

# STATE OF NEW YORK

5082

2021-2022 Regular Sessions

## IN SENATE

February 23, 2021

Introduced by Sen. BENJAMIN -- 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 unlawful manufacture, distribution or sale of a purported synthetic drug

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

1 Section 1. The penal law is amended by adding a new section 220.80 to  
2 read as follows:

3 § 220.80 Unlawful manufacture, distribution or sale of a purported  
4 synthetic drug.

5 1. No person or entity shall knowingly manufacture, sell, offer for  
6 sale, display for sale, distribute for sale, or possess with intent to  
7 sell any purported synthetic drug.

8 2. In any proceeding commenced in connection with an alleged violation  
9 of this section, it shall be necessary to prove that the purported  
10 synthetic drug was represented to be:

11 (a) any synthetic cannabinoid or synthetic phenethylamine, as such  
12 terms are defined by part nine of title ten of the New York codes, rules  
13 and regulations as of the date of the violation, or as included in sche-  
14 dule I of the federal drug enforcement administration schedules of  
15 controlled substances, as listed in section 1308.11 of title twenty-one  
16 of the code of federal regulations, or successor regulation, as of the  
17 date of the violation, or any cannabimimetic agent, as defined in  
18 section eight hundred twelve of title twenty-one of the United States  
19 code, as of the date of the violation;

20 (b) any analogue of a synthetic cannabinoid, synthetic phenethylamine  
21 or cannabimimetic agent. For the purposes of this paragraph, "analogue  
22 of a synthetic cannabinoid, synthetic phenethylamines or cannabimimetic  
23 agent" means a substance that has a chemical structure that is substan-  
24 tially similar to the chemical structure of a substance described in  
25 paragraph (a) of this subdivision and has a stimulant, depressant, or

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

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1 hallucinogenic effect on the central nervous system that is substantial-  
2 ly similar to or greater than the stimulant, depressant, or hallucino-  
3 genic effect on the central nervous system of such a substance described  
4 in paragraph (a) of this subdivision; or

5 (c) any substance commonly known as synthetic marijuana, K-2 or bath  
6 salts, that is represented as being intended for human consumption.  
7 Evidence of representations that a substance commonly known as synthetic  
8 marijuana, K-2 or bath salts is intended for human consumption may  
9 include, but is not limited to, oral, visual or written representations  
10 by the manufacturer, distributor or seller about the substance with  
11 regard to its nature, use or effect.

12 Provided, however, that it shall not be a defense to prosecution under  
13 this section that the accused believed the purported synthetic drug to  
14 be such a substance.

15 3. For the purposes of this section, the term "purported synthetic  
16 drug" means a substance that, by dosage unit appearance, including  
17 color, shape and size, and by a representation, is represented to be a  
18 substance described in paragraph (a), (b) or (c) of subdivision two of  
19 this section. Evidence of such a representation may include, but is not  
20 limited to, oral, visual or written representations by the manufacturer,  
21 distributor or seller about the substance with regard to:

22 (a) its price, nature, use or effect as a substance described in para-  
23 graph (a), (b) or (c) of subdivision two of this section; or

24 (b) its packaging in a manner normally used for substances described  
25 in paragraph (a), (b) or (c) of subdivision two of this section. Unlaw-  
26 ful manufacture, distribution or sale of a purported synthetic drug is a  
27 class A misdemeanor.

28 § 2. This act shall take effect on the ninetieth day after it shall  
29 have become a law.