

SECOND REGULAR SESSION

HOUSE BILL NO. 1427

92ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE PORTWOOD.

Read 1st time February 9, 2004, and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

4065L.011

AN ACT

To repeal sections 195.140 and 195.410, RSMo, and to enact in lieu thereof two new sections relating to forfeiture of controlled substances and drug paraphernalia, with a penalty provision.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 195.140 and 195.410, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 195.140 and 195.410, to read as follows:

195.140. 1. All controlled substances, imitation controlled substances or drug paraphernalia for the administration, use or manufacture of controlled substances or imitation controlled substances and which have come into the custody of a peace officer or officer or agent of the department of health and senior services as provided by sections 195.010 to 195.320, the lawful possession of which is not established or the title to which cannot be ascertained after a hearing as prescribed in Rule 34 of Rules of Criminal Procedure for the courts of Missouri or some other appropriate hearing, shall be forfeited, and disposed of as follows:

(1) Except as in this section otherwise provided, the court or associate circuit judge having jurisdiction shall order such controlled substances, imitation controlled substances, or drug paraphernalia forfeited and destroyed. A record of the place where said controlled substances, imitation controlled substances, or drug paraphernalia were seized, of the kinds and quantities of controlled substances, imitation controlled substances, or drug paraphernalia so destroyed, and of the time, place and manner of destructions, shall be kept, and a return under oath, reporting the destruction of the controlled substances, imitation controlled substances, or drug paraphernalia shall be made to the court or associate circuit judge [and to the United States

EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law. Matter in boldface type in the above law is proposed language.

16 Commissioner of Narcotics, by the officer who destroys them.

17 (2) Upon written application by the department of health and senior services, the court
18 or associate circuit judge by whom the forfeiture of such controlled substances, imitation
19 controlled substances, or drug paraphernalia has been decreed may order the delivery of any of
20 them, except heroin and its salts and derivatives, to said department of health and senior services,
21 for distribution or destruction, as herein provided.

22 (3) Upon application by any hospital within this state, not operated for private gain, the
23 department of health and senior services may in its discretion deliver any controlled substances,
24 imitation controlled substances, or drug paraphernalia for the use of controlled substances or
25 imitation controlled substances that have come into its custody by authority of this section to the
26 applicant for medicinal use. The department of health and senior services may, from time to
27 time, deliver excess stocks of such controlled substances, imitation controlled substances, or
28 drug paraphernalia to the United States Commissioner of Narcotics, or may destroy them.

29 (4)];

30 (2) The department of health and senior services shall keep a complete record of all
31 controlled substances, imitation controlled substances, or drug paraphernalia received and
32 disposed of, together with the dates of such receipt and disposal, showing the exact kinds,
33 quantities, and forms of such controlled substances, imitation controlled substances, or drug
34 paraphernalia; the persons from whom received and to whom delivered; and by whose authority
35 they were received, delivered or destroyed; which record shall be open to inspection by all
36 federal or state officers charged with the enforcement of federal and state narcotic or controlled
37 substances laws.

38 2. (1) Everything of value furnished, or intended to be furnished, in exchange for a
39 controlled substance, imitation controlled substance or drug paraphernalia in violation of sections
40 195.010 to 195.320, all proceeds traceable to such an exchange, and all moneys, negotiable
41 instruments, or securities used, or intended to be used, to facilitate any violation of sections
42 195.010 to 195.320 shall be forfeited, except that no property shall be forfeited under this
43 subsection to the extent of the interest of an owner by reason of any act or omission established
44 by him to have been committed without his knowledge or consent.

45 (2) Any moneys, coin, or currency found in close proximity to forfeitable controlled
46 substances, imitation controlled substances, or drug paraphernalia, or forfeitable records of the
47 importation, manufacture, or distribution of controlled substances, imitation controlled
48 substances or drug paraphernalia are presumed to be forfeitable under this subsection. The
49 burden of proof shall be upon claimants of the property to rebut this presumption.

50 (3) All forfeiture proceedings shall be conducted pursuant to the provisions of sections
51 513.600 to 513.660, RSMo.

195.410. 1. No registration shall be issued under section 195.405 unless and until the applicant for such registration has furnished proof satisfactory to the department of health and senior services that:

(1) The applicant is of good moral character or, if the applicant is an association or corporation, that the managing officers are of good moral character; and

(2) The applicant is properly equipped as to land, building, and paraphernalia to carry on the business described in his application.

2. No registration shall be granted to any person who has within two years been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution under the laws of any state or of the United States, for any misdemeanor offense or within seven years for any felony offense related to controlled substances or chemicals listed in subsection 2 of section 195.400.

3. The department of health and senior services shall register an applicant to manufacture, distribute, sell, transfer, or otherwise furnish listed chemicals unless it determines that the issuance of that registration would be inconsistent with the public interest. In determining the public interest, the following factors shall be considered:

(1) Maintenance of effective controls against diversion of controlled substances or chemicals listed in subsection 2 of section 195.400 into other than legitimate medical, scientific, or industrial channels;

(2) Compliance with applicable state and local law;

(3) Any convictions of an applicant under any federal or state laws relating to any controlled substance or chemicals listed in subsection 2 of section 195.400;

(4) Past experience in the manufacture or distribution of controlled substances or chemicals listed in subsection 2 of section 195.400 and the existence in the applicant's establishment of effective controls against diversion;

(5) Furnishing by the applicant of false or fraudulent material information in any application filed under section 195.405; and

(6) Any other factors that the department of health and senior services determines to be relevant to and consistent with the public health and safety.

4. Registration does not entitle a registrant to manufacture and distribute chemicals listed in subsection 2 of section 195.400 other than those specified in the registrant's registration.

5. A registration to manufacture, distribute, sell, transfer, or otherwise furnish or dispense a controlled substance or chemical listed in subsection 2 of section 195.400 may be suspended or revoked by the department of health and senior services upon a finding that the registrant has:

(1) Furnished false or fraudulent material information in any application filed pursuant

37 to sections 195.405 to 195.425;

38 (2) Been convicted of a felony under any state or federal law relating to any controlled
39 substance or listed chemical;

40 (3) Had his federal authority to manufacture, distribute or dispense controlled substances
41 or chemicals listed in sections 195.405 to 195.425 suspended or revoked; or

42 (4) Violated any federal controlled substances or chemicals statute or regulation, or any
43 provision of sections 195.005 to 195.425 or regulation promulgated pursuant to sections 195.005
44 to 195.425.

45 6. The department of health and senior services may:

46 (1) Warn or censure a registrant;

47 (2) Limit a registration to particular listed chemicals;

48 (3) Limit revocation or suspension of a registration to a particular listed chemical with
49 respect to which grounds for revocation or suspension exist;

50 (4) Restrict or limit a registration under such terms and conditions as the department of
51 health and senior services considers appropriate for a period of five years;

52 (5) Suspend or revoke a registration for a period not to exceed five years; or

53 (6) Deny an application for registration.

54

55 In any order of revocation, the department of health and senior services may provide that the
56 registrant may not apply for a new registration for one to five years following the date of such
57 order. Any stay order shall toll this time period.

58 7. [If the department of health and senior services suspends or revokes a registration, all
59 listed chemicals owned or possessed by the registrant at the time of suspension or the effective
60 date of the revocation order may be placed under seal by the department and held pending final
61 disposition of the case. No disposition may be made of chemicals under seal until the time for
62 taking an appeal has elapsed or until all appeals have been concluded, unless a court, upon
63 application therefor, orders the sale of perishable chemicals and the deposit of the proceeds of
64 the sale with the court. Upon a revocation order becoming final, all chemicals may be forfeited
65 to the state.

66 8.] The department of health and senior services shall promptly notify the Drug
67 Enforcement Administration, United States Department of Justice or their successor agencies,
68 of all orders suspending or revoking registration and all forfeitures of controlled substances.

69 [9.] 8. The department of health and senior services may suspend without an order to
70 show cause, any registration simultaneously with the institution of proceedings under subsection
71 5 of this section if the department of health and senior services finds that there is imminent
72 danger to the public health or safety which warrants this action. The suspension shall continue

73 in effect until the conclusion of the proceedings, including review of such proceedings unless
74 sooner withdrawn by the department of health and senior services, dissolved by a court of
75 competent jurisdiction or stayed by the administrative hearing commission.