S T A T E O F N E W Y O R K

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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:

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

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

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

3. ANY PERSON, FIRM, CORPORATION, PARTNERSHIP, ASSOCIATION, LIMITED LIABILITY COMPANY OR OTHER ENTITY THAT IS FOUND BY A LOCAL CRIMINAL COURT, AS DEFINED IN SUBDIVISION THREE OF SECTION 10.10 OF THE CRIMINAL PROCEDURE LAW, TO HAVE VIOLATED THE PROVISIONS OF SUBDIVISION TWO OF THIS SECTION SHALL BE SUBJECT TO A CIVIL PENALTY OF TWO THOUSAND DOLLARS; PROVIDED, HOWEVER, THAT UPON A FINDING OF A SECOND OR SUBSEQUENT VIOLATION WITHIN ANY PERIOD OF FIVE YEARS, THE VIOLATOR SHALL BE SUBJECT TO A CIVIL PENALTY OF FIVE THOUSAND DOLLARS; AND PROVIDED, FURTHER, THAT UPON A FINDING OF A THIRD OR SUBSEQUENT VIOLATION WITHIN ANY PERIOD OF FIVE YEARS, THE COURT SHALL PROVIDE NOTICE THEREOF TO THE COMMISSIONER OF TAXATION AND FINANCE, THE DIVISION OF THE LOTTERY AND THE STATE LIQUOR AUTHORITY, AND THE VIOLATOR SHALL BE PROHIBITED FROM SELLING CIGARETTES AND TOBACCO PRODUCTS, LOTTERY TICKETS, AND ALCOHOLIC 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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S 2. Paragraphs (e) and (f) of subdivision 2 of section 480 of the tax law, as amended by chapter 744 of the laws of 1990, are amended and a new paragraph (g) is added to read as follows:

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

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

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

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

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

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

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

S 4. Subdivision a of section 1605 of the tax law, as amended by chapter 217 of the laws of 2011, is amended to read as follows:

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

S 5. Section 1607 of the tax law is amended by adding a new subdivision i to read as follows:

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

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

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

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

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

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

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

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

S 9. This act shall take effect on the first of January next succeeding the date on which it shall have become a law.