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

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2013-2014 Regular Sessions

I N A S S E M B L Y

January 18, 2013

Introduced by M. of A. CLARK, COLTON, TITUS, FINCH, BARRETT, RA, SWEENEY, McDONOUGH, THIELE, CUSICK, GUNTHER, GOODELL, NOLAN, ROBERTS, SCARBOROUGH, SCHIMEL, COOK -- Multi-Sponsored by -- M. of A. ARROYO, BARCLAY, CROUCH, JORDAN, LOSQUADRO, McLAUGHLIN -- read once and referred to the Committee on Health

AN ACT to amend the public health law and the penal law, in relation to controlled substances and to provide a defense for sale or administration of synthetic cannabinoids in certain circumstances

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

Section 1. Subdivision 4 of section 3302 of the public health law, as added by chapter 878 of the laws of 1972 and as renumbered by chapter 537 of the laws of 1998, is amended to read as follows:

4. "Concentrated Cannabis" means

[(a)] the separated resin, whether crude or purified, obtained from a plant of the genus Cannabis[; or

(b) a material, preparation, mixture, compound or other substance which contains more than two and one-half percent by weight of delta-9 tetrahydrocannabinol, or its isomer, delta-8 dibenzopyran numbering system, or delta-1 tetrahydrocannabinol or its isomer, delta 1 (6) monoterpene numbering system].

S 2. Subdivisions 33, 34, 35, 36, 37, 38, 39, 40 and 41 of section 3302 of the public health law are renumbered subdivisions 34, 35, 36, 37, 38, 39, 40, 41 and 42 and a new subdivision 33 is added to read as follows:

33. "SYNTHETIC CANNABINOID" MEANS ANY MATERIAL, COMPOUND, MIXTURE OR PREPARATION CONTAINING ANY QUANTITY OF:

(A) CP 47,497 AND HOMOLOGUES: 2-5-(2-METHYLOCTAN-2-YL)PHENOL;

(B) HU-210;

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

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(C) HU-211: (DEXANABINOL, (6AS, 10AS)-9-(HYDROXYMETHYL) -6,6-DIMETHYL-3- (2-METHYLOCTAN-2-YL)-6A,7,10, 10A-TETRAHYDROBENZO CHROMEN-1-OL);
(D) JWH-O18: 1-PENTYL-3-(1-NAPHTHOYL)INDOLE; OR
(E) JWH-O73: 1-BUTYL-3-(1-NAPHTHOYL)INDOLE.
IT DOES NOT INCLUDE ANY PRODUCTS THAT HAVE BEEN APPROVED FOR MEDICAL USE BY THE UNITED STATES FOOD AND DRUG ADMINISTRATION.

S 3. Subdivision (d) of schedule I of section 3306 of the public health law is amended by adding five new paragraphs 33, 34, 35, 36 and 37 to read as follows:

(33) CP 47,497 AND HOMOLOGUES: 2-5-(2-METHYLOCTAN-2-YL)PHENOL.
(34) HU-210.
(35) HU-211: (DEXANABINOL, (6AS, 10AS)-9-(HYDROXYMETHYL) -6,6-DIMETHYL -3-(2-METHYLOCTAN-2-YL)-6A,7,10, 10A-TETRAHYDROBENZO CHROMEN-1-OL).
(36) JWH-O18: 1-PENTYL-3-(1-NAPHTHOYL)INDOLE.
(37) JWH-O73: 1-BUTYL-3-(1-NAPHTHOYL)INDOLE.

S 4. Section 3308 of the public health law is amended by adding a new subdivision 7 to read as follows:

7. THE COMMISSIONER SHALL, IN CONJUNCTION WITH THE DIVISION OF CRIMINAL JUSTICE SERVICES, ESTABLISH AND MAINTAIN A DATABASE OF KNOWN SYNTHETIC CANNABINOIDS, AS DEFINED IN SECTION THIRTY-THREE HUNDRED TWO OF THIS TITLE. THE DATABASE SHALL BE PUBLISHED ON THE DEPARTMENT'S WEBSITE SO THAT CONSUMERS, RETAILERS, AND LAW ENFORCEMENT AGENCIES CAN ACCESS INFORMATION INCLUDING, BUT NOT LIMITED TO:
(A) A LIST OF COMPOUNDS KNOWN TO BELONG TO THE CLASSES OF CHEMICALS LISTED ABOVE, AND THEIR TRADE NAMES;
(B) A PHYSICAL DESCRIPTION OF PRODUCTS KNOWN TO CONTAIN SUCH COMPOUNDS, AND THEIR EFFECTS; AND
(C) A LIST OF THE BRAND NAMES OF PRODUCTS KNOWN TO CONTAIN SUCH COMPOUNDS, AND IMAGES OF THEIR PACKAGING.
THE WEBSITE SHALL INCLUDE A STATEMENT INDICATING THAT SUCH INFORMATION IS BEING PROVIDED AS A RESOURCE FOR CONSUMERS, RETAILERS, AND LAW ENFORCEMENT; AND, DUE TO THE NATURE OF THE ILLEGAL DRUG TRADE, SUCH INFORMATION MAY NOT BE COMPREHENSIVE. NEITHER THE DEPARTMENT NOR THE DIVISION OF CRIMINAL JUSTICE SERVICES SHALL BE LIABLE FOR ANY ECONOMIC HARM, PERSONAL INJURY, OR DEATH THAT MAY RESULT FROM INFORMATION INCLUDED IN, OR OMITTED FROM, THE DATABASE.

S 5. Subdivisions 5, 6 and 10 of section 220.00 of the penal law, subdivision 5 as amended by chapter 537 of the laws of 1998, subdivision 6 as amended by chapter 1051 of the laws of 1973 and subdivision 10 as amended by chapter 664 of the laws of 1985, are amended to read as follows:

5. "Controlled substance" means any substance listed in schedule I, II, III, IV or V of section thirty-three hundred six of the public health law other than marihuana, but including concentrated cannabis as defined in [paragraph (a) of] subdivision four, AND SYNTHETIC CANNABINOID AS DEFINED IN SUBDIVISION THIRTY-THREE, of section thirty-three hundred two of such law.
6. "Marihuana" means "marihuana[" or]," "concentrated cannabis" OR "SYNTHETIC CANNABINOID" as those terms are defined in section thirty-three hundred two of the public health law.
10. "Hallucinogenic substance" means any controlled substance listed in schedule I(d) other than concentrated cannabis, SYNTHETIC CANNABINOIDS, lysergic acid diethylamide, or an hallucinogen.

S 6. Subdivision 4 of section 220.06 of the penal law, as amended by chapter 537 of the laws of 1998, is amended to read as follows:

4. one or more preparations, compounds, mixtures or substances containing concentrated cannabis as defined in [paragraph (a) of] subdivision four of section thirty-three hundred two of the public health law, OR SYNTHETIC CANNABINOID AS DEFINED IN SUBDIVISION THIRTY-THREE OF SECTION THIRTY-THREE HUNDRED TWO OF THE PUBLIC HEALTH LAW, and said preparations, compounds, mixtures or substances are of an aggregate weight of one-fourth ounce or more; or

S 7. Subdivision 10 of section 220.09 of the penal law, as amended by chapter 537 of the laws of 1998, is amended to read as follows:

10. one or more preparations, compounds, mixtures or substances containing concentrated cannabis as defined in [paragraph (a) of] subdivision four of section thirty-three hundred two of the public health law, OR SYNTHETIC CANNABINOID AS DEFINED IN SUBDIVISION THIRTY-THREE OF SECTION THIRTY-THREE HUNDRED TWO OF THE PUBLIC HEALTH LAW, and said preparations, compounds, mixtures or substances are of an aggregate weight of one ounce or more; or

S 8. Subdivision 3 of section 220.34 of the penal law, as amended by chapter 537 of the laws of 1998, is amended to read as follows:

3. concentrated cannabis as defined in [paragraph (a) of] subdivision four of section thirty-three hundred two of the public health law, OR SYNTHETIC CANNABINOID AS DEFINED IN SUBDIVISION THIRTY-THREE OF SECTION THIRTY-THREE HUNDRED TWO OF THE PUBLIC HEALTH LAW; or

S 9. The penal law is amended by adding a new section 220.79 to read as follows:

S 220.79 DEFENSE FOR SALE OR ADMINISTRATION OF SAMPLES OF SYNTHETIC CANNABINOID.

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 ANY PRODUCT WHICH CONTAINS A SYNTHETIC CANNABINOID, DID NOT HAVE KNOWLEDGE THAT IT WAS A PRODUCT CONTAINING A SYNTHETIC CANNABINOID, IF SUCH KNOWLEDGE WAS NOT REASONABLY DISCOVERABLE.

S 10. This act shall take effect on the ninetieth day after it shall have become a law; provided, however, that the commissioner of health and the division of criminal justice services shall immediately take the actions necessary to ensure that the database created by subdivision 7 of section 3308 of the public health law, as added by section four of this act is established and maintained in accordance with such subdivision, and provided further, that, notwithstanding the provisions of any law to the contrary, for ninety days after this act shall have become law, section 220.03, 220.06, 220.09, 220.16, 220.18, 220.21, 221.05, 221.10, 221.15, 221.20, 221.25 or 221.30 of the penal law shall not be enforced with regard to the possession of synthetic cannabinoids, as defined in section 3302 of the public health law.