

ASSEMBLY BILL

No. 1811

Introduced by Assembly Member Ammiano

February 11, 2010

An act to amend Sections 11014.5, 11364.5, and 11532 of the Health and Safety Code, relating to controlled substances.

LEGISLATIVE COUNSEL'S DIGEST

AB 1811, as introduced, Ammiano. Drug paraphernalia.

Existing law makes it a crime to possess, deliver, furnish, or transfer drug paraphernalia, as specified, or to loiter in any public place with the intent to engage in drug-related activity, which intent may be shown by the possession of drug paraphernalia, and requires a business that keeps, displays, or offers drug paraphernalia to meet specified requirements with respect to minors and drug paraphernalia or be subject to the revocation, nonrenewal, or denial of a local business license, as specified. "Drug paraphernalia" is defined for purposes of these provisions to include objects designed or marketed for use in various sets relating to the production, sale, and consumption of specified controlled substances, including ingesting, inhaling, or otherwise introducing those controlled substances into the human body.

This bill would revise the definition of "drug paraphernalia" to refer to those same objects when designed or marketed for use in the unlawful conduct of those acts, including the unlawful ingesting, inhaling, or other introduction of those controlled substances into the human body.

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

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

SECTION 1. Section 11014.5 of the Health and Safety Code is amended to read:

11014.5. (a) “Drug paraphernalia” means all equipment, products, and materials of any kind which are designed for use or marketed for use, in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of this division. It includes, but is not limited to:

(1) Kits designed for use or marketed for use in planting, propagating, cultivating, growing, or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived.

(2) Kits designed for use or marketed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances.

(3) Isomerization devices designed for use or marketed for use in increasing the potency of any species of plant which is a controlled substance.

(4) Testing equipment designed for use or marketed for use in identifying, or in analyzing the strength, effectiveness, or purity of controlled substances.

(5) Scales and balances designed for use or marketed for use in weighing or measuring controlled substances.

(6) Containers and other objects designed for use or marketed for use in storing or concealing controlled substances.

(7) Hypodermic syringes, needles, and other objects designed for use or marketed for use in parenterally injecting controlled substances into the human body.

(8) Objects designed for use or marketed for use in *the unlawful* ingesting, inhaling, or otherwise introducing *of* marijuana, cocaine, hashish, or hashish oil into the human body, such as:

(A) Carburetion tubes and devices.

(B) Smoking and carburetion masks.

(C) Roach clips, meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand.

1 (D) Miniature cocaine spoons, and cocaine vials.

2 (E) Chamber pipes.

3 (F) Carburetor pipes.

4 (G) Electric pipes.

5 (H) Air-driven pipes.

6 (I) Chillums.

7 (J) Bongs.

8 (K) Ice pipes or chillers.

9 (b) For the purposes of this section, the phrase “marketed for
10 use” means advertising, distributing, offering for sale, displaying
11 for sale, or selling in a manner which promotes the use of
12 equipment, products, or materials with controlled substances *for*
13 *unlawful purposes*.

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) Instructions, oral or written, provided with the object
20 concerning its use for ingesting, inhaling, or otherwise introducing
21 a controlled substance into the human body.

22 (3) Descriptive materials accompanying the object which explain
23 or depict its use.

24 (4) National and local advertising concerning its use.

25 (5) The manner in which the object is displayed for sale.

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

29 (7) Expert testimony concerning its use.

30 (d) If any provision of this section or the application thereof to
31 any person or circumstance is held invalid, it is the intent of the
32 Legislature that the invalidity shall not affect other provisions or
33 applications of the section which can be given effect without the
34 invalid provision or application and to this end the provisions of
35 this section are severable.

36 SEC. 2. Section 11364.5 of the Health and Safety Code is
37 amended to read:

38 11364.5. (a) Except as authorized by law, no person shall
39 maintain or operate any place of business in which drug
40 paraphernalia is kept, displayed or offered in any manner, sold,

1 furnished, transferred or given away unless such drug paraphernalia
2 is completely and wholly kept, displayed or offered within a
3 separate room or enclosure to which persons under the age of 18
4 years not accompanied by a parent or legal guardian are excluded.
5 Each entrance to such a room or enclosure shall be signposted in
6 reasonably visible and legible words to the effect that drug
7 paraphernalia is kept, displayed or offered in such room or
8 enclosure and that minors, unless accompanied by a parent or legal
9 guardian, are excluded.

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

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

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

34 (1) Kits intended for use or designed for use in planting,
35 propagating, cultivating, growing or harvesting of any species of
36 plant which is a controlled substance or from which a controlled
37 substance can be derived.

38 (2) Kits intended for use or designed for use in manufacturing,
39 compounding, converting, producing, processing, or preparing
40 controlled substances.

1 (3) Isomerization devices intended for use or designed for use
2 in increasing the potency of any species of plant which is a
3 controlled substance.

4 (4) Testing equipment intended for use or designed for use in
5 identifying, or in analyzing the strength, effectiveness or purity of
6 controlled substances.

7 (5) Scales and balances intended for use or designed for use in
8 weighing or measuring controlled substances.

9 (6) Diluents and adulterants, such as quinine hydrochloride,
10 mannitol, mannite, dextrose, and lactose, intended for use or
11 designed for use in cutting controlled substances.

12 (7) Separation gins and sifters intended for use or designed for
13 use in removing twigs and seeds from, or in otherwise cleaning or
14 refining, marijuana.

15 (8) Blenders, bowls, containers, spoons, and mixing devices
16 intended for use or designed for use in compounding controlled
17 substances.

18 (9) Capsules, balloons, envelopes, and other containers intended
19 for use or designed for use in packaging small quantities of
20 controlled substances.

21 (10) Containers and other objects intended for use or designed
22 for use in storing or concealing controlled substances.

23 (11) Hypodermic syringes, needles, and other objects intended
24 for use or designed for use in parenterally injecting controlled
25 substances into the human body.

26 (12) Objects intended for use or designed for use in *the unlawful*
27 ingesting, inhaling, or otherwise introducing *of* marijuana, cocaine,
28 hashish, or hashish oil into the human body, such as the following:

29 (A) Metal, wooden, acrylic, glass, stone, plastic, or ceramic
30 pipes with or without screens, permanent screens, hashish heads,
31 or punctured metal bowls.

32 (B) Water pipes.

33 (C) Carburetion tubes and devices.

34 (D) Smoking and carburetion masks.

35 (E) Roach clips, meaning objects used to hold burning material,
36 such as a marijuana cigarette that has become too small or too
37 short to be held in the hand.

38 (F) Miniature cocaine spoons, and cocaine vials.

39 (G) Chamber pipes.

40 (H) Carburetor pipes.

1 (I) Electric pipes.

2 (J) Air-driven pipes.

3 (K) Chillums.

4 (L) Bongs.

5 (M) Ice pipes or chillers.

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

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

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

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

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

23 (5) Descriptive materials, accompanying the object which
24 explain or depict its use.

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

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

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

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

32 (10) Expert testimony concerning its use.

33 (f) This section shall not apply to any of the following:

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

38 (2) Any physician, dentist, podiatrist or veterinarian who
39 furnishes or prescribes drug paraphernalia described in paragraph
40 (11) of subdivision (d) 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).

4 (g) Notwithstanding any other provision of law, including
5 Section 11374, violation of this section shall not constitute a
6 criminal offense, but operation of a business in violation of the
7 provisions of this section shall be grounds for revocation or
8 nonrenewal of any license, permit, or other entitlement previously
9 issued by a city, county, or city and county for the privilege of
10 engaging in such business and shall be grounds for denial of any
11 future license, permit, or other entitlement authorizing the conduct
12 of such business or any other business, if the business includes the
13 sale of drug paraphernalia.

14 SEC. 3. Section 11532 of the Health and Safety Code is
15 amended to read:

16 11532. (a) It is unlawful for any person to loiter in any public
17 place in a manner and under circumstances manifesting the purpose
18 and with the intent to commit an offense specified in Chapter 6
19 (commencing with Section 11350) and Chapter 6.5 (commencing
20 with Section 11400).

21 (b) Among circumstances that may be considered in determining
22 whether a person has the requisite intent to engage in drug-related
23 activity are that the person:

24 (1) Acts as a “look-out.”

25 (2) Transfers small objects or packages for currency in a furtive
26 fashion.

27 (3) Tries to conceal himself or herself or any object that
28 reasonably could be involved in an unlawful drug-related activity.

29 (4) Uses signals or language indicative of summoning purchasers
30 of illegal drugs.

31 (5) Repeatedly beckons to, stops, attempts to stop, or engages
32 in conversations with passersby, whether on foot or in a motor
33 vehicle, indicative of summoning purchasers of illegal drugs.

34 (6) Repeatedly passes to or receives from passersby, whether
35 on foot or in a motor vehicle, money or small objects.

36 (7) Is under the influence of a controlled substance or possesses
37 narcotic or drug paraphernalia. For the purposes of this paragraph,
38 “narcotic or drug paraphernalia” means any device, contrivance,
39 instrument, or apparatus designed or marketed for the use of
40 *unlawfully* smoking, injecting, ingesting, or consuming marijuana,

1 hashish, PCP, or any controlled substance, including, but not
2 limited to, roach clips, cigarette papers, and rollers designed or
3 marketed for use in smoking a controlled substance.

4 (8) Has been convicted in any court within this state, within
5 five years prior to the arrest under this chapter, of any violation
6 involving the use, possession, or sale of any of the substances
7 referred to in Chapter 6 (commencing with Section 11350) or
8 Chapter 6.5 (commencing with Section 11400), or has been
9 convicted of any violation of those provisions or substantially
10 similar laws of any political subdivision of this state or of any
11 other state.

12 (9) Is currently subject to any order prohibiting his or her
13 presence in any high drug activity geographic area.

14 (10) Has engaged, within six months prior to the date of arrest
15 under this section, in any behavior described in this subdivision,
16 with the exception of paragraph (8), or in any other behavior
17 indicative of illegal drug-related activity.

18 (c) The list of circumstances set forth in subdivision (b) is not
19 exclusive. The circumstances set forth in subdivision (b) should
20 be considered particularly salient if they occur in an area that is
21 known for unlawful drug use and trafficking, or if they occur on
22 or in premises that have been reported to law enforcement as a
23 place suspected of unlawful drug activity. Any other relevant
24 circumstances may be considered in determining whether a person
25 has the requisite intent. Moreover, no one circumstance or
26 combination of circumstances is in itself determinative of intent.
27 Intent must be determined based on an evaluation of the particular
28 circumstances of each case.