

MAINE STATE LEGISLATURE

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L.D. 1875

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STATE OF MAINE
HOUSE OF REPRESENTATIVES (Filing No. H-638)
110TH LEGISLATURE
SECOND REGULAR SESSION

6 COMMITTEE AMENDMENT "A" to H.P. 1882, L.D. 1875, Bill,
7 "AN ACT Concerning Look-alike Drugs."

8 Amend the bill in section 1 by striking out all of sub-
9 section 19 and inserting in its place the following:

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

15 Further amend the bill in section 2 in that part desig-
16 nated "§1116.", subsection 1, in the 3rd line by inserting
17 after the underlined word "drug" the following:

18 ', unless the conduct which constitutes such trafficking or
19 furnishing is expressly made a civil violation by Title 22,
20 section 2383-A'

21 Further amend the bill in section 2 in that part desig-
22 nated "§1116.", by striking out all of subsection 4 and
23 inserting in its place the following:

24 '4. A 2nd or subsequent violation of Title 22, section
25 2383-A is a Class E crime.'

26 Further amend the bill in section 2 in that part desig-
27 nated "§1116." by adding a new subsection 5 to read:

28 '5. In determining whether the appearance of a dosage
29 unit of an imitation scheduled drug would lead a reasonable
30 person to believe the substance was a scheduled drug, as re-
31 quired by section 1101, subsection 19, the court shall con-
32 sider, but is not limited to considering, the following:

33 A. In the case of a substance in tablet, capsule or
34 other solid form, whether the size, shape and color are
35 substantially similar to that of a specific scheduled

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2 drug, and in the case of a substance in powdered or
3 liquid form, whether the color, consistency and appear-
4 ance are substantially similar to that of a specific
5 scheduled drug;

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

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

13 Further amend the bill in section 2 in that part desig-
14 nated "§1116." subsection 5, paragraph B, line 2 (page 3,
15 line 2 in L.D.) by placing after the underlined word "drugs"
16 the underlined words 'solely for or'

17 Further amend the bill in section 2 in that part desig-
18 nated "§1116." by renumbering subsection 5 to be subsection
19 6.

20 Further amend the bill by adding at the end before the
21 statement of fact the following:

22 'Sec. 3. 22 MRSA c. 558, first 2 lines, as enacted by
23 PL 1969, c. 443, §7, are repealed and the following enacted
24 in their place:

25 CHAPTER 558

26 MARIJUANA AND IMITATION

27 SCHEDULED DRUGS

28 Sec. 4. 22 MRSA §2383-A is enacted to read:

29 §2383-A. Possession of imitation scheduled drugs

30 Possession of fewer than 100 tablets, capsules or other
31 dosage units of imitation scheduled drugs, as defined in
32 Title 17-A, section 1101, subsection 19, constitutes a civil
33 violation for which a forfeiture of not more than \$200 may
34 be adjudged. In determining whether the substance is an

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2 imitation scheduled drug, the court shall apply Title 17-A,
3 section 1116, subsection 5. An imitation scheduled drug is
4 declared to be contraband and may be seized by the State.

5 STATEMENT OF FACT

6 This amendment does 4 things.

7 First, the amendment removes from section 1 of the
8 bill, which amends a definitions section of the Maine Crimi-
9 nal Code, the listing of factors a court is to consider in
10 determining whether a reasonable person would believe that a
11 substance, which is in fact not a scheduled drug, is a
12 scheduled drug. Assessing these factors requires the exer-
13 cise of a court's judgment and thus this listing should be
14 placed in the part of the Maine Criminal Code which details
15 the substantive crime rather than in a definitions section.
16 This amendment makes this change in placement. The amend-
17 ment also states that the court shall consider the listed
18 factors, among any others it wishes to consider, rather than
19 stating that the court may consider the listed factors.
20 This change give the court some definite standards to follow
21 in determining if a substance is an imitation scheduled
22 drug.

23 Second, the amendment removes the creation of the civil
24 violation for possession of fewer than 100 tablets of imita-
25 tion scheduled drugs from the Maine Criminal Code and places
26 it in Title 22 with the civil violation for possession of a
27 usable amount of marijuana. The Maine Criminal Code should
28 be reserved for descriptions of crimes and not civil viola-
29 tions.

30 Third, the amendment provides that a 2nd violation for
31 possession of fewer than 100 tablets of imitation scheduled
32 drugs will not be treated as a civil violation, but becomes
33 instead a Class E crime.

34 Fourth, the amendment alters paragraph B on page 2 of
35 the bill to make it clear that the crime of trafficking in
36 or furnishing imitation scheduled drugs is not applicable to
37 those manufacturers, processors, packagers or distributors
38 who prepare imitation scheduled drugs solely for legitimate

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2 uses. This is to prevent a loophole for someone who does
3 have a legitimate business, but who may also be preparing
4 some imitation scheduled drugs for illegitimate customers
5 and uses.

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Reported by the Committee on Judiciary.
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of the House.

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