

MAINE STATE LEGISLATURE

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(EMERGENCY)

ONE HUNDRED AND SEVENTH LEGISLATURE

Legislative Document

No. 1054

H. P. 880

House of Representatives, March 13, 1975

On motion of Mr. Gauthier of Sanford, referred to the Committee on Judiciary. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. Joyce of Portland.

STATE OF MAINE

**IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-FIVE**

AN ACT to Make Possession of Federally Controlled Drugs Unlawful.

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, prosecutors in the State have found that proof that a particular drug is a "potent medicinal substance" is difficult, but that proof that a particular drug is federally controlled would be far simpler since federal statutes and regulations can be directly introduced into evidence, and that legislation is required immediately to fill the gap between the present and the time when the criminal code revision, containing comprehensive drug provisions, can be passed; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. 22 MRSA § 2210, as last amended by PL 1971, c. 621, § 1, is repealed and the following enacted in place thereof:

§ 2210. Sale of barbiturates

1. Legislative finding. It is the finding of the Legislature that the Congress of the United States, through legislation, and the Attorney General of

the United States, through regulations adopted pursuant to delegation by Congress, have demonstrated sufficient expertise in designating particular dangerous drugs as controlled, that the delegation of authority contained in this section is proper.

2. Prohibition. It shall be unlawful for any person, firm or corporation to sell, furnish or give away or offer to sell, furnish or give away or have in possession, any drug listed in Schedules I, II, III and IV of section 812 of Title 21 of the United States Code or in Schedules I, II, III and IV established by regulation of the Attorney General of the United States pursuant to section 811 of Title 21 of the United States Code, except that any substance so listed, the possession or any transfer of which is also governed by another section of this Title other than this section, shall be deemed to be controlled by that other section and not by this section; any veronal or barbital, or any other salts, derivatives or compounds of barbituric acid, or any registered trademarked or copyrighted preparation registered in the United States Patent Office containing the above substance, or any drug designated by the board as a "potent medicinal substance" pursuant to section 2201, or have in possession, furnish or give away, or offer to furnish or give away any amphetamines or derivatives or compounds thereof, except upon the written order or prescription of a physician, surgeon, dentist or veterinary surgeon. These provisions shall not apply to the possession, sale, furnishing or giving away, or the offering to sell, furnish or give away such drugs, by drug jobbers, drug wholesalers and drug manufacturers and their agents and employees to registered pharmacists and the pharmacies registered under Title 32, section 2901, nor to physicians, dentists, veterinary surgeons or hospitals, nor to each other, nor to the sale at retail in pharmacies by pharmacists to each other acting in good faith. Nothing in this subchapter shall apply to a compound, mixture or preparation which is sold in good faith by a pharmacy for the purpose for which it is intended and not for the purpose of evading this subchapter if:

A. Contains other drugs. Such compound, mixture or preparation, contains a sufficient quantity of another drug or drugs to cause it to produce an action other than its hypnotic, somnifacient, stimulating or depressant action; or

B. Spray or gargle. Such compound, mixture or preparation is intended for use as a spray or gargle or for external application and contains some other drug or drugs rendering it unfit for internal administration.

Sec. 2. 22 MRSA § 2375, sub-§ 1, 1st sentence, as last amended by PL 1967, c. 390, § 13, is further amended to read:

No person shall obtain or attempt to obtain a narcotic, depressant or stimulant drug, or hallucinogenic agent listed in section 2212-B, or any ~~potent medicinal~~ substance listed in or designated pursuant to section ~~2201~~ 2210, or procure or attempt to procure the administration of such drug, agent or substance:

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.

STATEMENT OF FACT

Section 1 of the bill which relates to the incorporation of dangerous drugs listed by federal law and regulations as "controlled" is designed primarily to make proof problems easier in court. It is unclear what must be shown to prove proper promulgation by the Board of Commissioners of the Profession of Pharmacy of its list of "potent medicinal substances", but one of the biggest potential problems is the lack of any widespread publication of that list. Incorporation of the federal control drugs also provides an alternative list, as from time to time certain dangerous drugs appear on it which do not appear on the state's potent medicinal substance list.

The prohibition against possession of drugs bearing on their container the legend "Caution: Federal law prohibits dispensing without prescription" is stricken as useless. No federal list published in such a manner as to make it admissible in evidence can be found, nor does there appear to be any federal statutory authority for any agency to promulgate such a list.

The "except" clause is necessary to insure that penalties previously enacted by the Legislature for the unlawful possession or transfer of drugs such as narcotics, LSD, amphetamines and marijuana are kept at their present level.

The purpose of section 2 of this bill is to conform Title 22, section 2375 to the amendments of Title 22, section 2201 contained in the above-mentioned bill.