

# **TITLE 66**

## **REGULATED SUBSTANCES**



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### CHAPTER 1 GENERAL PROVISIONS

#### Section

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**§1-101. Declaration of policy.** — The Legislature finds that the purchase, obtaining, use, and consumption of tobacco products, alcoholic beverages, and narcotic drugs are injurious to the health and welfare of the citizens of Pohnpei, are disruptive of the social fabric of our society, and are an unnecessary burden on the limited financial resources of Pohnpeian families. It is therefore the declared policy of the Legislature to discourage activities which seek to promote or encourage the purchase, obtaining, use or consumption of these commodities and to prohibit the commercial distribution of tobacco products to or on behalf of minors.

Source: S.L. No. 3L-63-94 §1, 8/15/94

**§1-102. Definitions.** — As used in this chapter and §3-101, unless the context clearly requires otherwise:

(1) “Advertise,” “advertising” or “advertisement” means to intentionally call the attention of the general public to a commodity by any physical, mechanical or electronic means, including, but not limited to, billboards, establishment signs, display cases, radio broadcasts, television broadcasts, telephone surveys, cable transmissions, handouts or any other devices, or by praising a commodity publicly so as to induce or encourage a person to want to purchase, obtain, consume or otherwise use it. Advertising includes any use of the name of the commodity which is the subject of the advertisement or any image, song, signal, statement or emblem which, by its use, is designed to call attention to the commodity, and also includes any gift of the commodity or any gift or promotional item which is provided along with the obtaining of the commodity, such as tee shirts, sports hats or cigarette lighters which bear the name of the commodity or any other image or symbol which calls attention to the commodity. Advertising includes all activities of the person seeking to call attention to

the product and any aspect of the commodity or paraphernalia provided in or along with the commodity which constitutes an advertisement as defined by this subsection and which is offered by or through that person, whether or not that person or the business he represents is the source of such advertisement. For purposes of this chapter and §3-101, advertisement shall not include the use of the trademark, brand name or symbol of a commodity in respect to the sponsorship of a sporting event or of a participant therein, or for a donation to, or sponsorship of a charitable activity or event; PROVIDED that there is no requirement for the purchase, obtainment, use or consumption of the commodity to obtain the sponsorship or donation or to attend or participate in the event or activity.

(2) "Alcoholic beverages" means any and all alcoholic beverages as defined by §2-101(1).

(3) "Minor" means any natural person below the age of 18 years.

(4) "Narcotic drugs" means any and all controlled substances as defined by §4-101(15).

(5) "Tobacco products" means any and all of the commodities produced from the tobacco plant, including cigarettes, cigars, pipe tobacco, chewing tobacco, and other tobacco products.

Source: S.L. No. 3L-63-94 §2, 8/15/94

### **§1-103. Advertising prohibited. —**

(1) No person who conducts any business within this state which offers for distribution, wholesale sale, retail sale, use or consumption any tobacco product, alcoholic beverage or narcotic drug as defined by this chapter may undertake or allow to be undertaken through his offering of such commodity for transfer to another, any activity which constitutes the advertisement of such commodity; PROVIDED, HOWEVER, that persons who have signs and other physical indices of advertisement which were posted or otherwise emplaced prior to the effective date of this chapter [August 15, 1994] shall have 45 days following the effective date of this chapter to remove such signs and other indices of advertisement from public view and to cease to use them in any manner which would constitute a violation of this chapter.

(2) No person may provide services or act as the agent of another party for profit or any other valuable consideration for the purpose of advertising any tobacco product, alcoholic beverage or narcotic drug as defined by this chapter within the state of Pohnpei; PROVIDED, HOWEVER, that persons holding valid contracts or other legal obligations for service or agency on the effective date of this chapter [August 15, 1994] for the purpose of advertising any such commodity shall, within 45 days following the effective date of this chapter, cease any activity prohibited by this subsection.

(3) Notwithstanding the prohibitions of Subsection (1) of this section, nothing therein shall prohibit a commercial vendor from advertising the prices of legal products by hand-drafted or electronically or mechanically produced signs of a size substantially equivalent to those used generally for other products offered for sale or transfer by the vendor; PROVIDED, HOWEVER, that such signs are posted inside the vendor's premises and are not readily visible to the public from outside the vendor's premises.

(4) Notwithstanding the prohibitions of Subsection (1) of this section, nothing therein shall prohibit a person who conducts a business lawfully dealing in any tobacco product, alcoholic beverage or narcotic drug to indicate in the name of the business and in references to the name of the business that the business deals in such commodities; PROVIDED, HOWEVER, that such name and/or references may not contain any reference by word or symbol to any particular trademark, brand name or producer of a commodity for which advertisement is prohibited by Subsection (1) of this section.

(5) Notwithstanding the prohibitions of Subsection (2) of this section, nothing therein shall prohibit a broadcaster of audio or video signals by air or cable transmission or vendor of printed materials, audio recordings or video recordings for purchase or rent from transmitting or offering for sale or rent pre-printed or prerecorded material obtained from outside the state which contain advertisements prohibited by this chapter, but which are incidental to the main topic of the printing or prerecording; PROVIDED that the transmitter or vendor neither has requested such advertisements nor

gains any specific royalties or any other specific fees or valuable consideration for the transmission, sale or rental of such advertisements.

Source: S.L. No. 3L-63-94 §3, 8/15/94

**§1-104. Prohibition on promotional activities.** — No person or business entity, by itself or in conjunction with any other person or business entity, may initiate, advertise for, coordinate, facilitate, manage, broker, serve as an agent or in any other manner participate in sponsoring or operating any contest, raffle, lottery or any other promotional event that awards prizes of any kind which is based in whole or in part on the element of chance and that is premised in any way upon the obtaining or consumption of any tobacco product, alcoholic beverage or narcotic drug as defined by this chapter or the display or surrender of any indices of the obtaining or use of that commodity or of any packaging, coupon or other item which can be identified with that commodity; PROVIDED, HOWEVER, that the prohibition of this section shall not apply to the awarding of prizes with respect to a promotional event which has already been initiated prior to the effective date of this chapter [*August 15, 1994*]; PROVIDED FURTHER that the award of such prizes is made within 60 days following the effective date of this chapter. It shall be the burden of the person or business seeking the exemption provided herein to show to the satisfaction of the court that the exemption applies to the activity in question.

Source: S.L. No. 3L-63-94 §4, 8/15/94

**§1-105. Posting of warnings required.** — Not later than 45 days following the effective date of this chapter [*effective date is August 15, 1994*], each person who conducts any business within this state which offers for retail sale or consumption in a public place any tobacco product, alcoholic beverage or narcotic drug as defined by this chapter shall post and maintain at a conspicuous space in the immediate vicinity of the commodity offered for sale and on any menu or other offering of the commodity for consumption at a public place a warning issued and provided by the Director of the Department of Health Services as to the generally recognized health risks involved in the use of that commodity. Any warning which substantially follows the findings of the Surgeon General of the United States of America Government shall be deemed to meet the requirements of this section. The warnings issued with respect to the acquisition or consumption of tobacco products and alcoholic beverages shall further contain information on age restrictions with respect thereto as imposed by state law. The Director may charge a reasonable fee for the distribution of warning signs as required by this section, which fees may be directly applied to the costs of production and distribution of the warning signs without any further authorization or appropriation by law.

Source: S.L. No. 3L-63-94 §6, 8/15/94

**§1-106. Violations of §§1-103, 1-104, 1-105, and 3-101.** — Any person or business entity who shall knowingly and willfully violate any provision of §§1-103, 1-104, 1-105 or 3-101, shall be guilty of an offense against this state, and upon conviction thereof, shall be fined not more than \$1,000, or imprisoned not more than 30 days, or both such fine and imprisonment. Each day that such a violation occurs shall constitute a separate offense. A criminal action against a business entity which violates any such provision may be joined with a criminal action against the owners and operators thereof, as well as other violators, or may be prosecuted separately; and a conviction against one of the parties shall not bar the prosecution of other culpable persons or business entities.

Source: S.L. No. 3L-63-94 §7, 8/15/94

**§1-107. Forfeiture.** — Any apparatus used in an advertisement or promotional event or any prize offered or awarded thereunder in violation of this chapter shall be subject to forfeiture to the state of Pohnpei as illegal contraband, except such property as may be transferred to a third person without knowledge that it was used in or obtained through an advertisement or a promotional event undertaken in violation of this chapter.

Source: S.L. No. 3L-63-94 §8, 8/15/94

**§1-108. Enforcement.** —

(1) The Office of Economic Affairs, in consultation with the Attorney General, the Department of Health Services, the Department of Education, and the Department of Public Safety, shall maintain constant surveillance of all business establishments to which this chapter and §3-101 applies to ensure compliance with the terms of this chapter and §3-101 and other Pohnpei law, and shall take such action as may be necessary to ensure full compliance with this chapter and §3-101 including, to the extent practical, at least two unannounced inspections each year of each place of business within the state which offers for sale or other transfer for valuable consideration any tobacco product, alcoholic beverage or narcotic drug as defined by this chapter.

(2) The Administrator of the Office of Economic Affairs shall submit a comprehensive report to the Legislature within ten days following the commencement of the first regular session of the Legislature each year on the activities of that office and of other agencies and instrumentalities of the Pohnpei Government to ensure compliance with the terms of this chapter and §3-101 and to promote the spirit and the goals of this chapter and §3-101.

Source: S.L. No. 3L-63-94 §10, 8/15/94; S.L. No. 5L-14-00 §3-7, 10/1/00

Note: S.L. No. 3L-63-94 §9 was repealed in its entirety by S.L. No. 4L-123-99 §6-2(5), 9/1/99.

## CHAPTER 2 ALCOHOLIC BEVERAGES

### Section

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### PART A GENERAL

**§2-101. Definitions.** — The following words and phrases, when used in this part, shall be defined as follows:

(1) “Alcoholic beverages” means alcohol, spirits, beer, and wines, and shall also include every liquid or solid containing alcohol, spirits, beer or wine capable of being consumed as a beverage by human beings, but shall not include Pohnpeian sakau (Piper methysticum) or its derivatives.

(2) “Beer” includes any beverage containing more than 3.2 percent (3.2%) of alcohol by weight and obtained by the alcoholic fermentation of barley, rice or other grain, malt, and similar products, including yeast. Beer may or may not contain hops or other vegetable products, and includes, among other things, beer, ale, stout, lager, porter, and other malt or brewed liquors, but does not include sake, known as Japanese rice wine.

(3) “Cabaret” means a confined place of entertainment having restricted entrances and providing dancing or live performances.

(4) “Cabaret-sale” means the sale and consumption of alcoholic beverages on and off the premises of the cabaret establishment, but shall not include the sale of alcoholic beverages for consumption off the premises of the cabaret establishment after 10:00 p.m.

(5) “Club” means any organization that operates a place for social purposes, whether or not for pecuniary gain, having a bona fide membership list and officers.

(6) “Employee” includes any agent, servant or employee of a licensee while in the performance of any act or duty in connection with the licensed business or at the licensed business or on the licensed premises.

(7) “Establishment” means any place, including, without limitation, bars, clubs, cabarets, restaurants, hotels or retail stores, but excluding religious organizations when conducting services,

which sells, gives, offers to sell or give away, or otherwise dispenses alcoholic beverages to the general public.

(8) “Licensee” means any individual, association, partnership or corporation having a duly issued license to operate an establishment or club pursuant to this part.

(9) “Local option” means the authority of a local government to enact ordinances for the control of alcoholic beverages in accordance with §2-103.

(10) “Nightclub” means a cabaret.

(11) “Off-sale” means the sale of alcoholic beverages for consumption off the premises.

(12) “On-sale” means the sale and consumption of alcoholic beverages on and off the premises of the on-sale establishment, but shall not include the sale of alcoholic beverages off the premises of the on-sale establishment after 10:00 p.m.

(13) “Original package” means any container of alcoholic beverages filled and stamped or sealed by the manufacturer.

(14) “Person” means and includes an individual, partnership, corporation, cooperative, club or association.

(15) “Personal identification” means a valid motor vehicle operator’s permit, a valid passport, a legal birth certificate or an identification card issued pursuant to Title 16 Chapter 6; PROVIDED that such operator’s permit, passport, birth certificate or identification card shall provide for a description of the person and his age or date of birth.

(16) “Premises” includes land, buildings, rooms, and equipment under the control of the licensee and used in connection with or in furtherance of the business covered by the license.

(17) “Restaurant-sale” means the sale and consumption of alcoholic beverages on the premises solely in conjunction with the sale of food for consumption on the premises; PROVIDED that the total sales of alcoholic beverages shall not exceed the total sales of food, as specified herein, during any 30-day period.

(18) “Sale” means any transfer, exchange or barter in any manner or by any means whatsoever and includes all sales made by a person whether as principal proprietor, agent, servant or employee.

(19) “Wholesale” means any business which sells alcoholic beverages in large quantities at reduced prices to purchasers intending to resell them at retail.

(20) “Wine” means and includes any beverage containing more than point five percent (0.5%) of alcohol by weight and not more than twenty four percent (24%) of alcohol by volume, obtained by the fermentation of the natural contents of fruits, vegetables, honey, milk or other products containing sugar, whether or not other ingredients are added, and includes vermouth and sake, known as Japanese rice wine.

Source: PDC §3-1, 3/71; S.L. No. 7L-47-09 §1, 8/1/09

Note: D.L. No. 4L-99-77 §1, 6/17/77 repealed §3-1 and inserted a new §3-1.

**§2-102. Manufacture, sale, and consumption of alcoholic beverages permitted.** — The manufacture, sale, and consumption of alcoholic beverages are permitted within the jurisdiction of Pohnpei, subject to the provisions of this part.

Source: PDC §3-2, 3/71

Note: D.L. No. 4L-99-77 §1, 6/17/77 repealed §3-2 and inserted a new §3-2.

**§2-103. Local option.** — Each local government within Pohnpei shall determine by local option whether or not it shall permit the manufacture, sale, and consumption of alcoholic beverages within its jurisdiction. Local governments may exercise the right of the local option with respect to beer only or with respect to any other alcoholic beverages, and may control or limit the manufacture, sale or consumption of alcoholic beverages, or any of these.

Source: PDC §3-3, 3/71

Note: D.L. No. 4L-99-77 §1, 6/17/77 repealed §3-3 and inserted a new §3-3.

**§2-104. Authority of the Governor.** — The Governor is authorized and empowered to promulgate rules and regulations pertaining to the control of alcoholic beverages. Such rules and regulations shall have the force and effect of law, insofar as they are not in conflict with the laws of Pohnpei. As Chief Executive, the Governor is responsible for the administration of this part, whose responsibilities shall include, but not be limited to the following:

- (1) To review, reject or grant retail and wholesale licenses;
- (2) To cause periodic and unannounced inspection of the premises of each licensee to be conducted for compliance with the requirements of this part, and other applicable laws and regulations;
- (3) To appoint a committee or special undercover inspectors and prescribe their duties and responsibilities, to assist the Governor in the administration of this part;
- (4) To consult and coordinate with all sectors of the Pohnpeian community for their assistance and efforts in the administration of this part;
- (5) To provide means to educate the general public about this part; and
- (6) To report to the Legislature, at least once annually, about the administration of this part.

Source: PDC §3-4, 3/71

Note: D.L. No. 4L-99-77 §1, 6/17/77 repealed §3-4 and inserted a new §3-4.

**§2-105. Application for license; application fee.** —

(1) Each applicant intending to obtain or renew an alcoholic beverages business license shall be required to submit an application in writing to the Governor setting forth his name, sex, date of birth, or in the case of a corporation or cooperative, the name of the corporate business, and date of incorporation, residency, the type of license applied for, place of his premises, and other pertinent information which the Governor may require. The applicant shall forthwith pay a non-refundable application fee to the Director of the Department of Treasury and Administration upon submitting his application at the rate specified below:

(a) Wholesale business application fee – \$5 per application.

(b) Retail business application fee, whether off-sale, on-sale, restaurant-sale, or cabaret-sale— \$10 per application.

(2) Failure to pay the prescribed application fee shall be cause for the Governor to not consider such application. Upon receipt of an application for the alcoholic beverages license, together with the prescribed application fee, the Governor shall cause an inspection of the applicant's premises prior to granting or renewing of such business license to the applicant.

Source: PDC §3-5, 3/71; S.L. No. 7L-47-09 §2, 8/1/09

Note: D.L. No. 4L-99-77 §1, 6/17/77 repealed §3-5 and inserted a new §3-5.

**§2-106. Alcoholic beverages business license fee.** — Upon satisfactory compliance with §§2-105, 2-107, and 2-114(3), and if the Governor is satisfied that such applicant is eligible and qualifies for a business license, the Governor shall grant the alcoholic beverages business license and collect the business license fee as follows:

(1) Wholesale license. Wholesalers of alcoholic beverages shall be required to acquire an alcoholic beverages wholesale license at a fee of \$250 for 12 months or any part thereof; PROVIDED that such license fees shall apply to licenses hereafter granted or renewed, and shall not affect licenses granted or renewed before the effective date of this part. Such fees shall be payable to the Director of the Department of Treasury and Administration at the time such wholesaler is granted a business license under this part.

(2) Retail license. Retailers of alcoholic beverages shall be required to acquire an alcoholic beverages retail license. Such retail license shall be of four types: “on-sale,” “off-sale,” “restaurant-sale”, and “cabaret-sale” as defined. The fees for such license per 12 months or any part thereof are as specified in this subsection; PROVIDED that such license fees shall apply to licenses hereafter granted or renewed, and shall not affect licenses granted or renewed before the effective date of this part. Upon granting a retail license as required by this section, the licensee shall pay the required business

license fee to the Director of the Department of Treasury and Administration, who shall transfer such fee to the local government in which the business establishment is located.

- (a) On-sale business license fee. A fee of \$200 for the privilege of selling any alcoholic beverages;
- (b) Off-sale business license fee. A fee of \$100 for the privilege of selling any alcoholic beverages;
- (c) Restaurant-sale business license fee. A fee of \$50 for the privilege of selling any alcoholic beverages; and
- (d) Cabaret-sale business license fee. A fee of \$500 for the privilege of selling any alcoholic beverages.

(3) Except for the fees collected under Subsection 2 of this section, all other fees collected under §§2-105 and 2-106(1), and all court fines for conviction of any provision of this part shall be deposited with the Director of the Department of Treasury and Administration for appropriation by the Legislature.

Source: PDC §3-6, 3/71; S.L. No. 7L-47-09 §3, 8/1/09

Note: D.L. No. 4L-99-77 §1, 6/17/77 repealed §3-6 and inserted a new §3-6.

**§2-107. Licensee eligibility.** — Every licensee, in the case of a natural person, shall be a legal resident of Pohnpei, have attained the age of 21 years, be of good moral character, and not serving a sentence for conviction of a felony. In the case of corporations, cooperatives, clubs, and associations, licensees must otherwise be legally capable of engaging in the business of selling alcoholic beverages under the laws of the Federated States of Micronesia and the state of Pohnpei. Only licensees may operate an establishment or club.

Source: PDC §3-7, 3/71

Note: D.L. No. 4L-99-77 §1, 6/17/77 repealed §3-7 and inserted a new §3-7.

**§2-108. Revocation and suspension of licenses.** — A license granted under this part may be revoked or suspended by any court of competent jurisdiction on any of the following grounds:

- (1) Acquittal of any criminal charge by reason of insanity;
- (2) Adjudication of mental incompetency, drug addiction or alcoholism as certified by a recognized physician or medical officer;
- (3) Violation of, causing or permitting a violation of, or failure or refusal to comply with this part or any regulations promulgated pursuant hereto;
- (4) Conviction of any criminal offense within the preceding two years, involving actual or attempted personal injury or death;
- (5) Misrepresentation of a material fact, within the preceding two years, in obtaining or renewing a license; or
- (6) The continuation of a license would be otherwise contrary to the public interest.

Source: PDC §3-8, 3/71

Note: D.L. No. 4L-99-77 §1, 6/17/77 repealed §3-8 and inserted a new §3-8.

**§2-109. Restrictions as to persons under 21 years of age and certain other persons.** —

- (1) It shall be unlawful for any licensee, knowingly or otherwise, to sell, give, serve, or permit to be sold, given or served any alcoholic beverages to any person under 21 years of age, to any person in a state of intoxication or to any person who is currently serving a court sentence under which such person is restrained from consuming any alcoholic beverages as a condition of his sentence.
- (2) It shall be unlawful for any person, knowingly or otherwise, to sell or give any alcoholic beverages to any person under 21 years of age.
- (3) It shall be unlawful for any person under 21 years of age to purchase, possess or consume any alcoholic beverages.

(4) It shall be unlawful for any person under 21 years of age to misrepresent his age, his identity or his eligibility for the purpose of purchasing, possessing or consuming any alcoholic beverages

Source: PDC §3-9, 3/71

Note: D.L. No. 4L-99-77 §1, 6/17/77 repealed §3-9 and inserted a new §3-9.

**§2-110. [RESERVED]**

**§2-111. [RESERVED]**

**§2-112. Personal identification.** — For proof of age, the owner, proprietor, operator, cashier clerk or other attendant on duty at an establishment shall, prior to the sale of any alcoholic beverages to any person, require such person to produce his personal identification, as defined.

Source: PDC §3-10, 3/71

Note: D.L. No. 4L-99-77 §1, 6/17/77 repealed §3-10 and inserted a new §3-10.

**§2-113. Conduct of off-sale business.** — The following subsections of this section shall apply to all off-sale businesses:

(1) The sale of alcoholic beverages in unsealed or uncapped containers is prohibited. It shall be unlawful for any licensee to sell, for consumption off the premises, any alcoholic beverages in a container that is not sealed or capped, or in any container other than its original package.

(2) *Non-consumption stores.* The consumption of alcoholic beverages shall not be permitted on the premises of an off-sale establishment or club, whether wholesale or retail.

(3) Wholesale businesses shall be required to keep and maintain a log of all sales of alcoholic beverages made to off-sale business licensees. Such log shall be available for inspection by the Chief of the Division of Police and Security or any law enforcement officer and shall provide, among other things, the following information:

(a) Name of off-sale licensee and the license number;

(b) Date of sale, names and types of alcoholic beverages sold, types of containers, and quantity sold; and

(c) The signature of the person making the sale.

(4) *Off-sale retail establishments.* The licensee of an off-sale retail business shall also be required to maintain a log which shall be in such form as prescribed by the Governor, and which shall contain the following information:

(a) Name of licensee and license number;

(b) Name of each person purchasing any alcoholic beverages from the establishment;

(c) Name, type, and quantity of beverages sold to such person;

(d) Date of the sale;

(e) Initials of the person making the sale;

(f) Monthly tally of the amount of alcoholic beverages purchased by the business and the amount sold by the business in the same period; and

(g) Such other information as the Governor, by regulation, may require.

(5) The log required by Subsection (4) of this section shall be made available at all times for inspection by the Director of the Department of Public Safety or any law enforcement officer, and may be used as evidence in a criminal proceeding. Failure to maintain a log as herein prescribed, or to produce the same for inspection as herein provided, shall constitute a violation of this part.

Source: PDC §3-11, 3/71; S.L. No. 5L-14-00 §3-38, 10/1/00

Note: D.L. No. 4L-99-77 §1, 6/17/77 repealed §3-11 and inserted a new §3-11.

**§2-114. Conduct of on-sale, restaurant-sale and cabaret-sale businesses.** — The following subsections of this section shall apply to all on-sale, restaurant-sale and cabaret-sale businesses:

(1) Conduct of on-sale, restaurant-sale and cabaret-sale businesses generally. The consumption of alcoholic beverages at licensed establishment or club shall not be encouraged directly or indirectly but

shall be confined to the supply of the demand for alcoholic beverages in a dignified and orderly manner in accordance with this part.

(2) Consumption forbidden in certain places. The consumption of alcoholic beverages by any person shall not be permitted at any place on the premises of any such establishment or club except when adequate tables, waiters or waitresses, facilities, and trash receptacles are provided.

(3) Condition of premises. The premises, including all furniture, furnishings, and equipment, of all such establishments and clubs shall, at all times, be clean, sanitary, sufficiently lighted, safe, and in good repair, and shall otherwise be in compliance with all other applicable state and local government laws and regulations pertaining to health, safety, and other conditions. Drinking glasses and other eating utensils must be washed and effectively cleaned between each use. Toilet facilities shall be provided for males and females and, at all times, maintained in a clean and sanitary condition.

(4) Unauthorized alcoholic beverages. No licensee shall keep or sell, give, offer to sell or give, or otherwise dispense from his establishment or club any alcoholic beverages that are not authorized by his license.

(5) Stacking drinks. A licensee, or his agents and employees shall not sell, give, offer to sell or give, or otherwise dispense more than one drink of any alcoholic beverage or one full container of beer or wine for consumption on the premises to one person at any one time.

(6) Full containers. A licensee or his agents or employees of an establishment or club shall not sell, give, offer to sell or give, or otherwise dispense any alcoholic beverages for consumption on the premises, from any container other than its original package, exclusive of drinks mixed on the premises upon request of the customer, from such beverages in their original packages.

(7) Refilling containers. A licensee, or his agents and employees shall not refill any alcoholic beverage container with alcoholic beverages and shall not sell, give, offer to sell or give, or otherwise dispense any alcoholic beverage from a refilled container.

(8) Noise. A licensee, or his agents and employees shall not permit noise at his establishment or club from persons, music, entertainment or any other source that unreasonably disturbs any hotel guests, restaurant patrons, store invitees or neighboring residents.

(9) Consumption while on duty. A licensee, or his agents and employees shall not consume or be permitted to consume any alcoholic beverages while on duty at his establishment or club.

(10) Employment of persons under 21 years of age. Notwithstanding any other provision of this part, a licensee, or his agents and employees shall not employ any person under 21 years of age to sell, give, offer to sell or give, or otherwise dispense any alcoholic beverages at his establishment or club.

(11) The licensee shall maintain a log as prescribed by §2-113(4) of this part for all off-sale transactions by his establishment or club.

Source: PDC §3-12, 3/71; S.L. No. 7L-47-09 §4, 8/1/09

Notes: 1. D.L. No. 4L-99-77 §1, 6/17/77 repealed §3-12 and inserted a new §3-12.

2. PDC §3-12(11), 3/71 was repealed by S.L. No. 1L-3-85 §10-1(5), 3/9/85.

**§2-114A. Additional conditions for the conduct of cabaret-sale businesses.** — The conduct of a cabaret-sale business shall be subject to all requirements of §2-114. In addition:

(1) The cabaret-sale establishment shall be housed in a fully enclosed facility designed to prohibit noises generated within the cabaret to escape from the interior of the facility;

(2) The cabaret-sale establishment shall have a parking area on the grounds of the establishment and away from the public roadways sufficient to accommodate the maximum number of customers that can be serviced by the establishment; and

(3) At all times that the cabaret-sale establishment is in operation, it shall have a doorman at each public entryway into the interior of the establishment and not less than two additional employees, commonly referred to as bouncers, primarily assigned to the order and security of the establishment and parking areas.

Source: S.L. No. 7L-47-09 §5, 8/1/09

**§2-115. Implied consent to search.** — Any person who enters or attempts to enter any on-sale, restaurant-sale, or cabaret-sale establishment or club which sells or dispenses alcoholic beverages in open containers shall thereby consent, upon request of the owner, proprietor or operator of such establishment or club, or upon the request of a duly authorized employee thereof, duly appointed private policemen hired by such establishment or club, or any law enforcement officer, subject to exclusion therefrom for denial thereof, to:

- (1) Produce for inspection his personal identification; and
- (2) Submit to a non-strip search by a person of the same sex for any dangerous weapon, device or instrument capable of inflicting personal injury or death to any person. No person found to be in possession of any dangerous weapon, device or instrument capable of inflicting personal injury or death shall be allowed into, or to remain within, any such establishment or club; PROVIDED, HOWEVER, that such person may, at the discretion of the owner, manager, operator or private policemen on duty, allow such person to enter if such person delivers possession of any such dangerous device for safekeeping while such person remains on the premises.

Source: PDC §3-13, 3/71; S.L. No. 7L-47-09 §6, 8/1/09

Note: D.L. No. 4L-99-77 §1, 6/17/77 repealed §3-13 and inserted a new §3-13.

**§2-116. Legal sale hours.** — The sale and purchase of alcoholic beverages shall be lawful only during the following hours as specified in Subsections (1) through (3) of this section, subject to the following exceptions of Subsection (4) of this section and §2-118 of this part:

- (1) Off-sale establishments: from 8:00 a.m. until 10:00 p.m. each day.
- (2) On-sale and restaurant-sale establishments:
  - (a) Sunday through Thursday, from 10:00 a.m. until 12 midnight; and
  - (b) On Friday and Saturday, from 10:00 a.m. until 1:00 a.m. the following day.
- (3) Cabaret-sale establishments: from 10:00 a.m. until 3:00 a.m. the following day.
- (4) Alcoholic beverages may be sold and purchased at on-sale and restaurant-sale establishments for consumption on the premises until 1:00 a.m. when the following day is a legal holiday; PROVIDED, HOWEVER, that notwithstanding any other provision of this part, no alcoholic beverages may be sold or purchased by any category of licensee for consumption off the premises at any time on December 24th, December 25th, December 31st and January 1st.

Source: PDC §3-14, 3/71; S.L. No. 5L-41-01 §1, 7/19/01; S.L. No. 7L-47-09 §7, 8/1/09

Note: D.L. No. 4L-99-77 §1, 6/17/77 repealed §3-14 and inserted a new §3-14.

**§2-117. Premises restrictions.** —

(1) Establishments that engage in more than one business activity within the same general premises, such as hotels and motels, that conduct an on-sale or cabaret-sale business, shall physically separate the areas of alcohol purchase and consumption from the areas of general public access.

(2) It shall be unlawful for any on-sale, restaurant-sale, or cabaret-sale retail licensee owner, employee, waiter, waitress or agent to permit the consumption of alcoholic beverages or permit or allow any customer or any person other than the owner or his or her employees to remain within the premises of the establishment where alcohol is allowed to be purchased or consumed, except during legal sale hours and for 30 minutes after the end of legal sale hours.

(3) Between 30 minutes after the end of legal sale hours, and the beginning of the next legal sale hours, it shall be unlawful for anyone to be on the licensed premises where alcohol is allowed to be purchased or consumed of an on-sale, restaurant-sale or cabaret-sale retail establishment except the licensee and his immediate employees.

(4) The provisions of Subsections (2) and (3) of this section shall not prohibit the presence of bona fide contractors, servicemen, deliverymen, salesmen, and their agents solely engaged in the business of offering or providing products or services to an establishment during the restricted hours stated in said subsections.

Source: PDC §3-14A, 3/71; S.L. No. 7L-47-09 §8, 8/1/09

Note: PDC §3-14A was inserted by S.L. No. 5L-41-01 §2, 7/19/01.

**§2-118. Election day prohibitions.** — Notwithstanding any other provision of this part, alcoholic beverages may not be sold, purchased or otherwise provided, nor may any alcoholic beverage be consumed by any person during an election day while the polling places in that local jurisdiction or town are open; PROVIDED that this provision shall not apply when the polls in a local jurisdiction or town are open solely for the purpose of receiving absentee ballots.

Source: PDC §3-14B, 3/71

Note: PDC §3-14B was inserted by S.L. No. 5L-41-01 §3, 7/19/01.

**§2-119. Prohibitions and disturbance of the peace.** —

(1) *Restriction on sale or consumption.* No alcoholic beverages shall be sold or consumed within 100 feet of any hospital, dispensary, school, church, prayer house, local government office, court house, administration building or on a public playground, including children's play or picnic areas as may be designated by the Governor, or any authorized organization; PROVIDED that the Governor may grant permission to any group or association to consume alcoholic beverages at the restricted areas only during an official reception or bona fide party.

(2) *Prohibition on open containers.* It shall be unlawful for any person to carry or drink from any open can, glass, bottle or any other container containing alcoholic beverages on any public road, or in any moving vehicle, or in any business establishment not having an on-sale or restaurant-sale retail license.

(3) *Disturbance of the peace.* Every person who shall unlawfully and willfully commit any acts while in a state of intoxication which annoy or disturb other persons so that they are deprived of their right to peace and quiet, or to provoke a breach of peace, shall be guilty of an offense under this part.

Source: PDC §3-15, 3/71

Note: D.L. No. 4L-99-77 §1, 6/17/77 repealed §3-15 and inserted a new §3-15.

**§2-120. Sacramental wine.** — Nothing in this part shall in any way limit or restrict the sale of sacred wine to bona fide religious denominations for use in religious services.

Source: PDC §3-16, 3/71

Note: D.L. No. 4L-99-77 §1, 6/17/77 repealed §3-16 and inserted a new §3-16.

**§2-121. Penalties.** — Any person or licensee violating any provision of this part shall, upon conviction thereof, be fined not less than \$25 and not more than \$500, or imprisoned for a period of not more than six months, or both such fine and imprisonment; PROVIDED, that for the third and subsequent violations of this part by any licensee, he shall be sentenced according to this section and his license shall be suspended or revoked for a period of not less than 30 days. In no event shall licensees who have had their licenses suspended or revoked under this section be refunded any part of the license fee paid for the period of suspension or revocation.

Source: PDC §3-17, 3/71

Note: §3-17 was inserted by D.L. No. 4L-99-77 §1, 6/17/77.

**§2-122. Authorization for appropriation; administration.** — There is hereby authorized for appropriation from the general fund of Pohnpei a sum or sums to be determined annually in the Comprehensive Budget Act for the purpose of financing the administration of this part. The sums appropriated under this authorization shall be administered and expended by the Governor solely for the purposes specified by this section. The Governor shall submit an annual financial report to the Legislature within 15 days after the closing day of the previous fiscal year. The balance of all sums appropriated for any fiscal year under this authorization not expended or obligated for expenditure on the closing day of each fiscal year shall revert to the general fund of Pohnpei.

Source: PDC §3-18, 3/71; D.L. No. 4L-136-78 §14, 3/27/78

Note: §3-18 was inserted by D.L. No. 4L-99-77 §1, 6/17/77.

Extended legislative history: PDC §§3-1 to 3-16, 3/71; PDC §3-1 was amended by D.L. No. 3L-94-74 §1, 6/29/74; PDC §3-2 was amended by D.L. No. 3L-46-73 §1, 5/25/73; PDC §3-3 was amended by D.L. No. 3L-4-72 §1, 5/23/72; PDC §3-4 was amended by D.L. No. 3L-5-72 §1, 5/23/72, and D.L. No. 3L-94-74 §2, 6/29/74; PDC §3-6

was amended by D.L. No. 3L-10-72 §1, 5/24/72, and D.L. No. 3L-125-75 §1, 6/3/75; PDC §3-9 was amended by D.L. No. 3L-94-74 §3, 6/29/74; PDC §3-10 was amended by D.L. No. 3L-94-74 §4, 6/29/74; PDC §3-11(d) was amended by D.L. No. 3L-94-74 §5, 6/29/74; PDC §3-12 was amended by D.L. No. 3L-68-73 §1, 10/30/73; PDC §3-15 was amended by D.L. No. 3L-58-73 §14, 5/29/73; PDC §§3-1 to 3-16 were repealed in their entirety by D.L. No. 4L-99-77 §1, 6/17/77; PDC §§3-1 to 3-18 were established by D.L. No. 4L-99-77 §1, 6/17/77; PDC §3-12(11) was repealed by S.L. No. 1L-3-85 §10-1(5), 3/9/85; PDC §3-18 was amended by D.L. No. 4L-136-78 §14, 3/27/78.

## PART B JUVENILES

**§2-123. No entering premises of on-sale or cabaret-sale business by juveniles.** — It shall be unlawful for any juvenile to enter into, or loiter upon, the premises of an on-sale or cabaret-sale licensed business that dispenses alcoholic beverages; PROVIDED that a juvenile may enter into the area of the premises of any hotel, motel or restaurant where the on-sale or cabaret-sale licensed business dispenses alcoholic beverages when accompanied by his parent or legal guardian.

Source: PDC §6-3, 3/71; D.L. No. 3L-15-72 §1, 5/25/72; S.L. No. 7L-47-09 §9, 8/1/09

**§2-124. Violation of §2-123.** — Any person found to be encouraging, enticing or permitting a juvenile to violate §2-123 shall, upon conviction thereof, be imprisoned for not less than six months, or fined not more than \$200, or both such fine and imprisonment. Any juvenile found violating §2-123 shall be dealt with in accordance with 61 PC 1-107 and 52 PC 6-104 and 6-105.

Source: PDC §6-10, 3/71; D.L. No. 3L-11-72 §1, 5/24/72

Note: The original section included a reference to the Trust Territory Code concerning a presumption of the responsibility of children, but incorrectly referenced 11 TTC §5, which pertains to insanity as a defense. 11 TTC §6 provides for a presumption of the responsibility of children. This part of the Trust Territory Code has been superseded by §10-3 of S.L. No. 3L-89-95. There is no equivalent section on the presumption of the responsibility of children in S.L. No. 3L-89-95.

**§2-125. Juvenile defined.** — For the purpose of this part, a juvenile is defined by 52 PC 1-101.

Source: PDC §6-1, 3/71

Note: Definition of "Juvenile" has been codified under Title 52 Chapter 1, entitled "Juvenile Defined".

REGULATED SUBSTANCES

## CHAPTER 3 TOBACCO PRODUCTS

### Section

3-101 Prohibition on the sale or other transfer of tobacco products to or on behalf of minors

3-102 Smoking restrictions in state buildings

### **§3-101. Prohibition on the sale or other transfer of tobacco products to or on behalf of minors.**

— Effective 45 days after the effective date of this section [*effective date is August 15, 1994*], no person who conducts or who is employed by any business within this state which offers for distribution, wholesale sale, retail sale or consumption any tobacco product as defined by this section and Chapter 1 of this title may offer, sell or otherwise transfer for valuable consideration by any means including any vending machine or other dispensing device, any tobacco product to a minor or to any person which the provider knows or has substantial reason to believe is obtaining such product for and on behalf of a minor. It shall not be a defense that the minor is acquiring the product on behalf of a person of the age of 18 years or over, whether or not such person is physically present at the time of acquisition. Any person who owns, operates or controls a vending machine or other dispensing device that mechanically or electronically dispenses any tobacco product for valuable consideration shall maintain continuous physical supervision and control over such device at all times it is serviceable for the distribution of any tobacco product to ensure that it is not used by or for a minor in violation of this section.

Source: S.L. No. 3L-63-94 §5, 8/15/94

### **§3-102. Smoking restrictions in state buildings. —**

(1) Smoking is not permitted in government buildings belonging to Pohnpei State except in specifically designated areas. Those designated areas will be plainly marked by signs. In all other areas smoking is absolutely prohibited.

(2) Any person who knowingly and willfully smokes in areas other than those specifically designated shall be guilty of a misdemeanor.

(3) Any person found guilty of violating this section shall be subject to a fine of not more than \$100, or imprisonment for 30 days, or both such fine and imprisonment.

Source: S.L. No. 2L-131-89 §§2 – 4, 10/18/89

Note: S.L. No. 2L-131-89 §1 purpose and finding provision reads:

“For some years now cigarette packages have been carrying the Surgeon General’s Warning:

‘SMOKING CAUSES LUNG CANCER, HEART DISEASE, EMPHYSEMA, AND MAY COMPLICATE PREGNANCY.’

Considering the source of the warning we can no longer ignore the fact that smoking can and does cause grave injury to the body. If the injury were only to the smoker who voluntarily indulged it would be one thing, but non-smokers in rooms with smokers are involuntarily forced to breathe the smoke which may injure them. Breathing cigarette smoke is dangerous. It is therefore, the purpose of this act to establish as a matter of policy that Pohnpei recognizes the inherent health danger associated with smoking and to safeguard those who do not smoke by designating smoking and non-smoking areas in Government buildings.”

REGULATED SUBSTANCES

## CHAPTER 3A EXPOSURE TO TOBACCO SMOKE

### Section

**3A-101 Findings and intent**

**3A-102 Construction of chapter**

**3A-103 Definitions**

**3A-104 Smoking prohibited in public places or places of employment**

**3A-105 Owners, lessees to post signs prohibiting smoking**

**3A-106 Application to certain places**

**3A-107 Minimum distance from certain areas**

**3A-108 Violations of chapter**

**3A-109 Regulations authorized**

**§3A-101. Findings and intent.** — The people of Pohnpei recognize that exposure to secondhand smoke is known to cause cancer in humans. Children are especially vulnerable to such exposure. Secondhand smoke is also a known cause of other diseases including pneumonia, asthma, bronchitis, and heart disease. Citizens are often exposed to secondhand smoke in public places and in work places, and are likely to develop chronic, potentially fatal diseases as a result of such exposure. In order to protect the health and welfare of all citizens, it is necessary to prohibit smoking in these places.

Source: S.L. No. 7L-104-11 §1, 1/1/12

**§3A-102. Construction of chapter.** — The provisions of this chapter shall be in addition to such prohibitions, penalties, taxes and restrictions related to tobacco products as are otherwise imposed by law.

Source: S.L. No. 7L-104-11 §1, 1/1/12

**§3A-103. Definitions.** — As used in this chapter, the following terms have the meanings indicated unless the context clearly indicates otherwise.

(1) “Designated smoking area” means a special area assigned by the management of a restaurant, of a sakau bar, or of a licensed cabaret-sale or on-sale establishment for the consumption of alcoholic beverages as defined by 66 PC 2-101:

- (a) Which special area constitutes not more than 20 percent of the total area of the establishment;
- (b) Which special area is separate and apart from the areas of the establishment that are open to the general public and is separated from such general access areas by the minimum distance as prescribed by §3A-107;
- (c) Which special area vents the tobacco smoke generated therein to the outside atmosphere and from which such tobacco smoke is not allowed to penetrate into the general access areas of the establishment; and
- (d) Which special area is clearly posted as a “designated smoking area” by the management of the establishment.

(2) “Smoke” or “smoking” means the carrying or smoking of tobacco by any kind of lighted pipe, cigar, cigarette, or any other lighted smoking device.

(3) “Public place” means that portion of any building or vehicle used by and open to the public, regardless of whether the building or vehicle is owned in whole or in part by private persons or entities, the state of Pohnpei, or other public entity, and regardless of whether a fee is charged for admission, and includes a presumptively reasonable minimum distance, as set forth in §3A-107 of twenty-five feet from entrances, exits, windows that open, and ventilation intakes that serve an enclosed area where smoking is prohibited; PROVIDED that:

(a) Public places include, but are not limited to: schools, elevators, museums, concert halls, theaters, auditoriums, exhibition halls, indoor sports arenas, hospitals, nursing homes, health care facilities or clinics, enclosed shopping centers, retail stores, retail service establishments, financial institutions, educational facilities, ticket areas, public hearing facilities, state legislative chambers and immediately adjacent hallways, public restrooms, libraries, restaurants, waiting areas, lobbies, bars, taverns, night clubs, cabarets, reception areas, and no less than seventy-five percent (75%) of the sleeping quarters within a hotel or motel that are rented to guests.

(b) Public places also include the enclosed areas of inter-island ocean vessels, taxi cabs, buses and other public conveyances or transportation vehicles.

(c) A public place does not include a private residence unless the private residence is used to provide licensed child care, foster care, adult care, or other similar social service care on the premises.

(d) This chapter is not intended to restrict smoking in private facilities which are occasionally open to the public except upon the occasions when the facility is open to the public.

(4) “Place of employment” or “workplace” means any area under the control of a public or private employer which employees are required to pass through during the course of employment, including, but not limited to: entrances and exits to the places of employment, and including a presumptively reasonable minimum distance, as set forth in §3A-107 from entrances, exits, windows that open, and ventilation intakes that serve an enclosed area where smoking is prohibited; work areas; restrooms; conference and classrooms; break rooms and cafeterias; and other common areas. A private residence or home-based business, unless used to provide licensed child care, foster care, adult care, or other similar social service care on the premises, is not a place of employment.

Source: S.L. No. 7L-104-11 §1, 1/1/12

Note:

**§3A-104. Smoking prohibited in public places or places of employment.** — No person may smoke in a public place or in any place of employment as defined by this chapter, including the minimum distance therefrom as set forth in §3A-107, except in a designated smoking area as defined by §3A-103(1).

Source: S.L. No. 7L-104-11 §1, 1/1/12

**§3A-105. Owners, lessees to post signs prohibiting smoking.** — Owners, or in the case of a leased or rented space the lessee or other person in charge, of a place regulated under this chapter shall prohibit smoking in public places and places of employment and shall post signs prohibiting smoking as appropriate under this chapter. Signs shall be posted conspicuously at each building entrance. In the case of retail stores, restaurants, bars and other retail service establishments, signs shall be posted conspicuously at each entrance and in prominent locations throughout the place.

Source: S.L. No. 7L-104-11 §1, 1/1/12

**§3A-106. Application to certain places.** — This chapter is not intended to regulate smoking in a private workplace which is fully open to the outside atmosphere, such as a farm field or a building construction site prior to the emplacement of the roof on the building being constructed nor is this chapter intended to regulate smoking in a retail service establishment, such as a traditional sakau bar, which is open to the outside atmosphere and for which solid walls surround not more than 20% of the structure, even though such places may be visited by nonsmokers, excepting such places open to the outside atmosphere in which smoking is prohibited by regulation issued pursuant to this chapter.

Source: S.L. No. 7L-104-11 §1, 1/1/12

**§3A-107. Minimum distance from certain areas.** — Smoking is prohibited within a presumptively reasonable minimum distance of twenty-five feet from entrances, exits, windows that open, and

ventilation intakes that serve an enclosed area where smoking is prohibited so as to ensure that tobacco smoke does not enter the area through entrances, exits, open windows, or other means. Owners, operators, managers, employers, or other persons who own or control a public place or place of employment may seek to rebut the presumption that twenty-five feet is a reasonable minimum distance by making application to the Director of the Department of Health Services. The presumption will be rebutted if the applicant can show by clear and convincing evidence that, given the unique circumstances presented by the location of entrances, exits, windows that open, ventilation intakes, or other factors, smoke will not infiltrate or reach the entrances, exits, open windows, or ventilation intakes or enter into such public place or place of employment and, therefore, the public health and safety will be adequately protected by a lesser distance.

Source: S.L. No. 7L-104-11 §1, 1/1/12

**§3A-108. Violations of chapter. —**

(1) Any person intentionally violating this chapter by smoking in a public place or place of employment, inclusive of the minimum distance therefrom as set forth in §3A-107, or any person removing, defacing, or destroying a sign required by this chapter, is subject to a civil fine of up to one hundred dollars. Any person passing by or through a public place while on a public sidewalk or public right-of-way has not intentionally violated this chapter.

(2) When violations of §3A-105 occur, a warning shall first be given to the owner or other person in charge. Any subsequent violation is subject to a civil fine of up to one hundred dollars. Each day upon which a violation occurs or is permitted to continue constitutes a separate violation.

(3) The Department of Public Safety, with the assistance of the Department of Health Services, shall enforce §3A-105 regarding the duties of owners or persons in control of public places and places of employment by either of the following actions:

(a) Serving notice requiring the correction of any violation; or

(b) Calling upon the Office of the Attorney General to maintain an action for an injunction to enforce §3A-105, to correct a violation, and to assess and recover a civil penalty for the violation.

(4) Civil fines imposed by this section shall, upon collection, be deposited in the general fund of the Pohnpei Treasury as the realization of general revenues; PROVIDED that the Governor shall maintain a separate accounting of such deposits and endeavor to budget such monies for public information programs designed to discourage smoking habits among the citizens and residents of Pohnpei.

(5) The civil fines that may be levied pursuant to this section shall be in addition to such civil fines and criminal penalties as may be imposed pursuant to other law.

Source: S.L. No. 7L-104-11 §1, 1/1/12

**§3A-109. Regulations authorized. —** The Director of the Department of Health Services shall establish rules and regulations for the proper administration of this chapter which, upon the approval of the Governor, shall carry the force and effect of law. Such rules and regulations shall be issued in compliance with Title 8 Chapter 1 of this Code, relating to administrative procedures.

Source: S.L. No. 7L-104-11 §1, 1/1/12

REGULATED SUBSTANCES

## CHAPTER 4 CONTROLLED SUBSTANCES

### Section

4-101 Definitions	4-119 Registration: denial, revocation or suspension; notice and hearing
4-102 Reports and recommendations by Director of the Department of Public Safety	4-120 Registration: records
4-103 Nomenclature	4-121 Order forms for Schedules I or II substances
4-104 Schedule I – Criteria for classification	4-122 Prescriptions
4-105 Schedule I – Designated	4-123 Trafficking
4-106 Schedule II – Criteria for classification	4-124 Possession
4-107 Schedule II – Designated	4-125 Commercial offenses
4-108 Schedule III – Criteria for classification	4-126 Fraudulent practices
4-109 Schedule III – Designated	4-127 Attempts, endeavors, and conspiracies
4-110 Schedule IV – Criteria for classification	4-128 Penalties for violation of chapter to be in addition to civil or administrative penalties
4-111 Schedule IV – Designated	4-129 Distribution to persons under 18
4-112 Schedule V – Criteria for classification	4-130 Conditional discharge for first offense of possession
4-113 Schedule V – Designated	4-131 Conviction by another jurisdiction not bar to prosecution
4-114 Annual update and republication of schedules	4-132 Second and subsequent offenses
4-115 Rules and regulations; charging of fees	4-133 Sakau and betel nut
4-116 Registration; exceptions	
4-117 Registration: criteria for granting; effect	
4-118 Registration: revocation or suspension; limitation of effect; sealing of substances	

### **§4-101. Definitions.** — As used in this chapter:

(1) “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:

- (a) A practitioner (or, in his presence, by his authorized agent); or
- (b) The patient or research subject at the direction and in the presence of the practitioner.

(2) “Agent” means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor or dispenser but does not include a common or contract carrier, public warehouseman or employee thereof.

(3) “Controlled substance” means a drug, substance or immediate precursor in Schedules I through V of §§4-105, 4-107, 4-109, 4-111, and 4-113.

(4) “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 or persons who in fact manufactured, distributed or dispensed such substance and which thereby falsely purports or is represented to be the product of, or to have been distributed by such other manufacturer, distributor or dispenser.

(5) “Deliver” or “delivery” means the actual, constructive, or attempted transfer from one person to another of a controlled substance whether or not there exists an agency relationship.

(6) “Director” means the Director of the Department of Public Safety.

(7) “Dispense” means to deliver a controlled substance to the ultimate user or research subject by or pursuant to the lawful order of a practitioner, including prescribing, administering, packaging, labeling, and compounding necessary to prepare the substance for such delivery.

(8) “Dispenser” is a practitioner who dispenses.

(9) "Distribute" means to deliver other than by administering or dispensing a controlled substance.

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

(11) "Drug" means:

(a) Substances recognized in the official United States of America pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, or any supplement to any of them;

(b) Substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;

(c) Substances (other than food) intended to affect the structure or any function of the body of man or other animals; and

(d) Substances intended for use as a component of any article specified in Paragraphs (a), (b) or (c) of this subsection, but does not include devices or their components, parts or accessories.

(12) "Immediate precursor" means a substance which the Director has found to be and by regulation 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 such manufacture.

(13) "Manufacture" means the production, preparation, propagation, compounding, conversion or processing of a controlled substance, either directly or indirectly, 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 or compounding of a controlled substance by an individual for his own use or the preparation, compounding, packaging or labeling of a controlled substance:

(a) By a practitioner as an incident to his administering or dispensing of a controlled substance in the course of his professional practice; or

(b) 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.

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

(15) "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:

(a) Opium and opiate, and any salt, compound, derivative or preparation of opium or opiate;

(b) Any salt, compound, isomer, derivative or preparation thereof which is chemically equivalent or identical with any of the substances referred to in Paragraph (a) of this subsection, but not including the isoquinoline alkaloids of opium;

(c) Opium poppy and poppy straw;

(d) Coca leaves and any salt, compound, derivative or preparation of coca leaves, and any salt, compound, isomer, 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.

(16) "Opiate" means any substances having 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 §4-102, the

dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms.

(17) "Opium poppy" means the plant of the species *Palaver somniferum L.*, except the seeds thereof.

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

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

(20) "Practitioner" means a physician, dentist or a veterinarian who is licensed and registered to practice in Pohnpei State.

(21) "Prescribe" means to direct, designate or order the use of a formula for the preparation of a drug and medicine for a disease or illness and the manner of using them.

(22) "Prescriber" means one who is authorized to issue a prescription.

(23) "Prescription" means an order or formula issued by a licensed practitioner of medicine, osteopathy, podiatry, dentistry or veterinary medicine, for the compounding or dispensing of drugs.

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

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

Source: S.L. No. 2L-198-91 §1, 6/27/91; S.L. No. 5L-14-00 §3-29, 10/1/00

Note: The word "distributed" in Subsection (4) has been substituted for the word "distrusted" appearing in the original statute.

#### **§4-102. Reports and recommendations by Director of the Department of Public Safety. —**

(1) The Director shall report to the Pohnpei Legislature within ten days following the commencement of the first regular session of each year, the effects of the implementation of this chapter in relation to the problems of drug abuse in Pohnpei, and shall recommend to the Legislature any additions, deletions or revisions, in the schedules of substances enumerated in §§4-105, 4-107, 4-109, 4-111, and 4-113, and any other recommendations which he deems necessary. The Director shall not recommend any additions, deletions or revisions in such schedules until after notice and an opportunity for a hearing is afforded all interested parties, except that such hearing shall not be required if official notice has been received that the substance has been added, deleted or rescheduled under United States of America federal law. In making a recommendation regarding a substance, the Director shall assess the degree of danger or probable danger of the substance by considering the following:

(a) The actual or probable abuse of the substance including:

(i) Its history and current pattern of abuse;

(ii) The scope, duration, and significance of abuse; and

(iii) A judgment of the degree of actual or probable detriment which may result from the abuse of the substance.

(b) The biomedical hazard of the substance including:

(i) Its pharmacology: the effects and modifiers of effects of the substance;

(ii) Its toxicology: the acute and chronic toxicity, interaction with other substances whether controlled or not, and liability to psychological or physiological dependence;

(iii) Risk to public health and particular susceptibility of segments of the population;

and

(iv) Existence of therapeutic alternative for substances which are or may be used for medical purposes.

(c) A judgment of the probable physical and social impact of widespread abuse of the substance.

(d) Whether the substance is an immediate precursor of a substance already controlled under this chapter.

(e) The current state of scientific knowledge regarding the substance.

(2) After considering the factors enumerated above, the Director shall make a recommendation to the Legislature, specifying to what schedule the substance shall be added, deleted or rescheduled if it finds that the substance has a degree of danger or probable danger. The Director may make such recommendation to the Legislature prior to the submission of his annual report in which case the Director shall publish and give notice to the public of such recommendation.

(3) The Legislature has the sole authority to add, delete or reschedule all substances enumerated in the schedules in §§4-105, 4-107, 4-109, 4-111, and 4-113.

(4) If the Legislature designates a substance as an immediate precursor, substances that are precursors of the controlled precursor shall not be subject to control solely because they are precursors of the controlled precursor.

Source: S.L. No. 2L-198-91 §2, 6/27/91; S.L. No. 5L-14-00 §3-29, 10/1/00

**§4-103. Nomenclature.** — The following schedules include the controlled substance listed or to be listed by whatever official name, common or usual name, chemical name or trade name designated.

Source: S.L. No. 2L-198-91 §3, 6/27/91

**§4-104. Schedule I – Criteria for classification.** — The Director in his recommendation shall place a substance in Schedule I if he finds that:

(1) The substance has a high potential for abuse; and

(2) The substance has no accepted medical use in treatment, or lacks accepted safety for use in treatment under medical supervision.

Source: S.L. No. 2L-198-91 §4, 6/27/91

**§4-105. Schedule I – Designated.** — The controlled substances listed in this section are included in Schedule I:

(1) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:

- (a) Acetylmethadol;
- (b) Alfentanil;
- (c) Allylprodine;
- (d) Alphacetylmethadol;
- (e) Alphameprodine;
- (f) Alphamethadol;
- (g) Alpha-methylfentanyl;
- (h) Benzethidine;
- (i) Betacetylmethadol;
- (j) Betameprodine;
- (k) Betamethadol;
- (l) Betaprodine;
- (m) Clonitazene;
- (n) Dextromoramide;
- (o) Diampromide;
- (p) Diethylambutene;
- (q) Difenoxyin;
- (r) Dimenoxadol;
- (s) Dimepheptanol;

- (t) Dimethylthiambutene;
  - (u) Dioxaphetyl butyrate;
  - (v) Dipipanone;
  - (w) Ethylmethylthiambutene;
  - (x) Etonitazene;
  - (y) Etoxidene;
  - (z) Furethidine;
  - (aa) Hydroxypethidine;
  - (bb) Ketobemidone;
  - (cc) Levomoramide;
  - (dd) Levophenacymorphan;
  - (ee) Morpheridine;
  - (ff) Noracymethadol;
  - (gg) Norlevorphanol;
  - (hh) Normethadone;
  - (ii) Norpipanone;
  - (jj) Parahexyl;
  - (kk) Phenadoxone;
  - (ll) Phenampromide;
  - (mm) Phenomorphan;
  - (nn) Phenoperidine;
  - (oo) Piritramide;
  - (pp) Proheptazine;
  - (qq) Properidine;
  - (rr) Propiram;
  - (ss) Racemoramide;
  - (tt) Tildine;
  - (uu) Trimerperidine;
  - (vv) N-[1-(1-methyl-2-phenyl) ethyl-4-piperidyl]-N-phenylacetamide (acetyl-alpha methylfentanyl);
  - (ww) N-[1-(1-methyl-2-(2-thienyl)ethyl-4-piperidyl]-N-phenylpropanamide (alpha methylthiofentanyl);
  - (xx) N-[1-benzyl-4-piperidyl]-N-phenylpropanamide (benzylfentanyl);
  - (yy) N-[1-(2-hydroxy-2-phenyl)ethyl-4-piperidyl]-N-phenylpropanamide (betahydroxyfentanyl);
  - (zz) N-[3-methyl-1-(2-hydroxy-2-phenyl)-ethyl-4-piperidyl]-N-phenylpropanamide (beta-hydroxy-3-methylfentanyl);
  - (aaa) N-[3-methyl-1-(2-(2-thienyl)ethyl-4-piperidyl)-N-phenylpropanamide methylthiofentanyl];
  - (bbb) N-[1-(2-thienyl)methyl-4 piperidyl]-N-phenylpropanamide (thenylfentanyl);
- and
- (ccc) N-[1-(2-2 thienyl)ethyl-4-piperidyl]-N-phenylpropanamide (thiofentanyl).

(2) Any of the following opium derivatives, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (a) Acetorphine;
- (b) Acetyldihydrocodeine;
- (c) Benzylmorphine;
- (d) Codeine methylbromide;
- (e) Codeine-N-Oxide;

- (f) Cyprenorphine;
- (g) Desomorphine;
- (h) Dihydromorphine;
- (i) Drotebanol;
- (j) Etorphine;
- (k) Heroin;
- (l) Hydromorphanol;
- (m) Methyldesorphine;
- (n) Methyldihydromorphine;
- (o) Morphine methylbromide;
- (p) Morphine methylsulfonate;
- (q) Morphine-N-Oxide;
- (r) Myorphine;
- (s) Nicocodeine;
- (t) Nicomorphine;
- (u) Normorphine;
- (v) Phoclodine; and
- (w) Thebacon.

(3) Any material, compound, mixture or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (a) 2, 5-dimethoxyamphetamine (2, 5-DMA);
- (b) 3, 4-methylenedioxyamphetamine;
- (c) 5-methoxy-3, 4-methylenedioxyamphetamine;
- (d) 4-bromo-2, dimethoxyamphetamine (4-bromo-2, 5-DMA);
- (e) 3, 4, 5-trimethoxyamphetamine;
- (f) Bufotenine;
- (g) 4-methoxyamphetamine (PMA);
- (h) Fenethylthine;
- (i) Diethyltryptamine;
- (j) Dimethyltryptamine;
- (k) 4-methyl-2, 5-dimethoxylamphetamine;
- (l) Ibogaine;
- (m) Lysergic acid diethylamide;
- (n) Marijuana;
- (o) Mescaline;
- (p) Peyote;
- (q) N-ethyl-3-piperidyl benzilate;
- (r) N-methyl-3-piperidyl benzilate;
- (s) Psilocyn;
- (t) Psilocybin;
- (u) Tetrahydrocannabinols;
- (v) Ethylamine analog of phencyclidine (PCE);
- (w) Pyrrolidine analog of phencyclidine (PcPy, PHP); and
- (x) Thiophene analog of phencyclidine (TPCP), (TPCP; TCP).

(4) Unless specifically excepted, the schedule shall include any material, compound, mixture or preparation that contains any quantity of the substance methaqualone.

Source: S.L. No. 2L-198-91 §5, 6/27/91

**§4-106. Schedule II – Criteria for classification.** — The Director in his recommendation shall place a substance in Schedule II if he finds that:

- (1) The substance has a high potential for abuse;
- (2) The substance has currently accepted medical use with severe restrictions; and
- (3) Abuse of the substance may lead to severe psychological or physical dependence.

Source: S.L. No. 2L-198-91 §6, 6/27/91

**§4-107. Schedule II – Designated.** — The controlled substances listed in this section are included in Schedule II:

(1) Any of the following substances except those narcotic drugs listed in other schedules, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:

- (a) Opium and opiate, and any salt, compound, derivative or preparation of opium or opiate;
- (b) Opium and opiate, isomers, derivative or preparation thereof which is chemically equivalent or identical with any of the substances referred to in Paragraph (a) of this subsection, but not including the isoquinoline alkaloids of opium;
- (c) Opium poppy and poppy straw;
- (d) Coca leaves and any salt, compound, derivative or preparation of coca leaves, and any salt, compound, derivative or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions which do not include cocaine or ecgonine.

(2) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:

- (a) Alfentanil;
- (b) Alphaprodine;
- (c) Anileridine;
- (d) Bezitramide;
- (e) Bulk dextropropoxyphene (nondosage form);
- (f) Dihydrocodeine;
- (g) Diphenoxylate;
- (h) Fentanyl;
- (i) Isomethadone;
- (j) Levomethorphan;
- (k) Levorphanol;
- (l) Metazocine;
- (m) Methadone;
- (n) Methadone-Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;
- (o) Moramide-Intermediate, 2-methyl-3-morpholino-1, 1-diphenyl-propane-carboxylic acid;
- (p) Pethidine;
- (q) Pethidine-Intermediate, A-4-cyano-1-methyl-4-phenylpiperidine;
- (r) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate;
- (s) Pethidine-Intermediate-C, 1-methyl-4-phenyl-4-piperidine-4-carboxylic acid;
- (t) Phenazocine;
- (u) Piminodine;
- (v) Racemethorphan;
- (w) Racemorphan; and
- (x) Sufentanil.

(3) *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:

- (a) Amobarbital;
- (b) Pentobarbital;
- (c) Phencyclidine;
- (d) Phencyclidine immediate precursors:
  - (i) I-phenycyclohexylamine;
  - (ii) I-piperidinocyclohexane-carbonitrile (PCC); and
- (e) Secobarbital.

(4) *Stimulants*. Any material, compound, mixture or preparation, which contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system:

- (a) Amphetamine, its salts, optical isomers, and salts of its optical isomers;
- (b) Any substance which contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers;
- (c) Any material, compound, mixture or preparation, which contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system:
  - (i) Phenmetrazine and its salts;
  - (ii) Phenylacetone (P2P); and
  - (iii) Methylphenidate.

Source: S.L. No. 2L-198-91 §7, 6/27/91

**§4-108. Schedule III – Criteria for classification.** — The Director in his recommendation shall place a substance in Schedule III if he finds that:

- (1) The substance has a potential for abuse less than the substances listed in Schedules I and II;
- (2) The substance has currently accepted medical use in treatment; and
- (3) Abuse of the substance may lead to moderate or low physical dependence or high psychological dependence.

Source: S.L. No. 2L-198-91 §8, 6/27/91

**§4-109. Schedule III – Designated.** — The controlled substances listed in this section are included in Schedule III:

(1) *Stimulants*. 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, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (a) Those compounds, mixtures or preparations in dosage unit form containing any stimulant substance listed in Schedule II, and any other drug of the quantitative composition or which is the same except that it contains a lesser quantity of controlled substances;
- (b) Benzphetamine;
- (c) Chlorphentermine;
- (d) Clortermine;
- (e) Mazindol; and
- (f) Phendimetrazine.

(2) *Depressants*. 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:

- (a) Any compound, mixture or preparation containing amobarbital, secobarbital, pentobarbital or any salt thereof and one or more other active medicinal ingredients which are not listed in any schedule;
  - (b) Any suppository dosage form containing amobarbital, secobarbital, pentobarbital or any salt of any of these drugs and approved by the Food and Drug Administration of the United States of America Government for marketing only as a suppository;
  - (c) Any substance which contains any quantity of a derivative of barbituric acid or any salt thereof;
  - (d) Chlorexadol;
  - (e) Glutethimide;
  - (f) Lysergic acid;
  - (g) Lysergic acid amide;
  - (h) Methyprylon;
  - (i) Sulfondiethylmethane;
  - (j) Sulfonethylmethane; and
  - (k) Sulfonmethane.
- (3) Nalorphine.
- (4) Any material, compound, mixture or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:
- (a) Not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;
  - (b) Not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts;
  - (c) Not more than 300 milligrams of dihydrocodeinone, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;
  - (d) Not more than 300 milligrams of dihydrocodeinone, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts;
  - (e) Not more than 1.8 grams of dihydrocodeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts;
  - (f) Not more than 300 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more ingredients in recognized therapeutic amounts;
  - (g) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts;
  - (h) Not more than 50 milligrams of morphine, or any of its salts, per 100 milliliters or per 100 grams, with one or more active, non-narcotic ingredients in recognized therapeutic amounts.
- (5) The Director may except, by rule, any compound, mixture or preparation containing any stimulant or depressant substance listed in Subsections (1) and (2) of this section from the application of all or any part of this chapter if the compound, mixture or preparation contains one or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion or concentration that vitiate the potential for abuse of the substances which do have a stimulant or depressant effect on the central nervous system.

Source: S.L. No. 2L-198-91 §9, 6/27/91

**§4-110. Schedule IV – Criteria for classification.** — The Director in his recommendation shall place a substance in Schedule IV if he finds that:

- (1) The substance has a low potential for abuse relative to substances in Schedule III;
- (2) The substance has currently accepted medical use in treatment; and
- (3) Abuse of the substance may lead to limited physical dependence or psychological dependence relative to the substances listed in Schedule III.

Source: S.L. No. 2L-198-91 §10, 6/27/91

**§4-111. Schedule IV – Designated.** — The controlled substances listed in this section are included in Schedule IV:

(1) *Depressants.* Any material, compound, mixture or preparation that contains any quantity of the following substances or salts thereof having a potential for abuse associated with a depressant effect on the central nervous system:

- (a) Alprazolam;
- (b) Barbital;
- (c) Bromazepam;
- (d) Camazepam;
- (e) Chloral betaine;
- (f) Chloral hydrate;
- (g) Chlordiazepoxide;
- (h) Clobazam;
- (i) Clonazepam;
- (j) Clorazepate;
- (k) Clotiazepam;
- (l) Cloxazolam;
- (m) Delorazepam;
- (n) Diazepam;
- (o) Estazolam;
- (p) Ethchlorvynol;
- (q) Ethinamate;
- (r) Ethyl lofazepate;
- (s) Fludiazepam;
- (t) Flunitrazepam;
- (u) Flurazepam;
- (v) Halazepam;
- (w) Haloxazolam;
- (x) Ketazolam;
- (y) Loprazolam;
- (z) Lorazepam;
- (aa) Lormetazepam;
- (bb) Mebutamate;
- (cc) Medazepam;
- (dd) Methohexital;
- (ee) Meprobamate;
- (ff) Mephobarbital;
- (gg) Methylphenobarbital;
- (hh) Midazolam;
- (ii) Nimetazepam;
- (jj) Nitrazepam;
- (kk) Nordiazepam;

- (ll) Oxazepam;
- (mm) Oxazolam;
- (nn) Paraldehyde;
- (oo) Petrichloral;
- (pp) Phenobarbital;
- (qq) Pinazepam;
- (rr) Prazepam;
- (ss) Quazepam;
- (tt) Temazepam;
- (uu) Tetrazepam; and
- (vv) Triazolam.

(2) *Fenfluramine*. Any material, compound, mixture or preparation that contains any quantity of fenfluramine, including its salts, isomers, and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible:

- (a) Fenfluramine.

(3) *Stimulants*. Unless listed in another schedule, any material, compound, mixture or preparation that contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of such isomers, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (a) Diethylpropion;
- (b) Phentermine; or
- (c) Pemoline (including organometallic complexes and chelates thereof).

(4) *Other substances*. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation that contains any quantity of the following substances, including its salts:

- (a) Dextropropoxyphene; or
- (b) Pentazocine.

(5) The Director may except, by rule, any compound, mixture or preparation containing any depressant substance listed in Subsection (1) of this section from the application of all or any part of this chapter if the compound, mixture or preparation contains one or more active medicinal ingredients not having a depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion or concentration that vitiate the potential for abuse of the substances which have a depressant effect on the central nervous system.

Source: S.L. No. 2L-198-91 §11, 6/27/91

**§4-112. Schedule V – Criteria for classification.** — The Director in his recommendation shall place a substance in Schedule V if he finds that:

- (1) The substance has a low potential for abuse relative to the controlled substances listed in Schedule IV;
- (2) The substance has currently accepted medical use in treatment; and
- (3) The substance has limited physical dependence or psychological dependence liability relative to the controlled substances listed in Schedule IV.

Source: S.L. No. 2L-198-91 §12, 6/27/91

**§4-113. Schedule V – Designated.** — The controlled substances listed in this section are included in Schedule V:

- (1) Any compound, mixture or preparation containing limited quantities of any of the following narcotic drugs, which shall include one or more active, non-narcotic medicinal ingredients in sufficient proportion to confer upon the compound, mixture or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

- (a) Not more than 200 milligrams of codeine, or any of its salts, per 100 milliliters or per 100 grams;
- (b) Not more than 100 milligrams of dihydrocodeine, or any of its salts, per 100 milliliters or per 100 grams;
- (c) Not more than 100 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or per 100 grams;
- (d) Not more than 2.5 milligrams of dephenoxylate, and not less than 25 micrograms of atropine sulfate per dosage unit; and
- (e) Not more than 100 milligrams of opium per milliliters or per 100 grams.

Source: S.L. No. 2L-198-91 §13, 6/27/91

**§4-114. Annual update and republication of schedules.** — The Director shall update and republish the schedules annually and make them available to any registrant, law enforcement agency or any member of the public desiring such list.

Source: S.L. No. 2L-198-91 §14, 6/27/91

**§4-115. Rules and regulations; charging of fees.** — The Director is authorized to promulgate rules and regulations in accordance with and charge reasonable fees relating to the registration and control of the manufacture, distribution, prescribing, and dispensing of controlled substances within the state of Pohnpei.

Source: S.L. No. 2L-198-91 §15, 6/27/91

**§4-116. Registration; exceptions.** —

(1) Every person who manufactures, distributes, prescribes or dispenses any controlled substance within the state of Pohnpei or who proposes to engage in the manufacture, distribution, prescription or dispensing of any controlled substance within the state of Pohnpei shall obtain annually a registration issued by the Director in accordance with the rules made by him.

(2) Any person registered by the Director under this chapter to manufacture, distribute, prescribe, dispense or conduct research with controlled substances may possess, manufacture, distribute, dispense, prescribe or conduct research with those substances to the extent authorized by their registration and in conformity with the other provisions of this chapter.

(3) The following persons need not register and may lawfully possess controlled substances under this chapter:

(a) A common or contract carrier or warehouseman, or an employee thereof, whose possession of any controlled substance is in the usual course of his business or employment; and

(b) An ultimate user or a person in possession of any controlled substance pursuant to a lawful order of a practitioner, or such person in lawful possession of a Schedule V substance.

(4) The Director may, by rule, waive the requirement for registration of certain manufacturers, distributors or dispensers if he finds it consistent with public health and safety.

(5) A separate registration shall be required at each principal place of business or professional practice where the applicant manufactures, distributes, prescribes or dispenses controlled substances.

(6) The Director or his designee may inspect the establishment of a registrant or applicant for registration in accordance with the rules promulgated by him.

Source: S.L. No. 2L-198-91 §16, 6/27/91

**§4-117. Registration: criteria for granting; effect.** —

(1) The Director shall register an applicant to manufacture, prescribe or distribute controlled substances included in §§4-105, 4-107, 4-109, 4-111, and 4-113 unless he determines that the issuance of that registration is inconsistent with the public interest. In determining the public interest, the Director shall consider the following factors:

- (a) Maintenance of effective controls against diversion of controlled substances into other than legitimate medical, scientific or industrial channels;
- (b) Compliance with applicable law;
- (c) Prior conviction record of applicant under foreign or domestic laws relating to controlled substances;
- (d) Past experience in the manufacture or distribution of controlled substances, and the existence in the establishment of effective controls against diversion;
- (e) Furnishing by the applicant of false or fraudulent material in any application filed under this chapter;
- (f) Suspension or revocation of the applicant's foreign or domestic registration to manufacture, distribute, prescribe or dispense controlled substances as authorized by that other jurisdiction; and
- (g) Any other factors relevant to and consistent with the public health and safety.

(2) A registration granted under Subsection (1) of this section shall not entitle a registrant to manufacture and distribute controlled substances in Schedules I or II other than those specified in the registration.

(3) Practitioners must be registered to dispense or prescribe any controlled substances or to conduct research with controlled substances in Schedules II through V if they are authorized to dispense, prescribe or conduct research under law applicable within the state of Pohnpei. The Director need not require separate registration for practitioners engaging in research with non-narcotic controlled substances in Schedules II through V where the registrant is already registered under this chapter in another capacity. Practitioners registered under applicable law to conduct research with Schedule I substances may conduct research with Schedule I substances within Pohnpei State upon furnishing evidence of that registration.

(4) The Director shall waive the requirements for registration under this section for manufacturers and distributors who can show compliance with registration requirements of foreign or domestic controlled substance statutes recognized by the state.

Source: S.L. No. 2L-198-91 §17, 6/27/91

**§4-118. Registration: revocation or suspension; limitation of effect; sealing of substances. —**

(1) A registration pursuant to §4-117 to manufacture, distribute, prescribe or dispense a controlled substance may be suspended or revoked by the Director upon a finding that the registrant:

- (a) Has materially falsified any application filed pursuant to this chapter or required by this chapter;
- (b) Has been convicted of any violation under this chapter or any foreign or domestic law relating to any substance defined herein as a controlled substance;
- (c) Has had his registration suspended or revoked by competent authority of any other foreign or domestic jurisdiction and is no longer authorized by the law thereof to engage in the manufacture, distribution or dispensing of controlled substances;
- (d) Has violated any regulation promulgated by the Director relating to §§4-115 through 4-122; or
- (e) Has had the registrant's license to practice the registrant's profession suspended or revoked by the applicable governing board.

(2) The Director may limit revocation or suspension of a registration to the particular controlled substance with respect to which grounds for revocation or suspension exists.

(3) In the event the Director suspends or revokes a registration, controlled substances owned or possessed by the registrant pursuant to such registration at the time of suspension or the effective date of the revocation order, as the case may be, may in the discretion of the Director be placed under seal. No disposition may be made of substances under seal until the time for taking an appeal has elapsed or until all appeals have been concluded unless a court, upon application therefor, orders the sale of

perishable substances and the deposit of the proceeds of the sale with the court. Upon a revocation order becoming final, all such controlled substances shall be forfeited.

Source: S.L. No. 2L-198-91 §18, 6/27/91

**§4-119. Registration: denial, revocation or suspension; notice and hearing. —**

(1) Before denying, suspending or revoking registration, or refusing a renewal of registration, the Director shall serve upon the applicant or registrant a notice to show cause why registration should not be denied, revoked or suspended, or why the renewal should not be refused. The notice to show cause shall contain a statement of the basis therefor and shall call upon the applicant or registrant to appear before the Director at a time and place not less than 30 days after the date of service of the notice, but in the case of a denial of renewal of registration the notice to show cause shall be served not later than 30 days before the expiration of the registration. These proceedings shall be conducted as administrative hearings without regard to any criminal prosecution or other proceeding. Proceedings to refuse renewal of registration shall not abate the existing registration which shall remain in effect pending the outcome of the administrative hearing.

(2) The Director may suspend, without a notice to show cause, any registration simultaneously with the institution of proceedings under §4-118, or where renewal of registration is refused, if he finds that there is an imminent danger to the public health or safety which warrants this action. The suspension shall continue in effect until the conclusion of the proceedings, including judicial review thereof, unless sooner withdrawn by the Director or dissolved by a court of competent jurisdiction.

Source: S.L. No. 2L-198-91 §19, 6/27/91

**§4-120. Registration: records. —** Persons registered to manufacture, distribute, prescribe or dispense controlled substances under this chapter shall keep records and maintain inventories in conformance with the record keeping and inventory requirements of applicable law and in accordance with any rules or regulations adopted by the Director pursuant to this chapter.

Source: S.L. No. 2L-198-91 §20, 6/27/91

**§4-121. Order forms for Schedules I or II substances. —** Controlled substances in Schedules I and II shall be distributed by a registrant to another registrant only pursuant to an order form prescribed by the rules and regulations adopted by the Director pursuant to this chapter; PROVIDED, HOWEVER, that the rules and regulations shall allow the use of order forms made in compliance with foreign and domestic controlled substance statutes recognized by the state.

Source: S.L. No. 2L-198-91 §21, 6/27/91

**§4-122. Prescriptions. —**

(1) Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, no controlled substance in Schedule II may be dispensed without the written prescription of a practitioner.

(2) In emergency situations, as defined by rule of the Director, Schedule II drugs may be dispensed upon oral prescription of a practitioner reduced promptly to writing and filled by the pharmacy. Prescriptions shall be retained in conformity with the requirements of §4-120. No prescription for a Schedule II substance may be refilled.

(3) Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, a controlled substance included in Schedules III or IV, which is a prescription drug, shall not be dispensed without a written or oral prescription of a practitioner. The prescription shall not be filled or refilled more than six months after the date thereof or be refilled more than five times, unless renewed by the practitioner.

(4) A controlled substance included in Schedule V shall not be distributed or dispensed other than for a medical purpose.

(5) No prescription for a controlled substance shall be filled or refilled with more than a 30-day supply, based upon the dosage units contained in the prescription.

Source: S.L. No. 2L-198-91 §22, 6/27/91

**§4-123. Trafficking. —**

(1) Except as authorized by this chapter, it shall be unlawful for any person knowingly or intentionally:

(a) To manufacture, deliver or dispense, or possess with intent to manufacture, deliver or dispense, a controlled substance; or

(b) To create, distribute or possess with intent to deliver, a counterfeit controlled substance.

(2) Any person who violates Subsection (1) of this section with respect to:

(a) A substance classified in Schedules I or II which is a narcotic drug shall be sentenced to a term of imprisonment for less than ten years, a fine of not more than \$10,000, or both such fine and imprisonment;

(b) Any other controlled substance classified in Schedules I, II or III shall be sentenced to a term of imprisonment for less than five years, a fine of not more than \$5,000, or both such fine and imprisonment;

(c) A substance classified in Schedule IV shall be sentenced to a term of imprisonment for not more than two years, a fine of not more than \$1,000, or both such fine and imprisonment; or

(d) A substance classified in Schedule V shall be sentenced to a term of imprisonment for not more than one year, a fine of not more than \$1,000, or both such fine and imprisonment.

(3) Notwithstanding Subsection (2)(b) of this section, any person who violates Subsection (1)(a) of this section by distributing not more than one ounce of marijuana for no remuneration shall be treated as provided in §4-124(3)(a).

Source: S.L. No. 2L-198-91 §23, 6/27/91

**§4-124. Possession. —**

(1) It is unlawful for any person knowingly or intentionally to possess a controlled substance, unless such 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 chapter.

(2) Any person who violates Subsection (1) of this section with respect to any controlled substance except marijuana shall be sentenced to a term of imprisonment for not more than one year, a fine of not more than \$1,000, or both such fine and imprisonment.

(3) Any person who violates Subsection (1) of this section with respect to marijuana shall be penalized as follows:

(a) Any person who possesses one ounce or less shall be sentenced to a term of imprisonment of not more than one month, a fine of not more than \$100, or both such fine and imprisonment;

(b) Any person possessing more than one ounce but less than two and two-tenths pounds shall be sentenced to a term of imprisonment of not more than three months, a fine of not more than \$500, or both such fine and imprisonment; and

(c) Any person possessing two and two-tenths pounds or more of marijuana shall be sentenced to a term of imprisonment of not more than one year, a fine of not more than \$1,000, or both such fine and imprisonment.

(4) The possession of two and two-tenths pounds or more of marijuana by any person shall constitute a rebuttable presumption of the crime of trafficking under §4-123.

Source: S.L. No. 2L-198-91 §24, 6/27/91

**§4-125. Commercial offenses. —**

(1) It shall be unlawful for any person who is subject to the requirements of §§4-115 through 4-122:

- (a) To distribute or dispense a controlled substance not authorized by his registration to another registrant or other authorized person;
- (b) To manufacture, distribute or dispense a controlled substance not authorized by his registration to another registrant or other authorized person;
- (c) To refuse or fail to make, keep or furnish any record, notification, order form, statement, invoice or information required under this chapter;
- (d) To refuse an entry into any premises for any inspection authorized by this chapter; or
- (e) To knowingly keep or maintain any store, shop, warehouse, dwelling house, building, vehicle, boat, aircraft or any other structure or place whatever, which is resorted to by persons using controlled substances, or which is used for the keeping or selling of the same in violation of this chapter.

(2) Any person who violates Subsection (1) of this section is punishable by imprisonment for not more than five years, a fine of not more than \$1,000, or both such fine and imprisonment.

Source: S.L. No. 2L-198-91 §25, 6/27/91

**§4-126. Fraudulent practices. —**

(1) It shall be unlawful for any person knowingly or intentionally:

- (a) To distribute a controlled substance classified in Schedules I or II, in the course of his legitimate business, if that person is a registrant, except pursuant to an order form as required by §4-121;
- (b) To use in the course of the manufacture or distribution of a controlled substance a registration number which is fictitious, revoked, suspended or issued to another person;
- (c) To acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge;
- (d) To furnish false or fraudulent material information in, or omit any material information from, any application, report or other document required to be kept or filed under this chapter, or any record required to be kept by this chapter; or
- (e) To make, distribute or possess any punch, die, plate, stone or other thing designed to print, imprint or reproduce the trademark, trade name or other identifying mark, imprint or device of another or any likeness of any of the foregoing upon any drug or container of labeling thereof so as to render such drug a counterfeit controlled substance.

(2) Any person who violates this section is punishable by imprisonment for not more than five years, a fine of not more than \$1,000, or both such fine and imprisonment.

Source: S.L. No. 2L-198-91 §26, 6/27/91

**§4-127. Attempts, endeavors, and conspiracies. —** Any person who attempts, endeavors or conspires to commit any offense defined in this chapter is punishable by imprisonment or fine or both which may not exceed the maximum punishment prescribed for the offense, the commission of which was the object of the attempt, endeavor, or conspiracy.

Source: S.L. No. 2L-198-91 §27, 6/27/91

**§4-128. Penalties for violation of chapter to be in addition to civil or administrative penalties. —** Any penalty imposed for violation of this chapter shall be in addition to, and not in lieu of, any civil or administrative penalty or sanction authorized by law.

Source: S.L. No. 2L-198-91 §28, 6/27/91

**§4-129. Distribution to persons under 18.** — Any person who is at least 18 years of age who violates §4-123(1) by distributing a substance listed in Schedules I or II which is a narcotic drug to a person under 18 years of age who is at least three years his junior shall be punished by a term of imprisonment as authorized by §4-123(2)(a), in addition to such fine as may be imposed as authorized by §4-123(2)(a). Any person who is at least 18 years of age who violates §4-123(1) by distributing any other controlled substance listed in Schedules I, II, III, and IV to a person under 18 years of age who is at least three years his junior shall be punished by a term of imprisonment as authorized in §4-123(2)(b) or (c), in addition to such fine as may be imposed as authorized by §4-123(2)(b) or (c), or both such fine and imprisonment.

Source: S.L. No. 2L-198-91 §29, 6/27/91

**§4-130. Conditional discharge for first offense of possession.** —

(1) Whenever any person who has not previously been convicted of any offense under this chapter or under any statute of the Trust Territory of the Pacific Islands, of the United States of America Government, or of any jurisdiction of the Federated States of Micronesia relating to narcotic drugs, marijuana or stimulant, depressant or hallucinogenic drugs pleads guilty to or is found guilty of possession of a controlled substance under §4-124(1) the court, without entering a judgment of guilt and with the consent of the accused, may defer further proceedings and place him on probation upon terms and conditions. Upon violation of a term or condition, the court may enter an adjudication of guilty and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge such person and dismiss the proceedings against him. Discharge and dismissal under this section shall be without court adjudication of guilt and shall not be deemed a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime including the additional penalties imposed for second or subsequent convictions under §4-132. Discharge and dismissal under this section may occur only once with respect to any person.

(2) Upon the dismissal of such person and discharge of the proceedings against him under Subsection (1) of this section, such person may apply to the court for an order to expunge from all official records (other than the nonpublic records to be retained by the court solely for the purpose of use by the courts in determining whether or not, in subsequent proceedings, such person qualifies under this section) all recordation relating to his arrest, indictment or information, trial, finding of guilt, and dismissal and discharge pursuant to this section. If the court determines after hearing that such person was dismissed and the proceedings against him discharged, it shall enter such order. The effect of such order shall be to restore such person, in the contemplation of the law, to the status he occupied before such arrest or indictment or information. No person as to whom such order has been entered shall be held hereafter under any provisions of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, indictment, information or trial in response to any inquiry made of him for any purpose.

Source: S.L. No. 2L-198-91 §30, 6/27/91

**§4-131. Conviction by another jurisdiction not bar to prosecution.** — If a violation of this chapter is a violation of the law of another jurisdiction, a conviction or acquittal under the law of that other jurisdiction for the same act is not a bar to prosecution in Pohnpei.

Source: S.L. No. 2L-198-91 §31, 6/27/91

**§4-132. Second and subsequent offenses.** — Any person who shall be found in violation of any provision of this chapter after one or more prior convictions of him under the same provision of this chapter have become final is punishable by a term of imprisonment of up to twice that authorized by this chapter for a violation thereof, but less than ten years, or by a fine of up to twice that authorized by this chapter for a violation thereof, or both such fine and imprisonment.

Source: S.L. No. 2L-198-91 §32, 6/27/91

**§4-133. Sakau and betel nut.** — Notwithstanding any other provision of this chapter, nothing in this chapter shall be deemed to control in any manner the substances of sakau and of betel nut as they appear in their natural state in the islands of Micronesia, or processed forms thereof that do not combine their ingredients with controlled substances specified in this chapter.

Source: S.L. No. 2L-198-91 §34, 6/27/91

Note: S.L. No. 2L-198-91 §33 superseding and §35 severability provisions have been omitted.

**TITLE 67**  
**[RESERVED]**

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