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

3945

2009-2010 Regular Sessions

I N S E N A T E

April 7, 2009

Introduced by Sen. OPPENHEIMER -- read twice and ordered printed, and when printed to be committed to the Committee on Health

AN ACT to amend the public health law, in relation to making ephedrine and ma huang controlled substances

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

Section 1. The opening paragraph of subdivision (e) of schedule IV of section 3306 of the public health law, as amended by chapter 589 of the laws of 1996, is amended and two new paragraphs 13 and 14 are added to read as follows:

Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, (OTHER THAN PSEUDOEPHEDRINE) and salts of such isomers (OTHER THAN PSEUDOEPHEDRINE):

(13) EPHEDRINE.

(14) BOTANICAL PRODUCTS OF GENUS EPHEDRA WHICH CONTAIN EPHEDRINE.

S 2. Section 3307 of the public health law is amended by adding a new subdivision 5 to read as follows:

5. DRUG PRODUCTS CONTAINING EPHEDRINE, A SALT OF EPHEDRINE, AN OPTICAL ISOMER OF EPHEDRINE, OR A SALT OF AN OPTICAL ISOMER OF EPHEDRINE ARE EXEMPTED FROM SUBDIVISION (E) OF SCHEDULE IV OF SECTION THIRTY-THREE HUNDRED SIX OF THIS TITLE IF THE DRUG PRODUCT MAY LAWFULLY BE SOLD OVER THE COUNTER WITHOUT A PRESCRIPTION UNDER FEDERAL LAW, IS LABELED AND MARKETED IN A MANNER CONSISTENT WITH THE PERTINENT OVER THE COUNTER (OTC) TENTATIVE FINAL OR FINAL MONOGRAPH, IS MANUFACTURED AND DISTRIBUTED FOR LEGITIMATE MEDICAL USE IN A MANNER THAT REDUCES OR ELIMINATES THE LIKELIHOOD FOR ABUSE, AND IS NOT MARKETED, ADVERTISED, OR LABELED FOR AN INDICATION OF STIMULATION, MENTAL ALERTNESS, ENERGY, WEIGHT LOSS, APPETITE CONTROL, OR MUSCLE ENHANCEMENT.

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

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S 3. Paragraph c of subdivision 1 of section 3383 of the public health law, as added by chapter 494 of the laws of 1982, is amended to read as follows:

c. "Imitation controlled substance" means a substance, other than a drug for which a prescription is required pursuant to article one hundred thirty-seven of the education law OR A DRUG WHICH HAS BEEN APPROVED BY THE FOOD AND DRUG ADMINISTRATION FOR TREATMENT OF MEDICALLY RECOGNIZED CONDITIONS, that is not a controlled substance, which by dosage unit appearance, including color, shape, and size [and] OR by a representation is represented to be a controlled substance, as defined in the penal law. Evidence of representations that the substance is a controlled substance may include but is not limited to oral or written representations by the manufacturer or seller, as the case may be, about the substance with regard to:

(i) its price, nature, use, or effect as a controlled substance; or

(ii) its packaging in a manner normally used for illicit controlled substances; or

(iii) markings on the substance.

S 4. This act shall take effect on the one hundred eightieth day after it shall have become a law; provided, however, that section two of this act shall take effect immediately and provided further that the commissioner of health is authorized to take steps necessary to implement the provisions of section two of this act in a timely manner.