

STATE OF NEW YORK

4527

2017-2018 Regular Sessions

IN SENATE

February 16, 2017

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

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:

1 Section 1. Section 220.00 of the penal law is amended by adding a new
2 subdivision 21 to read as follows:

3 21. "Knowingly" when used in connection with the offenses involving
4 the possession or sale, or the attempt or conspiracy to possess or sell
5 a controlled substance analogue, shall not require knowledge by the
6 defendant of the chemical structure of the substance, but rather, it is
7 sufficient if:

8 (a) the defendant knew or should have known that the substance has a
9 stimulant, depressant, or hallucinogenic effect on the central nervous
10 system that is substantially similar to or greater than the stimulant,
11 depressant, or hallucinogenic effect on the central nervous system of a
12 controlled substance in schedule I or II of section thirty-three hundred
13 six of the public health law; or

14 (b) the defendant represented or intended for the substance to have a
15 stimulant, depressant, or hallucinogenic effect on the central nervous
16 system that is substantially similar to or greater than the stimulant,
17 depressant, or hallucinogenic effect on the central nervous system of a
18 controlled substance in schedule I or II of section thirty-three hundred
19 six of the public health law.

20 § 2. Subdivisions 5, 7, 8, 9, 10, 11, 12 and 13 of section 220.00 of
21 the penal law, subdivision 5 as amended by chapter 537 of the laws of

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

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1 1998, subdivisions 7, 9, 10, 11, 12 and 13 as amended by chapter 664 of
2 the laws of 1985, and subdivision 8 as amended by section 18 of part C
3 of chapter 447 of the laws of 2012, are amended to read as follows:

4 5. "Controlled substance" means any substance listed in schedule I,
5 II, III, IV or V of section thirty-three hundred six of the public
6 health law, and any controlled substance analogue for such controlled
7 substance as defined in subdivision forty-four of section thirty-three
8 hundred two of the public health law, other than marihuana, but includ-
9 ing concentrated cannabis as defined in paragraph (a) of subdivision
10 four of section thirty-three hundred two of such law.

11 7. "Narcotic drug" means any controlled substance listed in schedule
12 I(b), I(c), II(b) or II(c) other than methadone, and any controlled
13 substance analogue for such controlled substance as defined in subdivi-
14 sion forty-four of section thirty-three hundred two of the public health
15 law.

16 8. "Narcotic preparation" means any controlled substance listed in
17 schedule II(b-1), III(d) or III(e), and any controlled substance
18 analogue for such controlled substance as defined in subdivision forty-
19 four of section thirty-three hundred two of the public health law.

20 9. "Hallucinogen" means any controlled substance listed in schedule
21 I(d) (5), (18), (19), (20), (21) and (22), and any controlled substance
22 analogue for such controlled substance as defined in subdivision forty-
23 four of section thirty-three hundred two of the public health law.

24 10. "Hallucinogenic substance" means any controlled substance listed
25 in schedule I(d) other than concentrated cannabis, lysergic acid diethy-
26 lamide, or an hallucinogen, and any controlled substance analogue for
27 such controlled substance as defined in subdivision forty-four of
28 section thirty-three hundred two of the public health law.

29 11. "Stimulant" means any controlled substance listed in schedule
30 I(f), II(d), and any controlled substance analogue for such controlled
31 substance as defined in subdivision forty-four of section thirty-three
32 hundred two of the public health law.

33 12. "Dangerous depressant" means any controlled substance listed in
34 schedule I(e)(2), (3), II(e), III(c)(3) or IV(c)(2), (31), (32), (40),
35 and any controlled substance analogue for such controlled substance as
36 defined in subdivision forty-four of section thirty-three hundred two of
37 the public health law.

38 13. "Depressant" means any controlled substance listed in schedule
39 IV(c) except (c)(2), (31), (32), (40), and any controlled substance
40 analogue for such controlled substance as defined in subdivision forty-
41 four of section thirty-three hundred two of the public health law.

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

44 44. "Controlled substance analogue" means:

45 (a) Except as provided in paragraph (b), the term "controlled
46 substance analogue" means a substance, the chemical structure of which
47 is substantially similar to the chemical structure of a controlled
48 substance in schedule I or II of section thirty-three hundred six of the
49 public health law, and which either:

50 (i) has a stimulant, depressant, or hallucinogenic effect on the
51 central nervous system that mimics or is similar to or greater than the
52 stimulant, depressant, or hallucinogenic effect on the central nervous
53 system of a controlled substance in schedule I or II of section thirty-
54 three hundred six of this title; or

55 (ii) with respect to a particular person, is a substance that such
56 person represents or intends to have a stimulant, depressant, or hallu-

1 cinogenic effect on the central nervous system that is substantially
2 similar to or greater than the stimulant, depressant, or hallucinogenic
3 effect on the central nervous system of a controlled substance in sched-
4 ule I or II of section thirty-three hundred six of this title.

5 (b) Such term shall not include:

6 (i) a controlled substance; or

7 (ii) any substance for which there is an approved new drug application
8 by the Federal Food and Drug Administration (FDA); or

9 (iii) with respect to a particular person, any substance, if an
10 exemption is in effect for investigational use for that person, as
11 provided by 21 U.S.C. § 355, to the extent conduct with respect to the
12 substance is pursuant to such exemption.

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

15 § 3306-a. Controlled substance analogues. A controlled substance
16 analogue, as defined in section thirty-three hundred two of this title,
17 shall be treated for the purposes of any New York law, including the
18 penal law, as the controlled substance of which it is an analogue.

19 § 5. This act shall take effect on the first of November next succeed-
20 ing the date on which it shall have become a law.