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THE GENERAL ASSEMBLY OF PENNSYLVANIA

# HOUSE BILL

## No. 851

Session of 1971

INTRODUCED BY MR. BERKES, MRS. CRAWFORD, MRS. ANDERSON, MESSRS. GREENFIELD, SCANLON, MILLER, SAVITT, J. H. HAMILTON, GALLAGHER, KNEPPER, BRAIG, R. W. WILT, MELTON, FEE, MRS. KELLY, MESSRS. BELLOMINI, DeMEDIO, HASKELL, DOMBROWSKI, RITTER, BLAIR, D. S. HAYES, O'PAKE, PIEVSKY, FINEMAN, ENGLEHART, IRVIS, MRS. FAWCETT, MESSRS. O'BRIEN, KURY, WANSACZ, MALADY, COMER, DAGER, H. S. PARKER, STONE, B. L. PARKER, PEZAK, SHERMAN, BARBER, J. JOHNSON, DOYLE, KELLY, E. B. DAVIS, FRANK, LUTTY, HUTCHINSON, ARTHURS, CROWLEY, RAPPAPORT, RIEGER, KOWALYSHYN, MRS. TOLL, MESSRS. SCIRICA, BERSON, WOJDAK, SCHMITT, ZELLER, MEHOLCHICK, MANDERINO, HOVIS, EARLY, McMONAGLE, BENNETT, KLEPPER, DREIBELBIS, PERRY, MORRIS, YAHNER, KLUNK, GLEESON, STEMMLER, NEEDHAM, D. M. DAVIS, MEBUS, F. M. ALLEN, ZORD, HALVERSON, WRIGHT, PIPER, WISE, HETRICK, PRENDERGAST, GELFAND, LAUDADIO, BONETTO, SHELHAMER, KOLTER, R. O. DAVIS, HOPKINS, WEIDNER AND LETTERMAN, MAY 3, 1971

REFERRED TO COMMITTEE ON HEALTH AND WELFARE, MAY 3, 1971

AN ACT

Relating to the manufacture, sale and possession of drugs, devices and cosmetics; conferring powers on the courts and the secretary and Department of Health and a newly created Pennsylvania Drug, Device and Cosmetic Board; establishing schedules of controlled drugs and dangerous substances; providing penalties; requiring registration of persons engaged in the drug trade and for the revocation or suspension of certain licenses and registrations; and repealing an act.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Short Title.--This act shall be known and may be cited as "The Drug, Device and Cosmetic Act of 1971."

Section 2. Definitions.--As used in this act:

(1) "Drug" means (i) articles recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; and (ii) articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals; and (iii) articles (other than food) intended to affect the structure or any function of the body of man or other animals; and (iv) articles intended for use as a component of any article specified in clause (i), (ii) or (iii), but not including devices or their components, parts or accessories: Provided, That the drug provisions of this act shall not apply to medicated feed intended for and used exclusively as food for animals other than man: And provided further, That the drug provisions as provided in this act shall not apply to such vitamins, minerals and chemicals when used in the processing and manufacture of foods and non-alcoholic beverages specifically permitted under existing State and Federal statutes as food and color additives. The term shall include substances controlled by the secretary under the provisions of sections 3 and 4 of this act.

(2) "Device" means instruments, apparatus and contrivances, including their components, parts and accessories, intended (i) for use in the diagnosis, cure, mitigation, treatment or prevention of disease of man or other animals; or (ii) to affect the structure or any function of the body of man or other animals.

(3) "Cosmetic" means (i) articles intended to be rubbed, poured, sprinkled or sprayed on, introduced into or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness or altering the

appearance, and (ii) articles intended for use as a component of any such articles, except that such term shall not include soap.

(4) "Administer" means to transfer or deliver a controlled drug or dangerous substance by a practitioner or his authorized agent, in his presence, to an ultimate user or human research subject by injection, or for inhalation or ingestion, or by any other means involving the actual use of the drug.

(5) "Advertisement" means any representation, disseminated in any manner or by any means other than by labeling, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase and/or use of a drug, device or cosmetic.

(6) "Board" means the Pennsylvania Drug, Device and Cosmetic Board.

(7) "Color additive" means a material which 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, and, when added or applied to a drug or cosmetic or to the human body, is capable, alone or through reaction with another substance, of imparting color thereto, except that such term does not include any material which the appropriate authority, pursuant to the Federal act, determines is used or intended to be used solely for a purpose or purposes other than coloring. The term "color" includes black, white and intermediate grays.

(8) "Council" means the Governor's Council on Drug, Narcotics and Alcohol Abuse.

(9) "Contaminated with filth" means consisting, in whole or in part, of any decomposed, putrid or filthy substance, or

prepared, packed or held under any unsanitary condition or exposed whereby the article or product concerned may have become contaminated with filth, dirt, dust or any foreign material, or in any manner rendered injurious to health.

(10) "Contraband" means any controlled drug or dangerous substance possessed by a person not authorized by law to possess such drug or substance, or obtained or held in a manner contrary to the provisions of this act.

(11) "Control" means to add, remove, or change the placement of a drug, substance, or immediate precursor under the provisions of sections 3 and 4 of this act.

(12) "Controlled dangerous substance" means a drug, substance or immediate precursor in the schedules set forth in section 4.

(13) "Controlled drug" includes:

(i) Any "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 coca leaves, (B) any opiate having an addiction-forming or addiction-sustaining capacity similar to morphine, (C) any compound, manufacture, salt, derivative, or preparation of opium or coca leaves or any opiate, and (D) any substance, and any compound, manufacture, salt, derivative, or preparation thereof, which is chemically identical with any of the substances referred to in (A), (B), or (C); except that it shall not include decocainized coca leaves, or extracts of coca leaves which do not contain cocaine or ecgonine;

(ii) "Marihuana" means all parts of the plant Cannabis, sativa L., 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 seeds of such plant which is incapable of germination; and

(iii) "Depressant or stimulant drug" means: (A) a drug which contains any quantity of barbituric acid or any of the salts of barbituric acid; or any derivative of barbituric acid which has been designated by the United States Secretary of Health, Education, and Welfare as habit forming under subsection (d) of section 502 of the "Federal Food, Drug, and Cosmetic Act" (52 Stat. 1050; 21 U.S.C. 352 (d)); (B) a drug which contains any quantity of amphetamine or any of its optical isomers; or any salt of amphetamine or any salt of any optical isomer of amphetamine; or any substance which the secretary, after investigation, has found to be, and by regulation designated as, habit forming because of its stimulant effect on the central nervous system; or (C) lysergic acid diethylamide or any other drug which contains any quantity of a substance which the secretary, after investigation, has found to have, and by regulation designates as having, a potential for abuse because of its depressant or stimulant effect on the central nervous system or its hallucinogenic effect; but the term "controlled drug" shall not include any drug specifically exempted by a regulation promulgated by the secretary as not dangerous to the public health and welfare. Except as otherwise provided herein,

the term shall include dangerous substances controlled by the secretary under sections 3 and 4 of this act.

(14) "Controlled paraphernalia" includes:

(i) a hypodermic syringe, needle or other instrument or implement or combination thereof adapted for the administration of controlled substances by intravenous injections or otherwise under circumstances, including but not limited to, the close proximity to other controlled paraphernalia, which reasonably indicate an intention to use or possess such controlled paraphernalia for purposes of unlawfully administering any controlled substance;

(ii) diluents, dilutants or adulterants, including but not limited to, any of the following: quinine hydrochloride, mannitol, mannite, lactose or dextrose, adapted for the dilution of controlled substances under circumstances, including, but not limited to, the close proximity to other controlled paraphernalia, which reasonably indicate an intention to use or possess such controlled paraphernalia for purposes of unlawfully diluting or processing any controlled substance; and

(iii) gelatin capsules, glassine envelopes or any other material suitable for the packaging of individual quantities of controlled substances under circumstances, including but not limited to, the close proximity to other controlled paraphernalia, which reasonably indicate an intention to use or possess any such item for the unlawful manufacture, distribution or dispensing of any such controlled substance.

(15) "Counterfeit drug" means a drug or controlled dangerous substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number, or device, or any likeness

thereof, of a manufacturer, distributor, or dispenser other than the person or persons who in fact manufactured, distributed, or dispensed such substance and which thereby falsely purports or is represented to be the product of, or to have been distributed by, such other manufacturer, distributor, or dispenser.

(16) "Dispense" means to transfer or deliver a drug or controlled dangerous substance to an ultimate user or human research subject by, or pursuant to the lawful order of, a practitioner.

(17) The term "immediate container" does not include package liners.

(18) "Immediate precursor" means a substance which the board has found to be and by regulation 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 dangerous substance, the control of which is necessary to prevent, curtail, or limit such manufacture.

(19) "Label" means a display of written, printed or graphic matter upon the immediate container of any article, and a requirement made by or under authority of this act that any word, statement or other information appearing on the label shall not be considered to be complied with unless such word statement or other information also appears on the outside container or wrapper, if any there be, of the retail package of such article or is easily legible through the outside container or wrapper.

(20) "Labeling" means all labels and other written, printed, or graphic matter (i) upon an article or any of its containers or wrappers, or (ii) accompanying such article.

(21) "Manufacture" means the production, preparation, propagation, compounding, or processing of a drug or controlled dangerous 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. "Manufacturer" also includes any person who packages, repackages, or labels any container of any drug or controlled dangerous substance, except practitioners who dispense or compound prescription order for delivery to the ultimate consumer.

(22) "New drug" means (i) any drug the composition of which is such that such 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 (ii) any drug the composition of which is such that such 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, otherwise than in such investigations, been used to a material extent or for a material time under such conditions.

(23) "Nonproprietary drug" means any drug containing any quantity of any narcotic drug, a drug containing biologicals or substances of glandular origin (except intestinal enzymes and all liver products), drugs which are administered hypodermically, intramuscularly or intravenously, but not any such drugs which are prepackaged with complete dosage instructions in the labeling limiting their use to the care or treatment of poultry and livestock.

(24) "Official compendium" means the official United States

Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, official National Formulary or any supplement to any of them.

(25) "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having such addiction-forming or addiction-sustaining liability.

(26) "Opium poppy" means the plant of the species Papaver somniferum L., except the seeds thereof.

(27) "Person" means any individual, partnership, corporation, association, trust, or other institution or entity.

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

(29) "Possess" means to exercise dominion or control over a drug or controlled dangerous substance.

(30) "Practitioner" means a physician, including an intern and resident, dentist, veterinarian, scientific investigator, pharmacist, pharmacy, hospital, clinic, or other person licensed, registered, or otherwise authorized or allowed by the Commonwealth of Pennsylvania to distribute, dispense, conduct research with respect to or administer a drug or controlled dangerous substance in the course of professional practice or research.

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

(32) "Registrant" means any person registered under the laws of this Commonwealth to manufacture, dispense, administer or sell drugs.

(33) "Secretary" means the Secretary of Health of the

Commonwealth of Pennsylvania.

(34) "Ultimate user" means any person who possesses a drug or controlled dangerous substance for his own use or for the use of a member of his household or for administration to an animal owned by him or by a member of his household.

(35) "Wholesaler" means any person engaged in the activities of jobber, dealer, repackager or wholesaler, selling, repackaging or otherwise distributing any drug or controlled dangerous substance for resale or redistribution which he has not himself prepared, produced or compounded.

Section 3. Authority to Control.--(a) The secretary shall control all substances enumerated in section 4 of this act and may, upon his own motion or on the petition of any interested party add, delete, or reschedule a substance as a controlled dangerous substance. Before so doing, the secretary shall request the advice in writing from the Governor's Council on Drug, Narcotics and Alcohol Abuse whether a substance should be added, deleted, or rescheduled as a controlled dangerous substance. Such advice shall be rendered to the secretary within a reasonable time. The secretary shall consider with respect to each substance hereafter controlled:

(1) Its actual or relative potential for abuse;

(2) Scientific evidence of its pharmacological effect, if known;

(3) State of current scientific knowledge regarding the substance;

(4) Its history and current pattern of abuse;

(5) The scope, duration, and significance of abuse;

(6) What, if any, risk there is to the public health;

(7) Its psychic or physiological dependence liability;

(8) Whether the substance is controlled under Federal law; and

(9) Whether the substance is an immediate precursor of a substance already controlled under this section. After considering the above factors, the secretary shall make findings with respect thereto and shall issue an order controlling the substance if he finds that the substance has a potential for abuse.

(b) If the secretary 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.

(c) When, for the purpose of greater protection of the public, at the time a new drug application is submitted to the board for any drug having a stimulant, depressant, or hallucinogenic effect on the central nervous system, it appears that such drug has an abuse potential such information shall be submitted to review by the Scientific Advisory Committee of the Board prior to their advising the secretary whether or not to control such drug under this act.

(d) The secretary shall not remove any Schedule I substance of section 4 of this act to Schedules III, IV or V of such section, nor shall he delete such substances from the controls of this act unless specifically authorized by the General Assembly to do so.

Section 4. Schedules of Controlled Substances.--The following schedules include the controlled dangerous substances listed or to be listed by whatever official name, common or usual name, chemical name, or trade name designated.

(1) Schedule I--In determining that a substance comes within

this schedule, the secretary shall find: a high potential for abuse, no currently accepted medical use in the United States, and a lack of accepted safety for use under medical supervision. The following controlled dangerous substances are included in this schedule:

(i) 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 such isomers, esters, ethers and salts is possible within the specific chemical designation:

1. Acetylmethadol.
2. Allylprodine.
3. Alphacteylmethadol.
4. Alphameprodine.
5. Alphamethadol.
6. Benzethidine.
7. Betacetylmethadol.
8. Betameprodine.
9. Betamethadol.
10. Betaprodine.
11. Clonitazene.
12. Dextromoramide.
13. Dextrorphan (except its methylether).
14. Diampromide.
15. Diethyliambutene.
16. Dimenoxadol.
17. Dimepheptanol.
18. Dimethyliambutene.
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. Trimeperidine.

(ii) Any of the following opium derivatives, 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:

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. Methylhydromorphine.

14. Morphine methylbromide.

15. Morphine methylsulfonate.

16. Morphine-N-Oxide.

17. Myrophine.

18. Nicocodeine.

19. Nicomorphine.

20. Normorphine.

21. Pholcodine.

22. Thebacon.

(iii) 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:

1. 3,4-methylenedioxy amphetamine.

2. 5-methoxy-3,4-methylenedioxy amphetamine.

3. 3,4,5-trimethoxy amphetamine.

4. Bufotenine.

5. Diethyltryptamine.

6. Dimethyltryptamine.

7. 4-methyl-2,5-dimethoxyamphetamine.

8. Ibogaine.

9. Lysergic acid diethylamide.

10. Marihuana.

11. Mescaline.

12. Peyote.

13. N-ethyl-3-piperidyl benzilate.

14. N-methyl-3-piperidyl benzilate.

15. Psilocybin.

16. Psilocyn.

17. Tetrahydrocannabinois.

(2) Schedule II--In determining that a substance comes within this schedule, the secretary shall find: a high potential for abuse, currently accepted medical use in the United States, or currently accepted medical use with severe restrictions, and abuse may lead to severe psychic or physical dependence. The following controlled dangerous substances are included in this schedule:

(i) Any of the following substances except those narcotic drugs specifically excepted or 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, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in subclause 1, except that these substances shall not include 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, except that the substances shall not include decocainized coca leaves or extraction of coca leaves, which extractions do not contain cocaine or ecgonine.

(ii) 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 such isomers, esters, ethers and salts is possible within the specific chemical designation:

1. Alphaprodine.

2. Anileridine.

3. Bezitramide.

4. Dihydrocodeine.

5. Diphenoxylate.

6. Fentanyl.

7. Isomethadone.

8. Levomethorphan.

9. Levorphanol.

10. Metazocine.

11. Methadone.

12. Methadone-Intermediate, 4-cyano-2-dimethylamino-4,4-diphenyl butane.

13. Moramide-Intermediate, 2-methyl-3-morpholino-1, 1-diphenyl-propane-carboxylic acid.

14. Pethidine.

15. Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine.

16. Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate.

17. Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid.

18. Phenazocine.

19. Piminodine.

20. Racemethorphan.

21. Racemorphan.

(iii) Unless specifically excepted or unless listed in another schedule, any injectable liquid which contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers.

(iv) The phrase "opiates" as used in section 4 of this act and elsewhere throughout the act shall not include the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts, but does include its racemic and levorotatory forms.

(3) Schedule III--In determining that a substance comes within this schedule, the secretary shall find: a potential for abuse less than the substances listed in Schedules I and II; well documented and currently accepted medical use in the United States; and abuse may lead to moderate or low physical dependence or high psychological dependence. The following classes of controlled dangerous substances are included in this schedule:

(i) Any material, compound, mixture, or preparation unless specifically excepted or unless listed in another schedule which contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the

central nervous system:

1. Amphetamine, its salts, optical isomers, and salts of its optical isomers.

2. Phenmetrazine and its salts.

3. Any substance which contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers.

4. Methylphenidate.

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

1. Any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid.

2. Chorhexadol.

3. Glutethimide.

4. Lysergic acid.

5. Lysergic acid amide.

6. Methyprylon.

7. Phencyclidine.

8. Sulfondiethylmethane.

9. Sulfonethylmethane.

10. Sulfonmethane.

(iii) Nalorphine.

(iv) Any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof, except those narcotic drugs specifically excepted or listed in other schedules:

1. Not more than one and eighty one-hundredths grams of codeine 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.

2. Not more than one and eighty one-hundredths grams of codeine per one hundred milliliters or not more than ninety milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

3. Not more than three hundred milligrams of dihydrocodeinone 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.

4. Not more than three hundred milligrams of dihydrocodeinone per one hundred milliliters or not more than fifteen milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

5. Not more than one and eighty one-hundredths grams of dihydrocodeine per one hundred milliliters or not more than ninety milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

6. Not more than three hundred milligrams of ethylmorphine per one hundred milliliters or not more than fifteen milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

7. 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.

8. Not more than fifty milligrams of morphine per one hundred milliliters or per one hundred grams with one or more

active, nonnarcotic ingredients in recognized therapeutic amounts.

(v) The secretary may by regulation except any compound, mixture, or preparation containing any drug or controlled dangerous substance listed in subclauses (i) and (ii) of this schedule above from the application of those provisions of this act covering controlled drugs, 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.

(vi) The secretary shall by regulation exempt any nonnarcotic substance from the control under this act if such substance may, under the provisions of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), be lawfully sold over the counter without a prescription.

(4) Schedule IV--Any material, compound, mixture, or preparation, unless specifically excepted or unless listed in another schedule, which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

1. Barbital.

2. Chloral betaine.

3. Chloral hydrate.

4. Ethchlorvynol.

5. Ethinamate.

6. Methohexital.

7. Meprobamate.

8. Methylphenobarbital.

9. Paraldehyde.

10. Petrichloral.

11. Phenobarbital.

(5) Schedule V--In determining that a substance comes within this schedule, the secretary shall find: a low potential for abuse relative to the substances listed in Schedule IV; currently accepted medical use in the United States; and limited physical dependence and/or psychological dependence liability relative to the substances listed in Schedule IV. The following controlled dangerous substances are included in this schedule:

(i) Any compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, which shall include one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation, valuable medicinal qualities other than those possessed by the narcotic drug alone:

1. Not more than two hundred milligrams of codeine per one hundred milliliter or per one hundred grams.

2. Not more than one hundred milligrams of dihydrocodeine per one hundred milliliters or per one hundred grams.

3. Not more than fifty milligrams of ethylmorphine per one hundred milliliters or per one hundred grams.

4. Not more than two and five-tenths milligrams of diphenoxylate and not less than twenty-five micrograms of atropine sulfate per dosage unit.

5. Not more than one hundred milligrams of opium per one hundred milliliters or per one hundred grams, or not more than five milligrams per dosage unit.

Section 5. Exempt Substances and Drugs.--(a) In accordance with the provisions of section 3, the secretary, after consultation and upon the recommendation of the board, may, by regulation, exempt, from the provisions of this act relating to controlled dangerous substances or drugs to such extent as he determines to be consistent with the public welfare, substances and drugs found by the secretary:

(1) Either to possess no addiction-forming or addiction-sustaining liability or not to possess an addiction-forming or addiction-sustaining liability sufficient to warrant imposition of all of the requirements of this act; and

(2) Not to permit recovery of a controlled dangerous substance or drug having such an addiction-forming or addiction-sustaining liability with such relative technical simplicity and degree of yield as to create a risk of improper use.

(b) In exercising the authority granted in subsection (a), the secretary, by regulations and without special findings, shall, unless cogent reasons require otherwise in the interest of public health, grant exempt status to such substances and drugs as are determined to be exempt under the Federal narcotic law and regulations and the Federal law and regulations pertaining to controlled drugs and dangerous substances.

(c) If the secretary shall subsequently determine that any exempt substance or drug does possess a degree of addiction liability that results in abusive use, he shall, by regulation, remove such substance or drug from exempt status effective on a date fixed by the regulation.

Section 6. Registration.--(a) No person shall operate within this Commonwealth as a manufacturer, wholesaler or retailer of drugs or devices nor sell, offer for sale nor solicit the

purchase of drugs or devices nor hold drugs or devices for sale or resale until such person has registered under this act with the secretary.

(1) Any manufacturer or wholesaler not operating an establishment within this Commonwealth, but employing sales representatives or detailmen within this Commonwealth, shall either register as a manufacturer, or wholesaler as the case may be, or file, in lieu of registration, with the secretary the names and addresses of such representatives and detailmen, and shall promptly inform the secretary of any changes in said list.

(2) Separate registration with the secretary shall be required for each place at which such person carries on activities as a manufacturer, wholesaler or retailer within this Commonwealth. The certificate evidencing such registration shall be conspicuously displayed and shall not be transferable.

(3) Certificates of registration issued by the State Board of Pharmacy or under the law preceding this act to manufacturers shall continue to be valid for the period issued and, upon expiration, shall be renewed in the manner provided for renewal of certificates of registration issued pursuant to this section. Nothing contained herein shall be construed to require the registration hereunder of pharmacists registered by the Board of Pharmacy nor pharmacies licensed by said board, nor to require the separate registration of agents or employes of persons registered pursuant to the provisions of this section, or of sales representatives or detailmen of manufacturers or wholesalers nor operating an establishment within this Commonwealth whose names and addresses are on file with the secretary: Provided, however, That all persons registered pursuant to this section, whether located within this

Commonwealth or not, shall be deemed to have accepted and shall be subject to all provisions of this act.

(b) No person shall operate as a manufacturer of drugs or devices unless such drugs or devices are manufactured under the supervision of a registered pharmacist, chemist or other person possessing at least five years' experience in the manufacture of drugs or devices or such other person approved by the secretary as qualified by scientific or technical training or experience to perform such duties of supervision as may be necessary to protect the public health and safety.

(c) Each application for registration as a manufacturer shall be accompanied by a fee of one hundred dollars ($100). Each application for registration as a wholesaler shall be accompanied by a fee of twenty-five dollars ($25). Each application for registration as a retailer shall be accompanied by a fee of two dollars ($2). Applications shall be on forms prescribed by the secretary. Registration certificates shall be renewed annually and applications therefor shall be accompanied by the same fee as for initial applications.

(d) Registration shall become effective at noon on the sixtieth day after application therefor is filed: Provided, however, That the secretary shall have authority to issue a registration certificate or to issue an order denying such registration pursuant to subsection (e) hereof at any time prior to the expiration of such sixty day period. Renewal of registration shall be effective upon application.

(e) The secretary may refuse the initial registration (i) of any person who has made false representation in the application for registration, or of any person or agent or employe of any person who manufactures drugs or devices other than under the

supervision of a registered pharmacist, chemist or other person possessing at least five years' experience in the manufacture of said drugs or devices, or such person approved by the secretary as provided herein, or who fails to comply with the standards of sanitation, equipment, materials or supplies promulgated pursuant to the provisions of this act, until such person has filed a proper application and is in compliance with this section and with said standards of sanitation, equipment, materials and supplies; and (ii) in addition to the foregoing, of any manufacturer or wholesaler, (A) who has been convicted of a violation of any law of this Commonwealth or of the United States relating to the sale, use or possession of narcotic drugs if such refusal shall be necessary for the protection of the public health and safety, or (B) who knowingly employs in any capacity connected with the preparation, handling or sale of narcotic drugs any person convicted of a violation of the laws of this Commonwealth or of the United States relating to the sale, use or possession of narcotics, unless prior consent shall have been obtained from the secretary.

(f) In addition to all other penalties provided for violations of this act, the secretary may, after notice and hearing pursuant to the Administrative Agency Law as amended, (i) in the case of a manufacturer registered hereunder, prohibit the sale in Pennsylvania of any drugs or devices involved in any violation of this act which he commits with knowledge or reason to know of said violation, (ii) suspend or revoke the registration of any manufacturer if said registrant, (A) makes any sale in Pennsylvania of any drug or device whose sale has been prohibited under the preceding clause, or (B) is convicted of a violation of any law of this Commonwealth or of the United

States relating to the sale, use or possession of drugs or controlled substances if such suspension or revocation shall be necessary for the protection of the public health and safety, (C) knowingly employs in any capacity connected with the preparation, handling or sale of drugs or controlled substances any person convicted of a violation of the laws of this Commonwealth or of the United States relating to the sale, use or possession of drugs or controlled substances unless prior consent shall have been obtained from the secretary, (iii) in the case of a wholesaler registered hereunder, suspend or revoke his registration for any violation of this act which he commits with knowledge or reason to know of said violation if such suspension or revocation shall be necessary for the protection of the public health and safety.

(g) If the secretary takes any action refusing registration or disciplining any registrant under subsections (e) and (f), the aggrieved party may, within fifteen days after the date upon which a copy of the order is delivered to the address indicated on the application or the registration certificate, whichever is applicable, petition the board for review. The board shall, within thirty days, grant a hearing and, as soon thereafter as practicable, adopt, modify or reject the action of the secretary. Any action by the board shall be deemed an adjudication to which the provisions of the Administrative Agency Law, as amended, shall be applicable.

Section 7. Adulteration.--A drug or device or cosmetic shall be deemed to be adulterated:

(1) (i) If it consists, in whole or in part, of any filthy, putrid or decomposed substance; (ii) if it has been prepared, packed or held under conditions whereby it may have been

contaminated with filth, or whereby it may have been rendered injurious to health; (iii) if its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health; (iv) if it has been exposed to conditions of fire, water or extreme temperature, which may have rendered it injurious to health; (v) if (A) it bears or contains for purposes of coloring only a color additive, unless it be a hair dye which is unsafe within the meaning of section 9 of this act, or (B) it is a color additive the intended use of which in or on drugs, devices or cosmetics is for purposes of coloring only and is unsafe, unless it be a hair dye within the meaning of section 9 of this act.

(2) If it purports to be or is represented as a drug, the name of which is recognized in an official compendium and its strength differs from or its quality or purity falls below the standards set forth in such compendium. Such determination as to strength, quality or purity, shall be made in accordance with the tests or methods of assay set forth in such compendium, or in the absence of or inadequacy of such tests or methods of assay those prescribed under the authority of the Federal act. No drug defined in an official compendium shall be deemed to be adulterated under this subsection because it differs from the standard of strength, quality or purity therefor set forth in such compendium, if its difference in strength, quality or purity from such standard is plainly stated on its label. Whenever a drug is recognized in both the United States Pharmacopoeia and the Homeopathic Pharmacopoeia of the United States, it shall be subject to the requirements of the United States Pharmacopoeia unless it is labeled and offered for sale as a homeopathic drug, in which case, it shall be subject to the

provisions of the Homeopathic Pharmacopoeia of the United States and not to those of the United States Pharmacopoeia.

(3) If it is a color additive and is to be used or is recommended for use as a hair dye and it is not exempt under section 9 unless its label bears the following legend conspicuously displayed thereon: "Caution. This product contains ingredients which may cause skin irritation on certain individuals and a preliminary test according to accompanying directions should first be made. This product must not be used for dyeing the eyelashes or eyebrows, to do so may cause blindness," and the labeling bears adequate directions for such preliminary testing. For the purpose of this paragraph, the term "hair dye" shall not include eyelash dyes or eyebrow dyes.

(4) If it is not subject to the provisions of clause (2) of this section and its strength differs from or its purity or quality falls below that which it purports or is represented to possess.

(5) If it is a drug and any substance has been (i) mixed or packed therewith so as to reduce its quality or strength, or (ii) substituted wholly or in part therefor.

Section 8. Misbranding.--A drug or device or cosmetic shall be deemed to be misbranded:

(1) If its labeling is false or misleading in any particular.

(2) If in package form unless it bears a label containing (i) the name and place of business of the manufacturer, packer or distributor, and (ii) an accurate statement of the quantity of the contents in terms of weight measure or numerical count: Provided, That under subclause (ii) of this clause, reasonable variations shall be permitted and exemptions as to small

packages shall be established by regulations.

(3) If any word, statement or other information required by or under authority of this act to appear on the label, or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs or devices in the labeling), and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(4) If it is for use by man and is a narcotic, depressant or stimulant drug designated as habit-forming, unless its label bears the name and quantity or proportion of such substance or derivative and if required by applicable Federal law or regulations, in juxtaposition therewith the statement "Warning. May Be Habit-Forming."

(5) If it is a drug and is not designated solely by a name recognized in an official compendium, unless its label bears (i) the common or usual name of the drug, if such there be, and (ii) in case it is fabricated from two or more ingredients, the common or usual name of each active ingredient including the kind and quantity or proportion of any alcohol and also including whether active or not, the name and quantity or proportion of any bromides, ether, chloroform, acetanilid, acetphenetidin, amidopyrine, antipyrine, atropine, hyoscine, hyoscyamine, arsenic, digitalis, glucosides, mercury, ouabain, strophanthin, strychnine, thyroid or any derivative or preparation of any such substances contained therein: Provided, That to the extent that compliance with the requirements of subclause (ii) of this clause is impracticable, exemptions shall be established by regulations.

(6) Unless its labeling bears (i) adequate directions for

use, and (ii) such adequate warnings against use in those pathological conditions or by children where its use may be dangerous to health or against unsafe dosage or methods or duration of administration or application in such manner and form as are necessary for the protection of users: Provided, That where any requirement of subclause (i) of this clause as applied to any drug or device is not necessary for the protection of the public health, regulations shall be promulgated exempting such drug or device or cosmetic from such requirements.

(7) If it purports to be a drug, the name of which is recognized in an official compendium, unless it is packaged and labeled as prescribed therein: Provided, That the method of packing may be modified with a consent of the secretary. Whenever a drug is recognized in both the United States Pharmacopoeia and the Homeopathic Pharmacopoeia of the United States, it shall be subject to the requirements of the United States Pharmacopoeia with respect to packaging and labeling, unless it is labeled and offered for sale as a homeopathic drug, in which case, it shall be subject to the provisions of the Homeopathic Pharmacopoeia of the United States and not to those of the United States Pharmacopoeia.

(8) If it has been found by the secretary to be a drug liable to deterioration unless it is packaged in such form and manner and its label bears a statement specifying such precautions against deterioration as the secretary shall by regulation require as necessary for the protection of public health. No such regulation shall be established for any drug recognized in an official compendium, or for any drug which regulations specifying precautions against deterioration have

been promulgated by the Secretary of Health, Education and Welfare under the Federal act.

(9) If it is offered for sale or sold under the name of another drug, device or cosmetic or brand of drug, device or cosmetic, or if it is manufactured, packaged, labeled or sold in such manner as to give rise to a reasonable probability that the purchaser will be led to believe he is purchasing such drug, device or cosmetic as another drug, device or cosmetic or as the product of another manufacturer.

(10) If it is dangerous to health when used in the dosage or with the frequency or duration prescribed, recommended or suggested in the labeling thereof.

(11) A drug dispensed by filling or refilling a written or oral prescription issued by a person licensed by law to administer or prescribe such drug (except a drug sold in the course of the conduct of a business of selling drugs pursuant to diagnosis by mail) shall be exempt from the requirements of this section, except clauses (1) and (9) if such drug bears a label containing the name and place of business of the dispenser, the serial number and date of such prescription, the name and address of the person prescribing such drug, the name and address of the patient and such directions for use and cautionary statements, if any, contained in such prescription.

(12) If it is a cosmetic and its container is so made, formed or filled as to be misleading.

Section 9. Color Additives.--A color additive shall be deemed unsafe unless there is in effect with respect to such additive a regulation issued pursuant to the Federal act permitting such use and unless such additive and use thereof conforms in all respects to the requirements of the Federal act

and regulations issued pursuant thereto.

Section 10. New Drugs.--(a) No person shall sell, deliver, offer for sale, hold for sale, or give away, any new drug unless (i) an application with respect thereto has been approved under the appropriate Federal act, or (ii) when not subject to the Federal act unless such drug has been tested and has not been found to be unsafe or ineffective for use under the conditions prescribed, recommended or suggested in the labeling thereof, and prior to selling or offering for sale such drug, there has been filed with the secretary an application, setting forth full reports of investigations which have been made to show whether or not such drug is safe and effective for use, a full list of the articles used as components of such drug, a full statement of the composition of such drug, a full description of the methods used in and the facilities and controls used for the manufacture, processing and packing of such drug, such samples of such drug and of the articles used as components thereof as the secretary may require, and specimens of the labeling proposed to be used for such drug.

(b) An application provided for in subsection (a) (ii) shall be submitted to the board for its recommendations but such application shall become effective on the sixtieth day after the filing thereof except that if the secretary finds, after due notice to the applicant and giving him an opportunity for a hearing, that the drug is not safe and effective for use under the conditions prescribed, recommended or suggested in the proposed labeling thereof, he shall prior to the effective date of the application issue an order refusing to permit the application to become effective.

(c) This section shall not apply:

(1) To a drug intended solely for investigational use by experts qualified by scientific training and experience to investigate the safety in drugs, provided the drug is plainly labeled "For investigational use only," or words of similar import, and provided such investigator furnishes a statement to the secretary showing that he has adequate facilities for such investigation;

(2) To a drug sold in this State at any time prior to enactment of this act or introduced into interstate commerce at any time prior to the enactment of the Federal act; or

(3) To any drug which is licensed under the animal virus serum and toxin law of March 4, 1913 (21 U.S.C. 151, et seq.) or under the Public Health Service Act of July 1, 1944 (42 U.S.C. 201, et seq.).

(d) An order refusing to permit an application under this section to become effective may be revoked by the secretary.

Section 11. Professional Prescription, Administration, and Dispensing.--(a) A pharmacist may dispense a controlled dangerous substance or drug to an individual only upon the written prescription of a practitioner, except that in emergency situations as prescribed by the secretary, such drug may be dispensed upon oral prescription, provided that a written memorandum signed by the practitioner is subsequently substituted for the oral prescription. The form of the prescription shall be specified by the secretary.

(b) No prescription for a controlled dangerous substance or drug may be filled more than one month after the date on which the prescription was issued. No prescription for a narcotic drug may be refilled, and no prescription for any other controlled dangerous substance or drug may be refilled more than five

times.

(c) A physician or dentist may prescribe, administer, or dispense a controlled dangerous substance or drug only (i) in good faith in the course of his professional practice, (ii) within the scope of the patient relationship, and (iii) in accordance with treatment principles accepted by a responsible segment of the medical profession. A physician or dentist may cause a controlled dangerous substance or drug to be administered by a professional assistant under his direction and supervision.

(d) A veterinarian may prescribe, administer, or dispense a controlled dangerous substance or drug only (i) in good faith in the course of his professional practice, and (ii) not for use by a human being. He may cause a controlled dangerous substance or drug to be administered by a professional assistant under his direction and supervision.

(e) Any narcotic drug dispensed by a pharmacist pursuant to a written prescription shall bear a label showing (i) the pharmacist's own name, address, and any registration number obtained pursuant to any applicable Federal laws, (ii) the name and address of the patient, or, if the patient is an animal, the name and address of the owner of the animal and the species of the animal, (iii) the name, address, and any registration number required to be obtained pursuant to any applicable Federal laws, of the practitioner by whom the prescription was written, and (iv) such directions as may be stated on the prescription.

Section 12. Records of Distribution of Controlled Dangerous Substances and Drugs.--(a) Every person who sells or otherwise distributes controlled dangerous substances or drugs, shall keep records of all purchases or other receipt and sales or other

distribution of such drugs for two years from the date of purchase or sale. Such records shall include the name and address of the person from whom purchased or otherwise received or to whom sold or otherwise distributed, the date of purchase or receipt or sale or distribution, and the quantity involved.

(b) Every practitioner licensed by law to administer, dispense or distribute narcotic drugs shall keep a record of all such substances and drugs, administered, dispensed or distributed by him, showing the amount administered, dispensed or distributed, the date, the name and address of the patient, and in the case of a veterinarian, the name and address of the owners of the animal to whom such drugs are dispensed or distributed. Such record shall be kept for two years from the date of administering, dispensing or distributing such drug and shall be open for inspection by the proper authorities.

Section 13. Lawful Acts.--The following acts are lawful within the Commonwealth:

(1) The possession, control, dealing in, dispensing, selling, delivery, distribution, prescription, trafficking in, or giving of, any controlled drug in the regular course of a business, profession, employment, occupation or duties of (i) manufacturers of drugs, (ii) persons engaged in the wholesale drug trade, (iii) importers or exporters of drugs, (iv) registered pharmacists in any licensed pharmacy, (v) bona fide owners of pharmacies or drugstores, (vi) practitioners licensed by law to administer, prescribe or dispense such drugs, (vii) persons in the employ of the United States or of this Commonwealth or of any county, municipality or township of this Commonwealth and having such drugs in their possession by reason of their official duties, (viii) warehousemen or common carriers

engaged bona fide in handling or transporting drugs, (ix) nurses under the supervision of a physician, (x) persons in charge of a laboratory where such drugs are used for the purpose of medical or scientific investigation, teaching or analysis and not for further distribution, (xi) captains or proper officers of ships, upon which no regular physician is employed, for the actual medical needs of the officers and crew of their own ships only, (xii) persons in the bona fide employ of any of the persons above enumerated, (xiii) the provisions of this clause pertaining to possession shall also apply to, in addition to the foregoing, (A) persons having said drugs in their possession for their own personal use only: Provided, That they have obtained the same in good faith, for their own use, from a practitioner licensed to prescribe or dispense such drugs, or in pursuance of a prescription given them by a practitioner licensed to prescribe such drugs, (B) persons having said drugs in their possession for the use of an animal belonging to them: Provided, That they have obtained the same in good faith, from a duly licensed veterinarian, for the use of such animal, or in pursuance of a prescription given by a duly licensed veterinarian.

(2) The sale, dispensation, distribution or gift by any manufacturer, producer, importer or person engaged in the wholesale drug trade of any controlled dangerous substance or drug in pursuance of a written order signed by the person authorized by law to possess, sell, dispense or prescribe such drugs to whom such drug is sold, dispensed, distributed or given. "Written order" hereunder shall include bills of lading, invoices, receipts or written memorandums signed by the person authorized by law to receive such drugs, showing the names and

quantities of drugs purchased.

(3) The sale, dispensation, distribution or gift by any registered pharmacist in any licensed pharmacy of any controlled dangerous substance or drug to (i) a practitioner licensed by law to administer, dispense or prescribe such drug, (ii) a bona fide hospital, dispensary, asylum, sanatorium or public institution, (iii) an individual in pursuance of a written prescription, or an oral prescription subject to the requirements hereinafter set forth, issued by a practitioner licensed by law to prescribe such drug, which prescription shall be dated as of the day on which signed and shall be signed by the practitioner who issued the same, (iv) a person in charge of a laboratory where such drugs are used in medical or scientific investigation, teaching or analysis and not for sale or further distribution, (v) the captain or proper officer of a ship upon which no regular physician is employed for the actual medical needs of the officers and crew of such ship only, (vi) a person in the employ of the United States or of this Commonwealth or of any county, municipality or township thereof, purchasing or receiving the same in his official capacity.

(4) Using, taking, administering to the person or causing to be administered to the person, or administering to any other person or causing to be administered to any other person, any controlled dangerous substance or drug under the advice and direction and with the consent of a practitioner licensed by law to prescribe or administer such drugs to human beings.

Section 14. Prohibited Acts; Penalties.--(a) The following commercial type acts and the causing thereof within the Commonwealth are hereby prohibited:

(1) The manufacture, sale or delivery, holding, offering for

sale, or possession of any drug, device or cosmetic that is adulterated or misbranded.

(2) The adulteration or misbranding of any drug, device or cosmetic.

(3) The receipt in commerce of any drug, device or cosmetic that is adulterated or misbranded and the delivery or proffered delivery thereof for pay or otherwise.

(4) The sale, delivery for sale, holding for sale or offering for sale of any article in violation of section 10.

(5) The dissemination or publication of any false or materially misleading advertisement.

(6) The removal or disposal of a detained or embargoed article in violation of section 25, whether or not such article is in fact adulterated or misbranded.

(7) The adulteration, 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 or cosmetic, if such act is done while such article is held for sale and results in such article being adulterated or misbranded.

(8) Forging, counterfeiting, simulating or falsely representing, or without proper authority using any mark, stamp, tag, label or other identification device authorized or required by regulation promulgated under the provisions of this act.

(9) Placing or causing to be placed upon any drug or pharmaceutical preparation, or upon the container of any drug or pharmaceutical preparation, with intent to defraud, the trademark, trade name or other identifying mark, imprint or device of another, or any likeness of any of the foregoing.

(10) Selling, dispensing, disposing of or causing to be

sold, dispensed or disposed of, or keeping in possession, control or custody, or concealing any drug or pharmaceutical preparation or any container of any drug or pharmaceutical preparation with knowledge that the trademark, trade name or other identifying mark, imprint or device of another, or any likeness of any of the foregoing, has been placed thereon in a manner prohibited by clause (9) hereof.

(11) Making, selling, disposing of or causing to be made, sold, or disposed of, or keeping in possession, control or custody, or concealing with intent to defraud, 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, pharmaceutical preparation, or container thereof.

(12) The use on the labeling of any drug, or in any advertisement relating to such drug, of any representation or suggestion that any application with respect to such drug is effective under section 10 or that such drug complies with the provisions of such section.

(13) The use of any statement or representation in advertising or promoting the retail sale of any drug that the seller of such drug is registered under this act.

(14) The sale at retail of a nonproprietary drug except by a registered pharmacist in a licensed pharmacy or by a practitioner.

(15) The operation of a drug manufacturing, wholesaling or retailing establishment, except by registered pharmacists in a licensed pharmacy, without conforming with such standards respecting sanitation, materials, equipment and supplies as the

secretary, after consultation with the board, may establish by regulation for the protection of the public health and safety.

(16) Except in emergency situations and pursuant to regulations of the secretary, the sale, dispensation, distribution or gift by any registered pharmacist or operator of a licensed pharmacy of any controlled dangerous substance or drug, except in pursuance of a written order signed by the person to whom such drugs are sold, dispensed, distributed or given as provided for in section 11, when such drugs are sold, dispensed, distributed or given to an individual in pursuance of a prescription. Such prescription shall be regarded as the written order herein required and no further written order shall be necessary. Such orders shall be kept and preserved for a period of two years. Where there is no initial written order in an emergency situation, said order shall be verified by a written memorandum signed by the vendee.

(17) The sale, dispensation, distribution, prescription or gift by any practitioner otherwise authorized by law so to do of any controlled drug or dangerous substance to any person known to such practitioner to be a drug dependent person, unless said drug is prescribed, administered, dispensed or given, for the cure or treatment of some malady other than the drug habit, except that a controlled drug such as methadone may be permitted by such regulations for the treatment of the drug habit pursuant to regulations providing for such use.

(18) The administration, dispensation, delivery, gift or prescription by any practitioner otherwise authorized by law so to do of any controlled dangerous substance or drug except after a physical examination of the person or animal for whom said drugs are intended, said examination to be made at the time said

prescription is issued or at the time said drug is administered, dispensed, given away or delivered by said practitioner, or except where the practitioner is satisfied by evidence that the person is not a drug dependent person. No veterinarian shall sell, dispense, distribute, give or prescribe any narcotic drug for the use of a human being.

(19) The sale at retail or dispensing of any controlled drug or dangerous substance to any person, except to one authorized by law to sell, dispense, prescribe or possess such drugs or substances, unless upon the written or oral prescription of a person licensed by law to prescribe such drug and unless compounded or dispensed by a registered pharmacist or under the immediate personal supervision of a registered pharmacist, or the refilling of a written or oral prescription for a drug, unless such refilling is authorized by the prescriber either in the original written prescription or by written confirmation of the original oral prescription. The provisions of this subsection shall not apply to a practitioner licensed to prescribe or dispense such drugs, who keeps a record of the amount of such drugs purchased and a dispensing record showing the date, name, and quantity of the drug dispensed and the name and address of the patient, as required by this act.

(20) The dispensing of any controlled drug or dangerous substance by a pharmacist without affixing to the container in which the drug is sold or dispensed a label bearing the name and address of such pharmacist, the name and address of the patient, the date compounded and the consecutive number of the prescription under which it is recorded in his prescription files, together with the name of the practitioner prescribing it.

(21) The dispensing of a controlled drug or dangerous substance by a practitioner otherwise authorized by law so to do without affixing to the container in which the drug is sold or dispensed a label bearing the name and address of the practitioner, the date dispensed, the name and address of the patient and the directions for the use of the drug by the patient.

(22) The selling or possession by a pharmacy or wholesaler of any drug or controlled dangerous substance defined herein unless the container bears a label, securely attached thereto, stating conspicuously the specific name of the drug and the proportion or amount thereof. Such label shall not be necessary when the drug is dispensed by a pharmacist upon a prescription or dispensed by a practitioner authorized by law to dispense such drugs to his own patients and the container is labeled in the manner prescribed in this act.

(23) The purchase or receipt in commerce by any person of any drugs or devices from any person not authorized by law to sell, distribute, dispense or otherwise deal in such drugs or devices.

(24) The using by any person to his own advantage or revealing other than to the secretary or officers or employes of the Department of Health or to the council or to the board or to courts or a hearing examiner when relevant to proceedings under this act any information acquired under authority of this act concerning any method or process which as a trade secret is entitled to protection. Such information obtained under the authority of this act shall not be admitted in evidence in any proceeding before any court of the Commonwealth except in proceedings under this act.

Any person who violates any of the provisions of this subsection (a) shall be guilty of a misdemeanor, and shall, on conviction thereof, be sentenced to imprisonment for not more than one year or a fine of not more than five thousand dollars ($5,000), or both; but if the violation is committed after a prior conviction of such person, for a violation of this act under this section, has become final, such person shall be sentenced to imprisonment for not more than three years or a fine of not more than twenty-five thousand dollars ($25,000), or both.

(b) Any person who is an otherwise legitimate producer, manufacturer, or distributor and who fails to register or obtain a license as required by this act shall be guilty of a misdemeanor, and shall, on conviction thereof, be punished only as follows:

(1) Upon conviction of the first such offense, he shall be sentenced to imprisonment for not more than six months, or fined not exceeding ten thousand dollars ($10,000), or both.

(2) Upon conviction of the second and subsequent such offense, he shall be sentenced to imprisonment for not more than two years, or fined not exceeding forty thousand dollars ($40,000), or both.

(c) Any person who fails to maintain or permit inspection of records as required by this act or divulges information in violation of this act shall be guilty of a felony, and shall, on conviction thereof, be punished as follows:

(1) Upon conviction of the first such offense, he shall be sentenced to imprisonment for not more than two years, or fined not exceeding ten thousand dollars ($10,000), or have his license revoked for not exceeding one year, or any of these.

(2) Upon conviction of the second and subsequent such offense, he shall be sentenced to imprisonment for not more than ten years, or fined not exceeding thirty thousand dollars ($30,000), or have his license revoked for not more than five years, or any of these.

(d) Any person, not authorized by law to do so, who acquires, receives, possesses, stores, sells or distributes any controlled paraphernalia shall be guilty of a felony and shall, on conviction thereof, be sentenced to imprisonment for not more than three years or a fine of not more than five thousand dollars ($5,000), or both.

(e) It shall be unlawful for any person to obtain or attempt to obtain a controlled dangerous substance or drug by:

(1) Misrepresentation, deception, or subterfuge, (i) from any person that he believes uses such a substance or drug in research, teaching, or chemical analysis, and who in fact is authorized by law to administer, dispense, or distribute such a substance or drug; or (ii) from any person that he believes is lawfully entitled to possess and distribute a controlled dangerous substance or drug, and who in fact is authorized by law to administer, dispense, or distribute such a substance or drug;

(2) Use of a prescription that has been forged, or that has been altered by someone other than the prescribing practitioner; or

(3) Use of a false name or address on a prescription.

Any person who obtained a controlled drug or dangerous substance by any means of fraud or deceit as herein set forth shall be guilty of a misdemeanor and shall, upon conviction thereof, be punished as follows:

(1) Upon conviction of the first such offense, he shall be sentenced to imprisonment for not more than one year, or fined not exceeding five thousand dollars ($5,000), or both.

(2) Upon conviction of the second and subsequent such offense, he shall be sentenced to imprisonment for not more than two years, or fined not exceeding ten thousand dollars ($10,000), or both.

(3) Any person who is a drug dependent person and who violates this provision to satisfy his drug dependence, and who is not charged with a trafficking offense involving distribution of a controlled drug or dangerous substance at wholesale or distribution at retail of any controlled drug or dangerous substance as part of an organized professional system, shall be handled only pursuant to the provisions relating to care, treatment and civil commitment.

(f) It shall be unlawful for any person who is not registered or licensed as required by law to possess a controlled drug or dangerous substance with intent to distribute it or to distribute a controlled drug or dangerous substance in violation of this act and shall, upon conviction thereof, be punished as follows:

(1) Trafficking in the First Degree. A person who in violation of this act possesses a controlled drug or dangerous substance except marihuana with intent to distribute it or who in violation of this act distributes a controlled drug or dangerous substance except marihuana at wholesale to another distributor shall be guilty of a felony, and shall, on conviction thereof, be punished as follows:

(i) upon conviction of the first such offense involving a controlled drug or dangerous substance classified in Schedule I

or II which is a narcotic drug, such person shall be sentenced to imprisonment for not more than twenty years and fined without limitation an amount sufficient to exhaust the assets utilized in and the profits obtained by the illegal activity and upon conviction of the second and subsequent such offense, he shall be sentenced to imprisonment for not more than life, and fined without limitation an amount sufficient to exhaust the assets utilized in and the profits obtained by the illegal activity;

(ii) upon conviction of the first such offense involving a controlled drug or dangerous substance classified in Schedule I or II which is not a narcotic drug or any controlled drug or dangerous substance classified in Schedule III, such person shall be sentenced to imprisonment for not more than five years, or fined not exceeding fifteen thousand dollars ($15,000), or both and upon conviction of the second and subsequent such offense, he shall be sentenced to imprisonment for not more than ten years, or fined not exceeding thirty thousand dollars ($30,000), or both;

(iii) upon conviction of the first such offense involving a controlled drug or dangerous substance classified in Schedule IV, such person shall be sentenced to imprisonment for not more than three years, or fined not exceeding ten thousand dollars ($10,000), or both and upon conviction of the second and subsequent such offense, he shall be sentenced to imprisonment of not more than six years, or fined not exceeding twenty thousand dollars ($20,000), or both;

(iv) upon conviction of the first such offense involving a controlled drug or dangerous substance classified in Schedule V, such person shall be sentenced to imprisonment of not more than one year, or fined not exceeding five thousand dollars ($5,000),

or both and upon conviction of the second and subsequent such offense, he shall be sentenced to imprisonment for not more than two years, or fined not exceeding ten thousand dollars ($10,000), or both.

(2) Trafficking in the Second Degree. A person who in violation of this act possesses a controlled drug or dangerous substance except marihuana with intent to distribute it to an ultimate user thereof in violation of this act, or who in violation of this act distributes a controlled drug or dangerous substance except marihuana to an ultimate user thereof, shall be guilty of a felony, and shall, on conviction thereof, be punished as follows:

(i) upon conviction of the first such offense involving a controlled drug or dangerous substance classified in Schedule I or II which is a narcotic drug, such person shall be sentenced to imprisonment for not more than twenty years, and fined an amount sufficient to exhaust the assets utilized in and the profits obtained by the illegal activity, and upon conviction of the second and subsequent such offense, he shall be sentenced to imprisonment for not more than forty years, and fined an amount sufficient to exhaust the assets utilized in and the profits obtained by the illegal activity;

(ii) upon conviction of the first such offense involving a controlled drug or dangerous substance classified in Schedule I or II which is not a narcotic drug or any controlled drug or dangerous substance classified in Schedule III, such person shall be sentenced to imprisonment for not more than five years, or fined not exceeding five thousand dollars ($5,000), or both and upon conviction of the second and subsequent such offense, he shall be sentenced to imprisonment for not more than ten

years, or fined not exceeding ten thousand dollars ($10,000), or both;

(iii) upon conviction of the first such offense involving a controlled drug or dangerous substance classified in Schedule IV, such person shall be sentenced to imprisonment for not more than three years, or fined not exceeding three thousand dollars ($3,000), or both and upon conviction of the second and subsequent such offense, he shall be sentenced to imprisonment for not more than six years, or fined not exceeding six thousand dollars ($6,000), or both;

(iv) upon conviction of the first such offense involving a controlled drug or dangerous substance classified in Schedule V, such person shall be sentenced to imprisonment for not more than one year, or fined not exceeding two thousand dollars ($2,000), or both, and upon conviction of the second and subsequent such offense, he shall be sentenced to imprisonment for not more than two years, or fined not exceeding three thousand dollars ($3,000), or both.

(3) Trafficking in the Third Degree. A person who in violation of this act possesses marihuana with intent to distribute it, or who in violation of this act distributes marihuana, shall be guilty of a felony, and shall, on conviction thereof, be punished as follows:

(i) upon conviction of the first such offense, he shall be sentenced to imprisonment for not more than ten years, and fined an amount sufficient to exhaust the assets utilized in and the profits obtained by the illegal activity;

(ii) upon conviction of the second such offense, he shall be sentenced to imprisonment for not more than twenty years, and fined an amount sufficient to exhaust the assets utilized in and

the profits obtained by the illegal activity.

(g) Any person who manufactures or distributes a counterfeit drug or substance or who possesses a counterfeit drug or substance with intent to distribute it, knowing it to be a counterfeit drug or substance, or who manufactures or distributes any device intended to reproduce any identifying name or mark upon any drug or substance or container or labeling so as to render such drug or substance a counterfeit drug, shall be guilty of a felony, and shall, upon conviction thereof, be punished as follows:

(1) Upon conviction of the first such offense involving a counterfeit substance classified in Schedule I or II which is a narcotic drug, such person shall be sentenced to imprisonment for not more than ten years, and fined without limitation in an amount sufficient to exhaust the assets utilized in and the profits obtained by the illegal activity and upon conviction of the second and subsequent such offense, he shall be sentenced to imprisonment for not more than thirty years, and fined without limitation an amount sufficient to exhaust the assets utilized in and the profits obtained by the illegal activity.

(2) Upon conviction of the first such offense involving a counterfeit substance classified in Schedule I or II which is not a narcotic drug or any counterfeit substance classified in Schedule III, shall be sentenced to imprisonment for not more than five years, or fined not exceeding ten thousand dollars ($10,000), or both and upon the second and subsequent such offense, he shall be sentenced to imprisonment for not more than ten years, or fined not exceeding twenty thousand dollars ($20,000), or both.

(3) Upon conviction of the first such offense involving a

counterfeit substance classified in Schedule IV, such person shall be sentenced to imprisonment for not more than three years, or fined not exceeding seven thousand five hundred dollars ($7,500), or both and upon conviction of the second and subsequent such offense, he shall be sentenced to imprisonment for not more than six years, or fined not exceeding fifteen thousand dollars ($15,000), or both.

(4) Upon conviction of the first such offense involving a counterfeit substance classified in Schedule V, such person shall be sentenced to imprisonment for not more than one year, or fined not exceeding five thousand dollars ($5,000), or both and upon conviction of the second and subsequent such offense, he shall be sentenced to imprisonment for not more than two years, or fined not exceeding ten thousand dollars ($10,000), or both.

(h) Any person who acquires a controlled drug or dangerous substance in violation of this act with intent to distribute, administer, or dispense it in accordance with this act, or who acquires a controlled drug or dangerous substance in violation of this act and distributes, administers, or dispenses it in accordance with this act, shall be guilty of a felony, and shall, on conviction thereof, be punished only as follows:

(1) Upon conviction of the first such offense involving a controlled drug or dangerous substance classified in Schedule I or II which is a narcotic drug, such person shall be sentenced to imprisonment for not more than four years, or fined not exceeding twenty thousand dollars ($20,000), or have his license suspended for not exceeding six months, or any of these and upon conviction of the second and subsequent such offense, he shall be sentenced to imprisonment for not more than ten years, or

fined not exceeding fifty thousand dollars ($50,000), or have his license suspended or revoked, or any of these.

(2) Upon conviction of the first such offense involving a controlled drug or dangerous substance classified in Schedule I or II which is not a narcotic drug and any controlled drug or dangerous substance classified in Schedule III, such person shall be sentenced to imprisonment for not more than three years, or fined not exceeding fifteen thousand dollars ($15,000), or have his license suspended for not exceeding four months, or any of these and upon conviction of the second and subsequent such offense, he shall be sentenced to imprisonment for not more than eight years, or fined not exceeding thirty thousand dollars ($30,000), or have his license suspended or revoked, or any of these.

(3) Upon conviction of the first such offense involving a controlled drug or dangerous substance classified in Schedule IV, such person shall be sentenced to imprisonment for not more than two years, or fined not exceeding ten thousand dollars ($10,000), or have his license suspended for not exceeding three months, or any of these and upon conviction of the second and subsequent such offense, he shall be sentenced to imprisonment for not more than six years, or fined not exceeding twenty thousand dollars ($20,000), or have his license suspended or revoked, or any of these.

(4) Upon conviction of the first such offense involving a controlled drug or dangerous substance classified in Schedule V, such person shall be sentenced to imprisonment for not more than one year, or fined not exceeding five thousand dollars ($5,000), or have his license suspended for not exceeding two months, or any of these and upon conviction of the second and subsequent

offense, he shall be sentenced to imprisonment for not more than four years, or fined not exceeding ten thousand dollars ($10,000), or have his license suspended or revoked, or any of these.

(i) Any person who prescribes, administers, dispenses, or investigates a controlled drug or dangerous substance in violation of this act shall be guilty of a misdemeanor for the first and second offense and shall be guilty of a felony for the third and subsequent offense and shall, on conviction thereof, be punished as follows:

(1) Upon conviction of the first and second such offense involving a controlled drug or dangerous substance classified in Schedule I or II which is a narcotic drug, such person shall be sentenced to imprisonment for not more than one year, or fined not more than five thousand dollars ($5,000), or have his license suspended for not exceeding three months, or any of these and upon conviction of the third and subsequent such offense he shall be sentenced to imprisonment for not more than ten years, or fined not exceeding thirty thousand dollars ($30,000), or have his license suspended or revoked, or any of these.

(2) Upon conviction of the first and second such offense involving a controlled drug or dangerous substance classified in Schedule I or II which is not a narcotic drug, and any controlled or dangerous substance classified in Schedule III, such person shall be sentenced to imprisonment for not more than six months, or fined not more than three thousand dollars ($3,000), or have his license suspended for not exceeding two months, or any of these and upon conviction of the third and subsequent such offense he shall be sentenced to imprisonment

for not more than eight years, or fined not exceeding eighteen thousand dollars ($18,000), or have his license suspended or revoked, or any of these.

(3) Upon conviction of the first and second such offense involving a controlled drug or dangerous substance classified in Schedule IV, such person shall be sentenced to imprisonment for not more than three months, or fined not exceeding two thousand dollars ($2,000), or have his license suspended for not exceeding one month, or any of these and upon conviction of the third and subsequent such offense he shall be sentenced to imprisonment for not more than six years, or fined not exceeding twelve thousand dollars ($12,000), or have his license suspended or revoked, or any of these.

(4) Upon conviction of the first and second such offense involving a controlled drug or dangerous substance classified in Schedule V, such person shall be sentenced to imprisonment for not more than two months, or fined not exceeding one thousand dollars ($1,000), or have his license suspended for not exceeding one month, or any of these and upon conviction of the third and subsequent such offense he shall be sentenced to imprisonment for not more than four years, or fined not exceeding six thousand dollars ($6,000), or have his license suspended or revoked, or any of these.

(j) Any person who has possession illegally of any controlled drug or dangerous substance for personal use or distribution not for remuneration shall be guilty of a misdemeanor, and shall, on conviction thereof, be punished only as follows:

(1) Possession in the First Degree. Any person who in violation of this act possesses a controlled drug or dangerous

substance except marihuana for personal use, or who in violation of this act possesses a controlled drug or dangerous substance except marihuana with intent to distribute it but not for remuneration or for the purpose of making another dependent upon the drug or substance, or who in violation of this act distributes a controlled drug or dangerous substance except marihuana but not for remuneration or for the purpose of making another dependent upon the drug or substance, shall be admonished by the court about the seriousness of the violation, or required to complete a course on drug abuse prescribed by the council, or imprisoned not exceeding two years, or fined not exceeding ten thousand dollars ($10,000), or any of these.

(2) Possession in the Second Degree. Any person who in violation of this act possesses marihuana for personal use, or who in violation of this act possesses marihuana with intent to distribute it but not for remuneration or for the purpose of introducing another to the drug, or who in violation of this act distributes marihuana but not for remuneration or for the purpose of introducing another to the drug shall be admonished by the court about the seriousness of the violation, or required to complete a prescribed course on drug abuse, or imprisonment not exceeding thirty days, or fined not exceeding five hundred dollars ($500), or any of these.

Section 15. Additional Penalties.--Any penalty imposed for violation of this act shall be in addition to, and not in lieu of, any civil or administrative penalty or sanction authorized by law.

Section 16. Distribution to Persons Under Age Eighteen.--Any person who is at least eighteen years of age who violates this act by distributing a controlled substance listed in Schedules I

or II which is a narcotic drug to a person under eighteen years of age who is at least three years his junior is punishable by a term of imprisonment up to twice that otherwise authorized by subsection (f) of section 14 of this act, in addition to any fine authorized by this act. Any person who is at least eighteen years of age who violates this act by distributing any other controlled drug or dangerous substance listed in Schedules I, II, III, IV and V to a person under eighteen years of age who is at least three years his junior is punishable by a term of imprisonment up to twice that authorized by subsection (f) of section 14 of this act, in addition to any fine authorized by this act. Imposition or execution of such sentence shall not be suspended and probation shall not be granted.

Section 17. Enforcement Provisions.--The following guidelines shall be applicable in the enforcement of any penalties imposed by this act:

(1) No publisher, radio broadcast licensee, or agency or medium for the dissemination of an advertisement, except the manufacturer, distributor or seller of the article to which a false advertisement relates, shall be liable under section 14 of this act by reason of the dissemination by him of such false advertisement unless he has refused on the request of the secretary to furnish the secretary with the name and post office address of the manufacturer, distributor, seller or advertising agency who causes him to disseminate such advertisement or unless he publishes such advertisement knowing or having good cause to know that it is false or otherwise in violation of the law.

(2) For purposes of this section, any adjudication of violation or conviction under any Federal or State law or of any

ordinance of any political subdivision relating to any controlled drug or substance other than a juvenile violation, shall constitute a prior offense if it related to the type of conduct against which a subsequent offense is directed.

(3) Any penalty relating to license suspension or revocation shall be executed by the appropriate licensing agency upon receipt of a court order setting forth the penalty.

(4) No person shall be convicted of an offense under section 14 of this act unless he knew with respect to each element of the offense that he was engaged in the act or omission prescribed, but knowledge that the act or omission constituted a civil or criminal offense shall not be required for conviction.

(5) Imprisonment may be imposed for failure to pay all or any part of a fine imposed under this section only when the offender does not show that such failure is caused by indigence or a lack of sufficient funds.

(6) All fines collected under this section shall be utilized for the treatment and rehabilitation services established by law.

(7) The probation or parole or other conditional release of any drug abuser or drug dependent person convicted of an offense under this act or of any other offense may be conditioned on the person's agreement to periodic urine analyses. Neither a relapse into drug abuse one or more times or the failure to conform to a set schedule for rehabilitation, or both, shall be sufficient in themselves to require that his status be revoked or treatment denied.

(8) The court without a jury shall hold a full and fair hearing for the purpose of setting the amount of any fine pursuant to this section, during which the district attorney and

the defendant may introduce evidence. The defendant shall be permitted to cross-examine any adverse witness or rebut any adverse evidence. The amount of any fine set by the court shall be supported by substantial evidence.

(9) A person may be entitled to probation without verdict under the following circumstances:

(i) A person who has not previously been convicted of an offense relating to a controlled drug or dangerous substance under any law of this Commonwealth, the United States, or any other state, shall be eligible for probation without verdict if he pleads nolo contendere or guilty to, or is found guilty of, any offense under this act. The court may, without entering a judgment, and with the consent of such person, defer further proceedings and place him on probation for a specific time period upon such reasonable terms and conditions as it may require. Probation without verdict shall not be available to any such person who is charged with a trafficking offense involving distribution of a controlled drug or dangerous substance at wholesale or distribution at retail of any controlled drug or dangerous substance as part of an organized professional system.

(ii) Upon violation of a term or condition of probation, the court may enter a judgment and proceed as in any criminal case, or may continue the probation without verdict.

(iii) Upon fulfillment of the terms and conditions of probation, the court shall discharge such person and dismiss the proceedings against him. Discharge and dismissal shall be without adjudication of guilt and shall not constitute a conviction for any purpose whatever: Provided, That probation without verdict shall be available to any person only once.

Section 18. Offenses by a Corporation, Copartnership or

Association.--If any violation of the provisions of this act is by a corporation, copartnership or association, the officers and directors of such corporation or the members of such copartnership or association, the agents and employes with prior guilty knowledge of the fact, shall be deemed guilty of a violation of the provisions of this act to the same extent as though said violation were committed by them personally.

Section 19. Expunging Criminal Records.--(a) Any arrest for a criminal offense under this act or under the provisions previously governing narcotics and dangerous drugs or substances in the Commonwealth of Pennsylvania, or any political subdivision thereof, shall promptly be expunged from the person's public arrest and other public criminal records when the charges are withdrawn or dismissed or the person is acquitted of the charges.

(b) Any conviction of a criminal offense under this act or under the provisions previously governing narcotics and dangerous drugs or substances in the Commonwealth of Pennsylvania or any political subdivision thereof may be expunged from all public criminal records by a court upon the filing of a petition supported by substantial evidence of good conduct since the petitioner's conviction. Copies of the petition shall be served on the Attorney General and the district attorney, who shall be responsible for consulting other appropriate public agencies and departments. If a district attorney files a motion to dismiss the petition within sixty days, the court, without a jury, shall hold a full and fair hearing before ruling on the issue. The petitioner shall have the right to cross-examine any adverse witness or rebut any adverse evidence. The proceeding shall be private. The petition

shall be granted if supported by substantial evidence of good conduct since the petitioner's conviction unless the court finds, on the basis of evidence of record, good cause not to accept the petitioner's allegations of good conduct. The petition may be filed and heard only after the following time lapses:

(1) For a conviction for trafficking in the third degree or possession in the second degree, or any offense under prior law that would not come within any of these provisions, after two years from the date or release from a penal institution or from the date of conviction if not sent to a penal institution.

(2) For a conviction for possession in the first degree, or any offense under prior law that would not come within any of these provisions, after three years from the date of release from a penal institution or from the date of conviction if not sent to a penal institution.

(3) For a conviction for any other offense under this act, or any offense under prior law that would now come within any of these provisions, or any offense under prior law governing narcotics and controlled drugs or dangerous substances that would not now come within any of these provisions, after three years from the date of release from a penal institution or from the date of conviction if not sent to a penal institution.

(c) Any expunged arrest or conviction shall not thereafter be regarded as an arrest or conviction for the purpose of any statute or regulation or license or questionnaire or any other public or private purpose: Provided, That it shall continue to constitute an offense for purposes of any criminal statute under which the existence of a prior conviction is relevant to the penalty to be imposed. No person shall be permitted to learn of

an expunged arrest or conviction, or of the expungement, by any means whatever: Provided, That the judiciary, court personnel, and district attorneys may learn of an expunged arrest or conviction, and of the expungement, where it becomes relevant to a penalty to be imposed in a subsequent case. Any person who seeks or divulges such information in violation of this subsection shall be guilty of a misdemeanor, and shall, upon conviction thereof be punished by imprisonment not exceeding ninety days, or a fine not exceeding one thousand dollars ($1,000), or both.

Section 20. Burden of Proving Exemptions.--In any prosecution under this act, it shall not be necessary to negate any of the exemptions of this act in any complaint, information or indictment. The burden of proving any exemption under this act shall be upon the defendant.

Section 21. Revocation of Licenses of Practitioners.--(a) Any license heretofore issued to any physician, dentist, veterinarian, pharmacist or registered nurse may be either revoked or suspended by the proper officers or boards having power to issue licenses to any of the foregoing, upon proof that the licensee is addicted to the use of any narcotic drugs, after giving such licensee reasonable notice and opportunity to be heard.

(b) The appropriate licensing boards in the Department of Education are hereby authorized to revoke or suspend the registration or license of any physician, surgeon, dentist, veterinarian, pharmacist or nurse, when such person has pleaded guilty or nolo contendere or has been found guilty by a judge or jury of violating any State or Federal law pertaining to the sale, use or distribution of narcotics. Before any such

revocation or suspension, the licensee or registrant shall be given a hearing before the appropriate board. At such hearing the accused may be represented by counsel and shall be entitled to compulsory attendance of witnesses.

Section 22. Administrative Inspections and Warrants.--(a) As used in this section, the term "controlled premises" means:

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

(2) Places, including factories, warehouses, or other establishments, and conveyances, where persons registered under section 6 (or exempted from registration under section 6) may lawfully hold, manufacture, or distribute, dispense, administer or otherwise dispose of controlled substances.

(b) (1) For the purpose of inspecting, copying, and verifying the correctness of records, reports, or other documents required to be kept or made under this act and otherwise facilitating the carrying out of his functions under this act, the Secretary of Health is authorized, in accordance with this section, to enter controlled premises and to conduct administrative inspections thereof, and of the things specified in this section, relevant to those functions.

(2) Such entries and inspections shall be carried out through officers or employes (hereinafter referred to as "agents") designated by the secretary. Any such agent upon stating his purpose and presenting to the owner, operator, or agent in charge of such premises (i) appropriate credentials and (ii) a written notice of his inspection authority (which notice in the case of an inspection requiring, or in fact supported by, an administrative inspection warrant shall consist of such warrant), shall have the right to enter such premises and

conduct such inspection at reasonable times.

(3) Except as may otherwise be indicated in an applicable inspection warrant, the agent shall have the right: (i) to inspect and copy records, reports, and other documents required to be kept or made under this act; (ii) to inspect, within reasonable limits and in a reasonable manner, controlled premises and all pertinent equipment, finished and unfinished drugs and other substances or materials, containers, and labeling found therein, and, except as provided in clause (5) of this subsection, all other things therein (including records, files, papers, processes, controls, and facilities) appropriate for verification of the records, reports, and documents referred to in subclause (i) or otherwise bearing on the provisions of this act; and (iii) to inventory any stock of any controlled substance therein and obtain samples of any such substance.

(4) Except when the owner, operator, or agent in charge of the controlled premises so consents in writing, no inspection authorized by this section shall extend to: (i) financial data; (ii) sales data other than shipment data; or (iii) pricing data.

(c) A warrant under this section shall not be required for the inspection of books and records pursuant to an administrative subpoena issued in accordance with any provisions of any Act of Assembly nor for entries and administrative inspections (including seizures of property):

(1) With the consent of the owner, operator, or agent in charge of the controlled premises;

(2) In situations presenting imminent danger to health or safety;

(3) In situations involving inspection of conveyances where there is reasonable cause to believe that the mobility of the

conveyance makes it impracticable to obtain a warrant;

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

(5) In any other situations where a warrant is not constitutionally required.

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

(1) Any judge of a Commonwealth court of record, may, within his territorial jurisdiction, and upon proper oath or affirmation showing probable cause, issue warrants for the purpose of conducting administrative inspections authorized by this act or regulations thereunder, and seizures of property appropriate to such inspections. For the purposes of this section, the term "probable cause" means a valid public interest in the effective enforcement of this act or regulations thereunder sufficient to justify administrative inspections of the area, premises, building, or conveyance, or contents thereof, in the circumstances specified in the application for the warrant.

(2) A warrant shall issue only upon an affidavit of an officer or employe having knowledge of the facts alleged, sworn to before the judge and establishing the grounds for issuing the warrant. If the judge 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 such inspection, and, where appropriate, the type of property to be inspected, if any. The warrant shall identify the items or types of property to be seized, if any. The warrant shall be directed to a person authorized under subsection (b) (2) to

execute it. The warrant shall state the grounds for its issuance and the name of the person or persons whose affidavit has been taken in support thereof. It shall command the person to whom it is directed to inspect the area, premises, building, or conveyance identified for the purpose specified, and, where appropriate, shall direct the seizure of the property specified. The warrant shall direct that it be served during normal business hours. It shall designate the judge to whom it shall be returned.

(3) A warrant issued pursuant to this section must be executed and returned within ten days of its date unless, upon a showing by the Secretary of Health of a need therefor, the judge allows additional time in the warrant. If property is seized pursuant to a warrant, the person executing the warrant shall give to the person from whom or from whose premises the property was taken a copy of the warrant and a receipt for the property taken or shall leave the copy and receipt at the place from which the property was taken. The return of the warrant shall be made promptly and shall be 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 they are present, or in the presence of at least one credible person other than the person making such inventory, and shall be verified by the person executing the warrant. The judge upon request, shall deliver a copy of the inventory to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

(4) The judge who has issued a warrant under this section shall attach to the warrant a copy of the return and all papers

filed in connection therewith and shall file them with the clerk of the court for the judicial district in which the inspection was made.

Section 23. Injunctive Relief.--In addition to the remedies provided herein, the secretary is hereby authorized to apply to the court of common pleas in the county in which such violation occurs or to the Commonwealth Court for, and such court shall have jurisdiction to grant, a temporary or permanent injunction restraining any person from continued violation of any provision of this act irrespective of the existence of an adequate remedy at law.

Section 24. Cooperation With Other Authorities.--The agencies charged with the enforcement of this act shall actively cooperate and coordinate with the agencies charged with the enforcement of all Federal and State laws relating to the regulation of the distribution of controlled drugs or dangerous substances.

Section 25. Embargo and Seizure.--(a) Whenever a duly authorized agent of the secretary finds or has probable cause to believe that any drug, device or cosmetic is adulterated or misbranded or contraband, the same shall be deemed subject to embargo and he shall affix to such article or articles a tag or other appropriate marking, approved by the secretary, giving notice that such article is or is suspected of being adulterated, misbranded or contraband and warning all persons not to remove or dispose of such article or articles until permission so to do has been granted by such agent, or until it shall have determined by proper authority that such article or articles are not adulterated, misbranded or contraband. At the time such notice is offered, the agent shall provide the person

in charge of such articles, if any, or the owner, if he is known, a statement in writing, setting forth both the basis for the embargo and supporting facts.

(b) When an article or articles is detained or embargoed under subsection (a), the secretary shall serve within three days from the date of such embargo a citation upon the claimant thereof or owner, if he is known, setting forth both the basis for the embargo and supporting facts and fixing a date for a hearing not later than ten days from the date of service of said citation at which a hearing examiner, appointed under the authority of section 27, will receive evidence pertaining to the alleged offense. Unless postponed by mutual consent, failure to serve a citation or commence hearings within the time herein specified shall operate to void such embargo.

(c) If, after hearing, the examiner is satisfied from the evidence presented that a detained or embargoed article is adulterated, misbranded or contraband, he shall, within five days of the conclusion of the hearing, order such article or articles destroyed at the expense of the claimant thereof under supervision of an agent of the secretary: Provided, That when the embargo is based on an adulteration or misbranding which can be corrected by proper labeling or processing of the article, the examiner, after entry of the order and after such costs, fees and expenses have been paid and a good and sufficient bond conditioned that such article shall be so labeled or processed has been executed, may by order direct that such article be released to the claimant thereof for such labeling or processing under the supervision of an agent of the secretary. The expense of such supervision, if any, shall be paid by the claimant. Such article shall be released to the claimant of the article when

the article is no longer in violation of this act and the expenses of such supervision have been paid.

(d) If no claimant shall appear to defend such proceedings, the hearing examiner may order the embargoed articles destroyed or distributed to a nonprofit institution.

Section 26. Forfeiture.--(a) The following shall be subject to forfeiture to the Commonwealth and no property right shall exist in them:

(1) All controlled paraphernalia which have been manufactured, distributed, dispensed, or acquired in violation of this act.

(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 act.

(3) All property which is used, or intended for use, as a container for property described in clause (1) or (2) of this subsection.

(4) All conveyances, including aircraft, vehicles, or vessels, which are used or are intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession, or concealment of property described in clause (1) or (2) except that:

(i) no conveyance used by any person as a common carrier in the transaction of business as a common carrier shall be forfeited under the provisions of this section unless it shall appear that the owner or other person in charge of such conveyance was a consenting party or privy to a violation of this title; and

(ii) no conveyance shall be forfeited under the provisions

of 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.

(5) All books, records, and research, including formulas, microfilm, tapes and data which are used, or intended for use, in violation of this act.

(b) Property subject to forfeiture under this act may be seized by the law enforcement authority upon process issued by any court of common pleas 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 inspection under an administrative inspection warrant;

(2) The property subject to seizure has been the subject of a prior judgment in favor of the Commonwealth in a criminal injunction or forfeiture proceeding under this act;

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

(4) There is probable cause to believe that the property has been used or is intended to be used in violation of this act.

(c) In the event seizure without process occurs, as provided herein, proceedings for the issuance thereof 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 law enforcement authority subject only to the orders and decrees of the court of common pleas having jurisdiction over the forfeiture proceedings. When property is seized under this act, the law enforcement authority may:

(1) Place the property under seal;

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

(3) Require that the proper administrative authority take custody of the property and remove it to an appropriate location for disposition in accordance with law.

(e) Whenever property is forfeited under this act, the law enforcement authority may:

(1) Retain the property for official use;

(2) Sell any forfeited property which is not required to be destroyed by law and which is not harmful to the public, but the proceeds from any such sale shall be used to pay all proper expenses of the proceedings for forfeiture and sale including expenses of seizure, maintenance of custody, advertising and court costs;

(3) Require that the appropriate administrative agency take custody of the property and remove it for disposition in accordance with law; or

(4) Forward it to the council, or its successor agency, for disposition.

Section 27. Hearing Examiners.--(a) The secretary shall appoint, with the approval of the Governor, such hearing examiners as shall be necessary to conduct hearings as provided in section 25.

(b) Hearing examiners appointed under this act shall have the power to issue subpoenas requiring the attendance and testimony of, or the production of, pertinent books and papers by persons whom they believe to have information relevant to any matter pending before him. Such examiner shall also have the power to administer oaths.

(c) Any person who refuses to obey a subpoena issued hereunder or to be sworn or affirmed or to testify, or who is

guilty of any contempt after summons to appear, may be punished as for contempt of court. For this purpose, an application may be made by the examiner to the court of common pleas within the territorial jurisdiction of which the offense was committed for which purpose such court is hereby given jurisdiction.

(d) In any action or proceeding before him, the hearing examiner may assess all costs incurred in connection with the prosecution of such proceeding, including investigative and laboratory costs incurred by the Commonwealth, against respondent in such proceeding; such costs to be in addition to any other penalty imposed and to be retained by the Department of Health and applied to cost to the department administering this act.

(e) Hearings shall be conducted under the provisions of the Administrative Agency Law, as amended, and subject to such other rules and regulations not inconsistent therewith as the secretary may provide and any person aggrieved by any action of the hearing examiner may appeal in accordance with the provisions of the Administrative Agency Law, as amended.

Section 28. Board Creation.--(a) There is hereby created within the Department of Health a departmental administrative board to be known as the "Pennsylvania Drug, Device and Cosmetic Board."

(b) The board shall consist of the Secretary of Health, his successors in office, and nine additional members whom the Governor shall appoint, by and with the advice and consent of two-thirds of all the members of the Senate. Of the members: one shall be a physician, one a dentist, one a veterinarian, and one a pharmacist, each of whom shall be duly licensed in their respective professions by the Commonwealth; one shall be a

biochemist and one shall be a pharmacologist, each of whom shall have earned an advanced degree in that field from an institution of higher learning and shall have been engaged as such for three years in this State; one shall be a manufacturer registered to manufacture drugs or an employe thereof; and the two remaining persons shall be members of the general public not engaged in any of the aforementioned professional fields, who shall be citizens of this State. Two members initially shall serve for terms of one, two, three and four years, respectively, the particular term of each to be designated by the Governor at the time of appointment. Any additional member, the appointment of whom is authorized by amending act, shall serve for a term of four years. The terms of all their successors shall be four years each, except that any person appointed to fill a vacancy shall serve only for the unexpired term. Every member's term shall extend until his successor is appointed and qualified. Any appointed member of the board shall be eligible for reappointment. Each member of the board shall receive compensation at a rate of thirty dollars ($30) per diem in addition to expenses incurred when actually engaged in official meetings or otherwise in the performance of their official duties as directed by the chairman.

(c) The Secretary of Health, or his designate, shall serve as chairman of the board. A majority of the members shall constitute a quorum for the purpose of organizing the board, conducting its business, and exercising all of its powers. A vote of the majority of the members present shall be sufficient for all actions of the board unless the bylaws require a greater number.

(d) The board shall have the power to prescribe, amend and

repeal bylaws, rules and regulations governing the manner in which the business of the body is conducted and the manner in which the powers granted to it are exercised. The board may delegate supervision of the administration of board activities to an administrative secretary and such other employes as the Secretary of Health shall appoint.

(e) The board shall have the power to do all things necessary or convenient to carry out the powers granted to it by this act.

(f) The board may, for the authentication of its records, process and proceedings, adopt, keep and use a common seal of which seal judicial notice shall be taken in all courts of this Commonwealth and any process, writ, notice or other document, which the board may be authorized by law to issue, shall be deemed sufficient if signed by the chairman or secretary of the board and authenticated by such seal. All acts, proceedings, orders, papers, findings, minutes and records of the board, and all reports and documents filed with the board, may be proved in any court of this Commonwealth by a copy thereof certified to by the chairman or secretary of the board with the seal of the board attached.

(g) In order to enable the board to carry out the provisions of this act, including its power to advise the secretary on various matters, it shall have the power to issue subpoenas, requiring the attendance and testimony of, or the production of, pertinent books and papers by persons whom the board believes to have information, books or papers of importance to it in carrying out the purposes and intent of this act. Each member of the board and such officers, employes or others employed in the work of the board designated by the chairman of the board also

shall have the power to administer oaths and affirmations, to question witnesses thereunder, and to examine such books and papers. The board may issue commissions, letters rogatory, or other appropriate processes outside the Commonwealth.

(h) Any person who refuses to obey a subpoena issued hereunder, or to be sworn or affirmed, or to testify, or who is guilty of any contempt after summons to appear, may be punished as for contempt of court. For this purpose an application may be made by the board to the court of common pleas within the territorial jurisdiction of which the offense was committed, for which purpose, such court is hereby given jurisdiction.

Section 29. Persons Authorized to Prescribe Drugs to Remain as Heretofore.--No provision of this act or any rule or regulation promulgated pursuant to this act shall authorize or be construed as authorizing any person to prescribe drugs who is not specifically so authorized under existing law.

Section 30. Conformity With Federal Law.--No drug, device or cosmetic shall be deemed to be adulterated or misbranded under this act if such drug, device or cosmetic complies with the applicable Federal act and/or regulations and interpretations issued pursuant thereto, unless the secretary, after consultation with and upon the recommendation of the board, shall have previously promulgated a regulation stating that the applicable provision of the Federal act and/or regulations and interpretations thereof would not be followed.

Section 31. Administration of Act.--(a) Except as may be otherwise provided by law, the provisions of this act shall be administered by the Department of Health of the Commonwealth of Pennsylvania. The Secretary of Health is authorized to employ such consultants, assistants, stenographers, clerks and other

employes as, in his opinion, may be necessary and to fix their compensation subject to "The Administrative Code of 1929," as amended, act of April 9, 1929 (P.L.177).

(b) The secretary is authorized and directed to establish a Bureau of Narcotics Control within the department and to employ therein sufficient law enforcement personnel to act as agents for the purpose of performing the inspection and enforcement duties imposed upon the department by this act.

(c) Any officer or employe of the Bureau of Narcotics of the department 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 the Commonwealth;

(3) Make arrests without warrant for any offense under this act 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 act which may constitute a felony;

(4) Make seizures of property pursuant to this act; or

(5) Perform other law enforcement duties as the secretary designates.

(d) Nothing contained herein shall be deemed to limit the authority of the Department of Justice in dealing with law enforcement matters with respect to professional criminals engaged in the unlawful importation, manufacture, sale and production of drugs and controlled dangerous substances nor the authority of the council in performing any duties imposed upon it by the "Pennsylvania Drug, Narcotic and Alcohol Abuse Act of

1971."

Section 32. Promulgation of Regulations.--(a) The secretary shall have the authority to promulgate in accordance with the provisions of this section any regulations hereinbefore referred to in this act and such other regulations upon the advice of the board regarding the possession, sale, purchase or manufacture of drugs, devices or cosmetics as may be necessary to aid in the enforcement of this act.

(b) (i) Prior to the promulgation, amendment or repeal of any regulation under this act the secretary shall give at least thirty days public notice of his proposed action, and shall afford all interested persons an opportunity to present their views thereon either orally or in writing. As soon as practicable thereafter, the secretary shall either withdraw such proposal or shall promulgate the proposed regulation.

(ii) Any person aggrieved by the promulgation, amendment or repeal of a regulation, or by the refusal to promulgate, amend or repeal a regulation, may file objections with the secretary specifying, with particularity, the reason why such action is deemed objectionable and the grounds for such objection. As soon as possible after the filing of objections, the secretary shall hold a public hearing for the purpose of receiving evidence relevant to such objections. As soon as practicable after completion of hearings, the secretary shall issue an appropriate order either confirming, modifying or withdrawing the regulation in question.

(iii) Any party to proceedings, conducted pursuant to paragraph (ii) hereof, aggrieved by the order of the secretary, shall have a right of appeal in accordance with the provisions of the Administrative Agency Law, as amended, and such order

shall be deemed an "adjudication" as that term is defined and used in the Administrative Agency Law, as amended.

Section 33. Administrative Procedure.--The Administrative Agency Law, as amended, shall be applicable in its entirety to the Department of Health in the administration of this act.

Section 34. Savings Provision.--The provisions of this act shall not affect any act done, liability incurred, or right accrued or vested, or affect any suit or prosecution pending to enforce any right or penalty or punish any offense under the authority of any Act of Assembly, or part thereof, repealed by this act.

Section 35. Severability.--The provisions of this act are severable and, if any provision or part hereof shall be held invalid or unconstitutional or inapplicable to any person or circumstances, such invalidity, unconstitutionality or inapplicability shall not affect or impair the remaining provisions of the act. It is hereby declared to be the legislative intent that this act would have been adopted if such invalid, unconstitutional or inapplicable provision had not been included therein.

Section 36. Repeals.--(a) The act of September 26, 1961 (P.L.1664), known as "The Drug, Device and Cosmetic Act," is hereby repealed.

(b) All other acts, or parts of acts, inconsistent with this act are hereby repealed.

Section 37. Effective Date.--This act shall take effect sixty days after the enactment thereof.