

## RESOLUTION 14-02-2017

### DIGEST

#### Marijuana: Remove Penalties for Possession in Vehicles.

Amends Health and Safety Code section 11362.3 to remove penalties for possession of open marijuana containers while operating, or riding in, a vehicle in California.

### RESOLUTIONS COMMITTEE RECOMMENDATION

#### APPROVE IN PRINCIPLE

#### History:

No similar resolutions found.

#### Reasons:

This resolution amends Health and Safety Code section 11362.3 to remove penalties for possession of open marijuana containers while operating, or riding in, a vehicle in California. This resolution should be approved in principle because, unlike alcohol, marijuana is not a time-sensitive consumable that would likely be consumed by the vehicle's operator merely because the container is open or the marijuana is loose from any packaging.

Proposition 64 passed in 2016, adding section 11362.3, among others, to the Health and Safety Code. Health and Safety Code section 11362.3, subdivision (a) states that none of the marijuana possession and usage rights granted in Health and Safety Code section 11362.1 "shall be construed to permit any person to" do any of the activities enumerated in subdivisions (1)-(8). Health and Safety Code section 11362.3, subdivision (a)(4) prohibits any person from possessing "an open container or open package of marijuana or marijuana products while driving, or operating, or riding in the passenger seat or compartment of a motor vehicle, boat, vessel, aircraft, or other vehicle used for transportation." (Original underline). This proposal's removal of subdivision (a)(4) from Health and Safety Code section 11362.3 corrects confusion made between marijuana and alcohol products, eliminates the potential for pretextual arrests by law enforcement officers, and solves for the redundancy of Health and Safety Code section 11362.3, subdivisions (a)(7) and (a)(8).

Health and Safety Code section 11362.3, subdivision (a)(4) emulates Vehicle Code section 23223, which prohibits open containers of alcohol in a motor vehicle. However, marijuana differs from alcohol in that alcohol is predominately found in liquid form, necessitating both a container and the need to be consumed quickly before it expires or evaporates. Furthermore, alcohol is a substance that is often manufactured commercially, and thus is placed within sealed and re-sealable containers. Marijuana, on the other hand, originates in plant form and it is generally consumed in a solid state, so the presence of an open container or packaging does not strongly infer that the party in control of the vehicle intends to consume the substance lest it quickly expire. Because of its solid-state form and its common lack of commercial packaging, unlike alcohol, Marijuana could also be loose in small quantities somewhere in a vehicle due to a spill for long periods of time, which would automatically cause those unknowing occupants of the vehicle to be in violation of subdivision (a)(4) of the Health and Safety Code, which is contrary to the spirit of Proposition 64 and Health and Safety Code section 11362.1.

Removal of Health and Safety Code section 11362.3, subdivision (a)(4) would not lessen law enforcement efforts meant to combat impaired driving due to the presence of subdivisions (a)(7) and (a)(8). Subdivision (a)(7) prohibits the smoking or ingestion of marijuana products while operating a vehicle, while subdivision (a)(8) applies the same restraints to passengers, and further limits the use of marijuana products in vehicles while persons under the age of 21 are present.

Recently, Senate Bill 96 was passed, which amended Health and Safety Code section 11362.3 in part, but it did not change subdivision (a)(4) or the relevant recommendations below.

## TEXT OF RESOLUTION

**RESOLVED** that the Conference of California Bar Associations recommends that legislation be sponsored to amend Health and Safety Code section 11362.3 to read as follows:

- 1 § 11362.3  
2 (a) Nothing in Section 11362.1 shall be construed to permit any person to:  
3 (1) Smoke or ingest marijuana or marijuana products in any public place, except in  
4 accordance with Section 26200 of the Business and Professions Code.  
5 (2) Smoke marijuana or marijuana products in a location where smoking tobacco is  
6 prohibited.  
7 (3) Smoke marijuana or marijuana products within 1,000 feet of a school, day care center,  
8 or youth center while children are present at such a school, day care center, or youth center,  
9 except in or upon the grounds of a private residence or in accordance with Section 26200 of, or  
10 Chapter 3.5 (commencing with Section 19300) of Division 8 of, the Business and Professions  
11 Code and only if such smoking is not detectable by others on the grounds of such a school, day  
12 care center, or youth center while children are present.  
13 ~~(4) Possess an open container or open package of marijuana or marijuana products while~~  
14 ~~driving, or operating, or riding in the passenger seat or compartment of a motor vehicle, boat,~~  
15 ~~vessel, aircraft, or other vehicle used for transportation.~~  
16 (5) (4) Possess, smoke or ingest marijuana or marijuana products in or upon the grounds  
17 of a school, day care center, or youth center while children are present.  
18 (6) (5) Manufacture concentrated cannabis using a volatile solvent, unless done in  
19 accordance with a license under Chapter 3.5 (commencing with Section 19300) of Division 8 of,  
20 or Division 10 of, the Business and Professions Code.  
21 (7) (6) Smoke or ingest marijuana or marijuana products while driving, operating a motor  
22 vehicle, boat, vessel, aircraft, or other vehicle used for transportation.  
23 (8) (7) Smoke or ingest marijuana or marijuana products while riding in the passenger  
24 seat or compartment of a motor vehicle, boat, vessel, aircraft, or other vehicle used for  
25 transportation except as permitted on a motor vehicle, boat, vessel, aircraft, or other vehicle used  
26 for transportation that is operated in accordance with Section 26200 of the Business and  
27 Professions Code and while no persons under the age of 21 years are present.  
28 (b) For purposes of this section, the following definitions apply:  
29 (1) “Day care center” has the same meaning as in Section 1596.76.  
30 (2) “Smoke” means to inhale, exhale, burn, or carry any lighted or heated device or pipe,  
31 or any other lighted or heated cannabis or cannabis product intended for inhalation, whether

32 natural or synthetic, in any manner or in any form. “Smoke” includes the use of an electronic  
33 smoking device that creates an aerosol or vapor, in any manner or in any form, or the use of any  
34 oral smoking device for the purpose of circumventing the prohibition of smoking in a place.  
35 (3) “Volatile solvent” means a solvent that is or produces a flammable gas or vapor that,  
36 when present in the air in sufficient quantities, will create explosive or ignitable mixtures.  
37 (4) “Youth center” has the same meaning as in Section 11353.1.  
38 (c) Nothing in this section shall be construed or interpreted to amend, repeal, affect,  
39 restrict, or preempt laws pertaining to the Compassionate Use Act of 1996.

(Proposed new language underlined; language to be deleted stricken)

**PROPONENT:** Bay Area Lawyers for Individual Freedom

### **STATEMENT OF REASONS**

The Problem: This law penalizes individuals for mere possession of a product that is lawful under California law.

There’s absolutely no harm caused by possessing an open package of marijuana while operating or riding in a motor vehicle, boat, vessel, aircraft, or other vehicle used for transportation. This is the equivalent of being cited for carrying a package of unlit cigarettes. Moreover, as currently written, persons of color will be disproportionately affected by this law.

A 2008 study conducted by the ACLU of Southern California found that for every 10,000 residents, about 3,400 more black people are stopped than whites, and 360 more Latinos are stopped than whites.

- Stopped blacks are 127% more likely to be frisked -- and stopped Latinos are 43% more likely to be frisked -- than stopped whites.
- Stopped blacks are 76% more likely to be searched, and stopped Latinos are 16% more likely to be searched than stopped whites.

The same holds true in Northern California, where a police report conducted in 2014 pursuant to requirements of the Oakland Police Department’s federal overseer, found African-Americans, who compose 28 percent of Oakland’s population, accounted for 62 percent of police stops from last April of the previous year to November of the previous year, the report found and that African-Americans were far more likely to be searched by police upon being stopped.

The Solution: This resolution repeals paragraph (4) of subsection (a) of Health and Safety Code section 11362.3, thereby removing penalties for mere possession of a substance otherwise lawfully possessed under California law, and which would disproportionately affect communities of color.

### **IMPACT STATEMENT**

The resolution does not affect any other law, statute or rule other than those expressly identified.

### **CURRENT OR PRIOR RELATED LEGISLATION**

AB 64 (Cooley, Jones-Sawyer, Lackey, and Wood) 2016 - Cannabis: medical and nonmedical: regulation and advertising – Filed with Secretary of State on December 12, 2016.

AB 266 (Bonta) - 2015- Medical Marijuana - Filed by Secretary of State on October 9, 2015  
AB 243 (Wood) - 2015 - Medical Marijuana - Filed with Secretary of State on October 09, 2015.  
SB 243 (McGuire) - 2016 Medical Marijuana - Filed with Secretary of State on October 09,  
2015

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