

1 AN ACT concerning professional regulation.

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

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

6 (410 ILCS 620/3.23 new)

7 Sec. 3.23. Legend drug prohibition.

8 (a) In this Section:

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

12 (1) habit forming;

13 (2) toxic or having potential for harm; or

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

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

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

23 "Manufacture" means the production, preparation,

1 propagation, compounding, conversion, or processing of a
2 legend drug, either directly or indirectly, by extraction from
3 substances of natural origin, or independently by means of
4 chemical synthesis, or by a combination of extraction and
5 chemical synthesis, and includes any packaging or repackaging
6 of the substance or labeling of its container. "Manufacture"
7 does not include:

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

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

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

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

18 "Prescription" means a lawful written, facsimile, or
19 verbal order of a medical practitioner as defined under the
20 laws of the State.

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

1 normal course of business under the supervision of the
2 licensee. Any person who violates this Section is guilty of a
3 Class 3 felony, the fine for which shall not exceed \$100,000. A
4 person convicted of a second or subsequent violation of this
5 Section is guilty of a Class 1 felony, the fine for which shall
6 not exceed \$250,000.

7 (c) The following are subject to forfeiture:

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

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

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

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

26 (B) no conveyance is subject to forfeiture under

1 this Section by reason of any act or omission which the
2 owner proves to have been committed or omitted without
3 his knowledge or consent; and

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

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

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

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

1 violation of Section 33.1 of this Act.

2 (d) Property subject to forfeiture under this Act may be
3 seized by the Secretary or any peace officer upon process or
4 seizure warrant issued by any court having jurisdiction over
5 the property. Seizure by the Secretary or any peace officer
6 without process may be made:

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

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

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

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

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

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

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

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

11 (1) place the property under seal;

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

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

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

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

25 (6) provide for another agency or custodian, including
26 an owner, secured party, or lienholder, to take custody of

1 the property upon the terms and conditions set by the
2 Secretary.

3 (g) If the Department suspends or revokes a registration,
4 all legend drugs owned or possessed by the registrant at the
5 time of suspension or the effective date of the revocation
6 order may be placed under seal. No disposition may be made of
7 substances under seal until the time for taking an appeal has
8 elapsed or until all appeals have been concluded unless a
9 court, upon application therefor, orders the sale of perishable
10 substances and the deposit of the proceeds of the sale with the
11 court. Upon a revocation rule becoming final, all substances
12 may be forfeited to the Department.

13 (h) If property is forfeited under this Act, then the
14 Secretary must sell all such property unless such property is
15 required by law to be destroyed or is harmful to the public,
16 and shall distribute the proceeds of the sale, together with
17 any moneys forfeited or seized, in accordance with subsection
18 (i) of this Section. Upon the application of the seizing agency
19 or prosecutor who was responsible for the investigation, arrest
20 or arrests, and prosecution that led to the forfeiture, the
21 Secretary may return any item of forfeited property to the
22 seizing agency or prosecutor for official use in the
23 enforcement of laws if the agency or prosecutor can demonstrate
24 that the item requested would be useful to the agency or
25 prosecutor in their enforcement efforts. If any forfeited
26 conveyance, including an aircraft, vehicle, or vessel, is

1 returned to the seizing agency or prosecutor, then the
2 conveyance may be used immediately in the enforcement of the
3 criminal laws of the State. Upon disposal, all proceeds from
4 the sale of the conveyance must be used for drug enforcement
5 purposes. If any real property returned to the seizing agency
6 is sold by the agency or its unit of government, then the
7 proceeds of the sale shall be delivered to the Secretary and
8 distributed in accordance with subsection (i) of this Section.

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

12 (1) 65% shall be distributed to the metropolitan
13 enforcement group, local, municipal, county, or State law
14 enforcement agency or agencies which conducted or
15 participated in the investigation resulting in the
16 forfeiture. The distribution shall bear a reasonable
17 relationship to the degree of direct participation of the
18 law enforcement agency in the effort resulting in the
19 forfeiture, taking into account the total value of the
20 property forfeited and the total law enforcement effort
21 with respect to the violation of the law upon which the
22 forfeiture is based. Amounts distributed to the agency or
23 agencies shall be used for the enforcement of laws.

24 (2) 12.5% shall be distributed to the Office of the
25 State's Attorney of the county in which the prosecution
26 resulting in the forfeiture was instituted, deposited in a

1 special fund in the county treasury and appropriated to the
2 State's Attorney for use in the enforcement of laws. In
3 counties over 3,000,000 population, 25% will be
4 distributed to the Office of the State's Attorney for use
5 in the enforcement of laws governing cannabis and
6 controlled substances. If the prosecution is undertaken
7 solely by the Attorney General, the portion provided
8 hereunder shall be distributed to the Attorney General for
9 use in the enforcement of laws.

10 (3) 12.5% shall be distributed to the Office of the
11 State's Attorneys Appellate Prosecutor and deposited in a
12 separate fund of that office to be used for additional
13 expenses incurred in the investigation, prosecution and
14 appeal of cases. The Office of the State's Attorneys
15 Appellate Prosecutor shall not receive distribution from
16 cases brought in counties with over 3,000,000 population.

17 (4) 10% shall be retained by the Department of State
18 Police for expenses related to the administration and sale
19 of seized and forfeited property.

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

22 (725 ILCS 150/3) (from Ch. 56 1/2, par. 1673)

23 Sec. 3. Applicability. The provisions of this Act are
24 applicable to all property forfeitable under the Illinois

1 Controlled Substances Act, the Cannabis Control Act, the
2 Illinois Food, Drug and Cosmetic Act, or the Methamphetamine
3 Control and Community Protection Act.
4 (Source: P.A. 94-556, eff. 9-11-05.)

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