
By: **Delegate Valderrama**
Introduced and read first time: February 8, 2002
Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Prohibition Against Possession of Marijuana - Exceptions**

3 FOR the purpose of prohibiting a county or municipal corporation from enacting a
4 local law authorizing the possession and use of marijuana for a medical
5 condition without submitting the enactment to a referendum of the voters of the
6 county or municipal corporation for the voters' approval; requiring the governing
7 body and the appropriate election board or municipal election official to do those
8 things necessary to carry out the referendum; making provisions of this Act
9 severable; making this Act contingent on the failure of another Act; and
10 generally relating to public local laws and possession of marijuana and related
11 drug paraphernalia for certain purposes.

12 BY repealing and reenacting, without amendments,
13 Article - Criminal Law
14 Section 5-601(a)
15 Annotated Code of Maryland
16 (As enacted by Chapter ___(H.B. 11) of the Acts of the General Assembly of 2002)

17 BY repealing and reenacting, with amendments,
18 Article - Criminal Law
19 Section 5-619
20 Annotated Code of Maryland
21 (As enacted by Chapter ___(H.B. 11) of the Acts of the General Assembly of 2002)

22 BY adding to
23 Article - Criminal Law
24 Section 5-629
25 Annotated Code of Maryland
26 (As enacted by Chapter ___(H.B. 11) of the Acts of the General Assembly of 2002)

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

1

Article - Criminal Law

2 5-601.

3 (a) Except as otherwise provided in this title, a person may not:

4 (1) possess or administer to another a controlled dangerous substance,
5 unless obtained directly or by prescription or order from an authorized provider
6 acting in the course of professional practice; or7 (2) obtain or attempt to obtain a controlled dangerous substance, or
8 procure or attempt to procure the administration of a controlled dangerous substance
9 by:

10 (i) fraud, deceit, misrepresentation, or subterfuge;

11 (ii) the counterfeiting or alteration of a prescription or a written
12 order;

13 (iii) the concealment of a material fact;

14 (iv) the use of a false name or address;

15 (v) falsely assuming the title of or representing to be a
16 manufacturer, distributor, or authorized provider; or17 (vi) making, issuing, or presenting a false or counterfeit
18 prescription or written order.

19 5-619.

20 (a) (1) In this section, "drug paraphernalia" means equipment, a product, or
21 material that is used, intended for use, or designed for use, in:22 (i) planting, propagating, cultivating, growing, harvesting,
23 manufacturing, compounding, converting, producing, processing, preparing, testing,
24 analyzing, packaging, repackaging, storing, containing, or concealing a controlled
25 dangerous substance in violation of this title; or26 (ii) injecting, ingesting, inhaling, or otherwise introducing into the
27 human body a controlled dangerous substance in violation of this title.

28 (2) "Drug paraphernalia" includes:

29 (i) a kit used, intended for use, or designed for use in planting,
30 propagating, cultivating, growing, or harvesting any species of plant that is a
31 controlled dangerous substance or from which a controlled dangerous substance can
32 be derived;

- 1 (ii) a kit used, intended for use, or designed for use in
2 manufacturing, compounding, converting, producing, processing, or preparing a
3 controlled dangerous substance;
- 4 (iii) an isomerization device used, intended for use, or designed for
5 use in increasing the potency of any species of plant that is a controlled dangerous
6 substance;
- 7 (iv) testing equipment used, intended for use, or designed for use in
8 identifying or in analyzing the strength, effectiveness, or purity of a controlled
9 dangerous substance;
- 10 (v) a scale or balance used, intended for use, or designed for use in
11 weighing or measuring a controlled dangerous substance;
- 12 (vi) a diluent or adulterant, such as quinine hydrochloride,
13 mannitol, mannite, dextrose, or lactose, used, intended for use, or designed for use in
14 cutting a controlled dangerous substance;
- 15 (vii) a separation gin or sifter used, intended for use, or designed for
16 use in removing twigs and seeds from, or in otherwise cleaning or refining,
17 marijuana;
- 18 (viii) a blender, bowl, container, spoon, or mixing device used,
19 intended for use, or designed for use in compounding a controlled dangerous
20 substance;
- 21 (ix) a capsule, balloon, envelope, or other container used, intended
22 for use, or designed for use in packaging small quantities of a controlled dangerous
23 substance;
- 24 (x) a container or other object used, intended for use, or designed
25 for use in storing or concealing a controlled dangerous substance;
- 26 (xi) a hypodermic syringe, needle, or other object used, intended for
27 use, or designed for use in parenterally injecting a controlled dangerous substance
28 into the human body; and
- 29 (xii) an object used, intended for use, or designed for use in
30 ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, or hashish
31 oil into the human body such as:
- 32 1. a metal, wooden, acrylic, glass, stone, plastic, or ceramic
33 pipe with or without screen, permanent screen, hashish head, or punctured metal
34 bowl;
 - 35 2. a water pipe;
 - 36 3. a carburetion tube or device;

1 (10) whether the owner or a person in control of the object is a licensed
2 distributor or dealer of tobacco products or other legitimate supplier of related items
3 to the community;

4 (11) direct or circumstantial evidence of the ratio of sales of the object to
5 the total sales of the business enterprise;

6 (12) the existence and scope of legitimate uses for the object in the
7 community; and

8 (13) expert testimony concerning use of the object.

9 (c) The innocence of an owner or a person in control of the object as to a direct
10 violation of this section does not prevent a finding that the object is intended for use
11 or designed for use as drug paraphernalia.

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

14 (E) (1) Unless authorized under this title, a person may not use or possess
15 with intent to use drug paraphernalia to:

16 (i) plant, propagate, cultivate, grow, harvest, manufacture,
17 compound, convert, produce, process, prepare, test, analyze, pack, repack, store,
18 contain, or conceal a controlled dangerous substance; or

19 (ii) inject, ingest, inhale, or otherwise introduce into the human
20 body a controlled dangerous substance.

21 (2) A person who violates this subsection is guilty of a misdemeanor and
22 on conviction is subject to:

23 (i) for a first violation, a fine not exceeding \$500; and

24 (ii) for each subsequent violation, imprisonment not exceeding 2
25 years or a fine not exceeding \$2,000 or both.

26 (3) A person who is convicted of violating this subsection for the first
27 time and who previously has been convicted of violating subsection [(e)(4)] (F)(4) of
28 this section is subject to the penalty specified under paragraph (2)(ii) of this
29 subsection.

30 [(e)] (F) (1) Unless authorized under this title, a person may not deliver or
31 sell, or manufacture or possess with intent to deliver or sell, drug paraphernalia,
32 knowing, or under circumstances where one reasonably should know, that the drug
33 paraphernalia will be used to:

34 (i) plant, propagate, cultivate, grow, harvest, manufacture,
35 compound, convert, produce, process, prepare, test, analyze, pack, repack, store,
36 contain, or conceal a controlled dangerous substance; or

1 (ii) inject, ingest, inhale, or otherwise introduce into the human
2 body a controlled dangerous substance.

3 (2) A person who violates this subsection is guilty of a misdemeanor and
4 on conviction is subject to:

5 (i) for a first violation, a fine not exceeding \$500; and

6 (ii) for each subsequent violation, imprisonment not exceeding 2
7 years or a fine not exceeding \$2,000 or both.

8 (3) A person who is convicted of violating this subsection for the first
9 time and who previously has been convicted of violating paragraph (4) of this
10 subsection is subject to imprisonment not exceeding 2 years or a fine not exceeding
11 \$2,000 or both.

12 (4) If a person who is at least 18 years old violates paragraph (1) of this
13 subsection by delivering drug paraphernalia to a minor who is at least 3 years
14 younger than the person, the person is guilty of a separate misdemeanor and on
15 conviction is subject to imprisonment not exceeding 8 years or a fine not exceeding
16 \$15,000 or both.

17 [(f)] (G) (1) A person may not advertise in a newspaper, magazine, handbill,
18 poster, sign, mailing, or other writing or publication, or by sound truck, knowing, or
19 under circumstances where one reasonably should know, that the purpose of the
20 advertisement, wholly or partly, is to promote the sale or delivery of drug
21 paraphernalia.

22 (2) A person who violates this subsection is guilty of a misdemeanor and
23 on conviction is subject to:

24 (i) for a first violation, a fine not exceeding \$500; and

25 (ii) for each subsequent violation, imprisonment not exceeding 2
26 years or a fine not exceeding \$2,000 or both.

27 5-629.

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

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

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

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

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

15 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
16 October 1, 2002, contingent on the failure of either Chapter ____ (H.B. ____)(2lr2347) or
17 Chapter ____ (H.B. ____)(2lr2530) of the Acts of the General Assembly of 2002, and if
18 either Chapter ____ does become effective, this Act shall be null and void without the
19 necessity of further action by the General Assembly.