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

2377--A

2013-2014 Regular Sessions

I N S E N A T E

January 17, 2013

Introduced by Sen. KLEIN -- read twice and ordered printed, and when printed to be committed to the Committee on Health -- reported favorably from said committee and committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the general business law and the public health law, in relation to prohibiting sale and distribution of dietary supplements containing DMAA and foods containing an unsafe DMAA food additive

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-s to read as follows:

S 391-S. DMAA DIETARY SUPPLEMENTS AND FOOD ADDITIVES; PROHIBITION. 1. NO PERSON, FIRM, CORPORATION, PARTNERSHIP, ASSOCIATION, LIMITED LIABILITY COMPANY OR OTHER ENTITY SHALL SELL, OFFER TO SELL OR GIVE AWAY, FOR EITHER RETAIL, WHOLESALE OR PROMOTIONAL PURPOSES, A DIETARY SUPPLEMENT CONTAINING ANY QUANTITY OF DMAA, OR A FOOD CONTAINING AN UNSAFE DMAA FOOD ADDITIVE.

2. FOR PURPOSES OF THIS SECTION, THE FOLLOWING TERMS HAVE THE FOLLOWING MEANINGS:

(A) "DIETARY SUPPLEMENT" MEANS A PRODUCT (OTHER THAN TOBACCO) THAT (1) IS INTENDED TO SUPPLEMENT THE DIET, AND THAT BEARS OR CONTAINS ONE OR MORE OF THE FOLLOWING DIETARY INGREDIENTS: A VITAMIN, A MINERAL, AN HERB OR OTHER BOTANICAL, AN AMINO ACID, A DIETARY SUBSTANCE FOR THE USE BY A PERSON TO SUPPLEMENT THE DIET BY INCREASING THE TOTAL DAILY INTAKE, OR A CONCENTRATE, METABOLITE, CONSTITUENT, EXTRACT OR COMBINATIONS OF THESE INGREDIENTS; (2) IS INTENDED FOR INGESTION IN PILL, CAPSULE, TABLET OR LIQUID FORM; AND (3) IS LABELED AS A "DIETARY SUPPLEMENT" PURSUANT TO THE FEDERAL DIETARY SUPPLEMENT HEALTH AND EDUCATION ACT, 21 U.S.C. 321, AS AMENDED.

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

LBD07852-06-3

(B) "DMAA" MEANS 1, 3-DIMETHYLAMYLAMINE (ALSO KNOWN AS 1,3-DMAA, 1,3-DIMETHYLPENTYLAMINE, 2-AMINO-4-METHYLHEXANE, 2-HEXANAMINE, 4-METHYL-2-HEXANAMINE, 4-METHYL-2-HEXYLAMINE, 4-METHYLHEXANE-2-AMINE, 4-METHYL-(9CI), DIMETHYLAMYLAMINE, GERANAMINE, AND METHYLHEXANAMINE).

(C) "FOOD" MEANS ALL ARTICLES OF FOOD, DRINK, CONFECTIONERY OR CONDIMENT, WHETHER SIMPLE, MIXED OR COMPOUND, USED OR INTENDED FOR USE BY HUMANS OR ANIMALS, AND SHALL ALSO INCLUDE ALL SUBSTANCES OR INGREDIENTS TO BE ADDED TO FOOD FOR ANY PURPOSE. SUCH TERM SHALL INCLUDE CHEWING GUM.

(D) "UNSAFE DMAA FOOD ADDITIVE" MEANS A FOOD ADDITIVE THAT CONTAINS DMAA THAT HAS NOT BEEN RECOGNIZED BY THE COMMISSIONER OF AGRICULTURE AND MARKETS AS SAFE, FOR THE PURPOSE OF ENFORCEMENT OF ARTICLE SEVENTEEN OF THE AGRICULTURE AND MARKETS LAW.

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

4. ANY ENFORCEMENT OFFICER, AS DEFINED IN SECTION THIRTEEN HUNDRED ELEVEN OF THE PUBLIC HEALTH LAW, SHALL HAVE THE POWER TO IMPOSE UPON ANY PERSON, FIRM, CORPORATION, PARTNERSHIP, ASSOCIATION, LIMITED LIABILITY COMPANY OR OTHER ENTITY THE CIVIL PENALTIES AUTHORIZED BY SUCH SECTION, FOLLOWING A HEARING CONDUCTED IN THE SAME MANNER AS HEARINGS CONDUCTED PURSUANT TO ARTICLE THIRTEEN-E OF THE PUBLIC HEALTH LAW.

S 2. The public health law is amended by adding a new section 1311 to read as follows:

S 1311. REGULATION OF DMAA. 1. FOR THE PURPOSE OF THIS SECTION, THE TERM "ENFORCEMENT OFFICER" SHALL MEAN ANY ENTITY SO DESIGNATED BY ANY MUNICIPALITY OR POLITICAL SUBDIVISION. SUCH ENFORCEMENT OFFICERS SHALL HAVE CONCURRENT JURISDICTION WITH THE COMMISSIONER TO ENFORCE THE PROVISIONS OF SECTION THREE HUNDRED NINETY-ONE-S OF THE GENERAL BUSINESS LAW, PURSUANT TO RULES AND REGULATIONS PROMULGATED BY THE COMMISSIONER.

2. IF AN ENFORCEMENT OFFICER DETERMINES AFTER A HEARING THAT A VIOLATION OF SECTION THREE HUNDRED NINETY-ONE-S OF THE GENERAL BUSINESS LAW HAS OCCURRED, AND SUBSEQUENT TO ANY APPEAL PURSUANT TO SUBDIVISION FOUR OF THIS SECTION HAVING BEEN FINALLY DETERMINED, A CIVIL PENALTY MAY BE IMPOSED BY THE ENFORCEMENT OFFICER; PROVIDED, HOWEVER, THAT NO SUCH PENALTY SHALL EXCEED FIVE HUNDRED DOLLARS. WHEN THE ENFORCEMENT OFFICER IS THE COMMISSIONER, THE HEARING SHALL BE CONDUCTED PURSUANT TO THE PROVISIONS OF SECTION TWELVE-A OF THIS CHAPTER. WHEN THE ENFORCEMENT OFFICER IS A BOARD OF HEALTH OR IN A CITY WITH A POPULATION OF MORE THAN ONE MILLION, THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE, OR AN OFFICER DESIGNATED TO ENFORCE THE PROVISIONS OF SECTION THREE HUNDRED NINETY-ONE-S OF THE GENERAL BUSINESS LAW, THE HEARING SHALL BE CONDUCTED PURSUANT TO PROCEDURES SET FORTH IN THE COUNTY SANITARY CODE, OR HEALTH CODE OF SUCH CITY, OR IN THE ABSENCE THEREOF, PURSUANT TO PROCEDURES ESTABLISHED BY THE ELECTED COUNTY LEGISLATURE OR BOARD OF SUPERVISORS. NO OTHER PENALTY, FINE OR SANCTION MAY BE IMPOSED, PROVIDED THAT NOTHING IN THIS SECTION SHALL BE CONSTRUED TO PROHIBIT AN ENFORCEMENT OFFICER FROM COMMENCING A PROCEEDING FOR INJUNCTIVE RELIEF TO COMPEL COMPLIANCE WITH SECTION THREE HUNDRED NINETY-ONE-S OF THE GENERAL BUSINESS LAW.

3. ANY PERSON WHO DESIRES TO REGISTER A COMPLAINT FOR A VIOLATION OF SECTION THREE HUNDRED NINETY-ONE-S OF THE GENERAL BUSINESS LAW MAY DO SO WITH THE APPROPRIATE ENFORCEMENT OFFICER.

4. ANY PERSON AGGRIEVED BY THE DECISION OF AN ENFORCEMENT OFFICER, OTHER THAN THE COMMISSIONER, MAY APPEAL TO THE COMMISSIONER FOR A REVIEW OF SUCH DECISION WITHIN THIRTY DAYS OF SUCH DECISION. THE DECISION OF

ANY ENFORCEMENT OFFICER SHALL BE REVIEWABLE PURSUANT TO ARTICLE SEVENTY-EIGHT OF THE CIVIL PRACTICE LAW AND RULES.

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, FOR EITHER RETAIL, WHOLESALE OR PROMOTIONAL PURPOSES, A DIETARY SUPPLEMENT, DID NOT HAVE KNOWLEDGE THAT THE DIETARY SUPPLEMENT CONTAINED ANY QUANTITY OF DMAA, OR THAT THE FOOD CONTAINED AN UNSAFE DMAA FOOD ADDITIVE, IF SUCH KNOWLEDGE WAS NOT REASONABLY DISCOVERABLE.

S 3. This act shall take effect on the sixtieth day after it shall have become a law.