

**As Introduced**

**128th General Assembly  
Regular Session  
2009-2010**

**H. B. No. 274**

**Representative Yates**

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**A BILL**

To amend sections 2923.24, 2925.12, 2925.14, and 1  
3719.172 of the Revised Code to provide an 2  
affirmative defense to certain offenses involving 3  
a hypodermic or syringe that the person is 18 4  
years of age or older and possesses or otherwise 5  
obtains the hypodermic or syringe for the purpose 6  
of having a clean needle to avoid HIV exposure and 7  
to permit an authorized person to sell or furnish 8  
a hypodermic without a prescription to a person 9  
who is 18 years of age or older and who wishes to 10  
obtain it for that purpose. 11

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That sections 2923.24, 2925.12, 2925.14, and 12  
3719.172 of the Revised Code be amended to read as follows: 13

**Sec. 2923.24.** (A) No person shall possess or have under the 14  
person's control any substance, device, instrument, or article, 15  
with purpose to use it criminally. 16

(B) Each of the following constitutes prima-facie evidence of 17  
criminal purpose: 18

(1) Possession or control of any dangerous ordnance, or the 19  
materials or parts for making dangerous ordnance, in the absence 20

of circumstances indicating the dangerous ordnance, materials, or parts are intended for legitimate use;

(2) Possession or control of any substance, device, instrument, or article designed or specially adapted for criminal use;

(3) Possession or control of any substance, device, instrument, or article commonly used for criminal purposes, under circumstances indicating the item is intended for criminal use.

(C) It is an affirmative defense to a charge of a violation of this section that the person charged was eighteen years of age or older at the time of the conduct in question, that the device, instrument, or article the person possessed or had under control that is the basis of the charge was a hypodermic or syringe, and that the person possessed it or had it under control for the purpose of having a clean hypodermic or syringe to avoid exposure to a virus that causes acquired immunodeficiency syndrome.

(D) Whoever violates this section is guilty of possessing criminal tools. Except as otherwise provided in this division, possessing criminal tools is a misdemeanor of the first degree. If the circumstances indicate that the substance, device, instrument, or article involved in the offense was intended for use in the commission of a felony, possessing criminal tools is a felony of the fifth degree.

**Sec. 2925.12.** (A) No person shall knowingly make, obtain, possess, or use any instrument, article, or thing the customary and primary purpose of which is for the administration or use of a dangerous drug, other than marihuana, when the instrument involved is a hypodermic or syringe, whether or not of crude or extemporized manufacture or assembly, and the instrument, article, or thing involved has been used by the offender to unlawfully administer or use a dangerous drug, other than marihuana, or to

prepare a dangerous drug, other than marihuana, for unlawful 52  
administration or use. 53

(B)(1) This section does not apply to manufacturers, licensed 54  
health professionals authorized to prescribe drugs, pharmacists, 55  
owners of pharmacies, and other persons whose conduct was in 56  
accordance with Chapters 3719., 4715., 4723., 4729., 4730., 4731., 57  
and 4741. of the Revised Code. 58

(2) It is an affirmative defense to a charge of a violation 59  
of this section that the person charged was eighteen years of age 60  
or older at the time of the conduct in question and that the 61  
person made, obtained, possessed, or used the hypodermic or 62  
syringe that is the basis of the charge for the purpose of having 63  
a clean hypodermic or syringe to avoid exposure to a virus that 64  
causes acquired immunodeficiency syndrome. 65

(C) Whoever violates this section is guilty of possessing 66  
drug abuse instruments, a misdemeanor of the second degree. If the 67  
offender previously has been convicted of a drug abuse offense, a 68  
violation of this section is a misdemeanor of the first degree. 69

(D) In addition to any other sanction imposed upon an 70  
offender for a violation of this section, the court shall suspend 71  
for not less than six months or more than five years the 72  
offender's driver's or commercial driver's license or permit. If 73  
the offender is a professionally licensed person, in addition to 74  
any other sanction imposed for a violation of this section, the 75  
court immediately shall comply with section 2925.38 of the Revised 76  
Code. 77

**Sec. 2925.14.** (A) As used in this section, "drug 78  
paraphernalia" means any equipment, product, or material of any 79  
kind that is used by the offender, intended by the offender for 80  
use, or designed for use, in propagating, cultivating, growing, 81  
harvesting, manufacturing, compounding, converting, producing, 82

processing, preparing, testing, analyzing, packaging, repackaging,	83
storing, containing, concealing, injecting, ingesting, inhaling,	84
or otherwise introducing into the human body, a controlled	85
substance in violation of this chapter. "Drug paraphernalia"	86
includes, but is not limited to, any of the following equipment,	87
products, or materials that are used by the offender, intended by	88
the offender for use, or designed by the offender for use, in any	89
of the following manners:	90
(1) A kit for propagating, cultivating, growing, or	91
harvesting any species of a plant that is a controlled substance	92
or from which a controlled substance can be derived;	93
(2) A kit for manufacturing, compounding, converting,	94
producing, processing, or preparing a controlled substance;	95
(3) Any object, instrument, or device for manufacturing,	96
compounding, converting, producing, processing, or preparing	97
methamphetamine;	98
(4) An isomerization device for increasing the potency of any	99
species of a plant that is a controlled substance;	100
(5) Testing equipment for identifying, or analyzing the	101
strength, effectiveness, or purity of, a controlled substance;	102
(6) A scale or balance for weighing or measuring a controlled	103
substance;	104
(7) A diluent or adulterant, such as quinine hydrochloride,	105
mannitol, mannite, dextrose, or lactose, for cutting a controlled	106
substance;	107
(8) A separation gin or sifter for removing twigs and seeds	108
from, or otherwise cleaning or refining, marihuana;	109
(9) A blender, bowl, container, spoon, or mixing device for	110
compounding a controlled substance;	111
(10) A capsule, balloon, envelope, or container for packaging	112

small quantities of a controlled substance;	113
(11) A container or device for storing or concealing a controlled substance;	114 115
(12) A hypodermic syringe, needle, or instrument for parenterally injecting a controlled substance into the human body;	116 117
(13) An object, instrument, or device for ingesting, inhaling, or otherwise introducing into the human body, marihuana, cocaine, hashish, or hashish oil, such as a metal, wooden, acrylic, glass, stone, plastic, or ceramic pipe, with or without a screen, permanent screen, hashish head, or punctured metal bowl; water pipe; carburetion tube or device; smoking or carburetion mask; roach clip or similar object used to hold burning material, such as a marihuana cigarette, that has become too small or too short to be held in the hand; miniature cocaine spoon, or cocaine vial; chamber pipe; carburetor pipe; electric pipe; air driver pipe; chillum; bong; or ice pipe or chiller.	118 119 120 121 122 123 124 125 126 127 128
(B) In determining if any equipment, product, or material is drug paraphernalia, a court or law enforcement officer shall consider, in addition to other relevant factors, the following:	129 130 131
(1) Any statement by the owner, or by anyone in control, of the equipment, product, or material, concerning its use;	132 133
(2) The proximity in time or space of the equipment, product, or material, or of the act relating to the equipment, product, or material, to a violation of any provision of this chapter;	134 135 136
(3) The proximity of the equipment, product, or material to any controlled substance;	137 138
(4) The existence of any residue of a controlled substance on the equipment, product, or material;	139 140
(5) Direct or circumstantial evidence of the intent of the owner, or of anyone in control, of the equipment, product, or	141 142

material, to deliver it to any person whom the owner or person in control of the equipment, product, or material knows intends to use the object to facilitate a violation of any provision of this chapter. A finding that the owner, or anyone in control, of the equipment, product, or material, is not guilty of a violation of any other provision of this chapter does not prevent a finding that the equipment, product, or material was intended or designed by the offender for use as drug paraphernalia.

(6) Any oral or written instruction provided with the equipment, product, or material concerning its use;

(7) Any descriptive material accompanying the equipment, product, or material and explaining or depicting its use;

(8) National or local advertising concerning the use of the equipment, product, or material;

(9) The manner and circumstances in which the equipment, product, or material is displayed for sale;

(10) Direct or circumstantial evidence of the ratio of the sales of the equipment, product, or material to the total sales of the business enterprise;

(11) The existence and scope of legitimate uses of the equipment, product, or material in the community;

(12) Expert testimony concerning the use of the equipment, product, or material.

(C)(1) No person shall knowingly use, or possess with purpose to use, drug paraphernalia.

(2) No person shall knowingly sell, or possess or manufacture with purpose to sell, drug paraphernalia, if the person knows or reasonably should know that the equipment, product, or material will be used as drug paraphernalia.

(3) No person shall place an advertisement in any newspaper,

magazine, handbill, or other publication that is published and 173  
printed and circulates primarily within this state, if the person 174  
knows that the purpose of the advertisement is to promote the 175  
illegal sale in this state of the equipment, product, or material 176  
that the offender intended or designed for use as drug 177  
paraphernalia. 178

(D)(1) This section does not apply to manufacturers, licensed 179  
health professionals authorized to prescribe drugs, pharmacists, 180  
owners of pharmacies, and other persons whose conduct is in 181  
accordance with Chapters 3719., 4715., 4723., 4729., 4730., 4731., 182  
and 4741. of the Revised Code. This section shall not be construed 183  
to prohibit the possession or use of a hypodermic as authorized by 184  
section 3719.172 of the Revised Code. 185

(2) It is an affirmative defense to a charge of a violation 186  
of division (C)(1) of this section that the person charged was 187  
eighteen years of age or older at the time of the conduct in 188  
question, that the drug paraphernalia the person used, or 189  
possessed with purpose to use, that is the basis of the charge was 190  
a hypodermic syringe, needle, or instrument for parenterally 191  
injecting a controlled substance into the human body, and that the 192  
person used or possessed it for the purpose of having a clean 193  
hypodermic syringe, needle, or instrument to avoid exposure to a 194  
virus that causes acquired immunodeficiency syndrome. 195

(3) Division (C)(2) of this section does not apply to a 196  
person who sells, or possesses with purpose to sell, drug 197  
paraphernalia if the drug paraphernalia that the person sells, or 198  
possesses with purpose to sell, is a hypodermic syringe, needle, 199  
or instrument for parenterally injecting a controlled substance 200  
into the human body, if the person sells it, or possesses it with 201  
the purpose to sell it, to another person who informs the person 202  
who sells it, or possesses it with purpose to sell it, that the 203  
other person wishes to obtain it for the purpose of having a clean 204

hypodermic syringe, needle, or instrument to avoid exposure to a 205  
virus that causes acquired immunodeficiency syndrome, and if the 206  
other person is eighteen years of age or older at the time of the 207  
conduct in question. 208

(E) Notwithstanding Chapter 2981. of the Revised Code, any 209  
drug paraphernalia that was used, possessed, sold, or manufactured 210  
in a violation of this section shall be seized, after a conviction 211  
for that violation shall be forfeited, and upon forfeiture shall 212  
be disposed of pursuant to division (B) of section 2981.12 of the 213  
Revised Code. 214

(F)(1) Whoever violates division (C)(1) of this section is 215  
guilty of illegal use or possession of drug paraphernalia, a 216  
misdemeanor of the fourth degree. 217

(2) Except as provided in division (F)(3) of this section, 218  
whoever violates division (C)(2) of this section is guilty of 219  
dealing in drug paraphernalia, a misdemeanor of the second degree. 220

(3) Whoever violates division (C)(2) of this section by 221  
selling drug paraphernalia to a juvenile is guilty of selling drug 222  
paraphernalia to juveniles, a misdemeanor of the first degree. 223

(4) Whoever violates division (C)(3) of this section is 224  
guilty of illegal advertising of drug paraphernalia, a misdemeanor 225  
of the second degree. 226

(G) In addition to any other sanction imposed upon an 227  
offender for a violation of this section, the court shall suspend 228  
for not less than six months or more than five years the 229  
offender's driver's or commercial driver's license or permit. If 230  
the offender is a professionally licensed person, in addition to 231  
any other sanction imposed for a violation of this section, the 232  
court immediately shall comply with section 2925.38 of the Revised 233  
Code. 234



Sec. 3719.172. (A) Possession of a hypodermic is authorized	235
for the following:	236
(1) A manufacturer or distributor of, or dealer in,	237
hypodermics or medication packaged in hypodermics, and any	238
authorized agent or employee of that manufacturer, distributor, or	239
dealer, in the regular course of business;	240
(2) A terminal distributor of dangerous drugs, in the regular	241
course of business;	242
(3) A person authorized to administer injections, in the	243
regular course of the person's profession or employment;	244
(4) A person, when the hypodermic was lawfully obtained and	245
is kept and used for the purpose of self-administration of insulin	246
or other drug prescribed for the treatment of disease by a	247
licensed health professional authorized to prescribe drugs;	248
(5) A person whose use of a hypodermic is for legal research,	249
clinical, educational, or medicinal purposes;	250
(6) A farmer, for the lawful administration of a drug to an	251
animal;	252
(7) A person whose use of a hypodermic is for lawful	253
professional, mechanical, trade, or craft purposes.	254
(B) No manufacturer or distributor of, or dealer in,	255
hypodermics or medication packaged in hypodermics, or their	256
authorized agents or employees, and no terminal distributor of	257
dangerous drugs, shall display any hypodermic for sale. No person	258
authorized to possess a hypodermic pursuant to division (A) of	259
this section shall negligently fail to take reasonable precautions	260
to prevent any hypodermic in the person's possession from theft or	261
acquisition by any unauthorized person.	262
(C) No person other than one of the following shall sell or	263
furnish a hypodermic to another person:	264

(1) A manufacturer or distributor of, or dealer in, 265  
hypodermics or medication packaged in hypodermics, or their 266  
authorized agents or employees; 267

(2) A terminal distributor of dangerous drugs; 268

(3) A person under the direct supervision of a pharmacist; 269

(4) A licensed health professional authorized to prescribe 270  
drugs, acting in the regular course of business and as permitted 271  
by law; 272

(5) An individual who holds a current license, certificate, 273  
or registration issued under Title 47 of the Revised Code and has 274  
been certified to conduct diabetes education by a national 275  
certifying body specified in rules adopted by the state board of 276  
pharmacy under section 4729.68 of the Revised Code, but only if 277  
diabetes education is within the individual's scope of practice 278  
under statutes and rules regulating the individual's profession. 279

(D)(1) No person shall sell or furnish a hypodermic to 280  
another whom the person knows or has reasonable cause to believe 281  
is not authorized by division (A) of this section to possess a 282  
hypodermic. 283

(2) Division (D)(1) of this section does not apply to a 284  
person who sells or furnishes a hypodermic to another whom the 285  
person knows or has reasonable cause to believe is not authorized 286  
by division (A) of this section to possess a hypodermic if the 287  
other person is eighteen years of age or older at the time of the 288  
sale or furnishing and if the other person informs the person who 289  
sells or furnishes the hypodermic that the other person wishes to 290  
obtain it for the purpose of having a clean hypodermic to avoid 291  
exposure to a virus that causes acquired immunodeficiency 292  
syndrome. 293

(E) A person who is eighteen years of age or older and who 294  
wishes to obtain a hypodermic for the purpose of having a clean 295

hypodermic to avoid exposure to a virus that causes acquired 296  
immunodeficiency syndrome may obtain the hypodermic from a person 297  
described in division (C) of this section without a prescription, 298  
by informing the person described in division (C) of this section 299  
that the person wishes to obtain it for that purpose. A person 300  
described in division (C) of this section may sell or furnish a 301  
hypodermic to another person without a prescription if the other 302  
person is eighteen years of age or older at the time of the sale 303  
or furnishing and if the other person, in accordance with this 304  
division, informs the person described in division (C) of this 305  
section that the other person wishes to obtain it for the purpose 306  
of having a clean hypodermic to avoid exposure to a virus that 307  
causes acquired immunodeficiency syndrome. A person described in 308  
division (C) of this section who, in accordance with this 309  
division, sells or furnishes a hypodermic without a prescription 310  
to another person who is eighteen years of age or older at the 311  
time of the sale or furnishing is immune from any criminal 312  
liability and from any civil damages for any injury, death, or 313  
loss to person or property, that allegedly resulted from or is 314  
related to the sale or furnishing of the hypodermic to the other 315  
person. 316

**Section 2.** That existing sections 2923.24, 2925.12, 2925.14, 317  
and 3719.172 of the Revised Code are hereby repealed. 318