STATE OF NEW YORK

6968

IN SENATE

January 6, 2020

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 hemp, cannabinoid hemp, and 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. Articles 29 and 29-A of the agriculture and markets law, article 29-A as added by a chapter of the laws of 2019 amending the agriculture and markets law relating to the growth of industrial hemp and the regulation of hemp extract, as proposed in legislative bills numbers S.6184-A and A.7680-A, are REPEALED and a new article 29 is added to read as follows:

ARTICLE 29
GROWTH OF HEMP

Section 505. Definitions.
506. Growth, sale, distribution, transportation and processing of hemp and products derived from such hemp permitted.
507. Prohibitions.
508. Regulations.
509. Hemp grower's authorization, license; fees; requirements.
510. Granting, suspending or revoking licenses.
511. Proceedings to review.
512. Transferability; change in ownership or control.
513. Access to criminal history information through the division of criminal justice services.
514. Records.
515. Aids to enforcement.
516. Compliance action plan.
517. Penalties.
518. Remedies.
519. Hemp economic development.
520. Hemp data collection and best farming practices.

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

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521. Severability.

§ 505. Definitions. As used in this article:

1. "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 three-tenths of a percent on a dry weight basis.

2. "Institution of higher education" means:

(a) any of the colleges and universities described in subdivision three of section three hundred fifty-two of the education law;

(b) a college established and operated pursuant to the provisions of article one hundred twenty-six of the education law, and providing two-year or four-year post-secondary programs in general and technical educational subjects and receiving financial assistance from the state;

(c) the city university of New York, as defined in subdivision two of section sixty-two hundred two of the education law; and

(d) a not-for-profit two or four-year university or college given the power to confer associate, baccalaureate or higher degrees in this state by the legislature or by the regents under article five of the education law.

3. "License" means a license, permit or registration issued pursuant to this article.

4. "Processing of hemp in connection with its growing and cultivation" means the growing, cultivation, cloning, harvesting, drying, curing, grinding and trimming of hemp plants.

§ 506. Growth, sale, distribution, transportation and processing of hemp and products derived from such hemp permitted. 1. Notwithstanding any provision of law to the contrary, hemp and products derived from such hemp are agricultural products which may be grown, cultivated, produced, processed, manufactured, possessed in the state, and sold, distributed, or transported in the state, pursuant to authorization under federal law, the provisions of this article, article thirty-three-B of the public health law or any other state law.

2. Notwithstanding any provision of law to the contrary restricting the growing or cultivating, processing, manufacturing, sale, distribution or transportation of hemp and products derived from such hemp, and subject to authorization of the growth and cultivation of hemp under federal law, the commissioner may: (a) authorize the growing, cultivating, processing and manufacturing of hemp as part of agricultural pilot programs conducted by the department or an institution of higher education to study the growth and cultivation, sale, distribution, transportation, processing and manufacturing of such hemp and products derived from such hemp provided that the sites and programs used for growing or cultivating hemp are authorized by, and registered with, the department; and (b) license the growth and cultivation of hemp, including the processing of hemp in connection with its growing and cultivation, and the sale of hemp plants or hemp seed.

§ 507. Prohibitions. 1. Except as authorized by federal and state law, and rules and regulations promulgated thereunder, the growth, cultivation, sale, distribution or export of hemp is prohibited.

2. Hemp produced outside the state and sold or distributed in the state shall meet all standards established for hemp under state law, rules and regulations.

§ 508. Regulations. The commissioner is hereby authorized to adopt, amend, promulgate and issue rules and regulations consistent with the provisions of this article, including, but not limited to:

1. The authorization or licensing of any person who may acquire or possess hemp plants or viable seeds, grow or cultivate hemp plants, or sell, purchase, distribute, or transport such plants, plant parts, or seeds;

2. Reasonable license fees and duration of licensure, which shall be at least three years;

3. Maintaining relevant information regarding land on which hemp is produced within the state, including the legal description of the land and its latitude and longitude, for a period of not less than three calendar years;

4. The procedure for testing of hemp produced in the state for delta-9 tetrahydrocannabinol levels, using post decarboxylation, other similarly reliable methods, or any other method authorized by the United States department of agriculture;

5. Procedures for effective disposal of hemp plants or products derived from hemp that are produced in violation of this article or its rules and regulations;

6. Procedures for conducting sampling of hemp to verify that hemp is not produced in violation of this article or its rules and regulations;

7. Such other matters that are necessary or appropriate for the state to obtain approval from the United States department of agriculture to assume primary regulatory authority over the production of hemp, pursuant to federal law;

8. Such other matters that are necessary or appropriate for the administration of agricultural pilot programs of the department or institutions of higher education or the regulation of program participants or their activities;

9. Record keeping and any reporting requirements;

10. Reasonably necessary security measures;

11. Standards, practices or requirements for the growth, cultivation and the processing of hemp in connection with its cultivation, as necessary, depending upon the hemp's intended use; or

12. Such other rules and regulations as the commissioner deems appropriate or necessary.

§ 509. Hemp grower's authorization, license; fees; requirements. 1. No person shall: (a) grow, cultivate, process, produce, sell or distribute hemp in the state unless authorized by the commissioner as part of an agricultural research pilot program established under this article; or (b) grow, cultivate and process hemp in connection with its growing and cultivation or sell hemp plants or hemp seed unless licensed by the commissioner. Mere transportation, such as by common carrier or another entity or individual, does not constitute activity subject to licensing under this article.

2. A hemp grower license does not authorize the processing or retail sale of hemp for human consumption, as defined in section thirty-three hundred ninety-eight of the public health law, unless the licensee also obtains a cannabinoid hemp processor license, cannabinoid hemp retailer license, or any other license required pursuant of article thirty-three-B of the public health law.

3. Applications for licenses, authorizations or a modification thereof, as set out in regulation, shall be upon a form specified by the commissioner, accompanied by a reasonable application fee for new applications or significant modifications to an application, which shall be established by regulation and which may be made non-refundable by regulation.

4. The commissioner may also assess a reasonable authorization or licensing fee established by regulation, scaled to cover the estimated, or if known, actual costs of inspections, regulatory testing and other administrative expenses of the authorized or licensed activity, which fee shall be paid prior to the issuance of the authorization or license.

5. The applicant, if an individual, shall be asked to furnish together with the application evidence of his or her good moral character and, if an entity, the applicant shall be asked to furnish together with the application evidence of the good moral character of the individuals who have or will have substantial responsibility for the licensed or authorized activity and those in control of the entity, including principals, officers, or others exercising such control. The names of such individuals shall be set forth in the application.

6. The applicant shall furnish evidence of his, her or its experience and competency, and that the applicant has adequate facilities, equipment, process controls, testing capability and security, to grow, cultivate and process hemp in connection with its growing and cultivation or to sell hemp plants or hemp seed.

7. The department shall provide an application for renewal of any license issued under this article not less than ninety days prior to the expiration of the current license. A renewal application shall be submitted to the commissioner at least thirty days prior to the expiration of the authorization or license, on a form or forms provided by the commissioner for such purpose.

§ 510. Granting, suspending or revoking licenses. After due notice and opportunity to be heard, as established by rules and regulations, the commissioner may decline to grant a new license, impose conditions or limits with respect to the grant of a license, modify an existing license or decline to renew a license, or suspend or revoke a license already granted, whenever the commissioner finds that:

1. A material statement contained in an application is or was false or misleading;

2. The applicant or licensee, or a person in a position of management and control thereof or of the licensed activity, does not have good moral character, necessary experience or competency, adequate facilities, equipment, process controls, testing capability or security, to grow, cultivate and process hemp in connection with its growing and cultivation or to sell hemp plants or hemp seed;

3. After appropriate notice and opportunity, the applicant or licensee has failed to produce any records or provide any information required by this article, the rules and regulations promulgated pursuant thereto or demanded by the commissioner, reasonably related to the administration and enforcement of this article;

4. The applicant or licensee, or any officer, director, partner, or other person exercising any position of management or control thereof has willfully failed to comply with any of the provisions of this article or rules and regulations promulgated pursuant thereto or other law of this state applicable to the licensed activity; or

5. The licensee has failed to comply with its compliance action plan established under section five hundred sixteen of this article.

§ 511. Proceedings to review. The action of the commissioner in refusing to grant or renew a license, or in revoking or suspending a license, or in conditioning or limiting the granting or renewal of a license, may be reviewed in the manner provided by article seventy-eight of the civil practice law and rules, and the decision of the commissioner shall be final unless within four months from the date of service thereof upon

the party affected thereby a court proceeding is instituted to review such action. The pleadings upon which such review proceeding is instituted shall be served in the manner specified in the civil practice law and rules, unless a different manner of service is provided in an order to show cause granted by the supreme court.

§ 512. Transferability; change in ownership or control. 1. Licenses issued under this article are not transferable, absent written consent of the commissioner.

2. A license shall become void by a change in ownership, substantial corporate change or change of location or acreage grown without prior written approval of the commissioner. The commissioner may promulgate rules and regulations allowing for certain types of changes in ownership without the need for prior written approval.

§ 513. Access to criminal history information through the division of criminal justice services. In connection with the administration of this article, the commissioner is authorized to request, receive and review criminal history information through the division of criminal justice services, referred to as "the division" for the purposes of this section, with respect to any person seeking authorization under this article to undertake a hemp pilot project or a hemp license; and/or each individual who has substantial management responsibility for the authorized or licensed activity or those in control of the entity, including principals, officers, or other such persons. Those persons for whom criminal history information is sought shall promptly submit to the division his or her fingerprints in such form and in such manner as specified by the division, for the purpose of conducting a search identifying criminal convictions and pending criminal charges and returning a report thereon in accordance with the procedures and requirements established by the division pursuant to the provisions of article thirty-five of the executive law, which shall include the payment of the specified processing fees for the cost of the division's full search and retain procedures and a national criminal history record check for such information. The commissioner, or his or her designee, shall submit such fingerprints and the processing fee to the division. The division shall forward to the commissioner a report with respect to the person's previous criminal convictions and pending criminal charges, if any, or a statement that the person has no such previous criminal history according to its files. Fingerprints submitted to the division pursuant to this section may also be submitted to the federal bureau of investigation for a national criminal history record check as described in this section. If additional copies of fingerprints are required, the person to be fingerprinted shall furnish them upon request.

§ 514. Records. Every licensee shall keep, in such form as the commissioner may direct, such records as may be required pursuant to rules and regulations promulgated pursuant to this article.

§ 515. Aids to enforcement. 1. All licensees shall be subject to reasonable inspection by the department 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.

2. The commissioner may promulgate rules and regulations to aid in the enforcement of this article, provided such enforcement tools, remedies and/or procedures are available to the commissioner for enforcement with

respect to similar licensed practices or prohibited conduct under this chapter, and/or the civil practice law and rules.

§ 516. Compliance action plan. If the commissioner determines, after notice and an opportunity to be heard, that a licensee has negligently violated a provision of this article or its rules or regulations, 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 for a period of no less than the next two calendar years following the commencement date of the compliance action plan. Notwithstanding the above, this provision shall not be applicable to a research partner conducting hemp research pursuant to a research partner agreement, the terms of which shall control.

§ 517. Penalties. Notwithstanding the provisions of any law to the contrary, except section five hundred sixteen of this article, the failure to comply with a requirement of this article, a rule or regulation promulgated thereunder, or the research agreements entered into by those conducting department authorized research may be punishable by a civil penalty of not more than one thousand dollars for a first violation; not more than five thousand dollars for a second violation within three years; and not more than ten thousand dollars for a third violation and each subsequent violation thereafter, within three years.

§ 518. Remedies. The commissioner may institute such action at law or in equity as may be necessary to enforce compliance with any provision of this article or of any rule or regulation applicable thereto or promulgated thereunder in a manner consistent with this chapter and/or the civil practice law and rules.

§ 519. Hemp economic development. To the extent the commissioner believes it to be necessary, the commissioner shall consult and cooperate with the New York state urban development corporation with respect to the funding and support of research concerning hemp and businesses involved in growing, cultivating, and processing hemp for food, fiber, cannabinoid content, construction materials and other uses.

§ 520. Hemp data collection and best farming practices. 1. 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 hemp and products derived from hemp and work with the New York state college of agriculture and life sciences at Cornell pursuant to section fifty-seven hundred twelve of the education law and Cornell cooperative extension pursuant to section two hundred twenty-four of the county law to promote best farming practices for hemp which are compatible with state water quality and other environmental objectives.

2. The department, in conjunction with the department of environmental conservation, shall promulgate all necessary rules and regulations, as well as a process for approval, governing the safe production of hemp, including, but not limited to, environmental and energy standards and restrictions on the use of pesticides.

§ 521. 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.

§ 2. The public health law is amended by adding a new article 33-B to read as follows:

ARTICLE 33-B

REGULATION OF CANNABINOID HEMP AND HEMP EXTRACT

Section 3398. Definitions.
3398-a. Rulemaking authority.
3398-b. Cannabinoid hemp processor license.
3398-c. Cannabinoid hemp retailer license.
3398-d. Cannabinoid license applications.
3398-e. Information to be requested in applications for licenses.
3398-f. Fees.
3398-g. Selection criteria.
3398-h. License renewal.
3398-i. Form of license.
3398-j. Transferability; amendment to license; change in ownership or control.
3398-k. Granting, suspending or revoking licenses.
3398-l. Record keeping and tracking.
3398-m. Packaging and labeling of cannabinoid hemp and hemp extract.
3398-n. Processing of cannabinoid hemp and hemp extract.
3398-o. Laboratory testing.
3398-p. New York hemp product.
3398-q. Penalties.
3398-r. Hemp workgroup.
3398-s. Prohibitions.
3398-t. Special use permits.
3398-u. Severability.

§ 3398. Definitions. As used in this article, the following terms shall have the following meanings, unless the context clearly requires otherwise:

1. "Cannabinoid" means the phytocannabinoids found in hemp and does not include synthetic cannabinoids as that term is defined in subdivision (g) of schedule I of section thirty-three hundred six of this chapter.

2. "Cannabinoid hemp" means any hemp and any product processed or derived from hemp, that is used for human consumption provided that when such product is packaged or offered for retail sale to a consumer, it shall not have a concentration of more than three tenths of a percent delta-9 tetrahydrocannabinol.

3. "Used for human consumption" means intended by the manufacturer or distributor to be: (a) used for human consumption for its cannabinoid content; or (b) used in, on or by the human body for its cannabinoid content.

4. "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 (THC) of not more than three-tenths of a percent on a dry weight basis. It shall not include "medical marihuana" as defined in subdivision eight of section thirty-three hundred sixty of this chapter.

5. "Hemp extract" means all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers derived from hemp, used or intended for human consumption, for its cannabinoid content, with a delta-9 tetrahydrocannabinol concentration of not more than an amount determined by the department in regulation. For the purpose of this article, hemp extract excludes (a) any food, food ingredient or food

additive that is generally recognized as safe pursuant to federal law; or (b) any hemp extract that is not used for human consumption. Such excluded substances shall not be regulated pursuant to the provisions of this article but are subject to other provisions of applicable state law, rules and regulations.

6. "License" means a license issued pursuant to this article.

7. "Cannabinoid hemp processor license" means a license granted by the department to process, extract, pack or manufacture cannabinoid hemp or hemp extract into products, whether in intermediate or final form, used for human consumption.

8. "Processing" means extracting, preparing, treating, modifying, compounding, manufacturing or otherwise manipulating cannabinoid hemp to concentrate or extract its cannabinoids, or creating product, whether in intermediate or final form, used for human consumption. For purposes of this article, processing does not include: (a) growing, cultivation, cloning, harvesting, drying, curing, grinding or trimming when authorized pursuant to article twenty-nine of the agriculture and markets law; or

(b) mere transportation, such as by common carrier or another entity or individual.

§ 3398-a. Rulemaking authority. The commissioner may make regulations pursuant to this article for the processing, distribution, marketing, transportation and sale of cannabinoid hemp and hemp extracts used for human consumption, which may include, but not be limited to:

1. Specifying forms, establishing application, reasonable administration and renewal fees, or license duration;

2. Establishing the qualifications and criteria for licensing, as authorized by law;

3. The books and records to be created and maintained by licensees and lawful procedures for their inspection;

4. Any reporting requirements;

5. Methods and standards of processing, labeling, packaging and marketing of cannabinoid hemp, hemp extract and products derived therefrom;

6. Procedures for how cannabinoid hemp, hemp extract or ingredients, additives, or products derived therefrom can be deemed as acceptable for sale in the state;

7. Provisions governing the modes and forms of administration, including inhalation;

8. Procedures for determining whether cannabinoid hemp, hemp extract or ingredients, additives, or products derived therefrom produced outside the state or within the state meet the standards and requirements of this article and can therefore be sold within the state;

9. Procedures for the granting, cancellation, revocation or suspension of licenses, consistent with the state administrative procedures act;

10. Restrictions governing the advertising and marketing of cannabinoid hemp, hemp extract and products derived therefrom; and

11. Any other regulations necessary to implement this article.

§ 3398-b. Cannabinoid hemp processor license. 1. Persons processing cannabinoid hemp or hemp extract used for human consumption, whether in intermediate or final form, shall be required to obtain a cannabinoid hemp processor license from the department.

2. A cannabinoid hemp processor license authorizes one or more specific activities related to the processing of cannabinoid hemp into products used for human consumption, whether in intermediate or final form, and the distribution or sale thereof by the licensee. Nothing

herein shall prevent a cannabinoid hemp processor from processing, extracting and processing hemp products not to be used for human consumption.

3. Persons authorized to grow hemp pursuant to article twenty-nine of the agriculture and markets law are not authorized to engage in processing of cannabinoid hemp or hemp extract without first being licensed as a cannabinoid hemp processor under this article.

4. This article shall not apply to hemp, cannabinoid hemp, hemp extracts or products derived therefrom that are not used for human consumption. This article also shall not apply to hemp, cannabinoid hemp, hemp extracts or products derived therefrom that have been deemed generally recognized as safe pursuant to federal law.

5. The commissioner shall have the authority to set reasonable fees for such license, to limit the activities permitted by such license, to establish the period during which such license is authorized, which shall be two years or more, and to make rules and regulations necessary to implement this section.

6. Any person holding an active research partnership agreement with the department of agriculture and markets, authorizing that person to process cannabinoid hemp, shall be awarded licensure under this section, provided that the research partner is actively performing research pursuant to such agreement and is able to demonstrate compliance with this article, as determined by the department, after notice and an opportunity to be heard.

§ 3398-c. Cannabinoid hemp retailer license. 1. Retailers selling cannabinoid hemp, in final form to consumers within the state, shall be required to obtain a cannabinoid hemp retailer license from the department.

2. The commissioner shall have the authority to set reasonable fees for such license, to establish the period during which such license is authorized, which shall be one year or more, and to make rules and regulations necessary to implement this section.

§ 3398-d. Cannabinoid license applications. 1. Persons shall apply for a license under this article by submitting an application upon a form supplied by the department, providing all the relevant requested information, verified by the applicant or an authorized representative of the applicant.

2. A separate license shall be required for each facility at which processing or retail sales are conducted; however, an applicant may submit one application for separate licensure at multiple locations.

3. Each applicant shall remit with its application the fee for each requested license, which shall be a reasonable fee.

§ 3398-e. Information to be requested in applications for licenses. 1. The commissioner may specify the manner and form in which an application shall be submitted to the department for licensure under this article.

2. The commissioner may adopt regulations establishing what relevant information shall be included on an application for licensure under this article. Such information may include, but is not limited to: information about the applicant's identity; ownership and investment information, including the corporate structure; evidence of good moral character; financial statements; information about the premises to be licensed; information about the activities to be licensed; and any other relevant information specified in regulation.

3. All license applications shall be signed by the applicant if an individual, by a managing partner if a limited liability company, by an officer if a corporation, or by all partners if a partnership. Each

person signing such application shall verify it as true under the penalties of perjury.

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

5. If there be any change, after the filing of the application or the granting, modification or renewal of a license, in any of the material facts required to be set forth in such application, a supplemental statement giving notice of such change, duly verified, shall be filed with the department within ten days after such change. Failure to do so, if willful and deliberate, may be grounds for revocation of the license.

§ 3398-f. Fees. The department may charge licensees a reasonable license fee. Such fee may be based on the activities permitted by the license, the amount of cannabinoid hemp or hemp extract to be processed or extracted by the licensee, the gross annual receipts of the licensee for the previous license period, or any other factors reasonably deemed appropriate by the department.

§ 3398-g. Selection criteria. 1. The applicant, if an individual or individuals, shall furnish evidence of the individual's good moral character, and if an entity, the applicant shall furnish evidence of the good moral character of the individuals who have or will have substantial responsibility for the licensed or authorized activity and those in control of the entity, including principals, officers, or others with such control.

2. The applicant shall furnish evidence of the applicant's experience and competency, and that the applicant has or will have adequate facilities, equipment, process controls, and security to undertake those activities for which licensure is sought.

3. The applicant shall furnish evidence of his, her or its ability to comply with all applicable state and local laws, rules and regulations.

4. If the commissioner is not satisfied that the applicant should be issued a license, the commissioner shall notify the applicant in writing of the specific reason or reasons for denial.

5. No license pursuant to this article may be issued to an individual under the age of eighteen years.

§ 3398-h. License renewal. 1. Each license, issued pursuant to this article, may be renewed upon application therefor by the licensee and the payment of the reasonable fee for such license as specified by this article.

2. In the case of applications for renewals, the department 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.

3. The department shall provide an application for renewal of any license issued under this article not less than ninety days prior to the expiration of the current license.

4. The department may only issue a renewal license upon receipt of the specified renewal application and renewal fee from a licensee if, in addition to the selection criteria set out in this article, the licensee's license is not under suspension and has not been revoked.

§ 3398-i. Form of license. Licenses issued pursuant to this article shall specify:

1. The name and address of the licensee;

2. The activities permitted by the license;

3. The land, buildings and facilities that may be used for the licensed activities of the licensee;

4. A unique license number issued by the department to the licensee; and

5. Such other information as the commissioner shall deem necessary to assure compliance with this chapter.

§ 3398-j. Transferability; amendment to license; change in ownership or control. 1. Licenses issued under this article are not transferable, absent written consent of the commissioner.

2. Upon application of a licensee, a license may be amended to add or delete permitted activities.

3. A license shall become void by a change in ownership, substantial corporate change or change of location without prior written approval of the commissioner. The commissioner may make regulations allowing for certain types of changes in ownership without the need for prior written approval.

§ 3398-k. Granting, suspending or revoking licenses. After due notice and an opportunity to be heard, established by rules and regulations, the commissioner may decline to grant a new license, impose conditions or limits with respect to the grant of a license, modify an existing license or decline to renew a license, and may suspend or revoke a license already granted after due notice and an opportunity to be heard, as established by rules and regulations, whenever the commissioner finds that:

1. A material statement contained in an application is or was false or misleading;

2. The applicant or licensee, or a person in a position of management and control thereof or of the licensed activity, does not have good moral character, necessary experience or competency, adequate facilities, equipment, process controls, or security to process, distribute, transport or sell cannabinoid hemp, hemp extract or products derived therefrom;

3. After appropriate notice and opportunity, the applicant or licensee has failed or refused to produce any records or provide any information required by this article or the regulations promulgated pursuant thereto;

4. The licensee has conducted activities outside of those activities permitted on its license; or

5. The applicant or licensee, or any officer, director, partner, or any other person exercising any position of management or control thereof or of the licensed activity has willfully failed to comply with any of the provisions of this article or regulations under it and other laws of this state applicable to the licensed activity.

§ 3398-l. Record keeping and tracking. Every licensee shall keep, in such form as the commissioner may direct, such relevant records as may be required pursuant to regulations under this article.

§ 3398-m. Packaging and labeling of cannabinoid hemp and hemp extract. 1. Cannabinoid hemp processors shall be required to provide appropriate label warning to consumers, and restricted from making unapproved label claims, as determined by the department, concerning the potential impact on or benefit to human health resulting from the use of cannabinoid hemp, hemp extract and products derived therefrom for human consumption, which labels shall be affixed to those products when sold, pursuant to rules and regulations that the department may adopt.

2. The department may, by rules and regulations, require processors to establish a code, including, but not limited to QR code, for labels and establish methods and procedures for determining, among other things, serving sizes or dosages for cannabinoid hemp, hemp extract and products

derived therefrom, 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 rules and regulations may require an appropriate fact panel that incorporates data regarding serving sizes and potency thereof.

3. The packaging, sale, or possession of products derived from cannabinoid hemp or hemp extract used for human consumption not labeled or offered in conformity with regulations under this section shall be grounds for the seizure or quarantine of the product, the imposition of a civil penalty against a processor or retailer, and the suspension, revocation or cancellation of a license, in accordance with this article.

§ 3398-n. Processing of cannabinoid hemp and hemp extract. 1. No processor shall sell or agree to sell or deliver in the state any cannabinoid hemp, hemp extract or product derived therefrom, used for human consumption, except in sealed containers containing quantities in accordance with size standards pursuant to rules adopted by the commissioner. Such containers shall have affixed thereto such labels as may be required by the rules of the department.

2. Processors shall take such steps necessary to ensure that the cannabinoid hemp or hemp extract used in their processing operation has only been grown with pesticides that are registered by the department of environmental conservation or that specifically meet the United States environmental protection agency registration exemption criteria for minimum risk, used in compliance with rules, regulations, standards and guidelines issued by the department of environmental conservation for pesticides.

3. All cannabinoid hemp, hemp extract and products derived therefrom used for human consumption shall be extracted and processed in accordance with good manufacturing processes pursuant to Part 117 or Part 111 of title 21 of the code of federal regulations, as may be defined, modified and decided upon by the commissioner in rules or regulations.

4. As necessary to protect human health, the department shall have the authority to: (a) regulate and prohibit specific ingredients, excipients or methods used in processing cannabinoid hemp, hemp extract and products derived therefrom; and (b) prohibit, or expressly allow, certain products or product classes derived from cannabinoid hemp or hemp extract, to be processed.

§ 3398-o. Laboratory testing. Every cannabinoid hemp processor shall contract with an independent commercial laboratory to test the hemp extract and products produced by the licensed processor. The commissioner shall establish the necessary qualifications or certifications required for such laboratories used by licensees. The commissioner is authorized to issue rules and regulations consistent with this article establishing the testing required, the reporting of testing results and the form for reporting such laboratory testing results. The department has authority to require licensees to submit any cannabinoid hemp, hemp extract or product derived therefrom, processed or offered for sale within the state, for testing by the department. This section shall not obligate the department, in any way, to perform any testing on hemp, cannabinoid hemp, hemp extract or product derived therefrom.

§ 3398-p. New York hemp product. The commissioner may establish and adopt official grades and standards for cannabinoid hemp, hemp extract and products derived therefrom, as he or she may deem advisable, which are produced for sale in this state and, from time to time, may amend or modify such grades and standards.

§ 3398-q. Penalties. Notwithstanding the provision of any law to the contrary, the failure to comply with a requirement of this article, or a regulation thereunder, may be punishable by a civil penalty of not more than one thousand dollars for a first violation; not more than five thousand dollars for a second violation within three years; and not more than ten thousand dollars for a third violation and each subsequent violation thereafter, within three years.

§ 3398-r. Hemp workgroup. The commissioner, in consultation with the commissioner of the department of agriculture and markets, may appoint a New York state hemp and hemp extract workgroup, composed of growers, researchers, producers, processors, manufacturers and trade associations, to make recommendations for the industrial hemp and cannabinoid hemp programs, state and federal policies and policy initiatives, and opportunities for the promotion and marketing of cannabinoid hemp and hemp extract as consistent with federal and state laws, rules and regulations.

§ 3398-s. Prohibitions. 1. Except as authorized by the United States food and drug administration, the processing of cannabinoid hemp or hemp extract used for human consumption is prohibited within the state unless the processor is licensed under this article.

2. Cannabinoid hemp and hemp extracts used for human consumption and grown or processed outside the state shall not be distributed or sold at retail within the state, unless they meet all standards established for cannabinoid hemp under state law and regulations.

3. The retail sale of cannabinoid hemp is prohibited in this state unless the retailer is licensed under this article.

§ 3398-t. Special use permits. The commissioner shall have the authority to issue temporary permits for carrying on any activity related to cannabinoid hemp, hemp extract and products derived therefrom, licensed under this article. The commissioner may set reasonable fees for such permits, to establish the periods during which such permits are valid, and to make rules and regulations to implement this section.

§ 3398-u. 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 this 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.

§ 3. 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 term "marihuana" shall not include:

(a) 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[~~.~~];

(b) hemp, as defined in subdivision one of section five hundred five of the agriculture and markets law;

(c) cannabinoid hemp as defined in subdivision two of section thirty-three hundred ninety-eight of this chapter; or

(d) hemp extract as defined in subdivision five of section thirty-three hundred ninety-eight of this chapter.

§ 4. This act shall take effect on the same date and in the same manner as a chapter of the laws of 2019 amending the agriculture and markets law relating to the growth of industrial hemp and the regulation of hemp extract, as proposed in legislative bills numbers S.6184-A and A.7680-A, takes effect; provided, however, that section two of this act shall take effect May 1, 2020; and provided further, however, that sections 3398-b, 3398-c and 3398-s of article 33-B of the public health law as added by section two of this act shall take effect January 1, 2021.