of subsection (3), (4), or (5) of Section 16 of this Act with respect to a controlled substance classified in Schedules IV or V shall be guilty of a felony and shall be punished by not less than 1 year nor more than 3 years imprisonment, or by a fine of not less than \$1,000 nor more than \$3,000, or both.

(10) Any person who violates subsection (6) of Section 16 of this Act or who violates any other provision of this Act, for which a specific penalty is not otherwise provided, shall be guilty of a misdemeanor and shall upon conviction be imprisoned for not more than 90 days or fined not more than \$500, or both.

Section 32. A new section of Chapter 218A of the Kentucky Revised Statutes is created to read as follows:

Notwithstanding the existence or pursuit of any other remedy, civil or criminal, any state licensing board may impose a fine not to exceed \$500 on any practitioner, pharmacist, manufacturer, or wholesaler whom it licenses for any violation of this Act. All such fines shall be deposited to the credit of the respective licensing board concerned to be used by such board in carrying out the provisions of this Act.

Section 33. Sections 218.010, 218.020, 218.025, 218.030, 218.040, 218.050, 218.060, 218.070, 218.080, 218.090, 218.100, 218.110, 218.120, 218.130, 218.140, 218.150, 218.160, 218.170,

218.180, 218.190, 218.191, 218.192, 218.194, 218.200, 218.210, 218.220, 218.230, 218.240, 218.245, 217.721, 217.725, 217.731, 217.735, 217.741, 217.745, 217.751, 217.755, 217.761, 217.765, 217.771, 217.775, 217.781, 217.785, and 217.995 of the Kentucky Revised Statutes are repealed.

Section 34. A new section of KRS Chapter 218A is created to read as follows:

The provisions of this Act shall not apply to any offense committed prior to its effective date, unless the defendant elects to be tried under the provisions of this code. Such an offense must be construed and punished according to the provisions of law existing at the time of the commission thereof in the same manner as if this Act had not been enacted if he does so elect.

Section 35. This Act shall become effective July 1, 1972.

Approved March 25, 1972

CHAPTER 227

(S. B. 350)

AN ACT relating to state legislative districts.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 6.011 is hereby repealed, amended and re-enacted to read as follows:

The Commonwealth of Kentucky is divided into senatorial districts as follows:

(1) First District: Carlisle, Hickman, Fulton, Graves and Calloway Counties and that part of the County of Marshall contained within voting precincts Brewers, Hardin, South Marshall and West Marshall.

(2) Second District: Ballard and McCracken Counties and Marshall County except for voting precincts Brewers, Hardin, South Marshall and West Marshall.

(3) Third District: Christian, Lyon, Todd and Trigg Counties and that part of Muhlenberg County contained in the County