

AMENDED IN SENATE MARCH 16, 2004

SENATE BILL

No. 1159

Introduced by Senator Vasconcellos

(Principal coauthors: Assembly Members Berg and Nation)

(Coauthors: Assembly Members Goldberg, Hancock, Jerome Horton,
Laird, and Levine)

February 2, 2004

An act to amend ~~Section 4145~~ *Sections 4145 and 4147* of, and to repeal Section 4146 of, the Business and Professions Code, to amend Section 11364 of, and to add Chapter 13.5 (commencing with Section 121285) to Part 4 of Division 105 of, the Health and Safety Code, and to amend Sections 41770 and 41900 of, and to add Section 41803 to, the Public Resources Code, relating to hypodermic needles and syringes.

LEGISLATIVE COUNSEL'S DIGEST

SB 1159, as amended, Vasconcellos. Hypodermic needles and syringes.

(1) Existing law regulates the sale, possession, and disposal of hypodermic needles and syringes. Under existing law, a prescription is required to purchase a hypodermic needle or syringe for human use, except to administer adrenaline or insulin.

This bill would authorize a licensed pharmacist, until December 31, 2008, to sell or furnish 10 or fewer hypodermic needles or syringes to a person for human use without a prescription if the pharmacy is registered with a local health department in the Disease Prevention Demonstration Project, which would be created by the bill to evaluate the long-term desirability of allowing licensed pharmacies to sell or

furnish nonprescription hypodermic needles or syringes to prevent the spread of blood-borne pathogens, including HIV and hepatitis C.

The bill would require local health departments to register pharmacies in the program and to cooperate with the Office of AIDS of the State Department of Health Services, thereby imposing a state-mandated local program. The bill would require the Office of AIDS of the State Department of Health Services, in conjunction with an advisory panel, to evaluate the effects of allowing the sale of hypodermic needles or syringes without prescription, and would require a report to be submitted to the Governor and the Legislature by January 15, 2008, subject to funding being available from federal or private sources. The demonstration program would terminate on December 31, 2008.

Alternatively, the bill would also authorize the sale or furnishing of hypodermic needles or syringes to a person for human use without a prescription if the person is known to the furnisher and has previously provided the furnisher with a prescription or other proof of a legitimate medical need.

The bill would make it unlawful to discard or dispose a hypodermic needle or syringe upon the grounds of a playground, beach, park, or any public or private elementary, vocational, junior high, or high school. The bill would make a knowing violation of this prohibition a crime, thereby imposing a state-mandated local program.

(2) Existing law requires a pharmacist to keep detailed records of nonprescription sales of hypodermic needles and syringes.

This bill would delete that requirement.

(3) Existing law prohibits the possession and sale of drug paraphernalia.

This bill, until December 31, 2008, would authorize a person to possess 10 or fewer hypodermic needles or syringes if acquired through an authorized source.

(4) Existing law requires a county or regional agency to prepare an integrated waste management plan based on submissions from cities and the county that includes a program element for the safe collection, recycling, treatment, and disposal of hazardous waste generated by households that should be separated from the solid waste stream.

This bill would authorize, as part of the update of the household waste element described above, a program to be identified for the safe collection, recycling, treatment, and disposal of household sharps



waste, defined to mean hypodermic needles, syringes, and lancets. The bill would enact other related provisions.

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.~~

~~This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.~~

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

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

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

- 1 SECTION 1. Section 4145 of the Business and Professions
- 2 Code is amended to read:
- 3 4145. (a) Notwithstanding any other provision of law, a
- 4 pharmacist or physician may, without a prescription or a permit,
- 5 furnish hypodermic needles and syringes for human use, and a
- 6 person may, without a prescription or license, obtain hypodermic
- 7 needles and syringes from a pharmacist or physician for human
- 8 use, if one of the following requirements is met:



1 (1) The person is known to the furnisher and the furnisher has
2 previously been provided a prescription or other proof of a
3 legitimate medical need requiring a hypodermic needle or syringe
4 to administer a medicine or treatment.

5 (2) For the period commencing January 1, 2005, and ending
6 December 31, 2008, a pharmacist may furnish or sell 10 or fewer
7 hypodermic needles or syringes at any one time to a person 18
8 years of age or older if the pharmacist works for a pharmacy that
9 is registered for the Disease Prevention Demonstration Project
10 pursuant to Chapter 16 (commencing with Section 121350) of Part
11 4 of Division 105 of the Health and Safety Code and the pharmacy
12 complies with the provisions of that chapter.

13 (b) Notwithstanding any other provision of law, a pharmacist,
14 veterinarian, or person licensed pursuant to Section 4141 may,
15 without a prescription or license, furnish hypodermic needles and
16 syringes for use on animals, and a person may, without a
17 prescription or license, obtain hypodermic needles and syringes
18 from a pharmacist, veterinarian, or person licensed pursuant to
19 Section 4141 for use on animals, providing that no needle or
20 syringe shall be furnished to a person who is unknown to the
21 furnisher and unable to properly establish his or her identity.

22 SEC. 2. Section 4146 of the Business and Professions Code
23 is repealed.

24 SEC. 3. *Section 4147 of the Business and Professions Code is*
25 *amended to read:*

26 4147. (a) *For the purposes of this section, “playground”*
27 *means any park or outdoor recreational area specifically designed*
28 *to be used by children that has play equipment installed or any*
29 *similar facility located on public or private school grounds or*
30 *county parks.*

31 (b) Any hypodermic needle or syringe that is to be disposed of,
32 shall be contained, treated, and disposed of, pursuant to Part 14
33 (commencing with Section 117600) of Division 104 of the Health
34 and Safety Code.

35 (c) *It is unlawful to discard or dispose of a hypodermic needle*
36 *or syringe upon the grounds of a playground, beach, park, or any*
37 *public or private elementary, vocational, junior high, or high*
38 *school.*

39 (d) *A person who knowingly violates subdivision (c) is guilty of*
40 *a misdemeanor, and upon conviction shall be punished by a fine*



1 *of not less than two hundred dollars (\$200) and not more than two*
2 *thousand dollars (\$2,000), or by imprisonment of up to six months,*
3 *or by both that fine and imprisonment.*

4 *(e) Subdivision (c) does not apply to the containment,*
5 *treatment, and disposal of medical sharps waste from medical care*
6 *or first aid services rendered on school grounds, nor to the*
7 *containment, treatment, and disposal of hypodermic needles or*
8 *syringes used for instructional or educational purposes on school*
9 *grounds.*

10 *SEC. 4.* Section 11364 of the Health and Safety Code is
11 amended to read:

12 11364. (a) It is unlawful to possess an opium pipe or any
13 device, contrivance, instrument, or paraphernalia used for
14 unlawfully injecting or smoking (1) a controlled substance
15 specified in subdivision (b), (c), or (e), or paragraph (1) of
16 subdivision (f) of Section 11054, specified in paragraph (14), (15),
17 or (20) of subdivision (d) of Section 11054, specified in
18 subdivision (b) or (c) of Section 11055, or specified in paragraph
19 (2) of subdivision (d) of Section 11055, or (2) a controlled
20 substance which is a narcotic drug classified in Schedule III, IV,
21 or V.

22 (b) This section shall not apply to hypodermic needles or
23 syringes that have been containerized for safe disposal in a
24 container that meets state and federal standards for disposal of
25 sharps waste.

26 (c) For the period commencing January 1, 2005, and ending
27 December 31, 2008, subdivision (a) shall not apply to the
28 possession solely for personal use of 10 or fewer hypodermic
29 needles or syringes if acquired from an authorized source.

30 ~~SEC. 4.~~

31 *SEC. 5.* Chapter 13.5 (commencing with Section 121285) is
32 added to Part 4 of Division 105 of the Health and Safety Code, to
33 read:

34

35 CHAPTER 13.5. DISEASE PREVENTION DEMONSTRATION PROJECT

36

37 121285. (a) The Disease Prevention Demonstration Project,
38 a collaboration between pharmacies and local and state health
39 officials, is hereby authorized for the purpose of evaluating the
40 long-term desirability of allowing licensed pharmacists to furnish



1 or sell nonprescription hypodermic needles or syringes to prevent
2 the spread of blood-borne pathogens, including HIV and hepatitis
3 C.

4 (b) The Office of AIDS shall, subject to the availability of
5 federal or private funds for these purposes, evaluate the effects of
6 allowing pharmacists to furnish or sell a limited number of
7 hypodermic needles or syringes without prescription, and provide
8 a report to the Governor and the Legislature on or before January
9 15, 2008. The report shall include, but need not be limited to, the
10 effect of nonprescription hypodermic needle or syringe sale on all
11 of the following:

12 (1) Hypodermic needle or syringe sharing practice among
13 those who inject illegal drugs.

14 (2) Rates of disease infection caused by hypodermic needle or
15 syringe sharing.

16 (3) Needlestick injuries to law enforcement officers and waste
17 management employees.

18 (4) Drug crime or other crime in the vicinity of pharmacies.

19 (5) Safe or unsafe discard of used hypodermic needles or
20 syringes.

21 (6) Rates of injection of illegal drugs.

22 (c) The Office of AIDS, subject to the availability of federal or
23 private funds for this purpose, shall convene an uncompensated
24 advisory panel comprised of all of the following: two or more
25 specialists in the control of infectious diseases; one or more
26 representatives of the California State Board of Pharmacy; one or
27 more representatives of independent pharmacies; one or more
28 representatives of chain pharmacy owners; one or more
29 representatives of law enforcement executives, such as police
30 chiefs and sheriffs; one or more representatives of rank and file law
31 enforcement officers; a specialist in hazardous waste management
32 from the State Department of Health Services; one or more
33 representatives of rank and file waste haulers; one or more
34 representatives of the waste management industry; and one or
35 more representatives of local health officers.

36 (d) Local health departments shall be responsible for all of the
37 following:

38 (1) Maintaining a list of all pharmacies within the local health
39 department's jurisdiction that have registered under the Disease
40 Prevention Demonstration Project.



1 (2) Providing pharmacies with written information that can be
2 reproduced that is to be provided in writing or orally by the
3 pharmacy at the time of furnishing or sale of nonprescription
4 hypodermic needles or syringes, including all of the following:

- 5 (A) Local options for accessing drug treatment.
- 6 (B) Local options for accessing testing and treatment for HIV
7 and hepatitis C.
- 8 (C) Local options for safe disposal of sharps waste, including,
9 if available, the locations of authorized needle exchange
10 programs, home-generated sharps consolidation points as defined
11 in Section 117904, or medical waste generators for disposal
12 pursuant to Section 118147.

13 (3) Cooperating with the Office of AIDS in the collection and
14 analysis of data relative to the evaluation of the Disease Prevention
15 Demonstration Project, as needed.

16 (e) In order to furnish or sell nonprescription hypodermic
17 needles or syringes as part of the Disease Prevention
18 Demonstration Project, a pharmacy shall do all of the following:

19 (1) Register with the local health department by providing a
20 contact name and related information, and certifying that it will
21 provide, at the time of furnishing or sale of hypodermic needles or
22 syringes, written information or verbal counseling on all of the
23 following:

- 24 (A) Local options for accessing drug treatment.
- 25 (B) Local options for accessing testing and treatment for HIV
26 and hepatitis C.
- 27 (C) Local options for safe disposal of sharps waste, including,
28 if available, the locations of authorized needle exchange
29 programs, home-generated sharps consolidation points as defined
30 in Section 117904, or medical waste generators for disposal
31 pursuant to Section 118147.

32 (2) Store hypodermic needles and syringes so that they are
33 available only to authorized personnel, and not openly available to
34 customers.

35 (3) In order to provide for the safe disposal of hypodermic
36 needles and syringes, a registered pharmacy shall provide one or
37 more of the following options:

- 38 (A) An onsite safe hypodermic needle and syringe collection
39 and disposal program.



1 (B) Furnish or make available for purchase mail-back sharps
2 disposal containers authorized by the United States Postal Service
3 that meet applicable state and federal requirements, and provide
4 tracking forms to verify destruction at a certified disposal facility.

5 (C) Furnish or make available for purchase personal sharps
6 disposal containers that meet state and federal standards for
7 disposal of medical waste.

8 (f) As used in this chapter, “sharps waste” means hypodermic
9 needles, syringes, and lancets.

10 ~~SEC. 5.~~

11 *SEC. 6.* Section 41770 of the Public Resources Code is
12 amended to read:

13 41770. (a) Except as provided in subdivision (d), each
14 countywide or regional agency integrated waste management
15 plan, and the elements thereof, shall be reviewed, revised, if
16 necessary, and submitted to the board every five years in
17 accordance with the schedule set forth under Chapter 7
18 (commencing with Section 41800).

19 (b) Any revisions to a countywide or regional agency
20 integrated waste management plan, and the elements thereof, shall
21 use a waste disposal characterization method that the board shall
22 develop for the use of the city, county, city and county, or regional
23 agency. The city, county, city and county, or regional agency shall
24 conduct waste disposal characterization studies, as prescribed by
25 the board, if it fails to meet the diversion requirements of Section
26 41780, at the time of the five-year revision of the source reduction
27 and recycling element.

28 (c) The board may review and revise its regulations governing
29 the contents of revised source reduction and recycling elements to
30 reduce duplications in one or more components of these revised
31 elements.

32 (d) On and after January 1, 2005, when a county or regional
33 agency revises its countywide or regional integrated waste
34 management plan and its elements, the city and county household
35 hazardous waste elements may be updated to include a program for
36 the safe collection, treatment, and disposal of sharps waste
37 generated by households. As used in this subdivision, “sharps
38 waste” means hypodermic needles, syringes, and lancets.

39 ~~SEC. 6.~~



1 *SEC. 7.* Section 41803 is added to the Public Resources Code,
2 to read:

3 41803. In addition to the provisions of Section 41802, any
4 household hazardous waste plan submitted to the board after
5 January 1, 2005, may include a program for the safe collection,
6 treatment, and disposal of sharps waste generated by households
7 that may include the following:

8 (a) The designation of authorized locations such as household
9 hazardous waste collection facilities, designated hospitals and
10 clinics, and fire stations, that will accept sharps waste.

11 (b) Efforts by the local agency to inform and encourage the
12 public to return sharps waste to designated collection locations.

13 (c) Efforts by the local agency to inform and encourage the
14 public to subscribe to mail-back programs authorized by the
15 United States Postal Service.

16 (d) Expenditures for the safe collection, treatment, and
17 disposal of sharps waste, consideration of the feasibility of
18 offering low-cost mail-back programs for senior and low-income
19 households.

20 As used in this section, “sharps waste” means hypodermic
21 needles, syringes, and lancets.

22 ~~SEC. 7.~~

23 *SEC. 8.* Section 41900 of the Public Resources Code is
24 amended to read:

25 41900. Each city and county shall demonstrate a funding
26 source, or sources, available to pay for preparing, adopting, and
27 implementing the element or plan, as required by this part,
28 including fees imposed pursuant to Section 41901. Plans
29 submitted after January 1, 2005, may also include the
30 identification of funding sources for the collection, treatment, and
31 disposal of sharps waste generated by households. As used in this
32 section, “sharps waste” means hypodermic needles, syringes, and
33 lancets.

34 ~~SEC. 8. Notwithstanding Section 17610 of the Government~~
35 ~~Code, if the Commission on State Mandates determines that this~~
36 ~~act contains costs mandated by the state, reimbursement to local~~
37 ~~agencies and school districts for those costs shall be made pursuant~~
38 ~~to Part 7 (commencing with Section 17500) of Division 4 of Title~~
39 ~~2 of the Government Code. If the statewide cost of the claim for~~
40 ~~reimbursement does not exceed one million dollars (\$1,000,000),~~



1 ~~reimbursement shall be made from the State Mandates Claims~~
2 ~~Fund.~~

3 *SEC. 9. No reimbursement is required by this act pursuant to*
4 *Section 6 of Article XIII B of the California Constitution for*
5 *certain costs that may be incurred by a local agency or school*
6 *district because in that regard this act creates a new crime or*
7 *infraction, eliminates a crime or infraction, or changes the penalty*
8 *for a crime or infraction, within the meaning of Section 17556 of*
9 *the Government Code, or changes the definition of a crime within*
10 *the meaning of Section 6 of Article XIII B of the California*
11 *Constitution.*

12 *However, notwithstanding Section 17610 of the Government*
13 *Code, if the Commission on State Mandates determines that this*
14 *act contains other costs mandated by the state, reimbursement to*
15 *local agencies and school districts for those costs shall be made*
16 *pursuant to Part 7 (commencing with Section 17500) of Division*
17 *4 of Title 2 of the Government Code. If the statewide cost of the*
18 *claim for reimbursement does not exceed one million dollars*
19 *(\$1,000,000), reimbursement shall be made from the State*
20 *Mandates Claims Fund.*

