

BY: Delegate Vitale

AMENDMENTS TO HOUSE BILL 262
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 2, strike “Distribution of”; in line 3, strike “Substantially Similar Chemical Structure” and substitute “Court Determinations, Distribution, and Advertising”; in line 4, strike “requiring a court,” and substitute “altering the factors a court or other authority must consider”; strike beginning with the comma in line 6 down through “substance” in line 8 and substitute “; prohibiting a person from distributing, attempting to distribute, or possessing with intent to distribute a noncontrolled substance to a minor in violation of this Act; prohibiting a person from placing certain advertisements or solicitations with reasonable knowledge that the purpose of the advertising or solicitation is to promote the distribution of noncontrolled substances in violation of this Act; providing penalties for a violation of this Act”.

AMENDMENT NO. 2

On page 2, in line 13, strike “AND”; in line 16, after “SUBSTANCE” insert “;

(5) WHETHER OVERALL DOSAGE UNIT APPEARANCE, INCLUDING COLOR, SHAPE, SIZE, MARKINGS, AND PACKAGING, OR REPRESENTATIONS MADE, WOULD CAUSE THE LIKELIHOOD THAT THE NONCONTROLLED SUBSTANCE WOULD BE MISTAKEN FOR A CONTROLLED DANGEROUS SUBSTANCE, UNLESS THE SUBSTANCE WAS INTRODUCED INTO COMMERCE BEFORE THE INITIAL INTRODUCTION INTO COMMERCE OF THE CONTROLLED DANGEROUS SUBSTANCE THAT IT WAS ALLEGED TO IMITATE;

(6) WHETHER BY AN EXPRESS OR IMPLIED REPRESENTATION, THE NONCONTROLLED SUBSTANCE WAS PURPORTED TO ACT LIKE A

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CONTROLLED DANGEROUS SUBSTANCE AS A STIMULANT OR DEPRESSANT OF THE CENTRAL NERVOUS SYSTEM AND WHICH IS NOT COMMONLY USED OR RECOGNIZED FOR USE IN THAT PARTICULAR FORMULATION FOR A PURPOSE OTHER THAN FOR THE STIMULANT OR DEPRESSANT EFFECT, UNLESS THE SUBSTANCE WAS MARKETED, PROMOTED, OR SOLD AS PERMITTED BY THE UNITED STATES FOOD AND DRUG ADMINISTRATION;

(7) WHETHER THE OWNER, OR ANYONE IN CONTROL OF THE NONCONTROLLED SUBSTANCE, HAD A PRIOR CONVICTION UNDER STATE OR FEDERAL LAW RELATED TO CONTROLLED DANGEROUS SUBSTANCES OR FRAUD; AND

(8) WHETHER THE NONCONTROLLED SUBSTANCE WAS FOUND OR STORED NEAR CONTROLLED DANGEROUS SUBSTANCES”;

after line 16, insert:

“(C) FOR PURPOSES OF SUBSECTION (B)(6) OF THIS SECTION, AN EXPRESS OR IMPLIED REPRESENTATION MAY INCLUDE:

(1) A STATEMENT MADE BY AN OWNER OR BY ANYONE ELSE IN CONTROL OF THE NONCONTROLLED SUBSTANCE CONCERNING THE NATURE OF THE NONCONTROLLED SUBSTANCE OR ITS USE OR EFFECT;

(2) A STATEMENT MADE TO THE RECIPIENT THAT THE NONCONTROLLED SUBSTANCE MAY BE RESOLD FOR INORDINATE PROFIT; AND

(3) AN EVASIVE TACTIC OR ACTION USED BY THE OWNER OR PERSON IN CONTROL OF THE NONCONTROLLED SUBSTANCE TO AVOID DETECTION BY LAW ENFORCEMENT AUTHORITIES.”;

in line 17, strike “(c)” and substitute “**(D)**”; in the same line, after “violates” insert “**SUBSECTION (B) OF**”; after line 18, insert:

“(E) (1) A PERSON MAY NOT DISTRIBUTE, ATTEMPT TO DISTRIBUTE, OR POSSESS WITH INTENT TO DISTRIBUTE A NONCONTROLLED SUBSTANCE TO A MINOR IN VIOLATION OF THIS SECTION.

(2) A PERSON WHO VIOLATES PARAGRAPH (1) OF THIS SUBSECTION IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 10 YEARS OR A FINE NOT EXCEEDING \$25,000 OR BOTH.

(F) (1) A PERSON MAY NOT PLACE IN A NEWSPAPER, MAGAZINE, HANDBILL, OR OTHER PUBLICATION OR POST OR DISTRIBUTE IN A PUBLIC PLACE AN ADVERTISEMENT OR SOLICITATION WITH REASONABLE KNOWLEDGE THAT THE PURPOSE OF THE ADVERTISEMENT OR SOLICITATION IS TO PROMOTE THE DISTRIBUTION OF NONCONTROLLED SUBSTANCES IN VIOLATION OF THIS SECTION.

(2) A PERSON WHO VIOLATES THIS SUBSECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 3 YEARS OR A FINE NOT EXCEEDING \$5,000 OR BOTH.”;

and in line 19, strike “(d)” and substitute “**(G)**”.