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**Title 44 - Health**

CHAPTER 53.

POISONS, DRUGS AND OTHER CONTROLLED SUBSTANCES

ARTICLE 1.

GENERAL PROVISIONS

**SECTION 44-53-10.** General powers of Department of Health and Environmental Control regarding controlled substances.

The Department of Health and Environmental Control shall take cognizance of the interest of the public health as it relates to the sale of drugs and the adulteration thereof and shall make all necessary inquiries and investigations relating thereto. For such purpose it may appoint inspectors, analysts and chemists who shall be subject to its supervision and removal. The Department shall adopt such measures as it may deem necessary to facilitate the enforcement of this chapter. It shall prepare rules and regulations with regard to the proper method of collecting and examining drugs.

**SECTION 44-53-20.** "Food" and "drug" defined.

The term "food" as used in Section 44-53-10 shall include every article used for food or drink by man, including all candies, teas, coffees and spirituous, fermented and malt liquors. The term "drug" as used in Section 44-53-10 shall include all medicines for internal or external use.

**SECTION 44-53-30.** Persons selling certain articles to furnish samples for analysis.

Every person offering or exposing for sale or delivering to a purchaser any drug or article of food or spirituous, fermented or malt liquor included under the provisions of Section 44-53-10, shall furnish to any analyst, or other officer or agent appointed hereunder who shall apply to him for the purpose and shall tender to him the value of the same, a sample sufficient for the purpose of analysis of any such drug, article of food or drink which is in his possession.

**SECTION 44-53-40.** Obtaining certain drugs, devices, preparations or compounds by fraud, deceit, or the like.

(A) It is unlawful for a person to obtain or attempt to obtain a drug or device as defined by Section 39-23-20, or any pharmaceutical preparation, chemical, or chemical compound that is restricted in regard to its sale at retail by:

- (1) fraud, deceit, misrepresentation, or subterfuge;
- (2) forgery or alteration of a prescription;
- (3) falsification in any manner of any record of sale required by law;
- (4) use of a false name or the giving of a false address;
- (5) concealment of a material fact; or
- (6) falsely assuming the title of or representing himself to be a person authorized by the laws of this State to possess such drugs, pharmaceutical preparations, chemicals, chemical compound, or devices.

(B) A person who violates this section is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than two years, or both for a first offense. Conviction for a second or subsequent offense, is a felony and the person must be fined not more than two thousand dollars or imprisoned not more than five years, or both.

A person must not be convicted of a criminal offense under this section unless it is shown by clear and convincing evidence that the drug, pharmaceutical preparation, chemical, chemical compound, or device would not have been obtained but for the fraud, deceit, misrepresentation, subterfuge, forgery, alteration, falsification, concealment, or other prohibited act allegedly practiced by the accused.

**SECTION 44-53-50.** Restrictions on use, sale, or manufacture of cleaning agents containing phosphates; exceptions; penalties.

(A) Except as otherwise provided in this section, a person may not use, sell, manufacture, or distribute for use or sale in this State any cleaning agent that contains more than zero percent phosphorus by weight expressed as elemental phosphorus except for an amount not exceeding five-tenths of one percent that is incidental to manufacturing. For the purposes of this section, "cleaning agent" means a laundry detergent, dishwashing compound, household cleaner, metal cleaner, industrial cleaner, phosphate compound, or other substance that is intended to be used for cleaning purposes.

(B) A person may use, sell, manufacture, or distribute for use or sale a cleaning agent that contains greater than zero percent phosphorus by weight but does not exceed eight and seven-tenths percent phosphorus by weight that is:

- (1) a detergent used in a dishwashing machine, whether commercial or household; and
- (2) a substance excluded from the zero percent phosphorus limitation of this section by regulations adopted by the Department of Health and Environmental Control which are based on a finding that compliance with this section would:
  - (i) create a significant hardship on the user; or
  - (ii) be unreasonable because of the lack of an adequate substitute cleaning agent.

(C) This section does not apply to a cleaning agent that is:

- (1) used in dairy, beverage, or food processing equipment;

(2) a product used as an industrial sanitizer, brightener, acid cleaner, or metal conditioner, including phosphoric acid products or trisodium phosphate;

(3) used in hospitals, veterinary hospitals, clinics, or health care facilities or in agricultural or dairy production or in the manufacture of health care supplies;

(4) used by a commercial laundry or textile rental service company or any other commercial entity: (a) to provide laundry service to hospitals, clinics, nursing homes, other health care facilities, or veterinary hospitals or clinics; (b) to clean textile products owned by a commercial laundry or textile rental service company and supplied to industrial or commercial users of the products on a rental basis; or (c) to clean military, professional, industrial, or commercial work uniforms;

(5) used by industry for metal, fabric, or fiber cleaning or conditioning;

(6) manufactured, stored, or distributed for use or sale outside of this State;

(7) used in any laboratory, including a biological laboratory, research facility, chemical laboratory, and engineering laboratory;

(8) used for cleaning hard surfaces, including household cleansers for windows, sinks, counters, ovens, tubs, or other food preparation surfaces and plumbing fixtures;

(9) used as a water softening chemical, antiscaling chemical, or corrosion inhibitor intended for use in closed systems such as boilers, air conditioners, cooling towers, or hot water heating systems.

(D) The Department of Health and Environmental Control shall promulgate regulations to administer and enforce the provisions of this section. Any cleaning agent held for sale or distribution in violation of this section may be seized by appropriate administrative or law enforcement personnel. The seized cleaning agents are considered forfeited.

(E) A person who knowingly sells, manufactures, or distributes any cleaning agent in violation of the provisions of this section shall receive a written warning from the Department of Health and Environmental Control for the first violation. For a subsequent violation, the person is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than one year. Each unlawful sale constitutes a separate violation.

### ARTICLE 3.

#### NARCOTICS AND CONTROLLED SUBSTANCES

##### **SECTION 44-53-110.** Definitions.

As used in this article and Sections 44-49-10, 44-49-40, and 44-49-50:

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

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

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

"Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser, except that this term does not include a common or contract carrier, public warehouseman, or employee of the carrier or warehouseman, when acting in the usual or lawful course of the carrier's or warehouseman's business.

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

"Commission" means the South Carolina Commission on Alcohol and Drug Abuse.

"Confidant" means a medical practitioner, a pharmacist, a pharmacologist, a psychologist, a psychiatrist, a full-time staff member of a college or university counseling bureau, a guidance counselor or a teacher in an elementary school or in a junior or senior high school, a full-time staff member of a hospital, a duly ordained and licensed member of the clergy, accredited Christian Science practitioner, or any professional

or paraprofessional staff member of a drug treatment, education, rehabilitation, or referral center who has received a communication from a holder of the privilege.

"Controlled substance" means a drug, substance, or immediate precursor in Schedules I through V in Sections 44-53-190 , 44-53-210, 44-53-230, 44-53-250, and 44-53-270.

"Controlled substance analogue" means a substance that is intended for human consumption and that either has a chemical structure substantially similar to that of a controlled substance in Schedules I, II, or III or has a stimulant, depressant, analgesic, or hallucinogenic effect on the central nervous system that is substantially similar to that of a controlled substance in Schedules I, II, or III. Controlled substance analogue does not include a controlled substance; any substance generally recognized as safe and effective within the meaning of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 301 et seq.; any substance for which there is an approved new drug application; or, with respect to a particular person, any substance if an exemption is in effect for investigational use for that person under Section 505 of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 355.

"Counterfeit substance" means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number, or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person who, in fact, manufactured, distributed, or dispensed such substance and which, thereby, falsely purports or is represented to be the product of, or to have been distributed by, such other manufacturer, distributor, or dispenser.

"Cocaine base" means an alkaloidal cocaine or freebase form of cocaine, which is the end product of a chemical alteration whereby the cocaine in salt form is converted to a form suitable for smoking. Cocaine base is commonly referred to as "rock" or "crack cocaine".

"Deliver" or "delivery" means the actual, constructive, or attempted transfer of a controlled drug or paraphernalia whether or not there exists an agency relationship.

"Department" means the State Department of Health and Environmental Control.

"Depressant or stimulant drug" means:

(a) a drug which contains any quantity of barbituric acid or any of the salts of barbituric acid, or any derivative of barbituric acid which has been designated as habit forming by the appropriate federal agency or by the department;

(b) a drug which contains any quantity of amphetamine or any of its optical isomers, any salt of amphetamine or any salt of any optical isomer of amphetamine, or any other substance which the appropriate federal agency or the department, after investigation, has found to be capable of being, and by regulation designated as, habit forming because of its stimulant effect on the central nervous system; or

(c) lysergic acid diethylamide or mescaline, or any other substance which the appropriate federal agency or the department, after investigation, has found to have, and by regulation designates as having a potential for abuse because of its stimulant or depressant effect on the central nervous system or its hallucinogenic effect.

"Detoxification treatment" means the dispensing, for a period not in excess of twenty-one days, of a narcotic drug in decreasing doses to an individual in order to alleviate adverse physiological or psychological effects incident to withdrawal from the continuous or sustained use of a narcotic drug and as a method of bringing the individual to a narcotic drug-free state within this period.

"Director" means the Director of the Department of Narcotics and Dangerous Drugs under the South Carolina Law Enforcement Division.

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

"Dispenser" means a practitioner who delivers a controlled substance to the ultimate user or research subject.

"Distribute" means to deliver (other than by administering or dispensing) a controlled substance.

"Distributor" means a person who so delivers a controlled substance.

"Drug" means a substance:

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

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

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

(d) intended for use as a component of any substance specified in subitem (a), (b), or (c) of this paragraph but does not include devices or their components, parts, or accessories.

"Drug problem" means a mental or physical problem caused by the use or abuse of a controlled substance.

"Holder of the privilege" means a person with an existing or a potential drug problem who seeks counseling, treatment, or therapy regarding such drug problem.

"Imitation controlled substance" means a noncontrolled substance which is represented to be a controlled substance and is packaged in a manner normally used for the distribution or delivery of an illegal controlled substance.

"Immediate precursor" means a substance which the appropriate federal agency or the department has found to be and by regulation has designated as being, or can be proven by expert testimony 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, or is a reagent, solvent, or catalyst used in the manufacture of controlled substances, the control of which is necessary to prevent, curtail, or limit such manufacture.

"Maintenance treatment" means the dispensing, for a period in excess of twenty-one days, of a narcotic drug in the treatment of an individual for dependence upon heroin or other morphine-like drugs.

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

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

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

"Manufacturer" means any person who packages, repackages, or labels any container of any controlled substance, except practitioners who dispense or compound prescription orders for delivery to the ultimate consumer.

"Marijuana" means:

(1) all species or variety of the marijuana plant and all parts thereof whether growing or not;

(2) the seeds of the marijuana plant;

(3) the resin extracted from any part of the marijuana plant;

(4) every compound, manufacture, salt, derivative, mixture, or preparation of the marijuana plant, marijuana seeds, or marijuana resin.

"Marijuana" does not mean:

- (1) the mature stalks of the marijuana plant or fibers produced from these stalks;
- (2) oil or cake made from the seeds of the marijuana plant;
- (3) any other compound, manufacture, salt, derivatives, mixture, or preparation of the mature stalks (except the resin extracted therefrom);
- (4) the sterilized seed of the marijuana plant which is incapable of germination.

"Methamphetamine" includes any salt, isomer, or salt of an isomer, or any mixture or compound containing amphetamine or methamphetamine. Methamphetamine is commonly referred to as "crank", "ice", or "crystal meth".

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

- (a) opium, coca leaves, and opiates;
- (b) a compound, manufacture, salt, derivative or preparation of opium, coca leaves, or opiates;
- (c) a substance (and any compound, manufacture, salt, derivative, or preparation thereof) which is chemically identical with any of the substances referred to in subitem (a) or (b). This term does not include decocainized coca leaves or extracts of coca leaves, which extracts do not contain cocaine or ecgonine.

"Noncontrolled substance" means any substance of chemical or natural origin which is not included in the schedules of controlled substances set forth in this article or included in the federal schedules of controlled substances set forth in Title 21, Section 812 of the United States Code or in Title 21, Part 1308 of the Code of Federal Regulations.

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

"Opium poppy" means the plant of the species *Papaver somniferum* L., except the seed thereof.

"Paraphernalia" means any instrument, device, article, or contrivance used, designed for use, or intended for use in ingesting, smoking, administering, manufacturing, or preparing a controlled substance and does not include cigarette papers and tobacco pipes but includes, but is not limited to:

- (1) metal, wooden, acrylic, glass, stone, plastic, or ceramic marijuana or hashish pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;
- (2) water pipes designed for use or intended for use with marijuana, hashish, hashish oil, or cocaine;
- (3) carburetion tubes and devices;
- (4) smoking and carburetion masks;
- (5) roach clips;
- (6) separation gins designed for use or intended for use in cleaning marijuana;
- (7) cocaine spoons and vials;
- (8) chamber pipes;
- (9) carburetor pipes;
- (10) electric pipes;
- (11) air-driven pipes;

(12) chilams;

(13) bongos;

(14) ice pipes or chillers.

"Peyote" means all parts of the plant presently classified botanically as *Lophophora Williamsii* Lemaire, whether growing or not; the seeds thereof; any extract from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds, or extracts.

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

"Practitioner" means:

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

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

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

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

**SECTION 44-53-120.** Duties of State Law Enforcement Division.

The State Law Enforcement Division shall:

(1) Cooperate with Federal and other State agencies in discharging its responsibilities concerning traffic in narcotics and controlled substances and in suppressing the abuse of dangerous substances;

(2) Coordinate and cooperate in training programs on controlled substances law enforcement at the local and State levels;

(3) Cooperate with the Federal Bureau of Narcotics and Dangerous Drugs by establishing a centralized unit within the South Carolina Law Enforcement Division which shall accept, catalogue, file and collect statistics, including records of drug dependent persons and other controlled substance law offenders within the State, and make such information available for Federal, State, and local law-enforcement purposes; and collect and furnish statistics for other appropriate purposes;

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

(5) promulgate regulations to provide uniform procedures for the seizure, inventory, reporting, auditing, handling, testing, storage, preservation for evidentiary use, and destruction or other lawful disposition of controlled substances.

**SECTION 44-53-130.** Coordination of law enforcement.

The State Law Enforcement Division shall formulate a plan to coordinate the controlled substance enforcement effort from the local to the State level.

**SECTION 44-53-140.** Certain communications and observations shall be privileged.

Whenever a holder of the privilege shall seek counselling, treatment, or therapy for any drug problem from a confidant, no statement made by such holder and no observation or conclusion derived from such confidant shall be admissible against such holder in any proceeding. The results of any examination to determine the existence of illegal or prohibited drugs in a holder's body shall not be admissible in any proceeding against such holder.

The privilege belongs to the holder and if he waives the right to claim the privilege the communication between the holder of the privilege and the confidant shall be admissible in evidence in any proceeding.

There is no privilege if the services of a confidant are sought to enable the holder of the privilege to commit or plan to commit a crime or a tort.

**SECTION 44-53-150.** Study and review of penalties relating to marihuana.

Within one year after the date the Federal Commission on Marihuana and Drug Abuse submits its report to the President and the United States Congress, the permanent committee on narcotics and controlled substances shall conduct a comprehensive study and review of the penalties established in this article concerning offenses relating to the use and possession of marihuana.

**SECTION 44-53-160.** Manner in which changes in schedule of controlled substances shall be made.

(1) Annually, within thirty days after the convening of each regular session of the General Assembly, the Department shall recommend to the General Assembly any additions, deletions or revisions in the schedules of substances, enumerated in Sections 44-53-190, 44-53-210, 44-53-230, 44-53-250 and 44-53-270, which it deems necessary. The Department shall not make any additions, deletions or revisions in such schedules until after notice and an opportunity for a hearing is afforded all interested parties. In making a recommendation to the General Assembly regarding a substance, the Department shall consider the following:

- (a) The actual or relative potential for abuse;
- (b) The scientific evidence of its pharmacological effect, if known;
- (c) State of current scientific knowledge regarding the substance;
- (d) The history and current pattern of abuse;
- (e) The scope, duration, and significance of abuse;
- (f) The risk to the public health;
- (g) The potential of the substance to produce psychic or physiological dependence liability; and
- (h) Whether the substance is an immediate precursor of a substance already controlled under this Division.

(2) After considering the above factors, the Department shall make a recommendation to the General Assembly, specifying to what schedule the substance should be added, deleted or rescheduled, if it finds that the substance has a potential for abuse.

(3) During the time the General Assembly is not in session, the Department may by rule add, delete or reschedule a substance as a controlled substance after providing for notice and hearing to all interested parties. Upon the adoption of such rule, the Department shall forward copies to the chairmen of the Medical Affairs Committee of the Senate, and the Military, Public and Municipal Affairs Committee of the House of Representatives and to the Clerks of the Senate and House and to the Chairman of the Joint Legislative Committee on Drugs and Narcotics.

(4) If any substance is added, deleted, or rescheduled as a controlled substance under Federal law and notice of the designation is given to the Department, the Department shall recommend that a corresponding change in South Carolina law be made by the next regular session of the General Assembly not less than thirty days after publication in the Federal register of a final order designating a substance as a controlled substance or rescheduling or deleting a substance, unless the Department objects to the change. In that case, the Department shall publish the reasons for objection and afford all interested parties an opportunity to be heard. At the conclusion of the hearing, the Department shall announce its decision and shall notify the General Assembly in writing of the change in Federal law or regulations and of the Department's recommendation that a corresponding change in South Carolina law be made, or not be made, as the case may be.

If the Department does not object to the change of schedule, it shall by rule, at its first regular or special meeting after the final order by the Bureau or its successor agency is published in the Federal register,



reschedule the substance into the appropriate schedule, such rule having force of law unless overturned by the General Assembly; in such case, no hearing need be given unless requested by an interested party. This rule issued by the Department shall be in substance identical with the order published in the Federal register effecting the change in Federal status of the substance.

(5) The Department shall exclude any nonnarcotic substance from a schedule if such substance may, under the Federal Food, Drug, and Cosmetic Act and the law of this State, be lawfully sold over the counter without a prescription.

**SECTION 44-53-170.** Nomenclature of controlled substances in schedules.

The controlled substances listed, or to be listed, in the schedules in Sections 44-53-190, 44-53-210, 44-53-230, 44-53-250 and 44-53-270 are included by whatever official, chemical or trade name designated as well as the common or usual name designated.

**SECTION 44-53-180.** Tests for inclusion of substance in Schedule I.

The Department shall place a substance in Schedule I if it finds that the substance has:

- (a) A high potential for abuse;
- (b) No accepted medical use in treatment in the United States; and
- (c) A lack of accepted safety for use in treatment under medical supervision.

**SECTION 44-53-190.** Schedule I.

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

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

1. Acetylmethadol
2. Allylprodine
3. Alphacetylmethadol
4. Alphameprodine
5. Alphamethadol
6. Benzethidine
7. Betacetylmethadol
8. Betameprodine
9. Betamethadol
10. Betaprodine
11. Clonitazene
12. Dextromoramide
13. [Deleted]
14. Diampromide
15. Diethylthiambutene
16. Dimenoxadol
17. Dimepheptanol

18. Dimethylthiambutene
19. Dioxaphetyl butyrate
20. Dipipanone
21. Ethylmethylthiambutene
22. Etonitazene
23. Etoxeridine
24. Furethidine
25. Hydroxypethidine
26. Ketobemidone
27. Levomoramide
28. Levophenacymorphan
29. Morpheridine
30. Noracymethadol
31. Norlevorphanol
32. Normethadone
33. Norpipanone
34. Phenadoxone
35. Phenampromide
36. Phenomorphan
37. Phenoperidine
38. Piritramide
39. Proheptazine
40. Properidine
41. Racemoramide
42. Trimeperidine
43. Propiram
44. Difenoxin
45. Alfentanyl
46. Tilidine
47. Alphamethylfentanyl (N- [1-(alpha-methyl-beta-phenyl) ethyl-4-piperidyl] propionanilide; 1-(1-methyl-2-phenylethyl-4-(N-propanilido) piperidine).

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

1. Acetorphine

2. Acetyldihydrocodeine
3. Benzylmorphine
4. Codeine methylbromide
5. Codeine-N-Oxide
6. Cyprenorphine
7. Desomorphine
8. Dihydromorphine
9. Etorphine
10. Heroin
11. Hydromorphinol
12. Methyldesorphine
13. Methylhydromorphine
14. Morphine methylbromide
15. Morphine methylsulfonate
16. Morphine-N-Oxide
17. Myrophine
18. Nicocodeine
19. Nicomorphine
20. Normorphine
21. Pholcodine
22. Thebacon
23. Drotebanol

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

1. 3,4-methylenedioxy amphetamine
2. 5-methoxy--3,4-methylenedioxy amphetamine
3. 3,4-methylenedioxymethamphetamine (MDMA)
4. 3,4,5-trimethoxy amphetamine
5. Bufotenine
6. Diethyltryptamine (DET)
7. Dimethyltryptamine (DMT)
8. 4-methyl-2,5-dimethoxyamphetamine (STP)
9. Ibogaine

10. Lysergic acid diethylamide (LSD)
11. Marijuana
12. Mescaline
13. Peyote
14. N-ethyl-3-piperidyl benzilate
15. N-methyl-3-piperidyl benzilate
16. Psilocybin
17. Psilocyn
18. Tetrahydrocannabinol (THC)
19. 2,5-dimethoxyamphetamine
20. 4-bromo-2,5-dimethoxyamphetamine
21. 4-Methoxyamphetamine
22. Thiophene analog of phencyclidine
23. Parahexyl.

(e) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substance having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers if possible within the specific chemical designation:

- (1) Mecloqualone;
- (2) Methaqualone; or
- (3) Gamma Hydroxybutyric Acid.

(f) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

- (1) Fenethylline.
- (2) N-ethylamphetamine.

**SECTION 44-53-200.** Tests for inclusion of substance in Schedule II.

The Department shall place a substance in Schedule II if it finds that:

- (a) It has a high potential for abuse;
- (b) It has a currently accepted medical use in treatment in the United States, or currently accepted medical use with severe restrictions; and
- (c) Abuse may lead to severe psychic or physical dependence.

**SECTION 44-53-210.** Schedule II.

- (a) The controlled substances listed in this section are included in Schedule II.
- (b) Any of the following substances except those narcotic drugs listed in other schedules whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:

(1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, excluding Apomorphine, Nalbuphine, Naloxone, and Naltrexone, and their respective salts;

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

(3) Opium poppy and poppy straw;

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

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

1. Alphaprodine
2. Anileridine
3. Bezitramide
4. Dihydrocodeine
5. Diphenoxylate
6. Fentanyl
7. Isomethadone
8. Levomethorphan
9. Levorphanol
10. Metazocine
11. Methadone
12. Methadone - Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane
13. Moramide - Intermediate, 2-methyl-3-morpholino-1, 1-diphenylpropane-carboxylic acid
14. Pentazocine (to be administered by injection only)
15. Pethidine (meperidine).
16. Pethidine - Intermediate-A, 4-cyano-1-methyl-4-phenyl-piperidine
17. Pethidine - Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate
18. Pethidine - Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid
19. Phenazocine
20. Piminodine
21. Racemethorphan
22. Racemorphan
23. Dextropropoxyphene [ $\alpha$ -(-)-4-dimethylamino-1, 2-diphenyl-3-methyl-2-propionoxybutane], in bulk form.
24. Sufentanil

(d) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system:

1. Amphetamine, its salts, optical isomers, and salts of its optical isomers.
2. Methamphetamine, its salts, and salts of isomers.
3. Phenmetrazine and its salts.
4. Methylphenidate.

(e) [Deleted]

(f) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system:

1. Amobarbital
2. Secobarbital
3. Pentobarbital
4. Phencyclidine
5. Phencyclidine immediate precursors:

(a) 1-phenylcyclohexylamine

(b) 1-piperidinocyclohexanecarbonitrile (PCC).

(g) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substance:

(1) Immediate precursor to amphetamine and methamphetamine:

(i) Phenylacetone, also known as phenyl-2-propanone; P2P; benzyl methyl ketone; methyl benzyl ketone.

**SECTION 44-53-220.** Tests for inclusion of substance in Schedule III.

The Department shall place a substance in Schedule III if it finds that:

- (a) It has a potential for abuse less than the substances listed in Schedules I and II;
- (b) It has a currently accepted medical use in treatment in the United States; and
- (c) Abuse of the substance may lead to moderate or low physical dependence or high psychological dependence.

**SECTION 44-53-230.** Schedule III.

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

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

1. Benzphetamine
2. Chlorphentermine
3. Clortermine
4. (Deleted)

5. Phendimetrazine

(c) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system:

1. any compound, mixture, or preparation containing amobarbital, secobarbital, pentobarbital or any salt thereof and one or more other active ingredients which are not listed in any schedule;
  2. any suppository dosage form containing amobarbital, secobarbital, pentobarbital, or any salt of any of these drugs and approved by the United States Food and Drug Administration for marketing only as a suppository;
  3. any substance which contains any quantity of a derivative or barbituric acid or any salt thereof;
4. Chlorhexadol;
5. Gamma Hydroxybutyric Acid, and its salts, isomers, and salts of isomers contained in a drug product for which an application has been approved under Section 505 of the Federal Food, Drug and Cosmetic Act;
6. Glutehimide;
7. Lysergic Acid;
8. Lysergic Acid Amide;
9. Methyprylon;
10. Sulfondiethylmethane;
11. Sulfonethylmethane;
12. Sulfonmethane.

(d) Nalorphene

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

1. Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium.
2. Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts.
3. Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with a four-fold or greater quantity of an isoquinoline alkaloid of opium.
4. Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts.
5. Not more than 1.8 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts.
6. Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts.
7. Not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts.
8. Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams with one or more active, non-narcotic ingredients in recognized therapeutic amounts.

**SECTION 44-53-240.** Tests for inclusion of substance in Schedule IV.

The Department shall place a substance in Schedule IV if it finds that:

- (a) It has a low potential for abuse relative to the substances in Schedule III;
- (b) It has a currently accepted medical use in treatment in the United States; and
- (c) Abuse of the substance may lead to limited physical or psychological dependence relative to substances in Schedule III.

**SECTION 44-53-250.** Schedule IV.

The controlled substances in this section are included in Schedule IV.

(a) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers (whether position, geometric, or optical), and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Alprazolam
- (2) Barbitol
- (3) Bromazepam
- (4) Camazepam
- (5) Chloral Betaine
- (6) Chloral Hydrate
- (7) Chlordiazepoxide
- (8) Clobazam
- (9) Clonazepam
- (10) Clorazepate
- (11) Clotiazepam
- (12) Cloxazolam
- (13) Delorazepam
- (14) Diazepam
- (15) Estazolam
- (16) Ethchlorvynol
- (17) Ethinamate
- (18) Ethyl Loflazepate
- (19) Fludiazepam
- (20) Flunitrazepam
- (21) Flurazepam
- (22) Halazepam
- (23) Haloxazolam



- (24) Ketazolam
- (25) Loprazolam
- (26) Lorazepam
- (27) Lormetazepam
- (28) Mebutamate
- (29) Medazepam
- (30) Meprobamate
- (31) Methohexital
- (32) Methylphenobarbital
- (33) Nimetazepam
- (34) Nitrazepam
- (35) Nordiazepam
- (36) Oxazepam
- (37) Oxazolam
- (38) Paraldehyde
- (39) Petrichloral
- (40) Phenobarbital
- (41) Pinazepam
- (42) Prazepam
- (43) Temazepam
- (44) Tetrazepam
- (45) Triazolam.

(b) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether position, geometric, or optical), and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Diethylpropion
- (2) Mazindol
- (3) Phentermine
- (4) Pemoline, including organometallic complexes and chelates thereof
- (5) Pipradol
- (6) SPA [(-)-1-Dimethylamino-1, 2-diphenylethane].

(c) Any material, compound, mixture or preparation containing any quantity of the following substance, including its salts, isomers (whether position, geometric, or optical) and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible:

- (1) Fenfluramine.

(d) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances, including its salts;

(1) [Blank]

(e) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:

(1) Not more than one milligram of difenoxin and not less than twenty-five micrograms of atropine sulfate per dosage unit.

(2) Dosage forms of Dextropropoxyphene [Alpha-( )-4-dimethylamino-1, 2-diphenyl-3-methyl-2-propionoxybutane].

(f) Pentazocine hydrochloride and acetaminophen, pentazocine hydrochloride and aspirin, and pentazocine and naloxone hydrochloride (all for oral administration only).

(g) Butorphanol

**SECTION 44-53-260.** Tests for inclusion of substance in Schedule V.

The Department shall place a substance in Schedule V if it finds that:

(a) It has a low potential for abuse relative to the substances listed in Schedule IV;

(b) It has a currently accepted medical use in treatment in the United States; and

(c) Abuse of the substance may lead to limited physical dependence or psychological dependence relative to the substances listed in Schedule IV.

**SECTION 44-53-270.** Schedule V.

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

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

(1) Not more than 200 milligrams of codeine per 100 milliliter or per 100 grams;

(2) Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams;

(3) Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams;

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

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

(6) Not more than one-half milligram of difenoxin and not less than twenty-five micrograms of atropine sulfate per dosage unit.

**SECTION 44-53-280.** Promulgation of rules and regulations; requirement of professional license; expiration of registration; failure to renew registration; reinstatement; fees and penalties.

(A) The department may promulgate regulations and may charge reasonable fees relating to the license and control of the manufacture, distribution, and dispensing of controlled substances.

(B) No person engaged in a profession or occupation for which a license is required by law may be registered under this article unless the person holds a valid license of that profession or occupation.

(C) A class 20-28 registration, as provided for by the board in regulation, expires October first of each year. A registrant who fails to renew by October thirty-first must be penalized twenty-five dollars. If failure to renew continues beyond October thirty-first, the registrant must be notified, by certified mail

return receipt requested, sent to the registrant's last known address, that continued failure to renew will result in the cancellation of the registration. The registration of a registrant who fails to renew by December thirty-first is canceled. However, registration may be reinstated upon payment of the renewal fees due and a penalty of one hundred dollars if the registrant is otherwise in good standing and presents a satisfactory explanation for failure to renew.

(D) All registrations other than class 20-28, as provided for by the board in regulation, expire on April first of each year. A registrant who fails to renew by April thirtieth must be penalized twenty-five dollars. If failure to renew continues beyond April thirtieth, the registrant must be notified, by certified mail return receipt requested, sent to the registrant's last known address, that continued failure to renew will result in cancellation of the registration. The registration of a registrant who fails to renew by June thirtieth is canceled. However, registration may be reinstated upon payment of the renewal fees due and a penalty of one hundred dollars if the registrant is otherwise in good standing and presents a satisfactory explanation for failure to renew.

(E) Refusal by the department to reinstate a canceled registration after payment of the renewal fee and penalty and presentation of an explanation constitutes a refusal to renew and the procedures under Section 44-53-320 apply.

(F) For class 20-28 registrants, initial registrations issued before July first expire October first of that same year, and initial registrations issued on or after July first expire October first of the following year. For classes other than class 20-28, initial registrations issued before January first expire April first of the following year, and initial registrations issued on or after January first expire April first of the following year.

**SECTION 44-53-290.** Requirement of and authority granted by registration; individuals exempt from registration; registration for maintenance and detoxification treatment.

(a) Every person 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 a registration issued by the Department in accordance with its rules and regulations.

(b) Persons registered by the Department under this article 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 Department may, by regulation, waive the requirement for registration of certain manufacturers, distributors or dispensers if it finds it consistent with the public health and safety.

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

(f) The Department is authorized to inspect the establishment of a registrant or an applicant for a registration in accordance with the rules and regulations promulgated by it.

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

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

(i) Practitioners who dispense narcotic drugs to individuals for maintenance treatment or detoxification treatment shall obtain annually a separate registration for that purpose. The Board shall register an applicant to dispense but not prescribe narcotic drugs to individuals for maintenance treatment or detoxification treatment, or both,

(1) if the applicant is a practitioner who is otherwise qualified to be registered under the provisions of this article to engage in the treatment with respect to which registration has been sought;

(2) if the Board determines that the applicant will comply with standards established by the Board respecting security of stocks of narcotic drugs for such treatment, and the maintenance of records in accordance with Section 44-53-340 and the rules issued by the Board on such drugs; and

(3) if the Board determines that the applicant will comply with standards established by the Board after consultation with the South Carolina Methadone Council respecting the quantities of narcotic drugs which may be provided for unsupervised use by individuals in such treatment.

(j) Pursuant to the procedures set forth in Section 44-53-300, the department may issue a registration in Schedule V to a nurse practitioner certified to prescribe Schedule V controlled substances by the State Board of Nursing for South Carolina and to a physician's assistant certified to prescribe Schedule V controlled substances by the State Board of Medical Examiners. A nurse practitioner or a physicians' assistant registered by the department pursuant to this subsection may not acquire, possess, or dispense, other than by prescription, a controlled substance except as provided by law.

**SECTION 44-53-300.** Granting of registration.

(a) The Department shall register an applicant to manufacture, distribute, or dispense controlled substances included in Sections 44-53-190, 44-53-210, 44-53-230, 44-53-250 and 44-53-270 if it determines that the issuance of such registration is consistent with the public interest. In determining the public interest, the following factors shall be considered:

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

(2) Compliance with applicable state or federal law;

(3) Promotion and technical advances in the art of manufacturing these substances and the development of new substances;

(4) Prior conviction record of applicant under Federal and State laws relating to the manufacture, distribution or dispensing of such substances;

(5) Past experience in the manufacture, distribution, and dispensing of controlled substances and the existence in the establishment of effective controls against diversion;

(6) Such other factors as may be relevant to and consistent with the public health and safety; and

(7) Licensing by a federal agency.

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

(c) Within the discretion of the Department, practitioners may be registered to dispense one or more controlled substances in Schedules II through V if they are authorized to dispense drugs under the law of this State. Such practitioners, properly registered with the Department to dispense controlled substances, may also conduct research with non-narcotic controlled substances in Schedules II through V without additional registration as a researcher, provided that prior to engaging in such research, the practitioner shall notify the Department in writing of the scope of such research and the name of the controlled substances to be utilized. Practitioners desiring to conduct research with Schedule I controlled substances

or with narcotic controlled substances in Schedules II through V shall first obtain a separate researcher registration from the Department.

(d) The Department shall permit persons to apply for registration within sixty days after June 17, 1971 who own or operate any establishment engaged in the manufacture, distribution, or dispensing of any controlled substances prior to June 17, 1971 and who are registered by the State.

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

**SECTION 44-53-310.** Grounds for denial, revocation or suspension of registration; civil fine.

(a) An application for a registration or a registration granted pursuant to Section 44-53-300 to manufacture, distribute, or dispense a controlled substance, may be denied, suspended, or revoked by the Board upon a finding that the registrant:

(1) Has materially falsified any application filed pursuant to this article;

(2) Has been convicted of a felony or misdemeanor 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; or

(4) Has failed to comply with any standard referred to in Section 44-53-290(i).

(b) The department may place a registrant who violates this article on probation or levy a civil fine of not more than two thousand five hundred dollars, or both. Fines generated pursuant to this section must be remitted to the State Treasurer for deposit to the benefit of the Department of Mental Health to be used exclusively for the treatment and rehabilitation of drug addicts within the department's addiction center facilities.

(c) The Department may suspend, deny, or revoke the registration of any registrant or applicant for the conviction of any felony or misdemeanor involving moral turpitude.

(d) The Department may suspend, deny, or revoke the registration of any registrant or applicant for violation of any of the rules and regulations issued by the Department relating to controlled substances.

(e) The Department may suspend, deny, or revoke the registration of any registrant or applicant if it finds that the security provided for the storage of controlled substances is inadequate to the extent that repeated diversions by theft have occurred.

(f) The Department may suspend, deny, or revoke the registration of any registrant or applicant upon a finding by the Department that the registrant or applicant has violated any statutory provision of this article.

**SECTION 44-53-320.** Procedure for denial, revocation or suspension of registration; administrative consent order.

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

(b) The Department, without an order to show cause, may suspend any registration simultaneously with the institution of proceedings under Section 44-53-310, 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. A failure to comply with a standard referred to in Section 44-53-290(i) may be treated under this subsection as

grounds for immediate suspension of a registration granted under such section. The suspension shall continue in effect until withdrawn by the Board or dissolved by a court of competent jurisdiction.

(c) In the event the Department suspends or revokes a registration, all controlled substances owned or possessed by the registrant at the time of suspension or the effective date of the revocation order may be placed under seal. No disposition may be made of substances under seal until the suspension or revocation is withdrawn by the Department or dissolved by a court of competent jurisdiction, unless a court, upon application, 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 such controlled substances shall be forfeited to the State.

(d) After proper hearing of either a formal or informal nature, the Department, upon its own motion or otherwise, may tender to any respondent in an action brought under subsection (a) of this section, an offer of an administrative consent order if it is found that such administrative consent order properly serves the interests of justice. Such order may contain total or partial revocation of a portion or all of the registration to be affected; assessment of a civil fine and a probationary registration period as provided in Section 44-53-310; terms of any probationary registration; and any other terms affecting such registration as may be agreed upon and consented to by the parties to the order. Such order shall become effective on the date signed by the administrative hearing officer designated by the department unless another date is specified within the order. Violation of such order by the respondent thereto at any time subsequent to the effective date of the order and prior to the expiration of the order or the probationary registration period set forth therein shall cause the registration affected by such order to be revoked, after notice of such revocation is mailed to the respondent at his last known address.

**SECTION 44-53-330.** Copy of judgment shall be sent to licensing board upon conviction.

Upon the conviction of any person of the violation of any provision of this article, a certified copy of the judgment of conviction shall be sent by the clerk of the court to the licensing board by whom the convicted defendant has been licensed or registered to practice his profession or to carry on his business. Upon final order of the Department suspending, denying, modifying, or revoking the controlled substances registration of any registrant or applicant under this article, or upon the execution and approval of an administrative consent order provided for by Section 44-53-320, the Department shall forward a copy thereof to the licensing board by whom the affected registrant or applicant has been licensed or registered to practice his profession or carry on his business, if such licensing board be in existence.

**SECTION 44-53-340.** Records and inventories of registrants.

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 the Department issues.

**SECTION 44-53-350.** Order forms for distribution of controlled substances.

(a) Controlled substances in Schedules I and II shall be distributed by a registrant to another registrant only pursuant to an order form prescribed by the Department. Compliance with the provisions of Federal law respecting order forms shall be deemed compliance with this section.

(b) Nothing contained in subsection (a) shall apply:

(1) To the administering or dispensing of such substances to a patient by a practitioner in the course of his professional practice, however, such practitioner shall comply with the requirements of Section 44-53-340;

(2) To the distribution or dispensing of such substances by a pharmacist to an ultimate user pursuant to a written prescription issued by a practitioner authorized to issue such prescription, however, such pharmacist shall comply with the requirements of Section 44-53-340.

**SECTION 44-53-360.** Prescriptions.

(a) Except when dispensed directly by a practitioner, other than a pharmacist, to an ultimate user, or in emergency situations as prescribed by the Department by regulation, no controlled substance included in Schedule II may be dispensed without the written prescription of a practitioner. Prescriptions shall be

retained in conformity with the requirements of Section 44-53-340. No prescription for a controlled substance in Schedule II may be refilled.

(b) A pharmacist may dispense a controlled substance included in Schedule III, IV, or V pursuant to either a written prescription signed by a practitioner, or a facsimile of a written, signed prescription, transmitted by the practitioner or the practitioner's agent to the pharmacy, or pursuant to an oral prescription, reduced promptly to writing and filed by the pharmacist. A prescription transmitted by facsimile must be received at the pharmacy as it was originally transmitted by facsimile and must include the name and address of the practitioner, the phone number for verbal confirmation, the time and date of transmission, and the name of the pharmacy intended to receive the transmission, as well as any other information required by federal or state law. Such prescription, when authorized, may not be refilled more than five times or later than six months after the date of the prescription unless renewed by the practitioner.

(c) No controlled substances included in any schedule may be distributed or dispensed for other than a medical purpose. No practitioner may dispense a Schedule II narcotic controlled substance for the purpose of maintaining the addiction of a narcotic dependent person outside of a facility or program approved by the Department of Health and Environmental Control. No practitioner may dispense a controlled substance outside of a bona fide practitioner-patient relationship.

(d) Unless specifically indicated in writing on the face of the prescription that it is to be refilled, and the number of times specifically indicated, no prescription may be refilled. The indication of "PRN" or "ad lib" or phrases, abbreviations, or symbols of like meaning shall not be construed as to exceed five refills or six months, whichever shall first occur. Preprinted refill instructions on the face of a prescription shall be disregarded by the dispenser unless an affirmative marking or other indication is made by the prescriber.

(e) Prescriptions for controlled substances in Schedule II with the exception of transdermal patches, must not exceed a thirty-one day supply. Prescriptions for Schedule II substances must be dispensed within ninety days of the date of issue, after which time they are void. Prescriptions for controlled substances in Schedules III through V, inclusive, must not exceed a ninety-day supply.

(f) Preprinted prescriptions for controlled substances in any schedule are prohibited.

(g) The Board shall, by rules and regulations, specify the manner by which prescriptions are filed.

(h) A prescription, in order to be effective in legalizing the possession of a controlled substance and eliminating the need for registration of the recipient, must be issued for legitimate medical purposes. The responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, but a corresponding liability rests with the pharmacist who fills and ultimately dispenses the prescription. An order purporting to be a prescription issued to a drug dependent person, not in the course of generally accepted medical treatment, but for the purpose of providing the user with controlled substances sufficient to maintain his dependence upon the substance, or to provide him with quantities of controlled substances in great excess of normal dosage ranges as recommended by the manufacturer of the substance, is not a prescription within the meaning and intent of this article; and the person filling or dispensing such an order, as well as the person issuing it, shall be deemed in violation of this section.

(i) Excepting a mail order prescription dispensed in compliance with Chapter 43 of Title 40 for which the dispenser requires proper identification of the recipient, a prescription for a controlled substance in Schedules II through V may not be filled unless the dispenser knows the recipient or requires the recipient to produce a government issued photo identification, and the dispenser notes the identification source and number on the prescription, or in a readily retrievable log including:

- (1) prescription number;
- (2) date prescription filled;
- (3) number and type of identification;
- (4) initials of person obtaining and recording information.

**SECTION 44-53-365.** Theft of controlled substance; penalty.

(A) It is unlawful for a person to take or exercise control over a controlled substance, the immediate precursor of a controlled substance, or ephedrine, pseudoephedrine, or phenylpropanolamine belonging

to another person or entity with the intent to deprive the person or entity of the controlled substance, the immediate precursor, or ephedrine, pseudoephedrine, or phenylpropanolamine.

(B) A person who knowingly and intentionally violates subsection (A):

(1) for a first offense, is guilty of a felony and, upon conviction, must be imprisoned for not more than five years or fined not more than five thousand dollars, or both; and

(2) for a second or subsequent violation, is guilty of a felony and, upon conviction, must be imprisoned for not more than ten years or fined not more than ten thousand dollars, or both.

**SECTION 44-53-370.** Prohibited acts A; penalties.

(a) Except as authorized by this article it shall be unlawful for any person:

(1) to manufacture, distribute, dispense, deliver, purchase, aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase, or possess with the intent to manufacture, distribute, dispense, deliver, or purchase a controlled substance or a controlled substance analogue;

(2) to create, distribute, dispense, deliver, or purchase, or aid, abet, attempt, or conspire to create, distribute, dispense, deliver, or purchase, or possess with intent to distribute, dispense, deliver, or purchase a counterfeit substance.

(b) A person who violates subsection (a) with respect to:

(1) a controlled substance classified in Schedule I (b) and (c) which is a narcotic drug or lysergic acid diethylamide (LSD) and in Schedule II which is a narcotic drug is guilty of a felony and, upon conviction, for a first offense must be imprisoned not more than fifteen years or fined not more than twenty-five thousand dollars, or both. For a second offense, or if, in the case of a first conviction of violation of any provision of this subsection, the offender previously has been convicted of a violation of the laws of the United States or of any state, territory, or district relating to narcotic drugs, marijuana, depressant, stimulant, or hallucinogenic drugs, the offender must be imprisoned not less than five years nor more than thirty years, or fined not more than fifty thousand dollars, or both. For a third or subsequent offense, or if the offender previously has been convicted two or more times in the aggregate of a violation of the laws of the United States or of any state, territory, or district relating to narcotic drugs, marijuana, depressant, stimulant, or hallucinogenic drugs, the offender must be imprisoned not less than fifteen years nor more than thirty years, or fined not more than fifty thousand dollars, or both. Except in the case of conviction for a first offense, the sentence must not be suspended and probation must not be granted;

(2) any other controlled substance classified in Schedule I, II, or III, flunitrazepam or a controlled substance analogue, is guilty of a felony and, upon conviction, for a first offense must be imprisoned not more than five years or fined not more than five thousand dollars, or both. For a second offense, or, if, in the case of a first conviction of violation of any provision of this subsection, the offender previously has been convicted of a violation of the laws of the United States or of any state, territory, or district relating to narcotic drugs, marijuana, depressant, stimulant, or hallucinogenic drugs, the offender is guilty of a felony and, upon conviction, must be imprisoned not more than ten years or fined not more than ten thousand dollars, or both. For a third or subsequent offense, or, if the offender previously has been convicted two or more times in the aggregate of a violation of the laws of the United States or of any state, territory, or district relating to narcotic drugs, marijuana, depressant, stimulant, or hallucinogenic drugs, the offender is guilty of a felony and, upon conviction, must be imprisoned not less than five years nor more than twenty years, or fined not more than twenty thousand dollars, or both. Except in the case of conviction for a first offense, the sentence must not be suspended and probation must not be granted;

(3) a substance classified in Schedule IV except for flunitrazepam is guilty of a misdemeanor and, upon conviction, for a first offense must be imprisoned not more than three years or fined not more than three thousand dollars, or both. In the case of second or subsequent offenses, the person is guilty of a felony and, upon conviction, must be imprisoned not more than five years or fined not more than six thousand dollars, or both;

(4) a substance classified in Schedule V is guilty of a misdemeanor and, upon conviction, for a first offense must be imprisoned not more than one year or fined not more than one thousand dollars, or both. In the case of second or subsequent offenses, the sentence must be twice the first offense.



(c) It shall be unlawful for any person knowingly or intentionally to possess a controlled substance unless the substance was obtained directly from, or pursuant to a valid prescription or order of, a practitioner while acting in the course of his professional practice, or except as otherwise authorized by this article.

(d) A person who violates subsection (c) with respect to:

(1) a controlled substance classified in Schedule I (b) and (c) which is a narcotic drug or lysergic acid diethylamide (LSD) and in Schedule II which is a narcotic drug is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than two years or fined not more than five thousand dollars, or both. For a second offense, the offender is guilty of a felony and, upon conviction, must be imprisoned not more than five years or fined not more than five thousand dollars, or both. For a third or subsequent offense, the offender is guilty of a felony and, upon conviction, must be imprisoned not more than five years or fined not more than ten thousand dollars, or both;

(2) any other controlled substance classified in Schedules I through V is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than six months or fined not more than one thousand dollars, or both. For a second or subsequent offense, the offender is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than one year or fined not more than two thousand dollars, or both, except as provided in subsection (d)(4);

(3) cocaine is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than three years or fined not more than five thousand dollars, or both. For a first offense, the court, upon approval of the solicitor, may require as part of a sentence, that the offender enter and successfully complete a drug treatment and rehabilitation program. For a second offense, the offender is guilty of a felony and, upon conviction, must be imprisoned not more than five years or fined not more than seven thousand five hundred dollars, or both. For a third or subsequent offense, the offender is guilty of a felony and, upon conviction, must be imprisoned not more than ten years or fined not more than twelve thousand five hundred dollars, or both;

(4) possession of more than: ten grains of cocaine, one hundred milligrams of alpha- or beta-eucaine, four grains of opium, four grains of morphine, two grains of heroin, one hundred milligrams of isonipecaine, twenty-eight grams or one ounce of marijuana, ten grams of hashish, fifty micrograms of lysergic acid diethylamide (LSD) or its compounds, fifteen tablets, capsules, dosage units, or the equivalent quantity of 3, 4-methylenedioxymethamphetamine (MDMA), or twenty milliliters or milligrams of gamma hydroxybutyric acid or a controlled substance analogue of gamma hydroxybutyric acid, is prima facie guilty of violation of subsection (a) of this section. A person who violates this subsection with respect to twenty- eight grams or one ounce or less of marijuana or ten grams or less of hashish is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than thirty days or fined not less than one hundred dollars nor more than two hundred dollars. Conditional discharge may be granted in accordance with the provisions of Section 44-53-450 upon approval by the circuit solicitor to the magistrate or municipal judge. As a part of a sentence, a magistrate or municipal judge may require attendance at an approved drug abuse program. Persons charged with the offense of possession of marijuana or hashish under this item may be permitted to enter the pretrial intervention program under the provisions of Sections 17-22-10 through 17-22-160. For a second or subsequent offense, the offender is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than one year or fined not less than two hundred dollars nor more than one thousand dollars, or both.

When a person is charged under this subsection for possession of controlled substances, bail shall not exceed the amount of the fine and the assessment provided pursuant to Section 14-1-206, 14-1-207, or 14-1-208, whichever is applicable. A person charged under this item for a first offense for possession of controlled substances may forfeit bail by nonappearance. Upon forfeiture in general sessions court, the fine portion of the bail must be distributed as provided in Section 14-1-205. The assessment portion of the bail must be distributed as provided in Section 14-1-206, 14-1-207, or 14-1-208, whichever is applicable.

(e) Any person who knowingly sells, manufactures, cultivates, delivers, purchases, or brings into this State, or who provides financial assistance or otherwise aids, abets, attempts, or conspires to sell, manufacture, cultivate, deliver, purchase, or bring into this State, or who is knowingly in actual or constructive possession or who knowingly attempts to become in actual or constructive possession of:

(1) ten pounds or more of marijuana is guilty of a felony which is known as "trafficking in marijuana" and, upon conviction, must be punished as follows if the quantity involved is:

(a) ten pounds or more, but less than one hundred pounds:

1. for a first offense, a term of imprisonment of not less than one year nor more than ten years, no part of which may be suspended nor probation granted, and a fine of ten thousand dollars;
2. for a second offense, a term of imprisonment of not less than five years nor more than twenty years, no part of which may be suspended nor probation granted, and a fine of fifteen thousand dollars;
3. for a third or subsequent offense, a mandatory term of imprisonment of twenty-five years, no part of which may be suspended nor probation granted, and a fine of twenty-five thousand dollars;

(b) one hundred pounds or more, but less than two thousand pounds, or one hundred to one thousand marijuana plants regardless of weight, a mandatory term of imprisonment of twenty-five years, no part of which may be suspended nor probation granted, and a fine of twenty-five thousand dollars;

(c) two thousand pounds or more, but less than ten thousand pounds, or more than one thousand marijuana plants, but less than ten thousand marijuana plants regardless of weight, a mandatory term of imprisonment of twenty-five years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

(d) ten thousand pounds or more, or ten thousand marijuana plants, or more than ten thousand marijuana plants regardless of weight, a term of imprisonment of not less than twenty-five years nor more than thirty years with a mandatory minimum term of imprisonment of twenty-five years, no part of which may be suspended nor probation granted, and a fine of two hundred thousand dollars;

(2) ten grams or more of cocaine or any mixtures containing cocaine, as provided in Section 44-53-210 (b)(4), is guilty of a felony which is known as "trafficking in cocaine" and, upon conviction, must be punished as follows if the quantity involved is:

(a) ten grams or more, but less than twenty-eight grams:

1. for a first offense, a term of imprisonment of not less than three years nor more than ten years, no part of which may be suspended nor probation granted, and a fine of twenty-five thousand dollars;
2. for a second offense, a term of imprisonment of not less than five years nor more than thirty years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;
3. for a third or subsequent offense, a mandatory minimum term of imprisonment of not less than twenty-five years nor more than thirty years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

(b) twenty-eight grams or more, but less than one hundred grams:

1. for a first offense, a term of imprisonment of not less than seven years nor more than twenty-five years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;
2. for a second offense, a term of imprisonment of not less than seven years nor more than thirty years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;
3. for a third or subsequent offense, a mandatory minimum term of imprisonment of not less than twenty-five years and not more than thirty years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

(c) one hundred grams or more, but less than two hundred grams, a mandatory term of imprisonment of twenty-five years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

(d) two hundred grams or more, but less than four hundred grams, a mandatory term of imprisonment of twenty-five years, no part of which may be suspended nor probation granted, and a fine of one hundred thousand dollars;

(e) four hundred grams or more, a term of imprisonment of not less than twenty-five years nor more than thirty years with a mandatory minimum term of imprisonment of twenty-five years, no part of which may be suspended nor probation granted, and a fine of two hundred thousand dollars;

(3) four grams or more of any morphine, opium, salt, isomer, or salt of an isomer thereof, including heroin, as described in Section 44-53-190 or 44-53-210 , or four grams or more of any mixture containing any of these substances, is guilty of a felony which is known as "trafficking in illegal drugs" and, upon conviction, must be punished as follows if the quantity involved is:

(a) four grams or more, but less than fourteen grams:

1. for a first offense, a term of imprisonment of not less than seven years nor more than twenty-five years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;
2. for a second or subsequent offense, a mandatory minimum term of imprisonment of twenty-five years, no part of which may be suspended nor probation granted, and a fine of one hundred thousand dollars;

(b) fourteen grams or more but less than twenty-eight grams, a mandatory term of imprisonment of twenty-five years, no part of which may be suspended nor probation granted, and a fine of two hundred thousand dollars;

(c) twenty-eight grams or more, a mandatory term of imprisonment of not less than twenty-five years nor more than forty years, no part of which may be suspended nor probation granted, and a fine of two hundred thousand dollars;

(4) fifteen grams or more of methaqualone is guilty of a felony which is known as "trafficking in methaqualone" and, upon conviction, must be punished as follows if the quantity involved is:

(a) fifteen grams but less than one hundred fifty grams:

1. for a first offense, a term of imprisonment of not less than one year nor more than ten years, no part of which may be suspended nor probation granted, and a fine of ten thousand dollars;
2. for a second or subsequent offense, a mandatory term of imprisonment of twenty-five years, no part of which may be suspended nor probation granted, and a fine of twenty-five thousand dollars;

(b) one hundred fifty grams but less than fifteen hundred grams, a mandatory term of imprisonment of twenty-five years, no part of which may be suspended nor probation granted, and a fine of twenty-five thousand dollars;

(c) fifteen hundred grams but less than fifteen kilograms, a mandatory term of imprisonment of twenty-five years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

(d) fifteen kilograms or more, a term of imprisonment of not less than twenty-five years nor more than thirty years with a mandatory minimum term of imprisonment of twenty-five years, no part of which may be suspended nor probation granted, and a fine of two hundred thousand dollars;

(5) one hundred tablets, capsules, dosage units, or the equivalent quantity, or more of lysergic acid diethylamide (LSD) is guilty of a felony which is known as "trafficking in LSD" and, upon conviction, must be punished as follows if the quantity involved is:

(a) one hundred dosage units or the equivalent quantity, or more, but less than five hundred dosage units or the equivalent quantity:

1. for a first offense, a term of imprisonment of not less than three years nor more than ten years, no part of which may be suspended nor probation granted, and a fine of twenty thousand dollars;
2. for a second offense, a term of imprisonment of not less than five years nor more than thirty years, no part of which may be suspended or probation granted, and a fine of forty thousand dollars;
3. for a third or subsequent offense, a mandatory minimum term of imprisonment of not less than twenty-five years nor more than thirty years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

(b) five hundred dosage units or the equivalent quantity, or more, but less than one thousand dosage units or the equivalent quantity:

1. for a first offense, a term of imprisonment of not less than seven years nor more than twenty-five years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

2. for a second offense, a term of imprisonment of not less than seven years nor more than thirty years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

3. for a third or subsequent offense, a mandatory minimum term of imprisonment of not less than twenty-five years and not more than thirty years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

(c) one thousand dosage units or the equivalent quantity, or more, a mandatory term of imprisonment of twenty-five years, no part of which may be suspended nor probation granted, and a fine of one hundred thousand dollars;

(6) one gram or more of flunitrazepam is guilty of a felony which is known as "trafficking in flunitrazepam" and, upon conviction, must be punished as follows if the quantity involved is:

(a) one gram but less than one hundred grams;

1. for a first offense a term of imprisonment of not less than one year nor more than ten years, no part of which may be suspended nor probation granted, and a fine of ten thousand dollars;

2. for a second or subsequent offense, a mandatory term of imprisonment of twenty-five years, no part of which may be suspended nor probation granted, and a fine of twenty-five thousand dollars;

(b) one hundred grams but less than one thousand grams, a mandatory term of imprisonment of twenty years, no part of which may be suspended nor probation granted, and a fine of twenty-five thousand dollars;

(c) one thousand grams but less than five kilograms, a mandatory term of imprisonment of twenty-five years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

(d) five kilograms or more, a term of imprisonment of not less than twenty-five years, nor more than thirty years, with a mandatory minimum term of imprisonment of twenty-five years, no part of which may be suspended nor probation granted, and a fine of two hundred thousand dollars;

(7) fifty milliliters or milligrams or more of gamma hydroxybutyric acid or a controlled substance analogue of gamma hydroxybutyric acid is guilty of a felony which is known as "trafficking in gamma hydroxybutyric acid" and, upon conviction, must be punished as follows:

(a) for a first offense, a term of imprisonment of not less than one year nor more than ten years, no part of which may be suspended nor probation granted, and a fine of ten thousand dollars;

(b) for a second or subsequent offense, a mandatory term of imprisonment of twenty-five years, no part of which may be suspended nor probation granted, and a fine of twenty-five thousand dollars.

A person convicted and sentenced under this subsection to a mandatory term of imprisonment of twenty-five years, a mandatory minimum term of imprisonment of twenty-five years, or a mandatory minimum term of imprisonment of not less than twenty-five years nor more than thirty years is not eligible for parole, extended work release, as provided in Section 24-13-610, or supervised furlough, as provided in Section 24-13-710. Notwithstanding Section 44-53-420, a person convicted of conspiracy pursuant to this subsection must be sentenced as provided in this section with a full sentence or punishment and not one-half of the sentence or punishment prescribed for the offense.

The weight of any controlled substance in this subsection includes the substance in pure form or any compound or mixture of the substance.

The offense of possession with intent to distribute described in Section 44-53-370(a) is a lesser included offense to the offenses of trafficking based upon possession described in this subsection.

(8) one hundred tablets, capsules, dosage units, or the equivalent quantity, or more of 3, 4-methalenedioxymethamphetamine (MDMA) is guilty of a felony which is known as 'trafficking in MDMA or ecstasy' and, upon conviction, must be punished as follows if the quantity involved is:

(a) one hundred dosage units or the equivalent quantity, or more, but less than five hundred dosage units or the equivalent quantity:

(i) for a first offense, a term of imprisonment of not less than three years nor more than ten years, no part of which may be suspended nor probation granted, and a fine of twenty thousand dollars;

(ii) for a second offense, a term of imprisonment of not less than five years nor more than thirty years, no part of which may be suspended or probation granted, and a fine of forty thousand dollars;

(iii) for a third or subsequent offense, a mandatory minimum term of imprisonment of not less than twenty-five years nor more than thirty years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

(b) five hundred dosage units or the equivalent quantity, or more, but less than one thousand dosage units or the equivalent quantity:

(i) for a first offense, a term of imprisonment of not less than seven years nor more than twenty-five years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

(ii) for a second offense, a term of imprisonment of not less than seven years nor more than thirty years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

(iii) for a third or subsequent offense, a mandatory minimum term of imprisonment of not less than twenty-five years and not more than thirty years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

(c) one thousand dosage units or the equivalent quantity, or more, a mandatory term of imprisonment of twenty-five years, no part of which may be suspended nor probation granted, and a fine of one hundred thousand dollars.

(f) It shall be unlawful for a person to administer, distribute, dispense, deliver, or aid, abet, attempt, or conspire to administer, distribute, dispense, or deliver a controlled substance or gamma hydroxy butyrate to an individual with the intent to commit one of the following crimes against that individual:

(1) kidnapping, Section 16-3-910;

(2) criminal sexual conduct in the first, second, or third degree, Sections 16-3-652, 16-3-653, and 16-3-654;

(3) criminal sexual conduct with a minor in the first or second degree, Section 16-3-655;

(4) criminal sexual conduct where victim is legal spouse (separated), Section 16-3-658;

(5) spousal sexual battery, Section 16-3-615;

(6) engaging a child for a sexual performance, Section 16-3-810;

(7) committing lewd act upon child under sixteen, Section 16-15-140;

(8) petit larceny, Section 16-13-30 (A); or

(9) grand larceny, Section 16-13-30 (B).

(g) A person who violates subsection (f) with respect to:

(1) a controlled substance classified in Schedule I (b) or (c) which is a narcotic drug or lysergic acid diethylamide (LSD), or in Schedule II which is a narcotic drug is guilty of a felony and, upon conviction, must be:

(a) for a first offense, imprisoned not more than twenty years or fined not more than thirty thousand dollars, or both;

(b) for a second offense, or if in the case of a first conviction of a violation of any provision of this subsection, the offender previously has been convicted of a violation of the laws of the United States or of any state, territory, or district relating to narcotic drugs, marijuana, depressant, stimulant, or hallucinogenic drugs, imprisoned not less than five years nor more than thirty years, or fined not more than fifty thousand dollars, or both;

(c) for a third or subsequent offense, or if the offender previously has been convicted two or more times in the aggregate of a violation of the laws of the United States or of any state, territory, or district relating to narcotic drugs, marijuana, depressant, stimulant, or hallucinogenic drugs, imprisoned not less than fifteen years nor more than thirty years, or fined not more than fifty thousand dollars, or both.

Except in the case of conviction for a first offense, the sentence must not be suspended and probation must not be granted;

(2) any other controlled substance or gamma hydroxy butyrate is guilty of a felony and, upon conviction, must be:

(a) for a first offense, imprisoned not more than fifteen years or fined not more than twenty-five thousand dollars, or both;

(b) for a second offense, or if in the case of a first conviction of a violation of any provision of this subsection, the offender previously has been convicted of a violation of the laws of the United States or of any state, territory, or district relating to narcotic drugs, marijuana, depressant, stimulant, or hallucinogenic drugs, imprisoned not more than twenty years or fined not more than thirty thousand dollars, or both;

(c) for a third or subsequent offense, or if the offender previously has been convicted two or more times in the aggregate of a violation of the laws of the United States or of any state, territory, or district relating to narcotic drugs, marijuana, depressant, stimulant, or hallucinogenic drugs, imprisoned not less than five years nor more than twenty-five years, or fined not more than forty thousand dollars, or both.

Except in the case of conviction for a first offense, the sentence must not be suspended and probation must not be granted.

**SECTION 44-53-445 creating a separate criminal offense of unlawful distribution, etc.** of drugs within a half-mile radius of a school is entitled to strong presumption of constitutionality accorded legislation. 1984 Op Atty Gen, No. 84-43, p. 104.

First offense possession of marijuana with intent to distribute is a misdemeanor under Section 32-1510.49 [1976 Code Section 44-53-370] 1976-77 Op Atty Gen, No 77-186, p 142.

Sentence imposed on individuals guilty of distribution of crack cocaine or possession with intent to distribute crack cocaine pursuant to Section 44-53-375 may not be suspended nor probation granted. However, provision does not specifically deny parole eligibility. 1993 Op Atty Gen No. 93-25.

**SECTION 44-53-375.** Possession, manufacture and trafficking of methamphetamine and cocaine base and other controlled substances; penalties.

(A) A person possessing or attempting to possess less than one gram of methamphetamine or cocaine base, as defined in Section 44-53-110, is guilty of a misdemeanor and, upon conviction for a first offense, must be imprisoned not more than three years or fined not more than five thousand dollars, or both. For a first offense the court, upon approval of the solicitor, may require as part of a sentence, that the offender enter and successfully complete a drug treatment and rehabilitation program. For a second offense, the offender is guilty of a felony and, upon conviction, must be imprisoned not more than five years or fined not more than seven thousand five hundred dollars, or both. For a third or subsequent offense, the offender is guilty of a felony and, upon conviction, must be imprisoned not more than ten years or fined not more than twelve thousand five hundred dollars, or both.

(B) A person who manufactures, distributes, dispenses, delivers, purchases, or otherwise aids, abets, attempts, or conspires to manufacture, distribute, dispense, deliver, or purchase, or possesses with intent to distribute, dispense, or deliver methamphetamine or cocaine base, in violation of the provisions of Section 44-53-370, is guilty of a felony and, upon conviction:

(1) for a first offense, must be sentenced to a term of imprisonment of not more than fifteen years or fined not more than twenty-five thousand dollars, or both;

(2) for a second offense or if, in the case of a first conviction of a violation of this section, the offender has been convicted of any of the laws of the United States or of any state, territory, or district relating to narcotic drugs, marijuana, depressant, stimulant, or hallucinogenic drugs, the offender must be

imprisoned for not less than five years nor more than thirty years, or fined not more than fifty thousand dollars, or both;

(3) for a third or subsequent offense or if the offender has been convicted two or more times in the aggregate of any violation of the laws of the United States or of any state, territory, or district relating to narcotic drugs, marijuana, depressant, stimulant, or hallucinogenic drugs, the offender must be imprisoned for not less than fifteen years nor more than thirty years, or fined not more than fifty thousand dollars, or both.

Possession of one or more grams of methamphetamine or cocaine base is prima facie evidence of a violation of this subsection.

(C) A person who knowingly sells, manufactures, delivers, purchases, or brings into this State, or who provides financial assistance or otherwise aids, abets, attempts, or conspires to sell, manufacture, deliver, purchase, or bring into this State, or who is knowingly in actual or constructive possession or who knowingly attempts to become in actual or constructive possession of ten grams or more of methamphetamine or cocaine base, as defined and otherwise limited in Section 44-53-110, 44-53-210(d)(1), or 44-53-210(d)(2), is guilty of a felony which is known as "trafficking in methamphetamine or cocaine base" and, upon conviction, must be punished as follows if the quantity involved is:

(1) ten grams or more, but less than twenty-eight grams:

(a) for a first offense, a term of imprisonment of not less than three years nor more than ten years, no part of which may be suspended nor probation granted, and a fine of twenty-five thousand dollars;

(b) for a second offense, a term of imprisonment of not less than five years nor more than thirty years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

(c) for a third or subsequent offense, a mandatory minimum term of imprisonment of not less than twenty-five years nor more than thirty years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

(2) twenty-eight grams or more, but less than one hundred grams:

(a) for a first offense, a term of imprisonment of not less than seven years nor more than twenty-five years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

(b) for a second offense, a term of imprisonment of not less than seven years nor more than thirty years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

(c) for a third or subsequent offense, a mandatory minimum term of imprisonment of not less than twenty-five years and not more than thirty years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

(3) one hundred grams or more, but less than two hundred grams, a mandatory term of imprisonment of twenty-five years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

(4) two hundred grams or more, but less than four hundred grams, a mandatory term of imprisonment of twenty-five years, no part of which may be suspended nor probation granted, and a fine of one hundred thousand dollars;

(5) four hundred grams or more, a term of imprisonment of not less than twenty-five years nor more than thirty years with a mandatory minimum term of imprisonment of twenty-five years, no part of which may be suspended nor probation granted, and a fine of two hundred thousand dollars.

(D) Possession of equipment or paraphernalia used in the manufacture of cocaine, cocaine base, or methamphetamine is prima facie evidence of intent to manufacture.

(E)(1) It is unlawful for any person, other than a manufacturer, practitioner, dispenser, distributor, or retailer to knowingly possess any product that contains twelve grams or more of ephedrine, pseudoephedrine, or phenylpropanolamine, their salts, isomers, or salts of isomers, or a combination of any of these substances. A person who violates this subsection is guilty of a felony and, upon conviction, must be punished as follows if the quantity involved is:

(a) twelve grams or more, but less than twenty-eight grams:

(i) for a first offense, a term of imprisonment of not less than three years nor more than ten years, no part of which may be suspended nor probation granted, and a fine of twenty-five thousand dollars;

(ii) for a second offense, a term of imprisonment of not less than five years nor more than thirty years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

(iii) for a third or subsequent offense, a mandatory minimum term of imprisonment of not less than twenty-five years nor more than thirty years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

(b) twenty-eight grams or more, but less than one hundred grams:

(i) for a first offense, a term of imprisonment of not less than seven years nor more than twenty-five years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

(ii) for a second offense, a term of imprisonment of not less than seven years nor more than thirty years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

(iii) for a third or subsequent offense, a mandatory minimum term of imprisonment of not less than twenty-five years and not more than thirty years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

(c) one hundred grams or more, but less than two hundred grams, a mandatory term of imprisonment of twenty-five years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

(d) two hundred grams or more, but less than four hundred grams, a mandatory term of imprisonment of twenty-five years, no part of which may be suspended nor probation granted, and a fine of one hundred thousand dollars;

(e) four hundred grams or more, a term of imprisonment of not less than twenty-five years nor more than thirty years with a mandatory minimum term of imprisonment of twenty-five years, no part of which may be suspended nor probation granted, and a fine of two hundred thousand dollars.

(2) This subsection does not apply to:

(a) a consumer who possesses products:

(i) containing ephedrine, pseudoephedrine, or phenylpropanolamine in a manner consistent with typical medicinal or household use, as indicated by storage location, and possession of the products in a variety of strengths, brands, types, purposes, and expiration dates; or

(ii) for agricultural use containing anhydrous ammonia if the consumer has reformulated the anhydrous ammonia by means of additive so as effectively to prevent the conversion of the active ingredient into methamphetamine, its salts, isomers, salts of isomers, or its precursors, or the precursors' salts, isomers, or salts of isomers, or a combination of any of these substances; or

(b) products labeled for pediatric use pursuant to federal regulations and according to label instructions primarily intended for administration to children under twelve years of age; or

(c) products that the Drug Enforcement Administration and the Department of Health and Environmental Control, 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, its salts, isomers, salts of isomers, or its precursors, or the precursors' salts, isomers, or salts of isomers, or a combination of any of these substances.

(3) This subsection preempts all local ordinances or regulations governing the possession of any product that contains ephedrine, pseudoephedrine, or phenylpropanolamine.

(F) Except for a first offense, as provided in subsection (A) of this section, sentences for violation of the provisions of this section may not be suspended and probation may not be granted. A person convicted and sentenced under this subsection to a mandatory term of imprisonment of twenty-five years, a



mandatory minimum term of imprisonment of twenty-five years, or a mandatory minimum term of imprisonment of not less than twenty-five years nor more than thirty years is not eligible for parole, extended work release as provided in Section 24-13-610, or supervised furlough as provided in Section 24-13-710.

(G) A person eighteen years of age or older may be charged with unlawful conduct toward a child pursuant to Section 63-5-70, if a child was present at any time during the unlawful manufacturing of methamphetamine.

**SECTION 44-53-376.** Disposal of waste from production of methamphetamine; penalty; emergency or environmental response restitution; exemptions.

(A) It is unlawful for a person to knowingly cause to be disposed any waste from the production of methamphetamine or knowingly assist, solicit, or conspire with another to dispose of methamphetamine waste.

(B) A person who violates subsection (A) is guilty of a felony and, upon conviction for a first offense, must be imprisoned not more than five years or fined not more than five thousand dollars, or both. Upon conviction for a second or subsequent offense, a person must be imprisoned not more than ten years or fined not more than ten thousand dollars, or both.

(C) If a person is convicted of a violation of this section, in a manner that requires an emergency or environmental response, the person convicted must be required to make restitution to all public entities involved in the emergency response, to cover the reasonable cost of their participation in the emergency response. The convicted person shall make the restitution in addition to any other fine or penalty required by law.

(D) Exempt from the provisions of this section are the individuals, entities, agencies, law enforcement groups, and those otherwise authorized, who are lawfully tasked with the proper disposal of the waste created from methamphetamine production.

**SECTION 44-53-378.** Exposing child to methamphetamine.

(A) It is unlawful for a person who is eighteen years of age or older to:

(1) either directly or by extraction from natural substances, or independently by means of chemical processes, or both, unlawfully manufacture amphetamine, its salts, isomers, or salts of isomers, or methamphetamine, its salts, isomers, or salts of its isomers in the presence of a minor child; or

(2) knowingly permit a child to be in an environment where a person is selling, offering for sale, or having in such person's possession with intent to sell, deliver, distribute, prescribe, administer, dispense, manufacture, or attempt to manufacture amphetamine or methamphetamine; or

(3) knowingly permit a child to be in an environment where drug paraphernalia or volatile, toxic, or flammable chemicals are stored for the purpose of manufacturing or attempting to manufacture amphetamine or methamphetamine.

(B) A person who violates subsection (A)(1), (2), or (3), upon conviction, for a first offense must be imprisoned not more than five years or fined not more than five thousand dollars, or both. Upon conviction for a second or subsequent offense, the person must be imprisoned not more than ten years or fined not more than ten thousand dollars, or both.

**SECTION 44-53-380.** Prohibited acts B; penalties.

(a) It shall be unlawful for any person:

(1) Who is subject to the requirements of Sections 44-53-280 to 44-53-360 to distribute or dispense a controlled substance in violation of Section 44-53-360;

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

(3) To omit, remove, alter, or obliterate a symbol required by the Federal Controlled Substances Act or this article;

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

(5) To refuse any entry into any premises or inspection authorized by this article;

(6) Knowingly to keep or maintain any store, shop, warehouse, dwelling house, building, vehicle, boat, aircraft, or any place whatever, which is resorted to by persons using controlled substances in violation of this article for the purpose of using such substances, or which is used for the keeping or selling of the same in violation of this article; or

(7) Who is subject to the requirements of this article to fail to register as provided in Section 44-53-280 to manufacture, distribute, or dispense controlled substances prior to his engaging in such manufacturing, distribution, or dispensing.

(b) Any person who violates this section is punishable by a civil fine of not more than one thousand dollars; provided, that, if the violation is prosecuted by an information or indictment which alleges that the violation was committed knowingly or intentionally, and the trier of fact specifically finds that the violation was committed knowingly or intentionally, such person shall be deemed guilty of a felony and, upon conviction, shall be imprisoned for not more than five years, or fined not more than ten thousand dollars, except that if such person is a corporation it shall be subject to a civil penalty of not more than one hundred thousand dollars. Imposition of a civil penalty pursuant to this item shall not give rise to any disability or legal disadvantage based on conviction for a criminal offense.

**SECTION 44-53-390.** Prohibited acts C; penalties.

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

(1) distribute as a registrant a controlled substance classified in Schedules I or II, except pursuant to an order form as required by Section 44-53-350;

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

(4) 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 article, or any record required to be kept by this article;

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

(6) distribute or deliver a noncontrolled substance or an imitation controlled substance:

(A) with the expressed or implied representation that the substance is a narcotic or nonnarcotic controlled substance, or with the expressed or implied representation that the substance is of such nature or appearance that the recipient of the distribution or delivery will be able to dispose of the substance as a controlled substance;

(B) when the physical appearance of the finished product is substantially similar to a specific controlled substance, or if in a tablet or capsule dosage form as a finished product it is similar in color, shape, and size to any controlled substances' dosage form, or its finished dosage form has similar, but not necessarily identical, markings on each dosage unit as any controlled substances' dosage form, or if its finished dosage form container bears similar, but not necessarily identical, markings or printed material as any controlled substances which is commercially manufactured and commercially packaged by a manufacturer or repackager registered under the provisions of Title 21, Section 823 of the United States Code. In any prosecution for unlawful delivery of a noncontrolled substance, it is no defense that the accused believed the noncontrolled substance to actually be a controlled substance.

(b) A person who violates this section is guilty of a felony and, upon conviction, must be imprisoned not more than five years, or fined not more than ten thousand dollars, or both. If such person is a corporation, it is subject to a civil penalty of not more than one hundred thousand dollars.

(c) The provisions of Section 44-53-390(a)(6) do not apply to any transaction in the ordinary course of professional practice of a practitioner registered to dispense controlled substances under this article, nor do they apply to a pharmacy acting in the normal course of business, or pursuant to the lawful order of a placebo prescription.

**SECTION 44-53-391.** Unlawful to advertise for sale, manufacture, possess, sell or deliver, or to possess with intent to sell or deliver, paraphernalia.

(a) It shall be unlawful for any person to advertise for sale, manufacture, possess, sell or deliver, or to possess with the intent to deliver, or sell paraphernalia.

(b) In determining whether an object is paraphernalia, a court or 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) The proximity of the object to controlled substances;

(3) The existence of any residue of controlled substances on the object;

(4) 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, or should reasonably know, intend to use the object to facilitate a violation of law; the innocence of an owner, or of anyone in control of the object, as to a direct violation of law shall not prevent a finding that the object is intended for use, or designed for use as drug paraphernalia;

(5) Instructions, oral or written, provided with the object concerning its use;

(6) Descriptive materials accompanying the object which explain or depict its use;

(7) National and local advertising concerning its use;

(8) The manner in which the object is displayed for sale;

(9) 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;

(10) Direct or circumstantial evidence of the ratio of sales of the object to the total sales of the business enterprise;

(11) The existence and scope of legitimate uses for the object in the community;

(12) Expert testimony concerning its use.

(c) Any person found guilty of violating the provisions of this section shall be subject to a civil fine of not more than five hundred dollars except that a corporation shall be subject to a civil fine of not more than fifty thousand dollars. Imposition of such fine shall not give rise to any disability or legal disadvantage based on conviction for a criminal offense.

**SECTION 44-53-392.** Weight of controlled substance.

Notwithstanding any other provision of this article, the weight of any controlled substance referenced in this article is the weight of that substance in pure form or any compound or mixture thereof.

**SECTION 44-53-395.** Prohibited acts; penalties.

(A) It shall be unlawful:

(1) for any practitioner to issue any prescription document signed in blank. The issuance of such document signed in blank shall be prima facie evidence of a conspiracy to violate this section. The possession of prescription document signed in blank by a person other than the person whose signature

appears thereon shall be deemed prima facie evidence of a conspiracy between the possessor and the signer to violate the provisions of this section;

(2) for any person other than a practitioner registered with the Department under this article to possess a blank prescription not completed and signed by the practitioner whose name appears printed thereon;

(3) for any person to withhold the information from a practitioner that such person is obtaining controlled substances of like therapeutic use in a concurrent time period from another practitioner.

(B) Any person who knowingly and intentionally violates this section a first time shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a term of imprisonment for not more than two years or by a fine of not more than two thousand dollars, or both. Any person who knowingly and intentionally violates this section a second or subsequent time shall be deemed guilty of a felony and upon conviction shall be punished by a term of imprisonment for not more than five years.

**SECTION 44-53-398.** Sale of products containing ephedrine or pseudoephedrine; penalties; training of sales personnel.

(A) Products whose sole active ingredient is ephedrine or pseudoephedrine may be offered for retail sale only if sold in blister packaging. The retailer shall ensure that such products are not offered for retail sale by self-service, but only from behind a counter or other barrier so that such products are not directly accessible by the public but only by an employee or agent of the retailer.

(B) A retailer may not in any single over the counter sale sell more than three packages of any product containing ephedrine or pseudoephedrine as the sole active ingredient or in combination with other active ingredients or any number of packages that contain a combined total of more than nine grams of ephedrine or pseudoephedrine base and shall ensure that the product is delivered directly into the custody of the purchaser.

(C) It is unlawful for a retailer to purchase any product containing ephedrine or pseudoephedrine from any person or entity other than a manufacturer or a wholesale distributor registered by the United States Drug Enforcement Administration.

(D)(1) A retailer selling products containing ephedrine or pseudoephedrine pursuant to subsection (A) shall require the purchaser to produce a government issued photo identification showing the date of birth of the person and require the purchaser to sign a written or electronic log showing the date and time of the transaction, the person's name and address, and the amount of the compound, mixture, or preparation. The retailer shall determine that the name entered in the log corresponds to the name on the identification and that the date and time entered are correct and shall enter in the log the name of the product and the quantity sold. The log must include a notice to purchasers that entering false statements or misrepresentations in the logbook may subject the purchaser to criminal penalties. The retailer shall retain this log for two years after which the log may be destroyed. The log must be made available for inspection within twenty-four hours of a request made by a local, state, or federal law enforcement officer.

(2) A log retained by a retailer is confidential and not a public record as defined in Section 30-4-20(C) of the Freedom of Information Act. A retailer or an employee or agent of a retailer who in good faith releases information in a log to federal, state, or local law enforcement authorities is immune from civil liability for the release unless the release constitutes gross negligence or intentional, wanton, or wilful misrepresentation.

(E) Except as authorized by this section, it is unlawful for any person to possess, have under his or her control, manufacture, deliver, distribute, dispense, administer, purchase, sell, or possess with intent to distribute, any substance containing any amount of ephedrine, pseudoephedrine, or any of its salts, optical isomers, or salts of optical isomers which have been altered from their original condition so as to be powdered, liquefied, dissolved, solvated, or crushed. This subsection does not apply to any of the substances identified within this subsection which are possessed or altered for a legitimate medical purpose as directed by a person licensed under Title 40 and authorized to prescribe legend drugs.

(F) It is unlawful for a person to enter false statements or misrepresentations on the log required pursuant to subsection (D)(1).

(G) This section preempts all local ordinances or regulations governing the retail sale of over the counter products containing ephedrine or pseudoephedrine by a retailer except such local ordinances or regulations that existed on or before December 31, 2004.

(H)(1) Except as otherwise provided in this section, it is unlawful for a retailer knowingly to violate subsection (A), (B), (C), or (D)(1), and it is unlawful for a person knowingly to violate subsection (E) or (F).

(2) A retailer convicted of a violation of subsection (A) or (B) is guilty of a misdemeanor and, upon conviction for a first offense, must be fined not more than five thousand dollars and, upon conviction for a second or subsequent offense, must be fined not more than ten thousand dollars.

(3) A retailer convicted of a violation of subsection (C), upon conviction for a first offense, is guilty of a misdemeanor and must be imprisoned not more than one year or fined not more than one thousand dollars, or both; upon conviction for a second or subsequent offense, is guilty of a misdemeanor and must be imprisoned not more than three years or fined not more than five thousand dollars, or both.

(4) A retailer convicted of a violation of subsection (D)(1) is guilty of a misdemeanor and, upon conviction for a first offense, must be fined not more than one thousand dollars and not less than five hundred dollars. Upon conviction for a second offense, a retailer must be fined not more than five thousand dollars and not less than one thousand dollars. Upon conviction for a third or subsequent offense, a person must be fined not more than ten thousand dollars and not less than five thousand dollars.

(5) A person convicted of a violation of subsection (E) is guilty of a felony and, upon conviction for a first offense, must be imprisoned not more than five years and fined not more than five thousand dollars. The court, upon approval from the solicitor, may request as part of the sentence, that the offender enter and successfully complete a drug treatment program. For a second or subsequent offense, the offender is guilty of a felony and, upon conviction, must be imprisoned not more than ten years or fined not less than ten thousand dollars.

(6) A person convicted of a violation of subsection (F), upon conviction for a first offense, is guilty of a misdemeanor and must be fined not more than one thousand dollars and, upon conviction for a second or subsequent offense, is guilty of a felony and must be fined not more than five thousand dollars.

(7) It is an affirmative defense to a violation of subsection (A), (C), or (D)(1) if a retailer provided the training, maintained records, and obtained employee and agent statements of agreement required by subsection (I) for all employees and agents at the retail location where the violation occurred and at the time the violation occurred.

(I) A retailer shall provide training on the requirements of this section to all agents and employees who are responsible for delivering the products regulated by this section into the custody of purchasers or who deal directly with purchasers by obtaining payments for the products. A retailer shall obtain a signed, written agreement from each employee or agent that the employee or agent agrees to comply with the requirements of this section. The retailer shall maintain records demonstrating that these employees and agents have been provided this training and the documents executed by the retailer's employees and agents agreeing to comply with this section.

(J) This section does not apply to:

(1) pediatric products labeled pursuant to federal regulation as primarily intended for administration to children under twelve years of age according to label instructions; and

(2) products that the 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;

(3) a purchase of a single sales package containing not more than sixty milligrams of pseudoephedrine.

(K) For purposes of this section "retailer" means a retail distributor, including a pharmacy, where pseudoephedrine products are available for sale and does not include an employee or agent of a retailer.

**SECTION 44-53-400.** Penalties in article in addition to those under other laws.

Any penalty imposed for violation of this article shall be in addition to, and not in lieu of, any civil or administrative penalty or sanction otherwise authorized by law.

**SECTION 44-53-410.** Prosecution in another jurisdiction shall be bar to prosecution.

If a violation of this article is a violation of a Federal law or the law of another state, the conviction or acquittal under Federal law or the law of another state for the same act is a bar to prosecution in this State.

**SECTION 44-53-420.** Attempt and conspiracy; attempt to possess; penalties.

(A) Except as provided in subsection (B), a person who attempts or conspires to commit an offense made unlawful by the provisions of this article, upon conviction, be fined or imprisoned in the same manner as for the offense planned or attempted; but the fine or imprisonment shall not exceed one half of the punishment prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

(B) A person who attempts to possess a substance made unlawful by the provisions of this article is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than thirty days, or both.

**SECTION 44-53-430.** Appeals from orders of Department.

Any person may appeal from any order of the Department within thirty days after the filing of the order, to the court of common pleas of the county in which the aggrieved party resides or in which his place of business is located. The Department shall thereupon certify to the court the record in the hearing. The court shall review the record and the regularity and the justification for the order, on the merits, and render judgment thereon as in ordinary appeals in equity. The court may order or permit further testimony on the merits of the case, in its discretion such testimony to be given either before the judge or referee by him appointed. From such judgment of the court an appeal may be taken as in other civil actions.

**SECTION 44-53-440.** Distribution to persons under eighteen.

Any person eighteen years of age or over who violates Section 44-53-370(a) by distributing a controlled substance classified in Schedule I (b) and (c) which is a narcotic drug or lysergic acid diethylamide (LSD) and in Schedule II which is a narcotic drug, or who violates Section 44-53-375(B) by distributing crack cocaine to a person under eighteen years of age is guilty of a felony and, upon conviction, must be imprisoned for not more than twenty years or fined not more than thirty thousand dollars, or both, and the sentence may not be suspended and probation may not be granted. Any person eighteen years of age or over who violates Section 44-53-370(a) and (b) by distributing any other controlled substance listed in Schedules I through V to a person under eighteen years of age is guilty of a misdemeanor and, upon conviction, must be imprisoned for not more than ten years or fined not more than ten thousand dollars, or both. Any violation of this section constitutes a separate offense.

**SECTION 44-53-445.** Distribution of controlled substance within proximity of school.

(A) It is a separate criminal offense for a person to distribute, sell, purchase, manufacture, or to unlawfully possess with intent to distribute, a controlled substance while in, on, or within a one-half mile radius of the grounds of a public or private elementary, middle, or secondary school; a public playground or park; a public vocational or trade school or technical educational center; or a public or private college or university.

(B)(1) A person who violates the provisions of this section is guilty of a felony and, upon conviction, must be fined not more than ten thousand dollars, or imprisoned not more than ten years, or both.

(2) When a violation involves the distribution, sale, manufacture, or possession with intent to distribute crack cocaine, the person is guilty of a felony and, upon conviction, must be fined not less than ten thousand dollars and imprisoned not less than ten nor more than fifteen years.

(3) When a violation involves only the purchase of a controlled substance, including crack cocaine, the person is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

(C) For the purpose of creating inferences of intent to distribute, the inferences set out in Sections 44-53-370 and 44-53-375 apply to criminal prosecutions under this section.

**SECTION 44-53-445 creating a separate criminal offense of unlawful distribution, etc.** of drugs within a half-mile radius of a school is entitled to strong presumption of constitutionality accorded legislation. 1984 Op Atty Gen, No. 84-43, p. 104.

**SECTION 44-53-450.** Conditional discharge for first offense.

(a) Whenever any person who has not previously been convicted of any offense under this article or any offense under any State or Federal statute relating to marihuana, or stimulant, depressant, or hallucinogenic drugs, pleads guilty to or is found guilty of possession of a controlled substance under Section 44-53-370 (c) and (d), except narcotic drugs classified in Schedule I (b) and (c) and narcotic drugs classified in Schedule II, the court, without entering a judgment of guilt and with the consent of the accused, may defer further proceedings and place him on probation upon terms and conditions as it requires, including the requirement that such person cooperate in a treatment and rehabilitation program of a State-supported facility or a facility approved by the Commission, if available. Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge the person and dismiss the proceedings against him. Discharge and dismissal under this section shall be without court adjudication of guilt and is not a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime, including the additional penalties imposed for second or subsequent convictions. However, a nonpublic record shall be forwarded to and retained by the Department of Narcotic and Dangerous Drugs under the South Carolina Law Enforcement Division solely for the purpose of use by the courts in determining whether or not a person has committed a subsequent offense under this article. Discharge and dismissal under this section may occur only once with respect to any person.

(b) Upon the dismissal of such person and discharge of the proceedings against him under subsection (a) of this section, such person if he was not over twenty-five years of age at the time of the offense, and if the offense did not involve a controlled substance classified in Schedule I which is a narcotic drug and Schedule II which is a narcotic drug, may apply to the court for an order to expunge from all official records (other than the nonpublic records to be retained as provided in subsection (a) of this section) all recordation relating to his arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. If the court determines, after hearing, that such person was dismissed and the proceedings against him discharged and that he was not over twenty-five years of age at the time of the offense, it shall enter such order. The effect of such order shall be to restore such person, in the contemplation of the law, to the status he occupied before such arrest or indictment or information. No person as to whom such order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him for any purpose.

**SECTION 44-53-460.** Reduced sentence for accommodation offenses.

Any person who enters a plea of guilty to or is found guilty of a violation of Section 44-53-370(a) or (c) may move for and the court shall grant a further hearing at which evidence may be presented by the person, and by the prosecution if it so desires, relating to the nature of the act on the basis of which the person has been convicted. If the convicted person establishes by clear and convincing evidence that he delivered or possessed with intent to deliver a controlled substance, except a controlled substance classified in Schedule I (b) and (c) which is a narcotic drug or lysergic acid diethylamide (LSD) and in Schedule II which is a narcotic drug, only as an accommodation to another individual and not with intent to profit thereby nor to induce the recipient or intended recipient of the controlled or counterfeit substance to use or become addicted to or dependent upon the substance, the court shall sentence the person as if he had been convicted of a violation of Section 44-53-370(c).

**SECTION 44-53-470.** "Second or subsequent offense" defined.

An offense is considered a second or subsequent offense if:

(1) for a possession offense pursuant to the provisions of this article, the offender has been convicted within the previous ten years of a violation of a provision of this article or of another state or federal statute relating to narcotic drugs, marijuana, depressants, stimulants, or hallucinogenic drugs; and

(2) for all other offenses pursuant to the provisions of this article, the offender has at any time been convicted of a violation of a provision of this article or of another state or federal statute relating to narcotic drugs, marijuana, depressants, stimulants, or hallucinogenic drugs.

**SECTION 44-53-475.** Financial transactions, monetary instruments, or financial institutions involving property or proceeds of unlawful activities in narcotic drugs or controlled substances; penalties.

(A)(1) Whoever, knowing that the property involved in a financial transaction represents the proceeds of, or is derived directly or indirectly from the proceeds of unlawful activity relating to narcotic drugs or controlled substances, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds:

(a) with the intent to promote the carrying on of unlawful activity relating to narcotic drugs or controlled substances; or

(b) knowing that the transaction is designed in whole or in part to conceal or disguise the nature, location, sources, ownership, or control of the proceeds of the unlawful activity is guilty of a felony and, upon conviction, must be punished by a fine of not more than five hundred thousand dollars or twice the value of the property involved in the transaction, whichever is greater, or by imprisonment for not more than twenty years, or both.

(2) Whoever transports, transmits, or transfers, or attempts to transport, transmit, or transfer a monetary instrument or funds from a place in South Carolina to or through a place outside the United States or to a place in South Carolina from or through a place outside the United States:

(a) with the intent to promote the carrying on of unlawful activity relating to narcotic drugs or to controlled substances; or

(b) knowing that the monetary instrument or funds involved in the transportation represent the proceeds of the unlawful activity and knowing that the transportation is designed in whole or in part to conceal or disguise the nature, location, source, ownership, or control of the proceeds of the unlawful activity is guilty of a felony and, upon conviction, must be punished by a fine of five hundred thousand dollars or twice the value of the monetary instrument or funds involved in the transportation, whichever is greater, or by imprisonment for not more than twenty years, or both.

(3) Whoever, with the intent:

(a) to promote the carrying on of unlawful activity relating to narcotic drugs or to controlled substances; or

(b) to conceal or disguise the nature, location, source, ownership, or control of property believed to be the proceeds of the unlawful activity, conducts or attempts to conduct a financial transaction involving property represented by a law enforcement officer to be the proceeds of the unlawful activity, or property used to conduct or facilitate the unlawful activity is guilty of a felony and, upon conviction, must be punished by a fine of five hundred thousand dollars or twice the value of the property involved, whichever is greater, or by imprisonment for not more than twenty years, or both. For purposes of this subitem, the term "represented" means any representation made by a law enforcement officer or by another person at the direction of, or with the approval of, a state official authorized to investigate or prosecute violations of this section.

(B) Whoever conducts or attempts to conduct a transaction described in subsection (A)(1), or transportation described in subsection (A)(2), is liable to the State for a civil penalty of not more than the greater of:

(1) the value of the property, funds, or monetary instruments involved in the transaction; or

(2) ten thousand dollars.

(C) As used in this section:

(1) the term "conducts" includes initiating, concluding, or participating in initiating or concluding a transaction;



(2) the term "transaction" includes a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition and, with respect to a financial institution includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected;

(3) the term "financial transaction" means a transaction involving the movement of funds by wire or other means or involving one or more monetary instruments;

(4) the term "monetary instruments" means coin or currency of the United States or of any other country, travelers' checks, personal checks, bank checks, money orders, investment securities in bearer form or otherwise in that form that title to it passes upon delivery, and negotiable instruments in bearer form or otherwise in that form that title to it passes upon delivery;

(5) the term "financial institution" has the definition given that term in Section 5312(a)(2) of Title 31, United States Code, and the regulations promulgated thereunder.

(D) Nothing in this section supersedes any provision of law imposing criminal penalties or affording civil remedies in addition to those provided for in this section.

**SECTION 44-53-480.** Enforcement.

(a) The South Carolina Law Enforcement Division shall establish within its Division a Department of Narcotics and Dangerous Drugs, which shall be administered by a director and shall be primarily responsible for the enforcement of all laws pertaining to illicit traffic in controlled and counterfeit substances. The Department of Narcotics and Dangerous Drugs, in discharging its responsibilities concerning illicit traffic in narcotics and dangerous substances and in suppressing the abuse of controlled substances, shall enforce the State plan formulated in cooperation with the Narcotics and Controlled Substance Section as such plan relates to illicit traffic in controlled and counterfeit substances.

As part of its duties the Department of Narcotics and Dangerous Drugs shall:

(1) Assist the Commission on Alcohol and Drug Abuse in the exchange of information between itself and governmental and local law-enforcement officials concerning illicit traffic in and use and abuse of controlled substances.

(2) Assist the Commission in planning and coordinating training programs on law enforcement for controlled substances at the local and State level.

(3) Establish a centralized unit which shall accept, catalogue, file and collect statistics and make such information available for Federal, State and local law-enforcement purposes.

(4) Have the authority to execute and serve search warrants, arrest warrants, administrative inspection warrants, subpoenas, and summonses.

(b) The Department of Health and Environmental Control shall be primarily responsible for making accountability audits of the supply and inventory of controlled substances in the possession of pharmacists, doctors, hospitals, health care facilities and other practitioners as well as in the possession of any individuals or institutions authorized to have possession of such substances and shall also be primarily responsible for such other duties in respect to controlled substances as shall be specifically delegated to the Department of Health and Environmental Control by the General Assembly. Drug inspectors and special agents of the Department of Health and Environmental Control as provided for in Section 44-53-490, while in the performance of their duties as prescribed herein, shall have:

(1) Statewide police powers;

(2) Authority to carry firearms;

(3) Authority to execute and serve search warrants, arrest warrants, administrative inspection warrants, subpoenas, and summonses;

(4) Authority to make investigations to determine whether there has been unlawful dispensing of controlled substances or the removal of such substances from regulated establishments or practitioners into illicit traffic;

(5) Authority to seize property; and

(6) Authority to make arrests without warrants for offenses committed in their presence.

(c) The Department of Health and Environmental Control may contract with the Board of Pharmaceutical Examiners for the Chief Drug Inspector of the Board of Pharmacy and his assistants, to enforce the provisions of this article with respect to inspections and audits which apply to pharmacists or pharmacies whether located in drugstores, hospitals or other health care facilities.

**SECTION 44-53-485.** Handling of seized controlled substances; use of photographs or videotapes of substances at trial; admissibility of evidence.

(A) Controlled substances seized pursuant to this article must be inventoried, reported, audited, handled, tested, stored, preserved, or destroyed pursuant to procedures promulgated by the South Carolina Law Enforcement Division.

(B) The chief law enforcement official of the seizing agency, his designee, or the clerk of court, after one year following the conviction, guilty plea, plea by nolo contendere, or other disposition of the criminal case, may order the destruction or other lawful disposition of the substances unnecessary for evidentiary purposes in accordance with procedures promulgated by the division.

(C) The chief law enforcement official of the seizing agency or his designee, after a reasonable period of time following the seizure, may order the destruction or other lawful disposition of substances that do not come within the jurisdiction of court.

(D) When large amounts of substances are seized and storage is impractical, a law enforcement officer, only with the prior written approval and consent of the solicitor, may substitute photographs or videotapes of the substances at trial so long as a representative sample is analyzed for proof of the matter that the substances actually are present. When substitutions are used, the chief law enforcement official or his designee may authorize the destruction of the substances ten days following seizure.

(E) In all subsequent court proceedings following the disposition of the case, all evidence presented at the original proceedings is admissible through introduction of the certified record of the case.

**SECTION 44-53-490.** Drug inspectors.

The Department of Health and Environmental Control shall designate persons holding a degree in pharmacy to serve as drug inspectors. Such inspectors shall, from time to time, but no less than once every three years, inspect all practitioners and registrants who manufacture, dispense, or distribute controlled substances, including those persons exempt from registration but who are otherwise permitted to keep controlled substances for specific purposes. The drug inspector shall submit an annual report by the first day of each year to the Department and a copy to the Commission on Alcohol and Drug Abuse specifying the name of the practitioner or the registrant or such exempt persons inspected, the date of inspection and any other violations of this article.

The Department may employ other persons as agents and assistant inspectors to aid in the enforcement of those duties delegated to the Department by this article.

**SECTION 44-53-500.** Procedure for issuance and execution of administrative inspection warrants.

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

(1) Any judge or magistrate of a court having jurisdiction where the inspection or seizure is to be conducted, may, upon proper oath or affirmation showing probable cause, issue warrants for the purpose of conducting administrative inspections authorized by this article or regulations thereunder, and seizures of property appropriate to such inspections. For the purposes of this section, "probable cause" means a valid public interest in the effective enforcement of this article or regulations sufficient to justify administrative inspection of the area, premises, building or conveyance in the circumstances specified in the application for the warrant;

(2) A warrant shall issue only upon an affidavit of an officer or employee duly designated and having knowledge of the facts alleged, sworn to before the judge or magistrate and establishing the grounds for issuing the warrant. If the judge or magistrate is satisfied that grounds for the application exist or that there is probable cause to believe they exist, he shall issue a warrant identifying the area, premises,

building, or conveyance to be inspected, the purpose of such inspection, and, where appropriate, the type of property to be inspected, if any. The warrant shall identify the item or types of property to be seized, if any. The warrant shall be directed to a person authorized by Section 44-53-480(b) to execute it. The warrant shall state the grounds for issuance and the name of the person or persons whose affidavit has been taken in support thereof. It shall command the person to whom it is directed to inspect the area, premises, building, or conveyance identified for the purpose specified, and where appropriate, shall direct the seizure of the property specified. The warrant shall direct that it be served during normal business hours. It shall designate the judge or magistrate to whom it shall be returned;

(3) A warrant issued pursuant to this section must be executed and returned within ten days of its date. If property is seized pursuant to a warrant, the person executing the warrant shall give to the person from whom or from whose premises the property was taken a copy of the warrant and a receipt for the property taken or shall leave the copy and receipt at the place from which the property was taken. The return of the warrant shall be made promptly and shall be accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the person executing the warrant and of the person from whose possession or premises the property was taken, if they are present, or in the presence of at least one credible person other than the person executing the warrant. The clerk of the court, upon request, shall deliver a copy of the inventory to the person from whom or from whose premises the property was taken and to the applicant for the warrant; and

(4) The judge or magistrate who has issued a warrant under this section shall attach to the warrant a copy of the return and all papers filed in connection therewith and shall cause them to be filed with the court which issued such warrant.

(b) The Department of Health and Environmental Control is authorized to make administrative inspections of controlled premises in accordance with the following provisions:

(1) For the purposes of this article only, "controlled premises" means:

(a) Places where persons registered or exempted from registration requirements under this article are required to keep records, and

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

(2) When so authorized by an administrative inspection warrant issued pursuant to this section an officer or employee designated by the Commission on Alcohol and Drug Abuse upon presenting the warrant and appropriate credentials to the owner, operator, or agent in charge, may enter controlled premises for the purpose of conducting an administrative inspection.

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

(a) Inspect and copy records required by this article to be kept;

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

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

(4) This section shall not be construed to prevent entries and administrative inspections (including seizures of property) without a warrant:

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

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

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

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

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

(5) Except when the owner, operator, or agent in charge of the controlled premises so consents in writing, no inspection authorized by this section shall extend to:

(a) Financial data;

(b) Sales data other than shipment data;

(c) Pricing data;

(d) Personnel data; or

(e) Research data.

**SECTION 44-53-520. Forfeitures.**

(a) The following are subject to forfeiture:

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

(2) all raw materials, products, and equipment of any kind which are used, or which have been positioned for use, in manufacturing, producing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this article;

(3) all property which is used, or which has been positioned for use, as a container for property described in items (1) or (2);

(4) All property, both real and personal, which in any manner is knowingly used to facilitate production, manufacturing, distribution, sale, importation, exportation, or trafficking in various controlled substances as defined in this article;

(5) all books, records, and research products and materials, including formulas, microfilm, tapes, and data which are used, or which have been positioned for use, in violation of this article;

(6) all conveyances including, but not limited to, trailers, aircraft, motor vehicles, and watergoing vessels which are used or intended for use unlawfully to conceal, contain, or transport or facilitate the unlawful concealment, possession, containment, manufacture, or transportation of controlled substances and their compounds, except as otherwise provided, must be forfeited to the State. No motor vehicle may be forfeited to the State under this item unless it is used, intended for use, or in any manner facilitates a violation of Section 44-53-370(a), involving at least one pound or more of marijuana, one pound or more of hashish, more than four grains of opium, more than two grains of heroin, more than four grains of morphine, more than ten grains of cocaine, more than fifty micrograms of lysergic acid diethylamide (LSD) or its compounds, more than ten grains of crack, or more than one gram of ice or crank, as defined in Section 44-53-110, or unless it is used, intended for use, or in any manner facilitates a violation of Section 44-53-370(e) or fifteen tablets, capsules, dosage units, or the equivalent quantity of 3, 4-methylenedioxymethamphetamine (MDMA);

(7) all property including, but not limited to, monies, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance, and all proceeds including, but not limited to, monies, and real and personal property traceable to any exchange;

(8) all monies seized in close proximity to forfeitable controlled substances, drug manufacturing, or distributing paraphernalia, or in close proximity to forfeitable records of the importation, manufacturing, or distribution of controlled substances and all monies seized at the time of arrest or search involving violation of this article. If the person from whom the monies were taken can establish to the satisfaction of a court of competent jurisdiction that the monies seized are not products of illegal acts, the monies must be returned pursuant to court order.

(b) Any property subject to forfeiture under this article may be seized by the department having authority upon warrant 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 article;

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

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

(c) In the event of seizure pursuant to subsection (b), proceedings under Section 44-53-530 regarding forfeiture and disposition must be instituted within a reasonable time.

(d) Any property taken or detained under this section is not subject to replevin but is considered to be in the custody of the department making the seizure subject only to the orders of the court having jurisdiction over the forfeiture proceedings. Property described in Section 44-53-520(a) is forfeited and transferred to the government at the moment of illegal use. Seizure and forfeiture proceedings confirm the transfer.

(e) Controlled substances listed in Schedule I that are possessed, transferred, sold, or offered for sale in violation of this article are contraband and must 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 must be summarily forfeited to the State.

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

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

(h) For the purposes of this section, whenever the seizure of any property subject to seizure is accomplished as a result of a joint effort by more than one law enforcement agency, the law enforcement agency initiating the investigation is considered to be the agency making the seizure.

(i) Law enforcement agencies seizing property under this section shall take reasonable steps to maintain the property. Equipment and conveyances seized must be removed to an appropriate place for storage. Any monies seized must be deposited in an interest bearing account pending final disposition by the court unless the seizing agency determines the monies to be of an evidential nature and provides for security in another manner.

(j) When property and monies of any value as defined in this section or anything else of any value is seized, the law enforcement agency making the seizure, within ten days or a reasonable period of time after the seizure, shall submit a report to the appropriate prosecution agency.

(1) The report shall provide the following information with respect to the property seized:

(a) description;

(b) circumstances of seizure;

(c) present custodian and where the property is being stored or its location;

(d) name of owner;

(e) name of lienholder, if any;

(f) seizing agency; and

(g) the type and quantity of the controlled substance involved.

(2) If the property is a conveyance, the report shall include the:

- (a) make, model, serial number, and year of the conveyance;
- (b) person in whose name the conveyance is registered; and
- (c) name of any lienholders.

(3) In addition to the report provided for in items (1) and (2), the law enforcement agency shall prepare for dissemination to the public upon request a report providing the following information:

- (a) a description of the quantity and nature of the property and money seized;
- (b) the seizing agency;
- (c) the type and quantity of the controlled substance involved;
- (d) the make, model, and year of a conveyance; and
- (e) the law enforcement agency responsible for the property or conveyance seized.

(k) Property or conveyances seized by a law enforcement agency or department must not be used by officers for personal purposes.

**SECTION 44-53-520 does not violate the "takings" clause of the constitution by providing that property which facilitates trafficking in various controlled substances is subject to seizure and forfeiture, since forfeiture is within the legitimate exercise of the police power, not the power of eminent domain, and is directed to the prevention of serious public harm.** Myers v. Real Property at 1518 Holmes Street (S.C. 1991) 306 S.C. 232, 411 S.E.2d 209.

## 2. In general

After seizing property due to controlled substances violations, city police department and county sheriff's office had no duty to defend against city's independent legal process to condemn the property due to building, structural and fire code deficiencies; forfeiture and condemnation proceedings were distinct competing legal processes. Gadson v. Hembree (S.C. 2005) 364 S.C. 316, 613 S.E.2d 533, rehearing denied. Controlled Substances 178; Health 392; Health 393

A law enforcement agency that seizes property that is subject to forfeiture due to controlled substances violations has a duty to take reasonable steps to maintain the property once a warrant is issued for seizure of the property. Gadson v. Hembree (S.C. 2005) 364 S.C. 316, 613 S.E.2d 533, rehearing denied. Controlled Substances 178

Trial court finding that the State failed to establish probable cause to support the forfeiture of defendant's truck was legal error; evidence was presented by the State to show that defendant's truck was used to transport and conceal crack cocaine, and the State presented evidence that approximately 20 grams of cocaine had been in defendant's truck. Pope v. Gordon (S.C.App. 2004) 359 S.C. 572, 598 S.E.2d 288, rehearing denied, certiorari granted, affirmed 369 S.C. 469, 633 S.E.2d 148. Controlled Substances 184

The State failed to establish probable cause that the money in defendant's bank accounts contained proceeds traceable to illegal drug transactions, and thus the bank accounts were not subject to civil forfeiture; evidence established that defendant's bank accounts contained legitimate business income, there was no evidence that the deposit ticket seized from defendant's nephew showed the deposit of drug money or money from defendant's business, and there was no evidence that defendant was "washing" large amounts of undocumented money through the bank accounts. Pope v. Gordon (S.C.App. 2004) 359 S.C. 572, 598 S.E.2d 288, rehearing denied, certiorari granted, affirmed 369 S.C. 469, 633 S.E.2d 148. Controlled Substances 184

The forfeiture of car under Section 44-53-520, on the ground that it was used to facilitate sale of a controlled substance, was not warranted where the evidence showed only that the arrestee drove the car on the day he was arrested for the sale of drugs to an informant, and that he had its keys in his pocket when police arrested him. Condon v. One 1985 BMW, 4 Door, VIN No. WBAAE6403F0704170 (S.C.App. 1994) 312 S.C. 431, 440 S.E.2d 895, rehearing denied, certiorari denied.

The only persons who may apply pursuant to Section 44-53-586 for the return of seized items which are normally used for lawful purposes, are third parties who hold an interest in the property seized, and who did not consent to, were not privy to, or did not have knowledge of the use of the property which made it subject to seizure or forfeiture. *Medlock v. 1985 Ford F-150 Pick Up VIN 1FTDF15YGFNA22049* (S.C. 1992) 308 S.C. 68, 417 S.E.2d 85.

### 3. Jury trial

A defendant-owner of property, normally used for lawful purposes but which was seized pursuant to a drug offense, was entitled to a jury trial in a civil forfeiture action since forfeiture proceedings and similar actions were triable to a jury under the common law when the State Constitution was adopted, and since the defendant-owner would not have a right to replevy against the state for the property, if wrongfully forfeited. *Medlock v. 1985 Ford F-150 Pick Up VIN 1FTDF15YGFNA22049* (S.C. 1992) 308 S.C. 68, 417 S.E.2d 85.

The forfeiture procedure articulated in Section 44-53-530(a), which provides that forfeiture proceedings pursuant to Sections 44-53-520 and -530 be held before a judge alone, is unconstitutional to the extent that it denies a property owner the right to a jury trial in those cases where the property subject to forfeiture is normally used for lawful purposes, since the legislature may not abrogate the right to a jury trial simply by designating a proceeding as a civil action without a jury. *Medlock v. 1985 Ford F-150 Pick Up VIN 1FTDF15YGFNA22049* (S.C. 1992) 308 S.C. 68, 417 S.E.2d 85.

**SECTION 44-53-530.** Forfeiture procedures; disposition of forfeited items; disposition of proceeds of sales.

(a) Forfeiture of property defined in Section 44-53-520 must be accomplished by petition of the Attorney General or his designee or the circuit solicitor or his designee to the court of common pleas for the jurisdiction where the items were seized. The petition must be submitted to the court within a reasonable time period following seizure and shall set forth the facts upon which the seizure was made. The petition shall describe the property and include the names of all owners of record and lienholders of record. The petition shall identify any other persons known to the petitioner to have interests in the property. Petitions for the forfeiture of conveyances shall also include: the make, model, and year of the conveyance, the person in whose name the conveyance is registered, and the person who holds the title to the conveyance. The petition shall set forth the type and quantity of the controlled substance involved. A copy of the petition must be sent to each law enforcement agency which has notified the petitioner of its involvement in effecting the seizure. Notice of hearing or rule to show cause must be directed to all persons with interests in the property listed in the petition, including law enforcement agencies which have notified the petitioner of their involvement in effecting the seizure. Owners of record and lienholders of record may be served by certified mail, to the last known address as appears in the records of the governmental agency which records the title or lien.

The judge shall determine whether the property is subject to forfeiture and order the forfeiture confirmed. If the judge finds a forfeiture, he shall then determine the lienholder's interest as provided in this article. The judge shall determine whether any property must be returned to a law enforcement agency pursuant to Section 44-53-582.

If there is a dispute as to the division of the proceeds of forfeited property among participating law enforcement agencies, this issue must be determined by the judge. The proceeds from a sale of property, conveyances, and equipment must be disposed of pursuant to subsection (e) of this section.

All property, conveyances, and equipment which will not be reduced to proceeds may be transferred to the law enforcement agency or agencies or to the prosecution agency. Upon agreement of the law enforcement agency or agencies and the prosecution agency, conveyances and equipment may be transferred to any other appropriate agency. Property transferred must not be used to supplant operating funds within the current or future budgets. If the property seized and forfeited is an aircraft or watercraft and is transferred to a state law enforcement agency or other state agency pursuant to the provisions of this subsection, its use and retainage by that agency shall be at the discretion and approval of the Budget and Control Board.

If a defendant or his attorney sends written notice to the petitioner or the seizing agency of his interest in the subject property, service may be made by mailing a copy of the petition to the address provided and service may not be made by publication. In addition, service by publication may not be used for a person incarcerated in a South Carolina Department of Corrections facility, a county detention facility, or other

facility where inmates are housed for the county where the seizing agency is located. The seizing agency shall check the appropriate institutions after receiving an affidavit of nonservice before attempting service by publication.

(b) If the property is seized by a state law enforcement agency and is not transferred by the court to the seizing agency, the judge shall order it transferred to the Division of General Services for sale. Proceeds may be used by the division for payment of all proper expenses of the proceedings for the forfeiture and sale of the property, including the expenses of seizure, maintenance, and custody, and other costs incurred by the implementation of this section. The net proceeds from any sale must be remitted to the State Treasurer as provided in subsection (g) of this section. The Division of General Services may authorize payment of like expenses in cases where monies, negotiable instruments, or securities are seized and forfeited.

(c) If the property is seized by a local law enforcement agency and is not transferred by the court to the agency, the judge shall order it sold at public auction by the seizing agency as provided by law. Notwithstanding any other provision of the law, proceeds from the sale may be used by the agency for payment of all proper expenses of the proceeding for the forfeiture and sale of the property, including the expenses of the seizure, maintenance, and custody and other costs incurred by the implementation of this section. The net proceeds from the sale must be disposed of as provided by this section.

(d) Any forfeiture may be effected by consent order approved by the court without filing or serving pleadings or notices provided that all owners and other persons with interests in the property, including participating law enforcement agencies, entitled to notice under this section, except lienholders and agencies, consent to the forfeiture. Disposition of the property may be accomplished by consent of the petitioner and those agencies involved. Persons entitled to notice under this section may consent to some issues and have the judge determine the remaining issues.

All proceeds of property and cash forfeited by consent order must be disposed of as provided in subsection (e) of this section.

(e) All real or personal property, conveyances, and equipment of any value defined in Section 44-53-520, when reduced to proceeds, any cash more than one thousand dollars, any negotiable instruments, and any securities which are seized and forfeited must be disposed of as follows:

(1) seventy-five percent to the law enforcement agency or agencies;

(2) twenty percent to the prosecuting agency; and

(3) five percent must be remitted to the State Treasurer and deposited to the credit of the general fund of the State.

(f) The first one thousand dollars of any cash seized and forfeited pursuant to this article remains with and is the property of the law enforcement agency which effected the seizure unless otherwise agreed to by the law enforcement agency and prosecuting agency.

(g) All forfeited monies and proceeds from the sale of forfeited property as defined in Section 44-53-520 must be retained by the governing body of the local law enforcement agency or prosecution agency and deposited in a separate, special account in the name of each appropriate agency. These accounts may be drawn on and used only by the law enforcement agency or prosecution agency for which the account was established. For law enforcement agencies, the accounts must be used for drug enforcement activities and for prosecution agencies, the accounts must be used in matters relating to the prosecution of drug offenses and litigation of drug-related matters.

These accounts must not be used to supplant operating funds in the current or future budgets. Expenditures from these accounts for an item that would be a recurring expense must be approved by the governing body before purchase or, in the case of a state law enforcement agency or prosecution agency, approved as provided by law.

In the case of a state law enforcement agency or state prosecution agency, monies and proceeds must be remitted to the State Treasurer who shall establish separate, special accounts as provided in this section for local agencies.



All expenditures from these accounts must be documented, and the documentation made available for audit purposes and upon request by a person under the provisions of Chapter 4 of Title 30, the Freedom of Information Act.

(h) The use of all property forfeited pursuant to Section 44-53-520 and retained by the law enforcement agency must be documented and the documentation available upon request by a person subject to the provisions of Chapter 4 of Title 30.

(i) An expenditure from these accounts must be made in accordance with the established procurement procedures of the jurisdiction where the account is established.

(j) A law enforcement agency may draw from the account an amount necessary to maintain a confidential financial account to be used in the purchase of information or evidence relating to an investigation, to purchase services, or to provide compensation in matters which are confidential and in support of law enforcement activity. The disbursement of funds from the confidential financial account must be made in accordance with procedures approved by the South Carolina Law Enforcement Division (division). All records of disbursement must be maintained and made available for audit purposes as provided in this section.

All expenditures from these accounts must be fully documented and audited annually with the general fund of the appropriate jurisdiction.

(k) In all cases where the criminal offense giving rise to the forfeiture of property described in Section 44-53-520 is prosecuted in a state court, the forfeiture proceeding must be accomplished in the court of common pleas for the jurisdiction where the items were seized.

**SECTION 44-53-540.** Burden of proof.

(a) It shall not be necessary for the State to negate any exemption or exception set forth in this article in any complaint, information, indictment or other pleading or in any trial, hearing, or other proceeding under this article, and the burden of proof of any such exemption or exception shall be upon the person claiming its benefit.

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

**SECTION 44-53-550.** Prosecutions prior to effective date of article.

Prosecution occurring prior to June 17, 1971 is not affected or abated by this article. However, if the offense being prosecuted is similar to one set forth in Sections 44-53-370 to 44-53-470, then the penalties under Sections 44-53-370 to 44-53-470 shall apply if they are less than under prior law.

Offenses occurring prior to June 17, 1971 may be prosecuted under the statute then in force, but shall be subject to penalty limitations in this section.

**SECTION 44-53-560.** Transfer of agents from Department of Health and Environmental Control.

All agents of the Department of Health and Environmental Control who, sixty days after June 17, 1971, are either engaged in the enforcement of laws or regulations relating to controlled or counterfeit substances, except whose primary responsibility is making accountability audits, are hereby transferred to and shall be considered part of the Department of Narcotics and Dangerous Drugs under the South Carolina Law Enforcement Division.

**SECTION 44-53-570.** Service of search warrants.

A search warrant relating to offenses involving controlled substances may be served at any time of the day or night if the magistrate or judge of any court of record of the State having jurisdiction over the area where the property sought is located is satisfied that there is probable cause to believe that grounds exist for the warrant and for its service at such time.

**SECTION 44-53-577.** Illegal acts involving persons under seventeen years of age; penalties; separate offense.

(A) It is unlawful for any person at least seventeen years of age to knowingly and intentionally:

(1) use, solicit, direct, hire, persuade, induce, entice, coerce, or employ a person under seventeen years of age to violate Section 44-53-370 or 44-53-375(B);

(2) receive a controlled substance from a person under seventeen years of age in violation of this chapter; or

(3) conspire to use, solicit, direct, hire, persuade, induce, entice, coerce, or employ a person under seventeen years of age to violate Section 44-53-370 or 44-53-375(B).

(B) Any person who violates subsection (A)(1), (A)(2), or (A)(3) is guilty of a felony and, upon conviction, must be punished by a term of imprisonment of not less than five years nor more than fifteen years. A violation of this section constitutes a separate offense.

**SECTION 44-53-582.** Return of monies used to purchase controlled substances.

All monies used by law enforcement officers or agents, in the line of duty, to purchase controlled substances during a criminal investigation must be returned to the State or local agency or unit of government furnishing the monies upon a determination by the court that the monies were used by law enforcement officers or agents, in the line of duty, to purchase controlled substances during a criminal investigation.

**SECTION 44-53-583.** Repealed by 2006 Act No. 380, Section 3, eff June 14, 2006.

**SECTION 44-53-586.** Return of seized items to innocent owners; notice of hearing or rule to show cause; continuation of liens of innocent persons.

(a) Any innocent owner or any manager or owner of a licensed rental agency or any common carrier or carrier of goods for hire may apply to the court of common pleas for the return of any item seized under the provisions of Section 44-53-520. Notice of hearing or rule to show cause accompanied by copy of the application must be directed to all persons and agencies entitled to notice under Section 44-53-530. If the judge denies the application, the hearing may proceed as a forfeiture hearing held pursuant to Section 44-53-530.

(b) The court may return any seized item to the owner if the owner demonstrates to the court by a preponderance of the evidence:

(1) in the case of an innocent owner, that the person or entity was not a consenting party to, or privy to, or did not have knowledge of, the use of the property which made it subject to seizure and forfeiture.

(2) in the case of a manager or an owner of a licensed rental agency, a common carrier, or a carrier of goods for hire, that any agent, servant, or employee of the rental agency or of the common carrier or carrier of goods for hire was not a party to, or privy to, or did not have knowledge of, the use of the property which made it subject to seizure and forfeiture.

If the licensed rental agency demonstrates to the court that it has rented the seized property in the ordinary course of its business and that the tenant or tenants were not related within the third degree of kinship to the manager or owner, or any agents, servants, or employees of the rental agency, then it is presumed that the licensed rental agency was not a party to, or privy to, or did not have knowledge of, the use of the property which made it subject to seizure and forfeiture.

(c) The lien of any innocent person or other legal entity, recorded in public records, shall continue in force upon transfer of title of any forfeited item, and any transfer of title is subject to the lien, if the lienholder demonstrates to the court by a preponderance of the evidence that he was not a consenting party to, or privy to, or did not have knowledge of, the involvement of the property which made it subject to seizure and forfeiture.

**SECTION 44-53-590.** Penalty for use of property in manner which makes it subject to forfeiture.

Any person who uses property or a conveyance in a manner which would make the property or conveyance subject to forfeiture as provided for in Sections 44-53-520 or 44-53-530, except for innocent owners, rental agencies, lienholders, and the like as provided for in this article, is guilty of a misdemeanor and upon conviction must be imprisoned for not less than thirty days nor more than one

year or fined not more than five thousand dollars, or both, in the discretion of the court. The penalties prescribed in this section are cumulative and must be construed to be in addition to any other penalty prescribed by any other provision of this article relating to controlled substances or harmful or illegal drugs.

#### ARTICLE 4.

##### CONTROLLED SUBSTANCES THERAPEUTIC RESEARCH

###### **SECTION 44-53-610.** Short title.

This article may be cited as the "South Carolina Controlled Substances Therapeutic Research Act of 1980".

###### **SECTION 44-53-620.** Definitions.

As used in this article unless the context clearly indicates otherwise:

- (a) "Director" means the Director of the Department of Health and Environmental Control;
- (b) "Marijuana" means marijuana, all tetrahydrocannabinols or a chemical derivative of any tetrahydrocannabinol;
- (c) "Practitioner" means a physician licensed to practice medicine in this State and licensed to prescribe and administer drugs which are subject to regulation under the provisions of Article 3, Chapter 53 of Title 44 of the 1976 Code.

###### **SECTION 44-53-630.** Establishment of therapeutic research program; regulations; limits as to patient eligibility.

(A) There is established in the Department of Health and Environmental Control a controlled substances therapeutic research program. The program shall be administered by the director. The program shall distribute to cancer chemotherapy and radiology patients and to glaucoma patients who are certified pursuant to this article marijuana under the terms and conditions of this article for the purpose of alleviating the patient's discomfort, nausea and other painful side effects of their disease or chemotherapy treatments. The department shall promulgate regulations necessary for the proper administration of this article and in such promulgation, the department shall take into consideration those pertinent regulations promulgated by the Drug Enforcement Agency, U. S. Department of Justice; Food and Drug Administration; the National Institute on Drug Abuse, and the National Institutes of Health.

(B) Except as provided in subsection (c) of Section 44-53-640, the controlled substances therapeutic research program shall be limited to cancer chemotherapy and radiology patients and glaucoma patients, who are certified to the patient qualification review advisory board by a practitioner as being involved in a life-threatening or sense-threatening situation and who are not responding to conventional controlled substances or where the conventional controlled substances administered have proven to be effective but where the patient has incurred severe side effects.

###### **SECTION 44-53-640.** Patient Qualification Review Advisory Board; membership; compensation; duties.

(a) The director shall appoint a Patient Qualification Review Advisory Board to serve at his pleasure. The Patient Qualification Review Advisory Board shall be comprised of:

- (1) a physician licensed to practice medicine in South Carolina and certified by the American Board of Ophthalmology;
- (2) a physician licensed to practice medicine in South Carolina and certified by the American Board of Internal Medicine and also certified in the subspecialty of medical oncology;
- (3) a physician licensed to practice medicine in South Carolina and certified by the American Board of Psychiatry; and
- (4) a pharmacologist holding a Doctoral degree or its equivalent.

Members of the board shall be paid the usual per diem, mileage and subsistence as provided by law for members of boards, commissions and committees.

(b) The department shall review all applicants for the controlled substances therapeutic research program and their licensed practitioners and certify their participation in the program.

(c) The department, in its discretion, may include other disease groups for participation in the controlled substances therapeutic research program after pertinent medical data have been presented by a practitioner to both the director and the department and after necessary approval is received by the appropriate federal agencies.

**SECTION 44-53-650.** Director to obtain and distribute marijuana.

(a) The director shall obtain marijuana through whatever means he deems most appropriate consistent with federal law.

(b) The director shall cause such analyzed marijuana to be transferred to various locations throughout the State that provide adequate security as set forth in federal and state regulations for the purpose of distributing such marijuana to the certified patient in such manner as is consistent with federal law. The patient shall not be required to pay for such marijuana but the director may charge for ancillary medical services provided by the department to compensate the department for the cost, if any, of securing such marijuana, and providing it to the patient.

**SECTION 44-53-660.** Annual report.

The director shall annually report to the General Assembly his opinion as to the effectiveness of this program and his recommendations for any changes thereto.

#### ARTICLE 5.

#### METHADONE

**SECTION 44-53-710.** Exclusive control over methodone vested in Department of Health and Environmental Control.

The South Carolina Department of Health and Environmental Control has exclusive control over the controlled substance methadone.

**SECTION 44-53-720.** Restrictions on use of methadone.

Methadone and its salts are restricted to:

(1) use in treatment, maintenance, or detoxification programs as approved by the Department of Health and Environmental Control.

(2) dispensing by a hospital for analgesia, pertussis, and detoxification treatment as approved by the Department of Health and Environmental Control.

(3) dispensing by a retail pharmacy for analgesia as provided for by R. 61-4, Section 507.5.

**SECTION 44-53-730.** Restrictions on sale and distribution of methadone.

No supplier, distributor, or manufacturer may sell or distribute methadone or its salts to an entity for use, except as provided for in Section 44-53-720.

**SECTION 44-53-740.** Promulgation of rules and regulations.

The Board of the Department of Health and Environmental Control shall promulgate regulations necessary to carry out the provisions of this article.

**SECTION 44-53-750.** Autopsy on person dying while enrolled in program.

An autopsy shall be performed on any person on a methadone program who dies while enrolled in such program. A report concerning the autopsy shall be filed with the Department of Health and Environmental Control. Each person enrolling in such program shall be notified of the autopsy provision as a part of such person's consent which is required prior to admission to such program.

**SECTION 44-53-760.** Admission of minors to programs.

Parental consent shall be obtained for all persons under eighteen years of age prior to admission to a methadone maintenance program; provided, that if any court of competent jurisdiction declares a person under eighteen years of age an emancipated minor, then such person may be admitted to the program without parental consent.

ARTICLE 6.

DRUG AWARENESS RESISTANCE EDUCATION FUND

**SECTION 44-53-810.** Legislative findings.

The General Assembly finds:

- (1) that the future of this State rests in the hands of school children;
- (2) the Drug Abuse Resistance Education Program taught in this State and in many schools nationally provides an effective and proven awareness of instilling drug resistance skills in our school children, and promoting the hope of a secure and healthy future for these children.

**SECTION 44-53-820.** Establishment of DARE Fund; purpose.

There is established the Drug Awareness Resistance Education (DARE) Fund, an eleemosynary corporation, the resources of which must be used to promote and encourage the Drug Awareness and Resistance Education Program in this State. The trust fund supplements and augments services provided by government agencies and does not take the place of these services.

**SECTION 44-53-830.** Board of directors; membership; terms.

(A) The DARE Fund is to be administered by a board of directors appointed by the Governor, with the advice and consent of the Senate, and is composed of:

- (1) the Attorney General, ex officio, or his designee;
- (2) two county sheriffs, who shall serve ex officio;
- (3) two police chiefs;
- (4) two local law enforcement officers assigned to the DARE Program; and
- (5) two school principals.

Directors who are not elected officials serve by virtue of their position at the time of appointment.

(B) Members shall serve terms of four years and until successors are appointed and qualify. A board member may be removed by the Governor in accordance with Section 1-3-240(B). Vacancies must be filled in the manner of the original appointment for the unexpired portion of the term.

**SECTION 44-53-840.** Board members to be reimbursed for expenses.

Board members are not entitled to per diem but may be reimbursed for mileage and all necessary and reasonable expenses incurred in the performance of their duties under this article.

**SECTION 44-53-850.** Powers of board.

In administering this article, the board is authorized, but not limited to:

- (1) develop and implement educational programs and campaigns in support of the DARE Program in South Carolina;
- (2) make policy recommendations for the DARE Program in South Carolina;
- (3) assess the needs of DARE Programs;
- (4) determine how the monies in the fund are to be disbursed;
- (5) acquire and hold property;

- (6) invest trust monies, including pooled investment funds maintained by the State;
- (7) utilize local resources including volunteers when appropriate.

**SECTION 44-53-860.** Chairman; meetings; quorum.

The board shall elect a chairman from among its members and shall adopt rules for the governance of its operations. The board shall meet at least semiannually. Six members constitute a quorum.

**SECTION 44-53-870.** Director and staff; maximum administrative costs.

The board may employ a director and other staff as necessary to carry out the provisions of this article; however, administration of this article may not exceed twenty percent of the total funds credited to the trust fund, excluding the administrative fee paid to the Department of Revenue pursuant to Section 12-6-5080.

**SECTION 44-53-880.** Use of funds.

Funds credited to the trust fund, excluding the administrative fees paid to the Department of Revenue, may be used for, but are not limited to:

- (1) administration of this article including, but not limited to, personnel and board expenses;
- (2) development and promotion of the DARE Program in this State;
- (3) a reserve fund in an interest-bearing account with five percent of the funds received by the trust fund annually to be placed in this account. No withdrawals may be made from this account until the minimum balance has reached one hundred thousand dollars and then these funds may be used only in years in which donations do not meet the average normal operating cost incurred by the trust fund and funds are needed to meet expenses. Once the balance in the reserve funds reaches one hundred thousand dollars, excess fund earned by interest and yearly allocations may be used at the discretion of the board to cover operating costs and to provide additional funds.

**SECTION 44-53-890.** Annual report.

The fund board annually by February first shall submit a report to the General Assembly concerning its expenditures of fund monies and activities.

## ARTICLE 7.

### HYPODERMIC NEEDLES AND SYRINGES

**SECTIONS 44-53-910 to 44-53-920.**

Repealed by 2002 Act No. 365, Section 5, eff September 26, 2002.

**SECTIONS 44-53-910 to 44-53-920.** Repealed by 2002 Act No. 365, Section 5, eff September 26, 2002.

**SECTION 44-53-930.** Retail sales shall be made only by registered pharmacists or assistant pharmacists; exception.

Sales at retail of hypodermic needles or syringes shall be made only by a registered pharmacist or registered assistant pharmacist through a permitted pharmacy as authorized by Section 40-43-370, except that syringes and hypodermic needles may be sold by persons lawfully selling veterinary medicines as authorized by item (8) of Section 40-69-220 if they register annually with the Department of Health and Environmental Control and pay such registration fee as may be required by the Department and they shall be subject to the provisions of Section 44-53-920.

**SECTION 44-53-940.** Repealed by 2002 Act No. 365, Section 5, eff September 26, 2002.

**SECTION 44-53-950.** Veterinarians and licensed durable medical equipment providers exception.

Nothing in this article applies to veterinarians in connection with the practice of their profession or to certified or licensed durable medical equipment providers when selling hypodermic needles and syringes to insulin dependent diabetics.

**SECTION 44-53-960.** Penalties.

Any person who sells or purchases at retail any hypodermic needles or syringes, except in accordance with the terms of this article, shall be deemed guilty of a misdemeanor and upon conviction shall be fined not more than five hundred dollars or imprisoned for not more than sixty days.

ARTICLE 9.

AROMATIC HYDROCARBONS

**SECTION 44-53-1110.** Aromatic hydrocarbons shall not be used as intoxicants.

No person shall, for the purpose of causing a condition of intoxication, inebriation, excitement, stupefaction or the dulling of his brain or nervous system, intentionally smell or inhale the fumes from any substance containing aromatic hydrocarbons; provided, that nothing in this section shall be interpreted as applying to the inhalation of any anesthesia for medical or dental purposes.

**SECTION 44-53-1120.** Unlawful use or possession of aromatic hydrocarbons.

No person shall, for the purpose of violating Section 44-53-1110, use or possess for the purpose of so using, any substance containing aromatic hydrocarbons.

**SECTION 44-53-1130.** Penalties.

Any person who violates any provision of this article shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined in an amount not to exceed one hundred dollars or imprisoned for a term not to exceed thirty days.

ARTICLE 11.

DANGEROUS CAUSTIC AND CORROSIVE SUBSTANCES

**SECTION 44-53-1210.** Definitions.

The term "dangerous caustic or corrosive substance" means each and all of the acids, alkalis and substances named below:

(1) Hydrochloric acid and any preparation containing free or chemically unneutralized hydrochloric acid (HCL) in a concentration of ten per cent or more;

(2) Sulphuric acid and any preparation containing free or chemically unneutralized sulphuric acid (H<sub>2</sub>SO<sub>4</sub>) in a concentration of ten per cent or more;

(3) Nitric acid or any preparation containing free or chemically unneutralized nitric acid (HNO<sub>3</sub>) in a concentration of five per cent or more;

(4) Carboic acid, otherwise known as phenol, and any preparation containing carboic acid or phenol in a concentration of five per cent or more;

(5) Oxalic acid and any preparation containing free or chemically unneutralized oxalic acid (H<sub>2</sub>C<sub>2</sub>O<sub>4</sub>) in a concentration of ten per cent or more;

(6) Any salt or oxalic acid and any preparation containing any such salt in a concentration of ten per cent or more;

(7) Acetic acid or any preparation containing free or chemically unneutralized acetic acid (HC<sub>2</sub>H<sub>3</sub>O<sub>2</sub>) in a concentration of twenty per cent or more;

(8) Hypochlorous acid, either free or combined, including calx chlorinata, bleaching powder, chloride of lime, chlorinated soda, chlorinated potash and any preparation containing any of the aforesaid substances so as to yield a concentration of ten per cent or more of available chlorine;

(9) Potassium hydroxide and any preparation containing free or chemically unneutralized potassium hydroxide (KOH), including caustic potash and vienna paste, in a concentration of ten per cent or more;

(10) Sodium hydroxide and any preparation containing free or chemically unneutralized sodium hydroxide (NaOH), including caustic soda and lye, in a concentration of ten per cent or more;

(11) Silver nitrate, sometimes known as lunar caustic, and any preparation containing silver nitrate (AgNO<sub>3</sub>) in a concentration of five per cent or more;

(12) Ammonia water and any preparation yielding free or chemically uncombined ammonia (NH<sub>3</sub>), including ammonium hydroxide and "hartshorn," in a concentration of five per cent or more; and

(13) Any other alkali, acid, salt or preparation thereof having caustic or corrosive properties equivalent to those of any of the alkalis, acids, salts and preparations named above.

The term "misbranded parcel, package or container" means a retail parcel, package or container of any dangerous caustic or corrosive substance for household use, not bearing a conspicuous easily legible label or sticker, containing:

(1) The name of the article;

(2) The name and place of business of the manufacturer, packer, seller or distributor;

(3) The word "POISON" running parallel with the main body of reading matter on the label or sticker, on a clear plain background of a distinctly contrasting color, in uncondensed gothic capital letters, the letters to be not less than twenty-four-point size unless there is on the label no other type so large, in which event the type shall not be smaller than the largest type on the label; and

(4) Directions for treatment in case of accidental personal injury by the dangerous caustic or corrosive substance.

**SECTION 44-53-1220.** Sale or the like in misbranded parcel, package or container prohibited.

No person shall sell, barter, exchange, receive, hold, pack or display or offer for sale, barter or exchange in the State any dangerous caustic or corrosive substance in a misbranded parcel, package or container designed for household use.

**SECTION 44-53-1230.** Confiscation of misbranded parcels, packages or containers.

Any dangerous caustic or corrosive substance in a misbranded parcel, package or container for household use that is being sold, bartered or exchanged or held, displayed or offered for sale, barter or exchange shall be liable to be proceeded against in any magistrate's court and seized for confiscation in a manner provided by law. If such substance is condemned as misbranded by such court, it shall be disposed of by destruction or sale, as the court may direct, and, if sold, the proceeds less the actual costs and charges shall be paid over to the magistrate. But such substance shall not be sold contrary to the provisions of the laws of the State. Such proceedings shall conform as near as may be to the law providing for confiscating goods exposed for sale on Sunday.

But upon the payment of the costs of such proceedings and the execution and delivery of a good and sufficient bond to the effect that such substance will not be unlawfully sold or otherwise disposed of, the court may by order direct that such substance be delivered to the owner thereof.

**SECTION 44-53-1240.** Enforcement; approval of brands and labels.

The sheriff, deputy sheriffs and other peace officers shall enforce the provisions of this article and may approve and register such brands and labels intended for use under the provisions of this article as may be submitted to them for that purpose and as may in their judgment conform to the requirements of this article. But in any prosecution under this article the fact that any brand or label involved in the prosecution has not been submitted to the sheriff, a deputy sheriff or a peace officer to whom there is presented, or who in any way procures, satisfactory evidence of any violation of the provisions of this article shall cause appropriate proceedings to be commenced and prosecuted, without delay, for the enforcement of the penalties in such cases herein provided.

**SECTION 44-53-1250.** Penalties.



Any person violating the provisions of this article shall, upon conviction thereof, be punished by a fine of not more than one hundred dollars or by imprisonment for not more than ninety days, or by both such fine and imprisonment, in the discretion of the court.

ARTICLE 13.

CHILDHOOD LEAD POISONING PREVENTION AND CONTROL

**SECTION 44-53-1310.** Short title.

This article may be cited as the "Childhood Lead Poisoning Prevention and Control Act".

**SECTION 44-53-1320.** Definitions.

As used in this article, unless the context requires otherwise:

(1) "Accessible surface" means any protruding interior or exterior surface that a child can mouth or chew including, but not limited to, an interior windowsill.

(2) "Child" or "children" means a person under six years of age.

(3) "Childcare facility" means a structure or portion of a structure in which children are present on a regular basis, including a structure used as a school, nursery, childcare facility, or other facility catering to the needs of children, including an outbuilding, fencing, or other structure used in conjunction with the structure.

(4) "Department" means the Department of Health and Environmental Control.

(5) "Dwelling" means a structure, all or part of which is designed or used for human habitation, including a primary residence, secondary residence, outbuilding, fencing, or other structure used in conjunction with the structure.

(6) "Dwelling unit" means a room, group of rooms, or other areas of a dwelling.

(7) "Friction surface" means an interior or exterior surface subject to abrasion or friction including, but not limited to, a window or stair tread.

(8) "Householder" means the occupant of a dwelling or dwelling unit or the occupant's agent, the owner of an unoccupied dwelling unit or the owner's agent, or the owner or occupant of a childcare facility or the owner's or occupant's agent.

(9) "Impact surface" means an interior or exterior surface subject to damage by repeated impact on contact including, but not limited to, doors and door jambs.

(10) "Lead-based hazard" means a condition that causes exposure to lead from lead-contaminated paint, lead-contaminated dust, bare lead-contaminated soil, or other lead-based substance that is deteriorated in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects.

(11) "Lead-base substance" means paint, lacquer, glaze, or other material containing more than six hundredths of one percent (0.06 percent) lead by weight, or seven-tenths or more milligrams per square centimeter (0.7 mg/cm<sup>2</sup>) of lead in the dried paint film applied. Standards for lead-contaminated dust and lead-contaminated soil must be the same as those established by the United States Environmental Protection Agency.

(12) "Person" means an individual, firm, corporation, association, trust, or partnership.

(13) "Lead poisoning" means a blood lead level at an elevation hazardous to health as established by the Department of Health and Environmental Control.

**SECTIONS 44-53-1330, 44-53-1340.** Omitted by 2005 Act No. 142, Section 1, eff June 7, 2005.

**SECTIONS 44-53-1330, 44-53-1340.** Omitted by 2005 Act No. 142, Section 1, eff June 7, 2005.

**SECTION 44-53-1350.** Exemptions.

The provisions of this article do not apply to items that are exempt pursuant to federal law.

**SECTION 44-53-1360.** Program for early diagnosis of cases of childhood lead poisoning; examinations; records.

(A) The department may establish a program for the early diagnosis of cases of childhood lead poisoning. The program must provide for systematic examination for lead poisoning of children at risk residing within the State. Examinations must be made by such means and at such intervals as the department determines to be medically necessary.

The program must give priority in examinations to those children residing, or who have recently resided, in areas where significant numbers of lead poisoning cases have been reported recently or where other reliable evidence indicates that significant numbers of lead poisoning cases may be found.

(B) When the department is notified of a case of lead poisoning, the department shall examine or refer for examination within thirty days all other children under six years of age, and other children as the department finds advisable to examine, residing or recently residing in the household of the victim or in all other dwelling units in the dwelling of the victim or in a childcare facility occupied by the victim, unless the parents or guardian of the child objects to the examination because it conflicts with his or her religious beliefs or practices.

The department shall maintain comprehensive records of all examinations conducted pursuant to this section. These records are strictly confidential and may not be released except as required by law or by court order.

**SECTION 44-53-1370.** Childhood lead poisoning prevention education program.

The department may institute a childhood lead poisoning prevention education program. The program shall emphasize the dangers and sources of lead poisoning and the methods of lead poisoning prevention and lead-based hazard remediation.

**SECTION 44-53-1380.** Notification of incidents of lead poisoning.

(A) If a physician, hospital, public health nurse, or other diagnosing person or agency knows or has reason to believe that a child he or she examines or treats has or is suspected of having lead poisoning, the person shall notify the department within seven days. The department shall specify the procedure to be followed and shall provide the necessary forms.

(B) A laboratory doing business in this State shall notify the department of the results of any blood lead analyses conducted on children under six years of age; this notification must be submitted to the department within thirty days of completion of the analysis.

**SECTION 44-53-1390.** Investigation of lead poisoning case reports; right of entry.

When the department is notified of a lead poisoning case, the department, upon presentation of the appropriate credentials to the householder, and with the consent of the householder or his agent, may enter a dwelling, dwelling unit, or childcare facility at reasonable times and in a reasonable manner for the purpose of conducting a lead-based hazard investigation and may remove samples of objects necessary for laboratory analysis. If the householder refuses admission to the premises, the department may obtain an administrative warrant from a court of competent jurisdiction to investigate the premises. This section also applies to secondary residences and any other premises routinely occupied by the child.

**SECTION 44-53-1400.** Warrants for purpose of conducting investigation; oath or affirmation showing probable cause; contents of warrant.

The issuance and execution of an administrative warrant to investigate must be as follows:

(1) A judge or magistrate of a court having jurisdiction where the investigation is to be conducted, upon proper oath or affirmation showing probable cause, may issue warrants for the purpose of conducting investigations authorized by this article or regulations promulgated pursuant to this article and removing samples of objects from the premises appropriate to the investigations. For the purpose of this section, "probable cause" exists when the circumstances indicate there is reason to believe a child has been exposed or is at risk of being exposed to a lead-based hazard at the premises specified in the warrant.

(2) A warrant must be issued only upon an affidavit of a department employee designated and having knowledge of the facts alleged, sworn to before the judge or magistrate and establishing the grounds for issuing the warrant. If the judge or magistrate is satisfied that grounds for the application exist or that there is probable cause to believe they exist, the judge or magistrate shall issue a warrant identifying the area, premises, building, or conveyance to be investigated, the purpose of the investigation, and, where appropriate, the type of property to be investigated. The warrant must authorize the removal of samples of objects for laboratory analysis, where appropriate. The warrant must be directed to a designated department employee to execute it. The warrant must state the grounds for issuance and the name of the person or persons whose affidavit has been taken in support of the warrant. The warrant must command the person to whom it is directed to investigate the area, premises, building, or conveyance identified for the purpose specified and, where appropriate, authorize removal of samples of objects for laboratory analysis. The warrant must direct that it be served during reasonable hours and must designate the judge or magistrate to whom it must be returned.

(3) A warrant issued pursuant to this section must be executed and returned within ten days of the date of issuance.

(4) The judge or magistrate who has issued a warrant under this section shall attach to the warrant a copy of the return and all papers filed in connection with the warrant and shall cause these papers to be filed with the court which issued the warrant.

**SECTIONS 44-53-1410, 44-53-1420.** Omitted by 2005 Act No. 142, Section 1, eff June 7, 2005.

**SECTIONS 44-53-1410, 44-53-1420.** Omitted by 2005 Act No. 142, Section 1, eff June 7, 2005.

**SECTION 44-53-1430.** Notice of identification of lead-based hazard; order that it be remediated; appeals.

(A) If a child resides in a dwelling or dwelling unit or is routinely present at a childcare facility in which a lead-based hazard has been identified, the department shall:

(1) post in or upon the dwelling, dwelling unit, or childcare facility, in a conspicuous place, notice of the existence of the hazard. The notice must not be removed until the department determines that the identified lead-based hazard has been remediated.

(2) give written notice of the existence of the lead-based hazard to the householder occupying the dwelling, dwelling unit, or childcare facility.

(3) give written notice of the existence of the lead-based hazard to the property owner and order that the hazard be remediated within a reasonable period of time.

(B) The property owner of a building subject to this article has the right to appeal the order of the department as a contested case.

**SECTION 44-53-1440.** Restriction on rental; existing occupants.

A person must not rent or offer for occupancy a dwelling or dwelling unit to be occupied by children which has been posted and ordered remediated of lead-based hazards until the identified hazards have been remediated. If the presence of the lead-based hazard becomes known when the dwelling or dwelling unit is already rented to a family with children, the family of the children must not be evicted for that reason.

**SECTION 44-53-1450.** Regulations.

The department may promulgate regulations as necessary to carry out the intent and provisions of this article.

**SECTION 44-53-1460.** Legal actions not affected.

Nothing in this article may be interpreted or applied in any manner to defeat or impair the right of a person, municipality, or other political entity to maintain an action or suit for damages sustained, or equitable relief of, for violation of an ordinance by reason of, or in connection with, a violation of this article.

**SECTION 44-53-1470.** Omitted by 2005 Act No. 142, Section 1, eff June 7, 2005.

**SECTION 44-53-1480.** Penalties.

A person who knowingly violates a provision of this article or an order of the department issued pursuant to this article is guilty of a misdemeanor and, upon conviction, must be fined or imprisoned not more than the maximum allowed by the magistrates' courts in this State. Each day's violation constitutes a separate offense. Isolated lead-based hazard violations existing in dwellings, dwelling units, or childcare facilities must be considered separate violations.

**SECTION 44-53-1485.** Civil penalties.

A person who violates a provision of this article or a final determination or order of the department issued pursuant to this article is subject to a civil penalty not to exceed one thousand dollars a day.

**SECTION 44-53-1490.** Private causes of action; action by municipality.

(A) A violation of this article does not give rise to a private cause of action. However, this article does not prohibit a person from commencing an action for damages or injunctive relief pursuant to other law; and this article does not prohibit an action by a municipality or other governmental entity for damages or injunctive relief or an action authorized by other law or regulation.

(B) This section does not prohibit the introduction of evidence of failure to comply with the provisions of this article in establishing the appropriate standard of care in the other action.

**SECTION 44-53-1495.** Funding contingency.

The provisions of this article are contingent upon the appropriation of state general funds or the availability of financial support from other sources.

ARTICLE 14.

ANABOLIC STEROIDS

**SECTION 44-53-1510.** Definition of "anabolic steroid"; exceptions.

(A) The term "anabolic steroid" includes any of the following or any isomer, ester, salt, or derivative of the following that acts in the same manner on the human body:

- (1) clostebol;
- (2) dehydrochlormethyltestosterone;
- (3) ethylestrenol;
- (4) fluoxymesterone;
- (5) mesterolone;
- (6) methandienone;
- (7) methandrostenolone;
- (8) methenolone;
- (9) methyltestosterone;
- (10) nandrolone;
- (11) norethandrolone;
- (12) oxandrolone;
- (13) oxymesterone;
- (14) oxymetholone;
- (15) stanozolol; and

(16) testosterone.

(B) Anabolic steroids that are expressly intended for administration through implants to cattle or other nonhuman species, and that are approved by the federal Food and Drug Administration for this use, are not considered anabolic steroids as defined by this article and are not governed by its provisions.

**SECTION 44-53-1520.** Unprofessional conduct to dispense under certain circumstances.

It is unprofessional conduct, and is not a valid medical purpose, for a practitioner or veterinarian to prescribe, dispense, or administer an anabolic steroid, or a pharmacist to dispense an anabolic steroid, for the purpose of the hormonal manipulation that is intended to increase muscle mass, strength, or weight without a medical necessity to do so, or for the intended purpose of improving performance in any form of exercise, sport, or game.

**SECTION 44-53-1530.** Possessing anabolic steroids without a prescription, or prescribing anabolic steroids, by non-practitioner, pharmacist, or veterinarian unlawful; penalties.

It is unlawful for any person who is not a practitioner, pharmacist, or veterinarian to knowingly or intentionally possess anabolic steroids as defined in this article unless the steroids were obtained directly from, or pursuant to a valid prescription or order of, a practitioner while acting in the course of his professional practice. It is unlawful for any person who is not a practitioner, pharmacist, or veterinarian to knowingly or intentionally prescribe, dispense, deliver, or administer anabolic steroids to a person. Any person who violates this article with respect to:

(1) prescription, dispensation, delivery, or administration of an anabolic steroid, or delivery of an anabolic steroid to a person for human use without any purpose other than a valid medical purpose, or the sale or delivery of an anabolic steroid to a person for human use without a valid prescription, or the prescription, dispensation, delivery, or administration of an anabolic steroid to a person by any person who is not a practitioner, pharmacist, or veterinarian, is guilty of a felony and, upon conviction, must be punished as follows:

(a) for a first offense, imprisoned for a term not to exceed five years or fined in an amount not to exceed five thousand dollars, or both;

(b) for a second or subsequent offense, imprisoned for a term not to exceed ten years or fined in an amount not to exceed ten thousand dollars, or both;

(2) possession of ten or fewer dosage units of anabolic steroids without a valid prescription is guilty of a misdemeanor and, upon conviction, must be punished as follows:

(a) for a first offense, imprisoned for a term not to exceed six months or fined in an amount not to exceed one thousand dollars;

(b) for a second or subsequent offense, imprisoned for a term not to exceed one year or fined in an amount not to exceed two thousand dollars, or both;

(3) possession of more than ten but fewer than one hundred dosage-units of anabolic steroids without a valid prescription is guilty of a misdemeanor and, upon conviction, must be punished as follows:

(a) for a first offense, imprisoned for a term not to exceed one year or fined in an amount not to exceed two thousand dollars, or both;

(b) for a second or subsequent offense, imprisoned for a term not to exceed two years or fined in an amount not to exceed three thousand dollars, or both;

(4) possession of more than one hundred dosage-units of anabolic steroids without a valid prescription is guilty of a felony and, upon conviction, must be punished as follows:

(a) for a first offense, imprisoned for a term not to exceed five years or fined in an amount not to exceed five thousand dollars, or both;

(b) for a second or subsequent offense, imprisoned for a term not to exceed ten years or fined in an amount not to exceed ten thousand dollars, or both.

**SECTION 44-53-1550.** What constitutes a prior offense.

For purposes of determining whether or not a person has committed a second or subsequent offense under the provisions of this article, a violation of any other provision of this article or provision of law of the United States or any state, territory, or district, relating to an anabolic steroid, constitutes a prior offense.

ARTICLE 15.

PRESCRIPTION MONITORING PROGRAM

**SECTION 44-53-1610.** Citation of article.

This article may be cited as the "South Carolina Prescription Monitoring Act".

**SECTION 44-53-1620.** Purpose.

This article is intended to improve the state's ability to identify and stop diversion of prescription drugs in an efficient and cost effective manner that will not impede the appropriate medical utilization of licit controlled substances.

**SECTION 44-53-1630.** Definitions.

As used in this section:

(1) "Controlled substances" means those substances listed in Schedules II, III, and IV of the schedules provided for in Sections 44-53-210, 44-53-230, 44-53-250, and 44-53-270.

(2) "Dispenser" means a person who delivers a Schedule II-IV controlled substance to the ultimate user, but does not include:

(a) a licensed hospital pharmacy that distributes controlled substances for the purpose of inpatient hospital care or dispenses prescriptions for controlled substances at the time of discharge from the hospital;

(b) a practitioner or other authorized person who administers these controlled substances; or

(c) a wholesale distributor of a Schedule II-IV controlled substance.

(3) "Drug control" means the Department of Health and Environmental Control, Bureau of Drug Control.

(4) "Patient" means the person or animal who is the ultimate user of a drug for whom a prescription is issued or for whom a drug is dispensed, or both.

**SECTION 44-53-1640.** Authority to establish and maintain prescription monitoring program; electronic submission of information by dispensers; exemptions.

(A) The Department of Health and Environmental Control, Bureau of Drug Control may establish and maintain a program to monitor the prescribing and dispensing of all Schedule II, III, and IV controlled substances by professionals licensed to prescribe or dispense these substances in this State.

(B)(1) A dispenser shall submit to drug control, by electronic means, information regarding each prescription dispensed for a controlled substance. The following information must be submitted for each prescription:

(a) dispenser DEA registration number;

(b) date drug was dispensed;

(c) prescription number;

(d) whether prescription is new or a refill;

(e) NDC code for drug dispensed;

(f) quantity dispensed;

- (g) approximate number of days supplied;
- (h) patient name;
- (i) patient address;
- (j) patient date of birth;
- (k) prescriber DEA registration number;
- (l) date prescription issued by prescriber.

(2) A dispenser shall submit the information required pursuant to subsection (B)(1) in accordance with transmission methods and protocols provided in the "ASAP Telecommunications Format for Controlled Substances, May 1995 Version", developed by the American Society for Automation in Pharmacy, and frequency established by drug control, but shall report at least every thirty days, between the 1st and the 15th of the month following the month the prescription was dispensed.

(3) Drug control may issue a waiver to a dispenser who is unable to submit prescription information by electronic means. The waiver may permit the dispenser to submit prescription information by paper form or other means if all information required pursuant to subsection (B)(1) is submitted in this alternative format.

**SECTION 44-53-1650.** Confidentiality; persons to whom data may be released.

(A) Prescription information submitted to drug control is confidential and not subject to public disclosure under the Freedom of Information Act or any other provision of law, except as provided in subsections (C) and (D).

(B) Drug control shall maintain procedures to ensure that the privacy and confidentiality of patients and patient information collected, recorded, transmitted, and maintained is not disclosed, except as provided for in subsections (C) and (D).

(C) If there is reasonable cause to believe a violation of law or breach of professional standards may have occurred, drug control shall notify the appropriate law enforcement or professional licensure, certification, or regulatory agency or entity and shall provide prescription information required for an investigation.

(D) Drug control may provide data in the prescription monitoring program to the following persons:

(1) a practitioner or pharmacist who requests information and certifies that the requested information is for the purpose of providing medical or pharmaceutical treatment to a bona fide patient;

(2) an individual who requests the individual's own prescription monitoring information in accordance with procedures established pursuant to state law;

(3) a designated representative of the South Carolina Department of Labor, Licensing and Regulation responsible for the licensure, regulation, or discipline of practitioners, pharmacists, or other persons authorized to prescribe, administer, or dispense controlled substances and who is involved in a bona fide specific investigation involving a designated person;

(4) a local, state, or federal law enforcement or prosecutorial official engaged in the administration, investigation, or enforcement of the laws governing licit drugs and who is involved in a bona fide specific drug related investigation involving a designated person;

(5) the South Carolina Department of Health and Human Services regarding Medicaid program recipients;

(6) a properly convened grand jury pursuant to a subpoena properly issued for the records;

(7) personnel of drug control for purposes of administration and enforcement of this article;

(8) qualified personnel for the purpose of bona fide research or education; however, data elements that would reasonably identify a specific recipient, prescriber or dispenser must be deleted or redacted from such information prior to disclosure. Further, release of the information only may be made pursuant to a

written agreement between qualified personnel and the department in order to ensure compliance with this Subsection.

**SECTION 44-53-1660.** Contract for administration by other State agency or private vendor.

Drug control may contract with another agency of this State or with a private vendor, as necessary, to ensure the effective operation of the prescription monitoring program. A contractor shall comply with the provisions regarding confidentiality of prescription information in Section 44-53-1650 and is subject to the penalties specified in Section 44-53-1680 for unlawful acts.

**SECTION 44-53-1670.** Promulgation of regulations.

Drug control may promulgate regulations setting forth the procedures and methods for implementing this article.

**SECTION 44-53-1680.** Violations and penalties.

(A) A dispenser who knowingly fails to submit prescription monitoring information to drug control as required by this article, or who knowingly submits incorrect prescription information, is guilty of a misdemeanor, and upon conviction, must be fined not more than two thousand dollars or imprisoned not more than two years, or both.

(B) A person or persons authorized to have prescription monitoring information pursuant to this article who knowingly discloses this information in violation of this article is guilty of a felony and, upon conviction, must be fined not more than ten thousand dollars or imprisoned not more than ten years, or both.

(C) A person or persons authorized to have prescription monitoring information pursuant to this article who uses this information in a manner or for a purpose in violation of this article is guilty of a felony and, upon conviction, must be fined not more than ten thousand dollars or imprisoned not more than ten years, or both.

(D) Nothing in this chapter requires a pharmacist or practitioner to obtain information about a patient from the prescription monitoring program. A pharmacist or practitioner does not have a duty and must not be held liable in damages to any person in any civil or derivative criminal or administrative action for injury, death, or loss to person or property on the basis that the pharmacist or practitioner did or did not seek or obtain information from the prescription monitoring program. A pharmacist or practitioner acting in good faith is immune from any civil, criminal, or administrative liability that might otherwise be incurred or imposed for requesting or receiving information from the prescription monitoring program.