

4613

2013-2014 Regular Sessions

I N A S S E M B L Y

February 6, 2013

Introduced by M. of A. SCHIMEL -- read once and referred to the Committee on Health

AN ACT to amend the public health law, in relation to prohibiting the sale and promotional distribution of products for human consumption containing DMAA

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

1 Section 1. The public health law is amended by adding a new article
2 13-C to read as follows:

3 ARTICLE 13-C
4 REGULATION OF DMAA

5 SECTION 1397. DEFINITIONS.

6 1397-A. SALE OR PROMOTIONAL DISTRIBUTION OF PRODUCTS CONTAINING
7 DMAA.

8 1397-B. ENFORCEMENT.

9 1397-C. PENALTIES.

10 S 1397. DEFINITIONS. FOR THE PURPOSES OF THIS ARTICLE:

11 1. "DMAA" MEANS ANY OF THE FOLLOWING SUBSTANCES:

12 (A) 1, 3-DIMETHYLAMYLAMINE;

13 (B) 4-METHYLHEXANE-2-AMINE (IUPAC);

14 (C) DIMETHYLAMYLAMINE (DMAA);

15 (D) METHYLHEXANAMINE; AND

16 (E) ANY OTHER SYNTHETIC OR MANUFACTURED DMAA AS PRESCRIBED BY THE
17 COMMISSIONER.

18 2. "ENFORCEMENT OFFICER" MEANS THE BOARD OF HEALTH OF A COUNTY OR PART
19 COUNTY HEALTH DISTRICT ESTABLISHED PURSUANT TO TITLE THREE OF ARTICLE
20 THREE OF THIS CHAPTER, OR IN THE ABSENCE THEREOF, AN OFFICER OF A COUNTY
21 DESIGNATED FOR SUCH PURPOSE BY RESOLUTION OF THE ELECTED COUNTY LEGISLA-
22 TURE OR BOARD OF SUPERVISORS. ANY SUCH DESIGNATION SHALL BE FILED WITH
23 THE COMMISSIONER WITHIN THIRTY DAYS AFTER ADOPTION AND SUCH DESIGNATION
24 SHALL TAKE EFFECT THIRTY DAYS AFTER SUCH FILING. IF NO SUCH DESIGNATION

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

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1 IS MADE, THE COUNTY SHALL BE DEEMED TO HAVE DESIGNATED THE DEPARTMENT AS
2 ITS ENFORCEMENT OFFICER. THE ENFORCEMENT OFFICER SHALL HAVE SOLE JURIS-
3 DICTION TO ENFORCE THE PROVISIONS OF THIS ARTICLE ON A COUNTYWIDE BASIS.

4 S 1397-A. SALE OR PROMOTIONAL DISTRIBUTION OF PRODUCTS CONTAINING
5 DMAA. NO PERSON, FIRM, CORPORATION, PARTNERSHIP, ASSOCIATION, LIMITED
6 LIABILITY COMPANY OR OTHER ENTITY SHALL SELL, OFFER TO SELL OR GIVE
7 AWAY, AT EITHER RETAIL, WHOLESALE, OR FOR PROMOTIONAL PURPOSES, ANY
8 PRODUCT FOR HUMAN CONSUMPTION WHICH CONTAINS DMAA.

9 S 1397-B. ENFORCEMENT. 1. IF THE ENFORCEMENT OFFICER DETERMINES, AFTER
10 A HEARING, THAT A VIOLATION OF SECTION THIRTEEN HUNDRED NINETY-SEVEN-A
11 OF THIS ARTICLE HAS OCCURRED, A CIVIL PENALTY MAY BE IMPOSED BY THE
12 ENFORCEMENT OFFICER PURSUANT TO SECTION THIRTEEN HUNDRED NINETY-SEVEN-C
13 OF THIS ARTICLE. WHEN THE ENFORCEMENT OFFICER IS THE COMMISSIONER, THE
14 HEARING SHALL BE CONDUCTED PURSUANT TO THE PROVISIONS OF SECTION
15 TWELVE-A OF THIS CHAPTER. WHEN THE ENFORCEMENT OFFICER IS A BOARD OF
16 HEALTH OR AN OFFICER DESIGNATED TO ENFORCE THE PROVISIONS OF THIS ARTI-
17 CLE, THE HEARING SHALL BE CONDUCTED PURSUANT TO PROCEDURES SET FORTH IN
18 THE COUNTY SANITARY CODE, OR IN THE ABSENCE THEREOF, PURSUANT TO PROCE-
19 DURES ESTABLISHED BY THE ELECTED COUNTY LEGISLATURE OR BOARD OF SUPERVI-
20 SORS. NO OTHER PENALTY, FINE OR SANCTION MAY BE IMPOSED, PROVIDED THAT
21 NOTHING IN THIS ARTICLE SHALL BE CONSTRUED TO PROHIBIT AN ENFORCEMENT
22 OFFICER FROM COMMENCING A PROCEEDING FOR INJUNCTIVE RELIEF TO COMPEL
23 COMPLIANCE WITH THIS ARTICLE.

24 2. ANY PERSON WHO DESIRES TO REGISTER A COMPLAINT UNDER THIS ARTICLE
25 MAY DO SO WITH THE APPROPRIATE ENFORCEMENT OFFICER.

26 3. ANY PERSON AGGRIEVED BY THE DECISION OF AN ENFORCEMENT OFFICER,
27 OTHER THAN THE COMMISSIONER, MAY APPEAL TO THE COMMISSIONER TO REVIEW
28 SUCH DECISION WITHIN THIRTY DAYS OF SUCH DECISION. THE DECISION OF ANY
29 ENFORCEMENT OFFICER SHALL BE REVIEWABLE PURSUANT TO ARTICLE
30 SEVENTY-EIGHT OF THE CIVIL PRACTICE LAW AND RULES.

31 4. THE ENFORCEMENT OFFICER, SUBSEQUENT TO ANY APPEAL HAVING BEEN
32 FINALLY DETERMINED, MAY BRING AN ACTION TO RECOVER THE CIVIL PENALTY
33 PROVIDED IN SECTION THIRTEEN HUNDRED NINETY-SEVEN-C OF THIS ARTICLE IN
34 ANY COURT OF COMPETENT JURISDICTION.

35 S 1397-C. PENALTIES. THE COMMISSIONER MAY IMPOSE A CIVIL PENALTY FOR A
36 VIOLATION OF THIS ARTICLE IN AN AMOUNT NOT TO EXCEED THAT SET FORTH IN
37 SUBDIVISION ONE OF SECTION TWELVE OF THIS CHAPTER. ANY OTHER ENFORCEMENT
38 OFFICER MAY IMPOSE A CIVIL PENALTY FOR A VIOLATION OF THIS ARTICLE IN AN
39 AMOUNT NOT TO EXCEED THAT SET FORTH IN PARAGRAPH F OF SUBDIVISION ONE OF
40 SECTION THREE HUNDRED NINE OF THIS CHAPTER.

41 S 2. This act shall take effect immediately.