

MAINE STATE LEGISLATURE

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SECOND REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 1875

H. P. 1882 House of Representatives, January 26, 1982
Approved for introduction by the Legislative Council pursuant to
Joint Rule 26.

Referred to the Committee on Judiciary. Sent up for concurrence and 1,600 ordered printed.

EDWIN H PFERT Clerk

Presented by Representative Matthews of Caribou.

Cosponsors: Representative E. Paradis of Old Town, Representative D. Brown of Livermore Falls, Representative Ketover of Portland.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-TWO

AN ACT Concerning Look-alike Drugs.

17 Be it enacted by the People of the State of Maine as follows:

18 Sec. 1. 17-A MRSA §110I, sub-§§19 and 20 are enacted
19 to read:

19. "Imitation scheduled drug," a substance that is
not a scheduled drug and which was not obtained by valid
medical prescription, but which, by dosage unit appearance
or by representations made, would lead a reasonable person
to believe that the substance was a scheduled drug.

In determining whether the appearance of a dosage unit of an imitation scheduled drug would lead a reasonable person to believe the substance was a scheduled drug, the court may consider, but is not limited to considering, the following:

1 A. In the case of a substance in tablet, capsule or
2 other solid form, whether the size, shape and color are
3 substantially similar to that of a specific scheduled
4 drug, and in the case of a substance in powdered or
5 liquid form, whether the color, consistency and appear-
6 ance are substantially similar to that of a specific
7 scheduled drug;

8 B. Whether the markings on each dosage unit are sub-
9 stantially similar to those on a specific scheduled
10 drug; and

11 C. Whether the packaging of, or the labeling of a con-
12 tainer containing, the substance bears markings or
13 printed material substantially similar to that accompa-
14 nying or containing a specific scheduled drug.

15 20. "Dosage unit," that unit of measurement which is
16 equivalent to an average adult dose.

17 Sec. 2. 17-A MRSA §1116 is enacted to read:

18 §1116. Trafficking or furnishing imitation scheduled drugs

19 1. A person is guilty of trafficking in or furnishing
20 imitation scheduled drugs if he intentionally or knowingly
21 trafficks in or furnishes an imitation scheduled drug.

22 2. A person shall be presumed to be trafficking in or
23 furnishing imitation scheduled drugs if he intentionally or
24 knowingly possesses 100 or more tablets, capsules or other
25 dosage units of imitation scheduled drugs.

26 3. Trafficking in or furnishing imitation scheduled
27 drugs is a Class E crime, except that trafficking in or fur-
28 nishing imitation scheduled drugs by a person 18 years of
29 age or older to a person under 18 years of age is a Class D
30 crime.

31 4. Possession of fewer than 100 tablets, capsules or
32 other dosage units of imitation scheduled drugs constitutes
33 a civil violation for which a forfeiture of not more than
34 \$200 may be adjudged. An imitation scheduled drug is
35 declared to be contraband and may be seized by the State.

36 5. This section shall not apply to:

37 A. Law enforcement officers acting in the course and
38 legitimate scope of their employment;

B. Persons who manufacture, process, package, distribute or sell imitation scheduled drugs to licensed medical practitioners for use as placebos in the course of professional practice or research; and

C. Licensed medical practitioners, pharmacists and other persons authorized to dispense or administer scheduled drugs who are acting in the legitimate performance of their professional licenses.

STATEMENT OF FACT

10 The sale of drugs that are manufactured to appear simi-
11 lar to drugs controlled under federal law or scheduled drugs
12 under the Maine Criminal Code has increased dramatically in
13 recent years. Because these "look-alike"drugs do not con-
14 tain controlled substances, they are not subject to federal
15 or state controls and can be freely sold.

The primary objections to the sale of these drugs lies in their potential for initiating young people to the drug culture, in particularly dangerous ways. First, the unsuspecting user may pay several dollars for a single pill, believing it to be an illegal drug. Very often, however, hundreds and possibly thousands of these drugs can be purchased wholesale for the same price. The enormous profit potential present in the sale of 'look-alike' drugs consequently, invites an increasing number of participants. Second, while the ingredients in a look-alike drug may be nonscheduled substances, the concentrations in which they are present in the dosage unit can still be harmful. The primary ingredients often include caffeine, a stimulant; ephedrine, a vascular constrictor; and phenylpropanodamine (PPA), a chemical similar to amphetamine. Ingestion of sufficient quantities can cause heart or respiratory failure. Third, and most importantly, even if the user does not consume sufficient quantities of the look-alike drug to harm himself, he may come to believe it is safe to consume such drugs in those quantities. Should the user actually buy the real drug at some future time and ingest it in similar quantities, the results could be fatal. "Look-alike" drugs have been implicated in the deaths of at least 14 people nationally.

40 This bill gives law enforcement personnel the authority
41 they need to stop the sale of these drugs. Present provi-
42 sions in the Maine Criminal Code are inadequate.

1 This bill defines an imitation scheduled drug,
2 look-alike drug, as a substance that is not a scheduled drug
3 but which by dosage unit appearance, or representations made
4 by the seller, would lead a reasonable person to believe
5 that the substance was a scheduled drug. A placebo issued
6 pursuant to a valid medical prescription is not an imitation
7 scheduled drug.

8 Trafficking in or furnishing imitation scheduled sub-
9 stances is made a Class E crime. Trafficking includes manu-
10 facturing. If the seller is 18 years old or older and the
11 buyer is under 18 years of age, the offense is elevated to a
12 Class D crime. The bill also creates a presumption that a
13 person is trafficking in or furnishing imitation scheduled
14 drugs if he intentionally or knowingly possesses 100 or more
15 of these drugs. Possession of fewer than 100 of these drugs
16 is a civil violation, for which a fine may be imposed. The
17 bill declares imitation scheduled drugs to be contraband,
18 thus permitting them to be seized.

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