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

1686

2013-2014 Regular Sessions

I N S E N A T E

(PREFILED)

January 9, 2013

Introduced by Sens. FLANAGAN, GALLIVAN, GOLDEN, LITTLE, MARTINS -- read twice and ordered printed, and when printed to be committed to the Committee on Health

AN ACT to establish a synthetic cannabinoid and substituted cathinone surrender program; to amend the public health law and the penal law, in relation to controlled substances; to repeal certain provisions of the public health law, relating to controlled substances; and providing for the repeal of certain provisions upon expiration thereof

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

Section 1. There is hereby established a statewide synthetic cannabinoid and substituted cathinone surrender program. Pursuant to this program, for a period of ninety days commencing on the effective date of this section:

The department of health shall establish a statewide synthetic cannabinoid and substituted cathinone surrender program, in compliance with federal law. The program shall be composed of locations throughout the state, at which individuals may anonymously surrender products containing synthetic cannabinoids, as defined in section 3302 of the public health law, and substituted cathinones, as defined in section 3306 of the public health law. A surrender of synthetic cannabinoids and substituted cathinones pursuant to this section shall not constitute a "sale" for the purposes of the penal law.

S 2. 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

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

LBD05666-01-3

(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 3. Section 3302 of the public health law is amended by adding a new subdivison 42 to read as follows:

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

(A) TETRAHYDROCANNABINOLS, NAPHTHOYLINDOLES, NAPHTHYLMETHYLINDOLES, NAPHTHOYLPYRROLES, NAPHTHYLIDENEINDENES, PHENYLACETYLINDOLES, CYCLOHEXYLPHENOLS, BENZOYLINDOLES, OR ADAMANTOYLINDOLES, AS DEFINED IN SECTION THIRTY-THREE HUNDRED SIX OF THIS TITLE;

(B) (6AR, 10AR)-9-(HYDROXYMETHYL)-6,6-DIMETHYL-3-(2-METHYLOCTAN-2-YL)-6A,7,10,10A-TETRAHYDROBENZO{C}CHROMEN-1-OL (HU-210);

(C) (6AS, 10AS)-9-(HYDROXYMETHYL)-6,6-DIMETHYL-3-(2-METHYLOCTAN-2-YL)-6A,7,10,10A-TETRAHYDROBENZO{C}CHROMEN-1-OL (DEXANABINOL OR HU-211); OR

(D) 2,3-DIHYDRO-5-METHYL-3-(4-MORPHOLINYLMETHYL)PYRROLO{1,2,3-DE}-1,4-BENZOXAZIN-6-Y1-1-NAPHTHALENYLMETHANONE (WIN 55,212-2).

S 4. Subdivision (d) of schedule I of section 3306 of the public health law is amended by adding eleven new paragraphs 33, 34, 35, 36, 37, 38, 39, 40, 41, 42 and 43 to read as follows:

(33) NAPHTHOYLINDOLES. ANY COMPOUND CONTAINING A 3-(1-NAPHTHOYL)INDOLE STRUCTURE WITH SUBSTITUTION AT THE NITROGEN ATOM OF THE INDOLE RING BY AN ALKYL, HALOALKYL, ALKENYL, CYCLOALKYLMETHYL, CYCLOALKYLETHYL, 1-(N-METHYL-2-PIPERIDINYL)METHYL OR 2-(4-MORPHOLINYL)ETHYL GROUP, WHETHER OR NOT FURTHER SUBSTITUTED IN THE INDOLE RING TO ANY EXTENT AND WHETHER OR NOT SUBSTITUTED IN THE NAPHTHYL RING TO ANY EXTENT.

(34) NAPHTHYLMETHYLINDOLES. ANY COMPOUND CONTAINING A H-INDOL-3-YL-(1-NAPHTHYL)METHANE STRUCTURE WITH SUBSTITUTION AT THE NITROGEN ATOM OF THE INDOLE RING BY AN ALKYL, HALOALKYL, ALKENYL, CYCLOALKYLMETHYL, CYCLOALKYLETHYL, 1-(N-METHYL-2-PIPERIDINYL)METHYL OR 2-(4-MORPHOLINYL)ETHYL GROUP, WHETHER OR NOT FURTHER SUBSTITUTED IN THE INDOLE RING TO ANY EXTENT AND WHETHER OR NOT SUBSTITUTED IN THE NAPHTHYL RING TO ANY EXTENT.

(35) NAPHTHOYLPYRROLES. ANY COMPOUND CONTAINING A 3-(1-NAPHTHOYL)PYRROLE STRUCTURE WITH SUBSTITUTION AT THE NITROGEN ATOM OF THE PYRROLE RING BY AN ALKYL, HALOALKYL, ALKENYL, CYCLOALKYLMETHYL, CYCLOALKYLETHYL OR 2-(4-MORPHOLINYL)ETHYL GROUP, WHETHER OR NOT FURTHER SUBSTITUTED IN THE PYRROLE RING TO ANY EXTENT AND WHETHER OR NOT SUBSTITUTED IN THE NAPHTHYL RING TO ANY EXTENT.

(36) NAPHTHYLIDENEINDENES. ANY COMPOUND CONTAINING A NAPHTHYLIDENEINDENE STRUCTURE WITH SUBSTITUTION AT THE 3-POSITION OF THE INDENE RING BY AN ALKYL, HALOALKYL, ALKENYL, CYCLOALKYLMETHYL, CYCLOALKYLETHYL, 1-(N-METHYL-2-PIPERIDINYL)METHYL OR 2-(4-MORPHOLINYL)ETHYL GROUP, WHETHER OR NOT FURTHER SUBSTITUTED IN THE INDENE RING TO ANY EXTENT AND WHETHER OR NOT SUBSTITUTED IN THE NAPHTHYL RING TO ANY EXTENT.

(37) PHENYLACETYLINDOLES. ANY COMPOUND CONTAINING A 3-PHENYLACETYLINDOLE STRUCTURE WITH SUBSTITUTION AT THE NITROGEN ATOM OF THE INDOLE RING BY AN ALKYL, HALOALKYL, ALKENYL, CYCLOALKYLMETHYL, CYCLOALKYLETHYL, 1-(N-METHYL-2-PIPERIDINYL)METHYL OR 2-(4-MORPHOLINYL)ETHYL GROUP, WHETHER OR NOT FURTHER SUBSTITUTED IN THE INDOLE RING TO ANY EXTENT AND WHETHER OR NOT SUBSTITUTED IN THE PHENYL RING TO ANY EXTENT.

(38) CYCLOHEXYLPHENOLS. ANY COMPOUND CONTAINING A 2-(3-HYDROXYCYCLOHEXYL)PHENOL STRUCTURE WITH SUBSTITUTION AT THE 5-POSITION OF THE PHENOLIC RING BY AN ALKYL, HALOALKYL, ALKENYL, CYCLOALKYLME-

THYL, CYCLOALKYLETHYL, 1-(N-METHYL-2-PIPERIDINYL)METHYL OR 2-(4-MORPHOLINYL)ETHYL GROUP, WHETHER OR NOT SUBSTITUTED IN THE CYCLOHEXYL RING TO ANY EXTENT.

(39) BENZOYLINDOLES. ANY COMPOUND CONTAINING A 3-(BENZOYL)INDOLE STRUCTURE WITH SUBSTITUTION AT THE NITROGEN ATOM OF THE INDOLE RING BY AN ALKYL, HALOALKYL, ALKENYL, CYCLOALKYLMETHYL, CYCLOALKYLETHYL, 1-(N-METHYL-2-PIPERIDINYL)METHYL OR 2-(4-MORPHOLINYL)ETHYL GROUP, WHETHER OR NOT FURTHER SUBSTITUTED IN THE INDOLE RING TO ANY EXTENT AND WHETHER OR NOT SUBSTITUTED IN THE PHENYL RING TO ANY EXTENT.

(40) ADAMANTOYLINDOLES. ANY COMPOUND CONTAINING A 3-(1-ADAMANTOYL) INDOLE STRUCTURE WITH SUBSTITUTION AT THE NITROGEN ATOM OF THE INDOLE RING BY AN ALKYL, HALOALKYL, ALKENYL, CYCLOALKYLMETHYL, CYCLOALKYLETHYL, 1-(N-METHYL-2-PIPERINDINYL)METHYL, OR 2-(4-MORPHOLINYL)ETHYL GROUP, WHETHER OR NOT FURTHER SUBSTITUTED IN THE ADAMANTYL RING SYSTEM TO ANY EXTENT.

(41) (6AR,10AR)-9-(HYDROXYMETHYL)-6,6-DIMETHYL-3-(2-METHYLOCTAN-2-YL) -6A,7,10,10A-TETRAHYDROBENZO{C}CHROMEN-1-OL (HU-210).

(42) (6AS,10AS)-9-(HYDROXYMETHYL)-6,6-DIMETHYL-3-(2-METHYLOCTAN-2-YL) -6A,7,10,10A-TETRAHYDROBENZO{C}CHROMEN-1-OL (DEXANABINOL OR HU-211).

(43) 2,3-DIHYDRO-5-METHYL-3-(4-MORPHOLINYLMETHYL)PYRROLO{1,2,3-DE}-1, 4-BENZOXAZIN-6-YL-1-NAPHTHALENYLMETHANONE (WIN 55,212-2).

S 5. Paragraph 5 of subdivision (f) of schedule I of section 3306 of the public health law, as amended by chapter 457 of the laws of 2006, is amended to read as follows:

(5) [Methcathinone (some other names: 2-(methylamino) - propiophenone; alpha-(methylamino) propiophenone; 2-(methylamino) -1-phenylpropan-1-one; alpha-N-methylaminopropiophenone; monomethylpropion; ephedrone, N-methylcathinone, methylcathinone; AL-464; AL-422; AL-463 and UR1432), its salts, optical isomers and salts of optical isomers] SUBSTITUTED CATHINONES. ANY COMPOUND, OTHER THAN BUPROPRION, THAT IS STRUCTURALLY DERIVED FROM 2-AMINO-1-PHENYL-1-PROPANONE BY MODIFICATION IN ANY OF THE FOLLOWING WAYS:

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

(II) BY SUBSTITUTION AT THE 3-POSITION WITH AN ALKYL SUBSTITUTENT;

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

S 6. Paragraphs 9 and 10 of subdivision (f) of schedule I of section 3306 of the public health law are REPEALED.

S 7. 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, AND SUBSTITUTED CATHINONES, AS DEFINED IN SECTION THIRTY-THREE HUNDRED SIX 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 8. 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 FORTY-TWO, 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 9. 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 FORTY-TWO 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 10. 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 FORTY-TWO 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 11. 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 FORTY-TWO OF SECTION THIRTY-THREE HUNDRED TWO OF THE PUBLIC HEALTH LAW; or

S 12. 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 seven of this act, and the surrender program established by section one of this act, shall become operational on or before such effective date; 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, or substituted cathinones, as defined in section 3306 of the public health law, except that enforcement of such provisions of the penal law shall be allowed during this period with regard to the possession of methacathinone, 4-methylmethcathinone, methylenedioxypyrovalerone, and substances containing 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; and provided, further, that the provisions of section one of this act shall expire and be deemed repealed on the ninety-first day after such effective date.