

# STATE OF NEW YORK

868

2021-2022 Regular Sessions

## IN ASSEMBLY

(Prefiled)

January 6, 2021

Introduced by M. of A. GOTTFRIED, L. ROSENTHAL, DE LA ROSA, WALKER, WEPRIN, DINOWITZ, BRONSON, ABINANTI, JOYNER, STECK, SIMON, GLICK, AUBRY, FERNANDEZ, CRUZ, EPSTEIN, REYES -- Multi-Sponsored by -- M. of A. BRAUNSTEIN, CARROLL, COOK, HEVESI, HYNDMAN, KIM, NIOU, RICHARDSON -- read once and referred 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 section 4 of part I of chapter 57 of the laws of 2015, is  
3 amended to read as 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, which includes~~  
11 ~~the state's syringe exchange and pharmacy and medical provider-based~~  
12 ~~expanded syringe access programs~~]; nor shall it be a violation of this  
13 section when a person's unlawful possession of a controlled substance is  
14 discovered as a result of seeking immediate health care as defined in  
15 paragraph (b) of subdivision three of section 220.78 of [~~the penal law~~]  
16 this article, for either another person or him or herself because such  
17 person is experiencing a drug or alcohol overdose or other life threat-

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

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1 ening medical emergency as defined in paragraph (a) of subdivision three  
2 of section 220.78 of [~~the penal law~~] this article.

3 § 2. Section 220.45 of the penal law is REPEALED.

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

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

9 [~~(a)~~] (i) Kits, used or designed for the purpose of planting, propa-  
10 gating, cultivating, growing or harvesting of any species of plant which  
11 is a controlled substance or from which a controlled substance can be  
12 derived;

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

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

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

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

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

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

28 ~~(h)]~~ and

29 (vii) Objects, used or designed for the purpose of ingesting, inhal-  
30 ing, or otherwise introducing marihuana, cocaine, hashish, or hashish  
31 oil into the human body.

32 (b) "Drug-related paraphernalia" shall not include hypodermic needles,  
33 hypodermic syringes and other objects used for the purpose of parenter-  
34 ally injecting controlled substances into the human body.

35 § 4. Section 3381 of the public health law, as amended by section 9-a  
36 of part B of chapter 58 of the laws of 2007, subdivisions 1, 2 and 3 as  
37 amended by chapter 178 of the laws of 2010, paragraphs (e), (f) and (g)  
38 of subdivision 5 as amended by section 2 of part D of chapter 71 of the  
39 laws of 2016, is amended to read as follows:

40 § 3381. Sale and possession of hypodermic syringes and hypodermic  
41 needles. 1. It shall be unlawful for any person to sell or furnish to  
42 another person or persons, a hypodermic syringe or hypodermic needle  
43 except:

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

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

49 (c) by a pharmacy licensed under article one hundred thirty-seven of  
50 the education law, health care facility licensed under article twenty-  
51 eight of this chapter or a health care practitioner who is otherwise  
52 authorized to prescribe the use of hypodermic needles or syringes within  
53 his or her scope of practice; provided, however, that such sale or  
54 furnishing: (i) shall only be to a person eighteen years of age or  
55 older; and (ii) [~~shall be limited to a quantity of ten or less hypoderm-~~

1 ~~ic needles or syringes, and (iii)]~~ shall be in accordance with subdivi-  
2 sion [~~five~~] four of this section[ ~~] ; or~~

3 (d) under subdivision three of this section.

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

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

19 [4] ~~3.~~ The commissioner shall, subject to subdivision [~~five~~] four of  
20 this section, designate persons, or by regulation, classes of persons  
21 who may obtain hypodermic syringes and hypodermic needles without  
22 prescription and the manner in which such transactions may take place  
23 and the records thereof which shall be maintained.

24 [5] ~~4.~~ (a) A person eighteen years of age or older may obtain and  
25 possess a hypodermic syringe or hypodermic needle pursuant to paragraph  
26 (c) of subdivision one of this section.

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

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

55 (d) In addition to the requirements of paragraph (c) of subdivision  
56 one of this section, a pharmacy licensed under article one hundred thir-

1 ty-seven of the education law may sell or furnish hypodermic needles or  
2 syringes only if such pharmacy[ ~~+(i) does not advertise to the public~~  
3 ~~the availability for retail sale or furnishing of hypodermic needles or~~  
4 ~~syringes without a prescription; and (ii) at any location where hypo-~~  
5 ~~dermic needles or syringes are kept for retail sale or furnishing,~~ ]  
6 stores such needles and syringes in a manner that makes them available  
7 only to authorized personnel and not openly available to customers.

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

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

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

25 [6] 5. The provisions of this section shall not apply to farmers  
26 engaged in livestock production or to those persons supplying farmers  
27 engaged in livestock production, provided that:

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

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

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

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

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

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

40 § 5. This act shall take effect immediately.