

6040--B

Cal. No. 54

2015-2016 Regular Sessions

I N S E N A T E

August 26, 2015

Introduced by Sens. KLEIN, MURPHY, SERINO, VALESKY -- read twice and ordered printed, and when printed to be committed to the Committee on Rules -- recommitted to the Committee on Consumer Protection in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged and said bill committed to the Committee on Rules -- reported favorably from said committee, ordered to a third reading, passed by Senate and delivered to the Assembly, recalled, vote reconsidered, restored to third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to establish a statewide synthetic cannabinoid surrender program within the department of health; and to amend the general business law, the tax law and the alcoholic beverage control law, in relation to prohibiting the sale of synthetic cannabinoids

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. There is hereby established, within the department of
2 health, a statewide synthetic cannabinoid surrender program. Such
3 program shall, for a period of 90 days after the effective date of this
4 section, in compliance with federal law operate as the statewide
5 synthetic cannabinoid surrender program whereby any individual, at
6 multiple geographic locations throughout the state, may anonymously
7 surrender to the department of health any product containing a synthetic
8 cannabinoid, as defined in section 399-hh of the general business law.
9 Provided further, that no surrender of a synthetic cannabinoid pursuant
10 to this section shall be deemed to be a sale for any purpose of law,
11 rule or regulation.

12 S 2. The general business law is amended by adding a new section
13 399-hh to read as follows:

14 S 399-HH. SALE OR DISTRIBUTION OF SYNTHETIC CANNABINOID; PROHIBITED.
15 1. FOR THE PURPOSES OF THIS SECTION, "SYNTHETIC CANNABINOID" MEANS ANY

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 CHEMICAL COMPOUND THAT IS A CANNABINOID RECEPTOR AGONIST AND SHALL
2 INCLUDE, BUT NOT BE LIMITED TO, ANY MATERIAL, COMPOUND, MIXTURE OR PREP-
3 ARATION THAT IS NOT DESIGNATED AS A CONTROLLED SUBSTANCE PURSUANT TO
4 SECTION THIRTY-THREE HUNDRED SIX OF THE PUBLIC HEALTH LAW.

5 2. NO PERSON, FIRM, CORPORATION, PARTNERSHIP, ASSOCIATION, LIMITED
6 LIABILITY COMPANY OR OTHER ENTITY SHALL SELL, OFFER FOR SALE, DISTRIBUTE
7 OR GIVE AWAY, FOR RETAIL, WHOLESALE OR PROMOTIONAL PURPOSES ANY SYNTHET-
8 IC CANNABINOID.

9 3. ANY PERSON, FIRM, CORPORATION, PARTNERSHIP, ASSOCIATION, LIMITED
10 LIABILITY COMPANY OR OTHER ENTITY THAT IS FOUND BY A LOCAL CRIMINAL
11 COURT, AS DEFINED IN SUBDIVISION THREE OF SECTION 10.10 OF THE CRIMINAL
12 PROCEDURE LAW, TO HAVE VIOLATED THE PROVISIONS OF SUBDIVISION TWO OF
13 THIS SECTION SHALL BE SUBJECT TO A CIVIL PENALTY OF TWO THOUSAND
14 DOLLARS; PROVIDED, HOWEVER, THAT UPON A FINDING OF A SECOND OR SUBSE-
15 QUENT VIOLATION WITHIN ANY PERIOD OF FIVE YEARS, THE VIOLATOR SHALL BE
16 SUBJECT TO A CIVIL PENALTY OF FIVE THOUSAND DOLLARS; AND PROVIDED,
17 FURTHER, THAT UPON A FINDING OF A THIRD OR SUBSEQUENT VIOLATION WITHIN
18 ANY PERIOD OF FIVE YEARS, THE COURT SHALL PROVIDE NOTICE THEREOF TO THE
19 COMMISSIONER OF TAXATION AND FINANCE, THE DIVISION OF THE LOTTERY AND
20 THE STATE LIQUOR AUTHORITY, AND THE VIOLATOR SHALL BE PROHIBITED FROM
21 SELLING CIGARETTES AND TOBACCO PRODUCTS, LOTTERY TICKETS, AND ALCOHOLIC
22 BEVERAGES FOR A PERIOD OF FIVE YEARS.

23 S 3. Paragraphs (e) and (f) of subdivision 2 of section 480 of the tax
24 law, as amended by chapter 744 of the laws of 1990, are amended and a
25 new paragraph (g) is added to read as follows:

26 (e) Any controlling person of such applicant has committed any of the
27 acts specified in subdivision three of this section within the preceding
28 five years, [or]

29 (f) Such applicant or any controlling person has been finally deter-
30 mined to have violated any of the provisions of this article or article
31 twenty-A of this chapter, or any rule or regulation adopted pursuant to
32 this article or article twenty-A of this chapter[.], OR

33 (G) SUCH APPLICANT OR ANY CONTROLLING PERSON HAS BEEN DETERMINED TO
34 HAVE VIOLATED SUBDIVISION TWO OF SECTION THREE HUNDRED NINETY-NINE-HH OF
35 THE GENERAL BUSINESS LAW, THREE OR MORE TIMES DURING A PERIOD OF FIVE
36 YEARS; IN SUCH CASE THE VIOLATOR SHALL BE DENIED A LICENSE FOR A PERIOD
37 OF FIVE YEARS AFTER THE LAST SUCH VIOLATION.

38 S 4. Subparagraphs (iii) and (iv) of paragraph (b) of subdivision 3 of
39 section 480 of the tax law, subparagraph (iii) as added by chapter 860
40 of the laws of 1987 and subparagraph (iv) as amended by chapter 61 of
41 the laws of 1989, are amended and a new subparagraph (v) is added to
42 read as follows:

43 (iii) Has impersonated any person represented to be a wholesale dealer
44 under this article but not in fact licensed under this section, [or]

45 (iv) Has knowingly aided and abetted the sale of cigarettes or tobacco
46 products by a person which such licensee or controlling person knows (A)
47 has not been licensed by the commissioner of taxation and finance and
48 (B) is a wholesale dealer pursuant to the terms of subdivision eight of
49 section four hundred seventy of this chapter[.], OR

50 (V) HAS BEEN DETERMINED TO HAVE VIOLATED SUBDIVISION TWO OF SECTION
51 THREE HUNDRED NINETY-NINE-HH OF THE GENERAL BUSINESS LAW, THREE OR MORE
52 TIMES DURING A PERIOD OF FIVE YEARS; IN SUCH CASE THE VIOLATOR'S LICENSE
53 SHALL BE CANCELLED OR SUSPENDED FOR A PERIOD OF FIVE YEARS.

54 S 5. Subdivision a of section 1605 of the tax law, as amended by chap-
55 ter 217 of the laws of 2011, is amended to read as follows:

1 a. The division may license as agents to sell lottery tickets such
2 persons as in its opinion will best serve public convenience, except
3 that no license shall be issued to any person to engage in business
4 exclusively as a lottery sales agent; AND PROVIDED, FURTHER, THAT NO
5 LICENSE SHALL BE ISSUED TO ANY PERSON WHO HAS BEEN DETERMINED TO HAVE
6 VIOLATED SUBDIVISION TWO OF SECTION THREE HUNDRED NINETY-NINE-HH OF THE
7 GENERAL BUSINESS LAW, THREE OR MORE TIMES DURING A PERIOD OF FIVE YEARS;
8 IN SUCH CASE THE VIOLATOR SHALL BE DENIED A LICENSE FOR A PERIOD OF FIVE
9 YEARS AFTER THE LAST SUCH VIOLATION. The division may license such
10 persons as in its opinion are suitable to participate in video lottery
11 gaming pursuant to section sixteen hundred seventeen-a of this article.

12 S 6. Section 1607 of the tax law is amended by adding a new subdivi-
13 sion i to read as follows:

14 I. THREE OR MORE VIOLATIONS OF SUBDIVISION TWO OF SECTION THREE
15 HUNDRED NINETY-NINE-HH OF THE GENERAL BUSINESS LAW, WITHIN ANY PERIOD OF
16 FIVE YEARS, IN WHICH CASE, THE DIVISION SHALL SUSPEND THE VIOLATOR'S
17 LICENSE FOR A PERIOD OF FIVE YEARS.

18 S 7. Section 105 of the alcoholic beverage control law is amended by
19 adding a new subdivision 4 to read as follows:

20 4. NO PERSON SHALL RECEIVE A LICENSE TO ENGAGE IN THE RETAIL SALE OF
21 ALCOHOLIC BEVERAGES FOR OFF-PREMISES CONSUMPTION, WHO HAS BEEN DETER-
22 MINED TO HAVE VIOLATED SUBDIVISION TWO OF SECTION THREE HUNDRED NINETY-
23 NINE-HH OF THE GENERAL BUSINESS LAW, THREE OR MORE TIMES DURING A PERIOD
24 OF FIVE YEARS; IN SUCH CASE THE VIOLATOR SHALL BE DENIED A LICENSE FOR A
25 PERIOD OF FIVE YEARS AFTER THE LAST SUCH VIOLATION.

26 S 8. Section 106 of the alcoholic beverage control law is amended by
27 adding a new subdivision 4-b to read as follows:

28 4-B. NO PERSON SHALL RECEIVE A LICENSE TO ENGAGE IN THE RETAIL SALE OF
29 ALCOHOLIC BEVERAGES FOR ON-PREMISES CONSUMPTION, WHO HAS BEEN DETERMINED
30 TO HAVE VIOLATED SUBDIVISION TWO OF SECTION THREE HUNDRED NINETY-NINE-HH
31 OF THE GENERAL BUSINESS LAW, THREE OR MORE TIMES DURING A PERIOD OF FIVE
32 YEARS; IN SUCH CASE THE VIOLATOR SHALL BE DENIED A LICENSE FOR A PERIOD
33 OF FIVE YEARS AFTER THE LAST SUCH VIOLATION.

34 S 9. Section 118 of the alcoholic beverage control law is amended by
35 adding a new subdivision 1-a to read as follows:

36 1-A. A LICENSE OR PERMIT ISSUED PURSUANT TO THIS CHAPTER SHALL BE
37 SUSPENDED FOR A PERIOD OF FIVE YEARS WHEN THE HOLDER THEREOF HAS BEEN
38 DETERMINED TO HAVE VIOLATED SUBDIVISION TWO OF SECTION THREE HUNDRED
39 NINETY-NINE-HH OF THE GENERAL BUSINESS LAW, THREE OR MORE TIMES DURING A
40 PERIOD OF FIVE YEARS.

41 S 10. Construction with other laws. Nothing in this act shall be
42 construed to limit or restrict any municipality from enacting or enforc-
43 ing a local law or ordinance governing a license issued by a munici-
44 pality where such business was found to have unlawfully manufactured,
45 distributed or sold a synthetic cannabinoid or synthetic phentylamine.

46 S 11. This act shall take effect on the one hundred eightieth day
47 after it shall have become a law; provided, however, that, effective
48 immediately, any actions necessary to implement the provisions of
49 section one of this act on its effective date are authorized and
50 directed to be completed on or before such date.