

CHAPTER 161

NARCOTICS AND DANGEROUS SUBSTANCES

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161.001 Declaration of intent. The legislature finds that the abuse of narcotics and dangerous substances constitutes a serious problem for society. As a partial solution, these laws regulating mind altering substances have been enacted with penalties. The legislature, recognizing a need for differentiation among those who would violate these laws makes this declaration of legislative intent:

(1) Persons who illicitly traffic commercially in narcotics and dangerous drugs constitute a substantial menace to the public health and safety. The possibility of lengthy terms of imprisonment must exist as a deterrent to trafficking by such persons. Upon conviction for trafficking, such persons should be sentenced in a manner which will deter further trafficking by them, protect the public from their pernicious activities, and restore them to legitimate and socially useful endeavors.

(2) Persons who habitually or professionally engage in commercial trafficking in narcotics or dangerous drugs should, upon conviction, be sentenced to substantial terms of imprisonment to shield the public from the predatory acts. However, persons addicted to or depending on these dangerous substances should, upon conviction, be sentenced in a manner most likely to produce addiction or dependency rehabilitation.

(3) Upon conviction persons who casually use or experiment with narcotics or dangerous drugs should receive special treatment geared toward

rehabilitation. The sentencing of casual users and experimenters should be such as will best induce them to shun further contact with these dangerous substances and to develop acceptable alternatives to drug abuse.

SUBCHAPTER I
NARCOTICS

161.01 Definitions. The following words and phrases, as used in this chapter, shall have the following meanings, unless the context otherwise requires:

(1) "Person" includes any corporation, association, copartnership, or one or more individuals.

(2) "Physician" means a person licensed under ch. 448, when such person is engaged in his profession under circumstances that authorize him under such license then and there to practice by the use of narcotic drugs.

(3) "Dentist" means a person authorized by law to practice dentistry in this state.

(4) "Veterinarian" means a person authorized by law to practice veterinary medicine in this state.

(5) "Manufacturer" means a person who by compounding, mixing, cultivating, growing or other process, produces or prepares narcotic drugs, but does not include an apothecary who compounds narcotic drugs to be sold or dispensed on prescriptions.

(6) "Wholesaler" means a person who supplies narcotic drugs that he himself has not produced nor prepared, on official written orders, but not on prescriptions.

(7) "Apothecary" means a licensed pharmacist as defined by the laws of this state and, where the context so requires, the owner of a store or other place of business where narcotic drugs are compounded or dispensed by a licensed pharmacist; but nothing in this chapter shall be construed as conferring on a person who is not registered nor licensed as a pharmacist any authority, right or privilege that is not granted to him by the pharmacy laws of this state.

(8) "Hospital" means an institution for the care and treatment of the sick and injured, approved by the department of health and social services as proper to be entrusted with the custody of narcotic drugs and the professional use of narcotic drugs under the direction of a physician, dentist or veterinarian.

(9) "Laboratory" means a laboratory approved by the department of health and social services as proper to be entrusted with the custody of narcotic drugs and the use of narcotic drugs for scientific and medical purposes and for purposes of instruction.

(10) "Sale" includes barter, exchange or gift, or offer therefor, and each such transaction made by any person, whether as principal, proprietor, agent, servant or employe.

(12) "Opium" includes morphine, codeine and heroin and any compound, manufacture, salt, derivative, mixture or preparation of opium, but does not include apomorphine or any of its salts.

(13a) "Isonipecaine" means the substance identified chemically as 1-methyl-4-phenylpiperidine-4-carboxylic acid ethyl ester, or any salt thereof by whatever trade name identified.

(14) "Narcotic drugs" means any of the following, whether produced directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or a combination of extraction and chemical synthesis: opium, meperidine, isonipecaine, methadone, methadol, alphaprodine (Nisentil), heptazone, ketobemidone, levorphan and any other drug found by the dangerous substance control council after due notice and opportunity for public hearing to possess addiction or psychological dependency potentialities similar to those drugs listed herein, and proclaimed by the governor to have been so found by the council, and any compound, manufacture, salt, derivative or preparation of the foregoing. The council is authorized to issue necessary rules for carrying out this subsection.

(15) "Federal Narcotic Laws" means the laws of the United States relating to opium, coca leaves and other narcotic drugs.

(16) "Official written order" means an order written on a form provided for that purpose by the United States commissioner of narcotics, under any laws of the United States making provision therefor if such order forms are authorized and required by federal law, and if no such order form is provided, then on an official form provided for that purpose by the department of health and social services.

(17) "Dispense" includes distribute, leave with, give away, dispose of or deliver.

(18) "Registry number" means the number assigned to each person registered under the Federal Narcotic Laws.

161.02 Acts prohibited; evidence; penalties; commitment of addicts. (1) It is unlawful for any person to manufacture, possess, have control of, buy, sell, give away, prescribe, administer, dispense or compound any narcotic drug, except as authorized in this chapter. Any person violating this subsection shall be punished as provided in s. 161.28 (1).

(3) No person shall take or use narcotic drugs habitually or excessively or except in pursuance to a prescription for permitted use as prescribed in this chapter. The unlawful possession of narcotic drugs by a person or of a hypodermic syringe or needle, except when possessed by a diabetic, shall be prima facie evidence of the unlawful use of such drugs. Any person violating this subsection shall be imprisoned not more than 5 years. The judge of the court wherein said person was convicted may, if said person requires treatment, commit him to some appropriate institution under the control of the department of health and social services for treatment not exceeding 5 years.

161.03 License required to manufacture or wholesale. No person shall manufacture, compound, mix, cultivate, grow or by any other process produce or prepare narcotic drugs, and no person as a wholesaler shall supply the same, without having first obtained a license so to do from the pharmacy examining board.

161.04 Qualification for license. (1) No license shall be issued under s. 161.03 until the applicant therefor has furnished proof satisfactory to the pharmacy examining board:

(a) That the applicant is of good moral character or, if the applicant be an association or corporation, that the managing officers are of good moral character.

(b) That the applicant is equipped as to land,

buildings and paraphernalia properly to carry on the business described in his application.

(2) No license shall be granted to any person who has within five years been convicted of a wilful violation of any law of the United States, or of any state, relating to opium, coca leaves or other narcotic drugs, or to any person who is a narcotic drug addict.

(3) The pharmacy examining board may suspend or revoke any license for cause.

161.05 Sale on written orders; use of official written orders; lawful possession; administering narcotics. (1) A duly licensed manufacturer or wholesaler may sell and dispense narcotic drugs to any of the following persons, but only on official written orders:

(a) To a manufacturer, wholesaler or apothecary.

(b) To a physician, dentist or veterinarian.

(c) To a person in charge of a hospital, but only for use by or in that hospital.

(d) To a person in charge of a laboratory, but only for use in that laboratory for scientific and medical purposes.

(2) A duly licensed manufacturer or wholesaler may sell narcotic drugs to any of the following persons:

(a) On a special written order accompanied by a certificate of exemption, as required by the Federal Narcotic Laws, to a person in the employ of the United States government or any state, territorial, district, county, municipal or insular government, purchasing, receiving, possessing or dispensing narcotic drugs by reason of his official duties.

(b) To a master of a ship or a person in charge of any aircraft upon which no physician is regularly employed, or to a physician or surgeon duly licensed in some state, territory or the District of Columbia to practice his profession, or to a retired commissioned medical officer of the United States army, navy or public health service employed upon such ship or aircraft, for the actual medical needs of persons on board such ship or aircraft, when not in port, provided, such narcotic drugs shall be sold to the master of such ship or person in charge of such aircraft or to a physician, surgeon or retired commissioned medical officer of the United States army, navy or public health service employed upon such ship or aircraft only in pursuance of a special order form approved by a commissioned medical officer or acting assistant surgeon of the United States public health service.

(c) To a person in a foreign country if the provisions of the Federal Narcotic Laws are complied with.

(3) An official written order for any narcotic drug shall be signed in duplicate by the person giving said order or by his duly authorized agent. The original shall be presented to the person who sells or dispenses the narcotic drug or drugs named therein. In event of the acceptance of such order by said person, each party to the transaction shall preserve his copy of such order for a period of two years in such a way as to be readily accessible for inspection by any public officer or employe engaged in the enforcement of this chapter. It shall be deemed a compliance with this subsection if the parties to the transaction have complied with the Federal Narcotic Laws, respecting the requirements governing the use of order forms.

(4) Possession of or control of narcotic drugs obtained as authorized by this section shall be lawful if in the regular course of business, occupation, profession, employment or duty of the possessor.

(5) A person in charge of a hospital or of a laboratory, or in the employ of this state or of any other state, or of any political subdivision thereof, or a master of a ship or a person in charge of any aircraft upon which no physician is regularly employed, or a physician or surgeon duly licensed in some state, territory or the District of Columbia, to practice his profession or a retired commissioned medical officer of the United States army, navy or public health service employed upon such ship or aircraft, who obtains narcotic drugs under the provisions of this section or otherwise, shall not administer, nor dispense, nor otherwise use such drugs, within this state, except within the scope of his employment or official duty, and then only for scientific or medicinal purposes and subject to the provisions of this chapter.

161.06 Sales by apothecaries. (1) (a) An apothecary, in good faith, may sell and dispense narcotic drugs to any person upon a written prescription of a physician, dentist or veterinarian, dated and signed by the person prescribing on the day when issued and bearing the full name and address of the patient for whom, or of the owner of the animal for which, the drug is dispensed, and the full name, address and registry number under the federal narcotic laws of the person prescribing, if he is required by those laws to be so registered. If the prescription be for an animal, it shall state the species of animal for which the drug is prescribed. The person filling the prescription shall write the date of filling and his own signature on the face of the prescription. The prescription shall be retained on file by the proprietor of the pharmacy in which it is filled for a period of 2 years, so as to be readily accessible for inspection by any pub-

lic officer or employe engaged in the enforcement of this chapter. The prescription shall not be refilled.

(b) In lieu of a written prescription for such narcotic drugs or compounds of a narcotic drug found to possess relatively little or no addiction liability by the U. S. commissioner of narcotics pursuant to the federal narcotics laws, the sale, dispensing or distribution may be made by a pharmacist to a consumer upon oral prescription of a physician, dentist or veterinarian. Such oral prescription shall be promptly reduced to writing by the pharmacist and such writing filed and preserved in the manner and containing the same information as required for a written prescription under par. (a). An oral prescription shall not be refilled. Sections 161.09 (3) and (5), 161.10 (2) and 161.17 shall apply to all sales upon oral prescriptions.

(c) The provisions of this subsection shall apply to paregoric.

(2) The legal owner of any stock of narcotic drugs in a pharmacy, upon discontinuance of dealing in said drugs, may sell said stock to a manufacturer, wholesaler or apothecary, but only on an official written order.

(3) An apothecary, only upon an official written order, may sell to a physician, dentist or veterinarian, in quantities not exceeding one ounce at any one time, aqueous or oleaginous solutions of which the content of narcotic drugs does not exceed a proportion greater than 20 per cent of the complete solution, to be used for medical purposes.

161.07 Professional use of narcotic drugs.

(1) **PHYSICIANS AND DENTISTS.** A physician or a dentist, in good faith and in the course of his professional practice only, may prescribe, administer and dispense narcotic drugs, or he may cause the same to be administered by a nurse or intern under his direction and supervision.

(2) **VETERINARIANS.** A veterinarian, in good faith and in the course of his professional practice only, and not for use by a human being, may prescribe, administer and dispense narcotic drugs, and he may cause them to be administered by an assistant or orderly under his direction and supervision.

(3) **RETURN OF UNUSED DRUGS.** Any person who has obtained from a physician, dentist or veterinarian any narcotic drug for administration to a patient during the absence of such physician, dentist or veterinarian, shall return to such physician, dentist or veterinarian any unused portion of such drug, when it is no longer required by the patient.

161.08 Preparations exempted. Except as otherwise in this chapter specifically provided, this chapter shall not apply to the following cases:

(1) Administering, dispensing or selling at retail of any medicinal preparation exempted from the other provisions of this chapter by rules of the state board of pharmacy.

(2) The exemption authorized by this section shall be subject to the following conditions:

(a) That the medicinal preparation administered, dispensed or sold, shall contain, in addition to the narcotic drug in it, some drug or drugs conferring upon it medicinal qualities other than those possessed by the narcotic drug alone; and

(b) That such preparation shall be administered, dispensed and sold in good faith as a medicine, and not for the purpose of evading the provisions of this chapter.

(c) That such preparation shall be sold at retail only by a registered pharmacist when sold in a retail establishment.

(d) That such preparation when sold in a retail establishment shall bear the name and address of such establishment on the immediate container of said preparation.

(e) That any person purchasing such preparation shall at the time of purchase present to the seller his correct name and address. The seller shall then record said name and address and the name and quantity of the product sold. The purchaser and the seller shall sign the record of this transaction. The giving of a false name or false address by the purchaser shall be prima facie evidence of obtaining a narcotic drug by fraud and deceit.

(f) That no person shall purchase more than 4 ounces of such preparation within a 48-hour period without the authorization of a physician, dentist or veterinarian nor may more than 4 ounces be in the possession of any person other than a physician, dentist, veterinarian or pharmacist, at any time without the authorization of a physician, dentist or veterinarian.

(3) Nothing in this section shall be construed to limit the quantity of codeine or of any of its salts that may be prescribed, administered, dispensed or sold, to any person or for the use of any person or animal, when it is prescribed, administered, dispensed or sold, in compliance with the general provisions of this chapter.

161.09 Records required. (1) **PHYSICIANS, DENTISTS, VETERINARIANS AND OTHER AUTHORIZED PERSONS.** Every physician, dentist, veterinarian or other person who is authorized to administer or professionally use narcotic drugs, shall keep a record of such drugs re-

ceived by him, and a record of all such drugs administered, dispensed or professionally used by him otherwise than by prescription. It shall, however, be deemed a sufficient compliance with this subsection if any such person using small quantities of solutions or other preparations of such drugs for local applications, shall keep a record of the quantity, character and potency of such solutions or other preparations purchased or made up by him, and of the dates when purchased or made up, without keeping a record of the amount of such solution or other preparation applied by him to individual patients, and no record need be kept of narcotic drugs administered, dispensed or professionally used in the treatment of any one patient, when the amount administered, dispensed or professionally used for that purpose does not exceed in any 48 consecutive hours, (a) 4 grains of opium, or (b) one-half of a grain of morphine or of any of its salts, or (c) 2 grains of codeine or of any of its salts, or (d) one-fourth of a grain of heroin or of any of its salts, or (e) a quantity of any other narcotic drug or any combination of narcotic drugs that does not exceed in pharmacologic potency any one of the drugs named above in the quantity stated.

(2) **MANUFACTURERS AND WHOLESALERS.** Manufacturers and wholesalers shall keep records of all narcotic drugs compounded, mixed, cultivated, grown or by any other process produced or prepared, and of all narcotic drugs received and disposed of by them, in accordance with the provisions of subsection (5) of this section.

(3) **APOTHECARIES.** Apothecaries shall keep records of all narcotic drugs received and disposed of by them, in accordance with the provisions of subsection (5) of this section.

(4) **VENDORS OF EXEMPTED PREPARATIONS.** Every person who purchases for resale, or who sells narcotic drug preparations exempted by section 161.08, shall keep a record showing the quantities and kinds thereof received and sold, or disposed of otherwise, in accordance with the provisions of subsection (5) of this section.

(5) **FORM AND PRESERVATION OF RECORDS.** The form of records shall be prescribed by the pharmacy examining board. The record of narcotic drugs received shall in every case show the date of receipt, the name and address of the person from whom received, and the kind and quantity of drugs received; the kind and quantity of narcotic drugs produced or removed from process of manufacture, and the date of such production or removal from process of manufacture; and the record shall in every case show the proportion of morphine contained in or producible from crude opium. The record of

all narcotic drugs sold, administered, dispensed or otherwise disposed of, shall show the date of selling, administering or dispensing, the name and address of the person to whom, or for whose use, or the owner and species of animal for which the drugs were sold, administered or dispensed, and the kind and quantity of drugs. Every such record shall be kept for a period of 2 years from the date of the transaction recorded. The keeping of a record required by or under the federal narcotic laws, containing substantially the same information as is specified above, shall constitute compliance with this section, except that every such record shall contain a detailed list of narcotic drugs lost, destroyed or stolen, if any, the kind and quantity of such drugs, and the date of the discovery of such loss, destruction or theft.

Note: This section is printed as amended by Chap. 384, laws of 1969. Earlier amendments by Chaps. 141 and 366 are not shown. See the printing rule stated in the Preface section 6 (c).

161.10 Labels. (1) Whenever a manufacturer sells or dispenses a narcotic drug, and whenever a wholesaler sells or dispenses a narcotic drug in a package prepared by him, he shall securely affix to each package in which that drug is contained a label showing in legible English the name and address of the vendor and the quantity, kind and form of narcotic drug contained therein. No person, except an apothecary for the purpose of filling a prescription under this chapter shall alter, deface or remove any label so affixed.

(2) Whenever an apothecary sells or dispenses any narcotic drug on a prescription issued by a physician, dentist or veterinarian, he shall affix to the container in which such drug is sold or dispensed, a label showing his own name, address and registry number or the name, address and registry number of the apothecary for whom he is lawfully acting; the name and address of the patient or, if the patient is an animal, the name and address of the owner of the animal and the species of the animal; the name, address and registry number of the physician, dentist or veterinarian, by whom the prescription was written; and such directions as may be stated on the prescription. No person shall alter, deface or remove any label so affixed.

161.11 Authorized possession of narcotics by individuals. A person to whom or for whose use any narcotic drug has been prescribed, sold or dispensed, by a physician, dentist, apothecary or other person authorized under the provisions of section 161.05, and the owner of any animal for which any such drug has been prescribed, sold or dispensed, by a veterinarian, may lawfully possess it only in the

container in which it was delivered to him by the person selling or dispensing the same.

161.12 Persons exempted. The provisions of this chapter restricting the possessing and having control of narcotic drugs shall not apply to common carriers or to warehousemen, while engaged in lawfully transporting or storing such drugs, or to any employe of the same acting within the scope of his employment; or to public officers or their employes in the performance of their official duties requiring possession or control of narcotic drugs; or to temporary incidental possession by employes or agents of persons lawfully entitled to possession, or by persons whose possession is for the purpose of aiding public officers in performing their official duties.

161.13 Common nuisances. Any store, shop, warehouse, dwelling house, building, vehicle, boat, aircraft or any place whatever, which is resorted to by narcotic drug addicts for the purpose of using narcotic drugs or which is used for the illegal keeping or selling of the same, shall be deemed a common nuisance. No person shall keep or maintain such a common nuisance.

161.14 Narcotics when delivered to state. All narcotic drugs, the lawful possession of which is not established or the title to which cannot be ascertained, which have come into the custody of a peace officer, shall be forfeited, and disposed of as follows:

(1) Except as otherwise provided in this section, the court having jurisdiction shall order such narcotic drugs forfeited and destroyed. A record of the place where said drugs were seized, of the kinds and quantities of drugs so destroyed, and of the time, place and manner of destruction, shall be kept, and a return under oath, reporting said destruction, shall be made to the court and to the U.S. commissioner of narcotics by the officer who destroys them.

(2) Upon written application by the department of justice, the court by whom the forfeiture of narcotic or dangerous drugs has been decreed may order the delivery of any of them to the department of justice, for distribution or destruction, as hereinafter provided.

Note: The text of sub. (2) as printed incorporates the changes made by Chapters 141, 255 and 384, laws of 1969

(3) Upon application by any hospital within this state, not operated for private gain, the department of justice may deliver any narcotic drugs that have come into its custody having recognized medicinal value by authority of this section to the applicant for medicinal use. The department of justice may from time to time deliver excess stocks of such narcotic drugs to

the U.S. commissioner of narcotics, or may destroy the same.

(4) The department of justice shall keep a full and complete record of all drugs received and of all drugs disposed of, showing the exact kinds, quantities and forms of such drugs; the persons from whom received and to whom delivered; by whose authority received, delivered and destroyed; and the dates of the receipts, disposal or destruction, which record shall be open to inspection by all federal or state officers charged with the enforcement of federal and state narcotic laws.

161.15 Notice of conviction sent to licensing board. On the conviction of any person for violating this chapter, a copy of the judgment and sentence, and of the opinion of the court if any opinion is filed, shall be sent by the clerk of the court to the board or officer by whom the convicted defendant has been licensed or registered to practice his profession or to carry on his business. On the conviction of any such person, the court may suspend or revoke the license or registration of the convicted defendant to practice his profession or to carry on his business. On the application of any person whose license or registration has been suspended or revoked, and upon proper showing and for good cause, said board or officer may reinstate such license or registration. This section shall not apply in the case of any convictions to which s. 448.18 (3) and (4) applies, but in such case the conviction, the person and the license shall be subject to said subsections.

161.16 Records confidential. Prescriptions, orders and records required by this chapter, and stocks of narcotic drugs, shall be open for inspection only to federal, state, county and municipal officers, whose duty it is to enforce the laws of this state or of the United States relating to narcotic drugs. No officer having knowledge by virtue of his office of any such prescription, order or record shall divulge such knowledge, except in connection with a prosecution or proceeding in court or before a licensing or registration board or officer, to which prosecution or proceeding the person to whom such prescriptions, orders or records relate is a party.

161.17 Fraud or deceit. (1) No person shall obtain or attempt to obtain a narcotic drug, or procure or attempt to procure the administration of a narcotic drug, (a) by fraud, deceit, misrepresentation or subterfuge; or (b) by the forgery or alteration of a prescription or of any written order; or (c) by the concealment

of a material fact; or (d) by the use of a false name or the giving of a false address.

(2) Information communicated to a physician in an effort unlawfully to procure a narcotic drug, or unlawfully to procure the administration of any such drug, shall not be deemed a privileged communication.

(3) No person shall wilfully make a false statement in any prescription, order, report or record, required by this chapter.

(4) No person shall, for the purpose of obtaining a narcotic drug, falsely assume the title of, or represent himself to be, a manufacturer, wholesaler, apothecary, physician, dentist, veterinarian or other authorized person.

(5) No person shall make or utter any false or forged prescription or false or forged written order.

(6) No person shall affix any false or forged label to a package or receptacle containing narcotic drugs.

(7) The provisions of this section shall apply to all transactions relating to narcotic drugs under the provisions of section 161.08, in the same way as they apply to transactions under all other sections.

161.18 Exceptions and exemptions not required to be negated. In any complaint, information or indictment, and in any action or proceeding brought for the enforcement of any provision of this chapter, it shall not be necessary to negative any exception, excuse, proviso or exemption, contained in this chapter and the burden of proof of any such exception, excuse, proviso or exemption, shall be upon the defendant.

161.19 Enforcement and cooperation. (1) The department of justice and the pharmacy examining board, their officers, agents, inspectors and representatives, all peace officers within the state, and all district attorneys, shall enforce this chapter, except those provisions specifically delegated, and cooperate with the dangerous substance control council and all agencies charged with the enforcement of the laws of the United States, of this state and of all other states, relating to narcotic drugs.

Note: Sub (1) is printed as amended by Chap. 384, laws of 1969. Amendments by Chaps. 141, 336, 366 and 392, laws of 1969, are not shown. See the printing rule stated in the Preface, section 6 (c)

(2) The clerks of all courts having criminal jurisdiction shall make and transmit to the crime laboratory division in the department of justice, on January 1 and July 1 of each year upon forms furnished by the department of justice, reports of the number of persons convicted (upon trial or by plea of guilty or by plea of nolo contendere) of violations of chs. 161 and 450.

161.20 Penalties. Any person violating this chapter, except s. 161.02, may be fined not more than \$1,000, or imprisoned not more than 3 years [or] by both.

161.21 Prosecution under Federal Narcotic Laws. No person shall be prosecuted for a violation of any provision of this chapter if such person has been acquitted or convicted under the Federal Narcotic Laws of the same act or omission which, it is alleged, constitutes a violation of this chapter.

161.23 Interpretation. This chapter shall be so interpreted and construed as to make uniform the laws of those states which enact it.

161.24 Construction. Nothing in this chapter shall authorize the sale, dispensing, prescription, administration or use of drugs of any kind by any person or under any circumstances contrary to any other provision of law; nor shall anything in this chapter be construed to prohibit physicians, dentists, or veterinarians from compounding or mixing narcotic drugs in good faith for dispensing or administering in the course of their professional practice.

161.25 Name of act. Sections 161.01 to 161.25 are the Uniform Narcotic Drug Act.

161.26 Advertising narcotics. No physician, dentist or veterinarian and no druggist or pharmacist shall solicit by advertisement or otherwise the applications for prescriptions for narcotic drugs, nor shall he advertise any treatment, the principal element of which consists in administering or using a narcotic drug, except that a wholesale druggist or manufacturing pharmacist or sanitarium may advertise in publications intended for circulation among the medical profession and drug trade generally.

161.27 Possession of opium pipes. The possession or sale of smoking preparations of hemp or loco weed, of a pipe used for smoking opium, or the usual attachments thereto or other contrivances used for smoking opium, is unlawful and such things shall be seized and destroyed by a peace officer.

161.271 Keeping or leasing place to smoke opium. Any person who opens or maintains, to be resorted to by other persons, any place where opium or any of its preparations is sold or given away to be smoked at such place, and any person who, at such place, sells or gives away any opium or any of its preparations to be there smoked or otherwise used and any person who visits or resorts to any such place for the purpose of smoking opium or any

of its preparations, and any person who shall knowingly lease or let to another any house or other building, or any room therein, for the purpose of use as a place in which opium or any of its preparations are to be smoked or otherwise used, and any person who shall knowingly lease his premises or any part thereof to be used for such purpose shall be punished by imprisonment in the county jail not more than one year or by fine not exceeding \$500.

161.28 Penalties; sentence; probation and parole; evidence and procedure on prior convictions.

(1) Any person who violates s. 161.02 (1) may be imprisoned not less than 2 nor more than 10 years. For a 2nd offense or if, in case of a first conviction of violating s. 161.02 (1) such person had previously been convicted of any violation of the laws of the United States or of any state, territory or district thereof, relating to narcotic drugs, such person may be imprisoned not less than 5 nor more than 10 years. For a 3rd or subsequent offense, or if such person had previously been convicted 2 or more times in the aggregate of any violation of the laws of the United States or of any state, territory or district thereof, relating to narcotic drugs, such person may be imprisoned not less than 10 nor more than 20 years. Except for a first offense sentence shall not be withheld or its execution stayed pursuant to ch. 57, and parole shall not be granted until the minimum imprisonment provided for the offense has been served, less good time allowances as provided in ss. 53.11 and 53.12.

(2) Any person making an illegal sale of narcotic drugs to any person under the age of 21 years may be imprisoned not less than 3 years nor more than 25 years. For a 2nd conviction for such offense, such person may be imprisoned for not less than 20 years nor more than life. For a 3rd conviction for such offense such person may be imprisoned for life. Except for a first offense, sentence shall not be withheld or its execution stayed pursuant to ch. 57, and parole shall not be granted until the minimum imprisonment provided for the offense has been served, less good time allowances as provided in ss. 53.11 and 53.12.

(3) The procedure for charging and determining prior convictions under this section shall be as provided in s. 973.12.

Note: Sub. (3) is printed as amended by Chap. 255, section 65, laws of 1969

161.29 Forfeiture of vehicle or aircraft.

Any vehicle as defined under s. 939.22 (44) or aircraft, used or employed to aid in or to facilitate the unlawful sale or transportation of narcotics or the transportation of any person

wrongfully in possession of narcotics in or about this state or into or out of this state, may be seized by any peace officer and shall be forfeited to the state in an action brought by the attorney general or the district attorney of the county where the vehicle or aircraft is subject to forfeiture and such action shall be in the name of and on behalf of the state in accordance with ch. 288. Lienholders and owners shall have the same rights as provided in s. 139.40.

**SUBCHAPTER II
DANGEROUS SUBSTANCES**

161.30 Dangerous drugs. (1) As used in this section unless the context requires otherwise:

(a) "Dangerous drug" means any of the following:

1. Any drug or drug-containing preparation which is subject to the provisions of s. 303 (c) and 503 (b) of the federal food, drug and cosmetic act, as amended.

2. Any preparation which contains barbiturates, sulfonamides, thyroid, cinchophen, neocinchophen, aminopyrine, amphetamine, desoxyephedrine, diethylstilbestrol, ergot or any salts, derivatives, compounds, combinations or mixtures thereof except wherein one or more of the said drugs are in those combinations which by federal law may be dispensed without the prescription of a physician.

3. "Lysergic Acid," "LSD" (lysergic acid diethylamide), "DMT" (N-N-Dimethyltryptamine), peyote, mescaline, psilocyn or psilocybin, or any salts, derivatives, compounds, combinations or mixtures thereof and any substances which are chemically identical with such substances.

4. Marijuana, coca leaves, cocaine or ecgonine.

5. Any other drug found by the dangerous substance control council, after due notice and opportunity for public hearing, to possess psychological or physical dependency potentialities similar to those drugs listed herein, and proclaimed by the governor to have been so found by the council, and any compound, manufacture, salt, derivative or preparation of the foregoing. The council is authorized to issue necessary rules for carrying out this subsection.

(b) "Delivery" means selling, dispensing, giving away or supplying in any other manner.

(c) "Patient" means the individual for whom dangerous drugs are prescribed or to whom dangerous drugs are administered.

(d) "Person" includes an individual, corporation, partnership or association.

(e) "Practitioner" means a person licensed by law to prescribe and administer dangerous drugs.

(f) "Pharmacist" means a person duly registered with the state examining board as a compounding, dispenser and supplier of drugs.

(g) "Prescription" means a written order (or an oral order later reduced to writing) by a practitioner for a dangerous drug for a particular patient, which specifies the date of its issue, the name and address of such practitioner, the name and address of the patient, the name and quantity of the dangerous drug prescribed, directions for use of such drug and in case of a written order the signature of such practitioner.

(h) "Manufacturer" means persons other than pharmacists who manufacture dangerous drugs, and includes persons who prepare such drugs in dosage forms by mixing, compounding, encapsulating, entableting, or other process.

(i) "Wholesaler" means persons engaged in the business of distributing dangerous drugs to persons included in any of the classes named in sub. (8).

(j) "Warehouseman" means persons who store dangerous drugs for others and who have no control over the disposition of such dangerous drugs except for the purpose of such storage.

(k) "Supplier" means any unauthorized person who manufactures, sells or gives any dangerous drug defined under this section for the use of any person for whom such drug has not been prescribed by a practitioner or who in any way delivers such contraband material to anyone he intends to induce to become a user.

(l) "Sale" includes barter, exchange or gift, or offer therefor, and each such transaction made by any person, whether as principal, proprietor, agent, servant or employe.

(m) "Marijuana" means all parts of the plant *Cannabis Sativa L.*, whether growing or not; the seeds thereof, the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds, or resin; or any material chemically similar to biologically active substances contained in *Cannabis Sativa L.*, whether produced directly or indirectly by extraction from substances of natural origin, or indirectly by means of chemical synthesis, or a combination of extraction and chemical synthesis; but shall not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil or cake, or the sterilized seed of such plant which is incapable of germination.

(n) "Coca leaves" includes cocaine and any compound, manufacture, salt, derivative, mixture or preparation of coca leaves, except derivatives of coca leaves which do not contain cocaine, ecgonine or substances from which cocaine or ecgonine may be synthesized or made.

(2) No person except a practitioner shall deliver any dangerous drug except upon the prescription of a practitioner. An oral prescription, by telephone or otherwise, shall be promptly reduced to writing and filed by the pharmacist.

(3) No person, except a registered pharmacist or a practitioner shall prepare, compound, dispense or prepare for delivery for a patient any dangerous drug.

(4) No dangerous drug shall be delivered unless there is affixed to the immediate container a label disclosing:

(a) The name and address of the owner of the establishment from which such drug was delivered.

(b) The date on which the prescription for such drug was filled.

(c) The number of such prescription as filed in the prescription file of the pharmacist who filled such prescription.

(d) The name of the practitioner who prescribed such drug.

(e) The name and address of the patient.

(f) Directions for use of the drug as contained in the prescription.

(5) No prescription for a dangerous drug shall be refilled except as designated on such prescription, and unless accurate record of such refilling is entered on such prescription showing the date and amount thereof. No oral or written prescription shall be refilled unless the provisions of sub. (2) have been first complied with and unless either written or oral authority has been given by the prescriber.

(6) In the event of any sale in bankruptcy, at public auction or any other sale except in the normal course of business, the seller shall give written notice of such sale to the examining board at least one week prior to the date of sale and a complete and accurate report must be made in writing to the examining board by the seller within 10 days after such sale, showing the name and address of the parties to whom any narcotics, exempt narcotics or dangerous drugs have been sold together with an itemized inventory thereof. This does not apply to the bona fide sale of a pharmacy as a business, if the parties first notify the examining board of such impending sale.

(7) It shall be unlawful for any person to have any dangerous drug in his possession unless such

drug was obtained in compliance with the provisions hereof.

(8) Subsections (2), (3), (4) and (7) shall not be applicable to the wholesale delivery of dangerous drugs to persons included in any of the classes hereinafter named; nor to the agents or employes of such persons for use in the usual course of their business or practice or in the performance of their official duties, as the case may be; nor to the possession of dangerous drugs by such persons or their agents or employes for such use:

(a) Pharmacists.

(b) Practitioners.

(c) Persons who procure dangerous drugs for the purpose of lawful research, teaching or testing and not for resale.

(d) Hospitals and other institutions which procure dangerous drugs for lawful administration by practitioners.

(e) Officers or employes of the federal government.

(f) Manufacturers and wholesalers.

(9) (a) No person shall obtain or attempt to obtain a dangerous drug, or procure or attempt to procure the administration of a dangerous drug by fraud, deceit, wilful misrepresentation or subterfuge; or by the forgery or alteration of a prescription or of any written order; or by the wilful concealment of a material fact; or by the use of a false name or the giving of a false address.

(b) Information communicated to a physician in an effort unlawfully to procure a dangerous drug, or unlawfully to procure the administration of any such drug, shall not be deemed a privileged communication.

(c) No person shall wilfully make a false statement in any prescription, order, report or record required by this section.

(d) No person shall, for the purpose of obtaining a dangerous drug, falsely assume the title of, or represent himself to be, a licensed drug manufacturer, a licensed drug wholesaler, pharmacist, physician, dentist, veterinarian or other authorized practitioner.

(e) No person shall make or utter any false or forged prescription or false or forged written order.

(f) No person shall wilfully affix any false or forged label to a package or receptacle containing dangerous drugs.

(11) The pharmacy examining board is authorized to promulgate necessary rules for the administration of this section. The department of justice and the pharmacy examining board each shall have authority to promulgate necessary rules for the enforcement of this section.

The department and the examining board shall be responsible for the enforcement of this section.

(11m) This section does not apply to the non-drug-use of peyote and mescaline in the bona fide religious ceremonies of the Native American church.

(12) (a) Any person who violates this section by illegally using or possessing marijuana, may, upon a first conviction, be imprisoned in the county jail for not more than one year or fined not more than \$500 or both.

(b) Any person who violates this section by illegally using or possessing any dangerous drug except marijuana under this section may, upon a first conviction, be imprisoned not more than one year or fined not more than \$500 or both.

(d) Any person who is convicted of illegal possession with intent to sell, sale, furnishing or transportation of any dangerous drug defined under this section may be imprisoned not more than 5 years or fined not more than \$5,000 or both. For a 2nd conviction of such offense, such person may be fined not more than \$5,000 or imprisoned not more than 10 years or both.

(e) Whoever, with intent that a violation of this section be committed, advises, induces or encourages directly or by any other means, another to commit a violation of this section may be fined not more than \$2,500 or imprisoned not more than 5 years or both.

(f) Any person making an illegal sale of dangerous drugs to any person under the age of 21 years shall be imprisoned not more than 15 years. For a 2nd conviction of such offense, such person may be imprisoned for not less than 30 years nor more than life. For a 3rd conviction for such offense such person shall be imprisoned for life. Except for a first offense, sentence shall not be withheld or its execution stayed pursuant to ch. 57, and parole shall not be granted until the minimum imprisonment provided for the offense has been served, less good time allowances as provided in ss. 53.11 and 53.12.

(g) Any person who violates par. (a) or (b) may for a 2nd or subsequent conviction be imprisoned not more than 2 years or fined not more than \$1,000 or both.

(h) For the purpose of this section a previous conviction of any of the laws of the United States or of any state, territory or district thereof, relating to the same or a similar offense involving the illegal possession, use or sale of narcotic drugs, dangerous drugs or marijuana shall be a previous conviction under this section.

(i) Whenever any person who has not previously been convicted of any offense under this chapter or under any statute of the United States or of any other state relating to dangerous drugs

or narcotics, pleads guilty to or is found guilty of possession or use or gift of marijuana under this section the court may, without entering judgment and with the consent of such person, defer further proceedings and place him on probation under ch. 57. Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed to sentence the defendant. Upon fulfillment of the terms and conditions, the court shall discharge such person and dismiss the proceedings against him. Discharge and dismissal under this subsection shall be without court adjudication of guilt and shall not be deemed a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a felony or misdemeanor. Discharge and dismissal under this subsection may occur only once with respect to any person.

Note: Sub (12) is printed from Chap. 384, laws of 1969, although the act did not say that it was replacing the old 151.07 (12).

(13) In any complaint, information or indictment, and in any action or proceeding brought for the enforcement of any provision of this section, it shall not be necessary to negative any exception, excuse, proviso or exemption, contained in this section and the burden of proof of any such exception, excuse, proviso or exemption, shall be upon the defendant.

Note: Chap. 336, laws of 1969, renumbered 151.07 to be 450.07. Chap. 384, laws of 1969, renumbered 151.07 to be 161.30. It is here printed as amended by both Chaps. 336 and 384.

161.31 Exemption from prosecution. (1) No person who voluntarily surrenders to law enforcement authorities any narcotics or dangerous drugs, otherwise illegally possessed under this chapter, shall be subject to prosecution under this chapter for such illegal possession.

(2) No surrender of narcotics or dangerous drugs shall be deemed to have been made voluntarily under this section when tender thereof is made to law enforcement officers:

(a) Actively seeking evidence of violation of this chapter.

(b) Actively seeking to apprehend any person alleged to have violated this chapter.

161.32 Research permits. Renewable permits for research on specified narcotics and dangerous drugs, issuable for 6-months periods, may be granted to any responsible person by the department of justice with the advice of the dangerous substances control council. Such permits shall be granted under rules adopted by the department of justice. Possession and use of narcotics and dangerous drugs in accordance with terms of the permit shall be deemed legal.

161.35 Regulation of model airplane glue. (1) **DEFINITION.** "Airplane glue" means any glue, adhesive cement, mucilage, plastic cement or any similar substance used for building model airplanes containing one or more of the following volatile substances: acetone, benzene, butyl alcohol, cyclohexanone, ethyl acetate, ethyl alcohol, ethylene dichloride, hexane, isopropyl alcohol, methyl alcohol, methyl cellosolve, acetate, methyl ethyl ketone, methyl isobutyl tetone, pentachlorophenol, petroleum ether, trichlorethylene, tricresyl phosphate, toluene, toluol, or any other chemical capable of producing intoxication when inhaled.

(2) **SALE.** No person shall sell airplane glue to any person under 16 years of age.

(3) **COMMERCIAL DISPLAY.** No person shall publicly exhibit or display airplane glue except in a locked case.

(4) **PENALTIES.** Any person violating this section may be fined not less than \$10 nor more than \$100 or imprisoned not more than 30 days or both. Each day that each violation continues shall be considered a separate offense.

161.45 Forfeiture of vehicle or aircraft. Any vehicle, as defined in s. 939.22 (44), which was with the knowledge of the owner intentionally used or employed to aid in or to facilitate the unlawful sale or transportation of narcotics or a dangerous drug, when the possession or use of such a drug is punishable as a felony pursuant to this chapter, in or about this state or in or out of this state may be seized by any peace officer and shall be forfeited to the state in an action brought by the attorney general or the district attorney of the county where the vehicle or aircraft is subject to forfeiture and such action shall be in the name of and on behalf of the state in accordance with ch. 288. Lienholders and owners shall have the same rights as provided in s. 139.40.

SUBCHAPTER III HEALTH PROBLEMS

161.50 Definitions. In this subchapter:

(1) "Critical health problems education program" means a systematic and integrated program designed to provide appropriate learning experiences based on scientific knowledge of the human organism as it functions within its environment and designed to favorably influence the health, understanding, attitudes and practices of the individual child which will enable him to adapt to changing health problems of our society. The program shall be designed to educate youth with regard to critical health problems and shall include, but not be limited to, the following topics as the basis for comprehensive

education curricula in all elementary and secondary schools: drugs, narcotics, alcohol, tobacco, mental health and related health and safety topics.

(2) "Superintendent" means the state superintendent of public instruction.

161.51 Education program. A critical health problems education program is created in the department of public instruction. The superintendent is authorized to promote, support and conduct programs to carry out the purposes of this act. These programs may include, but not be limited to:

(1) Establishing guidelines to help local school districts develop comprehensive health education programs.

(2) Establishing special inservice programs to provide professional preparation in health education for teachers throughout the state.

(3) Providing leadership for institutions of higher education to develop and extend curricula in health education for professional preparation in both inservice and preservice programs.

(4) Developing cooperative programs between school districts and institutions of higher education whereby the appropriate health personnel of such institutions would be available to guide the continuing professional preparation of teachers and the development of curricula for local programs.

(5) Assisting in the development of plans and procedures for the evaluation of health education curricula.

161.52 Advisory panel. (1) The department of public instruction may appoint an advisory committee from universities and colleges, law enforcement, the various fields of education, the voluntary health agencies, the department of health and social services, the professional health associations and other groups or agencies it deems appropriate to advise it on the implementation of this act, including teachers, administrators and local school boards.

(2) The department of public instruction shall cooperate with agencies of the federal government and receive and use federal funds for the purposes of this act.

161.54 Annual report. The superintendent shall report in January of each year to the legislature:

(1) As to the scope and nature of programs undertaken under this subchapter.

(2) As to the degree and nature of cooperation being maintained with other state departments and local agencies.

(3) As to recommendations of the superintendent to improve such programs and cooperation.

161.60 Drug abuse control commission; powers and duties. The drug abuse control commission shall be the primary state authority to apply for and to receive funds from the United States government, gifts, donations and bequests, for the purpose of combating drug abuses, and to distribute such funds to state and local agencies for approved programs.

(1) The commission shall:

(a) Consider all questions and matters relating to drug abuse prevention.

(b) Coordinate and review state department and agency efforts to prevent and control drug abuse and make recommendations to such departments and agencies.

(c) Deliver a biennial report in January of each odd-numbered year to the governor and the legislature reviewing state activities in the area of drug abuse prevention and control and making recommendations for further legislation.

(2) The commission may:

(a) Determine the effectiveness of existing state drug abuse prevention and control programs and recommend new or improved programming.

(b) Make public reports to educate and inform the people as to the dangers and problems of drug abuse, together with recommended measures to combat drug abuse.

(c) Define responsibility among state agencies for various drug abuse prevention and control programs and direct cooperation between state departments and agencies.

161.61 Definitions. In ss. 161.60 to 161.64:

(1) "Drug dependence" means a condition arising from the periodic or continuous use of a drug which may result in psychic or physical dependence which would affect or potentially affect the public health, safety or welfare.

(2) "Drug abuse" means the use of a drug in such a manner as to endanger the public health, safety or welfare.

(3) "Secretary" means the secretary of health and social services.

(4) "Drug" means a substance included in the definitions under ss. 161.01 (14) and 161.30.

161.62 Drug dependence program. A drug dependence and drug abuse program is created within the department of health and social services. The secretary is authorized to develop and carry out programs concerned with education about and prevention of drug dependence and drug abuse, and programs con-

cerned with treatment and rehabilitation of drug dependent persons and persons who abuse drugs. The secretary shall appoint a drug dependence program coordinator to handle liaison with other departments and agencies, including the drug abuse control commission. These programs may include, but shall not be limited to:

(1) Education regarding use of drugs, and the prevention of drug dependence and drug abuse.

(2) Diagnosis, treatment and rehabilitation of patients who are drug dependent persons or persons who abuse drugs.

(3) Development of standards and provision of consultation for local drug dependence and drug abuse programs.

(4) Evaluation of programs conducted pursuant to the authority of this subsection as to their effectiveness and relationship to the public health, safety and welfare and the development of improved techniques for the prevention and treatment of drug dependence and drug abuse.

(5) Promotion and establishment of cooperative relationship with public and private agencies which have a responsibility for the prevention and treatment of drug dependence and drug

abuse.

161.63 Advisory committee. The secretary may appoint an advisory committee on drug dependence and drug abuse to meet on the call of the secretary and to advise him on broad policies and goals for the drug dependence and drug abuse program.

161.64 Federal cooperation. The drug abuse control commission, shall cooperate with agencies of the federal government and receive and use federal funds for the purposes of ss. 161.60 to 161.64.

161.65 Gifts. The department of health and social services may accept, receive, administer and expend any money, material or other gifts or grants of any description for purposes related to those set forth in ss. 161.60 to 161.64. Moneys and grants received under this section shall be deposited with the state treasurer and shall be credited to the department of health and social services and expended by the department or the drug abuse control commission for the purposes specified.