

ASSEMBLY BILL

No. 2169

Introduced by Assembly Member Travis Allen

February 17, 2016

An act to amend Section 11364.5 of the Health and Safety Code, relating to drug paraphernalia.

LEGISLATIVE COUNSEL'S DIGEST

AB 2169, as introduced, Travis Allen. Drug paraphernalia retailers.

Existing law generally prohibits the operation of a place of business in which drug paraphernalia is sold unless the drug paraphernalia is kept within a separate room or enclosure to which persons under 18 years of age who are not accompanied by a parent or legal guardian are excluded. Existing law prohibits an owner 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 that room or enclosure unless accompanied by his or her parents or legal guardian. Under existing law, a violation of these provisions is not a criminal offense but is grounds for the denial, revocation, or nonrenewal of any license, permit, or other entitlement issued for the privilege of engaging in that business.

This bill would instead prohibit a person from maintaining or operating a place of business in which drug paraphernalia sold, 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, ~~no~~ a person shall
4 *not* 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 such drug paraphernalia
7 is completely and wholly kept, displayed or offered within a
8 separate room or enclosure to which persons under the age of 18
9 years not accompanied by a parent or legal guardian are excluded.
10 Each entrance to such a room or enclosure shall be signposted in
11 reasonably visible and legible words to the effect that drug
12 paraphernalia is kept, displayed or offered in such room or
13 enclosure and that minors, unless accompanied by a parent or legal
14 guardian, are excluded. *away*.

15 (b) ~~Except as authorized by law, no owner, manager, proprietor~~
16 ~~or other person in charge of any room or enclosure, within any~~
17 ~~place of business, in which drug paraphernalia is kept, displayed~~
18 ~~or offered in any manner, sold, furnished, transferred or given~~
19 ~~away shall permit or allow any person under the age of 18 years~~
20 ~~to enter, be in, remain in or visit such room or enclosure unless~~
21 ~~such minor person is accompanied by one of his or her parents or~~
22 ~~by his or her legal guardian.~~

23 (c) ~~Unless authorized by law, no person under the age of 18~~
24 ~~years shall enter, be in, remain in or visit any room or enclosure~~
25 ~~in any place of business in which drug paraphernalia is kept,~~
26 ~~displayed or offered in any manner, sold, furnished, transferred or~~
27 ~~given away unless accompanied by one of his or her parents or by~~
28 ~~his or her legal guardian.~~

29 (d)

30 (b) As used in this section, “drug paraphernalia” means all
31 equipment, products, and materials of any kind ~~which~~ *that* are
32 intended for use or designed for use, in planting, propagating,
33 cultivating, growing, harvesting, manufacturing, compounding,
34 converting, producing, processing, preparing, testing, analyzing,
35 packaging, repackaging, storing, containing, concealing, injecting,
36 ingesting, inhaling, or otherwise introducing into the human body
37 a controlled substance. “Drug paraphernalia” includes, but is not
38 limited to, all of the following:

- 1 (1) Kits intended for use or designed for use in planting,
2 propagating, cultivating, growing or harvesting of any species of
3 plant—~~which~~ *that* is a controlled substance or from which a
4 controlled substance can be derived.
- 5 (2) Kits intended for use or designed for use in manufacturing,
6 compounding, converting, producing, processing, or preparing
7 controlled substances.
- 8 (3) Isomerization devices intended for use or designed for use
9 in increasing the potency of any species of plant—~~which~~ *that* is a
10 controlled substance.
- 11 (4) Testing equipment intended for use or designed for use in
12 identifying, or in analyzing the strength, effectiveness or purity of
13 controlled substances.
- 14 (5) Scales and balances intended for use or designed for use in
15 weighing or measuring controlled substances.
- 16 (6) Diluents and adulterants, such as quinine hydrochloride,
17 mannitol, mannite, dextrose, and lactose, intended for use or
18 designed for use in cutting controlled substances.
- 19 (7) Separation gins and sifters intended for use or designed for
20 use in removing twigs and seeds from, or in otherwise cleaning or
21 refining, marijuana.
- 22 (8) Blenders, bowls, containers, spoons, and mixing devices
23 intended for use or designed for use in compounding controlled
24 substances.
- 25 (9) Capsules, balloons, envelopes, and other containers intended
26 for use or designed for use in packaging small quantities of
27 controlled substances.
- 28 (10) Containers and other objects intended for use or designed
29 for use in storing or concealing controlled substances.
- 30 (11) Hypodermic syringes, needles, and other objects intended
31 for use or designed for use in parenterally injecting controlled
32 substances into the human body.
- 33 (12) Objects intended for use or designed for use in ingesting,
34 inhaling, or otherwise introducing marijuana, cocaine, hashish, or
35 hashish oil into the human body, such as the following:
 - 36 (A) Metal, wooden, acrylic, glass, stone, plastic, or ceramic
37 pipes with or without screens, permanent screens, hashish heads,
38 or punctured metal bowls.
 - 39 (B) Water pipes.
 - 40 (C) Carburetion tubes and devices.

- 1 (D) Smoking and carburetion masks.
- 2 (E) Roach clips, meaning objects used to hold burning material,
- 3 such as a marijuana cigarette that has become too small or too
- 4 short to be held in the hand.
- 5 (F) Miniature cocaine ~~spoons~~, *spoons* and cocaine vials.
- 6 (G) Chamber pipes.
- 7 (H) Carburetor pipes.
- 8 (I) Electric pipes.
- 9 (J) Air-driven pipes.
- 10 (K) Chillums.
- 11 (L) Bongs.
- 12 (M) Ice pipes or chillers.
- 13 ~~(e)~~
- 14 (c) In determining whether an object is drug paraphernalia, a
- 15 court or other authority may consider, in addition to all other
- 16 logically relevant factors, the following:
- 17 (1) Statements by an owner or by anyone in control of the object
- 18 concerning its use.
- 19 (2) Prior convictions, if any, of an owner, or of anyone in control
- 20 of the object, under any state or federal law relating to any
- 21 controlled substance.
- 22 (3) Direct or circumstantial evidence of the intent of an owner,
- 23 or of anyone in control of the object, to deliver it to persons whom
- 24 he or she knows, or should reasonably know, intend to use the
- 25 object to facilitate a violation of this section. The innocence of an
- 26 owner, or of anyone in control of the object, as to a direct violation
- 27 of this section shall not prevent a finding that the object is intended
- 28 for use, or designed for use, as drug paraphernalia.
- 29 (4) Instructions, oral or written, provided with the object
- 30 concerning its use.
- 31 (5) ~~Descriptive materials~~, *materials* accompanying the object
- 32 ~~which~~ *that* explain or depict its use.
- 33 (6) National and local advertising concerning its use.
- 34 (7) The manner in which the object is displayed for sale.
- 35 (8) Whether the owner, or anyone in control of the object, is a
- 36 legitimate supplier of like or related items to the community, such
- 37 as a licensed distributor or dealer of tobacco products.
- 38 (9) The existence and scope of legitimate uses for the object in
- 39 the community.
- 40 (10) Expert testimony concerning its use.

1 ~~(f)~~

2 (d) This section ~~shall~~ *does* not apply to any of the following:

3 (1) Any pharmacist or other authorized person who sells or
4 furnishes drug paraphernalia described in paragraph (11) of
5 subdivision ~~(d)~~ (b) upon the prescription of a physician, dentist,
6 podiatrist or veterinarian.

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

10 (3) Any manufacturer, wholesaler or retailer licensed by the
11 California State Board of Pharmacy to sell or transfer drug
12 paraphernalia described in paragraph (11) of subdivision ~~(d)~~ (b).

13 ~~(g)~~

14 (e) Notwithstanding any other ~~provision~~ of law, including
15 Section 11374, a violation of this section ~~shall not constitute~~ *is*
16 *not* a criminal offense, but operation of a business in violation of
17 the provisions of this section shall be grounds for revocation or
18 nonrenewal of any license, permit, or other entitlement previously
19 issued by a city, county, or city and county for the privilege of
20 engaging in ~~such~~ *that* business and shall be grounds for denial of
21 any future license, permit, or other entitlement authorizing the
22 conduct of ~~such~~ *that* business or any other business, if the business
23 includes the sale of drug paraphernalia.