STATE OF NEW YORK

6612

2019-2020 Regular Sessions

IN SENATE

June 20, 2019

Introduced by Sen. METZGER -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the agriculture and markets law and the public health law, in relation to the growth of industrial hemp and the regulation of hemp extract; and to repeal certain provisions of the agriculture and markets law relating thereto

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

Section 1. Subdivision 1 of section 505 of the agriculture and markets law, as added by chapter 524 of the laws of 2014, is amended and a new subdivision 3 is added to read as follows:

1. "Industrial hemp" means the plant Cannabis sativa L. and any part of such plant**, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers**, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.

3. "Hemp extract" means any product made or derived from industrial hemp, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than an amount determined by the department in regulation, for the purposes of extracting, processing and manufacturing such product used or intended for human or animal consumption on use for its cannabinoid content, as determined by the commissioner in regulation. Provided, however when such product is packaged or offered for sale that such concentration is not more than 0.3 percent delta-9 tetrahydrocannabinol. Hemp extract excludes industrial hemp used or intended exclusively for an industrial purpose and those food and/or food ingredients that are generally recognized as safe by the department, and shall not be regulated as hemp extract within the meaning of this article.

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

LBD13458-01-9

§ 2. Section 506 of the agriculture and markets law, as amended by section 1 of part OO of chapter 58 of the laws of 2017, is amended to read as follows:

§ 506. Growth, sale, distribution, transportation and processing of industrial hemp [~~and~~] products derived from such hemp**, and hemp extract,** permitted. [~~Notwithstanding any provision of law to the contrary, industrial~~] **1. Industrial** hemp and products derived from such hemp are agricultural products which may be grown, produced [~~and~~]**,** possessed [~~in the state, and~~]**,** sold, distributed, transported [~~or~~] **and/or** processed [~~either~~] in [~~or out of~~] state [~~as part of agricultural pilot programs pursuant to authorization under federal law and the provisions of this article~~] **pursuant to authorization under federal law and/or the provisions of this article**. [~~Notwithstanding any provision of law to the contrary restricting the growing or cultivating, sale, distribution, transportation or processing of industrial hemp and products derived from such hemp, and subject to authorization under federal law, the~~]

2. The commissioner may authorize the growing or cultivating of industrial hemp as part of agricultural pilot programs conducted by the department and/or an institution of higher education to study the growth and cultivation, sale, distribution, transportation and processing of such hemp [~~and~~]**,** products derived from such hemp**, and hemp extract,** provided that the sites and programs used for growing or cultivating industrial hemp are certified by, and registered with, the department.

3. The industrial hemp used for research pursuant to this section shall be sourced from authorized New York state industrial hemp producers. The research partner may obtain an exemption for only grain or fiber from this requirement upon a satisfactory showing to the department that a suitable variety of industrial hemp for the research project is not grown in New York and/or the use of New York sourced hemp is not practicable for the project. Hemp extract can only be sourced from authorized New York state industrial hemp producers, unless otherwise authorized by the department.

4. Nothing in this section shall limit the jurisdiction of the department under any other article of this chapter.

§ 3. Section 507 of the agriculture and markets law is REPEALED and a new section 507 is added to read as follows:

§ 507. Licensing; fees. 1. No person shall grow, process, extract, manufacture, produce, distribute and/or sell industrial hemp, products derived from industrial hemp, or hemp extract, in the state unless (a) licensed biennially by the commissioner or (b) authorized by the commissioner as part of an agricultural research pilot program established under this article.

2. Application for a license to grow industrial hemp shall be made upon a form prescribed by the commissioner, accompanied by a per-acre license fee and a non-refundable application fee up to five hundred dollars.

3. Application for a license to process, extract, and/or manufacture hemp extract shall be made upon a form prescribed by the commissioner, accompanied by a license fee, which may be based upon the amount of hemp extract to be processed, extracted and/or manufactured and a non-refundable application fee up to five hundred dollars.

4. The applicant shall furnish evidence of his or her good character, experience and competency, that the applicant has adequate facilities, equipment, process controls, testing capability and security to grow hemp.

5. A renewal application shall be submitted to the commissioner at least sixty days prior to the commencement of the next license period.

§ 4. Section 508 of the agriculture and markets law is REPEALED and a new section 508 is added to read as follows:

§ 508. Compliance action plan. If the commissioner determines, after notice and an opportunity for hearing, that a licensee has negligently violated a provision of and/or a regulation promulgated pursuant to this article, that licensee shall be required to comply with a corrective action plan established by the commissioner to correct the violation by a reasonable date and to periodically report to the commissioner with respect to the licensee's compliance with this article for a period of no less than the next two calendar years following the commencement date of the compliance action plan. The provisions of this section shall not be applicable to research partners conducting hemp research pursuant to a research partner agreement, the terms of which shall control.

§ 5. Section 509 of the agriculture and markets law is REPEALED and a new section 509 is added to read as follows:

§ 509. Granting, suspending or revoking licenses. The commissioner may decline to grant a new license, may decline to renew a license, may suspend or revoke a license already granted after due notice and opportunity for hearing whenever he or she finds that:

1. any statement contained in an application for an applicant or licensee is or was false or misleading;

2. the applicant or licensee does not have good character, the required experience and/or competency, adequate facilities, equipment, process controls, testing capability and/or security to produce hemp or products derived from hemp, including hemp extract;

3. the applicant or licensee has failed or refused to produce any records or provide any information demanded by the commissioner reasonably related to the administration and enforcement of this article; or

4. the applicant or licensee, or any officer, director, partner, holder of ten percent of the voting stock, or any other person exercising any position of management or control has failed to comply with any of the provisions of this article or rules and regulations promulgated pursuant thereto.

§ 6. Section 510 of the agriculture and markets law is REPEALED and a new section 510 is added to read as follows:

§ 510. Regulations. The commissioner may develop regulations consistent with the provisions of this article for the growing and cultivation, processing, extracting, manufacturing, sale, distribution, and transportation of industrial hemp grown in the state and hemp extract processed and/or manufactured in the state, including:

1. the authorization or licensing of any person who may: acquire or possess industrial hemp plants or seeds; grow or cultivate industrial hemp plants; and/or sell, purchase, distribute, or transport such industrial hemp plants, plant parts, or seeds;

2. maintaining relevant information regarding land on which industrial hemp is produced within the state, including the legal description of the land, for a period of not less than three calendar years;

3. the procedure for testing of industrial hemp produced in the state for delta-9-tetrahydrocannabinol levels, using a representative non-decarboxylated sample of flowers and leaves from the whole plant or other similarly reliable methods;

4. the procedure for effective disposal of industrial hemp plants or products derived from hemp that are produced in violation of this article;

5. a procedure for conducting at least a random sample of industrial hemp producers to verify that hemp is not produced in violation of this article;

6. methods of producing, processing, and packaging hemp extract; conditions of sanitation, environmental and energy standards, and standards of ingredients, quality, and identity of hemp extract products cultivated, processed, packaged or sold by licensees;

7. any required security measures; and

8. such other and further regulation as the commissioner deems appropriate or necessary.

§ 7. Section 511 of the agriculture and markets law is REPEALED and a new section 511 is added to read as follows:

§ 511. Prohibitions. 1. Except as authorized by state law, and regulations promulgated thereunder, the growth, cultivation, processing, sale, and/or distribution of industrial hemp is prohibited.

2. Except as authorized in this article, the manufacturing of hemp extract for human or animal consumption and the distribution and/or sale thereof is prohibited in this state unless the manufacturer is licensed under this article. Hemp extract and products derived therefrom for human and animal consumption produced outside the state may not be distributed or sold in this state unless they meet all standards and requirements established for such product manufactured in the state under this article and its rules and regulations as determined by the department.

§ 8. Section 512 of the agriculture and markets law is REPEALED and a new section 512 is added to read as follows:

§ 512. Industrial hemp data collection and best farming practices. The commissioner shall have the power to collect and publish data and research concerning, among other things, the growth, cultivation, production and processing methods of industrial hemp and products derived from industrial hemp and work with the New York state college of agriculture and life science at Cornell pursuant to section fifty-seven hundred twelve of the education law and the Cornell cooperative extension pursuant to section two hundred twenty-four of the county law to promote best farming practices for industrial hemp which are compatible with state water quality and other environmental objectives.

§ 9. Sections 513 and 514 of the agriculture and markets law are REPEALED and a new section 513 is added to read as follows:

§ 513. Aids to enforcement. 1. The commissioner shall have full access to all premises, buildings, factories, farms, vehicles, cars, boats, airplanes, vessels, containers, packages, barrels, boxes, and/or cans for the purpose of enforcing the provisions of this article. The commissioner may, at such locations, examine industrial hemp and hemp products and may open any package and/or container reasonably believed to contain industrial hemp or hemp products, including hemp extract to determine whether such industrial hemp or hemp products follow applicable law or regulation.

2. A search warrant shall be issued by any court to which application is made therefor, whenever it shall be made to appear to such court that a licensee has: refused to permit any industrial hemp or hemp extract to be inspected or samples taken therefrom; refused to permit access to any premises, or place where licensed activities are conducted; and/or refused or prevented access thereto by any inspector of the department and that such inspector has reasonable grounds to believe that such person has any industrial hemp or hemp extract in his or her possession, or under his or her control and/or is in violation of the provisions or

regulations of this article. In such a case, a warrant shall be issued in the name of the people, directed to a police officer, commanding him or her to: (a) search any place of business, factory, building, premises, or farm where licensed activities have occurred and any vehicle, boat, vessel, container, package, barrel, box, tub or can, containing, or believed to contain industrial hemp or hemp extract in the possession or under the control of any person who shall refuse to allow access to such hemp for inspection or sampling, (b) permit the inspection and sampling of any industrial hemp or hemp extract found in the execution of the warrant, as the officer applying for the search warrant shall designate when the same is found, by an inspector or a department official authorized by the commissioner or by this chapter, and/or (c) permit access to any place where access is refused or prevented, and to allow and enable a department inspector or other department official to conduct an inspection of the place. The provisions of article six hundred ninety of the criminal procedure law shall apply to such warrant as far as applicable thereto. The officer to whom the warrant is delivered shall make a return in writing of his or her proceedings thereunto to the court which issued the same.

3. The commissioner may quarantine industrial hemp or hemp extract when he or she has reason to believe that such commodity does not meet the definition thereof, set forth in subdivision one of section five hundred five of this article, or is otherwise in violation of or does not meet a standard set forth in, applicable law or regulation. The quarantine may by the issuance of an order directing the owner or custodian of industrial hemp not to distribute, dispose of, or move that commodity without the written permission of the commissioner. The commissioner may also quarantine a product by placing a tag or other appropriate marking thereon or adjacent thereto that provides and requires that such product must not be distributed, disposed of, or moved without his or her written permission, or may quarantine a product by otherwise informing the owner or custodian thereof that such condition must be complied with.

4. The commissioner may seize industrial hemp or hemp extract by taking physical possession of industrial hemp or hemp extract when he or she has substantial evidence to believe that such commodity does not meet the definition thereof, set forth in subdivision one of section five hundred five of this article, or is otherwise in violation of, or does not meet a standard set forth in, applicable law or regulation.

5. Subsequent to quarantining or seizing industrial hemp or hemp extract as authorized in subdivisions three and four of this section, the commissioner shall promptly give the owner or custodian thereof an opportunity to be heard to show cause why such industrial hemp or hemp extract should not be ordered destroyed. The commissioner shall, thereafter, consider all the relevant evidence and information presented and shall make a determination whether such industrial hemp or hemp extract should be ordered to be destroyed; that determination may be reviewed as provided for in article seventy-eight of the civil practice law and rules.

§ 10. The agriculture and markets law is amended by adding nine new sections 515, 516, 517, 518, 519, 520, 521, 522 and 523 to read as follows:

§ 515. Limitations of licensure; duration. 1. No license pursuant to this article may be issued to a person under the age of eighteen years.

2. The department shall have the authority to limit, by canopy, plant count or other means, the amount of hemp extract allowed to be cultivated, processed, extracted or sold by a licensee.

3. All licenses under this article shall expire two years after the date of issue and be subject to any rules or limitations prescribed by the commissioner in regulation.

§ 516. License renewal. 1. Each license, issued pursuant to this article, may be renewed upon application therefor by the licensee and the payment of the fee for such license as prescribed by this article.

2. The department 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.

3. The department shall have the authority to charge applicants for licensure under this article a non-refundable application fee. Such fee may be based on the type of licensure sought, cultivation and/or production volume, or any other factors deemed reasonable and appropriate by the department to achieve the policy and purpose of this chapter.

§ 517. Inspections and ongoing requirements. All licensees shall be subject to reasonable inspection by the department, in consultation with the department of health, and a person who holds a license must make himself or herself, or an agent thereof, available and present for any inspection required by the department. The department shall make reasonable accommodations so that ordinary business is not interrupted and safety and security procedures are not compromised by the inspection.

§ 518. Packaging and labeling of hemp extract. 1. The department, in consultation with the department of health, is hereby authorized to promulgate rules and regulations governing the packaging and labeling of hemp extract products, sold or possessed for sale in New York state.

2. Such regulations shall include, but not be limited to, requiring labels warning consumers of any potential impact on human health resulting from the consumption of hemp extract products that shall be affixed to those products when sold, if such labels are deemed warranted by the department. No label may state that hemp extract can treat, cure or prevent any disease without approval pursuant to federal law.

3. Such rules and regulations shall establish a QR code which may be used in conjunction with similar technology for labels and establish methods and procedures for determining, among other things, serving sizes for hemp extract products, active cannabinoid concentration per serving size, number of servings per container, and the growing region, state or country of origin if not from the United States. Such regulations shall also require a supplement fact panel that incorporates data regarding serving sizes and potency thereof.

4. The packaging, sale, or possession by any licensee of any hemp product intended for human or animal consumption or use 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 suspension, revocation or cancellation of a license.

§ 519. Provisions governing the growing, manufacturing and extracting of hemp extract. 1. Cultivators of hemp extract shall comply with plant cultivation regulations, standards, and guidelines issued by the department, in consultation with the department of environmental conservation. Such regulations, standards, and guidelines shall be guided by sustainable farming principles and practices such as organic, regenerative, and integrated pest management models, and shall restrict to the extent practicable, the use of pesticides, herbicides and fungicides to those

which are botanical and/or biological pursuant to the federal and state organic agriculture rules and regulations.

2. The nonpharmaceutical or nonmedical production, marketing, sale or distribution of beverages, food, or food products within the state that contain hemp or any part of the hemp plant, including the seeds and all naturally occurring cannabinoids, compounds, concentrates, extracts, isolates, terpenes, resins, isomers, acids, salts, salts of isomers or cannabidiol derivatives, may not be restricted or prohibited within the state based solely on the inclusion of hemp or any part of the hemp plant. Upon request of a processor, manufacturer or seller of beverages, food or food products that contain hemp or any part of such hemp plant, such as terpenes, that are generally recognized as safe, the department shall issue a declaration that such products shall not be regulated as hemp extract.

3. All hemp extract products shall be extracted and manufactured in accordance with good manufacturing processes, pursuant to Part 111 or 117 of Title 21 of the Code of Federal Regulations as may be modified and decided upon by the commissioner in regulation.

§ 520. Laboratory testing. 1. The department in consultation with the department of health shall issue regulations regarding laboratory requirements of hemp extract licensees.

2. Every hemp extract licensee shall contract with an independent laboratory to test the hemp extract products produced by the licensee.

3. On-site laboratory testing by licensees is permissible; however, such testing shall not be certified by the department and does not exempt the licensee from the requirements of quality assurance testing pursuant to this section.

§ 521. Penalties and violations of this article. Notwithstanding the provision of any law to the contrary, the failure to comply with the requirements of this article, the rules and regulations promulgated thereunder, after notice and opportunity to be heard, may be punishable by a fine of not more than one thousand dollars for a first violation; not more than five thousand dollars for a second violation; and not more than ten thousand dollars for a third violation and each subsequent violation thereafter.

§ 522. Hemp workgroup. The commissioner shall appoint a New York state industrial hemp and hemp extract workgroup, composed of researchers, producers, processors, manufacturers and trade associations, to make recommendations for the industrial hemp and hemp extract programs, state and federal policies and policy initiatives, and opportunities for the promotion and marketing of industrial hemp and hemp extract as consistent with federal and state laws, rules and regulations, which workgroup shall continue for such time as the commissioner deems appropriate.

§ 523. Severability. If any provision of this article or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the article which can be given effect without the invalid provision or application, and to this end the provisions of this article are declared to be severable.

§ 11. Subdivision 21 of section 3302 of the public health law, as added by chapter 878 of the laws of 1972 and as renumbered by chapter 537 of the laws of 1998, is amended to read as follows:

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. **"Marihuana" shall not include industrial hemp as defined in subdivision one of section five hundred five of the agriculture and markets law.**

§ 12. This act shall take effect on January 1, 2020.