

CHAPTER 31

AN ACT concerning toxic chemicals and amending section 7 of P.L.1999, c.90, N.J.S.2C:36-1, N.J.S.2C:36-2 and N.J.S.2C:36-3.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. Section 7 of P.L.1999, c.90 (C.2C:35-10.4) is amended to read as follows:

C.2C:35-10.4 Toxic chemicals.

7. Toxic Chemicals a. As used in this section the term "toxic chemical" means any chemical or substance having the property of releasing toxic fumes. "Toxic chemical" includes, but is not limited to, acetone, acetate, benzene, butyl alcohol, ethyl alcohol, ethylene dichloride, isopropyl alcohol, methyl alcohol, methyl ethyl ketone, nitrous oxide, pentachlorophenol, petroleum ether, toluol, toluene and any glue, cement, adhesive, paint remover or other substance containing a chemical capable of releasing vapors or fumes causing a condition of intoxication, inebriation, excitement, stupefaction, or dulling of the brain or nervous system.

b. A person commits a disorderly persons offense if the person:

(1) inhales the fumes of any toxic chemical for the purpose of causing a condition of intoxication; or

(2) possesses any toxic chemical for the purpose of causing a condition of intoxication.

This subsection shall not apply to the possession and use of nitrous oxide or any material containing nitrous oxide for the purpose of medical, surgical, or dental care by a person duly licensed to administer nitrous oxide.

c. A person commits a fourth degree offense if the person sells, or offers to sell, any substance containing a toxic chemical knowing that the intended use of the product is to cause a condition of intoxication, or knowing that the product does not include an additive required by the Commissioner of the State Department of Health and Senior Services to discourage the inhalation of vapors of toxic chemicals for the purpose of causing a condition of intoxication. This subsection does not apply to adhesives manufactured only for industrial application or to the sale of nitrous oxide or any material containing nitrous oxide lawfully distributed pursuant to sections 1 through 6 of P.L.1982, c.127 (C.24:6G-1 et seq.).

2. N.J.S.2C:36-1 is amended to read as follows:

Drug paraphernalia, defined; determination.

2C:36-1. Drug paraphernalia, defined; determination.

As used in this act, "drug paraphernalia" means all equipment, products and materials of any kind which are used or intended for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, ingesting, inhaling, or otherwise introducing into the human body a controlled dangerous substance, controlled substance analog or toxic chemical in violation of the provisions of chapter 35 of this title. It shall include, but not be limited to: a. kits used or intended for use in planting, propagating, cultivating, growing or harvesting of any species of plant which is a controlled dangerous substance or from which a controlled dangerous substance can be derived; b. kits used or intended for use in manufacturing, compounding, converting, producing, processing, or preparing controlled dangerous substances or controlled substance analogs; c. isomerization devices used or intended for use in increasing the potency of any species of plant which is a controlled dangerous substance; d. testing equipment used or intended for use identifying, or in analyzing the strength, effectiveness or purity of controlled dangerous substances or controlled substance analogs; e. scales and balances used or intended for use in weighing or measuring controlled dangerous substances or controlled substance analogs; f. dilutants and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, used or intended for use in cutting controlled dangerous substances or controlled substance analogs; g. separation gins and sifters used or intended for use in removing twigs and seeds from, or in otherwise cleaning or refining, marihuana; h. blenders, bowls, containers, spoons and mixing devices used or intended for use in compounding controlled

dangerous substances or controlled substance analogs; i. capsules, balloons, envelopes and other containers used or intended for use in packaging small quantities of controlled dangerous substances or controlled substance analogs; j. containers and other objects used or intended for use in storing or concealing controlled dangerous substances, controlled substance analogs or toxic chemicals; k. objects used or intended for use in ingesting, inhaling, or otherwise introducing marihuana, cocaine, hashish, hashish oil, nitrous oxide or the fumes of a toxic chemical into the human body, such as (1) metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls; (2) water pipes; (3) carburetion tubes and devices; (4) smoking and carburetion masks; (5) roach clips, meaning objects used to hold burning material, such as a marihuana cigarette, that has become too small or too short to be held in the hand; (6) miniature cocaine spoons, and cocaine vials; (7) chamber pipes; (8) carburetor pipes; (9) electric pipes; (10) air-driven pipes; (11) chillums; (12) bongs; (13) ice pipes or chillers; (14) compressed gas containers, such as tanks, cartridges or canisters, that contain food grade or pharmaceutical grade nitrous oxide as a principal ingredient; (15) chargers or charging bottles, meaning metal, ceramic or plastic devices that contain an interior pin that may be used to expel compressed gas from a cartridge or canister; and (16) tubes, balloons, bags, fabrics, bottles or other containers used to concentrate or hold in suspension a toxic chemical or the fumes of a toxic chemical.

In determining whether or not an object is drug paraphernalia, the trier of fact, in addition to or as part of the proofs, may consider the following factors: a. statements by an owner or by anyone in control of the object concerning its use; b. the proximity of the object of illegally possessed controlled dangerous substances, controlled substance analogs or toxic chemicals; c. the existence of any residue of illegally possessed controlled dangerous substances, controlled substance analogs or toxic chemicals on the object; d. 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 intend to use the object to facilitate a violation of this act; the innocence of an owner, or of anyone in control of the object, as to a direct violation of this act shall not prevent a finding that the object is intended for use as drug paraphernalia; e. instructions, oral or written, provided with the object concerning its use; f. descriptive materials accompanying the object which explain or depict its use; g. national or local advertising whose purpose the person knows or should know is to promote the sale of objects intended for use as drug paraphernalia; h. the manner in which the object is displayed for sale; i. the existence and scope of legitimate uses for the object in the community; and j. expert testimony concerning its use.

3. N.J.S.2C:36-2 is amended to read as follows:

Use or possession with intent to use, disorderly persons offense.

2C:36-2. Use or possession with intent to use, disorderly persons offense.

It shall be unlawful for any person to use, or to possess with intent to use, drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, ingest, inhale, or otherwise introduce into the human body a controlled dangerous substance, controlled substance analog or toxic chemical in violation of the provisions of chapter 35 of this title. Any person who violates this section is guilty of a disorderly persons offense.

4. N.J.S.2C:36-3 is amended to read as follows:

Distribute, dispense or possess with intent to distribute or manufacture, crime of fourth degree.

2C:36-3. Distribute, dispense or possess with intent to distribute or manufacture, crime of fourth degree.

It shall be unlawful for any person to distribute or dispense, or possess with intent to distribute or dispense, or manufacture with intent to distribute or dispense, drug paraphernalia, knowing that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, ingest, inhale or otherwise introduce into the human body a

controlled dangerous substance, controlled substance analog or toxic chemical in violation of the provisions of chapter 35 of this title. Any person who violates this section commits a crime of the fourth degree.

5. This act shall take effect immediately.

Approved January 29, 2007.