

AMENDED IN ASSEMBLY JANUARY 4, 2016

AMENDED IN ASSEMBLY MARCH 26, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 261**

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**Introduced by Assembly Member Travis Allen**

February 9, 2015

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An act to amend Section 11364.5 of the Health and Safety Code, relating to ~~cigarettes and tobacco products~~: *drug paraphernalia*.

LEGISLATIVE COUNSEL'S DIGEST

AB 261, as amended, Travis Allen. ~~Cigarettes and tobacco products~~: *Drug paraphernalia* retailers.

~~The California Cigarette and Tobacco Products Licensing Act of 2003 requires a retailer to have and maintain a license from the State Board of Equalization to engage in the sale of cigarette and tobacco products in California.~~

Existing law ~~prohibits~~ *prohibits, except as authorized*, a person from maintaining or operating any place of business in which drug paraphernalia is kept, displayed, or offered in any manner, sold, furnished, transferred, or given away, unless that drug paraphernalia is completely and wholly kept, displayed, or offered within a separate room or enclosure to which persons under 18 years of age not accompanied by a parent or legal guardian are ~~excluded~~: *excluded, prohibits an owner, manager, proprietor, or person in charge of such a room or enclosure from allowing any person under 18 years of age to enter the room or enclosure unless accompanied by his or her parents or legal guardian, and prohibits a person under 18 years of age from being in, remaining in, or visiting that room or enclosure unless*

*accompanied by his or her parents or legal guardian.* Under existing law, a violation of ~~that provision~~ *those provisions* is not a criminal offense, but is grounds for revocation or nonrenewal of any license, permit, or other entitlement previously issued by a city, county, or city and county for the privilege of engaging in that business and is grounds for denial of any future license, permit, or other entitlement authorizing the conduct of that business or any other business, if the business includes the sale of drug paraphernalia.

This bill would instead prohibit a person from maintaining or operating a place of business ~~described above unless the person has in place and maintains a license to engage in the sale of cigarette or tobacco products, and the place of business derives at least 50% of its annual gross revenues from the retail sale of cigarettes or tobacco products, as those terms are defined:~~ *in which drug paraphernalia is kept, displayed or offered in any manner, sold, furnished, transferred or given away, except as authorized by law.*

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 11364.5 of the Health and Safety Code  
 2 is amended to read:  
 3 11364.5. (a) Except as authorized by law, a person shall not  
 4 maintain or operate any place of business in which drug  
 5 paraphernalia is kept, displayed or offered in any manner, sold,  
 6 furnished, transferred or given away ~~unless all of the following~~  
 7 ~~conditions are satisfied:~~ *away.*  
 8 (1) ~~The drug paraphernalia is completely and wholly kept,~~  
 9 ~~displayed or offered within a separate room or enclosure to which~~  
 10 ~~persons under the age of 18 years not accompanied by a parent or~~  
 11 ~~legal guardian are excluded. Each entrance to such a room or~~  
 12 ~~enclosure shall be signposted in reasonably visible and legible~~  
 13 ~~words to the effect that drug paraphernalia is kept, displayed or~~  
 14 ~~offered in such room or enclosure and that minors, unless~~  
 15 ~~accompanied by a parent or legal guardian, are excluded.~~  
 16 (2) ~~The person has in place and maintains a license to engage~~  
 17 ~~in the sale of cigarettes or tobacco products issued pursuant to~~  
 18 ~~Division 8.6 (commencing with Section 22970) of the Business~~  
 19 ~~and Professions Code.~~

1 ~~(3) The place of business derives at least 50 percent of its annual~~  
2 ~~gross revenues from the retail sale of cigarettes, as defined in~~  
3 ~~Section 30003 of the Revenue and Taxation Code, or tobacco~~  
4 ~~products, as defined in Sections 30121 and 30131.1 of the Revenue~~  
5 ~~and Taxation Code.~~

6 ~~(b) Except as authorized by law, an owner, manager, proprietor~~  
7 ~~or other person in charge of any room or enclosure, within any~~  
8 ~~place of business, in which drug paraphernalia is kept, displayed~~  
9 ~~or offered in any manner, sold, furnished, transferred or given~~  
10 ~~away shall not permit or allow any person under 18 years of age~~  
11 ~~to enter, be in, remain in or visit such room or enclosure unless~~  
12 ~~such minor person is accompanied by one of his or her parents or~~  
13 ~~by his or her legal guardian.~~

14 ~~(c) Unless authorized by law, a person under 18 years of age~~  
15 ~~shall not enter, be in, remain in or visit any room or enclosure in~~  
16 ~~any place of business in which drug paraphernalia is kept, displayed~~  
17 ~~or offered in any manner, sold, furnished, transferred or given~~  
18 ~~away unless accompanied by one of his or her parents or by his or~~  
19 ~~her legal guardian.~~

20 ~~(d)~~

21 ~~(b) As used in this section, “drug paraphernalia” means all~~  
22 ~~equipment, products, and materials of any kind that are intended~~  
23 ~~for use or designed for use, in planting, propagating, cultivating,~~  
24 ~~growing, harvesting, manufacturing, compounding, converting,~~  
25 ~~producing, processing, preparing, testing, analyzing, packaging,~~  
26 ~~repackaging, storing, containing, concealing, injecting, ingesting,~~  
27 ~~inhaling, or otherwise introducing into the human body a controlled~~  
28 ~~substance. “Drug paraphernalia” includes, but is not limited to, all~~  
29 ~~of the following:~~

30 ~~(1) Kits intended for use or designed for use in planting,~~  
31 ~~propagating, cultivating, growing or harvesting of any species of~~  
32 ~~plant that is a controlled substance or from which a controlled~~  
33 ~~substance can be derived.~~

34 ~~(2) Kits intended for use or designed for use in manufacturing,~~  
35 ~~compounding, converting, producing, processing, or preparing~~  
36 ~~controlled substances.~~

37 ~~(3) Isomerization devices intended for use or designed for use~~  
38 ~~in increasing the potency of any species of plant that is a controlled~~  
39 ~~substance.~~

- 1 (4) Testing equipment intended for use or designed for use in  
2 identifying, or in analyzing the strength, effectiveness or purity of  
3 controlled substances.
- 4 (5) Scales and balances intended for use or designed for use in  
5 weighing or measuring controlled substances.
- 6 (6) Diluents and adulterants, such as quinine hydrochloride,  
7 mannitol, mannite, dextrose, and lactose, intended for use or  
8 designed for use in cutting controlled substances.
- 9 (7) Separation gins and sifters intended for use or designed for  
10 use in removing twigs and seeds from, or in otherwise cleaning or  
11 refining, marijuana.
- 12 (8) Blenders, bowls, containers, spoons, and mixing devices  
13 intended for use or designed for use in compounding controlled  
14 substances.
- 15 (9) Capsules, balloons, envelopes, and other containers intended  
16 for use or designed for use in packaging small quantities of  
17 controlled substances.
- 18 (10) Containers and other objects intended for use or designed  
19 for use in storing or concealing controlled substances.
- 20 (11) Hypodermic syringes, needles, and other objects intended  
21 for use or designed for use in parenterally injecting controlled  
22 substances into the human body.
- 23 (12) Objects intended for use or designed for use in ingesting,  
24 inhaling, or otherwise introducing marijuana, cocaine, hashish, or  
25 hashish oil into the human body, such as the following:
  - 26 (A) Metal, wooden, acrylic, glass, stone, plastic, or ceramic  
27 pipes with or without screens, permanent screens, hashish heads,  
28 or punctured metal bowls.
  - 29 (B) Water pipes.
  - 30 (C) Carburetion tubes and devices.
  - 31 (D) Smoking and carburetion masks.
  - 32 (E) Roach clips, meaning objects used to hold burning material,  
33 such as a marijuana cigarette that has become too small or too  
34 short to be held in the hand.
  - 35 (F) Miniature cocaine spoons and cocaine vials.
  - 36 (G) Chamber pipes.
  - 37 (H) Carburetor pipes.
  - 38 (I) Electric pipes.
  - 39 (J) Air-driven pipes.
  - 40 (K) Chillums.

1 (L) Bongs.

2 (M) Ice pipes or chillers.

3 ~~(e)~~

4 (c) In determining whether an object is drug paraphernalia, a  
5 court or other authority may consider, in addition to all other  
6 logically relevant factors, the following:

7 (1) Statements by an owner or by anyone in control of the object  
8 concerning its use.

9 (2) Prior convictions, if any, of an owner, or of anyone in  
10 control of the object, under any state or federal law relating to any  
11 controlled substance.

12 (3) Direct or circumstantial evidence of the intent of an owner,  
13 or of anyone in control of the object, to deliver it to persons whom  
14 he or she knows, or should reasonably know, intend to use the  
15 object to facilitate a violation of this section. The innocence of an  
16 owner, or of anyone in control of the object, as to a direct violation  
17 of this section shall not prevent a finding that the object is intended  
18 for use, or designed for use, as drug paraphernalia.

19 (4) Instructions, oral or written, provided with the object  
20 concerning its use.

21 (5) Descriptive materials accompanying the object that explain  
22 or depict its use.

23 (6) National and local advertising concerning its use.

24 (7) The manner in which the object is displayed for sale.

25 (8) Whether the owner, or anyone in control of the object, is a  
26 legitimate supplier of like or related items to the community, such  
27 as a licensed distributor or dealer of tobacco products.

28 (9) The existence and scope of legitimate uses for the object  
29 in the community.

30 (10) Expert testimony concerning its use.

31 ~~(f)~~

32 (d) This section does not apply to any of the following:

33 (1) Any pharmacist or other authorized person who sells or  
34 furnishes drug paraphernalia described in paragraph (11) of  
35 subdivision-~~(d)~~ (b) upon the prescription of a physician, dentist,  
36 podiatrist or veterinarian.

37 (2) Any physician, dentist, podiatrist or veterinarian who  
38 furnishes or prescribes drug paraphernalia described in paragraph  
39 (11) of subdivision-~~(d)~~ (b) to his or her patients.

1 (3) Any manufacturer, wholesaler or retailer licensed by the  
2 California State Board of Pharmacy to sell or transfer drug  
3 paraphernalia described in paragraph (11) of subdivision ~~(d)~~. *(b)*.  
4 ~~(g)~~  
5 *(e)* Notwithstanding any other law, including Section 11374, a  
6 violation of this section is not a criminal offense, but operation of  
7 a business in violation of the provisions of this section shall be  
8 grounds for revocation or nonrenewal of any license, permit, or  
9 other entitlement previously issued by a city, county, or city and  
10 county for the privilege of engaging in that business and shall be  
11 grounds for denial of any future license, permit, or other entitlement  
12 authorizing the conduct of that business or any other business, if  
13 the business includes the sale of drug paraphernalia.

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