



Rep. Arthur L. Turner

**Filed: 3/23/2010**

09600HB6234ham004

LRB096 18708 RLC 39414 a

1 AMENDMENT TO HOUSE BILL 6234

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 6234, AS AMENDED, by  
3 replacing everything after the enacting clause with the  
4 following:

5 "Section 5. The Drug Paraphernalia Control Act is amended  
6 by changing Sections 2 and 4 as follows:

7 (720 ILCS 600/2) (from Ch. 56 1/2, par. 2102)

8 Sec. 2. As used in this Act, unless the context otherwise  
9 requires:

10 (a) The term "cannabis" shall have the meaning ascribed to  
11 it in Section 3 of the Cannabis Control Act, as if that  
12 definition were incorporated herein.

13 (b) The term "controlled substance" shall have the meaning  
14 ascribed to it in Section 102 of the Illinois Controlled  
15 Substances Act, as if that definition were incorporated herein.

16 (c) "Deliver" or "delivery" means the actual, constructive

1 or attempted transfer of possession, with or without  
2 consideration, whether or not there is an agency relationship.

3 (d) "Drug paraphernalia" means all equipment, products and  
4 materials of any kind, other than methamphetamine  
5 manufacturing materials as defined in Section 10 of the  
6 Methamphetamine Control and Community Protection Act, which  
7 are intended to be used unlawfully in planting, propagating,  
8 cultivating, growing, harvesting, manufacturing, compounding,  
9 converting, producing, processing, preparing, testing,  
10 analyzing, packaging, repackaging, storing, containing,  
11 concealing, injecting, ingesting, inhaling or otherwise  
12 introducing into the human body cannabis or a controlled  
13 substance in violation of the Cannabis Control Act, the  
14 Illinois Controlled Substances Act, or the Methamphetamine  
15 Control and Community Protection Act. It includes, but is not  
16 limited to:

17 (1) kits intended to be used unlawfully in  
18 manufacturing, compounding, converting, producing,  
19 processing or preparing cannabis or a controlled  
20 substance;

21 (2) isomerization devices intended to be used  
22 unlawfully in increasing the potency of any species of  
23 plant which is cannabis or a controlled substance;

24 (3) testing equipment intended to be used unlawfully in  
25 a private home for identifying or in analyzing the  
26 strength, effectiveness or purity of cannabis or

1 controlled substances;

2 (4) diluents and adulterants intended to be used  
3 unlawfully for cutting cannabis or a controlled substance  
4 by private persons;

5 (5) objects intended to be used unlawfully in  
6 ingesting, inhaling, or otherwise introducing cannabis,  
7 cocaine, hashish, or hashish oil into the human body  
8 including, where applicable, the following items:

9 (A) water pipes;

10 (B) carburetion tubes and devices;

11 (C) smoking and carburetion masks;

12 (D) miniature cocaine spoons and cocaine vials;

13 (E) carburetor pipes;

14 (F) electric pipes;

15 (G) air-driven pipes;

16 (H) chillums;

17 (I) bonges;

18 (J) ice pipes or chillers;

19 (5.5) products marketed and sold for a lawful purpose,  
20 which are intended to be used lawfully, but which may be  
21 misused for the unlawful purpose of ingesting, inhaling, or  
22 otherwise introducing cannabis, cocaine, hashish, or  
23 hashish oil into the human body including, where  
24 applicable, the following items:

25 (A) individual tobacco wrappers, known as wraps,  
26 blunt wraps, or roll your own cigar wraps, whether in

1           the form of a sheet or tube, that consists in whole or  
2           in part of reconstituted tobacco leaf or flavored  
3           tobacco leaf; however, the term "wrap", "blunt wrap",  
4           or "roll your own cigar wrap", as used in this Section,  
5           does not include a tobacco leaf wrap that is used in  
6           the manufacturing of a cigar intended for retail sale;

7           (B) cored, hollowed out, or split cigars, but not  
8           including an intact cigar still in its original  
9           manufacturer packaging;

10           (C) cigarette-rolling papers, also known as  
11           cigarette papers or as roll your own cigarette papers,  
12           including but not by way of limitation wired cigarette  
13           papers; and

14           (D) tobacco pipes; and

15           (6) any item whose purpose, as announced or described  
16           by the seller, is for use in violation of this Act.

17           (Source: P.A. 93-526, eff. 8-12-03; 94-556, eff. 9-11-05.)

18           (720 ILCS 600/4) (from Ch. 56 1/2, par. 2104)

19           Sec. 4. Exemptions. This Act does not apply to:

20           (a) Items used in the preparation, compounding,  
21           packaging, labeling, or other use of cannabis or a  
22           controlled substance as an incident to lawful research,  
23           teaching, or chemical analysis and not for sale.

24           (b) Items historically and customarily used in  
25           connection with the planting, propagating, cultivating,

1 growing, harvesting, manufacturing, compounding,  
2 converting, producing, processing, preparing, testing,  
3 analyzing, packaging, repackaging, storing, containing,  
4 concealing, injecting, ingesting, or inhaling of tobacco  
5 or any other lawful substance.

6 Items exempt under this subsection include, but are not  
7 limited to, garden hoes, rakes, sickles, baggies, ~~tobacco~~  
8 ~~pipes,~~ and cigarette-rolling papers sold with an  
9 accompanying loose cigarette tobacco, pre-formed paper  
10 cigarette tubes used by consumers for making cigarettes,  
11 reconstituted tobacco wrapper or tobacco leaf wrap that is  
12 used in the manufacturing of a cigar, cigar wrappers  
13 marketed and sold jointly with an accompanying loose filler  
14 cigar tobacco and intact cigars still in their original  
15 manufacturer packaging.

16 (c) Items listed in Section 2 of this Act which are  
17 used for decorative purposes, when such items have been  
18 rendered completely inoperable or incapable of being used  
19 for any illicit purpose prohibited by this Act.

20 (d) A person who is legally authorized to possess  
21 hypodermic syringes or needles under the Hypodermic  
22 Syringes and Needles Act.

23 In determining whether or not a particular item is exempt under  
24 this Section, the trier of fact should consider, in addition to  
25 all other logically relevant factors, the following:

26 (1) the general, usual, customary, and historical use

1 to which the item involved has been put;

2 (2) expert evidence concerning the ordinary or  
3 customary use of the item and the effect of any peculiarity  
4 in the design or engineering of the device upon its  
5 functioning;

6 (3) any written instructions accompanying the delivery  
7 of the item concerning the purposes or uses to which the  
8 item can or may be put;

9 (4) any oral instructions provided by the seller of the  
10 item at the time and place of sale or commercial delivery;

11 (5) any national or local advertising concerning the  
12 design, purpose or use of the item involved, and the entire  
13 context in which such advertising occurs;

14 (6) the manner, place and circumstances in which the  
15 item was displayed for sale, as well as any item or items  
16 displayed for sale or otherwise exhibited upon the premises  
17 where the sale was made;

18 (7) whether the owner or anyone in control of the  
19 object is a legitimate supplier of like or related items to  
20 the community, such as a licensed distributor or dealer of  
21 tobacco products;

22 (8) the existence and scope of legitimate uses for the  
23 object in the community.

24 Notwithstanding the foregoing, there shall be a rebuttable  
25 presumption that the products identified in clauses (A) through  
26 (D) of subparagraph (5.5) of paragraph (d) of Section 2 of this

1 Act are not drug paraphernalia when marketed and sold in  
2 conjunction with, or otherwise found or discovered solely in  
3 the presence of, tobacco; provided however, that there shall be  
4 rebuttable presumption that any product or object identified in  
5 Section 2 is drug paraphernalia if the product or object  
6 either: (1) contains cannabis or the residue thereof or a  
7 controlled substance or the residue thereof; or (2) is found or  
8 discovered, or both, with or in close proximity to cannabis or  
9 a controlled substance.

10 The sale of cigarette paper or a blunt wrap is not exempt  
11 from a violation of this Act unless such cigarette paper or  
12 blunt wrap is sold jointly with tobacco.

13 (Source: P.A. 95-331, eff. 8-21-07.)

14 Section 10. The Tobacco Accessories and Smoking Herbs  
15 Control Act is amended by changing Sections 3, 4, and 5 as  
16 follows:

17 (720 ILCS 685/3) (from Ch. 23, par. 2358-3)

18 Sec. 3. Definitions. The following definitions shall apply  
19 to this Act:

20 (a) "Tobacco accessories" shall mean cigarette papers,  
21 pipes, holders of smoking materials of all types, cigarette  
22 rolling machines, and other items, designed primarily for the  
23 smoking or ingestion of tobacco products or of substances made  
24 illegal under any statute or of substances whose sale, gift,

1 barter, or exchange is made unlawful under this Act.

2 (b) "Smoking herbs" shall mean all substances of plant  
3 origin and their derivatives, including but not limited to  
4 broom, calea, California poppy, damiana, hops, ginseng,  
5 lobelia, jimson weed and other members of the Datura genus,  
6 passion flower and wild lettuce, which are processed or sold  
7 primarily for use as smoking materials.

8 (c) "Bidi cigarette" means a product that contains tobacco  
9 that is wrapped in temburni or tendu leaf or that is wrapped in  
10 any other material identified by rules of the Department of  
11 Public Health that is similar in appearance or characteristics  
12 to the temburni or tendu leaf.

13 (d) "Cigar wraps" shall mean individual cigar wrappers,  
14 known as wraps, blunt wraps, or roll your own cigar wraps,  
15 whether in the form of a sheet, tube or cone, that consists in  
16 whole or in part of reconstituted tobacco leaf or flavored  
17 tobacco leaf.

18 (Source: P.A. 91-734, eff. 1-1-01.)

19 (720 ILCS 685/4) (from Ch. 23, par. 2358-4)

20 Sec. 4. Offenses.

21 (a) Sale to minors. No person shall knowingly sell, barter,  
22 exchange, deliver or give away or cause or permit or procure to  
23 be sold, bartered, exchanged, delivered, or given away tobacco  
24 accessories or smoking herbs to any person under 18 years of  
25 age.



1 (a-5) Sale of bidi cigarettes. No person shall knowingly  
2 sell, barter, exchange, deliver, or give away a bidi cigarette  
3 to another person, nor shall a person cause or permit or  
4 procure a bidi cigarette to be sold, bartered, exchanged,  
5 delivered, or given away to another person.

6 (a-6) Sale of cigar wraps. No person shall knowingly sell,  
7 barter, exchange, deliver or give away or cause or permit or  
8 procure to be sold, bartered, exchanged, delivered, or given  
9 away cigar wraps to any person under 18 years of age.

10 (b) Sale of cigarette paper. No person shall knowingly  
11 offer, sell, barter, exchange, deliver or give away cigarette  
12 paper or cause, permit, or procure cigarette paper to be sold,  
13 offered, bartered, exchanged, delivered, or given away except  
14 from premises or an establishment where other tobacco products  
15 are sold. For purposes of this Section, "tobacco products"  
16 means cigarettes, cigars, smokeless tobacco, or tobacco in any  
17 of its forms.

18 (c) Sale of cigarette paper from vending machines. No  
19 person shall knowingly offer, sell, barter, exchange, deliver  
20 or give away cigarette paper or cause, permit, or procure  
21 cigarette paper to be sold, offered, bartered, exchanged,  
22 delivered, or given away by use of a vending or coin-operated  
23 machine or device. For purposes of this Section, "cigarette  
24 paper" shall not include any paper that is incorporated into a  
25 product to which a tax stamp must be affixed under the  
26 Cigarette Tax Act or the Cigarette Use Tax Act.

1 (d) Use of identification cards. No person in the  
2 furtherance or facilitation of obtaining smoking accessories,  
3 cigar wraps, and smoking herbs shall display or use a false or  
4 forged identification card or transfer, alter, or deface an  
5 identification card.

6 (e) Warning to minors. Any person, firm, partnership,  
7 company or corporation operating a place of business where  
8 tobacco accessories, cigar wraps, and smoking herbs are sold or  
9 offered for sale shall post in a conspicuous place upon the  
10 premises a sign upon which there shall be imprinted the  
11 following statement, "SALE OF TOBACCO ACCESSORIES, CIGAR  
12 WRAPS, AND SMOKING HERBS TO PERSONS UNDER EIGHTEEN YEARS OF AGE  
13 OR THE MISREPRESENTATION OF AGE TO PROCURE SUCH A SALE IS  
14 PROHIBITED BY LAW". The sign shall be printed on a white card  
15 in red letters at least one-half inch in height.

16 (Source: P.A. 91-734, eff. 1-1-01.)

17 (720 ILCS 685/5) (from Ch. 23, par. 2358-5)

18 Sec. 5. Penalty.

19 (a) Any person who shall knowingly violate, or shall  
20 knowingly cause the violation of any provision of this Act  
21 other than subsection (a-5) or (a-6) of Section 4 shall be  
22 guilty of a Class C misdemeanor.

23 (b) Any person who knowingly violates or knowingly causes  
24 the violation of subsection (a-5) of Section 4 is guilty of a  
25 petty offense for which the offender may be fined an amount as

1 follows:

2 (1) For a first offense, not less than \$100 and not  
3 more than \$500.

4 (2) For a second offense within a 2-year period, not  
5 less than \$250 and not more than \$500.

6 (3) For a third or subsequent offense within a 2-year  
7 period, not less than \$500 and not more than \$1,000.

8 (c) Any person who knowingly violates or knowingly causes  
9 the violation of subsection (a-6) of Section 4 is guilty of a  
10 Class C misdemeanor for a first offense, a Class B misdemeanor  
11 for a second offense within a 2-year period, and a Class A  
12 misdemeanor for a third or subsequent offense within a 3-year  
13 period.

14 (Source: P.A. 91-734, eff. 1-1-01.)

15 Section 99. Effective date. This Act takes effect upon  
16 becoming law."