

DISCLAIMER: This version of the West Virginia Code is updated with legislation passed through the 2010 2nd Special Session. While every attempt is made to maintain the West Virginia Code sections, this version may not be the most updated and accurate version of the West Virginia Code. If you rely on this version, you are relying at your own risk, please check with the West Virginia Legislature or its website to obtain updated versions or copies of legislation which passed during the current legislative session or any current special session.

WEST VIRGINIA CONSTITUTION ARTICLE SIX, SECTION FORTY-SIX

6-46. Manufacture and sale of liquor.

The Legislature shall by appropriate legislation regulate the manufacture and sale of intoxicating liquors within the limits of this state, and any law authorizing the sale of such liquors shall forbid and penalize the consumption and the sale thereof for consumption in a saloon or other public place.

CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES, COMMISSIONS, OFFICES, PROGRAMS, ETC.

ARTICLE 11. HUMAN RIGHTS COMMISSION.

§5-11-19. Private club exemption.

Nothing in this article shall prohibit a private club not in fact open to the public, which as an incident to its primary purpose or purposes provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or guests of members or from giving preference to its members or guests of members: *Provided*, That this exemption shall not apply to any private club not in fact open to the public which owns or operates residential subdivisions providing lodgings for rental, occupancy or sale, or which provides real estate for sale for the construction of single or multi-unit dwellings.

CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES, COMMISSIONS, OFFICES, PROGRAMS, ETC.

ARTICLE 11A. WEST VIRGINIA FAIR HOUSING ACT.

§5-11A-8. Religious organization or private club exemption.

(a) Nothing in this article shall prohibit a religious organization, association or society, or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association or society, from limiting the sale, rental or occupancy of dwellings which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons, unless membership in such religion is restricted on account

of race, color or national origin. Nor shall anything in this article prohibit a private club not in fact open to the public, which as an incident to its primary purpose or purposes provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members.

(b) (1) Nothing in this article limits the applicability of any reasonable local, state or federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling. Nor does any provision in this article regarding familial status apply with respect to housing for older persons.

(2) As used in this section, "housing for older persons" means housing:

(A) Provided under any state or federal program that the secretary of the United States department of housing and urban development determines is specifically designed and operated to assist elderly persons, as defined in the state or federal program; or

(B) Intended for, and solely occupied by, persons sixty-two years of age or older; or

(C) Intended and operated for occupancy by at least one person fifty-five years of age or older per unit. In determining whether housing qualifies as housing for older persons under this subsection, the commission shall develop regulations which require at least the following factors: (i) The existence of significant facilities and services specifically designed to meet the physical or social needs of older persons, or if the provision of such facilities and services is not practicable, that such housing is necessary to provide important housing opportunities for older persons; (ii) that at least eighty percent of the units are occupied by at least one person fifty-five years of age or older per unit; and (iii) the publication of, and adherence to, policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons fifty-five years of age or older.

(3) Housing shall not fail to meet the requirements for housing for older persons by reason of: (A) Persons residing in such housing as of the date of enactment of this article who do not meet the age requirements of subdivision (2)(B) or (C) of this subsection: *Provided*, That new occupants of such housing meet the age requirements of such subdivisions; or (B) unoccupied units: *Provided, however*, That such units are reserved for occupancy by persons who meet the age requirements of subdivision (2)(B) or (C) of this subsection.

(4) Nothing in this article prohibits conduct against a person because such person has been convicted by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance as defined in Section 102 of the Controlled Substances Act, Title 21, United States Code, Section 802.

CHAPTER 6. GENERAL PROVISIONS RESPECTING OFFICERS.

ARTICLE 7. COMPENSATION AND ALLOWANCES.

§6-7-2a. Terms of certain appointive state officers; appointment; qualifications; powers and salaries of such officers.

(a) Each of the following appointive state officers named in this subsection shall be appointed by the

Governor, by and with the advice and consent of the Senate. Each of the appointive state officers serves at the will and pleasure of the Governor for the term for which the Governor was elected and until the respective state officers' successors have been appointed and qualified. Each of the appointive state officers are subject to the existing qualifications for holding each respective office and each has and is hereby granted all of the powers and authority and shall perform all of the functions and services heretofore vested in and performed by virtue of existing law respecting each office.

Prior to the first day of July, two thousand six, each such named appointive state officer shall continue to receive the annual salaries they were receiving as of the effective date of the enactment of this section in two thousand six and thereafter, notwithstanding any other provision of this code to the contrary, the annual salary of each named appointive state officer shall be as follows:

Commissioner, Division of Highways, ninety-two thousand five hundred dollars; Commissioner, Division of Corrections, eighty thousand dollars; Director, Division of Natural Resources, seventy-five thousand dollars; Superintendent, State Police, eighty-five thousand dollars; Commissioner, Division of Banking, seventy-five thousand dollars; Commissioner, Division of Culture and History, sixty-five thousand dollars; Commissioner, Alcohol Beverage Control Commission, seventy-five thousand dollars; Commissioner, Division of Motor Vehicles, seventy-five thousand dollars; Chairman, Health Care Authority, eighty thousand dollars; members, Health Care Authority, seventy thousand dollars; Director, Human Rights Commission, fifty-five thousand dollars; Commissioner, Division of Labor, seventy thousand dollars; Director, Division of Veterans' Affairs, sixty-five thousand dollars; Chairperson, Board of Parole, fifty-five thousand dollars; members, Board of Parole, fifty thousand dollars; members, Employment Security Review Board, seventeen thousand dollars; and Commissioner, Bureau of Employment Programs, seventy-five thousand dollars. Secretaries of the departments shall be paid an annual salary as follows: Health and Human Resources, ninety-five thousand dollars; Transportation, ninety-five thousand dollars: *Provided*, That if the same person is serving as both the Secretary of Transportation and the Commissioner of Highways, he or she shall be paid one hundred twenty thousand dollars; Revenue, ninety-five thousand dollars; Military Affairs and Public Safety, ninety-five thousand dollars; Administration, ninety-five thousand dollars; Education and the Arts, ninety-five thousand dollars; Commerce, ninety-five thousand dollars; and Environmental Protection, ninety-five thousand dollars: *Provided, however*, That any increase in the salary of any current appointive state officer named in this subsection pursuant to the reenactment of this subsection during the regular session of the Legislature in two thousand six that exceeds five thousand dollars shall be paid to such officer or his or her successor beginning on the first day of July, two thousand six, in annual increments of five thousand dollars per fiscal year, up to the maximum salary provided in this subsection: *Provided further*, That if the same person is serving as both the Secretary of Transportation and the Commissioner of Highways, then the annual increments of five thousand dollars per fiscal year do not apply.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 13. TAXATION AND FINANCE.

§8-13-7. Tax on purchases of intoxicating liquors in municipalities; private club fees.

Every municipality shall have plenary power and authority to levy and collect a tax upon all purchases within such municipality of intoxicating liquors from the alcohol beverage control commissioner, from any person licensed to sell wine at retail to the public under the provisions of article eight, chapter sixty of this code, or from distributors licensed to sell or distribute wine pursuant to said article eight: *Provided*, That no municipality shall have authority to levy or collect any such tax on the intoxicating liquors sold by or purchased from holders of a license issued under the provisions of article seven, chapter sixty of this code. The tax shall be levied upon the purchaser and shall be added to and collected with the price of purchase. The tax shall not exceed five percent of the purchase price.

A copy of any ordinance imposing the tax authorized by this section shall be certified by the mayor of the municipality to the West Virginia alcohol beverage control commissioner and to the tax commissioner. The West Virginia alcohol beverage control commissioner by appropriate rules and regulations shall provide for the collection of such tax upon all purchases within such municipality of intoxicating liquors from the alcohol beverage control commissioner, from any person licensed to sell wine at retail pursuant to the provisions of article eight, chapter sixty of this code, or from distributors licensed to sell or distribute wine pursuant to said article eight, and for distribution thereof to the respective municipalities for which the same shall be collected. Such rules and regulations shall provide that all such taxes shall be deposited with the state treasurer and distributed quarterly by the treasurer upon warrants of the auditor payable to the municipality.

Every municipality shall have plenary power and authority to levy and collect a fee from any private club licensee whose premises are situate therein as authorized in section seven, article seven, chapter sixty of this code.

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-12. Mission of the State Police; powers of superintendent, officers and members; patrol of turnpike.

(c) Members of the West Virginia State Police are hereby designated as forest patrolmen and natural resources police officers throughout the state to do and perform any duties and exercise any powers of forest patrolmen and natural resources police officers, and may apprehend and bring before any court or magistrate having jurisdiction of these matters, anyone violating any of the provisions of chapters twenty, sixty and sixty-one of this code. The West Virginia State Police is at any time subject to the call of the West Virginia Alcohol Beverage Control Commissioner to aid in apprehending any person violating any of the provisions of chapter sixty of this code. They shall serve and execute warrants for the arrest of any person and warrants for the search of any premises issued by any properly constituted authority, and shall exercise all of the powers conferred by law upon a sheriff. They may not serve any civil process or exercise any of the powers of an officer in civil matters.

(i) The superintendent may at his or her discretion and upon the written request of the West Virginia Alcohol Beverage Control Commissioner assist the commissioner in the coordination and enforcement of article sixteen, chapter eleven of this code and chapter sixty of this code.

CHAPTER 17A. MOTOR VEHICLE ADMINISTRATION, REGISTRATION, CERTIFICATE OF TITLE, AND ANTITHEFT PROVISIONS.

ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION; ISSUANCE OF CERTIFICATES OF TITLE.

§17A-3-23. Registration plates to state, county, municipal and other governmental vehicles; use for undercover activities.

(a) Any motor vehicle designed to carry passengers, owned or leased by the State of West Virginia, or any of its departments, bureaus, commissions or institutions, except vehicles used by the Governor, Treasurer, three vehicles per elected office of the Board of Public Works, vehicles operated by the State Police, not to exceed five vehicles operated by the office of the Secretary of Military Affairs and Public Safety, not to exceed five vehicles operated by the Division of Homeland Security and Emergency Management, vehicles operated by natural resources police officers of the Division of Natural Resources, not to exceed ten vehicles operated by the arson investigators of the office of State Fire Marshal, not to exceed two vehicles operated by the Division of Protective Services, not to exceed sixteen vehicles operated by inspectors of the office of the Alcohol Beverage Control Commissioner and vehicles operated by probation officers employed under the Supreme Court of Appeals may not be operated or driven by any person unless it has displayed and attached to the front thereof, in the same manner as regular motor vehicle registration plates are attached, a plate of the same size as the regular registration plate, with white lettering on a green background bearing the words "West Virginia" in one line and the words "State Car" in another line and the lettering for the words "State Car" shall be of sufficient size to be plainly readable from a distance of one hundred feet during daylight.

CHAPTER 17B. MOTOR VEHICLE DRIVER'S LICENSES.

ARTICLE 3. CANCELLATION, SUSPENSION OR REVOCATION OF LICENSES.

§17B-3-12. Mandatory suspension for fraudulent use of driver's license.

1. (a) The commissioner shall suspend for a period of ninety days the driver's license of any person upon receipt of a sworn affidavit from any law-enforcement officer, employee of the alcohol beverage control commission or employee of the division of motor vehicles stating that the person committed any one of the following acts:

(1) Displayed or caused or permitted to be displayed to any law-enforcement officer or employee of the division of motor vehicles or have in his or her possession any fictitious or fraudulently altered driver's license;

(2) Loaned or gave his or her driver's license to any other person or knowingly permitted the use thereof by another for an unlawful or fraudulent purpose;

(3) Displayed or represented as one's own any driver's license not issued to him or her; or

(4) Used a false or fictitious name or birth date on any application for a driver's license or knowingly made a false statement, knowingly concealed a material fact or otherwise committed a fraud in making application for a driver's license.

(b) For the purposes of this section, "driver's license" means any permit, camera card, identification card or driver's license issued by this state or any other state to a person which authorizes the person to drive a motor vehicle of a specific class or classes subject to any restriction or endorsement contained thereon.

(c) No person shall have his or her driver's license suspended under any provision of this section unless he or she shall first be given written notice of such suspension sent by certified mail, return receipt requested, at least twenty days prior to the effective date of the suspension. Within ten days of the receipt of the notice of suspension, the person may submit a written request by certified mail for a hearing and request a stay of the suspension pending the results of the hearing. Upon receipt of the request for a hearing and request for a stay of the suspension, the commissioner shall grant a stay of the suspension pending the results of the hearing. If the commissioner shall after hearing make and enter an order affirming the earlier order of suspension, the person affected shall be entitled to judicial review as set forth in chapter twenty-nine-a of this code and, pending the appeal, the court may grant a stay or supersedeas of such order. If the person does not appeal the suspension or if the suspension is affirmed by the court, the order of suspension shall be effective and the period of suspension shall commence to run.

(d) The suspended driver's license shall be reinstated following the period of suspension and upon compliance with the conditions set forth in this chapter.

WEST VIRGINIA CODE CHAPTER 47. REGULATION OF TRADE.

ARTICLE 11A. UNFAIR TRADE PRACTICES.

§47-11A-1. Legislative findings; designation of article.

The sale of goods at less than the cost thereof results in economic maladjustments and tends toward the creation of monopolies, thereby destroying fair and healthy competition and tending toward bankruptcy among merchants who maintain a fair price policy, and is, therefore, an unfair trade practice. It is hereby declared that any advertisement, offer to sell, or sale of any merchandise, either by retailers or wholesalers, at less than cost, as defined in this article, or any advertisement of an intent to give, any offer to give, or gift of any merchandise, either by retailers or wholesalers, for the purposes of unfairly diverting trade from or otherwise injuring competitors and destroying competition, is an unfair method of competition contrary to public policy and in contravention of the policy of this article, which shall be known and designated as the "Unfair Practices Act."

§47-11A-2. When selling below cost or giving away of merchandise prohibited; penalty.

It shall be unlawful for any person, partnership, firm, corporation, joint-stock company, or other

association engaged in business as a retailer or wholesaler within this state, to sell, offer for sale or advertise for sale any article, product or item of merchandise at less than the cost thereof to the vendor, or give, offer to give or advertise the intent to give away any article, product or item of merchandise for the purposes of unfairly diverting trade from or otherwise injuring one or more competitors, and destroying competition. Each violation shall constitute a misdemeanor, and upon conviction thereof, any person, partnership, firm, corporation, joint-stock company, or other association violating this section shall be subject to the penalty set out in section eleven hereof.

§47-11A-3. When rebates and special privileges prohibited; penalty.

The secret payment or allowance of rebates, refunds, commissions, or unearned discounts, whether in the form of money or otherwise, or secretly extending to certain purchasers special services or privileges not extended to all purchasers purchasing upon like terms and conditions, to the injury of a competitor and where such payment or allowance tends to destroy competition, is an unfair trade practice and any person, partnership, firm, corporation, joint-stock company, or other association resorting to such trade practice shall be deemed guilty of a misdemeanor and on conviction thereof shall be subject to the penalties set out in section eleven of this article.

§47-11A-4. Personal responsibility of directors, officers or agents.

Any person who, either as director, officer or agent of any firm or corporation or as agent of any person violating the provisions of this article, assists or aids, directly or indirectly, in such violation shall be responsible therefor equally with the person, firm or corporation for whom or for which he acts.

§47-11A-5. "Retailer" and "wholesaler" defined; sales and transfers subject to article.

(a) The term "retailer" shall mean and include every person, partnership, firm, corporation, joint-stock company or other association engaged in the business of making sales at retail within this state: **Provided, however,** That in the case of a person, partnership, firm, corporation, joint-stock company or other association engaged in the business of making sales both at retail and at wholesale, such term shall be applied only to the retail portion of such business.

(b) The term "wholesaler" shall mean and include every person, partnership, firm, corporation, joint-stock company, or other association engaged in the business of making sales at wholesale within this state: **Provided,** That in the case of a person, partnership, firm, corporation, joint-stock company, or other association engaged in the business of making sales both at retail and wholesale, such term shall be applied only to the wholesale portion of such business.

(c) The provisions of this article shall be applicable to all sales at retail made by a retailer as herein defined, and shall be applicable to any transfer for a valuable consideration made in the ordinary course of trade, or the usual prosecution of the retailer's business, of title to tangible personal property to the purchaser for consumption or use other than resale or further proceedings or manufacturing, and shall be applicable also to any transfer of such property where title is retained by the retailer as security for the payment of such purchase price.

(d) The provisions of this article shall be applicable to all sales at wholesale, and shall be applicable to any transfer for a valuable consideration made in the ordinary course of trade or in the usual prosecution of the wholesaler's business, of title to tangible personal property to the purchaser for purposes of resale or further proceedings or manufacturing, and shall be applicable also to any such

transfer of property where title is retained by the seller as security for the payment of the purchase price.

§47-11A-6. How cost determined.

(a) The term "cost" when applicable to the business of **retailer** shall mean bona fide cost and shall mean (i) the invoice cost of the article, product or item of merchandise to the retailer or the replacement cost thereof to the retailer within thirty days prior to the date of sale, offer for sale or advertisement for sale, as the case may be, in the quantity last purchased, whichever is lower, from either of which there shall be deducted all trade discounts, except customary discounts for cash, and (ii) to either of which there shall be added the following items of expense:

(1) Freight charges not otherwise included in the cost of the article, product or item of merchandise, but which freight charges shall not be construed as including cartage to retail outlet if done or paid for by the retailer;

(2) A markup to cover, in part, the cost of doing business, which markup, in the absence of proof of a lesser cost, shall be seven percent of the aggregate of invoice cost or replacement cost (whichever is used), less trade discounts as aforesaid, and plus said freight charges.

(b) The term "cost" when applicable to the business of a **wholesaler** shall mean bona fide cost and shall mean (i) the invoice cost of the merchandise to the wholesaler plus applicable taxes, or the replacement cost of the merchandise to the wholesaler within thirty days prior to the date of sale, offer for sale or advertisement for sale, as the case may be, in the quantity last purchased, whichever is lower, from either of which there shall be deducted all trade discounts except customary discounts for cash and (ii) to either of which there shall be added the following items of expense:

(1) Freight charges not otherwise included in the cost of the article, product or item of merchandise, but which freight charges shall not be construed as including cartage to the retail outlet if done or paid for by the wholesaler;

(2) A markup to cover, in part, the cost of doing business, which markup in the absence of proof of a lesser cost, shall be four percent of the aggregate of invoice cost or replacement cost (whichever is used), less trade discounts as aforesaid, and plus said freight charges.

§47-11A-7. When invoice cost of goods purchased at forced, etc., sale may be used.

In establishing the "cost" of a given article, product or item of merchandise to the vendor, the invoice cost of any article, product or item of merchandise purchased at a forced, bankrupt, close-out sale, or other sale outside of the ordinary channels of trade may not be used as a basis for justifying a price lower than one based upon the replacement cost as of the date of said sale of said article, product or item of merchandise replaced through the ordinary channels of trade, unless said article, product or merchandise is kept separate from goods purchased in the ordinary channels of trade and unless said article, product or item of merchandise is advertised and sold as merchandise purchased at a forced, bankrupt, close-out sale, or by means other than through the ordinary channels of trade, and said advertising shall state the conditions under which said goods were so purchased, and the quantity of such merchandise to be sold or offered for sale.

§47-11A-8. Sales exempt.

The provisions of this article shall not apply to any sale made:

- (a) In closing out in good faith the owner's stock or any part thereof for the purpose of discontinuing his trade in any such stock or commodity, and in the case of the sale of seasonal goods or to the bona fide sale of perishable goods to prevent loss to the vendor by spoilage or depreciation;
- (b) When the goods are damaged or deteriorated in quality or where merchandise is sold in bona fide clearance sales, and, in each case, merchandise is advertised, marked and sold as such;
- (c) By an officer acting under the orders of any court;
- (d) In an endeavor in good faith to meet the legal prices of a competitor as herein defined selling the same article, product or item of merchandise, in the same locality or trade area;
- (e) For charitable purposes or to relief agencies;
- (f) Where merchandise is sold on contract to departments of the government or governmental institutions.

§47-11A-9. Injunctions and damage suits.

Any person, firm, partnership, corporation, joint-stock company, or trade association may maintain a proceeding to enjoin a continuance of any act or acts in violation of the provisions of this article and, if injured thereby, for the recovery of damages in the circuit court of the county wherein said article is alleged to have been or is being violated. If, in such proceeding, the court shall find that the defendant is violating or has violated any of the provisions of this article, it shall enjoin such defendant from a continuance thereof. It shall not be necessary that actual damages to the plaintiff be alleged or proved. In addition to such injunctive relief, the plaintiff in said action shall be entitled to recover from the defendant three times the amount of the actual damages, if any, sustained.

§47-11A-10. Certifications to and duty of attorney general as to companies convicted or enjoined; suits to forfeit charters and privileges and enjoin business permanently; jurisdiction.

Whenever any corporation or joint-stock company shall be convicted of, or shall be enjoined from violating any of the provisions of this article, it shall be the duty of the clerk of the court wherein said corporation or joint-stock company has been convicted or enjoined to certify said conviction or injunction decree, as the case may be, to the attorney general of this state. Upon the third conviction for the violation of this article by any corporation or joint-stock company, or whenever any corporation or joint-stock company shall have been enjoined three times from violating this article, it shall be the duty of the attorney general to institute proper suits in any circuit court in this state for the forfeiture of its charter, rights, franchises or privileges and powers exercised by such corporation or joint-stock company, and to enjoin permanently such violator from transacting business within this state; and if in such suit the court shall find that the party defendant is guilty of violating said article as aforesaid, it shall enjoin said party defendant from doing business in this state, permanently or for such time as the court, in its discretion, shall order, and if the order be for permanent injunction against the transaction of business, the court shall order the forfeiture of the charter, rights, franchises or privileges and powers exercised by such party defendant.

Jurisdiction is hereby vested in the circuit courts of this state to carry into effect the provisions of sections nine and ten hereof.

§47-11A-11. Penalties for violations.

Any person, firm, partnership, corporation, joint-stock company or other association, whether as principal, agent, officer or director, for himself, or itself, or for another person, or for any person, firm, partnership, corporation, joint-stock company or other association, who or which shall violate any of the provisions of this article, is guilty of a misdemeanor for each single violation and upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars, or by imprisonment not exceeding ninety days or by both said fine and imprisonment, in the discretion of the court.

§47-11A-12. Contracts violating article illegal and unenforceable.

Any contract, express or implied, made by any person, firm, partnership, corporation, joint-stock company or other association, in violation of any of the provisions of this article, is hereby declared to be an illegal contract and no recovery thereon shall be had.

§47-11A-12a. Unsolicited goods.

No person, firm, partnership, association or corporation, or agent or employee thereof, shall, in any manner, or by any means, offer for sale goods, wares or merchandise, where the offer includes the voluntary and unsolicited sending of goods, wares or merchandise not actually ordered or requested by the recipient, either orally or in writing. The receipt of any such unsolicited goods, wares or merchandise shall for all purposes be deemed an unconditional gift to the recipient who may use or dispose of the same in any manner he sees fit without any obligation on his part to the sender.

§47-11A-13. Prima facie evidence of violation.

In any injunction proceeding or in any prosecution for a misdemeanor under the provisions of this article, proof of any advertisement, offer to sell, or sale of any merchandise by a retailer or wholesaler, at less than cost, or any advertisement of an intent to give, offer to give, or gift of any merchandise by a retailer or wholesaler, or any secret payment, allowance of rebates, refunds, commissions, or unearned discounts, whether in the form of money or otherwise, or secretly extending to certain purchasers special services or privileges not extended to all purchasers purchasing upon like terms and conditions, shall be prima facie evidence of a violation of this article, and proof of a violation of this article by any person as officer, director or agent shall be sufficient proof of a violation of this article by the person, firm or corporation for whom or for which he acts.

§47-11A-14. Purpose and construction of article.

The Legislature declares that the purpose of this article is to safeguard the public against the creation or perpetuation of monopolies and to foster and encourage competition, by prohibiting unfair and discriminatory practices by which fair and honest competition is destroyed or prevented. This article shall be liberally construed that its beneficial purposes may be subserved.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY AND DECENCY.

§61-8-5. Houses of ill fame and assignation; penalties; jurisdiction of courts.

(a) Any person who shall keep, set up, maintain, or operate any house, place, building, hotel, tourist camp, other structure, or part thereof, or vehicle, trailer, or other conveyance for the purpose of prostitution, lewdness, or assignation; or who shall own any place, house, hotel, tourist camp, other structure, or part thereof, or trailer or other conveyance knowing the same to be used for the purpose of prostitution, lewdness, or assignation, or who shall let, sublet, or rent any such place, premises, or conveyance to another with knowledge or good reason to know of the intention of the lessee or rentee to use such place, premises, or conveyance for prostitution, lewdness, or assignation; or who shall offer, or offer to secure, another for the purpose of prostitution, or for any other lewd or indecent act; or who shall receive or offer or agree to receive any person into any house, place, building, hotel, tourist camp, or other structure, or vehicle, trailer, or other conveyance for the purpose of prostitution, lewdness, or assignation, or to permit any person to remain there for such purpose; or who for another or others shall direct, take, or transport, or offer or agree to take or transport, or aid or assist in transporting, any person to any house, place, building, hotel, tourist camp, other structure, vehicle, trailer, or other conveyance, or to any other person with knowledge or having reasonable cause to believe that the purpose of such directing, taking, or transporting is prostitution, lewdness, or assignation; or who shall aid, abet, or participate in the doing of any acts herein prohibited, shall, upon conviction for the first offense under this section, be punished by imprisonment in the county jail for a period not less than six months nor more than one year, and by a fine of not less than one hundred dollars and not to exceed two hundred fifty dollars, and upon conviction for any subsequent offense under this section shall be punished by imprisonment in the penitentiary for a period of not less than one year nor more than five years.

(b) Any person who shall engage in prostitution, lewdness, or assignation, or who shall solicit, induce, entice, or procure another to commit an act of prostitution, lewdness, or assignation; or who shall reside in, enter, or remain in any house, place, building, hotel, tourist camp, or other structure, or enter or remain in any vehicle, trailer, or other conveyance for the purpose of prostitution, lewdness, or assignation; or who shall aid, abet, or participate in the doing of any of the acts herein prohibited, shall, upon conviction for the first offense under this section, be punished by imprisonment in the county jail for a period of not less than sixty days nor more than six months, and by a fine of not less than fifty dollars and not to exceed one hundred dollars; and upon conviction for the second offense under this section, be punished by imprisonment in the county jail for a period of not less than six months nor more than one year, and by a fine of not less than one hundred dollars and not to exceed two hundred fifty dollars, and upon conviction for any subsequent offense under this section shall be punished by imprisonment in the penitentiary for not less than one year nor more than three years.

The subsequent offense provision shall apply only to the pimp, panderer, solicitor, operator or any person benefitting financially or otherwise from the earnings of a prostitute.

(c) All leases and agreements, oral or written, for letting, subletting, or renting any house, place, building, hotel, tourist camp, or other structure which is used for the purpose of prostitution,

lewdness, or assignation, shall be void from and after the date of any person who is a party to such an agreement shall be convicted of an offense hereunder. The term "tourist camp" shall include any temporary or permanent buildings, tents, cabins, or structures, or trailers, or other vehicles which are maintained, offered, or used for dwelling or sleeping quarters for pay.

(d) In the trial of any person, charged with a violation of any of the provisions of this section, testimony concerning the reputation or character of any house, place, building, hotel, tourist camp, or other structure, and of the person or persons who reside in or frequent same, and of the defendant or defendants, shall be admissible in evidence in support of the charge. Justices of the peace shall have concurrent jurisdiction with circuit, intermediate, and criminal courts to try and determine the misdemeanors set forth and described in this section.

§61-8-8. Receiving support from prostitution; pimping; penalty; prostitute may testify.

Any person who, knowing another person to be a prostitute, shall live or derive support or maintenance, in whole or in part, from the earnings or proceeds of the prostitution of such prostitute, or from money loaned or advanced to or charged against such prostitution by any keeper or manager or inmate of a house or other place where prostitution is practiced or allowed, or shall tout or receive compensation for touting for such prostitution, shall be guilty of pimping, and, upon the first conviction for such offense, shall be punished by imprisonment in the county jail for a period of not less than six months nor more than one year, and by a fine of not less than one hundred nor more than five hundred dollars; and, upon a conviction for any subsequent offense hereunder, shall be punished by imprisonment in the penitentiary for a period of not less than one nor more than three years: *Provided*, That where the prostitute referred to in this section is a minor, any person violating the provisions of this section shall be guilty of a felony, and, upon conviction shall be confined in the penitentiary not less than two years or fined not more than five thousand dollars, or both. A prostitute shall be a competent witness in any prosecution hereunder to testify for or against the accused as to any transaction or conversation with the accused, or by the accused with another person or persons in the presence of the prostitute, even if the prostitute may have married the accused before or after the violation of any of the provisions of this section, whether called as a witness during the existence of the marriage or after its dissolution.

§61-8-9. Indecent exposure.

(a) A person is guilty of indecent exposure when such person intentionally exposes his or her sex organs or anus or the sex organs or anus of another person, or intentionally causes such exposure by another or engages in any overt act of sexual gratification, and does so under circumstances in which the person knows that the conduct is likely to cause affront or alarm: *Provided*, That it is not considered indecent exposure for a mother to breast feed a child in any location, public or private.

(b) Except as provided in subsection (c), any person who violates the provisions of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail not more than ninety days, or fined not more than two hundred fifty dollars, or both fined and confined .

(c) Any person who violates the provisions of subsection (a) of this section by intentionally exposing himself or herself to another person and the exposure was done for the purpose of sexual gratification, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than five hundred dollars or confined in jail not more than twelve months, or both. For a second offense, the person is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one

thousand dollars and confined in jail for not less than thirty days nor more than twelve months. For a third or subsequent offense, the person is guilty of a felony and, upon conviction thereof, shall be fined not more than three thousand dollars and imprisoned in a state correctional facility for not less than one year nor more than five years.

§61-8-25. Requiring children to beg, sing or play musical instruments in streets; penalty.

Any person, having the care, custody, or control, lawful or unlawful, of any minor child under the age of eighteen years, who shall use such minor, or apprentice, give away, let out, hire or otherwise dispose of, such minor child to any person, for the purposes of singing, playing on musical instruments, begging, or for any mendicant business whatsoever in the streets, roads, or other highways of this state, and any person who shall take, receive, hire, employ, use or have in custody, any minor for the vocation, occupation, calling, service or purpose of singing, playing upon musical instruments, or begging upon the streets, roads or other highways of this state, or for any mendicant business whatever, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than five nor more than one hundred dollars.

§61-8-26. Permitting children to sing, dance or act in dance house, etc.; penalty.

Any person, having the care, custody, or control of any minor child under the age of fifteen years, who shall in any manner sell, apprentice, give away or permit such child to sing, dance, act, or in any manner exhibit it in any dance house, concert saloon, theater or place of entertainment where wines or spirituous or malt liquors are sold or given away, or with which any place for the sale of wines or spirituous or malt liquors is directly or indirectly connected by any passageway or entrance, and any proprietor of any dance house whatever, or any such concert saloon, theater, or place of entertainment, so employing any such child, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than five nor more than one hundred dollars for each offense.

§61-8-27. Unlawful admission of children to dance house, etc.; penalty.

Any proprietor or any person in charge of a dance house, concert saloon, theater, museum, or similar place of amusement, or other place, where wines or spirituous or malt liquors are sold or given away, or any place of entertainment injurious to health or morals, who admits or permits to remain therein any minor under the age of eighteen years, unless accompanied by his or her parent or guardian, shall be guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine not exceeding two hundred dollars.

§61-8-27a. Use of false identification, etc., by person under age; penalty.

Any person who exhibits or displays a false or erroneous birth certificate, draft card, registration card or certificate, license, or identification card or certificate of any kind or character, or who exhibits or displays any certificate, card or license of any kind or character not his own, for the purpose of purchasing or drinking beer or liquor or gaining admittance to any establishment, from which he or she would otherwise be barred by reason of age, shall be guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine of not less than twenty-five nor more than one hundred dollars, and, in the discretion of the court, may be imprisoned in the county jail not exceeding thirty days.

ARTICLE 10. CRIMES AGAINST PUBLIC POLICY.

§61-10-1. Keeping or exhibiting gaming table, machine, or device; penalty; seizure of table, machine or device; forfeiture of money used in such gaming.

Any person who shall keep or exhibit a gaming table, commonly called A.B.C. or E.O. table, or faro bank, or keno table, or any slot machine, multiple coin console machine, multiple coin console slot machine or device in the nature of a slot machine, or any other gaming table or device of like kind, under any denomination, or which has no name, whether the game, table, bank, machine or device be played with cards, dice or otherwise, or shall be a partner, or concerned in interest, in keeping or exhibiting such table, bank, machine or gaming device of any character, shall be guilty of a misdemeanor, and, upon conviction, shall be confined in jail not less than two nor more than twelve months and be fined not less than one hundred nor more than one thousand dollars. Any such table, faro bank, machine or gaming device, and all money staked or exhibited to allure persons to bet at such table, or upon such gaming device, may be seized by order of a court, or under the warrant of a justice, and the money so seized shall be forfeited to the county and paid into the treasury of the county in which such seizure is made, and the table, faro bank, machine or gaming device shall be completely destroyed: *Provided, however,* That the provisions of this section shall not extend to coin-operated nonpayout machines with free play feature or to automatic weighing, measuring, musical and vending machines which are so constructed as to give a certain uniform and fair return in value or services for each coin deposited therein and in which there is no element of chance.

§61-10-2. Permitting gaming table or device on premises; penalty.

If any person knowingly permit a gaming table, bank or device, such as is mentioned in the preceding section, to be kept or exhibited on any premises in his occupation, he shall be guilty of a misdemeanor, and, upon conviction, shall be confined in jail not more than one year, and be fined not less than one hundred nor more than one thousand dollars.

§61-10-3. Unlawful to act as doorkeeper, guard or watch for keeper of gaming table or device; penalty.

If any person shall act as doorkeeper, guard or watch, or employ another person to act as such, for a keeper or exhibitor of any such gaming table, bank or device, or shall resist, or by any means or device, prevent, hinder or delay the lawful arrest of such keeper or exhibitor, or the seizure of the table, bank or device, or money exhibited or staked thereat, or shall unlawfully take the same from the person seizing it, he shall be guilty of a misdemeanor, and, upon conviction, shall be confined in jail not more than one year and be fined not exceeding one thousand dollars.

§61-10-4. Playing or betting at gaming tables and devices; playing or betting on games at hotels and public places; penalty.

If any person bet or play at any such gaming table, bank or device as is mentioned in the first section of this article, or if, at any hotel or tavern, or other public place, or place of public resort, he play at any game except bowls, chess or backgammon, draughts or a licensed game, or bet on the sides of those who play at any game, whether the game be permitted or licensed or not, he shall be guilty of a misdemeanor, and, upon conviction, shall be fined not less than five nor more than one hundred dollars, and shall, if required by the court, give security for his good behavior for one year, or, in default thereof, may be imprisoned in the county jail not more than three months.

§61-10-5. Betting on games of chance; furnishing money or thing of value therefor; penalty.

If any person at any place, public or private, bet or wage money or other thing of value on any game of chance, or shall knowingly furnish any money or other thing of value to any other person to bet or wage on any such game, he shall be guilty of a misdemeanor, and, upon conviction, shall be fined not less than five nor more than three hundred dollars, and shall, if required by the court, give security for his good behavior for one year, and in default of the payment of such fine and the costs and the execution of such bond, if such bond be required, shall be imprisoned in the county jail not less than ten nor more than thirty days.

§61-10-6. Permitting gaming at hotels; penalty.

If the keeper of a hotel or tavern permit unlawful gaming at his house, or at any outhouse, booth, arbor, or other place appurtenant thereto or held therewith, he shall be guilty of a misdemeanor, and, upon conviction, be fined not less than twenty nor more than one hundred dollars, and shall forfeit his license, and shall give security for his good behavior for one year, or, in default of such security, be imprisoned in the county jail not more than four months.

§61-10-7. Presumption against hotelkeeper.

In a prosecution under the preceding section, if the gaming be proved, it shall be presumed it was permitted by the keeper of the hotel, unless it appear that he did not know of or suspect such gaming, or that he endeavored to prevent it, and gave information of it, with the names of the players, to the next circuit court of the county in which such gaming occurred, or to the prosecuting attorney thereof.

§61-10-8. Gaming at outhouse of hotel; penalty.

If the keeper of a hotel or tavern let or hire to another person any outhouse or other place, which has been at any time appurtenant to or held with the house kept by him, with intent that unlawful gaming be permitted thereat, he shall suffer the same punishment and incur the same forfeiture as if such unlawful gaming were permitted at his own principal house; and in a prosecution therefor, if the gaming be proved, it shall be presumed that such outhouse or other place was let or hired with intent aforesaid, unless the presumption be repelled in the manner provided for in the preceding section.

§61-10-9. Cheating at gaming; penalty.

If any person playing at any game, or making a wager, or having a share in any stake or wager, or betting on the hands or sides of others playing at any game or making a wager, shall cheat, or by fraudulent means win or acquire for himself, or another, money or other valuable thing, he shall be guilty of a misdemeanor, and, upon conviction, shall be confined in jail not more than one year and fined not less than five times the value of the money or thing won or acquired.

§61-10-10. Poolroom defined; selling tickets and chances in lottery; penalty.

The word "poolroom," wherever the same is used in this section, shall be held and construed to mean any room where any pool ticket, chance voucher or certificate is sold entitling or purporting to entitle the holder or promisee thereof, or any other person, to money or other thing of value, contingent upon the result of any horse race, prizefight, game of chance, game of skill or science, or other sport or contest. Any person who shall set up or promote, or be connected with or interested in the management or operation of any poolroom, his agents, servants or employees, they, and each of them, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than two hundred nor more than one thousand dollars for each offense, and may, in the discretion of the court,

be confined in jail not to exceed one year. The buying, selling or transferring of tickets or chances in any lottery shall be and the same is hereby prohibited.

§61-10-11. Lotteries or raffles; penalty.

If any person shall set up or promote or be concerned in managing or drawing a lottery or raffle, for money or other thing of value, or knowingly permit such lottery in any house under his control, or knowingly permit money or other property to be raffled for in such house, or to be won therein, by throwing or using dice, or by any other game of chance, or knowingly permit the sale in such house of any chance or ticket, or share of a ticket, in a lottery, or any writing, certificate, bill, token or other device purporting or intended to guarantee or assure to any person, or to entitle him to a prize, or a share of, or interest in, a prize to be drawn in a lottery, or shall, for himself, or any other person, buy, sell, or transfer, or have in his possession for the purpose of sale, or with intent to exchange, negotiate, or transfer, or shall aid in selling, exchanging, negotiating, or transferring a chance or ticket, or a share of a ticket, in a lottery, or any such writing, certificate, bill, token or device, he shall be guilty of a misdemeanor, and, upon conviction, shall, in the discretion of the court, be confined in jail not more than one year or be fined not exceeding one thousand dollars, or both: *Provided, however,* That this section shall not be deemed to apply to that certain type or form of lottery or raffle designated and familiarly known as "policy" or "numbers."

CHAPTER 60A. UNIFORM CONTROLLED SUBSTANCES ACT.

ARTICLE 1. DEFINITIONS.

§60A-1-101. Definitions.

As used in this act:

- (a) "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.
- (b) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor or dispenser. It does not include a common or contract carrier, public warehouseman or employee of the carrier or warehouseman.
- (c) "Analogue" means a substance that, in relation to a controlled substance, has a substantially similar chemical structure.
- (d) "Bureau" means the "Bureau of Narcotics and Dangerous Drugs, United States Department of Justice" or its successor agency.
- (e) "Controlled substance" means a drug, substance or immediate precursor in Schedules I through V of article two.
- (f) "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 the substance.

(g) "Imitation controlled substance" means: (1) A controlled substance which is falsely represented to be a different controlled substance; (2) a drug or substance which is not a controlled substance but which is falsely represented to be a controlled substance; or (3) a controlled substance or other drug or substance or a combination thereof which is shaped, sized, colored, marked, imprinted, numbered, labeled, packaged, distributed or priced so as to cause a reasonable person to believe that it is a controlled substance.

(h) "Deliver" or "delivery" means the actual, constructive or attempted transfer from one person to another of: (1) A controlled substance, whether or not there is an agency relationship; (2) a counterfeit substance; or (3) an imitation controlled substance.

(i) "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 that delivery.

(j) "Dispenser" means a practitioner who dispenses.

(k) "Distribute" means to deliver, other than by administering or dispensing, a controlled substance, a counterfeit substance or an imitation controlled substance.

(l) "Distributor" means a person who distributes.

(m) "Drug" means: (1) Substances recognized as drugs in the official "United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States or official National Formulary", or any supplement to any of them; (2) substances intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or animals; (3) substances (other than food) intended to affect the structure or any function of the body of man or animals; and (4) substances intended for use as a component of any article specified in clause (1), (2) or (3) of this subdivision. It does not include devices or their components, parts or accessories.

(n) "Immediate derivative" means a substance which the "West Virginia Board of Pharmacy" has found to be and by rule designates as being the principal compound or any analogue of the parent compound manufactured from a known controlled substance primarily for use and which has equal or similar pharmacologic activity as the parent compound which is necessary to prevent, curtail or limit manufacture.

(o) "Immediate precursor" means a substance which the "West Virginia Board of Pharmacy" (hereinafter in this act referred to as the State Board of Pharmacy) has found to be and by rule designates as being the principal compound commonly used or produced primarily for use and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail or limit manufacture.

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

(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.

(q) "Marijuana" means all parts of the plant "Cannabis sativa L.", whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, immediate derivative, mixture or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, immediate derivative, mixture or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil or cake, or the sterilized seed of the plant which is incapable of germination.

(r) "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:

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

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

(3) Opium poppy and poppy straw.

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

(s) "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 section two hundred one, article two of this chapter, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does not include its racemic and levorotatory forms.

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

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

(v) "Placebo" means an inert medicament or preparation administered or dispensed for its psychological effect, to satisfy a patient or research subject or to act as a control in experimental series.

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

(x) "Practitioner" means:

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

(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.

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

(z) "State", when applied to a part of the United States, includes any state, district, commonwealth, territory, insular possession thereof and any area subject to the legal authority of the United States of America.

(aa) "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 administering to an animal owned by him or by a member of his household.

§60A-2-204. Schedule I.

(a) Schedule I shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

(b) Opiates. Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts and salts of isomers, esters and ethers, whenever the existence of such isomers, esters, ethers and salts is possible within the specific chemical designation (for purposes of subdivision (34) of this subsection only, the term isomer includes the optical and geometric isomers):

(1) Acetyl-alpha-methylfentanyl (N-[1-(1-methyl-2-phenethyl)-4-piperidinyl]-N-phenylacetamide);

(2) Acetylmethadol;

(3) Allylprodine;

(4) Alphacetylmethadol (except levoalphacetylmethadol also known as levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM);

(5) Alphameprodine;

(6) Alphamethadol;

(7) Alpha-methylfentanyl (N-[1-(alpha-methyl-beta-phenyl)ethyl-4-piperidyl]propionanilide; 1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine);

(8) Alpha-methylthiofentanyl (N-[1-methyl-2-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide);

(9) Benzethidine;

(10) Betacetylmethadol;

(11) Beta-hydroxyfentanyl (N-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-N-phenylpropanamide);

(12) Beta-hydroxy-3-methylfentanyl (other name: N-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl]-N-phenylpropanamide);

(13) Betameprodine;

(14) Betamethadol;

- (15) Betaprodine;
- (16) Clonitazene;
- (17) Dextromoramide;
- (18) Diampromide;
- (19) Diethylthiambutene;
- (20) Difenoxin;
- (21) Dimenoxadol;
- (22) Dimepheptanol;
- (23) Dimethylthiambutene;
- (24) Dioxaphetyl butyrate;
- (25) Dipipanone;
- (26) Ethylmethylthiambutene;
- (27) Etonitazene;
- (28) Etoxidine;
- (29) Furethidine;
- (30) Hydroxypethidine;
- (31) Ketobemidone;
- (32) Levomoramide;
- (33) Levophenacetylmorphan;
- (34) 3-Methylfentanyl (N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide);
- (35) 3-methylthiofentanyl (N-[3-methyl-1-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide);
- (36) Morpheridine;
- (37) MPPP (1-methyl-4-phenyl-4-propionoxypiperidine);
- (38) Noracymethadol;
- (39) Norlevorphanol;
- (40) Normethadone;
- (41) Norpipanone;
- (42) Para-fluorofentanyl (N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4-piperidinyl]propanamide);
- (43) PEPAP(1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine);
- (44) Phenadoxone;
- (45) Phenampromide;
- (46) Phenomorphan;

- (47) Phenoperidine;
- (48) Piritramide;
- (49) Proheptazine;
- (50) Properidine;
- (51) Propiram;
- (52) Racemoramide;
- (53) Thiofentanyl (N-phenyl-N-[1-(2-thienyl)ethyl-4- piperidinyl]-propanamide);
- (54) Tilidine;
- (55) Trimeperidine.

(c) Opium derivatives. -- Unless specifically excepted or unless listed in another schedule, any of the following opium immediate derivatives, its salts, isomers and salts of isomers 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) Drotebanol;
- (10) Etorphine (except HCl Salt);
- (11) Heroin;
- (12) Hydromorphanol;
- (13) Methyldesorphine;
- (14) Methyldihydromorphine;
- (15) Morphine methylbromide;
- (16) Morphine methylsulfonate;
- (17) Morphine-N-Oxide;
- (18) Myrophine;
- (19) Nicocodeine;
- (20) Nicomorphine;
- (21) Normorphine;

(22) Pholcodine;

(23) Thebacon.

(d) Hallucinogenic substances. -- Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation, which contains any quantity of the following hallucinogenic substances, or which contains any of its salts, isomers and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation (for purposes of this subsection only, the term "isomer" includes the optical, position and geometric isomers):

(1) Alpha-ethyltryptamine; some trade or other names: etryptamine; Monase; alpha-ethyl-1H-indole-3-ethanamine; 3-(2-aminobutyl) indole; alpha-ET; and AET;

(2) 4-bromo-2, 5-dimethoxy-amphetamine; some trade or other names: 4-bromo-2,5-dimethoxy-alpha-methylphenethylamine; 4-bromo- 2,5-DMA;

(3) 4-Bromo-2,5-dimethoxyphenethylamine; some trade or other names: 2-(4-bromo-2,5-dimethoxyphenyl)-1-aminoethane; alpha- desmethyl DOB; 2C-B, Nexus;

(4) 2,5-dimethoxyamphetamine; some trade or other names: 2,5-dimethoxy-alpha-methylphenethylamine; 2,5-DMA;

(5) 2,5-dimethoxy-4-ethylamphet-amine; some trade or other names: DOET;

(6) 4-methoxyamphetamine; some trade or other names: 4-methoxy-alpha-methylphenethylamine; paramethoxyamphetamine; PMA;

(7) 5-methoxy-3, 4-methylenedioxy-amphetamine;

(8) 4-methyl-2,5-dimethoxy-amphetamine; some trade and other names: 4-methyl-2,5-dimethoxy-alpha-methylphenethylamine; "DOM"; and "STP";

(9) 3,4-methylenedioxy amphetamine;

(10) 3,4-methylenedioxymethamphetamine (MDMA);

(11) 3,4-methylenedioxy-N-ethylamphetamine (also known as N- ethyl-alpha-methyl-3,4 (methylenedioxy) phenethylamine, N-ethyl MDA, MDE, MDEA);

(12) N-hydroxy-3,4-methylenedioxyamphetamine (also known as – hydroxy-alpha-methyl-3,4 (methylenedioxy) phenethylamine, and N- hydroxy MDA);

(13) 3,4,5-trimethoxy amphetamine;

(14) Bufotenine; some trade and other names: 3-(beta-Dimethylaminoethyl)-5-hydroxyindole;3-(2-dimethylaminoethyl) -5-indolol; N, N-dimethylserotonin; 5-hydroxy-N,N- dimethyltryptamine; mappine;

(15) Diethyltryptamine; some trade and other names: N, N-Diethyltryptamine; DET;

(16) Dimethyltryptamine; some trade or other names: DMT;

(17) Ibogaine; some trade and other names: 7-Ethyl-6, 6 Beta, 7, 8, 9, 10, 12, 13-octahydro-2-methoxy-6, 9-methano-5H- pyrido [1', 2': 1, 2] azepino [5,4-b] indole; Tabernanthe iboga;

(18) Lysergic acid diethylamide;

- (19) Marihuana;
- (20) Mescaline;
- (21) Parahexyl-7374; some trade or other names: 3-Hexyl -1-hydroxy-7, 8, 9, 10-tetrahydro-6, 6, 9-trimethyl-6H-dibenzo [b,d] pyran; Synhexyl;
- (22) Peyote; meaning 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, salts, immediate derivative, mixture or preparation of such plant, its seeds or extracts;
- (23) N-ethyl-3-piperidyl benzilate;
- (24) N-methyl-3-piperidyl benzilate;
- (25) Psilocybin;
- (26) Psilocyn;
- (27) Tetrahydrocannabinols; synthetic equivalents of the substances contained in the plant, or in the resinous extractives of *Cannabis*, sp. and/or synthetic substances, immediate derivatives and their isomers with similar chemical structure and pharmacological activity such as the following:
- delta-1 Cis or trans tetrahydrocannabinol, and their optical isomers;
- delta-6 Cis or trans tetrahydrocannabinol, and their optical isomers;
- delta-3,4 Cis or trans tetrahydrocannabinol, and its optical isomers;
- (Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered.)
- (28) Ethylamine analog of phencyclidine; some trade or other names: N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl) ethylamine, cyclohexamine, PCE;
- (29) Pyrrolidine analog of phencyclidine; some trade or other names: 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, PHP;
- (30) Thiophene analog of phencyclidine; some trade or other names: 1-[1-(2-thienyl)-cyclohexyl]-piperidine, 2-thienyl analog of phencyclidine; TPCP, TCP;
- (31) 1[1-(2-thienyl)cyclohexyl]pyrrolidine; some other names: TCPy.
- (32) Synthetic Cannabinoids as follows:
- (a) 2-[(1R,3S)-3-hydroxycyclohexyl]-5-(2-methyloctan-2-yl)phenol {also known as CP 47,497 and homologues};
- (b) rel-2-[(1S,3R)-3-hydroxycyclohexyl]-5-(2-methylnonan-2-yl)phenol {also known as CP 47,497-C8 homolog};
- (c) [(6aR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol] {also known as HU-210};
- (d) (dexanabinol, (6aS,10aS)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol) {also known as HU-211};

- (e) 1-Pentyl-3-(1-naphthoyl)indole {also known as JWH-018};
- (f) 1-Butyl-3-(1-naphthoyl)indole {also known as JWH-073};
- (g) (2-methyl-1-propyl-1H-indol-3-yl)-1-naphthalenyl-methanone {also known as JWH-015};
- (h) (1-hexyl-1H-indol-3-yl)-1-naphthalenyl-methanone {also known as JWH-019};
- (i) [1-[2-(4-morpholinyl)ethyl]-1H-indol-3-yl]-1-naphthalenyl-methanone {also known as JWH-200};
- (j) 1-(1-pentyl-1H-indol-3-yl)-2-(3-hydroxyphenyl)-ethanone {also known as JWH-250};
- (k) 2-((1S,2S,5S)-5-hydroxy-2-(3-hydroxypropyl)cyclohexyl)-5-(2-methyloctan-2-yl)phenol {also known as CP 55,940};
- (l) (4-methyl-1-naphthalenyl)(1-pentyl-1H-indol-3-yl)-methanone {also known as JWH-122};
- (m) (4-methyl-1-naphthalenyl)(1-pentyl-1H-indol-3-yl)-methanone {also known as JWH-398};
- (n) (4-methoxyphenyl)(1-pentyl-1H-indol-3-yl)methanone {also known as RCS-4};
- (o) 1-(1-(2-cyclohexylethyl)-1H-indol-3-yl)-2-(2-methoxyphenyl)ethanone {also known as RCS-8}; and

(Since nomenclature of these substances is not internationally standardized, any immediate precursor or immediate derivative of these substances shall be covered).

(e) 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 and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

- (1) Mecloqualone;
- (2) Methaqualone.

(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) Aminorex; some other names: aminoxaphen; 2-amino-5-phenyl-2-oxazoline; or 4,5-dihydro-5-phenyl-2-oxazolamine;
- (2) Cathinone; some trade or other names: 2-amino-1-phenyl-1-propanone, alpha-aminopropiophenone, 2-aminopropiophenone, and norephedrone;
- (3) Fenethylamine;
- (4) Methcathinone, its immediate precursors and immediate derivatives, its salts, optical isomers and salts of optical isomers; some other names: (2-(methylamino)-propionophenone; alpha-(methylamino)propionophenone; 2-(methylamino)-1-phenylpropan-1-one; alpha-N-methylaminopropiophenone; monomethylpropion; 3,4-methylenedioxypropionylphenone and/or mephedrone; 3,4-methylenedioxypropionylphenone (MPVD); ephedrone; N-methylcathinone; methylcathinone; AL-464; AL-422; AL-463 and UR1432;

- (5) (+-) cis-4-methylaminorex; ((+)-)cis-4,5-dihydro-4-methyl- 5-phenyl-2-oxazolamine);
- (6) N-ethylamphetamine;
- (7) N,N-dimethylamphetamine; also known as N,N-alpha- trimethyl-benzeneethanamine; N,N-alpha-trimethylphenethylamine. (g) Temporary listing of substances subject to emergency scheduling. Any material, compound, mixture or preparation which contains any quantity of the following substances:
- (1) N-[1-benzyl-4-piperidyl]-N-phenylpropanamide (benzylfentanyl), its optical isomers, salts, and salts of isomers.
- (2)N-[1-(2-thienyl)methyl-4-piperidyl]-N-phenylpropanamide (thenylfentanyl), its optical isomers, salts and salts of isomers.
- (8) N-benzylpiperazine, also known as BZP.

ARTICLE 4. OFFENSES AND PENALTIES.

§60A-4-401. Prohibited acts A; penalties.

(a) Except as authorized by this act, it is unlawful for any person to manufacture, deliver, or possess with intent to manufacture or deliver, a controlled substance.

Any person who violates this subsection with respect to:

(i) A controlled substance classified in Schedule I or II, which is a narcotic drug, is guilty of a felony and, upon conviction, may be imprisoned in the state correctional facility for not less than one year nor more than fifteen years, or fined not more than twenty-five thousand dollars, or both;

(ii) Any other controlled substance classified in Schedule I, II or III is guilty of a felony and, upon conviction, may be imprisoned in the state correctional facility for not less than one year nor more than five years, or fined not more than fifteen thousand dollars, or both;

(iii) A substance classified in Schedule IV is guilty of a felony and, upon conviction, may be imprisoned in the state correctional facility for not less than one year nor more than three years, or fined not more than ten thousand dollars, or both;

(iv) A substance classified in Schedule V is guilty of a misdemeanor and, upon conviction, may be confined in jail for not less than six months nor more than one year, or fined not more than five thousand dollars, or both: *Provided*, That for offenses relating to any substance classified as Schedule V in article ten of this chapter, the penalties established in said article apply.

(b) Except as authorized by this act, it is unlawful for any person to create, deliver, or possess with intent to deliver, a counterfeit substance.

Any person who violates this subsection with respect to:

(i) A counterfeit substance classified in Schedule I or II, which is a narcotic drug, is guilty of a felony and, upon conviction, may be imprisoned in the state correctional facility for not less than one year nor more than fifteen years, or fined not more than twenty-five thousand dollars, or both;

(ii) Any other counterfeit substance classified in Schedule I, II or III is guilty of a felony and, upon conviction, may be imprisoned in the state correctional facility for not less than one year nor more than five years, or fined not more than fifteen thousand dollars, or both;

(iii) A counterfeit substance classified in Schedule IV is guilty of a felony and, upon conviction, may be imprisoned in the state correctional facility for not less than one year nor more than three years, or fined not more than ten thousand dollars, or both;

(iv) A counterfeit substance classified in Schedule V is guilty of a misdemeanor and, upon conviction, may be confined in jail for not less than six months nor more than one year, or fined not more than five thousand dollars, or both: *Provided*, That for offenses relating to any substance classified as Schedule V in article ten of this chapter, the penalties established in said article apply.

(c) It is 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 act. Any person who violates this subsection is guilty of a misdemeanor, and disposition may be made under section four hundred seven of this article, subject to the limitations specified in said section, or upon conviction, such person may be confined in jail not less than ninety days nor more than six months, or fined not more than one thousand dollars, or both: *Provided*, That notwithstanding any other provision of this act to the contrary, any first offense for possession of Synthetic Cannabinoids as defined by subdivision (32) subsection, (d), section 101, article 1 of this chapter; 3,4-methylenedioxypropylvalerone (MPVD) and 3,4-methylenedioxypropylvalerone and/or mephedrone as defined in subsection (f), section 101, article 1 of this chapter; or less than 15 grams of marijuana, shall be disposed of under said section.

(d) It is unlawful for any person knowingly or intentionally:

(1) To create, distribute or deliver, or possess with intent to distribute or deliver, an imitation controlled substance; or

(2) To create, possess or sell or otherwise transfer any equipment with the intent that such equipment shall be used to apply a trademark, trade name, or other identifying mark, imprint, number or device, or any likeness thereof, upon a counterfeit substance, an imitation controlled substance, or the container or label of a counterfeit substance or an imitation controlled substance.

(3) Any person who violates this subsection is guilty of a misdemeanor and, upon conviction, may be imprisoned in jail for not less than six months nor more than one year, or fined not more than five thousand dollars, or both. Any person being eighteen years old or more who violates subdivision (1) of this subsection and, in so doing, distributes or delivers an imitation controlled substance to a minor child who is at least three years younger than such person is guilty of a felony and, upon conviction, may be imprisoned in the state correctional facility for not less than one year nor more than three years, or fined not more than ten thousand dollars, or both.

(4) The provisions of subdivision (1) of this subsection shall not apply to a practitioner who administers or dispenses a placebo.