

STATE OF NEW YORK

3040--A

2017-2018 Regular Sessions

IN SENATE

January 19, 2017

Introduced by Sens. KRUEGER, ALCANTARA, BAILEY, COMRIE, DILAN, HAMILTON, HOYLMAN, MONTGOMERY, PARKER, PERALTA, RIVERA, SERRANO -- read twice and ordered printed, and when printed to be committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public health law, in relation to the description of marihuana, and the growing of and use of marihuana by persons twenty-one years of age or older; to amend the civil practice law and rules, in relation to removing certain references to marihuana relating to forfeiture actions; to amend the vehicle and traffic law, in relation to making technical changes regarding the definition of marihuana; to amend the penal law, in relation to the qualification of certain offenses involving marihuana and to exempt certain persons from prosecution for the use, consumption, display, production or distribution of marihuana; to amend the alcoholic beverage control law, in relation to providing for the licensure of persons authorized to produce, process and sell marihuana; to amend the state finance law, in relation to establishing the marihuana control fund and the marihuana revenue fund; to amend the tax law, in relation to providing for the levying of an excise tax on certain sales of marihuana; to amend the criminal procedure law, the civil practice law and rules, the general business law, the state finance law, the executive law, the penal law and the vehicle and traffic law, in relation to making conforming changes; to repeal sections 221.05, 221.10, 221.15, 221.20, 221.25, 221.30, 221.35 and 221.40 of the penal law relating to the criminal possession and sale of marihuana; to repeal paragraph (f) of subdivision 2 of section 850 of the general business law relating to drug related paraphernalia; and making an appropriation therefor

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

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

LBD05327-04-7

1 Section 1. This act shall be known and may be cited as the "marihuana
2 regulation and taxation act".

3 § 2. Legislative findings and intent. The legislature finds that
4 existing marihuana laws have not been beneficial to the welfare of the
5 general public. Existing laws have been ineffective in reducing or curb-
6 ing marihuana use and have instead resulted in devastating collateral
7 consequences that inhibit an otherwise law-abiding citizen's ability to
8 access housing, employment opportunities, and other vital services.
9 Existing laws have also created an illicit market which represents a
10 threat to public health and reduces the ability of the legislature to
11 deter the accessing of marihuana by minors. Existing marihuana laws have
12 also disproportionately impacted African-American and Latino communi-
13 ties.

14 The intent of this act is to regulate, control, and tax marihuana in a
15 manner similar to alcohol, generate millions of dollars in new revenue,
16 prevent access to marihuana by those under the age of twenty-one years,
17 reduce the illegal drug market and reduce violent crime, reduce partic-
18 ipation of otherwise law-abiding citizens in the illicit market, end the
19 racially disparate impact of existing marihuana laws and create new
20 industries and increase employment.

21 Nothing in this act is intended to limit the authority of any district
22 government agency or office or employers to enact and enforce policies
23 pertaining to marihuana in the workplace, to allow driving under the
24 influence of marihuana, to allow individuals to engage in conduct that
25 endangers others, to allow smoking marihuana in any location where smok-
26 ing tobacco is prohibited, or to require any individual to engage in any
27 conduct that violates federal law or to exempt anyone from any require-
28 ment of federal law or pose any obstacle to the federal enforcement of
29 federal law.

30 Nothing in this act is intended to limit any privileges or rights of a
31 medical marihuana patient or medical marihuana caregiver under the New
32 York Compassionate Care Act.

33 § 3. Section 3302 of the public health law, as added by chapter 878 of
34 the laws of 1972, subdivisions 1, 14, 16, 17 and 27 as amended and
35 subdivisions 4, 5, 6, 7, 8, 11, 12, 13, 15, 18, 19, 20, 21, 22, 23, 24,
36 25, 26, 28, 29 and 30 as renumbered by chapter 537 of the laws of 1998,
37 subdivisions 9 and 10 as amended and subdivisions 34, 35, 36, 37, 38, 39
38 and 40 as added by chapter 178 of the laws of 2010, paragraph (a) of
39 subdivision 20, the opening paragraph of subdivision 22 and subdivision
40 29 as amended by chapter 163 of the laws of 1973, subdivision 31 as
41 amended by section 4 of part A of chapter 58 of the laws of 2004, subdi-
42 vision 41 as added by section 6 of part A of chapter 447 of the laws of
43 2012, and subdivisions 42 and 43 as added by section 13 of part D of
44 chapter 60 of the laws of 2014, is amended to read as follows:

45 § 3302. Definitions of terms of general use in this article. Except
46 where different meanings are expressly specified in subsequent
47 provisions of this article, the following terms have the following mean-
48 ings:

49 1. "Addict" means a person who habitually uses a controlled substance
50 for a non-legitimate or unlawful use, and who by reason of such use is
51 dependent thereon.

52 2. "Administer" means the direct application of a controlled
53 substance, whether by injection, inhalation, ingestion, or any other
54 means, to the body of a patient or research subject.

55 3. "Agent" means an authorized person who acts on behalf of or at the
56 direction of a manufacturer, distributor, or dispenser. No person may be

1 authorized to so act if under title VIII of the education law such
2 person would not be permitted to engage in such conduct. It does not
3 include a common or contract carrier, public warehouseman, or employee
4 of the carrier or warehouseman when acting in the usual and lawful
5 course of the carrier's or warehouseman's business.

6 4. [~~"Concentrated Cannabis" means~~

7 ~~(a) the separated resin, whether crude or purified, obtained from a~~
8 ~~plant of the genus Cannabis; or~~

9 ~~(b) a material, preparation, mixture, compound or other substance~~
10 ~~which contains more than two and one half percent by weight of delta 9~~
11 ~~tetrahydrocannabinol, or its isomer, delta 8 dibenzopyran numbering~~
12 ~~system, or delta 1 tetrahydrocannabinol or its isomer, delta 1 (6) mono-~~
13 ~~terpene numbering system.~~

14 5.] "Controlled substance" means a substance or substances listed in
15 section thirty-three hundred six of this [~~chapter~~] title.

16 [~~6.~~] 5. "Commissioner" means commissioner of health of the state of
17 New York.

18 [~~7.~~] 6. "Deliver" or "delivery" means the actual, constructive or
19 attempted transfer from one person to another of a controlled substance,
20 whether or not there is an agency relationship.

21 [~~8.~~] 7. "Department" means the department of health of the state of
22 New York.

23 [~~9.~~] 8. "Dispense" means to deliver a controlled substance to an ulti-
24 mate user or research subject by lawful means, including by means of the
25 internet, and includes the packaging, labeling, or compounding necessary
26 to prepare the substance for such delivery.

27 [~~10.~~] 9. "Distribute" means to deliver a controlled substance, includ-
28 ing by means of the internet, other than by administering or dispensing.

29 [~~11.~~] 10. "Distributor" means a person who distributes a controlled
30 substance.

31 [~~12.~~] 11. "Diversion" means manufacture, possession, delivery or use
32 of a controlled substance by a person or in a manner not specifically
33 authorized by law.

34 [~~13.~~] 12. "Drug" means

35 (a) substances recognized as drugs in the official United States Phar-
36 macopoeia, official Homeopathic Pharmacopoeia of the United States, or
37 official National Formulary, or any supplement to any of them;

38 (b) substances intended for use in the diagnosis, cure, mitigation,
39 treatment, or prevention of disease in man or animals; and

40 (c) substances (other than food) intended to affect the structure or a
41 function of the body of man or animal. It does not include devices or
42 their components, parts, or accessories.

43 [~~14.~~] 13. "Federal agency" means the Drug Enforcement Administration,
44 United States Department of Justice, or its successor agency.

45 [~~15.~~] 14. "Federal controlled substances act" means the Comprehensive
46 Drug Abuse Prevention and Control Act of 1970, Public Law 91-513, and
47 any act or acts amendatory or supplemental thereto or regulations
48 promulgated thereunder.

49 [~~16.~~] 15. "Federal registration number" means such number assigned by
50 the Federal agency to any person authorized to manufacture, distribute,
51 sell, dispense or administer controlled substances.

52 [~~17.~~] 16. "Habitual user" means any person who is, or by reason of
53 repeated use of any controlled substance for non-legitimate or unlawful
54 use is in danger of becoming, dependent upon such substance.

55 [~~18.~~] 17. "Institutional dispenser" means a hospital, veterinary
56 hospital, clinic, dispensary, maternity home, nursing home, mental

1 hospital or similar facility approved and certified by the department as
2 authorized to obtain controlled substances by distribution and to
3 dispense and administer such substances pursuant to the order of a prac-
4 titioner.

5 ~~[19.]~~ 18. "License" means a written authorization issued by the
6 department or the New York state department of education permitting
7 persons to engage in a specified activity with respect to controlled
8 substances.

9 ~~[20.]~~ 19. "Manufacture" means the production, preparation, propa-
10 gation, compounding, cultivation, conversion or processing of a
11 controlled substance, either directly or indirectly or by extraction
12 from substances of natural origin, or independently by means of chemical
13 synthesis, or by a combination of extraction and chemical synthesis, and
14 includes any packaging or repackaging of the substance or labeling or
15 relabeling of its container, except that this term does not include the
16 preparation, compounding, packaging or labeling of a controlled
17 substance:

18 (a) by a practitioner as an incident to his administering or dispens-
19 ing of a controlled substance in the course of his professional prac-
20 tice; or

21 (b) by a practitioner, or by his authorized agent under his super-
22 vision, for the purpose of, or as an incident to, research, teaching, or
23 chemical analysis and not for sale; or

24 (c) by a pharmacist as an incident to his dispensing of a controlled
25 substance in the course of his professional practice.

26 ~~[21. "Marihuana" means all parts of the plant of the genus Cannabis,
27 whether growing or not, the seeds thereof, the resin extracted from any
28 part of the plant, and every compound, manufacture, salt, derivative,
29 mixture, or preparation of the plant, its seeds or resin. It does not
30 include the mature stalks of the plant, fiber produced from the stalks,
31 oil or cake made from the seeds of the plant, any other compound, manu-
32 facture, salt, derivative, mixture, or preparation of the mature stalks
33 (except the resin extracted therefrom), fiber, oil, or cake, or the
34 sterilized seed of the plant which is incapable of germination.~~

35 ~~22.]~~ 20. "Narcotic drug" means any of the following, whether produced
36 directly or indirectly by extraction from substances of vegetable
37 origin, or independently by means of chemical synthesis, or by a combi-
38 nation of extraction and chemical synthesis:

39 (a) opium and opiate, and any salt, compound, derivative, or prepara-
40 tion of opium or opiate;

41 (b) any salt, compound, isomer, derivative, or preparation thereof
42 which is chemically equivalent or identical with any of the substances
43 referred to in [~~subdivision~~] paragraph (a) of this subdivision, but not
44 including the isoquinoline alkaloids of opium;

45 (c) opium poppy and poppy straw.

46 ~~[23.]~~ 21. "Opiate" means any substance having an addiction-forming or
47 addiction-sustaining liability similar to morphine or being capable of
48 conversion into a drug having addiction-forming or addiction-sustaining
49 liability. It does not include, unless specifically designated as
50 controlled under section [~~3306~~] thirty-three hundred six of this [~~arti-~~
51 ~~cle~~] title, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and
52 its salts (dextromethorphan). It does include its racemic and levorota-
53 tory forms.

54 ~~[24.]~~ 22. "Opium poppy" means the plant of the species *Papaver*
55 *somniferum* L., except its seeds.

1 ~~[25.]~~ 23. "Person" means individual, institution, corporation, govern-
2 ment or governmental subdivision or agency, business trust, estate,
3 trust, partnership or association, or any other legal entity.

4 ~~[26.]~~ 24. "Pharmacist" means any person licensed by the state depart-
5 ment of education to practice pharmacy.

6 ~~[27.]~~ 25. "Pharmacy" means any place registered as such by the New
7 York state board of pharmacy and registered with the Federal agency
8 pursuant to the federal controlled substances act.

9 ~~[28.]~~ 26. "Poppy straw" means all parts, except the seeds, of the
10 opium poppy, after mowing.

11 ~~[29.]~~ 27. "Practitioner" means:

12 A physician, dentist, podiatrist, veterinarian, scientific investi-
13 gator, or other person licensed, or otherwise permitted to dispense,
14 administer or conduct research with respect to a controlled substance in
15 the course of a licensed professional practice or research licensed
16 pursuant to this article. Such person shall be deemed a "practitioner"
17 only as to such substances, or conduct relating to such substances, as
18 is permitted by his license, permit or otherwise permitted by law.

19 ~~[30.]~~ 28. "Prescribe" means a direction or authorization, by
20 prescription, permitting an ultimate user lawfully to obtain controlled
21 substances from any person authorized by law to dispense such
22 substances.

23 ~~[31.]~~ 29. "Prescription" shall mean an official New York state
24 prescription, an electronic prescription, an oral prescription~~[,]~~ or
25 out-of-state prescription~~[, or any one]~~.

26 ~~[32.]~~ 30. "Sell" means to sell, exchange, give or dispose of to anothe-
27 er, or offer or agree to do the same.

28 ~~[33.]~~ 31. "Ultimate user" means a person who lawfully obtains and
29 possesses a controlled substance for his own use or the use by a member
30 of his household or for an animal owned by him or in his custody. It
31 shall also mean and include a person designated, by a practitioner on a
32 prescription, to obtain such substance on behalf of the patient for whom
33 such substance is intended.

34 ~~[34.]~~ 32. "Internet" means collectively computer and telecommuni-
35 cations facilities which comprise the worldwide network of networks that
36 employ a set of industry standards and protocols, or any predecessor or
37 successor protocol to such protocol, to exchange information of all
38 kinds. "Internet," as used in this article, also includes other
39 networks, whether private or public, used to transmit information by
40 electronic means.

41 ~~[35.]~~ 33. "By means of the internet" means any sale, delivery,
42 distribution, or dispensing of a controlled substance that uses the
43 internet, is initiated by use of the internet or causes the internet to
44 be used.

45 ~~[36.]~~ 34. "Online dispenser" means a practitioner, pharmacy, or person
46 in the United States that sells, delivers or dispenses, or offers to
47 sell, deliver, or dispense, a controlled substance by means of the
48 internet.

49 ~~[37.]~~ 35. "Electronic prescription" means a prescription issued with
50 an electronic signature and transmitted by electronic means in accord-
51 ance with regulations of the commissioner and the commissioner of educa-
52 tion and consistent with federal requirements. A prescription generated
53 on an electronic system that is printed out or transmitted via facsimile
54 is not considered an electronic prescription and must be manually
55 signed.

1 ~~[38-]~~ 36. "Electronic" means of or relating to technology having elec-
2 trical, digital, magnetic, wireless, optical, electromagnetic or similar
3 capabilities. "Electronic" shall not include facsimile.

4 ~~[39-]~~ 37. "Electronic record" means a paperless record that is
5 created, generated, transmitted, communicated, received or stored by
6 means of electronic equipment and includes the preservation, retrieval,
7 use and disposition in accordance with regulations of the commissioner
8 and the commissioner of education and in compliance with federal law and
9 regulations.

10 ~~[40-]~~ 38. "Electronic signature" means an electronic sound, symbol, or
11 process, attached to or logically associated with an electronic record
12 and executed or adopted by a person with the intent to sign the record,
13 in accordance with regulations of the commissioner and the commissioner
14 of education.

15 ~~[41-]~~ 39. "Registry" or "prescription monitoring program registry"
16 means the prescription monitoring program registry established pursuant
17 to section thirty-three hundred forty-three-a of this article.

18 ~~[42-]~~ 40. "Compounding" means the combining, admixing, mixing, dilut-
19 ing, pooling, reconstituting, or otherwise altering of a drug or bulk
20 drug substance to create a drug with respect to an outsourcing facility
21 under section 503B of the federal Food, Drug and Cosmetic Act and
22 further defined in this section.

23 ~~[43-]~~ 41. "Outsourcing facility" means a facility that:

24 (a) is engaged in the compounding of sterile drugs as defined in
25 section sixty-eight hundred two of the education law;

26 (b) is currently registered as an outsourcing facility pursuant to
27 article one hundred thirty-seven of the education law; and

28 (c) complies with all applicable requirements of federal and state
29 law, including the Federal Food, Drug and Cosmetic Act.

30 Notwithstanding any other provision of law to the contrary, when an
31 outsourcing facility distributes or dispenses any drug to any person
32 pursuant to a prescription, such outsourcing facility shall be deemed to
33 be providing pharmacy services and shall be subject to all laws, rules
34 and regulations governing pharmacies and pharmacy services.

35 § 4. Paragraphs 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25,
36 26, 27, 28, 29, 30, 31 and 32 of subdivision (d) of schedule I of
37 section 3306 of the public health law, paragraphs 13, 14, 15, 16, 17,
38 18, 19, 20, 21, 22, 23 and 24 as added by chapter 664 of the laws of
39 1985, paragraphs 25, 26, 27, 28, 29 and 30 as added by chapter 589 of
40 the laws of 1996 and paragraphs 31 and 32 as added by chapter 457 of the
41 laws of 2006, are amended to read as follows:

42 (13) ~~[Marihuana-]~~

43 ~~(14)~~ Mescaline.

44 ~~(15)~~ (14) Parahexyl. Some trade or other names: 3-Hexyl-1-hydroxy-
45 7,8,9,10-tetra hydro-6,6,9-trimethyl-6H-dibenfo{b,d} pyran.

46 ~~(16)~~ (15) Peyote. Meaning all parts of the plant presently classi-
47 fied botanically as *Lophophora williamsii* Lemaire, whether growing or
48 not, the seeds thereof, any extract from any part of such plant, and
49 every compound, manufacture, salts, derivative, mixture, or preparation
50 of such plant, its seeds or extracts.

51 ~~(17)~~ (16) N-ethyl-3-piperidyl benzilate.

52 ~~(18)~~ (17) N-methyl-3-piperidyl benzilate.

53 ~~(19)~~ (18) Psilocybin.

54 ~~(20)~~ (19) Psilocyn.

55 ~~(21)~~ (20) Tetrahydrocannabinols. Synthetic tetrahydrocannabinols not
56 derived from the cannabis plant that are equivalents of the substances

1 contained in the plant, or in the resinous extractives of cannabis, sp.
2 and/or synthetic substances, derivatives, and their isomers with similar
3 chemical structure and pharmacological activity such as the following:
4 delta 1 cis or trans tetrahydrocannabinol, and their optical isomers
5 delta 6 cis or trans tetrahydrocannabinol, and their optical isomers
6 delta 3, 4 cis or trans tetrahydrocannabinol, and its optical isomers
7 (since nomenclature of these substances is not internationally standard-
8 ized, compounds of these structures, regardless of numerical designation
9 of atomic positions covered).

10 [~~(22)~~] (21) Ethylamine analog of phencyclidine. Some trade or other
11 names: N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl) ethyla-
12 mine, N-(1-phenylcyclohexyl) ethylamine cyclohexamine, PCE.

13 [~~(23)~~] (22) Pyrrolidine analog of phencyclidine. Some trade or other
14 names 1-(1-phenylcyclohexyl)-pyrrolidine; PCPy, PHP.

15 [~~(24)~~] (23) Thiophene analog of phencyclidine. Some trade or other
16 names: 1-{1-(2-thienyl)-cyclohexyl}-piperidine, 2-thienylanalog of
17 phencyclidine, TPCP, TCP.

18 [~~(25)~~] (24) 3,4-methylenedioxyamphetamine (MDMA).

19 [~~(26)~~] (25) 3,4-methylenedioxy-N-ethylamphetamine (also known as
20 N-ethyl-alpha-methyl-3,4 (methylenedioxy) phenethylamine, N-ethyl MDA,
21 MDE, MDEA.

22 [~~(27)~~] (26) N-hydroxy-3,4-methylenedioxyamphetamine (also known as
23 N-hydroxy-alpha-methyl-3,4 (methylenedioxy) phenethylamine, and
24 N-hydroxy MDA.

25 [~~(28)~~] (27) 1-{1-(2-thienyl) cyclohexyl} pyrrolidine. Some other
26 names: TCPY.

27 [~~(29)~~] (28) Alpha-ethyltryptamine. Some trade or other names:
28 etryptamine; Monase; Alpha-ethyl-1H-indole-3-ethanamine;
29 3-(2-aminobutyl) indole; Alpha-ET or AET.

30 [~~(30)~~] (29) 2,5-dimethoxy-4-ethylamphetamine. Some trade or other
31 names: DOET.

32 [~~(31)~~] (30) 4-Bromo-2,5-dimethoxyphenethylamine. Some trade or other
33 names: 2-(4-bromo-2,5-dimethoxyphenyl)-1-aminoethane; alpha-desmethyl
34 DOB; 2C-B, Nexus.

35 [~~(32)~~] (31) 2,5-dimethoxy-4-(n)-propylthiophenethylamine (2C-T-7), its
36 optical isomers, salts and salts of isomers.

37 § 5. Section 3382 of the public health law, as added by chapter 878 of
38 the laws of 1972, is amended to read as follows:

39 § 3382. Growing of the plant known as Cannabis by unlicensed persons.
40 A person who, without being licensed so to do under this article, grows
41 the plant of the genus Cannabis or knowingly allows it to grow on his
42 land without destroying the same, shall be guilty of a class A
43 misdemeanor, unless the person grows in accordance with sections 221.05
44 and 221.05-a of the penal law.

45 § 6. Paragraph (d) of subdivision 3 of section 1311 of the civil
46 practice law and rules, as added by chapter 655 of the laws of 1990, is
47 amended to read as follows:

48 (d) In a forfeiture action commenced by a claiming authority against a
49 defendant, the following rebuttable presumption shall apply: all
50 currency or negotiable instruments payable to the bearer shall be
51 presumed to be the proceeds of a pre-conviction forfeiture crime when
52 such currency or negotiable instruments are (i) found in close proximity
53 to a controlled substance unlawfully possessed by the defendant in an
54 amount sufficient to constitute a violation of section 220.18 or 220.21
55 of the penal law, or (ii) found in close proximity to any quantity of a
56 controlled substance [~~or—marihuana~~] unlawfully possessed by such

1 defendant in a room, other than a public place, under circumstances
2 evincing an intent to unlawfully mix, compound, distribute, package or
3 otherwise prepare for sale such controlled substance [~~or marihuana~~].

4 § 7. Subdivision 1 of section 3397-b of the public health law, as
5 added by chapter 810 of the laws of 1980, is amended to read as follows:

6 1. [~~"Marijuana"~~] "Marihuana" means [~~marijuana~~] marihuana as defined in
7 [~~section thirty-three hundred two of this chapter~~] subdivision six of
8 section 220.00 of the penal law and shall also include tetrahydrocanna-
9 binols or a chemical derivative of tetrahydrocannabinol.

10 § 8. Section 114-a of the vehicle and traffic law, as added by chapter
11 163 of the laws of 1973, is amended to read as follows:

12 § 114-a. Drug. The term "drug" when used in this chapter, means and
13 includes any substance listed in section thirty-three hundred six of the
14 public health law and marihuana and concentrated cannabis as defined in
15 section 220.00 of the penal law.

16 § 9. Subdivisions 5, 6 and 9 of section 220.00 of the penal law,
17 subdivision 5 as amended by chapter 537 of the laws of 1998, subdivision
18 6 as amended by chapter 1051 of the laws of 1973 and subdivision 9 as
19 amended by chapter 664 of the laws of 1985, are amended and two new
20 subdivisions 21 and 22 are added to read as follows:

21 5. "Controlled substance" means any substance listed in schedule I,
22 II, III, IV or V of section thirty-three hundred six of the public
23 health law other than marihuana, but including concentrated cannabis as
24 defined in [~~paragraph (a) of subdivision four of section thirty-three~~
25 ~~hundred two of such law~~] subdivision twenty-one of this section.

26 6. "Marihuana" means [~~"marihuana" or "concentrated cannabis" as these~~
27 ~~terms are defined in section thirty-three hundred two of the public~~
28 ~~health law~~] all parts of the plant of the genus Cannabis, whether grow-
29 ing or not; the seeds thereof; the resin extracted from any part of the
30 plant; and every compound, manufacture, salt, derivative, mixture, or
31 preparation of the plant, its seeds or resin. It does not include the
32 mature stalks of the plant, fiber produced from the stalks, oil or cake
33 made from the seeds of the plant, any other compound, manufacture, salt,
34 derivative, mixture, or preparation of the mature stalks (except the
35 resin extracted therefrom), fiber, oil, or cake, or the sterilized seed
36 of the plant which is incapable of germination. It does not include all
37 parts of the plant Cannabis sativa L., whether growing or not, having no
38 more than three-tenths of one percent tetrahydrocannabinol (THC).

39 9. "Hallucinogen" means any controlled substance listed in [~~schedule~~
40 ~~I(d)~~] paragraphs (5), [~~(18), (19), (20), (21) and (22)~~] (17), (18),
41 (19), (20) and (21) of subdivision (d) of schedule I of section thirty-
42 three hundred six of the public health law.

43 21. "Concentrated cannabis" means:

44 (a) the separated resin, whether crude or purified, obtained from a
45 plant of the genus Cannabis; or

46 (b) a material, preparation, mixture, compound or other substance
47 which contains more than three percent by weight of delta-9 tetrahydro-
48 cannabinol, or its isomer, delta-8 dibenzopyran numbering system, or
49 delta-1 tetrahydrocannabinol or its isomer, delta 1 (6) monoterpene
50 numbering system.

51 22. "Marihuana products" means marihuana, concentrated cannabis, and
52 marihuana-infused products containing concentrated marihuana or cannabis
53 and other ingredients.

54 § 10. Subdivision 4 of section 220.06 of the penal law, as amended by
55 chapter 537 of the laws of 1998, is amended to read as follows:

1 4. one or more preparations, compounds, mixtures or substances
2 containing concentrated cannabis as defined in [~~paragraph (a) of subdi-~~
3 ~~vision four of section thirty-three hundred two of the public health~~
4 ~~law~~] subdivision twenty-one of section 220.00 of this article and said
5 preparations, compounds, mixtures or substances are of an aggregate
6 weight of one-fourth ounce or more; or

7 § 11. Subdivision 10 of section 220.09 of the penal law, as amended by
8 chapter 537 of the laws of 1998, is amended to read as follows:

9 10. one or more preparations, compounds, mixtures or substances
10 containing concentrated cannabis as defined in [~~paragraph (a) of subdi-~~
11 ~~vision four of section thirty-three hundred two of the public health~~
12 ~~law~~] subdivision twenty-one of section 220.00 of this article and said
13 preparations, compounds, mixtures or substances are of an aggregate
14 weight of one ounce or more; or

15 § 12. Subdivision 3 of section 220.34 of the penal law, as amended by
16 chapter 537 of the laws of 1998, is amended to read as follows:

17 3. concentrated cannabis as defined in [~~paragraph (a) of subdivision~~
18 ~~four of section thirty-three hundred two of the public health law~~]
19 subdivision twenty-one of section 220.00 of this article; or

20 § 13. Section 220.50 of the penal law, as amended by chapter 627 of
21 the laws of 1990, is amended to read as follows:

22 § 220.50 Criminally using drug paraphernalia in the second degree.

23 A person is guilty of criminally using drug paraphernalia in the
24 second degree when he knowingly possesses or sells:

25 1. Diluents, dilutants or adulterants, including but not limited to,
26 any of the following: quinine hydrochloride, mannitol, mannite, lactose
27 or dextrose, adapted for the dilution of narcotic drugs or stimulants
28 under circumstances evincing an intent to use, or under circumstances
29 evincing knowledge that some person intends to use, the same for
30 purposes of unlawfully mixing, compounding, or otherwise preparing any
31 narcotic drug or stimulant, other than marihuana or concentrated canna-
32 bis; or

33 2. Gelatine capsules, glassine envelopes, vials, capsules or any other
34 material suitable for the packaging of individual quantities of narcotic
35 drugs or stimulants under circumstances evincing an intent to use, or
36 under circumstances evincing knowledge that some person intends to use,
37 the same for the purpose of unlawfully manufacturing, packaging or
38 dispensing of any narcotic drug or stimulant, other than marihuana or
39 concentrated cannabis; or

40 3. Scales and balances used or designed for the purpose of weighing or
41 measuring controlled substances, under circumstances evincing an intent
42 to use, or under circumstances evincing knowledge that some person
43 intends to use, the same for purpose of unlawfully manufacturing, pack-
44 aging or dispensing of any narcotic drug or stimulant, other than mari-
45 huana or concentrated cannabis.

46 Criminally using drug paraphernalia in the second degree is a class A
47 misdemeanor.

48 § 14. Sections 221.05, 221.10, 221.15, 221.20, 221.25, 221.30, 221.35
49 and 221.40 of the penal law are REPEALED.

50 § 15. The penal law is amended by adding two new sections 221.05 and
51 221.05-a to read as follows:

52 § 221.05 Personal use of marihuana.

53 1. Notwithstanding any other provision of this chapter, the following
54 acts are lawful under state and local law for persons twenty-one years
55 of age and older:

1 (a) possessing, using, being under the influence, displaying, purchas-
2 ing, obtaining, or transporting up to two pounds of marihuana and four
3 and one-half ounces of concentrated cannabis;

4 (b) transferring, without remuneration, to a person twenty-one years
5 of age and older up to two pounds of marihuana and four and one-half
6 ounces of concentrated cannabis;

7 (c) possessing, planting, cultivating, harvesting, drying, processing
8 or transporting not more than six living marihuana plants and possessing
9 the marihuana produced by the plants;

10 (d) smoking, ingesting or otherwise consuming marihuana products;

11 (e) possessing, using, displaying, purchasing, obtaining, manufactur-
12 ing, transporting or giving away to persons twenty-one years of age and
13 older marihuana paraphernalia; and

14 (f) assisting another person who is twenty-one years of age and older
15 or allow property to be used in any of the acts described in paragraphs
16 (a) through (e) of this subdivision.

17 2. Paragraph (e) of subdivision one of this section is intended to
18 meet the requirements of subsection (f) of Section 863 of Title twenty-
19 one of the United States Code (21 U.S.C. § 863 (f)) by authorizing,
20 under state law, any person in compliance with this section to manufac-
21 ture, possess, or distribute marihuana paraphernalia.

22 3. Marihuana products involved in any way with conduct deemed lawful
23 by this section are not contraband nor subject to seizure or forfeiture
24 of assets under article four hundred eighty of this chapter, section
25 thirteen hundred eleven of the civil practice law and rules, or other
26 applicable law, and no conduct deemed lawful by this section shall
27 constitute the basis for approach, search, seizure, arrest, and/or
28 detention.

29 4. (a) Except as provided in subdivision five of this section, none of
30 the following shall, individually or in combination with each other,
31 constitute reasonable suspicion of a crime or be used as evidence in any
32 criminal proceeding:

33 (1) the odor of marihuana or of burnt marihuana;

34 (2) the possession of or the suspicion of possession of marihuana
35 products;

36 (3) The possession of multiple containers of marihuana without
37 evidence of marihuana quantity in excess of sixteen ounces or concen-
38 trated cannabis quantity in excess of four and one-half ounces; or

39 (4) the presence of cash or currency cannot be used as evidence in any
40 cases involving criminal sale of marihuana.

41 (b) The possession of up to two ounces of marihuana and up to sixteen
42 ounces of marihuana products cannot be used as evidence in any cases
43 involving criminal sale of marihuana.

44 5. Subdivision four of this section shall not apply when a law
45 enforcement officer is investigating whether a person is operating or in
46 physical control of a vehicle or watercraft while intoxicated, under the
47 influence of, or impaired by alcohol or a drug or any combination there-
48 of in violation of section eleven hundred ninety-two of the vehicle and
49 traffic law.

50 6. Possession of greater than two pounds of marihuana and greater than
51 four and one-half ounces of concentrated cannabis is a violation punish-
52 able by a fine of not more than one hundred twenty-five dollars per
53 offense.

54 § 221.05-a Personal cultivation of marihuana.

1 1. Personal cultivation of marihuana under paragraph (c) of subdivi-
 2 sion one of section 221.05 of this article is subject to the following
 3 restrictions:

4 (a) a person shall plant, cultivate, harvest, dry, or process plants
 5 in accordance with local ordinances, if any, adopted in accordance with
 6 subdivision (2) of this section;

7 (b) the living plants and any marihuana produced by the plants in
 8 excess of two pounds are kept within the person's private residence, or
 9 upon the grounds of that private residence (e.g., in an outdoor garden
 10 area), are in a locked space, and are not visible by normal unaided
 11 vision from a public place; and

12 (c) not more than six living plants may be planted, cultivated,
 13 harvested, dried, or processed within a single private residence, or
 14 upon the grounds of that private residence, at one time.

15 2. (a) A local jurisdiction may enact and enforce reasonable regu-
 16 lations to reasonably regulate the actions and conduct in paragraph (c)
 17 of subdivision one of section 221.05 of this article, provided that a
 18 violation of such a regulation is only subject to an infraction and
 19 fine.

20 (b) Notwithstanding paragraph (a) of this subdivision, no local juris-
 21 isdiction may completely prohibit persons engaging in the actions and
 22 conduct under paragraph (c) of subdivision one of section 221.05 of this
 23 article.

24 3. A violation of subdivision one or two of this section is a
 25 violation punishable by a fine of not more than one hundred twenty-five
 26 dollars per offense.

27 § 16. Section 221.45 of the penal law, as amended by chapter 265 of
 28 the laws of 1979, the opening paragraph as amended by chapter 75 of the
 29 laws of 1995, is amended to read as follows:

30 § 221.45 [~~Criminal~~] Unlicensed sale of marihuana in the third degree.

31 A person is guilty of [~~criminal~~] unlicensed sale of marihuana in the
 32 third degree when he knowingly and unlawfully sells [~~one or more prepa-~~
 33 ~~rations, compounds, mixtures or substances containing marihuana and the~~
 34 ~~preparations, compounds, mixtures or substances are of an aggregate~~
 35 ~~weight of more than twenty-five grams~~] not more than sixteen ounces of
 36 marihuana or not more than four and one-half ounces of concentrated
 37 cannabis, not including the weight of any other ingredient combined with
 38 marihuana to prepare topical or oral administrations, food, drink, or
 39 other product.

40 [~~Criminal~~] Unlicensed sale of marihuana in the third degree is [~~a~~
 41 ~~class E felony~~] subject to the following:

42 1. A violation punishable by a fine of not more than one hundred twen-
 43 ty-five dollars, for a first offense;

44 2. A violation punishable by a fine of not more than two hundred
 45 fifty dollars for a second offense;

46 3. A class B misdemeanor and a fine of not more than five hundred
 47 dollars for a third or subsequent offense.

48 § 17. Section 221.50 of the penal law, as amended by chapter 265 of
 49 the laws of 1979, the opening paragraph as amended by chapter 75 of the
 50 laws of 1995, is amended to read as follows:

51 § 221.50 [~~Criminal~~] Unlicensed sale of marihuana in the second degree.

52 A person twenty-one years of age and older is guilty of [~~criminal~~]
 53 unlicensed sale of marihuana in the second degree when he knowingly and
 54 unlawfully sells one or more preparations, compounds, mixtures or
 55 substances containing marihuana and the preparations, compounds,
 56 mixtures or substances are of an aggregate weight of more than four

1 ounces, or knowingly and unlawfully sells one or more preparations,
2 compounds, mixtures [~~or substances containing marihuana~~] to a person
3 less than [~~eighteen~~] twenty-one years of age.

4 [~~Criminal~~] Unlicensed sale of marihuana in the second degree is a
5 class [~~D~~] E felony.

6 § 18. Section 221.55 of the penal law, as amended by chapter 265 of
7 the laws of 1979, the opening paragraph as amended by chapter 75 of the
8 laws of 1995, is amended to read as follows:

9 § 221.55 [~~Criminal~~] Unlicensed sale of marihuana in the first degree.

10 A person is guilty of [~~criminal~~] unlicensed sale of marihuana in the
11 first degree when he knowingly and unlawfully sells to a person less
12 than twenty-one years of age one or more preparations, compounds,
13 mixtures or substances containing marihuana and the preparations,
14 compounds, mixtures or substances are of an aggregate weight of more
15 than sixteen ounces.

16 [~~Criminal~~] Unlicensed sale of marihuana in the first degree is a class
17 [~~E~~] E felony.

18 § 19. The penal law is amended by adding a new section 221.60 to read
19 as follows:

20 § 221.60 Licensing of marihuana production and distribution.

21 The provisions of this article and of article two hundred twenty of
22 this title shall not apply to any person exempted from criminal penal-
23 ties pursuant to the provisions of this chapter or possessing, manufac-
24 turing, transporting, distributing, selling or transferring marihuana or
25 concentrated cannabis, or engaged in any other action that is in compli-
26 ance with article eleven of the alcoholic beverage control law.

27 § 20. Subdivision 8 of section 1399-n of the public health law, as
28 amended by chapter 13 of the laws of 2003, is amended to read as
29 follows:

30 8. "Smoking" means the burning of a lighted cigar, cigarette, pipe or
31 any other matter or substance which contains tobacco or marihuana;
32 provided that it does not include the use of an electronic smoking
33 device that creates an aerosol or vapor, unless local or state statutes
34 extend prohibitions on smoking to electronic smoking devices.

35 § 21. Section 2 of the alcoholic beverage control law, as amended by
36 chapter 406 of the laws of 2014, is amended to read as follows:

37 § 2. Policy of state and purpose of chapter. It is hereby declared as
38 the policy of the state that it is necessary to regulate and control the
39 manufacture, sale and distribution within the state of alcoholic bever-
40 ages and marihuana products for the purpose of fostering and promoting
41 temperance in their consumption and respect for and obedience to law;
42 for the primary purpose of promoting the health, welfare and safety of
43 the people of the state, promoting temperance in the consumption of
44 alcoholic beverages and marihuana products; and, to the extent possible,
45 supporting economic growth, job development, and the state's alcoholic
46 beverage production industries and its tourism and recreation industry;
47 and which promotes the conservation and enhancement of state agricul-
48 tural lands; provided that such activities do not conflict with the
49 primary regulatory objectives of this chapter. It is hereby declared
50 that such policies will best be carried out by empowering the liquor
51 authority of the state to determine whether public convenience and
52 advantage will be promoted by the issuance of licenses to traffic in
53 alcoholic beverages and marihuana products, the increase or decrease in
54 the number thereof and the location of premises licensed thereby,
55 subject only to the right of judicial review provided for in this chap-

1 ter. It is the purpose of this chapter to carry out these policies in
2 the public interest.

3 § 22. Subdivisions 20-a, 20-b, 20-c, 20-d and 20-e of section 3 of the
4 alcoholic beverage control law are renumbered subdivisions 20-j, 20-k,
5 20-l, 20-m and 20-n and ten new subdivisions 7-e, 20-a, 20-b, 20-c,
6 20-d, 20-e, 20-f, 20-g, 20-h and 20-i are added to read as follows:

7 7-e. "Concentrated cannabis" means: (a) the separated resin, whether
8 crude or purified, obtained from a plant of the genus Cannabis; or
9 (b) a material, preparation, mixture, compound or other substance
10 which contains more than three percent by weight of delta-9 tetrahydro-
11 cannabinol, or its isomer, delta-8 dibenzopyran numbering system, or
12 delta-1 tetrahydrocannabinol or its isomer, delta 1 (6) monoterpene
13 numbering system.

14 20-a. "Marihuana" means all parts of the plant of the genus Cannabis,
15 whether growing or not; the seeds thereof; the resin extracted from any
16 part of the plant; and every compound, manufacture, salt, derivative,
17 mixture, or preparation of the plant, its seeds or resin. It does not
18 include the mature stalks of the plant, fiber produced from the stalks,
19 oil or cake made from the seeds of the plant, any other compound, manu-
20 facture, salt, derivative, mixture, or preparation of the mature stalks
21 (except the resin extracted therefrom), fiber, oil, or cake, or the
22 sterilized seed of the plant which is incapable of germination. It does
23 not include all parts of the plant Cannabis sativa L., whether growing
24 or not, having no more than three-tenths of one percent tetrahydrocanna-
25 binol (THC).

26 20-b. "Marihuana consumer" means a person twenty-one years of age or
27 older who purchases marihuana or marihuana products for personal use by
28 persons twenty-one years of age or older, but not for resale to others.

29 20-c. "Marihuana processor" means a person licensed by the bureau to
30 purchase marihuana and concentrated cannabis from marihuana producers,
31 to process marihuana, concentrated cannabis, and marihuana infused
32 products, package and label marihuana, concentrated cannabis and mari-
33 huana infused products for sale in retail outlets, and sell marihuana,
34 concentrated cannabis and marihuana infused products at wholesale to
35 marihuana retailers.

36 20-d. "Marihuana producer" means a person licensed by the bureau to
37 produce, process, and sell marihuana and concentrated cannabis at whole-
38 sale to marihuana processors, marihuana retailers, or other marihuana
39 producers, but not to consumers.

40 20-e. "Marihuana products" means marihuana, concentrated cannabis, and
41 marihuana-infused products.

42 20-f. "Marihuana-infused products" means products that contain mari-
43 huana, marihuana extracts, or concentrated cannabis and are intended for
44 human use or consumption, such as, but not limited to, edible products,
45 ointments, and tinctures.

46 20-g. "Marihuana retailer" means a person licensed by the bureau to
47 purchase marihuana, concentrated cannabis, and marihuana-infused
48 products from marihuana producers and marihuana processors and sell
49 marihuana, marihuana infused products, and concentrated cannabis in a
50 retail outlet.

51 20-h. "Marihuana retailer for on-premises consumption" means a person
52 licensed by the bureau to purchase marihuana, concentrated cannabis, and
53 marihuana infused products from marihuana producers, marihuana retail-
54 ers, and marihuana processors and sell marihuana products for a customer
55 to consume while the customer is within a facility.

1 20-i. "Unreasonably impracticable" means that the measures necessary
2 to comply with the regulations require such a high investment of risk,
3 money, time or other resource or asset that the operation of a marihuana
4 establishment is not worthy of being carried out by a reasonably prudent
5 businessperson.

6 § 23. Section 65-b of the alcoholic beverage control law, as amended
7 by chapter 519 of the laws of 1999, paragraphs (b) and (c) of subdivi-
8 sion 3 as amended by chapter 257 of the laws of 2013 and the opening
9 paragraph of subdivision 6 as amended by chapter 503 of the laws of
10 2000, is amended to read as follows:

11 § 65-b. Offense for one under age of twenty-one years to purchase or
12 attempt to purchase an alcoholic beverage or marihuana products through
13 fraudulent means. 1. As used in this section: (a) "A device capable of
14 deciphering any electronically readable format" or "device" shall mean
15 any commercial device or combination of devices used at a point of sale
16 or entry that is capable of reading the information encoded on the
17 magnetic strip or bar code of a driver's license or non-driver identifi-
18 cation card issued by the commissioner of motor vehicles;

19 (b) "Card holder" means any person presenting a driver's license or
20 non-driver identification card to a licensee, or to the agent or employ-
21 ee of such licensee under this chapter; and

22 (c) "Transaction scan" means the process involving a device capable of
23 deciphering any electronically readable format by which a licensee, or
24 agent or employee of a licensee under this chapter reviews a driver's
25 license or non-driver identification card presented as a precondition
26 for the purchase of an alcoholic beverage or marihuana products as
27 required by subdivision two of this section or as a precondition for
28 admission to an establishment licensed for the on-premises sale of alco-
29 holic beverages or marihuana products where admission is restricted to
30 persons twenty-one years or older.

31 2. (a) No person under the age of twenty-one years shall present or
32 offer to any licensee under this chapter, or to the agent or employee of
33 such licensee, any written evidence of age which is false, fraudulent or
34 not actually his or her own, for the purpose of purchasing or attempting
35 to purchase any alcoholic beverage or marihuana products.

36 (b) No licensee, or agent or employee of such licensee shall accept as
37 written evidence of age by any such person for the purchase of any alco-
38 holic beverage or marihuana products, any documentation other than: (i)
39 a valid driver's license or non-driver identification card issued by the
40 commissioner of motor vehicles, the federal government, any United
41 States territory, commonwealth or possession, the District of Columbia,
42 a state government within the United States or a provincial government
43 of the dominion of Canada, or (ii) a valid passport issued by the United
44 States government or any other country, or (iii) an identification card
45 issued by the armed forces of the United States. Upon the presentation
46 of such driver's license or non-driver identification card issued by a
47 governmental entity, such licensee or agent or employee thereof may
48 perform a transaction scan as a precondition to the sale of any alcohol-
49 ic beverage. Nothing in this section shall prohibit a licensee or agent
50 or employee from performing such a transaction scan on any of the other
51 documents listed in this subdivision if such documents include a bar
52 code or magnetic strip that ~~that~~ may be scanned by a device capable of
53 deciphering any electronically readable format.

54 (c) In instances where the information deciphered by the transaction
55 scan fails to match the information printed on the driver's license or
56 non-driver identification card presented by the card holder, or if the

1 transaction scan indicates that the information is false or fraudulent,
2 the attempted purchase of the alcoholic beverage or marihuana products
3 shall be denied.

4 3. A person violating the provisions of paragraph (a) of subdivision
5 two of this section shall be guilty of a violation and shall be
6 sentenced in accordance with the following:

7 (a) For a first violation, the court shall order payment of a fine of
8 not more than one hundred dollars and/or an appropriate amount of commu-
9 nity service not to exceed thirty hours. In addition, the court may
10 order completion of an alcohol awareness program established pursuant to
11 section 19.25 of the mental hygiene law or a marihuana awareness
12 program.

13 (b) For a second violation, the court shall order payment of a fine of
14 not less than fifty dollars nor more than three hundred fifty dollars
15 and/or an appropriate amount of community service not to exceed sixty
16 hours. The court also shall order completion of an alcohol or marihuana
17 awareness program as referenced in paragraph (a) of this subdivision if
18 such program has not previously been completed by the offender, unless
19 the court determines that attendance at such program is not feasible due
20 to the lack of availability of such program within a reasonably close
21 proximity to the locality in which the offender resides or matriculates,
22 as appropriate.

23 (c) For third and subsequent violations, the court shall order payment
24 of a fine of not less than fifty dollars nor more than seven hundred
25 fifty dollars and/or an appropriate amount of community service not to
26 exceed ninety hours. The court also shall order that such person submit
27 to an evaluation by an appropriate agency certified or licensed by the
28 office of alcoholism and substance abuse services to determine whether
29 the person suffers from the disease of alcoholism or alcohol or marihua-
30 na abuse, unless the court determines that under the circumstances
31 presented such an evaluation is not necessary, in which case the court
32 shall state on the record the basis for such determination. Payment for
33 such evaluation shall be made by such person. If, based on such evalu-
34 ation, a need for treatment is indicated, such person may choose to
35 participate in a treatment plan developed by an agency certified or
36 licensed by the office of alcoholism and substance abuse services. If
37 such person elects to participate in recommended treatment, the court
38 shall order that payment of such fine and community service be suspended
39 pending the completion of such treatment.

40 (d) Evaluation procedures. For purposes of this subdivision, the
41 following shall apply:

42 (i) The contents of an evaluation pursuant to paragraph (c) of this
43 subdivision shall be used for the sole purpose of [~~determining if such~~
44 ~~person suffers from the disease of alcoholism or alcohol abuse~~] diagnos-
45 ing such person with alcohol or cannabis use disorder.

46 (ii) The agency designated by the court to perform such evaluation
47 shall conduct the evaluation and return the results to the court within
48 thirty days, subject to any state or federal confidentiality law, rule
49 or regulation governing the confidentiality of alcohol and substance
50 abuse treatment records.

51 (iii) The office of alcoholism and substance abuse services shall make
52 available to each supreme court law library in this state, or, if no
53 supreme court law library is available in a certain county, to the coun-
54 ty court law library of such county, a list of agencies certified to
55 perform evaluations as required by subdivision (f) of section 19.07 of
56 the mental hygiene law.

1 (iv) All evaluations required under this subdivision shall be in writ-
2 ing and the person so evaluated or his or her counsel shall receive a
3 copy of such evaluation prior to its use by the court.

4 (v) A minor evaluated under this subdivision shall have, and shall be
5 informed by the court of, the right to obtain a second opinion regarding
6 his or her need for alcoholism or substance use disorder treatment.

7 4. A person violating the provisions of paragraph (b) of subdivision
8 two of this section shall be guilty of a violation punishable by a fine
9 of not more than one hundred dollars, and/or an appropriate amount of
10 community service not to exceed thirty hours. In addition, the court may
11 order completion of an alcohol or substance abuse training awareness
12 program established pursuant to subdivision twelve of section seventeen
13 of this chapter where such program is located within a reasonably close
14 proximity to the locality in which the offender is employed or resides.

15 5. No determination of guilt pursuant to this section shall operate as
16 a disqualification of any such person subsequently to hold public
17 office, public employment, or as a forfeiture of any right or privilege
18 or to receive any license granted by public authority; and no such
19 person shall be denominated a criminal by reason of such determination.

20 6. In addition to the penalties otherwise provided in subdivision
21 three of this section, if a determination is made sustaining a charge of
22 illegally purchasing or attempting to illegally purchase an alcoholic
23 beverage or marijuana products, the court may suspend such person's
24 license to drive a motor vehicle and the privilege of an unlicensed
25 person of obtaining such license, in accordance with the following and
26 for the following periods, if it is found that a driver's license was
27 used for the purpose of such illegal purchase or attempt to illegally
28 purchase; provided, however, that where a person is sentenced pursuant
29 to paragraph (b) or (c) of subdivision three of this section, the court
30 shall impose such license suspension if it is found that a driver's
31 license was used for the purpose of such illegal purchase or attempt to
32 illegally purchase:

33 (a) For a first violation of paragraph (a) of subdivision two of this
34 section, a three month suspension.

35 (b) For a second violation of paragraph (a) of subdivision two of this
36 section, a six month suspension.

37 (c) For a third or subsequent violation of paragraph (a) of subdivi-
38 sion two of this section, a suspension for one year or until the holder
39 reaches the age of twenty-one, whichever is the greater period of time.

40 Such person may thereafter apply for and be issued a restricted use
41 license in accordance with the provisions of section five hundred thirty
42 of the vehicle and traffic law.

43 7. (a) In any proceeding pursuant to subdivision one of section
44 sixty-five of this article, it shall be an affirmative defense that such
45 person had produced a driver's license or non-driver identification card
46 apparently issued by a governmental entity, successfully completed the
47 transaction scan, and that the alcoholic beverage or marijuana products
48 had been sold, delivered or given to such person in reasonable reliance
49 upon such identification and transaction scan. In evaluating the appli-
50 cability of such affirmative defense, the liquor authority shall take
51 into consideration any written policy adopted and implemented by the
52 seller to carry out the provisions of this chapter. Use of a transaction
53 scan shall not excuse any licensee under this chapter, or agent or
54 employee of such licensee, from the exercise of reasonable diligence
55 otherwise required by this section. Notwithstanding the above

1 provisions, any such affirmative defense shall not be applicable in any
2 other civil or criminal proceeding, or in any other forum.

3 (b) A licensee or agent or employee of a licensee may electronically
4 or mechanically record and maintain only the information from a trans-
5 action scan necessary to effectuate the purposes of this section. Such
6 information shall be limited to the following: (i) name, (ii) date of
7 birth, (iii) driver's license or non-driver identification number, and
8 (iv) expiration date. The liquor authority and the state commissioner of
9 motor vehicles shall jointly promulgate any regulation necessary to
10 govern the recording and maintenance of these records by a licensee
11 under this chapter. The liquor authority and the commissioner of health
12 shall jointly promulgate any regulations necessary to ensure quality
13 control in the use of transaction scan devices.

14 8. A licensee or agent or employee of such licensee shall only use the
15 information recorded and maintained through the use of such devices for
16 the purposes contained in paragraph (a) of subdivision seven of this
17 section, and shall only use such devices for the purposes contained in
18 subdivision two of this section. No licensee or agent or employee of a
19 licensee shall resell or disseminate the information recorded during
20 such scan to any third person. Such prohibited resale or dissemination
21 includes, but is not limited to, any advertising, marketing or promo-
22 tional activities. Notwithstanding the restrictions imposed by this
23 subdivision, such records may be released pursuant to a court ordered
24 subpoena or pursuant to any other statute that specifically authorizes
25 the release of such information. Each violation of this subdivision
26 shall be punishable by a civil penalty of not more than one thousand
27 dollars.

28 § 24. Section 65-c of the alcoholic beverage control law, as added by
29 chapter 592 of the laws of 1989, paragraph (a) of subdivision 2 as
30 amended by chapter 409 of the laws of 2016 and subdivision 3 as amended
31 by chapter 137 of the laws of 2001, is amended to read as follows:

32 § 65-c. Unlawful possession of an alcoholic beverage or marijuana
33 product with the intent to consume by persons under the age of twenty-
34 one years. 1. Except as hereinafter provided, no person under the age of
35 twenty-one years shall possess any alcoholic beverage or marijuana prod-
36 uct, as defined in this chapter, with the intent to consume such bever-
37 age or marijuana product.

38 2. A person under the age of twenty-one years may possess any alcohol-
39 ic beverage or marijuana product with intent to consume if the alcoholic
40 beverage or marijuana product is given:

41 (a) to a person who is a student in a curriculum licensed or regis-
42 tered by the state education department and the student is required to
43 taste or imbibe alcoholic beverages or marijuana products in on-campus
44 or off-campus courses which are a part of the required curriculum,
45 provided such alcoholic beverages or marijuana products are used only
46 for instructional purposes during class conducted pursuant to such
47 curriculum; or

48 (b) to the person under twenty-one years of age by that person's
49 parent or guardian.

50 3. Any person who unlawfully possesses an alcoholic beverage or mari-
51 huana product with intent to consume may be summoned before and examined
52 by a court having jurisdiction of that charge; provided, however, that
53 nothing contained herein shall authorize, or be construed to authorize,
54 a peace officer as defined in subdivision thirty-three of section 1.20
55 of the criminal procedure law or a police officer as defined in subdivi-
56 sion thirty-four of section 1.20 of such law to arrest a person who

1 unlawfully possesses an alcoholic beverage or marihuana product with
2 intent to consume. If a determination is made sustaining such charge the
3 court may impose a fine not exceeding fifty dollars and/or completion of
4 an alcohol or drug awareness program established pursuant to section
5 19.25 of the mental hygiene law and/or an appropriate amount of communi-
6 ty service not to exceed thirty hours.

7 4. No such determination shall operate as a disqualification of any
8 such person subsequently to hold public office, public employment, or as
9 a forfeiture of any right or privilege or to receive any license granted
10 by public authority; and no such person shall be denominated a criminal
11 by reason of such determination, nor shall such determination be deemed
12 a conviction.

13 5. Whenever a peace officer as defined in subdivision thirty-three of
14 section 1.20 of the criminal procedure law or police officer as defined
15 in subdivision thirty-four of section 1.20 of the criminal procedure law
16 shall observe a person under twenty-one years of age openly in
17 possession of an alcoholic beverage or marihuana product as defined in
18 this chapter, with the intent to consume such beverage or product in
19 violation of this section, said officer may seize the beverage or prod-
20 uct, and shall deliver it to the custody of his or her department.

21 6. Any alcoholic beverage or marihuana product seized in violation of
22 this section is hereby declared a nuisance. The official to whom the
23 beverage or product has been delivered shall, no earlier than three days
24 following the return date for initial appearance on the summons, dispose
25 of or destroy the alcoholic beverage or marihuana product seized or
26 cause it to be disposed of or destroyed. Any person claiming ownership
27 of an alcoholic beverage or marihuana product seized under this section
28 may, on the initial return date of the summons or earlier on five days
29 notice to the official or department in possession of the beverage or
30 product, apply to the court for an order preventing the destruction or
31 disposal of the alcoholic beverage or marihuana product seized and
32 ordering the return of that beverage or product. The court may order
33 the beverage or product returned if it is determined that return of the
34 beverage or product would be in the interest of justice or that the
35 beverage or product was improperly seized.

36 § 25. The alcoholic beverage control law is amended by adding a new
37 section 65-e to read as follows:

38 § 65-e. Restrictions on personal consumption of marihuana. 1. Nothing
39 in sections 221.05 and 221.05-a of the penal law shall be construed to
40 permit any person to:

41 (a) smoke marihuana in public;

42 (b) smoke marihuana products in a location where smoking tobacco is
43 prohibited pursuant to section thirteen hundred ninety-nine-o of the
44 public health law;

45 (c) possess, smoke or ingest marihuana products in or upon the grounds
46 of any school property used for school purposes which is owned by or
47 leased to any elementary or secondary school or school board while chil-
48 dren are present; or

49 (d) smoke or ingest marihuana products while driving, operating a
50 motor vehicle, boat, vessel, aircraft, or other vehicle used for trans-
51 portation.

52 2. For purposes of this section:

53 (a) "Smoke" means to inhale, exhale, burn, or carry any lighted or
54 heated device or pipe, or any other lighted or heated marihuana or
55 concentrated cannabis product intended for inhalation, whether natural
56 or synthetic, in any manner or in any form.

1 (b) "Smoke" does not include the use of an electronic smoking device
2 that creates an aerosol or vapor, unless local or state statutes extend
3 prohibitions on smoking to electronic smoking devices.

4 3. Violations of the restrictions under this section are subject to a
5 fine not exceeding twenty-five dollars or an appropriate amount of
6 community service not to exceed twenty hours.

7 § 26. Section 140 of the alcoholic beverage control law, as amended by
8 chapter 810 of the laws of 1981, is amended to read as follows:

9 § 140. Applicability of chapter before local option. Until such time
10 as it shall become unlawful to sell alcoholic beverages or marijuana
11 products in any town or city by the vote of the voters in such town or
12 city in the manner provided in this article, all of the provisions of
13 this chapter shall apply throughout the entire state. This article shall
14 not apply to the Whiteface mountain ski center, owned by the state and
15 located in the town of Wilmington, county of Essex.

16 § 27. Section 141 of the alcoholic beverage control law, as amended by
17 chapter 319 of the laws of 2007, is amended to read as follows:

18 § 141. Local option for towns. 1. Not less than sixty days nor more
19 than seventy-five days before the general election in any town at which
20 the submission of the questions hereinafter stated is authorized by this
21 article, a petition signed by electors of the town to a number amounting
22 to twenty-five per centum of the votes cast in the town for governor at
23 the then last preceding gubernatorial election, acknowledged by the
24 signers or authenticated by witnesses as provided in the election law in
25 respect of a nominating petition, requesting the submission at such
26 election to the electors of the town of one or more of the following
27 questions, may be filed with the town clerk:

28 Question 1. Tavern alcoholic beverage license. Shall a person be
29 allowed to obtain a license to operate a tavern with a limited-service
30 menu (sandwiches, salads, soups, etc.) which permits the tavern operator
31 to sell alcoholic beverages for a customer to drink while the customer
32 is within the tavern. In addition, unopened containers of beer (such as
33 six-packs and kegs) may be sold "to go" for the customer to open and
34 drink at another location (such as, for example, at his home)?

35 Question 2. Restaurant alcoholic beverage license. Shall the operator
36 of a full-service restaurant be allowed to obtain a license which
37 permits the restaurant operator to sell alcoholic beverages for a
38 customer to drink while the customer is within the restaurant. In addi-
39 tion, unopened containers of beer (such as six-packs and kegs) may be
40 sold "to go" for the customer to open and drink at another location
41 (such as, for example, at his home)?

42 Question 3. Year-round hotel alcoholic beverage license. Shall the
43 operator of a year-round hotel with a full-service restaurant be allowed
44 to obtain a license which permits the year-round hotel to sell alcoholic
45 beverages for a customer to drink while the customer is within the
46 hotel. In addition, unopened containers of beer (such as six-packs and
47 kegs) may be sold "to go" for the customer to open and drink at another
48 location (such as, for example, at his home)?

49 Question 4. Summer hotel alcoholic beverage license. Shall the opera-
50 tor of a summer hotel with a full-service restaurant, open for business
51 only within the period from May first to October thirty-first in each
52 year, be allowed to obtain a license which permits the summer hotel to
53 sell alcoholic beverages for a customer to drink while the customer is
54 within the hotel. In addition, unopened containers of beer (such as
55 six-packs and kegs) may be sold "to go" for the customer to open and
56 drink at another location (such as, for example, at his home)?

1 Question 5. Retail package liquor or wine store license. Shall a
2 person be allowed to obtain a license to operate a retail package
3 liquor-and-wine or wine-without-liquor store, to sell "to go" unopened
4 bottles of liquor or wine to a customer to be taken from the store for
5 the customer to open and drink at another location (such as, for exam-
6 ple, at his home)?

7 Question 6. Off-premises beer and wine cooler license. Shall the oper-
8 ator of a grocery store, drugstore or supply ship operating in the
9 harbors of Lake Erie be allowed to obtain a license which permits the
10 operator to sell "to go" unopened containers of beer (such as six-packs
11 and kegs) and wine coolers with not more than 6% alcohol to a customer
12 to be taken from the store for the customer to open and drink at another
13 location (such as, for example, at his home)?

14 Question 7. Baseball park, racetrack, athletic field or stadium
15 license. Shall a person be allowed to obtain a license which permits
16 the sale of beer for a patron's consumption while the patron is within a
17 baseball park, racetrack, or other athletic field or stadium where
18 admission fees are charged?

19 Question 8. Marihuana retailer license. Shall a person be allowed to
20 obtain a license to operate a retail marihuana store, to sell unopened
21 marihuana products to a customer to be taken from the store for the
22 customer to open and consumer at another location (such as, for example,
23 at his home)?

24 Question 9. On-premises marihuana retailer licenses. Shall a person be
25 allowed to obtain a license to operate a facility where the service of
26 food is only incidental and permits the facility operator to sell mari-
27 huana products for a customer to consumer while the customer is within
28 the facility?

29 2. Upon the due filing of such petition complying with the foregoing
30 provisions, such questions shall be submitted in accordance therewith.

31 3. The town clerk shall, within five days from the filing of such
32 petition in his office, prepare and file in the office of the board of
33 elections, as defined by the election law, of the county, a certified
34 copy of such petition. Such questions may be submitted only at the time
35 of a general election. At least ten days before such general election,
36 the board of elections shall cause to be printed and posted in at least
37 four public places in such town, a notice of the fact that all of the
38 local option questions will be voted on at such general election; and
39 the said notice shall also be published at least five days before the
40 vote is to be taken once in a newspaper published in the county in which
41 such town is situated, which shall be a newspaper published in the town,
42 if there be one. Whenever such questions are to be submitted under the
43 provisions of this article the board of elections shall cause the proper
44 ballot labels to be printed and placed on all voting machines used in
45 the town in which such questions are to be submitted, in the form
46 prescribed by the election law in respect of other propositions or ques-
47 tions, upon the face of which shall be printed in full the said ques-
48 tions. Any elector qualified to vote for state officers shall be enti-
49 tled to vote upon such local option questions. As soon as the election
50 shall be held, a return of the votes cast and counted shall be made as
51 provided by law and the returns canvassed by the inspectors of election.
52 If a majority of the votes cast shall be in the negative on all or any
53 of the questions, no person shall, after such election, sell alcoholic
54 beverages or marihuana products in such town contrary to such vote or to
55 the provisions of this chapter; provided, however, that the result of
56 such vote shall not shorten the term for which any license may have been

1 lawfully issued under this chapter or affect the rights of the licensee
 2 thereunder; and no person shall after such vote apply for or receive a
 3 license to sell alcoholic beverages or marihuana products at retail in
 4 such town contrary to such vote, until, by referendum as hereinafter
 5 provided for, such sale shall again become lawful.

6 § 28. Subdivision 3 of section 142 of the alcoholic beverage control
 7 law is amended to read as follows:

8 3. If a majority of the votes cast shall be in the negative on any or
 9 all of the questions, no person shall, after such election, sell alco-
 10 holic beverages or marihuana products in such city contrary to such vote
 11 or to the provisions of this chapter; provided, however, that the result
 12 of such vote shall not shorten the term for which any license may have
 13 been lawfully issued under this chapter or affect the rights of the
 14 licensee thereunder; and no person shall after such vote apply for or
 15 receive a license to sell alcoholic beverages or marihuana products at
 16 retail in such city contrary to such vote, until, by referendum as here-
 17 inafter provided for, such sale shall again become lawful.

18 § 29. Subdivision 2 of section 147 of the alcoholic beverage control
 19 law is amended to read as follows:

20 2. If at the time of any subsequent submission of such questions it
 21 shall be lawful to sell alcoholic beverages or marihuana products and a
 22 majority of the votes cast shall be in the negative on such questions,
 23 then all of the provisions of this article applicable thereto shall
 24 become effective.

25 § 30. Article 11 and sections 160, 161, 162, 163 and 164 of the alco-
 26 holic beverage control law, article 11 and sections 160, 161, 162 and
 27 163 as renumbered by chapter 725 of the laws of 1954, are renumbered
 28 article 12 and sections 200, 201, 202, 203, 204.

29 § 31. The alcoholic beverage control law is amended by adding a new
 30 article 11 to read as follows:

31 ARTICLE 11

32 PROVISIONS RELATING TO MARIHUANA

33 Section 165. Definitions.

34 166. Bureau of marihuana policy.

35 167. Administration of the bureau of marihuana policy.

36 168. Licenses issued.

37 169. Licensing limits.

38 170. Actions taken pursuant to a valid license are lawful.

39 171. General prohibitions and restrictions.

40 172. Certain officials not to be interested in the manufacture
 41 or sale of marihuana.

42 173. Provisions governing initial rulemaking.

43 174. Provisions governing marihuana producers.

44 175. Provisions governing processors.

45 176. Provisions governing marihuana retailers.

46 177. Provisions governing marihuana on-site consumption
 47 licenses.

48 178. Advertising and forms of the issuance of licenses.

49 179. Packaging of marihuana products.

50 180. Labeling of marihuana products.

51 181. Seed to sale tracking.

52 182. Renewals of licenses and permits.

53 183. Information to be provided by applicants.

54 184. Notification to municipalities.

55 185. Licenses, publication, general provisions.

56 186. Revocation of licenses for cause.

- 1 187. Procedure for revocation or cancellation.
- 2 188. Decisions of the bureau of marihuana policy and review by
- 3 the courts.
- 4 189. Minority and women business enterprises.
- 5 190. Disposition of moneys received for license fees.
- 6 191. Persons forbidden to traffic in marihuana.
- 7 192. Surrender of license; notice to police officials.
- 8 193. Authority to promulgate rules and regulations.
- 9 194. Protections for the use of marihuana.
- 10 195. Discrimination protections for the use of marihuana or
- 11 medical marihuana.
- 12 196. Employment protections.
- 13 197. Protections for persons under state supervision.
- 14 198. Professional and medical record keeping.

15 § 165. Definitions. Whenever used in this chapter, unless the context
16 requires otherwise:

17 1. "Applicant" means an owner applying for a license pursuant to this
18 article.

19 2. "Bureau" means the bureau of marihuana policy within the authority.

20 3. "Commercial marihuana activity" means the production, processing,
21 possession, storing, laboratory testing, packaging, labeling, transpor-
22 tation, delivery, or sale of marihuana and marihuana products as
23 provided for in this article.

24 4. "Customer" means a natural person twenty-one years of age or older.

25 5. "Delivery" means a licensee that delivers retail marihuana and
26 marihuana products to customers. Retailer licensees and microbusiness
27 licensees are permitted to deliver retail marihuana and marihuana
28 products to customers without obtaining an additional distributor
29 license.

30 6. "Distribution" means the procurement, sale, and transport of mari-
31 huana and marihuana products between entities licensed pursuant to this
32 article.

33 7. "Distributor" means a licensee for the distribution of marihuana
34 and marihuana products between entities licensed pursuant to this arti-
35 cle. Producer licensees, processor licensees, and microbusiness licen-
36 sees are permitted to distribute marihuana and marihuana products
37 between entities licensed pursuant to this article without obtaining an
38 additional distributor license.

39 8. "Labeling" means any label or other written, printed, or graphic
40 matter upon a marihuana product, or upon its container or wrapper, or
41 that accompanies any marihuana product.

42 9. "License" means a state license issued under this article. Each
43 license issued pursuant to this article corresponds to a single place of
44 business.

45 10. "Licensee" means any person or entity holding a license under this
46 article.

47 11. "Marihuana" means all parts of the plant of the genus cannabis,
48 whether growing or not; the seeds thereof; the resin extracted from any
49 part of the plant; and every compound, manufacture, salt, derivative,
50 mixture, or preparation of the plant, its seeds or resin. It does not
51 include the mature stalks of the plant, fiber produced from the stalks,
52 oil or cake made from the seeds of the plant, any other compound, manu-
53 facture, salt, derivative, mixture, or preparation of the mature stalks
54 (except the resin extracted therefrom), fiber, oil, or cake, or the
55 sterilized seed of the plant which is incapable of germination. It does
56 not include all parts of the plant Cannabis Sativa L., whether growing

1 or not, having no more than three-tenths of one percent tetrahydrocanna-
2 binol (THC).

3 12. "Marihuana products" means marihuana, concentrated cannabis, and
4 marihuana-infused products.

5 13. "Marihuana-infused products" means products that contain marihua-
6 na, marihuana extracts, or concentrated cannabis and are intended for
7 human use or consumption, such as, but not limited to, edible products,
8 ointments, and tinctures.

9 14. "Microbusiness" means a licensee that may act as a marihuana
10 producer for the cultivation of marihuana on an area less than ten thou-
11 sand square feet, a marihuana processor, and a marihuana retailer under
12 this article, provided such licensee complies with all requirements
13 imposed by this article on licensed producers, processors, and retailers
14 to the extent the licensee engages in such activities. A "microbusiness"
15 may distribute marihuana and marihuana products to other licensed mari-
16 huana businesses and may deliver marihuana and marihuana products to
17 customers.

18 15. "Nursery" means a licensee that produces only clones, immature
19 plants, seeds, and other agricultural products used specifically for the
20 planting, propagation, and cultivation of marihuana.

21 16. "Onsite consumption" means a marihuana retail licensee or a mari-
22 huana microbusiness that permits the consumption of marihuana and mari-
23 huana products at the licensee's place of business.

24 17. "Owner" means an individual with an aggregate ownership interest
25 of twenty percent or more in a marihuana business licensed pursuant to
26 this article, unless such interest is solely a security, lien, or encum-
27 brance, or an individual that will be participating in the direction,
28 control, or management of the licensed marihuana business.

29 18. "Package" means any container or receptacle used for holding mari-
30 huana or marihuana products.

31 19. "Processor" means a licensee that compounds, blends, extracts,
32 infuses, or otherwise makes or prepares marihuana products, but not the
33 production of the marihuana contained in the marihuana product. A
34 "processor" may also distribute marihuana and marihuana products to
35 other licensed marihuana businesses.

36 20. "Producer" means a licensee that plants, grows, harvests, dries,
37 cures, grades, or trims marihuana. A "producer" may also distribute
38 marihuana to other licensed marihuana businesses.

39 21. "Retailer" means a licensee that sells marihuana or marihuana
40 products directly to customers. A "retailer" may deliver marihuana and
41 marihuana products to customers.

42 22. "Testing facility" means a licensee that tests marihuana and mari-
43 huana products.

44 § 166. Bureau of marihuana policy. There is hereby established in the
45 authority a bureau of marihuana policy. The members of the bureau shall
46 be appointed by the governor by and with the advice and consent of the
47 senate. Not more than two members of the bureau shall belong to the same
48 political party. The chairman of the bureau of marihuana policy hereto-
49 fore appointed and designated by the governor and the remaining members
50 of such board heretofore appointed by the governor shall continue to
51 serve as chairman and members of the bureau until the expiration of the
52 respective terms for which they were appointed. Upon the expiration of
53 such respective terms the successors of such chairman and members shall
54 be appointed to serve for a term of three years each and until their
55 successors have been appointed and qualified. The commissioners, other
56 than the chairman shall, when performing the work of the bureau, be

1 compensated at a rate of two hundred sixty dollars per day, together
2 with an allowance for actual and necessary expenses incurred in the
3 discharge of their duties.

4 § 167. Administration of the bureau of marihuana policy. 1. The
5 bureau established in section one hundred sixty-six of this article
6 shall heretofore have the power, duty, purpose, responsibility, and
7 jurisdiction to regulate commercial marihuana activity as provided in
8 the Marihuana Regulation and Taxation Act.

9 2. The bureau shall have the exclusive authority to create, issue,
10 renew, discipline, suspend, or revoke licenses for commercial marihuana
11 activities in accordance with the state administrative procedure act,
12 codified at N.Y. A.P.A. Law § 100 et seq.

13 (a) The bureau shall consult with the department of agriculture and
14 markets regarding rules, regulations, and licenses for the cultivation
15 of marihuana.

16 (b) The bureau shall begin issuing licenses not later than eighteen
17 months following the effective date of the Marihuana Regulation and
18 Taxation Act.

19 (i) The bureau shall begin accepting applications no more than fifteen
20 months following the effective date of this act.

21 (ii) Pursuant to section one hundred eighty-four of this article, the
22 bureau shall notify municipalities of any applications for license.

23 (iii) The bureau shall issue an annual license to the applicant
24 between forty-five and ninety days after receipt of an application
25 unless the bureau finds the applicant is not in compliance with regu-
26 lations enacted pursuant to section one hundred seventy-three of this
27 article or the department is notified by the relevant municipality that
28 the applicant is not in compliance with such regulations.

29 (c) The bureau shall have the authority to collect fees in connection
30 with activities they regulate concerning marihuana pursuant to section
31 one hundred ninety of this article.

32 3. (a) Not later than ten months following the enactment of this arti-
33 cle, each municipality may enact an ordinance or regulation specifying
34 the entity within the municipality that is responsible for processing
35 applications submitted for a license to operate a marihuana establish-
36 ment within the boundaries of the municipality and for the issuance of
37 such licenses should the issuance by the municipality become necessary
38 because of a failure by the bureau to adopt regulations pursuant to
39 section one hundred seventy-three of this article or because of a fail-
40 ure by the bureau to process and issue licenses as required by the
41 subdivision two of this section.

42 (b) A municipality may enact ordinances or regulations, not in
43 conflict with this section or with regulations or legislation enacted
44 pursuant to this section, governing the time, place, manner and number
45 of marihuana establishment operations; establishing procedures for the
46 issuance, suspension, and revocation of a license issued by the muni-
47 cipality in accordance with paragraphs (c) and (d) of this subdivision,
48 such procedures to be subject to all requirements of state administra-
49 tive procedure act, codified as N.Y. A.P.A. Law § 100, et seq. or any
50 successor provision, establishing a schedule of annual operating,
51 licensing, and application fees for marihuana establishments, provided,
52 the application fee shall only be due if an application is submitted to
53 a municipality in accordance with paragraph (d) of this subdivision and
54 a licensing fee shall only be due if a license is issued by a muni-
55 cipality in accordance with paragraph (c) or (d) of this subdivision; and
56 establishing civil penalties for violation of an ordinance or regulation

1 governing the time, place, and manner of a marihuana establishment that
2 may operate in such a municipality. A municipality may prohibit the
3 operation of marihuana production facilities, marihuana processing
4 facilities, marihuana retail stores, marihuana microbusinesses, or mari-
5 huana testing facilities through the enactment of an ordinance.

6 (c) If the bureau does not issue a license to an applicant within
7 ninety days of receipt of the application filed in accordance with
8 subdivision two and does not notify the applicant of the specific reason
9 for its denial, in writing and within such time period, or if the bureau
10 has adopted regulations pursuant to section one hundred seventy-three of
11 this article but has not issued any licenses within eighteen months of
12 the effective date of this article, for any locality enacting an ordi-
13 nance providing for local processing of applications, the applicant may
14 resubmit its application directly to the municipality pursuant to para-
15 graph (a) of this subdivision, and the municipality may issue an annual
16 license to the applicant. A municipality issuing a license to an appli-
17 cant shall do so within ninety days of receipt of the resubmitted appli-
18 cation unless the municipality finds and notifies the applicant that the
19 applicant is not in compliance with the ordinances and regulations made
20 pursuant to paragraph (b) of this subdivision in effect at the time the
21 application is resubmitted and the municipality shall notify the bureau
22 if an annual license has been issued to the applicant. If an application
23 is submitted to a municipality under this paragraph, the bureau shall
24 forward to the municipality the application fee paid by the applicant to
25 the bureau upon request by the municipality. A license issued by a muni-
26 cipality in accordance with this paragraph shall have the same force and
27 effect as a license issued by the bureau in accordance with subdivision
28 two of this section and the holder of such license shall not be subject
29 to regulation or enforcement by the bureau during the term of that
30 license. A subsequent or renewed license may be issued under this para-
31 graph on an annual basis only upon resubmission to the municipality of a
32 new application submitted to the bureau pursuant to subdivision two of
33 this section. Nothing in this paragraph shall limit such relief as may
34 be available to an aggrieved party under section four hundred one of the
35 state administrative procedure act or any successor provision.

36 (d) If the bureau does not adopt regulations required by section one
37 hundred seventy-three of this article, an applicant may submit an appli-
38 cation directly to a municipality fifteen months following the effective
39 date of this article and the municipality may issue an annual license to
40 the applicant. A municipality issuing a license to an applicant shall do
41 so within ninety days of receipt of the application unless it finds and
42 notifies the applicant that the applicant is not in compliance with
43 ordinances and regulations made pursuant to paragraph (b) of this subdi-
44 vision in effect at the time of application and shall notify the bureau
45 if an annual license has been issued to the applicant. A license issued
46 by a municipality in accordance with this paragraph shall have the same
47 force and effect as a license issued by the bureau in accordance with
48 subdivision two of this section and the licensee shall not be subject to
49 regulation or enforcement by the bureau during the term of that license.
50 A subsequent or renewed license may be issued under this paragraph on an
51 annual basis if the bureau has not adopted regulations required by
52 section one hundred seventy-three of this article at least ninety days
53 prior to the date upon which such subsequent or renewed license would be
54 effective or if the department has adopted regulations pursuant to
55 section one hundred seventy-three of this article but has not, at least

1 ninety days after the adoption of such regulations, issued licenses
2 pursuant to subdivision two of this section.

3 4. The bureau may limit the total amount of marihuana produced in New
4 York based on the demand for marihuana and marihuana products and in an
5 effort to reduce illicit marihuana markets.

6 § 168. Licenses issued. The following kinds of licenses shall be
7 issued by the bureau for the manufacture, production, processing, test-
8 ing, retail sale and delivery of marihuana:

9 1. marihuana nursery license;

10 2. marihuana producer license;

11 3. marihuana processor license;

12 4. marihuana distributor license;

13 5. marihuana retailer license;

14 6. marihuana microbusiness license;

15 7. marihuana on-site consumption license;

16 8. marihuana delivery license;

17 9. marihuana testing license; and

18 10. any other type of licenses allowed by the bureau.

19 § 169. Licensing limits. 1. All licenses issued under this article
20 shall bear a clear designation indicating that the license is for
21 commercial marihuana activity as distinct from medical marihuana manu-
22 factured, produced and sold for medical use pursuant to title five-A of
23 article thirty-three of the public health law.

24 2. An owner of a marihuana retail store shall not hold a license in
25 another license category of section one hundred sixty-eight of this
26 article, shall not own or have ownership interest in an entity licensed
27 pursuant to title five-A of article thirty-three of the public health
28 law, and shall hold not more than three retail licenses.

29 3. An owner of a marihuana microbusiness shall not hold a license in
30 another license category of section one hundred sixty-eight of this
31 article, shall not own or have ownership interest in a facility licensed
32 pursuant to title five-A of article thirty-three of the public health
33 law, and shall hold not more than one microbusiness license.

34 4. An owner of a marihuana testing facility shall not hold a license
35 in another license category of section one hundred sixty-eight of this
36 article and shall not own or have ownership interest in a facility
37 licensed pursuant to title five-A of article thirty-three of the public
38 health law.

39 5. Only a marihuana retail licensee or a marihuana microbusiness
40 licensee may be issued an on-site consumption license.

41 6. Only a marihuana retail licensee, marihuana microbusiness licensee,
42 or marihuana delivery licensee may be permitted to deliver marihuana
43 directly to customers.

44 7. Only a marihuana producer licensee, marihuana processor licensee,
45 or marihuana distributor licensee may distribute marihuana and marihuana
46 products to other licensed marihuana businesses.

47 8. No marihuana delivery owner may hold more than one marihuana deliv-
48 ery license.

49 9. No marihuana distributor owner may hold more than one marihuana
50 distributor license.

51 10. The bureau shall issue a series of producer licenses distinguished
52 by canopy size and type of lighting used, natural/outdoor light, indoor
53 light, or mixed-light.

54 11. No marihuana producer owner may hold more than one marihuana
55 producer and one marihuana processor license.

1 12. No marihuana processor owner may hold more than three marihuana
2 processor licenses.

3 § 170. Actions taken pursuant to a valid license are lawful. No
4 contracts related to the operation of licenses under this chapter shall
5 be deemed unenforceable on the basis that the actions permitted pursuant
6 to the license are prohibited by federal law. The following actions are
7 not unlawful as provided under this chapter, shall not be an offense
8 under New York law or the laws of any locality within New York, and
9 shall not result in any civil fine, seizure, or forfeiture of assets
10 against any person acting in accordance with this chapter:

11 1. Actions of a licensee, its employees, and its agents, as permitted
12 by this chapter and consistent with rules and regulations of the bureau,
13 pursuant to a valid license issued by the bureau.

14 2. Actions of those who allow property to be used by a licensee, its
15 employees, and its agents, as permitted by this chapter and consistent
16 with rules and regulations of the bureau, pursuant to a valid license
17 issued by the bureau.

18 3. Actions of any person or entity, their employees, or their agents
19 providing a service to a licensee or potential licensee, as permitted by
20 this chapter and consistent with rules and regulations of the bureau,
21 relating to the formation of a business.

22 4. The purchase, possession, or consumption of marihuana, as permitted
23 by this chapter and consistent with rules and regulations of the bureau,
24 obtained from a validly licensed retailer.

25 § 171. General prohibitions and restrictions. 1. No marihuana products
26 may be imported or exported into New York state by a licensee from or to
27 a jurisdiction in which possession, transport, distribution of marihuana
28 or other marihuana related conduct remains illegal under the laws of
29 that jurisdiction.

30 2. (a) No person holding any license pursuant to this article to grow
31 or process marihuana may employ any person who has been convicted of an
32 offense related to the functions, or duties of the business or profes-
33 sion for which the application is made within three years of the appli-
34 cation date, except that if the bureau determines that the owner or
35 licensee is otherwise suitable to be issued a license, and granting the
36 license would not compromise public safety, the bureau shall conduct a
37 thorough review of the nature of the crime, conviction, circumstances,
38 and evidence of rehabilitation of the owner, and shall evaluate the
39 suitability of the owner or licensee to be issued a license based on the
40 evidence found through the review. In determining which offenses are
41 substantially related to the qualifications, functions, or duties of the
42 business or profession for which the application is made, the bureau
43 shall include, but not be limited to, the following:

44 (i) A felony conviction involving fraud and other unlawful conduct
45 related to owning and operating a business.

46 (ii) A felony conviction for hiring, employing, or using a minor in
47 transporting, carrying, selling, giving away, preparing for sale, or
48 peddling, any controlled substance to a minor; or selling, offering to
49 sell, furnishing, offering to furnish, administering, or giving any
50 controlled substance to a minor.

51 (b) Notwithstanding the provisions of paragraph (a) of this subdivi-
52 sion, if the bureau issues its written approval for the employment by a
53 licensee, in a specified capacity, of a person previously convicted of a
54 felony or any of the offenses above enumerated in paragraph (a) of this
55 subdivision, such person, may, unless he or she is subsequently
56 convicted of a felony or any of such offenses, thereafter be employed in

1 the same capacity by any other licensee without the further written
2 approval of the bureau unless the prior approval given by the bureau is
3 terminated.

4 3. No license of any kind may be issued to a person under the age of
5 twenty-one years, nor shall any licensee employ anyone under the age of
6 twenty-one years.

7 § 172. Certain officials not to be interested in the manufacture or
8 sale of marihuana. 1. Except as otherwise provided in section one
9 hundred twenty-eight-a of this chapter, it shall be unlawful for any
10 police commissioner, police inspector, captain, sergeant, roundsman,
11 patrolman or other police official or subordinate of any police depart-
12 ment in the state, to be either directly or indirectly interested in the
13 manufacture or sale of marihuana or to offer for sale, or recommend to
14 any licensee any marihuana. A person may not be denied any license
15 granted under the provisions of sections fifty-four, fifty-five, fifty-
16 nine, sixty-three, sixty-four, seventy-nine, eighty-one, or article
17 seven of this chapter solely on the grounds of being the spouse of a
18 public servant described in this subdivision. The solicitation or recom-
19 mendation made to any licensee, to purchase any marihuana by any police
20 official or subordinate as described in this subdivision, shall be
21 presumptive evidence of the interest of such official or subordinate in
22 the manufacture or sale of marihuana.

23 2. No elective village officer shall be subject to the limitations set
24 forth in subdivision one of this section unless such elective village
25 officer shall be assigned duties directly relating to the operation or
26 management of the police department.

27 § 173. Provisions governing initial rulemaking. 1. Within two hundred
28 forty days after the effective date of this article, the bureau shall
29 perform such acts, prescribe such forms and make such rules, regulations
30 and orders as it may deem necessary or proper to fully effectuate the
31 provisions of this article.

32 2. The bureau shall promulgate necessary rules and regulations govern-
33 ing the licensing of marihuana producers, marihuana processors, marihua-
34 na retailers and marihuana retailers for consumption on-site, including:

35 (a) prescribing forms and establishing application, reinstatement, and
36 renewal fees;

37 (b) the qualifications for licensure;

38 (c) the books and records to be created and maintained by licensees,
39 the reports to be made thereon to the bureau, and inspection of the
40 books and records;

41 (d) methods of producing, processing, and packaging marihuana, mari-
42 huana-infused products, and concentrated cannabis; conditions of sanita-
43 tion, and standards of ingredients, quality, and identity of marihuana
44 products produced, processed, packaged, or sold by licensees; and

45 (e) security requirements for marihuana retailers and premises where
46 marihuana products are produced or processed, and safety protocols for
47 licensees and their employees.

48 3. The bureau shall promulgate rules and regulations that are calcu-
49 lated to:

50 (a) prevent the distribution of marihuana to persons under twenty-one
51 years of age;

52 (b) prevent the revenue from the sale of marihuana from going to crim-
53 inal enterprises, gangs, and cartels;

54 (c) prevent the diversion of marihuana from this state to other
55 states;

1 (d) prevent marihuana activity that is legal under state law from
2 being used as a cover or pretext for the trafficking of other illegal
3 drugs or other illegal activity;

4 (e) prevent violence and the use of firearms in the cultivation and
5 distribution of marihuana;

6 (f) prevent drugged driving and the exacerbation of other adverse
7 public health consequences associated with the use of marihuana;

8 (g) prevent the growing of marihuana on public lands and the attendant
9 public safety and environmental dangers posed by marihuana production on
10 public lands; and

11 (h) prevent the possession and use of marihuana on federal property.

12 4. Rules and regulations promulgated by the bureau pursuant to subdi-
13 vision three of this section shall not prohibit the operation of mari-
14 huana establishments either expressly or through regulations that make
15 their operation unreasonably impracticable.

16 5. The bureau, in consultation with the department of agriculture and
17 markets and the department of environmental conservation, shall promul-
18 gate necessary rules and regulations governing the safe production of
19 marihuana, including restrictions on the use of pesticides, insecticides
20 and herbicides.

21 § 174. Provisions governing marihuana producers. 1. No producer shall
22 sell, or agree to sell or deliver in the state any marihuana products,
23 as the case may be, except in sealed containers containing quantities in
24 accordance with size standards pursuant to rules adopted by the bureau.
25 Such containers shall have affixed thereto such labels as may be
26 required by the rules of the bureau, together with all necessary New
27 York state excise tax stamps, as required by law.

28 2. No producer shall deliver any marihuana products, except in vehi-
29 cles owned and operated by such producer, or hired and operated by such
30 producer from a trucking or transportation company registered with the
31 bureau, and shall only make deliveries at the licensed premises of the
32 purchaser.

33 3. Each producer shall keep and maintain upon the licensed premises,
34 adequate books and records of all transactions involving the producer
35 and sale of his or its products, which shall include all information
36 required by rules promulgated by the bureau. Each sale shall be recorded
37 separately on a numbered invoice, which shall have printed thereon the
38 number, the name of the licensee, the address of the licensed premises,
39 and the current license number. Such producer shall deliver to the
40 purchaser a true duplicate invoice stating the name and address of the
41 purchaser, the quantity purchased, description and the price of the
42 product, and a true, accurate and complete statement of the terms and
43 conditions on which such sale is made. Such books, records and invoices
44 shall be kept for a period of two years and shall be available for
45 inspection by any authorized representative of the bureau.

46 4. No producer shall furnish or cause to be furnished to any licensee,
47 any exterior or interior sign, printed, painted, electric or otherwise,
48 except as authorized by the bureau. The bureau may make such rules as it
49 deems necessary to carry out the purpose and intent of this subdivision.

50 § 175. Provisions governing processors. 1. No processor shall be
51 engaged in any other business on the premises to be licensed; except
52 that nothing contained in this chapter shall prevent a marihuana produc-
53 er and a marihuana processor from operating on the same premises and
54 from a person holding both licenses.

55 2. No processor shall sell, or agree to sell or deliver in the state
56 any marihuana products, except in a sealed package containing quantities

1 in accordance with size standards pursuant to rules adopted by the
2 bureau. Such containers shall have affixed thereto such labels as may be
3 required by the rules of the bureau, together with all necessary New
4 York state excise tax stamps, as required by law.

5 3. No processor shall deliver any products, except in vehicles owned
6 and operated by such processor, or hired and operated by such processor
7 from a trucking or transportation company registered with the bureau,
8 and shall only make deliveries at the licensed premises of the purchas-
9 er.

10 4. Each processor shall keep and maintain upon the licensed premises,
11 adequate books and records of all transactions involving the business
12 transacted by such processor, which shall show the amount of marihuana
13 products, purchased by such processor together with the names, license
14 numbers and places of business of the persons from whom the same was
15 purchased and the amount involved in such purchases, as well as the
16 amount of marihuana products sold by such processor together with the
17 names, addresses, and license numbers of such purchasers. Each sale
18 shall be recorded separately on a numbered invoice, which shall have
19 printed thereon the number, the name of the licensee, the address of the
20 licensed premises, and the current license number. Such processor shall
21 deliver to the purchaser a true duplicate invoice stating the name and
22 address of the purchaser, quantity purchased, description and the price
23 of the product, and a true, accurate and complete statement of the terms
24 and conditions on which such sale is made. Such books, records and
25 invoices shall be kept for a period of two years and shall be available
26 for inspection by any authorized representative of the bureau.

27 § 176. Provisions governing marihuana retailers. 1. No retail license
28 shall be granted for any premises, unless the applicant shall be the
29 owner thereof, or shall be in possession of said premises under a lease,
30 management agreement or other agreement giving the applicant control
31 over the premises, in writing, for a term not less than the license
32 period.

33 2. No premises shall be licensed to sell marihuana products, unless
34 said premises shall be located in a store, the principal entrance to
35 which shall be from the street level and located on a public thorough-
36 fare in premises which may be occupied, operated or conducted for busi-
37 ness, trade or industry or on an arcade or sub-surface thoroughfare
38 leading to a railroad terminal. There may be not more than one addi-
39 tional entrance which shall be from the street level and located on and
40 giving access to and from a public or private parking lot or parking
41 area having space for not less than five automobiles.

42 3. No marihuana retail license shall be granted for any premises which
43 a license would not be allowed to sell at retail for consumption of
44 alcohol off the premises based on its proximity to a building occupied
45 exclusively as a school, church, synagogue or other place of worship
46 pursuant to the provisions of section one hundred five of this chapter.

47 4. No marihuana retail licensee shall offer for sale any marihuana
48 products in any other container, except in the original sealed package,
49 as received from the producer, distributor or processor. Such containers
50 shall have affixed thereto such labels as may be required by the rules
51 of the bureau, together with all New York state excise tax stamps, as
52 required by law. Such containers shall not be opened nor its contents
53 consumed on the premises where sold.

54 5. No marihuana retail licensee shall sell or transfer marihuana
55 products to any person under the age of twenty-one years.

1 6. No marihuana retail licensee shall sell alcoholic beverages on the
2 same premises where marihuana products are sold.

3 7. No sign of any kind printed, painted or electric, advertising any
4 brand shall be permitted on the exterior or interior of such premises,
5 except by permission of the bureau.

6 8. No retail licensee shall deliver any marihuana products except in
7 vehicles owned and operated by such licensee, or hired and operated by
8 such licensee from a trucking or transportation company registered with
9 the bureau, and shall only make such deliveries at the premises of the
10 purchaser.

11 9. No retail licensee shall keep or permit to be kept upon the
12 licensed premises, any marihuana products in any unsealed container.

13 10. No retail licensee shall sell or deliver any marihuana products to
14 any person with knowledge of, or with reasonable cause to believe, that
15 the person to whom such marihuana products are being sold, has acquired
16 the same for the purpose of peddling them from place to place, or of
17 selling or giving them away in violation of the provisions of this chap-
18 ter or in violation of the rules and regulations of the bureau.

19 11. No premises licensed as a marihuana retailer shall be permitted to
20 remain open during a time when a premises licensed to sell liquor and/or
21 wine for off-premises consumption is not permitted to remain open pursu-
22 ant to the provisions of section one hundred five of this chapter.

23 12. Each marihuana retail licensee shall keep and maintain upon the
24 licensed premises, adequate books and records of all transactions
25 involving the business transacted by such licensee, which shall show the
26 amount of marihuana products, purchased by such licensee together with
27 the names, license numbers and places of business of the persons from
28 whom the same were purchased, and the amount involved in such purchases,
29 as well as the amount of marihuana products, sold by such licensee, and
30 the amount involved in each sale. Such books and records shall be avail-
31 able for inspection by any authorized representative of the bureau.

32 13. All premises licensed under this section shall be subject to
33 inspection by any peace officer described in subdivision four of section
34 2.10 of the criminal procedure law acting pursuant to his or her special
35 duties, or police officer or any duly authorized representative of the
36 bureau, during the hours when the said premises are open for the trans-
37 action of business.

38 § 177. Provisions governing marihuana on-site consumption licenses. 1.
39 No marihuana retailer or microbusiness shall be granted a marihuana
40 on-site consumption license for a premises located in whole or in part
41 inside the boundaries of any city, village or town, unless the local
42 legislative body of such city, village or town, by resolution, expressly
43 authorizes the licensing of such facilities in such city, village or
44 town. The local legislative body may direct an appropriate officer,
45 board or body of such city, village or town as the local licensing
46 authority to authorize individual marihuana facility license applica-
47 tions. In cities of one million or more residents, should the local
48 legislative body authorize such license, no marihuana retailer license
49 for consumption on-site shall be granted unless the community board
50 established pursuant to section twenty-eight hundred of the New York
51 city charter with jurisdiction over the area in which the premises will
52 be located shall also authorize such license.

53 2. No marihuana retailer or microbusiness shall be granted a marihuana
54 on-site consumption license for any premises, unless the applicant shall
55 be the owner thereof, or shall be in possession of said premises under a
56 lease, in writing, for a term not less than the license period except,

1 however, that such license may thereafter be renewed without the
2 requirement of a lease as herein provided. This subdivision shall not
3 apply to premises leased from government agencies, as defined under
4 subdivision twelve-c of section three of this chapter; provided, howev-
5 er, that the appropriate administrator of such government agency
6 provides some form of written documentation regarding the terms of occu-
7 pancy under which the applicant is leasing said premises from the
8 government agency for presentation to the bureau at the time of the
9 license application. Such documentation shall include the terms of occu-
10 pancy between the applicant and the government agency, including, but
11 not limited to, any short-term leasing agreements or written occupancy
12 agreements.

13 3. No marihuana retailer or microbusiness shall be granted a marihuana
14 on-site consumption license for any premises where a license would not
15 be allowed to sell at retail for consumption of alcohol on the premises
16 based on its proximity to a building occupied exclusively as a school,
17 church, synagogue or other place of worship pursuant to the provisions
18 of section one hundred five of this chapter.

19 4. The bureau may consider any or all of the following in determining
20 whether public convenience and advantage and the public interest will be
21 promoted by the granting of licenses and permits for a marihuana on-site
22 consumption license at a particular unlicensed location:

23 (a) The number, classes and character of licenses in proximity to the
24 location and in the particular municipality or subdivision thereof.

25 (b) Evidence that all necessary licenses and permits have been
26 obtained from the state and all other governing bodies.

27 (c) Effect of the grant of the license on vehicular traffic and park-
28 ing in proximity to the location.

29 (d) The existing noise level at the location and any increase in noise
30 level that would be generated by the proposed premises.

31 (e) The history of marihuana violations and reported criminal activity
32 at the proposed premises.

33 (f) Any other factors specified by law or regulation that are relevant
34 to determine the public convenience and advantage and public interest of
35 the community.

36 5. If the bureau shall disapprove an application for a license or
37 permit, it shall state and file in its offices the reasons therefor and
38 shall notify the applicant thereof. Such applicant may thereupon apply
39 to the bureau for a review of such action in a manner to be prescribed
40 by the rules of the bureau. A hearing upon notice to the applicant shall
41 thereupon be held by the bureau or by one of its members at its office
42 most conveniently situated to the office of its duly authorized repre-
43 sentative in a manner to be prescribed in its rules; and on such hearing
44 proof may be taken by oral testimony or by affidavit relative thereto.
45 After such hearing, if the bureau confirms such disapproval, it shall
46 endorse such application accordingly and shall send notice to the appli-
47 cant of its action in such form as the bureau may prescribe. If the
48 bureau does not confirm the disapproval action it may grant such appli-
49 cation and issue such license.

50 6. No marihuana on-site consumption licensee, except persons or corpo-
51 rations operating a hotel, as defined in subdivision fourteen of section
52 three of this chapter, for exclusive use in the furnishing of room
53 service in the manner prescribed by rule or regulation of the bureau,
54 shall keep upon the licensed premises any marihuana products, except
55 those purchased from a licensed producer, and in containers approved by
56 the bureau. Such containers shall have affixed thereto such labels as

1 may be required by the rules of the bureau, together with all necessary
2 excise stamps as required by law. No marihuana retail licensee for
3 on-site consumption shall reuse, refill, tamper with, adulterate, dilute
4 or fortify the contents of any container of marihuana products as
5 received from the manufacturer or wholesaler.

6 7. No marihuana on-site consumption licensee shall sell, deliver or
7 give away, or cause or permit or procure to be sold, delivered or given
8 away any marihuana for consumption on the premises where sold in a
9 container or package containing more than one gram of marihuana.

10 8. No marihuana on-site consumption licensee shall suffer or permit
11 any gambling on the licensed premises, or suffer or permit such premises
12 to become disorderly. The use of the licensed premises, or any part
13 thereof, for the sale of lottery tickets, playing of bingo or games of
14 chance, or as a simulcast facility or simulcast theater pursuant to the
15 racing, pari-mutuel wagering and breeding law, when duly authorized and
16 lawfully conducted thereon, shall not constitute gambling within the
17 meaning of this subdivision.

18 (a) No marihuana on-site consumption licensee shall suffer or permit
19 any person to appear on licensed premises in such manner or attire as to
20 expose to view any portion of the pubic area, anus, vulva or genitals,
21 or any simulation thereof, nor shall suffer or permit any female to
22 appear on licensed premises in such manner or attire as to expose to
23 view any portion of the breast below the top of the areola, or any simu-
24 lation thereof.

25 (b) No marihuana on-site consumption licensee shall suffer, permit or
26 promote an event on its premises wherein the contestants deliver, or are
27 not forbidden by the applicable rules thereof from delivering kicks,
28 punches or blows of any kind to the body of an opponent or opponents,
29 whether or not the event consists of a professional match or exhibition,
30 and whether or not the event or any such act, or both, is done for
31 compensation; provided, however, that this prohibition shall not be
32 applied to any professional match or exhibition which consists of
33 boxing, sparring, wrestling, or martial arts and which is excepted from
34 the definition of the term "combative sport" contained in subdivision
35 three of section one thousand of the general business law.

36 (c) In addition to any other penalty provided by law, a violation of
37 this subdivision shall constitute an adequate ground for instituting a
38 proceeding to suspend, cancel or revoke the license of the violator in
39 accordance with the applicable procedures specified in section one
40 hundred nineteen of this chapter.

41 9. Except where a permit to do so is obtained pursuant to section
42 405.10 of the penal law, no marihuana on-site consumption licensee shall
43 suffer, permit, or promote an event on its premises wherein any person
44 shall use, explode, or cause to explode, any fireworks or other pyro-
45 technics in a building as defined in paragraph e of subdivision one of
46 section 405.10 of the penal law, that is covered by such license or
47 possess such fireworks or pyrotechnics for such purpose. In addition to
48 any other penalty provided by law, a violation of this subdivision shall
49 constitute an adequate ground for instituting a proceeding to suspend,
50 cancel, or revoke the license of the violator in accordance with the
51 applicable procedures specified in section one hundred nineteen of this
52 chapter; provided however, if more than one licensee is participating in
53 a single event, upon approval by the bureau, only one licensee must
54 obtain such permit.

55 10. No restaurant and no premises licensed to sell marihuana products
56 for on-site consumption under paragraph (a) of subdivision six of

1 section sixty-four-a of this chapter shall be permitted to have any
2 opening or means of entrance or passageway for persons or things between
3 the licensed premises and any other room or place in the building
4 containing the licensed premises, or any adjoining or abutting premises,
5 unless ingress and egress is restricted by an employee, agent of the
6 licensee, or other approved method of controlling access to the facili-
7 ty, or unless such premises are a bona fide restaurant with such access
8 for patrons and guests from any part of such building or adjoining or
9 abutting premises as shall serve public convenience in a reasonable and
10 suitable manner; or unless such licensed premises are in a building
11 owned or operated by any county, town, city, village or public authority
12 or agency, in a park or other similar place of public accommodation. All
13 glass in any window or door on said licensed premises shall be clear and
14 shall not be opaque, colored, stained or frosted.

15 11. A vessel licensed to sell marihuana products for on-site consump-
16 tion shall not be permitted to sell any marihuana products, while said
17 vessel is moored to a pier or dock, except that vessels sailing on
18 established schedules shall be permitted to sell marihuana products for
19 a period of three hours prior to the regular advertised sailing time.

20 12. Each marihuana on-site consumption licensee shall keep and main-
21 tain upon the licensed premises, adequate records of all transactions
22 involving the business transacted by such licensee which shall show the
23 amount of marihuana products, in an applicable metric measurement,
24 purchased by such licensee together with the names, license numbers and
25 places of business of the persons from whom the same were purchased, the
26 amount involved in such purchases, as well as the sales of marihuana
27 products made by such licensee. The bureau is hereby authorized to
28 promulgate rules and regulations permitting an on-site licensee operat-
29 ing two or more premises separately licensed to sell marihuana products
30 for on-site consumption to inaugurate or retain in this state methods or
31 practices of centralized accounting, bookkeeping, control records,
32 reporting, billing, invoicing or payment respecting purchases, sales or
33 deliveries of marihuana products, or methods and practices of central-
34 ized receipt or storage of marihuana products within this state without
35 segregation or earmarking for any such separately licensed premises,
36 wherever such methods and practices assure the availability, at such
37 licensee's central or main office in this state, of data reasonably
38 needed for the enforcement of this chapter. Such records shall be avail-
39 able for inspection by any authorized representative of the bureau.

40 13. All retail licensed premises shall be subject to inspection by any
41 peace officer, acting pursuant to his or her special duties, or police
42 officer and by the duly authorized representatives of the bureau, during
43 the hours when the said premises are open for the transaction of busi-
44 ness.

45 14. A marihuana on-site consumption licensee shall not provide mari-
46 huana products to any person under the age of twenty-one or to any
47 person who is visibly impaired.

48 § 178. Advertising and forms of the issuance of licenses. 1. The
49 bureau is hereby authorized to promulgate rules and regulations govern-
50 ing the advertising of marihuana producers, marihuana processors, mari-
51 huana retailers, and any marihuana related products or services.

52 2. The bureau shall promulgate explicit rules prohibiting advertising
53 that:

54 (a) is false, deceptive, or misleading;

55 (b) promotes overconsumption;

56 (c) depicts consumption by children or other minors;

- 1 (d) is designed in any way to appeal to children or other minors;
2 (e) is within two hundred feet of the perimeter of a school grounds,
3 playground, child care center, public park, or library;
4 (f) is in public transit vehicles and stations;
5 (g) is in the form of an unsolicited internet pop-up; or
6 (h) is on publicly owned or operated property.

7 3. The bureau shall promulgate explicit rules prohibiting all market-
8 ing strategies and implementation including, but not limited to, brand-
9 ing, packaging, labeling, location of marihuana retailers and marihuana
10 microbusinesses, and advertisements that are designed to:

- 11 (a) appeal to persons less than twenty-one years of age; or
12 (b) disseminate false or misleading information to customers.

13 4. The bureau shall promulgate explicit rules requiring that:

- 14 (a) all advertisements and marketing accurately and legibly identify
15 the licensee responsible for its content; and
16 (b) any broadcast, cable, radio, print and digital communications
17 advertisements only be placed where the audience is reasonably expected
18 to be twenty-one years of age or older, as determined by reliable,
19 up-to-date audience composition data.

20 § 179. Packaging of marihuana products. 1. The bureau is hereby
21 authorized to promulgate rules and regulations governing the packaging
22 of marihuana products, sold or possessed for sale in New York state.

23 2. Such regulations shall include requiring that:

- 24 (a) packaging meets requirements similar to the federal "poison
25 prevention packaging act of 1970," 15 U.S.C. Sec 1471 et seq.;
26 (b) all marihuana-infused products shall have a separate packaging for
27 each serving;
28 (c) prior to delivery or sale at a retailer, marihuana and marihuana
29 products shall be labeled and placed in a resealable, child-resistant
30 package; and
31 (d) packages and labels shall not be made to be attractive to chil-
32 dren.

33 § 180. Labeling of marihuana products. 1. The bureau is hereby author-
34 ized to promulgate rules and regulations governing the labeling and
35 offering of marihuana products for sale within this state.

36 2. Such rules and regulations shall be calculated to: (a) prohibit
37 deception of the consumer; (b) afford adequate information as to quality
38 and identity of the product; and (c) achieve national uniformity in this
39 business.

40 3. The bureau may seek the assistance of the department of health when
41 necessary before promulgating rules and regulations under this section.

42 4. Such regulations shall include requiring labels warning consumers
43 of any potential impact on human health resulting from the consumption
44 of marihuana products that shall be affixed to those products when sold,
45 if such labels are deemed warranted by the bureau after consultation
46 with the department of health.

47 5. All marihuana and marihuana product labels and inserts shall
48 include the following information prominently displayed in a clear and
49 legible fashion in accordance with the requirements, including font
50 size, prescribed by the bureau or the department of health: not less
51 than 8 point font:

- 52 (a) manufacture date and source;
53 (b) for packages containing only dried flower, the net weight of mari-
54 huana in the package;

1 (c) identification of the source and date of cultivation, the type of
2 marihuana or marihuana product and the date of manufacturing and packag-
3 ing;

4 (d) list of pharmacologically active ingredients, including, but not
5 limited to, tetrahydrocannabinol (THC), cannibidiol (CBP), and other
6 cannabinoid content, the THC and other cannabinoid amount in milligrams
7 per serving, servings per package, and the THC and other cannabinoid
8 amount in milligrams for the package total, and the potency of the mari-
9 huana or marihuana product by reference to the amount of tetrahydrocan-
10 nibinol and canibidiol in each serving;

11 (e) for marihuana products, a list of all ingredients and disclosure
12 of nutritional information in the same manner as the federal nutritional
13 labeling requirements in 21 C.F.R. section 101.9;

14 (f) a list of any solvents, nonorganic pesticides, herbicides, and
15 fertilizers that were used in the cultivation, production, and manufac-
16 ture of such marihuana or marihuana product;

17 (g) a warning if nuts or other known allergens are used;

18 (h) information associated with the unique identifier issued by the
19 bureau of marihuana policy; and

20 (i) any other requirements set by the bureau of marihuana policy.

21 6. Only generic food names may be used to describe the ingredients in
22 edible marihuana products.

23 7. Such rules and regulations shall establish methods and procedures
24 for determining serving sizes for marihuana-infused products, active
25 cannabis concentration per serving size, and number of servings per
26 container. Such regulations shall also require a nutritional fact panel
27 that incorporates data regarding serving sizes and potency thereof.

28 8. Such rules and regulations shall require information containing the
29 license number of the marihuana producer and processor facilities where
30 the marihuana was grown and processed.

31 9. The packaging, sale, or possession by any licensee of any marihuana
32 product not labeled or offered in conformity with rules and regulations
33 promulgated in accordance with this section shall be grounds for the
34 imposition of a fine, and/or the suspension, revocation or cancellation
35 of the license.

36 § 181. Seed to sale tracking. 1. No later than fifteen months follow-
37 ing the effective date of the Marihuana Regulation and Taxation Act, the
38 bureau shall establish a seed to sale tracking program for reporting the
39 movement of marihuana and marihuana products throughout the distribution
40 chain that utilizes a unique identifier and secure packaging and is
41 capable of providing information that captures, at a minimum, all of the
42 following:

43 (a) the licensee receiving the product;

44 (b) the transaction date; and

45 (c) the producer from which the product originates, including the
46 associated unique identifier.

47 2. (a) The bureau shall create an electronic database containing the
48 electronic shipping manifests to facilitate the administration of the
49 seed to sale program tracking, which shall include, but not be limited
50 to, the following information:

51 (b) the quantity, or weight, and variety of products shipped;

52 (c) the estimated times of departure and arrival;

53 (d) the quantity, or weight, and variety of products received;

54 (e) the actual time of departure and arrival;

55 (f) a categorization of the product; and

1 (g) the license number and unique identifier issued by the bureau for
2 all licensees involved in the shipping process, including, but not
3 limited to, producer, processor, retailer, and delivery licensees.

4 (3) The database shall be designed to flag irregularities for the
5 bureau to investigate.

6 § 182. Renewals of licenses and permits. 1. Each license and permit,
7 issued pursuant to this article may be renewed upon application therefor
8 by the licensee or permittee and the payment of the annual fee for such
9 license or permit as prescribed by this article. In the case of applica-
10 tions for renewals, the bureau may dispense with the requirements of
11 such statements as it deems unnecessary in view of those contained in
12 the application made for the original license or permit, but in any
13 event the submission of photographs of the licensed premises shall be
14 dispensed with, provided the applicant for such renewal shall file a
15 statement with such bureau to the effect that there has been no alter-
16 ation of such premises since the original license was issued. The
17 bureau may make such rules as may be necessary not inconsistent with
18 this chapter regarding applications for renewals of licenses and permits
19 and the time for making the same. Each applicant must submit to the
20 bureau documentation of the racial, ethnic, and gender diversity of the
21 applicant's employees and owners prior to a license or permit being
22 renewed.

23 2. The bureau shall provide an application for renewal of a license
24 issued under this article not less than sixty days prior to the expira-
25 tion of the current license.

26 § 183. Information to be provided by applicants. 1. The following
27 shall be the information required on an application for a license or
28 permit:

29 (a) A statement of identity as follows:

30 (i) If the applicant is an individual, his or her name, date and place
31 of birth, citizenship, permanent home address, telephone number and
32 social security number, as well as any other names by which he or she
33 has conducted a business at any time.

34 (ii) If the applicant is a corporation, the corporate name of the
35 applicant, its place of incorporation, its main business address (and if
36 such main business address is not within the state, the address of its
37 main place of business within the state), other names by which it has
38 been known or has conducted business at any time, its telephone number,
39 its federal employer identification number, and the names, ages, citi-
40 zenship, and permanent home addresses of its directors, officers and its
41 shareholders (except that if there be more than ten shareholders then
42 those shareholders holding ten percent or more of any class of its
43 shares).

44 (iii) If the applicant is a partnership, its name, its main business
45 address (and if such main business address is not within the state, the
46 address of its main place of business within the state), other names by
47 which it has been known or has conducted business at any time, its tele-
48 phone number, its federal employer identification number, and the names,
49 ages, citizenship, and permanent home addresses of each of its partners.

50 (b) A statement identifying the street and number of the premises to
51 be licensed, if the premises has a street and number, and otherwise such
52 description as will reasonably indicate the locality thereof; photo-
53 graphs, drawings or other items related to the appearance of the interi-
54 or or exterior of such premises, and a floor plan of the interior, shall
55 be required. The applicant shall also state the nature of his or her
56 interest in the premises; and the name of any other person interested as

1 a partner, joint venturer, investor or lender with the applicant either
2 in the premises or in the business to be licensed.

3 (c) A description of any other marihuana license or permit under this
4 article, within the past ten years, the applicant (including any offi-
5 cers, directors, shareholders or partners listed in the statement of
6 identity under paragraph (a) of this subdivision or the spouse of any
7 such person) or the applicant's spouse held or applied for.

8 (d) A description of the applicant's plan to ensure diversity among
9 the applicant's employees, including strategies for ensuring:

10 (i) gender diversity;

11 (ii) racial and ethnic diversity that reflects the demographics within
12 the municipality in which the applicant's proposed business will be
13 located; and

14 (iii) that persons with prior criminal convictions are not barred from
15 employment.

16 (e) A statement that the location and layout of the premises to be
17 licensed does not violate any requirement of this chapter relating to
18 location and layout of licensed premises, with a copy of the certificate
19 of occupancy for the premises.

20 (f) A statement that the applicant has control of the premises to be
21 licensed by ownership of a fee interest or via a leasehold, management
22 agreement, or other agreement giving the applicant control over the
23 premises, with a term at least as long as the license for which the
24 application is being made, or by a binding contract to acquire the same
25 and a statement of identity under paragraph (a) of this subdivision for
26 the lessor of any leasehold, manager of any management agreement, or
27 other agreement giving the applicant control over the premises, with a
28 copy of the lease, contract, management agreement, or other agreement
29 giving the applicant control over the food and beverage at the premises,
30 or deed evidencing fee ownership of the premises.

31 (g) A financial statement adequate to show all persons who, directly
32 or indirectly have an economic interest in the establishment or acquisi-
33 tion of the business for which the license or permit application is
34 being made, to identify the sources of funds to be applied in such
35 establishment or acquisition, and to describe the terms and conditions
36 governing such establishment with copies of such financial documents as
37 the bureau may reasonably require.

38 (h) The fingerprints of the applicants. Fingerprints submitted by the
39 applicants shall be transmitted to the division of criminal justice
40 services and may be submitted to the federal bureau of investigation for
41 state and national criminal history record checks.

42 2. All license or permit applications shall be signed by the applicant
43 (if an individual), by a managing partner (if a limited liability corpo-
44 ration), by an officer (if a corporation), or by all partners (if a
45 partnership). Each person signing such application shall verify it or
46 affirm it as true under the penalties of perjury.

47 3. All license or permit applications shall be accompanied by a check,
48 draft or other forms of payment as the bureau may require or authorize
49 in the amount required by this article for such license or permit.

50 4. If there be any change, after the filing of the application or the
51 granting of a license, in any of the facts required to be set forth in
52 such application, a supplemental statement giving notice of such change,
53 cost and source of money involved in the change, duly verified, shall be
54 filed with the bureau within ten days after such change. Failure to do
55 so shall, if willful and deliberate, be cause for revocation of the
56 license.

1 5. In giving any notice, or taking any action in reference to a licen-
2 see of a licensed premises, the bureau may rely upon the information
3 furnished in such application and in any supplemental statement
4 connected therewith, and such information may be presumed to be correct,
5 and shall be binding upon a licensee or licensed premises as if correct.
6 All information required to be furnished in such application or supple-
7 mental statements shall be deemed material in any prosecution for perju-
8 ry, any proceeding to revoke, cancel or suspend any license, and in the
9 bureau's determination to approve or deny the license.

10 6. The bureau may in its discretion waive the submission of any cate-
11 gory of information described in this section for any category of
12 license or permit, provided that it shall not be permitted to waive the
13 requirement for submission of any such category of information solely
14 for an individual applicant or applicants.

15 § 184. Notification to municipalities. 1. Not less than thirty days
16 before filing any of the following applications, an applicant shall
17 notify the municipality in which the premises is located of such appli-
18 cant's intent to file such an application for a:

- 19 (a) marihuana producer license;
- 20 (b) marihuana processor license;
- 21 (c) marihuana microbusiness license;
- 22 (d) marihuana retailer license;
- 23 (e) marihuana retailer license for on-site consumption;
- 24 (f) marihuana delivery license;
- 25 (g) marihuana testing license; and/or
- 26 (h) any other type of licenses allowed by the bureau.

27 2. Such notification shall be made to the clerk of the village, town
28 or city, as the case may be, wherein the premises is located. For
29 purposes of this section:

30 (a) notification need only be given to the clerk of a village when the
31 premises is located within the boundaries of the village; and

32 (b) in the city of New York, the community board established pursuant
33 to section twenty-eight hundred of the New York city charter with juris-
34 isdiction over the area in which the premises is located shall be consid-
35 ered the appropriate public body to which notification shall be given.

36 3. For purposes of this section, "substantial corporate change" shall
37 mean:

38 (a) for a corporation, a change of eighty percent or more of the offi-
39 cers and/or directors, or a transfer of eighty percent or more of stock
40 of such corporation, or an existing stockholder obtaining eighty percent
41 or more of the stock of such corporation; and

42 (b) for a limited liability company, a change of eighty percent or
43 more of the managing members of the company, or a transfer of eighty
44 percent or more of ownership interest in said company, or an existing
45 member obtaining a cumulative of eighty percent or more of the ownership
46 interest in said company.

47 4. Such notification shall be made in such form as shall be prescribed
48 by the rules of the bureau.

49 5. A municipality may express an opinion for or against the granting
50 of such application. Any such opinion shall be deemed part of the record
51 upon which the bureau makes its determination to grant or deny the
52 application.

53 6. Such notification shall be made by: certified mail, return receipt
54 requested; overnight delivery service with proof of mailing; or personal
55 service upon the offices of the clerk or community board.

1 7. The bureau shall require such notification to be on a standardized
2 form that can be obtained on the internet or from the bureau and such
3 notification to include:

4 (a) the trade name or "doing business as" name, if any, of the estab-
5 lishment;

6 (b) the full name of the applicant;

7 (c) the street address of the establishment, including the floor
8 location or room number, if applicable;

9 (d) the mailing address of the establishment, if different than the
10 street address;

11 (e) the name, address and telephone number of the attorney or repre-
12 sentative of the applicant, if any;

13 (f) a statement indicating whether the application is for:

14 (i) a new establishment;

15 (ii) a transfer of an existing licensed business;

16 (iii) a renewal of an existing license; or

17 (iv) an alteration of an existing licensed premises;

18 (g) if the establishment is a transfer or previously licensed prem-
19 ises, the name of the old establishment and such establishment's license
20 serial number;

21 (h) in the case of a renewal or alteration application, the license
22 serial number of the applicant; and

23 (i) the type of license.

24 § 185. Licenses, publication, general provisions. 1. The various types
25 of licenses issued pursuant to this article shall be distinctive in
26 color and design so as to be readily distinguishable from each other.

27 2. No license shall be transferable or assignable except that notwith-
28 standing any other provision of law, the license of a sole proprietor
29 converting to corporate form, where such proprietor becomes the sole
30 stockholder and only officer and director of such new corporation, may
31 be transferred to the subject corporation if all requirements of this
32 chapter remain the same with respect to such license as transferred and,
33 further, the licensee shall transmit to the bureau, within ten days of
34 the transfer of license allowable under this subdivision, on a form
35 prescribed by the bureau, notification of the transfer of such license.

36 3. No license shall be pledged or deposited as collateral security for
37 any loan or upon any other condition; and any such pledge or deposit,
38 and any contract providing therefor, shall be void.

39 4. Licenses issued under this article shall contain, in addition to
40 any further information or material to be prescribed by the rules of the
41 bureau, the following information: (a) name of person to whom license is
42 issued; (b) kind of license and what kind of traffic in marihuana is
43 thereby permitted; (c) description by street and number, or otherwise,
44 of licensed premises; and (d) a statement in substance that such license
45 shall not be deemed a property or vested right, and that it may be
46 revoked at any time pursuant to law.

47 5. There shall be printed and furnished by the bureau to each licensee
48 a statement of the causes for which licenses may be revoked. Such state-
49 ment shall be prepared by the bureau and delivered to the licensee with
50 his or her license or as soon thereafter as may be practicable. Any
51 amendments thereto shall also be sent by the bureau to all licensees as
52 soon as may be practicable after such amendments. Failure to send such
53 statements or changes therein, or failure to receive the same, or any
54 misstatement or error contained in such statements or amendments shall,
55 however, not be an excuse or justification for any violation of law, or
56 prevent, or remit, or decrease any penalty or forfeiture therefor.

1 6. Before commencing or doing any business for the time for which a
2 license has been issued said license shall be enclosed in a suitable
3 wood or metal frame having a clear glass space and a substantial wood or
4 metal back so that the whole of said license may be seen therein, and
5 shall be posted up and at all times displayed in a conspicuous place in
6 the room where such business is carried on, so that all persons visiting
7 such place may readily see the same. It shall be unlawful for any person
8 holding a license to post such license or to permit such license to be
9 posted upon premises other than the premises licensed, or upon premises
10 where traffic in marihuana is being carried on by any person other than
11 the licensee, or knowingly to deface, destroy or alter any such license
12 in any respect. Whenever a license shall be lost or destroyed without
13 fault on the part of the licensee or his or her agents or employees, a
14 duplicate license in lieu thereof may be issued by the bureau in its
15 discretion and in accordance with such rules and regulations and the
16 payment of such fees, not exceeding five dollars, as it may prescribe.

17 § 186. Revocation of licenses for cause. 1. Any license or permit
18 issued pursuant to this article may be revoked, cancelled, suspended
19 and/or subjected to the imposition of a civil penalty for cause, and
20 must be revoked for the following causes:

21 (a) Conviction of the licensee, permittee or his or her agent or
22 employee for selling any illegal marihuana or marihuana products on the
23 premises licensed.

24 (b) For transferring, assigning or hypothecating a license or permit.

25 2. Notwithstanding the issuance of a license or permit by way of
26 renewal, the bureau may revoke, cancel or suspend such license or permit
27 and/or may impose a civil penalty against any holder of such license or
28 permit, as prescribed by this section and section one hundred nineteen
29 of this chapter, for causes or violations occurring during the license
30 period immediately preceding the issuance of such license or permit, and
31 may recover, as provided in section one hundred twelve of this chapter,
32 the penal sum of the bond on file during said period.

33 3. As used in this section, the term "for cause" shall also include
34 the existence of a sustained and continuing pattern of noise, disturb-
35 ance, misconduct, or disorder on or about the licensed premises, related
36 to the operation of the premises or the conduct of its patrons, which
37 adversely affects the health, welfare or safety of the inhabitants of
38 the area in which such licensed premises are located.

39 4. The existence of a sustained and continuing pattern of noise,
40 disturbance, misconduct, or disorder on or about the licensed premises,
41 related to the operation of the premises or the conduct of its patrons,
42 will be presumed upon the sixth incident reported to the bureau by a law
43 enforcement agency of noise or disturbance or misconduct or disorder on
44 or about the licensed premises or related to the operation of the prem-
45 ises or the conduct of its patrons, in any sixty day period, absent
46 clear and convincing evidence of either fraudulent intent on the part of
47 any complainant or a factual error with respect to the content of any
48 report concerning such complaint relied upon by the bureau.

49 § 187. Procedure for revocation or cancellation. 1. Any license or
50 permit issued by the bureau pursuant to this article may be revoked,
51 cancelled or suspended and/or be subjected to the imposition of a mone-
52 tary penalty in the manner prescribed by this section.

53 2. The bureau may on its own initiative or on complaint of any person
54 institute proceedings to revoke, cancel or suspend any retail license
55 and may impose a civil penalty against the licensee after a hearing at
56 which the licensee shall be given an opportunity to be heard. Such hear-

1 ing shall be held in such manner and upon such notice as may be
2 prescribed by the rules of the bureau.

3 3. All other licenses or permits issued under this article may be
4 revoked, cancelled, suspended and/or made subject to the imposition of a
5 civil penalty by the bureau after a hearing to be held in the manner to
6 be determined by the rules of the bureau.

7 4. (a) The provisions of this subdivision shall apply in all cases of
8 licensee or permittee failure after receiving appropriate notice, to
9 comply with a summons, subpoena or warrant relating to a paternity or
10 child support proceeding and arrears in payment of child support or
11 combined child and spousal support referred to the bureau by a court
12 pursuant to the requirements of section two hundred forty-four-c of the
13 domestic relations law or pursuant to section four hundred fifty-eight-b
14 or five hundred forty-eight-b of the family court act.

15 (b) Upon receipt of an order from the court based on arrears in
16 payment of child support or combined child and spousal support pursuant
17 to one of the foregoing provisions of law, the bureau, if it finds such
18 person to have been issued a license or permit, shall within thirty days
19 of receipt of such order from the court, provide notice to the licensee
20 or permittee of, and initiate, a hearing which shall be held at least
21 twenty days and no more than thirty days after the sending of such
22 notice to the licensee or permittee. The hearing shall be solely held
23 for the purpose of determining whether there exists as of the date of
24 the hearing proof that full payment of all arrears of support estab-
25 lished by the order of the court to be due from the licensee or permit-
26 tee have been paid. Proof of such payment shall be a certified check
27 showing full payment of established arrears or a notice issued by the
28 court or the support collection unit, where the order is payable to the
29 support collection unit designated by the appropriate social services
30 district. Such notice shall state that full payment of all arrears of
31 support established by the order of the court to be due have been paid.
32 The licensee or permittee shall be given full opportunity to present
33 such proof of payment at the hearing in person or by counsel. The only
34 issue to be determined by the bureau as a result of the hearing is
35 whether the arrears have been paid. No evidence with respect to the
36 appropriateness of the court order or ability of the respondent party in
37 arrears to comply with such order shall be received or considered by the
38 bureau.

39 (c) Notwithstanding any inconsistent provision of this article or of
40 any other provision of law to the contrary, such license or permit shall
41 be suspended if at the hearing, provided for by paragraph (b) of this
42 subdivision, the licensee or permittee fails to present proof of payment
43 as required by such paragraph. Such suspension shall not be lifted
44 unless the court or the support collection unit, where the court order
45 is payable to the support collection unit designated by the appropriate
46 social services district, issues notice to the bureau that full payment
47 of all arrears of support established by the order of the court to be
48 due have been paid.

49 (d) Upon receipt of an order from the court based on failure to comply
50 with a summons, subpoena, or warrant relating to a paternity or child
51 support proceeding, the bureau, if it finds such person has been issued
52 a license or permit, shall within thirty days of receipt of such order
53 from the court, provide notice to the licensee or permittee that his or
54 her license shall be suspended in sixty days unless the conditions in
55 paragraph (e) of this subdivision are met.

1 (e) Notwithstanding any inconsistent provision of this article or of
2 any other provision of law to the contrary, such license or permit shall
3 be suspended in accordance with the provisions of paragraph (c) of this
4 subdivision unless the court terminates its order to commence suspension
5 proceedings. Such suspension shall not be lifted unless the court issues
6 an order to the bureau terminating its order to commence suspension
7 proceedings.

8 (f) The bureau shall inform the court of all actions taken hereunder
9 as required by law.

10 (g) This subdivision applies to support obligations paid pursuant to
11 any order of child support or child and spousal support issued under
12 provisions of section two hundred thirty-six or two hundred forty of the
13 domestic relations law, or article four, five or five-A of the family
14 court act.

15 (h) Notwithstanding any inconsistent provision of this article or of
16 any other provision of law to the contrary, the provisions of this
17 subdivision shall apply to the exclusion of any other requirements of
18 this article and to the exclusion of any other requirement of law to the
19 contrary.

20 5. Where a licensee is convicted of two or more qualifying offenses
21 within a five year period, the bureau, upon receipt of notification of
22 such second or subsequent conviction pursuant to the provisions of
23 subdivision two of section one hundred six-a of this chapter, shall, in
24 addition to any other sanction or civil or criminal penalty imposed
25 pursuant to this chapter, impose on such licensee a civil penalty not to
26 exceed five hundred dollars. For purposes of this subdivision, a quali-
27 fying offense shall mean: (a) the offense defined in subdivision one of
28 section sixty-five of this chapter; or (b) the offense defined in para-
29 graph (b) of subdivision one of section sixty-five-b of this chapter.
30 For purposes of this subdivision, a conviction of a licensee or an
31 employee or agent of such licensee shall constitute a conviction of such
32 licensee.

33 § 188. Decisions of the bureau of marihuana policy and review by the
34 courts. Provisions of sections one hundred twenty, one hundred twenty-
35 one and one hundred twenty-four of this chapter shall apply to marihuana
36 licenses issued under this article.

37 § 189. Minority and women-owned business enterprises. The bureau
38 shall:

39 1. actively promote racial, ethnic, and geographic diversity when
40 licensing marihuana growers, processors, and retailers;

41 2. encourage applicants who qualify as a minority or women-owned busi-
42 ness enterprise, as defined in section three hundred ten of the execu-
43 tive law, to apply for licenses;

44 3. in accordance with the Official Compilation of Codes, Rules and
45 Regulations of the State of New York Title 5, Department of Economic
46 Development, Chapter XIV, Division of Minority and Women's Business
47 Development, Part 141, submit an annual master goal plan to promote the
48 inclusion of: (a) minority-owned business enterprises; (b) women-owned
49 business enterprises; and (c) minority and women-owned business enter-
50 prises with justifications for such goals; and

51 4. actively promote and encourage applicants that promote and ensure
52 racial, ethnic, and gender diversity in their workforce when licensing
53 marihuana growers, processors, and retailers.

54 § 190. Disposition of moneys received for license fees. The bureau
55 shall establish a scale of application, licensing, and renewal fees.

1 based upon the cost of enforcing this article and the size of the mari-
2 huana business being licensed, as follows:

3 1. Each licensing authority shall charge each licensee a licensure and
4 renewal fee, as applicable. The licensure and renewal fee shall be
5 calculated to cover the costs of administering this article. The licen-
6 sure fee may vary depending upon the varying costs associated with
7 administering the various regulatory requirements of this article as
8 they relate to the nature and scope of the different licensure activ-
9 ities, but shall not exceed the reasonable regulatory costs to the
10 licensing authority.

11 2. The total fees assessed pursuant to this article shall be set at an
12 amount that will fairly and proportionately generate sufficient total
13 revenue to fully cover the total costs of administering this article.

14 3. All license fees shall be set on a scaled basis by the bureau,
15 dependent on the size of the business.

16 4. The bureau shall deposit all fees collected in the marihuana
17 control fund established pursuant to section eighty-two of the state
18 finance law.

19 § 191. Persons forbidden to traffic in marihuana. 1. The following
20 persons are forbidden to traffic in marihuana:

21 (a) A person under the age of twenty-one years.

22 (b) A person who is not a citizen of the United States or an alien
23 lawfully admitted for permanent residence in the United States.

24 (c) A co-partnership or a corporation, unless each member of the part-
25 nership, or each of the principal officers and directors of the corpo-
26 ration, is a citizen of the United States or an alien lawfully admitted
27 for permanent residence in the United States, not less than twenty-one
28 years of age, and has not been convicted of any felony or any of the
29 misdemeanors, specified in section 230.20 or 230.40 of the penal law, or
30 if so convicted has received, subsequent to such conviction, an execu-
31 tive pardon therefor removing this disability a certificate of good
32 conduct granted by the department of corrections and community super-
33 vision, or a certificate of relief from disabilities granted by the
34 department of corrections and community supervision or a court of this
35 state pursuant to the provisions of article twenty-three of the
36 correction law to remove the disability under this section because of
37 such conviction; provided however that a corporation which otherwise
38 conforms to the requirements of this section and article may be licensed
39 if each of its principal officers and more than one-half of its direc-
40 tors are citizens of the United States or aliens lawfully admitted for
41 permanent residence in the United States; and provided further that a
42 corporation organized under the not-for-profit corporation law or the
43 education law which otherwise conforms to the requirements of this
44 section and article may be licensed if each of its principal officers
45 and more than one-half of its directors are not less than twenty-one
46 years of age and none of its directors are less than eighteen years of
47 age; and provided further that a corporation organized under the not-
48 for-profit corporation law or the education law and located on the prem-
49 ises of a college as defined by section two of the education law which
50 otherwise conforms to the requirements of this section and article may
51 be licensed if each of its principal officers and each of its directors
52 are not less than eighteen years of age.

53 (d) (i) A person who shall have had any license issued under this
54 chapter revoked for cause, until the expiration of two years from the
55 date of such revocation.

1 (ii) A person not licensed under the provisions of this chapter, who
2 has been convicted of a violation of this chapter, until the expiration
3 of two years from the date of such conviction.

4 (e) A corporation or co-partnership, if any officer and director or
5 any partner, while not licensed under the provisions of this chapter,
6 has been convicted of a violation of this chapter, or has had a license
7 issued under this chapter revoked for cause, until the expiration of two
8 years from the date of such conviction or revocation.

9 2. An applicant shall not be denied a state license under this article
10 if the denial is based solely on a conviction for a violation of article
11 two hundred twenty or two hundred twenty-one of the penal law.

12 § 192. Surrender of license; notice to police officials. Within three
13 days after a license shall have been revoked pursuant to this article,
14 notice thereof shall be given to the licensee by mailing such notice
15 addressed to him at the premises licensed. Notice shall also be mailed
16 to the owner of the premises licensed. The holder of such license shall
17 thereupon surrender same to the bureau. The mailing thereof by the
18 licensee to the bureau by registered mail or insured parcel post shall
19 be deemed sufficient compliance with this section. The bureau, imme-
20 diately upon giving notice of revocation, shall serve a written notice
21 thereof upon the commissioner of police, chief of police or chief police
22 officer of the city, or village in which the premises for which the
23 revoked license was issued is situated, or upon the sheriff of the coun-
24 ty or a constable of the town in case the license was issued for prem-
25 ises situated in a town and not within any city or village. Such notice
26 shall include a statement of the number of such license, the name and
27 place of residence of the holder thereof, the location of the licensed
28 premises, and the date when such license was revoked. In case such
29 license be not forthwith surrendered, the bureau shall issue a written
30 demand for the surrender of such license and deliver said demand to the
31 sheriff of the county in which the licensed premises are located, or to
32 any representative of the bureau, and said sheriff or representative
33 shall immediately take possession of such license and return the same to
34 the bureau.

35 § 193. Authority to promulgate rules and regulations. The bureau shall
36 promulgate and implement all rules and regulations as it deems necessary
37 to carry out the purpose and intent of this article.

38 § 194. Protections for the use of marihuana. Individuals and licensed
39 entities shall not be subject to arrest, prosecution, or penalty in any
40 manner, or denied any right or privilege, including but not limited to
41 civil liability or disciplinary action by a business or occupational or
42 professional licensing board or bureau, solely for conduct permitted
43 under this article. For the avoidance of doubt, the appellate division
44 of the supreme court of the state of New York, and any disciplinary or
45 character and fitness committees established by them are occupational
46 and professional licensing boards within the meaning of this section.
47 State or local law enforcement agencies shall not cooperate with or
48 provide assistance to the government of the United States or any agency
49 thereof in enforcing the Controlled Substance Act, 21, U.S.C. § 8012 et
50 seq., solely for actions consistent with this chapter, except as pursu-
51 ant to a valid court order.

52 § 195. Discrimination protections for the use of marihuana or medical
53 marihuana. 1. No school or landlord may refuse to enroll or lease to and
54 may not otherwise penalize a person solely for conduct allowed under
55 sections 221.05 and 221.05-a of the penal law, except as exempted:

1 (a) If failing to do so would cause the school or landlord to lose a
2 monetary or licensing related benefit under federal law or regulations;

3 (b) If the institution has adopted a code of conduct prohibiting mari-
4 huana use on the basis of religious belief;

5 (c) If a property is registered with the New York Smoke-Free Housing
6 Registry, it is not required to permit the smoking of marihuana products
7 on its premises.

8 2. For the purposes of medical care, including organ transplants, a
9 registered qualifying patient's authorized use of medical marihuana must
10 be considered the equivalent of the use of any other medication under
11 the direction of a practitioner and does not constitute the use of an
12 illicit substance or otherwise disqualify a registered qualifying
13 patient from medical care.

14 3. No person may be denied custody of or visitation or parenting time
15 with a minor, and there is no presumption of neglect or child endanger-
16 ment for conduct allowed under sections 221.05 and 221.05-a of the penal
17 law, unless the person's behavior creates an unreasonable danger to the
18 safety of the minor as established by clear and convincing evidence. For
19 the purposes of this section, an "unreasonable danger" determination
20 cannot be based solely on whether, when, and how often a person uses
21 marihuana without separate evidence of harm.

22 § 196. Employment protections. 1. Unless an employer establishes by a
23 preponderance of the evidence that the lawful use of marihuana has
24 impaired the employee's ability to perform the employee's job responsi-
25 bilities, it shall be unlawful to take any adverse employment action
26 against an employee based on either:

27 (a) conduct allowed under sections 221.05 and 221.05-a of the penal
28 law; or

29 (b) the employee's positive drug test for marihuana components or
30 metabolites.

31 2. For the purposes of this section, an employer may consider an
32 employee's ability to perform the employee's job responsibilities to be
33 impaired when the employee manifests specific articulable symptoms while
34 working that decrease or lessen the employee's performance of the duties
35 or tasks of the employee's job position.

36 3. Nothing in this section shall restrict an employer's ability to
37 prohibit or take adverse employment action for the possession or use of
38 intoxicating substances during work hours, or require an employer to
39 commit any act that would cause the employer to be in violation of
40 federal law, or that would result in the loss of a federal contract or
41 federal funding.

42 4. As used in this section, "adverse employment action" means refusing
43 to hire or employ, barring or discharging from employment, requiring a
44 person to retire from employment, or discriminating against in compen-
45 sation or in terms, conditions, or privileges of employment.

46 § 197. Protections for persons under state supervision. A person
47 currently under parole, probation or other state supervision, or
48 released on bail awaiting trial may not be punished or otherwise penal-
49 ized for conduct allowed under sections 221.05 and 221.05-a of the penal
50 law.

51 § 198. Professional and medical record keeping. Any professional
52 providing services in connection with a licensed or potentially licensed
53 business under this chapter, or in connection with other conduct permit-
54 ted under this chapter, and any medical professional providing medical
55 care to a patient, may agree with their client or patient to maintain no
56 record, or any reduced level of record keeping that professional and

1 client or patient may agree. In case of such agreement, the profes-
 2 sional's only obligation shall be to keep such records as agreed, and to
 3 keep a record of the agreement. Such reduced record keeping is conduct
 4 permitted under this chapter, and shall attract the protections of
 5 section one hundred ninety-four of this article.

6 § 32. The state finance law is amended by adding two new sections 82
 7 and 82-a to read as follows:

8 § 82. Marihuana control fund. 1. There is hereby established in the
 9 joint custody of the commissioner of taxation and finance and the state
 10 comptroller a special fund to be known as the "marihuana control fund".

11 2. The marihuana control fund shall consist of the revenues required
 12 to be deposited pursuant to the provisions of section one hundred ninety
 13 of the alcoholic beverage control law, and all other moneys credited or
 14 transferred thereto from any other fund or source pursuant to law.

15 3. Moneys in the fund used solely for the purpose of administering the
 16 regulatory requirements of article eleven of the alcoholic beverage
 17 control law. Moneys in the fund shall not be co-mingled with any other
 18 state funds.

19 4. Moneys shall be paid out of the fund on the audit and warrant of
 20 the comptroller on vouchers certified or approved by the chairman of the
 21 bureau of marihuana policy.

22 § 82-a. Marihuana revenue fund. 1. There is hereby established in the
 23 joint custody of the commissioner of taxation and finance ant the state
 24 comptroller a special fund to be known as the "marihuana revenue fund".

25 2. The marihuana revenue fund shall consist of the revenues required
 26 to be deposited pursuant to the provisions of section four hundred fifty
 27 of the tax law and all other moneys credited or transferred thereto from
 28 any other fund or source pursuant to law, less any payment of refunds
 29 due to tax payers.

30 3. Moneys in th fund used solely for the purpose of administering the
 31 regulatory requirements of article eleven of the alcoholic beverage
 32 control law. Moneys in the fund shall not be co-mingled with any other
 33 state funds.

34 4. Moneys shall be paid out of the fund on the audit and warrant of
 35 the comptroller on vouchers certified or approved by the commissioner of
 36 taxation and finance.

37 § 33. The tax law is amended by adding a new article 18-A to read as
 38 follows:

39 ARTICLE 18-A

40 PROVISIONS RELATING TO MARIHUANA

41 Section 446. Definitions.

42 447. Taxes imposed.

43 447-a. Local taxes on marihuana by a city or town.

44 447-b. Ordinary and necessary expenses deductible from net
 45 income.

46 448. Surety bond.

47 449. Collection of tax.

48 450. Revenue allocation.

49 § 446. Definitions. As used in this article:

50 1. "Commercial market activity" includes the cultivation, possession,
 51 manufacture, distribution, processing, storing, laboratory testing,
 52 labeling, transportation, delivery or sale of marihuana and marihuana
 53 products, as provided for in article eleven of the alcoholic beverage
 54 control law, but shall not include medical marihuana activities provided
 55 for in title five-A of article thirty-three of the public health law.

1 2. "Concentrated cannabis" means (a) the separated resin, whether
2 crude or purified, obtained from a plant of the genus Cannabis; or (b) a
3 material, preparation, mixture, compound or other substance which
4 contains more than three percent by weight of delta-9 tetrahydrocannabi-
5 nol, or its isomer, delta-8 dibenzopyran numbering system, or delta-1
6 tetrahydrocannabinol or its isomer, delta 1 (6) monoterpene numbering
7 system.

8 3. "Marihuana" means all parts of the plant of the genus Cannabis,
9 whether growing or not; the seeds thereof; the resin extracted from any
10 part of the plant; and every compound, manufacture, salt, derivative,
11 mixture, or preparation of the plant, its seeds or resin. It does not
12 include the mature stalks of the plant, fiber produced from the stalks,
13 oil or cake made from the seeds of the plant, any other compound, manu-
14 facture, salt, derivative, mixture, or preparation of the mature stalks
15 (except the resin extracted therefrom), fiber, oil, or cake, or the
16 sterilized seed of the plant which is incapable of germination. It does
17 not include all parts of the plant Cannabis sativa L., whether growing
18 or not, having no more than three-tenths of one percent tetrahydrocanna-
19 binol (THC).

20 4. "Marihuana consumer" means a person twenty-one years of age or
21 older who purchased marihuana or marihuana products for personal use by
22 persons twenty-one years of age or older, but not for resale to others.

23 5. "Marihuana flowers" shall mean the dried flowers of the marihuana
24 plant.

25 6. "Marihuana leaves" shall mean all parts of the marihuana plant
26 other than marihuana flowers that are sold or consumed.

27 7. "Marihuana processor" means a person licensed by the bureau of
28 marihuana policy to purchase marihuana and concentrated cannabis from
29 marihuana producers, to process marihuana, concentrated cannabis, and
30 marihuana-infused products, package and label marihuana, concentrated
31 cannabis and marihuana-infused products for sale in retail outlets, and
32 sell marihuana, concentrated cannabis and marihuana infused products at
33 wholesale to marihuana retailers.

34 8. "Marihuana producer" means a person licensed by the bureau of mari-
35 huana policy to produce, process, and sell marihuana and concentrated
36 cannabis at wholesale to marihuana processors, marihuana retailers, or
37 other marihuana producers, but not to consumers.

38 9. "Marihuana products" means marihuana, concentrated cannabis, and
39 marihuana-infused products.

40 10. "Marihuana-infused products" means products that contain marihua-
41 na, marihuana extracts, or concentrated cannabis and are intended for
42 human use or consumption, such as, but not limited to, edible products,
43 ointments, and tinctures.

44 11. "Immature marihuana plant" means a marihuana plant with no observ-
45 able flowers or buds.

46 12. "Marihuana retailer" means a person licensed by the bureau of
47 marihuana policy to purchase marihuana, concentrated cannabis, and mari-
48 huana-infused products from marihuana producers and marihuana processors
49 and sell marihuana, marihuana-infused products, and concentrated canna-
50 bis in a retail outlet.

51 13. "Marihuana retailer for on-premises consumption" means a person
52 licensed by the bureau of marihuana policy to purchase marihuana,
53 concentrated cannabis, and marihuana infused products from marihuana
54 producers, marihuana retailers and marihuana processors and sell mari-
55 huana products for a customer to consume while the customer is within
56 the facility.

1 § 447. Taxes imposed. 1. (a) There is hereby levied and imposed a
2 cultivation tax upon all harvested marihuana that enters the commercial
3 market upon all persons required to be licensed to cultivate marihuana
4 pursuant to article eleven of the alcoholic beverage control law. The
5 tax shall be due after the marihuana is harvested.

6 (i) Marihuana flowers shall be taxed at a rate of sixty-two cents per
7 dry-weight gram.

8 (ii) Marihuana leaves shall be taxed at a rate of ten cents per dry-
9 weight gram.

10 (b) There is hereby levied and imposed a nursery tax upon all immature
11 plants that enter the commercial market upon all persons required to be
12 licensed to produce immature plants pursuant to article eleven of the
13 alcoholic beverage control law. Immature plants shall be taxed at a rate
14 of one dollar and thirty-five cents each.

15 (c) There is hereby levied and imposed a tax upon marihuana sold or
16 otherwise transferred by a marihuana producer to a marihuana processor
17 or marihuana retailer at a rate equivalent to the rate established under
18 article twenty-eight of this chapter.

19 (d) A marihuana excise tax is hereby levied and imposed upon customers
20 of nonmedical marihuana or nonmedical marihuana products sold in this
21 state at the rate fifteen percent of any sale by a retailer, microbusi-
22 ness, or other person required to be licensed pursuant to article eleven
23 of the alcoholic beverage control law to sell marihuana and marihuana
24 products directly to a customer.

25 (e) The department shall establish procedures for the collection al
26 all taxes levied.

27 (f) No tax established by this section shall be levied upon medical
28 marihuana intended for sale to a certified patient or designated care-
29 giver pursuant to title five-A of article thirty-three of the public
30 health law.

31 2. For reporting periods beginning later than one year following the
32 effective date of this article, the rates of tax under subdivision one
33 of this section shall be adjusted for each biennium according to the
34 cost-of-living adjustment for the calendar year.

35 3. The department shall regularly review the rates of the tax under
36 subdivision one of this section and make recommendations to the legisla-
37 ture regarding appropriate adjustments to the rates that will further
38 the purposes of:

39 (a) maximizing net revenue;

40 (b) minimizing the illegal marihuana industry; and

41 (c) discouraging the use of marihuana by minors under twenty-one years
42 of age.

43 § 447-a. Local taxes on marihuana by a city or town. Any city or town
44 in this state, acting through its local legislative body, is hereby
45 authorized and empowered to adopt and amend local laws imposing in any
46 such city or town a sales tax on marihuana retailers at a rate of no
47 more than two percent of the sale price of marihuana products sold to a
48 marihuana consumer. Any taxes imposed pursuant to the authority of this
49 section shall be administered and collected by the department in the
50 same manner as the taxes imposed under section four hundred forty-nine
51 of this article. The commissioner is hereby empowered to make such
52 provisions as it deems necessary for the joint administration and
53 collection of the state and local taxes imposed and authorized by this
54 article.

55 § 447-b. Ordinary and necessary expenses deductible from net income.
56 Notwithstanding any federal tax law to the contrary, in computing net

1 income for businesses exempted from criminal penalties under articles
2 two hundred twenty and two hundred twenty-one of the penal law and arti-
3 cle eleven of the alcoholic beverage control law, there shall be allowed
4 as a deduction from state taxes all the ordinary and necessary expenses
5 paid or incurred during the taxable year in carrying on any trade or
6 business, including but not limited to, reasonable allowance for sala-
7 ries or other compensation for personal services actually rendered.

8 § 448. Surety bond. Marihuana retailer applicants are required to
9 submit a surety bond with the department equal to two months of the
10 cultivation facility's anticipated retail marihuana excise tax. The
11 surety bond must be issued by a company authorized to do business in the
12 state. Proof of surety bond is required for approval of applicant's
13 retail license.

14 § 449. Collection of tax. This tax shall be collected by the commis-
15 sioner who shall establish a procedure for the collection of this tax.

16 § 450. Revenue allocation. 1. Before any funds are disbursed pursuant
17 to subdivisions three, four, five, and six of this section the state
18 comptroller shall disburse from the marihuana revenue fund to the appro-
19 priate account, without regard to fiscal year, the following:

20 (a) reasonable costs incurred by the department for administering and
21 collecting the taxes imposed by this article; provided, however, that
22 such costs shall not exceed four percent of tax revenues received; and

23 (b) reasonable costs incurred by the bureau of marihuana policy for
24 implementing, administering, and enforcing the Marihuana Regulation and
25 Taxation Act to the extent those costs are not reimbursed pursuant to
26 section one hundred ninety of the alcoholic beverage control law. The
27 provisions of this paragraph shall remain operative through fiscal year
28 two thousand twenty-two - two thousand twenty-three.

29 2. For the purposes of data collection and reporting, the commissioner
30 shall next disburse the sum of seven hundred fifty thousand dollars
31 annually beginning with fiscal year two thousand nineteen - two thousand
32 twenty until fiscal year two thousand twenty-nine - two thousand thirty
33 to:

34 (a) The bureau of marihuana policy to track and report data related to
35 the licensing of marihuana businesses, including the geographic
36 location, structure, and function of licensed marihuana businesses, and
37 demographic data, including race, ethnicity, and gender, of license
38 holders. The bureau of marihuana policy shall publish reports on its
39 findings annually and shall make the reports available to the public.

40 (b) The department of criminal justice services to track and report
41 data related to any infractions, violations, or criminal convictions
42 that occur under any of the remaining marihuana statutes. The department
43 of criminal justice services shall publish reports on its findings annu-
44 ally and shall make the reports available to the public.

45 3. The commissioner shall next disburse the sum of one million dollars
46 to the state university of New York annually beginning with fiscal year
47 two thousand nineteen - two thousand twenty until fiscal year two thou-
48 sand twenty-nine - two thousand thirty to research and evaluate the
49 implementation and effect of the Marihuana Regulation and Taxation Act,
50 and shall, if appropriate, make recommendations to the legislature and
51 governor regarding possible amendments to the Marihuana Regulation and
52 Taxation Act. The recipients of these funds shall publish reports on
53 their findings at a minimum of every two years and shall make the
54 reports available to the public. The research funded pursuant to this
55 subdivision shall include but not necessarily be limited to:

1 (a) impacts on public health, including health costs associated with
2 marihuana use, as well as whether marihuana use is associated with an
3 increase or decrease in use of alcohol or other drugs;

4 (b) the impact of treatment for cannabis use disorder and the effec-
5 tiveness of different treatment programs;

6 (c) public safety issues related to marihuana use, including studying
7 the effectiveness of the packaging and labeling requirements and adver-
8 tising and marketing restrictions contained in the Marihuana Regulation
9 and Taxation Act at preventing underage access to and use of marihuana
10 and marihuana products, and studying the health-related effects among
11 users of varying potency levels of marihuana and marihuana products;

12 (d) marihuana use rates, maladaptive use rates for adults and youth,
13 and diagnosis rates of marihuana-related substance use disorders;

14 (e) marihuana market prices, illicit market prices, tax structures and
15 rates, including an evaluation of how to best tax marihuana based on
16 potency, and the structure and function of licensed marihuana busi-
17 nesses;

18 (f) whether additional protections are needed to prevent unlawful
19 monopolies or anti-competitive behavior from occurring in the nonmedical
20 marihuana industry and, if so, recommendations as to the most effective
21 measures for preventing such behavior;

22 (g) the economic impacts in the private and public sectors, including
23 but not necessarily limited to, job creation, workplace safety, reven-
24 ues, taxes generated for state and local budgets, and criminal justice
25 impacts, including, but not necessarily limited to, impacts on law
26 enforcement and public resources, short and long term consequences of
27 involvement in the criminal justice system, and state and local govern-
28 ment agency administrative costs and revenue;

29 (h) whether the regulatory agencies tasked with implementing and
30 enforcing the Marihuana Regulation and Taxation Act are doing so
31 consistent with the purposes of the Marihuana Regulation and Taxation
32 Act, and whether different agencies might do so more effectively; and

33 (i) environmental issues related to marihuana production and the crim-
34 inal prohibition of marihuana production.

35 4. The commissioner shall next divide fifteen percent of the remaining
36 revenue collected in the marihuana revenue fund equally between:

37 (a) the division of criminal justice services for re-entry support
38 services for individuals released from prison after serving time for
39 drug related offenses;

40 (b) the office of alcoholism and substance abuse services for drug
41 abuse prevention and treatment programs; and

42 (c) the department of labor for apprenticeship and job training
43 programs targeting, with preference given to programs targeting census
44 tracts with a poverty rate of at least twenty percent or an unemployment
45 rate of at least one and one quarter times the New York state unemploy-
46 ment rate.

47 5. The commissioner shall, after disbursing funds pursuant to subdivi-
48 sions one through four of this section, disburse funds deposited in the
49 marihuana revenue fund during the prior fiscal year into sub-trust
50 accounts, which are hereby created as follows:

51 (a) Twenty-five percent shall be provided to the education department
52 which shall distribute these funds in accordance with subdivisions two
53 and four of section ninety-two-c of the state finance law;

54 (b) Twenty-five percent shall be deposited in the drug treatment and
55 public education fund, and disbursed by the comptroller for the follow-
56 ing purposes:

1 (i) To develop and implement a youth-focused public health education
2 and prevention campaign, including school-based prevention, early inter-
3 vention, and health care services and programs to reduce the risk of
4 marihuana and other substance use and abuse by school-aged children;

5 (ii) To develop and implement a statewide public health campaign
6 focused on the health effects of marihuana and legal use, including an
7 ongoing education and prevention campaign that educates the general
8 public, including parents, consumers and retailers, on the legal use of
9 marihuana, the importance of preventing youth access, the importance of
10 safe storage and preventing secondhand marihuana smoke exposure, infor-
11 mation for pregnant or breastfeeding women, and the overconsumption of
12 edibles;

13 (iii) To provide substance use disorder treatment programs for youth
14 and adults, with an emphasis on programs that are culturally and gender
15 competent, trauma-informed, evidence-based and provide a continuum of
16 care that includes screening and assessment (substance use disorder as
17 well as mental health), early intervention, active treatment, family
18 involvement, case management, overdose prevention, prevention of commu-
19 nicable diseases related to substance use, relapse management for
20 substance use and other co-occurring behavioral health disorders, voca-
21 tional services, literacy services, parenting classes, family therapy
22 and counseling services, medication-assisted treatments, psychiatric
23 medication and psychotherapy;

24 (iv) To evaluate the programs being funded to determine their effec-
25 tiveness.

26 (c) Fifty percent shall be deposited in the community grants reinvest-
27 ment fund by the commissioner, and disbursed by the comptroller for the
28 establishment of a community grants reinvestment program that shall
29 administer the monies to qualified community-based nonprofit organiza-
30 tions for the purpose of reinvesting in communities disproportionately
31 affected by past federal and state drug policies. The grants from this
32 program shall be used to support job placement, mental health treatment,
33 substance use disorder treatment, system navigation services, legal
34 services to address barriers to reentry, and linkages to medical care and
35 women's health services. The programs may include, but are not limited
36 to, the following components:

37 (i) The community grants reinvestment program shall periodically eval-
38 uate the programs it is funding to determine the effectiveness of the
39 programs.

40 (ii) The community grants reinvestment program shall be governed and
41 administered by an executive steering committee of thirteen members that
42 includes representatives of the office of children and family services,
43 the department of labor and the department of health appointed by the
44 governor and a representative of the department of education appointed
45 by the board of regents. In addition, the majority and minority leaders
46 of the senate and assembly shall each appoint one member to the steering
47 committee, the comptroller shall appoint three additional members, and
48 the attorney general shall appoint two additional members from relevant
49 local government entities and community-based organizations. Every
50 effort should be made to ensure a balanced and diverse committee, which
51 shall have expertise in job placement, homelessness and housing, behav-
52 ioral health and substance abuse treatment, and effective rehabilitative
53 treatment for adults and juveniles, and shall include representatives of
54 organizations serving communities impacted by past federal and state
55 drug policies.

1 (iii) The committee shall make recommendations regarding the design,
 2 efficacy, and viability of proposals.

3 (iv) The committee shall prioritize proposals that provide any of the
 4 following:

5 (A) Community-based job skills services.

6 (B) Community-based job placement services.

7 (C) Adult education services.

8 (D) Other community-based supportive services.

9 6. The Community Grants Reinvestment Program shall not make any grants
 10 to municipal governments which have banned the cultivation, including
 11 personal cultivation of marihuana under section 221.05-a of the penal
 12 law, or retail sale of marihuana or marihuana products pursuant to arti-
 13 cle eleven of the alcoholic beverage control law.

14 § 34. Paragraphs (i), (j) and (k) of subdivision 3 of section 160.50
 15 of the criminal procedure law, paragraphs (i) and (j) as added by chap-
 16 ter 905 of the laws of 1977 and paragraph (k) as added by chapter 835 of
 17 the laws of 1977 and as relettered by chapter 192 of the laws of 1980,
 18 are amended to read as follows:

19 (i) prior to the filing of an accusatory instrument in a local crimi-
 20 nal court against such person, the prosecutor elects not to prosecute
 21 such person. In such event, the prosecutor shall serve a certification
 22 of such disposition upon the division of criminal justice services and
 23 upon the appropriate police department or law enforcement agency which,
 24 upon receipt thereof, shall comply with the provisions of paragraphs
 25 (a), (b), (c) and (d) of subdivision one of this section in the same
 26 manner as is required thereunder with respect to an order of a court
 27 entered pursuant to said subdivision one~~[-]~~; or

28 (j) following the arrest of such person, the arresting police agency,
 29 prior to the filing of an accusatory instrument in a local criminal
 30 court but subsequent to the forwarding of a copy of the fingerprints of
 31 such person to the division of criminal justice services, elects not to
 32 proceed further. In such event, the head of the arresting police agency
 33 shall serve a certification of such disposition upon the division of
 34 criminal justice services which, upon receipt thereof, shall comply with
 35 the provisions of paragraphs (a), (b), (c) and (d) of subdivision one of
 36 this section in the same manner as is required thereunder with respect
 37 to an order of a court entered pursuant to said subdivision one~~[-]~~; or

38 (k) (i) The accusatory instrument alleged a violation of article two
 39 hundred twenty or section 240.36 of the penal law, prior to the taking
 40 effect of article two hundred twenty-one of the penal law, or by the
 41 conviction of such person of a violation of [~~article two hundred twen-~~
 42 ~~ty-one~~] section 221.45 of the penal law on or after the effective date
 43 of the chapter of the laws of 2017 that amended this subdivision or a
 44 violation of sections 221.05, 221.10, 221.15, 221.20, 221.25, 221.30,
 45 221.35, or 221.40 of the penal law prior to the effective date of the
 46 chapter of the laws of 2017 that amended this subdivision; and (ii) the
 47 sole controlled substance involved is [~~marijuana, (iii) the conviction~~
 48 ~~was only for a violation or violations; and (iv) at least three years~~
 49 ~~have passed since the offense occurred]~~ marihuana. No defendant shall
 50 be required or permitted to waive eligibility for sealing pursuant to
 51 this paragraph as part of a plea of guilty, sentence or any agreement
 52 related to a conviction for a violation of section 221.45 of the penal
 53 law. Any such waiver shall be deemed void and wholly unenforceable.

54 § 35. Subdivision 4 of section 160.50 of the criminal procedure law,
 55 as amended by chapter 905 of the laws of 1977 and renumbered by chapter
 56 142 of the laws of 1991, is amended to read as follows:

1 4. A person in whose favor a criminal action or proceeding was termi-
2 nated, as defined in [~~paragraph~~ paragraphs (a) through (h), ~~(k) or (l)~~
3 of subdivision [~~two~~ three] of this section, prior to the effective date
4 of [~~this section, may upon motion apply to the court in which such~~
5 ~~termination occurred, upon not less than twenty days notice to the~~
6 ~~district attorney, for an order granting to such person the relief set~~
7 ~~forth in subdivision one of this section, and such order shall be grant-~~
8 ~~ed unless the district attorney demonstrates to the satisfaction of the~~
9 ~~court that the interests of justice require otherwise. A person in whose~~
10 ~~favor a criminal action or proceeding was terminated, as defined in~~
11 ~~paragraph (i) or (j) of subdivision two of this section, prior to the~~
12 ~~effective date of this section, may apply to the appropriate prosecutor~~
13 ~~or police agency for a certification as described in said paragraph (i)~~
14 ~~or (j) granting to such person the relief set forth therein, and such~~
15 ~~certification shall be granted by such prosecutor or police agency.] the
16 chapter of the laws of two thousand seventeen that amended this subdivi-
17 sion, and whose records have not been sealed pursuant to subdivision one
18 of this section, may apply to have the records of such criminal action
19 or proceeding sealed at the clerk's office for the court in which the
20 criminal action or proceeding was terminated. Application may be made by
21 the person or his or her attorney. Upon a determination by the clerk
22 that the action or proceeding was terminated in the person's favor as
23 defined in subdivision three of this section, the clerk of the court
24 shall immediately notify the commissioner of the division of criminal
25 justice services and the heads of all appropriate police departments and
26 other law enforcement agencies that the action has been terminated in
27 favor of the accused and that the record of such action or proceedings
28 shall be sealed. Upon receipt of notification of such termination and
29 sealing, all records relating to the criminal action shall be sealed, as
30 required under paragraph (c) of subdivision one of this section, and all
31 photographs, photographic plates or proofs, palmprints and fingerprints
32 shall be destroyed or returned as specified in paragraphs (a) and (b) of
33 subdivision one of this section. This paragraph shall not apply to cases
34 in which the court declined to seal for reasons stated on the record,
35 pursuant to subdivision one of this section. When an applicant under
36 this subdivision presents to the court clerk fingerprint records from
37 New York state division of criminal justice services or a court disposi-
38 tion which indicate that a criminal action or proceeding against the
39 applicant was dismissed but the supporting court records cannot be
40 located, have been destroyed, or do not indicate whether the dismissal
41 was a "termination in favor of" the accused as that term is defined in
42 subdivision three of this section, the clerk of the court wherein such
43 criminal action or proceeding was terminated shall proceed as if the
44 matter had been so terminated.~~

45 § 36. Subdivisions 1 and 2 of section 170.56 of the criminal procedure
46 law, subdivision 1 as amended by chapter 360 of the laws of 1977 and
47 subdivision 2 as added by chapter 1042 of the laws of 1971, is amended
48 to read as follows:

49 1. Upon or after arraignment in a local criminal court upon an infor-
50 mation, a prosecutor's information or a misdemeanor complaint, where the
51 sole remaining count or counts charge a violation or violations of
52 section [~~221.05, 221.10, 221.15, 221.35 or 221.40~~] 221.45 of the penal
53 law, or upon summons for a nuisance offense under section sixty-five-c
54 of the alcoholic beverage control law and before the entry of a plea of
55 guilty thereto or commencement of a trial thereof, the court, upon
56 motion of a defendant, may order that all proceedings be suspended and

1 the action adjourned in contemplation of dismissal, or upon a finding
2 that adjournment would not be necessary or appropriate and the setting
3 forth in the record of the reasons for such findings, may dismiss in
4 furtherance of justice the accusatory instrument; provided, however,
5 that the court may not order such adjournment in contemplation of
6 dismissal or dismiss the accusatory instrument if: (a) the defendant has
7 previously been granted such adjournment in contemplation of dismissal,
8 or (b) the defendant has previously been granted a dismissal under this
9 section, or (c) the defendant has previously been convicted of any
10 offense involving controlled substances, or (d) the defendant has previ-
11 ously been convicted of a crime and the district attorney does not
12 consent or (e) the defendant has previously been adjudicated a youthful
13 offender on the basis of any act or acts involving controlled substances
14 and the district attorney does not consent. Notwithstanding the limita-
15 tions set forth in this subdivision, the court may order that all
16 proceedings be suspended and the action adjourned in contemplation of
17 dismissal based upon a finding of exceptional circumstances. For
18 purposes of this subdivision, exceptional circumstances exist when,
19 regardless of the ultimate disposition of the case, the entry of a plea
20 of guilty is likely to result in severe collateral consequences, includ-
21 ing, but not limited to, those that could leave a noncitizen inadmissi-
22 ble or removable from the United States.

23 2. Upon ordering the action adjourned in contemplation of dismissal,
24 the court must set and specify such conditions for the adjournment as
25 may be appropriate, and such conditions may include placing the defend-
26 ant under the supervision of any public or private agency. At any time
27 prior to dismissal the court may modify the conditions or extend or
28 reduce the term of the adjournment, except that the total period of
29 adjournment shall not exceed [~~twelve~~ **six**] months. Upon violation of any
30 condition fixed by the court, the court may revoke its order and restore
31 the case to the calendar and the prosecution thereupon must proceed. If
32 the case is not so restored to the calendar during the period fixed by
33 the court, the accusatory instrument is, at the expiration of such peri-
34 od, deemed to have been dismissed in the furtherance of justice.

35 § 37. Section 210.46 of the criminal procedure law, as amended by
36 chapter 360 of the laws of 1977, is amended to read as follows:

37 § 210.46 Adjournment in contemplation of dismissal in marihuana cases
38 in a superior court.

39 Upon or after arraignment in a superior court upon an indictment where
40 the sole remaining count or counts charge a violation or violations of
41 section [~~221.05, 221.10, 221.15, 221.35 or 221.40~~] **221.45** of the penal
42 law and before the entry of a plea of guilty thereto or commencement of
43 a trial thereof, the court, upon motion of a defendant, may order that
44 all proceedings be suspended and the action adjourned in contemplation
45 of dismissal or may dismiss the indictment in furtherance of justice, in
46 accordance with the provisions of section 170.56 of this chapter.

47 § 38. Paragraphs (h) and (i) of subdivision 1 of section 440.10 of the
48 criminal procedure law, paragraph (h) as amended by chapter 332 of the
49 laws of 2010 and paragraph (i) as amended by chapter 368 of the laws of
50 2015, are amended and a new paragraph (j) is added to read as follows:

51 (h) The judgment was obtained in violation of a right of the defendant
52 under the constitution of this state or of the United States; [~~or~~]

53 (i) The judgment is a conviction where the arresting charge was under
54 section 240.37 (loitering for the purpose of engaging in a prostitution
55 offense, provided that the defendant was not alleged to be loitering for
56 the purpose of patronizing a person for prostitution or promoting pros-

1 titution) or 230.00 (prostitution) or 230.03 (prostitution in a school
2 zone) of the penal law, and the defendant's participation in the offense
3 was a result of having been a victim of sex trafficking under section
4 230.34 of the penal law, labor trafficking under section 135.35 of the
5 penal law, aggravated labor trafficking under section 135.37 of the
6 penal law, compelling prostitution under section 230.33 of the penal
7 law, or trafficking in persons under the Trafficking Victims Protection
8 Act (United States Code, title 22, chapter 78); provided that

9 (i) a motion under this paragraph shall be made with due diligence,
10 after the defendant has ceased to be a victim of such trafficking or
11 compelling prostitution crime or has sought services for victims of such
12 trafficking or compelling prostitution crime, subject to reasonable
13 concerns for the safety of the defendant, family members of the defend-
14 ant, or other victims of such trafficking or compelling prostitution
15 crime that may be jeopardized by the bringing of such motion, or for
16 other reasons consistent with the purpose of this paragraph; and

17 (ii) official documentation of the defendant's status as a victim of
18 trafficking, compelling prostitution or trafficking in persons at the
19 time of the offense from a federal, state or local government agency
20 shall create a presumption that the defendant's participation in the
21 offense was a result of having been a victim of sex trafficking, compell-
22 ing prostitution or trafficking in persons, but shall not be required
23 for granting a motion under this paragraph[-]; or

24 (j) The judgment occurred prior to the effective date of this para-
25 graph and is a conviction for:

26 (i) an offense as defined by section 221.05 or 221.10 of the penal law
27 (criminal possession of marihuana in the fifth degree), as in effect
28 prior to the effective date of this paragraph, provided that the accusa-
29 tory instrument that underlies the judgment does not include an allega-
30 tion that the defendant possessed more than twenty-five grams of mari-
31 huana; or

32 (ii) an offense as defined by former section 221.35 of the penal law
33 (criminal sale of marihuana in the fifth degree).

34 § 39. Subdivision 6 of section 440.10 of the criminal procedure law,
35 as added by chapter 332 of the laws of 2010, is amended to read as
36 follows:

37 6. If the court grants a motion under paragraph (i) or paragraph (j)
38 of subdivision one of this section, it must vacate the judgment and
39 dismiss the accusatory instrument, and may take such additional action
40 as is appropriate in the circumstances.

41 § 40. The criminal procedure law is amended by adding a new section
42 440.46-a to read as follows:

43 § 440.46-a Motion for resentence; persons convicted of certain marihuana
44 offenses.

45 1. A person currently serving a sentence for a conviction, whether by
46 trial or by open or negotiated plea, who would not have been guilty of
47 an offense or who would have been guilty of a lesser offense on and
48 after the effective date of this section had this section been in effect
49 at the time of his or her conviction may petition for a recall or
50 dismissal of sentence before the trial court that entered the judgment
51 of conviction in his or her case to request resentencing or dismissal in
52 accordance with article twelve hundred twenty-one of the penal law.

53 2. Upon receiving a motion under subdivision one of this section the
54 court shall presume the movant satisfies the criteria in subdivision one
55 of this section unless the party opposing the motion proves by clear and
56 convincing evidence that the movant does not satisfy the criteria. If

1 the movant satisfies the criteria in subdivision one of this section,
2 the court shall grant the motion to vacate the sentence or to resentence
3 because it is legally invalid. In exercising its discretion, the court
4 may consider, but shall not be limited to, the following:

5 (a) The movant's criminal conviction history, including the type of
6 crimes committed, the extent of injury to victims, the length of prior
7 prison commitments, and the remoteness of the crimes.

8 (b) The movant's disciplinary record and record of rehabilitation
9 while incarcerated.

10 3. A person who is serving a sentence and resentenced pursuant to
11 subdivision two of this section shall be given credit for any time
12 already served and shall be subject to supervision for one year follow-
13 ing completion of his or her time in custody or shall be subject to
14 whatever supervision time he or she would have otherwise been subject to
15 after release, whichever is shorter, unless the court, in its
16 discretion, as part of its resentencing order, releases the person from
17 supervision. Such person is subject to parole supervision under section
18 60.04 of the penal law or post-release supervision under section 70.45
19 of the penal law by the designated agency and the jurisdiction of the
20 court in the county in which the offender is released or resides, or in
21 which an alleged violation of supervision has occurred, for the purpose
22 of hearing petitions to revoke supervision and impose a term of custody.

23 4. Under no circumstances may resentencing under this section result
24 in the imposition of a term longer than the original sentence, or the
25 reinstatement of charges dismissed pursuant to a negotiated plea agree-
26 ment.

27 5. A person who has completed his or her sentence for a conviction
28 under the former article two hundred twenty-one of the penal law, wheth-
29 er by trial or open or negotiated plea, who would not have been guilty
30 of an offense or who would have been guilty of a lesser offense on and
31 after the effective date of this section had this section been in effect
32 at the time of his or her conviction, may file an application before the
33 trial court that entered the judgment of conviction in his or her case
34 to have the conviction, in accordance with article two hundred twenty-
35 one of the penal law:

36 (a) Dismissed because the prior conviction is now legally invalid and
37 sealed in accordance with section 160.50 of this chapter;

38 (b) Redesignated (or "reclassified") as a violation and sealed in
39 accordance with section 160.50 of this chapter; or

40 (c) Redesignated (reclassified) as a misdemeanor.

41 6. The court shall presume the petitioner satisfies the criteria in
42 subdivision five unless the party opposing the application proves by
43 clear and convincing evidence that the petitioner does not satisfy the
44 criteria in subdivision five. Once the applicant satisfies the criteria
45 in subdivision five, the court shall redesignate (or "reclassify") the
46 conviction as a misdemeanor, redesignate (reclassify) the conviction as
47 a violation and seal the conviction, or dismiss and seal the conviction
48 as legally invalid under this section had this section been in effect at
49 the time of his or her conviction.

50 7. Unless requested by the applicant, no hearing is necessary to grant
51 or deny an application filed under subdivision five of this section.

52 8. Any felony conviction that is vacated and resentenced under subdi-
53 vision two or designated as a misdemeanor or violation under subdivision
54 six of this section shall be considered a misdemeanor or violation for
55 all purposes. Any misdemeanor conviction that is vacated and resentenced
56 under subdivision two of this section or designated as a violation under

1 subdivision six of this section shall be considered a violation for all
2 purposes.

3 9. If the court that originally sentenced the movant is not available,
4 the presiding judge shall designate another judge to rule on the peti-
5 tion or application.

6 10. Nothing in this section is intended to diminish or abrogate any
7 rights or remedies otherwise available to the petitioner or applicant.

8 11. Nothing in this and related sections is intended to diminish or
9 abrogate the finality of judgements in any case not falling within the
10 purview of this section.

11 12. The provisions of this section shall apply equally to juvenile
12 delinquency adjudications and dispositions under section five hundred
13 one-e of the executive law if the juvenile would not have been guilty of
14 an offense or would have been guilty of a lesser offense under this
15 section had this section been in effect at the time of his or her
16 conviction.

17 13. The office of court administration shall promulgate and make
18 available all necessary forms to enable the filing of the petitions and
19 applications provided in this section no later than sixty days following
20 the effective date of this section.

21 § 41. Paragraph (c) of subdivision 8 of section 700.05 of the criminal
22 procedure law, as amended by chapter 37 of the laws of 2014, is amended
23 to read as follows:

24 (c) Criminal possession of a controlled substance in the seventh
25 degree as defined in section 220.03 of the penal law, criminal
26 possession of a controlled substance in the fifth degree as defined in
27 section 220.06 of the penal law, criminal possession of a controlled
28 substance in the fourth degree as defined in section 220.09 of the penal
29 law, criminal possession of a controlled substance in the third degree
30 as defined in section 220.16 of the penal law, criminal possession of a
31 controlled substance in the second degree as defined in section 220.18
32 of the penal law, criminal possession of a controlled substance in the
33 first degree as defined in section 220.21 of the penal law, criminal
34 sale of a controlled substance in the fifth degree as defined in section
35 220.31 of the penal law, criminal sale of a controlled substance in the
36 fourth degree as defined in section 220.34 of the penal law, criminal
37 sale of a controlled substance in the third degree as defined in section
38 220.39 of the penal law, criminal sale of a controlled substance in the
39 second degree as defined in section 220.41 of the penal law, criminal
40 sale of a controlled substance in the first degree as defined in section
41 220.43 of the penal law, criminally possessing a hypodermic instrument
42 as defined in section 220.45 of the penal law, criminal sale of a
43 prescription for a controlled substance or a controlled substance by a
44 practitioner or pharmacist as defined in section 220.65 of the penal
45 law, criminal possession of methamphetamine manufacturing material in
46 the second degree as defined in section 220.70 of the penal law, crimi-
47 nal possession of methamphetamine manufacturing material in the first
48 degree as defined in section 220.71 of the penal law, criminal
49 possession of precursors of methamphetamine as defined in section 220.72
50 of the penal law, unlawful manufacture of methamphetamine in the third
51 degree as defined in section 220.73 of the penal law, unlawful manufac-
52 ture of methamphetamine in the second degree as defined in section
53 220.74 of the penal law, unlawful manufacture of methamphetamine in the
54 first degree as defined in section 220.75 of the penal law, unlawful
55 disposal of methamphetamine laboratory material as defined in section
56 220.76 of the penal law, operating as a major trafficker as defined in

1 section 220.77 of the penal law, [~~criminal possession of marihuana in~~
2 ~~the first degree as defined in section 221.30 of the penal law, criminal~~
3 ~~sale of marihuana in the first degree as defined in section 221.55 of~~
4 ~~the penal law,~~] promoting gambling in the second degree as defined in
5 section 225.05 of the penal law, promoting gambling in the first degree
6 as defined in section 225.10 of the penal law, possession of gambling
7 records in the second degree as defined in section 225.15 of the penal
8 law, possession of gambling records in the first degree as defined in
9 section 225.20 of the penal law, and possession of a gambling device as
10 defined in section 225.30 of the penal law;

11 § 42. Paragraphs (b) and (c) of subdivision 4-b and subdivisions 6 and
12 9 of section 1310 of the civil practice law and rules, paragraphs (b)
13 and (c) of subdivision 4-b as added by chapter 655 of the laws of 1990
14 and subdivisions 6 and 9 as added by chapter 669 of the laws of 1984,
15 are amended to read as follows:

16 (b) on three or more occasions, engaging in conduct constituting a
17 violation of any of the felonies defined in section 220.09, 220.16,
18 220.18, 220.21, 220.31, 220.34, 220.39, 220.41[,] or 220.43 [~~ex 221.55~~]
19 of the penal law, which violations do not constitute a single criminal
20 offense as defined in subdivision one of section 40.10 of the criminal
21 procedure law, or a single criminal transaction, as defined in paragraph
22 (a) of subdivision two of section 40.10 of the criminal procedure law,
23 and at least one of which resulted in a conviction of such offense, or
24 where the accusatory instrument charges one or more of such felonies,
25 conviction upon a plea of guilty to a felony for which such plea is
26 otherwise authorized by law; or

27 (c) a conviction of a person for a violation of section 220.09,
28 220.16, 220.34 or 220.39 of the penal law, [~~or a conviction of a crimi-~~
29 ~~nal defendant for a violation of section 221.30 of the penal law,~~] or
30 where the accusatory instrument charges any such felony, conviction upon
31 a plea of guilty to a felony for which the plea is otherwise authorized
32 by law, together with evidence which: (i) provides substantial indicia
33 that the defendant used the real property to engage in a continual,
34 ongoing course of conduct involving the unlawful mixing, compounding,
35 manufacturing, warehousing, or packaging of controlled substances [~~or~~
36 ~~where the conviction is for a violation of section 221.30 of the penal~~
37 ~~law, marijuana,~~] as part of an illegal trade or business for gain; and
38 (ii) establishes, where the conviction is for possession of a controlled
39 substance [~~or where the conviction is for a violation of section 221.30~~
40 ~~of the penal law, marijuana,~~] that such possession was with the intent
41 to sell it.

42 [~~6. "Pre conviction forfeiture crime" means only a felony defined in~~
43 ~~article two hundred twenty or section 221.30 or 221.55 of the penal~~
44 ~~law.~~]

45 9. "Criminal defendant" means a person who has criminal liability for
46 a crime defined in [~~subdivisions~~] subdivision five [~~and six hereof~~] of
47 this section. For purposes of this article, a person has criminal
48 liability when [~~(a)~~] he has been convicted of a post-conviction forfei-
49 ture crime[, ~~or (b) the claiming authority proves by clear and convinc-~~
50 ~~ing evidence that such person has committed an act in violation of arti-~~
51 ~~cle two hundred twenty or section 221.30 or 221.55 of the penal law~~].

52 § 43. Subdivision 3-a and paragraphs (a) and (b) of subdivision 11 of
53 section 1311 of the civil practice law and rules, subdivision 3-a as
54 added by chapter 655 of the laws of 1990 and paragraphs (a) and (b) of
55 subdivision 11 as amended by section 47 of part A-1 of chapter 56 of the
56 laws of 2010, are amended to read as follows:

1 3-a. Conviction of a person in a criminal action upon an accusatory
2 instrument which includes one or more of the felonies specified in
3 subdivision four-b of section thirteen hundred ten of this article, of
4 any felony other than such felonies, shall not preclude a defendant, in
5 any subsequent proceeding under this article where that conviction is at
6 issue, from adducing evidence that the conduct underlying the conviction
7 would not establish the elements of any of the felonies specified in
8 such subdivision other than the one to which the criminal defendant pled
9 guilty. If the defendant does adduce such evidence, the burden shall be
10 upon the claiming authority to prove, by clear and convincing evidence,
11 that the conduct underlying the criminal conviction would establish the
12 elements of the felony specified in such subdivision. Nothing contained
13 in this subdivision shall affect the validity of a settlement of any
14 forfeiture action negotiated between the claiming authority and a crimi-
15 nal defendant contemporaneously with the taking of a plea of guilty in a
16 criminal action to any felony defined in article two hundred twenty [~~or~~
17 ~~section 221.30 or 221.55~~] of the penal law, or to a felony conspiracy to
18 commit the same.

19 (a) Any stipulation or settlement agreement between the parties to a
20 forfeiture action shall be filed with the clerk of the court in which
21 the forfeiture action is pending. No stipulation or settlement agreement
22 shall be accepted for filing unless it is accompanied by an affidavit
23 from the claiming authority that written notice of the stipulation or
24 settlement agreement, including the terms of such, has been given to the
25 office of victim services, the state division of criminal justice
26 services[, ~~and in the case of a forfeiture based on a felony defined in~~
27 ~~article two hundred twenty or section 221.30 or 221.55 of the penal law,~~
28 ~~to the state division of substance abuse services~~].

29 (b) No judgment or order of forfeiture shall be accepted for filing
30 unless it is accompanied by an affidavit from the claiming authority
31 that written notice of judgment or order, including the terms of such,
32 has been given to the office of victim services, the state division of
33 criminal justice services[, ~~and in the case of a forfeiture based on a~~
34 ~~felony defined in article two hundred twenty or section 221.30 or 221.55~~
35 ~~of the penal law, to the state division of substance abuse services~~].

36 § 44. Subdivision 13 of section 89-f of the general business law, as
37 added by chapter 336 of the laws of 1992, is amended to read as follows:

38 13. "Serious offense" shall mean any felony involving the offenses
39 enumerated in the closing paragraph of this subdivision; a criminal
40 solicitation of or a conspiracy to commit or an attempt to commit or a
41 criminal facilitation of a felony involving the offenses enumerated in
42 the closing paragraph of this subdivision, which criminal solicitation,
43 conspiracy, attempt or criminal facilitation itself constitutes a felony
44 or any offense in any other jurisdiction which if committed in this
45 state would constitute a felony; any offense in any other jurisdiction
46 which if committed in this state would constitute a felony provided that
47 for the purposes of this article, none of the following shall be consid-
48 ered criminal convictions or reported as such: (i) a conviction for
49 which an executive pardon has been issued pursuant to the executive law;
50 (ii) a conviction which has been vacated and replaced by a youthful
51 offender finding pursuant to article seven hundred twenty of the crimi-
52 nal procedure law, or the applicable provisions of law of any other
53 jurisdiction; or (iii) a conviction the records of which have been
54 sealed pursuant to the applicable provisions of the laws of this state
55 or of any other jurisdiction; and (iv) a conviction for which other

1 evidence of successful rehabilitation to remove the disability has been
2 issued.

3 Felonies involving: assault, aggravated assault and reckless endanger-
4 ment pursuant to article one hundred twenty; vehicular manslaughter,
5 manslaughter and murder pursuant to article one hundred twenty-five; sex
6 offenses pursuant to article one hundred thirty; unlawful imprisonment,
7 kidnapping or coercion pursuant to article one hundred thirty-five;
8 criminal trespass and burglary pursuant to article one hundred forty;
9 criminal mischief, criminal tampering and tampering with a consumer
10 product pursuant to article one hundred forty-five; arson pursuant to
11 article one hundred fifty; larceny and offenses involving theft pursuant
12 to article one hundred fifty-five; offenses involving computers pursuant
13 to article one hundred fifty-six; robbery pursuant to article one
14 hundred sixty; criminal possession of stolen property pursuant to arti-
15 cle one hundred sixty-five; forgery and related offenses pursuant to
16 article one hundred seventy; involving false written statements pursuant
17 to article one hundred seventy-five; commercial bribing and commercial
18 bribe receiving pursuant to article one hundred eighty; criminal imper-
19 sonation and scheme to defraud pursuant to article one hundred ninety;
20 bribery involving public servants and related offenses pursuant to arti-
21 cle two hundred; perjury and related offenses pursuant to article two
22 hundred ten; tampering with a witness, intimidating a victim or witness
23 and tampering with physical evidence pursuant to article two hundred
24 fifteen; criminal possession of a controlled substance pursuant to
25 sections 220.06, 220.09, 220.16, 220.18 and 220.21; criminal sale of a
26 controlled substance pursuant to sections 220.31, 220.34, 220.39,
27 220.41, 220.43 and 220.44; criminal sale of [~~marijuana~~] marihuana in the
28 first degree pursuant to [~~sections~~] section 221.45[~~, 221.50 and 221.55~~];
29 riot in the first degree, aggravated harassment in the first degree,
30 criminal nuisance in the first degree and falsely reporting an incident
31 in the second or first degree pursuant to article two hundred forty; and
32 crimes against public safety pursuant to article two hundred sixty-five
33 of the penal law.

34 § 45. Paragraph (f) of subdivision 2 of section 850 of the general
35 business law is REPEALED.

36 § 46. Paragraph (h) of subdivision 2 of section 850 of the general
37 business law, as amended by chapter 812 of the laws of 1980, is amended
38 to read as follows:

39 (h) Objects, used or designed for the purpose of ingesting, inhaling,
40 or otherwise introducing [~~marihuana,~~] cocaine, [~~hashish, or hashish oil~~]
41 into the human body.

42 § 47. Paragraph a of subdivision 4-a of section 165 of the state
43 finance law, as added by chapter 95 of the laws of 2000, is amended to
44 read as follows:

45 a. In order to advance specific economic goals, New York state
46 labelled wines, as defined in subdivision [~~twenty-a~~] twenty-j of section
47 three of the alcoholic beverage control law, shall have favored source
48 status for the purposes of procurement in accordance with the provisions
49 of this subdivision. Procurement of these New York state labelled wines
50 shall be exempt from the competitive procurement provisions of section
51 one hundred sixty-three of this article and other competitive procure-
52 ment statutes. Such exemption shall apply to New York state labelled
53 wines as defined in subdivision [~~twenty-a~~] twenty-j of section three of
54 the alcoholic beverage control law produced by a licensed winery as
55 defined in section seventy-six of the alcoholic beverage control law.

1 § 48. Subdivision 7 of section 995 of the executive law, as amended by
2 chapter 19 of the laws of 2012, is amended to read as follows:

3 7. "Designated offender" means a person convicted of any felony
4 defined in any chapter of the laws of the state or any misdemeanor
5 defined in the penal law [~~except that where the person is convicted~~
6 ~~under section 221.10 of the penal law, only a person convicted under~~
7 ~~subdivision two of such section, or a person convicted under subdivision~~
8 ~~one of such section who stands previously convicted of any crime as~~
9 ~~defined in subdivision six of section 10.00 of the penal law].~~

10 § 49. Paragraphs (b) and (c) of subdivision 7 of section 480.00 of the
11 penal law, paragraph (b) as amended by section 31 of part AAA of chapter
12 56 of the laws of 2009 and paragraph (c) as added by chapter 655 of the
13 laws of 1990, are amended to read as follows:

14 (b) three or more violations of any of the felonies defined in section
15 220.09, 220.16, 220.18, 220.21, 220.31, 220.34, 220.39, 220.41,
16 220.43[7] or 220.77[7, ~~or 221.55~~] of this chapter, which violations do
17 not constitute a single criminal offense as defined in subdivision one
18 of section 40.10 of the criminal procedure law, or a single criminal
19 transaction, as defined in paragraph (a) of subdivision two of section
20 40.10 of the criminal procedure law, and at least one of which resulted
21 in a conviction of such offense, or where the accusatory instrument
22 charges one or more of such felonies, conviction upon a plea of guilty
23 to a felony for which such plea is otherwise authorized by law; or

24 (c) a conviction of a person for a violation of section 220.09,
25 220.16, 220.34[7] or 220.39[7, ~~or 221.30~~] of this chapter, or where the
26 accusatory instrument charges any such felony, conviction upon a plea of
27 guilty to a felony for which the plea is otherwise authorized by law,
28 together with evidence which: (i) provides substantial indicia that the
29 defendant used the real property to engage in a continual, ongoing
30 course of conduct involving the unlawful mixing, compounding, manufac-
31 turing, warehousing, or packaging of controlled substances [~~or where the~~
32 ~~conviction is for a violation of section 221.30 of this chapter, mari-~~
33 ~~juana~~] as part of an illegal trade or business for gain; and (ii) estab-
34 lishes, where the conviction is for possession of a controlled substance
35 [~~or where the conviction is for a violation of section 221.30 of this~~
36 ~~chapter, marijuana~~], that such possession was with the intent to sell
37 it.

38 § 50. Paragraph (c) of subdivision 4 of section 509-cc of the vehicle
39 and traffic law, as amended by chapter 368 of the laws of 2015, is
40 amended to read as follows:

41 (c) The offenses referred to in subparagraph (i) of paragraph (b) of
42 subdivision one and subparagraph (i) of paragraph (c) of subdivision two
43 of this section that result in disqualification for a period of five
44 years shall include a conviction under sections 100.10, 105.13, 115.05,
45 120.03, 120.04, 120.04-a, 120.05, 120.10, 120.25, 121.12, 121.13,
46 125.40, 125.45, 130.20, 130.25, 130.52, 130.55, 135.10, 135.55, 140.17,
47 140.25, 140.30, 145.12, 150.10, 150.15, 160.05, 160.10, 220.06, 220.09,
48 220.16, 220.31, 220.34, 220.60, 220.65, [~~221.30, 221.50, 221.55,~~
49 230.00, 230.05, 230.06, 230.11, 230.12, 230.13, 230.19, 230.20, 235.05,
50 235.06, 235.07, 235.21, 240.06, 245.00, 260.10, subdivision two of
51 section 260.20 and sections 260.25, 265.02, 265.03, 265.08, 265.09,
52 265.10, 265.12, 265.35 of the penal law or an attempt to commit any of
53 the aforesaid offenses under section 110.00 of the penal law, or any
54 similar offenses committed under a former section of the penal law, or
55 any offenses committed under a former section of the penal law which
56 would constitute violations of the aforesaid sections of the penal law,

1 or any offenses committed outside this state which would constitute
2 violations of the aforesaid sections of the penal law.

3 § 51. Appropriation. The sum of five million dollars (\$5,000,000) is
4 hereby appropriated to the New York State Liquor Authority out of any
5 moneys in the state treasury in the general fund to the credit of the
6 state purposes account, not otherwise appropriated, and made immediately
7 available, for the purpose of carrying out the provisions of this act.
8 Such moneys shall be payable on the audit and warrant of the comptroller
9 on vouchers certified or approved by the superintendent or the chairman
10 of the New York State Liquor Authority in the manner prescribed by law.

11 § 52. Severability. If any provision or term of this act is for any
12 reason declared unconstitutional or invalid or ineffective by any court
13 of competent jurisdiction, such decision shall not affect the validity
14 of the effectiveness of the remaining portions of this act or any part
15 thereof.

16 § 53. This act shall take effect immediately.