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

2836--C

2015-2016 Regular Sessions

I N S E N A T E

January 29, 2015

Introduced by Sens. FLANAGAN, GALLIVAN, GOLDEN, LITTLE, MARCHIONE, MARTINS, RANZENHOFER, RITCHIE -- read twice and ordered printed, and when printed to be committed to the Committee on Health -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported favorably from said committee, ordered to first and second report, amended on second report, ordered to a third reading, and to be reprinted as amended, retaining its place in the order of third reading -- recommitted to the Committee on Health in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public health law and the penal law, in relation to controlled substances

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

Section 1. 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

(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 2. Section 3302 of the public health law is amended by adding a new subdivision 44 to read as follows:

44. "SYNTHETIC CANNABINOID" SHALL HAVE THE MEANING SET FORTH IN SECTION THIRTY-THREE HUNDRED SIX OF THIS TITLE.

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

LBD08320-04-6

S 3. Paragraph 21 of subdivision (d) of schedule I of section 3306 of the public health law, as added by chapter 664 of the laws of 1985, is amended by to read as follows:

(21) Tetrahydrocannabinols. [Synthetic equivalents of the] THE substances contained in the plant, or in the resinous extractives of cannabis, sp. and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following:

/\1 cis or trans tetrahydrocannabinol, and their optical isomers

/\6 cis or trans tetrahydrocannabinol, and their optical isomers

/\3, 4 cis or trans tetrahydrocannabinol, and its optical isomers (since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered).

S 4. Schedule I of section 3306 of the public health law is amended by adding a new subdivision (g) to read as follows:

(G) (1) UNLESS SPECIFICALLY EXCEPTED OR UNLESS LISTED IN ANOTHER SCHEDULE, ANY MATERIAL, COMPOUND, MIXTURE, OR PREPARATION THAT IS NOT APPROVED BY THE FEDERAL FOOD AND DRUG ADMINISTRATION (FDA), AND WHICH CONTAINS ANY QUANTITY OF SYNTHETIC CANNABINOIDS, OR WHICH CONTAINS ANY OF ITS SALTS, ISOMERS (WHETHER OPTICAL, POSITIONAL, OR GEOMETRIC), HOMOLOGUES (ANALOGS), AND SALTS OF ISOMERS AND HOMOLOGUES (ANALOGS), WHENEVER THE EXISTENCE OF SUCH SALTS, ISOMERS, HOMOLOGUES (ANALOGS), AND SALTS OF ISOMERS AND HOMOLOGUES (ANALOGS) IS POSSIBLE WITHIN THE SPECIFIC CHEMICAL DESIGNATION.

(2) AS USED IN THIS SUBDIVISION, THE TERM "SYNTHETIC CANNABINOIDS" MEANS ANY CHEMICAL COMPOUND OR SYNTHETIC EQUIVALENT THAT IS A CANNBINOID RECEPTOR TYPE 1 (CB1 RECEPTOR) AGONIST AS DEMONSTRATED BY BINDING STUDIES AND FUNCTIONAL ASSAYS WITHIN ANY OF THE FOLLOW STRUCTURAL CLASSES:

(I) 2-(3-HYDROXYCYCLOHEXYL)PHENOL WITH SUBSTITUTION AT THE 5-POSITION OF THE PHENOLIC RING BY ALKYL OR ALKENYL, WHETHER OR NOT SUBSTITUTED ON THE CYCLOHEXYL RING TO ANY EXTENT;

(II) 3-(1-NAPHTHOYL)INDOLE OR 3-(1-NAPHTHYLMETHANE)INDOLE BY SUBSTITUTION AT THE NITROGEN ATOM OF THE INDOLE RING, WHETHER OR NOT FURTHER SUBSTITUTED ON THE INDOLE RING TO ANY EXTENT, WHETHER OR NOT SUBSTITUTED ON THE NAPHTHOYL OR NAPHTHYL RING TO ANY EXTENT;

(III) 3-(1-NAPHTHOYL)PYRROLE BY SUBSTITUTION AT THE NITROGEN ATOM OF THE PYRROLE RING, WHETHER OR NOT FURTHER SUBSTITUTED IN THE PYRROLE RING TO ANY EXTENT, WHETHER OR NOT SUBSTITUTED ON THE NAPHTHOYL RING TO ANY EXTENT;

(IV) 1-(1-NAPHTHYLMETHYLENE)INDENE BY SUBSTITUTION OF THE 3-POSITION OF THE INDENE RING, WHETHER OR NOT FURTHER SUBSTITUTED IN THE INDENE RING TO ANY EXTENT, WHETHER OR NOT SUBSTITUTED ON THE NAPHTHYL RING TO ANY EXTENT;

(V) 3-PHENYLACETYLINDOLE OR 3-BENZOYLINDOLE BY SUBSTITUTION AT THE NITROGEN ATOM OF THE INDOLE RING, WHETHER OR NOT FURTHER SUBSTITUTED IN THE INDOLE RING TO ANY EXTENT, WHETHER OR NOT SUBSTITUTED ON THE PHENYL RING TO ANY EXTENT;

(VI) 5-(1,1-DIMETHYLHEPTYL)-2-[(1R,3S)-3-HYDROXYCYCLOHEXYL]-PHENOL (CP 47,497);

(VII) 5-(1,1-DIMETHYLOCTYL)-2-[(1R,3S)-3-HYDROXYCYCLOHEXYL]-PHENOL (CANNABICYCLOHEXANOL; CP 47,497 C8 HOMOLOGUE);

(VIII) 1-PENTYL-3-(1-NAPHTHOYL)INDOLE (JWH-018; AM678);

(IX) 1-BUTYL-3-(1-NAPHTHOYL)INDOLE (JWH-073);

(X) 1-HEXYL-3-(1-NAPHTHOYL)INDOLE (JWH-019);

(XI) 1-[2-(4-MORPHOLINYL)ETHYL]-3-(1-NAPHTHOYL)INDOLE (JWH-200);
(XII) 1-PENTYL-3-(2-METHOXYPHENYLACETYL)INDOLE (JWH-250);
(XIII) 1-PENTYL-3-[1-(4-METHOXYNAPHTHOYL)]INDOLE (JWH-081);
(XIV) 1-PENTYL-3-(4-METHYL-1-NAPHTHOYL)INDOLE (JWH-122);
(XV) 1-PENTYL-3-(4-CHLORO-1-NAPHTHOYL)INDOLE (JWH-398);
(XVI) 1-(5-FLUOROPENTYL)-3-(1-NAPHTHOYL)INDOLE (AM2201);
(XVII) 1-(5-FLUOROPENTYL)-3-(2-IODOBENZOYL)INDOLE (AM694);
(XVIII) 1-PENTYL-3-[(4-METHOXY)-BENZOYL]INDOLE (SR-19; RCS-4);
(XIX) 1-CYCLOHEXYLETHYL-3-(2-METHOXYPHENYLACETYL)INDOLE (SR-18; RCS-8);
(XX) 1-PENTYL-3-(2-CHLOROPHENYLACETYL)INDOLE (JWH-203);
(XXI) (1-PENTYL-1H-INDOL-3-YL)(2,2,3,3-TETRAMETHYLCYCLOPROPYL)METHANONE (UR-144);
(XXII) [1-(5-FLUORO-PENTYL)-1H-INDOL-3-YL](2,2,3,3-TETRAMETHYLCYCLOPROPYL)METHANONE (5-FLUORO-UR-144; XLR11); AND
(XXIII) N-(1-ADAMANTYL)-1-PENTYL-1H-INDAZOLE-3-CARBOXAMIDE (APINACA; AKB48).

(3) THE TERM "SYNTHETIC CANNABINOIDS" SHALL ALSO INCLUDE:

(I) (1-PENTYL-1H-INDOL-3-YL)(2,2,3,3-TETRAMETHYLCYCLOPROPYL)METHANONE, ITS OPTICAL, POSITIONAL, AND GEOMETRIC ISOMERS, SALTS AND SALTS OF ISOMERS-7144 (OTHER NAMES: UR-144, 1-PENTYL-3-(2,2,3,3- TETRAMETHYLCYCLOPROPOYL)INDOLE);

(II) [1-(5-FLUORO-PENTYL)-1H-INDOL-3-YL](2,2,3,3-TETRAMETHYLCYCLOPROPYL)METHANONE, ITS OPTICAL, POSITIONAL, AND GEOMETRIC ISOMERS, SALTS AND SALTS OF ISOMERS-7011 (OTHER NAMES: 5-FLUORO-UR-144, 5-F-UR-144, XLR11, 1-(5-FLUORO-PENTYL)-3-(2,2,3,3-TETRAMETHYLCYCLOPROPOYL)INDOLE);

(III) N-(1-ADAMANTYL)-1-PENTYL-1H-INDAZOLE-3-CARBOXAMIDE, ITS OPTICAL, POSITIONAL, AND GEOMETRIC ISOMERS, SALTS AND SALTS OF ISOMERS-7048 (OTHER NAMES: APINACA, AKB48);

(IV) QUINOLIN-8-YL 1-PENTYL-1H-INDOLE-3-CARBOXYLATE, ITS OPTICAL, POSITIONAL, AND GEOMETRIC ISOMERS, SALTS AND SALTS OF ISOMERS-7222 (OTHER NAMES: PB-22; QUPIC);

(V) QUINOLIN-8-YL 1-(5-FLUOROPENTYL)-1H-INDOLE-3-CARBOXYLATE, ITS OPTICAL, POSITIONAL, AND GEOMETRIC ISOMERS, SALTS AND SALTS OF ISOMERS-7225 (OTHER NAMES: 5-FLUORO-PB-22; 5F-PB-22);

(VI) N-(1-AMINO-3-METHYL-1-OXOBUTAN-2-YL)-1-(4-FLUOROBENZYL)-1H- INDAZOLE-3-CARBOXAMIDE, ITS OPTICAL, POSITIONAL, AND GEOMETRIC ISOMERS, SALTS AND SALTS OF ISOMERS-7012 (OTHER NAMES: AB-FUBINACA);

(VII) N-(1-AMINO-3,3-DIMETHYL-1-OXOBUTAN-2-YL)-1-PENTYL-1H-INDAZOLE-3-CARBOXAMIDE, ITS OPTICAL, POSITIONAL, AND GEOMETRIC ISOMERS, SALTS AND SALTS OF ISOMERS-7035 (OTHER NAMES: ADB-PINACA);

(VIII) N-(1-AMINO-3-METHYL-1-OXOBUTAN-2-YL)-1-(CYCLOHEXYLMETHYL)-1H-INDAZOLE-3-CARBOXAMIDE, ITS OPTICAL, POSITIONAL, AND GEOMETRIC ISOMERS, SALTS, AND SALTS OF ISOMERS-7031 (OTHER NAMES: AB-CHMINACA);

(IX) N-(1-AMINO-3-METHYL-1-OXOBUTAN-2-YL)-1-PENTYL-1H-INDAZOLE-3-CARBOXAMIDE, ITS OPTICAL, POSITIONAL, AND GEOMETRIC ISOMERS, SALTS, AND SALTS OF ISOMERS-7023 (OTHER NAMES: AB-PINACA); AND

(X) [1-(5-FLUOROPENTYL)-1H-INDAZOL-3-YL](NAPHTHALEN-1-YL)METHANONE, ITS OPTICAL, POSITIONAL, AND GEOMETRIC ISOMERS, SALTS, AND SALTS OF ISOMERS-7024 (OTHER NAMES: THJ-2201).

S 5. Section 220.00 of the penal law is amended by adding a new subdivision 21 to read as follows:

21. "KNOWINGLY" WHEN USED IN CONNECTION WITH THE OFFENSES INVOLVING THE POSSESSION OR SALE, OR THE ATTEMPT OR CONSPIRACY TO POSSESS OR SELL, A SYNTHETIC CANNABINOID, SYNTHETIC CATHINONE, OR A CONTROLLED SUBSTANCE

ANALOGUE, SHALL NOT REQUIRE KNOWLEDGE BY THE DEFENDANT OF THE CHEMICAL STRUCTURE OF THE SUBSTANCE, BUT RATHER, IT IS SUFFICIENT IF:

(A) THE DEFENDANT KNEW OR SHOULD HAVE KNOWN THAT THE SUBSTANCE HAS A STIMULANT, DEPRESSANT, OR HALLUCINOGENIC EFFECT ON THE CENTRAL NERVOUS SYSTEM THAT IS SUBSTANTIALLY SIMILAR TO OR GREATER THAN THE STIMULANT, DEPRESSANT, OR HALLUCINOGENIC EFFECT ON THE CENTRAL NERVOUS SYSTEM OF A CONTROLLED SUBSTANCE IN SCHEDULE I OR II OF SECTION THIRTY-THREE HUNDRED SIX OF THE PUBLIC HEALTH LAW; OR

(B) THE DEFENDANT REPRESENTED OR INTENDED FOR THE SUBSTANCE TO HAVE A STIMULANT, DEPRESSANT, OR HALLUCINOGENIC EFFECT ON THE CENTRAL NERVOUS SYSTEM THAT IS SUBSTANTIALLY SIMILAR TO OR GREATER THAN THE STIMULANT, DEPRESSANT, OR HALLUCINOGENIC EFFECT ON THE CENTRAL NERVOUS SYSTEM OF A CONTROLLED SUBSTANCE IN SCHEDULE I OR II OF SECTION THIRTY-THREE HUNDRED SIX OF THE PUBLIC HEALTH LAW.

S 6. Subdivision 8 of section 220.06 of the penal law, as added by chapter 264 of the laws of 2003, is amended and a new subdivision 9 is added to read as follows:

8. one or more preparations, compounds, mixtures or substances containing gamma hydroxybutyric acid, as defined in paragraph four of subdivision (e) of schedule I of section thirty-three hundred six of the public health law, and said preparations, compounds, mixtures or substances are of an aggregate weight of twenty-eight grams or more[.]; OR

9. ONE OR MORE PREPARATIONS, COMPOUNDS, MIXTURES OR SUBSTANCES CONTAINING A SYNTHETIC CANNABINOID AS DEFINED IN SUBDIVISION (G) OF SCHEDULE I OF SECTION THIRTY-THREE HUNDRED SIX OF THE PUBLIC HEALTH LAW AND SAID PREPARATIONS, COMPOUNDS, MIXTURES OR SUBSTANCES ARE OF AN AGGREGATE WEIGHT OF ONE OUNCE OR MORE.

S 7. Subdivision 15 of section 220.09 of the penal law, as added by chapter 264 of the laws of 2003, is amended and a new subdivision 16 is added to read as follows:

15. one or more preparations, compounds, mixtures or substances containing gamma hydroxybutyric acid, as defined in paragraph four of subdivision (e) of schedule I of section thirty-three hundred six of the public health law, and said preparations, compounds, mixtures or substances are of an aggregate weight of two hundred grams or more[.]; OR

16. ONE OR MORE PREPARATIONS, COMPOUNDS, MIXTURES OR SUBSTANCES CONTAINING A SYNTHETIC CANNABINOID AS DEFINED IN SUBDIVISION (G) OF SCHEDULE I OF SECTION THIRTY-THREE HUNDRED SIX OF THE PUBLIC HEALTH LAW AND SAID PREPARATIONS, COMPOUNDS, MIXTURES OR SUBSTANCES ARE OF AN AGGREGATE WEIGHT OF FOUR OUNCES OR MORE.

S 8. Subdivision 13 of section 220.16 of the penal law, as amended by chapter 75 of the laws of 1995, is amended and a new subdivision 14 is added to read as follows:

13. phencyclidine and said phencyclidine weighs one thousand two hundred fifty milligrams or more[.]; OR

14. ONE OR MORE PREPARATIONS, COMPOUNDS, MIXTURES OR SUBSTANCES CONTAINING A SYNTHETIC CANNABINOID AS DEFINED IN SUBDIVISION (G) OF SCHEDULE I OF SECTION THIRTY-THREE HUNDRED SIX OF THE PUBLIC HEALTH LAW AND SAID PREPARATIONS, COMPOUNDS, MIXTURES OR SUBSTANCES ARE OF AN AGGREGATE WEIGHT OF TEN POUNDS OR MORE.

S 9. Subdivision 3 of section 220.34 of the penal law, as amended by chapter 537 of the laws of 1998, is amended and a new subdivision 10 is added 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

10. ONE OR MORE PREPARATIONS, COMPOUNDS, MIXTURES OR SUBSTANCES CONTAINING A SYNTHETIC CANNABINOID AS DEFINED IN SUBDIVISION (G) OF SCHEDULE I OF SECTION THIRTY-THREE HUNDRED SIX OF THE PUBLIC HEALTH LAW AND SAID PREPARATIONS, COMPOUNDS, MIXTURES OR SUBSTANCES ARE OF AN AGGREGATE WEIGHT OF ONE OUNCE OR MORE.

S 10. Subdivision 9 of section 220.39 of the penal law, as added by chapter 410 of the laws of 1979, is amended and a new subdivision 10 is added to read as follows:

9. a narcotic preparation to a person less than twenty-one years old[.] ; OR

10. ONE OR MORE PREPARATIONS, COMPOUNDS, MIXTURES OR SUBSTANCES CONTAINING A SYNTHETIC CANNABINOID AS DEFINED IN SUBDIVISION (G) OF SCHEDULE I OF SECTION THIRTY-THREE HUNDRED SIX OF THE PUBLIC HEALTH LAW AND SAID PREPARATIONS, COMPOUNDS, MIXTURES OR SUBSTANCES ARE OF AN AGGREGATE WEIGHT OF SIXTEEN OUNCES OR MORE.

S 11. This act shall take effect on the one hundred eightieth day after it shall have become a law; provided, however, 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 and 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 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.