

No. 1980-186

AN ACT

SB 634

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," prohibiting the possession, manufacture, delivery and advertisement of drug paraphernalia and providing for the seizure of drug paraphernalia.

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

Section 1. Subsection (b) of section 2, act of April 14, 1972 (P.L.233, No.64), known as "The Controlled Substance, Drug, Device and Cosmetic Act," is amended by adding a definition 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.*

(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) *Chillum.*

(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, 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.

* * *

Section 2. Subsection (a) of section 13 of the act is amended by adding clauses and the section is amended by adding a subsection to read:

Section 13. Prohibited Acts; Penalties.—(a) The following acts and the causing thereof within the Commonwealth are hereby prohibited:

* * *

(32) The use of, or possession with intent to use, drug paraphernalia for the purpose of planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packing, repacking, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance in violation of this act.

(33) The delivery of, possession with intent to deliver, or manufacture with intent to deliver, drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it would be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance in violation of this act.

(34) The placing in any newspaper, magazine, handbill or other publication any advertisement, knowing, or under circumstances where one reasonably should know, that the purpose of the advertisement, in whole or in part is to promote the sale of objects designed or intended for use as drug paraphernalia.

* * *

(i) Any person who violates clauses (32), (33) and (34) of subsection (a) is guilty of a misdemeanor and upon conviction thereof shall be sentenced to pay a fine not exceeding two thousand five

hundred dollars (\$2,500) or to imprisonment not exceeding one (1) year, or to both. Any person who violates clause (33) by delivering drug paraphernalia to a person under eighteen (18) years of age who is three (3) or more years his junior shall be guilty of a misdemeanor of the second degree and upon conviction thereof shall be sentenced to pay a fine not exceeding five thousand dollars (\$5,000) or to imprisonment not exceeding two (2) years, or to both.

Section 3. Clause (1) of subsection (a) of section 28 of the act is amended to read:

Section 28. Forfeiture.—(a) The following shall be subject to forfeiture to the Commonwealth and no property right shall exist in them:

(1) All *drug paraphernalia*, controlled substances or other drugs which have been manufactured, distributed, dispensed, or acquired in violation of this act.

* * *

Section 4. The act is amended by adding a section to read:

Section 41.1. Effect on Local Ordinances.—Nothing in this act relating to drug paraphernalia shall be deemed to supersede or invalidate any consistent local ordinance, including zoning and nuisance ordinances, relating to the possession, sale or use of drug paraphernalia.

Section 5. This act shall take effect in 60 days.

APPROVED—The 4th day of December, A. D. 1980.

DICK THORNBURGH