

AMENDED IN ASSEMBLY JULY 2, 2004
AMENDED IN ASSEMBLY JUNE 21, 2004
AMENDED IN SENATE MAY 11, 2004
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, *Koretz*, Laird, Levine, and Vargas)

February 2, 2004

An act to amend 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, 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 State Department of Health Services, thereby imposing a state-mandated local program~~ *a pharmacy that participates in the Disease and Demonstration Project to comply with specified requirements, including registering with the State Department of Health Services.* The bill would require 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. 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 of 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) 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.~~

(4) 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.

This bill would provide that no reimbursement is required by this act for a specified reason.

(5) This bill would make the operation of its provisions contingent upon the enactment of SB 1362.

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:

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

13 (2) For the period commencing January 1, 2005, and ending
14 December 31, 2008, a pharmacist may furnish or sell 10 or fewer
15 hypodermic needles or syringes at any one time to a person 18
16 years of age or older if the pharmacist works for a pharmacy that
17 is registered for the Disease Prevention Demonstration Project
18 pursuant to Chapter 13.5 (commencing with Section 121285) of
19 Part 4 of Division 105 of the Health and Safety Code and the
20 pharmacy complies with the provisions of that chapter.



1 (b) Notwithstanding any other provision of law, a pharmacist,
2 veterinarian, or person licensed pursuant to Section 4141 may,
3 without a prescription or license, furnish hypodermic needles and
4 syringes for use on animals, and a person may, without a
5 prescription or license, obtain hypodermic needles and syringes
6 from a pharmacist, veterinarian, or person licensed pursuant to
7 Section 4141 for use on animals, providing that no needle or
8 syringe shall be furnished to a person who is unknown to the
9 furnisher and unable to properly establish his or her identity.

10 SEC. 2. Section 4146 of the Business and Professions Code
11 is repealed.

12 SEC. 3. Section 4147 of the Business and Professions Code
13 is amended to read:

14 4147. (a) For the purposes of this section, “playground”
15 means any park or outdoor recreational area specifically designed
16 to be used by children that has play equipment installed or any
17 similar facility located on public or private school grounds or
18 county parks.

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

23 (c) It is unlawful to discard or dispose of a hypodermic needle
24 or syringe upon the grounds of a playground, beach, park, or any
25 public or private elementary, vocational, junior high, or high
26 school.

27 (d) A person who knowingly violates subdivision (c) is guilty
28 of a misdemeanor, and upon conviction shall be punished by a fine
29 of not less than two hundred dollars (\$200) and not more than two
30 thousand dollars (\$2,000), or by imprisonment in a county jail for
31 up to six months, or by both that fine and imprisonment.

32 (e) Subdivision (c) does not apply to the containment,
33 treatment, and disposal of medical sharps waste from medical care
34 or first aid services rendered on school grounds, nor to the
35 containment, treatment, and disposal of hypodermic needles or
36 syringes used for instructional or educational purposes on school
37 grounds.

38 SEC. 4. Section 11364 of the Health and Safety Code is
39 amended to read:



1 11364. (a) It is unlawful to possess an opium pipe or any
2 device, contrivance, instrument, or paraphernalia used for
3 unlawfully injecting or smoking (1) a controlled substance
4 specified in subdivision (b), (c), or (e), or paragraph (1) of
5 subdivision (f) of Section 11054, specified in paragraph (14), (15),
6 or (20) of subdivision (d) of Section 11054, specified in
7 subdivision (b) or (c) of Section 11055, or specified in paragraph
8 (2) of subdivision (d) of Section 11055, or (2) a controlled
9 substance which is a narcotic drug classified in Schedule III, IV,
10 or V.

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

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

19 SEC. 5. Chapter 13.5 (commencing with Section 121285) is
20 added to Part 4 of Division 105 of the Health and Safety Code, to
21 read:

22

23 CHAPTER 13.5. DISEASE PREVENTION DEMONSTRATION PROJECT

24

25 121285. (a) The Disease Prevention Demonstration Project,
26 a collaboration between pharmacies and local and state health
27 officials, is hereby authorized for the purpose of evaluating the
28 long-term desirability of allowing licensed pharmacists to furnish
29 or sell nonprescription hypodermic needles or syringes to prevent
30 the spread of blood-borne pathogens, including HIV and hepatitis
31 C.

32 (b) The State Department of Health Services shall evaluate the
33 effects of allowing pharmacists to furnish or sell a limited number
34 of hypodermic needles or syringes without prescription, and
35 provide a report to the Governor and the Legislature on or before
36 January 15, 2008. The report shall include, but need not be limited
37 to, the effect of nonprescription hypodermic needle or syringe sale
38 on all of the following:

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



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

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

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

6 (5) Safe or unsafe discard of used hypodermic needles or
7 syringes.

8 (6) Rates of injection of illegal drugs.

9 (c) The State Department of Health Services shall convene an
10 uncompensated evaluation advisory panel comprised of all of the
11 following: two or more specialists in the control of infectious
12 diseases; one or more representatives of the California State Board
13 of Pharmacy; one or more representatives of independent
14 pharmacies; one or more representatives of chain pharmacy
15 owners; one or more representatives of law enforcement
16 executives, such as police chiefs and sheriffs; one or more
17 representatives of rank and file law enforcement officers; a
18 specialist in hazardous waste management from the State
19 Department of Health Services; one or more representatives of the
20 waste management industry; and one or more representatives of
21 local health officers.

22 (d) In order to furnish or sell nonprescription hypodermic
23 needles or syringes as part of the Disease Prevention
24 Demonstration Project, a pharmacy shall do all of the following:

25 (1) Register with the ~~local health department~~ *State Department*
26 *of Health Services* by providing a contact name and related
27 information, and certify that it will provide, at the time of
28 furnishing or sale of hypodermic needles or syringes, written
29 information or verbal counseling on all of the following:

30 (A) ~~Local options for accessing~~ *How to access* drug treatment.

31 (B) ~~Local options for accessing~~ *How to access* testing and
32 treatment for HIV and hepatitis C.

33 ~~(C) Local options for safe disposal of sharps waste, including,~~
34 ~~if available, the locations of authorized needle exchange~~
35 ~~programs, home-generated sharps consolidation points as defined~~
36 ~~in Section 117904, or medical waste generators for disposal~~
37 ~~pursuant to Section 118147.~~

38 (C) *How to safely dispose of sharps waste.*



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

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

7 (A) An onsite safe hypodermic needle and syringe collection
8 and disposal program.

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

13 (C) Furnish or make available for purchase personal sharps
14 disposal containers that meet state and federal standards for
15 disposal of medical waste.

16 ~~(e) Local health departments~~ *The State Department of Health*
17 *Services* shall be responsible for all of the following:

18 (1) Maintaining a list of all pharmacies ~~within the local health~~
19 ~~department's jurisdiction~~ that have registered under the Disease
20 Prevention Demonstration Project.

21 ~~(2) Providing pharmacies with written information that can be~~
22 ~~reproduced that is~~

23 (2) *Making available to pharmacies written information that*
24 *may be provided or reproduced* to be provided in writing or orally
25 by the pharmacy at the time of furnishing or the sale of
26 nonprescription hypodermic needles or syringes, including all of
27 the following:

28 (A) ~~Local options for accessing~~ *How to access* drug treatment.

29 (B) ~~Local options for accessing~~ *How to access* testing and
30 treatment for HIV and hepatitis C.

31 ~~(C) Local options for safe disposal of sharps waste, including,~~
32 ~~if available, the locations of authorized needle exchange~~
33 ~~programs, home-generated sharps consolidation points as defined~~
34 ~~in Section 117904, or medical waste generators for disposal~~
35 ~~pursuant to Section 118147.~~

36 ~~(3) Cooperating with the State Department of Health Services~~
37 ~~in the collection and analysis of data relative to the evaluation of~~
38 ~~the Disease Prevention Demonstration Project, as needed.~~

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



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

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

19 *SEC. 6. No reimbursement is required by this act pursuant to*
 20 *Section 6 of Article XIII B of the California Constitution because*
 21 *the only costs that may be incurred by a local agency or school*
 22 *district will be incurred because this act creates a new crime or*
 23 *infraction, eliminates a crime or infraction, or changes the penalty*
 24 *for a crime or infraction, within the meaning of Section 17556 of*
 25 *the Government Code, or changes the definition of a crime within*
 26 *the meaning of Section 6 of Article XIII B of the California*
 27 *Constitution.*

28 SEC. 7. This act shall become operative only if Senate Bill
 29 1362 of the 2003–04 Regular Session is enacted and becomes
 30 effective on or before January 1, 2005.

