

HOUSE BILL ANALYSIS

HB 2772

Title: An act relating to drug paraphernalia.

Brief Description: Revising provisions relating to drug paraphernalia.

Sponsors: Representatives McDonald and Kastama.

HOUSE COMMITTEE ON LAW & JUSTICE

Staff: Bill Perry (786-7123).

Background: It is a misdemeanor to use drug paraphernalia to produce or use illegal drugs. It is also a misdemeanor to deliver drug paraphernalia to another knowing that the paraphernalia will be used to produce or use illegal drugs.

Drug paraphernalia is defined as material of any kind which is used, intended for use, or designed for use in producing or using illegal drugs. Drug paraphernalia includes, but is not limited to, the following:

- (1) kits for use in planting, propagating, cultivating, growing, or harvesting of a plant that is a controlled substance, or from which a controlled substance can be made;
- (2) kits for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances;
- (3) isomerization devices for use in increasing the potency of a plant that is a controlled substance;
- (4) testing equipment for use in identifying or in analyzing the strength, effectiveness, or purity of controlled substances;
- (5) scales and balances for use in weighing or measuring controlled substances;
- (6) diluents and adulterants for use in cutting controlled substances;
- (7) separation gins and sifters for use in cleaning or refining marijuana;
- (8) blenders, bowls, containers, spoons, and mixing devices for use in compounding controlled substances;
- (9) capsules, balloons, envelopes, and other containers for use in packaging small quantities of controlled substances;
- (10) containers and other objects for use in storing or concealing controlled substances;

- (11) hypodermic syringes, needles, and other objects for use in injecting controlled substances into the human body;
- (12) objects for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, or hashish oil into the human body, such as:
 - (a) metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;
 - (b) water pipes;
 - (c) carburetion tubes and devices;
 - (d) smoking and carburetion masks;
 - (e) roach clips: meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand;
 - (f) miniature cocaine spoons and cocaine vials;
 - (g) chamber pipes;
 - (h) carburetor pipes;
 - (i) electric pipes;
 - (j) air-driven pipes;
 - (k) chillums;
 - (l) bongs; and
 - (m) ice pipes or chillers.

In determining whether an object is drug paraphernalia, a court is to consider, in addition to all other logically relevant factors, the following:

- (1) statements by an owner or by anyone in control of the object concerning its use;
- (2) prior convictions, if any, of an owner, or of anyone in control of the object, under any state or federal law relating to any controlled substance;
- (3) the proximity of the object, in time and space, to a direct violation of the controlled substances act;
- (4) the proximity of the object to controlled substances;
- (5) the existence of any residue of controlled substances on the object;
- (6) direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons whom he or she knows, or should reasonably know, intend to use the object to facilitate a violation of this chapter; however, the innocence of an owner, or of anyone in control of the object, as to a direct violation of the controlled substances act does not prevent a finding that the object is intended or designed for use as drug paraphernalia;
- (7) instructions, oral or written, provided with the object concerning its use;

- (8) descriptive materials accompanying the object which explain or depict its use;
- (9) national and local advertising concerning its use;
- (10) the manner in which the object is displayed for sale;
- (11) whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;
- (12) direct or circumstantial evidence of the ratio of sales of the object(s) to the total sales of the business enterprise;
- (13) the existence and scope of legitimate uses for the object in the community; and
- (14) expert testimony concerning its use.

Under the controlled substances act, delivery of drugs in certain "drug free zones" results in the doubling of the otherwise applicable maximum penalty for the offense. Zones covered by this provision include:

- o schools, school buses, and the area within 1,000 feet of a school or a school bus route stop;
- o public parks;
- o designated public housing projects;
- o public transit vehicles and transit stop shelters; and
- o designated civic centers and the area within 1,000 feet of a designated center.

Summary of Bill: Delivery of drug paraphernalia is made a gross misdemeanor, with a maximum penalty of one year in jail and a fine of \$5,000. However, delivery of drug paraphernalia in a drug free zone carries twice those maximum penalties.

The elements of the crime of delivery of drug paraphernalia are also changed. It is no longer necessary to prove that the defendant knew or should have known that the paraphernalia would be used for the production or use of drugs.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Office of Program Research