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## AB-2136 Controlled substances: analyzing and testing. (2023-2024)

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### Assembly Bill No. 2136

#### CHAPTER 701

An act to amend Sections 11014.5, 11364, 11364.5, and 11364.7 of, and to add Article 5 (commencing with Section 11300) to Chapter 5 of Division 10 of, the Health and Safety Code, relating to controlled substances.

[ Approved by Governor September 27, 2024. Filed with Secretary of State September 27, 2024. ]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 2136, Jones-Sawyer. Controlled substances: analyzing and testing.

Existing law, the California Uniform Controlled Substances Act, categorizes controlled substances into 5 schedules and places the greatest restrictions on those substances contained in Schedule I. Existing law also defines drug paraphernalia and prohibits, among other things, the manufacture, sale, and possession, as specified, of drug paraphernalia. Existing law excludes from these prohibitions any testing equipment that is designed, marketed, used, or intended to be used to analyze a substance for the presence of fentanyl, ketamine, gamma hydroxybutyric acid, or any analog of fentanyl.

This bill would additionally exclude from the definition of drug paraphernalia equipment, any equipment for testing a substance for the presence of contaminants, toxic substances, hazardous compounds, or other adulterants, as specified. The bill would exclude from the criminal liability of possessing drug paraphernalia those individuals obtaining controlled substance checking services and would state that it is lawful to use, possess, or distribute equipment intended for use or designed for use in identifying, or in analyzing the strength, effectiveness, or purity of a controlled substance. The bill would authorize specified entities to provide controlled substance checking services and would define those services as the process of identifying or analyzing a substance to determine its chemical composition. The bill would provide a person engaged in providing or using those services immunity from detention, arrest, criminal prosecution, and civil liability, among other things. The bill would require a controlled substance service provider, as defined, to destroy personally identifiable information from service users and would prohibit them from providing that information to law enforcement, as specified.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

#### THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

**SECTION 1.** Section 11014.5 of the Health and Safety Code is amended to read:

**11014.5.** (a) "Drug paraphernalia" means all equipment, products, and materials of any kind that are designed for use or marketed for use, in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of this division. It includes, but is not limited to:

(1) Kits designed for use or marketed for use in planting, propagating, cultivating, growing, or harvesting of any species of plant that is a controlled substance or from which a controlled substance can be derived.

(2) Kits designed for use or marketed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances.

(3) Isomerization devices designed for use or marketed for use in increasing the potency of any species of plant that is a controlled substance.

(4) Scales and balances designed for use or marketed for use in weighing or measuring controlled substances.

(5) Containers and other objects designed for use or marketed for use in storing or concealing controlled substances.

(6) Hypodermic syringes, needles, and other objects designed for use or marketed for use in parenterally injecting controlled substances into the human body.

(7) Objects designed for use or marketed for use in ingesting, inhaling, or otherwise introducing cannabis, cocaine, hashish, or hashish oil into the human body, such as:

(A) Carburetion tubes and devices.

(B) Smoking and carburetion masks.

(C) Roach clips, meaning objects used to hold burning material, such as a cannabis cigarette, that has become too small or too short to be held in the hand.

(D) Miniature cocaine spoons, and cocaine vials.

(E) Chamber pipes.

(F) Carburetor pipes.

(G) Electric pipes.

(H) Air-driven pipes.

(I) Chillums.

(J) Bongs.

(K) Ice pipes or chillers.

(8) Testing equipment designed for use or marketed for use in identifying, or in analyzing the strength, effectiveness, or purity of, controlled substances, except as otherwise provided in subdivision (d).

(b) For the purposes of this section, the phrase "marketed for use" means advertising, distributing, offering for sale, displaying for sale, or selling in a manner that promotes the use of equipment, products, or materials with controlled substances.

(c) In determining whether an object is drug paraphernalia, a court or other authority may consider, in addition to all other logically relevant factors, the following:

(1) Statements by an owner or by anyone in control of the object concerning its use.

(2) Instructions, oral or written, provided with the object concerning its use for ingesting, inhaling, or otherwise introducing a controlled substance into the human body.

(3) Descriptive materials accompanying the object that explain or depict its use.

(4) National and local advertising concerning its use.

(5) The manner in which the object is displayed for sale.

(6) Whether the owner or anyone in control of the object is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products.

(7) Expert testimony concerning its use.

(d) Notwithstanding paragraph (8) of subdivision (a), "drug paraphernalia" does not include any testing equipment designed, marketed, intended to be used, or used, to test a substance for the presence of contaminants, toxic substances, hazardous compounds, or other adulterants, or controlled substances that include, without limitation, fentanyl, ketamine, gamma hydroxybutyric acid, or any analog of fentanyl.

(e) If any provision of this section or the application thereof to any person or circumstance is held invalid, it is the intent of the Legislature that the invalidity shall not affect other provisions or applications of the section that can be given effect without the invalid provision or application and to this end the provisions of this section are severable.

**SEC. 2.** Article 5 (commencing with Section 11300) is added to Chapter 5 of Division 10 of the Health and Safety Code, to read:

**Article 5. Controlled Substance Checking Services**

**11300.** For the purposes of this article, the following terms shall have the following meanings:

(a) "Controlled substance analog" has the same meaning as described in Section 11041.

(b) "Controlled substance checking" means the process of identifying, analyzing, or testing a substance, controlled or otherwise, or residue on drug paraphernalia or controlled substance packaging, to determine its chemical composition to assist in determining whether the substance contains contaminants, toxic substances, hazardous compounds, or other adulterants within a substance.

(c) "Controlled substance checking equipment" means equipment, products, technologies, or materials used, designed for use, or intended for use to perform chemical analysis of controlled substances or controlled substance analogs, including materials and items used by the person operating the equipment or products to store, measure, or process samples for analysis. Controlled substance checking equipment includes, but is not limited to, fentanyl test strips, other controlled substance or controlled substance analog immunoassay strips, colorimetric reagents, spectrometers such as Fourier transform infrared and Raman spectrometers, and equipment that uses high-performance liquid chromatography, gas chromatography, mass spectrometry, or nuclear magnetic resonance techniques.

(d) "Controlled substance checking service provider" means an eligible entity that provides the service of controlled substance checking. For purposes of this section, the following entities are eligible entities:

(1) An entity that provides syringe exchange services as defined in Section 121349.

(2) A research institution, college, or university.

(3) A community-based organization or nonprofit organization working in collaboration with public health departments, entities that provide syringe exchange services, or research institutions, colleges, and universities to reduce the potential harms associated with the use of controlled substances.

(e) "Controlled substance packaging" means the materials or items used by persons selling, buying, or ingesting controlled substances or controlled substance analogs to store, contain, cover, or transport small amounts of one or more controlled substances or controlled substance analogs.

(f) "Harm reduction" has the same meaning as described in subdivision (a) of Section 1954.08 of the Civil Code.

(g) "Person" means an individual, corporation, partnership, association, cooperative, limited liability company, trust, joint venture, government, political subdivision, or any other legal, commercial, or informal entity or group.

**11301.** Notwithstanding any other law, it is not a violation of this division for a controlled substance checking service provider to do any of the following solely for the purpose of providing controlled substance checking services:

(a) Receive voluntarily provided samples of substances potentially containing controlled substances or controlled substance analogs.

(b) Possess, transport, transfer, or store a sample of a controlled substance or a controlled substance analog solely for the purpose of analyzing the substance to determine its chemical composition.

(c) Use available technologies to analyze the contents of samples to obtain timely and accurate information regarding the composition of controlled substances or controlled substance analogs.

(d) Provide results of analysis obtained from controlled substance checking equipment to the person requesting controlled substance checking services.

(e) Provide information and harm reduction services and advice to help individuals make informed decisions about use of controlled substances and controlled substance analogs.

(f) Disseminate data containing only the results of analysis and containing no personally identifiable information to community members at risk of overdose.

(g) If necessary, arrange for a sample of a substance to be tested by a laboratory for secondary verification, including transportation of samples.

(h) Purchase, obtain, possess, provide, transport, distribute, use, or evaluate the use of controlled substance checking equipment.

(i) Provide training and technical assistance concerning controlled substance checking equipment, the process of controlled substance checking, and the purpose of controlled substance checking.

(j) Work in collaboration with a local health officer, the State Department of Public Health, or a research institution to conduct or engage in any activities authorized by this article.

**11302.** Notwithstanding Section 11306, in operating a controlled substance checking service, personally identifiable information may be collected from a service user providing a controlled substance or a controlled substance analog to a controlled substance checking service provider only as necessary to communicate controlled substance checking results to the service user. Personally identifiable information collected solely for the purposes of communicating controlled substance checking results shall be destroyed after delivery of results.

**11303.** (a) A program, employee, contractor, volunteer, owner, or other person acting in the good faith provision of controlled substance checking services and acting in accordance with established protocols shall not be subject to any of the following:

(1) Detention, arrest, or prosecution for a violation of this division, including for attempting to, aiding and abetting in, or conspiracy to commit a violation of this division.

(2) Forfeiture of property.

(3) Any civil or administrative penalty or liability of any kind, including disciplinary action by a professional licensing board, credentialing restrictions, contractual or civil liability, or employment action.

(4) Denial of a right or privilege for actions, conduct, or omissions relating to the operation of a controlled substance checking service in compliance with this article and any rules adopted pursuant to this article.

(b) The exemption provided in this section shall not apply to a party acting as a controlled substance checking service in a negligent manner or in bad faith.

**11304.** (a) An individual possessing a controlled substance or a controlled substance analog who is engaged in obtaining controlled substances checking services from a controlled substance checking service provider pursuant to this section shall not be subject to any criminal or civil penalty or investigation based solely on the individual's utilization of a controlled substance checking service or actions authorized by this act, including, but not limited to, any of the following:

(1) Detention or arrest.

(2) Criminal prosecution, including a violation or revocation of a grant of probation, parole, pretrial release, or any other form of community supervision.

(3) Civil, disciplinary, or administrative action.

(4) Forfeiture of property.

(5) Referral or transfer to, or detention or investigation for the purpose of referral or transfer to, United States Immigration and Customs Enforcement or any immigration authority or joint law enforcement task force as those terms are defined in Section 7284.4 of the Government Code.

(b) The exemption provided in this section shall not apply to any party utilizing a controlled substance checking service in bad faith.

**11305.** Utilizing a controlled substance checking service shall not serve as the basis for, or a fact contributing to the existence of, reasonable suspicion or probable cause for a law enforcement officer to conduct a search or seizure.

**11306.** (a) A government agency, controlled substances checking service provider, or agent thereof, shall not collect, maintain, use, or disclose any personal information relating to an individual from whom the agency receives a controlled substance or controlled substance analog for checking or disposal and shall not provide this information to law enforcement.

(b) Notwithstanding subdivision (a), collection and disclosure of aggregate information that is not linked to an individual and does not contain a personal identifier may be released to clinicians, public health officials, researchers, or other local and state agencies as requested and may be stored or uploaded onto an internet website.

**SEC. 3.** 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 that 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) This section does not apply to an individual obtaining controlled substance checking services, as described in Article 5 (commencing with Section 11300) of Chapter 5.

(d) Until January 1, 2026, 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 hypodermic needles or syringes.

**SEC. 4.** Section 11364.5 of the Health and Safety Code is amended to read:

**11364.5.** (a) Except as authorized by law, a person shall not maintain or operate a place of business in which drug paraphernalia is kept, displayed, or offered in any manner, sold, furnished, transferred, or given away unless that drug paraphernalia is completely and wholly kept, displayed, or offered within a separate room or enclosure to which persons under 18 years of age who are not accompanied by a parent or legal guardian are excluded. Each entrance to such a room or enclosure shall be signposted in reasonably visible and legible words to the effect that drug paraphernalia is kept, displayed, or offered in the room or enclosure and that minors, unless accompanied by a parent or legal guardian, are excluded.

(b) Except as authorized by law, an owner, manager, proprietor, or other person in charge of a room or enclosure, within a place of business, in which drug paraphernalia is kept, displayed, or offered in any manner, sold, furnished, transferred, or given away shall not permit or allow a person under 18 years of age to enter, be in, remain in, or visit the room or enclosure unless that minor person is accompanied by their parent or legal guardian.

(c) Unless authorized by law, a person under 18 years of age shall not enter, be in, remain in, or visit a room or enclosure in a place of business in which drug paraphernalia is kept, displayed, or offered in any manner, sold, furnished, transferred, or given away unless accompanied by their parent or legal guardian.

(d) As used in this section, "drug paraphernalia" means all equipment, products, and materials of any kind which are intended for use or designed for use, in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance. "Drug paraphernalia" includes, but is not limited to, all of the following:

(1) Kits intended for use or designed for use in planting, propagating, cultivating, growing, or harvesting of any species of plant that is a controlled substance or from which a controlled substance can be derived.

(2) Kits intended for use or designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances.

(3) Isomerization devices intended for use or designed for use in increasing the potency of any species of plant that is a controlled substance.

(4) Scales and balances intended for use or designed for use in weighing or measuring controlled substances.

(5) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose, and lactose, intended for use or designed for use in cutting controlled substances.

(6) Separation gins and sifters intended for use or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, cannabis.

(7) Blenders, bowls, containers, spoons, and mixing devices intended for use or designed for use in compounding controlled substances.

(8) Capsules, balloons, envelopes, and other containers intended for use or designed for use in packaging small quantities of controlled substances.

(9) Containers and other objects intended for use or designed for use in storing or concealing controlled substances.

(10) Hypodermic syringes, needles, and other objects intended for use or designed for use in parenterally injecting controlled substances into the human body.

(11) Objects intended for use or designed for use in ingesting, inhaling, or otherwise introducing cannabis, cocaine, hashish, or hashish oil into the human body, such as the following:

(A) Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls.

(B) Water pipes.

(C) Carburetion tubes and devices.

(D) Smoking and carburetion masks.

(E) Roach clips, meaning objects used to hold burning material, such as a cannabis cigarette that has become too small or too short to be held in the hand.

(F) Miniature cocaine spoons, and cocaine vials.

(G) Chamber pipes.

(H) Carburetor pipes.

(I) Electric pipes.

(J) Air-driven pipes.

(K) Chillums.

(L) Bongs.

(M) Ice pipes or chillers.

(12) Testing equipment designed for use or marketed for use in identifying, or in analyzing the strength, effectiveness, or purity of, controlled substances, except as otherwise provided in subdivision (g).

(e) In determining whether an object is drug paraphernalia, a court or other authority may consider, in addition to all other logically relevant factors, the following:

(1) Statements by an owner or by anyone in control of the object concerning its use.

(2) Prior convictions, if any, of an owner, or of anyone in control of the object, under any state or federal law relating to any controlled substance.

(3) Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons whom they know, or should reasonably know, intend to use the object to facilitate a violation of this section. The innocence of an owner, or of anyone in control of the object, as to a direct violation of this section shall not prevent a finding that the object is intended for use, or designed for use, as drug paraphernalia.

(4) Instructions, oral or written, provided with the object concerning its use.

(5) Descriptive materials, accompanying the object which explain or depict its use.

(6) National and local advertising concerning its use.

(7) The manner in which the object is displayed for sale.

(8) Whether the owner or anyone in control of the object is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products.

(9) The existence and scope of legitimate uses for the object in the community.

(10) Expert testimony concerning its use.

(f) This section shall not apply to any of the following:

(1) Any pharmacist or other authorized person who sells or furnishes drug paraphernalia described in paragraph (10) of subdivision (d) upon the prescription of a physician, dentist, podiatrist, or veterinarian.

(2) Any physician, dentist, podiatrist, or veterinarian who furnishes or prescribes drug paraphernalia described in paragraph (10) of subdivision (d) to a patient.

(3) Any manufacturer, wholesaler, or retailer licensed by the California State Board of Pharmacy to sell or transfer drug paraphernalia described in paragraph (10) of subdivision (d).

(g) Notwithstanding paragraph (12) of subdivision (a), "drug paraphernalia" does not include any testing equipment designed, marketed, intended to be used, or used, to test a substance for the presence of contaminants, toxic substances, hazardous compounds, or other adulterants, or controlled substances that include, without limitation, fentanyl, ketamine, gamma hydroxybutyric acid, or any analog of fentanyl.

(h) Notwithstanding any other law, including Section 11374, violation of this section shall not constitute a criminal offense, but operation of a business in violation of the provisions of this section shall be grounds for revocation or nonrenewal of any license, permit, or other entitlement previously issued by a city, county, or city and county for the privilege of engaging in such business and shall be grounds for denial of any future license, permit, or other entitlement authorizing the conduct of such business or any other business, if the business includes the sale of drug paraphernalia.

**SEC. 5.** Section 11364.7 of the Health and Safety Code is amended to read:

**11364.7.** (a) (1) Except as authorized by law, a person who delivers, furnishes, or transfers, possesses with intent to deliver, furnish, or transfer, or manufactures with the intent to deliver, furnish, or transfer, drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance, except as provided in subdivision (b), in violation of this division, is guilty of a misdemeanor.

(2) A public entity, its agents, or employees shall not be subject to criminal prosecution for distribution of hypodermic needles or syringes or any materials deemed by a local or state health department to be necessary to prevent the spread of communicable diseases, or to prevent drug overdose, injury, or disability to participants in clean needle and syringe exchange projects authorized by the public entity pursuant to Chapter 18 (commencing with Section 121349) of Part 4 of Division 105.

(b) Except as authorized by law, a person who manufactures with intent to deliver, furnish, or transfer drug paraphernalia knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body cocaine, cocaine base, heroin, phencyclidine, or methamphetamine in violation of this division shall be punished by imprisonment in a county jail for not more than one year, or in the state prison.

(c) Except as authorized by law, a person, 18 years of age or over, who violates subdivision (a) by delivering, furnishing, or transferring drug paraphernalia to a person under 18 years of age who is at least three years their junior, or who, upon the grounds of a public or private elementary, vocational, junior high, or high school, possesses a hypodermic needle, as defined in Section 11014.5, with the intent to deliver, furnish, or transfer the hypodermic needle, knowing, or under circumstances where one reasonably should know, that it will be used by a person under 18 years of age to inject into the human body a controlled substance, is guilty of a misdemeanor and shall be punished by imprisonment in a county jail for not more than one year, by a fine of not more than one thousand dollars (\$1,000), or by both that imprisonment and fine.

(d) The violation, or the causing or the permitting of a violation, of subdivision (a), (b), or (c) by a holder of a business or liquor license issued by a city, county, or city and county, or by the State of California, and in the course of the licensee's business shall be grounds for the revocation of that license.

(e) All drug paraphernalia defined in Section 11014.5 is subject to forfeiture and may be seized by any peace officer pursuant to Section 11471 unless its distribution has been authorized pursuant to subdivision (a).

(f) If any provision of this section or the application thereof to any person or circumstance is held invalid, it is the intent of the Legislature that the invalidity shall not affect other provisions or applications of this section that can be given effect without the invalid provision or application and to this end the provisions of this section are severable.

**SEC. 6.** The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.