

2017 Regular Session

SENATE BILL NO. 70

BY SENATOR DONAHUE

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

CONTROL DANGER SUBSTANCE. Makes misbranding or adulteration of drugs under certain circumstances a felony. (8/1/17)

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AN ACT

To amend and reenact R.S. 40:639 and to enact R.S. 40:971.3, relative to controlled dangerous substances; to make the misbranding or adulteration of drugs with the intent to defraud or mislead a felony offense; to provide penalties; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 40:639 is hereby amended and reenacted and R.S. 40:971.3 is hereby enacted to read as follows:

§639. Penalties

~~Whoever~~ **Except as provided in R.S. 40:971.3, whoever** violates any provision of this Part shall be fined, for the first offense, not more than one thousand dollars or imprisoned for not more than one year, or both. For the second or subsequent offense, he shall be fined not more than three thousand dollars or imprisoned for not more than two years, or both. But any person who violates the provisions of ~~Subsection C~~ of R.S. 40:625**(C)** shall only be fined not more than one thousand dollars for each violation if the violation does not involve gross deception or imminent danger to health, and is established by opinion evidence only.

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**§971.3. Misbranding or adulteration of drugs with intent to defraud or mislead**

**Any person who violates the provisions of R.S. 40:617 or R.S. 40:636 with respect to any drug, as defined in R.S. 40:602, and with the intent to defraud or mislead shall be imprisoned, with or without hard labor, for not more than five years, or fined not more than ten thousand dollars, or both.**

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The original instrument was prepared by Alden A. Clement, Jr. The following digest, which does not constitute a part of the legislative instrument, was prepared by Cathy Wells.

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## DIGEST

SB 70 Reengrossed

2017 Regular Session

Donahue

Present law provides that the term "drug" includes all substances and preparations recognized in the official compendium and intended for use in the diagnosis, treatment, or prevention of disease in man or beast, and all substances and preparations, other than food and cosmetics, intended to affect the structure or any function of the body.

Proposed law retains present law.

Present law provides that a drug or device is considered misbranded if it has been found to be misbranded by any department of the U.S. government, or if, among other things:

- (1) Its labeling is false or misleading in any particular. Any representation concerning any effect of a drug or device is considered false for purposes of present law if the representation is not supported by demonstrable scientific facts or substantial and reliable medical or scientific opinion.
- (2) It is dangerous to health under the conditions of use prescribed in the labeling or advertising thereof.
- (3) It is a drug and its container is so made, formed, or filled as to mislead the purchaser.

Proposed law retains present law.

Present law prohibits, among others, the following acts relative to drugs:

- (1) The introduction or delivery for introduction into commerce of any food, drug, device, or cosmetic that is adulterated or misbranded.
- (2) The adulteration, or misbranding, of any food, drug, device, or cosmetic in commerce.
- (3) The possession in any place where sales or service is made to the public of any food, drug, device or cosmetic that is adulterated or misbranded.

Proposed law retains present law.

Present law provides that whoever violates any provision of present law relative to the misbranding or adulteration of any drug is to be fined, for the first offense, up to \$1,000, imprisoned for up to one year, or both. Present law provides that for the second or

subsequent offense, the person is to be fined up to \$3,000, or imprisoned for up to two years, or both. Present law further provides that any person who violates the provisions of present law relative to the false or misleading advertising of a drug is to be fined up to \$1,000 for each violation if the violation does not involve gross deception or imminent danger to health, and is established by opinion evidence only.

Proposed law retains present law and adds that any person who violates present law relative to misbranding or adulteration of any drug with the intent to defraud or mislead is to be imprisoned, with or without hard labor, for up to five years, or fined up to \$10,000, or both.

Effective August 1, 2017.

(Amends R.S. 40:639; adds R.S. 40:971.3)

Summary of Amendments Adopted by Senate

Senate Floor Amendments to engrossed bill

1. Makes Legislative Bureau technical corrections.