STATE OF NEW YORK

2106

2023-2024 Regular Sessions

IN ASSEMBLY

January 23, 2023

Introduced by M. of A. PEOPLES-STOKES -- read once and referred to the Committee on Economic Development

AN ACT to amend the cannabis law, in relation to requiring that the sale or delivery of cannabis products by distributors to retailers be in exchange for cash to be paid at the time of delivery or on terms requiring payment by such retailer for such cannabis products

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

Section 1. The cannabis law is amended by adding a new section 78-a to read as follows:

§ 78-a. Terms of sale. 1. As used in this section:

a. "Credit period" means a period beginning on the date cannabis products are delivered and ending thirty days thereafter.

b. "Payment period" means the period beginning on the date cannabis products are delivered and ending on the thirtieth day following the date on which cannabis products are delivered.

c. "Final payment date" means the last day of a payment period.

d. "Notification date" means, notwithstanding section twenty-five of the general construction law, for deliveries on:

(i) Monday, the Monday immediately following a final payment date;

(ii) Tuesday, the Tuesday immediately following the final payment date;

(iii) Wednesday, the Wednesday immediately following the final payment date;

(iv) Thursday, the Thursday immediately following the final payment date;

(v) Friday, the Friday immediately following the final payment date.

e. "Retailer" means a person licensed to sell cannabis products at retail for on-premise consumption or for off-premise consumption (including a person holding a permit granted by the board pursuant to this article).

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

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f. "Cannabis product" shall have the same meaning as the term is defined in subdivision nine of section three of this chapter.

g. "Cash" means and includes currency and coin of the United States of America, certified check, money order, electronic funds transfer, bank officer's check or draft, or a check drawn on the account of the retailer payable to the distributor and dated no later than the date of delivery of the cannabis products and which is honored upon presentment for payment, provided, however, that if any check or other instrument described herein tendered by a retailer on the delinquent list is not honored upon presentment for payment, the license of such retailer may be suspended for not more than fifteen days for the first offense, and not more than sixty days for a subsequent offense, which penalty shall be in addition to the penalty provided for by the provisions of subdivision six of this section, and provided further, that nothing herein contained shall require a distributor to accept a check tendered by or drawn on the account of a retailer on the delinquent list unless the same has been certified.

h. "Distributor" shall have the same meaning as the term is defined in subdivision twenty-four of section three of this chapter.

2. No distributor licensed under this chapter shall sell or deliver any cannabis product to any retailer except:

(a) for cash to be paid at the time of delivery; or

(b) on terms requiring payment by such retailer for such cannabis products on or before the final payment date of the credit period for which delivery is made.

3. Each such distributor is hereby required, on or before the respective notification dates for each retailer license, to give written notice of default, by first class mail, to all such licensees therein who have failed to make payment to him or her on or before their final payment date for cannabis products sold or delivered to them during a credit period ending on their final payment date. No retailer shall be placed in default if the distributor has issued an account credit to the retailer, which after application to all debts owed by the retailer, is equal to or greater than the amount of the default. Any such retailer receiving such notice shall not thereafter purchase cannabis products except for cash until such time as the board determines that his or her name shall not be published on the delinquent list as provided in subdivision four of this section, or until such time as the board permits sales or deliveries to him or her as provided in subdivision five of this section. Each such distributor is hereby required to file with the board, on or before each notification date, copies of the notices sent by him or her to all delinquent retailer licensees as required in this subdivision, and in addition, if the board shall so require, a written list setting forth the names and addresses of all such delinquent retailers. The board, in its discretion, may extend for a period not exceeding three days the date for giving written notice of default to delinquent retailers and extend for three days the date for filing with the board the copies of notices sent to such retailers and/or the written list of delinquent retailers as required in this subdivision. The board, in its discretion, may limit the documents to be filed to those relating to retailers who are to be added or deleted from the default list and direct that the distributor shall maintain copies of all other documents required under this section for future inspection by the board. The board shall, as soon as practicable after each notification date, compile and publish and furnish each distributor a list, to be designated the delinquent list, containing the names and addresses of

all retailers who have been reported by distributors pursuant to the provisions of this section as having failed to make payment as required by this section for cannabis products sold or delivered to them, and no such distributor, on or after the fifth day after the receipt of such delinquent list, shall knowingly, willfully or intentionally sell or deliver any cannabis products to any such retailer whose name appears on such list, except for cash, until such time as the name of such retailer is removed therefrom, except as hereinafter permitted. The receipt of a delinquent list by a distributor shall constitute knowledge of the names of the retailers who have failed to make payment for cannabis products as required by this section. The failure of any distributor to comply with the foregoing provisions of this section may, at the discretion of the board, subject the license of such distributor to suspension for not more than five days for the first offense, and not more than thirty days for a subsequent offense. The board may publish the delinquent list on its website; provided, however, that full access shall be restricted to those distributors and access to their specific status shall be provided to retailers. Such publication shall be considered receipt thereof by all distributors.

4. In the event that any dispute shall exist between any distributor and a retailer to whom he or she shall have sold cannabis products, either as to the fact of payment or as to the amount due for such cannabis products or as to the quantity of the cannabis products sold or delivered, which dispute cannot be adjusted between them, the board is hereby authorized to receive statements from each of the parties to such dispute as to the facts and circumstances thereof and to determine whether or not such retailer's name should be published on the appropriate delinquent list.

5. The board in the case of a retailer who has actually made payment for cannabis products, or on good cause shown to it, may permit sales or deliveries to any retailer who has received notice of default or who is named on any delinquent list, on terms other than for cash, but within the limitations of this section, prior to the publication of the next appropriate delinquent list.

6. The license of any retailer who purchases or accepts delivery of cannabis products on any terms, other than as provided in this section, may be suspended for not more than five days for the first offense and not more than thirty days for a subsequent offense. The failure of any such retailer to pay any amount in default before the expiration of the period of suspension shall be deemed and punishable as a subsequent offense until paid. In addition, the board may require any such retailer, after default in making payment in accordance with the provisions of this section to make payment in cash for cannabis products subsequently delivered.

7. All retailers who fail to pay distributors for cannabis products sold or delivered to such retailers by such distributors subsequent to the effective date of this section, shall liquidate and pay such unpaid balances to such distributors in equal monthly installments over a period of three months from the date upon which such unpaid balances become due. The board, shall not, however, because of such an indebtedness or failure to pay such balance refuse to renew the license of any such licensee.

8. Nothing herein contained shall be construed to require any distributor to extend credit to any retailer nor to restrain any distributor from seeking to enforce by legal action or otherwise, payment of any sum

or sums of money due or alleged to be due to any such distributor for cannabis products sold or delivered to any such retailer.

9. The board is hereby authorized to do such acts, prescribe such forms and make such rules, regulations and orders as it may deem necessary or proper fully to effectuate the provisions of this section, including but not limited to the changing of any date on which any act or function pursuant to this section is to be performed by any licensee or by the board.

10. For the purpose of raising the moneys necessary to defray the expenses incurred in the administration of this section, on or before the tenth day after this section becomes a law, there shall be paid to the board by each distributor licensed under this chapter to sell cannabis products to retailers, a sum equivalent to ten per centum of the biennial license fee prescribed by this chapter for each such licensee. A like sum shall be paid by each person hereafter applying for any such license or the renewal of any such license, and such sum shall accompany the application and the license fee prescribed by this chapter for such license or renewal, as the case may be.

§ 2. This act shall take effect January 1, 2024. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.