ACT 10 S. B. NO. 310

A Bill for an Act Relating to the Adoption of the Uniform Controlled Substances Act.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Except as otherwise specified in this Act, the present Chapter 329, Hawaii Revised Statutes, entitled "Narcotics" is repealed and the following substituted therefor as Chapter 329:

"CHAPTER
UNIFORM CONTROLLED SUBSTANCES ACT
PART I. GENERAL PROVISIONS

Sec. -1 Definitions. As used in this chapter:

'Abuse' means the misuse of a substance or the use of a substance to an extent deemed deleterious or detrimental to the user, to others, or to society.

'Administer' means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:

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

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

'Agent' means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. It does not include a common or contract carrier, public warehouseman, or employee of the carrier or warehouseman.

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

'Controlled substance' means a drug, substance, or immediate precursor in Schedules I through V of Part II.

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

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

'Department' means the department of health, State of Hawaii.

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

'Dispenser' means a practitioner who dispenses.

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

'Distributor' means a person who distributes.

'Drug' means:

(1) substances recognized as drugs in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them;

(2) substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals;

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

(4) substances intended for use as a component of any article specified in clause (1), (2), or (3) of this subsection. It does not include devices or their components, parts, or accessories.

'Immediate precursor' means a substance which the department has found to be and by rule designates as being the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled

substance, the control of which is necessary to prevent, curtail, or limit manufacture.

'Manufacture' means the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation or compounding of a controlled substance by an individual for his own use or the preparation, compounding, packaging, or labeling of a controlled substance:

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

(2) by a practitioner, or by his authorized agent under his supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale.

'Marijuana' means all parts of the plant Cannabis sativa, whether growing or not; the seeds thereof, the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil, or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

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

(1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate.

(2) Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in clause (1), but not including the isoquinoline alkaloids of opium.

(3) Opium poppy and poppy straw.

(4) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.

'Opiate' means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under section -5 of this chapter, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms.

'Opium poppy' means the plant of the species Papaver somniferum, except its seeds.

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

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

'Practitioner' means:

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

(2) A pharmacy, hospital, or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of professional practice or research in this State.

(3) Prescribe means: to direct, designate or order the use of a formula for the preparation of a drug and medicine for a disease or illness and the manner of using them.

(4) Prescriber means: one who is authorized to issue a prescription.

(5) Prescription means: an order or formula issued by a licensed practitioner of medicine, osteopathy, podiatry, dentistry, or veterinary medicine, for the compounding or dispensing of drugs.

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

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

'Ultimate user' means a person who lawfully possesses a controlled substance for his own use or for the use of a member of his household or for administering to an animal owned by him or by a member of his household.

"§ **-2 Hawaii advisory commission on controlled substances; number; appointment.** There shall be established a state advisory commission on controlled substances hereinafter called the commission, consisting of fifteen members appointed by the governor, as provided in section 26-34. The members shall be selected on the basis of their ability to contribute to the solution of problems arising from the abuse of controlled substances, and to the extent possible, shall represent the pharmacological, medical, community and business affairs, youth action, educational, legal defense, enforcement, and corrections segments of the community. The commission shall elect its chairman. The members shall serve without compensation, but shall be paid their necessary expenses in attending meetings of the commission.

The commission shall be a part of the department of health for administrative purposes, as provided for in section 26-35.

"§ **-3 Annual report.** The commission shall prepare and present to the governor in the month of January in each year a report respecting its actions during the preceding fiscal year, together with its recommendations respecting

legislation, copies of which reports shall be furnished by the governor to the legislature.

"§ **-4 Duties of the commission.** The commission shall:

(1) Act in an advisory capacity to the department relating to the scheduling of substances provided in part II of this chapter, by recommending the addition, deletion, or rescheduling of all substances enumerated in part II of this chapter.

(2) Act in an advisory capacity to the department relating to establishment and maintenance of the classes of controlled substances, as provided in part II of this chapter.

(3) Assist the department in coordinating all action programs of community agencies (State, county, military, or private) specifically focused on the problem of drug abuse.

(4) Assist the department in carrying out educational programs designed to prevent and deter abuse of controlled substances.

(5) Encourage research on abuse of controlled substances. In connection with such research, and in furtherance of the enforcement of this chapter, it may, with the approval of the director of health: (A) establish methods to assess accurately the effects of controlled substances and to identify and characterize controlled substances with potential for abuse; (B) make studies and undertake programs of research to:

(i) develop new or improved approaches, techniques, systems, equipment, and devices to strengthen the enforcement of this chapter.

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

(iii) improve methods for preventing, predicting, understanding, and dealing with the abuse of controlled substances.

(6) Create public awareness and understanding of the problems of drug abuse; and

(7) Sit in an advisory capacity to the governor, director of health, director of social services and housing on matters relating to the commission's work.

"PART II. STANDARDS AND SCHEDULES

Section -5. Authority to Schedule Controlled Substances.

(a) Annually, upon the convening of each annual session of the State Legislature, the department shall report to the Legislature the effects of the implementation of this chapter in relation to the problems of drug abuse in Hawaii and shall recommend to the Legislature any additions, deletions or revisions in the schedules of substances, enumerated in Sections 8, 10, 12, 14 and 16 of this chapter, and any other recommendations which it deems necessary. The department shall not recommend any additions, deletions or revisions in such schedules until after notice and an opportunity for a hearing

is afforded all interested parties, except such hearing shall not be required if official notice has been received that the substance has been added, deleted or rescheduled as a controlled substance under federal law. In making a determination regarding a substance, the department shall assess the degree of danger or probable danger of the substance by considering the following:

(1) the actual or probable abuse of the substance including:
  (a) its history and current pattern of abuse;
  (b) the scope, duration and significance of abuse; and
  (c) a judgment of the degree of actual or probable detriment which may result from the abuse of the substance.

(2) the biomedical hazard of the substance including:
  (a) its pharmacology: the effects and modifiers of effects of the substance;
  (b) its toxicology: the acute and chronic toxicity, interaction with other substances whether controlled or not and liability to psychic or physiological dependence;
  (c) risk to public health and particular susceptibility of segments of the population; and
  (d) existence of therapeutic alternatives for substances which are or may be used for medical purposes.

(3) a judgment of the probable physical and social impact of widespread abuse of the substance.

(4) whether the substance is an immediate precursor of a substance already controlled under this part.

(5) the current state of scientific knowledge regarding the substance.

(b) After considering the factors enumerated above, the department shall make a recommendation to the Legislature, specifying to what schedule the substance should be added, deleted or rescheduled if it finds that the substance has a degree of danger or probable danger. The department may make such recommendation to the legislature prior to the submission of its annual report in which case the department shall publish and give notice to the public of such recommendation.

(c) The State Legislature has the sole authority to add, delete, or reschedule all substances enumerated in the schedules in Sections -8, -10, -12, -14, and -16.

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

(e) If a substance is added, deleted or rescheduled as a controlled substance under federal law and notice of the designation is given to the department, the department shall recommend that a corresponding change in Hawaii law be made by the state legislature, unless the department objects to the change. In that case, the department shall publish the reasons for objection and afford all interested parties an opportunity to be heard. Following the hearing, the department shall announce its decision and shall notify the legislature in writing of the change in federal law or regulations and of the department's recommendation.

"§ -6 **Nomenclature.** The controlled substances listed or to be listed in the schedules in Sections -8, -10, -12, -14, and -16 are included by whatever official, common, usual, chemical, or trade name designated.

"§ -7 **Schedule I Tests.** A substance shall be placed in Schedule I if it has the highest degree of danger or probable danger according to the determination made pursuant to Section -5.

"§ -8 **Schedule I.** (a) The controlled substances listed in this section are included in Schedule I.

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

(1) Acetylmethadol;
(2) Allylprodine;
(3) Alphacetylmethadol;
(4) Alphameprodine;
(5) Alphamethadol;
(6) Benzethidine;
(7) Betacetylmethadol;
(8) Betameprodine;
(9) Betamethadol;
(10) Betaprodine;
(11) Clonitazene;
(12) Dextromoramide;
(13) Dextrorphan;
(14) Diampromide;
(15) Diethylthiambutene;
(16) Dimenoxadol;
(17) Dimepheptanol;
(18) Dimethylthiambutene;
(19) Dioxaphetyl butyrate;
(20) Dipipanone;
(21) Ethylmethylthiambutene;
(22) Etonitazene;
(23) Etoxeridine;
(24) Furethidine;
(25) Hydroxypethidine;
(26) Ketobemidone;
(27) Levomoramide;
(28) Levophenacylmorphan
(29) Morpheridine;
(30) Noracymethadol;
(31) Norlevorphanol;
(32) Normethadone;
(33) Norpipanone;

(34) Phenadoxone;
(35) Phenampromide;
(36) Phenomorphan;
(37) Phenoperidine;
(38) Piritramide;
(39) Proheptazine;
(40) Properidine;
(41) Racemoramide;
(42) Trimerperidine.

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

(1) Acetorphine;
(2) Acetyldihydrocodeine;
(3) Benzylmorphine;
(4) Codeine methylbromide;
(5) Codeine-N-Oxide;
(6) Cyprenorphine;
(7) Desomorphine;
(8) Dihydromorphine;
(9) Etorphine;
(10) Heroin;
(11) Hydromorphinol;
(12) Methyldesorphine;
(13) Methyldihydromorphine;
(14) Morphine methylbromide;
(15) Morphine methylsulfonate;
(16) Morphine-N-Oxide;
(17) Myrophine;
(18) Nicocodeine;
(19) Nicomorphine;
(20) Normorphine;
(21) Phoclodine;
(22) Thebacon.

(d) Any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) 3,4-methylenedioxy amphetamine;
(2) 5-methoxy-3,4-methylenedioxy amphetamine;
(3) 3,4,5-trimethoxy amphetamine;
(4) Bufotenine;
(5) Diethyltryptamine;
(6) Dimethyltryptamine;
(7) 4-methyl-2, 5-dimethoxylamphetamine;
(8) Ibogaine;
(9) Lysergic acid diethlamide;
(10) Marijuana;

(11) Mescaline;
(12) Peyote;
(13) N-ethyl-3-piperidyl benzilate;
(14) N-methyl-3-piperidyl benzilate;
(15) Psilocybin;
(16) Psilocyn;
(17) Tetrahydrocannabinols.

Section -9. Schedule II Tests. A substance shall be placed in Schedule II if it has a high degree of danger or probable danger according to the determination made pursuant to Section 5.

"§ **-10 Schedule II.** (a) The controlled substances listed in this section are included in Schedule II.

(b) Any of the following substances, except those narcotic drugs listed in other schedules, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:

(1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate.
(2) Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph (1), but not including the isoquinoline alkaloids of opium.
(3) Opium poppy and poppy straw.
(4) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions which do not contain cocaine or ecgonine.

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

(1) Alphaprodine;
(2) Anileridine;
(3) Bezitramide;
(4) Dihydrocodeine;
(5) Diphenoxylate;
(6) Fentanyl;
(7) Isomethadone;
(8) Levomethorphan;
(9) Levorphanol;
(10) Metazocine;
(11) Methadone;
(12) Methadone—Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenylbutane;
(13) Moramide—Intermediate, 2-methyl-3-morpholino-1, 1-diphenylpropane-carboxylic acid;
(14) Pethidine;

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

(d) Any substance, except those substances which are specifically listed in other schedules, which contains the following barbituric acid derivatives or combinations of these substances: (1) secobarbital; (2) hexobarbital; (3) pentobarbital; (4) amobarbital.

(e) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a danger or probable danger associated with a stimulant effect on the central nervous system;

(1) amphetamine, its salts, optical isomers, and salts of its optical isomers;
(2) any substance which contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers.

"Sec. -11 Schedule III Tests. A substance shall be placed in Schedule III if the substance has a degree of danger or probable danger less than the substances listed in Schedules I and II according to the determination made pursuant to Section -5.

"Sec. -12 Schedule III. (a) The controlled substances listed in this section are included in Schedule III.

(b) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a degree of danger or probable danger associated with a stimulant effect on the central nervous system;

(1) Phenmetrazine and its salts;
(2) Methylphenidate.

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

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

(10) Sulfonmethane.

(d) Nalorphine.

(e) Pentazozine

(f) Apomorphine

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

(1) Not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

(2) Not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts;

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

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

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

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

(7) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(8) Not more than 50 milligrams of morphine, or any of its salts, per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(f) The department may except by rule any compound, mixture, or preparation containing any stimulant or depressant substance listed in subsections (b) and (c) from the application of all or any part of this chapter if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system.

"Sec. -13. **Schedule IV Tests.** A substance shall be placed in Schedule IV if the substance has a degree of danger or probable danger less than the

substances listed in Schedule III according to the determination made pursuant to section -5.

"Sec. -14. Schedule IV.

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

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

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

(c) The department may except by rule any compound, mixture, or preparation containing any depressant substance listed in subsection (b) from the application of all or any part of this chapter if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the degree of danger or probable danger of the substances which have a depressant effect on the central nervous system.

"Sec. -15. Schedule V Tests. A substance shall be placed in Schedule V if it has a degree of danger or probable danger less than the substances listed in Schedule IV according to the determination made pursuant to Section -5.

"Sec. -16. Schedule V. (a) The controlled substances listed in this section are included in Schedule V.

(b) Any compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, which also contains one or more 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:

(1) Not more than 200 milligrams of codeine, or any of its salts, per 100 milliliters or per 100 grams;
(2) Not more than 100 milligrams of dihydrocodeine, or any of its salts, per 100 milliliters or per 100 grams;
(3) Not more than 100 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or per 100 grams;
(4) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;

(5) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams.

"**Sec. -17. Republishing of schedules.** The department shall republish the schedules semi-annually for two years from the effective date of this chapter, and thereafter annually.

"PART III. REGULATION OF MANUFACTURE, DISTRIBUTION, PRESCRIPTION, AND DISPENSING OF CONTROLLED SUBSTANCES

"§ **-18 Rules.** The department may promulgate rules and charge reasonable fees relating to the registration and control of the manufacture, distribution, prescription, and dispensing of controlled substances within this State.

"§ **-19 Registration requirements.** (a) Every person who manufactures, distributes, prescribes, or dispenses any controlled substance within this State or who proposes to engage in the manufacture, distribution, prescription, or dispensing of any controlled substance within this State, must obtain annually a registration issued by the department in accordance with its rules.

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

(c) Except as otherwise provided, the following persons need not register and may lawfully possess controlled substances under this chapter:

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

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

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

(d) The department may waive by rule the requirement for registration or filing of certain manufacturers, distributors, prescribers, or dispensers if it is consistent with the public health and safety and if the department states the specific reasons for such waiver and the time period for which it is to be valid.

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

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

"**Sec. -20 Registration.**

(a) The department shall register an applicant to manufacture, dispense, prescribe, or distribute controlled substances included in Sections -8, -10, -12, -14, and -16 unless it determines that the issuance of that registration would be inconsistent with the public interest. In determining the public interest, the department shall consider the following factors:

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

(2) compliance with applicable State and local law;

(3) any convictions of the applicant under any Federal and State laws relating to any controlled substance;

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

(5) furnishing by the applicant of false or fraudulent material in any application filed under this chapter;

(6) suspension or revocation of the applicant's Federal registration to manufacture, distribute, prescribe or dispense controlled substances as authorized by Federal law; and

(7) any other factor relevant to and consistent with the public health and safety.

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

(c) Practitioners must be registered to dispense or to prescribe any controlled substances or to conduct research with controlled substances in schedules II through V if they are authorized to dispense or to prescribe or conduct research under the law of this State. The department need not require separate registration under this part for practitioners engaging in research with non-narcotic controlled substances in schedules II through V where the registrant is already registered under this part in another capacity. Practitioners registered under Federal law to conduct research with schedule I substances may conduct research with schedule I substances within this State upon furnishing the department evidence of that Federal registration.

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

"§ **-21 Revocation and suspension of registration.** (a) A registration under section -20 to manufacture, distribute, or dispense a controlled substance may be suspended or revoked by the department upon a finding that the registrant:

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

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

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

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

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

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

"§ **-22 Order to show cause.**

(a) Before denying, suspending or revoking a registration, or refusing a renewal of registration, the department shall serve upon the applicant or registrant an order to show cause why registration should not be denied, revoked, or suspended, or why the renewal should not be refused. The order to show cause shall contain a statement of the basis therefor and shall call upon the applicant or registrant to appear before the department at a time and place not less than 30 days after the date of service of the order, but in the case of a denial or renewal of registration the show cause order shall be served not later than 30 days before the expiration of the registration. These proceedings shall be conducted in accordance with chapter 91 without regard to any criminal prosecution or other proceeding. Proceedings to refuse renewal of registration shall not abate the existing registration which shall remain in effect pending the outcome of the administrative hearing.

(b) The department may suspend any registration simultaneously with the institution of proceedings under section -21, or where renewal of registration is refused, if it finds that there is an imminent danger to the public health or safety which warrants this action. The suspension shall continue in effect until the conclusion of the proceedings, including judicial review thereof, unless sooner withdrawn by the department or dissolved by a court of competent jurisdiction.

"§ **-23 Records of registrants.** Persons registered to manufacture, distribute, prescribe or dispense controlled substances under this chapter shall keep records and maintain inventories in conformance with the record-keeping and inventory requirements of Federal law and with any additional rules the department issues.

"§ **-24. Filing requirements.** All persons registered to manufacture, distribute, or dispense controlled substances and all persons who transport, warehouse, or otherwise handle controlled substances, shall file with the department on forms and within the time and manner prescribed by the department, copies of order, receipt and distribution of schedule I and schedule II

controlled substances and other controlled substances designated by the department, showing the amounts of such controlled substances ordered, received, distributed, transported, warehoused, or otherwise handled.

"§ -25 **Prescriptions.**

(a) No controlled substance in Schedule II may be dispensed without a written prescription of a practitioner.

(b) In emergency situations, as defined by rule of the department Schedule II drugs may be dispensed upon oral prescription of a practitioner, reduced promptly to writing and filed by the pharmacy. Prescriptions shall be retained in conformity with the requirements of section -23. No prescription for a Schedule II substance may be refilled.

(c) A controlled substance included in Schedule III or IV, which is a prescription drug as determined under chapter 328, shall not be dispensed without a written or oral prescription of a practitioner. The prescription shall not be filled or refilled more than 6 months after the date thereof or be refilled more than 5 times, unless renewed by the practitioner.

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

PART IV. OFFENSES & PENALTIES

"**Sec. -27 Prohibited Acts B—Penalties.** (a) It is unlawful for any person:

(1) who is subject to part III to distribute or dispense a controlled substance in violation of section -25; however, a licensed manufacturer or wholesaler may sell or dispense a controlled substance to a master of a transpacific ship or a person in charge of a transpacific aircraft upon which no physician is regularly employed, for the actual medical needs of persons on board such ship or aircraft when not in port; provided schedule I or II controlled substances shall be sold to the master of such ship or person in charge of such aircraft only in pursuance of a special official written order approved by a commissioned medical officer or acting assistant surgeon of the United States public health service.

(2) who is a registrant to manufacture a controlled substance not authorized by his registration or to distribute or dispense a controlled substance not authorized by his registration to another registrant or another authorized person.

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

(4) to refuse any lawful entry into any premises for any inspection authorized by this chapter; or

(5) knowingly to keep or maintain any store, shop, warehouse, dwelling, building, vehicle, boat, aircraft, or other structure or place for the

purpose of using these substances or which is used for keeping or selling them in violation of this chapter.

(b) Any person who violates this section is guilty of a crime and upon conviction may be imprisoned for not more than five years, fined not more than $5,000, or both.

"§ -28 **Prohibited Acts C—Penalties.**

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

(1) to distribute as a registrant a controlled substance classified in schedules I or II, except pursuant to an order form as required by section -24 of this chapter;

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

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

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

(5) to make, distribute, or possess any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any drug or container or labeling thereof so as to render the drug a counterfeit substance.

(b) Any person who violates this section is guilty of a crime and upon conviction may be imprisoned for not more than five years, or fined not more than $5,000, or both.

"§ -29 **Penalties under other laws.** Any penalty imposed for violation of this chapter is in addition to , and not in lieu of, any civil or administrative penalty or sanction otherwise authorized by law.

"PART V. ENFORCEMENT AND ADMINISTRATIVE PROVISIONS

"§ -35 **Powers of enforcement personnel.**

(a) Any officer or employee of the department designated by the director of health may:

(1) carry firearms in the performance of his official duties;

(2) execute and serve search warrants, arrest warrants, administrative inspection warrants, subpoenas, and summonses issued under the authority of this State;

(3) 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;

(4) make seizures of property pursuant to this chapter; or

(5) perform other law enforcement duties as the director of health designates.

"§ -36 **Administrative inspections and warrants.**

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

(1) A judge of the circuit court, or any district 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 hereunder, and seizures of the property appropriate to the inspections. For purposes of the issuance of administrative inspection warrants, probable cause exists upon showing a valid public interest in the effective enforcement of this chapter or rules hereunder, sufficient to justify administrative inspection of the area, premises, building or conveyance in the circumstances specified in the application for the warrant;

(2) A warrant shall issue only upon an affidavit of a designated officer or employee having knowledge of the facts alleged, sworn to before the judge or magistrate and establishing the grounds for issuing the warrant. If the judge or magistrate is satisfied that grounds for the application exist or that there is probable cause to believe they exist, he shall issue a warrant identifying the area, premises, building, or conveyance to be inspected, the purpose of the inspection, and, if appropriate, the type of property to be inspected, if any. The warrant shall:

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

(ii) be directed to a person authorized by section -35 to execute it;

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

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

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

(3) A warrant issued pursuant to this Section must be executed and returned within 10 days of its date unless, upon a showing of a need for additional time, the court orders otherwise. If property is seized pursuant to a warrant, a copy shall be given to the person from whom or from whose premises the property is taken, together with a receipt for the property taken. The return of the warrant shall be made promptly, accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the person executing the warrant and of the person from whose possession or premises the property was taken, if present, or in the presence of at least one credible person other than the person executing the war-

rant. 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 thereto a copy of the return and all papers returnable in connection therewith and file them with the chief clerk of the judicial circuit in which the inspection was made.

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

(1) For purposes of this section only, 'controlled premises' means:

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

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

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

(3) When authorized by an administrative inspection warrant, an officer or employee designated by the department may:

(i) inspect and copy records required by this chapter to be kept;

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

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

(4) This section does not prevent the inspection without a warrant of books and records pursuant to an administrative subpoena issued in accordance with law, nor does it prevent entries and administrative inspections, including seizures of property, without a warrant:

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

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

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

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

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

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

"§ -37 **Injunctions.**

(a) The circuit courts of this State may exercise jurisdiction to restrain or enjoin violations of this chapter.

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

"§ -38 **Cooperative arrangements and confidentiality.**

(a) The department shall cooperate with Federal and other State agencies in discharging its responsibilities concerning traffic in controlled substances and in suppressing the abuse of controlled substances. To this end, it may:

(1) arrange for the exchange of information among governmental officials concerning the use and abuse of controlled substances;

(2) coordinate and cooperate in training programs concerning controlled substance law enforcement at local and State levels;

(3) cooperate with the Bureau by establishing a centralized unit to accept, catalogue, file, and collect statistics, including records of drug dependent persons and other controlled substance law offenders within the State, and make the information available for Federal, State and local law enforcement purposes. It shall not furnish the name or identity of a patient or research subject whose identity could not be obtained under subsection (c); and

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

(b) Results, information, and evidence received from the Bureau relating to the regulatory functions of this chapter, including results of inspections conducted by it may be relied and acted upon by the department in the exercise of its regulatory functions under this chapter.

(c) A practitioner engaged in medical practice or research is not required or compelled to furnish the name or identity of a patient or research subject to the department, nor may he be compelled in any State or local civil, criminal, administrative, legislative or other proceedings to furnish the name or identity of an individual that the practitioner is obligated to keep confidential.

"§ -39 **Forfeitures.**

(a) The following are subject to forfeiture:

(1) all controlled substances which have been manufactured, distributed, dispensed or acquired in violation of this chapter.

(2) all raw materials, products and equipment of any kind which are used, or intended for use, in manufacturing, compounding, proces-

sing, delivering, importing, or exporting any controlled substance in violation of this chapter;

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

(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), but:

(i) no conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter;

(ii) no conveyance is subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted without his knowledge or consent and;

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

(5) all books, records, and research products and materials, including formulas, microfilms, tapes, and data which are used, or intended for use, in violation of this chapter.

(b) Property subject to forfeiture under this chapter may be seized by the department upon process issued by any circuit court having jurisdiction over the property. Seizure without process may be made if:

(1) the seizure is incident to an arrest or a 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 judgement in favor of the State in a criminal injunction or forfeiture, proceeding based upon this chapter;

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

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

(c) In the event of seizure pursuant to subsection (b), proceedings under subsection (d) 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 subject only to the orders and decrees of the court having jurisdiction over the forfeiture proceedings. When property is seized under this chapter, the department may:

(1) place the property under seal;

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

(3) require the sheriff to take custody of the property and remove it to an appropriate location for disposition in accordance with law.

(e) When property is forfeited under this chapter the department may:

(1) retain it for official use;
(2) sell that which is not required to be destroyed by law and which is not harmful to the public. The proceeds shall be used for payment of all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising and court costs;
(3) require the sheriff to take custody of the property and remove it for disposition in accordance with law; or
(4) forward it to the Bureau for disposition.

(f) Controlled substances listed in schedule I that are possessed, transferred, sold, or offered for sale in violation of this chapter are contraband and shall be seized and summarily forfeited to the State. Controlled substances listed in schedule I, which are seized or come into the possession of the State, the owners of which are unknown, are contraband and shall be summarily forfeited to the State.

(g) Species of plants from which controlled substances in schedules I and II may be derived which have been planted or cultivated in violation of this chapter, or of which the owners or cultivators are unknown, or which are wild growths, may be seized and summarily forfeited to the State.

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

"§ **-40 Burden of proof; liabilities.**

(a) It is not necessary for the State to negate any exemption or exception in this chapter in any complaint, information, indictment or other pleading or in any trial, hearing, or other proceeding under this chapter. The burden of proof of any exemption or exception is upon the person claiming it.

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

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

"§ **-41 Judicial review.** All final determinations, findings and conclusions of the department under this chapter are final and conclusive decisions of the matters involved. Any person aggrieved by the decision may obtain review of the decision pursuant to chapter 91. Findings of fact by the department, if supported by substantial evidence, are conclusive.

"§ **-42 Education and research.**

(a) The department shall carry out educational programs designed to prevent and deter misuse and abuse of controlled substances. In connection with these programs it may:

(1) promote better recognition of the problems of misuse and abuse of

controlled substances within the regulated industry and among interested groups and organizations;

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

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

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

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

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

(b) The department may enter into contracts for educational and research activities without performance bonds and without regard to chapter 103.

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

(d) The department may authorize the possession and distribution of controlled substances by persons engaged in research. Persons who obtain this authorization are exempt from State prosecution for possession and distribution of controlled substances to the extent of the authorization."

Section 2. **Pending Proceedings.**

(a) Prosecution for any violation of law occurring prior to the effective date of this Act is not affected or abated by this Act. If the offense being prosecuted is similar to one set out in Part IV of the chapter adopted by this Act, then the penalties under Part IV apply if they are less than those under prior law.

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

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

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

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

Section 3. **Continuation of Rules.** Any order or rule promulgated under any law affected by this Act and in effect on the effective date of this Act and not in conflict with it continue in effect until modified, superseded, or repealed.

Section 4. **Uniformity of Interpretation.** This Act shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this Act among those states which enact it.

Section 5. **Short Title.** This Act may be cited as the Uniform Controlled Substances Act.

Section 6. **Severability.** If any provision of the chapter adopted by this Act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of the chapter are severable.

Section 7. Chapter 329 and Part V of Chapter 328 are repealed except with respect to rights and duties which matured, penalties which were incurred and proceedings which were begun before the effective date of this Act and except for the following sections which are to be appropriately renumbered by the revisor of statutes:

(1) Section 329-14.

(2) Section 329-22.

Section 8. This Act shall take effect on January 1, 1973 only if H. B. 20 in any form passed by the Legislature, Regular Session 1972, becomes an Act. In that event, provisions of H. B. 20 referring to chapter 329 shall be deemed to refer to this Act, except that references in chapter 13 of H. B. 20 relating to HRS chapter 329 and part V of chapter 328 shall be superseded by this Act.

(Approved April 11, 1972.)