STATE OF NEW YORK

8544

2025-2026 Regular Sessions

IN SENATE

October 24, 2025

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

AN ACT to amend the penal law, in relation to excluding certain medication from being deemed unlawful to prescribe or dispense; and to amend the education law, in relation to excluding certain medication from being deemed misbranded

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

Section 1. Subdivision 3 of section 178.00 of the penal law, as added by chapter 81 of the laws of 1995, is amended to read as follows:

3. **(a)** "Criminal diversion act" means an act or acts in which a person knowingly:

[~~(a)~~] **(i)** transfers or delivers, in exchange for anything of pecuniary value, a prescription medication or device with knowledge or reasonable grounds to know that the recipient has no medical need for it; or

[~~(b)~~] **(ii)** receives, in exchange for anything of pecuniary value, a prescription medication or device with knowledge or reasonable grounds to know that the seller or transferor is not authorized by law to sell or transfer such prescription medication or device; or

[~~(c)~~] **(iii)** transfers or delivers a prescription in exchange for anything of pecuniary value; or

[~~(d)~~] **(iv)** receives a prescription in exchange for anything of pecuniary value.

(b) The prescribing, dispensing, or receipt of brand name or generic mifepristone or any drug used for medication abortion shall not be considered a criminal diversion act for purposes of this definition solely because it is no longer approved by the federal food and drug administration or because it no longer bears the label currently in effect, provided that:

(i) its labeling was true and accurate at the time of manufacture; and

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

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(ii) the drug is recommended for the purpose for which it was prescribed under World Health Organization guidelines that are current at the time of prescribing or dispensing.

§ 2. Subdivision 13 of section 6802 of the education law, as added by chapter 987 of the laws of 1971, is amended to read as follows:

13. "Misbranding". **a.** If a drug, device or cosmetic is alleged to be misbranded because the labeling is misleading, or if an advertisement is alleged to be false because it is misleading then in determining whether the labeling or advertisement is misleading there shall be taken into account (among other things) not only representations made or suggested by statement, word, design, device, sound or any combination thereof, but also the extent to which the labeling fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the drug, device, or cosmetic to which the labeling or advertising relates under the conditions of use prescribed in the labeling or advertising thereof or under such conditions of use as are customary or usual.

b. No drug, device or cosmetic which is subject to, and complies with regulations promulgated under the provisions of the federal food, drug, and cosmetic act, relating to adulteration and misbranding shall be deemed to be adulterated or misbranded in violation of the provisions of this article because of its failure to comply with the board's regulations, or the rules of the state board of pharmacy, insofar as the regulations are in conflict with regulations relating to adulteration and misbranding under the federal food, drug and cosmetic act.

c. Notwithstanding paragraph b of this subdivision, brand name or generic mifepristone or any drug used for medication abortion shall not be deemed to be adulterated or misbranded in violation of the provisions of this article solely because it is no longer approved or no longer bears the label currently in effect, provided that (1) its labeling was true and accurate at the time of manufacture; and (2) the drug is recommended for the purpose for which it was prescribed under World Health Organization guidelines that are current at the time of prescribing or dispensing.

§ 3. Section 6815 of the education law is amended by adding a new subdivision 3 to read as follows:

3. Drugs used for medication abortion. Brand name or generic mifepristone or any drug used for medication abortion shall not be deemed an adulterated or misbranded drug in violation of the provisions of this article solely because it is no longer approved or no longer bears the label currently in effect, provided that:

a. its labeling was true and accurate at the time of manufacture; and

b. the drug is recommended for the purpose for which it was prescribed under World Health Organization guidelines that are current at the time of prescribing or dispensing.

§ 4. Severability. If any item, clause, sentence, subparagraph, subdivision, section or other part of this act, or the application thereof to any person or circumstances shall be held to be invalid, such holding shall not affect, impair or invalidate the remainder of this act, or the application of such section or part of a section held invalid, to any other person or circumstances, but shall be confined in its operation to the item, clause, sentence, subparagraph, subdivision, section or other part of this act directly involved in such holding, or to the person and circumstances therein involved.

§ 5. This act shall take effect immediately.