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

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

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

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

Nothing in this act is intended to limit the authority of any district government agency or office or employers to enact and enforce policies pertaining to marihuana in the workplace, to allow driving under the influence of marihuana, to allow individuals to engage in conduct that endangers others, to allow smoking marihuana in any location where smoking tobacco is prohibited, or to require any individual to engage in any conduct that violates federal law or to exempt anyone from any requirement of federal law or pose any obstacle to the federal enforcement of federal law.

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

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

§ 3302. Definitions of terms of general use in this article. Except where different meanings are expressly specified in subsequent provisions of this article, the following terms have the following meanings:

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

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

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

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

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

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

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

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

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

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

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

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

[~~10.~~] **9.** "Distribute" means to deliver a controlled substance, including by means of the internet, other than by administering or dispensing.

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

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

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

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

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

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

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

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

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

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

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

hospital or similar facility approved and certified by the department as authorized to obtain controlled substances by distribution and to dispense and administer such substances pursuant to the order of a practitioner.

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

[~~20.~~] **19.** "Manufacture" means the production, preparation, propagation, compounding, cultivation, conversion or processing of a controlled substance, either directly or indirectly or by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation, compounding, packaging or labeling of a controlled substance:

(a) by a practitioner as an incident to his administering or dispensing of a controlled substance in the course of his professional practice; or

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

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

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

~~22.~~] **20.** "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(a) opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate;

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

(c) opium poppy and poppy straw.

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

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

[~~25.~~] 23. "Person" means individual, institution, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

[~~26.~~] 24. "Pharmacist" means any person licensed by the state department of education to practice pharmacy.

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

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

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

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

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

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

[~~32.~~] 30. "Sell" means to sell, exchange, give or dispose of to another, or offer or agree to do the same.

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

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

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

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

[~~37.~~] 35. "Electronic prescription" means a prescription issued with an electronic signature and transmitted by electronic means in accordance with regulations of the commissioner and the commissioner of education and consistent with federal requirements. A prescription generated on an electronic system that is printed out or transmitted via facsimile is not considered an electronic prescription and must be manually signed.

[~~38.~~] **36.** "Electronic" means of or relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities. "Electronic" shall not include facsimile.

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

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

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

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

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

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

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

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

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

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

(13) [~~Marihuana.~~

~~(14)~~] Mescaline.

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

[~~(16)~~] **(15)** Peyote. Meaning all parts of the plant presently classified botanically as Lophophora williamsii Lemaire, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts, derivative, mixture, or preparation of such plant, its seeds or extracts.

[~~(17)~~] **(16)** N-ethyl-3-piperidyl benzilate.

[~~(18)~~] **(17)** N-methyl-3-piperidyl benzilate.

[~~(19)~~] **(18)** Psilocybin.

[~~(20)~~] **(19)** Psilocyn.

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

contained in the plant, or in the resinous extractives of cannabis, sp. and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following:
delta 1 cis or trans tetrahydrocannabinol, and their optical isomers
delta 6 cis or trans tetrahydrocannabinol, and their optical isomers
delta 3, 4 cis or trans tetrahydrocannabinol, and its optical isomers
(since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered).
[~~(22)~~] (21) Ethylamine analog of phencyclidine. Some trade or other names: N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl) ethylamine cyclohexamine, PCE.
[~~(23)~~] (22) Pyrrolidine analog of phencyclidine. Some trade or other names 1-(1-phenylcyclohexyl)-pyrrolidine; PCPy, PHP.
[~~(24)~~] (23) Thiophene analog of phencyclidine. Some trade or other names: 1-{1-(2-thienyl)-cyclohexyl}-piperidine, 2-thienylanalog of phencyclidine, TPCP, TCP.
[~~(25)~~] (24) 3,4-methylenedioxymethamphetamine (MDMA).
[~~(26)~~] (25) 3,4-methylendioxy-N-ethylamphetamine (also known as N-ethyl-alpha-methyl-3,4 (methylenedioxy) phenethylamine, N-ethyl MDA, MDE, MDEA.
[~~(27)~~] (26) N-hydroxy-3,4-methylenedioxyamphetamine (also known as N-hydroxy-alpha-methyl-3,4 (methylenedioxy) phenethylamine, and N-hydroxy MDA.
[~~(28)~~] (27) 1-{1- (2-thienyl) cyclohexyl} pyrrolidine. Some other names: TCPY.
[~~(29)~~] (28) Alpha-ethyltryptamine. Some trade or other names: etryptamine; Monase; Alpha-ethyl-1H-indole-3-ethanamine; 3- (2-aminobutyl) indole; Alpha-ET or AET.
[~~(30)~~] (29) 2,5-dimethoxy-4-ethylamphetamine. Some trade or other names: DOET.
[~~(31)~~] (30) 4-Bromo-2,5-dimethoxyphenethylamine. Some trade or other names: 2-(4-bromo-2,5-dimethoxyphenyl)-1-aminoethane; alpha-desmethyl DOB; 2C-B, Nexus.
[~~(32)~~] (31) 2,5-dimethoxy-4-(n)-propylthiophenethylamine (2C-T-7), its optical isomers, salts and salts of isomers.

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

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

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

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

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

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

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

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

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

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

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

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

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

21. "Concentrated cannabis" means:

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

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

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

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

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

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

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

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

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

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

§ 220.50 Criminally using drug paraphernalia in the second degree.

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

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

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

3. Scales and balances used or designed for the purpose of weighing or measuring controlled substances, under circumstances evincing an intent to use, or under circumstances evincing knowledge that some person intends to use, the same for purpose of unlawfully manufacturing, packaging or dispensing of any narcotic drug or stimulant**, other than marihuana or concentrated cannabis**.

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

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

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

§ 221.05 Personal use of marihuana.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 221.05-a Personal cultivation of marihuana.

1. Personal cultivation of marihuana under paragraph (c) of subdivision one of section 221.05 of this article is subject to the following restrictions:

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

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

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

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

(b) Notwithstanding paragraph (a) of this subdivision, no local jurisdiction may completely prohibit persons engaging in the actions and conduct under paragraph (c) of subdivision one of section 221.05 of this article.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 221.60 Licensing of marihuana production and distribution.

The provisions of this article and of article two hundred twenty of this title shall not apply to any person exempted from criminal penalties pursuant to the provisions of this chapter or possessing, manufacturing, transporting, distributing, selling or transferring marihuana or concentrated cannabis, or engaged in any other action that is in compliance with article eleven of the alcoholic beverage control law.

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

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

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

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

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

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

7-e. "Concentrated cannabis" means: (a) the separated resin, whether crude or purified, obtained from a plant of the genus Cannabis; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) For third and subsequent violations, the court shall order payment of a fine of not less than fifty dollars nor more than seven hundred fifty dollars and/or an appropriate amount of community service not to exceed ninety hours. The court also shall order that such person submit to an evaluation by an appropriate agency certified or licensed by the office of alcoholism and substance abuse services to determine whether the person suffers from the disease of alcoholism or alcohol **or marihuana** abuse, unless the court determines that under the circumstances presented such an evaluation is not necessary, in which case the court shall state on the record the basis for such determination. Payment for such evaluation shall be made by such person. If, based on such evaluation, a need for treatment is indicated, such person may choose to participate in a treatment plan developed by an agency certified or licensed by the office of alcoholism and substance abuse services. If such person elects to participate in recommended treatment, the court shall order that payment of such fine and community service be suspended pending the completion of such treatment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 65-c. Unlawful possession of an alcoholic beverage **or marihuana product** with the intent to consume by persons under the age of twenty-one years. 1. Except as hereinafter provided, no person under the age of twenty-one years shall possess any alcoholic beverage **or marihuana product**, as defined in this chapter, with the intent to consume such beverage **or marihuana product**.

2. A person under the age of twenty-one years may possess any alcoholic beverage **or marihuana product** with intent to consume if the alcoholic beverage **or marihuana product** is given:

(a) to a person who is a student in a curriculum licensed or registered by the state education department and the student is required to taste or imbibe alcoholic beverages **or marihuana products** in on-campus or off-campus courses which are a part of the required curriculum, provided such alcoholic beverages **or marihuana products** are used only for instructional purposes during class conducted pursuant to such curriculum; or

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

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

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

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

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

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

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

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

(a) smoke marihuana in public;

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

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

(d) smoke or ingest marihuana products while driving, operating a motor vehicle, boat, vessel, aircraft, or other vehicle used for transportation.

2. For purposes of this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 11

PROVISIONS RELATING TO MARIHUANA

Section 165. Definitions.
166. Bureau of marihuana policy.
167. Administration of the bureau of marihuana policy.
168. Licenses issued.
169. Licensing limits.
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§ 165. Definitions. Whenever used in this chapter, unless the context requires otherwise:

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

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

3. "Commercial marihuana activity" means the production, processing, possession, storing, laboratory testing, packaging, labeling, transportation, delivery, or sale of marihuana and marihuana products as provided for in this article.

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

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

6. "Distribution" means the procurement, sale, and transport of marihuana and marihuana products between entities licensed pursuant to this article.

7. "Distributor" means a licensee for the distribution of marihuana and marihuana products between entities licensed pursuant to this article. Producer licensees, processor licensees, and microbusiness licensees are permitted to distribute marihuana and marihuana products between entities licensed pursuant to this article without obtaining an additional distributor license.

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

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

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

11. "Marihuana" means all parts of the plant of the genus cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. It does not include all parts of the plant Cannabis Sativa I., whether growing

or not, having no more than three-tenths of one percent tetrahydrocannabinol (THC).

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

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

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

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

16. "Onsite consumption" means a marihuana retail licensee or a marihuana microbusiness that permits the consumption of marihuana and marihuana products at the licensee's place of business.

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

18. "Package" means any container or receptacle used for holding marihuana or marihuana products.

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

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

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

22. "Testing facility" means a licensee that tests marihuana and marihuana products.

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

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

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

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

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

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

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

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

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

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

3. (a) Not later than ten months following the enactment of this article, each municipality may enact an ordinance or regulation specifying the entity within the municipality that is responsible for processing applications submitted for a license to operate a marihuana establishment within the boundaries of the municipality and for the issuance of such licenses should the issuance by the municipality become necessary because of a failure by the bureau to adopt regulations pursuant to section one hundred seventy-three of this article or because of a failure by the bureau to process and issue licenses as required by the subdivision two of this section.

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

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

(c) If the bureau does not issue a license to an applicant within ninety days of receipt of the application filed in accordance with subdivision two and does not notify the applicant of the specific reason for its denial, in writing and within such time period, or if the bureau has adopted regulations pursuant to section one hundred seventy-three of this article but has not issued any licenses within eighteen months of the effective date of this article, for any locality enacting an ordinance providing for local processing of applications, the applicant may resubmit its application directly to the municipality pursuant to paragraph (a) of this subdivision, and the municipality may issue an annual license to the applicant. A municipality issuing a license to an applicant shall do so within ninety days of receipt of the resubmitted application unless the municipality finds and notifies the applicant that the applicant is not in compliance with the ordinances and regulations made pursuant to paragraph (b) of this subdivision in effect at the time the application is resubmitted and the municipality shall notify the bureau if an annual license has been issued to the applicant. If an application is submitted to a municipality under this paragraph, the bureau shall forward to the municipality the application fee paid by the applicant to the bureau upon request by the municipality. A license issued by a municipality in accordance with this paragraph shall have the same force and effect as a license issued by the bureau in accordance with subdivision two of this section and the holder of such license shall not be subject to regulation or enforcement by the bureau during the term of that license. A subsequent or renewed license may be issued under this paragraph on an annual basis only upon resubmission to the municipality of a new application submitted to the bureau pursuant to subdivision two of this section. Nothing in this paragraph shall limit such relief as may be available to an aggrieved party under section four hundred one of the state administrative procedure act or any successor provision.

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

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

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

§ 168. Licenses issued. The following kinds of licenses shall be issued by the bureau for the manufacture, production, processing, testing, retail sale and delivery of marihuana:

1. marihuana nursery license;

2. marihuana producer license;

3. marihuana processor license;

4. marihuana distributor license;

5. marihuana retailer license;

6. marihuana microbusiness license;

7. marihuana on-site consumption license;

8. marihuana delivery license;

9. marihuana testing license; and

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

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

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

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

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

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

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

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

8. No marihuana delivery owner may hold more than one marihuana delivery license.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. The bureau shall promulgate necessary rules and regulations governing the licensing of marihuana producers, marihuana processors, marihuana retailers and marihuana retailers for consumption on-site, including:

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

(b) the qualifications for licensure;

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

(d) methods of producing, processing, and packaging marihuana, marihuana-infused products, and concentrated cannabis; conditions of sanitation, and standards of ingredients, quality, and identity of marihuana products produced, processed, packaged, or sold by licensees; and

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

3. The bureau shall promulgate rules and regulations that are calculated to:

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

(b) prevent the revenue from the sale of marihuana from going to criminal enterprises, gangs, and cartels;

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

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

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

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

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

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

4. Rules and regulations promulgated by the bureau pursuant to subdivision three of this section shall not prohibit the operation of marihuana establishments either expressly or through regulations that make their operation unreasonably impracticable.

5. The bureau, in consultation with the department of agriculture and markets and the department of environmental conservation, shall promulgate necessary rules and regulations governing the safe production of marihuana, including restrictions on the use of pesticides, insecticides and herbicides.

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

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

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

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

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

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

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

3. No processor shall deliver any products, except in vehicles owned and operated by such processor, or hired and operated by such processor from a trucking or transportation company registered with the bureau, and shall only make deliveries at the licensed premises of the purchaser.

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

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

2. No premises shall be licensed to sell marihuana products, unless said premises shall be located in a store, the principal entrance to which shall be from the street level and located on a public thoroughfare in premises which may be occupied, operated or conducted for business, trade or industry or on an arcade or sub-surface thoroughfare leading to a railroad terminal. There may be not more than one additional entrance which shall be from the street level and located on and giving access to and from a public or private parking lot or parking area having space for not less than five automobiles.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) Effect of the grant of the license on vehicular traffic and parking in proximity to the location.

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

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

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

5. If the bureau shall disapprove an application for a license or permit, it shall state and file in its offices the reasons therefor and shall notify the applicant thereof. Such applicant may thereupon apply to the bureau for a review of such action in a manner to be prescribed by the rules of the bureau. A hearing upon notice to the applicant shall thereupon be held by the bureau or by one of its members at its office most conveniently situated to the office of its duly authorized representative in a manner to be prescribed in its rules; and on such hearing proof may be taken by oral testimony or by affidavit relative thereto. After such hearing, if the bureau confirms such disapproval, it shall endorse such application accordingly and shall send notice to the applicant of its action in such form as the bureau may prescribe. If the bureau does not confirm the disapproval action it may grant such application and issue such license.

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

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

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

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

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

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

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

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

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

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

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

12. Each marihuana on-site consumption licensee shall keep and maintain upon the licensed premises, adequate records of all transactions involving the business transacted by such licensee which shall show the amount of marihuana products, in an applicable metric measurement, purchased by such licensee together with the names, license numbers and places of business of the persons from whom the same were purchased, the amount involved in such purchases, as well as the sales of marihuana products made by such licensee. The bureau is hereby authorized to promulgate rules and regulations permitting an on-site licensee operating two or more premises separately licensed to sell marihuana products for on-site consumption to inaugurate or retain in this state methods or practices of centralized accounting, bookkeeping, control records, reporting, billing, invoicing or payment respecting purchases, sales or deliveries of marihuana products, or methods and practices of centralized receipt or storage of marihuana products within this state without segregation or earmarking for any such separately licensed premises, wherever such methods and practices assure the availability, at such licensee's central or main office in this state, of data reasonably needed for the enforcement of this chapter. Such records shall be available for inspection by any authorized representative of the bureau.

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

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

§ 178. Advertising and forms of the issuance of licenses. 1. The bureau is hereby authorized to promulgate rules and regulations governing the advertising of marihuana producers, marihuana processors, marihuana retailers, and any marihuana related products or services.

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

(a) is false, deceptive, or misleading;

(b) promotes overconsumption;

(c) depicts consumption by children or other minors;

(d) is designed in any way to appeal to children or other minors;
(e) is within two hundred feet of the perimeter of a school grounds, playground, child care center, public park, or library;
(f) is in public transit vehicles and stations;
(g) is in the form of an unsolicited internet pop-up; or
(h) is on publicly owned or operated property.
3. The bureau shall promulgate explicit rules prohibiting all marketing strategies and implementation including, but not limited to, branding, packaging, labeling, location of marihuana retailers and marihuana microbusinesses, and advertisements that are designed to:
(a) appeal to persons less then twenty-one years of age; or
(b) disseminate false or misleading information to customers.
4. The bureau shall promulgate explicit rules requiring that:
(a) all advertisements and marketing accurately and legibly identify the licensee responsible for its content; and
(b) any broadcast, cable, radio, print and digital communications advertisements only be placed where the audience is reasonably expected to be twenty-one years of age or older, as determined by reliable, up-to-date audience composition data.
§ 179. Packaging of marihuana products. 1. The bureau is hereby authorized to promulgate rules and regulations governing the packaging of marihuana products, sold or possessed for sale in New York state.
2. Such regulations shall include requiring that:
(a) packaging meets requirements similar to the federal "poison prevention packaging act of 1970," 15 U.S.C. Sec 1471 et seq.;
(b) all marihuana-infused products shall have a separate packaging for each serving;
(c) prior to delivery or sale at a retailer, marihuana and marihuana products shall be labeled and placed in a resealable, child-resistant package; and
(d) packages and labels shall not be made to be attractive to children.
§ 180. Labeling of marihuana products. 1. The bureau is hereby authorized to promulgate rules and regulations governing the labeling and offering of marihuana products for sale within this state.
2. Such rules and regulations shall be calculated to: (a) prohibit deception of the consumer; (b) afford adequate information as to quality and identity of the product; and (c) achieve national uniformity in this business.
3. The bureau may seek the assistance of the department of health when necessary before promulgating rules and regulations under this section.
4. Such regulations shall include requiring labels warning consumers of any potential impact on human health resulting from the consumption of marihuana products that shall be affixed to those products when sold, if such labels are deemed warranted by the bureau after consultation with the department of health.
5. All marihuana and marihuana product labels and inserts shall include the following information prominently displayed in a clear and legible fashion in accordance with the requirements, including font size, prescribed by the bureau or the department of health: not less than 8 point font:
(a) manufacture date and source;
(b) for packages continuing only dried flower, the net weight of marihuana in the package;

(c) identification of the source and date of cultivation, the type of marihuana or marihuana product and the date of manufacturing and packaging;

(d) list of pharmacologically active ingredients, including, but not limited to, tetrahydricannabinal (THC), cannibidiol (CBP), and other cannabinoid content, the THC and other cannabinoid amount in milligrams per serving, servings per package, and the THC and other cannibinoid amount in milligrams for the package total, and the potency of the marihuana or marihuana product by reference to the amount of tetrahydrocannibinol and canibidiol in each serving;

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

(f) a list of any solvents, nonorganic pesticides, herbicides, and fertilizers that were used in the cultivation, production, and manufacture of such marihuana or marihuana product;

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

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

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

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

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

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

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

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

(a) the licensee receiving the product;

(b) the transaction date; and

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

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

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

(c) the estimated times of departure and arrival;

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

(e) the actual time of departure and arrival;

(f) a categorization of the product; and

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

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

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

2. The bureau shall provide an application for renewal of a license issued under this article not less than sixty days prior to the expiration of the current license.

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

(a) A statement of identity as follows:

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

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

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

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

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

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

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

(i) gender diversity;

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

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

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

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

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

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

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

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

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

5. In giving any notice, or taking any action in reference to a licensee of a licensed premises, the bureau may rely upon the information furnished in such application and in any supplemental statement connected therewith, and such information may be presumed to be correct, and shall be binding upon a licensee or licensed premises as if correct. All information required to be furnished in such application or supplemental statements shall be deemed material in any prosecution for perjury, any proceeding to revoke, cancel or suspend any license, and in the bureau's determination to approve or deny the license.

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

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

(a) marihuana producer license;

(b) marihuana processor license;

(c) marihuana microbusiness license;

(d) marihuana retailer license;

(e) marihuana retailer license for on-site consumption;

(f) marihuana delivery license;

(g) marihuana testing license; and/or

(h) any other type of licenses allowed by the bureau.

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

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

(b) in the city of New York, the community board established pursuant to section twenty-eight hundred of the New York city charter with jurisdiction over the area in which the premises is located shall be considered the appropriate public body to which notification shall be given.

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

(a) for a corporation, a change of eighty percent or more of the officers and/or directors, or a transfer of eighty percent or more of stock of such corporation, or an existing stockholder obtaining eighty percent or more of the stock of such corporation; and

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

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

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

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

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

(a) the trade name or "doing business as" name, if any, of the establishment;

(b) the full name of the applicant;

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

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

(e) the name, address and telephone number of the attorney or representative of the applicant, if any;

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

(i) a new establishment;

(ii) a transfer of an existing licensed business;

(iii) a renewal of an existing license; or

(iv) an alteration of an existing licensed premises;

(g) if the establishment is a transfer or previously licensed premises, the name of the old establishment and such establishment's license serial number;

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

(i) the type of license.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5. Where a licensee is convicted of two or more qualifying offenses within a five year period, the bureau, upon receipt of notification of such second or subsequent conviction pursuant to the provisions of subdivision two of section one hundred six-a of this chapter, shall, in addition to any other sanction or civil or criminal penalty imposed pursuant to this chapter, impose on such licensee a civil penalty not to exceed five hundred dollars. For purposes of this subdivision, a qualifying offense shall mean: (a) the offense defined in subdivision one of section sixty-five of this chapter; or (b) the offense defined in paragraph (b) of subdivision one of section sixty-five-b of this chapter. For purposes of this subdivision, a conviction of a licensee or an employee or agent of such licensee shall constitute a conviction of such licensee.

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

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

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

2. encourage applicants who qualify as a minority or women-owned business enterprise, as defined in section three hundred ten of the executive law, to apply for licenses;

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

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

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

based upon the cost of enforcing this article and the size of the marihuana business being licensed, as follows:

1. Each licensing authority shall charge each licensee a licensure and renewal fee, as applicable. The licensure and renewal fee shall be calculated to cover the costs of administering this article. The licensure fee may vary depending upon the varying costs associated with administering the various regulatory requirements of this article as they relate to the nature and scope of the different licensure activities, but shall not exceed the reasonable regulatory costs to the licensing authority.

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

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

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

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

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

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

(c) A co-partnership or a corporation, unless each member of the partnership, or each of the principal officers and directors of the corporation, is a citizen of the United States or an alien lawfully admitted for permanent residence in the United States, not less than twenty-one years of age, and has not been convicted of any felony or any of the misdemeanors, specified in section 230.20 or 230.40 of the penal law, or if so convicted has received, subsequent to such conviction, an executive pardon therefor removing this disability a certificate of good conduct granted by the department of corrections and community supervision, or a certificate of relief from disabilities granted by the department of corrections and community supervision or a court of this state pursuant to the provisions of article twenty-three of the correction law to remove the disability under this section because of such conviction; provided however that a corporation which otherwise conforms to the requirements of this section and article may be licensed if each of its principal officers and more than one-half of its directors are citizens of the United States or aliens lawfully admitted for permanent residence in the United States; and provided further that a corporation organized under the not-for-profit corporation law or the education law which otherwise conforms to the requirements of this section and article may be licensed if each of its principal officers and more than one-half of its directors are not less than twenty-one years of age and none of its directors are less than eighteen years of age; and provided further that a corporation organized under the not-for-profit corporation law or the education law and located on the premises of a college as defined by section two of the education law which otherwise conforms to the requirements of this section and article may be licensed if each of its principal officers and each of its directors are not less than eighteen years of age.

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

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

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

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

§ 192. Surrender of license; notice to police officials. Within three days after a license shall have been revoked pursuant to this article, notice thereof shall be given to the licensee by mailing such notice addressed to him at the premises licensed. Notice shall also be mailed to the owner of the premises licensed. The holder of such license shall thereupon surrender same to the bureau. The mailing thereof by the licensee to the bureau by registered mail or insured parcel post shall be deemed sufficient compliance with this section. The bureau, immediately upon giving notice of revocation, shall serve a written notice thereof upon the commissioner of police, chief of police or chief police officer of the city, or village in which the premises for which the revoked license was issued is situated, or upon the sheriff of the county or a constable of the town in case the license was issued for premises situated in a town and not within any city or village. Such notice shall include a statement of the number of such license, the name and place of residence of the holder thereof, the location of the licensed premises, and the date when such license was revoked. In case such license be not forthwith surrendered, the bureau shall issue a written demand for the surrender of such license and deliver said demand to the sheriff of the county in which the licensed premises are located, or to any representative of the bureau, and said sheriff or representative shall immediately take possession of such license and return the same to the bureau.

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

§ 194. Protections for the use of marihuana. Individuals and licensed entities shall not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including but not limited to civil liability or disciplinary action by a business or occupational or professional licensing board or bureau, solely for conduct permitted under this article. For the avoidance of doubt, the appellate division of the supreme court of the state of New York, and any disciplinary or character and fitness committees established by them are occupational and professional licensing boards within the meaning of this section. State or local law enforcement agencies shall not cooperate with or provide assistance to the government of the United States or any agency thereof in enforcing the Controlled Substance Act, 21, U.S.C. S8012 et seq., solely for actions consistent with this chapter, except as pursuant to a valid court order.

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

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

(b) If the institution has adopted a code of conduct prohibiting marihuana use on the basis of religious belief;

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

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

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

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

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

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

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

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

4. As used in this section, "adverse employment action" means refusing to hire or employ, barring or discharging from employment, requiring a person to retire from employment, or discriminating against in compensation or in terms, conditions, or privileges of employment.

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 18-A

PROVISIONS RELATING TO MARIHUANA

Section 446. Definitions.
447. Taxes imposed.
447-a. Local taxes on marihuana by a city or town.
447-b. Ordinary and necessary expenses deductible from net income.
448. Surety bond.
449. Collection of tax.
450. Revenue allocation.

§ 446. Definitions. As used in this article:

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

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

3. "Marihuana" means all parts of the plant of the genus Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. It does not include all parts of the plant Cannabis sativa L., whether growing or not, having no more than three-tenths of one percent tetrahydrocannabinol (THC).

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

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

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

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

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

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

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

11. "Immature marihuana plant" means a marihuana plant with no observable flowers or buds.

12. "Marihuana retailer" means a person licensed by the bureau of marihuana policy to purchase marihuana, concentrated cannabis, and marihuana-infused products from marihuana producers and marihuana processors and sell marihuana, marihuana-infused products, and concentrated cannabis in a retail outlet.

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

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

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

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

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

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

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

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

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

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

3. The department shall regularly review the rates of the tax under subdivision one of this section and make recommendations to the legislature regarding appropriate adjustments to the rates that will further the purposes of:

(a) maximizing net revenue;

(b) minimizing the illegal marihuana industry; and

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

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

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

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

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

§ 449. Collection of tax. This tax shall be collected by the commissioner who shall establish a procedure for the collection of this tax.

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

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

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

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

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

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

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

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

(b) the impact of treatment for cannabis use disorder and the effectiveness of different treatment programs;

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

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

(e) marihuana market prices, illicit market prices, tax structures and rates, including an evaluation of how to best tax marihuana based on potency, and the structure and function of licensed marihuana businesses;

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

(g) the economic impacts in the private and public sectors, including but not necessarily limited to, job creation, workplace safety, revenues, taxes generated for state and local budgets, and criminal justice impacts, including, but not necessarily limited to, impacts on law enforcement and public resources, short and long term consequences of involvement in the criminal justice system, and state and local government agency administrative costs and revenue;

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

(i) environmental issues related to marihuana production and the criminal prohibition of marihuana production.

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

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

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

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

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

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

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

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

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

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

(iv) To evaluate the programs being funded to determine their effectiveness.

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

(i) The community grants reinvestment program shall periodically evaluate the programs it is funding to determine the effectiveness of the programs.

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

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

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

(A) Community-based job skills services.

(B) Community-based job placement services.

(C) Adult education services.

(D) Other community-based supportive services.

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

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

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

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

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

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

4. A person in whose favor a criminal action or proceeding was terminated, as defined in [~~paragraph~~] paragraphs (a) through (h), (k) or (l) of subdivision [~~two~~] three of this section, prior to the effective date of [~~this section, may upon motion apply to the court in which such termination occurred, upon not less than twenty days notice to the district attorney, for an order granting to such person the relief set forth in subdivision one of this section, and such order shall be granted unless the district attorney demonstrates to the satisfaction of the court that the interests of justice require otherwise. A person in whose favor a criminal action or proceeding was terminated, as defined in paragraph (i) or (j) of subdivision two of this section, prior to the effective date of this section, may apply to the appropriate prosecutor or police agency for a certification as described in said paragraph (i) or (j) granting to such person the relief set forth therein, and such certification shall be granted by such prosecutor or police agency.~~] the chapter of the laws of two thousand seventeen that amended this subdivision, and whose records have not been sealed pursuant to subdivision one of this section, may apply to have the records of such criminal action or proceeding sealed at the clerk's office for the court in which the criminal action or proceeding was terminated. Application may be made by the person or his or her attorney. Upon a determination by the clerk that the action or proceeding was terminated in the person's favor as defined in subdivision three of this section, the clerk of the court shall immediately notify the commissioner of the division of criminal justice services and the heads of all appropriate police departments and other law enforcement agencies that the action has been terminated in favor of the accused and that the record of such action or proceedings shall be sealed. Upon receipt of notification of such termination and sealing, all records relating to the criminal action shall be sealed, as required under paragraph (c) of subdivision one of this section, and all photographs, photographic plates or proofs, palmprints and fingerprints shall be destroyed or returned as specified in paragraphs (a) and (b) of subdivision one of this section. This paragraph shall not apply to cases in which the court declined to seal for reasons stated on the record, pursuant to subdivision one of this section. When an applicant under this subdivision presents to the court clerk fingerprint records from New York state division of criminal justice services or a court disposition which indicate that a criminal action or proceeding against the applicant was dismissed but the supporting court records cannot be located, have been destroyed, or do not indicate whether the dismissal was a "termination in favor of" the accused as that term is defined in subdivision three of this section, the clerk of the court wherein such criminal action or proceeding was terminated shall proceed as if the matter had been so terminated.

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

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

the action adjourned in contemplation of dismissal, or upon a finding that adjournment would not be necessary or appropriate and the setting forth in the record of the reasons for such findings, may dismiss in furtherance of justice the accusatory instrument; provided, however, that the court may not order such adjournment in contemplation of dismissal or dismiss the accusatory instrument if: (a) the defendant has previously been granted such adjournment in contemplation of dismissal, or (b) the defendant has previously been granted a dismissal under this section, or (c) the defendant has previously been convicted of any offense involving controlled substances, or (d) the defendant has previously been convicted of a crime and the district attorney does not consent or (e) the defendant has previously been adjudicated a youthful offender on the basis of any act or acts involving controlled substances and the district attorney does not consent. **Notwithstanding the limitations set forth in this subdivision, the court may order that all proceedings be suspended and the action adjourned in contemplation of dismissal based upon a finding of exceptional circumstances. For purposes of this subdivision, exceptional circumstances exist when, regardless of the ultimate disposition of the case, the entry of a plea of guilty is likely to result in severe collateral consequences, including, but not limited to, those that could leave a noncitizen inadmissible or removable from the United States.**

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

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

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

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

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

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

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

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

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

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

(j) The judgment occurred prior to the effective date of this paragraph and is a conviction for:

(i) an offense as defined by section 221.05 or 221.10 of the penal law (criminal possession of marihuana in the fifth degree), as in effect prior to the effective date of this paragraph, provided that the accusatory instrument that underlies the judgment does not include an allegation that the defendant possessed more than twenty-five grams of marihuana; or

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

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

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

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

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

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

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

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

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

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

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

4. Under no circumstances may resentencing under this section result in the imposition of a term longer than the original sentence, or the reinstatement of charges dismissed pursuant to a negotiated plea agreement.

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

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

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

(c) Redesignated (reclassified) as a misdemeanor.

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

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

8. Any felony conviction that is vacated and resentenced under subdivision two or designated as a misdemeanor or violation under subdivision six of this section shall be considered a misdemeanor or violation for all purposes. Any misdemeanor conviction that is vacated and resentenced under subdivision two of this section or designated as a violation under

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

9. If the court that originally sentenced the movant is not available, the presiding judge shall designate another judge to rule on the petition or application.

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

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

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

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

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

(c) Criminal possession of a controlled substance in the seventh degree as defined in section 220.03 of the penal law, criminal possession of a controlled substance in the fifth degree as defined in section 220.06 of the penal law, criminal possession of a controlled substance in the fourth degree as defined in section 220.09 of the penal law, criminal possession of a controlled substance in the third degree as defined in section 220.16 of the penal law, criminal possession of a controlled substance in the second degree as defined in section 220.18 of the penal law, criminal possession of a controlled substance in the first degree as defined in section 220.21 of the penal law, criminal sale of a controlled substance in the fifth degree as defined in section 220.31 of the penal law, criminal sale of a controlled substance in the fourth degree as defined in section 220.34 of the penal law, criminal sale of a controlled substance in the third degree as defined in section 220.39 of the penal law, criminal sale of a controlled substance in the second degree as defined in section 220.41 of the penal law, criminal sale of a controlled substance in the first degree as defined in section 220.43 of the penal law, criminally possessing a hypodermic instrument as defined in section 220.45 of the penal law, criminal sale of a prescription for a controlled substance or a controlled substance by a practitioner or pharmacist as defined in section 220.65 of the penal law, criminal possession of methamphetamine manufacturing material in the second degree as defined in section 220.70 of the penal law, criminal possession of methamphetamine manufacturing material in the first degree as defined in section 220.71 of the penal law, criminal possession of precursors of methamphetamine as defined in section 220.72 of the penal law, unlawful manufacture of methamphetamine in the third degree as defined in section 220.73 of the penal law, unlawful manufacture of methamphetamine in the second degree as defined in section 220.74 of the penal law, unlawful manufacture of methamphetamine in the first degree as defined in section 220.75 of the penal law, unlawful disposal of methamphetamine laboratory material as defined in section 220.76 of the penal law, operating as a major trafficker as defined in

section 220.77 of the penal law, [~~criminal possession of marihuana in the first degree as defined in section 221.30 of the penal law, criminal sale of marihuana in the first degree as defined in section 221.55 of the penal law,~~] promoting gambling in the second degree as defined in section 225.05 of the penal law, promoting gambling in the first degree as defined in section 225.10 of the penal law, possession of gambling records in the second degree as defined in section 225.15 of the penal law, possession of gambling records in the first degree as defined in section 225.20 of the penal law, and possession of a gambling device as defined in section 225.30 of the penal law;

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

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

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

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

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

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

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

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

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

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

13. "Serious offense" shall mean any felony involving the offenses enumerated in the closing paragraph of this subdivision; a criminal solicitation of or a conspiracy to commit or an attempt to commit or a criminal facilitation of a felony involving the offenses enumerated in the closing paragraph of this subdivision, which criminal solicitation, conspiracy, attempt or criminal facilitation itself constitutes a felony or any offense in any other jurisdiction which if committed in this state would constitute a felony; any offense in any other jurisdiction which if committed in this state would constitute a felony provided that for the purposes of this article, none of the following shall be considered criminal convictions or reported as such: (i) a conviction for which an executive pardon has been issued pursuant to the executive law; (ii) a conviction which has been vacated and replaced by a youthful offender finding pursuant to article seven hundred twenty of the criminal procedure law, or the applicable provisions of law of any other jurisdiction; or (iii) a conviction the records of which have been sealed pursuant to the applicable provisions of the laws of this state or of any other jurisdiction; and (iv) a conviction for which other

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

Felonies involving: assault, aggravated assault and reckless endangerment pursuant to article one hundred twenty; vehicular manslaughter, manslaughter and murder pursuant to article one hundred twenty-five; sex offenses pursuant to article one hundred thirty; unlawful imprisonment, kidnapping or coercion pursuant to article one hundred thirty-five; criminal trespass and burglary pursuant to article one hundred forty; criminal mischief, criminal tampering and tampering with a consumer product pursuant to article one hundred forty-five; arson pursuant to article one hundred fifty; larceny and offenses involving theft pursuant to article one hundred fifty-five; offenses involving computers pursuant to article one hundred fifty-six; robbery pursuant to article one hundred sixty; criminal possession of stolen property pursuant to article one hundred sixty-five; forgery and related offenses pursuant to article one hundred seventy; involving false written statements pursuant to article one hundred seventy-five; commercial bribing and commercial bribe receiving pursuant to article one hundred eighty; criminal impersonation and scheme to defraud pursuant to article one hundred ninety; bribery involving public servants and related offenses pursuant to article two hundred; perjury and related offenses pursuant to article two hundred ten; tampering with a witness, intimidating a victim or witness and tampering with physical evidence pursuant to article two hundred fifteen; criminal possession of a controlled substance pursuant to sections 220.06, 220.09, 220.16, 220.18 and 220.21; criminal sale of a controlled substance pursuant to sections 220.31, 220.34, 220.39, 220.41, 220.43 and 220.44; criminal sale of [~~marijuana~~] **marihuana in the first degree** pursuant to [~~sections~~] **section** 221.45[~~, 221.50 and 221.55~~]; riot in the first degree, aggravated harassment in the first degree, criminal nuisance in the first degree and falsely reporting an incident in the second or first degree pursuant to article two hundred forty; and crimes against public safety pursuant to article two hundred sixty-five of the penal law.

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

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

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

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

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

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

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

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

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

(c) a conviction of a person for a violation of section 220.09, 220.16, 220.34[~~,~~] **or** 220.39[~~, or 221.30~~] of this chapter, or where the accusatory instrument charges any such felony, conviction upon a plea of guilty to a felony for which the plea is otherwise authorized by law, together with evidence which: (i) provides substantial indicia that the defendant used the real property to engage in a continual, ongoing course of conduct involving the unlawful mixing, compounding, manufacturing, warehousing, or packaging of controlled substances [~~or where the conviction is for a violation of section 221.30 of this chapter, marijuana~~] as part of an illegal trade or business for gain; and (ii) establishes, where the conviction is for possession of a controlled substance [~~or where the conviction is for a violation of section 221.30 of this chapter, marijuana~~], that such possession was with the intent to sell it.

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

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

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

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

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

§ 53. This act shall take effect immediately.