

TEXAS CONTROLLED SUBSTANCES ACT

CHAPTER 429⁸⁴

H. B. No. 447

An Act relating to regulation of the manufacture, distribution, possession, and use of certain drugs and controlled substances; prescribing penalties; amending Subsections (a), (f), and (g) of Section 2, Sections 3, 4, 5, 6, and 15 of Chapter 425, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 726d, Vernon's Texas Penal Code); repealing the Uniform Narcotic Drug Act, as amended (Article 725b, Vernon's Texas Penal Code); repealing Chapter 237, Acts of the 53rd Legislature, Regular Session, 1953, as amended (Article 725c, Vernon's Texas Penal Code); repealing Chapter 300, Acts of the 54th Legislature, 1955, as amended (Article 725d, Vernon's Texas Penal Code); repealing Section 7, Chapter 425, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 726d, Vernon's Texas Penal Code); repealing Chapter 87, Acts of the 62nd Legislature, Regular Session, 1971 (Article 4413(37), Vernon's Texas Civil Statutes); amending Section 12 and Subsection (d) of Section 17, Chapter 107, Acts of the 41st Legislature, Regular Session, 1929, as amended (Article 4542a, Vernon's Texas Civil Statutes); amending Subsection (a), Section 5F, Article 11, Texas Liquor Control Act, as added (Article 667—5F, Vernon's Texas Penal Code); amending Sections 1 and 2, Chapter 21, Acts of the 55th Legislature, Regular Session 1957 (Article 353c, Vernon's Texas Penal Code); amending Subsection (d), Section 24, Water Safety Act, as amended (Article 1722A, Vernon's Texas Penal Code); amending Section 21 and Subdivision 6 of Section 23 and adding Section 15A, Chapter 373, Acts of the 57th Legislature, Regular Session, 1961, as amended (Article 4476—5, Vernon's Texas Civil Statutes); and declaring an emergency.

Be it enacted by the Legislature of the State of Texas:

SUBCHAPTER 1. GENERAL PROVISIONS

Short Title

Section 1.01. This Act may be cited as the "Texas Controlled Substances Act."

Definitions

Sec. 1.02. For the purposes of this Act:

- (1) "Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:
 - (A) a practitioner (or, in his presence, by his authorized agent), or
 - (B) the patient or research subject at the direction and in the presence of a practitioner.
- (2) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. It does not include a common or contract carrier, public warehouseman, or employee of the carrier or warehouseman when acting in the usual and lawful course of his employment.

84. Vernon's Ann.P.C. art. 725f, §§ 1.01, 1.02, 2.01 to 2.17, 3.01 to 3.08, 4.01 to 4.12, 5.01 to 5.14, 6.01 to 6.04.

- (3) "Bureau" means the Bureau of Narcotics and Dangerous Drugs of the United States Department of Justice or its successor agency.
- (4) "Commissioner" means the Commissioner of Health of the State Department of Health or his designee.
- (5) "Controlled substance" means a drug, substance, or immediate precursor listed in Schedules I through V and Penalty Groups 1 through 4 of this Act.
- (6) "Federal Controlled Substances Act" means the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970 (Public Law 91-513) or its successor.
- (7) "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.
- (8) "Deliver" or "delivery" means the actual or constructive transfer from one person to another of a controlled substance, whether or not there is an agency relationship. For purposes of this Act, it also includes an offer to sell a controlled substance. Proof of an offer to sell must be corroborated by a person other than the offeree or by evidence other than a statement of the offeree.
- (9) "Director" means the Director of the Texas Department of Public Safety or an employee of the department designated by him.
- (10) "Dispense" means to deliver a controlled substance to an ultimate user or research subject by, or pursuant to the lawful order of, a practitioner (in the course of professional practice or research), including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for such delivery.
- (11) "Dispenser" means a person who dispenses.
- (12) "Distribute" means to deliver other than by administering or dispensing a controlled substance.
- (13) "Distributor" means a person who distributes.
- (14) "Drug" means:
 - (A) any substance recognized as a drug 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) any substance intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals;
 - (C) any substance (other than food) intended to affect the structure or any function of the body of man or animals; and
 - (D) any substance intended for use as a component of any substance specified in Subdivision (A), (B), or (C) of this subsection. It does not include devices or their components, parts, or accessories.
- (15) "Immediate precursor" means a substance which the commissioner has found to be and by rule designates as being a

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 of such controlled substance.

- (16) "Manufacture" means the production, preparation, propagation, compounding, conversion, or processing of a controlled substance other than marihuana, 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 re-labeling of its container, except that this term does not include the preparation, compounding, packaging, or labeling of a controlled substance:
- (A) by a practitioner as an incident to his administering or dispensing of a controlled substance in the course of his professional practice; or
 - (B) by a practitioner, or by his authorized agent under his supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for delivery.
- (17) "Marihuana" means the plant *Cannabis sativa* L., whether growing or not; the seeds thereof; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, or its seeds. However, it does not include the resin extracted from any part of such plant or any compound, manufacture, salt, derivative, mixture, or preparation of the resin; nor does it 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, fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.
- (18) "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 opiates, and any salt, compound, derivative, or preparation of opium or opiates;
 - (B) any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in Subdivision (A) of this subsection, but not including the isoquinoline alkaloids of opium;
 - (C) opium poppy and poppy straw; or
 - (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.
- (19) "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being

capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under Section 2.09 of this Act, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms.

- (20) "Opium poppy" means the plant of the species *Papaver somniferum* L., except its seeds.
- (21) "Person" means any individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.
- (22) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.
- (23) "Possession" means actual care, custody, control or management.
- (24) "Practitioner" means:
 - (A) a physician, dentist, veterinarian, scientific investigator, or other person licensed, registered, or otherwise permitted to distribute, dispense, analyze or conduct research with respect to, or to administer a controlled substance in the course of professional practice or research in this state; or
 - (B) a pharmacy, hospital, or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or administer a controlled substance in the course of professional practice or research in this state.
- (25) "Production" includes manufacturing, planting, cultivating, growing, or harvesting of a controlled substance.
- (26) "Ultimate user" means a person who has lawfully obtained and possesses a controlled substance for his own use or for the use of a member of his household or for administering to an animal owned by him or by a member of his household.

SUBCHAPTER 2. STANDARD AND SCHEDULES

Controlled Substances

Section 2.01. The legislature determines that the substances listed in Schedules I, II, III, IV, and V and in Penalty Groups 1, 2, 3, and 4 shall be controlled substances.

Nomenclature

Sec. 2.02. The controlled substances listed or to be listed in the schedules in Schedules I, II, III, IV, and V and Penalty Groups 1, 2, 3, and 4 are included by whatever official, common, usual, chemical, or trade name they may be designated.

Schedule I

Sec. 2.03. (a) Schedule I shall initially consist of the controlled substances listed in this section.

(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) Allylprodine;
- (2) Benzethidine;
- (3) Betaprodine;
- (4) Clonitazene;
- (5) Dextrorphan;
- (6) Diampromide;
- (7) Diethylthiambutene;
- (8) Dimenoxadol;
- (9) Dimethylthiambutene;
- (10) Dioxaphetyl butyrate;
- (11) Dipipanone;
- (12) Ethylmethylthiambutene;
- (13) Etonitazene;
- (14) Etoxidine;
- (15) Furethidine;
- (16) Hydroxypethidine;
- (17) Ketobemidone;
- (18) Levophenacymorphan;
- (19) Meprodine;
- (20) Methadol;
- (21) Moramide;
- (22) Morpheridine;
- (23) Noracymethadol;
- (24) Norlevorphanol;
- (25) Normethadone;
- (26) Norpipanone;
- (27) Phenadoxone;
- (28) Phenampromide;
- (29) Phenomorphan;
- (30) Phenoperidine;
- (31) Piritramide;
- (32) Proheptazine;
- (33) Properidine;
- (34) Propiram;
- (35) Trimeperidine.

(c) Any of the following opium derivatives, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Acetorphine;
- (2) Acetyldihydrocodeine;
- (3) Benzylmorphine;
- (4) Codeine methylbromide;
- (5) Codeine-N-Oxide;
- (6) Cyprenorphine;
- (7) Desomorphine;
- (8) Dihydromorphine;
- (9) Etorphine;
- (10) Heroin;
- (11) Hydromorphanol;
- (12) Methyl-desorphine;
- (13) Methyl-dihydromorphine;
- (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-dimethoxyamphetamine;
- (8) Ibogaine;
- (9) Lysergic acid diethylamide;
- (10) Marihuana;
- (11) Mescaline;
- (12) Peyote;
- (13) N-ethyl-3-piperidyl benzilate;
- (14) N-methyl-3-piperidyl benzilate;
- (15) Psilocybin;
- (16) Psilocyn;
- (17) Tetrahydrocannabinols and synthetic equivalents of the substances contained in the plant, or in the resinous extractives of cannabis, or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following:
 - delta-1 cis or trans tetrahydrocannabinol, and their optical isomers;
 - delta-6 cis or trans tetrahydrocannabinol, and their optical isomers;
 - delta-3,4 cis or trans tetrahydrocannabinol, and its optical isomers.

(Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions are covered.)

Schedule II

Sec. 2.04. (a) Schedule II shall initially consist of the controlled substances listed in this section.

(b) Any of the following substances, except those narcotic drugs listed in other schedules, however produced:

- (1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, including the following:
 - (A) Raw opium;
 - (B) Opium extracts;
 - (C) Opium fluid extracts;

- (D) Powdered opium;
 - (E) Granulated opium;
 - (F) Tincture of opium;
 - (G) Apomorphine;
 - (H) Codeine;
 - (I) Ethylmorphine;
 - (J) Hydrocodone;
 - (K) Hydromorphone;
 - (L) Metopon;
 - (M) Morphine;
 - (N) Oxycodone;
 - (O) Oxymorphone;
 - (P) Thebaine;
- (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) of this subsection, but not including the isoquinoline alkaloids of opium;
 - (3) Opium poppy and poppy straw;
 - (4) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions which do not contain cocaine or ecgonine.
- (c) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:
- (1) Alphaprodine;
 - (2) Anileridine;
 - (3) Bezitramide;
 - (4) Dihydrocodeine;
 - (5) Diphenoxylate;
 - (6) Fentanyl;
 - (7) Isomethadone;
 - (8) Levomethorphan;
 - (9) Levorphanol;
 - (10) Metazocine;
 - (11) Methadone;
 - (12) Methadone-Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;
 - (13) Moramide-Intermediate, 2-methyl-3-morpholino-1, 1-diphenyl-propane-carboxylic acid;
 - (14) Pethidine;
 - (15) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine;
 - (16) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate;
 - (17) Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;
 - (18) Phenazocine;
 - (19) Piminodine;
 - (20) Racemethorphan;
 - (21) Racemorphan.

(d) 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 stimulant effect on the central nervous system:

- (1) amphetamine, its salts, optical isomers, and salts of its optical isomers;
 - (2) methamphetamine, including its salts, isomers, and salts of isomers;
 - (3) methylphenidate and its salts; and
 - (4) phenmetrazine and its salts.
- (e) Methaqualone.

Schedule III

Sec. 2.05. (a) Schedule III shall initially consist of the controlled substances listed in this section.

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

- (1) any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid, except those substances which are specifically listed in other schedules;
- (2) Chlorhexadol;
- (3) Glutethimide;
- (4) Lysergic acid;
- (5) Lysergic acid amide;
- (6) Methyprylon;
- (7) Phencyclidine;
- (8) Sulfondiethylmethane;
- (9) Sulfonethylmethane;
- (10) Sulfonmethane.

(c) Nalorphine.

(d) 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.

(e) Any compound, mixture, or preparation containing any stimulant listed in Subsection (d) of Section 2.04 or depressant substance listed in Subsection (b) of this section is excepted 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.

Schedule IV

Sec. 2.06. (a) Schedule IV shall initially consist of the controlled substances listed in this section.

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

- (1) Barbital;
- (2) Chloral betaine;
- (3) Chloral hydrate;
- (4) Ethchlorvynol;
- (5) Ethinamate;
- (6) Methohexital;
- (7) Meprobamate;
- (8) Methylphenobarbital;
- (9) Paraldehyde;
- (10) Petrichloral;
- (11) Phenobarbital.

(c) Any compound, mixture, or preparation containing any depressant substance listed in Subsection (b) of this section is excepted 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.

Schedule V

Sec. 2.07. (a) Schedule V shall initially consist of the controlled substances listed in this section.

(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 15 milligrams of opium per 29.5729 milliliters or per 28.35 grams.

Exclusion from Schedule

Sec. 2.08. A nonnarcotic substance is excluded from Schedules I through V if the substance may lawfully be sold over the counter without a prescription, under the Federal Food, Drug, and Cosmetic Act and the commissioner shall have no power to include a nonnarcotic substance in Schedules I through V if the substance may lawfully be sold over-the-counter without a prescription under the Federal Food, Drug, and Cosmetic Act.

Authority to Control

Sec. 2.09. (a) The legislature, under the directions hereinafter expressed, delegates to the commissioner with approval of the State Board of Health the power to add substances to, or delete or reschedule any substance enumerated in, the schedules enumerated in Sections 2.03 through 2.07 of this Act. The commissioner may not add any substance to the schedules if the substance has been deleted from the schedules by the legislature, or sought to be added to the schedules by the legislature but failed to pass when considered by a quorum of either house. The commissioner shall have no authority to extend scheduling to distilled spirits, wine, malt beverages, or tobacco.

(b) In making a determination regarding a substance, the commissioner shall consider the following:

- (1) the actual or relative potential for abuse;
- (2) the scientific evidence of its pharmacological effect, if known;
- (3) the state of current scientific knowledge regarding the substance;
- (4) the history and current pattern of abuse;
- (5) the scope, duration, and significance of abuse;
- (6) the risk to the public health;
- (7) the potential of the substance to produce psychic or physiological dependence liability; and
- (8) whether the substance is an immediate precursor of a substance already controlled under this Act.

(c) After considering the factors enumerated in Subsection (b) of this section, the commissioner shall make findings with respect thereto and issue a rule controlling the substance if he finds the substance has a potential for abuse.

(d) If the commissioner designates a substance as an immediate precursor, substances which are precursors of the controlled precursor shall not be subject to control solely because they are precursors of the controlled precursor.

(e) If any substance is designated, rescheduled, or deleted as a controlled substance under federal law and notice thereof is given to the commissioner, the commissioner shall similarly control the substance under this Act after the expiration of 30 days from publication in the Federal Register of a final order designating a substance as a controlled substance or rescheduling or deleting a substance unless within that 30-day period the commissioner objects to inclusion. In that case, the commissioner shall publish the reasons for objection and afford all interested parties an opportunity to be heard. At the conclusion of the hearing, the commissioner shall publish his decision, which shall be final unless altered by statute. Upon publication of objection to inclusion, rescheduling, or deleting, control as to that particular substance under this Act is stayed until the commissioner publishes his decision.

(f) The commissioner, in making his decision as to which schedule a controlled substance shall be assigned, shall perform the tests enumerated in Sections 2.10 through 2.14.

(g) Within 10 days of any action taken pursuant to Subsection (a) of this section, the commissioner shall provide written notice of such action to the director and to each state licensing board having jurisdiction over practitioners.

Schedule I Tests

Sec. 2.10. The commissioner shall place a substance in Schedule I if he finds that:

- (1) the substance has high potential for abuse; and
- (2) the substance has no accepted medical use in treatment in the United States or lacks accepted safety for use in treatment under medical supervision.

Schedule II Tests

Sec. 2.11. The commissioner shall place a substance in Schedule II if he finds that:

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

Schedule III tests

Sec. 2.12. The commissioner shall place a substance in Schedule III if he finds that:

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

Schedule IV tests

Sec. 2.13. The commissioner shall place a substance in Schedule IV if he finds that:

- (1) the substance has a low potential for abuse relative to substances in Schedule III;

- (2) the substance has currently accepted medical use in treatment in the United States; and
- (3) abuse of the substance may lead to limited physical dependence or psychological dependence relative to the substances in Schedule III.

Schedule V tests

Sec. 2.14. The commissioner shall place a substance in Schedule V if he finds that:

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

Alterations in schedule: notice and hearing

Sec. 2.15. Each alteration made by the commissioner in a schedule under Subchapter 2 of this Act, except pursuant to Section 2.09(e), must be preceded by a public hearing held by the commissioner in Austin following publication of notice in at least three newspapers of general circulation in this state. The notice shall state the time and place of the hearing, which must be at least 30 days but not more than 60 days after the date of the publication, and the substance of the proposed alteration.

Republishing of schedules

Sec. 2.16. The commissioner shall republish the schedules semiannually for two years from the effective date of this Act, and thereafter annually, reflecting the changes, if any, made in the schedules. The commissioner shall publish the schedules by filing a certified copy with the secretary of state.

Dangerous drugs

Sec. 2.17. The following substances are dangerous drugs regulated by the provisions of Chapter 425, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 726d, Vernon's Texas Penal Code):

- (1) tranquilizers;
- (2) procaine, its salts, derivatives, or compounds or mixtures thereof;
- (3) any substance that bears the legend: Caution: federal law prohibits dispensing without prescription; or the legend: Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian;
- (4) phendimetrazine, its salts, derivatives, or compounds or mixtures thereof;
- (5) pentazocine, its salts, derivatives, or compounds or mixtures thereof.

SUBCHAPTER 3. REGULATION OF MANUFACTURE, DISTRIBUTION, AND DISPENSING OF CONTROLLED SUBSTANCES

Registration requirements

Sec. 3.01. (a) Every person who manufactures, distributes, analyzes, or dispenses any controlled substance within this state must possess a valid registration. Registrations must be obtained annually from the director in accordance with rules promulgated by him under Section 3.02.

(b) Persons registered by the director under this Act to manufacture, distribute, dispense, analyze, or conduct research with controlled substances may possess, manufacture, distribute, dispense, analyze, or conduct research with those substances to the extent authorized by their registration and in conformity with the other provisions of this Act.

(c) No registration to manufacture, distribute, analyze, or conduct research with controlled substances shall be issued without a signed consent form executed by the applicant granting the director or his designee the right to inspect the controlled premises as defined in Subchapter 5 of this Act.

(d) No registration to dispense controlled substances shall be issued without a signed consent form executed by the applicant granting the director or his designee the right to inspect records required to be kept by this Act.

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

- (1) an agent or employee of any registered manufacturer, distributor, analyzer, 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; or
- (3) an ultimate user, as that term is defined herein, 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.

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

(g) The director may inspect the establishment of an applicant for registration in accordance with this Act.

(h) The director 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, provided the Attorney General of the United States has issued a similar waiver pursuant to the Federal Controlled Substances Act.

Rules

Sec. 3.02. (a) The director may promulgate reasonable rules.

(b) The director may charge up to \$5 per registrant as a reasonable fee for the costs necessary to administer this Act.

(c) Those registrants licensed by a state agency shall include the annual registration fee as a part of the license fee to the state agency.

(d) The director by rule may provide for remittance of registration fees collected by state agencies for the department of public safety.

Registration

Sec. 3.03. (a) The director shall register an applicant to manufacture or distribute or analyze controlled substances included in Schedules II through V, if:

- (1) the applicant is registered for such purpose pursuant to the Federal Controlled Substances Act; and
- (2) the applicant has made proper application and paid the applicable fee.

(b) The director shall register an applicant to dispense any controlled substances in Schedules II through V or to conduct research with controlled substances in Schedules II through V, if:

- (1) the applicant is a practitioner licensed under the laws of this state; and
- (2) the applicant has made proper application and paid the applicable fee.

(c) The director shall not require separate registration under this subchapter for a practitioner engaged in research with nonnarcotic controlled substances in Schedules II through V where the registrant is already registered under this subchapter in another capacity. Only practitioners registered under federal law to conduct research with or analyze Schedule I substances may conduct research with or analyze Schedule I substances within this state upon furnishing the director evidence of that federal registration.

(d) The director may authorize persons engaged in research on the use and effects of controlled substances to withhold the names and other identifying characteristics of individuals who are the subjects of the research. Persons who obtain this authorization are not compelled in any civil, criminal, administrative, legislative, or other proceeding to identify the individuals who are the subjects of research for which the authorization was obtained.

(e) The director may authorize the possession, distribution, planting, and cultivation 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.

Grounds for revocation and suspension

Sec. 3.04. (a) A registration under Section 3.03 to manufacture, distribute, analyze, or dispense a controlled substance may be suspended or revoked in accordance with this Act upon a finding that the registrant:

- (1) has furnished false or fraudulent material information in any application filed under this Act;
- (2) has been convicted of a felony offense under any state or federal law relating to any controlled substance or convicted of any other felony;
- (3) has had his registration under the Federal Controlled Substances Act suspended or revoked to manufacture, distribute, analyze, or dispense controlled substances;
- (4) has had his practitioner's license under the laws of this state suspended or revoked;
- (5) has failed to establish and maintain effective controls against diversion of controlled substances into other than legitimate medical, scientific, or industrial channels as provided by fed-

eral regulations or laws now in effect or hereafter promulgated; or

- (6) has willfully failed to maintain records required to be kept or has willfully or unreasonably refused to allow an inspection authorized by this Act.

(b) The revocation or suspension of a registration may be limited to the particular schedule or controlled substance within a schedule with respect to which grounds for revocation or suspension exist.

(c) If a registration is suspended or revoked, 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 as provided under Section 5.04 of this Act.

(d) The purpose of this Act being to promote the public health and welfare by the control of the illegal drug traffic, the operation of any registrant in violation of the regulations specified in this section is hereby declared to be a public nuisance, and the director may apply to any court of competent jurisdiction for and may obtain an injunction suspending the registration of the offender.

(e) The Rules of Civil Procedure shall govern proceedings under this section except when in conflict herewith.

(f) The director shall promptly notify the bureau and state agencies of all orders suspending or revoking registration and all forfeitures of controlled substances.

Procedure for suspension and revocation

Sec. 3.05. (a) A registration under this Act may be revoked or suspended for cause set forth in Section 3.04 by any district court of this state. The attorney representing the state in the various district courts shall have the authority, and it shall be his duty, to file and prosecute appropriate judicial proceedings for the suspension or revocation of a registrant under this Act upon presentation of competent evidence by the director. A proceeding under this section may be maintained in the county of residence of the registrant, in the county where the registrant maintains a place of business or practice, or in the county in which a wrongful act under Section 3.04 was committed.

(b) The petition shall be sufficient if it contains substantially the following requisites:

- (1) the petitioner shall be "The State of Texas";
- (2) it shall be directed to the registrant whose license is sought to be revoked or suspended;
- (3) it shall contain a short statement of the cause of action sufficient to give notice of the grounds upon which revocation or suspension of the registration is sought;
- (4) it shall ask for a revocation or suspension of the registration; and
- (5) it shall be signed and verified by the director.

Records of registrants

Sec. 3.06. Persons registered to manufacture, distribute, analyze, or dispense controlled substances under this Act shall keep records and maintain inventories in conformance with recordkeeping and inventory requirements of federal law and with any additional rules the director issues.

Order forms

Sec. 3.07. Controlled substances in Schedules 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.

Prescriptions

Sec. 3.08. (a) No controlled substance in Schedule II may be dispensed without the written prescription of a practitioner, except when dispensed directly to an ultimate user by a practitioner, other than a pharmacy.

(b) In emergency situations, as defined by rule of the director, Schedule II drugs may be dispensed upon oral prescription of a practitioner, reduced promptly to writing by the pharmacy and filed by the pharmacy. Prescriptions shall be retained in conformity with the requirements of Section 3.06. No prescription for a Schedule II substance may be refilled.

(c) Except when dispensed directly to an ultimate user by a practitioner, other than a pharmacy, a controlled substance included in Schedule III or IV, which is a prescription drug as determined under the Federal Food, Drug, and Cosmetic Act, shall not be dispensed without a written or oral prescription of a practitioner. The prescription shall not be filled or refilled more than six months after the date thereof or be refilled more than five times, unless renewed by the practitioner.

(d) A controlled substance included in Schedule V shall not be distributed or dispensed other than for a medical purpose.

(e) No prescription for Schedule II narcotic drugs shall be filled after the second day the prescription was issued.

SUBCHAPTER 4. OFFENSES AND PENALTIES**Classification of offenses and punishment**

Section 4.01. (a) Misdemeanors are classified according to the relative seriousness of the offense into three categories:

- (1) Class A misdemeanors. An individual adjudged guilty of a Class A misdemeanor shall be punished by:
 - (A) a fine not to exceed \$2,000;
 - (B) confinement in jail for a term not to exceed one year; or
 - (C) both such fine and imprisonment.
- (2) Class B misdemeanors. An individual adjudged guilty of a Class B misdemeanor shall be punished by:
 - (A) a fine not to exceed \$1,000;
 - (B) confinement in jail for a term not to exceed 180 days; or
 - (C) both such fine and imprisonment.
- (3) Class C misdemeanors. An individual adjudged guilty of a Class C misdemeanor shall be punished by a fine not to exceed \$200.

(b) Felonies are classified according to the relative seriousness of the offense into three categories:

- (1) Felonies of the first degree. An individual adjudged guilty of a felony of the first degree shall be punished by confinement in the Texas Department of Corrections for life or for a term of not more than 99 years or less than 5 years.
- (2) Felonies of the second degree. An individual adjudged guilty of a felony of the second degree shall be punished by confinement in the Texas Department of Corrections for a term of not more than 20 years or less than 2 years. In addition to imprisonment, an individual adjudged guilty of a felony of the second degree may be punished by a fine not to exceed \$10,000.
- (3) Felonies of the third degree. An individual adjudged guilty of a felony of the third degree shall be punished by confinement in the Texas Department of Corrections for a term of not more than 10 years or less than 2 years. In addition to imprisonment, an individual adjudged guilty of a felony of the third degree may be punished by a fine not to exceed \$5,000.

(c) A court may set aside a judgment or verdict of guilty of any felony of the third degree other than a violation of Section 4.03 involving a controlled substance in Penalty Group 2 and enter a judgment of guilt and punish for a Class A misdemeanor if, after considering the gravity and circumstances of the felony committed and the history, character, and rehabilitative needs of the defendant, the court finds that such sentence would best serve the ends of justice.

(d) When a court is authorized to enter judgment of guilty and sentence for a lesser category of offense as provided in this subchapter, the court may authorize the prosecuting attorney to prosecute initially for the lesser category of offense.

Criminal classification

Sec. 4.02. (a) For the purpose of establishing criminal penalties for violation of a provision of this Act, there are established the following groups of controlled substances.

(b) Penalty Group 1. Penalty Group 1 shall include the following controlled substances:

- (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:
 - (A) Allylprodine;
 - (B) Benzethidine;
 - (C) Betaprodine;
 - (D) Clonitazene;
 - (E) Dextrorphan;
 - (F) Diampromide;
 - (G) Diethylthiambutene;
 - (H) Dimenoxadol;
 - (I) Dimethylthiambutene;
 - (J) Dioxaphetyl butyrate;
 - (K) Dipipanone;
 - (L) Ethylmethylthiambutene;

- (M) Etonitazene;
 - (N) Etoxeridine;
 - (O) Furethidine;
 - (P) Hydroxypethidine;
 - (Q) Ketobemidone;
 - (R) Levophenacymorphan;
 - (S) Meprodine;
 - (T) Methodol;
 - (U) Moramide;
 - (V) Morpheridine;
 - (W) Noracymethadol;
 - (X) Norievorphanol;
 - (Y) Normethadone;
 - (Z) Norpipanone;
 - (AA) Phenadoxone;
 - (BB) Phenampromide;
 - (CC) Phenomorphan;
 - (DD) Phenoperidine;
 - (EE) Piritramide;
 - (FF) Proheptazine;
 - (GG) Properidine;
 - (HH) Propiram;
 - (II) Trimeperidine.
- (2) Any of the following opium derivates, 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) Hydromorphinol;
 - (L) Methyldesorphine;
 - (M) Methyldihydromorphine;
 - (N) Morphine methylbromide;
 - (O) Morphine methylsulfonate;
 - (P) Morphine-N-Oxide;
 - (Q) Myrophine;
 - (R) Nicocodeine;
 - (S) Nicomorphine;
 - (T) Normorphine;
 - (U) Pholcodine;
 - (V) Thebacon.
- (3) Any of the following substances, except those narcotic drugs listed in another group, however produced:
- (A) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, including the following:
 - (i) Raw opium;
 - (ii) Opium extracts;

- (iii) Opium fluid extracts;
 - (iv) Powdered opium;
 - (v) Granulated opium;
 - (vi) Tincture of opium;
 - (vii) Apomorphine;
 - (viii) Codeine;
 - (ix) Ethylmorphine;
 - (x) Hydrocodone;
 - (xi) Hydromorphone;
 - (xii) Metopon;
 - (xiii) Morphine;
 - (xiv) Oxycodone;
 - (xv) Oxymorphone;
 - (xvi) Thebaine;
- (B) Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph (A), but not including the isoquinoline alkaloids of opium;
- (C) Opium poppy and poppy straw;
- (D) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions which do not contain cocaine or ecgonine.
- (4) 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-morpholine-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.

- (5) Lysergic acid diethylamide.
- (6) Methamphetamine, including its salts, isomers, and salts of isomers.
- (7) Phenylacetone and methylamine, if possessed together with intent to manufacture methamphetamine.

(c) Penalty Group 2. Penalty Group 2 shall include any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (A) 3,4-methylenedioxy amphetamine;
- (B) 5-methoxy-3, 4-methylenedioxy amphetamine;
- (C) 3,4,5-trimethoxy amphetamine;
- (D) Bufotenine;
- (E) Diethyltryptamine;
- (F) Dimethyltryptamine;
- (G) 4-methyl-2, 5-dimethoxyamphetamine;
- (H) Ibogaine;
- (I) Mescaline;
- (J) N-ethyl-3-piperidyl benzilate;
- (K) N-methyl-3-piperidyl benzilate;
- (L) Psilocybin;
- (M) Psilocyn;
- (N) Tetrahydrocannabinols other than marihuana and synthetic equivalents of the substances contained in the plant, or in the resinous extractives of cannabis, or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following:
 - delta-1 cis or trans tetrahydrocannabinol, and their optical isomers;
 - delta-6 cis or trans tetrahydrocannabinol, and their optical isomers;
 - delta-3,4 cis or trans tetrahydrocannabinol, and its optical isomers.

(Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions are covered.)

(d) Penalty Group 3. Penalty Group 3 shall include the following controlled substances:

- (1) 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) methylphenidate and its salts; and
 - (C) phenmetrazine and its salts.
- (2) Methaqualone.

- (3) 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 substances which contain any quantity of a derivative of 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.
- (4) Nalorphine.
- (5) Any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:
 - (A) not more than 1.8 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;
 - (G) 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;
 - (H) 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;
 - (I) not more than 50 milligrams of morphine, or any of its salts, per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
- (6) Any compound, mixture, or preparation containing any stimulant listed in Subsection (d)(1) of this section or depressant substance listed in Subsection (d)(2) of this section is ex-

cepted 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.

(7) Any material, compound, mixture or preparation which contains any quantity of the following substances:

- (A) Barbital;
- (B) Chloral betaine;
- (C) Chloral hydrate;
- (D) Ethchlorvynol;
- (E) Ethinamate;
- (F) Methohexital;
- (G) Meprobamate;
- (H) Methylphenobarbital;
- (I) Paraldehyde;
- (J) Petrichloral;
- (K) Phenobarbital.

(8) Any compound, mixture, or preparation containing any depressant substance listed in Subsection (d)(7) is excepted 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.

(9) Peyote, unless unharvested and growing in its natural state.

(e) Penalty Group 4. Penalty Group 4 shall include any compound, mixture, or preparation containing any of the following limited quantities of narcotic drugs, which shall include 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 per 100 milliliters or per 100 grams;

(2) not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams;

(3) not more than 100 milligrams of ethymorphine 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 15 milligrams of opium per 29.5729 milliliters or per 28.35 grams.

Unlawful manufacture or delivery of controlled substances

Sec. 4.03. (a) Except as authorized by this Act, a person commits an offense if he knowingly or intentionally manufactures, delivers or possesses with intent to manufacture or deliver a controlled substance listed in Penalty Group 1, 2, 3, or 4.

(b) An offense under Subsection (a) of this section with respect to:

(1) a controlled substance in Penalty Group 1 is a felony of the first degree;

(2) a controlled substance in Penalty Group 2 is a felony of the third degree;

(3) a controlled substance in Penalty Group 3 is a felony of the third degree;

(4) a controlled substance in Penalty Group 4 is a Class A misdemeanor.

(c) The provisions of Section 4.01(c) and (d) do not apply to an offense under this section relating to a controlled substance in Penalty Group 2.

Unlawful possession of a controlled substance

Sec. 4.04. (a) Except as authorized by this Act, a person commits an offense if he knowingly or intentionally possesses a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his professional practice.

(b) An offense under Subsection (a) of this section with respect to:

(1) a controlled substance in Penalty Group 1 is a felony of the second degree;

(2) a controlled substance in Penalty Group 2 is a felony of the third degree;

(3) a controlled substance in Penalty Group 3 is a Class A misdemeanor;

(4) a controlled substance in Penalty Group 4 is a Class B misdemeanor.

Possession and delivery of marihuana

Sec. 4.05. (a) Except as authorized by this Act, a person commits an offense if he knowingly or intentionally possesses a usable quantity of marihuana.

(b) An offense under Subsection (a) of this section is:

(1) a felony of the third degree if he possesses more than four ounces;

(2) a Class A misdemeanor if he possesses four ounces or less but more than two ounces;

(3) a Class B misdemeanor if he possesses two ounces or less.

(c) The possession of marihuana may not be considered a crime involving moral turpitude.

(d) Except as otherwise provided by this Act, a person commits an offense if he knowingly or intentionally delivers marihuana.

(e) Except as provided in Subsection (f) of this section, an offense under Subsection (d) of this section is a felony of the third degree.

(f) An offense under Subsection (d) is a Class B misdemeanor if the actor delivers one-fourth ounce or less without receiving remuneration.

Resentencing

Sec. 4.06. (a) Any person who has been convicted of an offense involving a substance defined as marihuana by this Act prior to the effective date of this Act may petition the court in which he was convicted for resentencing in accordance with the provisions of Section 4.05 of this Act whether he is presently serving a sentence, is on probation or parole, or has been discharged from the sentence.

(b) On receipt of the petition, the court shall notify the appropriate prosecuting official and shall set the matter for a hearing within 90 days.

(c) At the hearing the court shall review the record or the prior conviction. The court shall resentence the petitioner in accordance with the appropriate provision of Section 4.05 and shall grant him credit for all time served on the original sentence prior to the resentencing hearing.

(d) If the time served on the original sentence exceeds the revised sentence imposed by the court under the appropriate provision of Section 4.05, the court shall order the petitioner discharged.

(e) In no event may resentencing under this section lengthen the petitioner's sentence or require him to pay an additional fine.

(f) Nothing in this section shall be construed to authorize the release of a person who is serving concurrent sentences for two or more offenses, if after resentencing such person still has time remaining to be served on a concurrent sentence.

Possession of controlled substance paraphernalia

Sec. 4.07. (a) A person, except a practitioner or a person acting under his direction, commits an offense if he possesses a hypodermic syringe, needle, or other instrument that has on it any quantity (including a trace) of a controlled substance in Penalty Group 1 or 2 with intent to use it for administration of the controlled substance by subcutaneous injection in a human being.

(b) An offense under Subsection (a) is a Class A misdemeanor.

Commercial offenses

Sec. 4.08. (a) It is unlawful for any person:

(1) who is a practitioner knowingly or intentionally to distribute or dispense a controlled substance in violation of Section 3.08;

(2) who is a registrant knowingly or intentionally 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 person;

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

(4) to refuse an entry into any premises for any inspection authorized by this Act.

(b) An offense under this section is a felony of the second degree.

Fraud offenses

Sec. 4.09. (a) It is unlawful for any person knowingly or intentionally:

(1) to distribute as a registrant a controlled substance classified in Schedule I or II, except pursuant to an order form as required by Section 3.07 of this Act;

(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

Ch. 429 63rd LEGISLATURE—REGULAR SESSION

required to be kept or filed under this Act, or any record required to be kept by this Act; 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 controlled substance or container or labeling thereof so as to render the controlled substance a counterfeit substance.

(b) An offense under Subsection (a) with respect to:

(1) a controlled substance classified in Schedule I or II is a felony of the second degree;

(2) a controlled substance classified in Schedule III is a felony of the third degree;

(3) a controlled substance classified in Schedule IV is a Class B misdemeanor.

Penalties under other laws

Sec. 4.10. Any penalty imposed for violation of this Act is in addition to, and not in lieu of, any civil or administrative penalty or sanction otherwise imposed by law.

Peyote exemption

Sec. 4.11. The provisions of this Act relating to the possession and distribution of peyote shall not apply to the use of peyote by members of the Native American Church in bona fide religious ceremonies of the church. However, persons who supply the substance to the church are required to register and maintain appropriate records of receipts and disbursements in accordance with rules promulgated by the director. The exemption granted to members of the Native American Church under this section does not apply to a member with less than 25 percent Indian blood.

Conditional discharge for first offense

Sec. 4.12. (a) If any person who has not previously been convicted of an offense under this Act, or, subsequent to the effective date of this Act, under any statute of the United States or of any state relating to a substance that is defined by this Act as a controlled substance, is charged with a violation of this subchapter or is found guilty of a violation of this subchapter after trial or on a plea of guilty, the court may, without entering a judgment of guilt and with the consent of the defendant, defer further proceedings and place him on probation on such reasonable conditions as it may require and for such period as the court may prescribe, except that the probationary period may not exceed two years.

(b) Upon violation of a condition of the probation, the court may enter an adjudication of guilt, pronounce sentence, and punish him accordingly. The court may, in its discretion, dismiss the proceedings against the defendant and discharge him from probation before the expiration of the maximum period prescribed for his probationary period. If during the period of his probation the defendant does not violate any of the conditions of the probation, then upon expiration of the probationary period the court shall discharge him and dismiss the proceedings against him. Discharge and dismissal under this subsection shall be

without an adjudication of guilt, but a nonpublic record of the proceedings shall be retained by the director solely for use by the courts in determining whether or not, in subsequent proceedings, the person qualifies for conditional discharge under this section.

(c) A discharge or dismissal under this section shall not be deemed a conviction for purposes of disqualifications or disabilities imposed by law for conviction of a crime, including any provision for enhancement of punishment for repeat or habitual offenders. There may be only one discharge and dismissal under this section with respect to any person.

(d) This section shall not be construed to provide an exclusive procedure. Any other procedure provided by law relating to suspension of trial or probation may be followed, in the discretion of the trial court.

SUBCHAPTER 5. ENFORCEMENT AND ADMINISTRATIVE PROVISIONS

Inspections

Section 5.01. (a) As used in this section, the term "controlled premises" means:

(1) places where original or other records or documents required under this Act are kept or required to be kept; and

(2) places, including factories, warehouses, or other establishments, and conveyances, where persons registered under this Act may lawfully hold, manufacture, or distribute, dispense, administer, possess, or otherwise dispose of controlled substances.

(b) For the purpose of inspecting, copying, and verifying the correctness of records, reports, or other documents required to be kept or made under this Act and otherwise facilitating the carrying out of his functions under this Act, the director is authorized, in accordance with this section, to enter controlled premises and to conduct inspections thereof, and of the things specified in this section, relevant to those functions.

(c) Inspections under Subsection (b) of this section shall be carried out through officers or employees designated by the director. Any such officer or employee shall have the right to enter premises and conduct such inspection at reasonable times upon stating his purpose and presenting to the owner, operator, or agent in charge of the premises appropriate credentials and written notice of his inspection authority.

(d) An officer or employee of the director shall have the right to:

(1) inspect and copy records, reports, and other documents required to be kept or made under this Act;

(2) inspect, within reasonable limits and in a reasonable manner, controlled premises and all pertinent equipment, finished and unfinished drugs and other substances or materials, containers, and labeling found therein, and except as provided in Subsection (e) of this section, all other things therein including records, files, papers, processes, controls, and facilities appropriate for verification of the records, reports, and documents required to be kept under this Act or otherwise bearing on the provisions of this Act;

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

(4) examine any hypodermic syringe, needle, pipe, or other instrument, device, or contrivance, equipment, control, container,

label, or facility relating to possible violation of this Act or any material used, to be used, or capable of use in diluting or adulterating a controlled substance.

(e) Except when the owner, operator, or agent in charge of the controlled premises consents in writing, no inspection authorized by this section shall extend to:

- (1) financial data;
- (2) Sales data other than shipment data; or
- (3) pricing data.

Cooperative arrangements and confidentiality

Sec. 5.02. (a) The director shall cooperate with federal and 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) cooperate and coordinate in training programs concerning controlled substances law enforcement at local and state levels;
- (3) cooperate with the bureau and state agencies by establishing a centralized unit to accept, catalog, file, and collect statistics, including records on drug-dependent persons and other controlled substance law offenders within this state, and make the information available for federal, state, and local law enforcement purposes, except that he may not furnish the name or identity of a patient or research subject whose identity could not be obtained under Subsection (c) of this section; 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 and state agencies relating to the regulatory functions of this Act, including results of inspections conducted by it may be relied and acted upon by the director in the exercise of his regulatory functions under this Act.

(c) A practitioner engaged in authorized medical practice or research may not be required or compelled to furnish the name or identity of a patient or research subject to the department of public safety, the director of the State Program on Drug Abuse, or to any other agency, public official, or law enforcement officer, and a practitioner may not be compelled in any state or local civil, criminal, administrative, legislative, or other proceeding to furnish the name or identity of an individual that the practitioner is obligated to keep confidential.

Forfeitures

Sec. 5.03. (a) The following are subject to forfeiture as authorized by this subchapter:

- (1) all controlled substances that are or have been manufactured, distributed, dispensed, delivered, acquired, obtained, or possessed in violation of this Act;
- (2) all raw materials, products, and equipment of any kind that are used, or intended for use, in manufacturing, compound-

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

- (3) all property that is used, or intended for use, as a container for property described in paragraph (1) or (2) of this subsection;
- (4) all books, records, and research products and materials, including formulas, microfilm, tapes, and data that are used, or intended for use, in violation of this Act;
- (5) any conveyance, including aircraft, vehicles, vessels, trailers, and railroad cars, that is used or intended for use to transport for delivery or in any manner facilitate the transportation for delivery of any property described in paragraph (1), (2), or (3) of this subsection, provided that no conveyance used by any person as a common carrier shall be forfeited under this subchapter unless the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this Act, and no conveyance shall be subject to forfeiture if the delivery involved is an offer to sell.

(b) No property shall be forfeited under this subchapter by reason of any act established by the owner thereof to have been committed without his knowledge or consent.

(c) A forfeiture of property encumbered by a bona fide security interest is subject to the interest of the secured party if he neither had knowledge of or consented to the act which caused the property to be subject to forfeiture.

Seizure

Sec. 5.04. (a) Property subject to forfeiture under this subchapter may be seized by any peace officer under authority of a search warrant issued pursuant to this Act.

(b) Seizure of any property subject to forfeiture may be made without warrant if:

- (1) the owner, operator, or agent in charge of the property consents;
- (2) the seizure is incident to a search to which the owner, operator, or agent in charge of the property consents;
- (3) 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; or
- (4) the seizure was incident to a lawful arrest, lawful search, or lawful search incident to arrest.

Notification of forfeiture proceedings

Sec. 5.05. (a) When any property is seized, proceedings under this section shall be instituted promptly.

(b) The seizing officer shall immediately cause to be filed in the name of the State of Texas with the clerk of the district court of the county in which the seizure is made a notice of the seizure and intended forfeiture. Certified copies of the notice shall be served upon the following persons as provided for the serving of process by citation in civil cases:

- (1) the owner of the property, if address is known;
- (2) any secured party who has registered his lien or filed a financing statement as provided by law; and

- (3) any other bona fide lienholder or secured party or other person holding an interest in the property in the nature of a security interest of whom the Texas Department of Public Safety has knowledge.

(c) If the property is a motor vehicle susceptible of registration under the motor vehicle registration laws of this state and if there is any reasonable cause to believe that the vehicle has been registered under the laws of this state, the officer in charge of initiating the forfeiture proceedings shall make inquiry of the State Highway Department as to what the records of the State Highway Department show as to who is the record owner of the vehicle and who, if anyone, holds any lien or security interest which affects the vehicle. •

(d) If the property is a motor vehicle and is not registered in Texas, then the officer in charge of initiating the proceeding shall attempt to ascertain the name and address of the person in whose name the vehicle is licensed, and if the vehicle is licensed in a state which has in effect a certificate of title law, he shall make inquiry of the appropriate agency of that state as to what the records of the agency show as to who is the record owner of the vehicle and who, if anyone, holds any lien, security interest, or other instrument in the nature of a security device which affects the vehicle.

(e) If the property is of a nature that a financing statement is required by the laws of this state to be filed to perfect a security interest affecting the property and if there is any reasonable cause to believe that a financing statement covering the security interest has been filed under the laws of this state, the officer in charge of initiating the proceeding shall make inquiry of the appropriate official designated in Chapter 9, Business & Commerce Code, as to what the records show as to who is the record owner of the property and who, if anyone, has filed a financing statement affecting the property.

(f) If the property is an aircraft or part thereof and if there is any reasonable cause to believe that an instrument in the nature of a security device affects the property, then the officer in charge of initiating the proceedings shall make inquiry of the administrator of the Federal Aviation Administration as to what the records of the administrator show as to who is the record owner of the property and who, if anyone, holds an instrument in the nature of a security device which affects the property.

(g) In the case of all other property subject to forfeiture, if there is any reasonable cause to believe that an instrument in the nature of a security device affects the property, then the officer in charge of initiating the proceeding shall make a good faith inquiry to identify the holder of any such instrument.

(h) In the event the answer to an inquiry states that the record owner of the property is any person other than the person who was in possession of it when it was seized, or states that any person holds any lien, security interest, or other interest in the nature of a security interest which affects the property, the officer in charge of initiating the proceeding shall cause any record owner and also any lienholder, secured party, or other person who holds an interest in the property in the nature of a security interest which affects the property to be named a party to the proceeding and to be served with citation of the pendency thereof as provided by the Texas Rules of Civil Procedure.

(i) If a person was in possession of the property subject to forfeiture at the time that it was seized, he shall also be made a party to the proceeding.

(j) If no person was in possession of the property subject to forfeiture at the time that it was seized and if the owner of the property is unknown, the officer in charge of initiating the proceeding shall file with the clerk of the court in which the proceeding is pending an affidavit to such effect, whereupon the clerk of the court shall issue a citation for service by publication addressed to "the Unknown Owner of . . .", filling in the blank space with a reasonably detailed description of the property subject to forfeiture. The citation shall contain the other requisites prescribed in Rules 114 and 115 and shall be served as provided by Rule 116 of the Texas Rules of Civil Procedure.

(k) No proceedings instituted pursuant to the provisions of this subchapter shall proceed to hearing unless the judge conducting the hearing is satisfied that this section has been complied with, and the officer initiating the proceeding shall introduce into evidence at the hearing any answer received from an inquiry required by Subsections (c) through (g) of this section.

Replevy of seized property

Sec. 5.06. (a) Any property, other than a controlled substance or raw material, seized under this subchapter may be replevied by the owner, lienholder, secured party, or other party holding an interest in the nature of a security interest affecting the property, upon execution by him of a good and valid bond with sufficient surety in a sum double the appraised value of the property replevied, which bond shall be approved by the seizing officer and shall be conditioned upon return of the property to the custody of the officer on the day of hearing of the forfeiture proceeding and abide the judgment of the court.

Forfeiture hearing

Sec. 5.07. (a) An owner of property that has been seized shall file a verified answer within 20 days of the mailing or publication of notice of seizure. If no answer is filed, the court shall hear evidence that the property is subject to forfeiture and may upon motion forfeit the property to the Texas Department of Public Safety. If an answer is filed, a time for hearing on forfeiture shall be set within 30 days of filing the answer and notice of the hearing shall be sent to all parties.

(b) If the owner of the property has filed a verified answer denying that the property is subject to forfeiture then the burden is on the state to prove beyond a reasonable doubt that the property is subject to forfeiture. However, if no answer has been filed by the owner of the property, the notice of seizure may be introduced into evidence and is prima facie evidence that the property is subject to forfeiture.

(c) At the hearing any claimant of any right, title, or interest in the property may prove his lien, security interest, or other interest in the nature of a security interest, to be bona fide and created without knowledge or consent that the property was to be used so as to cause the property to be subject to forfeiture.

(d) If it is found beyond a reasonable doubt that the property is subject to forfeiture, then the judge shall upon motion forfeit the property to the Department of Public Safety. However, if proof at the hearing discloses that the interest of any bona fide lienholder, secured party, or other person holding an interest in the property in the nature of a security interest is greater than or equal to the present value of the property, the court shall order the property released to him. If such interest is less

than the present value of the property and if the proof shows beyond a reasonable doubt that the property is subject to forfeiture, the court shall order the property forfeited to the Department of Public Safety.

(e) Except as otherwise provided in this section, the judge of the district court having jurisdiction may order destruction of all forfeited controlled substances and raw materials. A record of the place where the controlled substances and raw materials were seized, of the kind and quantities so destroyed, and of the time, place, and manner of destruction, shall be kept, and a return under oath, reporting the destruction, shall be made to the District Court by the officer who destroys them.

Disposition of forfeited property

Sec. 5.08. (a) Regarding all controlled substances and raw materials which have been forfeited, the director is authorized to:

- (1) retain the property for its official purposes;
- (2) deliver the property to a government agency or department for official purposes;
- (3) deliver the property to a person authorized by the director to receive it; or
- (4) destroy the property that is not otherwise disposed.

(b) All other property that has been forfeited, except as provided below, shall be sold at a public auction under the direction of the county sheriff after notice of public auction as provided by law for other sheriff's sales. The proceeds of the sale shall be delivered to the district clerk and shall be disposed of as follows:

- (1) to any bona fide lienholder, secured party, or other party holding an interest in the property in the nature of a security interest, to the extent of his interest; and
- (2) the balance, if any, after deduction of all storage and court costs, shall be forwarded to the state comptroller and deposited with and used as general funds of the state.

(c) The Department of Public Safety may maintain, repair, use, and operate for official purposes all property that has been forfeited to it if it is free from any interest of a bona fide lienholder, secured party, or other party who holds an interest in the property in the nature of a security interest. The department may purchase the interest of a bona fide lienholder, secured party, or other party who holds an interest so that the property can be released for use by the department. The department may maintain, repair, use, and operate the property with money appropriated to the department for current operations. If the property is a motor vehicle susceptible of registration under the motor vehicle registration laws of this state, the department is deemed to be the purchaser and the certificate of title shall be issued to it as required by Subsection (e) of this section.

(d) Storage charges on any property accrued while the property is stored at the request of a seizing officer of the department pending the outcome of the forfeiture proceedings shall be paid by the department out of its appropriations if such property after final hearing is not forfeited to the department.

(e) The State Highway Department shall issue a certificate of title to any person who purchases property under the provisions of this section when a certificate of title is required under the laws of this state.

Schedules I and II plant species—seizure and forfeiture

Sec. 5.09. (a) Species of plants from which controlled substances in Schedules I and II may be derived that have been planted or cultivated in violation of this Act, of which the owners or cultivators are unknown, or that are wild growths, may be seized and summarily forfeited to the state. The provisions of this subsection do not apply to unharvested peyote growing in its natural state.

(b) The failure, upon demand by any peace officer, of the person in occupancy or in control of land or premises upon which the species of plants are growing to produce an appropriate registration, or proof that he is the holder thereof, constitutes authority for the seizure and forfeiture of the plants.

Burden of proof; liabilities

Sec. 5.10. (a) It is not necessary for the state to negate any exemption or exception set forth in this Act in any complaint, information, indictment, or other pleading or in any trial, hearing, or other proceeding under this Act, and the burden of going forward with the evidence with respect to any exemption or exception shall be upon the person claiming its benefit.

(b) In the absence of proof that a person is the duly authorized holder of an appropriate registration or order form issued under this Act, he is presumed not to be the holder of the registration or form. The presumption is subject to rebuttal by a person charged with an offense under this Act.

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

Designation for federal funds

Sec. 5.11. The Texas Department of Community Affairs or its designee as provided in this Act is hereby designated as the single state agency to administer, apply for, and disperse funds under Public Law 92-255, the Drug Abuse Office and Treatment Act of 1972 and is given all powers necessary to receive these funds.

Education and research

Sec. 5.12. (a) The Texas Department of Community Affairs, in cooperation with other appropriate state agencies, shall carry out educational programs designed to prevent or deter misuse and abuse of controlled substances. In connection with these programs it 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 executive director of the Texas Department of Community Affairs shall encourage research on misuse and abuse of controlled substances. In connection with research, and in furtherance of the enforcement of this Act, 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:
 - (A) develop new or improved approaches, techniques, systems, equipment, and devices to strengthen the enforcement of this Act;
 - (B) determine patterns of misuse and abuse of controlled substances and the social effects thereof; and
 - (C) 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.

Search warrants

Sec. 5.13. A search warrant may be issued to search for and seize controlled substances possessed or manufactured in violation of this Act. The application for the issuance of and the execution of a search warrant under this section shall conform to the provisions of the Code of Criminal Procedure, 1965, to the extent applicable.

Report of arrests

Sec. 5.14. (a) All law enforcement agencies in this state shall file semiannually with the director a report of all arrests for drug offenses made by them during the preceding six months. Such reports shall be made on forms provided by the director, and shall contain such information as required therein.

(b) The director shall publish an annual summary of all drug arrests in this state.

SUBCHAPTER 6. MISCELLANEOUS

Saving provision

Section 6.01. (a) Except as provided in Subsections (b) and (c) of this section, this Act applies only to offenses committed on and after its effective date, and a criminal action for an offense committed before this Act's effective date is governed by the law existing before the effective date, which law is continued in effect for this purpose, as if this Act were not in force. For purposes of this section, an offense is committed on

or after the effective date of this Act if any element of the offense occurs on or after the effective date.

(b) Conduct constituting an offense under existing law that is no longer an offense under this Act may not be prosecuted after the effective date of this Act. If, on the effective date of this Act, a criminal action is pending for conduct that does not constitute an offense under this Act, the action is dismissed on the effective date of this Act. However, a final conviction existing on the effective date of this Act, for conduct constituting an offense under existing law, is valid and unaffected by this Act.

(c) In a criminal action pending, on appeal, or commenced on or after the effective date of this Act, for an offense committed before the effective date, the defendant, if adjudged guilty, shall be assessed punishment under this Act if he so elects by written motion filed with the trial court requesting that the court sentence him under the provisions of this Act.

Repealer

Sec. 6.02. The Uniform Narcotic Drug Act, as amended (Article 725b, Vernon's Texas Penal Code); Chapter 237, Acts of the 53rd Legislature, Regular Session, 1953, as amended (Article 725c, Vernon's Texas Penal Code); Chapter 300, Acts of the 54th Legislature, 1955, as amended (Article 725d, Vernon's Texas Penal Code); and Chapter 87, Acts of the 62nd Legislature, Regular Session, 1971 (Article 4413(37), Vernon's Texas Civil Statutes), are repealed.⁸⁵

Conforming amendments

Sec. 6.03. (a) Subsections (a), (f), and (g), Section 2, Chapter 425, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 726d, Vernon's Texas Penal Code), are amended ⁸⁶ to read as follows:

"(a) The term 'dangerous drug' means any drug or device that is not included in Schedules I through V of the Texas Controlled Substances Act and that is unsafe for self-medication, and includes the following:

"(1) Tranquilizers

"(2) Procaine, its salts, derivatives, or compounds or mixtures thereof except ointments and creams for topical application containing not more than two and one-half percent (2-1/2%) strength.

"(3) Any drug or device which bears the legend: Caution: federal law prohibits dispensing without prescription, or the legend: Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian.

"(4) Phendimetrazine, its salts, derivatives, or compounds or mixtures thereof.

"(5) Pentazocine, its salts, derivatives, or compounds or mixtures thereof."

"(f) The term 'pharmacist' shall mean a person licensed by the State Board of Pharmacy to practice the profession of pharmacy and to prepare, compound, and dispense practitioners' prescriptions, drugs, medicines, and poisons.

"(g) The term 'prescription' means a written order, and in cases of emergency, a telephonic order, by a practitioner (or his agent as desig-

⁸⁵. Vernon's Ann.P.C. arts. 725b, 725c, ⁸⁶. Vernon's Ann.P.C. art. 726d, § 2, sub-725d, repealed; Vernon's Ann.Civ.St. art. 4413(37), repealed.

nated in writing to the pharmacist) to a pharmacist for a dangerous drug for a particular patient, which specifies the date of its issue, the name and address of the patient (and, if such dangerous drug is prescribed for an animal, the species of such animal), the name and quantity of the dangerous drug prescribed, and the directions for use of such drug.”

(b) Sections 4, 5, and 6, Chapter 425, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 726d, Vernon's Texas Penal Code), are amended ⁸⁷ to read as follows:

“Sec. 4. The provisions of paragraphs (a) and (d) of Section 3 shall not be applicable:

“(a) As to the delivery of dangerous drugs to persons included in any of the classes hereinafter named, or to the agents or employees of such persons, for use in the usual course of their business or practice or in the performance of their official duties, as the case may be; or

“(b) To the possession of dangerous drugs by such persons or their agents or employees for such use:

“(1) Pharmacy, drug store, dispensary, apothecary shop, or prescription laboratory, duly registered with the State Board of Pharmacy;

“(2) Practitioners;

“(3) Persons who procure dangerous drugs for the purpose of lawful research, teaching, or testing, and not for resale;

“(4) Hospitals which procure dangerous drugs for lawful administration by practitioners;

“(5) Officers or employees of Federal, State, or local government;

“(6) Manufacturers and Wholesalers registered with the Commissioner of Health as required by Chapter 373, Acts of the 57th Legislature, 1961, as amended (Article 4476—5, Vernon's Texas Civil Statutes).

“(7) Carriers and Warehousemen.

“Sec. 5. Persons (other than carriers) exempt from the provisions of paragraphs (a) and (b) of Section 3 by virtue of Section 4 shall:

“(a)(1) Make a complete record of all stocks of drugs set forth in Section 2(a)(1), (4), and (5) hereof, on hand on the effective date of this Act, and retain such record for not less than two (2) calendar years immediately following such date, and

“(2) Retain each commercial or other record relating to those drugs set forth in Section 2(a)(1), (4), and (5) hereof, maintained by them in the usual course of their business or occupation, for not less than two (2) calendar years immediately following the date of such record, to create and maintain a perpetual record of the purchases of those drugs set forth in Section 2(a)(1), (4), and (5) hereof.

“(b) Pharmacies as set forth in Section 4(b)(1) shall, in addition to complying with the provisions of subsection (2) above, retain each prescription for those drugs set forth in Section 2(a)(1), (4), and (5) hereof, received by them for not less than two (2) calendar years immediately following the date of the filling or the date of the last refilling of such prescrip-

87. Vernon's Ann.P.C. art. 726d, §§ 4, 5, 6.

tion, whichever is the later date, to create and maintain a perpetual record of the sales of those drugs set forth in Section 2(a)(1), (4), and (5) hereof.

“Sec. 6. Persons required to keep files and records relating to those drugs set forth in Section 2(a)(1), (4), and (5) hereof, by Section 5 shall

“(1) make such files or records available for inspection by any public official or employee engaged in the enforcement of this Act, at all reasonable hours, for inspection and copying; and

“(2) accord to such officer or employee full opportunity to make inventory of all stocks of those drugs set forth in Section 2 (a)(1), (4), and (5) hereof, on hand; and it shall be unlawful for any such person to fail to make such files or records available or to accord such opportunity to check their correctness.”

(c) Sections 3 and 15, Chapter 425, Acts of the 56th Legislature, Regular Session, 1959, as last amended by Chapter 746, Acts of the 62nd Legislature, Regular Session, 1971, and by Chapter 901, Acts of the 62nd Legislature, Regular Session, 1971 (Article 726d, Vernon's Texas Penal Code), are amended⁸⁸ to read as follows:

“Sec. 3. The following acts, the failure to act as hereinafter set forth, and the causing of any such act or failure are hereby declared unlawful, except as provided in Section 4:

“(a) The delivery or offer of delivery of any dangerous drug unless:

“(1) Such dangerous drug is delivered or offered to be delivered by a pharmacist, upon an original prescription, and there is affixed to the immediate container in which such drug is delivered or offered to be delivered a label bearing the name and address of the owner of the establishment from which such drug was delivered or offered to be delivered; the date on which the prescription for such drug was filled; the number of such prescription as filed in the prescription files of the pharmacist who filled such prescription; the name of the practitioner who prescribed such drug; the name of the patient, and if such drug was prescribed for an animal, a statement showing the species of the animal; and the directions for use of the drug as contained in the prescription; or

“(2) Such dangerous drug is delivered or offered to be delivered by a practitioner in the course of his practice and the immediate container in which such drug is delivered or offered to be delivered bears a label on which appears the directions for use of such drug, the name and address of such practitioner, the name of the patient, and, if such drug is prescribed for an animal, a statement showing the species of the animal.

“(b) The refilling of any prescription for a dangerous drug, unless and as designated on the prescription by the practitioner, or through authorization by the practitioner at the time of refilling.

⁸⁸. Vernon's Ann.P.C. art. 726d, §§ 3, 15.

- “(c) The delivery of a dangerous drug upon prescription unless the pharmacist who filled such prescription files and retains it as required in Section 6.
- “(d) The possession of a dangerous drug by any person unless such person obtained the drug under the specific provision of Section 3(a)(1) and (2) of this Act.
- “(e) The refusal to make available and to accord full opportunity to check any record or file as required by Section 5 and Section 6.
- “(f) The failure to keep records as required by Section 5 and Section 6.
- “(g) The using of any person to his own advantage, or revealing, other than to an officer or employee of the State Board of Pharmacy, or to a court when relevant in a judicial proceeding under this Act, any information required under the authority of Section 6, concerning any method or process which as a trade secret is entitled to protection.
- “(h) Except as otherwise provided in this Act, the possession for sale of any dangerous drug defined in this Act.”

“Sec. 15. (a) Any person possessing in violation of Section 3 of this Act any dangerous drug defined in Section 2(a) of this Act shall be fined an amount not to exceed One Thousand Dollars (\$1,000) or confined in jail for a period of not to exceed six (6) months, or by both such fine and imprisonment. For any second or subsequent violation, any person shall be guilty of a misdemeanor punishable by a fine not to exceed Two Thousand Dollars (\$2,000), by confinement in jail for not more than one (1) year, or by both.

“(b) Any person who sells or delivers or offers to sell or deliver in violation of this Act any dangerous drug defined in this Act, shall be guilty of a felony and upon conviction is punishable by confinement in the penitentiary for not less than two (2) nor more than ten (10) years and, in addition, he may be punished by a fine not to exceed Five Thousand Dollars (\$5,000). Proof of an offer to sell must be corroborated by a person other than the offeree or by evidence other than a statement of the offeree.

“(c) Any person violating any other provision of this Act not set out in Subsection (a) or (b) of this section shall be fined an amount not exceeding One Thousand Dollars (\$1,000) or confined in jail for a period of not to exceed six (6) months, or by both such fine and imprisonment. For any second or subsequent violation any person shall be guilty of a misdemeanor punishable by a fine not to exceed Two Thousand Dollars (\$2,000), by confinement in jail for not more than one (1) year, or by both.

“(d) Any person not authorized by this Act or Federal law who manufactures any dangerous drug is guilty of a felony and upon conviction shall be punished by confinement in the penitentiary for not less than two (2) years or more than ten (10) years. In addition, he may be punished by a fine not to exceed Five Thousand Dollars (\$5,000).

(d) Section 7, Chapter 425, Acts of the 56th Legislature, 1959, (Article 726d, Vernon's Texas Penal Code), is repealed.⁸⁹

89. Vernon's Ann.P.C. art. 726d, § 7, repealed.

(e) Section 12, Chapter 107, Acts of the 41st Legislature, Regular Session, 1929, as amended (Article 4542a, Vernon's Texas Civil Statutes), is amended ⁹⁰ to read as follows:

"Sec. 12. The State Board of Pharmacy may in its discretion refuse to issue a license to any applicant, and may cancel, revoke, or suspend the operation of any license by it granted for any of the following reasons:

- "(a) That said applicant is guilty of gross immorality;
- "(b) That said applicant or licensee is guilty of any fraud, deceit, or misrepresentation in the practice of pharmacy or in his seeking admission to such practice;
- "(c) That said applicant or licensee is unfit or incompetent by reason of negligence;
- "(d) That said applicant or licensee has been convicted of a felony or a misdemeanor which involves moral turpitude;
- "(e) That said applicant or licensee is an habitual drunkard or is addicted to the use of morphine, cocaine, or other drugs having similar effect, or has become insane or has been adjudged by a court of competent jurisdiction to be of unsound mind;
- "(f) That said licensee, directly or indirectly, aids or abets in the practice of pharmacy any person not duly licensed to practice under this Act; provided further, that the said licensee is responsible for the legal operation of the pharmacy, dispensary, prescription laboratory or apothecary shop as long as his name appears on the permit issued for the operation of such establishments;
- "(g) That said applicant or licensee has been convicted in either a State or Federal Court of the illegal use, sale, or transportation of intoxicating liquor, narcotic drugs, barbiturates, amphetamines, desoxephedrine, their compounds or derivatives, controlled substances as defined in the Texas Controlled Substances Act, or any other dangerous or habit-forming drugs;
- "(h) That said licensee has engaged in the act of 'substitution' as that term is hereinafter defined. The term 'substitution' as used in this Act shall mean the dispensing of a drug or a brand of drug other than that which is ordered or prescribed without the express consent of the orderer or prescriber. If the consent of the orderer or prescriber for substitution by the licensee is obtained, a notation shall be made by the licensee on the prescription stating that such consent has been obtained and by whom such consent was given, and such notation shall, in addition, specify the drug or brand of drug so substituted;
- "(i) That said licensee is a member of the Communist Party or affiliated with such party.

"Revocation, cancellation, or suspension of a license shall be only after ten (10) days notice and a full hearing. Any person whose license to practice pharmacy has been refused, revoked, or suspended by the Board may, within twenty (20) days after the effective date of the order, decision, or ruling of the Board, take an appeal to any of the District Courts where said applicant resided at the time the offense was committed

90. Vernon's Ann.Civ.St. art. 4542a, § 12.

which resulted in the Board's action refusing, revoking, or suspending said license."

(f) Subsection (d), Section 17, Chapter 107, Acts of the 41st Legislature, Regular Session, 1929, as amended (Article 4542a, Vernon's Texas Civil Statutes), is amended⁹¹ to read as follows:

"(d) The State Board of Pharmacy may, in its discretion, refuse to issue a permit to any applicant, and may cancel, revoke, or suspend the operation of any permit by it granted under the foregoing subsections for any of the following reasons:

"(1) That the applicant has been convicted of a felony or a misdemeanor which involves moral turpitude, or if the applicant be an association, joint stock company, partnership, or corporation, that a managing officer has been convicted of a felony or a misdemeanor which involves moral turpitude;

"(2) That the applicant has been convicted in either a State or Federal Court of the illegal use, sale, or transportation of intoxicating liquor, narcotic drugs, barbiturates, amphetamines, desoxephedrine, their compounds or derivatives, controlled substances as defined in the Texas Controlled Substances Act, or any other dangerous or habit forming drugs, or if the applicant be an association, joint stock company, partnership, or corporation, that a managing officer has been convicted in either a State or Federal Court of the illegal use, sale, or transportation of intoxicating liquor, narcotic drugs, barbiturates, amphetamines, desoxephedrine, their compounds or derivatives, controlled substances, or any other dangerous or habit-forming drugs;

"(3) That the applicant applying for, or licensed, pursuant to Subsection (a) hereof has in any manner advertised his selling price for any drug or drugs which bear the legend: 'Caution: Federal law prohibits dispensing without prescription';

"(4) That any owner or employee of an owner of a licensed retail pharmacy, drugstore, dispensary, or apothecary shop, pursuant to Subsection (a), has violated any provision of this Act;

"(5) That the applicant has sold counterfeit drugs and medicines, or has sold without a prescription drugs and medicines bearing the legend: 'Caution: Federal Law prohibits dispensing without prescription,' to persons other than:

"(A) the owners or operators of a pharmacy, drug store, dispensary, apothecary shop, or prescription laboratory, duly registered with the State Board of Pharmacy;

"(B) practitioners;

"(C) persons who procure controlled substances or dangerous drugs for the purpose of lawful research, teaching, or testing, and not for resale;

"(D) hospitals which procure controlled substances or dangerous drugs for lawful administration by practitioners;

"(E) officers or employees of federal, state, or local government acting in the lawful discharge of their official duties;

"(F) manufacturers and wholesalers registered with the Commissioner of Health as required by Chapter 373, Acts of the 57th Legislature, 1961, as amended (Article 4476—5, Vernon's Texas Civil Statutes);

"(G) carriers and warehousemen."

⁹¹. Vernon's Ann.Civ.St. art. 4542a, § 17, subsec. (d).

(g) Subsection (a), Section 5F, Article II, Texas Liquor Control Act, as added (Article 667—5F, Vernon's Texas Penal Code), is amended⁹² to read as follows:

"(a) The County Judge shall refuse any original application for a Retail Dealer's On-Premise License or a Wine and Beer Retailer's Permit if he finds that the individual applicant, or the spouse of such applicant, has at any time during the three years next preceding the filing of such application been finally convicted of a felony, or any of the following offenses:

"(1) prostitution;

"(2) vagrancy convictions involving moral turpitude;

"(3) bookmaking;

"(4) gambling (gaming);

"(5) any offense involving controlled substances as defined in the Texas Controlled Substances Act or dangerous drugs;

"(6) violations of the Texas Liquor Control Act resulting in the cancellation of a license or permit, or a fine of not less than Five Hundred Dollars (\$500);

"(7) more than three violations of the Texas Liquor Control Act relating to minors;

"(8) bootlegging;

"(9) violation of penal law involving firearms or other deadly weapons or if he finds that three years has not elapsed since the termination of any sentence, parole or probation served by the applicant, or the spouse of such applicant, as the result of a felony prosecution, or prosecution for any type of offense named herein."

(h) Sections 1 and 2, Chapter 21, Acts of the 55th Legislature, Regular Session, 1957 (Article 353c, Vernon's Texas Penal Code), are amended⁹³ to read as follows:

"Section 1. It shall be unlawful for any officer or employee of the Texas Department of Corrections or for any other person to furnish, attempt to furnish, or assist in furnishing to any inmate of the Texas Department of Corrections any alcoholic beverage, controlled substance, or dangerous drug except from the prescription of a physician. It shall also be unlawful for any person to take, attempt to take, or assist in taking any of the aforementioned articles into the confines of property belonging to the Texas Department of Corrections which is occupied or used by prisoners except for delivery to a prison warehouse or pharmacy or to a physician.

"Sec. 2. As used in this Act, 'alcoholic beverage' shall have the meaning defined in the Texas Liquor Control Act, as heretofore or hereafter amended; 'controlled substance' means any substance defined as a controlled substance by the Texas Controlled Substances Act; and 'dangerous drug' means any substance defined as a dangerous drug by Chapter 425, Acts of the 56th Legislature, Regular Session, 1925, as amended (Article 726d, Vernon's Texas Penal Code)."

(i) Subsection (d), Section 24, Water Safety Act, as amended (Article 1722A, Vernon's Texas Penal Code), is amended⁹⁴ to read as follows:

"(d) Any person who operates any vessel or manipulates any water skis, aquaplane or similar device, upon the waters of this State in a careless or imprudent manner while such person is intoxicated, or under the

92. Vernon's Ann.P.C. art. 667—5F, sub-sec. (a).

93. Vernon's Ann.P.C. art. 353c, §§ 1, 2.

94. Vernon's Ann.P.C. art. 1722a, § 24, sub-sec. (d).

influence of intoxicating liquor, or while under the influence of any controlled substance as defined in the Texas Controlled Substances Act shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than Fifty Dollars (\$50) nor more than Five Hundred Dollars (\$500) or by imprisonment of not to exceed six (6) months, or both."

(j) Chapter 373, Acts of the 57th Legislature, Regular Session, 1961, as amended (Article 4476—5, Vernon's Texas Civil Statutes), is amended by adding ⁹⁵ a Section 15A to read as follows:

"Sec. 15A. A drug or device is misbranded if it is a drug or device which is required by Federal Law to bear the statement 'Caution: Federal Law prohibits dispensing without prescription,' and it does not bear the statement."

(k) Section 21, Chapter 373, Acts of the 57th Legislature, Regular Session, 1961, as amended (Article 4476—5, Vernon's Texas Civil Statutes), is amended ⁹⁶ to read as follows:

"Sec. 21. The Commissioner of Health or his duly authorized agent shall have free access at all reasonable hours to any factory, warehouse, or establishment in which foods, drugs, devices, or cosmetics are manufactured, processed, packed, stored or held for introduction into commerce, or to enter any vehicle being used to transport or hold such foods, drugs, devices, or cosmetics in commerce, for the purpose:

"(1) of inspecting such factory, warehouse, establishment, or vehicle to determine if any of the provisions of this Act are being violated, and to determine whether the record keeping provisions of Chapter 425, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 726d, Vernon's Texas Penal Code), of the Texas Controlled Substances Act or of the regulations of the director of the Department of Public Safety are being violated; and

"(2) to secure samples or specimens of any food, drug, device, or cosmetic after paying or offering to pay for such samples. It shall be the duty of the Commissioner of Health to make or cause to be made examinations of samples secured under the provisions of this section to determine whether or not any provision of this Act is being violated. Whenever samples are secured by the Commissioner of Health or his agent, an equal amount of the product sampled, may upon request, be given to the person who has custody of the product sampled; payments shall be made only for that portion of the sample actually taken by the said Commissioner or agent."

(l) Subdivision 6, Section 23, Chapter 373, Acts of the 57th Legislature, Regular Session, 1961 (Article 4476—5, Vernon's Texas Civil Statutes), as amended, is amended ⁹⁷ to read as follows:

"6. The Commissioner of Health may, after notice and hearing, refuse to register or cancel, revoke or suspend the registration of any wholesale drug company for any of the following reasons:

"(a) If the registrant has been convicted of a felony or misdemeanor which involves moral turpitude, or if the registrant be an association, partnership or corporation, that the managing officer has been convicted of a felony or misdemeanor which involves moral turpitude;

"(b) That the registrant has been convicted in either a State or Federal court for the illegal use, sale, or transportation of intoxicating liq-

⁹⁵. Vernon's Ann.Civ.St. art. 4476—5, § 15A. ⁹⁷. Vernon's Ann.Civ.St. art. 4476—5, § 23, subd. 6.

⁹⁶. Vernon's Ann.Civ.St. art. 4476—5, § 21.

uors, narcotic drugs, barbiturates, amphetamines, desoxyephedrine, their compounds or derivatives, or any other dangerous or habit-forming drugs, or if the registrant be an associate, partnership, or corporation, that the managing officer has been convicted in either State or Federal court of the illegal use, sale, or transportation of intoxicating liquors, narcotic drugs, barbiturates, amphetamines, desoxyephedrine, their compounds or derivatives, or any other dangerous or habit-forming drugs;

“(c) That based on evidence presented during a hearing it is determined that the applicant or registrant has sold counterfeit drugs and medicines, or has violated any of the provisions of Chapter 425, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 726d, Vernon’s Texas Penal Code), of the Texas Controlled Substances Act, or of the regulations of the director of the Department of Public Safety, including any significant discrepancy in the records required to be maintained by State law.”

Severability

Sec. 6.04. If any provision of this Act or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

Emergency

Sec. 6.05. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on May 7, 1973: Yeas 97, Nays 38 and 1 present not voting; that the House refused to concur in Senate amendments to H. B. No. 447 on May 21, 1973, and requested the appointment of a Conference Committee to consider the differences between the two Houses; and that the House adopted the Conference Committee Report on H. B. No. 447 on May 28, 1973: Yeas 84, Nays 58; passed by the Senate, with amendments, on May 17, 1973: Yeas 22, Nays 9; at the request of the House, the Senate appointed a Conference Committee to consider the differences between the two Houses; and that the Senate adopted the Conference Committee Report on H. B. No. 447, on May 28, 1973: Yeas 24, Nays 7.

Approved June 14, 1973.

Effective Aug. 27, 1973, 90 days after date of adjournment.