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Legislative Document

No. 994

H.P. 732

House of Representatives, March 10, 2021

An Act To Promote Public Health by Eliminating Criminal Penalties for Possession of Hypodermic Apparatuses

Reference to the Committee on Criminal Justice and Public Safety suggested and ordered printed.

A handwritten signature in cursive script that reads "Robert B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative McDONALD of Stonington.
Cosponsored by Representatives: BROOKS of Lewiston, EVANS of Dover-Foxcroft, PLUECKER of Warren, STOVER of Boothbay, WARREN of Scarborough, ZAGER of Portland, Senators: CARNEY of Cumberland, DAUGHTRY of Cumberland.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 17-A MRSA §1106, sub-§6**, as amended by PL 2019, c. 12, Pt. B, §7, is
3 further amended to read:

4 **6.** It is an affirmative defense to prosecution under this section that the substance
5 furnished is:

6 A. ~~Hemp; or~~

7 ~~B. A residual amount of any scheduled drug that is contained in one or more~~
8 ~~hypodermic apparatuses if the person is enrolled in a hypodermic apparatus exchange~~
9 ~~program that is certified by the Department of Health and Human Services, Maine~~
10 ~~Center for Disease Control and Prevention and is furnishing the hypodermic~~
11 ~~apparatuses to an employee of such a program.~~

12 **Sec. 2. 17-A MRSA §1107-A, sub-§5**, as amended by PL 2019, c. 12, Pt. B, §9, is
13 further amended to read:

14 **5.** It is an affirmative defense to prosecution under this section that the substance
15 furnished is:

16 A. ~~Hemp; or~~

17 ~~B. A residual amount of any scheduled drug that is contained in one or more~~
18 ~~hypodermic apparatuses if the person is enrolled in a hypodermic apparatus exchange~~
19 ~~program that is certified by the Department of Health and Human Services, Maine~~
20 ~~Center for Disease Control and Prevention and is transporting the hypodermic~~
21 ~~apparatuses to the program.~~

22 **Sec. 3. 17-A MRSA §1107-A, sub-§6** is enacted to read:

23 **6.** Unlawful possession of a scheduled drug does not include possession of a residual
24 amount of any scheduled drug that is contained in one or more hypodermic apparatuses.

25 **Sec. 4. 17-A MRSA §1110**, as amended by PL 2007, c. 695, Pt. A, §20, is repealed.

26 **Sec. 5. 17-A MRSA §1111**, as amended by PL 2007, c. 346, Pt. B, §4, is repealed.

27 **Sec. 6. 17-A MRSA §1111-A, sub-§1**, as amended by PL 2017, c. 409, Pt. B, §6,
28 is further amended to read:

29 **1.** As used in this section the term "drug paraphernalia" means all equipment, products
30 and materials of any kind that are used or intended for use in planting, propagating,
31 cultivating, growing, harvesting, manufacturing, compounding, converting, producing,
32 processing, preparing, ~~testing, analyzing,~~ packaging, repackaging, storing, containing, or
33 ~~concealing, injecting, ingesting, inhaling or otherwise introducing into the human body~~ a
34 scheduled drug in violation of this chapter or Title 22, section 2383, except that this section
35 does not apply to a person who is authorized to possess marijuana for medical use pursuant
36 to Title 22, chapter 558-C, to the extent the drug paraphernalia is used for that person's
37 medical use of marijuana; to a person who is authorized to possess marijuana pursuant to
38 Title 28-B, to the extent the drug paraphernalia is used for that person's adult use of
39 marijuana; or to a marijuana store licensed pursuant to Title 28-B, to the extent that the
40 drug paraphernalia relates to the sale or offering for sale of marijuana by the marijuana
41 store. It includes, but is not limited to:

- 1 A. Kits used or intended for use in planting, propagating, cultivating, growing or
2 harvesting of any species of plant which is a scheduled drug or from which a scheduled
3 drug can be derived;
- 4 B. Kits used or intended for use in manufacturing, compounding, converting,
5 producing, processing or preparing scheduled drugs;
- 6 C. Isomerization devices used or intended for use in increasing the potency of any
7 species of plant that is a scheduled drug;
- 8 ~~D. Testing equipment used or intended for use in identifying or in analyzing the
9 strength, effectiveness or purity of scheduled drugs;~~
- 10 E. Scales and balances used or intended for use in weighing or measuring scheduled
11 drugs;
- 12 F. Dilutants and adulterants, such as quinine hydrochloride, mannitol, mannite,
13 dextrose and lactose, used or intended for use in cutting scheduled drugs;
- 14 G. Separation gins and sifters, used or intended for use in removing twigs and seeds
15 from, or in otherwise cleaning or refining, marijuana;
- 16 H. Blenders, bowls, containers, spoons and mixing devices used or intended for use in
17 compounding scheduled drugs;
- 18 I. Capsules, balloons, envelopes and other containers used or intended for use in
19 packaging small quantities of scheduled drugs; and
- 20 J. Containers and other objects used or intended for use in storing or concealing
21 scheduled drugs; and
- 22 ~~K. Objects used or intended for use in ingesting, inhaling or otherwise introducing
23 marijuana, cocaine, hashish or hashish oil into the human body, such as:~~
- 24 ~~(1) Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without
25 screens, permanent screens, hashish heads or punctured metal bowls;~~
- 26 ~~(2) Water pipes;~~
- 27 ~~(3) Carburetion tubes and devices;~~
- 28 ~~(4) Smoking and carburetion masks;~~
- 29 ~~(5) Roach clips, meaning objects used to hold burning material, such as a
30 marijuana cigarette that has become too small or too short to be held in the hand;~~
- 31 ~~(6) Miniature cocaine spoons and cocaine vials;~~
- 32 ~~(7) Chamber pipes;~~
- 33 ~~(8) Carburetor pipes;~~
- 34 ~~(9) Electric pipes;~~
- 35 ~~(10) Air-driven pipes;~~
- 36 ~~(11) Chillums;~~
- 37 ~~(12) Bongs; or~~
- 38 ~~(13) Ice pipes or chillers.~~

1 **Sec. 7. 17-A MRSA §1111-A, sub-§2**, as enacted by PL 1981, c. 266, is amended
2 to read:

3 **2.** For purposes of this section, drug paraphernalia does not include hypodermic
4 apparatus ~~apparatuses~~. Possession of, furnishing or trafficking in hypodermic apparatus
5 constitute separate offenses under sections 1110 and 1111.

6 **Sec. 8. 17-A MRSA §1111-B**, as enacted by PL 2019, c. 137, §1 and amended by
7 c. 292, §1, is further amended to read:

8 **§1111-B. Exemption from criminal liability for reporting a drug-related medical**
9 **emergency or administering naloxone**

10 A person who in good faith seeks medical assistance for or administers naloxone
11 hydrochloride to another person experiencing a drug-related overdose or who is
12 experiencing a drug-related overdose and is in need of medical assistance may not be
13 arrested or prosecuted for a violation of section 1107-A, 1108, ~~1111~~ or 1111-A or a
14 violation of probation as authorized by chapter 49 67, subchapter 1 if the grounds for arrest
15 or prosecution are obtained as a result of the person's seeking medical assistance,
16 administering naloxone hydrochloride or experiencing a drug-related overdose.

17 **Sec. 9. 17-A MRSA §1126, sub-§2**, as enacted by PL 2019, c. 113, Pt. B, §17, is
18 amended to read:

19 **2. Mandatory minimum fine barring court finding exceptional circumstances.** In
20 addition to any other authorized sentencing alternative specified in section 1502, subsection
21 2 for individuals or section 1502, subsection 7 for organizations, the court shall impose a
22 minimum fine of \$400, none of which may be suspended, except as provided in subsection
23 3, for an individual convicted of a crime under section 1103; 1104; 1105-A; 1105-B;
24 1105-C; 1105-D; 1106; 1107-A; 1108; 1109; ~~1110; 1111~~; 1111-A, subsection 4-A; 1116;
25 1117; or 1118.

26 **Sec. 10. 22 MRSA §2383-B, sub-§2**, as amended by PL 2013, c. 266, §§9 and 10,
27 is further amended to read:

28 **2. Others lawfully in possession.** Except as otherwise authorized or restricted, the
29 following persons are authorized to possess, furnish and have control of scheduled or
30 prescription drugs; or controlled substances ~~or hypodermic apparatuses~~:

31 A. Common carriers or warehouse operators while engaged in lawfully transporting
32 or storing prescription drugs ~~or hypodermic apparatuses~~ or any of their employees
33 acting within the scope of their employment;

34 B. Employees or agents of persons lawfully entitled to possession who have temporary,
35 incidental possession while acting within the scope of their employment or agency;

36 C. Persons whose possession is for the purpose of aiding public officers in performing
37 their official duties while acting within the scope of their employment or duties;

38 D. Law enforcement officers while acting within the scope of their employment and
39 official duties;

40 E. Physicians, dentists, podiatrists, pharmacists or other persons authorized by law or
41 rule to administer, dispense, prescribe or sell scheduled or prescription drugs; or

1 controlled substances ~~or hypodermic apparatuses~~ while acting within the course of their
2 professional practice; and

3 ~~F. With regard to the possession or furnishing of hypodermic apparatuses, persons~~
4 ~~authorized by the Bureau of Health pursuant to a hypodermic apparatus exchange~~
5 ~~program, certified under chapter 252-A while acting within the scope of their~~
6 ~~employment under such programs; and~~

7 G. Persons conducting research at a school of pharmacology that is accredited or is a
8 candidate for accreditation in good standing.

9 **Sec. 11. 22 MRSA §2383-B, sub-§6**, as amended by PL 2015, c. 27, §1, is repealed.

10 **Sec. 12. 32 MRSA §13787-A, sub-§3**, as amended by PL 2003, c. 688, Pt. A, §39,
11 is repealed.

12 **Sec. 13. 32 MRSA §13787-A, sub-§4**, as enacted by PL 1993, c. 394, §2, is
13 amended to read:

14 **4. Immunity limited.** This section does not limit prosecution for violation of any law
15 prohibiting or regulating the use, possession, dispensing, distribution or promotion of
16 controlled substances; or scheduled drugs ~~or drug paraphernalia~~.

17 SUMMARY

18 This bill amends the provisions regarding hypodermic apparatuses in the following
19 ways.

20 1. It allows a person to possess a residual amount of a scheduled drug that is contained
21 in one or more hypodermic apparatuses without committing the crime of unlawful
22 possession of a scheduled drug.

23 2. It repeals the law governing the crimes of trafficking in or furnishing hypodermic
24 apparatuses.

25 3. It repeals the law governing the crime of illegal possession of hypodermic
26 apparatuses.

27 4. It removes from the definition of drug paraphernalia under the Maine Revised
28 Statutes, Title 17-A, section 1111-A items used for testing, analyzing, injecting, ingesting,
29 inhaling or otherwise introducing into the human body scheduled drugs.

30 5. It removes similar provisions in the food and drug safety provisions of the Maine
31 Revised Statutes and in the Maine Pharmacy Act.