STATE OF NEW YORK

875

2019-2020 Regular Sessions

IN SENATE

January 9, 2019

Introduced by Sens. RIVERA, HOYLMAN, KRUEGER, PARKER, SEPULVEDA, SERRANO -- 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:

Section 1. The opening paragraph of section 220.03 of the penal law, as amended by section 4 of part I of chapter 57 of the laws of 2015, is amended to read as follows:

A person is guilty of criminal possession of a controlled substance in the seventh degree when he or she knowingly and unlawfully possesses a controlled substance; provided, however, that it shall not be a violation of this section when a person possesses a residual amount of a controlled substance and that residual amount is in or on a hypodermic syringe or hypodermic needle [~~obtained and possessed pursuant to section thirty-three hundred eighty-one of the public health law, which includes the state's syringe exchange and pharmacy and medical provider based expanded syringe access programs~~]; nor shall it be a violation of this section when a person's unlawful possession of a controlled substance is discovered as a result of seeking immediate health care as defined in paragraph (b) of subdivision three of section 220.78 of [~~the penal law~~] **this article**, for either another person or him or herself because such person is experiencing a drug or alcohol overdose or other life threatening medical emergency as defined in paragraph (a) of subdivision three of section 220.78 of [~~the penal law~~] **this article**.

§ 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 Section 220.45 of the penal law is REPEALED.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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§ 3. Subdivision 2 of section 850 of the general business law, as amended by chapter 812 of the laws of 1980, is amended to read as follows:

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.

§ 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, paragraphs (e), (f) and (g) of subdivision 5 as amended by section 2 of part D of chapter 71 of the laws of 2016, is amended to read as follows:

§ 3381. Sale and possession of hypodermic syringes and hypodermic needles. 1. It shall be unlawful 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; 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[~~.~~] **; or**

(d) under subdivision three 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.~~

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

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

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

(b) Subject to regulations of the commissioner, a pharmacy licensed under article one hundred thirty-seven of the education law, a 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, may obtain and possess hypodermic needles or syringes for the purpose of selling or furnishing them pursuant to paragraph (c) of subdivision one of this section or for the purpose of disposing of them[~~, provided that such pharmacy, health care facility or health care practitioner has registered with the department~~].

(c) Sale or furnishing of hypodermic syringes or hypodermic needles to direct consumers pursuant to this subdivision by a pharmacy, health care facility, or health care practitioner shall be accompanied by a safety insert. Such safety insert shall be developed or approved by the commissioner and shall include, but not be limited to, (i) information on the proper use of hypodermic syringes and hypodermic needles; (ii) the risk of blood borne diseases that may result from the use of hypodermic syringes and hypodermic needles; (iii) methods for preventing the transmission or contraction of blood borne diseases; (iv) proper hypodermic syringe and hypodermic needle disposal practices; (v) information on the dangers of injection drug use, and how to access drug treatment; (vi) a toll-free phone number for information on the human immunodeficiency virus; and (vii) information on the safe disposal of hypodermic syringes and hypodermic needles including the relevant provisions of the environmental conservation law relating to the unlawful release of regulated medical waste. The safety insert shall be attached to or included in the hypodermic syringe and hypodermic needle packaging, or shall be given to the purchaser at the point of sale or furnishing in brochure form.

(d) In addition to the requirements of paragraph (c) of subdivision one of this section, a pharmacy licensed under article one hundred thirty-seven of the education law may sell or furnish hypodermic needles or syringes only if such pharmacy[~~: (i) does not advertise to the public the availability for retail sale or furnishing of hypodermic needles or~~

~~syringes without a prescription; and (ii) at any location where hypodermic needles or syringes are kept for retail sale or furnishing,~~] stores such needles and syringes in a manner that makes them available only to authorized personnel and not openly available to customers.

(e) A pharmacy registered under article one hundred thirty-seven of the education law may offer counseling and referral services to customers purchasing hypodermic syringes for the purpose of: preventing injection drug abuse; the provision of drug treatment; preventing and treating hepatitis C; preventing drug overdose; testing for the human immunodeficiency virus; and providing pre-exposure prophylaxis and non-occupational post-exposure prophylaxis. The content of such counseling and referral shall be at the professional discretion of the pharmacist.

(f) The commissioner shall promulgate rules and regulations necessary to implement the provisions of this subdivision which shall include**: (i) standards for advertising to the public the availability for retail sale or furnishing of hypodermic syringes or needles; and (ii)** a requirement that such pharmacies, health care facilities and health care practitioners cooperate in a safe disposal of used hypodermic needles or syringes.

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

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

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

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

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

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

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

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

§ 5. This act shall take effect immediately.