S T A T E O F N E W Y O R K

1833

2011-2012 Regular Sessions

I N S E N A T E

January 13, 2011

Introduced by Sen. FLANAGAN -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection

AN ACT to amend the general business law, in relation to prohibiting the sale of salvia divinorum to persons in New York state

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

Section 1. The general business law is amended by adding a new section 391-r to read as follows:

S 391-R. SALE OR DISTRIBUTION OF SALVIA DIVINORUM. 1. NO PERSON, FIRM, CORPORATION, PARTNERSHIP, ASSOCIATION, LIMITED LIABILITY COMPANY, OR OTHER ENTITY SHALL SELL OR OFFER TO SELL OR GIVE AWAY, AS EITHER A RETAIL OR WHOLESALE PROMOTION, SALVIA DIVINORUM, COMMONLY KNOWN AS SALVIA WITHIN NEW YORK STATE, EXCEPT AS AUTHORIZED BY SUBDIVISION THREE OF THIS SECTION.

2. FOR PURPOSES OF THIS SECTION, THE TERM SALVIA DIVINORUM SHALL MEAN THE HERB FREQUENTLY REFERRED TO AS "SKA MARIA PASTORA" AND "DIVINER'S SAGE" WHICH IS A PERENNIAL HERB IN THE MINT FAMILY THAT RESEMBLES SAGE.

3. NOTHING IN THIS SECTION SHALL APPLY TO NONPRESCRIPTION OVER-THE-COUNTER DRUGS APPROVED OR REGULATED BY THE FEDERAL FOOD AND DRUG ADMINISTRATION.

4. ANY PERSON, FIRM, CORPORATION, PARTNERSHIP, ASSOCIATION, LIMITED LIABILITY COMPANY, OR OTHER ENTITY THAT VIOLATES THE PROVISIONS OF THIS SECTION BY SELLING, OFFERING TO SELL, OR GIVING AWAY AS EITHER A RETAIL OR WHOLESALE PROMOTION SALVIA DIVINORUM, SHALL BE SUBJECT TO A CIVIL PENALTY OF NOT MORE THAN FIVE HUNDRED DOLLARS PER VIOLATION, RECOVERABLE IN AN ACTION BY ANY ENFORCEMENT AUTHORITY DESIGNATED BY ANY MUNICIPALITY OR POLITICAL SUBDIVISION.

5. IT SHALL BE A DEFENSE THAT ANY PERSON, FIRM, CORPORATION, PARTNERSHIP, ASSOCIATION, LIMITED LIABILITY COMPANY, OR OTHER ENTITY THAT SOLD, OFFERED FOR SALE, OR GAVE AWAY AS EITHER A RETAIL OR WHOLESALE PROMOTION

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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SALVIA DIVINORUM, DID NOT HAVE KNOWLEDGE THAT IT WAS SALVIA DIVINORUM, IF SUCH KNOWLEDGE WAS NOT REASONABLY DISCOVERABLE.

S 2. This act shall take effect on the sixtieth day after it shall have become a law.