STATE OF NEW YORK

2177

2023-2024 Regular Sessions

IN SENATE

January 19, 2023

Introduced by Sen. O'MARA -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the penal law and the cannabis law, in relation to including certain acts and subsequent penalties in the criminal sale of cannabis

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

Section 1. Section 222.50 of the penal law, as added by chapter 92 of the laws of 2021, is amended to read as follows:

§ 222.50 Criminal sale of cannabis in the third degree.

A person is guilty of criminal sale of cannabis in the third degree when:

1. he or she knowingly and unlawfully sells more than three ounces of cannabis or more than twenty-four grams of concentrated cannabis; or

2. being twenty-one years of age or older, he or she knowingly and unlawfully sells or gives, or causes to be given or sold, cannabis or concentrated cannabis to a person less than twenty-one years of age; except that in any prosecution under this subdivision, it is a defense that the defendant was less than three years older than the person under the age of twenty-one at the time of the offense. This subdivision shall not apply to designated caregivers, practitioners, employees of a registered organization or employees of a designated caregiver facility acting in compliance with article three of the cannabis law[~~.~~]**; or**

3. any person, while employed or operating a commercial establishment, store, club, or facility, who knowingly and unlawfully sells, transfers, gifts or trades cannabis without an appropriate license or authority under the cannabis law. Any person convicted under this subdivision shall act to preclude such person from seeking, qualifying or receiving any permit, license or authority to perform any activities under the cannabis law.

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

LBD05444-01-3

Criminal sale of cannabis in the third degree is a class A misdemeanor.

§ 2. Section 222.55 of the penal law, as added by chapter 92 of the laws of 2021, is amended to read as follows:

§ 222.55 Criminal sale of cannabis in the second degree.

A person is guilty of criminal sale of cannabis in the second degree when:

1. he or she knowingly and unlawfully sells more than sixteen ounces of cannabis or more than five ounces of concentrated cannabis; or

2. being twenty-one years of age or older, he or she knowingly and unlawfully sells or gives, or causes to be given or sold, more than three ounces of cannabis or more than twenty-four grams of concentrated cannabis to a person less than eighteen years of age. This subdivision shall not apply to designated caregivers, practitioners, employees of a registered organization or employees of a designated caregiver facility acting in compliance with article three of the cannabis law[~~.~~]**; or**

3. any person, while employed or operating a commercial establishment, store, club, or facility, who knowingly and unlawfully sells, transfers, gifts or trades cannabis without an appropriate license or authority under the cannabis law. Any person convicted under this subdivision shall act to preclude such person from seeking, qualifying or receiving any permit, license or authority to perform any activities under the cannabis law.

Criminal sale of cannabis in the second degree is a class E felony.

§ 3. Section 222.60 of the penal law, as added by chapter 92 of the laws of 2021, is amended to read as follows:

§ 222.60 Criminal sale of cannabis in the first degree.

A person is guilty of criminal sale of cannabis in the first degree when**:**

1. he or she knowingly and unlawfully sells more than five pounds of cannabis or more than two pounds of concentrated cannabis**; or**

2. any person, while employed or operating a commercial establishment, store, club, or facility, who knowingly and unlawfully sells, transfers, gifts or trades cannabis without an appropriate license or authority under the cannabis law. Any person convicted under this subdivision shall act to preclude such person from seeking, qualifying or receiving any permit, license or authority to perform any activities under the cannabis law.

Criminal sale of cannabis in the first degree is a class D felony.

§ 4. Section 132 of the cannabis law is amended to read as follows:

§ 132. Penalties for violation of this chapter. 1. Any person who cultivates for sale or sells cannabis, cannabis products, or medical cannabis without having an appropriate registration, license or permit therefor, or whose registration, license, or permit has been revoked, surrendered or cancelled, may be subject to prosecution in accordance with article two hundred twenty-two of the penal law.

2. **Any commercial establishment, store, club, or facility, that knowingly and unlawfully sells, transfers, gifts or trades any amount of cannabis without an appropriate license or authority under this chapter shall be subject to a civil penalty of not more than ten thousand dollars for a first violation; not more than twenty-five thousand dollars for a second violation; and not more than fifty thousand dollars for a third violation and each subsequent violation thereafter. The civil penalty shall be payable to the office of cannabis management, who shall be required to remit such payments to the county in which the violating establishment is located.**

3. Any registered organization or licensee, who has received notification of a registration or license suspension pursuant to the provisions of this chapter, who sells cannabis, cannabis products, medical cannabis or cannabinoid hemp or hemp extract during the suspension period, shall be subject to prosecution as provided in article two hundred twenty-two of the penal law, and upon conviction thereof under this section may be subject to a civil penalty of not more than five thousand dollars.

[~~3.~~] **4.** Any person who shall knowingly make any materially false statement in the application for a registration, license or a permit under this chapter may be subject to license or registration suspension, revocation, or denial subject to the board, and may be subject to a civil penalty of not more than two thousand dollars.

[~~4.~~] **5.** Any person under the age of twenty-one found to be in possession of cannabis or cannabis products who is not a certified patient pursuant to article three of this chapter shall be in violation of this chapter and shall be subject to the following penalty:

(a) (i) The person shall be subject to a civil penalty of not more than fifty dollars. The civil penalty shall be payable to the office of cannabis management.

(ii) Any identifying information provided by the enforcement agency for the purpose of facilitating payment of the civil penalty shall not be shared or disclosed under any circumstances with any other agency or law enforcement division.

(b) The person shall, upon payment of the required civil penalty, be provided with information related to the dangers of underage use of cannabis and information related to cannabis use disorder by the office.

(c) The issuance and subsequent payment of such civil penalty shall in no way qualify as a criminal accusation, admission of guilt, or a criminal conviction and shall in no way operate as a disqualification of any such person from holding public office, attaining public employment, or as a forfeiture of any right or privilege.

[~~5.~~] **6.** Cannabis recovered from individuals who are found to be in violation of this chapter may after notice and opportunity for a hearing be considered a nuisance and shall be disposed of or destroyed.

[~~6.~~] **7.** After due notice and opportunity to be heard, as established by rules and regulations, nothing in this section shall prohibit the board from suspending, revoking, or denying a license, permit, registration, or application in addition to the penalties prescribed in this section.

§ 5. This act shall take effect immediately.