

STATE OF NEW YORK

8977

IN ASSEMBLY

January 7, 2020

Introduced by M. of A. LUPARDO -- read once and referred to the Committee on Agriculture

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industrial hemp and the regulation of hemp extract, as proposed in legislative bills numbers S.6184-A and A.7680-A, are REPEALED and a new article 29 is added to read as follows: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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1 521. Severability.

2 § 505. Definitions. As used in this article:

3 1. "Hemp" means the plant *Cannabis sativa* L. and any part of such
4 plant, including the seeds thereof and all derivatives, extracts, canna-
5 binoids, isomers, acids, salts, and salts of isomers, whether growing or
6 not, with a delta-9 tetrahydrocannabinol concentration of not more than
7 three-tenths of a percent on a dry weight basis.

8 2. "Institution of higher education" means:

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

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

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

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

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

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

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

34 2. Notwithstanding any provision of law to the contrary restricting
35 the growing or cultivating, processing, manufacturing, sale, distrib-
36 ution or transportation of hemp and products derived from such hemp, and
37 subject to authorization of the growth and cultivation of hemp under
38 federal law, the commissioner may: (a) authorize the growing, cultivat-
39 ing, processing and manufacturing of hemp as part of agricultural pilot
40 programs conducted by the department or an institution of higher educa-
41 tion to study the growth and cultivation, sale, distribution, transpor-
42 tation, processing and manufacturing of such hemp and products derived
43 from such hemp provided that the sites and programs used for growing or
44 cultivating hemp are authorized by, and registered with, the department;
45 and (b) license the growth and cultivation of hemp, including the proc-
46 essing of hemp in connection with its growing and cultivation, and the
47 sale of hemp plants or hemp seed.

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

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

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

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

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

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

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

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

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

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

24 8. Such other matters that are necessary or appropriate for the admin-
25 istration of agricultural pilot programs of the department or insti-
26 tutions of higher education or the regulation of program participants or
27 their activities;

28 9. Record keeping and any reporting requirements;

29 10. Reasonably necessary security measures;

30 11. Standards, practices or requirements for the growth, cultivation
31 and the processing of hemp in connection with its cultivation, as neces-
32 sary, depending upon the hemp's intended use; or

33 12. Such other rules and regulations as the commissioner deems appro-
34 priate or necessary.

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

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

50 3. Applications for licenses, authorizations or a modification there-
51 of, as set out in regulation, shall be upon a form specified by the
52 commissioner, accompanied by a reasonable application fee for new appli-
53 cations or significant modifications to an application, which shall be
54 established by regulation and which may be made non-refundable by regu-
55 lation.

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

6 5. The applicant, if an individual, shall be asked to furnish together
7 with the application evidence of his or her good moral character and, if
8 an entity, the applicant shall be asked to furnish together with the
9 application evidence of the good moral character of the individuals who
10 have or will have substantial responsibility for the licensed or author-
11 ized activity and those in control of the entity, including principals,
12 officers, or others exercising such control. The names of such individ-
13 uals shall be set forth in the application.

14 6. The applicant shall furnish evidence of his, her or its experience
15 and competency, and that the applicant has adequate facilities, equip-
16 ment, process controls, testing capability and security, to grow, culti-
17 vate and process hemp in connection with its growing and cultivation or
18 to sell hemp plants or hemp seed.

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

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

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

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

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

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

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

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

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

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

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

14 § 513. Access to criminal history information through the division of
15 criminal justice services. In connection with the administration of
16 this article, the commissioner is authorized to request, receive and
17 review criminal history information through the division of criminal
18 justice services, referred to as "the division" for the purposes of this
19 section, with respect to any person seeking authorization under this
20 article to undertake a hemp pilot project or a hemp license; and/or each
21 individual who has substantial management responsibility for the author-
22 ized or licensed activity or those in control of the entity, including
23 principals, officers, or other such persons. Those persons for whom
24 criminal history information is sought shall promptly submit to the
25 division his or her fingerprints in such form and in such manner as
26 specified by the division, for the purpose of conducting a search iden-
27 tifying criminal convictions and pending criminal charges and returning
28 a report thereon in accordance with the procedures and requirements
29 established by the division pursuant to the provisions of article thir-
30 ty-five of the executive law, which shall include the payment of the
31 specified processing fees for the cost of the division's full search and
32 retain procedures and a national criminal history record check for such
33 information. The commissioner, or his or her designee, shall submit such
34 fingerprints and the processing fee to the division. The division shall
35 forward to the commissioner a report with respect to the person's previ-
36 ous criminal convictions and pending criminal charges, if any, or a
37 statement that the person has no such previous criminal history accord-
38 ing to its files. Fingerprints submitted to the division pursuant to
39 this section may also be submitted to the federal bureau of investi-
40 gation for a national criminal history record check as described in this
41 section. If additional copies of fingerprints are required, the person
42 to be fingerprinted shall furnish them upon request.

43 § 514. Records. Every licensee shall keep, in such form as the commis-
44 sioner may direct, such records as may be required pursuant to rules and
45 regulations promulgated pursuant to this article.

46 § 515. Aids to enforcement. 1. All licensees shall be subject to
47 reasonable inspection by the department and a person who holds a license
48 must make himself or herself, or an agent thereof, available and present
49 for any inspection required by the department. The department shall make
50 reasonable accommodations so that ordinary business is not interrupted,
51 and safety and security procedures are not compromised by the
52 inspection.

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

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

3 § 516. Compliance action plan. If the commissioner determines, after
4 notice and an opportunity to be heard, that a licensee has negligently
5 violated a provision of this article or its rules or regulations, that
6 licensee shall be required to comply with a corrective action plan
7 established by the commissioner to correct the violation by a reasonable
8 date and to periodically report to the commissioner with respect to the
9 licensee's compliance for a period of no less than the next two calendar
10 years following the commencement date of the compliance action plan.
11 Notwithstanding the above, this provision shall not be applicable to a
12 research partner conducting hemp research pursuant to a research partner
13 agreement, the terms of which shall control.

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

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

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

34 § 520. Hemp data collection and best farming practices. 1. The commis-
35 sioner shall have the power to collect and publish data and research
36 concerning, among other things, the growth, cultivation, production and
37 processing methods of hemp and products derived from hemp and work with
38 the New York state college of agriculture and life sciences at Cornell
39 pursuant to section fifty-seven hundred twelve of the education law and
40 Cornell cooperative extension pursuant to section two hundred twenty-
41 four of the county law to promote best farming practices for hemp which
42 are compatible with state water quality and other environmental objec-
43 tives.

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

49 § 521. Severability. If any provision of this article or the applica-
50 tion thereof to any person or circumstances is held invalid, such inva-
51 lidity shall not affect other provisions or applications of the article
52 which can be given effect without the invalid provision or application,
53 and to this end the provisions of this article are declared to be sever-
54 able.

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

ARTICLE 33-BREGULATION OF CANNABINOID HEMP AND HEMP EXTRACTSection 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 marijuana" 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

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

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

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

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

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

21 § 3398-a. Rulemaking authority. The commissioner may make regulations
22 pursuant to this article for the processing, distribution, marketing,
23 transportation and sale of cannabinoid hemp and hemp extracts used for
24 human consumption, which may include, but not be limited to:

25 1. Specifying forms, establishing application, reasonable adminis-
26 tration and renewal fees, or license duration;

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

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

31 4. Any reporting requirements;

32 5. Methods and standards of processing, labeling, packaging and
33 marketing of cannabinoid hemp, hemp extract and products derived there-
34 from;

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

38 7. Provisions governing the modes and forms of administration, includ-
39 ing inhalation;

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

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

46 10. Restrictions governing the advertising and marketing of cannabi-
47 noid hemp, hemp extract and products derived therefrom; and

48 11. Any other regulations necessary to implement this article.

49 § 3398-b. Cannabinoid hemp processor license. 1. Persons processing
50 cannabinoid hemp or hemp extract used for human consumption, whether in
51 intermediate or final form, shall be required to obtain a cannabinoid
52 hemp processor license from the department.

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

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

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

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

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

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

25 § 3398-c. Cannabinoid hemp retailer license. 1. Retailers selling
26 cannabinoid hemp, in final form to consumers within the state, shall be
27 required to obtain a cannabinoid hemp retailer license from the depart-
28 ment.

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

33 § 3398-d. Cannabinoid license applications. 1. Persons shall apply for
34 a license under this article by submitting an application upon a form
35 supplied by the department, providing all the relevant requested infor-
36 mation, verified by the applicant or an authorized representative of the
37 applicant.

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

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

43 § 3398-e. Information to be requested in applications for licenses. 1.
44 The commissioner may specify the manner and form in which an application
45 shall be submitted to the department for licensure under this article.

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

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

1 person signing such application shall verify it as true under the penal-
2 ties of perjury.

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

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

12 § 3398-f. Fees. The department may charge licensees a reasonable
13 license fee. Such fee may be based on the activities permitted by the
14 license, the amount of cannabinoid hemp or hemp extract to be processed
15 or extracted by the licensee, the gross annual receipts of the licensee
16 for the previous license period, or any other factors reasonably deemed
17 appropriate by the department.

18 § 3398-g. Selection criteria. 1. The applicant, if an individual or
19 individuals, shall furnish evidence of the individual's good moral char-
20 acter, and if an entity, the applicant shall furnish evidence of the
21 good moral character of the individuals who have or will have substan-
22 tial responsibility for the licensed or authorized activity and those in
23 control of the entity, including principals, officers, or others with
24 such control.

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

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

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

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

36 § 3398-h. License renewal. 1. Each license, issued pursuant to this
37 article, may be renewed upon application therefor by the licensee and
38 the payment of the reasonable fee for such license as specified by this
39 article.

40 2. In the case of applications for renewals, the department may
41 dispense with the requirements of such statements as it deems unneces-
42 sary in view of those contained in the application made for the original
43 license.

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

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

51 § 3398-i. Form of license. Licenses issued pursuant to this article
52 shall specify:

53 1. The name and address of the licensee;

54 2. The activities permitted by the license;

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

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

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

5 § 3398-j. Transferability; amendment to license; change in ownership
6 or control. 1. Licenses issued under this article are not transferable,
7 absent written consent of the commissioner.

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

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

15 § 3398-k. Granting, suspending or revoking licenses. After due notice
16 and an opportunity to be heard, established by rules and regulations,
17 the commissioner may decline to grant a new license, impose conditions
18 or limits with respect to the grant of a license, modify an existing
19 license or decline to renew a license, and may suspend or revoke a
20 license already granted after due notice and an opportunity to be heard,
21 as established by rules and regulations, whenever the commissioner finds
22 that:

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

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

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

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

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

42 § 3398-l. Record keeping and tracking. Every licensee shall keep, in
43 such form as the commissioner may direct, such relevant records as may
44 be required pursuant to regulations under this article.

45 § 3398-m. Packaging and labeling of cannabinoid hemp and hemp extract.

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

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

1 derived therefrom, active cannabinoid concentration per serving size,
2 number of servings per container, and the growing region, state or coun-
3 try of origin if not from the United States. Such rules and regulations
4 may require an appropriate fact panel that incorporates data regarding
5 serving sizes and potency thereof.

6 3. The packaging, sale, or possession of products derived from canna-
7 binoïd hemp or hemp extract used for human consumption not labeled or
8 offered in conformity with regulations under this section shall be
9 grounds for the seizure or quarantine of the product, the imposition of
10 a civil penalty against a processor or retailer, and the suspension,
11 revocation or cancellation of a license, in accordance with this arti-
12 cle.

13 § 3398-n. Processing of cannabinoid hemp and hemp extract. 1. No
14 processor shall sell or agree to sell or deliver in the state any canna-
15 binoïd hemp, hemp extract or product derived therefrom, used for human
16 consumption, except in sealed containers containing quantities in
17 accordance with size standards pursuant to rules adopted by the commis-
18 sioner. Such containers shall have affixed thereto such labels as may be
19 required by the rules of the department.

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

28 3. All cannabinoid hemp, hemp extract and products derived therefrom
29 used for human consumption shall be extracted and processed in accord-
30 ance with good manufacturing processes pursuant to Part 117 or Part 111
31 of title 21 of the code of federal regulations, as may be defined, modi-
32 fied and decided upon by the commissioner in rules or regulations.

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

39 § 3398-o. Laboratory testing. Every cannabinoid hemp processor shall
40 contract with an independent commercial laboratory to test the hemp
41 extract and products produced by the licensed processor. The commis-
42 sioner shall establish the necessary qualifications or certifications
43 required for such laboratories used by licensees. The commissioner is
44 authorized to issue rules and regulations consistent with this article
45 establishing the testing required, the reporting of testing results and
46 the form for reporting such laboratory testing results. The department
47 has authority to require licensees to submit any cannabinoid hemp, hemp
48 extract or product derived therefrom, processed or offered for sale
49 within the state, for testing by the department. This section shall not
50 obligate the department, in any way, to perform any testing on hemp,
51 cannabinoid hemp, hemp extract or product derived therefrom.

52 § 3398-p. New York hemp product. The commissioner may establish and
53 adopt official grades and standards for cannabinoid hemp, hemp extract
54 and products derived therefrom, as he or she may deem advisable, which
55 are produced for sale in this state and, from time to time, may amend or
56 modify such grades and standards.

1 § 3398-q. Penalties. Notwithstanding the provision of any law to the
2 contrary, the failure to comply with a requirement of this article, or a
3 regulation thereunder, may be punishable by a civil penalty of not more
4 than one thousand dollars for a first violation; not more than five
5 thousand dollars for a second violation within three years; and not more
6 than ten thousand dollars for a third violation and each subsequent
7 violation thereafter, within three years.

8 § 3398-r. Hemp workgroup. The commissioner, in consultation with the
9 commissioner of the department of agriculture and markets, may appoint a
10 New York state hemp and hemp extract workgroup, composed of growers,
11 researchers, producers, processors, manufacturers and trade associ-
12 ations, to make recommendations for the industrial hemp and cannabinoid
13 hemp programs, state and federal policies and policy initiatives, and
14 opportunities for the promotion and marketing of cannabinoid hemp and
15 hemp extract as consistent with federal and state laws, rules and regu-
16 lations.

17 § 3398-s. Prohibitions. 1. Except as authorized by the United States
18 food and drug administration, the processing of cannabinoid hemp or hemp
19 extract used for human consumption is prohibited within the state unless
20 the processor is licensed under this article.

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

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

27 § 3398-t. Special use permits. The commissioner shall have the author-
28 ity to issue temporary permits for carrying on any activity related to
29 cannabinoid hemp, hemp extract and products derived therefrom, licensed
30 under this article. The commissioner may set reasonable fees for such
31 permits, to establish the periods during which such permits are valid,
32 and to make rules and regulations to implement this section.

33 § 3398-u. Severability. If any provision of this article or the appli-
34 cation thereof to any person or circumstances is held invalid, such
35 invalidity shall not affect other provisions or applications of this
36 article which can be given effect without the invalid provision or
37 application, and to this end the provisions of this article are declared
38 to be severable.

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

42 21. "Marihuana" means all parts of the plant of the genus Cannabis,
43 whether growing or not; the seeds thereof; the resin extracted from any
44 part of the plant; and every compound, manufacture, salt, derivative,
45 mixture, or preparation of the plant, its seeds or resin. [~~It does not~~
46 ~~include~~] The term "marihuana" shall not include:

47 (a) the mature stalks of the plant, fiber produced from the stalks,
48 oil or cake made from the seeds of the plant, any other compound, manu-
49 facture, salt, derivative, mixture, or preparation of the mature stalks
50 (except the resin extracted therefrom), fiber, oil, or cake, or the
51 sterilized seed of the plant which is incapable of germination[-];

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

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

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

3 § 4. This act shall take effect on the same date and in the same
4 manner as a chapter of the laws of 2019 amending the agriculture and
5 markets law relating to the growth of industrial hemp and the regulation
6 of hemp extract, as proposed in legislative bills numbers S.6184-A and
7 A.7680-A, takes effect; provided, however, that section two of this act
8 shall take effect May 1, 2020; and provided further, however, that
9 sections 3398-b, 3398-c and 3398-s of article 33-B of the public health
10 law as added by section two of this act shall take effect January 1,
11 2021.