

8441--B

2015-2016 Regular Sessions

I N A S S E M B L Y

October 9, 2015

Introduced by M. of A. GJONAJ, MONTESANO, PICHARDO, RODRIGUEZ, MAYER, WALKER, COOK, BENEDETTO, RAIA, McLAUGHLIN, GRAF, RA, GALEF, RUSSELL, COLTON, HYNDMAN, BLAKE, CURRAN, HOOPER, PEOPLES-STOKES, PALMESANO, ARROYO, ORTIZ, STIRPE -- Multi-Sponsored by -- M. of A. ABBATE, BARCLAY, CRESPO, CROUCH, DUPREY, McDONOUGH, OAKS, ROBINSON -- read once and referred to the Committee on Economic Development -- recommitted to the Committee on Economic Development in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

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:

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

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1 S 399-HH. SALE OR DISTRIBUTION OF SYNTHETIC CANNABINOID; PROHIBITED.
2 1. FOR THE PURPOSES OF THIS SECTION, "SYNTHETIC CANNABINOID" MEANS ANY
3 CHEMICAL COMPOUND THAT IS A CANNABINOID RECEPTOR AGONIST AND SHALL
4 INCLUDE, BUT NOT BE LIMITED TO, ANY MATERIAL, COMPOUND, MIXTURE OR PREP-
5 ARATION THAT IS NOT DESIGNATED AS A CONTROLLED SUBSTANCE PURSUANT TO
6 SECTION THIRTY-THREE HUNDRED SIX OF THE PUBLIC HEALTH LAW.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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