

6971

2013-2014 Regular Sessions

I N   A S S E M B L Y

April 29, 2013

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

AN ACT to amend the public health law, the penal law and the general business law, in relation to synthetic cannabinoids, synthetic cannabinoid analog and substituted cathinones and prohibiting the production and sale thereof

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

1     Section 1. Section 3302 of the public health law is amended by adding  
2     three new subdivisions 42, 43 and 44 to read as follows:  
3     42. "SYNTHETIC CANNABINOID" MEANS ANY CHEMICAL COMPOUND THAT IS CHEMI-  
4     CALLY SYNTHESIZED AND:  
5     (A) HAS BEEN DEMONSTRATED TO HAVE A BINDING ACTIVITY AT ONE OR MORE  
6     CANNABINOID RECEPTORS; OR  
7     (B) IS A CHEMICAL ISOMER, SALT OR SALT OF AN ISOMER OF A COMPOUND THAT  
8     HAS BEEN DEMONSTRATED TO HAVE BINDING ACTIVITY AT ONE OR MORE CANNABI-  
9     NOID RECEPTORS; OR  
10    (C) HAS BEEN DESIGNATED IN REGULATION BY THE COMMISSIONER AS BEING A  
11    SYNTHETIC CANNABINOID.  
12    "SYNTHETIC CANNABINOID" DOES NOT INCLUDE ANY PRODUCTS THAT HAVE BEEN  
13    APPROVED FOR MEDICAL USE BY THE UNITED STATES FOOD AND DRUG ADMINIS-  
14    TRATION.  
15    43. "SYNTHETIC CANNABINOID ANALOG" MEANS ANY CHEMICAL THAT IS SUBSTAN-  
16    Tially SIMILAR IN CHEMICAL STRUCTURE TO A CHEMICAL COMPOUND THAT HAS  
17    BEEN DETERMINED TO HAVE BINDING ACTIVITY AT ONE OR MORE CANNABINOID  
18    RECEPTORS. IT DOES NOT INCLUDE ANY PRODUCTS THAT HAVE BEEN APPROVED FOR  
19    MEDICAL USE BY THE UNITED STATES FOOD AND DRUG ADMINISTRATION.  
20    44. "SUBSTITUTED CATHINONE" MEANS ANY CHEMICAL COMPOUND THAT IS CHEMI-  
21    CALLY SYNTHESIZED AND:

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

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1 (A) IS A COMPOUND LISTED IN PARAGRAPH FIVE, EIGHT OR NINE OF SUBDIVI-  
2 SION (F) OF SCHEDULE I OF SECTION THIRTY-THREE HUNDRED SIX OF THIS ARTI-  
3 CLE, OR

4 (B) HAS BEEN DESIGNATED IN REGULATION BY THE COMMISSIONER AS HAVING A  
5 CHEMICAL STRUCTURE DERIVATIVE OF CATHINONE, OR

6 (C) ANY COMPOUND, OTHER THAN BUPROPION, THAT IS STRUCTURALLY DERIVED  
7 FROM 2-AMINO-1-PHENYL-1-PROPANONE BY MODIFICATION IN ANY OF THE FOLLOW-  
8 ING WAYS:

9 (I) BY SUBSTITUTION IN THE PHENYL RING TO ANY EXTENT WITH ALKYL,  
10 ALKOXY, ALKYLENEDIOXY, HALOALKYL, OR HALIDE SUBSTITUENTS, WHETHER OR NOT  
11 FURTHER SUBSTITUTED IN THE PHENYL RING BY ONE OR MORE OTHER UNIVALENT  
12 SUBSTITUENTS;

13 (II) BY SUBSTITUTION AT THE THREE-POSITION WITH AN ALKYL SUBSTITUTENT;

14 (III) BY SUBSTITUTION AT THE NITROGEN ATOM WITH ALKYL OR DIALKYL  
15 GROUPS, OR BY INCLUSION OF THE NITROGEN ATOM IN A CYCLIC STRUCTURE.

16 S 2. Subdivisions 5 and 6 of section 220.00 of the penal law, subdivi-  
17 sion 5 as amended by chapter 537 of the laws of 1998, and subdivision 6  
18 as amended by chapter 1051 of the laws of 1973, are amended to read as  
19 follows:

20 5. "Controlled substance" means any substance listed in schedule I,  
21 II, III, IV or V of section thirty-three hundred six of the public  
22 health law other than marihuana, but including concentrated cannabis as  
23 defined in paragraph (a) of subdivision four of section thirty-three  
24 hundred two of such law, AND SUBSTITUTED CATHINONES AS DEFINED IN  
25 SECTION THIRTY-THREE HUNDRED TWO OF THE PUBLIC HEALTH LAW.

26 6. "Marihuana" means "marihuana" [or], "concentrated cannabis",  
27 "SYNTHETIC CANNABINOID" OR "SYNTHETIC CANNABINOID ANALOG" as those terms  
28 are defined in section thirty-three hundred two of the public health  
29 law.

30 S 3. The general business law is amended by adding a new section 399-  
31 ff to read as follows:

32 S 399-FF. SALE OF SYNTHETIC CANNABINOID AND SUBSTITUTED CATHINONE  
33 PROHIBITED. 1. FOR PURPOSES OF THIS SECTION, "SYNTHETIC CANNABINOID"  
34 MEANS ANY SUBSTANCE DEFINED BY SUBDIVISION FORTY-TWO OR FORTY-THREE OF  
35 SECTION THIRTY-THREE HUNDRED TWO OF THE PUBLIC HEALTH LAW AND "SUBSTI-  
36 TUTED CATHINONE" MEANS ANY SUBSTANCE DEFINED BY SUBDIVISION FORTY-FOUR  
37 OF SECTION THIRTY-THREE HUNDRED TWO OF THE PUBLIC HEALTH LAW.

38 2. NO PERSON, CORPORATION, PARTNERSHIP OR LIMITED LIABILITY COMPANY  
39 SHALL KNOWINGLY SELL OR OFFER FOR SALE ANY FORM OF SYNTHETIC CANNABI-  
40 NOID, SUBSTITUTED CATHINONE OR ANY OTHER SUBSTANCE INTENDED TO ACT AS OR  
41 ADVERTISED AS AN ALTERNATIVE FORM OF A CONTROLLED SUBSTANCE. NO PERSON,  
42 CORPORATION, PARTNERSHIP OR LIMITED LIABILITY COMPANY SHALL OFFER ANY  
43 SUBSTANCE FOR SALE WHERE THERE HAS BEEN AN EXPLICIT OR IMPLIED CLAIM  
44 MADE BY THE SELLING PARTY THAT THE SUBSTANCE SOLD WILL MIMIC OR APPROXI-  
45 MATE THE SAME EFFECTS OF CANNABINOID, SYNTHETIC CANNABINOID, SUBSTITUTED  
46 CATHINONE OR ANY OTHER SUBSTANCE INTENDED TO ACT AS OR ADVERTISED AS AN  
47 ALTERNATIVE FORM OF A CONTROLLED SUBSTANCE.

48 3. WHETHER A VIOLATION OF THIS SECTION HAS OCCURRED IS A QUESTION OF  
49 LAW FOR THE COURT.

50 4. WHENEVER THERE SHALL BE A VIOLATION OF THIS SECTION AN APPLICATION  
51 MAY BE MADE BY THE ATTORNEY GENERAL IN THE NAME OF THE PEOPLE OF THE  
52 STATE OF NEW YORK TO A COURT OR JUSTICE HAVING JURISDICTION BY A SPECIAL  
53 PROCEEDING TO ISSUE AN INJUNCTION, AND UPON NOTICE TO THE DEFENDANT OF  
54 NOT LESS THAN FIVE DAYS, TO ENJOIN AND RESTRAIN THE CONTINUANCE OF SUCH  
55 VIOLATIONS; AND IF IT SHALL APPEAR TO THE SATISFACTION OF THE COURT OR  
56 JUSTICE THAT THE DEFENDANT HAS, IN FACT, VIOLATED THIS SECTION, AN

1 INJUNCTION MAY BE ISSUED BY THE COURT OR JUSTICE, ENJOINING AND  
2 RESTRAINING ANY FURTHER VIOLATIONS, WITHOUT REQUIRING PROOF THAT ANY  
3 PERSON HAS, IN FACT, BEEN INJURED OR DAMAGED THEREBY. IN ANY SUCH  
4 PROCEEDING, THE COURT MAY MAKE ALLOWANCES TO THE ATTORNEY GENERAL AS  
5 PROVIDED IN PARAGRAPH SIX OF SUBDIVISION (A) OF SECTION EIGHTY-THREE  
6 HUNDRED THREE OF THE CIVIL PRACTICE LAW AND RULES, AND DIRECT RESTITU-  
7 TION. A VIOLATION OF THE PROVISIONS OF THIS SECTION SHALL BE AN OFFENSE  
8 PUNISHABLE BY A PENALTY OF FIVE THOUSAND DOLLARS FOR EACH SEPARATE  
9 VIOLATION. A VIOLATION OF THE PROVISIONS OF THIS SECTION AFTER HAVING  
10 BEEN PREVIOUSLY CONVICTED OF SUCH AN OFFENSE WITHIN THE PREVIOUS FIVE  
11 YEARS SHALL BE A CLASS A MISDEMEANOR PUNISHABLE BY A FINE OF TEN THOU-  
12 SAND DOLLARS FOR EACH SEPARATE VIOLATION. THE PENALTIES FOR ANY SUCH  
13 VIOLATION SHOULD BE SUCH AN ILLEGAL SALE HAVE BEEN MADE TO A PERSON  
14 UNDER THE AGE OF EIGHTEEN SHALL BE A CLASS E FELONY AS DEFINED IN THE  
15 PENAL LAW.  
16 S 4. This act shall take effect immediately.