

1 **State of Arkansas**  
2 **78th General Assembly**  
3 **Regular Session, 1991**  
4 **By: Representative Arnold**

# A Bill

**HOUSE BILL**

## For An Act To Be Entitled

8 "AN ACT TO AMEND VARIOUS SECTIONS OF ARKANSAS CODE  
9 ANNOTATED TO DEFINE ABANDONED DRUGS AND INCLUDE THEM UNDER  
10 THE FOOD DRUG AND COSMETIC ACT; AND FOR OTHER PURPOSES."

11

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

13

14 SECTION 1. Arkansas Code Annotated §20-56-202 is amended by adding a new  
15 subparagraph as follows:

16 "(19) 'Abandoned Drug' means a drug which:

17 (A) Is in the possession or control of a person who is without  
18 authority under law to possess, purchase or sell;

19 (B) In its present circumstances presents a danger to the public  
20 health or safety;

21 (C) Is not properly controlled by the person who by law has  
22 authority to possess, purchase or sell the drug;

23 (D) Is the subject of a recall order by the federal food and drug  
24 administration but has not been returned within a reasonable time after the  
25 publication of that order;

26 (E) Is adulterated, misbranded or a new drug as defined in this  
27 subchapter or a drug intended solely for investigational use and approved by  
28 the federal food and drug administration as such for which there is no  
29 approval in effect; or

30 (F) Is otherwise rendered unsafe for use as a result of fire,  
31 flood or other natural disaster."

32

33 SECTION 2. Arkansas Code Annotated §20-56-215 is amended to read as  
34 follows:

35 "20-56-215. Prohibited acts.

1           The following acts and the causing thereof within the State of Arkansas  
2 are prohibited:

3           (1) The manufacture or sale, delivery, holding, or offering for sale of  
4 any food, drug, device, or cosmetic that is adulterated, misbranded, or  
5 abandoned;

6           (2) The adulteration, misbranding, or abandoning of any food, drug,  
7 device, or cosmetic;

8           (3) The receipt in commerce of any food, drug, device, or cosmetic  
9 knowing it to be adulterated, misbranded, or abandoned and the delivery or  
10 proffered delivery thereof for pay or otherwise;

11           (4) The sale, delivery for sale, holding for sale, or offering for sale  
12 of any article in violation of 20-56-217;

13           (5) The dissemination of any false advertisement;

14           (6) The refusal to permit entry or inspection or to permit the taking  
15 of a sample, as authorized by 20-56-220;

16           (7) The giving of a guaranty or undertaking which is false, except by a  
17 person who relied on a guaranty or undertaking to the same effect signed by,  
18 and containing the name and address of, the person residing in the State of  
19 Arkansas from whom he received in good faith the food, drug, device, or  
20 cosmetic;

21           (8) The removal or disposal of a detained or embargoed article in  
22 violation of 20-56-216;

23           (9) The alteration, mutilation, destruction, obliteration, or removal  
24 of the whole or any part of the labeling of, or the doing of any other act  
25 with respect to, a food, drug, device, or cosmetic if the act is done while  
26 the article is held for sale and results in the article being misbranded;

27           (10) Forging, counterfeiting, simulating, or falsely representing or,  
28 without proper authority, using any mark, stamp, tag, label, or other  
29 identification device authorized or required by regulations promulgated under  
30 the provisions of this subchapter."

31

32           SECTION 3. Arkansas Code Annotated §20-56-216 is amended to read as  
33 follows:

34           "20-56-216. Adulterated, misbranded or abandoned food, drug, device, or  
35 cosmetic - Procedures.

1           (a) (1) Whenever an authorized agent of the State Board of Health finds  
2 or has probable cause to believe that any food, drug, device, or cosmetic is  
3 adulterated, so misbranded or abandoned as to be dangerous or fraudulent,  
4 within the meaning of this subchapter, he shall affix to the article a tag or  
5 other appropriate marking giving notice that the article is, or is suspected  
6 of being, adulterated, misbranded, or abandoned and has been detained or  
7 embargoed and warning all persons not to move, transfer from one (1) place to  
8 another, remove, or dispose of the article by sale or otherwise until written  
9 permission or order for movement, transfer, removal, or disposal is given by  
10 the agent or the court.

11           (2) It shall be unlawful for any person to move, transfer,  
12 remove, or dispose of such detained or embargoed article by sale or otherwise  
13 without permission.

14           (b) (1) When an article detained or embargoed under subsection (a) of  
15 this section has been found by an agent to be adulterated, misbranded, or  
16 abandoned the agent shall petition the judge of the chancery court in whose  
17 jurisdiction the article is detained or embargoed for a libel for condemnation  
18 of the article.

19           (2) When the agent has found that an article so detained or  
20 embargoed is not adulterated, misbranded or abandoned, then he shall remove  
21 the tag or other marking.

22           (c) If the court finds that a detained or embargoed article is  
23 adulterated, misbranded, or abandoned then the article, after entry of the  
24 decree, shall be destroyed at the expense of the claimant when under the  
25 supervision of the agent of the State Board of Health. All court costs and  
26 fees and storage and other proper expenses shall be taxed against the claimant  
27 of the article or his agent.

28           (1) When the adulteration, misbranding, or abandoning can be  
29 corrected by proper labeling or processing of the article, the court, after  
30 entry of the decree and after costs, fees, and expenses have been paid and a  
31 good and sufficient bond, conditioned that the article shall be so labeled or  
32 processed, has been executed, may direct that the article be delivered to the  
33 claimant thereof for labeling or processing under the supervision of an agent  
34 of the State Board of Health.

35           (2) The expense of the supervision shall be paid by the claimant.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35

(3) The bond shall be returned to the claimant of the article upon representation to the court by the State Board of Health that the article is no longer in violation of this subchapter and that the expenses of the supervision have been paid.

(d) Whenever the State Board of Health or any of its authorized agents shall find in any room, building, vehicle of transportation, or other structure any meat, seafood, poultry, vegetable, fruit, or other perishable articles which are unsound or contain any filthy, decomposed, or putrid substance or which may be poisonous or deleterious to health or otherwise unsafe, those articles being declared to be a nuisance, the State Board of Health or its authorized agent shall immediately condemn or destroy those articles or in any other manner render those articles unsalable as human food."

SECTION 4. All provisions of this act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

SECTION 5. 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 to be severable.

SECTION 6. All laws and parts of laws in conflict with this act are hereby repealed.