

Part X-B. Transactions in Drug-Related Objects Prohibited

[Editor's Note: A new Part X-B, consisting of R.S. 40:1031 through 1036, also known as the Drug Paraphernalia Law, was created by Act 669 of 1980 Legislature. Subsequent amendments are noted. Act 676 of 2006 Legislature re-designated this Part as Part X-B.]

§1021. Definitions

- A. As used in this Part, unless the context clearly otherwise indicates, the term "drug paraphernalia" shall mean and include, but not be limited to:
- (1) All equipment, products, and materials of any kind which are used, 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 controlled substance in violation of the Uniform Controlled Dangerous Substances Law, as scheduled in R.S. 40:964.
 - (2) Kits used, intended for use, or designed for use in planting, propagating, cultivating, growing, or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived.
 - (3) Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances.
 - (4) Isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant which is a controlled substance.
 - (5) Testing equipment used, intended for use, or designed for use in identifying, or in analyzing the strength, effectiveness, or purity of controlled substances.
 - (6) Diluents and adulterants, such as quinine, hydrochloride, mannitol, mannite, dextrose, and lactose, used, intended for use, or designed for use in cutting controlled substances.
 - (7) Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana.
 - (8) Blenders, bowls, containers, spoons, and mixing devices used, intended for use, or designed for use in compounding controlled substances.
 - (9) Capsules, balloons, envelopes, and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances.
 - (10) Containers and other objects used, intended for use, or designed for use in storing or concealing controlled substances.
 - (11) Hypodermic syringes, needles, and other objects used, intended for use, or designed for use in parenterally injecting controlled substances into the human body.
 - (12) Objects used, 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:
 - (a) Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls.
 - (b) Water pipes.
 - (c) Carburetion tubes and devices.
 - (d) Smoking and carburetion masks.
 - (e) Roach clips, meaning objects used to hold burning material, such as marijuana cigarette, that has become too small or too short to be held in the hand.
 - (f) Miniature cocaine spoons, and cocaine vials.
 - (g) Chamber pipes.
 - (h) Carburetor pipes.
 - (i) Electric pipes.
 - (j) Air-driven pipes.
 - (k) Chillums.
 - (l) Bongs.
 - (m) Ice pipes or chillers.

§1022. Determination of drug paraphernalia

In determining whether an object is drug paraphernalia, a court or other authority shall consider, in addition to all other legally relevant factors, the following:

- (1) Statements by an owner or by anyone in control of the object concerning its use.

- (2) The proximity of the object, in time and space, to a direct violation of the Uniform Controlled Dangerous Substances Law.
- (3) The proximity of the object to controlled substances.
- (4) The existence of any residue of controlled substances on the object.
- (5) 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 the Uniform Controlled Dangerous Substances Law; the innocence of an owner, or of anyone in control of the object, as to a direct violation of the Uniform Controlled Dangerous Substances Law shall not prevent a finding that the object is intended for use or designed for use as drug paraphernalia.
- (6) Instructions, oral or written, provided with the object concerning its use.
- (7) Descriptive materials accompanying the object which explain or depict its use.
- (8) National and local advertising concerning its use.
- (9) The manner in which the object is displayed for sale.
- (10) Direct or circumstantial evidence of the ratio of sales of the object(s) to the total sales of the business enterprise.
- (11) The existence and scope of legitimate use for the object in the community.
- (12) Expert testimony concerning its use.

§1023. Prohibited acts

- A. It is unlawful for any person or corporation, knowing, or under circumstances where one reasonably should know, to sell, lend, rent, lease, give, exchange, or otherwise distribute to any person any drug paraphernalia.
- B. It is unlawful for any person or corporation, knowing, or under circumstances where one reasonably should know, to display for sale or possess with the intent to distribute, any drug paraphernalia.
- C. It is unlawful for any person to use, or to possess with intent to use, any drug paraphernalia, to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of this Part.
- D. *(Repealed by Act 517 of 1990 Legislature, effective July 18, 1990)*

§1023.1. Prohibited acts; unmarried persons under seventeen years of age

- A. It is unlawful for any person, corporation, or association to sell, lend, rent, lease, give, exchange, exhibit, display, or distribute to any unmarried person under the age of seventeen any drug paraphernalia.
- B. The unlawful sale, loan, rent, lease, gift, exchange, exhibition, display, or distribution of drug paraphernalia to any unmarried person under the age of seventeen is the intentional sale, loan, rent, lease, gift, exchange, exhibition, display, or distribution of drug paraphernalia to any unmarried person under the age of seventeen years, at any newsstand, record store, tape store or any other commercial establishment which is open to persons under the age of seventeen years.
- C. It shall be unlawful to invite or permit any unmarried person under the age of seventeen to be in any commercial establishment that exhibits or displays any item, material, work, or object of any kind that is defined as drug paraphernalia pursuant to this Part.
- D. Lack of knowledge of age or marital status shall not constitute a defense, unless the defendant shows that he had reasonable cause to believe that the minor involved was either married or seventeen years of age or more and that the minor exhibited to the defendant a draft card, driver's license, birth certificate, or other official or apparently official document purporting to establish that such person was either married or seventeen years of age or more.

§1024. Exceptions; defenses

- A. Any provision of law to the contrary herein notwithstanding, the provisions of this Part shall not apply to the manufacture, sale, distribution, or advertisement of any product or object designed and sold primarily for scientific research, industrial, veterinary, or agricultural purposes, or for bona fide medical or clinical use.
- B. It shall be an affirmative defense that the person to whom the drug related object or advertisement or notice was distributed had a prescription from a licensed medical practitioner or psychiatrist for marijuana or the controlled substance for which the object is primarily intended to be used. It is also an affirmative defense that the drug related object was designed or marketed as useful primarily for veterinary or agricultural purposes.

§1025. Penalties

- A. (1) The first violation of or failure to comply with any provision of this Part shall subject the offender to a fine not in excess of three hundred dollars, or imprisonment of not more than fifteen days, or both.
(Amended by Act 246 of 2016 Legislature, effective August 1, 2016)
- (2) A conviction for a violation of the provisions of this Part may not be used as a predicate conviction for enhancement purposes under Subsections B and C of this Section if the offender has not been convicted of any violation of the controlled dangerous substances law for a period of two years from the date of completion of sentence, probation, parole, or suspension of sentence for that conviction.
The provisions of this Paragraph shall apply only once with respect to any person.
(Added by Act 246 of 2016 Legislature, effective August 1, 2016)
- B. On a second conviction, the offender shall be fined not more than one thousand dollars, or imprisoned for not more than six months, or both.
(Amended by Act 246 of 2016 Legislature, effective August 1, 2016)
- C. On a third or subsequent conviction, the offender shall be fined not more than two thousand five hundred dollars, or imprisoned, with or without hard labor, for not more than two years, or both.
(Amended by Act 246 of 2016 Legislature, effective August 1, 2016)
- D. If the second or subsequent conviction is by any person licensed under the occupational license tax law, as provided in R.S. 47:341, et seq., or by such person's manager, agent, servant, or employee, then such person shall forfeit the right to any permit issued thereunder and such permit may be suspended or revoked.

§1026. Contraband; condemnation proceedings

All instruments, devices, and objects which are seized after the effective date of this Section, on condemnation as being distributed or possessed in violation of this Part, may be destroyed by the authorities making the seizure, but only after compliance with the following procedure. Within ninety days after any seizure is made after the effective date of this Section, the district attorney shall institute condemnation proceedings in district court by petition, a copy of which shall be served upon the owner of the seized items, if known. If the owner is unknown, notice of the proceedings shall be published once a week for two weeks in the official journal of the parish. The petition shall allege that the seized items were distributed or possessed in violation of this Part. Fifteen days after the filing of the petition, judgment by default shall be entered by the court, and the court shall order the seized items to be destroyed. Otherwise, the case shall proceed as other civil cases in said court. If the prosecution proves, by a preponderance of the evidence, that the seized items were distributed or possessed in violation of the law, the court shall order the seized items to be destroyed.

(end of Part X-B of Chapter 4)