

4099

2015-2016 Regular Sessions

I N   S E N A T E

February 27, 2015

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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] *THIS ARTICLE*, for either another person or him  
15    or herself because such person is experiencing a drug or alcohol over-  
16    dose or other life threatening medical emergency as defined in paragraph  
17    (a) of subdivision three of section 220.78 of [the penal law] *THIS ARTI-*  
18    *CLE*.  
19    S 2. Section 220.45 of the penal law is REPEALED.

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

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1 S 3. Subdivision 2 of section 850 of the general business law, as  
2 amended by chapter 812 of the laws of 1980, is amended to read as  
3 follows:

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

6 [(a)] (I) Kits, used or designed for the purpose of planting, propa-  
7 gating, cultivating, growing or harvesting of any species of plant which  
8 is a controlled substance or from which a controlled substance can be  
9 derived;

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

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

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

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

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

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

25 (h)] AND

26 (VII) Objects, used or designed for the purpose of ingesting, inhal-  
27 ing, or otherwise introducing marihuana, cocaine, hashish, or hashish  
28 oil into the human body.

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

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

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

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

43 (b) to persons who have been authorized by the commissioner to obtain  
44 and possess such instruments; or

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

54 (D) UNDER SUBDIVISION THREE OF THIS SECTION.

55 2. [It shall be unlawful for any person to obtain or possess a hypo-  
56 dermic syringe or hypodermic needle unless such possession has been

1 authorized by the commissioner or is pursuant to a prescription, or is  
2 pursuant to subdivision five of this section.

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

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

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

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

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

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

1 stores such needles and syringes in a manner that makes them available  
2 only to authorized personnel and not openly available to customers.

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

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

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

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

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

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

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

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

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

27 S 5. This act shall take effect immediately.