

MAINE STATE LEGISLATURE

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(EMERGENCY)
SECOND SPECIAL SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 1700

H. P. 1708

House of Representatives, September 25, 1981

Reference to the Committee on Judiciary suggested and ordered printed.

EDWIN H. PERT, Clerk

Presented by Representative E. Paradis of Old Town.

Cosponsors: Representative Matthews of Caribou, Representative Mrs. Prescott of Hampden and Representative D. Brown of Livermore Falls.

Approved for introduction by a Majority of the Legislative Council pursuant to Joint Rule 27)

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-ONE

AN ACT Concerning the Sale and Use of Drug Paraphernalia.

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the law dealing with the sale and use of drug paraphernalia which was passed at the First Regular Session of the 110th Legislature was to have taken effect on September 18, 1981; and

Whereas, the Federal District Court has temporarily enjoined that law from taking effect; and

Whereas, certain changes must be made in the law in order to avoid controversial areas of interpretation; and

Whereas, these changes must be made immediately before the law takes effect, in order avoid these problems; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. 17-A MRSA § 1111-A, sub-§ 1, first sentence, as enacted by PL 1981, c. 266, is amended to read:

As used in this section the term "drug paraphernalia" means all equipment, products and materials of any kind which are used or 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 scheduled drug in violation of this chapter or Title 22, section 2383.

Sec. 2. 17-A MRSA § 1111-A, sub-§ 1, ¶¶ A-J, as enacted by PL 1981, c. 266, are amended to read:

- A. Kits used or intended for use ~~or designed for use~~ in planting, propagating, cultivating, growing or harvesting of any species of plant which is a scheduled drug or from which a scheduled drug can be derived;
- B. Kits used or intended for use ~~or designed for use~~ in manufacturing, compounding, converting, producing, processing or preparing scheduled drugs;
- C. Isomerization devices used or intended for use ~~or designed for use~~ in increasing the potency of any species of plant which is a scheduled drug;
- D. Testing equipment used or intended for use ~~or designed for use~~ in identifying or in analyzing the strength, effectiveness or purity of scheduled drugs;
- E. Scales and balances used or intended for use ~~or designed for use~~ in weighing or measuring scheduled drugs;
- F. Dilutents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, used or intended for use ~~or designed for use~~ in cutting scheduled drugs;
- G. Separation gins and sifters, used or intended for use ~~or designed for use~~ in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana;
- H. Blenders, bowls, containers, spoons and mixing devices used or intended for use ~~or designed for use~~ in compounding scheduled drugs;
- I. Capsules, balloons, envelopes and other containers used or intended for use ~~or designed for use~~ in packaging small quantities of scheduled drugs;
- J. Containers and other objects used or intended for use ~~or designed for use~~ in storing or concealing scheduled drugs; and

Sec. 3. 17-A MRSA § 1111-A, sub-§ 1, ¶K, first sentence, as enacted by PL 1981, c. 266, is amended to read:

Objects used or intended for use ~~or designed for use~~ in ingesting, inhaling or otherwise introducing marijuana, cocaine, hashish or hashish oil into the human body, such as:

Sec. 4. 17-A MRSA § 1111-A, sub-§ 3, ¶ F, as enacted by PL 1981, c. 266, is amended to read:

F. Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons whom he knows, or should reasonably know, intend to use the object to facilitate a violation of this chapter; the innocence of an owner, or of anyone in control of the object, as to a direct violation of this chapter shall not prevent a finding that the object is intended for use ~~or designed for use~~ as drug paraphernalia;

Sec. 5. 17-A MRSA § 1111-A, sub-§ 6, as enacted by PL 1981, c. 266, is amended to read:

6. It is unlawful for any person to place in any newspaper, magazine, handbill or other publication any advertisement, knowing, or under circumstances where one reasonable 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.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.

STATEMENT OF FACT

The purpose of this bill is to amend the drug paraphernalia laws to remove the phrase "or designed for use." In the cases which have interpreted the Model Drug Paraphernalia Act, from which the Maine law was derived, the phrase "designed for use" was held by those courts deciding that the statute was constitutional to apply to the intent or plan of the manufacturer where his state of mind was at issue. The cases which found the statute unconstitutionally vague based on the phrase "designed for use" have held that it relates to the physical design characteristics and therefor argue that someone who had the paraphernalia in his possession might not necessarily know the significance of the design characteristics. Since the Maine law does not make manufacturing drug paraphernalia a crime, removal of this phrase would not affect the reach of the statute and would avoid a controversial area of interpretation.