

1 Section 1. Section 204.101, Code 1981, is amended by
2 adding the following new subsection:

3 NEW SUBSECTION. "Simulated controlled substance" means
4 a substance which is not a controlled substance but which
5 is expressly represented to be a controlled substance, or
6 a substance which is not a controlled substance but which
7 is impliedly represented to be a controlled substance and
8 which because of its nature, packaging, or appearance would
9 lead a reasonable person to believe it to be a controlled
10 substance.

11 Sec. 2. Section 204.401, subsection 2, Code 1981, is
12 amended to read as follows:

13 2. Except as authorized by this chapter, it is unlawful
14 for any a person to create, deliver, or possess with intent
15 to deliver, a counterfeit substance or a simulated controlled
16 substance, or to act with, enter into a common scheme or
17 design with, or conspire with one or more other persons to
18 create, deliver, or possess with intent to deliver, a
19 counterfeit substance or a simulated controlled substance.

20 Any A person who violates this subsection with respect
21 to:

22 a. A counterfeit substance classified in schedule I or
23 II which is a narcotic drug, or a simulated controlled
24 substance represented to be a narcotic drug classified in
25 schedule I or II, is guilty of a class "C" felony.

26 b. Any other counterfeit substance classified in ~~schedules~~
27 schedule I, II, or III, or any simulated controlled substance
28 represented to be any other substance classified in schedule
29 I, II, or III, is guilty of a class "D" felony.

30 c. A counterfeit substance classified in schedule IV,
31 or a simulated controlled substance represented to be a
32 substance classified in schedule IV, is guilty of a serious
33 misdemeanor.

34 d. A counterfeit substance classified in schedule V, or
35 a simulated controlled substance represented to be a substance

1 classified in schedule V, is guilty of a simple misdemeanor.

2 Sec. 3. Section 204.406, Code 1981, is amended by striking
3 the section and inserting in lieu thereof the following:

4 204.406 DISTRIBUTION TO PERSON UNDER AGE EIGHTEEN.

5 1. A person who is eighteen years of age or over who
6 violates section 204.401, subsection 1, by distributing a
7 substance listed in schedule I or II, which is a narcotic
8 drug, to a person under eighteen years of age, is guilty of
9 a class "B" felony; however the minimum time to be served
10 before parole may be granted is five years. A person who
11 is eighteen years of age or over who violates section 204.401,
12 subsection 1, by distributing any other controlled substance
13 listed in schedule I, II, or III to a person under eighteen
14 years of age who is at least three years younger than the
15 violator is guilty of a class "C" felony. A person who is
16 eighteen years of age or over who violates section 204.401,
17 subsection 1 by distributing a controlled substance listed
18 in schedule IV or V to a person under eighteen years of age
19 who is at least three years younger than the violator is
20 guilty of an aggravated misdemeanor.

21 2. A person who is eighteen years of age or over who
22 violates section 204.401, subsection 2 by distributing a
23 counterfeit substance listed in schedule I or II which is
24 a narcotic drug, or a simulated controlled substance
25 represented to be a narcotic drug classified in schedule I
26 or II, to a person under eighteen years of age is guilty of
27 a class "B" felony. A person who is eighteen years of age
28 or over who violates section 204.401, subsection 2, by
29 distributing any other counterfeit substance listed in schedule
30 I, II, or III or a simulated controlled substance represented
31 to be any substance listed in schedule I, II, or III, to a
32 person under eighteen years of age who is at least three years
33 younger than the violator is guilty of a class "C" felony.
34 A person who is eighteen years of age or over who violates
35 section 204.401, subsection 2, by distributing a counter-

1 feit substance listed in schedule IV or V or a simulated con-
2 trolled substance represented to be a substance listed in
3 schedule IV or V or a person under eighteen years of age who
4 is at least three years younger than the violator is guilty
5 of an aggravated misdemeanor.

6 Sec. 4. NEW SECTION. TITLE. Sections 4 through 9 of
7 this Act may be cited as the "Iowa Imitation Controlled Sub-
8 stances Act".

9 Sec. 5. NEW SECTION. DEFINITIONS. As used in sections
10 4 through 9 of this Act, unless the context otherwise requires:

11 1. "Controlled substance" means a controlled substance
12 as defined in section 204.101, subsection 6.

13 2. "Deliver" or "delivery" means the actual, constructive,
14 or attempted transfer, distribution, or dispensing to another
15 of an imitation controlled substance.

16 3. "Manufacture" means the production, preparation, com-
17 pounding, processing, encapsulating, packaging, or labeling
18 of an imitation controlled substance.

19 4. "Imitation controlled substance" means a substance
20 which is not a controlled substance but which by color, shape,
21 size, markings, and other aspects of dosage unit appearance,
22 and packaging or other factors, appears to be or resembles
23 a controlled substance.

24 Sec. 6. NEW SECTION. FACTORS INDICATING AN IMITATION
25 CONTROLLED SUBSTANCE. When dosage unit appearance alone does
26 not establish that a substance is an imitation controlled
27 substance the following factors shall be considered in
28 determining whether the substance is an imitation controlled
29 substance:

30 1. The person in control of the substance expressly or
31 impliedly represents that the substance has the effect of
32 a controlled substance.

33 2. The person in control of the substance expressly or
34 impliedly represents that the substance because of its nature
35 or appearance can be sold or delivered as a controlled

1 substance or as a substitute for a controlled substance.

2 3. The person in control of the substance either demands
3 or receives money or other property having a value
4 substantially greater than the actual value of the substance
5 as consideration for delivery of the substance.

6 4. The person in control of the substance uses evasive
7 tactics with the intent to avoid detection by law enforcement
8 authorities.

9 5. The substance is packaged in a manner commonly used
10 for legal or illegal delivery of a controlled substance.

11 Sec. 7. NEW SECTION. OFFENSES AND PENALTIES.

12 1. It is unlawful for a person to manufacture, deliver,
13 or possess with intent to deliver, an imitation controlled
14 substance. Except as provided in subsection 3, a person who
15 violates this subsection is guilty of an aggravated
16 misdemeanor.

17 2. It is unlawful for a person to publish or to post or
18 distribute in a public place, an advertisement or solicitation,
19 if the person knows or reasonably should know the advertisement
20 or solicitation is to promote the distribution of imitation
21 controlled substances. A person who violates this subsection
22 is guilty of a serious misdemeanor.

23 3. A person who is eighteen years of age or older who
24 violates this section by delivering an imitation controlled
25 substance to a person under eighteen years of age who is at
26 least three years younger than the violator is guilty of a
27 class "D" felony.

28 Sec. 8. NEW SECTION. IMMUNITY. It is not unlawful for
29 a person registered under section 204.302, to manufacture,
30 deliver, or possess an imitation controlled substance for
31 use as a placebo by a registered practitioner in the course
32 of professional practice or research.

33 Sec. 9. NEW SECTION. FORFEITURE.

34 1. The following are subject to forfeiture:

35 a. All imitation controlled substances which have been

1 manufactured, delivered or acquired in violation of sections
2 4 through 9 of this Act.

3 b. All raw materials, products, and equipment of any kind
4 which are used, or intended for use, in manufacturing,
5 compounding, processing, delivering, importing, or exporting
6 an imitation controlled substance in violation of sections
7 4 through 9 of this Act.

8 c. All property which is used, or intended for use, as
9 a container for property described in paragraph a or b.

10 d. All books, records, and research products and materials,
11 including formulas, microfilm, tapes, and data which are used,
12 or intended for use, in violation of sections 4 through 9
13 of this Act.

14 2. Property subject to forfeiture under this section may
15 be seized when any of the following apply:

16 a. The seizure is incident to an arrest, or a search under
17 a search warrant, or an inspection under an administrative
18 inspection warrant issued as provided in section 204.502.

19 b. The property subject to seizure has been the subject
20 of a prior judgment of forfeiture in favor of the state in
21 an injunction or forfeiture proceeding based upon sections
22 4 through 9 of this Act.

23 c. There is probable cause to believe that the property
24 was used or is intended to be used in violation of sections
25 4 through 9 of this Act.

26 3. If property, other than a conveyance subject to
27 forfeiture, is seized under subsection 2, it shall be disposed
28 of in accordance with chapter 809.

29 However, controlled substances taken, detained, or for-
30 feited shall be disposed of as provided in section 204.506.
31 Controlled substances and imitation controlled substances
32 are not subject to replevin.

33 Sec. 10. Section 204.501, unnumbered paragraph 1, Code
34 1981, is amended to read as follows:

35 The department ~~shall-be~~ is primarily responsible for the

1 enforcement of ~~all provisions of~~ this chapter, and all other
2 laws and regulations of this state, relating to controlled
3 or counterfeit substances, or simulated or imitation controlled
4 substances, except that the board ~~shall be~~ is primarily respon-
5 sible for making accountability audits of the supply and
6 inventory of controlled substances in the possession of
7 pharmacists, doctors, hospitals, and health care facilities
8 as defined in section 135C.1, subsection 8, as well as in
9 the possession of any and all other individuals or institutions
10 authorized to have possession of any controlled substances,
11 and ~~shall~~ is also ~~be~~ primarily responsible for ~~such~~ any other
12 duties in respect to controlled substances as ~~shall be~~
13 specifically delegated to the board by law. Any An officer
14 or employee of the board may, when so directed or authorized
15 by the board:

16 Sec. 11. Section 204.502, subsection 1, paragraph a. Code
17 1981, is amended to read as follows:

18 a. A district ~~or municipal court~~ judge or district
19 associate judge, within ~~his~~ the court's jurisdiction, and
20 upon proper oath or affirmation showing probable cause, may
21 issue warrants for the purpose of conducting administrative
22 inspections ~~authorized by~~ under this chapter or a related
23 rule thereunder, and or under sections 4 through 9 of this
24 Act. The warrant may also permit seizures of property
25 appropriate to ~~such~~ the inspections. For purposes of the
26 issuance of administrative inspection warrants, probable cause
27 exists upon showing a valid public interest in the effective
28 enforcement of the ~~chapter~~ statute or related rules ~~promulgated~~
29 ~~thereunder~~, sufficient to justify administrative inspection
30 of the area, premises, building or conveyance in the
31 circumstances specified in the application for the warrant.

32 Sec. 12. Chapter 204, Code 1981, is amended by adding
33 the following new section:

34 NEW SECTION. PENALTY ENHANCEMENT. A person convicted
35 of violating a provision of this chapter, except section

1 204.401, subsection 3, may be fined an amount not to exceed
2 three times the amount of the fine otherwise authorized for
3 the violation. This fine may be in addition to any other
4 penalty provided for violation of the provision.

5 Sec. 13. Section 204.505, subsection 1, Code 1981, is
6 amended by adding the following new paragraph:

7 NEW PARAGRAPH. Everything of value that is furnished or
8 intended to be furnished in exchange for a controlled substance
9 in violation of this chapter, all proceeds including real
10 and personal property traceable to such an exchange, and all
11 moneys, negotiable instruments, securities, and conveyances
12 used or intended to be used to facilitate a violation of this
13 chapter, except that property shall not be forfeited under
14 this paragraph, to the extent of the interest of an owner,
15 by reason of an act or omission established by the owner to
16 have been committed or omitted without the owner's knowledge
17 or consent. All moneys, coin, and currency found in close
18 proximity to forfeitable controlled substances, to forfeitable
19 drug manufacturing or distributing paraphernalia, or to
20 forfeitable records of the importation, manufacture, or
21 distribution of controlled substances, are presumed to be
22 forfeitable under this paragraph. The burden of proof is
23 upon claimants of the property to rebut this presumption.

24 Sec. 14. Section 809.1, subsection 4, Code 1981, is amended
25 to read as follows:

26 4. Property subject to forfeiture except ~~such property~~
27 forfeitable conveyances described in chapters chapter 127
28 and except forfeitable controlled substances described in
29 chapter 204.

30 Sec. 15. Section 809.6, Code 1981, is amended by adding
31 the following new subsection:

32 NEW SUBSECTION. If the seized property is of the type
33 described in section 13 of this Act, and the court determines
34 that it is forfeited as provided in section 13 of this Act,
35 or a claimant's right to possession is not established under

1 subsection 2 of section 809.5, the court shall order the
2 property or the proceeds of its sale to be paid to the
3 treasurer of state for deposit in the general fund.

4 Sec. 16. Sections 4 through 9 of this Act are enacted
5 as a new chapter of the Code of Iowa.

6

EXPLANATION

7 Sections 1 through 11 of this bill make trafficking in
8 either simulated controlled substances or imitation controlled
9 substances unlawful. Simulated controlled substances are
10 noncontrolled substances which are represented to be controlled
11 substances. The penalties for the manufacture, delivery,
12 or possession with intent to deliver of a simulated controlled
13 substance are the same as those for the respective activities
14 when a counterfeit substance is involved. Imitation controlled
15 substances are noncontrolled substances which are represented
16 as having the effects of or as being a substitute for
17 controlled substances. Generally, a person who manufactures,
18 delivers, or possesses with intent to deliver, an imitation
19 controlled substance, or who advertises or solicits in
20 connection with an imitation controlled substance, would be
21 subject to criminal penalties.

22 Section 12 of the bill would provide for fines of up to
23 three times the ordinary maximum fine for the degree of the
24 offense in the case of violations of chapter 204, relating
25 to controlled substances.

26 Sections 13, 14, and 15 of this bill provide that all
27 property given or intended to be given in exchange for
28 controlled substances in a transaction in violation of chapter
29 204 shall be forfeited to the state general fund. The
30 forfeiture also would apply to proceeds of property used in
31 an illegal transaction. Once seized, the property would be
32 subject to a forfeiture hearing under chapter 809. A
33 presumption is created that all money found in close proximity
34 to forfeitable controlled substances or to other property
35 that is forfeitable under the controlled substances Act is

1 subject to forfeiture as well, and the burden of rebutting
2 the presumption is on the person claiming the property.
3 Property would not be forfeited if the owner proves it was
4 used in the illegal transaction without the owner's knowledge
5 or consent.

6 The bill would take effect July 1 following enactment.

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10. A. M. ... 2/22

Senate File 2202

Judiciary and Law Enforcement: Ritsema, Chair; Conlon, Corey, Rapp and Sturgeon.

*Amend per 5577 & Dr Pass
3/26 (p. 1050)*

SENATE FILE **2202**

BY COMMITTEE ON JUDICIARY

(AS AMENDED AND PASSED BY THE SENATE MARCH 17, 1982)

Passed Senate, Date 4-12-82 (p. 1145) Passed House, Date 4-6-82 (p. 1263)

Vote: Ayes 49 Nays 0 Vote: Ayes 97 Nays 0

Approved May 21, 1982

A BILL FOR

1 An Act relating to simulated controlled substances and
 2 imitation controlled substances, and to the forfeiture
 3 to the state of all things of value given or intended
 4 to be given in exchange for a controlled substance
 5 in violation of the controlled substances Act, and
 6 providing penalties.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

8

HOUSE AMENDMENT TO SENATE FILE 2202

S-5530

1 Amend Senate File 2202, as amended, passed and
2 reprinted by the Senate, as follows:

3 1. Page 3, line 3, by striking the words "or a
4 person" and inserting in lieu thereof the words "to
5 a person".

6 2. Page 3, by inserting after line 23 the
7 following:

8 "The state board of pharmacy examiners may designate
9 a substance as an imitation controlled substance
10 pursuant to the board's rule-making authority and
11 in accordance with chapter 17A."

12 3. Page 3, line 25, by inserting after the word
13 "When" the words "a substance has not been designated
14 as an imitation controlled substance by the state
15 board of pharmacy examiners and when".

16 4. Page 5, line 24, by inserting after the word
17 "However," the word "imitation".

18 5. Page 5, by striking line 26 and inserting in
19 lieu thereof the words "Imitation controlled
20 substances".

21 6. Page 7, by striking lines 34 and 35.

S-5530 FILED
APRIL 8, 1982

RECEIVED FROM THE HOUSE

Senate concurred 4/12 (p. 1145)

2202

1 Section 1. Section 204.101, Code 1981, is amended by
2 adding the following new subsection:

3 NEW SUBSECTION. "Simulated controlled substance" means
4 a substance which is not a controlled substance but which
5 is expressly represented to be a controlled substance, or
6 a substance which is not a controlled substance but which
7 is impliedly represented to be a controlled substance and
8 which because of its nature, packaging, or appearance would
9 lead a reasonable person to believe it to be a controlled
10 substance.

11 Sec. 2. Section 204.401, subsection 2, Code 1981, is
12 amended to read as follows:

13 2. Except as authorized by this chapter, it is unlawful
14 for any a person to create, deliver, or possess with intent
15 to deliver, a counterfeit substance or a simulated controlled
16 substance, or to act with, enter into a common scheme or
17 design with, or conspire with one or more other persons to
18 create, deliver, or possess with intent to deliver, a
19 counterfeit substance or a simulated controlled substance.

563020 Any A person who violates this subsection with respect
21 to:

22 a. A counterfeit substance classified in schedule I or
23 II which is a narcotic drug, or a simulated controlled
24 substance represented to be a narcotic drug classified in
25 schedule I or II, is guilty of a class "C" felony.

26 b. Any other counterfeit substance classified in ~~schedules~~
27 schedule I, II, or III, or any simulated controlled substance
28 represented to be any other substance classified in schedule
29 I, II, or III, is guilty of a class "D" felony.

30 c. A counterfeit substance classified in schedule IV,
31 or a simulated controlled substance represented to be a
32 substance classified in schedule IV, is guilty of a serious
33 misdemeanor.

34 d. A counterfeit substance classified in schedule V, or
35 a simulated controlled substance represented to be a substance

1 classified in schedule V, is guilty of a simple misdemeanor.

2 Sec. 3. Section 204.406, Code 1981, is amended by striking
3 the section and inserting in lieu thereof the following:

4 204.406 DISTRIBUTION TO PERSON UNDER AGE EIGHTEEN.

5 1. A person who is eighteen years of age or over who
6 violates section 204.401, subsection 1, by distributing a
7 substance listed in schedule I or II, which is a narcotic
8 drug, to a person under eighteen years of age, is guilty of
9 a class "B" felony; however the minimum time to be served
10 before parole may be granted is five years. A person who
11 is eighteen years of age or over who violates section 204.401,
12 subsection 1, by distributing any other controlled substance
13 listed in schedule I, II, or III to a person under eighteen
14 years of age who is at least three years younger than the
15 violator is guilty of a class "C" felony. A person who is
16 eighteen years of age or over who violates section 204.401,
17 subsection 1 by distributing a controlled substance listed
18 in schedule IV or V to a person under eighteen years of age
19 who is at least three years younger than the violator is
20 guilty of an aggravated misdemeanor.

21 2. A person who is eighteen years of age or over who
22 violates section 204.401, subsection 2 by distributing a
23 counterfeit substance listed in schedule I or II which is
24 a narcotic drug, or a simulated controlled substance
25 represented to be a narcotic drug classified in schedule I
26 or II, to a person under eighteen years of age is guilty of
27 a class "B" felony. A person who is eighteen years of age
28 or over who violates section 204.401, subsection 2, by
29 distributing any other counterfeit substance listed in schedule
30 I, II, or III or a simulated controlled substance represented
31 to be any substance listed in schedule I, II, or III, to a
32 person under eighteen years of age who is at least three years
33 younger than the violator is guilty of a class "C" felony.
34 A person who is eighteen years of age or over who violates
35 section 204.401, subsection 2, by distributing a counter-

1 feit substance listed in schedule IV or V or a simulated con-
2 trolled substance represented to be a substance listed in
3 schedule IV or V or a person under eighteen years of age who
4 is at least three years younger than the violator is guilty
5 of an aggravated misdemeanor.

6 Sec. 4. NEW SECTION. TITLE. Sections 4 through 9 of
7 this Act may be cited as the "Iowa Imitation Controlled Sub-
8 stances Act".

9 Sec. 5. NEW SECTION. DEFINITIONS. As used in sections
10 4 through 9 of this Act, unless the context otherwise requires:

11 1. "Controlled substance" means a controlled substance
12 as defined in section 204.101, subsection 6.

13 2. "Deliver" or "delivery" means the actual, constructive,
14 or attempted transfer, distribution, or dispensing to another
15 of an imitation controlled substance.

16 3. "Manufacture" means the production, preparation, com-
17 pounding, processing, encapsulating, packaging, or labeling
18 of an imitation controlled substance.

19 4. "Imitation controlled substance" means a substance
20 which is not a controlled substance but which by color, shape,
21 size, markings, and other aspects of dosage unit appearance,
22 and packaging or other factors, appears to be or resembles
23 a controlled substance.

24 Sec. 6. NEW SECTION. FACTORS INDICATING AN IMITATION
25 CONTROLLED SUBSTANCE. When dosage unit appearance alone does
26 not establish that a substance is an imitation controlled
27 substance the following factors may be considered in
28 determining whether the substance is an imitation controlled
29 substance:

30 1. The person in control of the substance expressly or
31 impliedly represents that the substance has the effect of
32 a controlled substance.

33 2. The person in control of the substance expressly or
34 impliedly represents that the substance because of its nature
35 or appearance can be sold or delivered as a controlled

1 substance or as a substitute for a controlled substance.

2 3. The person in control of the substance either demands
3 or receives money or other property having a value
4 substantially greater than the actual value of the substance
5 as consideration for delivery of the substance.

* 6 Sec. 7. NEW SECTION. OFFENSES AND PENALTIES.

7 1. It is unlawful for a person to manufacture, deliver,
8 or possess with intent to deliver, an imitation controlled
9 substance. Except as provided in subsection 3, a person who
10 violates this subsection is guilty of an aggravated
11 misdemeanor.

12 2. It is unlawful for a person to publish or to post or
13 distribute in a public place, an advertisement or solicitation,
14 if the person knows or reasonably should know the advertisement
15 or solicitation is to promote the distribution of imitation
16 controlled substances. A person who violates this subsection
17 is guilty of a serious misdemeanor.

18 3. A person who is eighteen years of age or older who
19 violates this section by delivering an imitation controlled
20 substance to a person under eighteen years of age who is at
21 least three years younger than the violator is guilty of a
22 class "D" felony.

23 Sec. 8. NEW SECTION. IMMUNITY. It is not unlawful for
24 a person registered under section 204.302, to manufacture,
25 deliver, or possess an imitation controlled substance for
26 use as a placebo by a registered practitioner in the course
27 of professional practice or research.

28 Sec. 9. NEW SECTION. FORFEITURE.

29 1. The following are subject to forfeiture:

30 a. All imitation controlled substances which have been
31 manufactured, delivered or acquired in violation of sections
32 4 through 9 of this Act.

33 b. All raw materials, products, and equipment of any kind
34 which are used, or intended for use, in manufacturing,
35 compounding, processing, delivering, importing, or exporting

1 an imitation controlled substance in violation of sections
2 4 through 9 of this Act.

3 c. All property which is used, or intended for use, as
4 a container for property described in paragraph a or b.

5 d. All books, records, and research products and materials,
6 including formulas, microfilm, tapes, and data which are used,
7 or intended for use, in violation of sections 4 through 9
8 of this Act.

9 2. Property subject to forfeiture under this section may
10 be seized when any of the following apply:

11 a. The seizure is incident to an arrest, or a search under
12 a search warrant, or an inspection under an administrative
13 inspection warrant issued as provided in section 204.502.

14 b. The property subject to seizure has been the subject
15 of a prior judgment of forfeiture in favor of the state in
16 an injunction or forfeiture proceeding based upon sections
17 4 through 9 of this Act.

18 c. There is probable cause to believe that the property
19 was used or is intended to be used in violation of sections
20 4 through 9 of this Act.

21 3. If property, other than a conveyance subject to
22 forfeiture, is seized under subsection 2, it shall be disposed
23 of in accordance with chapter 809.

24 However, controlled substances taken, detained, or for-
25 feited shall be disposed of as provided in section 204.506.
26 Controlled substances and imitation controlled substances
27 are not subject to replevin.

28 Sec. 10. Section 204.501, unnumbered paragraph 1, Code
29 1981, is amended to read as follows:

30 The department ~~shall-be~~ is primarily responsible for the
31 enforcement of ~~all-provisions-of~~ this chapter, and all other
32 laws and regulations of this state, relating to controlled
33 or counterfeit substances, or simulated or imitation controlled
34 substances, except that the board ~~shall-be~~ is primarily respon-
35 sible for making accountability audits of the supply and

1 inventory of controlled substances in the possession of
 2 pharmacists, doctors, hospitals, and health care facilities
 3 as defined in section 135C.1, subsection 8, as well as in
 4 the possession of any and all other individuals or institutions
 5 authorized to have possession of any controlled substances,
 6 and ~~shall~~ is also be primarily responsible for ~~such~~ any other
 7 duties in respect to controlled substances as ~~shall-be~~
 8 specifically delegated to the board by law. ~~Any~~ An officer
 9 or employee of the board may, when so directed or authorized
 10 by the board:

11 Sec. 11. Section 204.502, subsection 1, paragraph a, Code
 12 1981, is amended to read as follows:

13 a. A district ~~or-municipal-court~~ judge or district
 14 associate judge, within ~~his~~ the court's jurisdiction, and
 15 upon proper oath or affirmation showing probable cause, may
 16 issue warrants for the purpose of conducting administrative
 17 inspections ~~authorized-by~~ under this chapter or a related
 18 rule thereunder, and or under sections 4 through 9 of this
 19 Act. The warrant may also permit seizures of property
 20 appropriate to ~~such~~ the inspections. For purposes of the
 21 issuance of administrative inspection warrants, probable cause
 22 exists upon showing a valid public interest in the effective
 23 enforcement of the ~~chapter~~ statute or related rules ~~promulgated~~
 24 ~~thereunder~~, sufficient to justify administrative inspection
 25 of the area, premises, building or conveyance in the
 26 circumstances specified in the application for the warrant.

27 Sec. 12. Chapter 204, Code 1981, is amended by adding
 28 the following new section:

29 NEW SECTION. PENALTY ENHANCEMENT. A person convicted
 30 of violating a provision of this chapter, except section
 31 204.401, subsection 3, may be fined an amount not to exceed
 32 three times the amount of the fine otherwise authorized for
 33 the violation. This fine may be in addition to any other
 34 penalty provided for violation of the provision.

35 Sec. 13. Section 204.505, subsection 1, Code 1981, is

1 amended by adding the following new paragraph:

56462 NEW PARAGRAPH. Everything of value that is furnished or
3 intended to be furnished in exchange for a controlled substance
4 in violation of this chapter, all proceeds including real
5 and personal property traceable to such an exchange, and all
6 moneys, negotiable instruments, securities, and conveyances
7 used or intended to be used to facilitate a violation of this
8 chapter, except that property shall not be forfeited under
9 this paragraph, to the extent of the interest of an owner,
* 10 by reason of an act or omission committed or omitted without
11 the owner's knowledge or consent. All moneys, coin, and
12 currency found in close proximity to forfeitable controlled
13 substances, to forfeitable drug manufacturing or distributing
14 paraphernalia, or to forfeitable records of the importation,
15 manufacture, or distribution of controlled substances, are
16 presumed to be forfeitable under this paragraph. The burden
17 of proof is upon claimants of the property to rebut this
18 presumption.

19 Sec. 14. Section 809.1, subsection 4, Code 1981, is amended
20 to read as follows:

21 4. Property subject to forfeiture except ~~such property~~
22 forfeitable conveyances described in chapters chapter 127
23 and except forfeitable controlled substances described in
24 chapter 204.

25 Sec. 15. Section 809.6, Code 1981, is amended by adding
26 the following new subsection:

27 NEW SUBSECTION. If the seized property is of the type
28 described in section 13 of this Act, and the court determines
29 that it is forfeited as provided in section 13 of this Act,
30 or a claimant's right to possession is not established under
31 subsection 2 of section 809.5, the court shall order the
32 property or the proceeds of its sale to be paid to the
33 treasurer of state for deposit in the general fund.

667734 Sec. 15. Sections 4 through 9 of this Act are enacted
35 as a new chapter of the Code of Iowa.

H-5577

1 Amend Senate File 2202, as amended, passed and
2 reprinted by the Senate, as follows:

3 1. Page 3, line 3, by striking the words "or a
4 person" and inserting in lieu thereof the words "to
5 a person".

6 2. Page 3, by inserting after line 23 the
7 following:

8 "The state board of pharmacy examiners may designate
9 a substance as an imitation controlled substance
10 pursuant to the board's rule-making authority and
11 in accordance with chapter 17A."

12 3. Page 3, line 25, by inserting after the word
13 "When" the words "a substance has not been designated
14 as an imitation controlled substance by the state
15 board of pharmacy examiners and when".

16 4. Page 5, line 24, by inserting after the word
17 "However," the word "imitation".

18 5. Page 5, by striking line 26 and inserting in
19 lieu thereof the words "Imitation controlled
20 substances".

21 6. Page 7, by striking lines 34 and 35.

H-5577 FILED

MARCH 26, 1982

Adopted 4/6 (p 1262)

BY COMMITTEE ON JUDICIARY AND

LAW ENFORCEMENT

CONLON, Chair

SENATE FILE 2202

H-5630

1 Amend Senate File 2202, as amended, passed and
2 reprinted by the Senate, as follows:

3 1. Page 1, by striking lines 23 through 25 and
4 inserting in lieu thereof the words "II which is a
5 narcotic drug, is guilty of a class "C" felony."

6 2. Page 1, by striking lines 27 through 29 and
7 inserting in lieu thereof the words "schedule I, II,
8 or III, or a simulated controlled substance represented
9 to be a narcotic drug classified in schedule I or
10 II, is guilty of a class "D" felony."

11 3. Page 1, by inserting after line 29 the
12 following:

13 "c. Any simulated controlled substance represented
14 to be any other substance classified in schedule I,
15 II, or III, is guilty of an aggravated misdemeanor."

16 4. Page 1, line 30, by striking the letter "c."
17 and inserting in lieu thereof the letters "e d."

18 5. Page 1, line 34, by striking the letter "d."
19 and inserting in lieu thereof the letters "a e."

H-5630 FILED

MARCH 30, 1982

Lost 4/6 (p 1262)

BY RAPP of Black Hawk

DODERER of Johnson

POFFENBERGER of Dallas

SENATE FILE 2202

H-5648

1 Amend Senate File 2202 as amended, passed, and
2 reprinted by the Senate, as follows:
3 1. Page 7, by striking lines 11 through 18 and
4 inserting in lieu thereof the words "the owner's
5 knowledge or consent."

H-5648 FILED MARCH 31, 1982 BY BRANDT of Black Hawk

Loss 4/6 (p 126.3)

SENATE FILE 2202

AN ACT

RELATING TO SIMULATED CONTROLLED SUBSTANCES AND IMITATION CONTROLLED SUBSTANCES, AND TO THE FORFEITURE TO THE STATE OF ALL THINGS OF VALUE GIVEN OR INTENDED TO BE GIVEN IN EXCHANGE FOR A CONTROLLED SUBSTANCE IN VIOLATION OF THE CONTROLLED SUBSTANCES ACT, AND PROVIDING PENALTIES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 204.101, Code 1981, is amended by adding the following new subsection:

NEW SUBSECTION. "Simulated controlled substance" means a substance which is not a controlled substance but which is expressly represented to be a controlled substance, or a substance which is not a controlled substance but which is impliedly represented to be a controlled substance and which because of its nature, packaging, or appearance would lead a reasonable person to believe it to be a controlled substance.

Sec. 2. Section 204.401, subsection 2, Code 1981, is amended to read as follows:

2. Except as authorized by this chapter, it is unlawful for any a person to create, deliver, or possess with intent to deliver, a counterfeit substance or a simulated controlled substance, or to act with, enter into a common scheme or design with, or conspire with one or more other persons to create, deliver, or possess with intent to deliver, a counterfeit substance or a simulated controlled substance.

Any A person who violates this subsection with respect to:

a. A counterfeit substance classified in schedule I or II which is a narcotic drug, or a simulated controlled substance represented to be a narcotic drug classified in schedule I or II, is guilty of a class "C" felony.

b. Any other counterfeit substance classified in ~~schedules~~ schedule I, II, or III, or any simulated controlled substance represented to be any other substance classified in schedule I, II, or III, is guilty of a class "D" felony.

c. A counterfeit substance classified in schedule IV, or a simulated controlled substance represented to be a substance classified in schedule IV, is guilty of a serious misdemeanor.

d. A counterfeit substance classified in schedule V, or a simulated controlled substance represented to be a substance classified in schedule V, is guilty of a simple misdemeanor.

Sec. 3. Section 204.406, Code 1981, is amended by striking the section and inserting in lieu thereof the following:

204.406 DISTRIBUTION TO PERSON UNDER AGE EIGHTEEN.

1. A person who is eighteen years of age or over who violates section 204.401, subsection 1, by distributing a substance listed in schedule I or II, which is a narcotic drug, to a person under eighteen years of age, is guilty of a class "B" felony; however the minimum time to be served before parole may be granted is five years. A person who is eighteen years of age or over who violates section 204.401, subsection 1, by distributing any other controlled substance listed in schedule I, II, or III to a person under eighteen years of age who is at least three years younger than the violator is guilty of a class "C" felony. A person who is eighteen years of age or over who violates section 204.401, subsection 1 by distributing a controlled substance listed in schedule IV or V to a person under eighteen years of age who is at least three years younger than the violator is guilty of an aggravated misdemeanor.

2. A person who is eighteen years of age or over who violates section 204.401, subsection 2 by distributing a counterfeit substance listed in schedule I or II which is a narcotic drug, or a simulated controlled substance represented to be a narcotic drug classified in schedule I or II, to a person under eighteen years of age is guilty of

a class "B" felony. A person who is eighteen years of age or over who violates section 204.401, subsection 2, by distributing any other counterfeit substance listed in schedule I, II, or III or a simulated controlled substance represented to be any substance listed in schedule I, II, or III, to a person under eighteen years of age who is at least three years younger than the violator is guilty of a class "C" felony. A person who is eighteen years of age or over who violates section 204.401, subsection 2, by distributing a counterfeit substance listed in schedule IV or V or a simulated controlled substance represented to be a substance listed in schedule IV or V to a person under eighteen years of age who is at least three years younger than the violator is guilty of an aggravated misdemeanor.

Sec. 4. NEW SECTION. TITLE. Sections 4 through 9 of this Act may be cited as the "Iowa Imitation Controlled Substances Act".

Sec. 5. NEW SECTION. DEFINITIONS. As used in sections 4 through 9 of this Act, unless the context otherwise requires:

1. "Controlled substance" means a controlled substance as defined in section 204.101, subsection 6.
2. "Deliver" or "delivery" means the actual, constructive, or attempted transfer, distribution, or dispensing to another of an imitation controlled substance.
3. "Manufacture" means the production, preparation, compounding, processing, encapsulating, packaging, or labeling of an imitation controlled substance.
4. "Imitation controlled substance" means a substance which is not a controlled substance but which by color, shape, size, markings, and other aspects of dosage unit appearance, and packaging or other factors, appears to be or resembles a controlled substance.

The state board of pharmacy examiners may designate a substance as an imitation controlled substance pursuant to the board's rule-making authority and in accordance with chapter 17A.

Sec. 6. NEW SECTION. FACTORS INDICATING AN IMITATION CONTROLLED SUBSTANCE. When a substance has not been designated as an imitation controlled substance by the state board of pharmacy examiners and when dosage unit appearance alone does not establish that a substance is an imitation controlled substance the following factors may be considered in determining whether the substance is an imitation controlled substance:

1. The person in control of the substance expressly or impliedly represents that the substance has the effect of a controlled substance.
2. The person in control of the substance expressly or impliedly represents that the substance because of its nature or appearance can be sold or delivered as a controlled substance or as a substitute for a controlled substance.
3. The person in control of the substance either demands or receives money or other property having a value substantially greater than the actual value of the substance as consideration for delivery of the substance.

Sec. 7. NEW SECTION. OFFENSES AND PENALTIES.

1. It is unlawful for a person to manufacture, deliver, or possess with intent to deliver, an imitation controlled substance. Except as provided in subsection 3, a person who violates this subsection is guilty of an aggravated misdemeanor.
2. It is unlawful for a person to publish or to post or distribute in a public place, an advertisement or solicitation, if the person knows or reasonably should know the advertisement or solicitation is to promote the distribution of imitation controlled substances. A person who violates this subsection is guilty of a serious misdemeanor.
3. A person who is eighteen years of age or older who violates this section by delivering an imitation controlled substance to a person under eighteen years of age who is at least three years younger than the violator is guilty of a class "D" felony.

Sec. 8. NEW SECTION. IMMUNITY. It is not unlawful for a person registered under section 204.302, to manufacture, deliver, or possess an imitation controlled substance for use as a placebo by a registered practitioner in the course of professional practice or research.

Sec. 9. NEW SECTION. FORFEITURE.

1. The following are subject to forfeiture:

a. All imitation controlled substances which have been manufactured, delivered or acquired in violation of sections 4 through 9 of this Act.

b. All raw materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting an imitation controlled substance in violation of sections 4 through 9 of this Act.

c. All property which is used, or intended for use, as a container for property described in paragraph a or b.

d. All books, records, and research products and materials, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of sections 4 through 9 of this Act.

2. Property subject to forfeiture under this section may be seized when any of the following apply:

a. The seizure is incident to an arrest, or a search under a search warrant, or an inspection under an administrative inspection warrant issued as provided in section 204.502.

b. The property subject to seizure has been the subject of a prior judgment of forfeiture in favor of the state in an injunction or forfeiture proceeding based upon sections 4 through 9 of this Act.

c. There is probable cause to believe that the property was used or is intended to be used in violation of sections 4 through 9 of this Act.

3. If property, other than a conveyance subject to forfeiture, is seized under subsection 2, it shall be disposed of in accordance with chapter 809.

However, imitation controlled substances taken, detained, or forfeited shall be disposed of as provided in section 204.506. Imitation controlled substances are not subject to replevin.

Sec. 10. Section 204.501, unnumbered paragraph 1, Code 1981, is amended to read as follows:

The department ~~shall be~~ is primarily responsible for the enforcement of ~~all provisions of~~ this chapter, and all other laws and regulations of this state, relating to controlled or counterfeit substances, or simulated or imitation controlled substances, except that the board ~~shall be~~ is primarily responsible for making accountability audits of the supply and inventory of controlled substances in the possession of pharmacists, doctors, hospitals, and health care facilities as defined in section 135C.1, subsection 8, as well as in the possession of any and all other individuals or institutions authorized to have possession of any controlled substances, and ~~shall be~~ is also be primarily responsible for ~~such~~ any other duties in respect to controlled substances as ~~shall be~~ specifically delegated to the board by law. Any ~~An~~ officer or employee of the board may, when so directed or authorized by the board:

Sec. 11. Section 204.502, subsection 1, paragraph a, Code 1981, is amended to read as follows:

a. A district ~~or municipal court~~ judge or district associate judge, within ~~his~~ the court's jurisdiction, and upon proper oath or affirmation showing probable cause, may issue warrants for the purpose of conducting administrative inspections ~~authorized by~~ under this chapter or a related rule thereunder, and or under sections 4 through 9 of this Act. The warrant may also permit seizures of property appropriate to ~~such~~ the inspections. For purposes of the issuance of administrative inspection warrants, probable cause exists upon showing a valid public interest in the effective enforcement of the ~~chapter statute~~ or related rules promulgated thereunder, sufficient to justify administrative inspection

of the area, premises, building or conveyance in the circumstances specified in the application for the warrant.

Sec. 12. Chapter 204, Code 1981, is amended by adding the following new section:

NEW SECTION. PENALTY ENHANCEMENT. A person convicted of violating a provision of this chapter, except section 204.401, subsection 3, may be fined an amount not to exceed three times the amount of the fine otherwise authorized for the violation. This fine may be in addition to any other penalty provided for violation of the provision.

Sec. 13. Section 204.505, subsection 1, Code 1981, is amended by adding the following new paragraph:

NEW PARAGRAPH. Everything of value that is furnished or intended to be furnished in exchange for a controlled substance in violation of this chapter, all proceeds including real and personal property traceable to such an exchange, and all moneys, negotiable instruments, securities, and conveyances used or intended to be used to facilitate a violation of this chapter, except that property shall not be forfeited under this paragraph, to the extent of the interest of an owner, by reason of an act or omission committed or omitted without the owner's knowledge or consent. All moneys, coin, and currency found in close proximity to forfeitable controlled substances, to forfeitable drug manufacturing or distributing paraphernalia, or to forfeitable records of the importation, manufacture, or distribution of controlled substances, are presumed to be forfeitable under this paragraph. The burden of proof is upon claimants of the property to rebut this presumption.

Sec. 14. Section 809.1, subsection 4, Code 1981, is amended to read as follows:

4. Property subject to forfeiture except such property forfeitable conveyances described in chapters chapter 127 and except forfeitable controlled substances described in chapter 204.

Sec. 15. Section 809.6, Code 1981, is amended by adding the following new subsection:

NEW SUBSECTION. If the seized property is of the type described in section 13 of this Act, and the court determines that it is forfeited as provided in section 13 of this Act, or a claimant's right to possession is not established under subsection 2 of section 809.5, the court shall order the property or the proceeds of its sale to be paid to the treasurer of state for deposit in the general fund.

TERRY E. BRANSTAD
President of the Senate

DELWYN STROMER
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 2202, Sixty-ninth General Assembly.

K. MARIE THAYER
Secretary of the Senate

Approved May 21, 1982

ROBERT D. RAY
Governor