

# STATE OF NEW YORK

3104

2019-2020 Regular Sessions

## IN SENATE

February 4, 2019

Introduced by Sen. BIAGGI -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection

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

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

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

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

14 § 399-hh. Sale or distribution of synthetic cannabinoid; prohibited.  
15 1. For the purposes of this section, "synthetic cannabinoid" means any  
16 chemical compound that is a cannabinoid receptor agonist and shall  
17 include, but not be limited to, any material, compound, mixture or prep-  
18 aration that is not designated as a controlled substance pursuant to  
19 section thirty-three hundred six of the public health law; provided,  
20 however, that the term "synthetic cannabinoid" shall not include any  
21 product approved by the United States Food and Drug Administration as a  
22 drug or medical device, or approved by the commissioner of health pursu-  
23 ant to title five-A of article thirty-three of the public health law.

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

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

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

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

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

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

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

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

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

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

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

50 § 5. Subdivision a of section 1605 of the tax law, as amended by chap-  
51 ter 217 of the laws of 2011, is amended to read as follows:

52 a. The division may license as agents to sell lottery tickets such  
53 persons as in its opinion will best serve public convenience, except  
54 that no license shall be issued to any person to engage in business  
55 exclusively as a lottery sales agent; and provided, further, that no  
56 license shall be issued to any person who has been determined to have

1 violated subdivision two of section three hundred ninety-nine-hh of the  
2 general business law, three or more times during a period of five years;  
3 in such case the violator shall be denied a license for a period of five  
4 years after the last such violation. The division may license such  
5 persons as in its opinion are suitable to participate in video lottery  
6 gaming pursuant to section sixteen hundred seventeen-a of this article.

7 § 6. Section 1607 of the tax law is amended by adding a new subdivi-  
8 sion i to read as follows:

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

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

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

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

23 4-b. No person shall receive a license to engage in the retail sale of  
24 alcoholic beverages for on-premises consumption, who has been determined  
25 to have violated subdivision two of section three hundred ninety-nine-hh  
26 of the general business law, three or more times during a period of five  
27 years; in such case the violator shall be denied a license for a period  
28 of five years after the last such violation.

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

31 1-a. A license or permit issued pursuant to this chapter shall be  
32 suspended for a period of five years when the holder thereof has been  
33 determined to have violated subdivision two of section three hundred  
34 ninety-nine-hh of the general business law, three or more times during a  
35 period of five years.

36 § 10. Construction with other laws. Nothing in this act shall be  
37 construed to limit or restrict any municipality from enacting or enforc-  
38 ing a local law or ordinance governing a license issued by a munici-  
39 pality where such business was found to have unlawfully manufactured,  
40 distributed or sold a synthetic cannabinoid or synthetic phenthyllamine.

41 § 11. This act shall take effect on the one hundred eightieth day  
42 after it shall have become a law. Effective immediately, the addition,  
43 amendment and/or repeal of any rule or regulation necessary for the  
44 implementation of this act on its effective date are authorized to be  
45 made and completed on or before such effective date.