

AMENDED IN ASSEMBLY MARCH 9, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 1811

Introduced by Assembly Member Ammiano

February 11, 2010

An act to amend Sections 11014.5, 11364.5, 11364.7, and 11532 of the Health and Safety Code, relating to controlled substances.

LEGISLATIVE COUNSEL'S DIGEST

AB 1811, as amended, 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 activities* relating to the production, sale, and consumption of specified controlled substances, including *the* ingesting, inhaling, or otherwise introducing *of* those controlled substances into the human body. *Existing law also lists specified items which are included in the definition of "drug paraphernalia."*

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. *This bill would delete the lists of specified items included in the*

definition of “drug paraphernalia” and make conforming changes to related provisions.

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 11014.5 of the Health and Safety Code
2 is amended to read:
3 11014.5. (a) “Drug paraphernalia” means all equipment,
4 products, and materials of any kind which are designed for use or
5 marketed for use, in planting, propagating, cultivating, growing,
6 harvesting, manufacturing, compounding, converting, producing,
7 processing, preparing, testing, analyzing, packaging, repackaging,
8 storing, containing, concealing, injecting, ingesting, inhaling, or
9 otherwise introducing into the human body a controlled substance
10 in violation of this division. ~~It includes, but is not limited to:~~
11 ~~(1) Kits designed for use or marketed for use in planting,~~
12 ~~propagating, cultivating, growing, or harvesting of any species of~~
13 ~~plant which is a controlled substance or from which a controlled~~
14 ~~substance can be derived.~~
15 ~~(2) Kits designed for use or marketed for use in manufacturing,~~
16 ~~compounding, converting, producing, processing, or preparing~~
17 ~~controlled substances.~~
18 ~~(3) Isomerization devices designed for use or marketed for use~~
19 ~~in increasing the potency of any species of plant which is a~~
20 ~~controlled substance.~~
21 ~~(4) Testing equipment designed for use or marketed for use in~~
22 ~~identifying, or in analyzing the strength, effectiveness, or purity~~
23 ~~of controlled substances.~~
24 ~~(5) Scales and balances designed for use or marketed for use in~~
25 ~~weighing or measuring controlled substances.~~
26 ~~(6) Containers and other objects designed for use or marketed~~
27 ~~for use in storing or concealing controlled substances.~~
28 ~~(7) Hypodermic syringes, needles, and other objects designed~~
29 ~~for use or marketed for use in parenterally injecting controlled~~
30 ~~substances into the human body.~~
31 ~~(8) Objects designed for use or marketed for use in the unlawful~~
32 ~~ingesting, inhaling, or otherwise introducing of marijuana, cocaine,~~
33 ~~hashish, or hashish oil into the human body, such as:~~

- 1 ~~(A) Carburetion tubes and devices.~~
- 2 ~~(B) Smoking and carburetion masks.~~
- 3 ~~(C) Roach clips, meaning objects used to hold burning material,~~
- 4 ~~such as a marijuana cigarette, that has become too small or too~~
- 5 ~~short to be held in the hand.~~
- 6 ~~(D) Miniature cocaine spoons, and cocaine vials.~~
- 7 ~~(E) Chamber pipes.~~
- 8 ~~(F) Carburetor pipes.~~
- 9 ~~(G) Electric pipes.~~
- 10 ~~(H) Air-driven pipes.~~
- 11 ~~(I) Chillums.~~
- 12 ~~(J) Bongs.~~
- 13 ~~(K) Ice pipes or chillers.~~

14 (b) For the purposes of this section, the phrase “marketed for
15 use” means advertising, distributing, offering for sale, displaying
16 for sale, or selling in a manner which promotes the use of
17 equipment, products, or materials with controlled substances for
18 unlawful purposes.

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

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

24 (2) Instructions, oral or written, provided with the object
25 concerning its use for ingesting, inhaling, or otherwise introducing
26 a controlled substance into the human body.

27 (3) Descriptive materials accompanying the object which explain
28 or depict its use.

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

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

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

34 (7) Expert testimony concerning its use.

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

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

11364.5. (a) Except as authorized by law, no person shall maintain or operate any place of business in which drug paraphernalia is kept, displayed or offered in any manner, sold, furnished, transferred or given away unless such drug paraphernalia is completely and wholly kept, displayed or offered within a separate room or enclosure to which persons under the age of 18 years not accompanied by a parent or legal guardian are excluded. Each entrance to such a room or enclosure shall be signposted in reasonably visible and legible words to the effect that drug paraphernalia is kept, displayed or offered in such room or enclosure and that minors, unless accompanied by a parent or legal guardian, are excluded.

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

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

(d) As used in this section, "drug paraphernalia" means all equipment, products, and materials of any kind which are intended for use or designed for use in the unlawful planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, or concealing of, or in the unlawful injecting, ingesting, inhaling, or other unlawful introduction into the human body of, a controlled substance. "Drug paraphernalia" includes, but is not limited to, all of the following:

~~(1) Kits intended for use or designed for use in planting, propagating, cultivating, growing or harvesting of any species of~~

1 ~~plant which is a controlled substance or from which a controlled~~
2 ~~substance can be derived.~~

3 ~~(2) Kits intended for use or designed for use in manufacturing,~~
4 ~~compounding, converting, producing, processing, or preparing~~
5 ~~controlled substances.~~

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

9 ~~(4) Testing equipment intended for use or designed for use in~~
10 ~~identifying, or in analyzing the strength, effectiveness or purity of~~
11 ~~controlled substances.~~

12 ~~(5) Scales and balances intended for use or designed for use in~~
13 ~~weighing or measuring controlled substances.~~

14 ~~(6) Diluents and adulterants, such as quinine hydrochloride,~~
15 ~~mannitol, mannite, dextrose, and lactose, intended for use or~~
16 ~~designed for use in cutting controlled substances.~~

17 ~~(7) Separation gins and sifters intended for use or designed for~~
18 ~~use in removing twigs and seeds from, or in otherwise cleaning or~~
19 ~~refining, marijuana.~~

20 ~~(8) Blenders, bowls, containers, spoons, and mixing devices~~
21 ~~intended for use or designed for use in compounding controlled~~
22 ~~substances.~~

23 ~~(9) Capsules, balloons, envelopes, and other containers intended~~
24 ~~for use or designed for use in packaging small quantities of~~
25 ~~controlled substances.~~

26 ~~(10) Containers and other objects intended for use or designed~~
27 ~~for use in storing or concealing controlled substances.~~

28 ~~(11) Hypodermic syringes, needles, and other objects intended~~
29 ~~for use or designed for use in parenterally injecting controlled~~
30 ~~substances into the human body.~~

31 ~~(12) Objects intended for use or designed for use in the unlawful~~
32 ~~ingesting, inhaling, or otherwise introducing of marijuana, cocaine,~~
33 ~~hashish, or hashish oil into the human body, such as the following:~~

34 ~~(A) Metal, wooden, acrylic, glass, stone, plastic, or ceramic~~
35 ~~pipes with or without screens, permanent screens, hashish heads,~~
36 ~~or punctured metal bowls.~~

37 ~~(B) Water pipes.~~

38 ~~(C) Carburetion tubes and devices.~~

39 ~~(D) Smoking and carburetion masks.~~

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

4 ~~(F) Miniature cocaine spoons, and cocaine vials.~~

5 ~~(G) Chamber pipes.~~

6 ~~(H) Carburetor pipes.~~

7 ~~(I) Electric pipes.~~

8 ~~(J) Air-driven pipes.~~

9 ~~(K) Chillums.~~

10 ~~(L) Bongs.~~

11 ~~(M) Ice pipes or chillers.~~

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

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

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

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

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

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

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

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

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

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

38 (10) Expert testimony concerning its use.

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

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

5 (2) Any physician, dentist, podiatrist or veterinarian who
6 furnishes or prescribes ~~drug paraphernalia described in paragraph~~
7 ~~(11) of subdivision (d)~~ *hypodermic needles* to his or her patients.

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

12 (4) *For the purposes of this section, "hypodermic needles"*
13 *means hypodermic syringes, needles, or other objects designed*
14 *for use or marketed for use in parenterally injecting controlled*
15 *substances into the human body.*

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

26 *SEC. 3. Section 11364.7 of the Health and Safety Code is*
27 *amended to read:*

28 11364.7. (a) Except as authorized by law, any person who
29 delivers, furnishes, or transfers, possesses with intent to deliver,
30 furnish, or transfer, or manufactures with the intent to deliver,
31 furnish, or transfer, drug paraphernalia, knowing, or under
32 circumstances where one reasonably should know, that it will be
33 used to plant, propagate, cultivate, grow, harvest, compound,
34 convert, produce, process, prepare, test, analyze, pack, repack,
35 store, contain, conceal, inject, ingest, inhale, or otherwise introduce
36 into the human body a controlled substance, except as provided
37 in subdivision (b), in violation of this division, is guilty of a
38 misdemeanor.

39 No public entity, its agents, or employees shall be subject to
40 criminal prosecution for distribution of hypodermic needles or

1 syringes to participants in clean needle and syringe exchange
2 projects authorized by the public entity pursuant to Chapter 18
3 (commencing with Section 121349) of Part 4 of Division 105.

4 (b) Except as authorized by law, any person who manufactures
5 with intent to deliver, furnish, or transfer drug paraphernalia
6 knowing, or under circumstances where one reasonably should
7 know, that it will be used to plant, propagate, cultivate, grow,
8 harvest, manufacture, compound, convert, produce, process,
9 prepare, test, analyze, pack, repack, store, contain, conceal, inject,
10 ingest, inhale, or otherwise introduce into the human body cocaine,
11 cocaine base, heroin, phencyclidine, or methamphetamine in
12 violation of this division shall be punished by imprisonment in a
13 county jail for not more than one year, or in the state prison.

14 (c) Except as authorized by law, any person, 18 years of age or
15 over, who violates subdivision (a) by delivering, furnishing, or
16 transferring drug paraphernalia to a person under 18 years of age
17 who is at least three years his or her junior, or who, upon the
18 grounds of a public or private elementary, vocational, junior high,
19 or high school, possesses a hypodermic needle, ~~as defined in~~
20 ~~paragraph (7) of subdivision (a) of Section 11014.5;~~ with the intent
21 to deliver, furnish, or transfer the hypodermic needle, knowing,
22 or under circumstances where one reasonably should know, that
23 it will be used by a person under 18 years of age to inject into the
24 human body a controlled substance, is guilty of a misdemeanor
25 and shall be punished by imprisonment in a county jail for not
26 more than one year, by a fine of not more than one thousand dollars
27 (\$1,000), or by both that imprisonment and fine.

28 (d) The violation, or the causing or the permitting of a violation,
29 of subdivision (a), (b), or (c) by a holder of a business or liquor
30 license issued by a city, county, or city and county, or by the State
31 of California, and in the course of the licensee's business shall be
32 grounds for the revocation of that license.

33 (e) All drug paraphernalia defined in Section 11014.5 is subject
34 to forfeiture and may be seized by any peace officer pursuant to
35 Section 11471.

36 (f) If any provision of this section or the application thereof to
37 any person or circumstance is held invalid, it is the intent of the
38 Legislature that the invalidity shall not affect other provisions or
39 applications of this section which can be given effect without the

1 invalid provision or application and to this end the provisions of
2 this section are severable.

3 (g) *For purposes of this section, “hypodermic needle” means*
4 *a hypodermic syringe, needle, or other object designed for use or*
5 *marketed for use in parenterally injecting controlled substances*
6 *into the human body.*

7 ~~SEC. 3.~~

8 SEC. 4. Section 11532 of the Health and Safety Code is
9 amended to read:

10 11532. (a) It is unlawful for any person to loiter in any public
11 place in a manner and under circumstances manifesting the purpose
12 and with the intent to commit an offense specified in Chapter 6
13 (commencing with Section 11350) and Chapter 6.5 (commencing
14 with Section 11400).

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

18 (1) Acts as a “look-out.”

19 (2) Transfers small objects or packages for currency in a furtive
20 fashion.

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

23 (4) Uses signals or language indicative of summoning purchasers
24 of illegal drugs.

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

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

30 (7) Is under the influence of a controlled substance or possesses
31 narcotic or drug paraphernalia. For the purposes of this paragraph,
32 “narcotic or drug paraphernalia” means any device, contrivance,
33 instrument, or apparatus designed or marketed for the use of
34 unlawfully smoking, injecting, ingesting, or consuming marijuana,
35 hashish, PCP, or any controlled substance, including, but not
36 limited to, roach clips, cigarette papers, and rollers designed or
37 marketed for use in ~~smoking~~ *the unlawful smoking of* a controlled
38 substance.

39 (8) Has been convicted in any court within this state, within
40 five years prior to the arrest under this chapter, of any violation

1 involving the use, possession, or sale of any of the substances
2 referred to in Chapter 6 (commencing with Section 11350) or
3 Chapter 6.5 (commencing with Section 11400), or has been
4 convicted of any violation of those provisions or substantially
5 similar laws of any political subdivision of this state or of any
6 other state.

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

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

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