

ASSEMBLY BILL

No. 2603

Introduced by Assembly Member V. Manuel Pérez

February 21, 2014

An act to amend Sections 11350 and 11377 of the Health and Safety Code, relating to controlled substances.

LEGISLATIVE COUNSEL'S DIGEST

AB 2603, as introduced, V. Manuel Pérez. Controlled substances: permissive lawful possession.

Existing law, subject to certain exceptions, provides that it is a crime for any person to possess specified controlled substances, punishable by a fine or imprisonment in a county jail, as specified, unless it is upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state.

This bill would create an exception from these prohibitions for possession of those controlled substances for a lawful purpose by anyone with the express authorization or direction of the prescription holder.

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 11350 of the Health and Safety Code is
2 amended to read:
3 11350. (a) Except as otherwise provided in this division, every
4 person who possesses (1) any controlled substance specified in
5 subdivision (b) or (c), or paragraph (1) of subdivision (f) of Section
6 11054, specified in paragraph (14), (15), or (20) of subdivision (d)

1 of Section 11054, or specified in subdivision (b) or (c) of Section
 2 11055, or specified in subdivision (h) of Section 11056, or (2) any
 3 controlled substance classified in Schedule III, IV, or V which is
 4 a narcotic drug, unless upon the written prescription of a physician,
 5 dentist, podiatrist, or veterinarian licensed to practice in this state,
 6 shall be punished by imprisonment pursuant to subdivision (h) of
 7 Section 1170 of the Penal Code.

8 (b) Except as otherwise provided in this division, every person
 9 who possesses any controlled substance specified in subdivision
 10 (e) of Section 11054 shall be punished by imprisonment in a county
 11 jail for not more than one year or pursuant to subdivision (h) of
 12 Section 1170 of the Penal Code.

13 (c) Except as otherwise provided in this division, whenever a
 14 person who possesses any of the controlled substances specified
 15 in subdivision (a) or (b), the judge may, in addition to any
 16 punishment provided for pursuant to subdivision (a) or (b), assess
 17 against that person a fine not to exceed seventy dollars (\$70) with
 18 proceeds of this fine to be used in accordance with Section 1463.23
 19 of the Penal Code. The court shall, however, take into consideration
 20 the defendant’s ability to pay, and no defendant shall be denied
 21 probation because of his or her inability to pay the fine permitted
 22 under this subdivision.

23 (d) Except in unusual cases in which it would not serve the
 24 interest of justice to do so, whenever a court grants probation
 25 pursuant to a felony conviction under this section, in addition to
 26 any other conditions of probation which may be imposed, the
 27 following conditions of probation shall be ordered:

28 (1) For a first offense under this section, a fine of at least one
 29 thousand dollars (\$1,000) or community service.

30 (2) For a second or subsequent offense under this section, a fine
 31 of at least two thousand dollars (\$2,000) or community service.

32 (3) If a defendant does not have the ability to pay the minimum
 33 fines specified in paragraphs (1) and (2), community service shall
 34 be ordered in lieu of the fine.

35 (e) *This section does not apply to possession of a controlled*
 36 *substance described in subdivision (a) for a lawful purpose by*
 37 *anyone with the express authorization or direction of the*
 38 *prescription holder.*

39 SEC. 2. Section 11377 of the Health and Safety Code is
 40 amended to read:

1 11377. (a) Except as authorized by law and as otherwise
2 provided in subdivision (b) or Section 11375, or in Article 7
3 (commencing with Section 4211) of Chapter 9 of Division 2 of
4 the Business and Professions Code, every person who possesses
5 any controlled substance which is (1) classified in Schedule III,
6 IV, or V, and which is not a narcotic drug, (2) specified in
7 subdivision (d) of Section 11054, except paragraphs (13), (14),
8 (15), and (20) of subdivision (d), (3) specified in paragraph (11)
9 of subdivision (c) of Section 11056, (4) specified in paragraph (2)
10 or (3) of subdivision (f) of Section 11054, or (5) specified in
11 subdivision (d), (e), or (f) of Section 11055, unless upon the
12 prescription of a physician, dentist, podiatrist, or veterinarian,
13 licensed to practice in this state, shall be punished by imprisonment
14 in a county jail for a period of not more than one year or pursuant
15 to subdivision (h) of Section 1170 of the Penal Code.

16 (b) (1) Any person who violates subdivision (a) by unlawfully
17 possessing a controlled substance specified in subdivision (f) of
18 Section 11056, and who has not previously been convicted of a
19 violation involving a controlled substance specified in subdivision
20 (f) of Section 11056, is guilty of a misdemeanor.

21 (2) Any person who violates subdivision (a) by unlawfully
22 possessing a controlled substance specified in subdivision (g) of
23 Section 11056 is guilty of a misdemeanor.

24 (3) Any person who violates subdivision (a) by unlawfully
25 possessing a controlled substance specified in paragraph (7) or (8)
26 of subdivision (d) of Section 11055 is guilty of a misdemeanor.

27 (4) Any person who violates subdivision (a) by unlawfully
28 possessing a controlled substance specified in paragraph (8) of
29 subdivision (f) of Section 11057 is guilty of a misdemeanor.

30 (c) In addition to any fine assessed under subdivision (b), the
31 judge may assess a fine not to exceed seventy dollars (\$70) against
32 any person who violates subdivision (a), with the proceeds of this
33 fine to be used in accordance with Section 1463.23 of the Penal
34 Code. The court shall, however, take into consideration the
35 defendant's ability to pay, and no defendant shall be denied
36 probation because of his or her inability to pay the fine permitted
37 under this subdivision.

38 (d) *This section does not apply to possession of a controlled*
39 *substance described in subdivision (a) for a lawful purpose by*

- 1 *anyone with the express authorization or direction of the*
- 2 *prescription holder.*

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