



## 97TH GENERAL ASSEMBLY

### State of Illinois

2011 and 2012

HB3265

Introduced 2/24/2011, by Rep. Esther Golar

#### SYNOPSIS AS INTRODUCED:

720 ILCS 600/2	from Ch. 56 1/2, par. 2102
720 ILCS 600/4	from Ch. 56 1/2, par. 2104
720 ILCS 685/3	from Ch. 23, par. 2358-3
720 ILCS 685/4	from Ch. 23, par. 2358-4
720 ILCS 685/5	from Ch. 23, par. 2358-5

Amends the Drug Paraphernalia Control Act. Changes the definition of "drug paraphernalia" to include products marketed and sold for a lawful purpose, which are intended to be used lawfully, but which may be misused for the unlawful purpose of ingesting, inhaling, or otherwise introducing cannabis, cocaine, hashish, or hashish oil into the human body. Establishes certain rebuttable presumptions. Eliminates from the exemption of items as drug paraphernalia tobacco pipes and cigarette rolling papers. Amends the Tobacco Accessories and Smoking Herbs Control Act. Prohibits the sale of cigar wraps to persons under 18 years of age. Establishes penalties. Effective immediately.

LRB097 05220 RLC 49019 b

CORRECTIONAL  
BUDGET AND  
IMPACT NOTE ACT  
MAY APPLY

A BILL FOR

1 AN ACT concerning criminal law.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

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

6 (720 ILCS 600/2) (from Ch. 56 1/2, par. 2102)

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

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

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

15 (c) "Deliver" or "delivery" means the actual, constructive  
16 or attempted transfer of possession, with or without  
17 consideration, whether or not there is an agency relationship.

18 (d) "Drug paraphernalia" means all equipment, products and  
19 materials of any kind, other than methamphetamine  
20 manufacturing materials as defined in Section 10 of the  
21 Methamphetamine Control and Community Protection Act, which  
22 are intended to be used unlawfully in planting, propagating,  
23 cultivating, growing, harvesting, manufacturing, compounding,

1 converting, producing, processing, preparing, testing,  
2 analyzing, packaging, repackaging, storing, containing,  
3 concealing, injecting, ingesting, inhaling or otherwise  
4 introducing into the human body cannabis or a controlled  
5 substance in violation of the Cannabis Control Act, the  
6 Illinois Controlled Substances Act, or the Methamphetamine  
7 Control and Community Protection Act. It includes, but is not  
8 limited to:

9 (1) kits intended to be used unlawfully in  
10 manufacturing, compounding, converting, producing,  
11 processing or preparing cannabis or a controlled  
12 substance;

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

16 (3) testing equipment intended to be used unlawfully in  
17 a private home for identifying or in analyzing the  
18 strength, effectiveness or purity of cannabis or  
19 controlled substances;

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

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

- 1 (A) water pipes;
- 2 (B) carburetion tubes and devices;
- 3 (C) smoking and carburetion masks;
- 4 (D) miniature cocaine spoons and cocaine vials;
- 5 (E) carburetor pipes;
- 6 (F) electric pipes;
- 7 (G) air-driven pipes;
- 8 (H) chillums;
- 9 (I) bonges;
- 10 (J) ice pipes or chillers;

11 (5.5) products marketed and sold for a lawful purpose,  
12 which are intended to be used lawfully, but which may be  
13 misused for the unlawful purpose of ingesting, inhaling, or  
14 otherwise introducing cannabis, cocaine, hashish, or  
15 hashish oil into the human body including, where  
16 applicable, the following items:

17 (A) individual cigar wrappers, known as wraps,  
18 blunt wraps, or roll your own cigar wraps, whether in  
19 the form of a sheet, tube or cone, that consist in  
20 whole or in part of reconstituted tobacco leaf or  
21 flavored tobacco leaf;

22 (B) cored, hollowed out, or split cigars, but not  
23 including an intact cigar still in its original  
24 manufacturer packaging;

25 (C) cigarette-rolling papers, also known as  
26 cigarette papers or as roll your own cigarette papers,

1           including but not by way of limitation wired cigarette  
2           papers; and

3           (D) tobacco pipes; and

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

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

7           (720 ILCS 600/4) (from Ch. 56 1/2, par. 2104)

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

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

13           (b) Items historically and customarily used in  
14           connection with the planting, propagating, cultivating,  
15           growing, harvesting, manufacturing, compounding,  
16           converting, producing, processing, preparing, testing,  
17           analyzing, packaging, repackaging, storing, containing,  
18           concealing, injecting, ingesting, or inhaling of tobacco  
19           or any other lawful substance.

20           Items exempt under this subsection include, but are not  
21           limited to, garden hoes, rakes, sickles, and baggies,  
22           ~~tobacco pipes, and cigarette-rolling papers.~~

23           (c) Items listed in Section 2 of this Act which are  
24           used for decorative purposes, when such items have been  
25           rendered completely inoperable or incapable of being used

1 for any illicit purpose prohibited by this Act.

2 (d) A person who is legally authorized to possess  
3 hypodermic syringes or needles under the Hypodermic  
4 Syringes and Needles Act.

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

8 (1) the general, usual, customary, and historical use  
9 to which the item involved has been put;

10 (2) expert evidence concerning the ordinary or  
11 customary use of the item and the effect of any peculiarity  
12 in the design or engineering of the device upon its  
13 functioning;

14 (3) any written instructions accompanying the delivery  
15 of the item concerning the purposes or uses to which the  
16 item can or may be put;

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

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

22 (6) the manner, place and circumstances in which the  
23 item was displayed for sale, as well as any item or items  
24 displayed for sale or otherwise exhibited upon the premises  
25 where the sale was made;

26 (7) whether the owner or anyone in control of the

1 object is a legitimate supplier of like or related items to  
2 the community, such as a licensed distributor or dealer of  
3 tobacco products;

4 (8) the existence and scope of legitimate uses for the  
5 object in the community.

6 Notwithstanding the foregoing, there shall be a rebuttable  
7 presumption that the products identified in clauses (A) through  
8 (D) of subparagraph (5.5) of paragraph (d) of Section 2 of this  
9 Act are not drug paraphernalia when marketed or sold in  
10 conjunction with, or otherwise found or discovered solely in  
11 the presence of, tobacco; provided however, that there shall be  
12 a rebuttable presumption that any product or object identified  
13 in Section 2 is drug paraphernalia if the product or object  
14 either: (1) contains cannabis or the residue thereof or a  
15 controlled substance or the residue thereof; or (2) is found or  
16 discovered, or both, with or in close proximity to cannabis or  
17 a controlled substance.

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

19 Section 10. The Tobacco Accessories and Smoking Herbs  
20 Control Act is amended by changing Sections 3, 4, and 5 as  
21 follows:

22 (720 ILCS 685/3) (from Ch. 23, par. 2358-3)

23 Sec. 3. Definitions. The following definitions shall apply  
24 to this Act:

1 (a) "Tobacco accessories" shall mean cigarette papers,  
2 pipes, holders of smoking materials of all types, cigarette  
3 rolling machines, and other items, designed primarily for the  
4 smoking or ingestion of tobacco products or of substances made  
5 illegal under any statute or of substances whose sale, gift,  
6 barter, or exchange is made unlawful under this Act.

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

13 (c) "Bidi cigarette" means a product that contains tobacco  
14 that is wrapped in temburni or tendu leaf or that is wrapped in  
15 any other material identified by rules of the Department of  
16 Public Health that is similar in appearance or characteristics  
17 to the temburni or tendu leaf.

18 (d) "Cigar wraps" shall mean individual cigar wrappers,  
19 known as wraps, blunt wraps, or roll your own cigar wraps,  
20 whether in the form of a sheet, tube or cone, that consists in  
21 whole or in part of reconstituted tobacco leaf or flavored  
22 tobacco leaf.

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

24 (720 ILCS 685/4) (from Ch. 23, par. 2358-4)

25 Sec. 4. Offenses.



1           (a) Sale to minors. No person shall knowingly sell, barter,  
2 exchange, deliver or give away or cause or permit or procure to  
3 be sold, bartered, exchanged, delivered, or given away tobacco  
4 accessories or smoking herbs to any person under 18 years of  
5 age.

6           (a-5) Sale of bidi cigarettes. No person shall knowingly  
7 sell, barter, exchange, deliver, or give away a bidi cigarette  
8 to another person, nor shall a person cause or permit or  
9 procure a bidi cigarette to be sold, bartered, exchanged,  
10 delivered, or given away to another person.

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

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

23           (c) Sale of cigarette paper from vending machines. No  
24 person shall knowingly offer, sell, barter, exchange, deliver  
25 or give away cigarette paper or cause, permit, or procure  
26 cigarette paper to be sold, offered, bartered, exchanged,

1 delivered, or given away by use of a vending or coin-operated  
2 machine or device. For purposes of this Section, "cigarette  
3 paper" shall not include any paper that is incorporated into a  
4 product to which a tax stamp must be affixed under the  
5 Cigarette Tax Act or the Cigarette Use Tax Act.

6 (d) Use of identification cards. No person in the  
7 furtherance or facilitation of obtaining smoking accessories,  
8 cigar wraps, and smoking herbs shall display or use a false or  
9 forged identification card or transfer, alter, or deface an  
10 identification card.

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

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

22 (720 ILCS 685/5) (from Ch. 23, par. 2358-5)

23 Sec. 5. Penalty.

24 (a) Any person who shall knowingly violate, or shall  
25 knowingly cause the violation of any provision of this Act

1 other than subsection (a-5) or (a-6) of Section 4 shall be  
2 guilty of a Class C misdemeanor.

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

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

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

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

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

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

20 Section 99. Effective date. This Act takes effect upon  
21 becoming law.