No. 64

AN ACT

HB 851

Relating to the manufacture, sale and possession of controlled substances, other 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 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 Controlled Substance, Drug, Device and Cosmetic Act."

Section 2. Definitions.—(a) The definitions contained and used in the "Pennsylvania Drug and Alcohol Abuse Control Act" shall also apply for purposes of this act.

(b) As used in this act:

"Administer" means the direct application of a controlled substance, other drug or device, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject.

"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 controlled substance, other drug, device or cosmetic.

"Agent" means an authorized person when acting on behalf of or at the direction of a manufacturer, distributor, or dispenser. It does not include a common or contract carrier, public warehouseman, or employe of the carrier or warehouseman.

"Board" means the Pennsylvania Drug, Device and Cosmetic Board.

"Bureau" means the Bureau of Drug Control, Pennsylvania Department of Health.

"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 controlled substance, other drug, device or cosmetic to the human or animal 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.

"Commercial container" means any bottle, jar, tube, ampul, or other

receptacle in which a controlled substance, other drug, device or cosmetic is held for distribution or dispensing to an ultimate user, and in addition, any box or package in which the receptacle is held for distribution or dispensing to an ultimate user. The term "commercial container" does not include any package liner, package insert or other material kept with or within a commercial container, nor any carton, crate, drum, or other package in which commercial containers are stored or are used for shipment of controlled substances.

"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.

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

"Control" means to remove, or change the placement of a controlled substance or immediate precursor, under the provisions of this act.

"Controlled substance" means a drug, substance, or immediate precursor included in Schedules I through V of this act.

"Cosmetic" means: (i) substances intended to be rubbed, poured, sprinkled or sprayed on, introduced into or otherwise applied to the human body or other animal body or any part thereof for cleansing, beautifying, promoting attractiveness or altering the appearance, and (ii) substances intended for use as a component of any such substances, except that such term shall not include soap.

"Council" means the Governor's Council on Drug and Alcohol Abuse.

"Counterfeit" means a controlled substance, other drug, device or cosmetic 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 is falsely purported or represented to be the product of, or to have been distributed by, such other manufacturer, distributor, or dispenser.

"Court" means all courts of the Commonwealth of Pennsylvania, including magistrates and justices of the peace.

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

"Department" means the Department of Health of the Commonwealth of Pennsylvania.

"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.

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

"Dispenser" means a practitioner who dispenses.

"Distribute" means to deliver other than by administering or dispensing a controlled substance, other drug, device or cosmetic.

"Distributor" means any person engaged in the activities of jobber, dealer, or wholesaler who sells, or otherwise distributes, any controlled substance, other drug, device or cosmetic for resale or redistribution which he has not himself prepared, produced or compounded.

"Drug" means: (i) substances recognized in the official United States Pharmacopeia, or official National Formulary, or any supplement to either of them; and (ii) substances intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals; and (iii) substances (other than food) intended to affect the structure or any function of the human body or other animal body; and (iv) substances 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.

"Drug dependent person" means a person who is using a drug, controlled substance or alcohol, and who is in a state of psychic or physical dependence, or both, arising from administration of that drug, controlled substance or alcohol on a continuing basis. Such dependence is characterized by behavioral and other responses which include a strong compulsion to take the drug, controlled substance or alcohol on a continuous basis in order to experience its psychic effects, or to avoid the discomfort of its absence. This definition shall include those persons commonly known as "drug addicts."

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

"Label" means a display of written, printed or graphic matter upon the commercial container of any substance or 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 substance or is easily legible through the outside container or wrapper.

"Labeling" means all labels and other written, printed, or graphic matter: (i) upon a substance or any of its containers or wrappers; or (ii) accompanying such substance.

"Manufacture" means the production, preparation, propagation, compounding, conversion or processing of a controlled substance, other drug or device or the packaging or repackaging of such substance or article, or the labeling or relabeling of the commercial container of such substance or article, but does not include the activities of a practitioner who, as an incident to his administration or dispensing such substance or article in the course of his professional practice, prepares, compounds, packages or labels such substance or article. The term "manufacturer" means a person who manufactures a controlled substance, other drug or device.

"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 tetrahydrocannabinols, 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, cake, or the sterilized seed of such plant which is incapable of germination.

"Narcotic" 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: (i) opium, (ii) any opiate having an addiction-forming or addiction-sustaining capacity similar to morphine, but not including the isoquinoline alkaloids of opium, (iii) any compound, manufacture, salt, derivative, or preparation of opium or any opiate, and (iv) any substance, compound, manufacture, salt, derivative, or preparation thereof, which is chemically identical with any of the substances referred to in (i), (ii) or (iii).

"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.

"Nonproprietary drug" means any drug containing any quantity of any controlled substance or any drug requiring a prescription, a drug containing biologicals or substances of glandular origin (except intestinal

enzymes and all liver products), drugs which are administered parenterally, 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.

"Official compendium" means the official United States Pharmacopeia, the official National Formulary or any supplement to either of them.

"Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include the dextrorotatory isomer of 3-methoxy-n-methlmorphinan and its salts (dextromethorphan). It does include the racemic and levorotatory forms.

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

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

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

"Practitioner" means: (i) a physician, osteopath, dentist, veterinarian, pharmacist, podiatrist, nurse, scientific investigator, or other person licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance, other drug or device in the course of professional practice or research in the Commonwealth of Pennsylvania; (ii) a pharmacy, hospital, clinic or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance, other drug or device in the course of professional practice or research in the Commonwealth of Pennsylvania.

"Production" includes the manufacture, planting, cultivation, growing or harvesting of a controlled substance, other drug, device and cosmetic.

"Prescription" or "prescription order" means an order for a controlled substance, other drug or device for medication which is dispensed to or for an ultimate user, but does not include an order for a controlled substance, other drug or device for medication which is dispensed for immediate administration to the ultimate user (e.g., an order to dispense a drug to a bed patient for immediate administration in a hospital is not a prescription order).

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

"Secretary" means the Secretary of Health of the Commonwealth of Pennsylvania.

"Ultimate user" means a person who lawfully possesses a controlled substance, other drug, device or cosmetic for his own use or for the use of a member of his household or for administering to an animal in his care.

Section 3. Authority to Control.—(a) The secretary shall control all substances listed in Schedules I through V of this act and may, by regulation, upon his own motion or on the petition of any interested party, add a substance as a controlled substance. Such regulations shall be adopted in accordance with the act of July 31, 1968 (P.L.769), known as the "Commonwealth Documents Law." Before so doing, the secretary shall request the advice in writing from the board whether a substance should be added as a controlled 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) The 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 a regulation 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) The secretary shall not remove any substance from control under this act unless specifically authorized by the General Assembly to do so. The secretary shall not reschedule any controlled substance unless specifically authorized by the board to do so.

Section 4. Schedules of Controlled Substances.—The following schedules include the controlled 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 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. Alphacetylmethadol.
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. Diethylthiambutene.
16. Dimenoxadol.
17. Dimepheptanol.
18. Dimethylthiambutene.
19. Dioxaphetyl butyrate.
20. Dipipanone.
21. Ethylmethylthiambutene.
22. Etonitazene.
23. Etoxeridine.
24. Furethidine.
25. Hydroxypethidine.
26. Ketobemidone.
27. Levomoramide.
28. Levophenacylmorphan.
29. Morpheridine.
30. Noracymethadol.
31. Norlevorphanol.
32. Normethadone.
33. Norpipanone.
34. Phenadoxone.
35. Phenampromide.
36. Phenomorphan.
37. Phenoperidine.
38. Piritramide.
39. Proheptazine.
40. Properidine.
41. Racemoramide.
42. 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. Mescaline.
11. Peyote.
12. N-ethyl-3-piperidyl benzilate.
13. N-methyl-3-piperidyl benzilate.
14. Psilocybin.
15. Psilocyn.
16. Tetrahydrocannabinols.

(iv) Marihuana.

(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 substances are included in this schedule:

(i) Any of the following substances except those narcotics 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, but shall not include decocainized coca leaves or extracts of coca leaves, which extracts 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 or listed in another schedule, 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 material, compound, mixture or preparation which contains any quantity of the following substances, having a potential for abuse associated with the 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. Methylphenidate.
4. Any substance 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 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 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.

(ii) Nalorphine.

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

1. Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium.

2. Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

3. Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium.

4. Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

5. Not more than 1.8 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

6. Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

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

8. Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams and not more than 2.5 milligrams per dosage unit 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 substance listed in subclauses (i) and (ii) of this schedule above from the application of those provisions of this act covering controlled substances, 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—In determining that a substance comes within this schedule, the secretary shall find: a low potential for abuse relative to

substances in Schedule III; currently accepted medical use in the United States; and limited physical and/or psychological dependence liability relative to the substances listed in Schedule III. The following controlled 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 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.

(ii) The secretary may by regulation except any compound, mixture, or preparation containing any drug or controlled dangerous substance listed in subclause (i) 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 effe 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.

(iii) 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.

(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 substances are included in this schedule:

(i) Any compound, mixture, or preparation containing limited quantities of any of the following narcotics or any of their salts, 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 alone:

1. Not more than 200 milligrams of codeine, or any of its salts, per 100 milliliter or per 100 grams and not more than 10 milligrams per dosage unit.

2. Not more than 100 milligrams of dihydrocodeine, or any of its salts, per 100 milliliters or per 100 grams and not more than 5 milligrams per dosage unit.

3. Not more than 100 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or per 100 grams and not more than 5 milligrams per dosage unit.

4. Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit.

5. Not more than 100 milligrams of opium per 100 milliliters or per 100 grams, or not more than 5 milligrams per dosage unit.

Section 5. Exempt Controlled Substances, Other Drugs, Devices and Cosmetics.—(a) Except as set forth in the Schedules of Controlled Substances of section 4 of this act or otherwise provided herein, the secretary, after consultation with and upon the recommendation of the board, may, by regulation, exempt from the provisions of this act relating to controlled substances, other drugs, devices and cosmetics to such extent as he determines to be consistent with the public health.

Section 6. Registration.—(a) No person shall operate within this Commonwealth as a manufacturer, distributor or retailer of controlled substances, other drugs and devices nor sell, offer for sale nor solicit the purchase of controlled substances, other drugs and devices nor hold them for sale or resale until such person has registered under this act with the secretary. Such registration must be renewed annually in accordance with rules and regulations relating thereto.

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

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

(3) Registrations issued by the secretary or under the law preceding this act to manufacturers, distributors or retailers shall continue to be valid for the period issued and, upon expiration, shall be renewed in the manner provided for renewal of registration issued pursuant to this section. Nothing contained herein shall be construed to require the registration hereunder of any practitioner registered or licensed by the appropriate State 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 agents of manufacturers or distributors not 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 controlled substances or other drugs unless they are manufactured under the supervision of a registered pharmacist, chemist or other person possessing at least five years' experience in the manufacture of controlled substances, or other drugs 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, distributor or retailer shall be accompanied by a fee to be set by the secretary. Applications shall be on forms prescribed by the secretary. Registration shall be renewed annually and applications therefor shall be accompanied by the same fee as for initial applications.

(d) Initial 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 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 certification by the secretary that the applicant has met all requirements for such renewal.

(e) The secretary may refuse the initial registration and may, after notice and hearing pursuant to the Administrative Agency Law, suspend registration (i) of any person who has made material false representation in the application for registration; (ii) of any manufacturer or distributor who has been convicted of a violation of any law of this Commonwealth or of the United States relating to controlled substances, if such refusal shall be necessary for the protection of the public health and safety; (iii) of any manufacturer or distributor who knowingly employs in a capacity directly connected with the preparation, handling or sale of 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 controlled substances, if such refusal shall be necessary for the protection of the public health and safety.

(f) If the secretary takes any action refusing registration or revoking or suspending registration 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 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.

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

(1) an agent or employe of any registered manufacturer, distributor, dispenser or any person listed in lieu of registration with the secretary if he is acting in the usual course of his business or employment;

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

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

Section 7. Adulteration.—A controlled substance, other drug, 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 unsanitary conditions whereby it may have been contaminated with filth, or whereby it may have been rendered injurious to health; (iii) and if it is a drug or a device 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 or device, 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 or device 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.

(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 or device 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 controlled substance, other 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 controlled substance designated by Federal law as habit-forming, unless its label bears 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 glycosides, 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, device or cosmetic is not necessary for the protection of the public health, regulations shall be promulgated exempting such drug, device or cosmetic from such requirements.

(7) If it purports to be a drug or device the name of which is recognized in an official compendium, unless it is packaged and labeled as prescribed therein: Provided, That the method of packaging may be modified with a consent of the secretary.

(8) If it has been found by the secretary to be a drug, device or cosmetic 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.

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

(12) If it is a controlled substance, its commercial container must bear a label containing an identifying symbol for such substance in accordance with Federal regulations.

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.—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 or a notice of claimed investigational exemption for a new drug has been filed under the appropriate Federal act.

Section 11. Professional Prescription, Administration, and Dispensing.—(a) Except when dispensed or administered directly to the patient by a practitioner or his authorized agent, other than a pharmacist, to an ultimate user, no controlled substance in Schedule II, may be dispensed without the written prescription of a practitioner, except in emergency situations, as prescribed by the secretary by regulation. No prescription for a controlled substance in Schedule II may be refilled.

(b) Except when dispensed directly by a practitioner, other than a pharmacist, to an ultimate user, no controlled substance in Schedule III or IV, may be dispensed without a written or oral prescription. Such prescriptions shall not be filled or refilled more than six months after the date thereof or be refilled more than five times after the date of the prescription unless renewed by the practitioner.

(c) No controlled substance in Schedule V may be distributed or dispensed for other than a medicinal purpose.

(d) A practitioner may prescribe, administer, or dispense a controlled substance or other drug or device 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 practitioner may cause a controlled substance, other drug or device or drug to be administered by a professional assistant under his direction and supervision.

(e) A veterinarian may prescribe, administer, or dispense a controlled substance, other drug or device 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 substance, other drug or device to be administered by a professional assistant under his direction and supervision.

(f) Any drug or device dispensed by a pharmacist pursuant to a prescription order shall bear a label showing (i) the name and address of the pharmacy and any registration number obtained pursuant to any applicable Federal laws, (ii) the name of the patient, or, if the patient is an animal, the name of the owner of the animal and the species of the animal, (iii) the name and any registration number required to be obtained pursuant to any applicable Federal laws, of the practitioner by whom the prescription order was written, and (iv) the serial number and date of filing of the prescription order. In addition, the following statement shall be required on the label of a controlled substance: "Transfer of this drug to anyone other than the patient for whom it was prescribed is illegal."

Section 12. Records of Distribution of Controlled Substances.—(a) Every person who sells or otherwise distributes controlled substances, shall keep records of all purchases or other receipt and sales or other distribution of such substances 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: Provided, however, That this subsection shall not apply to a practitioner who dispenses controlled substances to his patients, unless the practitioner is regularly engaged in charging his patients, whether separately or together with charges for other professional services, for substances so dispensed.

(b) Every practitioner licensed by law to administer, dispense or

distribute controlled substances shall keep a record of all such substances 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 substances are dispensed or distributed. Such record shall be kept for two years from the date of administering, dispensing or distributing such substance and shall be open for inspection by the proper authorities.

(c) Persons registered or licensed to manufacture or distribute or dispense a controlled substance, other drug or device under this act shall keep records and maintain inventories in conformity with the record-keeping, order form and inventory requirements of Federal law and with any additional regulations the secretary issues. Controlled substances in Schedules I and II shall be distributed by a registrant to another registrant only pursuant to an order form.

Section 13. Prohibited Acts; Penalties.—(a) The following 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 controlled substance, other drug, device or cosmetic that is adulterated or misbranded.

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

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

(4) The removal or disposal of a detained or embargoed substance or article, whether or not such substance or article is in fact adulterated or misbranded.

(5) 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 controlled substance, other drug, device or cosmetic, if such act is done while such substance or article is held for sale and results in such substance or article being adulterated or misbranded.

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

(7) Placing or causing to be placed upon any controlled substance, other drug, device or cosmetic, or upon the container of any controlled substance, other drug, device or cosmetic, with intent to defraud, the trademark, trade name or other identifying mark, imprint or symbol of another, or any likeness of any of the foregoing.

(8) Selling, dispensing, disposing of or causing to be sold, dispensed or disposed of, or keeping in possession, control or custody, or concealing any controlled substance, other drug, device or cosmetic or any container of any drug, device or cosmetic with knowledge that the trademark, trade

name or other identifying mark, imprint or symbol of another, or any likeness of any of the foregoing, has been placed thereon in a manner prohibited by clause (7) hereof.

(9) 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 symbol of another or any likeness of any of the foregoing upon any controlled substance, other drug, device or cosmetic or container thereof.

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

(11) The operation of a drug manufacturing, distributing 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.

(12) The acquisition or obtaining of possession of a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge.

(13) The sale, dispensing, distribution, prescription or gift by any practitioner otherwise authorized by law so to do of any controlled substance to any person known to such practitioner to be or whom such practitioner has reason to know is a drug dependent person, unless said drug is prescribed, administered, dispensed or given, for the cure or treatment of some malady other than drug dependency, except that a controlled substance, including but not limited to methadone, may be permitted for the treatment of drug dependency pursuant to regulations of the secretary providing for such use. This clause shall not prohibit any practitioner from prescribing, distributing or dispensing any controlled substance on a short term basis pending confirmed admission of the patient to a hospital or rehabilitation center.

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

(15) The sale at retail or dispensing of any controlled substance listed in Schedules II, III and IV to any person, except to one authorized by law to sell, dispense, prescribe or possess such 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

pharmacy intern under the immediate personal supervision of a registered pharmacist, or the refilling of a written or oral prescription order for a drug, unless such refilling is authorized by the prescriber either in the original written prescription order or by written confirmation of the original oral prescription order. 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.

(16) Knowingly or intentionally possessing a controlled or counterfeit substance by a person not registered under this act, or a practitioner not registered or licensed by the appropriate State board, unless the substance was obtained directly from, or pursuant to, a valid prescription order or order of a practitioner, or except as otherwise authorized by this act.

(17) The wilful dispensing of a controlled 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 of the patient and the directions for the use of the drug by the patient.

(18) The selling by a pharmacy or distributor of any controlled substance or other drug unless the container bears a label, securely attached thereto, stating the specific name of the drug and the proportion or amount thereof unless otherwise specifically directed in writing by the practitioner.

(19) The intentional purchase or knowing receipt in commerce by any person of any controlled substance, other drug or device from any person not authorized by law to sell, distribute, dispense or otherwise deal in such controlled substance, other drug or device.

(20) The using by any person to his own advantage, or revealing other than to the secretary or officers or employes of the department 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.

(21) The refusal or failure to make, keep or furnish any record, notification, order form, statement, invoice or information required under this act.

(22) The refusal of entry into any premises for any inspection authorized by this act.

(23) The unauthorized removing, breaking, injuring, or defacing a seal placed upon embargoed substances or the removal or disposal of substances so placed under seal.

(24) The failure by a manufacturer or distributor to register or obtain a license as required by this act.

(25) The manufacture of a controlled substance by a registrant who knows or who has reason to know, the manufacturing is not authorized by his registration, or who knowingly distributes a controlled substance not authorized by his registration to another registrant or other authorized person.

(26) The knowing distribution by a registrant of a controlled substance classified in Schedules I or II, except pursuant to an order form as required by this act.

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

(28) The furnishing of false or fraudulent material information in, or omission of any material information from any application, report, or other document required to be kept or filed under this act, or any record required to be kept by this act.

(29) The intentional making, distributing, or possessing of any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or symbol of another or any likeness of any of the foregoing upon any drug or container or labeling thereof so as to render the drug a counterfeit substance.

(30) Except as authorized by this act, the manufacture, delivery, or possession with intent to manufacture or deliver, a controlled substance by a person not registered under this act, or a practitioner not registered or licensed by the appropriate State board, or knowingly creating, delivering or possessing with intent to deliver, a counterfeit controlled substance.

(31) Notwithstanding other subsections of this section, (i) the possession of a small amount of marihuana only for personal use; (ii) the possession of a small amount of marihuana with the intent to distribute it but not to sell it; or (iii) the distribution of a small amount of marihuana but not for sale.

For purposes of this subsection, thirty (30) grams of marihuana or eight (8) grams of hashish shall be considered a small amount of marihuana.

(b) Any person who violates any of the provisions of clauses (1) through (20) of subsection (a) shall be guilty of a misdemeanor, and except for clauses (4), (6), (7), (8), (9) and (19) shall, on conviction thereof, be sentenced to imprisonment not exceeding one year or to pay a fine not exceeding five thousand dollars ($5,000), or both; and for clauses (4), (6), (7), (8), (9) and (19) shall, on conviction thereof, be sentenced to imprisonment not exceeding three years or to pay a fine not exceeding 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

not exceeding three years or to pay a fine not exceeding twenty-five thousand dollars ($25,000), or both.

(c) Any person who violates the provisions of clauses (21), (22) and (24) of subsection (a) 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 not exceeding six months, or to pay a fine not exceeding ten thousand dollars ($10,000), or both.

(2) Upon conviction of the second and subsequent offense, he shall be sentenced to imprisonment not exceeding two years, or to pay a fine not exceeding twenty-five thousand dollars ($25,000), or both.

(d) Any person who knowingly or intentionally violates clause (23) of subsection (a) is guilty of a misdemeanor and upon conviction thereof shall be sentenced to imprisonment not exceeding three years, or to pay a fine not exceeding fifteen thousand dollars ($15,000), or both.

(e) Any person who violates clauses (25) through (29) of subsection (a) is guilty of a misdemeanor and upon conviction shall be sentenced to imprisonment not exceeding three years, or to pay a fine not exceeding twenty-five thousand dollars ($25,000), or both.

(f) Any person who violates clause (30) of subsection (a) with respect to:

(1) A controlled substance or counterfeit substance classified in Schedule I or II which is a narcotic drug, is guilty of a felony and upon conviction thereof shall be sentenced to imprisonment not exceeding fifteen years, or to pay a fine not exceeding two hundred fifty thousand dollars ($250,000), or both or such larger amount as is sufficient to exhaust the assets utilized in and the profits obtained from the illegal activity.

(2) Any other controlled substance or counterfeit substance classified in Schedule I, II, or III, is guilty of a felony and upon conviction thereof shall be sentenced to imprisonment not exceeding five years, or to pay a fine not exceeding fifteen thousand dollars ($15,000), or both.

(3) A controlled substance or counterfeit substance classified in Schedule IV, is guilty of a felony and upon conviction thereof shall be sentenced to imprisonment not exceeding three years, or to pay a fine not exceeding ten thousand dollars ($10,000), or both.

(4) A controlled substance or counterfeit substance classified in Schedule V, is guilty of a misdemeanor and upon conviction thereof shall be sentenced to imprisonment not exceeding one year, or to pay a fine not exceeding five thousand dollars ($5,000), or both.

(g) Any person who violates clause (31) of subsection (a) is guilty of a misdemeanor and upon conviction thereof shall be sentenced to imprisonment not exceeding thirty days, or to pay a fine not exceeding five hundred dollars ($500), or both.

(h) 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 14. Distribution to Persons Under Age Eighteen.—Any person who is at least twenty-one years of age who violates this act by distributing a controlled substance listed in Schedules I through V to a person under eighteen years of age who is at least five years his junior is punishable by a term of imprisonment up to twice that otherwise authorized by subsection (f) of section 13 of this act, in addition to any fine authorized by this act.

Section 15. Second or Subsequent Offense.—(a) Any person convicted of a second or subsequent offense under clause (30) of subsection (a) of section 13 of this act or of a similar offense under any statute of the United States or of any state prior to the commission of the second offense may be imprisoned for a term up to twice the term otherwise authorized, fined an amount up to twice that otherwise authorized, or both.

(b) For purposes of this section, an offense is considered a second or subsequent offense, if, prior to the commission of the second offense, the offender has at any time been convicted under this act or under any statute of the United States or of any state relating to controlled substances.

Section 16. 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 12 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 conviction under any Federal or State law relating to any controlled substance or other drug, 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 or registration suspension or revocation shall be executed by the appropriate licensing or registration agency upon receipt of a court order setting forth the penalty.

(4) The probation or parole or other conditional release or discharge of any person convicted of an offense under this act or of any other offense may be conditioned on the person's agreement to periodic urinalyses or other reasonable means of detection. A relapse into drug abuse one or more times or the failure to conform to a set schedule for rehabilitation, or both, in themselves shall not require that his status be revoked or treatment denied.

Section 17. Probation Without Verdict.—A person may be entitled to probation without verdict under the following circumstances:

(1) A person who has not previously been convicted of an offense under this act or under a similar act of the United States, or any other state, is eligible for probation without verdict if he pleads nolo contendere or guilty to, or is found guilty of, any nonviolent 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 not to exceed the maximum for the offense upon such reasonable terms and conditions as it may require.

Probation without verdict shall not be available to any person who is charged with violating clause (30) of subsection (a) of section 13 of this act and who is not himself a drug abuser.

(2) 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.

(3) 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, including the penalties imposed for second or subsequent convictions: Provided, That probation without verdict shall be available to any person only once: And further provided, That notwithstanding any other provision of this act, the prosecuting attorney or the court and the council shall keep a list of those persons placed on probation without verdict, which list may only be used to determine the eligibility of persons for probation without verdict and the names on such lists may be used for no other purpose whatsoever.

Section 18. Disposition in Lieu of Trial.—(a) If a person charged with a nonviolent crime claims to be drug dependent or a drug abuser and prior to trial he requests appropriate treatment, including but not limited to, admission or commitment under the Mental Health and Mental Retardation Act of 1966 in lieu of criminal prosecution, a physician experienced or trained in the field of drug dependency or drug abuse shall be appointed by the court to examine, if necessary, and to review the accused's record and advise the government attorney, the accused and the court in writing setting forth that for the treatment and rehabilitation of the accused it would be preferable for the criminal charges to be held in abeyance or withdrawn in order to institute treatment for drug dependence, or for the criminal charges to be prosecuted. The government attorney shall exercise his discretion whether or not to accept the physician's recommendation.

(b) In the event that he does not accept the physician's recommendation he shall state in writing and furnish the defendant a copy of his decision and the reasons therefor.

(c) If the government attorney accepts the physician's advice to hold

in abeyance, he shall arrange for a hearing before the appropriate court to hold in abeyance the criminal prosecution. The court, upon its approval, shall proceed to make appropriate arrangements for treatment.

(d) The government attorney, upon his own application, may institute proceedings for appropriate treatment, including but not limited to, commitment pursuant to the Mental Health and Mental Retardation Act of 1966.

(e) A criminal charge may be held in abeyance pursuant to this section for no longer than the lesser of either (i) the appropriate statute of limitations or (ii) the maximum term that could be imposed for the offense charged. At the expiration of such period, the criminal charge shall be automatically dismissed. A criminal charge may not be prosecuted except by order of court so long as the medical director of the treatment facility certifies that the accused is cooperating in a prescribed treatment program and is benefiting from treatment.

(f) If, after conviction, the defendant requests probation with treatment or civil commitment for treatment in lieu of criminal punishment, the court may appoint a qualified physician to advise the court in writing whether it would be preferable for the purposes of treatment and rehabilitation for him to receive a suspended sentence and probation on the condition that he undergo education and treatment for drug abuse and drug dependency, or to be committed pursuant to the Mental Health and Mental Retardation Act of 1966 for treatment in lieu of criminal punishment, or to receive criminal incarceration. A copy of the physician's report shall be furnished the court, the defendant and the government attorney. The court shall exercise its discretion whether to accept the physician's advice.

(g) Disposition in lieu of trial as provided in this section shall be available to any person only once.

Section 19. Expunging Criminal Records.—(a) Any records of arrest or prosecution or both for a criminal offense under this act, except for persons indicted for violations of clause (30) of subsection (a) of section 13, or under the provisions previously governing controlled substances in the Commonwealth of Pennsylvania or any political subdivision thereof shall be promptly expunged from the official and unofficial arrest and other criminal records, files and other documents pertaining to the particular arrest or prosecution, or both, when the charges are withdrawn or dismissed or the person is acquitted of the charges: Provided, That such expungment shall be available as a matter of right to any person only once. Within five days after such withdrawal, dismissal or acquittal the court, in writing, shall order the appropriate keepers of criminal records (i) to expunge and destroy the official and unofficial arrest and other criminal records, files and other documents pertaining to the arrest or prosecution or both, to request in so far as they are able the return of such records as they have made available to Federal and other State agencies, and to

destroy such records on receipt thereof; and (ii) to file with the court within thirty days an affidavit that such records have been expunged and destroyed, together with the court's expunction order and to retain no copies thereof. Upon receipt of such affidavit, the court shall seal the same together with the original and all copies of its expunction order and shall not permit any person or agency to examine such sealed documents.

The court shall file with the council a list of those persons whose record was expunged. The council shall maintain a confidential list, which list may be used only for the purpose of determining the eligibility of persons for the expunction provisions under this section and to be made available to any court upon request.

(b) Any expunged record of arrest or prosecution shall not hereafter be regarded as an arrest or prosecution for the purpose of any statute or regulation or license or questionnaire or any civil or criminal proceeding or any other public or private purpose. No person shall be permitted to learn of an expunged arrest or prosecution, or of the expunction, either directly or indirectly. Any person, except the individual arrested or prosecuted, who divulges such information in violation of this subsection shall be guilty of a summary offense and shall, upon conviction thereof, be punished by imprisonment not exceeding thirty (30) days or a fine not exceeding five hundred dollars ($500), or both.

(c) Nothing contained in this section shall prohibit a person acting pursuant to prior practice from petitioning an appropriate court for an expunction order.

Section 20. 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 21. Burden of Proving Exemptions.—In any prosecution under this act, it shall not be necessary to negate any of the exemptions or exceptions of this act in any complaint, information or trial. The burden of proof of such exemption or exception shall be upon the person claiming it.

Section 22. Judicial Review.—Any person aggrieved by a final administrative decision may obtain review of the decision pursuant to the provisions of the Administrative Agency Law.

Section 23. Revocation of Licenses of Practitioners.—(a) Any license or registration heretofore issued to any practitioner may either be revoked or suspended by the proper officers or boards having power to issue licenses or registration to any of the foregoing, upon proof that the licensee or registrant is a drug dependent person on the use of any controlled substance, after giving such licensee or registrant reasonable notice and opportunity to be heard.

(b) The appropriate licensing boards in the Department of State are hereby authorized to revoke or suspend the registration or license of any practitioner when such person has pleaded guilty or nolo contendere or has been convicted of a felony under this act or any similar State or Federal law. 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 24. 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 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 "officers") designated by the secretary. Any such officer upon stating his purpose and presenting to the owner, operator, or officer 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 officer 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 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 or article.

(4) Except when the owner, operator, or officer 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; (iii) pricing data; or (iv) research 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 officer 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 court, 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" exists upon showing 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 a designated 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 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. A copy of the inventory shall be delivered to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

(4) The judge who has issued a warrant under this section shall attach to the warrant a copy of the return and all papers returnable 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 25. 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 26. 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 substances, other drugs, devices or cosmetics.

Section 27. Embargo.—(a) Whenever a duly authorized officer of the secretary finds or has probable cause to believe that any controlled substance, other drug, device or cosmetic is adulterated or misbranded or contraband, the same shall be deemed subject to embargo and he shall affix to such substance or article a tag or other appropriate marking, approved by the secretary, giving notice that such substance or article is or is suspected of being adulterated, misbranded or contraband and warning all persons not to remove or dispose of such substance or article until permission so to do has been granted by such officer, or until it shall have determined by proper authority that such substance or article is not

adulterated, misbranded or contraband. At the time such notice is offered, the officer shall provide the person in charge of such substance or article, 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 a substance or article 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 30, 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 substance or article is adulterated, misbranded or contraband, he shall, within five days of the conclusion of the hearing, order such substance or article 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 substance or 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 substance or article shall be so labeled or processed has been executed, may by order direct that such substance or article be released to the claimant thereof for such labeling or processing under the supervision of an officer of the secretary. The expense of such supervision, if any, shall be paid by the claimant. Such substance or article shall be released to the claimant when it 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 substances or articles destroyed or distributed to a nonprofit institution.

Section 28. Forfeiture.—(a) The following shall be subject to forfeiture to the Commonwealth and no property right shall exist in them:

(1) All controlled substances or other drugs 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 or other drug 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;

(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;

(iii) no bona fide security interest retained or acquired under the Uniform Commercial Code by any merchant dealing in new or used aircraft, vehicles or vessels, or retained or acquired by any licensed or regulated finance company, bank, lending institution, or by any other business regularly engaged in the financing of, or lending on the security of, such aircraft, vehicles or vessels, shall be subject to forfeiture or impairment; and

(iv) no conveyance shall be forfeited under this section for violation of clauses (16) and (31) of subsection (a) of section 13.

(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 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 forthwith.

(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 and of the secretary. When property is seized under this act, the law enforcement authority shall:

(1) Place the property under seal; and either

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

(3) Require that the department 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 property shall be transferred to the custody of the department and the secretary 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.

Section 29. Procedure With Respect to Seized Property Subject to Liens and Rights of Lienholders.—(a) The person who seized said property shall notify the registered owner and lienholder, where possible, and shall publish notice in a newspaper of general circulation in the county or the city, where seized, of any vehicle, vessel or aircraft confiscated informing interested persons of the seizure and right to file a claim protesting the confiscation of said vehicle, vessel or aircraft.

(b) Any lawful lienholder, or other person showing a legal right, title or interest in a vehicle, vessel or aircraft, confiscated pursuant to this subtitle may, within thirty days of publication of notice file a claim protesting such seizure with the court or with the person having jurisdiction thereof. When such a claim is filed, the court of common pleas of the county wherein the property was confiscated, shall proceed in rem to hear and determine the question of forfeiture.

(c) If the court determines any property is subject to forfeiture it shall also determine whether any lawful lienholder who has filed a timely claim and protest had knowledge of such intended unlawful use. If the court shall find such knowledge then the lienholder's right, title and interest to the property shall likewise be deemed forfeited. If the court does not find such knowledge and the property is otherwise subject to forfeiture, it shall be forfeited and the person having custody of such property shall either pay the outstanding indebtedness secured by such lawful lien and keep the property or deliver the property to the said lienholder.

Section 30. 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 27.

(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 31. 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 ten 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, one a psychologist or psychiatrist 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 but one of whom shall be well informed on the problems caused by the abuse and misuse of drugs or other chemicals. 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, who is not otherwise an officer or employe of the Commonwealth, when actually engaged in official meetings or otherwise in the performances of his official duties as directed by the chairman, shall receive reimbursement for expenses incurred and per diem compensation at a rate to be set by the Executive Board.

(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 32. 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 33. Conformity With Federal Law.—No controlled substance, other drug, device or cosmetic shall be deemed to be adulterated or misbranded under this act if it 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 34. Administration of Act.—(a) Except as may be otherwise provided by law, the provisions of this act shall be administered by the department. The secretary is authorized to employ personnel and to fix their compensation subject to the act of April 9, 1929 (P.L.177), known as "The Administrative Code of 1929."

(b) The secretary is authorized and directed to establish a Bureau of Drug Control within the department and to employ therein sufficient personnel to perform the duties imposed upon the department by this act.

(c) The secretary may designate specific officers and employes of the Bureau of Drug Control as law enforcement personnel and authorize such personnel to:

(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 Bureau of Drug Control, the Pennsylvania State Police, the Department of Justice or any other law enforcement agency in dealing with law enforcement matters with respect to persons engaged in the unlawful importation, manufacture, distribution, sale and production of controlled substances, other drugs or devices or cosmetics nor the authority of the council in performing any duties imposed upon it by the "Pennsylvania Drug and Alcohol Abuse Act."

Section 35. Promulgation of Regulations.—The secretary shall have the authority to promulgate in accordance with the provisions of this section and of the act of July 31, 1968 (P.L.769), known as the "Commonwealth Documents Law" any regulations hereinbefore referred to in this act and such other regulations with the consent of the board regarding the possession, distribution, sale, purchase or manufacture of

controlled substances, other drugs or devices or cosmetics as may be necessary to aid in the enforcement of this act.

Section 36. 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 37. Cooperative Agreements and Confidentiality.—(a) The secretary shall cooperate with Federal and other State agencies in discharging his responsibilities concerning traffic in controlled substances, other drugs, devices and cosmetics and in suppressing the abuse of such substances and articles. To this end, he may:

(1) Arrange for the exchange of information among governmental officials concerning the use and abuse of such substances and articles;

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

(3) Request the Federal Bureau of Narcotics and Dangerous Drugs to establish a centralized unit to collect, accept, catalogue and file nonconfidential statistics and make the information available for Federal, State and local law enforcement purposes; and

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

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

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

(d) This section shall not exempt the practitioner from regulations of the secretary pertaining to the prescription of controlled substances to a patient over an extended period or in an increasingly large dosage.

Section 38. 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 39. Pending Proceedings.—(a) Prosecution for any violation of law occurring prior to the effective date of this act is not affected or abated by this act. In any case not yet final if the offense is similar to one set out in this act, the penalties under this act apply if they are less than those under prior law.

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

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

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

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

Section 40. Continuation of Regulations.—Any orders and regulations promulgated under any law affected by this act and in effect on the effective date of this act and not in conflict with it continue in effect until modified, superseded or repealed.

Section 41. Uniformity of Interpretation.—This act shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this act among those states which enact similar legislation.

Section 42. Bar to Prosecution.—If a violation of this act is a violation of a Federal law or the law of another state, a conviction or acquittal under Federal law or the law of another state for the same act is a bar to prosecution in this Commonwealth.

Section 43. 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.

APPROVED—The 14th day of April, A. D. 1972.

MILTON J. SHAPP

The foregoing is a true and correct copy of Act of the General Assembly No. 64.

C. DeLores Tucker

Secretary of the Commonwealth.