

HOUSE BILL NO. HB0232

Drug paraphernalia-2.

Sponsored by: Representative(s) Buchanan, Gingery and
Lubnau and Senator(s) Hines

A BILL

for

1 AN ACT relating to the Wyoming Controlled Substances Act;
2 combining offenses relating to possession or delivery of
3 drug paraphernalia; amending a definition; clarifying
4 factors to determine whether an item is drug paraphernalia;
5 specifying prior convictions that shall count toward the
6 imposition of an enhanced sentence for possession of a
7 controlled substance; providing exemptions; conforming a
8 provision; and providing for an effective date.

9

10 *Be It Enacted by the Legislature of the State of Wyoming:*

11

12 **Section 1.** W.S. 1—40—119(a)(iii), 6—8—104(b)(v),
13 35-7-1002(a)(xxvii)(intro), (E)(II), (III) and by creating
14 new subdivisions (XI) through (XV),
15 35—7—1031(c)(i)(intro), 35-7-1049(a)(vi) and 35-7-1056 are
16 amended to read:

1

2 **1-40-119. Surcharge to be assessed in certain**
3 **criminal cases; paid to account.**

4

5 (a) In addition to any fine or other penalty
6 prescribed by law, a defendant who pleads guilty or nolo
7 contendere to, or is convicted of, the following criminal
8 offenses shall be assessed a surcharge of not less than
9 fifty dollars (\$50.00) for the offenses specified in
10 paragraph (v) of this subsection and not less than one
11 hundred dollars (\$100.00) for the offenses specified in
12 paragraphs (i) through (iv) of this subsection:

13

14 (iii) Any violation of W.S. 35-7-1001 through
15 ~~35-7-1057~~ 35-7-1056;

16

17 **6-8-104. Wearing or carrying concealed weapons;**
18 **penalties; exceptions; permits.**

19

20 (b) The attorney general is authorized to issue
21 permits to carry a concealed firearm to persons qualified
22 as provided by this subsection. The attorney general shall
23 promulgate rules necessary to carry out this section no
24 later than October 1, 1994. Applications for a permit to

1 carry a concealed firearm shall be made available and
2 distributed by the division of criminal investigation and
3 local law enforcement agencies. The permit shall be valid
4 throughout the state for a period of five (5) years from
5 the date of issuance. The permittee shall carry the permit,
6 together with valid identification at all times when the
7 permittee is carrying a concealed firearm and shall display
8 both the permit and proper identification upon request of
9 any peace officer. The attorney general through the
10 division shall issue a permit to any person who:

11

12 (v) Has not been committed to a state or federal
13 facility for the abuse of a controlled substance or
14 convicted of a violation of the Wyoming Controlled
15 Substances Act of 1971, W.S. 35-7-1001 through ~~35-7-1057~~
16 35-7-1056 or similar laws of any other state or the United
17 States relating to controlled substances;

18

19 **35-7-1002. Definitions.**

20

21 (a) As used in this act:

22

23 (xxvii) "Drug paraphernalia" means ~~all~~ any
24 equipment, ~~products and materials~~ product or material of

1 any kind ~~when used, advertised~~ which is for use, ~~intended~~
2 ~~for use or designed for use for~~ in manufacturing,
3 compounding, converting, concealing, producing, processing,
4 preparing, ~~packaging, repackaging, storing, containing,~~
5 ~~concealing,~~ injecting, ingesting, inhaling or otherwise
6 introducing into the human body a controlled substance, in
7 ~~violation of~~ possession of which is unlawful under this
8 act. ~~and~~ It includes items for use in ingesting, inhaling
9 or otherwise introducing marihuana, cocaine, hashish,
10 hashish oil, PCP, methamphetamine or amphetamines into the
11 human body, such as:

12

13 (E) The following objects when used,
14 advertised for use, intended for use or designed for use in
15 ingesting, inhaling or otherwise introducing marihuana,
16 cocaine, hashish or hashish oil or any other controlled
17 substance into the human body:

18

19 (II) Carburetion tubes and devices;

20

21 (III) Smoking and carburetion masks;

22

23 (XI) Cocaine freebase kits;

24

1 (XII) Miniature spoons with level
2 capacities of one-tenth (0.10) cubic centimeter or less;

3

4 (XIII) Roach clips, meaning objects
5 used to hold burning materials such as a marihuana
6 cigarette that has become too small or too short to be held
7 in the hand;

8

9 (XIV) Water pipes; or

10

11 (XV) Wired cigarette papers.

12

13 **35-7-1031. Unlawful manufacture or delivery;**
14 **counterfeit substance; unlawful possession.**

15

16 (c) It is unlawful for any person knowingly or
17 intentionally to possess a controlled substance unless the
18 substance was obtained directly from, or pursuant to a
19 valid prescription or order of a practitioner while acting
20 in the course of his professional practice, or except as
21 otherwise authorized by this act. Any person who violates
22 this subsection:

23

1 (i) And has in his possession a controlled
2 substance in the amount set forth in this paragraph is
3 guilty of a misdemeanor punishable by imprisonment for not
4 more than twelve (12) months, a fine of not more than one
5 thousand dollars (\$1,000.00), or both. Any person
6 convicted for a third or subsequent offense under this
7 paragraph, including convictions for violations of similar
8 laws in other jurisdictions, shall be imprisoned for a term
9 not more than five (5) years, fined not more than five
10 thousand dollars (\$5,000.00), or both. Any prior
11 conviction for a violation of W.S. 35-7-1056, or
12 convictions for violations of laws in other jurisdictions
13 containing the same or similar elements as a crime defined
14 in W.S. 35-7-1056, shall be included for purposes of
15 calculating whether the present conviction is a third or
16 subsequent conviction under this paragraph. For purposes
17 of this paragraph, the amounts of a controlled substance
18 are as follows:

19

20 **35-7-1049. Forfeitures and seizures generally;**
21 **property subject to forfeiture.**

22

23 (a) The following are subject to forfeiture:

24

1 (vi) All "drug paraphernalia" as defined by W.S.
2 35-7-1002(a) (xxvii), subject to consideration of the
3 factors specified in W.S. 35-7-1056(d);
4

5 **35-7-1056. Delivery of, or possession with intent to**
6 **deliver, drug paraphernalia.**
7

8 (a) It is unlawful for any person to:
9

10 (i) Deliver, or possess with intent to deliver,
11 drug paraphernalia; ~~or~~ or
12

13 (ii) Possess drug paraphernalia.
14

15 (b) Except as provided in subsection (c) of this
16 section, any person who violates this section is guilty of
17 a ~~crime~~ misdemeanor and, upon conviction, may be imprisoned
18 for not more than six (6) months, fined not more than seven
19 hundred fifty dollars (\$750.00), or both.
20

21 (c) Any person who violates paragraph (a)(i) of this
22 section by delivering, or possessing with intent to
23 deliver, drug paraphernalia to a minor is guilty of a
24 felony and, upon conviction, may be imprisoned for not more

1 than five (5) years, fined not more than two thousand five
2 hundred dollars (\$2,500.00), or both.

3
4 (d) In determining whether an item constitutes drug
5 paraphernalia, in addition to all other logically relevant
6 factors, the following may be considered:

7
8 (i) Instructions, oral or written, provided with
9 the item concerning its use;

10
11 (ii) Descriptive materials accompanying the item
12 which explain or depict its use;

13
14 (iii) National and local advertising concerning
15 the item's use;

16
17 (iv) The manner in which the item is displayed
18 for sale;

19
20 (v) Whether the owner, or anyone in control of
21 the item, is a legitimate supplier of like or related items
22 to the community, such as a licensed distributor or dealer
23 of tobacco products;

24

1 (vi) Direct or circumstantial evidence of the
2 ratio of sales of the item to the total sales of the
3 business enterprise;

4
5 (vii) The existence and scope of legitimate uses
6 of the item in the community; and

7
8 (viii) Expert testimony concerning the item's
9 use.

10
11 (e) This section shall not apply to:

12
13 (i) Any person authorized by local, state or
14 federal law to manufacture, possess or distribute drug
15 paraphernalia meeting the factors specified in subsection
16 (d) of this section;

17
18 (ii) Any item that, in the normal lawful course
19 of business, is imported, exported, transported or sold
20 through the mail or by any other means, and traditionally
21 intended for use with tobacco products, including any pipe,
22 paper or accessory.

23
24 **Section 2.** W.S. 35-7-1057 is repealed.

1

2 **Section 3.** This act is effective July 1, 2007.

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4

(END)