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I N A S S E M B L Y

January 12, 2016

Introduced by M. of A. GUNTHER -- read once and referred to the Committee on Economic Development

AN ACT to amend the general business law, the tax law and the alcoholic beverage control law, in relation to prohibiting the sale or distribution of kratom

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

1 Section 1. The general business law is amended by adding a new section
2 399-hh to read as follows:

3 S 399-HH. SALE OR DISTRIBUTION OF KRATOM; PROHIBITED. 1. FOR THE
4 PURPOSES OF THIS SECTION, "KRATOM" MEANS ANY FORM OR DERIVATIVES OF
5 MITRAGYNA SPECIOSA AND SHALL INCLUDE, BUT NOT BE LIMITED TO, ANY MATERI-
6 AL, COMPOUND, MIXTURE OR PREPARATION THAT IS NOT DESIGNATED AS A
7 CONTROLLED SUBSTANCE PURSUANT TO SECTION THIRTY-THREE HUNDRED SIX OF THE
8 PUBLIC HEALTH LAW.

9 2. NO PERSON, FIRM, CORPORATION, PARTNERSHIP, ASSOCIATION, LIMITED
10 LIABILITY COMPANY OR OTHER ENTITY SHALL SELL, OFFER FOR SALE, DISTRIBUTE
11 OR GIVE AWAY, FOR RETAIL, WHOLESALE OR PROMOTIONAL PURPOSES ANY KRATOM.

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

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

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

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

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

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

16 S 3. Subparagraphs (iii) and (iv) of paragraph (b) of subdivision 3 of
17 section 480 of the tax law, subparagraph (iii) as added by chapter 860
18 of the laws of 1987 and subparagraph (iv) as amended by chapter 61 of
19 the laws of 1989, are amended and a new subparagraph (v) is added to
20 read as follows:

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

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

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

32 S 4. Subdivision a of section 1605 of the tax law, as amended by chap-
33 ter 217 of the laws of 2011, is amended to read as follows:

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

45 S 5. Section 1607 of the tax law is amended by adding a new subdivi-
46 sion i to read as follows:

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

51 S 6. Section 105 of the alcoholic beverage control law is amended by
52 adding a new subdivision 4 to read as follows:

53 4. NO PERSON SHALL RECEIVE A LICENSE TO ENGAGE IN THE RETAIL SALE OF
54 ALCOHOLIC BEVERAGES FOR OFF-PREMISES CONSUMPTION, WHO HAS BEEN DETER-
55 MINED TO HAVE VIOLATED SUBDIVISION TWO OF SECTION THREE HUNDRED NINETY-
56 NINE-HH OF THE GENERAL BUSINESS LAW THREE OR MORE TIMES DURING A PERIOD

1 OF FIVE YEARS, IN WHICH CASE THE VIOLATOR SHALL BE DENIED A LICENSE FOR
2 A PERIOD OF FIVE YEARS AFTER THE LAST SUCH VIOLATION.

3 S 7. Section 106 of the alcoholic beverage control law is amended by
4 adding a new subdivision 4-b to read as follows:

5 4-B. NO PERSON SHALL RECEIVE A LICENSE TO ENGAGE IN THE RETAIL SALE OF
6 ALCOHOLIC BEVERAGES FOR ON PREMISES CONSUMPTION, WHO HAS BEEN DETERMINED
7 TO HAVE VIOLATED SUBDIVISION TWO OF SECTION THREE HUNDRED NINETY-NINE-HH
8 OF THE GENERAL BUSINESS LAW THREE OR MORE TIMES DURING A PERIOD OF FIVE
9 YEARS, IN WHICH CASE THE VIOLATOR SHALL BE DENIED A LICENSE FOR A PERIOD
10 OF FIVE YEARS AFTER THE LAST SUCH VIOLATION.

11 S 8. Section 118 of the alcoholic beverage control law is amended by
12 adding a new subdivision 1-a to read as follows:

13 1-A. A LICENSE OR PERMIT ISSUED PURSUANT TO THIS CHAPTER SHALL BE
14 SUSPENDED FOR A PERIOD OF FIVE YEARS WHEN THE HOLDER THEREOF HAS BEEN
15 DETERMINED TO HAVE VIOLATED SUBDIVISION TWO OF SECTION THREE HUNDRED
16 NINETY-NINE-HH OF THE GENERAL BUSINESS LAW THREE OR MORE TIMES DURING A
17 PERIOD OF FIVE YEARS.

18 S 9. This act shall take effect on the first of January next succeed-
19 ing the date on which it shall have become a law.