

DRUGS AND DRUG TRAFFICKING ACT NO. 140 OF 1992

[ASSENTED TO 2 JULY, 1992]
[DATE OF COMMENCEMENT: 30 APRIL, 1993]

(English text signed by the State President)

This Act has been updated to *Government Gazette* 37495 dated 28 March, 2014.

as amended by

Justice Laws Rationalisation Act, No. 18 of 1996
[with effect from 1 April, 1997—see title COURTS]

International Co-operation in Criminal Matters Act, No. 75 of 1996
[with effect from 1 January, 1998—see title INTERNATIONAL LAW]

Proceeds of Crime Act, No. 76 of 1996

Prevention of Organised Crime Act, No. 121 of 1998

Financial Advisory and Intermediary Services Act, No. 37 of 2002
[with effect from 15 November, 2002, unless otherwise indicated—see title STOCK
EXCHANGE]

Regulation of Interception of Communications and Provision of Communication-related
Information Act, No. 70 of 2002
[with effect from 30 September, 2005, unless otherwise indicated—see title TRADE
AND INDUSTRY]

EDITORIAL NOTE

Please note that details of Government Notices published in the *Government Gazettes* that amend the Schedules to the Act are annotated at the beginning of the Schedules.

ACT

To provide for the prohibition of the use or possession of, or the dealing in, drugs and of certain acts relating to the manufacture or supply of certain substances or the acquisition or conversion of the proceeds of certain crimes; for the obligation to report certain information to the police; for the exercise of the powers of entry, search, seizure and detention in specified circumstances; for the recovery of the proceeds of drug trafficking; and for matters connected therewith.

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CHAPTER I
APPLICATION OF ACT

1. Definitions.—(1) In this Act, unless the context indicates otherwise—

“convert”

[Definition of “convert” deleted by s. 79 (b) of Act No. 121 of 1998.]

“dangerous dependence-producing substance” means any substance or any plant from which a substance can be manufactured included in Part II of Schedule 2;

“deal in”, in relation to a drug, includes performing any act in connection with the trans-shipment, importation, cultivation, collection, manufacture, supply, prescription, administration, sale, transmission or exportation of the drug;

“declaration of forfeiture” means a declaration of forfeiture made in terms of section 25 (1);

“defined crime”

[Definition of “defined crime” deleted by s. 79 (b) of Act No. 121 of 1998.]

“dependence-producing substance” means any substance or any plant from which a substance can be manufactured included in Part I of Schedule 2;

“designated officer” means any officer referred to in section 8;

“drug” means any dependence-producing substance, any dangerous dependence-producing substance or any undesirable dependence-producing substance;

“drug offence”—

(a) in relation to a drug offence committed in the Republic, means an offence referred to in section 13 (f);

(b) in relation to a drug offence committed outside the Republic, means any act or omission which, if it had occurred within the Republic, would have constituted an offence referred to in that section;

“economic offence”

[Definition of “economic offence” deleted by s. 79 (b) of Act No. 121 of 1998.]

“financial institution”

[Definition of “financial institution” deleted by s. 79 (b) of Act No. 121 of 1998.]

“interest” includes any right;

“manufacture”, in relation to a substance, includes the preparing, extraction or producing of the substance;

“medicinal purposes”, in relation to a particular drug, means the treatment or prevention of a disease or for some other definite curative or therapeutic purpose, but does not include the satisfaction or relief of a habit or of a craving for the particular drug or for any other drug;

“Medicines Act” means the Medicines and Related Substances Control Act, 1965 (Act No. 101 of 1965);

“Minister” means the Minister of Justice;

“**place of entertainment**” includes any premises, vehicle, vessel or aircraft, or any part thereof, used for or in connection with any exhibition, show, performance, dance, amusement, game, competition or sport;

“**plant**” includes any portion of a plant;

“**police official**” means any member of the Force as defined in section 1 of the Police Act, 1958 (Act No. 7 of 1958);

“**possess**”, in relation to a drug, includes to keep or to store the drug, or to have it in custody or under control or supervision;

“**premises**” means land or any building, dwelling, flat, room, shop, office or other structure;

“**proceeds**”

[Definition of “proceeds” deleted by s. 79 (b) of Act No. 121 of 1998.]

“**property**” means money or any other movable, immovable, corporeal or incorporeal thing;

“**record**” includes any information contained in a computer or reproduced by a computer print-out, as the case may be;

“**scheduled substance**” means any substance included in Part I or II of Schedule 1;

“**sell**”, in relation to a drug, includes to offer, advertise, possess or expose the drug for sale, to dispose of it, whether for consideration or otherwise, or to exchange it;

“**undesirable dependence-producing substance**” means any substance or any plant from which a substance can be manufactured included in Part III of Schedule 2.

(2) In this Act—

- (a) except where it is inconsistent with the context or clearly inappropriate, any reference to property shall be construed as a reference also to property which is situate outside the Republic;
- (b) any reference to a person practising any health service or cognate profession shall be construed as a reference to a person practising any health service or cognate profession as defined in the Medicines Act.

2. Operation of Act with regard to Medicines Act.—The provisions of this Act shall apply in addition to, and not in substitution for, the provisions of the Medicines Act or any regulation made thereunder.

CHAPTER II ILLEGAL ACTS

Acts relating to scheduled substances and drugs

3. Manufacture and supply of scheduled substances.—No person shall manufacture any scheduled substance or supply it to any other person, knowing or suspecting that any such scheduled substance is to be used in or for the unlawful manufacture of any drug.

4. Use and possession of drugs.—No person shall use or have in his possession—

- (a) any dependence-producing substance; or

- (b) any dangerous dependence-producing substance or any undesirable dependence-producing substance,

unless—

- (i) he is a patient who has acquired or bought any such substance—
- (aa) from a medical practitioner, dentist or practitioner acting in his professional capacity and in accordance with the requirements of the Medicines Act or any regulation made thereunder; or
- (bb) from a pharmacist in terms of an oral instruction or a prescription in writing of such medical practitioner, dentist or practitioner,
- and uses that substance for medicinal purposes under the care or treatment of the said medical practitioner, dentist or practitioner;
- (ii) he has acquired or bought any such substance for medicinal purposes—
- (aa) from a medical practitioner, veterinarian, dentist or practitioner acting in his professional capacity and in accordance with the requirements of the Medicines Act or any regulation made thereunder;
- (bb) from a pharmacist in terms of an oral instruction or a prescription in writing of such medical practitioner, veterinarian, dentist or practitioner; or
- (cc) from a veterinary assistant or veterinary nurse in terms of a prescription in writing of such veterinarian,
- with the intent to administer that substance to a patient or animal under the care or treatment of the said medical practitioner, veterinarian, dentist or practitioner;
- (iii) he is the Director-General: Welfare who has acquired or bought any such substance in accordance with the requirements of the Medicines Act or any regulation made thereunder;
- [Sub-para. (iii) amended by s. 4 of Act No. 18 of 1996.]
- (iv) he, she or it is a patient, medical practitioner, veterinarian, dentist, practitioner, nurse, midwife, nursing assistant, pharmacist, veterinary assistant, veterinary nurse, manufacturer of, or wholesale dealer in, pharmaceutical products, importer or exporter, or any other person contemplated in the Medicines Act or any regulation made thereunder, who or which has acquired, bought, imported, cultivated, collected or manufactured, or uses or is in possession of, or intends to administer, supply, sell, transmit or export any such substance in accordance with the requirements or conditions of the said Act or regulation, or any permit issued to him, her or it under the said Act or regulation;
- (v) he is an employee of a pharmacist, manufacturer of, or wholesale dealer in, pharmaceutical products, importer or exporter who has acquired, bought, imported, cultivated, collected or manufactured, or uses or is in possession of, or intends to supply, sell, transmit or export any such substance in the course of his employment and in accordance with the requirements or conditions of the Medicines Act or any regulation made thereunder, or any permit issued to such pharmacist, manufacturer of, or wholesale dealer in, pharmaceutical products, importer or exporter under the said Act or regulation; or
- (vi) he has otherwise come into possession of any such substance in a lawful manner.

5. Dealing in drugs.—No person shall deal in—

- (a) any dependence-producing substance; or
- (b) any dangerous dependence-producing substance or any undesirable dependence-producing substance,

unless—

- (i) he has acquired or bought any such substance for medicinal purposes—
 - (aa) from a medical practitioner, veterinarian, dentist or practitioner acting in his professional capacity and in accordance with the requirements of the Medicines Act or any regulation made thereunder;
 - (bb) from a pharmacist in terms of an oral instruction or a prescription in writing of such medical practitioner, veterinarian, dentist or practitioner; or
 - (cc) from a veterinary assistant or veterinary nurse in terms of a prescription in writing of such veterinarian,

and administers that substance to a patient or animal under the care or treatment of the said medical practitioner, veterinarian, dentist or practitioner;

- (ii) he is the Director-General: Welfare who acquires, buys or sells any such substance in accordance with the requirements of the Medicines Act or any regulation made thereunder;

[Sub-para. (ii) amended by s. 4 of Act No. 18 of 1996.]

- (iii) he, she or it is a medical practitioner, veterinarian, dentist, practitioner, nurse, midwife, nursing assistant, pharmacist, veterinary assistant, veterinary nurse, manufacturer of, or wholesale dealer in, pharmaceutical products, importer or exporter, or any other person contemplated in the Medicines Act or any regulation made thereunder, who or which prescribes, administers, acquires, buys, transships, imports, cultivates, collects, manufactures, supplies, sells, transmits or exports any such substance in accordance with the requirements or conditions of the said Act or regulation, or any permit issued to him, her or it under the said Act or regulation; or

- (iv) he is an employee of a pharmacist, manufacturer of, or wholesale dealer in, pharmaceutical products, importer or exporter who acquires, buys, transships, imports, cultivates, collects, manufactures, supplies, sells, transmits or exports any such substance in the course of his employment and in accordance with the requirements or conditions of the Medicines Act or any regulation made thereunder, or any permit issued to such pharmacist, manufacturer of, or wholesale dealer in, pharmaceutical products, importer or exporter under the said Act or regulation.

Acts relating to proceeds of defined crime

6.

[S. 6 repealed by s. 79 (b) of Act No. 121 of 1998.]

7.

[S. 7 repealed by s. 79 (b) of Act No. 121 of 1998.]

CHAPTER III
REPORTING OF INFORMATION, AND INVESTIGATIONS

Reporting of information

8. Designated officers.—For the purposes of this Chapter, every commissioned officer of the South African Police Service assigned to the South African Narcotics Bureau shall be a designated officer.

[S. 8 amended by s. 4 of Act No. 18 of 1996.]

9. Relaxation of restrictions on disclosure of information.—(1) Any person may, notwithstanding anything to the contrary contained in any law which prohibits him or her—

- (a) from disclosing any information relating to the affairs or business of any other person; or
- (b) from permitting any person to have access to any registers, records or other documents which have a bearing on the said affairs or business,

disclose to any attorney-general or designated officer such information as he or she may consider necessary for the prevention or combating, whether in the Republic or elsewhere, of a drug offence.

[Sub-s. (1) substituted by s. 79 (b) of Act No. 121 of 1998.]

(2) The provisions of subsection (1) shall not be construed as prohibiting any Minister by whom or any other authority by which, or under the control of whom or which, any law referred to in that subsection is administered, or any board, institution or body established by or under any such law, from making any other arrangement with regard to the furnishing of information or the granting of access contemplated in that subsection, according to which the information or access shall be furnished or granted—

- (a) by, or on the authority or with the approval of, any such Minister, authority, board, institution or body or any person designated by any such Minister, authority, board, institution or body; and
- (b) subject to the conditions, if any, determined by any such Minister, authority, board, institution, body or person.

10. Obligation to report certain information to police—(1) If the owner, occupier or manager of any place of entertainment, or any person in control of any place of entertainment or who has the supervision thereof, has reason to suspect that any person in or on such place of entertainment uses, has in his possession or deals in any drug in contravention of the provisions of this Act, he shall—

- (a) as soon as possible report his suspicion to any police official on duty at that place of entertainment or at the nearest police station, as the case may be; and
- (b) at the request of the said police official, furnish that police official with such particulars as he may have available regarding the person in respect of whom the suspicion exists.

(2)

[Sub-s. (2) deleted by s. 79 (b) of Act No. 121 of 1998.]

(3) If—

- (a) any stock-broker as defined in section 1 of the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985); or

[Para. (a) substituted by s. 45 (2) (b) of Act No. 37 of 2002.]

- (b) any financial instrument trader as defined in section 1 of the Financial Markets Control Act, 1989 (Act No. 55 of 1989),

[Para. (b) substituted by s. 45 (2) (b) of Act No. 37 of 2002.]

has reason to suspect that any property acquired by him from any person in the ordinary course of his business is the proceeds of a defined crime, he shall—

- (i) as soon as possible report his suspicion to any designated officer; and
- (ii) at the request of that designated officer, furnish the said officer with such particulars as he may have available regarding the person from whom that property has been acquired.

(4) No obligation as to secrecy and no other restriction on the disclosure of any information as to the affairs or business of a customer or client, whether imposed by any law, the common law or any agreement, shall affect any obligation incurred by virtue of the provisions of subsection (2) or (3).

Investigations

11. Powers of police officials.—(1) A police official may—

- (a) if he has reasonable grounds to suspect that an offence under this Act has been or is about to be committed by means or in respect of any scheduled substance, drug or property, at any time—

- (i) enter or board and search any premises, vehicle, vessel or aircraft on or in which any such substance, drug or property is suspected to be found;
- (ii) search any container or other thing in which any such substance, drug or property is suspected to be found;

- (b) if he has reasonable grounds to suspect that any person has committed or is about to commit an offence under this Act by means or in respect of any scheduled substance, drug or property, search or cause to be searched any such person or anything in his possession or custody or under his control: Provided that a woman shall be searched by a woman only;

- (c) if he has reasonable grounds to suspect that any article which has been or is being transmitted through the post contains any scheduled substance, drug or property by means or in respect of which an offence under this Act has been committed, notwithstanding anything to the contrary in any law contained, intercept or cause to be intercepted either during transit or otherwise any such article, and open and examine it in the presence of any suitable person;

- (d) question any person who in his opinion may be capable of furnishing any information as to any offence or alleged offence under this Act;

- (e) subject to section 15 of the Regulation of Interception of Communications and Provision of Communication-related Information Act, 2002, require from any person who has in his or her possession or custody or under his or her control any register, record or other document which in the opinion of the police official may have a bearing on any offence or alleged offence under this Act, to deliver to him or her then and there, or to submit to him or her at such time and place as may be determined by the police official, any such register, record or document;

[Para. (e) substituted by s. 60 of Act No. 70 of 2002.]

- (f) examine any such register, record or document or make an extract therefrom or a copy thereof, and require from any person an explanation of an entry in any such register, record or document;
 - (g) seize anything which in his opinion is connected with, or may provide proof of, a contravention of a provision of this Act.
- (2) A police official may in the exercise of his powers under this section—
- (a) require any vehicle, vessel or aircraft to be stopped; or
 - (b) request the master, pilot or owner of any vessel or aircraft to sail or to fly any such vessel or aircraft, or to cause it to be sailed or flown, to such harbour or airport as may be indicated by the police official.

12. Interrogation of persons under warrant of apprehension.—(1) Whenever it appears to a magistrate from information submitted to him on oath by the attorney-general concerned, or by any public prosecutor authorized thereto in writing by that attorney-general, that there are reasonable grounds for believing that any person is withholding any information as to a drug offence, whether the drug offence has been or is likely to be committed in the Republic or elsewhere, from that attorney-general, any such public prosecutor or any police official, as the case may be, he may issue a warrant for the arrest and detention of any such person.

(2) Notwithstanding anything to the contrary in any law contained, any person arrested by virtue of a warrant under subsection (1) shall as soon as possible be taken to the place mentioned in the warrant and detained there, or at such other place as the magistrate may from time to time determine, for interrogation in accordance with the directions, if any, issued by the magistrate from time to time.

(3) Any person arrested and detained under a warrant referred to in subsection (1) shall be detained until the magistrate orders his release when satisfied that the detainee has satisfactorily replied to all questions at the interrogation or that no useful purpose will be served by his further detention: Provided that the attorney-general concerned may at any time direct in writing that the interrogation of any particular detainee be discontinued, whereupon that detainee shall be released without delay.

(4) (a) Any person arrested under a warrant referred to in subsection (1) shall be brought before the magistrate within 48 hours of his arrest and thereafter not less than once every ten days.

(b) The magistrate shall at every appearance of such person before him enquire whether he has satisfactorily replied to all questions at his interrogation and whether it will serve any useful purpose to detain him further.

(c) Such person shall be entitled to be assisted at his appearance by his legal representative.

(5) Any person detained in terms of this section may at any time make representations in writing to the magistrate relating to his detention or release.

(6) No person, other than an official in the service of the State acting in the performance of his official duties—

(a) shall have access to a person detained in terms of this section, except with the consent of the magistrate and subject to such conditions as he may determine: Provided that the magistrate—

(i) shall refuse such permission only if he has reason to believe that access to a person so detained will hamper any investigation by the police;

- (ii) shall not refuse such permission in respect of a legal representative who visits a person so detained with a view to assisting him as contemplated in subsection (4) (c); or
 - (b) shall be entitled to any official information relating to or obtained from such detainee.
- (7) (a) Any person detained in terms of this section shall—
- (i) as soon as possible be examined by a district surgeon; and
 - (ii) not less than once every five days be visited in private by a district surgeon,

and such a district surgeon shall as soon as possible compile a report in respect of each such visit and submit it to the magistrate.

(b) The magistrate may, if he has reason to believe that it will not hamper any investigation by the police, furnish at the request of any particular detainee a copy of any report referred to in paragraph (a) to a person indicated by that detainee.

(8) For the purposes of this section “magistrate” includes an additional magistrate.

CHAPTER IV OFFENCES, PENALTIES, PRESUMPTIONS AND FORFEITURE

Offences and penalties

13. Offences relating to scheduled substances and drugs—Any person who—

- (a) places any drug in the possession, or in or on the premises, vehicle, vessel or aircraft, of any other person with intent that the latter person be charged with an offence under this Act;
- (b) contravenes a provision of section 3;
- (c) contravenes a provision of section 4 (a);
- (d) contravenes a provision of section 4 (b);
- (e) contravenes a provision of section 5 (a); or
- (f) contravenes a provision of section 5 (b),

shall be guilty of an offence.

14. Offences relating to proceeds of defined crime.—Any person who—

- (a) contravenes a provision of section 6; or
- (b) contravenes a provision of section 7,

shall be guilty of an offence.

15. Offences relating to reporting of information.—(1) Any person who fails to comply with a provision of section 10 (1), (2) or (3) shall be guilty of an offence.

(2) No prosecution shall be instituted in respect of an offence referred to in subsection (1) without the written authority of the attorney-general concerned.

16. Offences relating to powers of police officials.—Any person who—

- (a) hinders or obstructs any police official in the exercise of his powers under section 11;

- (b) refuses or fails to comply to the best of his ability with any requirement or request made by any police official in the exercise of his powers under section 11;
- (c) refuses or fails to answer to the best of his ability any question which any police official in the exercise of his powers under section 11 has put to him; or
- (d) wilfully furnishes to any police official information which is false or misleading,

shall be guilty of an offence.

17. Penalties.—Any person who is convicted of an offence under this Act shall be liable—

- (a) in the case of an offence referred to in section 16, to a fine, or to imprisonment for a period not exceeding twelve months, or to both such fine and such imprisonment;
- (b) in the case of an offence referred to in section 13 (a) or (c), to such fine as the court may deem fit to impose, or to imprisonment for a period not exceeding five years, or to both such fine and such imprisonment;
- (c) in the case of an offence referred to in section 13 (e), to such fine as the court may deem fit to impose, or to imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment;
- (d) in the case of an offence referred to in section 13 (b) or (d), 14 or 15, to such fine as the court may deem fit to impose, or to imprisonment for a period not exceeding 15 years, or to both such fine and such imprisonment; and
- (e) in the case of an offence referred to in section 13 (f), to imprisonment for a period not exceeding 25 years, or to both such imprisonment and such fine as the court may deem fit to impose.

Presumptions and liability of employers and principals

18. Presumption relating to samples of substances.—If in any prosecution for an offence under this Act it is proved that a sample which was taken from any substance by means or in respect of which the offence allegedly was committed possesses particular properties, it shall be presumed, until the contrary is proved, that any such substance possesses the same properties.

19. Presumptions relating to health matters.—(1) Whenever in any prosecution for an offence referred to in section 13 (c), (d), (e) or (f) the question arises—

- (a) whether any person is or was practising a particular health service or cognate profession, it shall be presumed, until the contrary is proved, that such person is or was not practising the particular health service or cognate profession;
- (b) whether any person is or was any manufacturer of, or wholesale dealer in, pharmaceutical products, importer or exporter, it shall be presumed, until the contrary is proved, that such person is or was not any such manufacturer, wholesale dealer, importer or exporter;
- (c) whether any drug has been acquired or bought in terms of any oral instruction or prescription in writing of a medical practitioner, veterinarian, dentist or practitioner, it shall be presumed, until the

contrary is proved, that such drug has not been acquired or bought in terms of any such instruction or prescription.

(2) If in the prosecution of any person for an offence referred to in section 13 (e) or (f) it is proved that the accused was found in possession of a quantity of drugs which exceeds the quantity of such drugs which the accused could have acquired or bought for medicinal purposes in terms of a particular oral instruction or a particular prescription in writing of a medical practitioner, veterinarian, dentist or practitioner, it shall be presumed, until the contrary is proved, that the accused dealt in such drugs.

20. Presumption relating to possession of drugs.—If in the prosecution of any person for an offence under this Act it is proved that any drug was found in the immediate vicinity of the accused, it shall be presumed, until the contrary is proved, that the accused was found in possession of such drug.

21. Presumptions relating to dealing in drugs.—(1) If in the prosecution of any person for an offence referred to—

(a) in section 13 (f) it is proved that the accused—

- (i) was found in possession of dagga exceeding 115 grams;
- (ii) was found in possession in or on any school grounds or within a distance of 100 metres from the confines of such school grounds of any dangerous dependence-producing substance; or
- (iii) was found in possession of any undesirable dependence-producing substance, other than dagga,

it shall be presumed, until the contrary is proved, that the accused dealt in such dagga or substance;

(b) in section 13 (f) it is proved—

- (i) that dagga plants of the existence of which plants the accused was aware or could reasonably be expected to have been aware, were found on a particular day on cultivated land; and
- (ii) that the accused was on the particular day the owner, occupier, manager or person in charge of the said land,

it shall be presumed, until the contrary is proved, that the accused dealt in such dagga plants;

(c) in section 13 (e) or (f) it is proved that the accused conveyed any drug, it shall be presumed, until the contrary is proved, that the accused dealt in such drug;

[Editorial Note: S. 21 (1) (c) has been declared inconsistent with the interim Constitution and therefore to be of no force and effect to the extent set out in the Constitutional Court Order published under Government Notice No. R.585 in *Government Gazette* 21266 of 15 June, 2000.]

(d) in section 13 (e) or (f) it is proved—

- (i) that any drug was found on or in any animal, vehicle, vessel or aircraft; and
- (ii) that the accused was on or in charge of, or that he accompanied, any such animal, vehicle, vessel or aircraft,

it shall be presumed, until the contrary is proved, that the accused dealt in such drug.

(2) For the purposes of subsection (1) (a) (ii)—

“**school**” means any educational institution, except a university, a college of education or a technikon, where full-time education, including pre-primary education, is provided to pupils;

“**school grounds**”, in relation to a school, means land, whether it is contiguous or not, buildings or accommodation, sporting or other facilities used for or in connection with the activities of the school.

22. Presumption relating to acquisition of proceeds of defined crime.—If in the prosecution of any person for an offence referred to in section 14 (a) it is proved that the accused was found in possession of any property which was the proceeds of a defined crime, it shall be presumed that the accused knew at the time of the acquisition of such property that it was the proceeds of a defined crime, unless he proves—

- (a) that he acquired that property in good faith; and
- (b) that the circumstances under which he acquired that property were not of such a nature that he could reasonably have been expected to have suspected that it was the proceeds of a defined crime.

23. Presumption relating to reporting of information.—If in any prosecution for the failure to comply with a provision of subsection (1) of section 10, it is proved—

- (a) that the accused was on a particular day the owner, occupier or manager of any place of entertainment to which admission is obtained by virtue of any consideration, whether directly or indirectly, or by virtue of any contribution to any fund or for any purpose or by virtue of membership of any association of persons, or that such place of entertainment was on the particular day under the control or supervision of the accused; and
- (b) that on the particular day any other person, while he was in or on such place of entertainment, and in contravention of the provisions of this Act, used or was in possession of, or dealt in, any drug,

it shall be presumed that the accused had reason for the suspicion contemplated in that subsection, unless he proves—

- (i) that he was not on the particular day aware that any person was using or had in his possession or was dealing in such drug in or on that place of entertainment; and
- (ii) that the circumstances under which the proven use or possession of, or dealing in, such drug occurred were not of such a nature that he could reasonably have been expected to have been aware of it or to have suspected that a person was using or had in his possession or was dealing in such drug in or on that place of entertainment; and
- (iii) if those circumstances were of such a nature that it could reasonably be expected of him to have taken precautions against the use or possession of, or dealing in, such drug in or on that place of entertainment by any person, that such precautions had been taken.

24. Liability of employers and principals.—(1) An act or omission of an employee or agent which constitutes an offence under this Act shall be deemed to be the act or omission of his employer or principal, and that employer or principal may be convicted and sentenced in respect of it, unless it appears from the evidence—

- (a) that he did not permit or connive at such act or omission; and
- (b) that he took all reasonable steps to prevent an act or omission of the kind in question; and

- (c) that an act or omission, whether legal or illegal, of the character of the act or omission charged did not under any condition or in any circumstance fall within the course of the employment or the scope of the authority of the employee or agent concerned.

(2) For the purposes of subsection (1) (b) the fact that an employer or principal forbade an act or omission of the kind in question shall not by itself be regarded as sufficient that he took all reasonable steps to prevent such an act or omission.

(3) The provisions of subsection (1) shall not relieve the employee or agent concerned from liability to be convicted and sentenced in respect of the act or omission in question.

Forfeiture

25. Declarations of forfeiture.—(1) Whenever any person is convicted of an offence under this Act, the court convicting him shall, in addition to any punishment which that court may impose in respect of the offence, declare—

- (a) any scheduled substance, drug or property—
 - (i) by means of which the offence was committed;
 - (ii) which was used in the commission of the offence; or
 - (iii) which was found in the possession of the convicted person;
- (b) any animal, vehicle, vessel, aircraft, container or other article which was used—
 - (i) for the purpose of or in connection with the commission of the offence; or
 - (ii) for the storage, conveyance, removal or concealment of any scheduled substance, drug or property by means of which the offence was committed or which was used in the commission of the offence;
- (c) in the case of an offence referred to in section 13 (e) or (f), any immovable property which was used for the purpose of or in connection with the commission of that offence,

and which was seized under section 11 (1) (g) or is in the possession or custody or under the control of the convicted person, to be forfeited to the State.

(2) Anything forfeited under subsection (1) shall, if it was seized under section 11 (1) (g), be kept or, if it is in the possession or custody or under the control of the convicted person, be seized and kept—

- (a) for a period of 30 days from the date of the declaration of forfeiture; or
- (b) if any person referred to in section 26 (1) has within the period contemplated in paragraph (a) made an application to the court concerned regarding his interest in such thing, until a final decision has been rendered in respect of any such application.

26. Interests of third parties.—(1) A declaration of forfeiture shall not affect any interest which any person other than the convicted person may have in the property, animal, vehicle, vessel, aircraft, container, article or immovable property in question, if he proves—

- (a) in the case of any property referred to in paragraph (a) of section 25 (1)—
 - (i) that he acquired the interest in that property in good faith and for consideration, whether in cash or otherwise; and

- (ii) that the circumstances under which he acquired the interest in that property were not of such a nature that he could reasonably have been expected to have suspected that it was the proceeds of a defined crime;
- (b) in the case of any animal, vehicle, vessel, aircraft, container, article or immovable property referred to in paragraph (b) or (c) of section 25 (1)—
 - (i) that he did not know that the animal, vehicle, vessel, aircraft, container or article in question was used or would be used as contemplated in the said paragraph (b), or that the immovable property in question was used or would be used as contemplated in the said paragraph (c), as the case may be; or
 - (ii) that he could not prevent such use.

(2) (a) Subject to the provisions of subsection (1), the court concerned or, if the judge or judicial officer concerned is not available, any judge or judicial officer of that court may at any time within a period of three years from the date of the declaration of forfeiture, on the application of any person other than the convicted person who claims that he has any interest in the property, animal, vehicle, vessel, aircraft, container, article or immovable property in question, inquire into and determine any such interest.

(b) If a court referred to in paragraph (a) finds—

- (i) that the property, animal, vehicle, vessel, aircraft, container, article or immovable property is wholly owned by the applicant, the court shall set aside the declaration of forfeiture in question and direct that the property, animal, vehicle, vessel, aircraft, container, article or immovable property, as the case may be, be returned to the applicant or, if the State has disposed of it, direct that the applicant be compensated by the State to the extent to which the State has been enriched by the disposal;
- (ii) that the applicant has an interest in the property, animal, vehicle, vessel, aircraft, container, article or immovable property—
 - (aa) the court shall direct that the property, animal, vehicle, vessel, aircraft, container, article or immovable property, as the case may be, be sold by public auction and that the applicant be paid out of the proceeds of the sale an amount equal to the value of his interest therein, but not exceeding the proceeds of the sale; or
 - (bb) if the State has disposed of the property, animal, vehicle, vessel, aircraft, container, article or immovable property in question, the court shall direct that the applicant be compensated by the State in an amount equal to the value of his interest therein, but not exceeding the enrichment of the State by the disposal.

(3) Any person aggrieved by a determination made by the court under subsection (2), may appeal against the determination as if it were a conviction by the court making the determination, and such appeal may be heard either separately or jointly with an appeal against the conviction as a result of which the declaration of forfeiture was made, or against a sentence imposed as a result of such conviction.

27. Evidence in respect of declarations of forfeiture and certain interests.—In order to make a declaration of forfeiture or to determine any interest under section 26 (2), the court may refer to the evidence and proceedings at the trial or hear such further evidence, either orally or by affidavit, as it may deem fit.

CHAPTER V

28 to 53 inclusive.

[Chapter V repealed by s. 37 of Act No. 76 of 1996.]

CHAPTER VI

54 to 62 inclusive.

[Chapter VI repealed by s. 36 of Act No. 75 of 1996.]

CHAPTER VII GENERAL PROVISIONS

63. Amendment of Schedules 1 and 2.—The Minister may by notice in the *Gazette* and after consultation with the Minister of National Health—

- (a) include any substance or plant in Schedule 1 or 2;
- (b) delete any substance or plant included in that Schedule; or
- (c) otherwise amend that Schedule.

64. Jurisdiction of magistrate's courts.—A magistrate's court shall have jurisdiction—

- (a) to impose any penalty mentioned in section 17, even though that penalty may exceed the punitive jurisdiction of a magistrate's court; and
- (b)

[Para. (b) deleted by s. 38 of Act No. 76 of 1996.]

65.

[S. 65 repealed by s. 36 of Act No. 75 of 1996.]

66. Repeal of laws.—The laws mentioned in Schedule 3 are hereby repealed to the extent indicated in the third column thereof.

67. Saving in respect of pending prosecutions.—Nothing in this Act shall affect any prosecution instituted before the commencement of this Act, and any such prosecution shall be continued and concluded as if this Act had not been passed.

68. Short title and commencement.—This Act shall be called the Drugs and Drug Trafficking Act, 1992, and shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.

Schedule 1

[Schedule 1 amended by Government Notice No. R.344 of 13 March 1998, by Government Notice No. R.521 of 15 June 2001 and by Government Notice No. R.880 of 8 October 2010.]

SCHEDULED SUBSTANCES

Substances useful for the manufacture of drugs

PART I

1. The following substances, namely:

N-Acetylanthranilic acid.

Ephedrine.

Ergometrine.

Ergotamine.

Isosafrole.

Lysergic acid.

3,4-Methylenedioxyphenyl-2-propanone.

Norephedrine, including its optical isomers.

1-phenyl-2-propanone.

Piperonal.

Pseudoephedrine.

Safrole.

2. The salts of all substances included in this Part, where the existence of such salts is possible.



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PART II

1. The following substances, namely:

Acetic anhydride.

Acetone.

Anthranilic acid.

Ethyl ether.

Hydrochloric acid.

Methyl ethyl ketone.

Orthotoluidine.

Potassium permanganate.

Phenylacetic acid.

Piperidine.

Sulphuric acid.

Toluene.

2. The salts of all substances included in this Part, except hydrochloric acid and sulphuric acid, where the existence of such salts is possible.

Schedule 2

[Schedule 2 amended by Government Notice No. R.1765 of 1 November 1996, by Government Notice No. R.760 of 11 June 1999, by Government Notice No. R.521 of 15 June 2001 and by Government Notice No. R.222 of 28 March 2014.]

PART I

Dependence-Producing Substances

1. The following substances, namely—

Amobarbital, cyclobarbital and pentobarbital, except preparations and mixtures containing not more than 30 milligrams per minimum recommended or prescribed dose when intended for continued use in asthma or containing not more than 50 milligrams per minimum recommended or prescribed dose when intended for continued use in epilepsy.

Buprenorphine.

Butalbital.

Cathine ((+)-norpseudoephedrine), except preparations and mixtures containing 50 milligrams or less of cathine per dosage unit.

Chlorphentermine.

Diethylpropion (amfepramone).

Flunitrazepam.

Gluthethimide.

Meptazinol.

Pentazocine.

2. Unless expressly excluded, all substances included in this Part include the following:

- (a) The salts and esters of the specified substances, where the existence of such salts and esters is possible;
- (b) all preparations and mixtures of the specified substances; or
- (c) all homologues of the listed substances (being any chemically related substances that incorporate a structural fragment into their structures that is similar to the structure of a listed substance or exhibit pharmacodynamic properties similar to the listed substances in this Part of the Schedule), unless listed separately in any Part of Schedule 2.

PART II

Dangerous Dependence-Producing Substances

1. The following substances or plants, namely—

Acetorphine.

Acetyldihydrocodeine, except preparations and mixtures containing not more than 20 milligrams of acetyldihydrocodeine per recommended or prescribed dose.

Acetylmethadol.

Alfentanil.

Allylprodine.

Alphacetylmethadol.

Alphameprodine.

Alphamethadol.

Alphaprodine.

Anileridine.

Benzethidine.

Benzphetamine.

Benzylmorphine.

Betacetylmethadol.

Betameprodine.

Betamethadol.

Betaprodine.

Bezitramide.

Butorphanol.

Chlorodyne (Chloroform and Morphine Tincture BP 1980) or any preparation or mixture thereof described as chlorodyne, except preparations and mixtures containing not more than 5,0 per cent of chloro- dyne in combination with other active medicinal substances.

Clonitazene.

Coca leaf and any salt, compound, derivative or preparation of coca leaf, and any salt, compound, derivative or preparation thereof that is chemically equivalent or identical to any of these substances, whether obtained directly or indirectly by extraction from material or substances obtained from plants, or obtained independently by chemical synthesis, or by a combination of extraction and chemical synthesis, except decocainized coca leaf and extractions of coca leaf where such extractions contain no cocaine or ecgonine.

Codeine (methyldmorphine), except preparations and mixtures containing not more than 20 milligrams of codeine per recommended or prescribed dose.

Codoxime.

Desomorphine.

Dextromoramide.

Dextropropoxyphene, except preparations and mixtures for oral use containing not more than 135 milligrams dextropropoxyphene, calculated as the base, per dosage unit, or with a concentration of not more than 2,5 per cent in undivided preparations.

Diampromide.

Diethylthiambutene.

Difenoxin (or diphenoxyllic acid), except mixtures containing, per dosage unit, not more than 0,5 milligrams of difenoxin, calculated as the base, and a quantity of atropine sulphate equal to at least 5,0 per cent of the quantity of difenoxin, calculated as the base, which is present in the mixture.

Dihydrocodeine, except preparations and mixtures containing not more than 20 milligrams of dihydrocodeine per recommended or prescribed dose.

Dihydroetorphine.

Dihydromorphine.

Dimenoxadol.

Dimepheptanol.

Dimethylthiambutene.

Dioxaphetylbutyrate.

Diphenoxylate, except preparations containing not more than 2,5 milligrams of diphenoxylate, calculated as the base, and not less than 25 micrograms of atropine sulphate per dosage unit.

Dipipanone.

Dronabinol [(-)-transdelta-9-tetrahydrocannabinol].

Drotebanol.

Ecgonine and the esters and derivatives thereof which are convertible to ecgonine and cocaine.

Ethylmethylthiambutene.

Ethylmorphine, except preparations and mixtures containing not more than 20 milligrams of ethylmorphine per recommended or prescribed dose.

Etonitazene.

Etorphine and analogues.

Etoxadine.

Fenproporex.

Fentanyl.

Furethidine.

Hydrocodone (dihydrocodeinone).

Hydromorfinol (14-hydroxydihydromorphine).

Hydromorphone (dihydromorphinone).

Hydroxypethidine.

Isomethadone.

Ketobemidone.

Levomoramide.

Levophenacymorphan.

Levorphanol.

Mecloqualone.

Mefenorex.

Metazocine.

Methadone.

Methadone-intermediate.

Methorphan, including levomethorphan and racemethorphan, but excluding dextromethorphan.

Methyl-desorphine.

Methyldihydromorphine.

Methylphenidate and the derivatives thereof.

Metopon.

Moramide-intermediate.

Morpheridine.

Morphine, except preparations and mixtures of morphine containing not more than 0,2 per cent of morphine, calculated as anhydrous morphine.

Morphine methobromide and other pentavalent nitrogen morphine derivatives.

Morphine-N-oxide and the derivatives thereof.

Myrophine (myristylbenzylmorphine).

Nicocodine.

Nicodicodine.

Nicomorphine.

Noracymethadol.

Norcodeine, except preparations and mixtures containing not more than 20 milligrams norcodeine per recommended or prescribed dose.

Norlevorphanol.

Normethadone.

Normorphine (demethylmorphine or N-demethylated morphine).

Norpipanone.

Opium and opiates and any salt, compound, derivative or preparation of opium or opiates, whether obtained directly or indirectly by extraction from material or substances obtained from plants, or obtained independently by chemical synthesis, or by a combination of extraction and chemical synthesis, except mixtures containing not more than 0,2 per cent of morphine, calculated as anhydrous morphine.

Opium-poppy and poppy straw, whether obtained directly or indirectly by extraction from material or substances obtained from plants, or whether obtained independently by chemical synthesis, or by a combination of extraction and chemical synthesis.

Oxycodone (14-hydroxydihydrocodeinone or dihydrohydroxycodeinone).

Oxymorphone (14-hydroxydihydromorphinone or dihydrohydroxymorphinone).

Pethidine, pethidine-intermediate A, pethidine-intermediate B and pethidine-intermediate C.

Phenadoxone.

Phenamipromide.

Phenazocine.

Phendimetrazine.

Phenomorphane.

Phenoperidine.

Pholcodine, except preparations and mixtures containing not more than 20 milligrams of pholcodine per recommended or prescribed dose.

Piminodine.

Piritramide.

Proheptazine.

Properidine.

Propiram.

Racemoramide.

Racemorphan.
Remifentanyl.
Secobarbital.
Sufentanyl.
Thebacon.
Thebaine.
Tilidine.
Trimeperidine.
Zipeprol.

2. Unless expressly excluded, all substances or plants included in this Part include the following:

- (a) The isomers of the specified substances or plants, where the existence of such isomers is possible;
- (b) the esters and ethers of the specified substances or plants and of the isomers referred to in subparagraph (a), as well as the isomers of such esters and ethers, where the existence of such esters, ethers and isomers is possible;
- (c) the salts of the specified substances or plants, of the isomers referred to in subparagraph (a) and of the esters, ethers and isomers referred to in subparagraph (b), as well as the isomers of such salts, where the existence of such salts and isomers is possible;
- (d) all preparations and mixtures of the specified substances or plants and of the isomers, esters, ethers and salts referred to in this paragraph; or
- (e) all homologues of the listed substances (being any chemically related substances that incorporate a structural fragment into their structures that is similar to the structure of a listed substance or exhibit pharmacodynamic properties similar to the listed substances in this Part of the Schedule), unless listed separately in any Part of Schedule 2.

PART III

Undesirable Dependence-Producing Substances

1. The following substances or plants, namely—

Amphetamine.

Brolamfetamine.

4-bromo-2,5-dimethoxyphenethylamine (2C-B), (“Nexus”).

Bufotenine (N,N-dimethylserotonin).

Cannabicyclohexanol.

Cannibis (dagga), the whole plant or any portion thereof, except dronabinol [(–)-transdelta-9 tetrahydrocannabinol].

Cathinone.

CP-47,497.

CP 47, 497-C6.

CP 47, 497-C7.

CP 47, 497-C8.

CP 47, 497-C9.

Dexamphetamine.

Diethyltryptamine [3-(2-(diethylamino)-ethyl)-indole;cb.

2,5-dimethoxyamphetamine (DMA).

2,5-dimethoxy-4-ethylamphetamine (DOET).

(±)-N,α-dimethyl-3,4-(methylenedioxy) phenethylamine (3,4-methylenedioxyamfetamine (MDMA).

3-(1,2-dimethylheptyl)-7,8,9,10-tetrahydro-6,6,9-trimethyl-6*H*-dibenzo [*b*, *d*] pyran-1-ol (DMHP).

Dimethyltryptamine [3-(2-(dimethylamino)-ethyl)-indole].

Etilamfetamine (N-ethylamphetamine).

Etryptamine (3-(2-aminobutyl)indole).

Fenetylline.

Fentanyl-analogues:

acetyl-alpha-methyl-fentanyl;

alpha-methyl-fentanyl;

alpha-methyl-fentanyl-acetanilide;

alpha-methyl-thio-fentanyl;

benzyl-fentanyl;

beta-hydroxy-fentanyl;

beta-hydroxy-3-methyl-fentanyl;

3-methyl-fentanyl and the two isomeric forms thereof, namely,

cis-N-(3-methyl-1-(2-phenethyl)-4-piperidyl)propionanilide and trans-N-(3-methyl-1-(2-phenethyl)-4-piperidyl)propionanilide;

3-methyl-thio-fentanyl;

para-fluoro-fentanyl; and

thio-fentanyl.

Gamma-hydroxybutyrate (GHB).

Harmaline (3,4-dihydroharmine).

Harmine [7-methoxy-1-methyl-9*H*-pyrido (3,4-*b*)-indole].

Heroin (diacetylmorphine).

HU-210.

JWH-018.

JWH-073.

JWH-200.

Levamphetamine.

Levomethamphetamine.

Lysergide (lysergic acid diethylamide).

Mescaline (3,4,5-trimethoxyphenethylamine).

Methamphetamine and methamphetamine racemate.

Methaqualone, including Mandrax, Isonox, Quaalude, or any other preparation containing methaqualone and known by any other trade name.

Methcathinone (2-(methylamino)-1-phenylpropan-1-one).

2-methoxy-4,5-methylenedioxyamphetamine (MMDA).

4-methylaminorex.

4-methyl-2,5-dimethoxyamphetamine (DOM) and the derivatives thereof.

Methylenedioxyamphetamine (MDA):

N-ethyl-methylenedioxyamphetamine; and

N-hydroxy-methylenedioxyamphetamine.

Nabilone.

Parahexyl.

Paramethoxyamphetamine (PMA).

Phencyclidine and the congeners thereof, namely, N-ethyl-1-phenylcyclohexylamine (PCE), 1-(1-phenylcyclohexyl) pyrrolidine (PHP or PCPY) and 1- [1-(2-thienyl) cyclohexyl] piperidine (TCP).

Pethidine-analogues:

1-methyl-4-phenyl-4-propionoxy-piperidine (MPPP);

1-methyl-4-phenyl-1,2,5,6-tetrahydropiperidine (MPTP); and

1-phenylethyl-4-phenyl-4-acetyloxy-piperidine (PEPAP).

Phenmetrazine.

Psilocin (4-hydroxydimethyltryptamine).

Psilocybin (4-phosphoryloxy-N,N-dimethyltryptamine).

Tetrahydrocannabinol.

3,4,5-trimethoxy amphetamine (TMA).

2. Unless expressly excluded, all substances or plants included in this Part include the following:

- (a) The isomers of the specified substances or plants, where the existence of such isomers is possible;
- (b) the esters and ethers of the specified substances or plants and of the isomers referred to in subparagraph (a), as well as the isomers of such esters and ethers, where the existence of such esters, ethers and isomers is possible;
- (c) the salts of the specified substances or plants, of the isomers referred to in subparagraph (a) and of the esters, ethers and isomers referred to in subparagraph (b), as well as the isomers of such salts, where the existence of such salts and isomers is possible;
- (d) all preparations and mixtures of the specified substances or plants and of the isomers, esters, ethers and salts referred to in this paragraph; or
- (e) all homologues of the listed substances (being any chemically related substances that incorporate a structural fragment into their structures that is similar to the structure of a listed substance or exhibit pharmacodynamic properties similar to the listed substances in this Part of the Schedule), unless listed separately in any Part of Schedule 2.

Schedule 3
LAWS REPEALED (SECTION 66)

<i>No. and year of law</i>	<i>Short title</i>	<i>Extent of repeal</i>
Act No. 41 of 1971	Abuse of Dependence-producing Substances and Rehabilitation Centres Act, 1971	So much as is unrepealed.
Act No. 80 of 1973	Abuse of Dependence-producing Substances and Rehabilitation Centres Amendment Act, 1973	So much as is unrepealed.
Act No. 14 of 1977	Abuse of Dependence-producing Substances and Rehabilitation Centres Amendment Act, 1977	So much as is unrepealed.
Act No. 76 of 1978	Abuse of Dependence-producing Substances and Rehabilitation Centres Amendment Act, 1978	The whole.
Act No. 97 of 1986	Transfer of Powers and Duties of the State President Act, 1986	Section 40.
Act No. 101 of 1986	Abuse of Dependence-producing Substances and Rehabilitation Centres Amendment Act, 1986	The whole.
Act No. 78 of 1990	Abuse of Dependence-producing Substances and Rehabilitation Centres Amendment Act, 1990	The whole.



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