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

8190

I N S E N A T E

September 14, 2016

Introduced by Sen. GALLIVAN -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the penal law, in relation to adding controlled substance analogues to the definition of controlled substances and to define the term knowingly, with respect to controlled substance offenses; and to amend the public health law, in relation to adding controlled substance analogues to the definition of controlled substances

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

Section 1. 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 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 2. Subdivisions 5, 7, 8, 9, 10, 11, 12 and 13 of section 220.00 of the penal law, subdivision 5 as amended by chapter 537 of the laws of 1998, subdivisions 7, 9, 10, 11, 12 and 13 as amended by chapter 664 of the laws of 1985, and subdivision 8 as amended by section 18 of part C of chapter 447 of the laws of 2012, are amended to read as follows:

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

LBD16044-02-6

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, AND ANY CONTROLLED SUBSTANCE ANALOGUE FOR SUCH CONTROLLED SUBSTANCE AS DEFINED IN SUBDIVISION FORTY-FOUR OF SECTION THIRTY-THREE HUNDRED TWO 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.

7. "Narcotic drug" means any controlled substance listed in schedule I(b), I(c), II(b) or II(c) other than methadone, AND ANY CONTROLLED SUBSTANCE ANALOGUE FOR SUCH CONTROLLED SUBSTANCE AS DEFINED IN SUBDIVISION FORTY-FOUR OF SECTION THIRTY-THREE HUNDRED TWO OF THE PUBLIC HEALTH LAW.

8. "Narcotic preparation" means any controlled substance listed in schedule II(b-1), III(d) or III(e), AND ANY CONTROLLED SUBSTANCE ANALOGUE FOR SUCH CONTROLLED SUBSTANCE AS DEFINED IN SUBDIVISION FORTY-FOUR OF SECTION THIRTY-THREE HUNDRED TWO OF THE PUBLIC HEALTH LAW.

9. "Hallucinogen" means any controlled substance listed in schedule I(d) (5), (18), (19), (20), (21) and (22), AND ANY CONTROLLED SUBSTANCE ANALOGUE FOR SUCH CONTROLLED SUBSTANCE AS DEFINED IN SUBDIVISION FORTY-FOUR OF 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, lysergic acid diethylamide, or an hallucinogen, AND ANY CONTROLLED SUBSTANCE ANALOGUE FOR SUCH CONTROLLED SUBSTANCE AS DEFINED IN SUBDIVISION FORTY-FOUR OF SECTION THIRTY-THREE HUNDRED TWO OF THE PUBLIC HEALTH LAW.

11. "Stimulant" means any controlled substance listed in schedule I(f),II(d), AND ANY CONTROLLED SUBSTANCE ANALOGUE FOR SUCH CONTROLLED SUBSTANCE AS DEFINED IN SUBDIVISION FORTY-FOUR OF SECTION THIRTY-THREE HUNDRED TWO OF THE PUBLIC HEALTH LAW.

12. "Dangerous depressant" means any controlled substance listed in schedule I(e)(2), (3), II(e), III(c)(3) or IV(c)(2), (31), (32), (40), AND ANY CONTROLLED SUBSTANCE ANALOGUE FOR SUCH CONTROLLED SUBSTANCE AS DEFINED IN SUBDIVISION FORTY-FOUR OF SECTION THIRTY-THREE HUNDRED TWO OF THE PUBLIC HEALTH LAW.

13. "Depressant" means any controlled substance listed in schedule IV(c) except (c)(2), (31), (32), (40), AND ANY CONTROLLED SUBSTANCE ANALOGUE FOR SUCH CONTROLLED SUBSTANCE AS DEFINED IN SUBDIVISION FORTY-FOUR OF SECTION THIRTY-THREE HUNDRED TWO OF THE PUBLIC HEALTH LAW.

S 3. Section 3302 of the public health law is amended by adding a new subdivision 44 to read as follows:

44. "CONTROLLED SUBSTANCE ANALOGUE" MEANS:

(A) EXCEPT AS PROVIDED IN PARAGRAPH (B), THE TERM "CONTROLLED SUBSTANCE ANALOGUE" MEANS A SUBSTANCE, THE CHEMICAL STRUCTURE OF WHICH IS SUBSTANTIALLY SIMILAR TO THE CHEMICAL STRUCTURE OF A CONTROLLED SUBSTANCE IN SCHEDULE I OR II OF SECTION THIRTY-THREE HUNDRED SIX OF THE PUBLIC HEALTH LAW, AND WHICH EITHER:

(I) HAS A STIMULANT, DEPRESSANT, OR HALLUCINOGENIC EFFECT ON THE CENTRAL NERVOUS SYSTEM THAT MIMICS OR IS 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 THIS TITLE; OR

(II) WITH RESPECT TO A PARTICULAR PERSON, IS A SUBSTANCE THAT SUCH PERSON REPRESENTS OR INTENDS 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 THIS TITLE.

(B) SUCH TERM SHALL NOT INCLUDE:

(I) A CONTROLLED SUBSTANCE; OR

(II) ANY SUBSTANCE FOR WHICH THERE IS AN APPROVED NEW DRUG APPLICATION BY THE FEDERAL FOOD AND DRUG ADMINISTRATION (FDA); OR

(III) WITH RESPECT TO A PARTICULAR PERSON, ANY SUBSTANCE, IF AN EXEMPTION IS IN EFFECT FOR INVESTIGATIONAL USE FOR THAT PERSON, AS PROVIDED BY 21 U.S.C. S 355, TO THE EXTENT CONDUCT WITH RESPECT TO THE SUBSTANCE IS PURSUANT TO SUCH EXEMPTION.

S 4. The public health law is amended by adding a new section 3306-a to read as follows:

S 3306-A. CONTROLLED SUBSTANCE ANALOGUES. A CONTROLLED SUBSTANCE ANALOGUE, AS DEFINED IN SECTION THIRTY-THREE HUNDRED TWO OF THIS TITLE, SHALL BE TREATED FOR THE PURPOSES OF ANY NEW YORK LAW, INCLUDING THE PENAL LAW, AS THE CONTROLLED SUBSTANCE OF WHICH IT IS AN ANALOGUE.

S 5. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.