

**Introduced by Senator Vasconcellos**

February 21, 2002

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An act to amend Section 11364.7 of the Health and Safety Code, relating to drug paraphernalia.

LEGISLATIVE COUNSEL'S DIGEST

SB 1734, as introduced, Vasconcellos. Drug paraphernalia: clean needle and syringe exchange projects.

Existing law generally provides that any person who delivers, furnishes, or transfers drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to inject into the human body a controlled substance is guilty of a misdemeanor. However, existing law also provides that no public entity, its agents, or employees shall be subject to criminal prosecution for distribution of hypodermic needles or syringes to participants in clean needle and syringe exchange projects authorized by the public entity pursuant to a declaration of a local emergency due to the existence of a critical local public health crisis.

This bill would revise the above immunity provision to also provide that no public entity, its agents, or employees shall be subject to criminal prosecution for distribution of any device or substance necessary to ensure the safety and cleanliness of needles or syringes distributed to participants in clean needle and syringe exchange projects.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 11364.7 of the Health and Safety Code  
2 is amended to read:

3 11364.7. (a) (1) Except as authorized by law, any person  
4 who delivers, furnishes, or transfers, possesses with intent to  
5 deliver, furnish, or transfer, or manufactures with the intent to  
6 deliver, furnish, or transfer, drug paraphernalia, knowing, or under  
7 circumstances where one reasonably should know, that it will be  
8 used to plant, propagate, cultivate, grow, harvest, compound,  
9 convert, produce, process, prepare, test, analyze, pack, repack,  
10 store, contain, conceal, inject, ingest, inhale, or otherwise  
11 introduce into the human body a controlled substance, except as  
12 provided in subdivision (b), in violation of this division, is guilty  
13 of a misdemeanor.

14 (2) No public entity, its agents, or employees shall be subject  
15 to criminal prosecution for distribution of hypodermic needles or  
16 syringes, *or any device or substance necessary to ensure the safety  
17 and cleanliness of those needles or syringes*, to participants in  
18 clean needle and syringe exchange projects authorized by the  
19 public entity pursuant to a declaration of a local emergency due to  
20 the existence of a critical local public health crisis.

21 (b) Except as authorized by law, any person who manufactures  
22 with intent to deliver, furnish, or transfer drug paraphernalia  
23 knowing, or under circumstances where one reasonably should  
24 know, that it will be used to plant, propagate, cultivate, grow,  
25 harvest, manufacture, compound, convert, produce, process,  
26 prepare, test, analyze, pack, repack, store, contain, conceal, inject,  
27 ingest, inhale, or otherwise introduce into the human body  
28 cocaine, cocaine base, heroin, phencyclidine, or  
29 methamphetamine in violation of this division shall be punished  
30 by imprisonment in a county jail for not more than one year, or in  
31 the state prison.

32 (c) Except as authorized by law, any person, 18 years of age or  
33 over, who violates subdivision (a) by delivering, furnishing, or  
34 transferring drug paraphernalia to a person under 18 years of age  
35 who is at least three years his or her junior, or who, upon the  
36 grounds of a public or private elementary, vocational, junior high,  
37 or high school, possesses a hypodermic needle, as defined in  
38 paragraph (7) of subdivision (a) of Section 11014.5, with the intent



1 to deliver, furnish, or transfer the hypodermic needle, knowing, or  
2 under circumstances where one reasonably should know, that it  
3 will be used by a person under 18 years of age to inject into the  
4 human body a controlled substance, is guilty of a misdemeanor and  
5 shall be punished by imprisonment in a county jail for not more  
6 than one year, by a fine of not more than one thousand dollars  
7 (\$1,000), or by both that imprisonment and fine.

8 (d) The violation, or the causing or the permitting of a  
9 violation, of subdivision (a), (b), or (c) by a holder of a business  
10 or liquor license issued by a city, county, or city and county, or by  
11 the State of California, and in the course of the licensee's business  
12 shall be grounds for the revocation of that license.

13 (e) All drug paraphernalia defined in Section 11014.5 is subject  
14 to forfeiture and may be seized by any peace officer pursuant to  
15 Section 11471.

16 (f) If any provision of this section or the application thereof to  
17 any person or circumstance is held invalid, it is the intent of the  
18 Legislature that the invalidity shall not affect other provisions or  
19 applications of this section which can be given effect without the  
20 invalid provision or application and to this end the provisions of  
21 this section are severable.

