
By: **Delegates Valderrama and Murphy**

Rules suspended

Introduced and read first time: March 7, 2001

Assigned to: Rules and Executive Nominations

A BILL ENTITLED

1 AN ACT concerning

2 **Public Local Laws - Marijuana - Exceptions**

3 FOR the purpose of allowing certain persons to possess marijuana and related drug
4 paraphernalia subject to the public local laws; requiring a county or municipal
5 corporation to submit to a referendum of the voters of the county or municipal
6 corporation any enactment to allow certain persons to possess marijuana and
7 related drug paraphernalia; requiring the governing body and the appropriate
8 election board or municipal election official to do those things necessary to carry
9 out the referendum; making provisions of this Act severable; making this Act
10 contingent on the failure of another Act; and generally relating to public local
11 laws and possession of marijuana and related drug paraphernalia.

12 BY repealing and reenacting, without amendments,
13 Article 27 - Crimes and Punishments
14 Section 287(a)
15 Annotated Code of Maryland
16 (1996 Replacement Volume and 2000 Supplement)

17 BY repealing and reenacting, with amendments,
18 Article 27 - Crimes and Punishments
19 Section 287A
20 Annotated Code of Maryland
21 (1996 Replacement Volume and 2000 Supplement)

22 BY adding to
23 Article 27 - Crimes and Punishments
24 Section 292
25 Annotated Code of Maryland
26 (1996 Replacement Volume and 2000 Supplement)

27 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
28 MARYLAND, That the Laws of Maryland read as follows:

1

Article 27 - Crimes and Punishments

2 287.

3 Except as authorized by this subheading, it is unlawful for any person:

4 (a) To possess or administer to another any controlled dangerous substance,
5 unless such substance was obtained directly, or pursuant to a valid prescription or
6 order from a practitioner, while acting in the course of his professional practice.

7 287A.

8 (a) As used in this section, the term "drug paraphernalia" means all
9 equipment, products, and materials of any kind which are used, intended for use, or
10 designed for use, in planting, propagating, cultivating, growing, harvesting,
11 manufacturing, compounding, converting, producing, processing, preparing, testing,
12 analyzing, packaging, repackaging, storing, containing, concealing, injecting,
13 ingesting, inhaling, or otherwise introducing into the human body a controlled
14 dangerous substance in violation of this subheading. It includes but is not limited to:

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

19 (2) Kits used, intended for use, or designed for use in manufacturing,
20 compounding, converting, producing, processing, or preparing controlled dangerous
21 substances;

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

25 (4) Testing equipment used, intended for use, or designed for use in
26 identifying, or in analyzing the strength, effectiveness, or purity of controlled
27 dangerous substances;

28 (5) Scales and balances used, intended for use, or designed for use in
29 weighing or measuring controlled dangerous substances;

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

33 (7) Separation gins and sifters used, intended for use, or designed for use
34 in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana;

35 (8) Blenders, bowls, containers, spoons and mixing devices used,
36 intended for use, or designed for use in compounding controlled dangerous
37 substances;

1 (9) Capsules, balloons, envelopes and other containers used, intended for
2 use, or designed for use in packaging small quantities of controlled dangerous
3 substances;

4 (10) Containers and other objects used, intended for use, or designed for
5 use in storing or concealing controlled dangerous substances;

6 (11) Hypodermic syringes, needles and other objects used, intended for
7 use, or designed for use in parenterally injecting controlled dangerous substances into
8 the human body;

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

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

15 (ii) Water pipes;

16 (iii) Carburetion tubes and devices;

17 (iv) Smoking and carburetion masks;

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

21 (vi) Miniature cocaine spoons, and cocaine vials;

22 (vii) Chamber pipes;

23 (viii) Carburetor pipes;

24 (ix) Electric pipes;

25 (x) Air-driven pipes;

26 (xi) Chillums;

27 (xii) Bongs;

28 (xiii) Ice pipes or chillers.

29 (b) In determining whether an object is drug paraphernalia, a court or other
30 authority should consider, in addition to all other logically relevant factors, the
31 following:

32 (1) Statements by an owner or by anyone in control of the object
33 concerning its use;

1 (2) Prior convictions, if any, of an owner, or of anyone in control of the
2 object, under any State or federal law relating to any controlled dangerous substance;

3 (3) The proximity of the object, in time and space, to a direct violation of
4 this section or to a controlled dangerous substance;

5 (4) The existence of any residue of controlled dangerous substances on
6 the object;

7 (5) Direct or circumstantial evidence of the intent of an owner, or of
8 anyone in control of the object, to deliver it to persons whom he knows, or should
9 reasonably know, intend to use the object to facilitate a violation of this section; the
10 innocence of an owner, or of anyone in control of the object, as to a direct violation of
11 this section shall not prevent a finding that the object is intended for use, or designed
12 for use as drug paraphernalia;

13 (6) Instructions, oral or written, provided with the object concerning its
14 use;

15 (7) Descriptive materials accompanying the object which explain or
16 depict its use;

17 (8) National and local advertising concerning its use;

18 (9) The manner in which the object is displayed for sale;

19 (10) Whether the owner, or anyone in control of the object, is a legitimate
20 supplier of like or related items to the community, such as a licensed distributor or
21 dealer of tobacco products;

22 (11) Direct or circumstantial evidence of the ratio of sales of the object or
23 objects to the total sales of the business enterprise;

24 (12) The existence and scope of legitimate uses for the object in the
25 community;

26 (13) Expert testimony concerning its use.

27 (C) THIS SECTION DOES NOT APPLY TO A PERSON WHO IS AUTHORIZED TO
28 POSSESS MARIJUANA UNDER ANY PUBLIC LOCAL LAW OF THE STATE.

29 [(c)] (D) It is unlawful for any person to use, or to possess with intent to use,
30 drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture,
31 compound, convert, produce, process, prepare, test, analyze, pack, repack, store,
32 contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a
33 controlled dangerous substance in violation of this subheading. Any person who
34 violates this subsection is guilty of a misdemeanor and upon conviction for a first
35 offense may be fined not more than \$500. A person who is convicted of a subsequent
36 violation of this subsection may be imprisoned for not more than 2 years or fined not
37 more than \$2,000 or both. Any person convicted of violating this subsection who

1 previously has been convicted of violating subsection [(d)(2)] (E)(2) OF THIS SECTION
2 shall be subject to the same penalties specified for subsequent violations of this
3 subsection.

4 [(d)] (E) (1) It is unlawful for any person to deliver or sell, possess with
5 intent to deliver or sell, or manufacture with intent to deliver or sell drug
6 paraphernalia, knowing, or under circumstances where one reasonably should know,
7 that it will be used to plant, propagate, cultivate, grow, harvest, manufacture,
8 compound, convert, produce, process, prepare, test, analyze, pack, repack, store,
9 contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a
10 controlled dangerous substance in violation of this subheading. Any person who
11 violates this subsection is guilty of a misdemeanor and upon conviction for a first
12 offense may be fined not more than \$500. A person who is convicted of a subsequent
13 violation of this subsection may be imprisoned for not more than 2 years or fined not
14 more than \$2,000 or both. Any person convicted of violating this subsection who
15 previously has been convicted of violating paragraph (2) of this subsection shall be
16 subject to the same penalties specified for subsequent violations of this subsection.

17 (2) Any person 18 years of age or over who violates paragraph (1) of this
18 subsection by delivering drug paraphernalia to a person under 18 years of age who is
19 at least 3 years his junior is guilty of a separate offense and upon conviction may be
20 imprisoned for not more than 8 years, fined not more than \$15,000, or both.

21 [(e)] (F) (1) It is unlawful for any person to advertise in any newspaper,
22 magazine, handbill, poster, sign, mailing, or other writing or publication, or by sound
23 truck, knowing, or under circumstances where one reasonably should know, that the
24 purpose of the advertisement, in whole or in part, is to promote the sale or delivery of
25 drug paraphernalia.

26 (2) Any person who violates this subsection is guilty of a misdemeanor
27 and upon conviction for a first offense may be fined not more than \$500. A person who
28 is convicted of a subsequent violation of this subsection may be imprisoned for not
29 more than 2 years or fined not more than \$2,000, or both.

30 292.

31 (A) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A COUNTY OR
32 MUNICIPAL CORPORATION MAY NOT ENACT ANY LOCAL LAW AUTHORIZING THE
33 POSSESSION AND USE OF MARIJUANA FOR A MEDICAL CONDITION UNLESS AN
34 ENACTMENT AUTHORIZING THE POSSESSION AND USE HAS BEEN SUBMITTED TO
35 THE VOTERS OF THE COUNTY OR MUNICIPAL CORPORATION AT A REFERENDUM
36 HELD AT A GENERAL OR SPECIAL ELECTION.

37 (B) (1) THE COST OF THE REFERENDUM, IF ANY, SHALL BE PAID BY THE
38 GOVERNING BODY OF THE COUNTY OR MUNICIPAL CORPORATION.

39 (2) THE GOVERNING BODY AND THE APPROPRIATE BOARD OF
40 SUPERVISORS OF ELECTIONS OR MUNICIPAL ELECTION OFFICIAL SHALL DO THOSE
41 THINGS NECESSARY AND PROPER TO PROVIDE FOR AND HOLD THE REFERENDUM.

1 (3) IF A MAJORITY OF THE VOTES CAST ON THE QUESTION ARE "FOR
2 THE REFERRED LAW", THE ENACTMENT MAY BECOME EFFECTIVE ON THE DATE
3 SPECIFIED IN THE ENACTMENT, BUT IF A MAJORITY OF THE VOTES CAST ON THE
4 QUESTION ARE "AGAINST THE REFERRED LAW", THE PROVISIONS OF THE
5 ENACTMENT ARE OF NO EFFECT AND NULL AND VOID.

6 SECTION 2. AND BE IT FURTHER ENACTED, That if any provision of this
7 Act or the application thereof to any person or circumstance is held invalid for any
8 reason in a court of competent jurisdiction, the invalidity does not affect other
9 provisions or any other application of this Act which can be given effect without the
10 invalid provision or application, and for this purpose the provisions of this Act are
11 declared severable.

12 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
13 October 1, 2001, contingent on the failure of Chapter ____ (S.B. 705/H.B. 940) of the
14 Acts of the General Assembly of 2001, and if Chapter ____ (S.B. 705/H.B. 940) does
15 become effective, this Act shall be null and void without the necessity of further action
16 by the General Assembly.