STATE OF NEW YORK

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2017-2018 Regular Sessions

IN ASSEMBLY

March 10, 2017

Introduced by M. of A. GJONAJ, PICHARDO, RODRIGUEZ, DiPIETRO, MOSLEY, ORTIZ, RA, RAIA, COLTON, McDONOUGH, MONTESANO, BLAKE, MAYER, CURRAN, HOOPER, PALMESANO, GRAF, GALEF -- Multi-Sponsored by -- M. of A. ABBATE, BARCLAY, COOK, HYNDMAN, MAGEE, McKEVITT, McLAUGHLIN, OAKS -- read once and referred to the Committee on Codes

AN ACT to amend the public health law and the penal law, in relation to synthetic cannabinoids and synthetic cathinones

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) mono-terpene numbering system~~].

§ 2. Section 3302 of the public health law is amended by adding two new subdivisions 44 and 45 to read as follows:

44. "Synthetic cannabinoid" means a substance or substances listed in paragraph thirty-six of subdivision (d) of schedule I of section thirty-three hundred six of this title.

45. "Synthetic cathinone" means a substance or substances listed in paragraph thirty-five of subdivision (f) of schedule I of section thirty-three hundred six of this title.

§ 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 and a new paragraph 36 is added to read as follows:

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

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(21) Tetrahydrocannabinols. [~~Synthetic equivalents of 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).~~]

(36) Synthetic cannabinoids. (i) Unless specifically exempted or listed in another schedule of this section, any material, compound, mixture or preparation which contains any quantity of synthetic cannabinoid, or which contains any of its salts, isomers (whether optical, positional or geometric), homologues (analogues), and salts of isomers and homologues (analogues), whenever the existence of such salts, isomers, homologues (analogues) and salts of isomers and homologues (analogues) is possible within the specific chemical designation.

(ii) For the purposes of this paragraph, "synthetic cannabinoid":

1. means any chemical compound that is a cannabinoid receptor type 1 (CB1 receptor) agonist as demonstrated by binding studies and functional assays within any of the following structural classes:

(A) 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.

(B) 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.

(C) 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.

(D) 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.

(E) 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;

2. shall include:

(A) 5-(1,1-dimethylheptyl)-2-[~~(1R,3S)-3-hydroxycyclohexyl~~]-phenol (CP-47,497).

(B) 5-(1,1-dimethyloctyl)-2-[~~(1R,3S)-3-hydroxycyclohexyl~~]-phenol (cannabicyclohexanol or CP-47,497 C8-homolog).

(C) 1-pentyl-3-(1-naphthoyl)indole (JWH-018 and AM678).

(D) 1-butyl-3-(1-naphthoyl)indole (JWH-073).

(E) 1-hexyl-3-(1-naphthoyl)indole (JWH-019).

(F) 1-[~~2-(4-morpholinyl)ethyl~~]-3-(1-naphthoyl)indole (JWH-200).

(G) 1-pentyl-3-(2-methoxyphenylacetyl)indole (JWH-250).

(H) 1-pentyl-3-[~~1-(4-methoxynaphthoyl)~~]indole (JWH-081).

(I) 1-pentyl-3-(4-methyl-1-naphthoyl)indole (JWH-122).

(J) 1-pentyl-3-(4-chloro-1-naphthoyl)indole (JWH-398).

(K) 1-(5-fluoropentyl)-3-(1-naphthoyl)indole (AM2201).

(L) 1-(5-fluoropentyl)-3-(2-iodobenzoyl)indole (AM694).

(M) 1-pentyl-3-[~~(4-methoxy)-benzoyl~~]indole (SR-19 and RCS-4).
(N) 1-cyclohexylethyl-3-(2-methoxyphenylacetyl)indole (SR-18 and RCS-8).
(O) 1-pentyl-3-(2-chlorophenylacetyl)indole (JWH-203).
(P) (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).
(Q) [~~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).
(R) 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).
(S) 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).
(T) 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).
(U) [~~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);
3. shall include synthetic tetrahydrocannabinols, meaning the synthetic equivalents of the substances contained in the cannabis plant, or in the resinous extractives of such plant, and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity to those substances contained in the plant, such as the following:
(A) cis or trans tetrahydrocannabinol, and their optical isomers.
(B) 6 cis or trans tetrahydrocannabinol, and their optical isomers.
(C) 3,4 cis or trans tetrahydrocannabinol, and its optical isomers.
(D) since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered; and
4. shall include any chemical compound that is a synthetic cannabinoid designated as a controlled substance under the federal Controlled Substances Act and regulations adopted pursuant to said Act, including any permanent and emergency regulations adopted by the federal Drug Enforcement Administration.

§ 4. Subdivision (f) of schedule I of section 3306 of the public health law is amended by adding eleven new paragraphs 25, 26, 27, 28, 29, 30, 31, 32, 33, 34 and 35 to read as follows:

(25) 4-methyl-N-ethylcathinone, its optical, positional, and geometric isomers, salts and salts of isomers-1249 (Other names: 4-MEC; 2-(ethylamino)-1-(4-methylphenyl)propan-1-one).
(26) 4-methyl-alpha-pyrrolidinopropiophenone, its optical, positional, and geometric isomers, salts and salts of isomers-7498 (Other names: 4-MePPP; MePPP; 4-methyl-alpha-pyrrolidinopropiophenone; 1-(4-methylphenyl)-2- (pyrrolidin-1-yl)-propan-1-one).
(27) alpha-pyrrolidinopentiophenone, its optical, positional, and geometric isomers, salts and salts of isomers-7545 (Other names: alpha-PVP; alpha-pyrrolidinovalerophenone; 1-phenyl-2-(pyrrolidin-1-yl)pentan-1-one).

(28) Butylone, its optical, positional, and geometric isomers, salts and salts of isomers- 7541 (Other names: bk-MBDB; 1-(1,3-benzodioxol-5-yl)-2- (methylamino)butan-1-one).

(29) Pentedrone, its optical, positional, and geometric isomers, salts and salts of isomers-1246 (Other names: alpha-methylaminovalerophenone; 2-(methylamino)-1- phenylpentan-1-one).

(30) Pentylone, its optical, positional, and geometric isomers, salts and salts of isomers- 7542 (Other names: bk-MBDP; 1-(1,3-benzodioxol-5-yl)-2- (methylamino)pentan-1-one).

(31) 4-fluoro-N-methylcathinone, its optical, positional, and geometric isomers, salts and salts of isomers-1238 (Other names: 4-FMC; flephedrone; 1-(4-fluorophenyl)-2-(methylamino)propan-1-one).

(32) 3-fluoro-N-methylcathinone, its optical, positional, and geometric isomers, salts and salts of isomers-1233 (Other names: 3-FMC; 1-(3-fluorophenyl)-2-(methylamino)propan- 1-one).

(33) Naphyrone, its optical, positional, and geometric isomers, salts and salts of isomers-1258 (Other names: naphthylpyrovalerone; 1-(naphthalen-2-yl)-2-(pyrrolidin-1- yl)pentan-1-one).

(34) Alpha-pyrrolidinobutiophenone, its optical, positional, and geometric isomers, salts and salts of isomers-7546 (Other names: alpha-PBP; 1-phenyl-2-(pyrrolidin-1-yl)butan-1-one).

(35) Synthetic cathinones. (i) Unless specifically exempted or listed in another schedule, any material, compound, mixture or preparation which contains any quantity of synthetic cathinone, or which contains any of their salts, isomers (whether optical, positional, or geometric), homologues (analogues), and salts of isomers and homologues (analogues), whenever the existence of such salts, isomers, homologues (analogues) and salts of isomers and homologues (analogues) is possible within the specific chemical designation.

(ii) For the purposes of this paragraph, "synthetic cathinone":

1. means any substance, except bupropion or compounds listed under a different schedule, that is structurally derived from 2-aminopropan-1-one by substitution at the 1- position with either phenyl, naphthyl, or thiophene ring systems, whether or not the compound is further modified in any of the following ways:

(A) by substitution in the ring system to any extent with alkyl, alkylenedioxy, alkoxy, haloalkyl, hydroxyl, or halide substituents, whether or not further substituted in the ring system by one or more other univalent substituents;

(B) by substitution at the 3-position with an acyclic alkyl substituent;

(C) by substitution at the 2-amino nitrogen atom with alkyl, dialkyl, benzyl or methoxybenzyl groups; or

(D) by inclusion of the 2-amino nitrogen atom in a cyclic structure;

2. means any substance that is structurally derived from 2-amino-1-phenyl-1-propanone (cathinone) by modification in any of the following ways:

(A) 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;

(B) by substitution at the 3-position with an alkyl substituent;

(C) by substitution at the nitrogen atom with alkyl, dialkyl, or benzyl groups, or by inclusion of the nitrogen atom in a cyclic structure;

3. shall include any chemical compound that is a synthetic cathinone designated as a controlled substance under the federal Controlled Substances Act and regulations adopted pursuant to such act, including any permanent and emergency regulations adopted by the federal Drug Enforcement Administration.

§ 5. Subdivision 5 of section 220.00 of the penal law, as amended by chapter 537 of the laws of 1998, is amended and a new subdivision 21 is added 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.

21. "Knowingly" for the purposes of any offense involving the possession or sale, or the attempt or conspiracy to possess or sell, a synthetic cannabinoid or synthetic cathinone, shall not require knowledge by a person of the chemical structure of the substance, but rather, it is sufficient if:

(a) the person 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 listed in schedule I or II of section thirty-three hundred six of the public health law; or

(b) the person 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 listed in schedule I or II of section thirty-three hundred six of the public health law.

§ 6. Section 220.03 of the penal law, as amended by section 4 of part I of chapter 57 of the laws of 2015, is amended to read as follows:

§ 220.03 Criminal possession of a controlled substance in the seventh degree.

A person is guilty of criminal possession of a controlled substance in the seventh degree when he or she knowingly and unlawfully possesses a controlled substance; provided, however, that it shall not be a violation of this section when a person possesses a residual amount of a controlled substance and that residual amount is in or on a hypodermic syringe or hypodermic needle obtained and possessed pursuant to section thirty-three hundred eighty-one of the public health law, which includes the state's syringe exchange and pharmacy and medical provider-based expanded syringe access programs; nor shall it be a violation of this section when a person's unlawful possession of a controlled substance is discovered as a result of seeking immediate health care as defined in paragraph (b) of subdivision three of section 220.78 of [~~the penal law~~] this article, for either another person or him or herself because such person is experiencing a drug or alcohol overdose or other life threatening medical emergency as defined in paragraph (a) of subdivision three of section 220.78 of [~~the penal law~~] this article; nor shall it be a violation of this section when a person possesses less than one ounce of a controlled substance and that controlled substance is a synthetic cannabinoid listed in paragraph thirty-six of subdivision (d) of schedule I of section thirty-three hundred six of the public health law.

Criminal possession of a controlled substance in the seventh degree is a class A misdemeanor.

§ 7. 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 listed in paragraph thirty-six of subdivision (d) 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.

§ 8. 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 listed in paragraph thirty-six of subdivision (d) 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.

§ 9. 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 listed in paragraph thirty-six of subdivision (d) 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.

§ 10. Subdivisions 3 and 9 of section 220.34 of the penal law, subdivision 3 as amended by chapter 537 of the laws of 1998 and subdivision 9 as added by chapter 264 of the laws of 2003, are 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

9. 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

10. one or more preparations, compounds, mixtures or substances containing a synthetic cannabinoid listed in paragraph thirty-six of subdivision (d) 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.

§ 11. 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 listed in paragraph thirty-six of subdivision (d) 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.

§ 12. This act shall take effect immediately.