



Legislation Text

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Preconsidered Res. No. 1325

Resolution calling upon the New York State Assembly to pass and the Governor to sign into law S.5260-C/A.7251-C, which would amend the Penal Law to establish the offense of fraudulent prescription, dispensing and procurement of non-controlled substance prescription medications and devices, and the offense of unlawful possession of non-controlled substance prescription medications and devices.

By Council Members Vallone, Fidler, Gentile, Koo, Rose, Vacca and Oddo

Whereas, There is a rapidly expanding underground market in non-controlled prescription medications;  
and

Whereas, Unlike psychotropic drugs and opioid pain relievers, which are considered “controlled” prescription drugs under state law and can be abused and lead to addiction, non-controlled prescription drugs are generally not used recreationally; and

Whereas, Non-controlled prescription drugs are used to treat those suffering from chronic medical conditions such as AIDS, asthma, high blood pressure, diabetes, bacterial infections and certain psychoses; and

Whereas, In order to pay for the exorbitant price of these non-controlled prescription medications, some individuals use Medicaid to cover these costs; and

Whereas, While most individuals obtain these drugs in a lawful manner and use them for legitimate purposes, news reports show that some individuals are selling their non-controlled prescription drugs in the underground market, a scheme known as “diversion”; and

Whereas, When diversion occurs, non-controlled prescription drugs are often repackaged by the original recipient and sold to unscrupulous pharmacies, overseas distributors, and online distributors for personal financial gain; and

Whereas, Non-controlled prescription drug diversion has many consequences, ranging from financial

impacts on society to severe public health risks; and

Whereas, The New York City Human Resources Administration approximates that more than \$35 million in identified Medicaid fraud results from false prescriptions and prescription drug diversion schemes; and

Whereas, There is potential for detrimental health impacts on patients who unwittingly purchase diverted non-controlled prescription drugs because these drugs can be stored without quality control measures and could be sold well past their expiration dates; and

Whereas, Non-controlled prescription drug diversion is a new form of drug dealing and it did not exist when the New York State Prescription Drug Diversion laws were enacted in 1995; and

Whereas, Accordingly, article 178 of the Penal Law, which criminalizes drug diversion, applies only to the sale of prescription narcotics and not the possession; and

Whereas, Under the current law, an individual who is caught in the act of illegally buying one or two bottles of non-controlled prescription drugs can be charged, at most, with the misdemeanor crime of Attempted Criminal Diversion of Prescription Medications and Prescriptions in the Fourth Degree; and

Whereas, In contrast, it is a class C felony for someone to sell a prescription for a controlled substance; this disparity in penalties creates an incentive for drug dealers to deal exclusively in non-controlled prescription drugs because there is little or no risk of criminal sanctions if caught; and

Whereas, In order to curb this practice, Senator Kemp Hannon and Assembly Member Daniel O'Donnell introduced legislation, S.5260-C and A.7251-C, respectively, which would address the large-scale underground market for non-controlled prescription drugs; and

Whereas, Some key components of S.5260-C/A.7251-C include punishing those individuals who commit criminal diversion acts on multiple occasions within a given period of time, penalizing pharmacists and physicians for providing a fraudulent prescription to someone who does not medically need it, and punishing those who possess large quantities of non-controlled substance prescription medication without a valid

prescription; and

Whereas, S.5260-C/A.7251-C would amend the definition of criminal diversion of prescription medications and prescriptions in order to punish those individuals who do not have a medical need for a non-controlled medication and who repeatedly purchase non-controlled substance prescription medication; and

Whereas, S.5260-C/A.7251-C would also criminalize the purchasing or dispensing of medications by pharmacists who have obtained the medication through the underground market; and

Whereas, S.5260-C/A.7251-C would amend the Penal Law by adding articles 179 and 219, entitled “fraudulent prescription, dispensing and procurement of non-controlled substance prescription medications and devices” and “unlawful possession of non-controlled substance prescription medications and devices,” respectively; and

Whereas, S.5260-C/A.7251-C would criminalize the writing of fraudulent prescriptions by physicians for patients with no medical need for the medication and pharmacists who dispense medication to those who do not need it; and

Whereas, S.5260-C/A.7251-C would criminalize possession of large quantities of non-controlled substance prescription medications by someone with no lawful basis for such possession; and

Whereas, Additionally, S.5260-C/A.7251-C would establish penalties for those convicted of unlawful possession of non-controlled substance prescription medications and devices, which range from a class A misdemeanor to a class B felony as determined by factors such as quantity and aggregate value; and

Whereas, The New York State Senate passed S.5260-C and delivered it to the New York State Assembly for consideration on February 13, 2012; and

Whereas, By passing this legislation the New York State Legislature would ensure that individuals who repeatedly purchase drugs in the underground market, pharmacists and physicians who provide prescriptions to individuals who do not need them, and those who illegally possess large quantities of prescription drugs are properly punished; now, therefore, be it

Resolved, That the Council of the City of New York calls upon the New York State Assembly to pass and the Governor to sign into law S.5260-C/A.7251-C, which would amend the Penal Law to establish the offense of fraudulent prescription, dispensing and procurement of non-controlled substance prescription medications and devices, and the offense of unlawful possession of non-controlled substance prescription medications and devices.

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