

tests by the Department of Corrections to determine whether the parolee is using controlled substances.

ARTICLE VI

§ 601. Prosecution for any violation of law occurring prior to the effective date of this Act is not affected or abated by this Act. If the offense being prosecuted would be a violation of this Act, and has not reached the sentencing stage or final adjudication, then for purposes of penalty the penalties under this Act apply if they are less than under the prior law upon which the prosecution was commenced.

§ 602. If any provision of this Act or the application thereof to any person or circumstance is invalid, such invalidation shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

§ 603. The following Acts and parts of Acts are repealed:

(a) The "Uniform Narcotic Drug Act," approved July 11, 1957, as amended.

(b) The "Drug Abuse Control Act," approved August 17, 1967, as amended.

(c) "An Act to amend Sections 2-15, 41 (a) and 43 of, and to add Sections 43.1, 43.2, 43.3, 43.4, 43.5, 43.6 and 43.7 to the "Uniform Drug, Device and Cosmetic Act", approved July 9, 1959, as amended," approved August 11, 1967, as amended.

(d) "An Act to amend Section 46 of the "Uniform Drug, Device and Cosmetic Act", approved July 9, 1959, as amended", approved August 18, 1967, as amended.

Passed in the General Assembly June 30, 1971.

Approved August 16, 1971.

(I.R.S. Chap. 38, Rep. Par. 22-1 through 22-49.1.)

PUBLIC ACT 77-758.

FOODS.

CANNABIS CONTROL ACT—CREATES.

(House Bill No. 788. Approved August 16, 1971.)

AN ACT to establish a regulatory system for the production, distribution and possession of marihuana.

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

Changes or additions indicated by *italics* deletions by ~~strikeout~~.

Section 1. The General Assembly recognizes that (1) the current state of scientific and medical knowledge concerning the effects of cannabis makes it necessary to acknowledge the physical, psychological and sociological damage which is incumbent upon its use; and (2) the use of cannabis occupies the unusual position of being widely used and pervasive among the citizens of Illinois despite its harmful effects; and (3) previous legislation enacted to control or forbid the use of cannabis has often unnecessarily and unrealistically drawn a large segment of our population within the criminal justice system without succeeding in deterring the expansion of cannabis use. It is, therefore, the intent of the General Assembly, in the interest of the health and welfare of the citizens of Illinois, to establish a reasonable penalty system which is responsive to the current state of knowledge concerning cannabis and which directs the greatest efforts of law enforcement agencies toward the commercial traffickers and large-scale purveyors of cannabis. To this end, this Act provides wide latitude in the sentencing discretion of the courts and establishes penalties in a sharply rising progression based on the amount of substances containing cannabis involved in each case.

§ 2. This Act shall be known and may be cited as the "Cannabis Control Act".

§ 3. As used in this Act, unless the context otherwise requires:

(a) "Cannabis" includes marihuana, hashish and other substances which are identified as including any parts of the plant *Cannabis Sativa*, whether growing or not; the seeds thereof, the resin extracted from any part of such plant; and any compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds, or resin, including tetrahydrocannabinol (THC) and all other cannabinol derivatives, including its naturally occurring or synthetically produced ingredients, whether produced directly or indirectly by extraction, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis; but shall not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil or cake, or the sterilized seed of such plant which is incapable of germination.

(b) "Casual delivery" means the delivery of not more than 10 grams of any substance containing cannabis without consideration.

(c) "Deliver" or "delivery" means the actual, constructive or attempted transfer of possession of cannabis, with or without consideration, whether or not there is an agency relationship.

(d) "Department of Law Enforcement" means the Department of Law Enforcement of the State of Illinois or its successor agency.

(e) "Department of Mental Health" means the Department of Mental Health of the State of Illinois or its successor agency.

(f) "Director" means the Director of the Department of Law Enforcement or his designated agent.

(g) "Local authorities" means a duly organized State, county, or municipal peace unit or police force.

(h) "Manufacture" means the production, preparation, propagation, compounding, conversion or processing of cannabis, 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 cannabis or labeling of its container, except that this term does not include the preparation, compounding, packaging, or labeling of cannabis as an incident to lawful research, teaching, or chemical analysis and not for sale.

(i) "Person" means any individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other entity.

(j) "Produce" or "production" means planting, cultivating, tending or harvesting.

(k) "State" includes the State of Illinois and any state, district, commonwealth, territory, insular possession thereof, and any area subject to the legal authority of the United States of America.

(1) "Subsequent offense" means an offense under this Act, the offender of which, prior to his conviction of the offense, has at any time been convicted under this Act or under any laws of the United States or of any state relating to cannabis, or any controlled substance as defined in the Illinois Controlled Substances Act.

§ 4. It is unlawful for any person knowingly to possess cannabis. Any person who violates this section with respect to:

(a) not more than 2.5 grams of any substance containing cannabis is guilty of an offense and shall be imprisoned in a penal institution other than the penitentiary for not more than 90 days;

(b) more than 2.5 grams but not more than 10 grams of any substance containing cannabis is guilty of an offense and shall be imprisoned in a penal institution other than the penitentiary for not more than 180 days;

(c) more than 10 grams but not more than 30 grams of any substance containing cannabis is guilty of an offense and shall be imprisoned in a penal institution other than the penitentiary for not more than 1 year; provided, that if any offense under this subsection (c) is a subsequent offense, the offender shall be imprisoned in a penal institution other than the penitentiary for not more than 1 year or the penitentiary from 1 to 2 years;

(d) more than 30 grams but not more than 500 grams of any substance containing cannabis is guilty of an offense and shall be imprisoned in the penitentiary from 1 to 3 years; provided that if any offense under this subsection (d) is a subsequent offense, the offender shall be imprisoned in the penitentiary from 2 to 6 years;

(e) more than 500 grams of any substance containing cannabis is guilty of an offense and shall be imprisoned in the penitentiary from 1 to 5 years; provided, that if any offense under this subsection (e) is a subsequent

offense, the offender shall be imprisoned in the penitentiary from 2 to 7 years.

§ 5. It is unlawful for any person knowingly to manufacture, deliver, or possess with intent to deliver, or manufacture, cannabis. Any person who violates this section with respect to:

(a) not more than 2.5 grams of any substance containing cannabis is guilty of an offense and shall be imprisoned in a penal institution other than the penitentiary for not more than 180 days;

(b) more than 2.5 grams but not more than 10 grams of any substance containing cannabis is guilty of an offense and shall be imprisoned in a penal institution other than the penitentiary for not more than 1 year or in the penitentiary from 1 to 2 years;

(c) more than 10 grams but not more than 30 grams of any substance containing cannabis is guilty of an offense and shall be imprisoned in a penal institution other than the penitentiary for not more than 1 year or in the penitentiary from 1 to 3 years; provided, that if any offense under this subsection (c) is a subsequent offense, the offender shall be imprisoned in the penitentiary from 1 to 4 years;

(d) more than 30 grams but not more than 500 grams of any substance containing cannabis is guilty of an offense and shall be imprisoned in the penitentiary from 1 to 4 years; provided, that if any offense under this subsection (d) is a subsequent offense, the offender shall be imprisoned in the penitentiary from 2 to 8 years;

(e) more than 500 grams of any substance containing cannabis is guilty of an offense and shall be imprisoned in the penitentiary from 1 to 7 years; provided, that if any offense under this subsection (e) is a subsequent offense, the offender shall be imprisoned in the penitentiary from 2 to 10 years.

§ 6. Any delivery of cannabis which is a casual delivery shall be treated in all respects as possession of cannabis for purposes of penalties.

§ 7. (a) Any person who is at least 18 years of age who violates Section 5 of this Act by delivering cannabis to a person under 18 years of age who is at least 3 years his junior is punishable by a sentence up to twice the maximum otherwise authorized by Section 5.

(b) Any person under 18 years of age who violates Section 4 or 5 of this Act may be treated by the court in accordance with the Juvenile Court Act.

§ 8. Any person who knowingly produces the cannabis sativa plant is guilty of an offense and shall be imprisoned in a penal institution other than the penitentiary for not more than 1 year, or fined not more than \$1,500, or both.

§ 9. (a) Any person who engages in a calculated criminal cannabis conspiracy, as defined in subsection (b), is guilty of an offense and upon conviction shall be imprisoned in the penitentiary from 3 to 10 years, and fined not more than \$200,000 and shall be subject to the forfeitures prescribed in subsection (c); except that, if any person engages in such offense

after one or more prior convictions under this section, section 4 (d), section 5 (d), or any law of the United States or of any State relating to cannabis, or controlled substances as defined in the Illinois Controlled Substances Act, in addition to the fine and forfeiture authorized above, he shall be imprisoned in the penitentiary from 5 to 20 years.

(b) For purposes of this section, a person engages in a calculated criminal cannabis conspiracy when:

- (1) he violates subsections 4 (d) or 5 (d) of this Act; and
- (2) such violation is a part of a conspiracy undertaken or carried on with two or more other persons; and
- (3) he obtains anything of value greater than \$500 from, or organizes, directs or finances such violation or conspiracy.

(c) Any person who is convicted under this section of engaging in a calculated criminal cannabis conspiracy shall forfeit to the State of Illinois:

- (1) the receipts obtained by him in such conspiracy; and
- (2) any of his interests in, claims against, receipts from, or property or rights of any kind affording a source of influence over, such conspiracy.

(d) Any court shall have jurisdiction to enter such injunctions, restraining orders, directions, or prohibitions, or to take such other actions, including the acceptance of satisfactory performance bonds, in connection with any property, claim, receipt, right or other interest subject to forfeiture under this section, as it deems proper.

§ 10. Whenever any person who has not previously been convicted of any offense under this Act or any law of the United States or of any State relating to cannabis, or controlled substances as defined in the Illinois Controlled Substances Act, pleads guilty to or is found guilty of violating Sections 4 (a), 5 (a), or 8 of this Act, the court may, without entering a judgment of guilt and with the consent of such person, defer further proceedings and place him on probation upon reasonable terms and conditions as it may require. Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge such person and dismiss the proceedings against him. Discharge and dismissal under this Section shall be without court adjudication of guilt and shall not be deemed a conviction for purposes of disqualification or disabilities imposed by law upon conviction of a crime (including the additional penalty imposed for subsequent offenses under Section 4 (c), 4 (d), 5 (c) or 5 (d) of this Act). Discharge and dismissal under this Section may occur only once with respect to any person.

§ 11. (a) The Department of Mental Health, with the approval of the Department of Law Enforcement, may authorize the possession, production, manufacture and delivery of substances containing cannabis by persons engaged in research, upon such terms and conditions as may be consistent with the public health and safety. To the extent of the applicable authori-

zation, persons are exempt from prosecution in this State for possession, production, manufacture or delivery of cannabis.

(b) Persons registered under Federal law to conduct research with cannabis may conduct research with cannabis within this State upon furnishing evidence to the Department of Law Enforcement of that Federal registration.

(c) Persons authorized to engage in research may be authorized by the Department of Mental Health to protect the privacy of individuals who are the subjects of such research by withholding from all persons not connected with the conduct of the research the names and other identifying characteristics of such individuals. Persons who are given this authorization shall not be compelled in any civil, criminal, administrative, legislative or other proceeding to identify the individuals who are the subjects of research for which the authorization was granted, except to the extent necessary to permit the Department of Mental Health to determine whether the research is being conducted in accordance with the authorization.

§ 12. (a) The following are subject to forfeiture:

(1) all substances containing cannabis which have been produced, manufactured, delivered, or possessed in violation of this Act;

(2) all raw materials, products and equipment of any kind which are produced, delivered, or possessed in connection with any substance containing cannabis 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, for the purpose of delivery of property described in paragraph (1) or (2), but:

(i) 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;

(ii) 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;

(iii) 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 which are used, or intended for use, in violation of this Act.

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

(1) If the property subject to seizure has been the subject of a prior judgment in favor of the State in a criminal, injunction or forfeiture proceeding based upon this Act;

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

(3) In accordance with the Code of Criminal Procedure of 1963, as amended.

(c) In the event of seizure pursuant to subsection (b), proceedings under subsection (d) shall be instituted promptly.

(d) Property taken or detained under this Section shall not be subject to replevin, but is deemed to be in the custody of the Director subject only to the order and decrees of the circuit court having jurisdiction over the forfeiture proceedings. When property is seized under this Act, the Director may:

(1) place the property under seal; or

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

(3) require the sheriff of the county in which the seizure occurs to take custody of the property and remove it to an appropriate location for disposition in accordance with law.

(e) No disposition may be made of property 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.

(f) When property is forfeited under this Act the Director may:

(1) retain it for official use; or

(2) require the sheriff of the county in which the forfeiture occurs to take custody of the property and remove it for disposition in accordance with law; or

(3) forward it to the Bureau of Narcotics and Dangerous Drugs, United States Department of Justice, or its successor agency, for disposition.

§ 13. (a) In addition to any other remedies the Director is authorized to apply to any circuit court for, and such circuit court shall have jurisdiction upon hearing and for cause shown, to grant a temporary or permanent injunction, without bond, restraining any person from violating any provision of this Act whether or not there exists an adequate remedy at law.

(b) A conviction or acquittal, under the laws of the United States or of any State relating to Cannabis for the same act is a bar to prosecution in this State.

§ 14. (a) The Director shall cooperate with Federal and other State agencies in discharging his responsibilities concerning traffic in cannabis and in suppressing, the use of cannabis. To this end he may:

(1) arrange for the exchange of information among governmental officials concerning the use of cannabis;

(2) coordinate and cooperate in training programs concerning cannabis law enforcement at local and State levels;

(3) cooperate with the Bureau of Narcotics and Dangerous Drugs, United States Department of Justice, or its successor agency; and

(4) conduct programs of eradication aimed at destroying wild illicit growth of plant species from which cannabis may be extracted.

§ 15. The Department of Mental Health shall encourage research on cannabis. In connection with the research, and in furtherance of the purposes of this Act, it may:

(1) establish methods to assess accurately the effect of cannabis;

(2) make studies and undertake programs of research to:

(i) develop new or improved approaches, techniques, systems, equipment and devices to strengthen the enforcement of this Act;

(ii) determine patterns of use of cannabis and its social effects; and

(iii) improve methods for preventing, predicting, understanding, and dealing with the use of cannabis;

(3) enter into contracts with public agencies, educational institutions, and private organizations or individuals for the purpose of conducting research, demonstrations, or special projects which relate to the use of cannabis.

§ 16. It is not necessary for the State to negate any exemption or exception in this Act in any complaint, information, indictment or other pleading or in any trial, hearing, or other proceeding under this Act. The burden of proof of any exemption or exception is upon the person claiming it.

§ 17. It is hereby made the duty of the Department of Law Enforcement, all peace officers within the State and of all State's attorneys, to enforce all provisions of this Act and to cooperate with all agencies charged with the enforcement of the laws of the United States, of this State, and of all other states, relating to cannabis.

§ 18. Prosecution for any violation of law occurring prior to the effective date of this Act is not affected or abated by this Act. If the offense being prosecuted would be a violation of this Act, and has not reached the sentencing stage or a final adjudication, then for purposes of penalty the penalties under this Act apply if they are less than under the prior law upon which the prosecution was commenced.

§ 19. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared severable.

Passed in the General Assembly June 30, 1971.

Approved August 16, 1971.