AMENDED IN ASSEMBLY MARCH 24, 2010
CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL No. 1858

Introduced by Assembly Member Blumenfield
(Coauthor: Assembly Member Monning)

February 12, 2010

An act to amend Section 4148 of, and to repeal Section 4140 of, the Business and Professions Code, and to amend Sections 11364, 121349; An act to amend Sections 121349, 121349.1, 121349.2, and 121349.3 of, and to add Section 121349.4 to, the Health and Safety Code, relating to public health.

LEGISLATIVE COUNSEL’S DIGEST

AB 1858, as amended, Blumenfield. Bloodborne disease prevention: sterile syringes and needles—Hypodermic needles and syringes: exchange services.

Existing law regulates the sale, possession, and disposal of hypodermic needles and syringes, and requires, with certain exceptions, a prescription to purchase a hypodermic needle or syringe for human use. Existing law prohibits any person from possessing or having under his control any hypodermic needle or syringe, except in accordance with those regulatory provisions.

Existing law which terminates December 31, 2010, authorizes a county or city to authorize a licensed pharmacist to sell or furnish 10 or fewer hypodermic needles or syringes to a person for human use without a prescription if the pharmacy is registered with a local health department in the Disease Prevention Demonstration Project, established by law to evaluate the long-term desirability of allowing licensed pharmacies to
sell or furnish nonprescription hypodermic needles or syringes to prevent
the spread of bloodborne pathogens, including HIV and hepatitis C.

This bill would delete the prohibition against any person possessing
or having under his or her control any hypodermic needle or syringe;
would recast related provisions to delete the requirement of authorization
by a county or city, delete the December 31, 2010, end date, and to
exempt 30 or fewer hypodermic needles and syringes for human use
obtained or possessed without a prescription or license, from the
prohibitions, and would make conforming changes.

Existing law authorizes a clean needle and syringe exchange project
in any city and county, county, or city, as specified.

This bill would permit the State Department of Public Health to
authorize entities to provide hypodermic needle and syringe exchange
services in any location where the department determines that the
conditions exist for the rapid spread of HIV, viral hepatitis, or any other
potentially deadly or disabling infections that are spread through the
sharing of used hypodermic needles and syringes. The bill would specify
that prescribed provisions relating to syringe and needle exchange
programs do not prevent a physician and surgeon from prescribing
syringes and needles to patients.

The bill would also require the department to establish a process to
allow local entities to apply for authorization to provide hypodermic
needle and syringe exchange services, to establish reporting standards
for these entities, and to establish and maintain on its Internet Web site
the address and contact information of programs providing hypodermic
needle and syringe exchange services. The bill would change related
hearing requirements from annually to biennially.

State-mandated local program: no.

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

SECTION 1. Section 4140 of the Business and Professions
Code is repealed.
SEC. 2. Section 4148 of the Business and Professions Code is
amended to read:
4148. All stocks of hypodermic needles or syringes shall be
confiscated if found outside the licensed premises of any person
holding a permit under Section 4141 and found not in the
possession or under the control of a person entitled to an exemption
under Section 4143, 4144, or 4145, or under Section 11364, 121349, or 121349.1 of the Health and Safety Code.

SEC. 3. Section 11364 of the Health and Safety Code is amended to read:

11364. (a) It is unlawful to possess an opium pipe or any device, contrivance, instrument, or paraphernalia used for unlawfully injecting or smoking (1) a controlled substance specified in subdivision (b), (c), or (e), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, specified in subdivision (b) or (c) of Section 11055, or specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11055, or (2) a controlled substance which is a narcotic drug classified in Schedule III, IV, or V.

(b) This section shall not apply to hypodermic needles or syringes that have been containerized for safe disposal in a container that meets state and federal standards for disposal of sharps waste.

(c) As a public health measure intended to prevent the transmission of HIV, viral hepatitis, and other bloodborne diseases among persons who use syringes and hypodermic needles, and to prevent subsequent infection of sexual partners, newborn children, or other persons, subdivision (a) shall not apply to the possession solely for personal use of 30 or fewer hypodermic needles or syringes if acquired from a physician, pharmacist, pharmacist technician, hypodermic needle and syringe exchange program, or any other source that is authorized by law to provide sterile syringes or hypodermic needles without a prescription.

SEC. 4.

SECTION 1. Section 121349 of the Health and Safety Code is amended to read:

121349. (a) The Legislature finds and declares that scientific data from needle exchange programs in the United States and in Europe have shown that the exchange of used hypodermic needles and syringes for clean hypodermic needles and syringes does not increase drug use in the population, can serve as an important bridge to treatment and recovery from drug abuse, and can curtail the spread of human immunodeficiency virus (HIV) infection among the intravenous drug user population.

(b) In order to reduce the spread of HIV infection and bloodborne hepatitis among the intravenous drug user population
within California, the Legislature hereby authorizes a clean needle and syringe exchange project pursuant to this chapter in any city and county, county, or city upon the action of a county board of supervisors and the local health officer or health commission of that county, or upon the action of the city council, the mayor, and the local health officer of a city with a health department, or upon the action of the city council and the mayor of a city without a health department.

(c) In order to reduce the spread of HIV infection, viral hepatitis, and other potentially deadly bloodborne infections, the State Department of Public Health may, notwithstanding any provision of law, authorize and register clinics, health services organizations, community-based organizations, or other entities to provide hypodermic needle and syringe exchange services in any location where the department determines that the conditions exist for the rapid spread of HIV, viral hepatitis, or any other potentially deadly or disabling infections that are spread through the sharing of used hypodermic needles and syringes.

(d) The State Department of Public Health shall, in addition to activity authorized pursuant to subdivision (c), establish a process to allow local entities to apply for authorization to provide hypodermic needle and syringe exchange services.

(e) The department shall establish reporting standards for entities authorized to provide hypodermic needle and syringe exchange services.

(f) The State Department of Public Health shall establish and maintain on its Internet Web site the address and contact information of programs providing hypodermic needle and syringe exchange services pursuant to subdivision (c).

(g) The authorization provided under this section shall only be for a clean needle and syringe exchange project as described in Section 121349.1.

SEC. 5. SEC. 2. Section 121349.1 of the Health and Safety Code is amended to read:
Health, that acts to authorize a clean needle and syringe exchange project pursuant to this chapter shall, in consultation with the Office of AIDS, shall authorize the exchange of clean hypodermic needles and syringes, as recommended by the United States Secretary of Health and Human Services, subject to the availability of funding, as part of a network of comprehensive services, including treatment services, to combat the spread of HIV and bloodborne hepatitis infection among injection drug users. Staff and volunteers participating in an exchange project authorized by the state, county, city, or city and county pursuant to this chapter shall not be subject to criminal prosecution for violation of Section 11364.7 or any other law related to the possession, furnishing, or transfer of hypodermic needles or syringes during participation in an exchange project. Program participants shall be allowed to possess syringes consistent with Section 11364.

SEC. 6. SEC. 3. Section 121349.2 of the Health and Safety Code is amended to read:

121349.2. Local government, local public health officials, and law enforcement shall be given the opportunity to comment on clean needle and syringe exchange programs on an biennial basis. The public shall be given the opportunity to provide input to local leaders to ensure that any potential adverse impacts on the public welfare of clean needle and syringe exchange programs are addressed and mitigated.

SEC. 7. SEC. 4. Section 121349.3 of the Health and Safety Code is amended to read:

121349.3. The health officer of the participating jurisdiction or a representative of the Office of AIDS shall present biennially at an open meeting of the board of supervisors or city council a report detailing the status of clean needle and syringe exchange programs, including, but not limited to, relevant statistics on bloodborne infections associated with needle sharing activity and the use of public funds for these programs. Law enforcement, administrators of alcohol and drug treatment programs, other stakeholders, and the public shall be afforded ample opportunity to comment at this annual meeting. The notice to the public shall be sufficient to assure adequate participation in the meeting by the public. This meeting shall be noticed in accordance with all state
and local open meeting laws and ordinances, and as local officials
deem appropriate. For hypodermic needle and syringe exchange
services authorized by the State Department of Public Health, a
biennial report shall be provided by the department to the local
public health officer based on the reports to the department from
service providers within the jurisdiction of the local public health
officer.

SEC. 8.—Section 121349.4 is added to the Health and Safety
Code, to read:

121349.4.—Nothing in this chapter shall prevent a physician
and surgeon from furnishing sterile hypodermic needles and
syringes or prescribing hypodermic needles and syringes to a
person in order to prevent the transmission of a communicable
disease or as part of patient medical care.