

2220

2015-2016 Regular Sessions

I N S E N A T E

January 22, 2015

Introduced by Sens. RIVERA, MONTGOMERY -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the penal law, in relation to criminal possession of a controlled substance in the seventh degree; to amend the general business law, in relation to drug-related paraphernalia; to amend the public health law, in relation to the sale and possession of hypodermic syringes and needles; and to repeal section 220.45 of the penal law relating to criminally possessing a hypodermic instrument

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. The opening paragraph of section 220.03 of the penal law,
2 as amended by chapter 154 of the laws of 2011, is amended to read as
3 follows:
4 A person is guilty of criminal possession of a controlled substance in
5 the seventh degree when he or she knowingly and unlawfully possesses a
6 controlled substance; provided, however, that it shall not be a
7 violation of this section when a person possesses a residual amount of a
8 controlled substance and that residual amount is in or on a hypodermic
9 syringe or hypodermic needle [obtained and possessed pursuant to section
10 thirty-three hundred eighty-one of the public health law]; nor shall it
11 be a violation of this section when a person's unlawful possession of a
12 controlled substance is discovered as a result of seeking immediate
13 health care as defined in paragraph (b) of subdivision three of section
14 220.78 of the penal law, for either another person or him or herself
15 because such person is experiencing a drug or alcohol overdose or other
16 life threatening medical emergency as defined in paragraph (a) of subdivision three of section 220.78 of the penal law.
17 S 2. Section 220.45 of the penal law is REPEALED.
18 S 3. Subdivision 2 of section 850 of the general business law, as
19 amended by chapter 812 of the laws of 1980, is amended to read as
20 follows:
21

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets [] is old law to be omitted.

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2. (A) "Drug-related paraphernalia" consists of the following objects used for the following purposes:

[(a)] (I) Kits, used or designed for the purpose of 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;

[(b)] (II) Kits, used or designed for the purpose of manufacturing, compounding, converting, producing, or preparing controlled substances;

[(c)] (III) Isomerization devices, used or designed for the purpose of increasing the potency of any species of plant which is a controlled substance;

[(d)] (IV) Scales and balances, used or designed for the purpose of weighing or measuring controlled substances;

[(e)] (V) Diluents and adulterants, including but not limited to quinine hydrochloride, mannitol, mannite, dextrose and lactose, used or designed for the purpose of cutting controlled substances;

[(f)] (VI) Separation gins, used or designed for the purpose of removing twigs and seeds in order to clean or refine marihuana;

[(g) Hypodermic syringes, needles and other objects, used or designed for the purpose of parenterally injecting controlled substances into the human body;

(h)] AND

(VII) Objects, used or designed for the purpose of ingesting, inhaling, or otherwise introducing marihuana, cocaine, hashish, or hashish oil into the human body.

(B) "DRUG-RELATED PARAPHERNALIA" SHALL NOT INCLUDE HYPODERMIC NEEDLES, HYPODERMIC SYRINGES AND OTHER OBJECTS USED FOR THE PURPOSE OF PARENTERALLY INJECTING CONTROLLED SUBSTANCES INTO THE HUMAN BODY.

S 4. Section 3381 of the public health law, as amended by section 9-a of part B of chapter 58 of the laws of 2007, subdivisions 1, 2 and 3 as amended by chapter 178 of the laws of 2010, is amended to read as follows:

S 3381. Sale and possession of hypodermic syringes and hypodermic needles. 1. It shall be [unlawful] LAWFUL for any person to sell or furnish to another person or persons, a hypodermic syringe or hypodermic needle [except]:

(a) pursuant to a prescription of a practitioner, which for the purposes of this section shall include a patient specific prescription form as provided for in the education law; or

(b) [to persons who have been authorized by the commissioner to obtain and possess such instruments] BY AN ORGANIZATION AUTHORIZED BY THE COMMISSIONER TO CONDUCT A SYRINGE EXCHANGE PROGRAM; or

(c) by a pharmacy licensed under article one hundred thirty-seven of the education law, health care facility licensed under article twenty-eight of this chapter or a health care practitioner who is otherwise authorized to prescribe the use of hypodermic needles or syringes within his or her scope of practice; provided, however, that such sale or furnishing: (i) shall only be to a person eighteen years of age or older; AND (ii) [shall be limited to a quantity of ten or less hypodermic needles or syringes; and (iii)] shall be in accordance with subdivision [five] FOUR of this section.

2. [It shall be unlawful for any person to obtain or possess a hypodermic syringe or hypodermic needle unless such possession has been authorized by the commissioner or is pursuant to a prescription, or is pursuant to subdivision five of this section.

1 3.] Any person selling or furnishing a hypodermic syringe or hypoderm-
2 ic needle pursuant to a prescription shall record upon the prescription,
3 his or her signature or electronic signature, and the date of the sale
4 or furnishing of the hypodermic syringe or hypodermic needle. Such
5 prescription shall be retained on file for a period of five years and be
6 readily accessible for inspection by any public officer or employee
7 engaged in the enforcement of this section. Such prescription may be
8 refilled not more than the number of times specifically authorized by
9 the prescriber upon the prescription, provided however no such authori-
10 zation shall be effective for a period greater than two years from the
11 date the prescription is signed.

12 [4] 3. The commissioner shall, subject to subdivision [five] FOUR of
13 this section, designate persons, or by regulation, classes of persons
14 who may obtain hypodermic syringes and hypodermic needles without
15 prescription and the manner in which such transactions may take place
16 and the records thereof which shall be maintained.

17 [5] 4. (a) A person eighteen years of age or older may obtain and
18 possess a hypodermic syringe or hypodermic needle pursuant to paragraph
19 (c) of subdivision one of this section.

20 (b) Subject to regulations of the commissioner, a pharmacy licensed
21 under article one hundred thirty-seven of the education law, a health
22 care facility licensed under article twenty-eight of this chapter or a
23 health care practitioner who is otherwise authorized to prescribe the
24 use of hypodermic needles or syringes within his or her scope of prac-
25 tice, may obtain and possess hypodermic needles or syringes for the
26 purpose of selling or furnishing them pursuant to paragraph (c) of
27 subdivision one of this section or for the purpose of disposing of
28 them[, provided that such pharmacy, health care facility or health care
29 practitioner has registered with the department].

30 (c) Sale or furnishing of hypodermic syringes or hypodermic needles to
31 direct consumers pursuant to this subdivision by a pharmacy, health care
32 facility, or health care practitioner shall be accompanied by a safety
33 insert. Such safety insert shall be developed or approved by the commis-
34 sioner and shall include, but not be limited to, (i) information on the
35 proper use of hypodermic syringes and hypodermic needles; (ii) the risk
36 of blood borne diseases that may result from the use of hypodermic
37 syringes and hypodermic needles; (iii) methods for preventing the trans-
38 mission or contraction of blood borne diseases; (iv) proper hypodermic
39 syringe and hypodermic needle disposal practices; (v) information on the
40 dangers of injection drug use, and how to access drug treatment; (vi) a
41 toll-free phone number for information on the human immunodeficiency
42 virus; and (vii) information on the safe disposal of hypodermic syringes
43 and hypodermic needles including the relevant provisions of the environ-
44 mental conservation law relating to the unlawful release of regulated
45 medical waste. The safety insert shall be attached to or included in the
46 hypodermic syringe and hypodermic needle packaging, or shall be given to
47 the purchaser at the point of sale or furnishing in brochure form.

48 (d) In addition to the requirements of paragraph (c) of subdivision
49 one of this section, a pharmacy licensed under article one hundred thir-
50 ty-seven of the education law may sell or furnish hypodermic needles or
51 syringes only if such pharmacy[: (i) does not advertise to the public
52 the availability for retail sale or furnishing of hypodermic needles or
53 syringes without a prescription; and (ii) at any location where hypo-
54 dermic needles or syringes are kept for retail sale or furnishing,]
55 stores such needles and syringes in a manner that makes them available
56 only to authorized personnel and not openly available to customers.

1 (e) The commissioner shall promulgate rules and regulations necessary
2 to implement the provisions of this subdivision which shall include: (I)
3 STANDARDS FOR ADVERTISING TO THE PUBLIC THE AVAILABILITY FOR RETAIL SALE
4 OR FURNISHING OF HYPODERMIC SYRINGES OR NEEDLES; AND (II) a requirement
5 that such pharmacies, health care facilities and health care practition-
6 ers cooperate in a safe disposal of used hypodermic needles or syringes.

7 (f) The commissioner may, upon the finding of a violation of this
8 section, suspend for a determinate period of time the sale or furnishing
9 of syringes by a specific entity.

10 [6] 5. The provisions of this section shall not apply to farmers
11 engaged in livestock production or to those persons supplying farmers
12 engaged in livestock production, provided that:

13 (a) Hypodermic syringes and needles shall be stored in a secure,
14 locked storage container.

15 (b) At any time the department may request a document outlining:

16 (i) the number of hypodermic needles and syringes purchased over the
17 past calendar year;

18 (ii) a record of all hypodermic needles used over the past calendar
19 year; and

20 (iii) a record of all hypodermic needles and syringes destroyed over
21 the past calendar year.

22 (c) Hypodermic needles and syringes shall be destroyed in a manner
23 consistent with the provisions set forth in section thirty-three hundred
24 eighty-one-a of this article.

25 S 5. This act shall take effect immediately.