

1454

2013-2014 Regular Sessions

I N S E N A T E

(PREFILED)

January 9, 2013

Introduced by Sens. FLANAGAN, MARTINS -- read twice and ordered printed,  
and when printed to be committed to the Committee on Consumer  
Protection

AN ACT to amend the general business law, in relation to prohibiting the  
sale of salvia divinorum to persons in New York state

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

1 Section 1. The general business law is amended by adding a new section  
2 391-s to read as follows:

3 S 391-S. SALE OR DISTRIBUTION OF SALVIA DIVINORUM. 1. NO PERSON, FIRM,  
4 CORPORATION, PARTNERSHIP, ASSOCIATION, LIMITED LIABILITY COMPANY, OR  
5 OTHER ENTITY SHALL SELL OR OFFER TO SELL OR GIVE AWAY, AS EITHER A  
6 RETAIL OR WHOLESALE PROMOTION, SALVIA DIVINORUM, COMMONLY KNOWN AS  
7 SALVIA WITHIN NEW YORK STATE, EXCEPT AS AUTHORIZED BY SUBDIVISION THREE  
8 OF THIS SECTION.

9 2. FOR PURPOSES OF THIS SECTION, THE TERM SALVIA DIVINORUM SHALL MEAN  
10 THE HERB FREQUENTLY REFERRED TO AS "SKA MARIA PASTORA" AND "DIVINER'S  
11 SAGE" WHICH IS A PERENNIAL HERB IN THE MINT FAMILY THAT RESEMBLES SAGE.

12 3. NOTHING IN THIS SECTION SHALL APPLY TO NONPRESCRIPTION  
13 OVER-THE-COUNTER DRUGS APPROVED OR REGULATED BY THE FEDERAL FOOD AND  
14 DRUG ADMINISTRATION.

15 4. ANY PERSON, FIRM, CORPORATION, PARTNERSHIP, ASSOCIATION, LIMITED  
16 LIABILITY COMPANY, OR OTHER ENTITY THAT VIOLATES THE PROVISIONS OF THIS  
17 SECTION BY SELLING, OFFERING TO SELL, OR GIVING AWAY AS EITHER A RETAIL  
18 OR WHOLESALE PROMOTION SALVIA DIVINORUM, SHALL BE SUBJECT TO A CIVIL  
19 PENALTY OF NOT MORE THAN FIVE HUNDRED DOLLARS PER VIOLATION, RECOVERABLE  
20 IN AN ACTION BY ANY ENFORCEMENT AUTHORITY DESIGNATED BY ANY MUNICIPALITY  
21 OR POLITICAL SUBDIVISION.

22 5. IT SHALL BE A DEFENSE THAT ANY PERSON, FIRM, CORPORATION, PARTNER-  
23 SHIP, ASSOCIATION, LIMITED LIABILITY COMPANY, OR OTHER ENTITY THAT SOLD,

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

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1 OFFERED FOR SALE, OR GAVE AWAY AS EITHER A RETAIL OR WHOLESALE PROMOTION  
2 SALVIA DIVINORUM, DID NOT HAVE KNOWLEDGE THAT IT WAS SALVIA DIVINORUM,  
3 IF SUCH KNOWLEDGE WAS NOT REASONABLY DISCOVERABLE.  
4 S 2. This act shall take effect on the sixtieth day after it shall  
5 have become a law.