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:

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

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

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

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

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

(b) any analogue of a synthetic cannabinoid, synthetic phenethylamine or cannabimimetic agent. For the purposes of this paragraph, "analogue of a synthetic cannabinoid, synthetic phenethylamines or cannabimimetic agent" means a substance that has a chemical structure that is substantially similar to the chemical structure of a substance described in 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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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 such a substance described in paragraph (a) of this subdivision; or

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

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

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

(a) its price, nature, use or effect as a substance described in paragraph (a), (b) or (c) of subdivision two of this section; or

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

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