STATE OF NEW YORK

8428--A

2023-2024 Regular Sessions

IN ASSEMBLY

December 29, 2023

Introduced by M. of A. RAJKUMAR, ARDILA, BENEDETTO, ALVAREZ, ZACCARO, BERGER, PHEFFER AMATO -- read once and referred to the Committee on Economic Development -- recommitted to the Committee on Economic Development in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the cannabis law and the penal law, in relation to forfeiture of property involved in the unlawful sale of cannabis

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

Section 1. This act shall be known and may be cited as the "stop marijuana over-proliferation and keep empty operators of unlicensed transactions (SMOKEOUT) act".

§ 2. Subdivision 8 of section 132 of the cannabis law, as added by section 17 of part UU of chapter 56 of the laws of 2023, is amended to read as follows:

8. Any person who knowingly and unlawfully sells, gives, or causes to be sold or given, **in connection with the operation of a business or at the business location,** any cannabis or cannabis products for which the sale of such products requires a license, permit, or registration under this chapter [~~where such person owns and/or is principally responsible for the operation of a business where such products were sold, given, or caused to be sold or given~~] without having obtained a valid license, permit or registration therefor shall be guilty of a class A misdemeanor. **A municipality shall have the authority to order the immediate closure of any business which is found to have violated the provisions of this section, or of any business where a violation of this section or any other violation exists that poses an immediate threat to public health and safety; and to seize any merchandise related to such violation or violations including cannabis, cannabis related products, tobacco, tobacco related products and any proceeds relating thereto**

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

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pursuant to the provisions of article four hundred fifty-five of the penal law. For the purposes of this subdivision, an "immediate threat to public health and safety" shall include, but is not limited to, the presence of any cannabis or cannabis products in connection with a violation of this section; the presence of any cigarette or tobacco products in connection with a violation of section eighteen hundred fourteen of the tax law; the presence of any schedule I substance as defined by section thirty-three hundred six of the public health law; or a violation of article thirteen-F of the public health law, including the presence of a substance or product whose sale is prohibited under such article. For the purposes of this section, "operation of a business" shall mean engaging in the sale of, or otherwise offering for sale, goods and services to the general public, including through indirect retail sales.

§ 3. The title heading of title W of part 4 of the penal law, as amended by chapter 920 of the laws of 1969, is amended to read as follows:

PROVISIONS RELATING TO FIREARMS, FIREWORKS, PORNOGRAPHY EQUIPMENT, CANNABIS AND VEHICLES USED IN THE TRANSPORTATION OF GAMBLING RECORDS

§ 4. The penal law is amended by adding a new article 455 to read as follows:

ARTICLE 455
SEIZURE AND FORFEITURE OF PROPERTY INVOLVED IN THE UNLAWFUL SALE OF CANNABIS

Section 455.00 Seizure and forfeiture of property involved in the unlawful sale of cannabis.

§ 455.00 Seizure and forfeiture of property involved in the unlawful sale of cannabis.

1. Any property constituting the proceeds or substituted proceeds of an offense involving the unlawful or unlicensed sale of cannabis; and any property constituting an instrumentality of such offense, including real property, is subject to forfeiture pursuant to this article. Any peace officer, acting pursuant to the special duties of the peace officer, or police officer of this state may seize any property involved in the unlawful or unlicensed sale of cannabis.

2. The seized property shall be delivered by the police officer or peace officer having made the seizure to the custody of the district attorney of the county wherein the seizure was made, except that in the cities of New York, Yonkers and Buffalo, the seized property shall be delivered to the custody of the police department of such cities together with a report of all the facts and circumstances of the seizure.

3. It shall be the duty of the district attorney of the county wherein the seizure was made, if elsewhere than in the cities of New York, Yonkers or Buffalo, and where the seizure is made in either such city it shall be the duty of the corporation counsel of the city, to inquire into the facts of the seizure so reported to him or her and if it appears probable that a forfeiture has been incurred, for the determination of which the institution of proceedings in the supreme court is necessary, to cause the proper proceedings to be commenced and prosecuted, at any time after thirty days from the date of seizure, to declare such forfeiture, unless, upon inquiry and examination such district attorney or corporation counsel decides that such proceedings cannot probably be sustained or that the ends of public justice do not require that they should be instituted or prosecuted, in which case, the

district attorney or corporation counsel shall cause such seized property to be returned to the owner thereof.

4. Notice of the institution of the forfeiture proceeding shall be served either (a) personally on the owners of the seized property or (b) by registered mail to the owners' last known address and by publication of the notice once a week for two successive weeks in a newspaper published or circulated in the county wherein the seizure was made.

5. Forfeiture shall not be adjudged where the owners established by preponderance of the evidence that the use of such seized property was not intentional on the part of any owner.

6. The district attorney or the police department having custody of the seized property, after such judicial determination of forfeiture, shall, by a public notice of at least five days, sell such forfeited property at public sale; provided, however, that cannabis and cannabis-infused products shall not be sold. Any cannabis or cannabis-infused products which have been determined to be subject to forfeiture shall be destroyed in accordance with regulations to be established by the division of the state police. The net proceeds of any permitted sale, after deduction of the lawful expenses incurred, shall be paid into the general fund of the county wherein the seizure was made except that the net proceeds of the permitted sale of property seized in the cities of New York, Yonkers and Buffalo shall be paid into the respective general funds of such cities.

7. Whenever any person interested in any property which is seized and declared forfeited under the provisions of this section files with a justice of the supreme court a petition for the recovery of such forfeited property, the justice of the supreme court may restore said forfeited property upon such terms and conditions as he or she deems reasonable and just, if the petitioner establishes the defense set forth in subdivision five of this section and that the petitioner was without personal or actual knowledge of the forfeiture proceeding. If the petition be filed after the sale of the forfeited property, any judgment in favor of the petitioner shall be limited to the net proceeds of such sale, after deduction of the lawful expenses and costs incurred by the district attorney, police department or corporation counsel.

8. No suit or action under this section for wrongful seizure shall be instituted unless such suit or action is commenced within two years after the time when the property was seized.

§ 5. This act shall take effect immediately.