

24:21-19.1 and 24:21-19.2

LEGISLATIVE HISTORY CHECKLIST  
(Prohibits "Look-a-Like"  
drug from being sold)

NJSA 24:21-19.1 and 24:21-19.2

LAWS 1982

CHAPTER 38

Bill No. S666

Sponsor(s) Rand, Costello and Dalton

Date Introduced Pre-filed

Committee: Assembly Corrections, Health & Human Services

Senate Institutions, Health and Welfare

Amended during passage Yes

~~No~~ **XX** Substituted for A999 (not attached since identical to S666). Amendments during passage denoted by asterisks.

Date of Passage: Assembly May 20, 1982

Senate March 15, 1982

Date of approval June 16, 1982

Following statements are attached if available:

Sponsor statement Yes ~~No~~ **XX**

(Below)

Committee Statement: Assembly Yes ~~No~~ **XX**

Senate Yes ~~No~~ **XX**

Fiscal Note ~~Yes~~ **XX** No

Veto Message ~~Yes~~ **XX** No

Message on signing ~~Yes~~ **XX** No

Following were printed:

Reports ~~Yes~~ **XX** No

Hearings ~~Yes~~ **XX** No

Sponsors' statement:

This bill prevents the abuse of over the counter drugs and the illegal trade in and manufacture "look-a-like" drugs which are often being misrepresented as controlled dangerous substances.

This legislation is closely patterned after legislation recently adopted in Delaware.

(over)

6/22/81

RECEIVED  
JUN 23 1982  
LEGISLATIVE SERVICES DIVISION  
TREASURY

Delaware legislation, as mentioned in sponsors' statement:  
Del. Code Ann: Tit. 16 4752A (1981)

6-16-82

[SECOND OFFICIAL COPY REPRINT]

## SENATE, No. 666

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1982 SESSION

By Senators RAND, COSTELLO and DALTON

A SUPPLEMENT to the "New Jersey Controlled Dangerous Substances Act," approved October 19, 1970 (P. L. 1970, c. 226, C. 24:21-1 et seq.).

1 BE IT ENACTED *by the Senate and General Assembly of the State*  
2 *of New Jersey:*

1 1. a. It is unlawful for any person to **\*\*[knowingly]\*\*** distri-  
2 bute**\*\*[, attempt to distribute,]\*\*** or **\*\*to\*\*** possess *\*\*or have under*  
3 *his control\*\** with intent to distribute **\*\*[a noncontrolled]\*\*** *\*\*any*  
4 *substance which is not a controlled dangerous\*\** substance:

5 (1) Upon the express or implied representation *\*\*to the reci-*  
6 *ipient\*\** that the substance is a **\*\*[narcotic or non-narcotic]\*\***  
7 controlled dangerous substance; or

8 (2) Upon the express or implied representation *\*\*to the reci-*  
9 *ipient\*\** that the substance is of **\*\*[the]\*\*** *\*\*such\*\** nature **\*\*[or]\*\***  
10 *\*\*,\*\** appearance *\*\*or effect\*\** that the recipient **\*\*[of the deli-**  
11 *very]\*\** will be able to distribute *\*\*or use\*\** the substance as a  
12 controlled dangerous substance; or

13 (3) Under **\*\*[express or implied]\*\*** circumstances which would  
14 lead a reasonable person to believe that the substance is a controlled  
15 dangerous substance.

16 **\*\*[b.** It is prima facie evidence of the implied representation re-  
17 ferred to in paragraphs (1), (2) and (3) if any two of the following  
18 factors are established**]\*\*** *\*\*Any of the following shall constitute*  
19 *prima facie evidence of such circumstances\*\**:

20 **\*\*[(1)]\*\*** *\*(a)\*\** The **\*\*[noncontrolled]\*\*** substance was pack-

**EXPLANATION**—Matter enclosed in bold-faced brackets [thus] in the above bill  
is not enacted and is intended to be omitted in the law.

Matter printed in italics *thus* is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

\*—Senate committee amendments adopted March 1, 1982.

\*\*—Assembly committee amendments adopted May 13, 1982.

21 aged in a manner normally used for the **["illegal delivery"]**  
 22 **unlawful distribution** of controlled dangerous substances;

23 **[(2)]** **(b)** The **[delivery]** **distribution** or at-  
 24 tempted **[delivery included]** **distribution of the substance**  
 25 **was accompanied by** an exchange of or demand for money or  
 26 other **[valuable property]** **thing** as consideration for  
 27 **[delivery of]** the substance, and the **[amount]** **value**  
 28 of the consideration **[was substantially in excess of]** **ex-**  
 29 **ceeded** the reasonable value of the **[non-]** **[trolled]**  
 30 **[controlled]** substance;

31 **[(3)]** **(c)** The **[overall]** physical appearance  
 32 of the **[finished]** **[product containing the substance]**  
 33 **[dosage form, including size, shape, color and markings or lack**  
 34 **thereof]** **substance** is substantially **[identical to]** **the**  
 35 **same as that** a specific controlled dangerous substance.

36 **[c. In any prosecution for unlawful distribution of a noncon-**  
 37 **trolled substance, it is no defense that the accused believed the**  
 38 **noncontrolled substance to actually be a controlled dangerous**  
 39 **substance.]**

1 **[2.]** **b.** It **[shall be]** **is** unlawful for any person  
 2 to manufacture, compound, **[encapsulate]** **encapsulate**, package  
 3 or imprint **[any substance which is not a controlled dangerous**  
 4 **substance, or any combination of substances,]** **[a controlled**  
 5 **substance]** **any substance which is not a controlled dangerous**  
 6 **substance or any combination of such substances,** **other than a**  
 7 **prescription drug** **,** **,** with the purpose that it resemble or  
 8 duplicate the physical appearance of the finished form, package,  
 9 label or imprint of a controlled dangerous substance.

10 **c. In any prosecution under this section, it shall not be a defense**  
 11 **that the defendant mistakenly believed a substance to be a controlled**  
 12 **dangerous substance.**

13 **d. Any person who violates this section shall be punished by**  
 14 **imprisonment for not more than 3 years, or by a fine of not more**  
 15 **than \$100,000.00, or both.**

1 **[3. Unlawful distribution or manufacturing of a noncontrolled**  
 2 **substance is a crime. The punishment upon conviction under this**  
 3 **section shall be governed by those provisions of P. L. 1970, c. 226**  
 4 **(C. 24:21-1 et seq.) dealing with distribution and manufacturing**  
 5 **of controlled dangerous substances. Specifically, the section pro-**  
 6 **hibiting distribution or manufacturing of the controlled dangerous**  
 7 **substance, which the defendant represented the noncontrolled sub-**  
 8 **stance to be, shall govern the punishment in each case. If no express**

9 or implied representation was made as to the identity of the con-  
10 trolled dangerous substance, the punishment shall be the same as  
11 for the distribution of **\*[an]\*** *\*a\** non-narcotic controlled sub-  
12 stance.]\*\*

1 **\*\*[4.]\*\*** **\*\*2.\*\*** The provisions of this supplementary act shall not  
2 be applicable to *\*a.\** practitioners or agents, servants and employees  
3 of practitioners dispensing or administering noncontrolled sub-  
4 stances to patients on behalf of practitioners in the normal course of  
5 their business or professional practice *\*and b. persons who manu-*  
6 *facture, process, package, distribute or sell noncontrolled substances*  
7 *to practitioners for use as placebos in the normal course of their*  
8 *business, professional practice or research or for use in Federal*  
9 *Food and Drug Administration investigational new drug trials\*.*

1 **\*\*[5.]\*\*** **\*\*3.\*\*** This act shall take effect on the sixtieth day after  
2 enactment.

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ASSEMBLY CORRECTIONS, HEALTH AND  
HUMAN SERVICES COMMITTEE

STATEMENT TO

**SENATE, No. 666**

[OFFICIAL COPY REPRINT]

with Assembly committee amendments

**STATE OF NEW JERSEY**

DATED: MAY, 13, 1982

This bill supplements the "New Jersey Controlled Dangerous Substances Act," P. L. 1970, c. 226 (C. 24:21-1 et seq.) to prohibit any person from distributing, possessing with intent to distribute, selling or manufacturing "look-alike" drugs.

"Look-alike" drugs are capsules and pills manufactured in such a way as to imitate, or look like, existing controlled dangerous substances, primarily amphetamine products. Since the major ingredient in most "look-alikes" is caffeine, which is not a controlled substance, the present manufacturing, advertising and distributing methods apparently fall with the present parameters of the law. There is currently an abuse psychology at the street level encouraging the resale of "look-alikes" at a large profit margin, under the assumption that the final buyer is purchasing a controlled substance for its abuse potential.

Testimony presented to the committee indicated "look-alike" drugs have the potential of causing the following problems:

1. The possibility of overdose by young abusers who confuse a strong controlled dangerous substance with its weaker "look-alike".
2. Confusion of "look-alike" with controlled substances or prescription drugs may interfere with an attending physician's ability to treat an overdose.
3. The possibility of a large overdose of "look-alike" leading to respiratory failure or stroke.

The bill exempts practitioners, such as doctors, pharmacists and scientific research personnel, who administer and distribute noncontrolled substances for use as placebos in the normal course of their business or practice. Also exempted are persons manufacturing, distributing or selling such substances to practitioners for use as placebos or in Federal food and Drug Administration testing.

Amendments to the bill were suggested by the Division of Criminal Justice in the Department of Law and Public Safety.

These were accepted by the sponsor of the legislation and by the committee. The purpose of these amendments is to strengthen and tighten the bill from a criminal prosecution viewpoint. It was believed that the penalties in the bill, which were to be the same for the "look-alike" as for its identical controlled dangerous substance, really did not apply. As amended, the penalty for violations of the act are imprisonment not to exceed 3 years, or a fine not to exceed \$100,000.00, or both.

The committee agrees with the intent of this legislation and released the bill with amendments.

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SENATE INSTITUTIONS, HEALTH AND WELFARE  
COMMITTEE

STATEMENT TO

**SENATE, No. 666**

with Senate committee amendment

**STATE OF NEW JERSEY**

DATED: MARCH 1, 1982

This bill prohibits the manufacture, sale and distribution of "look-alike" drugs. As amended by the committee, the bill supplements the Controlled Dangerous Substances Act to prohibit any person from knowingly distributing, possessing with intent to distribute or manufacturing a noncontrolled substance such as caffeine and the decongestants, phenylpropanolamine and ephedrine sulfate which in its finished product form is intended to look like a controlled dangerous substance such as an amphetamine. The penalties for unlawful distribution or manufacture of "look-alike" drugs will be governed by the Controlled Dangerous Substances Act and shall be the same as for the controlled substance that the "look-alike" drug was intended to imitate.

The bill exempts practitioners (i.e., doctors, pharmacists and scientific researchers) who administer noncontrolled substances such as placebos in the normal course of their practice and persons who manufacture, distribute or sell noncontrolled substances to practitioners for use as placebos or in federal Food and Drug Administration approved testing.

The committee amended the bill to clarify the terminology describing "look-alike" drugs, to exempt the manufacture of prescription drugs which resemble controlled dangerous substances and to extend the exemption from the provisions of the act to persons who manufacture, process, distribute or sell noncontrolled substances to practitioners for use as placebos and in approved testing of new drugs.