



Rep. David E. Miller

Filed: 3/12/2009

09600HB2450ham001

LRB096 04587 RPM 23225 a

1 AMENDMENT TO HOUSE BILL 2450

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 2450 by replacing  
3 everything after the enacting clause with the following:

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.

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

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

7       "Manufacture" means the production, preparation,  
8 propagation, compounding, conversion, or processing of a  
9 legend drug, either directly or indirectly, by extraction from  
10 substances of natural origin, or independently by means of  
11 chemical synthesis, or by a combination of extraction and  
12 chemical synthesis, and includes any packaging or repackaging  
13 of the substance or labeling of its container. "Manufacture"  
14 does not include:

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

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

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

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

25       "Prescription" means a lawful written, facsimile, or  
26 verbal order of a medical practitioner as defined under the

1 laws of the State.

2 (b) It is unlawful for any person to knowingly manufacture  
3 or deliver or possess with the intent to manufacture or deliver  
4 a legend drug of 6 or more pills, tablets, capsules, or caplets  
5 or 30 ml or more of a legend drug in liquid form who is not  
6 licensed by applicable law to prescribe or dispense legend  
7 drugs or is not an employee of the licensee operating in the  
8 normal course of business under the supervision of the  
9 licensee. Any person who violates this Section is guilty of a  
10 Class 3 felony, the fine for which shall not exceed \$100,000. A  
11 person convicted of a second or subsequent violation of this  
12 Section is guilty of a Class 1 felony, the fine for which shall  
13 not exceed \$250,000.

14 (c) The following are subject to forfeiture:

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

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

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

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

7           (B) no conveyance is subject to forfeiture under  
8           this Section by reason of any act or omission which the  
9           owner proves to have been committed or omitted without  
10           his knowledge or consent; and

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

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

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

25           (6) all real property, including any right, title, and  
26           interest, including, but not limited to, any leasehold

1 interest or the beneficial interest in a land trust, in the  
2 whole of any lot or tract of land and any appurtenances or  
3 improvements, which is used or intended to be used, in any  
4 manner or part, to commit, or in any manner to facilitate  
5 the commission of, any violation or act that constitutes a  
6 violation of Section 33.1 of this Act or that is the  
7 proceeds of any violation or act that constitutes a  
8 violation of Section 33.1 of this Act.

9 (d) Property subject to forfeiture under this Act may be  
10 seized by the Secretary or any peace officer upon process or  
11 seizure warrant issued by any court having jurisdiction over  
12 the property. Seizure by the Secretary or any peace officer  
13 without process may be made:

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

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

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

24 (4) if there is probable cause to believe that the  
25 property is subject to forfeiture under this Act and the  
26 property is seized under circumstances in which a

1 warrantless seizure or arrest would be reasonable; or

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

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

7 (f) Property taken or detained under this Section shall not  
8 be subject to replevin, but is deemed to be in the custody of  
9 the Secretary subject only to the order and judgments of the  
10 circuit court having jurisdiction over the forfeiture  
11 proceedings and the decisions of the State's Attorney under the  
12 Drug Asset Forfeiture Procedure Act. If property is seized  
13 under this Act, then the seizing agency shall promptly conduct  
14 an inventory of the seized property and estimate the property's  
15 value, and shall forward a copy of the inventory of seized  
16 property and the estimate of the property's value to the  
17 Secretary. Upon receiving notice of seizure, the Secretary may:

18 (1) place the property under seal;

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

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

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

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

6           (6) provide for another agency or custodian, including  
7           an owner, secured party, or lienholder, to take custody of  
8           the property upon the terms and conditions set by the  
9           Secretary.

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

20          (h) If property is forfeited under this Act, then the  
21          Secretary must sell all such property unless such property is  
22          required by law to be destroyed or is harmful to the public,  
23          and shall distribute the proceeds of the sale, together with  
24          any moneys forfeited or seized, in accordance with subsection  
25          (i) of this Section. Upon the application of the seizing agency  
26          or prosecutor who was responsible for the investigation, arrest

1 or arrests, and prosecution that led to the forfeiture, the  
2 Secretary may return any item of forfeited property to the  
3 seizing agency or prosecutor for official use in the  
4 enforcement of laws if the agency or prosecutor can demonstrate  
5 that the item requested would be useful to the agency or  
6 prosecutor in their enforcement efforts. If any forfeited  
7 conveyance, including an aircraft, vehicle, or vessel, is  
8 returned to the seizing agency or prosecutor, then the  
9 conveyance may be used immediately in the enforcement of the  
10 criminal laws of the State. Upon disposal, all proceeds from  
11 the sale of the conveyance must be used for drug enforcement  
12 purposes. If any real property returned to the seizing agency  
13 is sold by the agency or its unit of government, then the  
14 proceeds of the sale shall be delivered to the Secretary and  
15 distributed in accordance with subsection (i) of this Section.

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

19 (1) 65% shall be distributed to the metropolitan  
20 enforcement group, local, municipal, county, or State law  
21 enforcement agency or agencies which conducted or  
22 participated in the investigation resulting in the  
23 forfeiture. The distribution shall bear a reasonable  
24 relationship to the degree of direct participation of the  
25 law enforcement agency in the effort resulting in the  
26 forfeiture, taking into account the total value of the



1 property forfeited and the total law enforcement effort  
2 with respect to the violation of the law upon which the  
3 forfeiture is based. Amounts distributed to the agency or  
4 agencies shall be used for the enforcement of laws.

5 (2) 12.5% shall be distributed to the Office of the  
6 State's Attorney of the county in which the prosecution  
7 resulting in the forfeiture was instituted, deposited in a  
8 special fund in the county treasury and appropriated to the  
9 State's Attorney for use in the enforcement of laws. In  
10 counties over 3,000,000 population, 25% will be  
11 distributed to the Office of the State's Attorney for use  
12 in the enforcement of laws governing cannabis and  
13 controlled substances. If the prosecution is undertaken  
14 solely by the Attorney General, the portion provided  
15 hereunder shall be distributed to the Attorney General for  
16 use in the enforcement of laws.

17 (3) 12.5% shall be distributed to the Office of the  
18 State's Attorneys Appellate Prosecutor and deposited in a  
19 separate fund of that office to be used for additional  
20 expenses incurred in the investigation, prosecution and  
21 appeal of cases. The Office of the State's Attorneys  
22 Appellate Prosecutor shall not receive distribution from  
23 cases brought in counties with over 3,000,000 population.

24 (4) 10% shall be retained by the Department of State  
25 Police for expenses related to the administration and sale  
26 of seized and forfeited property.

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

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

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

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

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