

AMENDED IN SENATE JANUARY 4, 2016

AMENDED IN SENATE MARCH 16, 2015

SENATE BILL

No. 202

Introduced by Senator Hernandez

February 10, 2015

An act to amend Section ~~1770~~ of the ~~Civil Code~~, 11357.5 of the *Health and Safety Code*, relating to controlled substances.

LEGISLATIVE COUNSEL'S DIGEST

SB 202, as amended, Hernandez. Controlled substances: ~~unfair or deceptive practices~~. *Synthetic cannabinoids*.

Existing law makes it a misdemeanor to sell, dispense, distribute, furnish, administer, or give, or offer to sell, dispense, distribute, furnish, administer, or give, or possess for sale, any synthetic stimulant compound or any specified synthetic stimulant derivative. Existing law also makes it a misdemeanor to sell, dispense, distribute, furnish, administer, or give, or offer to sell, dispense, distribute, furnish, administer, or give, or possess for sale, any synthetic cannabinoid compound or any synthetic cannabinoid ~~derivative~~. *derivative, as defined*. Existing law, beginning January 1, 2016, law makes it an infraction to use or possess those drugs.

Existing law, the Consumers Legal Remedies Act, makes unlawful certain acts identified as unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of goods to any consumer. Existing law, among other remedies, authorizes consumer class action lawsuits and injunctive relief for alleged violations of the act and provides for senior citizens and disabled persons to receive an

award of punitive damages and attorney's fees, as specified, for successful actions brought under these provisions.

This bill would add to that list of unlawful acts the act of advertising or offering for sale products that contain synthetic cannabinoids or synthetic stimulants, as defined.

This bill would authorize the California State Board of Pharmacy to determine, upon adoption of a regulation, that additional substances are synthetic cannabinoid compounds, according to specified criteria. The bill would require the board to fund that activity by moneys appropriated by the Legislature. This bill would deem the adoption of regulations to add substances to the definition of "synthetic cannabinoid compound" an emergency. By expanding the definition of a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 11357.5 of the Health and Safety Code,
2 as added by Section 2 of Chapter 372 of the Statutes of 2014, is
3 amended to read:

4 11357.5. (a) Every person who sells, dispenses, distributes,
5 furnishes, administers, or gives, or offers to sell, dispense,
6 distribute, furnish, administer, or give, or possesses for sale any
7 synthetic cannabinoid compound, or any synthetic cannabinoid
8 derivative, to any person, is guilty of a misdemeanor, punishable
9 by imprisonment in a county jail not to exceed six months, or by
10 a fine not to exceed one thousand dollars (\$1,000), or by both that
11 fine and imprisonment.

12 (b) Every person who uses or possesses any synthetic
13 cannabinoid compound, or any synthetic cannabinoid derivative,
14 is guilty of an infraction, punishable by a fine not to exceed two
15 hundred fifty dollars (\$250).

1 (c) As used in this section, the term “synthetic cannabinoid
2 compound” refers to any of the following substances:

- 3 (1) 1-pentyl-3-(1-naphthoyl)indole (JWH-018).
- 4 (2) 1-butyl-3-(1-naphthoyl)indole (JWH-073).
- 5 (3) 1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl)indole
6 (JWH-200).
- 7 (4) 5-(1,1-dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol
8 (CP-47,497).
- 9 (5) 5-(1,1-dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol
10 (cannabicyclohexanol; CP-47,497 C8 homologue).

11 ~~(d) This section shall become operative on January 1, 2016.~~

12 (6) (A) *The California State Board of Pharmacy may include*
13 *any other substance as a synthetic cannabinoid compound*
14 *prohibited by this section upon adoption of a regulation. In*
15 *determining if a substance shall be included as a synthetic*
16 *cannabinoid compound, the California State Board of Pharmacy*
17 *shall consider:*

- 18 (i) *The substance’s actual or relative potential for abuse.*
- 19 (ii) *Scientific evidence of the substance’s pharmacological effect,*
20 *if known.*
- 21 (iii) *The state of current scientific knowledge regarding the*
22 *substance.*
- 23 (iv) *The substance’s history and current pattern of abuse.*
- 24 (v) *The scope, duration, and significance of abuse of the*
25 *substance.*
- 26 (vi) *The risk to public health caused by the substance.*
- 27 (vii) *The substance’s potential to produce psychological or*
28 *physiological dependence.*
- 29 (viii) *Whether the substance is an immediate precursor of a*
30 *substance already included in this subdivision.*
- 31 (ix) *The substance’s similarity to other substances already*
32 *considered synthetic cannabinoid compounds under this*
33 *subdivision.*

34 (B) *The board may adopt emergency regulations pursuant to*
35 *this paragraph. The adoption of regulations pursuant to this*
36 *paragraph shall be deemed to be an emergency and necessary for*
37 *the immediate preservation of the public peace, health, safety, or*
38 *general welfare. The emergency regulations authorized by this*
39 *paragraph are exempt from review by the Office of Administrative*
40 *Law. The emergency regulations authorized by this paragraph*

1 shall be submitted to the Office of Administrative Law for filing
 2 with the Secretary of State and shall remain in effect until the
 3 earlier of 180 days following their effective date or the effective
 4 date of regulations adopted pursuant to subparagraph (A).

5 (C) The board shall fund the activities authorized by this
 6 paragraph by moneys appropriated by the Legislature.

7 SEC. 2. No reimbursement is required by this act pursuant to
 8 Section 6 of Article XIII B of the California Constitution because
 9 the only costs that may be incurred by a local agency or school
 10 district will be incurred because this act creates a new crime or
 11 infraction, eliminates a crime or infraction, or changes the penalty
 12 for a crime or infraction, within the meaning of Section 17556 of
 13 the Government Code, or changes the definition of a crime within
 14 the meaning of Section 6 of Article XIII B of the California
 15 Constitution.

16 SECTION 1. ~~Section 1770 of the Civil Code is amended to~~
 17 ~~read:~~

18 ~~1770. (a) The following unfair methods of competition and~~
 19 ~~unfair or deceptive acts or practices undertaken by any person in~~
 20 ~~a transaction intended to result or which results in the sale or lease~~
 21 ~~of goods or services to any consumer are unlawful:~~

22 ~~(1) Passing off goods or services as those of another.~~

23 ~~(2) Misrepresenting the source, sponsorship, approval, or~~
 24 ~~certification of goods or services.~~

25 ~~(3) Misrepresenting the affiliation, connection, or association~~
 26 ~~with, or certification by, another.~~

27 ~~(4) Using deceptive representations or designations of~~
 28 ~~geographic origin in connection with goods or services.~~

29 ~~(5) Representing that goods or services have sponsorship,~~
 30 ~~approval, characteristics, ingredients, uses, benefits, or quantities~~
 31 ~~which they do not have or that a person has a sponsorship,~~
 32 ~~approval, status, affiliation, or connection which he or she does~~
 33 ~~not have.~~

34 ~~(6) Representing that goods are original or new if they have~~
 35 ~~deteriorated unreasonably or are altered, reconditioned, reclaimed,~~
 36 ~~used, or secondhand.~~

37 ~~(7) Representing that goods or services are of a particular~~
 38 ~~standard, quality, or grade, or that goods are of a particular style~~
 39 ~~or model, if they are of another.~~

- 1 ~~(8) Disparaging the goods, services, or business of another by~~
2 ~~false or misleading representation of fact.~~
- 3 ~~(9) Advertising goods or services with intent not to sell them~~
4 ~~as advertised.~~
- 5 ~~(10) Advertising goods or services with intent not to supply~~
6 ~~reasonably expectable demand, unless the advertisement discloses~~
7 ~~a limitation of quantity.~~
- 8 ~~(11) Advertising furniture without clearly indicating that it is~~
9 ~~unassembled if that is the case.~~
- 10 ~~(12) Advertising the price of unassembled furniture without~~
11 ~~clearly indicating the assembled price of that furniture if the same~~
12 ~~furniture is available assembled from the seller.~~
- 13 ~~(13) Making false or misleading statements of fact concerning~~
14 ~~reasons for, existence of, or amounts of price reductions.~~
- 15 ~~(14) Representing that a transaction confers or involves rights,~~
16 ~~remedies, or obligations which it does not have or involve, or~~
17 ~~which are prohibited by law.~~
- 18 ~~(15) Representing that a part, replacement, or repair service is~~
19 ~~needed when it is not.~~
- 20 ~~(16) Representing that the subject of a transaction has been~~
21 ~~supplied in accordance with a previous representation when it has~~
22 ~~not.~~
- 23 ~~(17) Representing that the consumer will receive a rebate,~~
24 ~~discount, or other economic benefit, if the earning of the benefit~~
25 ~~is contingent on an event to occur subsequent to the consummation~~
26 ~~of the transaction.~~
- 27 ~~(18) Misrepresenting the authority of a salesperson,~~
28 ~~representative, or agent to negotiate the final terms of a transaction~~
29 ~~with a consumer.~~
- 30 ~~(19) Inserting an unconscionable provision in the contract.~~
- 31 ~~(20) Advertising that a product is being offered at a specific~~
32 ~~price plus a specific percentage of that price unless (A) the total~~
33 ~~price is set forth in the advertisement, which may include, but is~~
34 ~~not limited to, shelf tags, displays, and media advertising, in a size~~
35 ~~larger than any other price in that advertisement, and (B) the~~
36 ~~specific price plus a specific percentage of that price represents a~~
37 ~~markup from the seller's costs or from the wholesale price of the~~
38 ~~product. This subdivision shall not apply to in-store advertising~~
39 ~~by businesses which are open only to members or cooperative~~
40 ~~organizations organized pursuant to Division 3 (commencing with~~

1 Section 12000) of Title 1 of the Corporations Code where more
2 than 50 percent of purchases are made at the specific price set forth
3 in the advertisement.

4 ~~(21) Selling or leasing goods in violation of Chapter 4
5 (commencing with Section 1797.8) of Title 1.7.~~

6 ~~(22) (A) Disseminating an unsolicited prerecorded message by
7 telephone without an unrecorded, natural voice first informing the
8 person answering the telephone of the name of the caller or the
9 organization being represented, and either the address or the
10 telephone number of the caller, and without obtaining the consent
11 of that person to listen to the prerecorded message.~~

12 ~~(B) This subdivision does not apply to a message disseminated
13 to a business associate, customer, or other person having an
14 established relationship with the person or organization making
15 the call, to a call for the purpose of collecting an existing
16 obligation, or to any call generated at the request of the recipient.~~

17 ~~(23) The home solicitation, as defined in subdivision (h) of
18 Section 1761, of a consumer who is a senior citizen where a loan
19 is made encumbering the primary residence of that consumer for
20 the purposes of paying for home improvements and where the
21 transaction is part of a pattern or practice in violation of either
22 subsection (h) or (i) of Section 1639 of Title 15 of the United States
23 Code or paragraph (e) of Section 226.32 of Title 12 of the Code
24 of Federal Regulations.~~

25 ~~A third party shall not be liable under this subdivision unless
26 (A) there was an agency relationship between the party who
27 engaged in home solicitation and the third party or (B) the third
28 party had actual knowledge of, or participated in, the unfair or
29 deceptive transaction. A third party who is a holder in due course
30 under a home solicitation transaction shall not be liable under this
31 subdivision.~~

32 ~~(24) (A) Charging or receiving an unreasonable fee to prepare,
33 aid, or advise any prospective applicant, applicant, or recipient in
34 the procurement, maintenance, or securing of public social services.~~

35 ~~(B) For purposes of this paragraph, the following definitions
36 shall apply:~~

37 ~~(i) "Public social services" means those activities and functions
38 of state and local government administered or supervised by the
39 State Department of Health Care Services, the State Department
40 of Public Health, or the State Department of Social Services, and~~

1 involved in providing aid or services, or both, including health
2 care services, and medical assistance, to those persons who,
3 because of their economic circumstances or social condition, are
4 in need of that aid or those services and may benefit from them.

5 (ii) “Public social services” also includes activities and functions
6 administered or supervised by the United States Department of
7 Veterans Affairs or the California Department of Veterans Affairs
8 involved in providing aid or services, or both, to veterans, including
9 pension benefits.

10 (iii) “Unreasonable fee” means a fee that is exorbitant and
11 disproportionate to the services performed. Factors to be
12 considered, when appropriate, in determining the reasonableness
13 of a fee, are based on the circumstances existing at the time of the
14 service and shall include, but not be limited to, all of the following:

15 (I) The time and effort required.

16 (II) The novelty and difficulty of the services.

17 (III) The skill required to perform the services.

18 (IV) The nature and length of the professional relationship.

19 (V) The experience, reputation, and ability of the person
20 providing the services.

21 (C) This paragraph shall not apply to attorneys licensed to
22 practice law in California, who are subject to the California Rules
23 of Professional Conduct and to the mandatory fee arbitration
24 provisions of Article 13 (commencing with Section 6200) of
25 Chapter 4 of Division 3 of the Business and Professions Code,
26 when the fees charged or received are for providing representation
27 in administrative agency appeal proceedings or court proceedings
28 for purposes of procuring, maintaining, or securing public social
29 services on behalf of a person or group of persons.

30 (25) (A) Advertising or promoting any event, presentation,
31 seminar, workshop, or other public gathering regarding veterans’
32 benefits or entitlements that does not include the following
33 statement in the same type size and font as the term “veteran” or
34 any variation of that term:

35 (i) “I am not authorized to file an initial application for Veterans’
36 Aid and Attendance benefits on your behalf, or to represent you
37 before the Board of Veterans’ Appeals within the United States
38 Department of Veterans Affairs in any proceeding on any matter,
39 including an application for such benefits. It would be illegal for
40 me to accept a fee for preparing that application on your behalf.”

1 The requirements of this clause do not apply to a person licensed
2 to act as an agent or attorney in proceedings before the Agency of
3 Original Jurisdiction and the Board of Veterans' Appeals within
4 the United States Department of Veterans Affairs when that person
5 is offering those services at the advertised event.

6 ~~(i) The statement in clause (i) shall also be disseminated, both~~
7 ~~orally and in writing, at the beginning of any event, presentation,~~
8 ~~seminar, workshop, or public gathering regarding veterans' benefits~~
9 ~~or entitlements.~~

10 ~~(B) Advertising or promoting any event, presentation, seminar,~~
11 ~~workshop, or other public gathering regarding veterans' benefits~~
12 ~~or entitlements which is not sponsored by, or affiliated with, the~~
13 ~~United States Department of Veterans Affairs, the California~~
14 ~~Department of Veterans Affairs, or any other congressionally~~
15 ~~chartered or recognized organization of honorably discharged~~
16 ~~members of the Armed Forces of the United States, or any of their~~
17 ~~auxiliaries that does not include the following statement, in the~~
18 ~~same type size and font as the term "veteran" or the variation of~~
19 ~~that term:~~

20
21 ~~"This event is not sponsored by, or affiliated with, the United~~
22 ~~States Department of Veterans Affairs, the California Department~~
23 ~~of Veterans Affairs, or any other congressionally chartered or~~
24 ~~recognized organization of honorably discharged members of the~~
25 ~~Armed Forces of the United States, or any of their auxiliaries.~~
26 ~~None of the insurance products promoted at this sales event are~~
27 ~~endorsed by those organizations, all of which offer free advice to~~
28 ~~veterans about how to qualify and apply for benefits."~~

29
30 ~~(i) The statement in this subparagraph shall be disseminated,~~
31 ~~both orally and in writing, at the beginning of any event,~~
32 ~~presentation, seminar, workshop, or public gathering regarding~~
33 ~~veterans' benefits or entitlements.~~

34 ~~(ii) The requirements of this subparagraph shall not apply in a~~
35 ~~case where the United States Department of Veterans Affairs, the~~
36 ~~California Department of Veterans Affairs, or other congressionally~~
37 ~~chartered or recognized organization of honorably discharged~~
38 ~~members of the Armed Forces of the United States, or any of their~~
39 ~~auxiliaries have granted written permission to the advertiser or~~
40 ~~promoter for the use of its name, symbol, or insignia to advertise~~

1 or promote the event, presentation, seminar, workshop, or other
2 public gathering.

3 ~~(26) Representing that a product is made in California by using~~
4 ~~a Made in California label created pursuant to Section 12098.10~~
5 ~~of the Government Code, unless the product complies with Section~~
6 ~~12098.10 of the Government Code.~~

7 ~~(27) Advertising, distributing, or selling a product for use by a~~
8 ~~consumer that contains synthetic cannabinoids, as defined in~~
9 ~~Section 11357.5 of the Health and Safety Code, or synthetic~~
10 ~~stimulants, as defined in Section 11375.5 of the Health and Safety~~
11 ~~Code.~~

12 ~~(b) (1) It is an unfair or deceptive act or practice for a mortgage~~
13 ~~broker or lender, directly or indirectly, to use a home improvement~~
14 ~~contractor to negotiate the terms of any loan that is secured,~~
15 ~~whether in whole or in part, by the residence of the borrower and~~
16 ~~which is used to finance a home improvement contract or any~~
17 ~~portion thereof. For purposes of this subdivision, “mortgage broker~~
18 ~~or lender” includes a finance lender licensed pursuant to the~~
19 ~~California Finance Lenders Law (Division 9 (commencing with~~
20 ~~Section 22000) of the Financial Code), a residential mortgage~~
21 ~~lender licensed pursuant to the California Residential Mortgage~~
22 ~~Lending Act (Division 20 (commencing with Section 50000) of~~
23 ~~the Financial Code), or a real estate broker licensed under the Real~~
24 ~~Estate Law (Division 4 (commencing with Section 10000) of the~~
25 ~~Business and Professions Code).~~

26 ~~(2) This section shall not be construed to either authorize or~~
27 ~~prohibit a home improvement contractor from referring a consumer~~
28 ~~to a mortgage broker or lender by this subdivision. However, a~~
29 ~~home improvement contractor may refer a consumer to a mortgage~~
30 ~~lender or broker if that referral does not violate Section 7157 of~~
31 ~~the Business and Professions Code or any other provision of law.~~
32 ~~A mortgage lender or broker may purchase an executed home~~
33 ~~improvement contract if that purchase does not violate Section~~
34 ~~7157 of the Business and Professions Code or any other provision~~
35 ~~of law. Nothing in this paragraph shall have any effect on the~~
36 ~~application of Chapter 1 (commencing with Section 1801) of Title~~
37 ~~2 to a home improvement transaction or the financing thereof.~~

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