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

6971

2013-2014 Regular Sessions

I N A S S E M B L Y

April 29, 2013

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:

Section 1. Section 3302 of the public health law is amended by adding three new subdivisions 42, 43 and 44 to read as follows:

42. "SYNTHETIC CANNABINOID" MEANS ANY CHEMICAL COMPOUND THAT IS CHEMICALLY SYNTHESIZED AND:

(A) HAS BEEN DEMONSTRATED TO HAVE A BINDING ACTIVITY AT ONE OR MORE CANNABINOID RECEPTORS; OR

(B) IS A CHEMICAL ISOMER, SALT OR SALT OF AN ISOMER OF A COMPOUND THAT HAS BEEN DEMONSTRATED TO HAVE BINDING ACTIVITY AT ONE OR MORE CANNABINOID RECEPTORS; OR

(C) HAS BEEN DESIGNATED IN REGULATION BY THE COMMISSIONER AS BEING A SYNTHETIC CANNABINOID.

"SYNTHETIC CANNABINOID" DOES NOT INCLUDE ANY PRODUCTS THAT HAVE BEEN APPROVED FOR MEDICAL USE BY THE UNITED STATES FOOD AND DRUG ADMINISTRATION.

43. "SYNTHETIC CANNABINOID ANALOG" MEANS ANY CHEMICAL THAT IS SUBSTANTIALLY SIMILAR IN CHEMICAL STRUCTURE TO A CHEMICAL COMPOUND THAT HAS BEEN DETERMINED TO HAVE BINDING ACTIVITY AT ONE OR MORE CANNABINOID RECEPTORS. IT DOES NOT INCLUDE ANY PRODUCTS THAT HAVE BEEN APPROVED FOR MEDICAL USE BY THE UNITED STATES FOOD AND DRUG ADMINISTRATION.

44. "SUBSTITUTED CATHINONE" MEANS ANY CHEMICAL COMPOUND THAT IS CHEMICALLY SYNTHESIZED AND:

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

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(A) IS A COMPOUND LISTED IN PARAGRAPH FIVE, EIGHT OR NINE OF SUBDIVISION (F) OF SCHEDULE I OF SECTION THIRTY-THREE HUNDRED SIX OF THIS ARTICLE, OR

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

(C) 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 THREE-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 2. Subdivisions 5 and 6 of section 220.00 of the penal law, subdivision 5 as amended by chapter 537 of the laws of 1998, and subdivision 6 as amended by chapter 1051 of the laws of 1973, 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 of section thirty-three hundred two of such law, AND SUBSTITUTED CATHINONES AS DEFINED IN SECTION THIRTY-THREE HUNDRED TWO OF THE PUBLIC HEALTH LAW.

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

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

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

2. NO PERSON, CORPORATION, PARTNERSHIP OR LIMITED LIABILITY COMPANY SHALL KNOWINGLY SELL OR OFFER FOR SALE ANY FORM OF SYNTHETIC CANNABINOID, SUBSTITUTED CATHINONE OR ANY OTHER SUBSTANCE INTENDED TO ACT AS OR ADVERTISED AS AN ALTERNATIVE FORM OF A CONTROLLED SUBSTANCE. NO PERSON, CORPORATION, PARTNERSHIP OR LIMITED LIABILITY COMPANY SHALL OFFER ANY SUBSTANCE FOR SALE WHERE THERE HAS BEEN AN EXPLICIT OR IMPLIED CLAIM MADE BY THE SELLING PARTY THAT THE SUBSTANCE SOLD WILL MIMIC OR APPROXIMATE THE SAME EFFECTS OF CANNABINOID, SYNTHETIC CANNABINOID, SUBSTITUTED CATHINONE OR ANY OTHER SUBSTANCE INTENDED TO ACT AS OR ADVERTISED AS AN ALTERNATIVE FORM OF A CONTROLLED SUBSTANCE.

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

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

INJUNCTION MAY BE ISSUED BY THE COURT OR JUSTICE, ENJOINING AND RESTRAINING ANY FURTHER VIOLATIONS, WITHOUT REQUIRING PROOF THAT ANY PERSON HAS, IN FACT, BEEN INJURED OR DAMAGED THEREBY. IN ANY SUCH PROCEEDING, THE COURT MAY MAKE ALLOWANCES TO THE ATTORNEY GENERAL AS PROVIDED IN PARAGRAPH SIX OF SUBDIVISION (A) OF SECTION EIGHTY-THREE HUNDRED THREE OF THE CIVIL PRACTICE LAW AND RULES, AND DIRECT RESTITUTION. A VIOLATION OF THE PROVISIONS OF THIS SECTION SHALL BE AN OFFENSE PUNISHABLE BY A PENALTY OF FIVE THOUSAND DOLLARS FOR EACH SEPARATE VIOLATION. A VIOLATION OF THE PROVISIONS OF THIS SECTION AFTER HAVING BEEN PREVIOUSLY CONVICTED OF SUCH AN OFFENSE WITHIN THE PREVIOUS FIVE YEARS SHALL BE A CLASS A MISDEMEANOR PUNISHABLE BY A FINE OF TEN THOUSAND DOLLARS FOR EACH SEPARATE VIOLATION. THE PENALTIES FOR ANY SUCH VIOLATION SHOULD BE SUCH AN ILLEGAL SALE HAVE BEEN MADE TO A PERSON UNDER THE AGE OF EIGHTEEN SHALL BE A CLASS E FELONY AS DEFINED IN THE PENAL LAW.

S 4. This act shall take effect immediately.