

CODE OF ALABAMA 1975

CUMULATIVE SUPPLEMENT
INCLUDING ACT OF 2009 LEGISLATURE



TITLE 20 CHAPTER 2 ALABAMA UNIFORM CONTROLLED SUBSTANCES ACT 1407 LEGISLATURE 1971

ALABAMA STATE BOARD OF PHARMACY

May 27, 2009

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ARTICLE 1.

GENERAL PROVISIONS.

§20-2-1. Short title.

This chapter may be cited as the Alabama Uniform Controlled Substances Act. (Acts 1971, No. 1407, p. 2378, §511.)

§20-2-2. Definitions.

When used in this chapter, the following words and phrases shall have the following meanings, respectively, unless the context clearly indicates otherwise:

(1) **ADMINISTER.** The direct application of a controlled substance, whether by injection, inhalation, ingestion or any other means, to the body of a patient or research subject by:

- (a) A practitioner or, in his or her presence, his or her authorized agent.
- (b) The patient or research subject at the direction and in the presence of the practitioner.

(2) **AGENT.** An authorized person who acts on behalf of or at the direction of a manufacturer, distributor or dispenser. Such term does not include a common or contract carrier, public warehouseman, or employee of the carrier or warehouseman.

(3) **CERTIFYING BOARDS.** The State Board of Medical Examiners, the State Board of Health, the State Board of Pharmacy, the State Board of Dental Examiners, the State Board of Podiatry and the State Board of Veterinary Medical Examiners.

(4) **CONTROLLED SUBSTANCE.** A drug, substance, or immediate precursor in Schedules I through V of Article 2 of this chapter.

(5) **COUNTERFEIT SUBSTANCE.** Substances which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number or device or any likeness thereof of a manufacturer, distributor, or dispenser other than the person who in fact manufactured, distributed, or dispensed the substance.

(6) **DELIVER OR DELIVERY.** The actual, constructive, or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship.

(7) **DISPENSE.** To deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling or compounding necessary to prepare the substance for that delivery.

(8) **DISPENSER.** A practitioner who dispenses.

(9) **DISTRIBUTE.** To deliver other than by administering or dispensing a controlled substance.

(10) **DISTRIBUTOR.** A person who distributes.

(11) **DRUG.**

(a) Substances recognized as drugs in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary or any supplement to any of them.

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

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

(d) Substances intended for use as a component of any article specified in paragraphs a, b or c of this subdivision. Such term does not include devices or their components, parts, or accessories.

(12) **IMMEDIATE PRECURSOR.** A substance which the State Board of Pharmacy has found to be and by rule designates as being the principal compound commonly used or produced primarily for use and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail, or limit manufacture.

(13) **MANUFACTURE.** The production, preparation, propagation, compounding, conversion, or processing of a controlled substance either directly or indirectly, by extraction from substances of natural origin

or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container; except, that this term does not include the preparation, compounding, packaging, or labeling of a controlled substance:

(a) By a practitioner as an incident to his or her administering or dispensing of a controlled substance in the course of his or her professional practice; or

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

(14) **MARIJUANA.** All parts of the plant *Cannabis sativa* L., whether growing or not, the seeds thereof, the resin extracted from any part of the plant and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin. Such term does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil or cake, or the sterilized seed of the plant which is incapable of germination.

(15) **NARCOTIC DRUG.** Any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis:

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

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

(c) Opium poppy and poppy straw.

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

(16) **OPIATE.** 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. Such term does not include, unless specifically designated as controlled under this section, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). Such term does include its racemic and levorotatory forms.

(17) **OPIUM POPPY.** The plant of the species *Papaver somniferum* L., except its seeds.

(18) **PERSON.** Individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, or association or any other legal entity.

(19) **POPPY STRAW.** All parts, except the seeds, of the opium poppy, after mowing.

(20) **PRACTITIONER.**

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

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

(21) **PRODUCTION.** The manufacture, planting, cultivation, growing, or harvesting of a controlled substance.

(22) **STATE.** When applied to a part of the United States, such term includes any state, district, commonwealth, territory, insular possession thereof, and any area subject to the legal authority of the United

States of America.

(23) **ULTIMATE USER.** A person who lawfully possesses a controlled substance for his or her own use or for the use of a member of his or her household or for administering to an animal owned by him or her by a member of his or her household. (Acts 1971, No. 1407, p. 2378, § 101; Acts 1976, No. 699, p. 965, § 1; Acts 1989, No. 89-242, p. 342, § 3; Act 2001-971, 3rd Sp. Sess., p. 873, §2.)

§20-2-3. Immunity of persons reporting suspected use, etc., of controlled substance by minor child.

All persons employed in any capacity in the public, private, and church elementary and secondary schools shall be immune from civil liability for communicating information to the parents of a minor child, law enforcement officers, or health care providers concerning the suspected use, possession, sale, distribution of any controlled substance as defined in chapter 2 of Title 20, by any minor child as defined by law. Notwithstanding the foregoing, this immunity shall not apply if said person communicated such information maliciously and with knowledge that it was false. (Act 1985, No. 85-239, p. 138.)

ARTICLE 2.

STANDARDS AND SCHEDULES.

§20-2-20. Administration of chapter.

(a) The State Board of Health, unless otherwise specified, shall administer this chapter and may add substances to or delete or reschedule all substances enumerated in the schedules in Sections 20-2-23, 20-2-25, 20-2-27, 20-2-29 or 20-2-31 pursuant to the procedures of the State Board of Health. In making a determination regarding a substance, the State Board of Health shall consider all of the following:

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

this chapter.

(b) After considering the factors enumerated in subsection (a), the State Board of Health shall make findings with respect thereto and issue a rule controlling the substance if it finds the substance has a potential for abuse.

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

(d) Authority to control under this section does not extend to distilled spirits, wine, malt, beverages, or tobacco.

(e) The State Board of Health shall exclude any nonnarcotic substance from a schedule if such substance, under the federal Food, Drug and Cosmetic Act, the federal Comprehensive Drug Abuse Prevention and Control Act of 1970, and the law of this state may be lawfully sold over the counter without a prescription. (Acts 1971, No. 1407, p. 2378, § 201; Act 2001-971, 3rd Sp.Sess., pg. 873, §2 .)

§20-2-21. Nomenclature of controlled substances in schedules.

The controlled substances listed or to be listed in the schedules in sections 20-2-23, 20-2-25, 20-2-27, 20-2-29 and 20-2-31 are included by whatever official, common, usual, chemical or trade name designated. (Acts 1971, No. 1407, p. 2378, § 202.)

§20-2-22. Schedule I; determinations.

The state board of health shall place a substance in schedule I if it finds that the substance:

- (1) Has high potential for abuse; and
- (2) Has no accepted medical use in treatment in the United States or lacks accepted safety for use in treatment under medical supervision. (Acts 1971, No. 1407, p. 2378, § 203.)

§20-2-23. Schedule I – Listing of controlled substances.

The controlled substances listed in this section are included in schedule I:

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

- a. Acetylmethadol;
- b. Allylprodine;
- c. Alphacetylmethadol;
- d. Alphameprodine;
- e. Alphamethadol;
- f. Benzethidine;
- g. Betacetylmethadol;
- h. Betameprodine;
- i. Betamethadol;
- j. Betaprodine;
- k. Clonitazene;
- l. Dextromoramide;
- m. Dextrorphan;
- n. Diampromide;
- o. Diethylthiambutene;
- p. Dimenoxadol;
- q. Dimepheptanol;
- r. Dimethylthiambutene;
- s. Dioxaphetyl butyrate;
- t. Dipipanone;
- u. Ethylmethylthiambutene;
- v. Etonitazene;
- w. Etoxidine;
- x. Furethidine;
- y. Hydroxypethidine;
- z. Ketobemidone;
- aa. Levomoramide;
- bb. Levophenacymorphan;
- cc. Morpheridine;
- dd. Noracymethadol;
- ee. Norlevorphanol;
- ff. Normethadone;
- gg. Norpipanone;
- hh. Phenodoxone;
- ii. Phenampromide;
- jj. Phenomorphan;

- kk. Phenoperidine;
- ll. Piritramide;
- mm. Proheptazine;
- nn. Properidine;
- oo. Racemoramide;
- pp. Trimeperidine.

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

- a. Acetorphine;
- b. Acetyldihydrocodeine;
- c. Benzylmorphine;
- d. Codeine methylbromide;
- e. Codeine-N-Oxide;
- f. Cyrenorphine;
- g. Desomorphine;
- h. Dihydromorphine;
- i. Etorphine;
- j. Heroin;
- k. Hydromorphinol;
- l. Methyldesorphine;
- m. Methyldihydromorphine;
- n. Morphine methylbromide;
- o. Morphine methylsulfonate;
- p. Morphine-N-Oxide;
- q. Myrophine;
- r. Nicocodeine;
- s. Nicomorphine;
- t. Normorphine;
- u. Pholcodine;
- v. Thebacon.

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

- a. 3,4-methylenedioxy amphetamine
- b. 5-methoxy-3, 4-methylenedioxy amphetamine;
- c. 3,4,5-trimethoxy amphetamine
- d. Bufotenine;
- e. Diethyltryptamine;
- f. Dimethyltryptamine;
- g. 4-methyl-2,5-dimethoxy amphetamine
- h. Ibogaine;
- i. Lysergic acid diethylamide;
- j. Marihuana;
- k. Mescaline;
- l. Peyote;
- m. N-ethyl-3-piperidyl benzilate;
- n. N-methyl-3-piperidyl benzilate;
- o. Psilocybin;
- p. Psilocyn;
- q. Tetrahydrocannabinols.

(Acts 1971, No. 1407, p. 2378, §204.)

§20-2-24. Schedule II; determinations.

The state board of health shall place a substance in schedule II if it finds that:

- (1) The substance has high potential for abuse;
- (2) The substance has currently accepted medical use in treatment in the United States or currently accepted medical use with severe restrictions; and
- (3) The abuse of the substance may lead to severe psychic or physical dependence. (Acts 1971, No. 1407, p. 2378, § 205.)

§20-2-25. Schedule II – Listing of controlled substances.

The controlled substances listed in this section are included in schedule II:

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

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

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

- a. Alphaprodine;
- b. Anileridine;
- c. Bezitramide;
- d. Dihydrocodeine;
- e. Diphenoxylate;
- f. Fentanyl;
- g. Isomethadone;
- h. Levomethorphan;
- i. Levorphanol;
- j. Metazocine;
- k. Methadone;
- l. Methadone - Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenylbutane;
- m. Moramide - Intermediate, 2-methyl-3-morpholino-1, 1-diphenylpropane-carboxylic acid;
- n. Pethidine;
- o. Pethidine - Intermediate-A, 4 -cyano-1-methyl-4-phenylpiperidine;
- p. Pethidine - Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate;
- q. Pethidine - Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;
- r. Phenazocine;
- s. Piminodine;
- t. Racemethorphan;
- u. Racemorphan.

§20-2-26. Schedule III; determinations.

The state board of health shall place a substance in schedule III if it finds that:

- (1) The substance has a potential for abuse less than the substances listed in schedules I and II;
- (2) The substance has currently accepted medical use in treatment in the United States; and
- (3) Abuse of the substance may lead to moderate or low physical dependence or high psychological dependence. (Acts 1971, No. 1407, p. 2378, § 207.)

§20-2-27. Schedule III – Listing of controlled substances.

(a) The controlled substances listed in this section are included in schedule III:

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

- a. Amphetamine, its salts, optical isomers and salts of its optical isomers;
- b. Phenmetrazine and its salts;
- c. Any substance which contains any quantity of methamphetamine, including its salts, isomers and salts of isomers;
- d. Methylphenidate

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

- a. Any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid, except those substances which are specifically listed in other schedules;
- b. Chlorhexadol;
- c. Glutethimide;
- d. Lysergic acid;
- e. Lysergic acid amide;
- f. Methyprylon;
- g. Phencyclidine;
- h. Sulfondiethylmethane;
- i. Sulfonethylmethane;
- j. Sulfonmethane;

(3) Nalorphine.

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

- a. Not more than 1.8 grams of codeine or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;
- b. Not more than 1.8 grams of codeine or any of its salts per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;
- c. Not more than 300 milligrams of dihydrocodeinone or any of its salts per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;
- d. Not more than 300 milligrams of dihydrocodeinone or any of its salts per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;
- e. Not more than 1.8 grams of dihydrocodeine or any of its salts per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amount;
- f. Not more than 300 milligrams of ethylmorphine or any of its salts per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more ingredients in recognized therapeutic amounts;

g. 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.

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

(b) The state board of health may except by rule any compound, mixture or preparation containing any stimulant or depressant substance listed in subdivisions (1) and (2) of subsection (a) of this section from the application of all or any part of this chapter if the compound, mixture or preparation contains one or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system and if the admixtures are included therein in combinations, quantity, proportion or concentration that vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system. (Acts 1971, No. 1407, p. 2378, § 208.)

§20-2-28. Schedule IV; determinations.

The state board of health shall place a substance in schedule IV if it finds that:

- (1) The substance has a low potential for abuse relative to substances in schedule III;
- (2) The substances has currently accepted medical use in treatment in the United States; and
- (3) Abuse of the substance may lead to limited physical dependence or psychological dependence relative to the substances in schedule III. (Acts 1971, No. 1407, p. 2378, § 209.)

§20-2-29. Schedule IV – Listing of controlled substances.

(a) The controlled substances listed in this section are included in schedule IV:

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

- a. Barbitol;
- b. Chloral betaine;
- c. Chloral hydrate;
- d. Ethchlorvynol;
- e. Ethinamate;
- f. Methohexital;
- g. Meprobamate;
- h. Methylphenobarbital;
- i. Paraldehyde;
- j. Petrichloral;
- k. Phenobarbital;

(b) The state board of health may except by rule any compound, mixture or preparation containing any depressant substance listed in subsection (a) from the application of all or any part of this chapter if the compound, mixture or preparation contains one or more active medicinal ingredients not having a depressant effect on the central nervous system and if the admixtures are included therein in combinations, quantity, proportion or concentration that vitiate the potential for abuse of the substances which have a depressant effect on the central nervous system. (Acts 1971, No. 1407, p. 2378, § 210.)

§20-2-30. Schedule V; determinations.

The state board of health shall place a substance in schedule V if it finds that:

- (1) The substance has low potential for abuse relative to the controlled substances listed in schedule IV;
- (2) The substance has currently accepted medical use in treatment in the United States; and
- (3) The substance has limited physical dependence or psychological dependence liability relative to the controlled substances listed in schedule IV. (Acts 1971, No. 1407, p. 2378, § 211.)

§20-2-31. Schedule V – Listing of controlled substances.

The controlled substances listed in this section are included in schedule V:

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

- a. Not more than 200 milligrams of codeine or any of its salts per 100 milliliters or per 100 grams.
- b. Not more than 100 milligrams of dihydrocodeine or any of its salts per 100 milliliters or per 100 grams;
- c. Not more than 100 milligrams of ethylmorphine or any of its salts per 100 milliliters or per 100 grams;
- d. Not more than 2.5 milligrams of diphenozylate and not less than 25 micrograms of atropine sulfate per dosage unit;
- e. Not more than 100 milligrams of opium per 100 milliliters or per 100 grams. (Acts 1971, No. 1407, p. 2378, § 212.)

§20-2-32. Revision and republication of schedules.

The state board of health shall revise and republish the schedules annually. (Acts 1971, No. 1407, p. 2378, § 213.)

ARTICLE 3.

REGULATION OF MANUFACTURE AND DISTRIBUTION.

§20-2-50. Certifying boards to promulgate rules and charge reasonable fees for registration and administration of provisions relating to manufacture, etc., of controlled substances; disposition of fees collected.

(a) The certifying boards shall promulgate rules and charge reasonable fees to defray expenses incurred in registration and administration of the provisions of this article in regard to the manufacture, dispensing or distribution of controlled substances within the state.

(b) The fees collected to defray expenses shall be retained by the certifying boards. (Acts 1971, No. 1407, p. 2378, § 301; Acts 1976, No. 699, p. 965, § 2.)

§20-2-51. Registration of persons manufacturing, distributing or dispensing controlled substances – General requirements.

(a) Every person who manufactures, distributes or dispenses any controlled substance within this state or who proposes to engage in the manufacture, distribution or dispensing of any controlled substance within this state must obtain annually a registration issued by the certifying boards in accordance with its rules.

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

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

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

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

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

(d) The certifying boards may waive by rule the requirement for registration of certain manufacturers, distributors or dispensers if they find it consistent with the public health and safety.

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

(f) The certifying boards may inspect the establishment of a registrant or applicant for registration in accordance with the rules and regulations promulgated by them. (Acts 1971, No. 1407, p. 2378, § 302.)

§20-2-52. Registration of persons manufacturing, distributing or dispensing controlled substances – Standards; requirements as to practitioners conducting research; effect of federal registration.

(a) The certifying boards shall register only an applicant certified by their respective boards to manufacture, dispense or distribute controlled substances enumerated in schedule I, II, III, IV and V; provided, that the state board of pharmacy shall register all manufacturers and wholesalers unless they determine that the issuance of that registration would be inconsistent with the public interest. In determining the public interest, the above-mentioned boards shall consider the following factors:

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

(2) Compliance with applicable state and local law;

(3) Any convictions of the applicant under any federal and state laws relating to any controlled substance;

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

(5) Furnishing by the applicant of false or fraudulent material in any application file under this article;

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

(7) Any other factors relevant to and consistent with the public health and safety.

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

(c) Practitioners must be registered to dispense any controlled substances or to conduct research with controlled substances in schedules II through V if they are authorized to dispense or conduct research under the laws of this state. The state board of health need not require separate registration under this article for practitioners engaging in research with nonnarcotic controlled substances in schedule II through V where the registrant is already registered under this article in another capacity. Practitioners registered under federal law to conduct research with schedule I substances may conduct research with schedule I substances within this state upon furnishing the state board of health evidence of that federal registration.

(d) Compliance by manufacturers and distributors with the provisions of the federal law respecting registration (excluding fees) entitles them to be registered under this article. (Acts 1971, No. 1407, p. 2378, § 303; Acts 1976, No. 699, p. 965, § 3.)

§20-2-53. Registration of persons manufacturing, distributing or dispensing controlled substances – Order to show cause, proceedings; review; issuance of stay.

(a) Before denying, suspending, or revoking a registration or refusing a renewal of registration, the certifying boards shall serve upon the applicant or registrant an order to show cause why registration should not be denied, revoked, or suspended or why the renewal should not be refused. The order to show cause shall contain a statement of the basis therefor and shall call upon the applicant or registrant to appear before the certifying board at a time and place not less than 30 days after the date of service of the order, but in the case of a denial of renewal of registration the show cause order shall be served not later than 30 days

before the expiration of the registration. These proceedings shall be conducted in accordance with the Alabama Administrative Procedure Act and the procedures established by the respective certifying board without regard to any criminal prosecution or other proceeding. Proceedings to refuse renewal of registration shall not abate the existing registration which shall remain in effect pending the outcome of the administration hearing.

(b) Anyone adversely affected by any order of a certifying board denying, suspending, or revoking a registration or refusing the renewal of a registration, whether or not such suspension, revocation, or registration is limited, may obtain judicial review thereof by filing a written petition for review with the Circuit Court of Montgomery County in accordance with Section 41-22-20. .

(c) The following procedures shall take precedence over subsection(c) of Section 41-22-20 relating to the issuance of a stay of any order of the certifying board suspending, revoking, or restricting a registration. The suspension, revocation, or restriction of a registration shall be given immediate effect, and no stay or supersedeas shall be granted pending judicial review of a decision by the certifying board to suspend, revoke, or restrict a registration unless a reviewing court, upon proof by the party seeking judicial review, finds in writing that the action of the certifying board was taken without statutory authority, was arbitrary or capricious, or constituted a gross abuse of discretion. Notwithstanding any other provision of law to the contrary, any action commenced for the purpose of seeking judicial review of the administrative decisions of a certifying board, including writ of mandamus, or judicial review pursuant to the Alabama Administrative Procedure Act, must be filed, commenced, and maintained in the Circuit Court of Montgomery County, Alabama.

(d) From the judgment of the circuit court, either the certifying board or the affected party who invoked the review may obtain a review of any final judgement of the circuit court under Section 41-22-21. No security shall be required of the certifying board.. (Acts 1971, No. 1407, p. 2378, § 305; Acts 1982, No. 82-492, p. 815, § 2; Act 2002-140, p. 359, §3.)

§20-2-54. Registration of persons manufacturing, distributing or dispensing controlled substances – Revocation or suspension of registration – Grounds and procedure generally.

(a) A registration under section 20-2-52 to manufacture, distribute or dispense a controlled substance may be suspended or revoked by the certifying boards upon a finding that the registrant:

- (1) Has furnished false or fraudulent material information in any application filed under this article;
- (2) Has been convicted of a crime under any state or federal law relating to any controlled substance;
- (3) Has had his federal registration suspended or revoked to manufacture, distribute or dispense controlled substances;
- (4) Has violated the provisions of Chapter 23 of Title 34; or
- (5) Has, in the opinion of the certifying board, excessively dispensed controlled substances for any of his patients.

a. A registrant may be considered to have excessively dispensed controlled substances if his certifying board finds that either the controlled substances were dispensed for no legitimate medical purpose, or that the amount of controlled substances dispensed by the registrant is not reasonably related to the proper medical management of his patient's illness or conditions. Drug addiction shall not be considered an illness or condition which would justify continued dispensing of controlled substances, except in gradually decreasing dosages administered to the patient for the purpose of curing the addiction.

b. A registrant who is a physician licensed to practice medicine in the State of Alabama may be considered to have excessively dispensed controlled substances if he or she prescribes, orders, dispenses, administers, supplies or otherwise distributes any Schedule II amphetamine and/or Schedule II amphetamine-like anorectic drug, and/or Schedule II sympathomimetic amine drug or compound thereof, and/or any salt, compound, isomer, derivative or preparation of the foregoing which are chemically equivalent thereto, and/or other non-narcotic Schedule II stimulant drug, which drugs or compounds are classified under Schedule II of the Alabama Uniform Controlled Substances Act, Section 20-2-24, to any person except for the therapeutic treatment of:

1. Narcolepsy

2. Hyperkinesia
3. Brain dysfunction of sufficiently specific diagnosis, or etiology which clearly indicates the need for these substances in treatment or control
4. Epilepsy
5. Differential psychiatric evaluation of clinically significant depression provided however, that such treatment shall not extend beyond a period of 30 days unless the patient is referred to a licensed practitioner specializing in the treatment of depression
6. Clinically significant depression shown to be refractory to other therapeutic modalities provided however, that such treatment shall not extend beyond a period of 30 days unless the patient is referred to a licensed practitioner specializing in the treatment of depression; or for the clinical investigation of the effects of such drugs or compounds, in which case an investigate protocol must be submitted to and reviewed and approved by the State Board of Medical Examiners before the investigation has begun. A physician prescribing, ordering or otherwise distributing the controlled substances listed above in the manner permitted by this subsection shall maintain a complete record which must include documentation of the diagnosis and reason for prescribing, the name, dose, strength, and quantity of the drug, and the date prescribed or distributed. The records required under this subsection shall be made available for inspection by the certifying board or its authorized representative upon request. Those Schedule II stimulant drugs enumerated above shall not be dispensed or prescribed for the treatment or control of exogenous obesity.

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

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

(d) The certifying boards shall promptly notify the Drug Enforcement Administration of the United States Department of Justice of all orders suspending or revoking registration and all forfeitures of controlled substances. (Acts 1971, No. 1407, p. 2378, § 304; Acts 1979, No. 79-204, p. 313, §1; Acts 1983, 4th Ex. Sess., No. 83-890, § 2; Act 2001-971, 3rd Sp. Sess., p. 873, §2.)

§20-2-54.1. Rules and regulations.

The certifying boards under the Alabama Uniform Controlled Substances Act, the state board of medical examiners and the medical licensure commission are each authorized to promulgate such rules and regulations as may be required to implement the provisions of this chapter. (Acts 1983, 4th Ex. Sess., No. 83-890, § 4.)

§20-2-55. Registration of persons manufacturing, distributing or dispensing controlled substances - Revocation or suspension of registration - Suspension without prior order to show cause.

The certifying boards may suspend, without an order to show cause, any registration simultaneously with the institution of proceedings under section 20-2-54 or where renewal of registration is refused, if it finds that there is an imminent danger to the public health or safety which warrants this action. The suspension shall continue in effect until the conclusion of the proceedings, including judicial review thereof, unless sooner withdrawn by the certifying boards or dissolved by a court of competent jurisdiction. (Acts 1971, No. 1407 p. 2378, § 305.)

§20-2-56. Records and inventories.

Persons registered to manufacture, distribute or dispense controlled substances under this article shall keep records and maintain inventories in conformance with the record keeping and inventory requirements of federal law and with any additional rules issued by the state board of medical examiners, the state board of health or the state board of pharmacy. (Acts 1971, No. 1407, p. 2378, §306; Acts 1976, No. 699, p. 965, § 4.)

§20-2-57. Distribution of certain controlled substances by one registrant to another registrant.

Controlled substances in schedules I and II shall be distributed by a registrant to another registrant only pursuant to an order form. Compliance with the provisions of federal law respecting order forms shall be deemed compliance with this section. (Acts 1971, No. 1407, p. 2378, § 307.)

§20-2-58. Dispensing of controlled substances in Schedule II; maintenance of records and inventories by registered pharmacies.

(a) Except as otherwise provided in this section or as otherwise provided by law, a pharmacist may dispense directly a controlled substance in Schedule II only pursuant to a written prescription signed by the practitioner. Except as provided in subsections (b) and (c), a prescription for a Schedule II controlled substance may be transmitted by the practitioner or the agent of the practitioner to a pharmacy via facsimile equipment, provided the original written, signed prescription is presented to the pharmacist for review prior to the actual dispensing of the controlled substance.

(b) A prescription written for a Schedule II narcotic substance to be compounded for the direct administration to a patient by parenteral, intravenous, intramuscular, subcutaneous, or intraspinal infusion may be transmitted by the practitioner or the agent of the practitioner to the home infusion pharmacy by facsimile. The facsimile shall serve as the original written prescription.

(c) A prescription written for Schedule II substances for a resident of a long-term care facility may be transmitted by the practitioner or the agent of the practitioner to the dispensing pharmacy by facsimile. The facsimile shall serve as the original written prescription.

(d) Each registered pharmacy shall maintain the inventories and records of controlled substances as follows:

(1) Inventories and records of all controlled substances listed in Schedules I and II shall be maintained separately from all other records of the pharmacy, and prescriptions for the substances shall be maintained in a separate prescription file.

(2) Inventories and records of controlled substances listed in Schedules III, IV, and V shall be maintained either separately from all other records of the pharmacy or in the form that the information required is readily retrievable from ordinary business records of the pharmacy, and prescriptions for the substances shall be maintained either in separate prescription file for controlled substances listed in Schedules III, IV, and V only or in the form that they are readily retrievable from the other prescription records of the pharmacy.

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

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

(g) In an emergency situation, a pharmacist may dispense a Schedule II controlled substance for a resident of a long-term care facility, a patient receiving hospice services, or a patient receiving home health care services pursuant to an emergency oral prescription transmitted by the practitioner to the dispensing pharmacy. The quantity dispensed pursuant to an emergency oral prescription shall be limited to the amount adequate to treat the patient during the emergency period not to exceed 72 hours. The practitioner, within seven days of the emergency oral prescription, shall provide the dispensing pharmacy with a written prescription for the quantity prescribed. (Acts 1971, No. 1407, p. 2378, § 308; Act 1995, No. 95-732, p. 1565, § 1; Act 98-617, p. 1358, §1, Effective 8-1-1998 Act 2006-183, Effective March 7, 2006.)

ARTICLE 4.

OFFENSES AND PENALTIES.

§20-2-70. Prohibited acts A. Repealed by Acts 1987, No. 87-603, p. 1047, §12, effective October 21, 1987, which is the "Drug Crimes Amendments Act of 1987", Code of Alabama, 1975, 13A-12-210 through 13A-12-216. (See Appendix - Section 13A-12-210 through 13A-12-216.)

§20-2-71. Prohibited acts B.

(a) It is unlawful for any person:

(1) Who is subject to article 3 of this chapter to distribute or dispense a controlled substance in violation of section 20-2-58;

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

(3) To refuse or fail to make, keep or furnish any record, notification, order form, statement, invoice or information required under this chapter; provided, however, that upon the first conviction of a violator under this provision said violator shall be guilty of a class A misdemeanor. Subsequent convictions shall subject the violator to the felony penalty provision set forth in subsection (b) of this section.

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

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

(b) Any person who violates this section is guilty of a Class B felony. (Acts 1971, No. 1407, p. 2378, § 402; Acts 1987, No. 87-603, p. 1047, § 6.)

§20-2-72. Order forms - False registration - Fraudulent possession - False information - Illegal imprints.

(a) It is unlawful for any person:

(1) To distribute as a registrant a controlled substance classified in schedules I or II, except pursuant to an order form as required by section 20-2-57;

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

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

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

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

(b) Any person who violates this section is guilty of a Class B felony, except that any person who violated subdivision (a) (3) of this section is guilty of a Class C felony. (Acts 1971, No. 1407, p. 2378, § 403; Acts 1987, No. 87-603, p. 1047, § 7.)

§20-2-73. Transferred to § 13A-12-215 by Acts 1988, 1st Ex. Sess., No. 88-918; p. 512, §2, effective September 30, 1988. (See appendix section 13A-12-215)

§20-2-74. Dentists.

(a) It shall be unlawful for any practitioner of dentistry to prescribe, administer or dispense any controlled substance enumerated in schedules I through V for any person not under his treatment in his regular practice of his profession or for any practitioner of veterinary medicine to prescribe, administer or dispense any controlled substance enumerated in schedules I through V for the use of human beings; provided, however, that the provisions of this section shall be construed not to prevent any lawfully authorized practitioner of medicine from furnishing or prescribing in good faith for the use of any habitual user of substances enumerated in schedules I through V who is under his professional care such substances as he may deem necessary for their treatment, when such prescriptions are not given or substances furnished for the purpose of maintaining addiction or abuse.

(b) Any person who violates this section shall be guilty of a Class B felony. (Acts 1971, No. 1407, p.2378, § 505; Acts 1987, No. 87-603, p. 1047, § 9.)

§20-2-75. Repealed by Acts 1986, No. 86-425, §4, effective April 29, 1986.

§20-2-75.1. Transferred to § 13A-12-260 by Acts 1988, 1st Ex. Sess., No. 98-918, p. 512, § 2, effective September 30, 1988. (See Appendix Section 13A-12-260.)

§ 20-2-76. Penalties for second or subsequent offenses; when offense deemed second or subsequent offense.

Repealed by Acts 1987, No. 87-603, §12, effective October 21, 1987.

§20-2-77 Conviction or acquittal under federal law or state law to bar prosecution for same violation under chapter.

Repealed by Acts 1987, No. 87-603, § 12, effective October 21, 1987.

§20-2-78. Penalties imposed for violations of chapter in addition to other civil or administrative penalties or sanctions.

Any penalty imposed for violation of this chapter is in addition to and not in lieu of any civil or administrative penalty or sanction otherwise authorized by law. (Acts 1971, No. 1407, p. 2378, § 404.)

§20-2-79. Transferred to §13A-12-250 by Acts 1988, 1st Ex. Sess., No. 88-918, p. 512, § 2, effective September 30, 1988. (See Appendix Section 13A-12-250.)

ARTICLE 4A.

TRAFFICKING IN ILLEGAL DRUGS.

§ § 20-2-80, 20-2-81. Transferred to §§ 13A-12-231 and 13A-12-232 by Acts 1988, 1st Ex. Sess., No. 88-918; p. 512, § 2, effective September 30, 1988. (See Appendix Section 13A-12-231.)

ARTICLE 5.

ENFORCEMENT.

§20-2-90. State Board of Pharmacy, Department of Public Safety, etc., to enforce chapter; drug inspectors to meet minimum standards.

(a) The State Board of Pharmacy and its drug inspectors shall enforce all provisions of this chapter. The agents and officers of this Department of Public Safety, the drug and narcotic agents and inspectors of the State Board of Health, the investigators of the State Board of Medical Examiners, the investigators of the Board of Dental Examiners, and all peace officers of the state and all prosecuting attorneys are also charged with the enforcement of this chapter. The agents and officers of the Department of Public Safety, the drug inspectors of the State Board of Pharmacy, the investigators of the State Board of Medical Examiners, the investigators of the Board of Dental Examiners, and the drug and narcotic agents and inspectors of the State Board of Health shall have the powers of peace officers in the performance of their duties to:

- (1) Make arrests without warrant for any offense under this chapter committed in their presence, or if they have probable cause to believe that the person to be arrested has committed or is committing a violation of this chapter which may constitute a felony.
- (2) Make seizure of property pursuant to this chapter.
- (3) Carry firearms in the performance of their official duties.

(b) In addition to the requirements of subsection (a), drug inspectors of the State Board of Pharmacy shall, beginning October 1, 1993, meet the minimum standards required of peace officers in this state. (Acts 1971, No. 1407, p. 2378, § 501; Acts 1981, No. 81-657, p. 1073; Acts 1987, No. 87-578, p. 923, § 1; Acts 1993, No. 93-671, p. 1209, § 3.)

§20-2-91. Inspection of stocks of controlled substances and prescriptions, orders, etc., required by chapter; disclosure of information as to the prescriptions, orders, etc., by enforcement personnel.

(a) Prescriptions, orders and records required by this chapter and stocks of controlled substances enumerated in schedules I, II, III, IV, and V shall be open for inspection only to federal, state, county and municipal officers, the investigators to the board of dental examiners, and the agents and officers of the department of public safety whose duty it is to enforce the laws of this state or of the United States relating to controlled substances.

(b) No officer having knowledge by virtue of his office of any such prescription, order or record shall divulge such knowledge, except in connection with a prosecution or proceeding in court or before a licensing board or officer, to which prosecution or proceeding the person to whom such prescriptions, orders or records relate is a party. (Acts 1971, No. 1407, p. 2378, § 502; Acts 1987, No. 87-578, p. 923, § 1.)

§20-2-92. Injunctions.

- (a) The circuit courts of this state have jurisdiction to restrain or enjoin violations of this chapter.
- (b) The defendant may demand trial by jury for an alleged violation of an injunction or temporary restraining order under this section. (Acts 1971, No. 1407, p. 2378, § 503.)

§20-2-93. Forfeitures; seizures.

- (a) The following are subject to forfeiture:
 - (1) All controlled substances which have been grown, manufactured, distributed, dispensed or acquired in violation of any law of this state.
 - (2) All raw materials, products and equipment of any kind which are used or intended for used in manufacturing, cultivating, growing, compounding, processing, delivering, importing or exporting any controlled substance in violation of any law of this state;
 - (3) All property which is used or intended for use as a container for property described in

subdivision (1) or (2) of this subsection;

(4) All moneys, negotiable instructions, securities, or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance in violation of any law of this state; all proceeds traceable to such an exchange; and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of any law of this state concerning controlled substances;

(5) All conveyances, including aircraft, vehicles, or vessels, or agricultural machinery, which are used, or are intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession, or concealment of any property described in subdivision (1) or (2) of this subsection;

(6) All books, records and research products and materials, including formulas, microfilm, tapes and data, which are used or intended for use in violation of any law of this state concerning controlled substances;

(7) All imitation controlled substances as defined under the laws of this state;

(8) All real property or fixtures used or intended to be used for the manufacture, cultivation, growth, receipt, storage, handling, distribution, or sale of any controlled substance in violation of any law of this state;

(9) All property of any type whatsoever constituting, or derived from, any proceeds obtained directly, or indirectly, from any violation of any law of this state concerning controlled substances;

(b) Property subject to forfeiture under this chapter may be seized by state, county or municipal law enforcement agencies upon process issued by any court having jurisdiction over the property. Seizure without process may be made if:

(1) The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;

(2) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding based upon this chapter;

(3) The state, county, or municipal law enforcement agency has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(4) The state, county, or municipal law enforcement agency has probable cause to believe that the property was used or is intended to be used in violation of this chapter.

(c) In the event of seizure pursuant to subsection (b) of this section, proceeding under subsection (d) of this section shall be instituted promptly.

(d) Property taken or detained under this section shall not be subject to replevin but is deemed to be in the custody of the state, county or municipal law enforcement agency subject only to the orders and judgment of the court having jurisdiction over the forfeiture proceedings. When property is seized under this chapter, the state, county or municipal law enforcement agency may:

(1) Place the property under seal;

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

(3) Require the state, county or municipal law enforcement agency to take custody of the property and remove it to an appropriate location for disposition in accordance with law; and

In the case of real property or fixtures, post notice of the seizure on the property, and file and record notice of the seizure in the probate office.

(e) When property is forfeited under this chapter the state, county or municipal law enforcement agency may:

(1) Retain it for official use; except for lawful currency (money) of the United States of America which shall be disposed of in the same manner provided for the disposal of proceeds from a sale in subdivision (e) (2) of this section;

(2) Sell that which is not required to be destroyed by law and which is not harmful to the public. The proceeds from the sale authorized by this subsection shall be used, first, for payment of all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of or custody, advertising and court costs; and the remaining proceeds from such sale shall be awarded and distributed by the court to the municipal law enforcement agency or department, and/or county law enforcement agency or department, and/or state law enforcement agency or department, following a determination of the court of

whose law enforcement agencies or departments are determined by the court to have been a participant in the investigation resulting in the seizure, and such award and distribution shall be made on the basis of the percentage as determined by the court, which the respective agency or department contributed to the police work resulting in the seizure. Provided however, any proceeds from sales authorized by this section awarded by the court to a county or municipal law enforcement agency or department shall be deposited into the respective county or municipal general fund and made available to the affected law enforcement agency or department upon requisition of the chief law enforcement official of such agency or department.

(3) Require the state, county or municipal law enforcement agency to take custody of the property and remove it for disposition in accordance with law.

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

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

(h) An owner's or bona fide lienholder's interest in real property or fixtures shall not be forfeited under this section for any act or omission unless the state proves that that act or omission was committed or omitted with the knowledge or consent of that owner or lienholder. An owner's or bona fide lienholder's interest in any type of property other than real property and fixtures shall be forfeited under this section unless the owner or bona fide lienholder proves both that the act or omission subjecting the property to forfeiture was committed or omitted without the owner's or lienholder's knowledge or consent and that the owner or lienholder could not have obtained by the exercise of reasonable diligence knowledge of the intended illegal use of the property so as to have prevented such use. Except as specifically provided to the contrary in this section, the procedures for the condemnation and forfeiture of property seized under this section shall be governed by and shall conform to the procedures set out in sections 28-4-286 through 28-4-290, except that: (1) the burden of proof and standard of proof shall be as set out in this subsection instead of as set out in the last three lines of section 28-4-290; and (2) the official filing the complaint shall also serve a copy of it on any person, corporation, or other entity having a perfected security interest in the property that is known to that official or that can be discovered through the exercise of reasonable diligence. (Acts 1971, No. 1407, p. 2378, § 504; Acts 1981, No. 81-413, p. 650; Acts 1982, No. 82-426, p. 670, § 4; Acts 1983, 2nd Ex. Sess., No. 83-131, p. 137, § 1; Acts 1988, No. 88-651, p. 1038, § 2; Acts 1989, No. 89-525, p. 1074; Acts 1990, No. 90-472.)

ARTICLE 6.

THERAPEUTIC RESEARCH.

§20-2-110. Title.

This article shall be known as the "Controlled Substances Therapeutic Research Act." (Acts 1979, No. 79-472, p. 870, § 1.)

§20-2-111. Legislative intent.

The legislature finds that recent research has shown that the use of cannabis may alleviate nausea and ill-effects of cancer chemotherapy, and may alleviate the ill-effects of glaucoma. The legislature further finds that there is a need for further research and experimentation with regard to the use of cannabis under strictly controlled circumstances. It is for these purposes that the Controlled Substances Therapeutic Research Act is hereby established. (Acts 1979, No. 79-472, p. 870, §2.)

§20-2-112. Definitions.

As used in this article the following words, unless the context clearly indicates the contrary, shall have the following means:

(1) **CONTROLLED SUBSTANCE.** The same as is defined in subdivision (5) of section 20-2-2, as amended;

(2) **CANNABIS.** The same as those substances defined in subdivision (15) of section 20-2-2, as amended, and particularly those substances defined as tetrahydrocannabinol, or a chemical derivative thereof;

(3) **PRACTITIONER.** A physician licensed to practice medicine in this state and particularly as herein enumerated. (Acts 1979, No. 79-472, p. 870, § 3.)

§20-2-113. Controlled substances therapeutic research program - Established; review committee; rules and regulations; formulation with federal agencies.

There is hereby established by the state board of medical examiners the controlled substances therapeutic research program. The board shall administer the program by a review committee. The board shall promulgate such rules and regulations as are necessary for the proper administration and implementation of the program. Such promulgations shall be formulated to consider those pertinent rules and regulations promulgated by the federal drug enforcement agency, food and drug administration and the national institute on drug abuse. (Acts 1979, No. 79-472, p. 870, § 4.)

§20-2-114. Same - Limited to cancer chemotherapy and glaucoma patients; certification; exemption from prosecution.

Except as herein otherwise provided, the controlled substances therapeutic research program shall be limited to cancer chemotherapy patients and glaucoma patients, who are certified to the review committee by an authorized practitioner as being in such medical condition necessary for the treatment of glaucoma, or the side effects of chemotherapy in cancer patients; such authorization shall be upon such terms and conditions as may be consistent with the public health and safety. To the extent of the applicable authorization, persons are exempt from prosecution in this state for possession, production, manufacture, or delivery of cannabis. (Acts 1979, No. 79-472, p. 870, § 5.)

§20-2-115. Composition of review committee.

The review committee shall consist of : (a) one physician licensed to practice medicine in this state and certified by the American Board of Ophthalmology; (b) one physician licensed to practice medicine in this state, certified by the American Board of Internal Medicine and also certified in the subspecialty of medical oncology; (c) one physician licensed to practice medicine in this state, certified in the specialty of pediatrics and also certified in the subspecialty of pediatrics oncology; (d) one physician licensed to practice medicine in this state, certified in the specialty of gynecology and also certified in the subspecialty of gynecological oncology; (e) one physician licensed to practice medicine in this state, certified in the specialty of radiology and also certified in the subspecialty of radiation oncology; and (f) the director of the Comprehensive Cancer Center of the University of Alabama in Birmingham. (Acts 1979, No. 79-472, p. 870, §6.)

§20-2-116. Certification in subspecialty of oncology required; certification by state board of medical examiners; recertification.

Only physicians in the practice of medicine as prescribed in section 20-2-115 and specifically certified by the state board of medical examiners to dispense cannabis under the provisions of this article, shall be practitioners hereunder. Each practitioner shall make application for recertification every three years. (Acts 1979, No. 79-472, p. 870, § 7; Acts 1981, No. 81-506, p. 869, § 1.)

§20-2-117. Contracts for receipt of cannabis; board of medical examiners to promulgate guidelines, rules and regulations.

The state board of medical examiners may apply to contract with the National Institute of Drug Abuse for receipt of cannabis pursuant to the regulations promulgated by the National Institute on Drug Abuse, the food and drug administration and the drug enforcement administration. The board may formulate and promulgate such guidelines as are necessary for dispensing cannabis consistent with the public health and safety and under strictly controlled circumstances. The board further may establish the rules and regulations requiring

accurate reporting and accountability by each practitioner to the board and any federal agency as required by law. (Acts 1979, No. 79-472, p. 870, § 8; Acts 1981, No. 81-506, p. 869, § 2.)

§20-2-118. Annual reports to governor and legislature.

Each year, on or before the fifth day of the regular session of the legislature the state board of medical examiners, in conjunction with the board's review committee, shall report their findings and recommendations to the governor, the president of the senate and the speaker of the house of representative, regarding the effectiveness of the controlled substances. (Acts 1979, No. 79-472, p. 870, § 9.)

§20-2-119. Enumeration as schedule I or II substance inapplicable.

The enumeration of cannabis, tetrahydrocannabinol or a chemical derivative thereof as a schedule I or II controlled substance under article 2 of chapter 2 of Title 20, as amended, does not apply to the use of such drugs or chemical derivatives thereof pursuant to the provisions of this article. (Acts 1979, No. 89-472, p. 870, § 10.)

§20-2-120. Violations.

Any person or any practitioner who prescribes or dispenses cannabis or any of its derivative for reasons other than outlined in this article upon conviction thereof shall be guilty of a felony and shall be punished as provided in section 13A-12-211. (Acts 1979, No. 79-472, p. 870, § 11.)

ARTICLE 7.

IMITATION CONTROLLED SUBSTANCES.

§20-2-140. Title.

This article shall be known and may be cited as the Imitation Controlled Substances Act. (Acts 1982, No. 82-426, p. 670, § 1.)

§20-2-141. Definitions.

As used in this article, the following terms shall have the following meanings, respectively, unless the context clearly indicates otherwise:

- (1) **CONTROLLED SUBSTANCE.** A substance as defined in section 20-2-2.
- (2) **IMITATION CONTROLLED SUBSTANCE.** A substance, other than a legend controlled drug, that is not a controlled substance, which by dosage unit appearance (including color, size, shape and markings), and by representations made, would lead a reasonable person to believe that the substance is a controlled substance. In the cases where the appearance of the dosage unit is not reasonably sufficient to establish that the substance is an "imitation controlled substance" (for example as in the case of a powder or liquid), the court or authority concerned should consider, in addition to all other logically relevant factors, the following facts as related to "representations made" in determining whether the substance is an "imitation controlled substance":
 - (a) Statements made by the owner or anyone else in control of the substance concerning the nature of the substance, its use or effect.
 - (b) Statements made to the recipient that the substance may be resold for an inordinate profit.
 - (c) Whether the substance is packaged in a manner normally used for illicit controlled substances.
 - (d) Evasive tactics or actions utilized by the owner or person in control of this substance to avoid detection by law enforcement authorities.
 - (e) Prior convictions, if any, of an owner or anyone in control of the substance, under state or

federal law related to controlled substances or fraud.

(f) The proximity of the substances to controlled substances.

(3) **DISTRIBUTE.** The actual, constructive or attempted transfer, delivery, or dispensing to another of an imitation controlled substance.

(4) **MANUFACTURE.** The production, preparation, compounding, processing, encapsulating, packaging, or repackaging, labeling or relabeling of an imitation controlled substance. (Acts 1982, No. 82-426, p. 670, § 2; Acts 1983, 2nd Ex. Sess., No. 83-131, p. 137, § 1.)

§20-2-142. Legislative intent.

It is the intent of the legislature to remove the merchandising of the "imitation controlled substance" or "lookalike drug" from the street corners, school yards, and campuses of our state, not to interfere with the legitimate distribution of "over the counter" formulations used for the treatment of illness dispensed or sold by licensed practitioners. (Acts 1982, No. 82-426, p. 670, § 6.)

§20-2-143. Manufacture - Distribution - Possession - Advertisement - Immunity.

(a) Manufacture or distribution. - It is unlawful for any person to manufacture, distribute, or possess with intent to distribute or sell an imitation controlled substance. Any person who violates this subsection shall be guilty of a Class A misdemeanor under Title 13A.

(b) Distribution to a minor. - Any person 18 years of age or older who violates subsection (a) of this section by distributing or selling an imitation controlled substance to a person under 18 years of age shall be guilty of a Class C felony under Title 13A.

(c) Possession. - It is unlawful for any person to use or possess with intent to use, an imitation controlled substance. Any person who violates this subsection shall be guilty of a Class C misdemeanor under Title 13A.

(d) Advertisement. - It is unlawful for any person to place in any newspaper, magazine, handbill or other publication, or to post or distribute in any public place, any advertisement or solicitation with reasonable knowledge that the purpose of the advertisement or solicitation is to promote the distribution or sale of an imitation controlled substance. Any person who violates this subsection shall be guilty of a Class B misdemeanor under Title 13A.

(e) Immunity. - No civil or criminal liability shall be imposed by virtue of this article on any person registered under chapter 2 of Title 20 who manufactures, distributes, or possesses a placebo, or investigational new drug in the course of professional practice of research. (Acts 1982, No. 82-426, p. 670, § 3.)

§20-2-144. Exceptions.

Nothing in this article shall apply to a noncontrolled substance that was initially introduced into commerce prior to the initial introduction into commerce of the controlled substance which it is alleged to imitate. (Acts 1982, No. 82-426, p. 670, § 7.)

ARTICLE 8.

**SOLICITATION, ATTEMPT AND CONSPIRACY TO
COMMIT CONTROLLED SUBSTANCE CRIME.**

§§ **20-2-160 through 20-2-164.** Transferred to §§ 13A-12-201 through 13A-12-205 by Acts 1988, 1st Ex. Sess., No. 88-918, p. 512, § 2, effective September 30, 1988.

ARTICLE 9.

PRECURSOR CHEMICALS.

§ 20-2-180. Definitions.

As used in this article and unless otherwise specified, the following terms are defined as follows:

- (1) **Board or Board of Pharmacy.** The Alabama state board of pharmacy.
- (2) **Listed Precursor Chemical.** A chemical substance specifically designated as such by the Alabama state board of pharmacy, that, in addition to legitimate uses, is used in the unlawful manufacture of a controlled substance or controlled substances.
- (3) **Person.** Any individual, corporation, partnership, association, or other entity which manufactures, sells, transfers, or possesses a listed precursor chemical. (Acts 1991, No. 91-589, p. 1085, § 1; Act 2001-971, 3rd Sp. Sess., p. 873, §2.)

§ 20-2-181. Designations and deletions.

(a) The board of pharmacy shall, within one year of July 29, 1991, designate by rule listed precursor chemicals.

(b) The board of pharmacy may subsequently by rule add chemicals as listed precursor chemicals following the criteria set forth in subdivision (2) of section 20-2-180, and may also by rule delete any substance previously named as a listed precursor chemical. In no event shall a chemical also be designated as a listed precursor chemical if it has been determined to be a controlled substance or an immediate precursor chemical pursuant to the Alabama Uniform Controlled Substances Act, Section 20-2-1 et seq.

(c) If any chemical is designated or deleted as a listed precursor chemical under federal law and notice thereof is given to the board of pharmacy, the board shall similarly list or delete the substance under this article after the expiration of 30 days from publication in the federal register of a final rule or order designating or deleting such substance as a listed precursor chemical, unless, within 30 days from publication in the federal register of the final rule or order, the board objects to the designation or deletion. In that case, the board shall publish the reasons for objection in the Alabama Administrative Monthly and shall afford all interested parties an opportunity to submit written comments and to be heard. At the conclusion of the hearing and the comment period, the state board of pharmacy shall publish its decision, which shall be final unless altered by statute. Upon publication of an objection to the designation or deletion by the board, the designation or deletion is stayed until the board publishes its decision. Notwithstanding the provision of the Alabama Administrative Procedure Act, sections 41-22-1 through 41-22-27, no further rulemaking or administrative proceedings shall be required of the board with respect to the designation or deletion of substances similarly designated or deleted under federal law.

(d) Until the board of pharmacy adopts a rule designating listed precursor chemicals, as required by subsection (a), the following chemicals or substances are hereby deemed listed precursor chemicals:

- (1) Acetic anhydride;
- (2) Anthranilic acid and its salts;
- (3) Benzyl cyanide;
- (4) Ephedrine, its salts, optical isomers, and salts of optical isomers
- (5) Ergonovine and its salts;
- (6) Ergotamine and its salts;
- (7) Hydriodic acid;
- (8) Isosafrol;
- (9) Methylamine;
- (10) N-Acetylanthranilic acid and its salts;
- (11) Norpseudoephedrine, its salts, optical isomers, and salts of optical isomers;
- (12) Phenylacetic acid and its salts;
- (13) Phenylpropanolamine, its salts, optical isomers, and salts of optical isomers;
- (14) Piperidine and its salts;
- (15) Pseudoephedrine, its salts, optical isomers, and salts of optical isomers;

- (16) Safrole; and
 - (17) 3,4-Methylenedioxyphenyl-2-propanone.
- (Acts 1991, No. 91-589, p. 1085, § 2.)

§ 20-2-182. Licenses; application procedure.

(a) A manufacturer, wholesaler, retailer, or other person who sells, transfers, manufactures, purchases for resale, or otherwise furnishes any listed precursor chemical defined in section 20-2-181 must first obtain on a biennial basis a license issued by the Board of Pharmacy upon payment of a fee as prescribed by rule of the board to the secretary of the board. Licenses shall be issued biennially beginning in 2010. All licenses shall expire on December 31 of even-numbered years. Every holder of such a license in order to continue to be licensed shall pay a biennial renewal fee to be prescribed by rule of the board. The renewal fee shall be due on October 31 and shall be delinquent after December 31 of even-numbered years. The payment of the renewal fee shall entitle the holder thereof to renewal of his or her license at the discretion of the board. If any holder of such license fails to pay the renewal fee on or before the due date, the license may be reinstated only upon payment of a penalty of ten dollars (\$10) for each lapsed month as prescribed by rule of the board.

(b) The procedure for obtaining a license to sell, transfer, manufacturer, purchase for resale, or otherwise furnish a listed precursor chemical shall be as follows:

- (1) Obtain an application from the board of pharmacy;
- (2) Submit the application to the board of pharmacy;
- (3) Demonstrate a legitimate reason to sell, transfer, or otherwise furnish listed precursor chemicals.

(c) The content of the application for a license shall include, but not be limited to, the following information:

- (1) Name of business;
- (2) Address of business other than a post office box number;
- (3) Phone number of business;
- (4) Names and addresses of business owners;
- (5) Location of storage facility;
- (6) Identification of listed precursor chemicals to be sold; and
- (7) Criminal history of applicant.

(d) A licensee shall make an accurate and legible record of any transaction of listed precursor chemicals and maintain such record together with the following records for a period of at least two years:

- (1) Inventory on hand;
- (2) Purchase receipts;
- (3) Manufacturing records including the date and quantity of any listed precursor chemicals manufactured, the quantity of listed precursor chemicals used in manufacturing any other substance or product, and the inventory on hand of listed precursor chemicals after the manufacturing of any other substance or product;
- (4) Copies of the board of pharmacy licenses or permits;
- (5) Records of substance disposal.

(Acts 1991, No. 91-589, p. 1085, § 3; Act 2009-576; effective May 2009.)

§ 20-2-183. Permit for possession.

(a) Any person having a legitimate need for using a listed precursor chemical defined in section 20-2-181, shall apply in person to the board of pharmacy for a permit to possess such chemical each time said chemical is obtained.

(b) The following must be submitted in person to the board of pharmacy to receive a permit for possession of listed precursor chemicals:

- (1) A driver's license number or other personal identification certificate number, date of birth,

residential or mailing address, other than a post office box number, and a driver's license or personal identification card issued by the department of public safety which contains a photograph of the recipient;

(2) In the event the applicant is a corporation, the information in this section shall be required of the person making application for the permit. In addition, the person making application for the permit on behalf of a corporation shall disclose his relationship to the corporation.

(3) The make, model, model year, state where licensed, and license number of the motor vehicle owned and operated by the recipient;

(4) The serial number of the permit issued in the name of the recipient by the board of pharmacy pursuant to this section, which shall be obtained from personal observation of the permit;

(5) A complete description of how the chemical is to be used; and

(6) The location where the chemical is to be stored and used.

(c) The permit shall consist of three parts, including:

(1) The original to be retained by the board of pharmacy;

(2) A copy to be retained by the manufacturer, wholesaler, retailer, or other person furnishing listed precursor chemicals; and

(3) A copy to be attached to the container of the listed precursor chemicals and to be kept with the chemicals at all times. (Acts 1991, No. 91-589, p. 1085, § 4.)

§ 20-2-184. Licenses or permits; denial; revocation; suspension.

A license or permit, obtained pursuant to section 20-2-182 or 20-2-183, shall be denied, suspended, or revoked by the board of pharmacy upon finding that the license or permit holder has:

(1) Furnished false or fraudulent material information in any application filed under this article;

(2) Been convicted of a crime under any state or federal law relating to any controlled substance;

(3) Had his federal registration suspended or revoked to manufacture, distribute or dispense controlled substances;

(4) Violated the provisions of chapter 23 of Title 34; or

(5) Failed to maintain effective controls against the diversion of said precursors to unauthorized persons or entities. (Acts 1991, No. 91-589, p. 1085, § 5.)

§ 20-2-185. Reporting of transactions.

(a) Any persons who sells, transfers, purchases for resale, or otherwise furnishes to a person in this state a listed precursor chemical shall submit a report of the transaction on a form obtained from the board of pharmacy that includes the information required by section 20-2-183.

(b) The board of pharmacy shall supply, upon request of any manufacturer, wholesaler, retailer, or other person who sells, transfers, purchases for resale, or otherwise furnishes a listed precursor chemical a form for the submission of;

(1) The report required by subsection (a);

(2) The name and measured amount of the listed precursor chemical delivered;

(3) Such other information as the board may require pursuant to agency rule of the board of pharmacy. (Acts 1991, No. 91-589, p. 1085, § 6.)

§ 20-2-186. Loss or theft reports - Administrative requirements for use, possession or sale.

(a) Any person, licensed or permitted, who discovers a loss or theft of, or disposes of a chemical listed in section 20-2-181 shall:

(1) Submit a report of the loss, theft, or disposal to the board of pharmacy no later than the third business day after the date the manufacturer, wholesaler, retailer, or other person discovers the loss or theft, or after the actual disposal; and

(2) Include the amount of loss, theft, or disposal in the report. Any disposal of listed precursor chemicals must be done in accordance with the rules and regulations of the United States Environmental Protection Administration and shall be performed at the expense of the permit or license holder.

(b) A manufacturer, wholesaler, retailer, or other person who sells, transfers, possesses, uses, or otherwise furnishes any listed precursor chemical shall:

(1) Maintain records as specified in section 20-2-182, or as prescribed by the rule of the board of pharmacy;

(2) Permit law enforcement authorities to conduct on-site audits, inspections or inventories, and inspect all records made in accordance with this article at any reasonable time; and

(3) Cooperate with the audit, inspection or inventory, or copying of any records. (Acts 1991, No. 91-589, p. 1085, § 7.)

§ 20-2-187. Rules and regulations - Fees.

The board of pharmacy may adopt reasonable rules to effectuate the provisions of this article. The board is further authorized to charge reasonable fees to defray expenses incurred in issuing any licenses or permits or maintaining any records or forms required by this article and in the administration of the provisions of this article. Any fees to defray expenses as set forth above or in administering the provisions of this article shall be retained by the board of pharmacy. (Acts 1991, No. 91-589, p. 1085, § 8.)

§ 20-2-188. Applicability - Exemptions.

(a) The provisions of this article shall not apply to the sale or transfer of products which include a listed precursor chemical if the product may be sold lawfully with a prescription or over the counter without a prescription under the Federal Food, Drug, and Cosmetic Act (21 U. S. C. Section 301 et seq.), or under a rule adopted pursuant to that act.

(b) Notwithstanding any other provision of this article, no person shall be required to obtain a listed precursor license or permit for the sale, receipt, transfer, manufacture, or possession of a listed precursor chemical when:

(1) Such person is a duly licensed physician, dentist, veterinarian, podiatrist, or pharmacist, when the sale, receipt, transfer, manufacture, or possession of such listed precursor chemical is a transaction otherwise lawfully authorized;

(2) A domestic lawful distribution in the usual course of business between agents or employees of a single regulated person;

(3) A delivery of a listed precursor chemical to or by a common or contract carrier for carriage in the lawful and usual course of the business of the common or contract carrier or to or by a warehouseman for storage in the lawful and usual course of the business of the warehouseman. (Acts 1991, No. 91-589, p. 1085, § 9.)

§ 20-2-189. Forfeiture.

All listed precursor chemicals as defined in section 20-2-181, which have been, or which are intended to be sold, transferred, manufactured, purchased for resale, possessed or otherwise transferred in violation of a provision of this article shall be subject to forfeiture to the state and no property right shall exist in them. (Acts 1991, No. 91-589, p. 1085, § 10.)

§20-2-190. Penalties; sale of ephedrine, etc.; Alabama Methamphetamine Abuse Task Force.

(a) Any person who manufactures, sells, transfers, receives or possesses a listed precursor chemical violates this article if the person:

(1) Knowingly fails to comply with the reporting requirements of this article;

(2) Knowingly makes a false statement in a report or record required by this article or the rules adopted thereunder;

(3) Is required by this article to have a listed precursor chemical license or permit, and is a person as defined by this article, and knowingly or deliberately fails to obtain such a license or permit. An offense under this subsection shall constitute a Class C felony.

(b) Notwithstanding the provisions of Section 20-2-188, a person who possesses, sells, transfers, or otherwise furnishes a listed precursor chemical or a product containing a precursor chemical commits an offense if the person possesses, sells, transfers or furnishes the substance with the knowledge or intent that the substance will be used in the unlawful manufacture of a controlled substance. An offense under this subsection shall constitute a Class B felony.

(c)

(1)

a. Products whose sole active ingredient is ephedrine or pseudoephedrine in strength of 30 mg. or more per tablet cannot be offered for retail sale loose in bottles, but must be sold only in blister packages.

On or after October 1, 2009, no product containing ephedrine or pseudoephedrine shall be sold in this state unless the product is manufactured in such a manner that the ephedrine or pseudoephedrine cannot be extracted so as to be used as an ingredient in the production of methamphetamine.

b. All packages of tablets containing ephedrine or pseudoephedrine as the sole active ingredient shall be stored by retail establishments by:

1. Placing the products behind a counter where the public is not permitted; or
2. Placing the products in a locked display case so that a customer wanting access to the packages must ask a store employee for assistance.

c. All packages of tablets containing ephedrine or pseudoephedrine and other active ingredients shall be stored by retail establishments by:

1. Placing the products behind a counter;
2. Placing the products under video surveillance and retaining the data for 30 days; or
3. Placing the products in a locked display case so that a customer wanting access to the package must ask a store employee for assistance.

(2) No person shall deliver in any single over-the-counter sale more than two packages, or any number of packages that contain a combined total of more than six grams of any product containing ephedrine or pseudoephedrine as the sole active ingredient, or in combination with other active ingredients. A purchase of more than six grams of such a product by an individual within a 30-day period with intent to manufacture shall be unlawful.

(3) Each pharmacy or retail establishment selling an over-the-counter product in compliance with paragraph b. of subdivision (1) shall require the purchaser of the product or products to be at least 18 years of age, to provide photographic identification of himself or herself, and to sign a special electronic or paper register which shall be maintained as a record of such a sale for inspection by any law enforcement officer or inspector of the Board of Pharmacy during normal business hours. In lieu of providing a photo identification, the purchaser may provide any two of the following forms of identification of himself or herself: A credit card, insurance card, Medicaid or Medicare card, or other government-issued identification card. A copy of the special register shall be maintained by the retail establishment for a minimum of 180 days. Any retailer maintaining the special register in accordance with this subdivision shall not be civilly liable as a result of any act or omission in carrying out the duties required by this subsection and shall be immune from liability to any third party unless the retailer has violated any provision of this subsection in relation to a claim brought for such violation. Any excessive or suspicious sales of such a product by any wholesaler, manufacturer, or repackager as defined in Section 34-23-1 shall be reported to the Board of Pharmacy.

4. This subsection does not apply to the following:

a. Pediatric products labeled pursuant to federal regulation primarily intended for administration to children under 12 years of age according to label instructions.

b. Products that the Alabama State Board of Pharmacy, upon application of a manufacturer, exempts because the product is formulated in such a way as to effectively prevent the conversion of the active ingredient into methamphetamine, or its salts or precursors.

c. Products dispensed pursuant to a legitimate prescription.

d. Any compound, mixture, or preparation which is in liquid, liquid capsule, or gel capsule form if ephedrine or pseudoephedrine is not the only active ingredient.

e. This subsection shall preempt all local ordinances or regulations governing the possession by individuals or sale by a retail distributor of over-the-counter products containing ephedrine or pseudoephedrine.

f. A retailer who is the general owner or operator of an establishment where ephedrine or pseudoephedrine products are available for sale shall not be penalized pursuant to this section for

conduct of an employee if the retailer documents that an employee training program was conducted by or approved by the Alabama Methamphetamine Abuse Task Force pursuant to subsection (g).

g. A violation of paragraph a. or b. of subdivision (1) or subdivision (2) of this subsection shall constitute a Class C misdemeanor on a first offense and a Class C felony on subsequent offenses. The violations shall be punishable as provided by law.

(d) Beginning October 1, 2005, any wholesaler, manufacturer, or repackager of drug products as defined in Section 34-23-1, other than a wholesaler, manufacturer, or repackager licensed by the Board of Pharmacy, shall obtain a registration annually from the Alcoholic Beverage Control Board which may promulgate and implement administrative rules for the registrations. Any wholesaler, manufacturer, or repackager shall keep complete records of all sales and transactions involving a listed precursor chemical or a product containing a precursor chemical including the names of all parties involved in the transaction and amount of the precursor chemical or product involved. The records shall be maintained for at least 12 months and the records shall be available for inspection by any law enforcement officer or inspector of the Board of Pharmacy during normal business hours.

(e) Beginning October 1, 2005, every retailer of ephedrine or pseudoephedrine, or a product containing ephedrine or pseudoephedrine, other than a retailer licensed by the Board of Pharmacy, is required to be registered with the Alcoholic Beverage Control Board to lawfully sell ephedrine or pseudoephedrine products to consumers. A retailer that requests a waiver of registration stating it will sell only ephedrine or pseudoephedrine products listed in paragraphs a., b., or d. of subdivision (4) of subsection (c), shall be exempt from registration.

(f) In addition to any other penalty that may be provided, a sale of ephedrine or pseudoephedrine by a wholesaler, manufacturer, repackager, or retailer without a license as required by subsection (d) or (e) is a Class A misdemeanor. In addition to any other penalty that may be provided, a sale of ephedrine or pseudoephedrine in violation of this section by a wholesaler, manufacturer, repackager, or retailer who is licensed as required by subsection (d) or (e) shall result in cancellation of the required registration and forfeiture of the right to sell the products for at least one year or longer as determined by the Alcoholic Beverage Control Board.

(g)

(1) The Alabama Methamphetamine Abuse Task Force is created to develop education and training programs that will curb the abuse of methamphetamine precursors used to make methamphetamine, and curb the use of methamphetamine in the State of Alabama. The task force shall consist of the following:

a. The Attorney General, or his or her designee.

b. The President of the Alabama State Board of Pharmacy, or his or her designee.

c. A representative of the Senate as appointed by the President Pro Tempore of the Senate.

d. A representative of the House of Representatives as appointed by the Speaker of the House of Representatives.

e. The Director of the Alcoholic Beverage Control Board, or his or her designee.

The representative of the Alcoholic Beverage Control Board shall serve as chair.

The membership of the task force shall be inclusive and reflect the racial, gender, geographic, urban/rural, and economic diversity of the state.

(2) The representative of the Alcoholic Beverage Control Board shall serve as chair.

(3) The membership of the task force shall be inclusive and reflect the racial, gender, geographic, urban/rural, and economic diversity of the state. The board shall annually report to the Legislature by the second legislative day to what extent the board is complying with this diversity provision.

(4) The chair of the task force shall be responsible for the conduct of the meetings and any correspondence derived therefrom.

(5) The task force shall develop training and education programs targeted for employees of establishments where ephedrine or pseudoephedrine products are available for sale and the programs shall be administered by the Alcoholic Beverage Control Board in conjunction with its program to restrict access to tobacco products by minors pursuant to Chapter 11, Title 28. The task force may avail itself of any advisory information as needed to develop the training and information programs. The chair of the task force shall call an organizational meeting of the task force within 30 days of July 1, 2005, and the task force shall report its meeting schedule and procedural rules to the Clerk of the House of Representatives and the Secretary of the Senate within 10 days of the meeting. The task force shall collect data related to the effectiveness of its training and education programs and shall submit a report to the Secretary of the Senate and Clerk of the House no later than

December 31 of each year.

(6) The task force may expend any funds from any source, including, but not limited to, donations, grants, and appropriations of public funds received for purposes of this subsection. (Acts 1991, No. 91-589, p. 1085, § 11; Acts 2004-564, p. 1323, §1; Acts 2005-181, p. 365, §1.)

ARTICLE 10

CONTROLLED SUBSTANCES PRESCRIPTION DATABASE.

§20-2-210. Legislative findings.

The Alabama Legislature hereby finds that the diversion, abuse, and misuse of prescription medications classified as controlled substances under the Alabama Uniform Controlled Substances Act constitutes a serious threat to the health and welfare of the citizens of the State of Alabama. The Legislature further finds that establishment of a controlled substances prescription database to monitor the prescribing and dispensing of controlled substances will materially assist state regulators and practitioners authorized to prescribe and dispense controlled substances in the prevention of diversion, abuse, and misuse of controlled substances prescription medication through the provision of education and information, early intervention, and prevention of diversion, and investigation and enforcement of existing laws governing the use of controlled substances. (Act 2004-443, 2nd Sp. Sess., p. 781, §1. Effective August 1, 2004.)

§20-2-211. Definitions.

For the purpose of this article, the following terms shall have the respective meanings ascribed by this section:

- (1) **CERTIFYING BOARDS.** Those boards designated in subdivision (3) of Section 20-2-2.
- (2) **CONTROLLED SUBSTANCE.** Any drug or medication defined as a controlled substance within the meaning of subdivision (4) of Section 20-2-2.
- (3) **DEPARTMENT.** The Alabama Department of Public Health.
- (4) **LICENSING BOARD OR COMMISSION.** The board, commission, or other entity that is authorized to issue a professional license to a pharmacist or an authorized practitioner.
- (5) **PHARMACY.** A retail establishment, as defined in subdivision (18) of Section 34-23-1, licensed by the Alabama State Board of Pharmacy
- (6) **PRACTITIONER or AUTHORIZED PRACTITIONER.** A medical, dental, podiatric, optometric, or veterinary medical practitioner licensed to practice in this state and authorized to prescribe, dispense, or furnish controlled substances under the Alabama Uniform Controlled Substances Act.
- (7) **STATE HEALTH OFFICER.** The executive officer of the Alabama Department of Public Health as designated in Section 22-2-8. (Act 2004-443, 2nd Sp. Sess., p. 781, §2. Effective August 1, 2004.)

§20-2-212. Controlled substances prescription database program; powers and duties of department; trust fund.

The department is hereby authorized to establish, create, and maintain a controlled substances prescription database program. In order to carry out its responsibilities under this article, the department is hereby granted the following powers and authority:

- (1) To adopt regulations, in accordance with the Alabama Administrative Procedure Act,

governing the establishment and operation of a controlled substances prescription database program.

(2) To receive and to expend for the purposes stated in this article funds in the form of grants, donations, federal matching funds, interagency transfer, and appropriated funds designated for the development, implementation, operation, and maintenance of the controlled substances prescription database. The funds received pursuant to this subdivision shall be deposited in a new fund that is hereby established as a separate special revolving trust fund in the State Treasury to be known as the Alabama State Controlled Substance Database Trust Fund. No monies shall be withdrawn or expended from this fund for any purpose unless the monies have been appropriated by the Legislature and allocated pursuant to this article. Any monies appropriated shall be budgeted and allocated pursuant to the Budget Management Act in accordance with Article 4 (commencing with Section 41-4-80) of Chapter 4 of Title 41, and only in the amounts provided by the Legislature in the general appropriations act or other appropriations act.

(3) To enter into one or more contracts with the State Board of Pharmacy for the performance of designated operational functions for the controlled substances prescription database, including, but not limited to, the receipt, collection, input, and transmission of controlled substances prescription data and such other operational functions as the department may elect.

(4) To create a controlled substances prescription database advisory committee. The mission of the advisory committee is to consult with and advise the State Health Officer on matters related to the establishment, maintenance, and operation of the database, access to the database information, how access is to be regulated, and security of information contained in the database. The committee shall consist of one representative designated by each of the following organizations:

- a. The Medical Association of the State of Alabama.
- b. The Alabama Dental Association.
- c. The Alabama Pharmacy Association.
- d. The Alabama Veterinary Medicine Association.
- e. The State Health Office, or his or here designee.
- f. The Alabama Hospital Association
- g. The Executive Director of the Alabama State Board of Pharmacy.
- h. The Executive Director of the Board of Medical Examiners.
- i. The Alabama Optometric Association.
- j. One representative from each of the certifying boards established under the Alabama Uniform Controlled Substances Act.
- k. The Alabama Independent Drug Store Association.
- l. The Alabama Podiatry Association. (Act 2004-443, 2nd Sp. Sess., p. 781, §3. Effective August 1, 2004.)

§20-2-213. Reporting requirements.

(a) Each of the entities designated in subsection (b) shall report to the department, or to any entity designated by the department, controlled substances prescription information as designated by regulation pertaining to all Class II, Class III, Class IV, and Class V controlled substances in such manner as may be prescribed by the department by regulation.

(b) The following entities or practitioners are subject to the reporting requirements of subsection (a):

(1) Licensed pharmacies, not including pharmacies of general and specialized hospitals, nursing homes, and any other healthcare facilities which provide inpatient care, so long as the controlled substance is administered and used by a patient on the premises of the facility.

(2) Mail order pharmacies or pharmacy benefit programs filling prescriptions for or dispensing controlled substances to residents of this state.

(3) Licensed physicians, dentists, podiatrists, optometrists, or veterinarians who dispense Class II, Class III, Class IV, and Class V controlled substances directly to patients, or in the case of veterinarians, for

administration to animals, but excluding sample medications. For the purposes of this article, sample medications are defined as those drugs labeled as sample, not for resale under the laws and regulations of the Federal Food and Drug Administration. Controlled substances administered to patients by injection, topical application, suppository administration, or oral administration during the course of treatment are excluded from the reporting requirement.

(c) The manner of reporting controlled substance prescription information shall be in such manner and format as designated in regulations of the department.

(d) The following data elements shall be used in transmitting controlled substance prescription information:

- (1) Name or other identifying designation of the prescribing practitioner.
- (2) Date prescription was filled or medications dispensed.
- (3) Name of person and full address for whom the prescription was written or to whom the medications were dispensed.
- (4) National Drug Code (NDC) of controlled substance dispensed.
- (5) Quantity of controlled substance dispensed.
- (6) Name or other identifying designation of dispensing pharmacy or practitioner.
- (7) Other data elements consistent with standards established by the American Society for Automation in Pharmacy as may be designated by regulations adopted by the department.

(e) In addition to any other applicable law or regulation, the failure of a licensed pharmacy or pharmacist or a licensed practitioner to comply with the requirements of this section shall constitute grounds for disciplinary action against the license of the pharmacy, pharmacist, or licensed practitioner by the appropriate licensing board or commission, and the imposition of such penalties as the licensing board or commission may prescribe. The department shall report to the appropriate licensing board, agency, or commission the failure of a licensed pharmacist or a licensed practitioner to comply with the reporting requirements of this section. Any report made by the department to a licensing board, agency, or commission shall be deemed a formal complaint and shall be investigated and appropriate action taken thereon. (Act 2004-443, 2nd sp. Sess., p. 781, § 4. Effective August 1, 2004.)

§20-2-214. Limited access to database permitted for certain persons or entities.

The following persons or entities shall be permitted access to the information in the controlled substances database, subject to the limitations indicated below:

(1) Authorized representatives of the certifying boards, provided, however, that access shall be limited to inquiries to inquiries concerning the licensees of the certifying board.

(2) A licensed practitioner approved by the department who has authority to prescribe, dispense, or administer controlled substances, provided, however, that such access shall be limited to information concerning a current or prospective patient of the practitioner. Practitioners shall have no requirement or obligation to access or check the information in the controlled substances database prior to prescribing, dispensing, or administering medications or as part of their professional practice.

(3) A licensed pharmacist approved by the department, provided, however, that such access is limited to information related to the patient or prescribing practitioner designated on a controlled substance prescription that a pharmacist has been asked to fill. Pharmacist shall have no requirement or obligation to access or check the information in the controlled substances database prior to dispensing or administering medications or as part of their professional practices.

(4) State and local law enforcement authorities as authorized under Section 20-2-91, and federal law enforcement authorities authorized to access prescription information upon application to the department accompanied by an affidavit stating probable cause for the use of the requested information.

(5) Employees of the department and consultants engaged by the department for operational and review purposes. (Act 2004-443, 2nd Sp. Sess. p. 781, §5. Effective August 1, 2004.)

§20-2-215. Confidentiality of database.

(a) The controlled substances database and all information contained therein and any records maintained by the department or by any entity contracting with the department which is submitted to, maintained, or stored as a part of the controlled substances prescription database is hereby declared privileged and confidential, is not a public record, is not subject to subpoena or discovery in civil proceedings and may only be used for investigatory or evidentiary purposes related to violations of state or federal law and regulatory activities of licensing or regulatory boards of practitioner authorized to prescribe or dispense controlled substances.

(b) Nothing in this section shall apply to records created or maintained in the regular course of business of a pharmacy, medical, dental, optometric, or veterinary practitioner, or other entity covered by this article and all information, documents, or records otherwise available from original sources are not to be construed as immune from discovery or use in any civil proceedings merely because such information contained in those records was reported to the controlled substances prescription database in accordance with the provisions of this article. (Act 2004-443, 2nd Sp. Sess., p. 781, §6. Effective August 1, 2004.)

§20-2-216. Unauthorized disclosure of information; unauthorized access, alteration, or destruction of information.

Any person who intentionally makes an unauthorized disclosure of information contained in the controlled substances prescription database shall be guilty of a Class A misdemeanor. Any person or entity who intentionally obtains unauthorized access to or who alters or destroys information contained in the controlled substances prescription database shall be guilty of a Class C felony. (Act 2004-443, 2nd Sp. Sess., p. 781, §7. Effective August 1, 2004.)

§ 20-2-217. Surcharge on controlled substance registration certificate for maintenance, etc., of database.

There is hereby assessed a surcharge in the amount of ten dollars (\$10) per year on the controlled substance registration certificate of each licensed medical, dental, podiatric, optometric, and veterinary medicine practitioner authorized to prescribe or dispense controlled substances. This surcharge shall be effective for every certificate issued or renewed on or after August 1, 2004, shall be in addition to any other fees collected by the certifying boards, and shall be collected by each of the certifying boards, and remitted to the department at such times and in such manner as designated in the regulations of the department. The proceeds of the surcharge assessed herein shall be used exclusively for the development, implementation, operation, and maintenance of the controlled substances prescription database.

At the end of the first fiscal year after the controlled substances database becomes operational, and at the end of each succeeding fiscal year thereafter, the State Health Officer shall determine the actual operating costs for the database, to include an allocation of costs for the services of employees of the department. If at the end of the fiscal year the State Health Officer determines that the funds received by the department for operation of the database exceed the operational costs incurred by at least twenty-five thousand dollars (\$25,000), then the department shall refund a portion of such excess to the certifying boards which made payments to the department under this section in an amount proportional the board's payment, provided, however, that no payment of less than five thousand dollars (\$5,000) to a certifying board shall be made. (Act 2004-43, 2nd Sp. Sess., p. 781, §8. Effective August 1, 2004.)

§20-2-218. Reimbursement of certain costs incurred in compliance with article.

The department is authorized to grant funds to participating pharmacies for the purpose of reimbursing reasonable costs for dedicated equipment and software incurred by pharmacies in complying with the reporting requirements of this article. Such grants shall be funded by gifts, grants, donations, or other funds appropriated for the operation of the controlled substances prescription database. The department is authorized to determine standards and specifications for any equipment and software purchased by the authority of this section. (Act 2004-443, 2nd Sp. Sess., p. 781, § 9. Effective August 1, 2004.)

§20-2-219. Financing of development, operation, etc., of database.

The controlled substances prescription database shall become operational within 12 months after the State Health Officer certifies to the certifying boards in writing that the department has sufficient funds to finance the development, implementation, and operation of the database. (Act 2004-443, 2nd Sp. Sess., p. 781, §10. Effective August 1, 2004.)

§20-2-220. Liability for reporting.

Any person or entity required to report information concerning controlled substance prescriptions to the department, or to its designated agent, pursuant to the requirements of this article shall not be liable to any person for any claim of damages as a result of the act of reporting the information and no lawsuit may be predicated thereon. (Act 2004-443, 2nd Sp. Sess., p. 781, §11. Effective August 1, 2004.)

RULES OF ALABAMA STATE BOARD OF PHARMACY

Chapter 680-X-3 ALABAMA UNIFORM CONTROLLED SUBSTANCES

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680-X-3-.01. REGISTRATION REQUIREMENTS.

(1) Every person or firm who manufactures, distributes, or dispenses any controlled substance or who proposes to engage in the manufacture, distribution, or dispensing of any controlled substance, shall obtain annually a registration from the Alabama State Board of Pharmacy, on forms provided by the Alabama State Board of Pharmacy, unless exempted by law. This applies to each individual pharmacist and to each pharmacy, but does not apply to Physicians, Dentists or Veterinarians, who are registered by their Certifying Boards.

(2) Only persons actually engaged in such activities are required to obtain a registration; related or affiliated persons who are not engaged in such activities are not required to be registered. (For example, a stockholder of a parent corporation of a corporation manufacturing controlled substances is not required to obtain a registration.)

Author: James W. McLane; Statutory Authority: Code of Alabama 1975, §34-23-92.; History: Adopted: November 27, 1973; Effective: 1 January 1974. Filed June 1, 1982.

680-X-3-.02. REGISTRATION AND REREGISTRATION FEES. Fee amounts.

(a) Effective January 1, 2006 for each registration or reregistration to manufacture controlled substances, the registrant shall pay a fee of six hundred dollars (\$600) to be renewed in even-numbered years.

(b) Effective January 1, 2006 for each registration or reregistration to distribute controlled substances, the registrant shall pay a fee of six hundred dollars (\$600) to be renewed in even-numbered years.

(c) Effective January 1, 2006 for each pharmacy registration or reregistration to dispense controlled substances listed in Schedule II through V, the registrant shall pay a fee of three hundred dollars (\$300) to be renewed in even-numbered years.

(d) Effective January 1, 2006 for each pharmacist registration or reregistration to dispense controlled substances listed in Schedule II through V, the registrant shall pay a fee of one hundred dollars (\$100) to be renewed in even-numbered years.

Author: James W. McLane
Statutory Authority: Code of Alabama 1975, §34-23-92.
History: Adopted: November 27, 1973; Effective: January 1, 1974; Filed June 1, 1982. Emergency rule filed December 8, 1993. Amended: Filed December 8, 1983; Amended: Filed December 22, 2005; Effective January 1, 2006.

680-X-3-.03 TIME AND METHOD OF PAYMENT; REFUND

Registration fees shall be paid at the time the application or renewal furnished by the Alabama State Board of Pharmacy for registration is submitted for filing. Payment shall be made payable to the Alabama State Board of Pharmacy and shall be due October 1 of each even-numbered year and delinquent after the last day of December of each even-numbered year. In the event the application is not accepted for filing or is denied, the payment shall be refunded to the applicant.

Author: Louise F. Jones, Executive Director
Statutory Authority: Code of Alabama 1975, §34-23-50(b)
History: Adopted: November 27, 1973; Effective: January 1, 1974. Filed June 1, 1982; Emergency rule filed December 22, 2005; effective December 22, 2005; Filed January 13, 2006; Effective April 21, 2006

680-X-3-.04. CONTINUING EDUCATION for REREGISTRATION. (Repealed)

Refer to Code of Alabama (1975), Title 34 Chapter 23, Practice of Pharmacy Act 205; Rule Numbers 680-X-2-.36 and 680-X-2-.37; Effective August 10, 2006

680-X-3-.05. RECORD KEEPING by MANUFACTURERS, WHOLESALERS, or DISTRIBUTORS of CONTROLLED SUBSTANCES and SUBMISSION of REPORTS to the STATE BOARD of PHARMACY.

(1) Any manufacturer, wholesaler or distributor of controlled substances doing business in the State of Alabama or who proposes to do business in Alabama shall obtain annually a registration by the Alabama State Board of Pharmacy.

(2) Such manufacturers, wholesalers, or distributors doing business in the State of Alabama who sell, furnish, give away or otherwise dispose of controlled substances drugs enumerated in Schedules I, II, III, IV or V or precursor agents used to manufacture such controlled substances to a registrant other than another manufacturer or wholesaler, shall submit to the Alabama State Board of Pharmacy legible copies of records and reports required by the Drug Enforcement Administration concerning increases in purchases or high or unusual volumes purchased by pharmacies within thirty (30) days.

Author: Vance L. Alexander, R.Ph., President; Statutory Authority: Code of Alabama 1975, §34-23-92.; History: Rule to become effective January 1, 1977. Filed June 1, 1989. Amended: Filed December 8, 1983. Amended: Filed May 20, 1996; Effective June 24, 1996; operative August 15, 1996.

680-X-3-.06. SURRENDER OF LICENSE and PERMITS at TERMINATION of OPERATION, INVENTORY AND DISPOSITION of CONTROLLED SUBSTANCES DRUGS.

(1) Every pharmacy or manufacturer/distributor of prescription legend drugs including controlled substances drugs who is registered with and holds licenses and permits from the Alabama State Board of Pharmacy shall immediately notify the Board anytime there is a termination of that operation and shall surrender all licenses and permits to the Board within ten (10) days of the termination.

(2) Within ten (10) days of termination of operation of any pharmacy, manufacturer or distributor registered with the Alabama State Board of Pharmacy, an inventory of all controlled substances on hand at the time of termination of operation shall be furnished the State Board of Pharmacy. Final disposition of all controlled substances on hand at the time of termination shall be reported to the Board as it may occur. Manufacturers and distributors of controlled substances located outside of this state and holding licenses and permits to distribute controlled substances within the state shall not be required to furnish inventory and disposition of controlled substances as stated.

(3) The next of kin of any deceased licensed pharmacist owner of a Pharmacy shall have a period of thirty (30) days within which to comply with the provisions of this rule during which time no prescriptions shall be filled unless a licensed pharmacist is on duty.

Author: James W. McLane; Statutory Authority: Code of Alabama 1975, §34-23-92.; History: Filed December 8, 1993.

680-X-3-.07. REPORT OF THEFT or LOSS of CONTROLLED SUBSTANCES.

(1) A pharmacy shall notify the Field Division Office of DEA and the Alabama State Board of Pharmacy of the theft or significant loss of any controlled substances upon discovery of such loss or theft.

The pharmacy shall also complete DEA Form, "Report of Theft or Loss of Controlled Substances", which may be obtained from the Board of Pharmacy or DEA Office.

(2) Four (4) copies must be made of the report. The pharmacy shall keep a duplicate copy for its records, forward two (2) copies, the original and duplicate copy, to the Field Division Office of DEA and provide one (1) duplicate copy to the Alabama State Board of Pharmacy.

Author: James W. McLane; Statutory Authority: Code of Alabama 1975, §34-23-92.; History: Filed October 10, 1986; Effective: December 1, 1986

680-X-3-.08. ANNUAL INVENTORY of CONTROLLED SUBSTANCES

(1) Every pharmacy shall take an initial inventory of all controlled substances on hand on January 15, 1987 and shall take a new inventory of all stocks of controlled substances on hand on January 15th or the alternative fixed date approved by the Board of each year following the date the initial inventory was taken.

(2) The annual inventory may be taken on any fixed date which does not vary by more than six (6) months from the annual date that would otherwise apply. If the registrant elects to take the annual inventory on another fixed date, he must first petition the Board for approval of the alternative fixed date on which the annual inventory will be taken.

(3) A pharmacy registered after any annual inventory date shall take an initial inventory of all stocks of controlled substances on hand on the date it first engages in the dispensing of controlled substances. In the event such pharmacy commences business with no controlled substances on hand, the record shall indicate this fact as the initial inventory. This pharmacy shall take a new inventory of all stocks of controlled substances on hand January 15th or the alternative fixed date approved by the Board of each year following the date the initial inventory was taken.

(4) The inventory by a pharmacy must be taken either as of the opening of business or as of the closing of business. The pharmacy shall indicate on the inventory records whether the inventory was taken as of the opening of business or as of the close of business, the date the inventory was taken, followed by the signature of the person responsible for taking the inventory.

(5) In determining the number of units of each finished form of a controlled substance in a commercial container which has been opened, the pharmacy shall do as follows:

(a) If the substance is listed in Schedule II, an exact count or measure of the contents shall be made.

(b) If the substance is listed in Schedule III, IV or V, an estimated count or measure may be made of the contents unless the container holds more than 1000 tablets or capsules in which case an exact count of the contents must be made.

Author: Jerry Moore, RPh, Executive Secretary; Statutory Authority: Code of Alabama 1975, §34-23-92.; History: Filed October 10, 1986; Effective: December 1, 1986; Amended: Filed August 23, 1994; Effective: January 1, 1995.

680-X-3-.09. INVOICES and ACQUISITIONS of CONTROLLED SUBSTANCES.

In addition to those records required under federal laws and regulations, and under provisions of the Alabama Uniform Controlled Substances Act, all receipts of controlled substances by a pharmacy shall be reviewed and approved by a pharmacist. Said review and approval shall be documented by the signature of a pharmacist employed by the pharmacy permit holder on the supplier's invoice or other similar such document.

Author: Vance Alexander, R.Ph., President; Statutory Authority: Code of Alabama 1975, §34-23-92.; History: New Rule: Filed May 20, 1996; Effective June 24, 1996; operative August 15, 1996.

680-X-3-.10 FACSIMILE PRESCRIPTION DRUG ORDERS FOR CONTROLLED SUBSTANCES.

(1) A prescription drug order which is transmitted by an electronic device which sends an exact copy image to the receiver (pharmacy) over telephone lines.

(2) Faxing Schedule II prescriptions:

(a) Faxing a Schedule II for a home infusion and/or I.V. pain therapy patient – A prescription, written for a Schedule II substance to be compounded for the direct administration to a home infusion patient by parenteral, intravenous, intramuscular, subcutaneous or intraspinal infusion, may be transmitted directly

from the prescribing practitioner, by the practitioner or the practitioner's agent to the pharmacy by facsimile. The facsimile serves as the original written prescription. This exception does not apply to any other dosage forms.

(b) Faxing a Schedule II for a long term care patient – A prescription written for a Schedule II substance, for long-term care patients, which include hospice patients, may be transmitted directly from the prescribing individual practitioner, by the practitioner or the practitioner's agent, to the provider pharmacy by facsimile. The facsimile serves as the original written prescription.

(3) Faxing for a long term care patient to a pharmacy.

(a) A pharmacist may accept a fax prescription for a long term care patient provided:

1. For Schedule II drugs, all requirements of a written prescription are met, including the prescriber's signature on the faxed order and it is faxed by the nurse/person the physician has designated as his/her "agent" to transmit the order, and must contain the nurse/person's signature.

2. For drugs other than Schedule II, the order is faxed by the nurse/person the physician has designated as his/her "agent" to transmit the order, and must contain the nurse/person's signature.

3. The pharmacist verifies the fax is from the machine of the designated nurse/person.

(4) Faxed prescriptions.

(a) A pharmacist may dispense directly a controlled substance listed in Schedule III, IV or V which is a prescription drug, or any legend drug, only pursuant to either a written prescription signed by a prescribing individual practitioner or a facsimile of a written signed prescription transmitted directly by the prescribing practitioner, or the practitioner's agent, to the pharmacy or pursuant to an oral prescription made by a prescribing individual practitioner, or the practitioner's agent, and promptly reduced to writing by the pharmacist.

(b) All laws and regulations applicable to oral prescription drug orders shall also apply to all facsimile orders including, but not limited to, generic substitution, maintenance of records, information required, etc.

(c) A prescription order transmitted by facsimile device shall contain all prescription information required by federal and state law.

(d) A pharmacist may dispense prescription orders transmitted by fax only when signed by the prescribing practitioner and transmitted from the practitioner's office or a long term care facility in compliance with all sections of this document.

(e) The original fax shall be assigned the number of the prescription dispensed, and maintained in pharmacy records for at least two (2) years.

(f) The receiving fax machine must be in the prescription department of the pharmacy to protect patient/pharmacist authorized prescribing practitioner confidentially and security.

(g) Refill authorizations for prescriptions, other than Schedule II, may be transmitted using a facsimile device.

Author: Jerry Moore, R. Ph., Executive Director; Statutory Authority: Section 34-23-92, Code of Alabama 1975; History: Adopted December 5, 1998; Effective March 1, 1999.

APPENDIX

Division 2.

Drug Possession and Sale Offenses.

§ 13A-12-210. Short title.

This division shall be entitled "The Drug Crimes Amendments Act of 1987." (Acts 1987, No. 87-603, P.1047, § 1; 1988, 1st Sp. Sess., No.88-918, p. 512, § 2 (11).)

§ 13A-12-211. Unlawful distribution of controlled substances.

(a) A person commits the crime of unlawful distribution of controlled substances if, except as otherwise authorized, he sells, furnishes, gives away, manufactures, delivers or distributes a controlled substance enumerated in schedule I through V.

(b) Unlawful distribution of controlled substances is a Class B felony. (Acts 1987, No. 87-603, p. 1047, § 2.)

§ 13A-12-212. Unlawful possession or receipt of controlled substances.

(a) A person commits the crime of unlawful possession of controlled substances if:

(1) Except as otherwise authorized, he possesses a substance enumerated in schedules I through V.

(2) He obtains by fraud, deceit, misrepresentation or subterfuge or by the alteration of a prescription or written order or by the concealment of a material fact or by the use of a false name or giving a false address, a controlled substance enumerated in schedules I through V.

(b) Unlawful possession of a controlled substance is a Class C felony. (Acts 1987, No. 87-603, p. 107, § 3.)

§ 13A-12-213. Unlawful possession of marihuana in the first degree.

(a) A person commits the crime of unlawful possession of marihuana in the first degree if, except as otherwise authorized:

(1) He possesses marihuana for other than personal use; or

(2) He possesses marihuana for his personal use only after having been previously convicted of unlawful possession of marihuana in the second degree or unlawful possession of marihuana for his personal use only.

(b) Unlawful possession of marihuana in the first degree a Class C felony. (Acts 1987, No. 87-603, p. 1047, § 4.)

§ 13A-12-214. Unlawful possession of marihuana in the second degree.

(a) A person commits the crime of unlawful possession of marihuana in the second degree if, except as otherwise authorized, he possesses marihuana for his personal use only.

(b) Unlawful possession of marihuana in the second is a Class A misdemeanor. (Acts 1987, No. 87-603, p. 1047, § 5.)

§ 13A-12-215. Sale, furnishing, etc., of controlled substances by persons over age 18 to persons under age 18.

If the offender is over the age of 18 and the offense consists selling, furnishing or giving such controlled substances as enumerated in schedules I, II, III, IV and V to a person who has not attained the age of 18 years the offender shall be guilty of a Class A felony. The imposition or execution of sentence shall not be suspended and probation shall not be granted. (Acts 1971, No. 1407, p. 2378, § 406; Acts 1987, No. 87-603, p. 1047, §8; Code 1975, § 20-2-73; Acts 1988, 1st Ex. Sess., No. 88-918, p. 512, § 2 (1).)

§ 13A-12-216. Schedules of controlled substances.

The schedules I through V referred to in this division are the schedules contained in section 20-2-20 through 20-2-31, or in those schedules as revised and republished annually by the state board of health pursuant to section 20-2-32. (Acts 1987, No. 87-603, p. 1047, § 10; Code 1975, § 13A-12-216; Acts 1988, 1st Ex. Sess., No. 88-918, p. 512, § 2 (12).)

Division 3.

Drug Trafficking Offenses

§ 13A-12-230. Reserved.

§ 13A-12-231 Trafficking in cannabis, cocaine, etc.; mandatory minimum terms of imprisonment; trafficking in illegal drugs; habitual felony offender act.

Except as authorized in chapter 2, Title 20:

(1) Any person who knowingly sells, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, in excess of one kilo or 2.2 pounds of cannabis is guilty of a felony, which felony shall be known as "trafficking in cannabis." If the quantity of cannabis involved:

(a) Is in excess of one kilo or 2.2 pounds, but less than 100 pounds, such person shall be sentenced to a mandatory minimum term of imprisonment of three calendar years and to pay a fine of 25,000.00

(b) Is 100 pounds or more, but less than 500 pounds, such person shall be sentenced to a mandatory minimum term of imprisonment of five calendar years and to pay a fine of \$50,000.00.

(c) Is 500 pounds or more, but less than 1,000 pounds, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 calendar years and to pay a fine of \$200,000.00.

(d) Is 1,000 pounds or more, such person shall be sentenced to a mandatory term of imprisonment of life without parole.

(2) Any person who knowingly sells, manufactures, delivers, or brings into this state, or who knowingly in actual or constructive possession of, 28 grams or more of cocaine or of any mixture containing cocaine, described in section 20-2-25 (1), is guilty of a felony, which felony shall be known as "trafficking in cocaine." If the quantity involved:

(a) Is 28 grams or more, but less than 500 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of three calendar years and to pay a fine of \$50,000.00.

(b) Is 500 grams or more, but less than one kilo, such person shall be sentenced to a mandatory minimum term of imprisonment of five calendar years and to pay a fine of \$100,000.00.

(c) Is one kilo, but less than 10 kilos, then such person shall be sentenced to a mandatory minimum term of imprisonment of 15 calendar years and to pay a fine of \$250,000.00.

(d) Is 10 kilos or more, such person shall be sentenced to a mandatory term of imprisonment of life without parole.

(3) Any person who knowingly sells, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, four grams or more of any morphine, opium, or any salt, isomer, or salt of an isomer thereof, including heroin, as described in section 20-2-23 (2) or section 20-2-25 (1) a, or four grams or more of any mixture containing any such substance, is guilty of a felony, which felony shall be known as "trafficking in illegal drugs." If the quantity involved:

(a) Is four grams or more, but less than 14 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of three calendar years and to pay a fine of \$50,000.00.

(b) Is 14 grams or more, but less than 28 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 10 calendar years and to pay a fine of \$100,000.00.

(c) Is 28 grams or more, but less than 56 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 25 calendar years and to pay a fine of \$500,000.00.

(d) Is 56 grams or more, such person shall be sentenced to a mandatory term of imprisonment of life without parole.

(4) Any person who knowingly sells, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of 1,000 or more pills or capsules of methaqualone, as

described in sections 20-2-1, et seq., is guilty of a felony, which felony shall be known as "trafficking in illegal drugs." If the quantity involved:

(a) Is 1,000 pills or capsules, but less than 5,000 pills or capsules, such person shall be sentenced to a mandatory minimum term of imprisonment of three calendar years and pay a fine of \$50,000.00.

(b) Is 5,000 capsules or more, but less than 25,000 capsules, that person shall be imprisoned to a mandatory minimum term of imprisonment of 10 calendar years and pay a fine of \$100,000.00.

(c) Is 25,000 pills or more, but less than 100,000 pills or capsules, such person shall be sentenced to a mandatory minimum term of imprisonment of 25 calendar years and pay a fine of \$500,000.00.

(d) Is 100,000 capsules or more, such person shall be sentenced to a mandatory term of imprisonment of life without parole.

(5) Any person who knowingly sells, manufactures, delivers or brings into this state, or who is knowingly in actual or constructive possession of 500 or more pills or capsules of hydromorphone as is described in sections 20-2-1, et. seq. is guilty of a felony which shall be known as "trafficking in illegal drugs" if the quantity involved:

(a) Is 500 pills or capsules or more but less than 1,000 pills or capsules, such person shall be sentenced to a mandatory term of imprisonment of three calendar years and to pay a fine of \$50,000.00.

(b) Is 1,000 pills or capsules or more, but less than 4,000 pills or capsules, such person shall be sentenced to a mandatory term of imprisonment of 10 calendar years and to pay a fine of \$100,000.00.

(c) Is 4,000 pills or capsules or more but less than 10,000 pills or capsules, such person shall be sentenced to a mandatory term of imprisonment of 25 calendar years and to pay a fine of \$100,000.00.

(d) Is more than 10,000 pills or capsules, such person shall be sentenced to a mandatory term of life in prison without parole.

(6) Any person who knowingly sells, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 28 grams or more of 3,4-methylenedioxy amphetamine, or of any mixture containing 3,4 methylenedioxy amphetamine, is guilty of a felony, which felony shall be known as "trafficking in illegal drugs". If the quantity involved:

(a) Is 28 grams or more, but less than 500 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of three calendar years and pay a fine of \$50,000.00.

(b) Is 500 grams or more, but less than one kilo, such person shall be sentenced to a mandatory minimum term of imprisonment of five calendar years and to pay a fine of \$100,000.00.

(c) Is one kilo, but less than 10 kilos, then such person shall be sentenced to a mandatory minimum term of imprisonment of fifteen calendar years and to pay a fine of \$250,000.00.

(d) Is 10 kilos or more, such person shall be sentenced to a mandatory term of imprisonment of life without parole.

(7) Any person who knowingly sells, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 28 grams or more of 5-methoxy-3,4 methylenedioxy amphetamine, or of any mixture containing 5-methoxy-3,4 methylenedioxy amphetamine is guilty of a felony, which felony shall be known as "trafficking in illegal drugs". If the quantity involved:

(a) Is 28 grams or more, but less than 500 grams, such person shall be sentenced to a mandatory minimum term or imprisonment of three calendar years and to pay a fine of \$50,000.00.

(b) Is 500 grams or more, but less than one kilo, such person shall be sentenced to a mandatory minimum term of imprisonment of five calendar years and to pay a fine of \$100,000.00.

(c) Is one kilo, but less than 10 kilos, then such person shall be sentenced to a mandatory minimum term of imprisonment of 15 calendar years and to pay a fine of \$250,000.00.

(d) Is 10 kilos or more, such person shall be sentenced to a mandatory term of imprisonment of life without parole.

(8) Any person who knowingly sells, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, four grams or more of phencyclidine, or any mixture containing phencyclidine, is guilty of a felony, which felony shall be known as "trafficking in illegal drugs." If the quantity involved:

(a) Is four grams or more, but less than 14 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of three calendar years and to pay a fine of \$50,000.00.

(b) Is 14 grams or more, but less than 56 grams, then such person shall be sentenced to a mandatory minimum term of imprisonment of five calendar years and to pay a fine of \$100,000.00.

(c) Is 28 grams or more, but less than 56 grams, then such person shall be sentenced to a

mandatory minimum term of imprisonment of 15 calendar years and to pay a fine of \$250,000.00.

(d) Is 56 grams or more, such person shall be sentenced to a mandatory term of imprisonment of life without parole.

(9) Any person who knowingly sells, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, four grams or more of lysergic acid diethylamide, of four grams or more of any mixture containing lysergic acid diethylamide, is guilty of a felony, which felony shall be known as "trafficking in illegal drugs." If the quantity involved:

(a) Is four grams or more but less than 14 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of three calendar years to pay a fine of \$50,000.00.

(b) Is 14 grams or more, but less than 28 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 10 calendar years and to pay a fine of \$100,000.00.

(c) Is 28 grams or more, but less than 56 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 25 calendar years and to pay a fine of \$500,000.00

(d) Is 56 grams or more, such person shall be sentenced to a mandatory term of imprisonment of life without parole.

(10) The felonies of "trafficking in cannabis," "trafficking in cocaine," and "trafficking in illegal drugs," as defined in subdivisions (1) through (9), above, shall be treated as Class A felonies for purposes of title 13A, including sentencing under section 13A-5-9. Provided however, that the sentence of imprisonment for a defendant with one or more prior felony convictions who violates subdivisions (1) through (9) of this section shall be the sentence provided therein, or the sentence provided under section 13A-5-9, whichever is greater. Provided further, that the fine for a defendant with one or more prior felony convictions who violates subdivisions (1) through (9) of this section shall be the fine provided therein, or the fine provided under section 13A-5-9, whichever is greater.

(11) Notwithstanding any provision of law to the contrary, any person who has possession of a firearm during the commission of any act proscribed by this act shall be punished by a term of imprisonment of five calendar years which shall be in addition to, and not in lieu of, the punishment otherwise provided, and a fine of \$25,000.00; the court shall not suspend the five-year additional sentence of such person or give such person a probationary sentence.

(Acts 1980, No. 80-587, p. 926; Acts 1986, No. 86-534, p. 1035, § 2; Acts 1987, No. 87-708, p. 1246, § 2; Code 1975, § 20-2-80; Acts 1988, 1st Ex. Sess., No. 88-918, p. 512, § 2(4); Acts 1990, No. 90-389, § 2.)

§ 13A-12-232. Sentence not to be suspended, deferred, etc., prior to mandatory minimum term; reduction, suspension, etc., of sentence for assistance in arrest, conviction, etc., of accessories, principals, etc.

(a) Notwithstanding the provisions of chapter 22, Title 15, or any other provision of law, with respect to any person who is found to have violated section 13A-12-231, adjudication of guilt or imposition of sentence shall not be suspended, deferred, or withheld, nor shall such person be eligible for any type of parole, probation, work release, supervised intensive restitution programs, release because of deduction from sentence for good behavior under corrections incentive time act or any other program, furlough, pass, leave, or any other type of early, conditional, or temporary release program, nor shall such person be permitted to leave the penitentiary for any reason whatsoever except for necessary court appearances and for necessary medical treatment, prior to serving the mandatory minimum term of imprisonment prescribed in this article or 15 years, whichever is less. Nothing contained in this section shall be construed in any way to render any inmate eligible for parole, probation, suspended sentence, furlough, pass, leave, or any type of early, conditional, or temporary release program of any type to which the inmate is not otherwise eligible under other provision of law. Not shall anything in this section be construed to render any person sentenced to life imprisonment without parole under this or any other act eligible for parole, probation, suspended sentence, furlough, pass leave, or any type of early, conditional, or temporary release program at any time.

(b) The prosecuting attorney may move the sentencing court to reduce or suspend the sentence of any person who is convicted of a violation of section 13A-12-231, except where the sentence is life imprisonment without parole, and who provides substantial assistance, in the arrest, or in the conviction of any of his accomplices, accessories, coconspirator, or principals. The arresting agency shall be given an

opportunity to be heard in aggravation or mitigation in reference to any such motion. Upon good cause shown, the motion may be filed and heard in camera. The judge hearing the motion may reduce or suspend the sentence if he finds that the defendant rendered such substantial assistance. Under no circumstances may the judge reduce or suspend the sentence except upon motion of the prosecuting attorney. (Acts 1980, No. 80-587, p. 926; Acts 1986, No.86-534, p. 1035, §2; Acts 1987, No. 87-708, p. 1246, § 3; Code 1975, § 20-2-81, Acts 1988, 1st Ex. Sess., No. 88-918, p. 512, § 2 (5).)

Division 4.

Sale on or Near School Campus.

§13A-12-250. Additional penalty if unlawful sale on or near school campus.

In addition to any penalties heretofore or hereafter provided by law for any person convicted of an unlawful sale of a controlled substance, there is hereby imposed a penalty of five years incarceration in a state corrections facility with no provision for probation if the situs of such unlawful sale was on the campus or within a three-mile radius of the campus boundaries of any public or private school, college, university or other educational institution in this state. (Acts 1987, No. 87-610, p. 1060; Code 1975, § 20-2-79; Acts 1988, 1st Ex. Sess., No. 88-918, p. 512, §2; Acts 1989, No. 89-950, p. 1872.)

Division 5.

Drug Paraphernalia Offenses.

§13A-12-260. Drug paraphernalia; use or possession; delivery or sale; forfeiture.

(a) Definition of "drug paraphernalia". - As used in this section, the term "drug paraphernalia" means all equipment, products, and materials of any kind which are used, intended for use, or designed for use, in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into human body a controlled substance in violation of the controlled substances laws of this state. It includes but is not limited to:

- (1) Kits used, intended for use, or designed use in planting, propagating, cultivating, growing, or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived;
- (2) Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances;
- (3) Isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant which is a controlled substance;
- (4) Testing equipment used, intended for use, or designed for use in identifying, or in analyzing the strength, effectiveness, or purity of controlled substances;
- (5) Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances;
- (6) Dilutants and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, used, intended for use, or designed for use in cutting controlled substances;
- (7) Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana;
- (8) Blenders, bowls, containers, spoons and mixing devices used, intended for use, or designed for use in compounding controlled substances;
- (9) Capsules, balloons, envelopes and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances;
- (10) Containers and other objects used, intended for use, or designed for use in storing or concealing controlled substances;
- (11) Hypodermic syringes, needles and other objects used, intended for use, or designed for use

in parenterally injecting controlled substances into the human body:

(12) Objects used, intended for use, or designed for used in ingesting, inhaling, or otherwise introducing marijuana, tetrahydrocannabinol, cocaine, hashish, or hashish oil into the human body, such as:

- a. Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;
- b. Water pipes;
- c. Carburetion tubes and devices;
- d. Smoking and carburetion masks;
- e. Roach clips: meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand;
- f. Miniature cocaine spoons, and cocaine vials;
- g. Chamber pipes;
- h. Carburetor pipes;
- i. Electric pipes;
- j. Air-driven pipes;
- k. Chillums;
- l. Bongs;
- m. Ice pipes or chillers.

(b) Factors in determining whether object is drug paraphernalia. - In determining whether an object is drug paraphernalia, a court to other authority shall consider, in addition to all other logically relevant factors, the following:

- (1) Statements by an owner or by anyone in control of the object concerning its use;
- (2) Prior convictions, if any, of an owner, or of anyone in control of the object, under any federal law relating to any controlled substance;
- (3) The proximity of the object, in time and space, to a direct violation of this section or to a controlled substance;
- (4) The existence of any residue of controlled substances on the object;
- (5) Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons whom he knows intend to use the object to facilitate a violation of the controlled substances laws of this state; the innocence of an owner, or of anyone in control of the object, as to a direct violation of such laws shall not prevent a finding that the object is intended for use, or designed for use as drug paraphernalia;
- (6) Instructions, oral or written, provided with the object concerning its use;
- (7) Descriptive materials accompanying the object which explain or depict its use;
- (8) National and local advertising concerning its use;
- (9) The manner in which the object is displayed for sale;
- (10) Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;
- (11) Direct or circumstantial evidence of the ratio of sales of the object or objects to the total sales of the business enterprise;
- (12) The existence and scope of legitimate uses for the object in the community;
- (13) Expert testimony concerning its use.

(c) Use or possession with intent to use. - It shall be unlawful for any person to use, or to possess with intent to use, or to use to inject, ingest, inhale or otherwise introduce into the human body, drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain or conceal a controlled substance in violation of the controlled substances laws of this state. Any person who violates this subsection is guilty of a Class A misdemeanor and upon conviction shall be punished as prescribed by law.

(d) Delivery or sale.

(1) It shall be unlawful for any person to deliver or sell, possess with intent to deliver or sell, or manufacture with intent to deliver or sell drug paraphernalia, knowing that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled

substance in violation of the controlled substances laws of this state. Any person who violates this section is guilty of a Class A misdemeanor and upon conviction shall be punished as prescribed by law. A person who is convicted of a subsequent violation of this subsection shall be guilty of a class C felony and punished as prescribed by law. Any person convicted of violating this subsection who previously has been convicted of violating subdivision (2) of this subsection shall be subject to the same penalties specified for subsequent violations of this subsection.

(2) Any person 18 years of age or over who violates subdivision (1) of this subsection by delivering drug paraphernalia to a person under 18 years of age who is at least three years his junior shall be guilty of a class B felony and upon conviction shall be punished as prescribed by law.

(e) Contraband; forfeiture. - All drug paraphernalia used in violation of this section shall be contraband and subject to the forfeiture laws of this state and section 20-2-93 as amended, in particular. (Acts 1986, No. 86-425, p. 771; Code 1975, § 20-2-75.1; Acts 1988, 1st Ex. Sess., No. 88-918, p. 512, § 2.)

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