
Commerce & Gaming Committee

HB 1416

Brief Description: Increasing the penalty for use of marijuana in public places.

Sponsors: Representative Klippert.

Brief Summary of Bill

- Increases from a class 3 civil infraction (\$50 fine) to a class 2 civil infraction (\$125 fine) the penalty for opening a package containing marijuana products or consuming marijuana products in view of the general public or in a public place.

Hearing Date: 1/31/17

Staff: Peter Clodfelter (786-7127).

Background:

Prohibition on Marijuana in View of the General Public or in a Public Place.

It is unlawful to open a package containing marijuana, useable marijuana, marijuana-infused products, or marijuana concentrates, or to consume marijuana, useable marijuana, marijuana-infused products, or marijuana concentrates, in view of the general public or in a public place.

The term "public space" in the context of the prohibition on opening a package of or consuming marijuana products in a public space includes the following:

- streets and alleys of incorporated cities and towns;
- state or county or township highways or roads;
- buildings and grounds used for school purposes;
- public dance halls and adjacent grounds;
- soft drink establishments, parts of establishments where beer is sold, public buildings, public meeting halls, lobbies, halls and dining rooms of hotels, restaurants, theatres, stores, garages and filling stations that are open to and are generally used by the public and to which the public is permitted to have unrestricted access;

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- railroad trains, stages, and other public conveyances of all kinds and character, and the depots and waiting rooms used in conjunction with such places that are open to unrestricted use and access by the public;
- publicly owned bathing beaches, parks, or playgrounds; and
- all other places of like or similar nature to which the general public has unrestricted right of access, and that are generally used by the public.

State parks are included in the definition of "public space" in the context of the prohibition on opening a package of or consuming marijuana products in a public space, but not with respect to the prohibition on opening a package containing liquor or consuming liquor in a public space.

Civil Infractions.

Conduct that is not criminal but is unlawful may be classified as a civil infraction. Violations of state law designated as a civil infraction may generally be heard and determined by a district court judge or commissioner, or if the same conduct is prohibited under local ordinance, by a municipal court judge or commissioner. A person who receives a notice of civil infraction has 15 days to respond if the person wishes to contest the determination that the person committed a civil infraction.

A person may contest a civil infraction by requesting a hearing and mailing the response or submitting it in person to the court specified in the notice. A person may be represented by counsel at the hearing. A person may request the court for issuance of subpoena of witnesses, including the enforcement officer, and has the right to present evidence and examine witnesses present in court. The burden is on the state to establish the commission of the civil infraction by a preponderance of the evidence. If a person does not contest that a civil infraction was committed, but wishes to offer mitigating circumstances to explain the violation, an informal hearing for that purpose may be held, at which no witnesses may be subpoenaed, and the court may enter an appropriate order.

A person found to have committed a civil infraction is assessed a monetary penalty. The maximum penalty and the default amount for a class 3 civil infraction is \$50, not including statutory assessments. The maximum penalty and the default amount for a class 2 civil infraction is \$125, not including statutory assessments. A court may also order a person found to have committed a civil infraction to make restitution.

If a court determines that a person has insufficient funds to pay the monetary penalty, the court may order performance of a number of hours of community restitution instead of a monetary penalty, at the rate of the then minimum wage per hour. An appeal from the court's determination or order is appealable to the superior court. Further appeal from a superior court's determination or order is subject to discretionary review by an appellate court. However, there is no appeal from a court's order following an informal hearing at which mitigating circumstances were offered to explain a violation.

Summary of Bill:

Prohibition on Marijuana in View of the General Public or in a Public Place.

The penalty is increased from a class 3 civil infraction to a class 2 civil infraction for a violation of the prohibition on opening a package containing marijuana, useable marijuana, marijuana-

infused products, or marijuana concentrates, or consuming marijuana, useable marijuana, marijuana-infused products, or marijuana concentrates, in view of the general public or in a public place.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.