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

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I N S E N A T E

May 1, 2012

Introduced by Sens. GRISANTI, MAZIARZ -- read twice and ordered printed, and when printed to be committed to the Committee on Insurance

AN ACT to amend the insurance law and the education law, in relation to pharmaceuticals with an aesthetic or cosmetic use or purpose

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

Section 1. Section 2341 of the insurance law is amended by adding a new subdivision (c) to read as follows:

(C) OTHER MATTERS THAT THE SUPERINTENDENT MAY SUBMIT TO THE COUNCILS FOR CONSIDERATION INCLUDE, BUT ARE NOT LIMITED TO, THE EXTENT TO WHICH LIABILITY INSURANCE RATES ARE AFFECTED BY NON-PRESCRIPTION AESTHETIC COMPOUNDS DEVELOPED WITHOUT THE APPROVAL OF THE FEDERAL FOOD AND DRUG ADMINISTRATION THAT ARE SOLD AS AN OVER-THE-COUNTER SUBSTITUTE FOR AN AESTHETIC PHARMACEUTICAL AS SUCH TERM IS DEFINED IN SUBDIVISION TWENTY-FOUR OF SECTION SIXTY-EIGHT HUNDRED TWO OF THE EDUCATION LAW.

S 2. Section 6802 of the education law is amended by adding a new subdivision 24 to read as follows:

24. "AESTHETIC PHARMACEUTICAL" MEANS:

A. BIMATOPROST;

B. EFLORNITHINE;

C. FINASTERIDE;

D. FLUOCINOLONE;

E. HYDROQUINONE;

F. TRETINOIN;

G. MINOXIDIL;

H. TAZAROTENE; OR

I. A DRUG THAT:

(1) IS NOT A CONTROLLED SUBSTANCE;

(2) REQUIRES A PRESCRIPTION FOR DISPENSATION;

(3) HAS BEEN APPROVED BY THE FEDERAL FOOD AND DRUG ADMINISTRATION; AND

(4) IS PRESCRIBED FOR THE ENHANCEMENT OF AN INDIVIDUAL'S APPEARANCE.

S 3. Subparagraph 9 of paragraph a of subdivision 2 of section 6807 of the education law, as amended by chapter 538 of the laws of 2001, is amended and a new subparagraph 10 is added to read as follows:

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

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(9) the dispensing of drugs pursuant to an oncological or AIDS protocol[.]; OR

(10) THE DISPENSING OF AN AESTHETIC PHARMACEUTICAL IN EXCESS OF THE PATIENT'S IMMEDIATE NEEDS WHEN DISPENSED BY A PHYSICIAN, WHERE THE PHYSICIAN:

I. INFORMS THE PATIENT THAT THE PRESCRIPTION MAY BE FILLED AT A PHARMACY OR DISPENSED IN THE PHYSICIAN'S OFFICE;

II. DISPENSES ONLY TO THE PHYSICIAN'S PATIENTS; AND

III. COMPLIES WITH ALL STATE AND FEDERAL LABELING AND RECORD KEEPING REQUIREMENTS. A RECORD MAINTAINED UNDER THIS SUBPARAGRAPH MUST BE ACCESSIBLE TO THE EXTENT REQUIRED BY STATE AND FEDERAL LAW. A PHYSICIAN MAY CHARGE A FEE FOR DISPENSING AN AESTHETIC PHARMACEUTICAL.

S 4. This act shall take effect immediately; provided, however that the amendments to section 2341 of the insurance law made by section one of this act shall not affect the expiration of such section and shall be deemed to expire therewith.