STATE OF NEW YORK

2722

2017-2018 Regular Sessions

IN SENATE

January 17, 2017

Introduced by Sens. KLEIN, AMEDORE, GALLIVAN, KENNEDY, MURPHY, O'MARA, ORTT, SERINO, VALESKY -- read twice and ordered printed, and when printed to be committed to the Committee on Health

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

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 3302 of the public health law is amended by adding a new subdivision 44 to read as follows:

44. "Controlled substance analogue" (a) means a substance, the chemical structure of which is substantially similar to the chemical structure of a controlled substance listed in schedule I or II of section thirty-three hundred six of this title, 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 listed 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 listed in schedule I or II of section thirty-three hundred six of this title.

(b) such term shall not include:

(i) a controlled substance;

(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

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

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provided by 21 U.S.C. § 355, to the extent conduct with respect to the substance is pursuant to such exemption.

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

§ 3306-a. Controlled substance analogues. A controlled substance analogue shall be deemed to be, for all purposes, including all provisions of law, the controlled substance of which it is an analogue.

§ 3. 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 an offense involving the possession or sale, or the attempt or conspiracy to possess or sell a controlled substance analogue, shall not require knowledge by a person of the chemical structure of the substance, but rather, it is sufficient if:

(a) such person knew or should have known that the controlled substance analogue 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) such 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.

§ 4. This act shall take effect immediately.