



SPONSOR: Rep. Keeley

HOUSE OF REPRESENTATIVES
148th GENERAL ASSEMBLY

HOUSE AMENDMENT NO. 3

TO

HOUSE BILL NO. 39

AMEND House Bill No. 39 by striking all text on lines 8 and 9 and inserting in lieu thereof the following:

“(33) “Personal use quantity” shall mean one ounce or less of marijuana in the form of leaf marijuana. Leaf marijuana means the dried leaves and flowering tops of the plant cannabis sativa L.”

FURTHER AMEND House Bill No. 39 by striking all text on line 13 and inserting in lieu thereof the following:

“(a) Any person under the age of 18 who knowingly or intentionally possesses, uses, or consumes a controlled substance or a counterfeit controlled substance classified in § 4714(d)(19) of this title, except as otherwise authorized by this chapter, and there is an aggravating factor, shall be guilty of a class B misdemeanor. Any person 18 years of age or older who knowingly or intentionally possesses, uses, or consumes, or possesses other than a personal”.

FURTHER AMEND House Bill No. 39 by striking all text on lines 16 through 19 and inserting in lieu thereof the following:

“(b) Any person under the age of 18 who knowingly or intentionally possesses, uses, or consumes a controlled substance or a counterfeit controlled substance classified in § 4714(d)(19) of this title, except as otherwise authorized by this chapter, shall be guilty of an unclassified misdemeanor and be fined not more than \$100. Any person 18 years of age or older who knowingly or intentionally possesses, uses, or consumes, or possesses other than a personal use quantity of a controlled substance or a counterfeit controlled substance classified in § 4714(d)(19) of this title, except as otherwise authorized by this chapter, shall be guilty of an unclassified misdemeanor and be fined not more than \$575, and imprisoned not more than 3 months, or both.

FURTHER AMEND House Bill No. 39 by striking all text on line 20 and inserting in lieu thereof the following:

“(c) Any person 21 years of age or older who knowingly or intentionally possesses a personal”.

FURTHER AMEND House Bill No. 39 at line 23 by inserting after the word “violations” and before the period the phrase “and the marijuana shall be forfeited”.

FURTHER AMEND House Bill No. 39 at line 23 by striking “of a controlled” and inserting in lieu thereof “by a person 21 years of age or older of a personal use quantity of a controlled”.

FURTHER AMEND House Bill No. 39 at line 25 by inserting after the word “subsection.” the following: “Any person 18 years of age or older, but under 21 years of age, who commits any of the acts described in this subsection shall be assessed a civil penalty of \$100 for the first offense and shall be guilty of an unclassified misdemeanor and fined \$100 for a second or subsequent offense.”.

FURTHER AMEND House Bill No. 39 at line 25 by striking “The person shall not be subject to any other form of criminal or civil punishment.”.

FURTHER AMEND House Bill No. 39 on line 26 by striking “within ninety (90) days of the offense” and inserting in lieu thereof “within 90 days of final adjudication of the violation”.

FURTHER AMEND House Bill No. 39 by striking all text on line 27 and inserting in lieu thereof the following:

“(d) Any person 18 years of age or older who knowingly or intentionally uses or consumes up”.

FURTHER AMEND House Bill No. 39 at line 29 by striking the phrase “in a public place” and inserting in lieu thereof “in an area accessible to the public or in a moving vehicle”.

FURTHER AMEND House Bill No. 39 at line 30 by striking “not more than \$200 and imprisoned not more than five days” and inserting in lieu thereof “not more than \$200, imprisoned not more than five days, or both”.

FURTHER AMEND House Bill No. 39 at line 30 by inserting at the end of the text appearing thereon the following:

“For purposes of this section “area accessible to the public” means any of the following:

(1) Sidewalks, streets, alleys, parking lots, parks, playgrounds, stores, restaurants, and any other areas to which the general public is invited.

(2) Any outdoor location within a distance of 10 feet from a sidewalk, street, alley, parking lot, park, playground, store, restaurant, or any other area to which the general public is invited.

(3) Any outdoor location within a distance of 10 feet from the entrances, exits, windows that open, or ventilation intakes of any public or private building.”

FURTHER AMEND House Bill No. 39 by striking lines 31 through 33 and inserting in lieu thereof the following:

“(e) Information concerning a civil offense classified in §4764(c) of this title shall not appear on a person’s certified criminal record.”.

FURTHER AMEND House Bill No. 39 by inserting after line 39 the following:

52 “(h) Nothing contained herein shall be construed to repeal or modify any law or procedure regarding search and
53 seizure.

54 (i) Any person who was convicted of a single criminal offense under subsection (c) of this section and who was
55 under the age of 21 at the time of the offense may, upon reaching the age of 21, apply for an expungement of the record of
56 the conviction and any indicia of arrest to the court in which the person was convicted. For violations of subsection (c) of
57 this section, an order granting such expungement shall issue upon proof that the person has reached the age of 21, unless
58 the person has failed to comply with the sentencing order or the person has another charge under this section which remains
59 outstanding. Upon issuance of the order of expungement, the records of the conviction and any indicia of arrest shall be
60 dealt with in accordance with the procedures specified in §§ 4373(c), 4374 and 4375 of Title 11. Nothing in this section
61 shall prohibit the Family Court from expunging a record of conviction as otherwise provided by law. The application for or
62 granting of a pardon pursuant to §§ 4361 through 4363 of Title 11 shall not prohibit an expungement under this section. All
63 sentencing orders for violations of this section by persons under the age of 21 at the time of the offense shall state that the
64 record of the conviction may be expunged upon reaching the age of 21 and thereafter. The civil filing fee shall apply to
65 applications for expungement plus a \$100 fee payable to the State Bureau of Investigation for administrative costs.”.

66 FURTHER AMEND House Bill No. 39 at line 45 by inserting after the word “offense” and before the period, the
67 following: “if in possession of drug paraphernalia pertaining to the use of marijuana”.

SYNOPSIS

This amendment makes several changes to House Bill 39. It clarifies that only small amounts of leaf marijuana are subject to a civil penalty under this Act. Other compounds, derivatives, and preparations of marijuana remain criminal in any quantity.

Under this amendment possession and use of marijuana by persons under the age of 18 remains a criminal offense in all circumstances. For persons between 18 and 21, private use or possession of less than one ounce of leaf marijuana is a civil violation for a first offense. Any second or subsequent offense by a person between 18 and 21 is an unclassified criminal misdemeanor punishable by a fine of \$100. A single criminal conviction for a person under 21 is eligible for mandatory expungement when that person turns 21 so long as no other offenses have been committed. This is also true for underage consumption of alcohol offenses.

A clarification is made that marijuana is still subject to forfeiture even when possessed or used in a manner that is subject to a civil penalty rather than a criminal charge. It changes language referring to the doubling of unpaid fines so that the time period for payment runs from final adjudication, rather than the date the violation occurred. The term public place is replaced with “area accessible to the public” and that term is defined. The amendment restores a criminal penalty for use or consumption of marijuana in a moving vehicle. The amendment clarifies that this change in the law is not intended to affect search and seizure law as it currently exists in the State. Clarification is made that the drug paraphernalia charge may not be brought where a marijuana possession charge has been brought – so long as the paraphernalia in question is marijuana related.

The amendment also makes technical changes to enhance clarity and eliminate unintended ambiguity.