CONTROLLED SUBSTANCES—UNIFORM ACT; CONFORMING CHANGES

CHAPTER 103

HOUSE BILL 2157

An Act relating to public health and safety; providing for the regulation of certain controlled substances; providing for the adoption of the uniform controlled substances act with certain changes; making certain conforming changes; providing for rules and regulations; proscribing certain acts; prescribing classification of violations; prescribing penalties and forfeitures; providing for drug dependent persons; prescribing applicability of certain definitions; amending sections 15-443.01, 15-1023, 32-1901, 32-1927, 32-1965 and 32-1968, Arizona Revised Statutes; repealing section 32-1970, Arizona Revised Statutes; amending sections 32-1971, 32-1992, 32-1993, 32-1996 and 36-142, Arizona Revised Statutes; amending title 36, Arizona Revised Statutes, by adding chapter 27; repealing title 36, chapter 9, articles 1, 2 and 3, Arizona Revised Statutes; amending title 36, chapter 9, Arizona Revised Statutes, by adding a new article 1, and changing the chapter heading of title 36, chapter 9, Arizona Revised Statutes.

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

Section 1. Section 15-443.01, Arizona Revised Statutes, is amended to read:

§ 15-443.01. Administration or giving of patent or proprietary medications by employees; limitations; requirements

A. Subject to the limitations and requirements set forth in subsection B, the district governing board shall establish policies and procedures governing the administration or the giving of a patent or proprietary medication as defined in § 32-1901, paragraph ~~29~~ 30, to students by employees of the board.

B. For purposes of this section, "administration" or "giving" of a patent or proprietary medication shall mean the giving of a single dose of medication or the giving of a treatment package in its original container. In the case of a minor student, such administration or giving shall only occur upon the written or oral request or authorization of a parent or legal guardian.

Sec. 2. Section 15-1023, Arizona Revised Statutes, is amended to read:

§ 15-1023. Instruction on alcohol, tobacco, narcotic drugs and controlled substances

A. Instruction on the nature and harmful effects of alcohol, tobacco, narcotic drugs and ~~dangerous drugs~~ controlled substances, including the plant cannabis and all substances and parts of the plant, on the human system, and instruction on the prevention of alcohol, tobacco, narcotic and ~~dangerous drug~~ controlled substance abuse, including the plant cannabis and all substances and parts of the plant, shall be included in the courses of study in common and high schools. The instruction may be combined with health, science, citizenship or similar studies.

B. The state board of education may, at the request of a school district, provide the following for use in carrying out the provisions of this section:

1. A suggested course of study.
2. A system of in-service training for teachers.
3. A list of available films and other teaching aids.

C. For the purpose of this section, the definitions of "cannabis", ~~and "narcotic drugs" as defined in § 36-1001 and "dangerous drug" as defined in § 32-1901, paragraph 9,~~ "controlled substance" and "narcotic drug" defined in § 36-2501 are applicable.

Sec. 3. Section 32-1901, Arizona Revised Statutes, is amended to read:

§ 32-1901. Definitions

In this chapter, unless the context otherwise requires:

1. "Advertisement" means all representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of drugs, devices, poisons, or hazardous substances.

2. "Antiseptic", when a drug is represented as such in the labeling thereof, shall be considered to be a representation that it is a germicide, except in the case of a drug purporting to be, or represented as, an antiseptic for inhibitory use as a wet dressing, ointment, dusting powder, or such other use as involves prolonged contact with the body.

3. "Authorized officers of the law" means legally empowered peace officers, inspectors of the state board of pharmacy and agents of the division of narcotics enforcement and criminal intelligence of the department of public safety.

4. "Board" or "board of pharmacy" means the Arizona state board of pharmacy.

5. "Chief inspector" means the inspector of the board who may be designated by the executive secretary to perform, at times, certain duties of the executive secretary in addition to his duties as an inspector.

6. "Color additive" means a material which:

(a) Is a dye, pigment, or other substance made by a process of synthesis or similar artifice, or extracted, isolated, or otherwise derived, with or without intermediate or final change of identity from a vegetable, animal, mineral, or other source, or,

(b) When added or applied to a drug, or to the human body or any part thereof, is capable of imparting color thereto, except that such term does not include any material which has been or may be exempted under the federal act. "Color" includes black, white, and intermediate grays. Nothing in this paragraph shall be construed to apply to any pesticide chemical, soil or plant nutrient, or other agricultural chemical solely because of its effect in aiding, retarding, or otherwise affecting, directly or indirectly the growth or other natural physiological process of produce of the soil and thereby affecting its color, whether before or after harvest.

7. "Controlled substance" means a drug, substance or immediate precursor identified, defined or listed in title 36, chapter 27, article 2.

~~7.~~ 8. "Corrosive" means any substance which in contact with living tissue will cause destruction of tissue by chemical action.

~~8.~~ 9. "Counterfeit drug" means a drug 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, ~~processor, packer, or~~ distributor or dispenser other than the person ~~or persons~~ who in fact manufactured, ~~processed, packed, or~~ distributed or dispensed such drug. ~~and which thereby falsely purports, or is represented to be the product of, or to have been packed or distributed by such other manufacturer, processor, packer, or distributor.~~

~~9. "Dangerous drug" means the controlled dangerous substances listed or to be listed by whatever official name, common or usual name, chemical~~

~~name, or trade name designated. The term "dangerous drug" includes, but is not limited to, the following:~~

~~(a) 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 such salts, isomers, and salts of isomers is possible within the specific chemical designation:~~

~~(i) Bufotenine.~~
~~(ii) Diethyltryptamine.~~
~~(iii) Dimethyltryptamine.~~
~~(iv) 4 Methyl 2, 5 dimethoxyamphetamine.~~
~~(v) Ibogaine.~~
~~(vi) Lysergic acid diethylamide.~~
~~(vii) Mescaline.~~
~~(viii) Psilocybin.~~
~~(ix) Psilocyn.~~
~~(x) Tetrahydrocannabinol.~~

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

~~(i) Amphetamine, its salts, optical isomers, and salts of its optical isomers.~~
~~(ii) Phenmetrazine and its salts.~~
~~(iii) Any substance which contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers.~~
~~(iv) Methylphenidate.~~

~~(c) 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:~~

~~(i) Any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid, unless specifically excepted.~~
~~(ii) Chloral betaine.~~
~~(iii) Chloral hydrate.~~
~~(iv) Chlorhexadol.~~
~~(v) Ethchlorvynol.~~
~~(vi) Ethinamate.~~
~~(vii) Glutethimide.~~
~~(viii) Lysergic acid.~~
~~(ix) Lysergic acid amide.~~
~~(x) Methyprylon.~~
~~(xi) Paraldehyde.~~
~~(xii) Petrichloral.~~
~~(xiii) Phencyclidine.~~
~~(xiv) Sulfondiethylmethane.~~
~~(xv) Sulfonethylmethane.~~
~~(xvi) Sulfonmethane.~~

~~(d) In determining that a substance comes within subdivision (a) of this paragraph, the board shall find a high potential for abuse, and no accepted medical use in the United States, and a lack of accepted safety for use under medical supervision.~~

~~(e) In determining that a substance comes within subdivision (b) or (c) of this paragraph, the board shall find a potential for abuse less than the substances that comes within subdivision (a) of this paragraph and well documented and approved medical use in the United States, and that abuse may lead to moderate or low physical dependence or high psychological dependence.~~

~~(f) The board may by regulation except any compound, mixture, or preparation containing any stimulant or depressant substance that comes within subdivisions (b) or (c) from the application of all or any part of~~

~~this paragraph 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, provided that such admixtures shall be included therein in such combinations, quantity, proportion, or concentration as to vitiate the potential for abuse of the substances which do have a stimulant or depressant effect on the central nervous system.~~

10. "Device", except as used in paragraph ~~8~~ 9 of this section and § 32–1965, paragraph 4, and § 32–1967, subsection A, paragraph 15 and subsection C, means instruments, apparatus and contrivances, including their components, parts and accessories, including all such items under the federal act, intended:

(a) For use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals, or

(b) To affect the structure or any function of the body of man or other animals.

11. "Direct supervision of a pharmacist", when relating to the sale of certain items, means the pharmacist shall be present and shall make the determination as to the legitimacy or advisability of a proposed purchase of such items.

12. "Director" means the director of the division of narcotics enforcement and criminal investigation of the department of public safety.

13. "Drug" means:

(a) Articles recognized, or for which standards or specifications are prescribed, in the official compendium.

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

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

(d) Articles intended for use as a component of any articles specified in subdivisions (a), (b) or (c), but does not include devices or their components, parts or accessories.

14. "Drug enforcement administration" means the drug enforcement administration of the United States department of justice or its successor agency.

~~14.~~ 15. "Economic poison" means any substance which, alone, in chemical combination, or in formulation with one or more other substances is a pesticide within the meaning of the laws of this state or the federal insecticide, fungicide and rodenticide act, and which is used in the production, storage, or transportation of raw agricultural commodities.

~~15.~~ 16. "Established name", with respect to a drug or ingredient thereof, means:

(a) The applicable official name, or

(b) If there is no such name and such drug or such ingredient is an article recognized in an official compendium, then the official title thereof in such compendium, or

(c) If neither subdivision (a) nor (b) of this paragraph applies, then the common or usual name of such drug.

~~16.~~ 17. "Federal act" means the federal laws and regulations pertaining to drugs, devices, poisons, and hazardous substances official at the time any drug, device, poison, or hazardous substance to which the provisions thereof relate.

~~17.~~ 18. "General dealer" means a person who is desirous of selling at retail certain convenience remedies not requiring a prescription order as outlined in § 32–1930, subsection A, paragraph 2, and who is duly licensed by the board.

~~18.~~ 19. "Highly toxic" means any substance which falls within any of the following categories:

(a) Produces death within fourteen days in half or more than half of a group of ten or more laboratory white rats each weighing between two hundred and three hundred grams, at a single dose of fifty milligrams or less per kilogram of body weight, when orally administered.

(b) Produces death within fourteen days in half or more than half of a group of ten or more laboratory white rats each weighing between two hundred and three hundred grams, when inhaled continuously for a period of one hour or less at an atmospheric concentration of two hundred parts per million by volume or less of gas or vapor or two milligrams per liter by volume or less of mist or dust, provided such concentration is likely to be encountered by man when the substance is used in any reasonable foreseeable manner.

(c) Produces death within fourteen days in half or more than half of a group of ten or more rabbits tested in a dosage of two hundred milligrams or less per kilogram of body weight, when administered by continuous contact with the bare skin for twenty-four hours or less.

If the board finds that available data on human experience with any substance indicate results different from those obtained on animals in the above-named dosages or concentrations, the human data shall take precedence.

~~19.~~ 20. "Hospital" means any institution for the care and treatment of the sick and injured approved and licensed as a hospital by the state department of health.

~~20.~~ 21. "Immediate container" does not include package liners.

~~21.~~ 22. "Irritant" means any substance, other than a corrosive, which on immediate, prolonged or repeated contact with normal living tissue will induce a local inflammatory reaction.

~~22.~~ 23. "Label" means a display of written, printed or graphic matter upon the immediate container of any article, and, unless easily legible through the outside wrapper or container, such written, printed or graphic matter shall also appear on the outside wrapper or container of the retail package of such article.

~~23.~~ 24. "Labeling" means all labels and other written, printed or graphic matter:

(a) Upon any article or any of its containers or wrappers, or

(b) Accompanying such article.

~~24.~~ 25. "Manufacture or manufacturer" means and includes every person who prepares, derives, produces, compounds, processes, packages or repackages, or labels any drug in a place devoted to manufacturing such drug, but does not include a pharmacy.

~~25.~~ 26. "Medical practitioner" means a physician (M.D. or D.O.), dentist, podiatrist, veterinarian, or other person licensed and authorized by law to use and prescribe drugs and devices for the treatment of sick and injured human beings or animals or for the diagnosis or prevention of sickness in human beings or animals in this state.

~~26.~~ 27. "New drug" means:

(a) Any drug the composition of which is such that the drug is not generally recognized among experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs as safe and effective for use under the conditions prescribed, recommended, or suggested in the labeling thereof, or

(b) Any drug the composition of which is such that the drug, as a result of investigations to determine its safety and effectiveness for use under such conditions, has become so recognized, but which has not, other than in such investigations, been used to a material extent or for a material time under such conditions.

~~27.~~ 28. "Official compendium" means the latest revision of the pharmacopeia of the United States, the latest revision of the national formulary, or any current supplement to either of them.

~~28.~~ 29. "Other jurisdiction", as used in this chapter, refers to one of the other forty-nine states, the District of Columbia, the Commonwealth of Puerto Rico or a territory of the United States of America.

~~29.~~ 30. "Patent or proprietary medicines" means and includes completely compounded packaged drugs, and nonbulk chemicals, not requiring a prescription order, which are sold, offered, promoted, and advertised by the manufacturer or primary distributor to the general public, the labeling and quality of which conforms to the requirements of this chapter or the federal act. This definition shall not include:

(a) Drugs which are primarily advertised and promoted professionally to medical practitioners and pharmacists by manufacturers or primary distributors thereof.

(b) A ~~narcotic drug or a drug containing a narcotic~~ controlled substance.

(c) A drug the label of which is required to bear substantially either the statement, "caution: federal law prohibits dispensing without prescription" or "warning: may be habit-forming".

(d) A drug intended for human use by hypodermic injection.

~~30.~~ 31. "Person" includes an individual, partnership, corporation and association, together with the duly authorized agents thereof.

~~31.~~ 32. "Pharmacist" or "licentiate in pharmacy" means an individual currently licensed by the board to practice the profession of pharmacy in this state.

~~32.~~ 33. "Pharmacy", "drug store" or "apothecary" means premise, laboratory, hospital, area, or other place:

(a) Where drugs, devices, poisons, or hazardous substances are offered for sale at retail.

(b) In which the profession of pharmacy is practiced and where prescription orders are compounded and dispensed.

(c) Which has displayed upon it or in it the words, "pharmacist," "pharmaceutical chemist," "apothecary," "druggist," "pharmacy," "drug store," "drugs," "drug sundries," or any of these words or combinations of these words, or words of similar import either in English or any other language, or which is advertised by any sign containing any of these words.

(d) Where the characteristic symbols of pharmacy or the characteristic prescription sign "Rx" may be exhibited. "Premises," as noted in subdivisions (a), (b), (c) and (d) of this paragraph, only refers to the portion of any building or structure leased, used, or controlled by the licensee in the conduct of the business licensed by the board at the address for which the license was issued providing the premises shall be enclosed and secured when pharmacist is not in attendance.

~~33.~~ 34. "Pharmacy intern" means a person who has all of the qualifications and experience as set forth in § 32–1923.

~~34.~~ 35. "Poison" or "hazardous substance" includes, but is not limited to, the following when intended and suitable for household use or use by children:

(a) Any substance which according to standard works on medicine, pharmacology, pharmacognosy, or toxicology, when applied to, introduced into or developed within the body in relatively small quantities by its inherent action uniformly produces serious bodily injury, disease or death; or

(b) A toxic substance; or

(c) A highly toxic substance; or

(d) A corrosive substance; or

(e) An irritant; or

(f) A strong sensitizer; or

(g) A mixture of the foregoing substances, if such substance or mixture of substances may cause substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion by children; or

(h) A substance designated by the board to be a poison or hazardous substance, but shall not apply to radioactive substance, economic poisons subject to the federal or state insecticide, fungicide and rodenticide act, or the state pesticide act, nor to foods, drugs, and cosmetics subject to state laws, or the federal act, nor to substances intended for use as fuels when stored in containers and used in the heating, cooking, or refrigeration system of a house, but such term shall apply to any substance or article which is not itself an economic poison within the meaning of the federal or state insecticide, fungicide and rodenticide act, or the state pesticide act but which is a poison or hazardous substance within the meaning of subdivisions (a) through (h) of this paragraph by reason of bearing or containing such an economic poison or hazardous substance.

~~35.~~ 36. "Preceptor" means a pharmacist who is serving as the practical instructor of a pharmacy intern and complies with § 32-1923.

~~36.~~ 37. "Prescription" means, according to the context, either a prescription order or a prescription medication.

~~37.~~ 38. "Prescription medication" means any drug, including label and container according to context, which is dispensed pursuant to a prescription order.

~~38.~~ 39. "Prescription-only device" includes, but is not limited to:

(a) Any device that is limited by the federal act to use under the supervision of a medical practitioner.

(b) Any device required by the federal act to bear on its label essentially the legend, "caution: federal law prohibits dispensing without prescription".

~~39.~~ 40. "Prescription-only drug" does not include a ~~dangerous drug or a narcotic~~ controlled substance but does include:

(a) Any drug which because of its toxicity or other potentiality for harmful effect, or the method of its use, or the collateral measures necessary to its use, is not generally recognized among experts, qualified by scientific training and experience to evaluate its safety and efficacy, as safe for use except by or under the supervision of a medical practitioner.

(b) Any drug that is limited by an approved new drug application under the federal act or § 32-1962 to use under the supervision of a medical practitioner.

(c) Every potentially harmful drug, the labeling of which does not bear or contain full and adequate directions for use by the consumer.

(d) Any drug, other than ~~dangerous drugs or narcotics~~ a controlled substance, required by the federal act to bear on its label the legend "caution: federal law prohibits dispensing without prescription".

~~40.~~ 41. "Prescription order" means:

(a) An order to a pharmacist for drugs or devices issued and signed by a duly licensed medical practitioner in the authorized course of his professional practice, or

(b) An order transmitted to a pharmacist through word of mouth, telephone or other means of communication directed by such medical practitioner. Prescription orders received by word of mouth, telephone, telegraph or other means of communication shall be recorded in writing by the pharmacist and the record so made by the pharmacist shall constitute the original prescription order to be dispensed by the pharmacist. Nothing in this paragraph shall be construed as altering or affecting in any way laws of this state or any federal act requiring a written prescription order.

~~41.~~ 42. "Quality" means the degree of excellence demanded in the manufacture of drugs, or devices using the official compendium or the federal act as standards.

~~42.~~ 43. "Radioactive substance" means a substance which emits ionizing radiation.

~~43.~~ 44. "Responsible pharmacist" means the pharmacist who is responsible to the board for a licensed establishment's compliance with the laws and regulations of this state and of the federal government, pertaining to the practice of pharmacy, manufacturing of drugs and the distribution of drugs and devices. Nothing in this definition relieves other pharmacists or persons from their responsibility to comply with state and federal laws and regulations.

~~44.~~ 45. "Secretary" or "executive secretary" means the executive secretary of the Arizona state board of pharmacy.

~~45.~~ 46. "Strong sensitizer" means a substance which will cause, on normal living tissue through an allergic or photodynamic process, a hypersensitivity which becomes evident on reapplication of the same substance and which is designated as such by the board.

~~46.~~ 47. "Symbol" means any of the characteristic symbols which have identified pharmacy for centuries, and include, but are not limited to, "show globes", "mortar and pestle", and the sign "Rx".

~~47.~~ 48. "Toxic substance" means a substance, other than a radioactive substance, which has the capacity to produce injury or illness to man through ingestion, inhalation or absorption through any body surface.

~~48.~~ 49. "Unprofessional conduct" means that conduct of a pharmacist or pharmacy intern which degrades or injures the profession of pharmacy as provided in § 32–1927, paragraph 14.

~~49.~~ 50. "Wholesale" or "wholesaler" means and includes every person, except a pharmacy, or manufacturer who has been duly licensed by the board to engage in distributing or supplying drugs for resale to pharmacies or other lawful outlets permitted to sell drugs, from a place devoted to wholesaling such items.

Sec. 4. Section 32–1927, Arizona Revised Statutes, is amended to read:

§ 32–1927. Grounds for revocation or suspension of license or other disciplinary action

The certificate of registration or license of any pharmacist or pharmacy intern may be revoked, suspended or placed on probation by the board when:

1. The registration is proved to the board to have been obtained by fraudulent means.

2. The registrant has been convicted of a felony.

3. The registrant is found by the board to be guilty of gross immorality.

4. The registrant is addicted to the use of liquor or drugs to such a degree as to render such registrant unfit in the opinion of the board to practice the profession of pharmacy.

5. The registrant is found by psychiatric examination to be mentally unfit to practice the profession of pharmacy.

6. The registrant is found by the board to be guilty of dispensing a different drug or brand of drug in place of the drug or brand of drug ordered or prescribed without the express permission in each case of the orderer, or in the case of a prescription order, the medical practitioner. The conduct prohibited by this paragraph shall not apply to substitutions authorized pursuant to § 32-1963.01.

7. The registrant is found to be physically incapacitated to such a degree as to render such registrant unfit, in the opinion of the board, to practice the profession of pharmacy.

8. The registrant is found to be professionally incompetent to such a degree as to render such registrant unfit, in the opinion of the board, to practice the profession of pharmacy.

9. The certificate of registration or license was issued through error.

10. The registrant is found by the board to be guilty of violating any Arizona or federal law, rule or regulation relating to the manufacture and distribution of drugs and devices or the practice of pharmacy, to such a degree as to render such registrant unfit, in the opinion of the board, to practice the profession of pharmacy.

11. The registrant is found by the board to have had his license to practice pharmacy denied, suspended or revoked in another jurisdiction and was not reinstated.

12. The registrant has committed an offense in another jurisdiction which if committed in this state would be grounds for suspension or revocation.

13. The registrant is found by the board, or is convicted in a federal or state court, of having violated federal or state laws or regulations pertaining to ~~dangerous drugs or narcotics~~ controlled substances.

14. The registrant is found by the board to be guilty of unprofessional conduct. For the purpose of this paragraph, the following acts constitute unprofessional conduct:

(a) Paying rebates or entering into an agreement for payment of rebates to a medical practitioner or any other person in the health field.

(b) Providing or causing to be provided to a medical practitioner prescription order blanks or forms bearing the pharmacist's or pharmacy's name, address or other means of identification.

(c) Claiming professional superiority in compounding or dispensing prescription orders.

(d) Fraudulently claiming to have performed a professional service.

(e) Fraudulently charging a fee for a professional service.

Sec. 5. Section 32-1965, Arizona Revised Statutes, is amended to read:

§ 32-1965. Prohibited acts

The following acts or the causing of any thereof, in addition to any others so specified in this chapter, are prohibited:

1. The manufacture, sale, holding or offering for sale of any drug, device, poison, or hazardous substance that is adulterated or misbranded.

2. The adulteration or misbranding of any drug, device, poison, or hazardous substance.

3. The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of, or the doing of any other act with respect to a drug, device, poison, or hazardous substance, if such act is done

while such article is held for sale and results in such article being adulterated or misbranded.

4. The manufacture, sale, holding or offering for sale of a counterfeit drug or the forging, counterfeiting, simulating, or falsely representing, or without proper authority using any mark, stamp, tag, label, or other identification device authorized or required by regulations promulgated under the provisions of this chapter, or of the federal act.

5. The using, on the labeling of any drug or device, or in any advertisement, relating to such drug or device, of any representation or suggestion that such drug or device complies with the provisions of this chapter.

6. In the case of a prescription-only drug, ~~dangerous drug or narcotic~~ or a controlled substance that requires a prescription order by state or federal law, the failure of the manufacturer, packer, or distributor thereof to transmit, to any medical practitioner who makes written request for information about such drug, true and correct copies of all printed matter included in any package in which that drug is distributed or other printed matter approved under the federal act.

Sec. 6. Section 32-1968, Arizona Revised Statutes, is amended to read:

§ 32-1968. Dispensing prescription-only drug; restrictions on renewing prescription order; exemption of prescription medication from labeling requirements of nonprescription drugs; additional label information

A. A "prescription-only drug" ~~or "dangerous drug"~~ shall be dispensed only:

1. By a medical practitioner in conformance with § 32-1921, or

2. Upon a written prescription order, or

3. Upon an oral prescription order which is reduced promptly to writing and filed by the pharmacist, or

4. By renewing any such written or oral prescription order, if such renewing is authorized by the prescriber either in the original prescription order or by oral order, which is reduced promptly to writing and filed by the pharmacist.

B. No prescription order shall be renewed:

1. If it is ordered by the prescriber not to be renewed.

2. If it is more than one year since it was originally ordered.

~~C. No prescription order for any dangerous drug shall be dispensed or renewed more than six months after the date on which such prescription order was issued and no such prescription order which is authorized to be renewed may be renewed more than five times, except that nothing in this chapter shall be construed as preventing a medical practitioner from issuing a new prescription order for the same drug.~~

~~D.~~ **C.** Any drug dispensed in accordance with subsection A of this section shall be exempt from the requirements of § 32-1967, except paragraphs 1, 10 and 11 and the packaging requirements of paragraphs 7 and 8, if the drug container bears a label containing the name and address of the dispenser, serial number, date of dispensing, name of the prescriber, name of the patient, or if an animal the name of the owner of the animal and the species of the animal, directions for use and cautionary statements, if any, contained in the order. This exemption shall not apply to any drug dispensed in the course of the conduct of a business of dispensing drugs pursuant to diagnosis by mail, or to a drug dispensed in violation of subsection A of this section.

~~E.~~ **D.** The board may also by regulation require additional information on the label of prescription medication which they believe to be necessary for the best interest of the public's health and welfare.

~~F.~~ E. A prescription-only drug ~~or a dangerous drug~~ shall be deemed to be misbranded if, at any time prior to dispensing, its label fails to bear the statement "Caution: Federal law prohibits dispensing without prescription." A drug to which subsection A of this section does not apply shall be deemed to be misbranded if, at any time prior to dispensing, its label bears the caution statement quoted in this subsection.

Sec. 7. Repeal

Section 32-1970, Arizona Revised Statutes, is repealed.

Sec. 8. Section 32-1971, Arizona Revised Statutes, is amended to read:

§ 32-1971. Fraudulently obtaining or attempting to obtain a prescription-only drug; exceptions

A. No person shall obtain or attempt to obtain any prescription-only drug ~~or dangerous drug~~ or procure or attempt to procure the administration of a prescription-only drug ~~or dangerous drug~~, by:

1. Fraud, deceit, misrepresentation or subterfuge.
2. Forgery or alteration of a prescription order or of any written order.
3. The concealment of a material fact.
4. Use of a false name or the giving of a false address.
5. Falsely assuming the title of, or representing himself to be, a manufacturer, wholesaler, pharmacist, medical practitioner, or other authorized person.
6. Making or uttering any false or forged label to a package containing any prescription-only drug. ~~, or dangerous drug.~~

B. The provisions of this section shall not apply to officers and employees of the United States or of this state, or of a political subdivision of this state acting in the course of their employment, who obtain such drugs for investigative, research or analytical purposes, but not for human use, or to drug manufacturers, or laboratories, their agents or employees acting in the course of their employment, who purchase such drugs for investigative, research or analytical purposes in connection with the sale or dispensing of such drugs but not for human use.

Sec. 9. Section 32-1992, Arizona Revised Statutes, is amended to read:

§ 32-1992. Provisions of narcotic laws not invalidiated by this chapter; medicated feed not included

A. Nothing in this chapter shall be construed to relieve any person from any requirement prescribed by or under authority of law with respect to ~~drugs~~ controlled substances now included or which may hereafter be included within the ~~classifications of narcotic drugs or marihuana~~ controlled substances listed in schedules provided for in title 36, chapter 27 and as defined in the applicable federal and state laws relating to ~~narcotic drugs~~ controlled substances and marihuana.

B. Nothing in this chapter shall be interpreted to include medicated feed for veterinary use.

Sec. 10. Section 32-1993, Arizona Revised Statutes, is amended to read:

§ 32-1993. Authorization to seize certain drugs, counterfeit drugs and equipment; disposition of seized equipment

A. The following may be seized by the division of narcotics enforcement and criminal intelligence within the department of public safety and its designated agents and all officers exercising police powers when they have reasonable grounds to believe it is:

~~1. A dangerous drug with respect to which a prohibited act within the meaning of § 32-1970 has occurred.~~

~~2.~~ 1. A drug that is a counterfeit.

~~3.~~ 2. A container of such ~~dangerous drug or of a~~ counterfeit drug.

~~4.~~ 3. Equipment used in manufacturing, compounding, or processing a ~~dangerous~~ drug with respect to which drug a prohibited act within the meaning of § 32-1965 has occurred.

~~5.~~ 4. Any punch, die, plate, stone, labeling, container or other thing used or designed for use in making a counterfeit drug.

~~6. Any conveyance being used to transport, carry or hold a dangerous drug with respect to which a prohibited act within the meaning of § 32-1970 has occurred.~~

~~7.~~ 5. Any conveyance being used to transport, carry or hold a counterfeit drug in violation of § 32-1965, paragraph 4.

B. When any article, equipment, conveyance, or other thing is seized pursuant to this chapter the peace officer shall, within five days thereafter, cause to be filed in the proper court in whose jurisdiction the merchandise is seized or detained a complaint for condemnation of such merchandise as provided in this chapter.

C. Any person, firm, or corporation having an interest in the alleged article, equipment, or other thing proceeded against, or any person, firm or corporation against whom a civil or criminal liability would exist if the merchandise is in violation of ~~§ 32-1970 or paragraph 4 of~~ § 32-1965, paragraph 4 may, within twenty days following the seizure, appear and file answer or demurrer to the complaint which shall allege the interest or liability of the party filing it.

D. Any article, equipment, conveyance or other thing condemned under this section shall, after entry of the decree, be disposed of by destruction or sale as the court may direct and the proceeds thereof, if sold, less the legal costs and other charges shall be paid to the state treasurer.

Sec. 11. Section 32-1996, Arizona Revised Statutes, is amended to read:

§ 32-1996. Violations; classification

A. A person violating any provision of this chapter without intent to defraud or mislead, not involving paragraph 4 of § 32-1965 ~~or subsection A, B or C of § 32-1970~~, is guilty of a class 2 misdemeanor. If the violation is made with the intent to defraud or mislead, a person is guilty of a class 5 felony.

~~B. A person who violates subsection C of § 32-1970, if such possession of a dangerous drug is without the intent of selling, is guilty of a class 4 felony. For the first offense a person may be found guilty of a class 1 misdemeanor.~~

~~C.~~ **B.** A person who violates paragraph 4 of § 32-1965, ~~or subsection A, B or C of § 32-1970, if such possession of a dangerous drug is with the intent of selling,~~ is guilty of a class 2 felony.

~~D.~~ **C.** Any person who secures registration of himself or of another person by knowingly making a false representation, or who fraudulently represents himself to be licensed as a pharmacist or pharmacy intern within the meaning of this chapter is guilty of a class 2 misdemeanor.

~~E.~~ **D.** A court convicting any person for violation of this chapter shall, immediately after the date of conviction, send a complete copy of the record of the conviction, including the person's name and offense committed, to the executive secretary of the board.

Sec. 12. Section 36-142, Arizona Revised Statutes, is amended to read:

§ 36-142. Imposing additional percentage of certain fines as part of fine; disbursement of proceeds

A. In addition to every fine imposed against a person for driving or being in actual physical control of a vehicle while he is under the influence of in-

toxicating liquor or drugs, in violation of § 28-692, or for violation of any provision of title 36, chapter 9, ~~articles~~ article 1, 2 or chapter 3 27, an additional fifteen per cent of the amount of the fine imposed shall be imposed by the court as a penalty assessment.

B. On the last day of each month, the court shall transmit the assessments collected pursuant to subsection A and an itemized statement of the fines and assessments collected pursuant to subsection A to the county treasurer, except that police courts shall transmit the assessments and the itemized statement of the fines and assessments to the city treasurer.

C. Notwithstanding any other provision of law to the contrary, the fifteen per cent penalty assessment and the itemized statement as required in subsection B, shall be transmitted by the appropriate authorities specified in subsection B to the state treasurer on or before the tenth day of each month, for deposit in the same account in which is deposited funds appropriated to the department of health services for use in administering the provisions of § 36-141. All monies deposited in such account under the provisions of this section are appropriated as a continuing appropriation to the department of health services, and shall be used by the department in administering the provisions of § 36-141.

Sec. 13. Title 36, Arizona Revised Statutes, is amended by adding chapter 27, to read:

CHAPTER 27.—UNIFORM CONTROLLED SUBSTANCES ACT

ARTICLE 1. GENERAL PROVISIONS

§ 36-2501. Definitions

A. In this chapter, unless the context otherwise requires:

1. "Board" means the Arizona state board of pharmacy.

2. "Cannabis" includes the following substances under whatever names they may be designated:

(a) Marijuana.

(b) All parts of any plant of the genus cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of such plant, and every compound, manufacture, salt, derivative, mixture or preparation of such plant, its seeds, or resin, but shall not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination.

(c) The resin extracted from such tops.

(d) Every compound, manufacture, salt, derivative, mixture or preparation of such resin, tetrahydrocannabinol (T.H.C.), or of such tops from which the resin has not been extracted.

3. "Controlled substance" means a drug, substance or immediate precursor in schedules I through V of article 2 of this chapter.

4. "Department" means the department of public safety.

5. "Drug dependent person" means a person who is using a controlled substance and who is in a state of psychic or physical dependence, or both, arising from the use of that substance on a continuous basis. Drug dependence is characterized by behavioral and other responses which include a strong com-

pulsion to take the substance on a continuing basis in order to experience its psychic effects or to avoid the discomfort caused by its absence.

6. "Drug enforcement administration" means the drug enforcement administration of the department of justice of the United States or its successor agency.

7. "Immediate precursor" means a substance which the board has found to be and by rule designates as being the principal compound commonly used or produced primarily for use and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail or limit manufacture.

8. "Narcotic drug" means any of the following whether produced directly or indirectly by extraction from substances of vegetable origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis:

(a) Opium and opiate and any salt, compound, derivation or preparation of opium or opiate.

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

(c) Opium poppy and poppy straw.

(d) Coca leaves and any salt, compound, derivation or preparation of coca leaves including cocaine and its optical isomers and any salt, compound, isomer, derivation 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.

(e) Cannabis.

9. "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 the dextrorotatory isomer of 3-methoxy-N-methylmorphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms.

10. "Opium poppy" means the plant of the species papaver somniferum l., except its seeds.

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

12. "Production" means the manufacture, planting, cultivating, growing or harvesting of a controlled substance.

13. "Registrant" means a person registered under the provisions of the Federal Controlled Substances Act (P.L. 91-513; 84 Stat. 1242; 21 U.S.C. sec. 801 et seq.).

14. "Schedule I controlled substances" means the controlled substances identified, defined or listed in § 36-2512.

15. "Schedule II controlled substances" means the controlled substances identified, defined or listed in § 36-2513.

16. "Schedule III controlled substances" means the controlled substances identified, defined or listed in § 36-2514.

17. "Schedule IV controlled substances" means the controlled substances identified, defined or listed in § 36-2515.

18. "Schedule V controlled substances" means the controlled substances identified, defined or listed in § 36-2516.

19. "State", when applied to a part of the United States, means any state, district, commonwealth, territory, insular possession thereof and any area subject to the legal authority of the United States of America.

B. Words or phrases in this chapter, if not defined in subsection A of this section, have the definitions given them in title 32, chapter 18, article 1, unless the context otherwise requires.

ARTICLE 2. SCHEDULES

§ 36-2511. Nomenclature

The controlled substances listed or to be listed in the schedules in §§ 36-2512 through 36-2516 are included by whatever official, common, usual, chemical or trade name designated.

§ 36-2512. Substances in schedule I

The following controlled substances are, unless specifically excepted, included in schedule I:

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

(a) Acetylmethadol.
(b) Allylprodine.
(c) Alphacetylmethadol.
(d) Alphameprodine.
(e) Alphamethadol.
(f) Benzethidine.
(g) Betacetylmethadol.
(h) Betameprodine.
(i) Betamethadol.
(j) Betaprodine.
(k) Clonitazene.
(l) Dextromoramide.
(m) Dextrorphan.
(n) Diampromide.
(o) Diethylthiambutene.
(p) Dimenoxadol.
(q) Dimepheptanol.
(r) Dimethylthiambutene.
(s) Dioxaphetyl butyrate.
(t) Dipipanone.
(u) Ethylmethylthiambutene.
(v) Etonitazene.
(w) Etoxeridine.
(x) Furethidine.

(y) Hydroxypethidine.
(z) Ketobemidone.
(aa) Levomoramide.
(bb) Levophenacylmorphan.
(cc) Morpheridine.
(dd) Noracymethadol.
(ee) Norlevorphanol.
(ff) Normethadone.
(gg) Norpipanone.
(hh) Phenadoxone.
(ii) Phenampromide.
(jj) Phenomorphan.
(kk) Phenoperidine.
(ll) Piritramide.
(mm) Proheptazine.
(nn) Properidine.
(oo) Propiram.
(pp) Racemoramide.
(qq) Trimeperidine.

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

(a) Acetorphine.
(b) Acetyldihydrocodeine.
(c) Benzylmorphine.
(d) Codeine methylbromide.
(e) Codeine-n-oxide.
(f) Cyprenorphine.
(g) Desomorphine.
(h) Dihydromorphine.
(i) Drotebanol.
(j) Etorphine, except hydrochloride salt.
(k) Heroin.
(l) Hydromorphinol.
(m) Methyldesorphine.
(n) Methyldihydromorphine.
(o) Morphine methylbromide.
(p) Morphine methylsulfonate.
(q) Morphine-n-oxide.
(r) Myrophine.
(s) Nicocodeine.
(t) Nicomorphine.
(u) Normorphine.
(v) Pholcodeine.
(w) Thebacon.

3. Any material, compound, mixture or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers and

salts of isomers, unless specifically excepted or unless listed in another schedule, whenever the existence of the salts, isomers and salts of isomers is possible within the specific chemical designation (for purposes of this paragraph only the term "isomer" includes the optical, position and geometric isomers):

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

§ 36-2513. Substances in schedule II

The following controlled substances are, unless specifically excepted, included in schedule II:

1. Any of the following substances, whether produced directly or indirectly by extraction from substances of vegetable origin or independently by means of chemical synthesis or by combination of extraction and chemical synthesis:

(a) Opium and opiate and any salt, compound, derivative or preparation of opium or opiate, excluding naloxone hydrochloride, but including the following:

(i) Codeine.
(ii) Ethylmorphine.
(iii) Etorphine hydrochloride.
(iv) Granulated opium.
(v) Hydrocodone.
(vi) Hydromorphone.
(vii) Metopon.
(viii) Morphine.
(ix) Opium extracts.
(x) Opium fluid extracts.
(xi) Oxycodone.
(xii) Oxymorphone.
(xiii) Powdered opium.
(xiv) Raw opium.
(xv) Thebaine.
(xvi) Tincture of opium.

(b) Any salt, compound, derivative or preparation thereof which is chemically equivalent or identical with any of the substances referred to in subdivision (a) of this paragraph, except that these substances shall not include the isoquinoline alkaloids of opium.

(c) Opium poppy and poppy straw.

(d) Coca leaves and any salt, compound, derivative or preparation of coca leaves, including cocaine and its optical isomers and any salt, compound, derivative or preparation thereof which is chemically equivalent or identical with any of these substances, except that the substances shall not include decocainized coca leaves or extraction of coca leaves, which extractions do not contain cocaine or ecgonine.

2. Any of the following opiates, including their isomers, esters, ethers, salts and salts of isomers, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation:

(a) Alphaprodine.

(b) Anileridine.

(c) Bezitramide.

(d) Dihydrocodeine.

(e) Diphenoxylate.

(f) Fentanyl.

(g) Isomethadone.

(h) Levomethorphan.

(i) Levorphanol.

(j) Metazocine.

(k) Methadone.

(*l*) Methadone—intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane.

(m) Moramide—intermediate, 2-methyl-3-morpholino-1, 1-diphenyl propane-carboxylic acid.

(n) Pethidine.

(o) Pethidine—intermediate—A, 4-cyano-1-methyl-4-phenylpiperidine.

(p) Pethidine—intermediate—B, ethyl-4-phenylpiperidine-4-carboxylate.

(q) Pethidine—intermediate—C, 1-methyl-4-phenylpiperidine-4-carboxylic acid.

(r) Phenazocine.

(s) Piminodine.

(t) Racemethorphan.

(u) Racemorphan.

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

(a) Amphetamine, its salts, optical isomers and salts of its optical isomers.

(b) Phenmetrazine and its salts.

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

(d) Methylphenidate.

4. 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, including its salts,

isomers and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

(a) Amobarbital.

(b) Methaqualone.

(c) Pentobarbital.

(d) Secobarbital.

§ 36-2514. Substances in schedule III

The following controlled substances are, unless specifically excepted, included in schedule III:

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, including its salts, isomers (whether optical, position or geometric) and salts of such isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

(a) Those compounds, mixtures or preparations in dosage unit form excepted by the board in compliance with § 36-2513, paragraph 5, and any other drug of the quantitative composition of such an excepted drug or which is the same except that it contains a lesser quantity of controlled substances.

(b) Benzphetamine.

(c) Chlorphentermine.

(d) Clotermine.

(e) Mazindol.

(f) Phendimetrazine.

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

(a) Any compound, mixture or preparation containing amobarbital, secobarbital, pentobarbital or any salt thereof and one or more other active medicinal ingredients which are not listed in any schedule.

(b) Any suppository dosage form containing amobarbital, secobarbital, pentobarbital or any salt of any of these drugs and approved by the federal act for marketing only as a suppository.

(c) Those compounds, mixtures or preparations in dosage unit form excepted by the board in compliance with § 36-2513, paragraph 5, and any other drug of the quantitative composition of such an excepted drug or which is the same except that it contains a lesser quantity of controlled substances.

(d) Any substance which contains any quantity of a derivative of barbituric acid or any salt thereof.

(e) Chlorhexadol.

(f) Glutethimide.

(g) Lysergic acid.

(h) Lysergic acid amide.

(i) Methyprylon.

(j) Phencyclidine.

(k) Sulfondiethylmethane.

(l) Sulfonethylmethane.

(m) Sulfonmethane.

3. Nalorphine (a narcotic drug).

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

(a) Not more than one point eight grams of codeine, or any of its salts, per one hundred milliliters or not more than ninety milligrams per dosage unit with an equal or greater quantity of an isoquinoline alkaloid of opium.

(b) Not more than one point eight grams of codeine, or any of its salts, per one hundred milliliters or not more than ninety milligrams per dosage unit with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(c) Not more than three hundred milligrams of dihydrocodeinone, or any of its salts, per one hundred milliliters or not more than fifteen milligrams per dosage unit with a fourfold or greater quantity of an isoquinoline alkaloid of opium.

(d) Not more than three hundred milligrams of dihydrocodeinone, or any of its salts, per one hundred milliliters or not more than fifteen milligrams per dosage unit with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(e) Not more than one point eight grams of dihydrocodeine, or any of its salts, per one hundred milliliters or not more than ninety milligrams per dosage unit with one or more active, nonnarcotic ingredients in recognized therapautic amounts.

(f) Not more than three hundred milligrams of ethylmorphine, or any of its salts, per one hundred milliliters or not more than fifteen milligrams per dosage unit with one or more ingredients in recognized therapeutic amounts.

(g) Not more than five hundred milligrams of opium per one hundred milliliters or per one hundred grams or not more than twenty-five milligrams per dosage unit with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(h) Not more than fifty milligrams of morphine, or any of its salts, per one hundred milliliters or per one hundred grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

§ 36-2515. Substances in schedule IV

The following controlled substances are, unless specifically excepted, included in schedule IV:

1. Any material, compound, mixture or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position or geometric) and salts of such isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

(a) Diethylpropion.

(b) Phentermine.

2. Any material, compound, mixture or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system, including its salts, isomers and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

(a) Barbital.
(b) Chloral betaine.
(c) Chloral hydrate.
(d) Chlordiazepoxide.
(e) Chlonazepam.
(f) Chlorazepate.
(g) Diazepam.
(h) Ethchlorvynol.
(i) Ethinamate.
(j) Mebutamate.
(k) Meprobamate.
(l) Methohexital.
(m) Methylphenobarbital.
(n) Oxazepam.
(o) Paraldehyde.
(p) Petrichloral.
(q) Phenobarbital.

3. Fenfluramine.

§ 36-2516. Substances in schedule V

The following controlled substances are included in schedule V:

1. Any compound, mixture or preparation containing limited quantities of any of the following narcotic drugs, which also contains one or more non-narcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

(a) Not more than two hundred milligrams of codeine, or any of its salts, per one hundred milliliters or per one hundred grams.

(b) Not more than one hundred milligrams of dihydrocodeine, or any of its salts, per one hundred milliliters or per one hundred grams.

(c) Not more than one hundred milligrams of ethylmorphine, or any of its salts, per one hundred milliliters or per one hundred grams.

(d) Not more than two point five milligrams of diphenoxylate and not less than twenty-five micrograms of atropine sulfate per dosage unit.

(e) Not more than one hundred milligrams of opium per one hundred milliliters or per one hundred grams.

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

§ 36-2521. Rules

The board may promulgate necessary and reasonable rules relating to the registration and control of the manufacture, distribution and dispensing of controlled substances within this state.

§ 36-2522. Registration requirements

A. Every person who manufactures, distributes, dispenses or uses for scientific purposes any controlled substance within this state or who proposes to engage in the manufacture, distribution, dispensing of or using for scientific purposes any controlled substance within this state shall first obtain and possess a current license or permit as a medical practitioner as defined in § 32-1901 or as a pharmacy, pharmacist, pharmacy intern, manufacturer or wholesaler pursuant to title 32, chapter 18. Such person shall be considered registered under this chapter.

B. Persons registered under this chapter to manufacture, distribute, dispense or use for scientific purposes controlled substances may possess, manufacture, distribute, dispense or use for scientific purposes those substances to the extent authorized by their license or permit in conformity with the other provisions of this chapter and title 32, chapter 18.

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

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

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

3. An ultimate user or a person in possession of any controlled substance pursuant to a lawful order of a medical practitioner or in lawful possession of a schedule V substance.

4. An officer or employee of the department of public safety or a peace officer as defined in § 1-215 in the lawful performance of his or her duty.

D. The board may waive by rule the requirement for registration of certain manufacturers, distributors or dispensers if it finds it consistent with the public health and safety or the requirements of the United States drug enforcement administration.

E. The board may inspect the establishment of a registrant or applicant for registration in accordance with the board's regulation.

§ 36-2523. Records of registrants

Persons registered to manufacture, distribute or dispense controlled substances under this chapter shall keep records and maintain inventories in conformance with the record keeping and inventory requirements of federal law and title 32, chapter 18, and with any additional rules the board issues.

§ 36-2524. Order forms

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.

§ 36-2525. Prescription orders; labels

A. In addition to requirements in § 32-1968, pertaining to prescription orders, the prescription order for a controlled substance shall bear the federal registration number of the prescriber. Prescription orders for controlled sub-

stances shall be filed and records kept in conformity with the requirements of § 36–2523.

B. Except in emergency situations in conformity with subsection C of this section or when dispensed directly by a medical practitioner to an ultimate user, a controlled substance in schedule II shall not be dispensed without the written prescription order in ink or indelible pencil or typewritten and manually signed by the medical practitioner. No prescription order for a schedule II substance may be refilled.

C. In emergency situations, emergency quantities of schedule II substances may be dispensed upon an oral prescription order of a medical practitioner. Such an emergency prescription order shall be immediately reduced to writing by the pharmacist and shall contain all the information required for schedule II drugs except for the manual signing of the order by the medical practitioner. Within seventy-two hours after authorizing an emergency oral prescription order, the prescribing medical practitioner shall cause a written prescription order manually signed for the emergency quantity prescribed to be delivered to the dispensing pharmacist. In addition to conforming to other requirements for prescription orders for schedule II substances, it shall have written on its face "authorization for emergency dispensing" and the date of the oral order. If the prescribing medical practitioner fails to deliver such an emergency prescription order within seventy-two hours in conformance with board rules, the pharmacist shall notify the board. Failure of the pharmacist to notify the board shall void the authority conferred by this subsection to dispense without a written, manually-signed prescription order of a medical practitioner.

D. Except when dispensed directly by a medical practitioner to an ultimate user, a controlled substance included in schedule III or IV which requires a prescription order as determined under state or federal laws shall not be dispensed without a written or oral prescription order of a medical practitioner. The prescription order shall not be filled or refilled more than six months after the date on which such prescription order was issued. No such prescription order authorized to be refilled may be refilled more than five times. Additional quantities may only be authorized by the prescribing medical practitioner through issuance of a new prescription order which shall be treated by the pharmacist as a new and separate prescription order.

E. Except when dispensed directly by a medical practitioner to an ultimate user, a controlled substance included in schedule V which requires a prescription order as determined under state or federal laws shall not be dispensed without a written or oral prescription order of a medical practitioner. The prescription order may be refilled as authorized by the prescribing medical practitioner but shall not be filled or refilled more than one year after the date of issuance.

F. A controlled substance listed in schedule III, IV or V which does not require a prescription order as determined under state or federal laws may be dispensed at retail by a pharmacist, or a pharmacy intern under his supervision, without a prescription order to a purchaser at least eighteen years of age provided that all of the following are true:

1. It is for a legitimate medical purpose.

2. Not more than one hundred twenty milliliters of any such controlled substance containing opium, nor more than sixty milliliters of any other such controlled substance, nor more than twenty-four dosage units of any such controlled substance containing opium, nor more than twelve dosage units of any other controlled substance may be dispensed at retail to the same purchaser in any given forty-eight hour period.

3. The pharmacist, or pharmacy intern, requires every purchaser of a controlled substance under this subsection not known to him to furnish suitable identification, including proof of age where appropriate.

4. A bound record book for dispensing of controlled substances under this subsection is maintained by the pharmacist, which book shall contain the name and address of the purchaser, the name and quantity of the controlled substance purchased, the date of each purchase and the name or initials of the pharmacist or pharmacy intern who dispensed the substance to the purchaser. Such book shall be maintained in conformity with record keeping requirements of § 36-2523.

G. In absence of a law requiring a prescription for a schedule five controlled substance, the board may by rules require, or remove from the requirement of, a prescription order for a schedule V controlled substance.

H. The label on a container of a controlled substance directly dispensed by a medical practitioner, not for the immediate administration to the ultimate user, such as a bed patient in a hospital, shall bear the name and address of the dispensing medical practitioner, the serial number, date of dispensing, name of prescriber, name of patient or, if an animal, the name of the owner of the animal and the species of the animal, directions for use and cautionary statements, if any, contained in the prescription order or required by law. If the controlled substance is included in schedule II, III or IV the label shall bear a transfer warning to the effect: "Caution: Federal Law prohibits the transfer of this drug to any person other than the patient for whom it was prescribed".

ARTICLE 4. OFFENSES AND PENALTIES

§ 36-2531. Prohibited acts; penalties

A. Except as authorized by this chapter, it is unlawful for any person to knowingly manufacture, possess with intent to manufacture, possess equipment or paraphernalia together with the necessary chemicals for the manufacture of, possess for sale, transport, import into this state, sell, furnish, administer or give away, or offer to manufacture, transport, import into this state, sell, furnish, administer, give away or transport a controlled substance.

B. A person who violates subsection A of this section with respect to:

1. A controlled substance classified in schedule I or II, which is a narcotic drug other than marijuana is guilty of a class 2 felony.

(a) Such person shall not be eligible for probation, pardon, parole, commutation or suspension of sentence or release on any other basis until such person has served not less than two-thirds of the sentence imposed by the court but in any event not less than five years, notwithstanding the provisions of §§ 41-1604.06 and 41-1604.07.

(b) Any person convicted of a violation of subsection A of this section involving an amount of one or more substances other than marijuana, having a value of not more than two hundred fifty dollars and who was not previously convicted of any felony is eligible for supervised probation.

(c) Any person convicted of a violation of subsection A of this section who is placed on probation in accordance with the terms of this paragraph shall upon sentencing, be committed to the department of corrections for not less than thirty nor more than sixty days.

2. Any other controlled substance classified in schedule I, II or III other than marijuana is guilty of a class 2 felony.

3. A substance classified in schedule IV is guilty of a class 3 felony. If the substance is administered to or comes into the possession of a minor, such person is guilty of a class 2 felony.

4. A substance classified in schedule V is guilty of a class 5 felony. If the substance is administered to or comes into the possession of a minor, such person is guilty of a class 4 felony.

C. It is unlawful for any person intentionally or knowingly to possess a controlled substance other than marijuana unless the substance was obtained directly from or pursuant to a valid prescription order or order of a medical practitioner while acting in the course of professional practice or except as otherwise authorized by this chapter.

D. A person who violates subsection C of this section with respect to a controlled substance classified in schedule I, II, III or IV is guilty of a class 4 felony.

E. A person who violates subsection C of this section with respect to a controlled substance classified in schedule V is guilty of a class 6 felony.

F. Every person of the age of eighteen years or over who in any voluntary manner solicits, induces, encourages or intimidates any minor with the intent that such minor shall knowingly violate, with respect to a narcotic drug other than marijuana, any provision of this chapter, or who hires, employs or uses a minor to knowingly and unlawfully transport, carry, sell, give away, prepare for sale or peddle any narcotic drug other than marijuana is guilty of a class 2 felony and shall not be eligible for probation, pardon, parole, commutation or suspension of sentence or release on any other basis until such person has served not less than two-thirds of the sentence imposed by the court but in any event not less than five years, notwithstanding the provisions of §§ 41-1604.06 and 41-1604.07.

G. Every person under the age of eighteen years who in any voluntary manner solicits, induces, encourages or intimidates any minor with the intent that the minor shall knowingly violate any provision of this chapter, or who hires, employs or uses a minor to knowingly and unlawfully transport, carry, sell, give away, prepare for sale or peddle any narcotic drug other than marijuana is guilty of a class 2 felony.

H. It is unlawful for any person:

1. Who is subject to article 3 of this chapter to intentionally or knowingly distribute or dispense a controlled substance in violation of § 36-2525.

2. Who is a registrant, to intentionally or knowingly manufacture a controlled substance not authorized by such person's registration or to intentionally or knowingly distribute or dispense a controlled substance not authorized by such person's registration to another registrant or other authorized person.

3. To intentionally or knowingly refuse or fail to make, keep or furnish any record, notification, order form, statement, invoice or information required under this chapter.

4. To intentionally or knowingly refuse an entry into any premises for any inspection authorized by this chapter.

5. To intentionally or knowingly keep or maintain any store, shop, warehouse, dwelling, building, vehicle, boat, aircraft or other structure or place which is resorted to by persons using controlled substances in violation of this chapter for the purpose of using these substances or which is used for keeping or selling them in violation of this chapter.

I. Notwithstanding any other provision of law to the contrary, any person who violates any provision of subsection H of this section is guilty of a class 4 felony.

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

1. To distribute as a registrant a controlled substance classified in schedule I or II, except pursuant to an order form as required by § 36-2524.

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 order, acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge for personal use or for the use of another.

4. To furnish false or fraudulent material information in, or omit any material information from, any application, report or other document required to be kept or filed under this chapter or any record required to be kept by this chapter.

K. A person who violates any provision of subsection J of this section is guilty of a class 4 felony.

§ 36-2532. Peyote; religious practice; defense

Notwithstanding any provision of law to the contrary, in a prosecution for an offense in which the criminal liability of the defendant is based upon possession of peyote in violation of § 36-2531, subsection C, it is a defense that the peyote is being used or is intended for use:

1. In connection with the bona fide practice of a religious belief.

2. As an integral part of a religious exercise.

3. In a manner not dangerous to public health, safety or morals.

§ 36-2533. Effect of acquittal or conviction under federal controlled substance act

A person shall not be prosecuted for a violation of any provision of this article if such person has been acquitted or convicted under the Federal Controlled Substances Act (P.L. 91-513; 84 Stat. 1247, 21 U.S.C. § 801 et seq.)

of the same act or omission which, it is alleged, constitutes a violation of this article.

§ 36-2534. Test to determine drug dependency; applicability to users on probation; cost of administration; rules and regulations

A. Whenever a superior court grants probation to a person who has been convicted of violating § 36-2531, and is a drug dependent person, the court shall require as a condition to probation that the probationer submit to periodic tests by a city, town or county health officer, if a physician, or by a physician appointed by the city, town or county health officer, to determine by means of appropriate tests as may be approved by the department of health services whether the probationer is a drug dependent person. In any case provided for in this section, the city, town or county health officer, if a physician, or the physician appointed by the city, town or county health officer shall report the results of the tests to the court which heard the matter.

B. In any case in which probation is granted to a person who is or has been a drug dependent person, it shall be a condition of the probation that the probationer undergo periodic tests as provided in subsection A of this section and that the county, city or town health officer, if a physician, or the physician appointed by the city, town or county health officer shall report the results of the tests to the court which heard the matter.

C. The cost of administering the test provided for by this section shall be a charge against the county.

D. The department of health services shall issue regulations prescribing the method or technique in administering the tests provided for by this section and shall provide the form of the report to be filed with the court.

§ 36-2535. Treatment for drug dependent persons

A. Notwithstanding any other provision of this article, a superior court or the board of pardons and paroles may grant probation or parole to a drug dependent person convicted of violation of § 36-2531, subsection C. The court or board of pardons and paroles shall require, as a condition of the probation or parole, that the probationer or parolee submit to treatment by a physician appointed by the court or board of pardons and paroles or by a drug treatment agency approved by the court, board, department of corrections or department of health services.

B. The physician or agency who treats such person shall report to the court or board of pardons and paroles the result of such treatment and such recommendations considered proper and advisable. The court or board of pardons and paroles may discharge such person from probation or parole or revoke probation or parole as the physician's report may justify.

C. The cost of such treatment shall be a county charge or a state charge when the board of pardons and paroles enforces this section.

D. In lieu of the provisions of subsections A through C of this section, the judge of a superior court may suspend sentence of any drug dependent person convicted for a first offense in violation of § 36-2531, subsection C. As a condition of suspension the judge shall require the drug dependent person, with his written consent, to submit to treatment for such dependency at any agency certified by the department of health services as having facilities to

treat such dependency. Where treatment is ordered, the cost of such treatment shall be as specified in subsection C of this section. The provisions of this subsection shall not be applicable to a person convicted of a second or subsequent felony offense under the terms of this article.

E. Nothing in this section shall prevent a physician from treating a drug dependent person, provided that such treatment, if utilizing a controlled substance, shall not exceed twenty-one days and is not for the purpose of maintaining the person's drug dependency.

F. Nothing in this section shall prohibit a drug dependent person from seeking maintenance therapy in excess of twenty-one days for drug dependency provided such treatment is under an approved state or federal program.

§ 36–2536. Notice of conviction

A court convicting any person for violation of this chapter shall, immediately after the date of conviction, send a complete copy of the record of this conviction, including the person's name and offense committed, to the executive secretary of the board.

ARTICLE 5. ENFORCEMENT AND ADMINISTRATION

§ 36–2541. Powers of enforcement personnel

An officer or employee of the department of public safety or other peace officer, as defined in § 1–215, may:

1. Execute and serve search warrants, arrest warrants, administrative inspection warrants, subpoenas and summonses issued under the authority of this state.

2. Make arrests without warrant for any offense under this chapter committed in his presence or if he has probable cause to believe that the person to be arrested has committed or is committing a violation of this chapter which may constitute a felony.

3. Make seizures of property pursuant to this chapter.

§ 36–2542. Administrative inspections and warrants

A. Issuance and execution of administrative inspection warrants for purposes of this chapter shall be as follows:

1. A judge of a state court of record or any justice of the peace or magistrate within his jurisdiction and upon proper oath or affirmation showing probable cause may issue warrants for the purpose of conducting administrative inspections authorized by this chapter or rules adopted pursuant to this chapter and seizures of property appropriate to the inspections. For purposes of the issuance of administrative inspection warrants, probable cause exists upon showing a valid public interest in the effective enforcement of this chapter, or rules and regulations adopted pursuant to this chapter, sufficient to justify administrative inspection of the area, premises, building or conveyance in the circumstances specified in the application for the warrant.

2. A warrant shall issue only upon an affidavit of a designated officer or employee having knowledge of the facts alleged, sworn to before the judge or magistrate and establishing the grounds for issuing the warrant. If the judge or magistrate is satisfied that grounds for the application exist or that

there is probable cause to believe they exist, such judge or magistrate shall issue a warrant identifying the area, premises, building or conveyance to be inspected, the purpose of the inspection and the type of property to be inspected, if any. The warrant shall:

(a) State the grounds for its issuance and the name of each person whose affidavit has been taken in support thereof.

(b) Be directed to a person authorized by § 36-2541 to execute it.

(c) Command the person to whom it is directed to inspect the area, premises, building or conveyance identified for the purpose specified and, if appropriate, direct the seizure of the property specified.

(d) Identify the item or types of property to be seized, if any.

(e) Direct that it be served during normal business hours and designate the judge or magistrate to whom it shall be returned.

3. A warrant issued pursuant to this section shall be executed and returned within ten days of its date unless, upon a showing of a need for additional time, the court orders otherwise. If property is seized pursuant to a warrant, a copy shall be given to the person from whom or from whose premises the property is taken, together with a receipt for the property taken. The return of the warrant shall be made promptly, accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the person executing the warrant and of the person from whose possession or premises the property was taken, if present, or in the presence of at least one credible person other than the person executing the warrant. A copy of the inventory shall be delivered to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

4. The judge or magistrate who has issued a warrant shall attach to such warrant a copy of the return and all papers returnable in connection therewith and file them with the clerk of the court in which the inspection was made.

B. The board, its members, officers or employees and officers and employees of the department or other peace officers may make administrative inspections of controlled premises in accordance with the following provisions:

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

(a) Places where persons registered or exempted from registration requirements under this chapter are required to keep records.

(b) Places including factories, warehouses, establishments and conveyances in which persons registered or exempted from registration requirements under this chapter are permitted to hold, manufacture, compound, process, sell, deliver or otherwise dispose of any controlled substance.

2. When authorized by an administrative inspection warrant issued pursuant to subsection A of this section such officer or employee upon presenting the warrant and appropriate credentials to the owner, operator or agent in charge may enter controlled premises for the purpose of conducting an administrative inspection.

3. When authorized by an administrative inspection warrant, such officer or employee may:

(a) Inspect and copy records required by this chapter to be kept.

(b) Inspect, within reasonable limits and in a reasonable manner, controlled premises and all pertinent equipment, finished and unfinished material, containers and labeling found in such premises and, except as provided in paragraph 5 of this subsection, all other things, including records, files, papers, processes, controls and facilities bearing on any violation of this chapter.

(c) Inventory any stock of any controlled substance and obtain samples of such substance.

4. This section does not prevent the inspection without a warrant of books and records pursuant to an administrative subpoena nor does it prevent entries and administrative inspections, including seizures of property, without a warrant:

(a) If the owner, operator or agent in charge of the controlled premises consents.

(b) In situations presenting imminent danger to health or safety.

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

(d) In any other exceptional or emergency circumstance where time or opportunity to apply for a warrant is lacking.

(e) In all other situations in which a warrant is not constitutionally required.

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

§ 36-2543. Cooperation of agencies

A. The board and department shall cooperate with federal and other state agencies in discharging responsibilities concerning traffic in controlled substances and in suppressing the abuse of controlled substances.

B. Results, information and evidence received from the United States drug enforcement administration relating to the regulatory functions of this chapter including results of inspections conducted by it may be relied and acted upon by the board or department in the exercise of its regulatory functions under this chapter.

§ 36-2544. Forfeitures

A. Pursuant to the terms of this chapter, the following are subject to forfeiture:

1. All controlled substances which have been manufactured, distributed, dispensed, acquired or possessed in violation of this chapter or chapter 9, article 1 of this title.

2. All raw materials, products and equipment of any kind which are used or intended for use in manufacturing, compounding, processing, delivering, importing or exporting any controlled substance in violation of this chapter or chapter 9, article 1 of this title.

3. All property which is used or intended for use as a container for property described in paragraphs 1 and 2 of this subsection.

4. All conveyances, including aircraft, vehicles or vessels which are used or intended for use to transport or in any manner to facilitate the transportation for the purpose of sale or receipt of property described in paragraph 1 or 2 of this subsection or in which such property is unlawfully kept, deposited or concealed or in which such property is unlawfully possessed by an occupant, except:

(a) No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter or chapter 9, article 1 of this title.

(b) No conveyance is subject to forfeiture under this section by reason of any act or omission established by the owner to have been committed or omitted without such owner's knowledge or consent.

(c) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if such party neither had knowledge of nor consented to the act or omission.

5. All books, records and research products and materials including formulas, microfilm, tapes and data which are used or intended for use in violation of this chapter or chapter 9, article 1 of this title.

B. Property subject to forfeiture under this section may be seized by the department or any peace officer upon process issued by any court having jurisdiction over the property. Seizure without process may be made if:

1. The seizure is incident to any arrest and any lawful search under a search warrant or an inspection under an administrative inspection warrant.

2. The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding based upon this chapter or chapter 9, article 1 of this title.

3. The department or any peace officer has probable cause to believe that the property is directly or indirectly dangerous to health or safety.

4. The department or any peace officer has probable cause to believe that the property was used or is intended to be used in violation of this chapter or chapter 9, article 1 of this title.

C. In the event of seizure pursuant to subsection B of this section proceedings under subsection D of this section shall be instituted promptly.

D. Property taken or detained under this section shall not be subject to replevin but is deemed to be in the custody of the department or any peace officer subject only to the orders and decrees of the court. When property is seized under this section, the department or local police agency may:

1. Place the property under seal.

2. Remove the property to a place designated by the agency detaining the property.

3. Require the department or appropriate local police agency to take custody of the property and remove it to an appropriate location for disposition in accordance with law.

E. Subject to the requirements of subsection G of this section, when a forfeiture is authorized by this section, it may be ordered by a court upon:

1. Motion by the state for forfeiture following the conviction of a person for an offense based on such person's unlawful possession, use or other act with respect to the thing that is forfeited.

2. An action in rem for forfeiture brought by the state upon a complaint alleging that a person, known or unknown, unlawfully possessed, used or otherwise acted with respect to the thing that is forfeited.

F. Upon a showing of good cause, the court may, in an action in rem under subsection E, paragraph 2 of this section, issue writs of attachment, sequestration, injunction and other appropriate writs in aid of the action.

G. Upon a motion for forfeiture specified in subsection E, paragraph 1 of this section or the institution of an action in rem specified in subsection E, paragraph 2 of this section, the court shall order the thing which may be subject to forfeiture to be held for a period of sixty days, during which period adequate notice in the manner and form prescribed by the court, whether by personal service, publication or otherwise, shall be given to all persons who might have an interest in the pending forfeiture.

H. During the sixty-day period following the court's order under subsection G of this section, any person claiming a lawful interest in the thing with respect to which forfeiture is pending may make a claim in the court for the recovery of the thing. The court shall order the thing restored or transferred to the claimant, if any, who proves, by a preponderance of the evidence, all of the following:

1. The claimant is the lawful owner or is otherwise entitled by law to ownership of the thing, due to enforcement of a civil proceeding.

2. The claimant's possession, use or other act is or was lawful.

3. The unlawful possession, use or other act upon which forfeiture is sought was without the consent of the claimant.

I. If no claimant makes the proof required by subsection H of this section, the court shall declare the thing forfeited to the state. No forfeiture shall be ordered in an action in rem pursuant to subsection B, paragraph 2 of this section for forfeiture unless the state satisfies the court that the forfeiture is authorized in the instant case. If the thing declared forfeited is money, the court shall order it deposited to the credit of the general fund of the state, otherwise the court shall order the thing:

1. Destroyed by a law enforcement agency of the jurisdiction in which the conviction or forfeiture was obtained or forwarded to the United States drug enforcement administration for disposition.

2. Sold at public auction with expenses of keeping and selling such property and the amount of all valid liens established by intervention paid out of the proceeds of the sale with the balance paid into the general fund of the city, town or county where seized.

3. Returned to the owner or lienholder upon payment of expenses incurred by its lawful seizure if the property is worthless, encumbered with liens in excess of its value or otherwise a burdensome asset.

4. Retained for official state or political subdivision law enforcement use with expenses for keeping and transferring such property to be paid by the state or appropriate political subdivision.

J. Controlled substances listed in schedule I that are possessed, transferred, sold or offered for sale in violation of this chapter or chapter 9, article 1 of this title are contraband and shall be seized and summarily forfeited to the state. Controlled substances listed in schedule I which are seized or come into the possession of the state, the owners of which are unknown, are contraband and shall be summarily forfeited to the state.

K. Species of plants from which controlled substances in schedules I and II may be derived which have been planted or cultivated in violation of this chapter or chapter 9, article 1 of this title or of which the owners or cultivators are unknown or which are wild growths may be seized and summarily forfeited to the state.

L. The failure, upon demand by the department, peace officer or board or its authorized agent, of the person in occupancy or in control of land or premises upon which species of plants from which controlled substances in schedules I and II may be derived are growing or being stored to produce an appropriate registration, as required by § 36-2522, or proof that such person is the holder of such plants constitutes authority for the seizure and forfeiture of the plants.

§ 36-2545. Liability

No liability is imposed by this chapter upon any authorized state, county or municipal officer while acting in good faith and within the scope of his authority.

§ 36-2546. Review

All final civil determinations, findings and conclusions of the board or the department under this chapter are final and conclusive unless appealed pursuant to title 12, chapter 7, article 6.

§ 36-2547. Education and research

A. The board and department shall cooperate with the department of health services in carrying out educational programs designed to prevent and deter misuse and abuse of controlled substances. In connection with these programs they 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.

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 board, department and department of health services shall encourage research on misuse and abuse of controlled substances. In connection with the research, and in furtherance of the enforcement of this chapter and chapter 9, article 1 of this title, they 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 chapter and chapter 9, article 1 of this title.

(b) Determine patterns of misuse and abuse of controlled substances and the social effects of such misuse and abuse.

(c) Improve methods for preventing, predicting, understanding and dealing with the misuse and abuse of controlled substances.

3. Enter into contracts with public agencies, institutions of higher education and private organizations or individuals for the purpose of conducting research, demonstrations or special projects which bear directly on misuse and abuse of controlled substances.

C. The board may authorize the possession and distribution of controlled substances by persons engaged in research. Persons who obtain this authorization are exempt from state prosecution for possession and distribution of controlled substances to the extent of the authorization.

ARTICLE 6. MISCELLANEOUS

§ 36-2551. Pending proceedings

A. Prosecution for any violation of law occurring prior to the effective date of this chapter is not affected or abated by this chapter.

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

C. All administrative proceedings pending under prior laws which are superseded by this chapter shall be continued and brought to a final determination in accord with the laws and rules in effect prior to the effective date of this chapter.

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

§ 36-2552. Continuation of rules

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

§ 36-2553. Applicability of certain definitions

Notwithstanding any provision of law to the contrary, any reference in the Arizona Revised Statutes to:

1. "Narcotic" or "narcotic drug" means narcotic drug as defined by § 36-2501.

2. "Dangerous drug" means all controlled substances as defined by § 36-2501 which are not narcotic drugs.

Sec. 14. Repeal

Title 36, chapter 9, articles 1, 2 and 3, Arizona Revised Statutes, are repealed.

Sec. 15. Title 36, chapter 9, Arizona Revised Statutes, is amended by adding a new article 1, to read:

ARTICLE 1. REGULATION OF MARIJUANA

§ 36-1001. Definition

In this article, unless the context otherwise requires "person" includes any corporation, association, copartnership or one or more individuals.

§ 36-1002. Growing, processing and possessing marijuana; classification

Every person who knowingly grows, plants, cultivates, harvests, dries or processes any marijuana, or any part thereof, or who knowingly possesses any marijuana, except as otherwise provided by law, is guilty of a class 6 felony.

§ 36-1003. Possessing marijuana for sale; classification

Every person who knowingly possesses for sale any marijuana except as otherwise provided by law is guilty of a class 4 felony.

§ 36-1004. Imports and transports of marijuana; sales and traffic; classification

Every person who knowingly transports, imports into this state, sells, furnishes, administers or gives away, or offers to transport, import into this state, sell, furnish, administer, give away or transport any marijuana is guilty of a class 2 felony.

§ 36-1005. Hiring or using minor for traffic in marijuana; inducing minor to use marijuana; classification

Every person of the age of eighteen years or over who knowingly hires, employs or uses a minor in unlawfully transporting, carrying, selling, giving away, preparing for sale or peddling any marijuana, or who knowingly and unlawfully sells, furnishes, administers, gives, or offers to sell, furnish, administer or give, any marijuana to a minor, or who induces a minor to use marijuana in violation of law, is guilty of a class 2 felony.

§ 36-1006. Retention and destruction of marijuana evidence prior to trial

A. Where seizures of marijuana are made in excess of eleven pounds in connection with any violation of §§ 36-1002 through 36-1005, it is permissible for the responsible law enforcement agency to retain eleven pounds of the marijuana randomly selected from the seized marijuana for representation purposes as evidence and destroy the remainder of the seized marijuana no sooner than seven days and no longer than thirty days after the seizure of the marijuana.

B. Before any destruction is carried out under this section, the responsible law enforcement agency shall cause the material seized to be photographed with identifying case numbers or other means of identification and shall prepare a report, identifying the seized material. The responsible law enforcement agency shall notify at least forty-eight hours in advance in writing any such persons accused of a violation of §§ 36-1002 through 36-1005, or the at-

torney for the accused that such photography will take place and that such accused person or the accused person's attorney may be present at such photographing of the seized material.

C. In addition to the amount of marijuana retained for representation purposes as evidence, all photographs and records made under this section and properly identified shall be admissible in any court proceeding for any purpose for which the seized marijuana itself would be admissible.

D. Evidence retained after trial shall be disposed of pursuant to the rules of criminal procedure, rule 28.

Sec. 16. Heading change

The chapter heading of title 36, chapter 9, Arizona Revised Statutes, is changed from "Regulation Of Narcotics, Alkalies, Acids And Poisons" to "Regulation Of Marijuana, Alkalies, Acids, Poisons And Human Blood And Its Derivatives".

Sec. 17. Effective date

This act becomes effective on July 1, 1980.

Approved by the Governor, April 20, 1979.

Filed in the Office of the Secretary of State, April 23, 1979.

PUBLIC OFFICERS AND EMPLOYEES—INSURANCE; RETIREMENT SYSTEM INVESTMENTS, FINANCING

CHAPTER 104

SENATE BILL 1266

An Act relating to public officers and employees; increasing limit on expenditure for health and accident insurance; prescribing appointment, terms and qualifications of members of the investment advisory council for the state employees retirement system; prescribing duty of the investment advisory council; providing for eliminating the determination of the method of financing the state employees retirement system and plan, and amending sections 38-651, 38-743.05, 38-757 and 38-781.23, Arizona Revised Statutes.

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

Section 1. Section 38-651, Arizona Revised Statutes, is amended to read:

§ 38-651. Expenditure of funds for health and accident insurance

A. The state personnel board may expend public funds appropriated for such purpose to procure health and accident coverage for full-time officers and employees of the state, its departments and agencies. The state personnel board by rule shall adopt standards for and designate qualifying plans which may include plans of indemnity health insurance, hospital and medical service plans and closed panel medicine plans, and for eligibility of officers and employees to participate in such plans. ~~Effective January 1, 1978,~~ Any indemnity health insurance or hospital and medical service plan designated as a qualifying