

Amendment No. 775

Assembly Amendment to Senate Bill No. 410 First Reprint (BDR 40-451)

Proposed by: Assembly Committee on Health and Human Services

Amends: Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) *green bold underlining* is newly added transitory language.

SRT/BFG



Date: 5/20/2013

S.B. No. 410—Revises provisions governing hypodermic devices. (BDR 40-451)



SENATE BILL NO. 410—SENATORS PARKS, SPEARMAN, SEGERBLOM, KIHUEN;
ATKINSON, GUSTAVSON, JONES, MANENDO, SMITH AND WOODHOUSE

MARCH 18, 2013

JOINT SPONSORS: ASSEMBLYMEN HEALEY, OHRENSCHALL; AIZLEY, DALY, DONDERO
LOOP, FIORE, HOGAN, MARTIN, PIERCE, SPIEGEL AND SWANK

Referred to Committee on Health and Human Services

SUMMARY—Revises provisions governing hypodermic devices. (BDR 40-451)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to hypodermic devices; authorizing ~~governmental~~ certain entities ~~and certain persons~~ to establish a program for the safe distribution and disposal of hypodermic devices and certain other material; requiring the county board of health or district board of health for the county in which a sterile hypodermic device program operates to establish guidelines governing such a program; providing that the possession of a trace amount of a controlled substance is not a criminal offense in certain circumstances; removing hypodermic devices from the list of paraphernalia that is prohibited for delivery, sale, possession, manufacture or use in this State; providing that hypodermic devices may be sold or furnished without a prescription if not prohibited by federal law in certain circumstances; repealing a provision which makes it a crime to misuse a hypodermic device; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 Section 4 of this bill authorizes a governmental entity, a tax-exempt nonprofit
2 corporation, a public health program, a licensed medical facility or a person who has a tax-
3 exempt nonprofit corporation as a fiscal sponsor, to establish a program for the safe
4 distribution and disposal of hypodermic devices. Section 4.5 of this bill requires the county
5 board of health or district board of health for the county in which a sterile hypodermic
6 device program operates to establish guidelines governing such a program. Sections 5-7
7 of this bill enact provisions governing the operation of a sterile hypodermic device program,
8 including, without limitation, the training of the staff and volunteers of the program and the
9 devices, material and information that a program may provide. Section 8 of this bill provides
10 that the State, any of its political subdivisions and a sterile hypodermic device program and its
11 staff and volunteers are exempt from civil liability relating to the operation of a sterile

hypodermic device program. **Section 9** of this bill: (1) provides for the confidentiality of any record which is obtained or created in the operation of a sterile hypodermic device program; (2) provides that such records are not discoverable or admissible in criminal proceedings; (3) prohibits the use of records obtained from a sterile hypodermic device program as a basis for initiating a criminal charge, or to substantiate a criminal charge, against a person who participates in the program; and (4) provides that the staff and volunteers of a sterile hypodermic device program cannot be compelled to provide evidence in criminal proceedings concerning information known to the staff member or volunteer through the program.

Existing law prohibits the possession of a controlled substance. (NRS 453.336) **Section 11** of this bill provides that a person does not violate this provision if he or she has a trace amount of a controlled substance that is in or on a hypodermic device that was obtained from a sterile hypodermic device program.

Existing law prohibits the delivery, sale, possession or manufacture of certain drug paraphernalia when the person engaging in the act reasonably should know that it will be used for an illegal purpose. (NRS 453.560) Existing law further makes it a felony for a person to deliver drug paraphernalia to a minor who is at least 3 years younger than the person. (NRS 453.562) **Section 12** of this bill removes hypodermic devices from the list of items that may be found to constitute drug paraphernalia.

Existing law authorizes the sale of hypodermic devices which are not restricted by federal law to being sold by prescription to be sold without a prescription for certain limited purposes. (NRS 454.480) **Section 15** of this bill removes the restrictions so that hypodermic devices may be sold or furnished without a prescription for any purpose so long as the sale of such devices is not restricted by federal law.

Section 16 of this bill repeals a provision which makes it a misdemeanor to use or allow the use of a hypodermic device for a purpose other than that for which it was purchased, because the specific uses were removed in **section 15**.

WHEREAS, The human immunodeficiency virus, hepatitis and other infectious diseases that may be transmitted through the use of unsterile hypodermic devices such as syringes and needles pose a major health threat in the United States, causing thousands of deaths and millions of dollars in preventable health care costs each year; and

WHEREAS, The lack of availability of sterile hypodermic devices is a major cause of this serious health threat; and

WHEREAS, Hundreds of studies have demonstrated that making sterile hypodermic devices available to persons who inject drugs reduces the spread of infectious disease and does not encourage drug use; and

WHEREAS, The trend among states has been to deregulate the possession, sale and use of hypodermic devices and to make such devices more accessible; and

WHEREAS, Increasing access to sterile hypodermic devices is necessary to control the spread of life-threatening infectious diseases; now, therefore,

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 439 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 10, inclusive, of this act.

Sec. 2. *The Legislature hereby declares that the purpose of sections 2 to 10, inclusive, of this act is to enable the use of sterile hypodermic devices and other related material for use among people who inject drugs for the purpose of reducing the intravenous transmission of diseases. The provisions of sections 2 to 10, inclusive, of this act are intended to:*

1. Ensure the availability and accessibility of sterile hypodermic devices by encouraging distribution of such devices by various means.

2. Provide for the effective operation of sterile hypodermic device programs that protect the human rights of people who use such programs.

3. Guarantee that sterile hypodermic devices and other sterile injection supplies are not deemed illegal.

4. Ensure that sterile hypodermic device programs operate in harmony with law enforcement activities.

Sec. 3. As used in sections 2 to 10, inclusive, of this act, "sterile hypodermic device program" or "program" means a program established pursuant to section 4 of this act for the safe distribution and disposal of hypodermic devices.

Sec. 4. A governmental entity, a nonprofit corporation that is recognized as exempt under section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. § 501(c)(3), a public health program, a medical facility or a person who has a fiscal sponsor that is recognized as exempt under section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. § 501(c)(3), may establish a sterile hypodermic device program in this State.

2. As used in this section:

(a) "Medical facility" has the meaning ascribed to it in NRS 449.0151.

(b) "Public health program" has the meaning ascribed to it in NRS 454.00973.

Sec. 4.5. The county board of health or district board of health for the county in which a sterile hypodermic device program operates shall establish guidelines governing the operation of the program which provide for, without limitation:

1. The recording of the quantities of hypodermic devices distributed and collected by the program; and

2. The procedures for the safe collection and disposal of used hypodermic devices.

Sec. 5. A sterile hypodermic device program shall ~~establish~~ :

1. Establish and follow procedures for the safe collection and disposal of used hypodermic devices and other related material pursuant to guidelines established by the county board of health or district board of health for the county in which the program operates.

2. Provide community outreach and educational programs concerning:

(a) The safer use of hypodermic devices to avoid disease and infection; and

(b) The safe disposal of hypodermic devices.

3. Report the quantities of hypodermic devices distributed and collected by the program to the State Board of Health at least semiannually.

Sec. 6. All staff and volunteers of a sterile hypodermic device program shall complete training which includes, without limitation, the following information:

1. The policies and procedures of the program and relevant regulations, including, without limitation, emergency and safety policies and procedures;

2. Legal and law enforcement issues and policies regarding hypodermic devices;

3. Overdose prevention, recognition and response;

4. The risk of blood-borne diseases that may result from the use of hypodermic devices;

5. Methods for preventing the transmission or contraction of blood-borne diseases;

6. The dangers of injecting drugs and the manner in which to access treatment;

7. Information concerning the human immunodeficiency virus and hepatitis virus and the prevention of the spread of these viruses;

8. The safe disposal of hypodermic devices, including, without limitation, procedures concerning accidental needle sticks; and

9. Cultural competency, including, without limitation, sensitivity to the needs of children, lesbian, gay, bisexual and transgendered individuals, racial and ethnic minorities, women, sex workers and any other participant population.

Sec. 7. A sterile hypodermic device program may provide:

1. Sterile hypodermic devices and other related material for safer injection drug use; and

2. Information concerning:

(a) The risks associated with the use of controlled substances;

(b) Drug dependence treatment services and other health services;

(c) Support services for people with drug dependence and their families;

~~(d) The safer use of hypodermic devices to avoid disease and infection;~~

~~(e) Methods for preventing the transmission or contraction of blood-borne diseases;~~

~~(f) (e)~~ Employment and vocational training services and centers; and

~~(g) (f)~~ Legal aid services.

Sec. 8. The State, any political subdivision thereof, a sterile hypodermic device program and the staff and volunteers thereof are not subject to civil liability in relation to any act or failure to act in connection with the operation of a sterile hypodermic device program, if the act or failure to act was in good faith for the purpose of executing the provisions of sections 2 to 10, inclusive, of this act, and was not a reckless act or failure to act.

Sec. 9. 1. Any record of a person which is created or obtained for use by a sterile hypodermic device program must be kept confidential and:

(a) Is not open for public inspection or disclosure;

(b) Must not be shared with any other person or entity without the consent of the person to whom the record relates; and

(c) Must not be discoverable or admissible during any legal proceeding.

2. A record described in subsection 1 must not be used:

(a) To initiate or substantiate any criminal charge against a person who participates in the sterile hypodermic device program; or

(b) As grounds for conducting any investigation of a person who participates in the sterile hypodermic device program.

3. The staff and volunteers of a sterile hypodermic device program shall not be compelled to provide evidence in any criminal proceeding conducted pursuant to the laws of this State concerning any information that was entrusted to them or became known to them through the program.

4. The use of any personal information of any person who participates in a sterile hypodermic device program or of the staff or volunteers of the sterile hypodermic device program in research and evaluation must be done in such a manner as to guarantee the anonymity of the person.

5. Aggregate data from a sterile hypodermic device program, including, without limitation, demographic information, the number of clients contacted and the types of referrals may be made available to the public.

Sec. 10. No person shall be subject to any discrimination in the operation of a sterile hypodermic device program on the basis of race, color, religion, sex, sexual orientation, gender identity or expression, age, political affiliation, disability, national origin, residence, frequency of injection or controlled substance used.

1 **Sec. 11.** NRS 453.336 is hereby amended to read as follows:

2 453.336 1. ~~1A~~ *Except as otherwise provided in subsection 5, a person*
3 shall not knowingly or intentionally possess a controlled substance, unless the
4 substance was obtained directly from, or pursuant to, a prescription or order of a
5 physician, physician assistant licensed pursuant to chapter 630 or 633 of NRS,
6 dentist, podiatric physician, optometrist, advanced practitioner of nursing or
7 veterinarian while acting in the course of his or her professional practice, or except
8 as otherwise authorized by the provisions of NRS 453.005 to 453.552, inclusive.

9 2. Except as otherwise provided in subsections 3 and 4 and in NRS 453.3363,
10 and unless a greater penalty is provided in NRS 212.160, 453.3385, 453.339 or
11 453.3395, a person who violates this section shall be punished:

12 (a) For the first or second offense, if the controlled substance is listed in
13 schedule I, II, III or IV, for a category E felony as provided in NRS 193.130.

14 (b) For a third or subsequent offense, if the controlled substance is listed in
15 schedule I, II, III or IV, or if the offender has previously been convicted two or
16 more times in the aggregate of any violation of the law of the United States or of
17 any state, territory or district relating to a controlled substance, for a category D
18 felony as provided in NRS 193.130, and may be further punished by a fine of not
19 more than \$20,000.

20 (c) For the first offense, if the controlled substance is listed in schedule V, for a
21 category E felony as provided in NRS 193.130.

22 (d) For a second or subsequent offense, if the controlled substance is listed in
23 schedule V, for a category D felony as provided in NRS 193.130.

24 3. Unless a greater penalty is provided in NRS 212.160, 453.337 or 453.3385,
25 a person who is convicted of the possession of flunitrazepam or gamma-
26 hydroxybutyrate, or any substance for which flunitrazepam or gamma-
27 hydroxybutyrate is an immediate precursor, is guilty of a category B felony and
28 shall be punished by imprisonment in the state prison for a minimum term of not
29 less than 1 year and a maximum term of not more than 6 years.

30 4. Unless a greater penalty is provided pursuant to NRS 212.160, a person
31 who is convicted of the possession of 1 ounce or less of marijuana:

32 (a) For the first offense, is guilty of a misdemeanor and shall be:

33 (1) Punished by a fine of not more than \$600; or

34 (2) Examined by an approved facility for the treatment of abuse of drugs to
35 determine whether the person is a drug addict and is likely to be rehabilitated
36 through treatment and, if the examination reveals that the person is a drug addict
37 and is likely to be rehabilitated through treatment, assigned to a program of
38 treatment and rehabilitation pursuant to NRS 453.580.

39 (b) For the second offense, is guilty of a misdemeanor and shall be:

40 (1) Punished by a fine of not more than \$1,000; or

41 (2) Assigned to a program of treatment and rehabilitation pursuant to NRS
42 453.580.

43 (c) For the third offense, is guilty of a gross misdemeanor and shall be
44 punished as provided in NRS 193.140.

45 (d) For a fourth or subsequent offense, is guilty of a category E felony and
46 shall be punished as provided in NRS 193.130.

47 5. *It is not a violation of this section if a person possesses a trace amount of*
48 *a controlled substance and that trace amount is in or on a hypodermic device*
49 *obtained from a sterile hypodermic device program pursuant to sections 2 to 10,*
50 *inclusive, of this act.*

51 6. As used in this section ~~1, "controlled"~~ :

1 (a) “Controlled substance” includes flunitrazepam, gamma-hydroxybutyrate
2 and each substance for which flunitrazepam or gamma-hydroxybutyrate is an
3 immediate precursor.

4 (b) “Sterile hypodermic device program” has the meaning ascribed to it in
5 section 3 of this act.

6 Sec. 12. NRS 453.554 is hereby amended to read as follows:

7 453.554 ~~+~~~~A+~~~~+~~

8 1. *Except as otherwise provided in subsection 2, as* used in NRS 453.554 to
9 453.566, inclusive, unless the context otherwise requires, “drug paraphernalia”
10 means all equipment, products and materials of any kind which are used, intended
11 for use, or designed for use in planting, propagating, cultivating, growing,
12 harvesting, manufacturing, compounding, converting, producing, preparing, testing,
13 analyzing, packaging, repackaging, storing, containing, concealing, ~~injecting,~~
14 ingesting, inhaling or otherwise introducing into the human body a controlled
15 substance in violation of this chapter. The term includes, but is not limited to:

16 ~~++~~ (a) Kits used, intended for use, or designed for use in planting,
17 propagating, cultivating, growing or harvesting of any species of plant which is a
18 controlled substance or from which a controlled substance can be derived;

19 ~~++~~ (b) Kits used, intended for use, or designed for use in manufacturing,
20 compounding, converting, producing or preparing controlled substances;

21 ~~++~~ (c) Isomerization devices used, intended for use, or designed for use in
22 increasing the potency of any species of plant which is a controlled substance;

23 ~~++~~ (d) Testing equipment used, intended for use, or designed for use in
24 identifying, or in analyzing the strength, effectiveness or purity of controlled
25 substances;

26 ~~++~~ (e) Scales and balances used, intended for use, or designed for use in
27 weighing or measuring controlled substances;

28 ~~++~~ (f) Diluents and adulterants, such as quinine hydrochloride, mannitol,
29 mannite, dextrose and lactose, used, intended for use, or designed for use in cutting
30 controlled substances;

31 ~~++~~ (g) Separation gins and sifters used, intended for use, or designed for use
32 in removing twigs and seeds from, or in otherwise cleaning or refining marijuana;

33 ~~++~~ (h) Blenders, bowls, containers, spoons and mixing devices used, intended
34 for use, or designed for use in compounding controlled substances;

35 ~~++~~ (i) Capsules, balloons, envelopes and other containers used, intended for
36 use, or designed for use in packaging small quantities of controlled substances;

37 ~~++~~ (j) Containers and other objects used, intended for use, or designed for
38 use in storing or concealing controlled substances; and

39 ~~++~~ (k) Objects used, intended for use, or designed for use in ingesting,
40 inhaling or otherwise introducing marijuana, cocaine, hashish or hashish oil into the
41 human body, such as:

42 ~~++~~ (1) Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or
43 without screens, permanent screens, hashish heads or punctured metal bowls;

44 ~~++~~ (2) Water pipes;

45 ~~++~~ (3) Smoking masks;

46 ~~++~~ (4) Roach clips, which are objects used to hold burning material, such as
47 a marijuana cigarette, that has become too small or too short to be held in the hand;

48 ~~++~~ (5) Cocaine spoons and cocaine vials;

49 ~~++~~ (6) Carburetor pipes and carburetion tubes and devices;

50 ~~++~~ (7) Chamber pipes;

51 ~~++~~ (8) Electric pipes;

52 ~~++~~ (9) Air-driven pipes;

53 ~~++~~ (10) Chillums;

~~+(11)~~ (11) Bongs; and

~~+(12)~~ (12) Ice pipes or chillers.

2. The term does not include any type of hypodermic syringe, needle, instrument, device or implement intended or capable of being adapted for the purpose of administering drugs by subcutaneous, intramuscular or intravenous injection.

Sec. 13. NRS 453.560 is hereby amended to read as follows:

453.560 Unless a greater penalty is provided in NRS 212.160, a person who delivers or sells, possesses with the intent to deliver or sell, or manufactures with the intent to deliver or sell any 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, prepare, test, analyze, pack, repack, store, contain, conceal, ~~inject,~~ ingest, inhale or otherwise introduce into the human body a controlled substance in violation of this chapter is guilty of a category E felony and shall be punished as provided in NRS 193.130.

Sec. 14. NRS 453.566 is hereby amended to read as follows:

453.566 Any person who uses, or possesses with intent to use, drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, prepare, test, analyze, pack, repack, store, contain, conceal, ~~inject,~~ ingest, inhale or otherwise introduce into the human body a controlled substance in violation of this chapter is guilty of a misdemeanor.

Sec. 15. NRS 454.480 is hereby amended to read as follows:

454.480 1. Hypodermic devices which are not restricted by federal law to sale by or on the order of a physician may be sold by a pharmacist, or by a person in a pharmacy under the direction of a pharmacist, on the prescription of a physician, dentist or veterinarian, or of an advanced practitioner of nursing who is a practitioner. Those prescriptions must be filed as required by NRS 639.236, and may be refilled as authorized by the prescriber. Records of refilling must be maintained as required by NRS 639.2393 to 639.2397, inclusive.

2. Hypodermic devices which are not restricted by federal law to sale by or on the order of a physician may be sold *or furnished* without *a* prescription. ~~{for the following purposes:~~

~~—(a) For use in the treatment of persons having asthma or diabetes.~~

~~—(b) For use in injecting intramuscular or subcutaneous medications prescribed by a practitioner for the treatment of human beings.~~

~~—(c) For use in an ambulance or by a fire fighting agency for which a permit is held pursuant to NRS 450B.200 or 450B.210.~~

~~—(d) For the injection of drugs in animals or poultry.~~

~~—(e) For commercial or industrial use or use by jewelers or other merchants having need for those devices in the conduct of their business, or by hobbyists if the seller is satisfied that the device will be used for legitimate purposes.~~

~~—(f) For use by funeral directors and embalmers, licensed medical technicians or technologists, or research laboratories.~~

Sec. 16. NRS 454.520 is hereby repealed.

Sec. 17. This act becomes effective on July 1, 2013.

TEXT OF REPEALED SECTION

454.520 Misuse of hypodermic device; penalty. Any person who has lawfully obtained a hypodermic device, as provided by NRS 454.480 to 454.530, inclusive, and uses, permits or causes, directly or indirectly, such a device to be used for any purpose other than that for which it was purchased is guilty of a misdemeanor.