HB4888

LRB10118479CPF67929b

101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

HB4888

Introduced 2/18/2020, by Rep. Jennifer Gong-Gershowitz - Fred Crespo - Marcus C. Evans, Jr. - Grant Wehrli - Terra Costa Howard, et al.

SYNOPSIS AS INTRODUCED:

New Act
5 ILCS 140/7 from Ch. 116, par. 207
30 ILCS 105/5.930 new

Creates the Pharmaceutical Recovery Act. Requires covered manufacturers to, no later than July 1, 2021 or 6 months after becoming a covered manufacturer, whichever is later, participate in an approved drug take-back program or have established and implemented a drug take-back program independently or as part of a group of covered manufacturers. Provides requirements for the drug take-back program and for manufacturer program operators. Requires each manufacturer program operator to submit a proposal for the establishment and implementation of a drug take-back program to the Environmental Protection Agency for review and approval. Contains provisions regarding changes or modifications to drug take-back programs, promotion of drug take-back programs, annual reports, funding, and reimbursement. Requires covered manufacturers and manufacturer program operators to submit an annual $5,000 registration fee. Provides civil penalties. Creates the Pharmaceutical Take-Back Reimbursement Program Fund and makes a conforming change in the State Finance Act. Contains other provisions. Amends the Freedom of Information Act. Provides that proprietary information submitted to the Environmental Protection Agency under the Pharmaceutical Recovery Act is exempt from inspection and copying under the Act. Effective immediately.

LRB101 18479 CPF 67929 b

A BILL FOR

AN ACT concerning safety.

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

Section 1. Short title. This Act may be cited as the Pharmaceutical Recovery Act.

Section 5. Findings. The General Assembly finds that:

(1) A safe system for the collection and disposal of unused, unwanted, and expired medicines is a key element of a comprehensive strategy to prevent prescription drug abuse and pharmaceutical pollution. Home medicine cabinets are full of unused and expired prescription drugs, only a fraction of which get disposed of properly.

(2) Storing unused, unwanted, or expired medicines can lead to accidental poisoning, drug abuse, and even drug trafficking, but disposing of medicines by flushing them down the toilet or placing them in the garbage can contaminate groundwater and other bodies of water, contributing to long-term harm to the environment and animal life.

(3) Manufacturers of these drugs hold the ultimate responsibility for the lasting impacts of the drugs they produce.

(4) The General Assembly therefore finds that it is in

the interest of public health and environmental protection to establish a single, uniform, statewide system of regulation for safe and secure collection and disposal of medicines through a uniform drug "take-back" program operated and funded by drug manufacturers.

Section 10. Definitions. In this Act:

"Agency" means the Environmental Protection Agency.

"Authorized collector" means any of the following who elect to collect covered drugs through participation in a pharmaceutical drug take-back program:

(1) a person who is registered with the United States Drug Enforcement Administration to collect controlled substances for the purpose of destruction; or

(2) a law enforcement agency.

"Collection site" means the location where an authorized collector operates a collection receptacle for the purpose of collecting covered drugs as part of a drug take-back program under this Act.

"Consumer" means a person who possesses a covered drug for personal use or for the use of a member of the person's household.

"Covered drug" means a legend drug, nonlegend drug, brand name drug, or generic drug. "Covered drug" does not include:

(1) a dietary supplement as defined by 21 U.S.C 321 (ff);

(2) drugs that are defined as Schedule I controlled substances under the Illinois Controlled Substances Act;

(3) personal care products, including, but not limited to, cosmetics, shampoos, sunscreens, lip balms, toothpastes, and antiperspirants, that are regulated as both cosmetics and nonprescription drugs under the federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301.

(4) drugs for which manufacturers provide a pharmaceutical product stewardship or drug take-back program as part of a federal managed risk evaluation and mitigation strategy under 21 U.S.C. 355-1;

(5) biological drug products, as defined by 21 C.F.R. 600.3(h), for which manufacturers provide a pharmaceutical product stewardship or drug take-back program;

(6) drugs that are administered in a clinical setting;

(7) emptied injector products or emptied medical devices and their component parts or accessories;

(8) needles or sharps;

(9) drugs that are intended for use as animal medicines, including, but not limited to, parasiticide products;

(10) pet pesticide products contained in pet collars, powders, shampoos, topical applications, or other forms; or

(11) dialysate drugs or other saline solutions required to perform kidney dialysis.

"Covered manufacturer" means a manufacturer, distributor, or licensed wholesale drug distributor, as defined in the Wholesale Drug Distribution Licensing Act, of a covered drug that is sold or offered for sale in Illinois. "Covered manufacturer" does not include:

(1) a private label distributor of a covered drug, or a pharmacy that sells a covered drug under the pharmacy's store label, if the manufacturer of the covered drug is identified under Section 20;

(2) a pharmacy chain that is licensed as a wholesale drug distributor under the Wholesale Drug Distribution Licensing Act, if it engages in intracompany transfers of covered drugs between any division, affiliate, subsidiary, parent, or other entity under complete common ownership or control, or if the manufacturer of the covered drug distributed at wholesale is identified under Section 20;

(3) a repackager of a covered drug, if the manufacturer of the drug is identified under Section 20, or if the repackager is a pharmacy chain that engages in intracompany transfers of the covered drug between any division, affiliate, subsidiary, parent, or other entity under complete common ownership or control; or

(4) a health care corporation exempt from taxation under Section 501(c)(3) of the federal Internal Revenue Code of 1986 that repackages covered drugs solely for the purpose of supplying the drugs to facilities or pharmacies

operated by the corporation or an affiliate of the corporation, if the manufacturer of the drug is identified under Section 20.

"Drug" means an article:

(1) recognized in the official United States Pharmacopoeia, the National Formulary, the Homeopathic Pharmacopoeia of the United States, Dispensatory of the United States of America, "Remington: The Science and Practice of Pharmacy", or any supplement to any of those sources;

(2) intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in human beings;

(3) other than food and that is intended to affect the structure or any function of the body of human beings; or

(4) intended for use as a component of any article specified in paragraph (1), (2) or (3), but not devices or their components, parts or accessories.

"Drug take-back program" means a program implemented by a manufacturer program operator for the collection, transportation, and disposal of covered drugs.

"Generic drug" means a drug that is chemically identical or bioequivalent to a brand name drug in dosage, form, safety, strength, route of administration, quality, performance characteristics, and intended use. The inactive ingredients in a generic drug need not be identical to the inactive

ingredients in the chemically identical or bioequivalent brand name drug.

"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 by the new drug application for the drug to use only under a medical practitioner's supervision.

"Manufacturer program operator" means a covered manufacturer, or group of covered manufacturers, that implements a drug take-back program.

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

"Nonlegend drug" means a drug that does not require dispensing by prescription and which is not restricted to use by practitioners only.

"Nonprescription drug" means a drug that may be lawfully sold in Illinois without a prescription.

"Person" means any individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company, trust, estate, political subdivision, State agency, or any other legal entity, or their legal representative, agent, or assign.

"Pharmaceutical drug take-back reimbursement program" means a program identified as part of a drug take-back program

to reimburse all authorized collectors for all costs associated with the collection, transportation, and disposal of covered drugs.

"Pharmaceutical reimbursement program operator" means an organization exempt from taxation under Section 501(c)(6) of the federal Internal Revenue Code of 1986 that exclusively represents retailers in Illinois and implements a pharmaceutical drug take-back reimbursement program.

"Pharmacy" has the meaning provided in Section 3 of the Pharmacy Practice Act.

"Prescription drug" means a drug that is required under State or federal law to be dispensed with a prescription or that is restricted to use by medical practitioners only.

"Proprietary information" means information that is:

(1) submitted under this Act;

(2) a trade secret or commercial or financial information that is privileged or confidential and is identified as such by the person providing the information; or

(3) not required to be disclosed under any other law or any regulation affecting a covered product, covered manufacturer, or pharmacy.

Section 15. Participation in a drug take-back program. Each covered manufacturer must, no later than July 1, 2021 or 6 months after becoming a covered manufacturer, whichever is

later, participate in an approved drug take-back program or have established and implemented a drug take-back program that complies with the requirements of this Act. A covered manufacturer must establish and implement a drug take-back program independently or as part of a group of covered manufacturers.

Section 20. Identification of covered manufacturers.

(a) No later than April 1, 2021, a covered manufacturer that sells or offers for sale in Illinois a covered drug must provide a list of covered manufacturers for that covered drug to the Agency. A covered manufacturer must provide an updated list to the Agency on January 15th of each subsequent year.

(b) No later than April 1, 2021, each pharmacy, private label distributor, and repackager that sells or offers for sale in Illinois, under its own label, a covered drug must provide written notification to the Agency identifying the covered manufacturer from which the covered drug is obtained.

(c) All covered manufacturers of covered drugs sold or offered for sale in Illinois must register with the Agency and pay to the Agency the annual registration fee set forth under Section 65.

Section 25. Drug take-back program requirements.

(a) At least 120 days prior to submitting a proposal under Section 35, a manufacturer program operator must notify

potential authorized collectors of the opportunity to serve as an authorized collector for the proposed drug take-back program. No later than 30 days after the potential authorized collector expresses interest in participating in a proposed program, the manufacturer program operator must commence good faith negotiations with a potential authorized collector regarding the collector's participation in the program.

(b) A person may serve as an authorized collector for a drug take-back program voluntarily, in exchange for compensation, or as part of a pharmaceutical take-back reimbursement program. Nothing in this Act requires any person to serve as an authorized collector for a drug take-back program.

(c) A pharmacy shall not be required to participate in a drug take-back program. A pharmacy that is registered with the United States Drug Enforcement Administration to collect controlled substances and elects to serve as an authorized collector shall participate in a pharmaceutical drug take-back reimbursement program.

(d) A drug take-back program must include as a collector any hospital or clinic with an on site pharmacy, and any law enforcement agency that (i) is an authorized collector and (ii) offers to participate in the program without compensation. The manufacturer program operator must include the hospital, clinic, or law enforcement agency in the program as a collector no later than 90 days after receiving a written offer to

participate.

(e) A drug take-back program must include and reimburse any authorized collection site registered with a pharmaceutical take-back reimbursement program under subsection (b) of Section 60.

(f) A drug take-back program collection site must accept all covered drugs from ultimate users during the hours that the authorized collector is normally open for business to the public.

(g) A drug take-back program collection site must use collection receptacles in compliance with federal law, including United States Drug Enforcement Administration regulations. The manufacturer program operator must provide a service schedule that meets the needs of each collection site to ensure that each secure collection receptacle is serviced as often as necessary to avoid reaching capacity and that collected covered drugs are transported to final disposal in a timely, environmentally sound manner, including a process for additional prompt collection service upon notification from the collection site.

(h) Authorized collectors must comply with applicable provisions of federal laws and regulations governing the handling of covered drugs, including United States Drug Enforcement Administration regulations.

(i) A drug take-back program's collection system must be safe, secure, and convenient on an ongoing, year-round basis

and must provide equitable and reasonably convenient access for residents across the State.

(j) A drug-take back program shall have a minimum of 3 collection sites in each county of the State, plus one additional collection site per county for every 50,000 county residents.

Authorized collection sites registered with a pharmaceutical take-back reimbursement program shall be counted towards meeting the minimum number of collection sites within a drug take-back program.

If a manufacturer program operator demonstrates to the Agency that there are not a sufficient number of authorized collection sites in the county, a drug take-back program must establish mail-back distribution locations or hold periodic collection events to supplement service to any area of the State that is underserved by collection sites, as determined by the Agency. The manufacturer program operator, in consultation with the Agency, local law enforcement, local health jurisdiction, and local community, must determine the number and locations of mail-back distribution locations and the frequency and location of these collection events, to be held at least twice each year, unless otherwise determined through consultation with the local community. The program must arrange any periodic collection events in advance with local law enforcement agencies and conduct periodic collection events in compliance with United States Drug Enforcement Administration

regulations and protocols and applicable State laws

Section 30. Manufacturer program operator requirements. A manufacturer program operator shall:

(1) Adopt policies and procedures to be followed by persons handling covered drugs collected under the program to ensure safety, security, and compliance with regulations adopted by the United States Drug Enforcement Administration, as well as any applicable State laws.

(2) Ensure the security of patient information on drug packaging during collection, transportation, recycling, and disposal.

(3) Promote the program by providing consumers, pharmacies, and other entities with educational and informational materials as required under Section 45.

(4) Demonstrate adequate funding for all administrative and operational costs of the drug take-back program with costs apportioned among participating covered manufacturers.

(5) Set long-term and short-term goals with respect to collection amounts and public awareness.

(6) Consider:

(A) the use of existing providers of pharmaceutical waste transportation and disposal services;

(B) separation of covered drugs from packaging to

reduce transportation and disposal costs; and

(C) recycling of drug packaging.

Section 35. Drug take-back program approval.

(a) By July 1, 2021, each manufacturer program operator must submit to the Agency for review and approval a proposal for the establishment and implementation of a drug take-back program.

(b) The Agency shall approve a proposed program if the manufacturer program operator pays the program operator fee established under Section 65, the program fulfills the requirements under Section 25, and the manufacturer program operator submits the following information on forms prescribed by the Agency:

(1) The identity and contact information for the manufacturer program operator and each participating covered manufacturer.

(2) The identity and contact information for the authorized collectors under a drug take-back program not enrolled in a pharmaceutical drug take-back reimbursement program.

(3) The identity of transporters and waste disposal facilities that the program will use to transport and dispose of collected covered drugs.

(4) The identity of the pharmaceutical drug take-back reimbursement program or programs in which the

manufacturer program operator has an agreement to participate.

(c) The Agency shall either approve or reject the proposal in writing to the manufacturer program operator. If the Agency rejects the proposal, it shall provide the reason for rejection.

(d) No later than 30 days after receipt of a notice of rejection under subsection (c) of this Section, the manufacturer program operator shall submit a revised proposal to the Agency. Within 30 days of receipt of a revised proposal the Agency shall either approve or reject the revised proposal in writing to the manufacturer program operator.

(e) A manufacturer program operator must initiate operation of an approved drug take-back program no later than December 1, 2021.

Section 40. Proposed changes or modifications to the approved manufacturer drug take-back program. A manufacturer program operator shall submit a notice of any proposed changes to an approved drug take-back program to the Agency in writing at least 15 days before the change is scheduled to occur. These include, but are not limited to, changes in:

(1) participating covered manufacturers;

(2) collection methods;

(3) collection site locations;

(4) contact information for the program operator or

collection sites; or

(5) agreements with pharmaceutical reimbursement take-back programs.

Section 45. Drug take-back program promotion.Each drug take-back program must include a system of promotion, education, and public outreach about the proper collection and management of covered drugs. This may include, but is not limited to, signage, written materials to be provided at the time of purchase or delivery of covered drugs, and advertising or other promotional materials. At a minimum, each program must do the following:

(1) Promote the proper collection and management of covered drugs by residents before disposal through a drug take-back program.

(2) Discourage residents from disposing of covered drugs in household waste, sewers, or septic systems.

(3) Promote the use of the drug take-back program so that where and how to return covered drugs is reasonably understood by residents.

(4) Maintain a toll-free telephone number and web site publicizing collection options and collection sites, and discouraging improper disposal practices for covered drugs, such as disposal in household waste, sewers, or septic systems.

(5) Prepare and distribute the educational and

outreach materials to program collection sites for dissemination to ultimate users. The materials must use plain language and explanatory images to make collection services and discouraged disposal practices readily understandable to all residents, including residents with limited English proficiency.

(6) Promotional materials prepared and distributed in conjunction with an approved drug take-back program under this Section may not be used to promote in-home disposal products of any kind, including, but not limited to, authorized collectors participating directly in a drug take-back program or a pharmaceutical drug take-back reimbursement program.

Section 50. Annual program report.

(a) By July 1st 2022, and each July 1st thereafter, a manufacturer program operator must submit to the Agency a report describing implementation of the drug take-back program during the previous calendar year. The report must include:

(1) a list of the covered manufacturers participating in the drug take-back program;

(2) the total amount, by weight, of covered drugs collected and the amount, by weight, from each collection method used;

(3) the total amount, by weight, of covered drugs collected from each collection site during the prior year;

(4) the following details regarding the program's collection system:

(A) a list of collection sites with addresses;

(B) collection sites where mailers were made available to the public;

(C) dates and locations of collection events held; and

(D) the transporters and disposal facility or facilities used to dispose of the covered drugs collected; and

(5) a description of the public education, outreach, and evaluation activities implemented;

(6) a description of how collected packaging was recycled to the extent feasible; and

(7) an evaluation of the program based on the short-term and long-term goals established by the manufacturer program operator in accordance with paragraph (5) of Section 30.

Section 55. Manufacturer drug-take back program funding.

(a) A covered manufacturer or group of covered manufacturers must pay all administrative and operational costs associated with establishing and implementing the drug take-back program in which it participates. Such administrative and operational costs include, but are not limited to:

(1) collection and transportation supplies for each collection site;

(2) purchase of collection receptacles for each collection site;

(3) ongoing maintenance or replacement of collection receptacles when requested by authorized collectors;

(4) compensation of authorized collectors, if applicable;

(5) operation of periodic collection events, including, but not limited to, the cost of law enforcement staff time;

(6) transportation of all collected covered drugs to final disposal;

(7) environmentally sound disposal of all collected covered drugs in compliance with subsection (g) of Section 25; and

(8) program promotion and outreach.

(b) A manufacturer program operator, covered manufacturer, authorized collector, or other person may not charge:

(1) a specific point-of-sale fee to consumers to recoup the costs of a drug take-back program; or

(2) a specific point-of-collection fee at the time covered drugs are collected from a person.

Section 60. Pharmaceutical take-back reimbursement program.

(a) A pharmaceutical reimbursement program operator may establish and implement a pharmaceutical drug take-back reimbursement program. Any establishment of a pharmaceutical take-back reimbursement program must be approved by the Agency.

(b) Any authorized collector may participate in a pharmaceutical drug take-back reimbursement program. An authorized collector that elects to participate in a pharmaceutical drug take-back reimbursement program shall register its authorized collection locations with the pharmaceutical reimbursement program operator.

(c) A drug take-back program shall include and reimburse any authorized collection site registered with a pharmaceutical drug take-back reimbursement program.

(d) A pharmaceutical reimbursement program operator's proposal for the establishment and implementation of a pharmaceutical drug take-back reimbursement program shall be approved by the Agency if the pharmaceutical reimbursement program operator submits the following information on forms prescribed by the Agency:

(1) The identity and contact information of the reimbursement program operator.

(2) The identity and contact information of each participating covered manufacturer.

(3) The identity and contact information of each participating pharmacy;

(4) The identity and contact information of each

participating authorized collector that is not a pharmacy.

(5) A system of promotion, education, and public outreach about the proper collection and management of covered drugs. This may include, but is not limited to, signage, written materials to be provided at the time of purchase or delivery of covered drugs, and advertising or other promotion materials.

(e) A pharmaceutical reimbursement program operator must notify the Agency in writing of any changes to the above information at least 15 days before such a change.

(f) By July 1st 2022, and by each July 1st thereafter, each pharmaceutical reimbursement program operator must submit to the Agency a report describing implementation of its pharmaceutical reimbursement take-back program during the previous calendar year. The report must include:

(1) a list of the covered manufacturers participating in the program;

(2) a list of the pharmacies participating in the program;

(3) a list of authorized collectors that are not pharmacies participating in the program;

(4) a list of the transporters and disposal facilities used to transport and dispose of the covered drugs collected by the program; and

(5) the amount, by weight, of the covered drugs collected from each collection site.

(g) Nothing in this Act shall require a pharmaceutical drug take-back reimbursement program to have a minimum number of collection sites in the State, in a county, or in a municipality. Nothing in this Act shall limit the number of authorized collection sites participating in a pharmaceutical drug take-back reimbursement program or a drug take-back program.

(h) A pharmaceutical reimbursement program operator shall keep financial records of the pharmaceutical take-back reimbursement program and the collection, transportation, and disposal of covered drugs collected under the program. These records shall include, but not be limited to, costs related to:

(1) administration of the program, fees, and collection and transportation of supplies for each collection site;

(2) the purchase of collection receptacles for each collection site;

(3) maintenance or replacement of collection receptacles when requested by authorized collectors;

(4) prepaid, preaddressed mailers;

(5) compensation for authorized collectors;

(6) operation of periodic collection events, including, but not limited to, the cost of staff time;

(7) transportation of all collected covered drugs to final disposal;

(8) environmentally sound disposal of all collected

covered drugs; and

(9) program promotion and outreach.

(i) Each authorized collection site that registers with a pharmaceutical reimbursement program operator shall provide collection, transportation, and disposal costs to the pharmaceutical reimbursement program operator. The pharmaceutical reimbursement program operator shall aggregate the total costs. The total costs shall be divided between all Illinois covered manufacturers. The covered manufacturers shall submit the required funding to the Agency. The Agency shall place the moneys in the Pharmaceutical Take-Back Reimbursement Program Fund. The pharmaceutical reimbursement program operator shall distribute the appropriate reimbursement moneys to the authorized collection sites.

(j) An annual independent financial audit of a pharmaceutical take-back reimbursement program's records may be requested by any participating covered manufacturer. The covered manufacturer requesting the audit shall fund the audit. The audit shall be conducted in accordance with auditing standards generally accepted in the United States of America, and standards set forth in Government Auditing Standards issued by the Comptroller General of the United States. The financial audit shall be prepared by an independent certified public accountant. The independent certified public accountant shall not perform nonaudit services for the covered manufacturers that would impair independence as defined in the Government

Auditing Standards issued by the Comptroller General of the United States, including, but not limited to, accounting services, development of internal controls, and management decisions. The final report shall not include any proprietary information.

Section 65. Registration fee.

(a) By April 1, 2021, and by April 1 of each year thereafter, each covered manufacturer and manufacturer program operator shall submit to the Agency a $5,000 registration fee.

(b) All fees collected under this Section must be deposited in the Solid Waste Management Fund to be used in accordance with this Act.

Section 70. Rules; enforcement; penalties.

(a) The Agency may adopt any rules it deems necessary to implement and administer this Act.

(b) Except as otherwise provided in this Act, any person who violates any provision of this Act is liable for a civil penalty of $7,000 per violation, provided that the penalty for failure to register or pay a fee under this Act shall be double the applicable registration fee.

(c) The penalties provided for in this Section may be recovered in a civil action brought in the name of the People of the State of Illinois by the State's Attorney of the county in which the violation occurred or by the Attorney General. Any

penalties collected under this Section in an action in which the Attorney General has prevailed shall be deposited in the Solid Waste Management Fund, to be used in accordance with the provisions of this Act.

(d) The Attorney General or the State's Attorney of a county in which a violation occurs may institute a civil action for an injunction, prohibitory or mandatory, to restrain violations of this Act or to require such actions as may be necessary to address violations of this Act.

(e) The Agency may impose a civil penalty for a violation of this Act of $7,000 per violation, plus any hearing costs incurred by the Agency. Such penalties shall be made payable to the Solid Waste Management Fund to be used in accordance with this Act.

(f) The penalties and injunctions provided in this Act are in addition to any penalties, injunctions, or other relief provided under any other law. Nothing in this Act bars a cause of action by the State for any other penalty, injunction, or other relief provided by any other law.

(g) Any person who knowingly makes a false, fictitious, or fraudulent material statement, orally or in writing, to the Agency, related to or required by this Act or any rule adopted under this Act commits a Class 4 felony, and each such statement or writing shall be considered a separate Class 4 felony. A person who, after being convicted under this subsection (g), violates this subsection (g) a second or

subsequent time, commits a Class 3 felony

Section 75. Pharmaceutical Take-Back Reimbursement Program Fund.

(a) The Pharmaceutical Take-Back Reimbursement Program Fund is created as a special fund in the State treasury. Moneys in the Fund shall be used only for reimbursement of the pharmaceutical take-back reimbursement program, pharmaceutical reimbursement program operator, and participating authorized collectors. All moneys received by the Agency under this Act, except moneys received under Section 60 or 65, must be deposited in the Fund.

(b) The Fund shall not be subject to sweeps, administrative charges or chargebacks, or any other fiscal or budgetary maneuver that would in any way transfer any funds from the Fund into any other fund of the State.

Section 80. Antitrust immunity. The activities authorized by this Act require collaboration among covered manufacturers and among authorized collectors. These activities will enable safe and secure collection and disposal of covered drugs in Illinois and are therefore in the best interest of the public. The benefits of collaboration, together with active State supervision, outweigh potential adverse impacts. Therefore, the General Assembly intends to exempt from State antitrust laws, and provide immunity through the state action doctrine

from federal antitrust laws, activities that are undertaken pursuant to this Act that might otherwise be constrained by such laws. The General Assembly does not intend and does not authorize any person or entity to engage in activities not provided for by this Act, and the General Assembly neither exempts nor provides immunity for such activities.

Section 85. Public disclosure. The Agency shall only use and disclose proprietary information submitted to the Agency under this Act in summary or aggregated form that does not directly or indirectly identify financial, production, or sales data of an individual covered manufacturer, authorized collector, or pharmacy.

Section 95. The Freedom of Information Act is amended by changing Section 7 as follows:

(5 ILCS 140/7) (from Ch. 116, par. 207)

Sec. 7. Exemptions.

(1) When a request is made to inspect or copy a public record that contains information that is exempt from disclosure under this Section, but also contains information that is not exempt from disclosure, the public body may elect to redact the information that is exempt. The public body shall make the remaining information available for inspection and copying. Subject to this requirement, the following shall be exempt from

inspection and copying:

(a) Information specifically prohibited from disclosure by federal or State law or rules and regulations implementing federal or State law.

(b) Private information, unless disclosure is required by another provision of this Act, a State or federal law or a court order.

(b-5) Files, documents, and other data or databases maintained by one or more law enforcement agencies and specifically designed to provide information to one or more law enforcement agencies regarding the physical or mental status of one or more individual subjects.

(c) Personal information contained within public records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, unless the disclosure is consented to in writing by the individual subjects of the information. "Unwarranted invasion of personal privacy" means the disclosure of information that is highly personal or objectionable to a reasonable person and in which the subject's right to privacy outweighs any legitimate public interest in obtaining the information. The disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of personal privacy.

(d) Records in the possession of any public body created in the course of administrative enforcement

proceedings, and any law enforcement or correctional agency for law enforcement purposes, but only to the extent that disclosure would:

(i) interfere with pending or actually and reasonably contemplated law enforcement proceedings conducted by any law enforcement or correctional agency that is the recipient of the request;

(ii) interfere with active administrative enforcement proceedings conducted by the public body that is the recipient of the request;

(iii) create a substantial likelihood that a person will be deprived of a fair trial or an impartial hearing;

(iv) unavoidably disclose the identity of a confidential source, confidential information furnished only by the confidential source, or persons who file complaints with or provide information to administrative, investigative, law enforcement, or penal agencies; except that the identities of witnesses to traffic accidents, traffic accident reports, and rescue reports shall be provided by agencies of local government, except when disclosure would interfere with an active criminal investigation conducted by the agency that is the recipient of the request;

(v) disclose unique or specialized investigative

techniques other than those generally used and known or disclose internal documents of correctional agencies related to detection, observation or investigation of incidents of crime or misconduct, and disclosure would result in demonstrable harm to the agency or public body that is the recipient of the request;

(vi) endanger the life or physical safety of law enforcement personnel or any other person; or

(vii) obstruct an ongoing criminal investigation by the agency that is the recipient of the request.

(d-5) A law enforcement record created for law enforcement purposes and contained in a shared electronic record management system if the law enforcement agency that is the recipient of the request did not create the record, did not participate in or have a role in any of the events which are the subject of the record, and only has access to the record through the shared electronic record management system.

(e) Records that relate to or affect the security of correctional institutions and detention facilities.

(e-5) Records requested by persons committed to the Department of Corrections, Department of Human Services Division of Mental Health, or a county jail if those materials are available in the library of the correctional institution or facility or jail where the inmate is confined.

(e-6) Records requested by persons committed to the Department of Corrections, Department of Human Services Division of Mental Health, or a county jail if those materials include records from staff members' personnel files, staff rosters, or other staffing assignment information.

(e-7) Records requested by persons committed to the Department of Corrections or Department of Human Services Division of Mental Health if those materials are available through an administrative request to the Department of Corrections or Department of Human Services Division of Mental Health.

(e-8) Records requested by a person committed to the Department of Corrections, Department of Human Services Division of Mental Health, or a county jail, the disclosure of which would result in the risk of harm to any person or the risk of an escape from a jail or correctional institution or facility.

(e-9) Records requested by a person in a county jail or committed to the Department of Corrections or Department of Human Services Division of Mental Health, containing personal information pertaining to the person's victim or the victim's family, including, but not limited to, a victim's home address, home telephone number, work or school address, work telephone number, social security number, or any other identifying information, except as may

be relevant to a requester's current or potential case or claim.

(e-10) Law enforcement records of other persons requested by a person committed to the Department of Corrections, Department of Human Services Division of Mental Health, or a county jail, including, but not limited to, arrest and booking records, mug shots, and crime scene photographs, except as these records may be relevant to the requester's current or potential case or claim.

(f) Preliminary drafts, notes, recommendations, memoranda and other records in which opinions are expressed, or policies or actions are formulated, except that a specific record or relevant portion of a record shall not be exempt when the record is publicly cited and identified by the head of the public body. The exemption provided in this paragraph (f) extends to all those records of officers and agencies of the General Assembly that pertain to the preparation of legislative documents.

(g) Trade secrets and commercial or financial information obtained from a person or business where the trade secrets or commercial or financial information are furnished under a claim that they are proprietary, privileged, or confidential, and that disclosure of the trade secrets or commercial or financial information would cause competitive harm to the person or business, and only insofar as the claim directly applies to the records

requested.

The information included under this exemption includes all trade secrets and commercial or financial information obtained by a public body, including a public pension fund, from a private equity fund or a privately held company within the investment portfolio of a private equity fund as a result of either investing or evaluating a potential investment of public funds in a private equity fund. The exemption contained in this item does not apply to the aggregate financial performance information of a private equity fund, nor to the identity of the fund's managers or general partners. The exemption contained in this item does not apply to the identity of a privately held company within the investment portfolio of a private equity fund, unless the disclosure of the identity of a privately held company may cause competitive harm.

Nothing contained in this paragraph (g) shall be construed to prevent a person or business from consenting to disclosure.

(h) Proposals and bids for any contract, grant, or agreement, including information which if it were disclosed would frustrate procurement or give an advantage to any person proposing to enter into a contractor agreement with the body, until an award or final selection is made. Information prepared by or for the body in preparation of a bid solicitation shall be exempt until an

award or final selection is made.

(i) Valuable formulae, computer geographic systems, designs, drawings and research data obtained or produced by any public body when disclosure could reasonably be expected to produce private gain or public loss. The exemption for "computer geographic systems" provided in this paragraph (i) does not extend to requests made by news media as defined in Section 2 of this Act when the requested information is not otherwise exempt and the only purpose of the request is to access and disseminate information regarding the health, safety, welfare, or legal rights of the general public.

(j) The following information pertaining to educational matters:

(i) test questions, scoring keys and other examination data used to administer an academic examination;

(ii) information received by a primary or secondary school, college, or university under its procedures for the evaluation of faculty members by their academic peers;

(iii) information concerning a school or university's adjudication of student disciplinary cases, but only to the extent that disclosure would unavoidably reveal the identity of the student; and

(iv) course materials or research materials used

by faculty members.

(k) Architects' plans, engineers' technical submissions, and other construction related technical documents for projects not constructed or developed in whole or in part with public funds and the same for projects constructed or developed with public funds, including, but not limited to, power generating and distribution stations and other transmission and distribution facilities, water treatment facilities, airport facilities, sport stadiums, convention centers, and all government owned, operated, or occupied buildings, but only to the extent that disclosure would compromise security.

(l) Minutes of meetings of public bodies closed to the public as provided in the Open Meetings Act until the public body makes the minutes available to the public under Section 2.06 of the Open Meetings Act.

(m) Communications between a public body and an attorney or auditor representing the public body that would not be subject to discovery in litigation, and materials prepared or compiled by or for a public body in anticipation of a criminal, civil, or administrative proceeding upon the request of an attorney advising the public body, and materials prepared or compiled with respect to internal audits of public bodies.

(n) Records relating to a public body's adjudication of

employee grievances or disciplinary cases; however, this exemption shall not extend to the final outcome of cases in which discipline is imposed.

(o) Administrative or technical information associated with automated data processing operations, including, but not limited to, software, operating protocols, computer program abstracts, file layouts, source listings, object modules, load modules, user guides, documentation pertaining to all logical and physical design of computerized systems, employee manuals, and any other information that, if disclosed, would jeopardize the security of the system or its data or the security of materials exempt under this Section.

(p) Records relating to collective negotiating matters between public bodies and their employees or representatives, except that any final contract or agreement shall be subject to inspection and copying.

(q) Test questions, scoring keys, and other examination data used to determine the qualifications of an applicant for a license or employment.

(r) The records, documents, and information relating to real estate purchase negotiations until those negotiations have been completed or otherwise terminated. With regard to a parcel involved in a pending or actually and reasonably contemplated eminent domain proceeding under the Eminent Domain Act, records, documents, and

information relating to that parcel shall be exempt except as may be allowed under discovery rules adopted by the Illinois Supreme Court. The records, documents, and information relating to a real estate sale shall be exempt until a sale is consummated.

(s) Any and all proprietary information and records related to the operation of an intergovernmental risk management association or self-insurance pool or jointly self-administered health and accident cooperative or pool. Insurance or self insurance (including any intergovernmental risk management association or self insurance pool) claims, loss or risk management information, records, data, advice or communications.

(t) Information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of a public body responsible for the regulation or supervision of financial institutions, insurance companies, or pharmacy benefit managers, unless disclosure is otherwise required by State law.

(u) Information that would disclose or might lead to the disclosure of secret or confidential information, codes, algorithms, programs, or private keys intended to be used to create electronic or digital signatures under the Electronic Commerce Security Act.

(v) Vulnerability assessments, security measures, and

response policies or plans that are designed to identify, prevent, or respond to potential attacks upon a community's population or systems, facilities, or installations, the destruction or contamination of which would constitute a clear and present danger to the health or safety of the community, but only to the extent that disclosure could reasonably be expected to jeopardize the effectiveness of the measures or the safety of the personnel who implement them or the public. Information exempt under this item may include such things as details pertaining to the mobilization or deployment of personnel or equipment, to the operation of communication systems or protocols, or to tactical operations.

(w) (Blank).

(x) Maps and other records regarding the location or security of generation, transmission, distribution, storage, gathering, treatment, or switching facilities owned by a utility, by a power generator, or by the Illinois Power Agency.

(y) Information contained in or related to proposals, bids, or negotiations related to electric power procurement under Section 1-75 of the Illinois Power Agency Act and Section 16-111.5 of the Public Utilities Act that is determined to be confidential and proprietary by the Illinois Power Agency or by the Illinois Commerce Commission.

(z) Information about students exempted from disclosure under Sections 10-20.38 or 34-18.29 of the School Code, and information about undergraduate students enrolled at an institution of higher education exempted from disclosure under Section 25 of the Illinois Credit Card Marketing Act of 2009.

(aa) Information the disclosure of which is exempted under the Viatical Settlements Act of 2009.

(bb) Records and information provided to a mortality review team and records maintained by a mortality review team appointed under the Department of Juvenile Justice Mortality Review Team Act.

(cc) Information regarding interments, entombments, or inurnments of human remains that are submitted to the Cemetery Oversight Database under the Cemetery Care Act or the Cemetery Oversight Act, whichever is applicable.

(dd) Correspondence and records (i) that may not be disclosed under Section 11-9 of the Illinois Public Aid Code or (ii) that pertain to appeals under Section 11-8 of the Illinois Public Aid Code.

(ee) The names, addresses, or other personal information of persons who are minors and are also participants and registrants in programs of park districts, forest preserve districts, conservation districts, recreation agencies, and special recreation associations.

(ff) The names, addresses, or other personal information of participants and registrants in programs of park districts, forest preserve districts, conservation districts, recreation agencies, and special recreation associations where such programs are targeted primarily to minors.

(gg) Confidential information described in Section 1-100 of the Illinois Independent Tax Tribunal Act of 2012.

(hh) The report submitted to the State Board of Education by the School Security and Standards Task Force under item (8) of subsection (d) of Section 2-3.160 of the School Code and any information contained in that report.

(ii) Records requested by persons committed to or detained by the Department of Human Services under the Sexually Violent Persons Commitment Act or committed to the Department of Corrections under the Sexually Dangerous Persons Act if those materials: (i) are available in the library of the facility where the individual is confined; (ii) include records from staff members' personnel files, staff rosters, or other staffing assignment information; or (iii) are available through an administrative request to the Department of Human Services or the Department of Corrections.

(jj) Confidential information described in Section 5-535 of the Civil Administrative Code of Illinois.

(kk) The public body's credit card numbers, debit card

numbers, bank account numbers, Federal Employer Identification Number, security code numbers, passwords, and similar account information, the disclosure of which could result in identity theft or impression or defrauding of a governmental entity or a person.

(ll) ~~(kk)~~ Records concerning the work of the threat assessment team of a school district.

(mm) Proprietary information submitted to the Environmental Protection Agency under the Pharmaceutical Recovery Act.

(1.5) Any information exempt from disclosure under the Judicial Privacy Act shall be redacted from public records prior to disclosure under this Act.

(2) A public record that is not in the possession of a public body but is in the possession of a party with whom the agency has contracted to perform a governmental function on behalf of the public body, and that directly relates to the governmental function and is not otherwise exempt under this Act, shall be considered a public record of the public body, for purposes of this Act.

(3) This Section does not authorize withholding of information or limit the availability of records to the public, except as stated in this Section or otherwise provided in this Act.

(Source: P.A. 100-26, eff. 8-4-17; 100-201, eff. 8-18-17; 100-732, eff. 8-3-18; 101-434, eff. 1-1-20; 101-452, eff.

1-1-20; 101-455, eff. 8-23-19; revised 9-27-19.)

Section 100. The State Finance Act is amended by adding Section 5.930 as follows:

(30 ILCS 105/5.930 new)

Sec. 5.930. The Pharmaceutical Take-Back Reimbursement Program Fund.

Section 999. Effective date. This Act takes effect upon becoming law.