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BILL ANALYSIS

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**Senate Bill 288 (as enrolled)**

(Public Act 139 of 1988)

Sponsor: Senator William Sederburg

Senate Committee: Judiciary

House Committee: Judiciary

Date Completed: 8-29-88

**RATIONALE**

According to the Department of State Police, the sale of drug paraphernalia — such as cocaine spoons, water pipes, and kits for growing marijuana — is a multi-million dollar business that glamorizes the use of illegal drugs. Reportedly, the growth of this industry coincides with the growth of substance abuse. In addition to the 30,000 "head shops" nationwide (as of November 1979), numerous other retailers carry drug paraphernalia — such as roach clips — as a sideline. In order to combat the increasing misuse of drugs, especially by minors, many advocate outlawing the sale of items that are designed for use with controlled substances. A model law to that effect has been prepared by the Drug Enforcement Administration (DEA), and laws limiting the sale of drug paraphernalia have been adopted by some 36 other states as well as the city of Detroit.

**CONTENT**

Senate Bill 288 would amend the controlled substances Act within the Public Health Code to do the following:

- Make it a crime to sell drug paraphernalia, with certain exceptions.
- Define "drug paraphernalia" and provide for declaratory judgments of what would constitute drug paraphernalia.
- Require notice to a person who would be arrested for selling drug paraphernalia and make it a defense to comply with a request to refrain from selling.
- Prescribe penalties.
- Include drug paraphernalia in the Act's forfeiture of property provisions.

Prohibited Activities/Penalties

The bill would prohibit a person from selling or offering to sell drug paraphernalia knowing that it would be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, analyze, pack, store, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance. ("Controlled substance" is currently defined in the controlled substances Act, MCL 333.7104.)

A person who violated the bill would be guilty of a misdemeanor and subject to imprisonment for up to 90 days, a maximum fine of \$5,000, or both. A person aged 18 or older who sold or offered to sell drug paraphernalia to a person under 18 would be guilty of a misdemeanor, punishable by up to one year in prison and/or a maximum fine of \$7,500.

Notice of Arrest/Declaratory Judgment

Before a person was arrested for violating the bill, the Attorney General or a prosecuting attorney would have to give the person written notice, not less than two business days before the arrest, that the person was in possession of specific, defined material that had been determined by the Attorney General or prosecutor to be drug paraphernalia. The notice also would have to request that the person refrain from selling or offering to sell the material and to state that if the person complied with the notice, no arrest would be made. A person's compliance with a notice would be a complete defense against a prosecution under the bill, as long as the compliance continued.

A person who received a notice could bring an action against the Attorney General or prosecuting attorney for a declaratory judgment to obtain an adjudication of the legality of the intended sale or offer to sell. If a declaratory judgment were issued and stated that sale or offering to sell the specified material did not violate the bill, the judgment would be a complete defense.

"Drug Paraphernalia"

"Drug paraphernalia" would be defined as any equipment, product, material, or combination of those items, that is specifically designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, analyzing, packaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance. Drug paraphernalia would include, but not be limited to, the following items that are specifically designed for use in the described ways:

- An isomerization device for increasing the potency of any species of plant that is a controlled substance.
- Testing equipment for identifying, or analyzing the strength, effectiveness, or purity of a controlled substance.
- A weight scale or balance for weighing or measuring a controlled substance.
- A dilutant or adulterant specifically designed for use with a controlled substance.
- A separation gin or sifter for removing twigs and seeds from, or otherwise cleaning or refining marijuana.
- A kit for planting, propagating, cultivating, growing, or harvesting any species of plant that is a controlled substance or from which a controlled substance can be derived.

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- A kit for manufacturing, compounding, converting, producing, processing, or preparing controlled substances.
- An object specifically designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, or hashish oil into the human body.
- A device, commonly known as a cocaine kit, specifically designed for use in ingesting, inhaling, or otherwise introducing controlled substances into the human body, which consists of at least a razor blade and a mirror.
- A device, commonly known as a bullet, specifically designed to deliver a measured amount of controlled substances to the user.
- A device, commonly known as a snorter, for carrying a small amount of controlled substances to the user's nose.
- A device, commonly known as an automotive safe, specifically designed to carry and conceal a controlled substance in an automobile, including but not limited to a can used for brake fluid, oil, or carburetor cleaner that contains a compartment for carrying and concealing controlled substances.
- A spoon, with or without a chain attached, that has a small diameter bowl and is specifically designed for use in ingesting, inhaling, or otherwise introducing controlled substances into the human body.

#### Exceptions

The provisions of the bill regarding prohibited activities and drug paraphernalia would not apply to any of the following:

- An object sold to a person licensed under Article 15 of the Public Health Code (health care professionals) or under the Occupational Code.
- An object sold to any hospital, sanitarium, clinical laboratory, or other health care institution including a penal, correctional, or juvenile detention facility, for use in that institution.
- A hypodermic syringe or needle sold for the purpose of injecting or otherwise treating livestock or other animals.
- An object sold to a dealer in medical, dental, surgical, or pharmaceutical supplies.
- Equipment, a product, or material that may be used in the preparation or smoking of tobacco or smoking herbs other than a controlled substance.
- A blender, bowl, container, spoon, or mixing device not specifically designed for a use described in the bill.
- An object sold, offered for sale, or given away by a State or local governmental agency or by a person specifically authorized by a State or local governmental agency to prevent the transmission of infectious agents.

#### Forfeiture

Public Act 251 of 1982 amended the controlled substances Act to expand the list of items related to drug-trafficking that are subject to forfeiture, and to give the State and local governments the authority to retain forfeited property for official use or sell it and apply the proceeds as required by law. The bill would include drug paraphernalia among the items subject to forfeiture.

MCL Reference 333.7521 et al.

### **FISCAL IMPACT**

The bill would have an indeterminate impact on State and local government. Local enforcement costs and increased fine revenue are not determinable. The bill also would result in an indeterminate loss of State sales tax revenues from previously legal sales of certain drug paraphernalia.

## **ARGUMENTS**

### **Supporting Argument**

Illegal drug use by the nation's youth has reached epidemic proportions and is fostered by the proliferation of drug paraphernalia. The industry is so well entrenched, in fact, that it even has its own trade magazines and associations. With the sale of drug paraphernalia in "head shops", convenience stores, and gas stations, its ready availability can only arouse curiosity about drugs, glamorize drug use, educate impressionable youths on how to use drugs, and help finance an already flourishing drug trade. At the same time that millions of dollars are being spent on enforcing drug laws, airing anti-drug commercials, and rehabilitating users, the paraphernalia shops are thriving, selling items designed specifically to promote the use of illicit substances. This paradox sends a message that use of the drugs is actually condoned; and the legality and ubiquity of drug paraphernalia contradict everything that the rest of society attempts to teach.

Prohibiting the open sale of drug paraphernalia would send a clear message that drug use is not, in fact, permissible, and would allow the State to adopt a more consistent approach toward the drug trade. By taking drug paraphernalia off the shelves and criminally penalizing those who continue to sell it, the bill would remove a blatant encouragement to use illegal drugs and would bring the State another step closer to a drug-free society.

### **Supporting Argument**

Criminalizing the sale of drug paraphernalia could result in increased convictions of those who use drugs. While it may be easy to get rid of the drugs themselves — by flushing them down a toilet, for example — during a drug bust, disposing of the equipment is harder.

### **Opposing Argument**

Instead of taking a superficial approach to the drug abuse problem by outlawing the sale of drug paraphernalia, the State would do better to improve drug education programs in the schools and to focus law enforcement efforts on convicting the pushers. Enforcement of this bill would fragment already strained resources and get at only the "little guy". Moreover, outlawing the sale of drug paraphernalia would not necessarily reduce the actual use of drugs, as many of the items in question can be made at home.

### **Opposing Argument**

Imposing criminal penalties on those who sell drug paraphernalia would be too severe. The bill's goals could be achieved by economic sanctions, such as stiff fines or license revocation.

**Response:** Without criminal penalties, the bill would stand little chance of being enforced and would fail to send a strong message that society disapproves of drug abuse. Further, criminal prosecution would fall on only those paraphernalia sellers foolhardy or recalcitrant enough to continue selling after being warned to stop.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.