

AN ACT concerning professional regulation.

**Be it enacted by the People of the State of Illinois,  
represented in the General Assembly:**

Section 5. The Illinois Food, Drug and Cosmetic Act is amended by adding Section 3.23 as follows:

(410 ILCS 620/3.23 new)

Sec. 3.23. Legend drug prohibition.

(a) In this Section:

"Legend drug" means a drug limited by the Federal Food, Drug and Cosmetic Act to being dispensed by or upon a medical practitioner's prescription because the drug is:

(1) habit forming;

(2) toxic or having potential for harm; or

(3) limited in use by the new drug application for the drug to use only under a medical practitioner's supervision.

"Medical practitioner" means any person licensed to practice medicine in all its branches in the State.

"Deliver" or "delivery" means the actual, constructive, or attempted transfer of possession of a legend drug, with or without consideration, whether or not there is an agency relationship.

"Manufacture" means the production, preparation,

propagation, compounding, conversion, or processing of a legend drug, 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 of its container. "Manufacture" does not include:

(1) by an ultimate user, the preparation or compounding of a legend drug for his own use; or

(2) by a medical practitioner, or his authorized agent under his supervision, the preparation, compounding, packaging, or labeling of a legend drug:

(A) as an incident to his administering or dispensing of a legend drug in the course of his professional practice; or

(B) as an incident to lawful research, teaching, or chemical analysis and not for sale.

"Prescription" has the same meaning ascribed to it in Section 3 of the Pharmacy Practice Act.

(b) It is unlawful for any person to knowingly manufacture or deliver or possess with the intent to manufacture or deliver a legend drug of 6 or more pills, tablets, capsules, or caplets or 30 ml or more of a legend drug in liquid form who is not licensed by applicable law to prescribe or dispense legend drugs or is not an employee of the licensee operating in the normal course of business under the supervision of the

licensee. Any person who violates this Section is guilty of a Class 3 felony, the fine for which shall not exceed \$100,000. A person convicted of a second or subsequent violation of this Section is guilty of a Class 1 felony, the fine for which shall not exceed \$250,000.

(c) The following are subject to forfeiture:

(1) all substances that have been manufactured, distributed, dispensed, or possessed in violation of this Act;

(2) all raw materials, products, and equipment of any kind which are used, or intended for use in manufacturing, distributing, dispensing, administering, or possessing any substance in violation of this Act;

(3) all conveyances, including aircraft, vehicles, or vessels, which are used, or intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession, or concealment of property described in items (1) and (2) of this subsection (c), but:

(A) no conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this Section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this Act;

(B) no conveyance is subject to forfeiture under this Section by reason of any act or omission which the

owner proves to have been committed or omitted without his knowledge or consent; and

(C) a forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if he neither had knowledge of nor consented to the act or omission;

(4) all money, things of value, books, records, and research products and materials including formulas, microfilm, tapes, and data that are used, or intended to be used in violation of this Act;

(5) everything of value furnished, or intended to be furnished, in exchange for a substance in violation of this Act, all proceeds traceable to such an exchange, and all moneys, negotiable instruments, and securities used, or intended to be used, to commit or in any manner to facilitate any violation of this Act; and

(6) all real property, including any right, title, and interest, including, but not limited to, any leasehold interest or the beneficial interest in a land trust, in the whole of any lot or tract of land and any appurtenances or improvements, which is used or intended to be used, in any manner or part, to commit, or in any manner to facilitate the commission of, any violation or act that constitutes a violation of Section 33.1 of this Act or that is the proceeds of any violation or act that constitutes a violation of Section 33.1 of this Act.

(d) Property subject to forfeiture under this Act may be seized by the Director of the Department of State Police or any peace officer upon process or seizure warrant issued by any court having jurisdiction over the property. Seizure by the Director of the Department of State Police or any peace officer without process may be made:

(1) if the seizure is incident to inspection under an administrative inspection warrant;

(2) if the property subject to seizure has been the subject of a prior judgment in favor of the State in a criminal proceeding, or in an injunction or forfeiture proceeding based upon this Act or the Drug Asset Forfeiture Procedure Act;

(3) if there is probable cause to believe that the property is directly or indirectly dangerous to health or safety;

(4) if there is probable cause to believe that the property is subject to forfeiture under this Act and the property is seized under circumstances in which a warrantless seizure or arrest would be reasonable; or

(5) in accordance with the Code of Criminal Procedure of 1963.

(e) In the event of seizure pursuant to subsection (c) of this Section, forfeiture proceedings shall be instituted in accordance with the Drug Asset Forfeiture Procedure Act.

(f) Property taken or detained under this Section shall not

be subject to replevin, but is deemed to be in the custody of the Director of the Department of State Police subject only to the order and judgments of the circuit court having jurisdiction over the forfeiture proceedings and the decisions of the State's Attorney under the Drug Asset Forfeiture Procedure Act. If property is seized under this Act, then the seizing agency shall promptly conduct an inventory of the seized property and estimate the property's value, and shall forward a copy of the inventory of seized property and the estimate of the property's value to the Director of the Department of State Police. Upon receiving notice of seizure, the Secretary may:

(1) place the property under seal;

(2) remove the property to a place designated by the Secretary;

(3) keep the property in the possession of the seizing agency;

(4) remove the property to a storage area for safekeeping or, if the property is a negotiable instrument or money and is not needed for evidentiary purposes, deposit it in an interest bearing account;

(5) place the property under constructive seizure by posting notice of pending forfeiture on it, by giving notice of pending forfeiture to its owners and interest holders, or by filing notice of pending forfeiture in any appropriate public record relating to the property; or

(6) provide for another agency or custodian, including an owner, secured party, or lienholder, to take custody of the property upon the terms and conditions set by the Director of the Department of State Police.

(g) If the Department suspends or revokes a registration, all legend drugs owned or possessed by the registrant at the time of suspension or the effective date of the revocation order may 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 rule becoming final, all substances may be forfeited to the Department.

(h) If property is forfeited under this Act, then the Director of the Department of State Police must sell all such property unless such property is required by law to be destroyed or is harmful to the public, and shall distribute the proceeds of the sale, together with any moneys forfeited or seized, in accordance with subsection (i) of this Section. Upon the application of the seizing agency or prosecutor who was responsible for the investigation, arrest or arrests, and prosecution that led to the forfeiture, the Director of the Department of State Police may return any item of forfeited property to the seizing agency or prosecutor for official use in the enforcement of laws if the agency or prosecutor can

demonstrate that the item requested would be useful to the agency or prosecutor in their enforcement efforts. If any forfeited conveyance, including an aircraft, vehicle, or vessel, is returned to the seizing agency or prosecutor, then the conveyance may be used immediately in the enforcement of the criminal laws of the State. Upon disposal, all proceeds from the sale of the conveyance must be used for drug enforcement purposes. If any real property returned to the seizing agency is sold by the agency or its unit of government, then the proceeds of the sale shall be delivered to the Director of the Department of State Police and distributed in accordance with subsection (i) of this Section.

(i) All moneys and the sale proceeds of all other property forfeited and seized under this Act shall be distributed as follows:

(1) 65% shall be distributed to the metropolitan enforcement group, local, municipal, county, or State law enforcement agency or agencies which conducted or participated in the investigation resulting in the forfeiture. The distribution shall bear a reasonable relationship to the degree of direct participation of the law enforcement agency in the effort resulting in the forfeiture, taking into account the total value of the property forfeited and the total law enforcement effort with respect to the violation of the law upon which the forfeiture is based. Amounts distributed to the agency or



agencies shall be used for the enforcement of laws.

(2) 12.5% shall be distributed to the Office of the State's Attorney of the county in which the prosecution resulting in the forfeiture was instituted, deposited in a special fund in the county treasury and appropriated to the State's Attorney for use in the enforcement of laws. In counties over 3,000,000 population, 25% will be distributed to the Office of the State's Attorney for use in the enforcement of laws governing cannabis and controlled substances. If the prosecution is undertaken solely by the Attorney General, the portion provided hereunder shall be distributed to the Attorney General for use in the enforcement of laws.

(3) 12.5% shall be distributed to the Office of the State's Attorneys Appellate Prosecutor and deposited in a separate fund of that office to be used for additional expenses incurred in the investigation, prosecution and appeal of cases. The Office of the State's Attorneys Appellate Prosecutor shall not receive distribution from cases brought in counties with over 3,000,000 population.

(4) 10% shall be retained by the Department of State Police for expenses related to the administration and sale of seized and forfeited property.

Section 10. The Drug Asset Forfeiture Procedure Act is amended by changing Section 3 as follows:

(725 ILCS 150/3) (from Ch. 56 1/2, par. 1673)

Sec. 3. Applicability. The provisions of this Act are applicable to all property forfeitable under the Illinois Controlled Substances Act, the Cannabis Control Act, the Illinois Food, Drug and Cosmetic Act, or the Methamphetamine Control and Community Protection Act.

(Source: P.A. 94-556, eff. 9-11-05.)

Section 99. Effective date. This Act takes effect upon becoming law.