

# STATE OF NEW YORK

2970

2017-2018 Regular Sessions

## IN ASSEMBLY

January 23, 2017

Introduced by M. of A. CUSICK -- read once and referred to the Committee on Health

AN ACT to amend the public health law, in relation to adding controlled substance analogues to the definitions and lists of controlled substances and requiring testing for controlled substances and controlled substance analogues in testing for patients who are suspected of a controlled substance overdose; and to amend the penal law in relation to adding controlled substance analogues to the offense of criminal possession of a controlled substance, and 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. The public health law is amended by adding a new section  
2 3306-a to read as follows:

3 § 3306-a. Controlled substance analogues. A controlled substance  
4 analogue, as defined in section thirty-three hundred two of this title,  
5 shall be treated for the purposes of any New York state law, as the  
6 controlled substance of which it is an analogue.

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

9 44. "Controlled substance analogue" means:

10 (a) Except as provided in paragraph (b) of this subdivision, the term  
11 "controlled substance analogue" means a substance, the chemical struc-  
12 ture of which is substantially similar to the chemical structure of any  
13 controlled substance included in the schedule of controlled substances  
14 in section thirty-three hundred six of this title, and which either:

15 (i) has a stimulant, depressant, or hallucinogenic effect on the  
16 central nervous system that mimics or is similar to or greater than the  
17 stimulant, depressant, or hallucinogenic effect on the central nervous

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

LBD06655-01-7

system of a controlled substance in 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 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; 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. § 355, to the extent conduct with respect to the substance is pursuant to such exemption.

§ 3. The public health law is amended by adding a new section 2805-z to read as follows:

§ 2805-z. Controlled substance analogue screenings. 1. Every facility providing treatment for patients suspected of a controlled substance overdose shall test for controlled substances, including controlled substance analogues.

2. The commissioner shall promulgate all such rules and regulations as may be necessary and proper to implement the provisions of this section.

§ 4. 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 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 included in the schedule of controlled substances in section thirty-three hundred six of the public health law.

§ 5. 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 controlled substance analogue as defined in section thirty-three hundred two of the public health law and said preparations,

compounds, mixtures or substances are of an aggregate weight of one ounce or more.

§ 6. 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 controlled substance analogue as defined in section thirty-three hundred two of the public health law and said preparations, compounds, mixtures or substances are of an aggregate weight of four ounces or more.

§ 7. 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 controlled substance analogue as defined in section thirty-three hundred two of the public health law and said preparations, compounds, mixtures or substances are of an aggregate weight of ten pounds or more.

§ 8. Section 220.34 of the penal law is amended by adding a new subdivision 10 to read as follows:

10. one or more preparations, compounds, mixtures or substances containing a controlled substance analogue as defined in section thirty-three hundred two of the public health law and said preparations, compounds, mixtures or substances are of an aggregate weight of one ounce or more.

§ 9. 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 controlled substance analogue as defined in section thirty-three hundred two of the public health law and said preparations, compounds, mixtures or substances are of an aggregate weight of sixteen ounces or more.

§ 10. 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:

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.

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

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

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

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

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

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

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

32 § 11. This act shall take effect immediately.