

STATE OF NEW YORK

7998--A

IN SENATE

January 4, 2024

Introduced by Sen. COMRIE -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations -- 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:

1 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 § 2. Subdivision 8 of section 132 of the cannabis law, as added by
3 actions (SMOKEOUT) act".
4 section 17 of part UU of chapter 56 of the laws of 2023, is amended to
5 read as follows:
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7 8. Any person who knowingly and unlawfully sells, gives, or causes to
8 be sold or given, in connection with the operation of a business or at
9 the business location, any cannabis or cannabis products for which the
10 sale of such products requires a license, permit, or registration under
11 this chapter [~~where such person owns and/or is principally responsible~~
12 ~~for the operation of a business where such products were sold, given, or~~
13 ~~caused to be sold or given~~] without having obtained a valid license,
14 permit or registration therefor shall be guilty of a class A misdemeanor.
15 A municipality shall have the authority to order the immediate

16 closure of any business which is found to have violated the provisions
17 of this section, or of any business where a violation of this section or
18 any other violation exists that poses an immediate threat to public
19 health and safety; and to seize any merchandise related to such
20 violation or violations including cannabis, cannabis related products,
21 tobacco, tobacco related products and any proceeds relating thereto
22 pursuant to the provisions of article four hundred fifty-five of the
23 penal law. For the purposes of this subdivision, an "immediate threat
24 to public health and safety" shall include, but is not limited to, the
25 presence of any cannabis or cannabis products in connection with a
26 violation of this section; the presence of any cigarette or tobacco

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

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1 products in connection with a violation of section eighteen hundred
 2 fourteen of the tax law; the presence of any schedule I substance as
 3 defined by section thirty-three hundred six of the public health law; or
 4 a violation of article thirteen-F of the public health law, including
 5 the presence of a substance or product whose sale is prohibited under
 6 such article. For the purposes of this section, "operation of a busi-
 7 ness" shall mean engaging in the sale of, or otherwise offering for
 8 sale, goods and services to the general public, including through indi-
 9 rect retail sales.

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

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

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

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

21 Section 455.00 Seizure and forfeiture of property involved in the unlaw-
 22 ful sale of cannabis.

23 § 455.00 Seizure and forfeiture of property involved in the unlawful
 24 sale of cannabis.

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

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

38 3. It shall be the duty of the district attorney of the county wherein
 39 the seizure was made, if elsewhere than in the cities of New York, Yonk-
 40 ers or Buffalo, and where the seizure is made in either such city it
 41 shall be the duty of the corporation counsel of the city, to inquire
 42 into the facts of the seizure so reported to him or her and if it
 43 appears probable that a forfeiture has been incurred, for the determi-
 44 nation of which the institution of proceedings in the supreme court is
 45 necessary, to cause the proper proceedings to be commenced and prose-
 46 cuted, at any time after thirty days from the date of seizure, to
 47 declare such forfeiture, unless, upon inquiry and examination such
 48 district attorney or corporation counsel decides that such proceedings
 49 cannot probably be sustained or that the ends of public justice do not
 50 require that they should be instituted or prosecuted, in which case, the
 51 district attorney or corporation counsel shall cause such seized proper-
 52 ty to be returned to the owner thereof.

53 4. Notice of the institution of the forfeiture proceeding shall be
 54 served either (a) personally on the owners of the seized property or (b)
 55 by registered mail to the owners' last known address and by publication

1 of the notice once a week for two successive weeks in a newspaper
2 published or circulated in the county wherein the seizure was made.

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

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

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

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

34 § 5. This act shall take effect immediately.