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THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2264 Session of 2022

INTRODUCED BY INNAMORATO, STRUZZI, BENHAM, SCHLOSSBERG, HOHENSTEIN, SANCHEZ, KENYATTA, ZABEL AND SIMS, JANUARY 21, 2022

REFERRED TO COMMITTEE ON JUDICIARY, JANUARY 21, 2022

AN ACT

Amending the act of April 14, 1972 (P.L.233, No.64), entitled "An act relating to the manufacture, sale and possession of controlled substances, other drugs, devices and cosmetics; conferring powers on the courts and the secretary and Department of Health, and a newly created Pennsylvania Drug, Device and Cosmetic Board; establishing schedules of controlled substances; providing penalties; requiring registration of persons engaged in the drug trade and for the revocation or suspension of certain licenses and registrations; and repealing an act," further providing for the definition of "drug paraphernalia" and for prohibited acts and penalties.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. The definition of "drug paraphernalia" in section 2(b) of the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act, is amended to read:

Section 2. Definitions.--* * *

(b) As used in this act:

* * *

"Drug paraphernalia" means all equipment, products and

materials of any kind which are used, intended for use or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance in violation of this act. It includes, but is not limited to:

(1) Kits used, intended for use or designed for use in planting, propagating, cultivating, growing or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived.

(2) Kits used, intended for use or designed for use in manufacturing, compounding, converting, producing, processing or preparing controlled substances.

(3) Isomerization devices used, intended for use or designed for use in increasing the potency of any species of plant which is a controlled substance.

(4) Testing equipment used, intended for use or designed for use in identifying or in analyzing the strength, effectiveness or purity of controlled substances.

(5) Scales and balances used, intended for use or designed for use in weighing or measuring controlled substances.

(6) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, used, intended for use or designed for use in cutting controlled substances.

(7) Separation gins and sifters used, intended for use or designed for use in removing twigs and seeds from or in otherwise cleaning or refining marihuana.

(8) Blenders, bowls, containers, spoons and mixing devices

used, intended for use or designed for use in compounding controlled substances.

(9) Capsules, balloons, envelopes and other containers used, intended for use or designed for use in packaging small quantities of controlled substances.

(10) Containers and other objects used, intended for use or designed for use in storing or concealing controlled substances.

(11) Hypodermic syringes, needles and other objects used, intended for use, or designed for use in parenterally injected controlled substances into the human body[.], subject to the following:

(i) The term does not include:

(A) A syringe, needle or other object used to reduce the risk of disease transmission or other harm, provided by a public or private entity, volunteer or health care provider through a syringe services program to a participant in the syringe services program.

(B) A syringe, needle or other object used to reduce the risk of disease transmission or other harm, provided by a pharmacist in accordance with the rules and regulations of the State Board of Pharmacy.

(C) A syringe, needle or other object that is used to reduce the risk of disease transmission or other harm and distributed to an individual in the usual course of business by a health care provider otherwise authorized to distribute the item.

(ii) A participant in a syringe services program shall evidence participation in the syringe services program by producing an identification card, which shall contain at least the following:

(A) A unique identification number generated by the syringe

services program from data elements determined by the syringe services program.

(B) The contact information for the syringe services program, including a number at which the program may be reached.

(iii) As used in this paragraph:

"Health care provider" means an individual or health care facility that is licensed, certified or otherwise authorized to provide health care under the laws of this Commonwealth. The term also includes an officer, employee or agent of a health care provider acting within the scope of the person's duties and authority and a legal entity through which one or more health care providers deliver health care, including, but not limited to, a professional corporation, a partnership or limited liability company.

"Syringe services program" means a program that, at a minimum, provides or arranges for the provision of the following:

(A) Access to sterile syringes, needles and other objects used to reduce the risk of disease transmission or other harm.

(B) Safe disposal of used syringes, needles and drug preparation equipment.

(C) Information and educational materials to each syringe services program participant regarding substance use disorder prevention and treatment.

(D) Information for syringe services program participants to reduce injection and overdose risks.

(E) Naloxone to syringe services program participants to reverse opioid overdoses or information about where naloxone can be obtained at low or no cost.

(F) Information on health care, including mental health

services.

(12) Objects used, intended for use or designed for use in ingesting, inhaling or otherwise introducing marihuana, cocaine, hashish or hashish oil into the human body, such as:

(i) Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens, hashish heads or punctured metal bowls.

(ii) Water pipes.

(iii) Carburetion tubes and devices.

(iv) Smoking and carburetion masks.

(v) Roach clips; meaning objects used to hold burning material such as a marihuana cigarette, that has become too small or too short to be held in the hand.

(vi) Miniature cocaine spoons and cocaine vials.

(vii) Chamber pipes.

(viii) Carburetor pipes.

(ix) Electric pipes.

(x) Air-driven pipes.

(xi) Chillums.

(xii) Bongs.

(xiii) Ice pipes or chillers.

In determining whether an object is drug paraphernalia, a court or other authority should consider, in addition to all other logically relevant factors, statements by an owner or by anyone in control of the object concerning its use, 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, the proximity of the object, in time and space, to a direct violation of this act, the proximity of the object to controlled substances, the existence of any residue of

controlled substances on the object, except as provided under section 13(g), direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons who he knows, or should reasonably know, intend to use the object to facilitate a violation of this act, the innocence of an owner or of anyone in control of the object, as to a direct violation of this act should not prevent a finding that the object is intended for use or designed for use as drug paraphernalia, instructions, oral or written, provided with the object concerning its use, descriptive materials accompanying the object which explain or depict its use, national and local advertising concerning its use, the manner in which the object is displayed for sale, 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, direct or circumstantial evidence of the ratio of sales of the objects to the total sales of the business enterprise, the existence and scope of legitimate uses for the object in the community, and expert testimony concerning its use. The following shall be immune from civil or criminal liability under State or local law for activities specifically permitted by this act:

(i) A pharmacist under paragraph (11)(i)(B).

(ii) A health care provider under paragraph (11)(i)(C).

(iii) A syringe services program, including its employees, operators, volunteers or participants, when the syringe services program is in compliance, as determined by the department, with the reporting requirements regarding the following:

(A) The number of individuals served.

(B) The number of needles and syringes dispensed.

(C) The number of naloxone kits dispensed.

(D) The number of treatment referrals provided to individuals served by the syringe services program.

A law enforcement officer who acts in good faith regarding the enforcement of other provisions of this act that are in conflict with this section shall be immune from civil or criminal liability under State or local law.

* * *

Section 2. Section 13 of the act is amended by adding a subsection to read:

Section 13. Prohibited Acts; Penalties.--* * *

(q) Notwithstanding any provision of law to the contrary, no person shall be prosecuted for a residual amount of a controlled substance contained in a used syringe, needle or other object which is excluded from the definition of "drug paraphernalia" under section 2(b)(11)(i) and (ii).

Section 3. The following shall apply:

(1) The Department of Health shall issue guidance on best practices for syringe services programs.

(2) Prior to commencing operations of a syringe services program, the syringe services program shall report the following to the Department of Health:

(i) The legal name of the organization, agency or health care facility operating the syringe services program.

(ii) The areas and populations to be served by the syringe services program.

(iii) The written notice of the proposed location to the governing authority in which the syringe services program is to be located.

(3) No later than one year after commencing operations and every 12 months thereafter, each syringe services program shall report the following to the Department of Health:

(i) The number of individuals served.

(ii) The number of needles and syringes dispensed.

(iii) The number of naloxone kits dispensed.

(iv) The number of treatment referrals provided to individuals served by the syringe services program.

(4) The Department of Health shall post the reports under paragraphs (2) and (3) on its publicly accessible Internet website.

Section 4. This act shall take effect in 60 days.