

LOCAL LAW NO. "B" FOR 2012

A LOCAL LAW OF THE COUNTY OF ALBANY, NEW YORK PROHIBITING THE SALE OR DISTRIBUTION OF PRODUCTS CONTAINING A SYNTHETIC CANNABINOID IN ALBANY COUNTY

Introduced: 3/12/12

By Messrs. Higgins, Clenahan and Ms. McKnight:

BE IT ENACTED by the Albany County Legislature as follows:

Section 1. Title.

This local law shall be known as the "Synthetic Marihuana Prohibition Law."

Section 2. Legislative Findings.

This Legislature finds that three years ago poison control centers across the country reported only 13 calls from patients who had used synthetic marihuana, a product containing synthetic cannabinoids. Last year thousands of such calls were reported.

This Legislature further finds that synthetic marihuana containing synthetic cannabinoids produces a marihuana like high with dangerous side effects including hallucinations, vomiting, increased heart rate and elevated blood pressure which effects endanger the health, safety, and welfare of the citizens of Albany County.

The Albany County Legislature further finds that these products are being openly sold and marketed in Albany County.

Section 3. Legislative Intent.

The purpose of this local law is to protect the health, safety and welfare of the citizens within the County of Albany by prohibiting the sale of synthetic marihuana products containing synthetic cannabinoids.

Section 4. Definitions.

"Sell" means to sell, exchange, give, or dispose of to another or offer or agree to do the same.

"Synthetic Cannabinoid" means any chemical compound that is chemically synthesized and:

1. Has been demonstrated to have a binding activity at one or more cannabinoid receptors; or
2. Is a chemical isomer, salt, or salt of an isomer of a compound that has been demonstrated to have binding activity at one or more cannabinoid receptors.

Synthetic Cannabinoid does not include any products that have been approved for medical use by the United States Food and Drug Administration.

“Synthetic Marihuana” means any product containing a synthetic cannabinoid.

Section 5. Prohibition against the sale of synthetic cannabinoids.

1. No person, firm, corporation, partnership, association, limited liability company or other entity shall sell any product, which contains a synthetic cannabinoid, which may also be commonly referred to as K2, Spike 99, Yucatan Fire, Haze, Spice, Genie or Zohai, except as authorized by subdivision two of this section.
2. Nothing in this section shall apply to nonprescription over-the-counter drugs approved or regulated by the Federal Food and Drug Administration.
3. It shall be a defense that any person, firm, corporation, partnership, association, limited liability company or other entity that sold or offered for sale had no knowledge that the product sold or offered for sale was a product containing a synthetic cannabinoid provided such knowledge was not reasonably discoverable.

Section 6. Penalties.

A violation of Section 5 of this local law shall be punishable as follows:

First Offense – Any person who violates Section 3 of this law shall be guilty of a violation punishable by a fine not to exceed Two Hundred Fifty Dollars (\$250), where such violation constitutes the person’s first offense.

Second Offense – Any person who violates Section 5 of this law, shall be guilty of a violation punishable by a fine of not less than Five Hundred Dollars (\$500), where such violation constitutes the person’s second offense.

Third and Subsequent Offenses – Any person who violates Section 5 of this law, shall be guilty of an unclassified misdemeanor punishable by a fine not to exceed One Thousand Dollars (\$1,000) and a term of imprisonment not to exceed one (1) year, or both.

Section 7. Conflict with Other Laws and Severability.

1. If any part or provision of this local law is inconsistent with any Federal or State statute, law, rule or regulation, then such statute, law, rule or regulation shall prevail.

2. The provision of Section 5 of this local law shall not in any way affect the application of any other law, where appropriate, including, but not limited to, New York Penal Law Section 260.10, Endangering the Welfare of a Minor, and Section 260.20(2), Unlawfully Dealing with a Child.
3. If any part or provision of this local law or the application thereof to any person or circumstance be adjudged invalid by a court of competent jurisdiction, such judgment shall be confined in its operation to the part or provision of or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this local law, or the application thereof to other persons or circumstances.

Section 8. Reverse Preemption.

This local law shall be null and void on the day that Statewide or Federal legislation goes into effect incorporating either the same or substantially similar provisions as are contained in this law, or in the event that a pertinent State or Federal administrative agency issues and promulgates regulations preempting such action by the County of Albany. The Albany County Legislature may determine via resolution whether or not identical or substantially similar statewide legislation has been enacted for the purposes of triggering the provisions of this section.

Section 9. Applicability.

This local law shall apply to all actions occurring on or after the effective date of this local law.

Section 10. Effective Date.

This local law shall take effect immediately upon filing with the Secretary of State.

Referred to Health and Audit and Finance Committees. 3/12/12