

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

House Bill 1316
Judiciary

(Delegate Swain, *et al.*)

**Crimes - Sale of Drug Paraphernalia to a Minor - Local Law Authorizing
Business License Revocation for a Second or Subsequent Violation**

This bill authorizes the governing body of a county or municipal corporation to adopt a local law that authorizes the revocation or nonrenewal of a business license or permit issued by the county or municipal corporation when an employee of an establishment commits a second or subsequent violation of the prohibition on the sale or delivery of drug paraphernalia to a minor and the violation occurs on the property of the business establishment.

Fiscal Summary

State Effect: The bill is not expected to materially affect State finances.

Local Effect: The bill is not expected to materially affect local finances.

Small Business Effect: Potential meaningful impact on small businesses whose licenses or permits are revoked or not renewed under local laws adopted as a result of the bill.

Analysis

Current Law: Unless authorized under law, a person may not deliver or sell, or manufacture or possess with the intent to deliver or sell, drug paraphernalia, knowing or under circumstances where a person reasonably should know that the drug paraphernalia will be used to:

- plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, or conceal a controlled dangerous substance; or
- inject, ingest, inhale, or otherwise introduce a controlled dangerous substance into the human body.

Exhibit 1 contains information on penalties for offenses involving the delivery or sale of drug paraphernalia.

Exhibit 1
Penalties for Delivery or Sale of Drug Paraphernalia

<u>Violation</u>	<u>Penalty</u>
First-time violation	Misdemeanor \$500 maximum fine
Subsequent violation	Misdemeanor Up to two years imprisonment and/or a maximum fine of \$2,000
First-time violation – violator has a prior conviction for delivery of drug paraphernalia by an adult to a minor who is at least three years younger	Misdemeanor Up to two years imprisonment and/or a maximum fine of \$2,000
Delivery of drug paraphernalia by an adult to a minor who is at least three years younger	Misdemeanor Up to eight years imprisonment and/or a maximum fine of \$15,000
Drug paraphernalia related to marijuana	Misdemeanor Same penalties as above apply, except in cases of medical necessity for which there is a \$100 maximum fine (see below)

Source: Department of Legislative Services

If the drug paraphernalia is related to marijuana, the defendant may introduce and the court must consider as a mitigating factor any evidence of medical necessity. If the court finds that the person used or possessed drug paraphernalia related to marijuana because of medical necessity, on conviction, the maximum penalty that the court may impose is a \$100 fine.

In a prosecution for the use or possession of marijuana or related paraphernalia, it is an affirmative defense that the defendant used or possessed marijuana or related paraphernalia because (1) the defendant has a debilitating medical condition that has been diagnosed by a physician with whom the defendant has a bona fide physician-patient relationship (*i.e.*, a relationship in which the physician has an ongoing responsibility for the assessment, care, and treatment of a patient's medical condition); (2) the debilitating medical condition is severe and resistant to conventional medicine; and (3) marijuana is likely to provide the defendant with therapeutic or palliative relief from the debilitating medical condition. The affirmative defense may not be used if the defendant was either using marijuana in a public place or in possession of more than one ounce of marijuana.

A similar affirmative defense is available to a defendant who possessed marijuana or related paraphernalia because the defendant was a caregiver and the marijuana or paraphernalia was intended for medical use by an individual with a debilitating medical condition.

Additional Information

Prior Introductions: SB 117 of 2013 passed the Senate and received a hearing in the House Judiciary Committee, but no further action was taken. SB 610 of 2012 passed the Senate and received an unfavorable report from the House Judiciary Committee.

Cross File: SB 43 (Senator Benson) - Finance.

Information Source(s): Kent, Washington, and Worcester counties; Judiciary (Administrative Office of the Courts); Maryland Association of Counties; Maryland Municipal League; Department of Legislative Services

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