ACT 286 H. B. 215.

A Bill for an Act Relating to Drug Abuse Control.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. **Findings and declaration of policy and purpose.** The legislature of the State of Hawaii hereby finds that it is essential to the public health and safety to regulate and control the manufacture, distribution, delivery and possession of depressant and stimulant drugs, and other drugs which have a potential for abuse because of their depressant or stimulant effect on the central nervous system or because of their hallucinogenic effect, as defined in this Act.

It is, therefore, hereby declared to be the policy and intent of the legislature and the purpose of this Act to regulate and control such manufacture, distribution, delivery, and possession, and in particular, but without limitation of such purpose, to afford the public the therapeutic benefits of such drugs under medical supervision; to complement and supplement the laws and regulations of the Congress of the United States and the appropriate agencies of the Federal Government affecting such manufacture, distribution, and delivery; to prevent such manufacture, distribution, and delivery for harmful or illegitimate purposes; and to place upon manufacturers, wholesalers, licensed compounders of prescriptions, and persons prescribing such drugs, a basic responsibility for preventing the improper distribution of such drugs to the extent that such drugs are produced, handled, sold, or prescribed by them.

The legislature further finds and declares that there is a substantial traffic in counterfeit drugs simulating the brand or other identifying mark

or device of the manufacturer of the genuine article; that such traffic poses a serious hazard to the health of innocent consumers of such drugs because of the lack of proper qualifications, facilities, and manufacturing controls on the part of the counterfeiter, whose operations are clandestine; and that these factors require enactment of additional controls with respect to such drugs.

SECTION 2. For the purpose of this Act:

(a) The term "director" means the director of health of the State of Hawaii or his duly authorized agent;

(b) The term "person" includes an individual, partnership, corporation, and association;

(c) (1) The term "drug" means (A) articles recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; and (B) articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals; and (C) articles (other than food) intended to affect the structure or any function of the body of man or other animals; and (D) articles intended for use as a component of any article specified in clause (A), (B), or (C); but does not include devices or their components, parts or accessories;

(2) The term "counterfeit drug" means a drug which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, or device, or any likeness thereof, of a drug manufacturer, processor, packer, or distributor other than the person or persons who in fact manufactured, processed, packed, or distributed such drug and which thereby falsely purports, or is represented to be the product of, or to have been packed or distributed by, such other drug manufacturer, processor, packer, or distributor.

(d) The term "depressant or stimulant drug" means:

(1) Any drug which contains any quantity of (A) barbituric acid or any of the salts of barbituric acid; or (B) any derivative of barbituric acid which has been designated by the director as habit-forming;

(2) Any drug which contains any quantity of (A) amphetamine or any of its optical isomers, (B) any salt of amphetamine or any salt of an optical isomer of amphetamine, or (C) any substance designated by regulations promulgated by the director as habit-forming because of its stimulant effect on the central nervous system;

(3) "Lysergic acid," "LSD" (Lysergic Acid Diethylamide), "DMT" (NN-Dimethyltryptamine), NN-Diethylryptamine, including their salts and derivatives, or any compounds, mixtures or preparations which are chemically identical with such substances;

(4) All parts of the plant of the genus Lophophora, also known as "peyote," whether growing or otherwise; the buttons thereof, the alkoloids extracted from any such plant; mescaline and every other compound, salt, derivative, mixture or preparation of such plant;

(5) Psilocybin or any like derivative from the "Mexican Mushroom", or

(6) Any other drug which contains any quantity of a substance designated by regulations promulgated by the director as having a potential for abuse because of its depressant or stimulant effect on the central nervous system or its hallucinogenic effect;

(e) The term "manufacture, compound or process" shall include repackaging or otherwise changing the container, wrapper, or labeling of any drug package in the furtherance of the distribution of the drug from the original place of manufacture to the person who makes final delivery or sale to the ultimate consumer, and the term "manufacturers, compounders, and processors" shall be deemed to refer to persons engaged in such defined activities;

(f) The term "practitioner" means a physician, dentist, veterinarian, or other person licensed in this State to prescribe or administer drugs which are subject to this Act, or a medical officer engaged in the performance of his official duties;

(g) The term "Federal Act" means the Federal Food, Drug, and Cosmetic Act (52 Stat. 1040 as amended; 21 U.S.C. section 301 et seq.).

SECTION 3. The following acts and the causing thereof are hereby prohibited:

(a) The manufacture, compounding, processing, or importation of a drug in violation of section 7(a);

(b) The sale, delivery, or other disposition of a drug in violation of section 7(b);

(c) The possession of a drug in violation of section 7(c);

(d) Obtaining a drug in violation of section 7(d);

(e) Making, selling, disposing of, or keeping in possession, control, or custody, or concealing 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 thereof so as to render such drug a counterfeit drug;

(f) The doing of any act which causes a drug to be a counterfeit drug, or the sale or dispensing, or the holding for sale or dispensing, of a counterfeit drug;

(g) Inducing any person under the age of twenty (20) years to buy, traffic in, receive, take, ingest or otherwise use, any depressant or stimulant drug, except that this prohibition shall not apply to a practitioner acting in the course of his professional practice or in the performance of his official duties;

(h) The failure to prepare or obtain, or the failure to keep, a complete and accurate record with respect to any drug as required by section 7(e);

(i) The refusal to permit access to or copying of any record as required by section 7(e);

(j) The refusal to permit entry or inspection as authorized by section 7(e);

(k) The filling or refilling of any prescription in violation of section 7(f).

SECTION 4. In addition to the remedies hereinafter provided the director is hereby authorized to apply to the proper court for, and such court shall have jurisdiction upon hearing and for cause shown, to grant a temporary or permanent injunction restraining any person from violating any provision of section 3, irrespective of whether or not there exists an adequate remedy at law.

SECTION 5. (a) Any person violating any of the provisions of sections 3(a), (b), (c), (d), (e), or (f) shall be fined not more than $1,000 and imprisoned for not more than 10 years for the first offense, and fined not more than $2,000 and imprisoned for not more than 20 years for any subsequent offense; provided, however, that any person who violates section 3(b) by selling, delivering, or otherwise disposing of any depressant or stimulant drug to any person under the age of 20 years, or who violates section 3(g), shall be fined not more than $1,000 and imprisoned for not more than 20 years for the first offense, and fined not more than $2,000 and imprisoned for life for any subsequent offense.

(b) Any person violating any of the provisions of sections 3(h), (i), (j), or (k) shall be fined not more than $1,000 and imprisoned not more than 1 year for the first offense, and fined not more than $2,000 and imprisoned for not more than 3 years for any subsequent offense.

(c) No person shall be subject to the penalties of subsection (a) of this section, for having violated section 3(e) if such person acted in good faith and had no reason to believe that use of the punch, die, plate, stone, or other thing involved would result in a drug being a counterfeit drug, or for having violated section 3(f) if the person doing the act or causing it to be done acted in good faith and had no reason to believe that the drug was a counterfeit drug.

SECTION 6. (a) The following may be seized without warrant by a duly authorized agent of the director or any police officer whenever he has reasonable grounds to believe they are: (1) a depressant or stimulant drug with respect to which a prohibited act within the meaning of section 3 has occurred; (2) a drug that is a counterfeit; (3) a container of such depressant or stimulant drug or of a counterfeit drug; (4) equipment used in manufacturing, compounding, or processing a depressant or stimulant drug with respect to which drug a prohibited act within the meaning of section 3 has occurred; (5) a punch, die, plate, stone, labeling, container or other thing used or designed for use in making a counterfeit drug or drugs, or (6) a conveyance being used to transport, carry or hold a depressant or stimulant drug with respect to which a prohibited act within the meaning of section 3 has occurred; or any conveyance being used to transport, carry or hold a counterfeit drug in violation of section 7(b) of this Act. As used in this paragraph the term "conveyance" includes every description of vehicle, ves-

sel, aircraft, or other contrivance used, or capable of being used as a means of transportation on land, in water, or through the air.

(b) When an article, equipment, conveyance, or other thing is seized under section 6(a), the director may within 15 days thereafter, cause to be filed in the circuit court in whose jurisdiction the property is seized or detained a complaint for the forfeiture of such property as herein provided. The proceedings shall be brought in the name of the State by the county attorney or the public prosecutor, of the county in which the article was seized, or by the attorney general, and the complaint shall be verified by a duly authorized agent of the director. The complaint shall describe the property, state its location, state the name of the person, firm, or corporation in actual possession, state the name of the owner, if known to the person verifying the complaint, allege the essential elements of the violation which is claimed to exist, and shall conclude with a prayer to enforce the forfeiture. Upon the filing of such a complaint, the court shall promptly cause process to issue to a person authorized by law to serve process, commanding him to seize the property described in the complaint and to hold the same for further order of the court. Such person shall at the time of seizure serve a copy of said process upon the owner of said property, if he is in possession thereof. Otherwise service may be made personally, by mail, or by publication according to the law governing the service of civil process in this State. Within 20 days after such seizure or within such further period as may be provided by law or court order, if no claimant has appeared to defend such complaint, the court shall order the police to dispose of said seized property.

(c) Any person, firm, or corporation having an interest in the alleged article, equipment, or other thing proceeded against, or any person, firm, or corporation against whom a civil or criminal liability would exist if said merchandise is in violation of section 3 of this Act may, within 20 days following the police seizure, appear and file answer to the complaint. The answer shall allege the interest or liability of the party filing it. In all other respects the issue shall be made up as in other civil actions.

(d) (1) Any article, equipment, conveyance or other thing forfeited under this section shall, after entry of the decree, be disposed of by destruction or sale as the court may, in accordance with the provisions of this section, direct, and the proceeds thereof, if sold, less the legal costs and charges shall be paid into the general fund of the State; but such article, equipment, or other thing shall not be sold under such decree contrary to provisions of this Act.

(2) Whenever in any proceedings under this section the forfeiture of any equipment or conveyance or other thing (other than a drug) is decreed, the court shall allow the claim of any claimant, to the extent of such claimant's interest, for remission or mitigation of such forfeiture if such claimant proves to the satisfaction of the court (A) that he has not committed or caused to be committed any prohibited act referred to in subparagraph (a) and has no interest in any drug referred to therein, (B) that he has an interest in such equipment or other thing as owner or lienor or otherwise,

acquired by him in good faith, and (C) that he at no time had any knowledge or reason to believe that such equipment, or conveyance or other thing was being or would be used in, or to facilitate, the violation of the laws of this State relating to depressant or stimulant drugs or counterfeit drugs.

(e) When a decree of forfeiture is entered against the article, equipment, conveyance or other thing, court costs and fees and storage and other proper expenses, shall be awarded against the person, if any, intervening as claimant of the article.

SECTION 7. (a) No person shall manufacture, compound or process in this State or import into the State any depressant or stimulant drug, except that this prohibition shall not apply to the following persons whose activities in connection with any drug are as specified in this subsection:

(1) Manufacturers, compounders, and processors, operating in conformance with the laws of this State relating to the manufacture, compounding or processing of drugs, who are regularly engaged in preparing pharmaceutical chemicals or prescription drugs for distribution through branch outlets, through wholesale druggists, or by direct shipment; (A) to pharmacies or to hospitals, clinics, public health agencies or physicians for dispensing by registered pharmacists upon prescriptions, or for use by or under the supervision of practitioners licensed in this State to administer such drugs in the course of their professional practice; or (B) to laboratories, research or educational institutions approved by the director under regulations promulgated in accordance with this Act, for their use in research, teaching or chemical analysis;

(2) Suppliers (operating in conformance with the laws of this State relating to the manufacture, compounding or processing of drugs) of manufacturers, compounders, and processors referred to in subparagraph (1);

(3) Wholesale druggists who maintain their establishments in conformance with state and local laws relating to the manufacture, compounding or processing of drugs and are regularly engaged in supplying prescription drugs (A) to pharmacies, or to hospitals, clinics, public health agencies, or physicians for dispensing by registered pharmacists upon prescriptions or for use by or under the supervision of practitioners licensed in this State to administer such drugs in the course of their professional practice, or (B) to laboratories or research or educational institutions for their use in research, teaching, or clinical analysis;

(4) Pharmacies, hospitals, clinics and public health agencies which maintain their establishments in conformance with state and local laws regulating the practice of pharmacy and medicine which are regularly engaged in dispensing drugs upon prescriptions of practitioners licensed in this State to administer such drugs for patients under the care of such practitioners in the course of their professional practice;

(5) Practitioners licensed in this State to prescribe or administer depressant or stimulant drugs, while acting in the course of their professional practice;

(6) Persons approved by the director under regulations promulgated in accordance with this Act who use depressant or stimulant drugs in research, teaching or chemical analysis and not for sale;

(7) Officers and employees of this State, or of a political subdivision of this State or of the United States while acting in the course of their official duties;

(8) An employee or agent of any person described in paragraph (1) through paragraph (6) of this subsection, and a nurse or other medical technician under the supervision of a practitioner licensed by law in this State to administer depressant or stimulant drugs, while such employee, nurse, or medical technician is acting in the course of his employment or occupation and not on his own account.

(b) No person other than:

(1) A person described in subsection (a), while such person is acting in the ordinary and authorized course of his business, profession, occupation, or employment, or

(2) A common or contract carrier or warehouseman, or an employee thereof, whose possession of any depressant or stimulant drug or counterfeit drug is in the usual course of his business or employment as such, shall sell, deliver or otherwise dispose of any depressant or stimulant drug or counterfeit drug to any other person.

(c) No person, other than a person described in subsection (a) or subsection (b) (2) shall possess any depressant or stimulant drug unless (1) such drug was obtained upon a valid prescription, and is held in the original container in which such drug was delivered; or (2) such drug was delivered by a practitioner in the course of his professional practice or in the performance of his official duties and the drug is held in the immediate container in which such drug was delivered.

(d) No person other than a person described in subsection (a) (7) shall obtain or attempt to obtain a depressant or stimulant drug by (1) fraud, deceit, misrepresentation or subterfuge; (2) falsely assuming the title of or representing himself to be a manufacturer, wholesaler, practitioner, pharmacist, owner of a pharmacy, or other persons authorized to possess stimulant or depressant drugs; (3) the use of a forged or altered prescription; or (4) the use of a false name or a false address on a prescription. The director is authorized and directed to cooperate with manufacturers, their agents or employees in activities directed toward the safeguarding of said manufacturer's trademark.

(e)(1) Every person engaged in manufacturing, compounding, processing, selling, delivering or otherwise disposing of any depressant or stimulant drug shall, upon the effective date of this Act, prepare a complete and accurate record of all stocks of each drug on hand and shall keep such record for three years; except that if this record has already been prepared in accordance with section 511(d) of the Federal Act, no additional record shall be required provided that all records prepared under 511(d) of the Federal Act have been retained and are made available to the director

upon request. When additional depressant or stimulant drugs are designated after the effective date of this Act, a similar record must be prepared upon the effective date of their designation. On and after the effective date of this Act, every person manufacturing, compounding, or processing any depressant or stimulant drug shall prepare and keep, for not less than three years, a complete and accurate record of the kind and quantity of each drug manufactured, compounded, or processed and the date of such manufacture, compounding, or processing; and every person selling, delivering, or otherwise disposing of any depressant or stimulant drug shall prepare or obtain and keep for not less than three years, a complete and accurate record of the kind and quantity of each such drug received, sold, delivered, or otherwise disposed of, the name and address from whom it was received and to whom it was sold, delivered, or otherwise disposed of, and the date of such transaction.

(2)(A) Every person required by paragraph (1) of this subsection to prepare or obtain, and keep records, and any carrier maintaining records with respect to any shipment containing any depressant or stimulant drug and every person in charge, or having custody, of such records, shall, upon request of an officer or employee designated by the director permit such officer or employee at reasonable times to have access to and copy such records. For the purposes of verification of such records and of the enforcement of this Act, officers or employees designated by the director are authorized to enter, at reasonable times, any factory, warehouse, establishment, or vehicle in which any depressant or stimulant drug is held, manufactured, compounded, processed, sold, delivered, or otherwise disposed of and to inspect, within reasonable limits and in a reasonable manner, such factory, warehouse, establishment, or vehicle, and all pertinent equipment, finished and unfinished material, containers and labeling therein, and all things therein (including records, files, papers, processes, controls, and facilities); and to inventory any stock of any such drug therein and obtain samples of any such drug.

(B) No inspection authorized by subparagraph (A) shall extend to (i) financial data, (ii) sales data other than data required to be recorded and maintained under this section, (iii) pricing data, (iv) research data, or (v) personnel data.

(3) The provisions of paragraphs (1) and (2) of this subsection shall not apply to a licensed practitioner described in subsection (a) (5) with respect to any depressant or stimulant drug received, prepared, processed, administered, or dispensed by him in the course of his professional practice, unless such practitioner regularly engages in dispensing any such drug or drugs to his patients for which they are charged, either separately or together with charges for other professional services.

(f) No prescription (issued before or after the effective date of this Act) for any depressant or stimulant drug may be filled or refilled more than six months after the date on which such prescription was issued and no such prescription which is authorized to be refilled may be refilled more than five times, except that nothing in this Act shall be construed as preventing a

practitioner from issuing a new prescription for the same drug either in writing or orally. Any oral prescription for such drug shall be promptly reduced to writing on a new prescription blank and filed by the pharmacist filling it.

(g) The director may by regulations exempt any depressant or stimulant drug from the application of all or any part of this section when he finds that regulation of its manufacture, compounding, processing, possession, sale or disposition as provided in this section or in such part thereof is not necessary for the protection of the public health.

SECTION 8. (a) Any officer, employee or agent of the state department of health designated by the director to conduct examinations, investigations, or inspections under this Act relating to depressant or stimulant drugs or to counterfeit drugs may, when so authorized by the director:

(1) Carry firearms;

(2) Execute and serve search warrants and arrest warrants;

(3) Execute seizure by process issued pursuant to section 6;

(4) Make arrests without warrant for offenses under this Act with respect to such drugs if the offense is committed in his presence or, in the case of a felony, if he has probable cause to believe that the person so arrested has committed or is committing such offense; and

(5) Make, prior to the institution of proceedings under section 6(b), seizures of drugs or containers or conveyances or of equipment, punches, dies, plates, stone, labeling, or other things, if they are, or he has reasonable grounds to believe that they are, subject to seizure and condemnation under section 6.

SECTION 9. The director may make rules and regulations having the force and effect of law for the efficient enforcement of this Act. The director is hereby authorized to make said rules and regulations conform, insofar as practicable, with those promulgated under the Federal Act.

SECTION 10. It is hereby made the duty of the state department of health, its officers, agents, inspectors and representatives and of all state, county and municipal officers whose duty it is to enforce the laws of the State, to enforce all provisions of this part, and to cooperate with all agencies charged with the enforcement of the laws of the United States, of this State and of all other states and territories, relating to drugs.

SECTION 11. If any provision of this Act is declared unconstitutional or the applicability thereof to any person or circumstances is held invalid, the constitutionality of the remainder of the Act and applicability thereof to other persons and circumstances shall not be affected thereby.

SECTION 12. This Act may be cited as the State Drug Abuse Control Act.

SECTION 13. This Act shall take effect thirty days after the date of its approval.

(Approved June 8, 1967.)