

Senate Bill No. 41

CHAPTER 738

An act to amend Sections 4144, 4145, and 4148 of, to add Section 4149.5 to, to add and repeal Sections 4144.5, 4145.5, and 4148.5 of, and to repeal Section 4140 of, the Business and Professions Code, and to amend Section 11364 of, to add Section 121281 to, and to add and repeal Section 11364.1 of, the Health and Safety Code, relating to public health.

[Approved by Governor October 9, 2011. Filed with
Secretary of State October 9, 2011.]

LEGISLATIVE COUNSEL'S DIGEST

SB 41, Yee. Hypodermic needles and syringes.

Existing law regulates the sale, possession, and disposal of hypodermic needles and syringes, and requires, with certain exceptions, a prescription to purchase a hypodermic needle or syringe for human use. Existing law prohibits any person from possessing or having under his or her control any hypodermic needle or syringe, except in accordance with those regulatory provisions.

This bill would delete the prohibition against any person possessing or having under his or her control any hypodermic needle or syringe, except in accordance with the aforementioned regulatory provisions.

Existing law, beginning January 1, 2011, and ending December 31, 2018, authorizes a county or city to authorize a licensed pharmacist to sell or furnish 10 or fewer hypodermic needles or syringes to a person 18 years of age or older for human use without a prescription if the pharmacist works for a pharmacy that is registered with a local health department in the Disease Prevention Demonstration Project, established by law to evaluate the long-term desirability of allowing licensed pharmacies to sell or furnish nonprescription hypodermic needles or syringes to prevent the spread of bloodborne pathogens, including HIV and hepatitis C.

Under existing law, it is unlawful to possess an opium pipe or any device, contrivance, instrument, or paraphernalia used for unlawfully injecting or smoking specified controlled substances.

Existing law, beginning January 1, 2011, and ending December 31, 2018, provides that the above-described provisions, pursuant to authorization from a city or county, shall not apply to the possession solely for personal use of 10 or fewer hypodermic needles or syringes.

This bill would, until January 1, 2015, make these provisions, including any local authorization, but not including the Disease Prevention Demonstration Project, inoperative, and would, in the interim, authorize a physician or pharmacist, without a prescription or a permit, to furnish 30 or fewer hypodermic needles and syringes for human use to a person 18

years of age or older and would authorize a person 18 years of age or older, without a prescription or license, to obtain 30 or fewer hypodermic needles and syringes solely for personal use from a physician or pharmacist.

This bill would, until January 1, 2015, provide that the above-described provisions making it unlawful to possess an opium pipe or any device, contrivance, instrument, or paraphernalia for unlawfully injecting or smoking certain controlled substances shall not apply to possession solely for personal use of 30 or fewer hypodermic needles or syringes if acquired from a physician, pharmacist, hypodermic needle and syringe exchange program, or any other source that is authorized by law to provide sterile syringes or hypodermic needles without a prescription.

This bill would require the state Office of AIDS to develop and maintain information on its Internet Web site to educate consumers at risk of bloodborne infections of opportunities to improve and protect their health, and to protect the public health and would also require the California State Board of Pharmacy to post, or post a link to, this information on its Internet Web site.

The Pharmacy Law authorizes a pharmacist to provide hypodermic needles and syringes without a prescription in specified circumstances. Existing law makes it a crime to knowingly violate any provision relating to the Pharmacy Law.

This bill would, until January 1, 2015, require pharmacies that furnish nonprescription hypodermic needles and syringes to store the hypodermic needles and syringes in a manner that ensures that they are not accessible to unauthorized persons, and would require pharmacies or hypodermic needle and syringe exchange programs to provide consumers with prescribed options for consumer disposal of hypodermic needles and syringes. This bill would also, until January 1, 2015, require the pharmacies to provide prescribed written information or verbal counseling at the time of furnishing or sale of nonprescription hypodermic needles or syringes. By changing the definition of an existing crime, this bill would impose a state-mandated local program.

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.

The people of the State of California do enact as follows:

SECTION 1. It is the intent of the Legislature to improve access to syringes and hypodermic needles so as to remove significant barriers for persons seeking to protect their health and the health of other persons, and to remove barriers for programs or businesses to provide sterile injection equipment and education to adults, thereby reducing the spread of communicable diseases and protecting the public health.

SEC. 2. Section 4140 of the Business and Professions Code is repealed.

SEC. 3. Section 4144 of the Business and Professions Code is amended to read:

4144. (a) A person may sell or obtain hypodermic needles and hypodermic syringes without a prescription or permit, for uses that the board determines are industrial, and that person shall not be required to comply with Section 4145 or 4146.

(b) This section shall be inoperative until January 1, 2015.

SEC. 4. Section 4144.5 is added to the Business and Professions Code, to read:

4144.5. (a) A person may sell or obtain hypodermic needles and hypodermic syringes without a prescription or permit, for uses that the board determines are industrial, and that person shall not be required to comply with Section 4145.5 or 4146.

(b) This section shall remain in effect only until January 1, 2015, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2015, deletes or extends that date.

SEC. 5. Section 4145 of the Business and Professions Code is amended to read:

4145. (a) Notwithstanding any other provision of law, a pharmacist or physician may, without a prescription or a permit, furnish hypodermic needles and syringes for human use, and a person may, without a prescription or license, obtain hypodermic needles and syringes from a pharmacist or physician for human use, if one of the following requirements is met:

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

(2) Pursuant to authorization by a county, with respect to all of the territory within the county, or a city, with respect to the territory within the city, for the period commencing January 1, 2005, and ending December 31, 2018, a pharmacist may furnish or sell 10 or fewer hypodermic needles or syringes at any one time to a person 18 years of age or older if the pharmacist works for a pharmacy that is registered with the Disease Prevention Demonstration Project pursuant to Chapter 13.5 (commencing with Section 121285) of Part 4 of Division 105 of the Health and Safety Code and the pharmacy complies with the provisions of that chapter.

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

(c) This section shall be inoperative until January 1, 2015.

SEC. 6. Section 4145.5 is added to the Business and Professions Code, to read:

4145.5. (a) Notwithstanding any other provision of law, a pharmacist or physician may, without a prescription or a permit, furnish hypodermic needles and syringes for human use, and a person may, without a prescription or license, obtain hypodermic needles and syringes from a pharmacist or physician for human use, if the person is known to the furnisher and the furnisher has previously been provided a prescription or other proof of a legitimate medical need requiring a hypodermic needle or syringe to administer a medicine or treatment.

(b) Notwithstanding any other provision of law, as a public health measure intended to prevent the transmission of HIV, viral hepatitis, and other bloodborne diseases among persons who use syringes and hypodermic needles, and to prevent subsequent infection of sexual partners, newborn children, or other persons, a physician or pharmacist may, without a prescription or a permit, furnish 30 or fewer hypodermic needles and syringes for human use to a person 18 years of age or older, and a person 18 years of age or older may, without a prescription or license, obtain 30 or fewer hypodermic needles and syringes solely for personal use from a physician or pharmacist.

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

(d) A pharmacy that furnishes nonprescription hypodermic needles and syringes shall store hypodermic needles and syringes in a manner that ensures that they are available only to authorized personnel, and are not accessible to other persons.

(e) In order to provide for the safe disposal of hypodermic needles and syringes, a pharmacy or hypodermic needle and syringe exchange program that furnishes nonprescription hypodermic needles and syringes shall provide consumers with one or more of the following disposal options:

(1) It shall establish an onsite, safe, hypodermic needle and syringe collection and disposal program that meets applicable state and federal standards for collection and disposal of medical sharps waste.

(2) It shall furnish, or make available, mail-back sharps containers authorized by the United States Postal Service that meet applicable state and federal requirements for the transport of medical sharps waste, and shall provide tracking forms to verify destruction at a certified disposal facility.

(3) It shall furnish, or make available, a sharps container that meets applicable state and federal standards for collection and disposal of medical sharps waste.

(f) A pharmacy that furnishes nonprescription syringes shall provide written information or verbal counseling to consumers at the time of furnishing or sale of nonprescription hypodermic needles or syringes on how to do the following:

- (1) Access drug treatment.
- (2) Access testing and treatment for HIV and hepatitis C.
- (3) Safely dispose of sharps waste.

(g) This section shall remain in effect only until January 1, 2015, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2015, deletes or extends that date.

SEC. 7. Section 4148 of the Business and Professions Code is amended to read:

4148. (a) All stocks of hypodermic needles or syringes shall be confiscated if found outside the licensed premises of any person holding a permit under Section 4141 and found not in the possession or under the control of a person entitled to an exemption under Section 4143, 4144, or 4145.

(b) This section shall be inoperative until January 1, 2015.

SEC. 8. Section 4148.5 is added to the Business and Professions Code, to read:

4148.5. (a) All stocks of hypodermic needles or syringes shall be confiscated if found outside the licensed premises of any person holding a permit under Section 4141 and found not in the possession or under the control of a person entitled to an exemption under Section 4143, 4144, or 4145.5, or under Section 11364.5, 121349, or 121349.1 of the Health and Safety Code.

(b) This section shall remain in effect only until January 1, 2015, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2015, deletes or extends that date.

SEC. 9. Section 4149.5 is added to the Business and Professions Code, to read:

4149.5. (a) Local authorizations related to Sections 4144, 4145, and 4148 of this code and Sections 11364 and 121285 of the Health and Safety Code shall be inoperative until January 1, 2015.

(b) Local authorizations related to Sections 4144, 4145, and 4148 of this code and Sections 11364 and 121285 of the Health and Safety Code shall again become operative on January 1, 2015, unless the city, county, or city and county acts to remove the authorization.

SEC. 10. Section 11364 of the Health and Safety Code is amended to read:

11364. (a) It is unlawful to possess an opium pipe or any device, contrivance, instrument, or paraphernalia used for unlawfully injecting or smoking (1) a controlled substance specified in subdivision (b), (c), or (e), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, specified in subdivision (b) or (c) of Section 11055, or specified in paragraph (2) of

subdivision (d) of Section 11055, or (2) a controlled substance which is a narcotic drug classified in Schedule III, IV, or V.

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

(c) Pursuant to authorization by a county, with respect to all of the territory within the county, or a city, with respect to the territory within in the city, for the period commencing January 1, 2005, and ending December 31, 2018, subdivision (a) shall not apply to the possession solely for personal use of 10 or fewer hypodermic needles or syringes if acquired from an authorized source.

(d) This section shall be inoperative until January 1, 2015.

SEC. 11. Section 11364.1 is added to the Health and Safety Code, to read:

11364.1. (a) It is unlawful to possess an opium pipe or any device, contrivance, instrument, or paraphernalia used for unlawfully injecting or smoking (1) a controlled substance specified in subdivision (b), (c), or (e), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, specified in subdivision (b) or (c) of Section 11055, or specified in paragraph (2) of subdivision (d) of Section 11055, or (2) a controlled substance which is a narcotic drug classified in Schedule III, IV, or V.

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

(c) As a public health measure intended to prevent the transmission of HIV, viral hepatitis, and other bloodborne diseases among persons who use syringes and hypodermic needles, and to prevent subsequent infection of sexual partners, newborn children, or other persons, this section shall not apply to the possession solely for personal use of 30 or fewer hypodermic needles or syringes if acquired from a physician, pharmacist, hypodermic needle and syringe exchange program, or any other source that is authorized by law to provide sterile syringes or hypodermic needles without a prescription.

(d) This section shall remain in effect only until January 1, 2015, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2015, deletes or extends that date.

SEC. 12. Section 121281 is added to the Health and Safety Code, to read:

121281. In order to assist pharmacists and pharmacy personnel in the education of consumers who are at risk of bloodborne infections regarding methods and opportunities for improving and protecting their health, and thereby protect the public health, the Office of AIDS shall develop and maintain all of the following information, on its Internet Web site, and the California State Board of Pharmacy shall also post, or maintain a link to, the information on its Internet Web site:

(a) How consumers can access testing and treatment for HIV and viral hepatitis.

(b) How consumers can safely dispose of syringes and hypodermic needles or other sharps waste.

(c) How consumers can access drug treatment.

SEC. 13. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.