



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

HB1205

Introduced 1/31/2023, by Rep. Curtis J. Tarver, II

SYNOPSIS AS INTRODUCED:

720 ILCS 550/4	from Ch. 56 1/2, par. 704
725 ILCS 5/108-1	from Ch. 38, par. 108-1
725 ILCS 5/114-12	from Ch. 38, par. 114-12

Amends the Cannabis Control Act. Provides that, in calculating the weight of cannabis for the purpose of imposing a penalty against an individual, the weight of the amount of cannabis that may be legally possessed by the individual under the Cannabis Regulation and Tax Act or the Compassionate Use of Medical Cannabis Program Act shall be subtracted from the total weight used in determining the offense class or applicable fine. Amends the Code of Criminal Procedure of 1963. Provides that if a motor vehicle is driven or occupied by an individual 21 years of age or over, a law enforcement officer may not search or inspect the motor vehicle, its contents, the driver, or the passenger solely because a law enforcement officer or a police dog trained in the detection of cannabis smelled that cannabis is present in the private motor vehicle. Provides that a defendant aggrieved by such an unlawful search and seizure may move the court for the return of property and to suppress as evidence anything so obtained.

LRB103 00018 RLC 45120 b

1 AN ACT concerning criminal law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Cannabis Control Act is amended by changing
5 Section 4 as follows:

6 (720 ILCS 550/4) (from Ch. 56 1/2, par. 704)

7 Sec. 4. Except as otherwise provided in the Cannabis
8 Regulation and Tax Act and the Industrial Hemp Act, it is
9 unlawful for any person knowingly to possess cannabis.

10 Any person who violates this Section with respect to:

11 (a) not more than 10 grams of any substance containing
12 cannabis is guilty of a civil law violation punishable by
13 a minimum fine of \$100 and a maximum fine of \$200. The
14 proceeds of the fine shall be payable to the clerk of the
15 circuit court. Within 30 days after the deposit of the
16 fine, the clerk shall distribute the proceeds of the fine
17 as follows:

18 (1) \$10 of the fine to the circuit clerk and \$10 of
19 the fine to the law enforcement agency that issued the
20 citation; the proceeds of each \$10 fine distributed to
21 the circuit clerk and each \$10 fine distributed to the
22 law enforcement agency that issued the citation for
23 the violation shall be used to defer the cost of

1 automatic expungements under paragraph (2.5) of
2 subsection (a) of Section 5.2 of the Criminal
3 Identification Act;

4 (2) \$15 to the county to fund drug addiction
5 services;

6 (3) \$10 to the Office of the State's Attorneys
7 Appellate Prosecutor for use in training programs;

8 (4) \$10 to the State's Attorney; and

9 (5) any remainder of the fine to the law
10 enforcement agency that issued the citation for the
11 violation.

12 With respect to funds designated for the Illinois
13 State Police, the moneys shall be remitted by the circuit
14 court clerk to the Illinois State Police within one month
15 after receipt for deposit into the State Police Operations
16 Assistance Fund. With respect to funds designated for the
17 Department of Natural Resources, the Department of Natural
18 Resources shall deposit the moneys into the Conservation
19 Police Operations Assistance Fund;

20 (b) more than 10 grams but not more than 30 grams of
21 any substance containing cannabis is guilty of a Class B
22 misdemeanor;

23 (c) more than 30 grams but not more than 100 grams of
24 any substance containing cannabis is guilty of a Class A
25 misdemeanor; provided, that if any offense under this
26 subsection (c) is a subsequent offense, the offender shall

1 be guilty of a Class 4 felony;

2 (d) more than 100 grams but not more than 500 grams of
3 any substance containing cannabis is guilty of a Class 4
4 felony; provided that if any offense under this subsection
5 (d) is a subsequent offense, the offender shall be guilty
6 of a Class 3 felony;

7 (e) more than 500 grams but not more than 2,000 grams
8 of any substance containing cannabis is guilty of a Class
9 3 felony;

10 (f) more than 2,000 grams but not more than 5,000
11 grams of any substance containing cannabis is guilty of a
12 Class 2 felony;

13 (g) more than 5,000 grams of any substance containing
14 cannabis is guilty of a Class 1 felony.

15 In calculating the weight of cannabis for the purpose of
16 imposing a penalty against an individual under this Section,
17 the weight of the amount of cannabis that may be legally
18 possessed by the individual under the Cannabis Regulation and
19 Tax Act or the Compassionate Use of Medical Cannabis Program
20 Act shall be subtracted from the total weight used in
21 determining the offense class or applicable fine.

22 (Source: P.A. 101-27, eff. 6-25-19; 101-593, eff. 12-4-19;
23 102-538, eff. 8-20-21.)

24 Section 10. The Code of Criminal Procedure of 1963 is
25 amended by changing Sections 108-1 and 114-12 as follows:

1 (725 ILCS 5/108-1) (from Ch. 38, par. 108-1)

2 Sec. 108-1. Search without warrant.

3 (1) When a lawful arrest is effected a peace officer may
4 reasonably search the person arrested and the area within such
5 person's immediate presence for the purpose of:

6 (a) protecting the officer from attack; or

7 (b) preventing the person from escaping; or

8 (c) discovering the fruits of the crime; or

9 (d) discovering any instruments, articles, or things
10 which may have been used in the commission of, or which may
11 constitute evidence of, an offense.

12 (2) (Blank).

13 (3) A law enforcement officer may not search or inspect a
14 motor vehicle, its contents, the driver, or a passenger solely
15 because of a violation of Section 12-603.1 of the Illinois
16 Vehicle Code.

17 (4) If a motor vehicle is driven or occupied by an
18 individual 21 years of age or over, a law enforcement officer
19 may not search or inspect the motor vehicle, its contents, the
20 driver, or the passenger solely because a law enforcement
21 officer or a police dog trained in the detection of cannabis
22 smelled that cannabis is present in the private motor vehicle.

23 (Source: P.A. 93-99, eff. 7-3-03.)

24 (725 ILCS 5/114-12) (from Ch. 38, par. 114-12)

1 Sec. 114-12. Motion to Suppress Evidence Illegally Seized.

2 (a) A defendant aggrieved by an unlawful search and
3 seizure may move the court for the return of property and to
4 suppress as evidence anything so obtained on the ground that:

5 (1) The search and seizure without a warrant was
6 illegal; ~~or~~

7 (2) The search and seizure with a warrant was illegal
8 because the warrant is insufficient on its face; the
9 evidence seized is not that described in the warrant;
10 there was not probable cause for the issuance of the
11 warrant; or, the warrant was illegally executed; or -

12 (3) The search and seizure without a warrant was
13 conducted in violation of subsection (4) of Section 108-1.

14 (b) The motion shall be in writing and state facts showing
15 wherein the search and seizure were unlawful. The judge shall
16 receive evidence on any issue of fact necessary to determine
17 the motion and the burden of proving that the search and
18 seizure were unlawful shall be on the defendant. If the motion
19 is granted the property shall be restored, unless otherwise
20 subject to lawful detention, and it shall not be admissible in
21 evidence against the movant at any trial.

22 (1) If a defendant seeks to suppress evidence because
23 of the conduct of a peace officer in obtaining the
24 evidence, the State may urge that the peace officer's
25 conduct was taken in a reasonable and objective good faith
26 belief that the conduct was proper and that the evidence

1 discovered should not be suppressed if otherwise
2 admissible. The court shall not suppress evidence which is
3 otherwise admissible in a criminal proceeding if the court
4 determines that the evidence was seized by a peace officer
5 who acted in good faith.

6 (2) "Good faith" means whenever a peace officer
7 obtains evidence:

8 (i) pursuant to a search or an arrest warrant
9 obtained from a neutral and detached judge, which
10 warrant is free from obvious defects other than
11 non-deliberate errors in preparation and contains no
12 material misrepresentation by any agent of the State,
13 and the officer reasonably believed the warrant to be
14 valid; or

15 (ii) pursuant to a warrantless search incident to
16 an arrest for violation of a statute or local
17 ordinance which is later declared unconstitutional or
18 otherwise invalidated.

19 (3) This amendatory Act of 1987 shall not be construed
20 to limit the enforcement of any appropriate civil remedy
21 or criminal sanction in actions pursuant to other
22 provisions of law against any individual or government
23 entity found to have conducted an unreasonable search or
24 seizure.

25 (4) This amendatory Act of 1987 does not apply to
26 unlawful electronic eavesdropping or wiretapping.

1 (c) The motion shall be made before trial unless
2 opportunity therefor did not exist or the defendant was not
3 aware of the grounds for the motion. If the motion is made
4 during trial, and the court determines that the motion is not
5 untimely, and the court conducts a hearing on the merits and
6 enters an order suppressing the evidence, the court shall
7 terminate the trial with respect to every defendant who was a
8 party to the hearing and who was within the scope of the order
9 of suppression, without further proceedings, unless the State
10 files a written notice that there will be no interlocutory
11 appeal from such order of suppression. In the event of such
12 termination, the court shall proceed with the trial of other
13 defendants not thus affected. Such termination of trial shall
14 be proper and shall not bar subsequent prosecution of the
15 identical charges and defendants; however, if after such
16 termination the State fails to prosecute the interlocutory
17 appeal until a determination of the merits of the appeal by the
18 reviewing court, the termination shall be improper within the
19 meaning of subparagraph (a)(3) of Section 3-4 of the Criminal
20 Code of 2012 and subsequent prosecution of such defendants
21 upon such charges shall be barred.

22 (d) The motion shall be made only before a court with
23 jurisdiction to try the offense.

24 (e) The order or judgment granting or denying the motion
25 shall state the findings of facts and conclusions of law upon
26 which the order or judgment is based.

HB1205

- 8 -

LRB103 00018 RLC 45120 b

1 (Source: P.A. 97-1150, eff. 1-25-13.)