

By: Bernal

H.B. No. 224

A BILL TO BE ENTITLED

AN ACT

relating to removing criminal penalties for the possession or distribution of certain drug paraphernalia under the Texas Controlled Substances Act.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 481.002(17), Health and Safety Code, is amended to read as follows:

(17) "Drug paraphernalia" means equipment, a product, or material that is used or intended for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, ~~testing, analyzing,~~ packaging, repackaging, storing, containing, or concealing a controlled substance in violation of this chapter or in injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of this chapter. The term includes:

(A) a kit used or intended for use in planting, propagating, cultivating, growing, or harvesting a species of plant that is a controlled substance or from which a controlled substance may be derived;

(B) a material, compound, mixture, preparation, or kit used or intended for use in manufacturing, compounding, converting, producing, processing, or preparing a controlled substance;

1 (C) an isomerization device used or intended for
2 use in increasing the potency of a species of plant that is a
3 controlled substance;

4 ~~(D) testing equipment used or intended for use in~~
5 ~~identifying or in analyzing the strength, effectiveness, or purity~~
6 ~~of a controlled substance;~~

7 (D) [~~(E)~~] a scale or balance used or intended for
8 use in weighing or measuring a controlled substance;

9 (E) [~~(F)~~] a dilutant or adulterant, such as
10 quinine hydrochloride, mannitol, inositol, nicotinamide, dextrose,
11 lactose, or absorbent, blotter-type material, that is used or
12 intended to be used to increase the amount or weight of or to
13 transfer a controlled substance regardless of whether the dilutant
14 or adulterant diminishes the efficacy of the controlled substance;

15 (F) [~~(G)~~] a separation gin or sifter used or
16 intended for use in removing twigs and seeds from or in otherwise
17 cleaning or refining marihuana;

18 (G) [~~(H)~~] a blender, bowl, container, spoon, or
19 mixing device used or intended for use in compounding a controlled
20 substance;

21 (H) [~~(I)~~] a capsule, balloon, envelope, or other
22 container used or intended for use in packaging small quantities of
23 a controlled substance;

24 (I) [~~(J)~~] a container or other object used or
25 intended for use in storing or concealing a controlled substance;

26 (J) [~~(K)~~] a hypodermic syringe, needle, or other
27 object used or intended for use in parenterally injecting a

controlled substance into the human body; and

(K) ~~[(L)]~~ an object used or intended for use in ingesting, inhaling, or otherwise introducing marihuana, cocaine, hashish, or hashish oil into the human body, including:

(i) a metal, wooden, acrylic, glass, stone, plastic, or ceramic pipe with or without a screen, permanent screen, hashish head, or punctured metal bowl;

(ii) a water pipe;

(iii) a carburetion tube or device;

(iv) a smoking or carburetion mask;

(v) a chamber pipe;

(vi) a carburetor pipe;

(vii) an electric pipe;

(viii) an air-driven pipe;

(ix) a chillum;

(x) a bong; or

(xi) an ice pipe or chiller.

SECTION 2. Section 481.125, Health and Safety Code, is amended by amending Subsections (a), (b), and (g) and adding Subsections (j) and (k) to read as follows:

(a) A person commits an offense if the person knowingly or intentionally uses or possesses with intent to use drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, ~~test,~~ ~~analyze,~~ pack, repack, store, contain, or conceal a controlled substance in violation of this chapter or to inject, ingest, inhale, or otherwise introduce into the human body a controlled

1 substance in violation of this chapter.

2 (b) A person commits an offense if the person knowingly or
3 intentionally delivers, possesses with intent to deliver, or
4 manufactures with intent to deliver drug paraphernalia knowing that
5 the person who receives or who is intended to receive the drug
6 paraphernalia intends that it be used to plant, propagate,
7 cultivate, grow, harvest, manufacture, compound, convert, produce,
8 process, prepare, ~~test, analyze,~~ pack, repack, store, contain, or
9 conceal a controlled substance in violation of this chapter or to
10 inject, ingest, inhale, or otherwise introduce into the human body
11 a controlled substance in violation of this chapter.

12 (c) A person commits an offense if the person commits an
13 offense under Subsection (b), is 18 years of age or older, and the
14 person who receives or who is intended to receive the drug
15 paraphernalia is younger than 18 years of age and at least three
16 years younger than the actor.

17 (d) An offense under Subsection (a) is a Class C
18 misdemeanor.

19 (e) An offense under Subsection (b) is a Class A
20 misdemeanor, unless it is shown on the trial of a defendant that the
21 defendant has previously been convicted under Subsection (b) or
22 (c), in which event the offense is punishable by confinement in jail
23 for a term of not more than one year or less than 90 days.

24 (f) An offense under Subsection (c) is a state jail felony.

25 (g) It is a defense to prosecution for an offense under
26 Subsection (a) that the actor:

27 (1) was the first person to request emergency medical

1 assistance in response to the possible overdose of another person
2 and:

3 (A) made the request for medical assistance
4 during an ongoing medical emergency;

5 (B) remained on the scene until the medical
6 assistance arrived; and

7 (C) cooperated with medical assistance and law
8 enforcement personnel; ~~or~~

9 (2) was the victim of a possible overdose for which
10 emergency medical assistance was requested, by the actor or by
11 another person, during an ongoing medical emergency; or

12 (3) was using drug paraphernalia to test a substance
13 for fentanyl, alpha-methylfentanyl, and any other derivative of
14 fentanyl.

15 (h) The defense to prosecution provided by Subsection (g) is
16 not available if:

17 (1) at the time the request for emergency medical
18 assistance was made:

19 (A) a peace officer was in the process of
20 arresting the actor or executing a search warrant describing the
21 actor or the place from which the request for medical assistance was
22 made; or

23 (B) the actor is committing another offense,
24 other than an offense punishable under Section 481.115(b),
25 481.1151(b)(1), 481.116(b), 481.1161(b)(1) or (2), 481.117(b),
26 481.118(b), or 481.121(b)(1) or (2), or an offense under Section
27 481.119(b), 483.041(a), or 485.031(a);

1 (2) the actor has been previously convicted of or
2 placed on deferred adjudication community supervision for an
3 offense under this chapter or Chapter 483 or 485;

4 (3) the actor was acquitted in a previous proceeding
5 in which the actor successfully established the defense under that
6 subsection or Section 481.115(g), 481.1151(c), 481.116(f),
7 481.1161(c), 481.117(f), 481.118(f), 481.119(c), 481.121(c),
8 483.041(e), or 485.031(c); or

9 (4) at any time during the 18-month period preceding
10 the date of the commission of the instant offense, the actor
11 requested emergency medical assistance in response to the possible
12 overdose of the actor or another person.

13 (i) The defense to prosecution provided by Subsection (g)
14 does not preclude the admission of evidence obtained by law
15 enforcement resulting from the request for emergency medical
16 assistance if that evidence pertains to an offense for which the
17 defense described by Subsection (g) is not available.

18 (j) Notwithstanding Subsection (a), it is not unlawful for a
19 person to use, or to possess with intent to use, equipment,
20 products, or materials to test or analyze a controlled substance to
21 determine if the controlled substance has been contaminated with
22 fentanyl, alpha-methylfentanyl, and any other derivative of
23 fentanyl.

24 (k) Notwithstanding Subsection (b), it is not unlawful for a
25 person or organization to deliver or possess with intent to deliver
26 equipment, products, or materials to test or analyze a controlled
27 substance to determine if the controlled substance has been

1 contaminated with fentanyl or another adulterant.

2 SECTION 3. The change in law made by this Act applies to
3 conduct that occurs before, on, or after the effective date of this
4 Act, except that a final conviction for an offense that exists on
5 the effective date of this Act is unaffected by this Act.

6 SECTION 4. This Act takes effect September 1, 2023.