STATE OF NEW YORK

5619--A

Cal. No. 222

2017-2018 Regular Sessions

IN SENATE

April 20, 2017

Introduced by Sens. KLEIN, ALCANTARA, AVELLA, VALESKY -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection -- recommitted to the Committee on Consumer Protection in accordance with Senate Rule 6, sec. 8 -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to establish a statewide synthetic cannabinoid surrender program within the department of health; and to amend the general business law, the tax law and the alcoholic beverage control law, in relation to prohibiting the sale of synthetic cannabinoids

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

Section 1. There is hereby established, within the department of health, a statewide synthetic cannabinoid surrender program. Such program shall, for a period of 90 days after the effective date of this section, in compliance with federal law operate as the statewide synthetic cannabinoid surrender program whereby any individual, at multiple geographic locations throughout the state, may anonymously surrender to the department of health any product containing a synthetic cannabinoid, as defined in section 399-hh of the general business law. Provided further, that no surrender of a synthetic cannabinoid pursuant to this section shall be deemed to be a sale for any purpose of law, rule or regulation.

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

§ 399-hh. Sale or distribution of synthetic cannabinoid; prohibited. 1. For the purposes of this section, "synthetic cannabinoid" means any chemical compound that is a cannabinoid receptor agonist and shall include, but not be limited to, any material, compound, mixture or preparation that is not designated as a controlled substance pursuant to

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

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section thirty-three hundred six of the public health law; provided, however, that the term "synthetic cannabinoid" shall not include any product approved by the United States Food and Drug Administration as a drug or medical device, or approved by the commissioner of health pursuant to title five-A of article thirty-three of the public health law.

2. No person, firm, corporation, partnership, association, limited liability company or other entity shall sell, offer for sale, distribute or give away, for retail, wholesale or promotional purposes any synthetic cannabinoid.

3. Any person, firm, corporation, partnership, association, limited liability company or other entity that is found by a local criminal court, as defined in subdivision three of section 10.10 of the criminal procedure law, to have violated the provisions of subdivision two of this section shall be subject to a civil penalty of two thousand dollars; provided, however, that upon a finding of a second or subsequent violation within any period of five years, the violator shall be subject to a civil penalty of five thousand dollars; and provided, further, that upon a finding of a third or subsequent violation within any period of five years, the court shall provide notice thereof to the commissioner of taxation and finance, the division of the lottery and the state liquor authority, and the violator shall be prohibited from selling cigarettes and tobacco products, lottery tickets, and alcoholic beverages for a period of five years.

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

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

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

(g) Such applicant or any controlling person has been determined to have violated subdivision two of section three hundred ninety-nine-hh of the general business law, three or more times during a period of five years; in such case the violator shall be denied a license for a period of five years after the last such violation.

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

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

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

(v) Has been determined to have violated subdivision two of section three hundred ninety-nine-hh of the general business law, three or more times during a period of five years; in such case the violator's license shall be cancelled or suspended for a period of five years.

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

a. The division may license as agents to sell lottery tickets such persons as in its opinion will best serve public convenience, except that no license shall be issued to any person to engage in business exclusively as a lottery sales agent**; and provided, further, that no license shall be issued to any person who has been determined to have violated subdivision two of section three hundred ninety-nine-hh of the general business law, three or more times during a period of five years; in such case the violator shall be denied a license for a period of five years after the last such violation**. The division may license such persons as in its opinion are suitable to participate in video lottery gaming pursuant to section sixteen hundred seventeen-a of this article.

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

i. Three or more violations of subdivision two of section three hundred ninety-nine-hh of the general business law, within any period of five years, in which case, the division shall suspend the violator's license for a period of five years.

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

4. No person shall receive a license to engage in the retail sale of alcoholic beverages for off-premises consumption, who has been determined to have violated subdivision two of section three hundred ninety-nine-hh of the general business law, three or more times during a period of five years; in such case the violator shall be denied a license for a period of five years after the last such violation.

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

4-b. No person shall receive a license to engage in the retail sale of alcoholic beverages for on-premises consumption, who has been determined to have violated subdivision two of section three hundred ninety-nine-hh of the general business law, three or more times during a period of five years; in such case the violator shall be denied a license for a period of five years after the last such violation.

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

1-a. A license or permit issued pursuant to this chapter shall be suspended for a period of five years when the holder thereof has been determined to have violated subdivision two of section three hundred ninety-nine-hh of the general business law, three or more times during a period of five years.

§ 10. Construction with other laws. Nothing in this act shall be construed to limit or restrict any municipality from enacting or enforcing a local law or ordinance governing a license issued by a municipality where such business was found to have unlawfully manufactured, distributed or sold a synthetic cannabinoid or synthetic phenthylamine.

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