

Committee Staff

Public Safety

Deepa Ambekar, *Legislative Counsel*  
Beth Golub, *Legislative Analyst*  
Laurie Wen, *Policy Analyst*

Consumer Affairs

Laboni Rahman, *Legislative Counsel*  
Israel Martinez, *Policy Analyst*

Health

David Seitzer, *Senior Legislative Counsel*  
Crystal Pond, *Senior Policy Analyst*

Mental Health, Developmental Disability, Alcoholism,  
Substance Abuse and Disability Services  
Kimberly Williams, *Legislative Counsel*  
Michael Benjamin, *Policy Analyst*



**THE COUNCIL**

**COMMITTEE REPORT OF THE GOVERNMENTAL AFFAIRS AND HUMAN  
SERVICES DIVISIONS**

*Matthew Gewolb, Legislative Director*

**COMMITTEE ON PUBLIC SAFETY**

*Hon. Vanessa Gibson, Chair*

**COMMITTEE ON HEALTH**

*Hon. Corey Johnson, Chair*

**COMMITTEE ON CONSUMER AFFAIRS**

*Hon. Rafael Espinal, Chair*

**COMMITTEE ON MENTAL HEALTH,  
DEVELOPMENTAL DISABILITY,  
ALCOHOLISM, SUBSTANCE ABUSE  
AND DISABILITY SERVICES**

*Hon. Andrew Cohen, Chair*

**September 21, 2015**

**Int. No. 885:**

By The Speaker (Council Member Mark-Viverito) and Council Members Gibson, Cohen, Arroyo, Barron, Chin, Johnson, Koo, Mendez, Richards, Rose and Wills

**Title:**

A Local Law to amend the administrative code of the city of New York, in relation to the revocation, suspension, or refusal to renew a cigarette dealer license due to the sale of synthetic drugs or imitation synthetic drugs

(bill list continued on next page)

**Int. No. 897:** By Council Members Garodnick, the Speaker (Council Member Mark-Viverito), Arroyo, Barron, Gibson, Johnson, Koo, Mealy, Mendez, Richards, Rose and Wills

**Title:** A Local Law to amend the administrative code of the city of New York, in relation to declaring nuisances related to the sale of synthetic drugs and imitation synthetic drugs

**Int. No. 917:** By Council Members Wills, Reynoso, Torres, Cabrera, Gibson, Cohen, the Speaker (Council Member Mark-Viverito), Arroyo, Gentile, Johnson, Koo, Koslowitz, Mendez, Richards and Rose

**Title:** A Local Law to amend the administrative code of the city of New York, in relation to imposing penalties for the manufacture, distribution or sale of synthetic cannabinoids, synthetic phenethylamines and synthetic cathinones

## **I. INTRODUCTION**

Today, the Committees on Public Safety; Health; Mental Health, Developmental Disability, Alcoholism, Substance Abuse and Disability Services; and Consumer Affairs; chaired by Council Members Gibson, Johnson, Cohen, and Espinal, respectively, will hold a hearing on three bills relating to the manufacture and sale of synthetic cannabinoids, phenethylamines and cathinones. Among those invited to testify are the Departments of Health and Mental Hygiene (DOHMH) and Consumer Affairs (DCA), the New York City Police Department (NYPD), and the Mayor's Office of Criminal Justice (MOCJ).

## **II. BACKGROUND**

Synthetic cannabinoids—better known as synthetic marijuana, K2 or Spice—refers to a wide variety of herbal mixtures that have been sprayed with chemical additives that produce

psychoactive effects.<sup>1</sup> Some users report experiences similar to those produced by marijuana—elevated mood, relaxation, and altered perception.<sup>2</sup> However, in some cases the effects are stronger and/or more dangerous than those of marijuana. For example some users have experienced extreme anxiety, paranoia, and hallucinations.<sup>3</sup> In fact, DOHMH issued an advisory on July 27, 2014 about fifteen cases of adverse reactions to synthetic cannabinoids.<sup>4</sup> The reactions included agitation, anxiety, nausea, vomiting, high blood pressure, tremors, seizures, hallucinations, paranoia, and violent behavior.<sup>5</sup> On April 17, 2015, DOHMH issued a press release warning New Yorkers of the unpredictable and dangerous effects synthetic cannabinoids cause because there were more than 120 emergency room visits between April 8<sup>th</sup> and April 15<sup>th</sup>.<sup>6</sup> There is no antidote presently available for synthetic cannabinoid intoxication.<sup>7</sup>

Nationally, synthetic cannabinoids are relatively popular among young people.<sup>8</sup> It is the second most popular drug among high school seniors.<sup>9</sup> However, in New York City the drug is widely used among homeless people.<sup>10</sup> Users reportedly often smoke openly on the street.<sup>11</sup> East

---

<sup>1</sup> National Institute on Drug Abuse, “K2/Spice,” *available at* <http://www.drugabuse.gov/drugs-abuse/k2spice-synthetic-marijuana>.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> New York City Department of Health and Mental Hygiene, “Increase in synthetic cannabinoid-related adverse events and emergency department visits, New York City,” 2014 Advisory #18, *available at* <https://a816-health30ssl.nyc.gov/sites/NYCHAN/Lists/AlertUpdateAdvisoryDocuments/Synthetic%20cannabinoids-HAN-advisory-7%2027%2014%2011AM.pdf>.

<sup>5</sup> *Id.*

<sup>6</sup> New York City Department of Health and Mental Hygiene, “DOHMH Warns New Yorkers of Dangers of ‘Synthetic Marijuana’ After Increase in Emergency Department Visits,” Apr. 17, 2015, *available at* <http://www.nyc.gov/html/doh/html/pr2015/pr017-15.shtml>.

<sup>7</sup> New York City Department of Health and Mental Hygiene, “Increase in synthetic cannabinoid (marijuana)-related adverse events and emergency department visits, New York City,” 2015 Advisory #6, *available at* <http://www.nyc.gov/html/doh/downloads/pdf/ah/marijuana-alert.pdf>.

<sup>8</sup> *Supra*, note 1.

<sup>9</sup> *Id.*

<sup>10</sup> Nicholas Casey, “K2, a Potent Drug, Casts a Shadow Over an East Harlem Block,” *N.Y. Times*, Sept. 2, 2015, *available at* <http://www.nytimes.com/2015/09/03/nyregion/k2-a-potent-drug-casts-a-shadow-over-an-east-harlem-block.html>.

<sup>11</sup> *Id.*

Harlem, Central Harlem, Chelsea<sup>12</sup> and Central Brooklyn<sup>13</sup> are among the neighborhoods where increased emergency room visits related to synthetic cannabinoid use have been identified.

Synthetic cannabinoids have been readily available in “head shops,” local bodegas, and via the internet for years.<sup>14</sup> The wide-spread availability of synthetic cannabinoids at local retailers and corner stores tracks with a long-standing history of unlawful activity occurring from time to time in New York City bodegas. For example, in June of this year, owners and employees of a bodega in Harlem were indicted for a scam that stole \$2.7 million from the federal Supplemental Nutritional Assistance Program (SNAP) over five years.<sup>15</sup> Also this summer, the NYPD reported that during a year-long NYPD crackdown on illegal gambling and numbers-running operations in Brooklyn, a majority of the busts have occurred in bodegas.<sup>16</sup>

Illegal cigarettes are another illicit product that is sometimes sold at bodegas. Cigarette retailers in New York City are required to be licensed by DCA and the commissioner may order the sealing of the premises of a business that is found to have engaged in unlicensed activity or committed numerous violations of applicable local law. New York State assesses higher taxes on cigarettes than states such as Virginia. Pursuant to New York State law, cigarettes purchased out of state may not be sold in New York. A report in 2014 indicated that inspections by the Department of Finance, however, found such out-of-state illegal cigarettes in 48% of the bodegas

---

<sup>12</sup> *Supra*, note 6.

<sup>13</sup> *Supra*, note 7.

<sup>14</sup> *Supra*, note 1.

<sup>15</sup> Shayna Jacobs, “Nine people stole \$2.7M through food stamps scam out of East Harlem grocery store: prosecutors,” *Daily News*, June 30, 2015, available at <http://www.nydailynews.com/new-york/nyc-crime/2-7m-stolen-east-harlem-food-stamps-scam-article-1.2277126>.

<sup>16</sup> James Faneli, “All Bets Are Off in Brooklyn as DA, Cops Bust Borough’s Illegal Gambling,” *DNAInfo*, July 15, 2013, available at <http://www.dnainfo.com/new-york/20130715/williamsburg/all-bets-are-off-brooklyn-as-da-cops-bust-boroughs-illegal-gambling>.

inspected around that time.<sup>17</sup> The sale of illegal cigarettes appears to be linked to the sale of synthetic cannabinoids. Busts of synthetic cannabinoids in bodegas tend to reveal large supplies of illegal cigarettes, and vice versa.<sup>18</sup>

States have moved to respond to the threat of synthetic cannabinoids and other synthetic drugs. Since 2011, all 50 states have banned some synthetic cannabinoids and synthetic cathinones (“bath salts”).<sup>19</sup> Legislation often targets specific ingredients used to create these drugs. However, to avoid prosecution, manufacturers have continually altered the chemical composition of these banned substances to create similar drugs not yet explicitly covered by law. Legislators have reacted with general bans prohibiting entire classes of substances or by using broad language to describe the overall chemical makeup. Thirty-four states—New York not among them—also use analogue laws, which prohibit drugs with chemical structures and effects substantially similar to those of already banned substances.<sup>20</sup> In addition, jurisdictions have successfully prosecuted retailers using public nuisance laws, as well as consumer protection laws against false advertising and mislabeling.<sup>21</sup>

In August of 2012, the New York State Department of Health (DOH) expanded the existing list of prohibited drugs and chemicals in the State Sanitary Code to include dozens of substances commonly used to make synthetic drugs. The same year, Attorney General Eric Schneiderman filed suit against 12 upstate retailers that sold synthetic drugs for violating New

---

<sup>17</sup> Michael Wilson, “In New York, a Nose for Hidden Compartments and Cigarettes,” *N.Y. Times*, Oct. 17, 2014, available at <http://www.nytimes.com/2014/10/18/nyregion/in-new-york-a-nose-for-hidden-compartments-and-the-potential-for-smoke.html>

<sup>18</sup> Laura Bult, “Cops bust pair for allegedly selling K2 drug at Queens bodega,” *N.Y. Daily News*, Aug. 12, 2015, available at <http://www.nydailynews.com/new-york/nyc-crime/cops-bust-pair-allegedly-selling-k2-drug-queens-bodega-article-1.2322842>; Gustavo Solis, “Deli Manager Busted for Selling Fake Pot and Untaxed Cigs After Harlem Raid,” July 8, 2015, available at <http://www.dnainfo.com/new-york/20150708/central-harlem/deli-manager-busted-for-selling-fake-pot-untaxed-cigs-after-harlem-raid>.

<sup>19</sup> National Conference of State Legislatures, “Synthetic Drug Threats,” Jan. 13, 2015, available at <http://www.ncsl.org/research/civil-and-criminal-justice/synthetic-drug-threats.aspx>.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

York State's labeling laws, which require consumer products' packaging to identify the manufacturer, the common product name, the net quantity of contents, and warnings for customary use, among other information.<sup>22</sup> Within three and a half months, Schneiderman obtained eight orders permanently banning synthetic drugs from the retailers and won a state Supreme Court ruling that resulted in a \$15,000 penalty.<sup>23</sup>

The alarming increase in synthetic marijuana-related emergency department visits in early 2015 has prompted further regulatory and legislative action. On the state level, DOH passed emergency measures in August of 2015 to ban two additional classes of compounds, covering potentially hundreds of chemicals.<sup>24</sup> The DOH regulations allow for an owner or an employee of an establishment selling synthetic drugs to be charged with possession of an illicit substance, with criminal penalties of up to \$500 in fines and up to 15 days in jail, and civil penalties of up to \$2,000 per violation. In the state legislature, there are currently at least seven bills pending to address this issue with varying approaches, including bills that ban analogue drugs, add synthetic marijuana to the definition of marijuana, and create a surrender program.

In New York City, at the request of Council Speaker Melissa Mark-Viverito, a multi-agency operation was created to inspect suspected sellers of synthetic marijuana. Led by the NYPD, the effort is joined by the New York City Sheriff's Office, DCA, and DOHMH. In early July of 2015, five retailers centered around 125<sup>th</sup> Street and Lexington Avenue in East Harlem were inspected, all of which had previously been served with an order to stop the sale of

---

<sup>22</sup> Office of the New York Attorney General, "A.G. Schneiderman Wins Court Victory in Push to Ban Mislabeled Drugs from Head Shops," Oct. 25, 2012, *available at* <http://www.ag.ny.gov/press-release/ag-schneiderman-wins-court-victory-push-ban-mislabeled-drugs-head-shops>.

<sup>23</sup> *Id.*

<sup>24</sup> Office of the Governor of New York, "Governor Cuomo Announces Passage of Emergency Regulations Targeting the Sale of Synthetic Marijuana," Aug. 6, 2015, *available at* <https://www.governor.ny.gov/news/governor-cuomo-announces-passage-emergency-regulations-targeting-sale-synthetic-marijuana>.

synthetic marijuana from DOHMH Commissioner Dr. Mary Bassett.<sup>25</sup> A total of nearly 8,000 bags of synthetic marijuana were recovered at two of the locations.<sup>26</sup> Several weeks later, a second inspection in the same area resulted in the confiscation of more than 2,000 bags of the substance.<sup>27</sup>

On September 16, 2015 NYPD, along with the United States Attorney's office and several other federal agencies, charged ten defendants involved in a massive K2 distribution ring. According to NYPD, the drug enterprise, operating in all five boroughs, allegedly involved the unlawful importation of at least 100 kilograms of K2, an amount sufficient to produce approximately 1,300 kilograms of dried product or approximately 260,000 retail packets. Coordinated with the announcement of these criminal charges, five processing facilities and warehouses used to store and distribute K2, and over 80 stores and bodegas around New York City were searched.

Despite some regulatory successes, additional enforcement measures are needed to prevent a continued rise of synthetic marijuana use and corresponding hospitalizations, as well as the continued evolution of these drugs in an attempt to remain one step ahead of regulatory efforts. City officials are examining a range of approaches, incorporating lessons learned from previous attempts to criminalize and prosecute drug sellers while addressing the complex network of social factors that drive increases in drug use.

### **III. ANALYSIS OF INT. NO. 917**

The first bill being heard today would prohibit the manufacture, sale, offer for sale, display for sale, knowing distribution for sale, or possession with intent to sell of a variety of

---

<sup>25</sup> New York City Council, "At Speaker Mark-Viverito's Request, NYPD Leads Multi-Agency Inspections on 125<sup>th</sup> Street for Synthetic Cannabinoids," July 7, 2015, *available at* <http://council.nyc.gov/html/pr/070715nypd.shtml>.

<sup>26</sup> *Id.*

<sup>27</sup> Emma Whitford, "City Seized 2,000 Bags of Synthetic Marijuana From Two Harlem Bodegas," *Gothamist*, July 27, 2015, *available at* [http://gothamist.com/2015/07/27/synthetic\\_weed\\_crackdown.php](http://gothamist.com/2015/07/27/synthetic_weed_crackdown.php).

synthetic cannabinoids, phenethylamines, and cathinones, and imitations of these substances. Specifically, it would prohibit these actions with respect to synthetic cannabinoids and synthetic phenethylamine as they are defined in the State Sanitary Code (which exempts substances that are controlled substances under state law), any synthetic cannabinoid or synthetic phenethylamine or synthetic cathinone classified as a schedule I substance under federal law that is not a controlled substance under New York state law, any substances commonly known as a synthetic drug in one of these categories that is represented as being for human consumption, and imitations of any of these substances that, by virtue of its packaging, price, or other attributes is represented to be such a substance. Possession of ten or more packets, individual containers, or separate units (such as joints) of a substance banned under this law would be presumptive evidence, which could be rebutted in court, that the possessing individual or entity was distributing them for sale or possessing them with intent to sell them.

Violations of this section would be a misdemeanor punishable by a fine of up to \$5,000 or imprisonment of up to one year, or both. The violating individual or entity would also be liable for civil penalties of between \$1,000 and \$10,000 per violation or, for first-time violators who have not been previously convicted of a felony or serious offense as defined in state law, between \$500 and \$5,000 per violation. The maximum civil penalties for violations in a single day by a single person or entity would be \$50,000. In addition to criminal and civil penalties, it would authorize the sealing of businesses that violate the provisions of this bill twice in a three-year period. It would not criminalize possession of these substances if such substances are not manufactured, being sold, offered for sale, displayed for sale, knowingly distributed for sale, or possessed with intent to sell them by the possessing individual.



The provisions of this bill would be enforceable by any police officer, sheriff, undersheriff, or deputy sheriff of the City of New York, or any peace officer acting pursuant to his or her special duties. Such enforcement officers would be authorized to seize the illegal substance when it is discovered.

This bill would take effect 60 days after it becomes law.

#### **IV. ANALYSIS OF INT. NO. 897**

The second bill being heard today, by Council Member Garodnick and the Speaker, would add synthetic drug violations to the list of violations that may result in the declaration of a nuisance under the City's Nuisance Abatement Law. Specifically, it would add violations of the section prohibiting the manufacture or sale of synthetic drugs that the first bill being heard today establishes to those for which a nuisance can be declared under the Nuisance Abatement Law.

The Nuisance Abatement Law allows the City to bring a claim in court to temporarily close or restrain, and/or to permanently enjoin, prohibited activities that constitute a public nuisance. The defendants in such an action are the "owner, lessor or lessee of a building, erection or place wherein the public nuisance is being conducted, maintained or permitted."<sup>28</sup> Among other nuisances defined in the law are controlled substance and gambling offenses.

This bill would take effect 60 days after its passage into law.

#### **V. ANALYSIS OF INT. NO. 885**

The third bill being heard today, by the Speaker and Council Members Gibson and Cohen, would add synthetic drug violations to the list of violations that require suspension (for first violations) and revocation (for subsequent violations) of a violator's retail cigarette dealer

---

<sup>28</sup> N.Y. Admin. Code § 7-706(a).

license. Specifically, it would cover violations of the section prohibiting the manufacture or sale of synthetic drugs that the first bill being heard today would create.

The bill would also allow the commissioner of DCA to refuse to renew a cigarette dealer license if the license holder has been convicted of a violation of the prohibitions created by the first bill being heard today.

This bill would take effect 60 days after its passage into law.

Int. No. 885

By The Speaker (Council Member Mark-Viverito) and Council Members Gibson, Cohen, Arroyo, Barron, Chin, Johnson, Koo, Mendez, Richards, Rose and Wills

A LOCAL LAW

To amend the administrative code of the city of New York, in relation to the revocation, suspension, or refusal to renew a cigarette dealer license due to the sale of synthetic drugs or imitation synthetic drugs

Be it enacted by the Council as follows:

Section 1. Section 10-203 of the administrative code of the city of New York is amended by adding a new subdivision g to read as follows:

g. Any person who engages in business as a retail dealer pursuant to section 20-202 of the code shall be subject to:

1. a mandatory suspension of his or her retail dealer license for a period of thirty days for a violation of section 10-203 of this code; or

2. a mandatory revocation of his or her retail dealer license for a second or subsequent violation of section 10-203 of this code occurring on a different day at the same place of business within a three-year period.

§ 2. Paragraphs 2 and 3 of subdivision a of section 20-206 of the administrative code of the city of New York, paragraph 2 as added by local law number 2 for the year 2000 and paragraph 3 as amended by local law number 69 for the year 2009, are amended, and a new paragraph 4 is added to such subdivision, to read as follows:

2. not paid, within the time permitted by law, any civil penalty or judgment duly imposed pursuant to the provisions of this subchapter or any rules promulgated thereunder or pursuant to

chapter thirteen of title eleven of this code, or chapter forty of title eleven of this code relating to cigarette sales[.]; or

3. violated the provisions of section 17-714 of this code or any rules promulgated thereunder[.]; or

4. violated any provision of section 10-203 of this code or any rules promulgated thereunder.

§ 3. The commissioner of consumer affairs may promulgate rules as may be necessary for the purposes of carrying out the provisions of this local law.

§ 4. Severability. If any section, subsection, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this local law, which remaining portions shall continue in full force and effect.

§ 5. This local law takes effect 60 days after it becomes law.

DSS  
LS #5968  
9/11/15

Int. No. 897

By Council Members Garodnick, the Speaker (Council Member Mark-Viverito), Arroyo, Barron, Gibson, Johnson, Koo, Mealy, Mendez, Richards, Rose and Wills

A LOCAL LAW

To amend the administrative code of the city of New York, in relation to declaring nuisances related to the sale of synthetic drugs and imitation synthetic drugs

Be it enacted by the Council as follows:

Section 1. Subdivision (g) of section 7-703 of the administrative code of the city of New York, as amended by local law number 8 for the year 2007, is amended to read as follows:

(g) Any building, erection or place, including one- or two-family dwellings, wherein, within the period of one year prior to the commencement of an action under this chapter, there have occurred three or more violations of one or any combination of the provisions of article two hundred twenty, two hundred twenty-one or two hundred twenty-five of the penal law, or section 10-203 of this code;

§ 2. This local law takes effect 60 days after it becomes law.

DSS  
LS #3875  
9/11/15

Int. No. 917

By Council Members Wills, Reynoso, Torres, Cabrera, Gibson, Cohen, the Speaker (Council Member Mark-Viverito), Arroyo, Gentile, Johnson, Koo, Koslowitz, Mendez, Richards and Rose

A LOCAL LAW

To amend the administrative code of the city of New York, in relation to imposing penalties for the manufacture, distribution or sale of synthetic cannabinoids, synthetic phenethylamines and synthetic cathinones

Be it enacted by the Council as follows:

Section 1. Chapter 2 of title 10 of the administrative code of the city of New York is amended by adding a new section 10-203 to read as follows:

§ 10-203 Unlawful manufacture, distribution or sale of a synthetic cannabinoid, synthetic phenethylamine, or synthetic cathinone. a. No person or entity shall manufacture, sell, offer for sale, display for sale, knowingly distribute for sale, or possess with intent to sell:

1. any synthetic cannabinoid or synthetic phenethylamine, as such terms are defined by part 9 of title 10 of the New York codes, rules and regulations;

2. any synthetic cannabinoid or synthetic phenethylamine or synthetic cathinone included in schedule I of the federal drug enforcement administration schedules of controlled substances, as listed in section 1308.11 of title 21 of the code of federal regulations, or successor regulation, which is not listed in schedule I, II, III, IV or V of section 3306 of the public health law, or successor provision;

3. any substance commonly known as synthetic marijuana, synthetic phenethylamine, or synthetic cathinone, including but not limited to a substance so denominated as an embargoed product by order of the commissioner of the department of health and mental hygiene, that is represented, notwithstanding packaging or other indication that the substance is not intended for

human consumption, as being intended for human consumption. Evidence of representations that a substance commonly known as synthetic marijuana is intended for human consumption may include, but is not limited to, oral or written representations by the manufacturer, distributor or seller about the substance with regard to its nature, use or effect; or

4. any imitation synthetic drug. In any prosecution for the violation of this paragraph, it shall be necessary to prove that the imitation synthetic drug was represented to be a substance described in paragraph 1 or 2 of this subdivision; provided, however, that it shall not be a defense to prosecution under this section that the accused believed the imitation synthetic drug to be such a substance. For the purposes of this subdivision, the term “imitation synthetic drug” means a substance that is not described in paragraph 1 or 2 of this subdivision but which, by dosage unit appearance, including color, shape and size, and by a representation, is represented to be a substance described in paragraph 1 or 2 of this subdivision. Evidence of such a representation may include, but is not limited to, oral or written representations by the manufacturer, distributor or seller about the substance with regard to:

(a) its price, nature, use or effect as a substance described in paragraph 1 or 2 of this subdivision; or

(b) its packaging in a manner normally used for substances described in paragraph 1 or 2 of this subdivision.

b. Possession of ten or more packets, individual containers or other separate units of a substance described in subdivision a of this section is presumptive evidence that the possessing person or entity is distributing such substance for sale or possesses such substances with intent to sell.

c. Any person or entity that violates subdivision a of this section shall be guilty of a misdemeanor punishable by a fine of not more than \$5,000 or imprisonment of up to one year, or both.

d. In addition to the penalties prescribed in subdivision c of this section, any person or entity that violates subdivision a of this section shall be liable for a civil penalty of not less than \$1,000 and not more than \$10,000 recoverable in a proceeding before any tribunal established within the office of administrative trials and hearings or within any agency of the city of New York designated to conduct such proceedings, provided that upon the first such violation, and any other such violations by the same person or entity on the same day as such first violation, such person or entity shall be liable for a civil penalty of not less than \$500 and not more than \$5,000 if (i) such violation is not in conjunction with the commission of any crime other than possession, manufacture, distribution or sale of any synthetic cannabinoid, synthetic phenethylamine, synthetic cathinone, or other substance described in subdivision a of this section and (ii) such person or entity has not been previously convicted of a felony or a serious offense as defined in subdivision 17 of section 265.00 of the penal law. The manufacture, distribution, sale, offer for sale, display for sale, or possession with intent to sell of each packet, individual container or other separate unit of substance described in subdivision a of this section shall constitute a separate violation under this subdivision, with a maximum civil liability of \$50,000 for violations in a day for a single person or entity under this subdivision.

e. Any police officer, sheriff, undersheriff, or deputy sheriff of the city of New York, or any peace officer acting pursuant to his or her special duties may enforce the provisions of this section. A proceeding to recover any civil penalty authorized pursuant to subdivision c of this section shall be commenced by the service of a notice of violation returnable to any tribunal



established within the office of administrative trials and hearings or within any agency of the city of New York designated to conduct such proceedings. The notice of violation or copy thereof when filled in and served shall constitute notice of the violation charged.

f. Whenever a police officer, sheriff, undersheriff, or deputy sheriff of the city of New York, or any peace officer acting pursuant to his or her special duties, discovers any substance described in subdivision a being possessed in a manner that violates such subdivision, such officer is authorized and empowered to seize and take possession of such substance, which shall be destroyed or used either for law enforcement purposes or for evidentiary purposes in connection with any enforcement proceeding conducted pursuant to this section.

§ 2. Subdivision (b) of section 11-4023 of the administrative code of the city of New York, as added by local law number 97 for the year 2013, is amended to read as follows:

(b) The following acts shall serve as the basis for a sealing order pursuant to this section:

(1) the violation of subdivisions a or b of section 11-1303 of this title or section 17-703 or 20-202 of the code on at least two occasions within a three-year period; or

(2) the violation of any provision of chapter 13 of this title or any of sections 17-703, 17-703.2, 17-704, 17-705, subdivisions a or b of section 17-706, 17-715 or 20-202 of the code on at least three occasions within a three-year period; or

(3) the violation of any provision of section 10-203 of the code on at least two occasions within a three-year period.

§ 3. The commissioners of health and mental hygiene, finance and consumer affairs may promulgate rules as may be necessary for the purposes of carrying out the provisions of this local law.

§ 4. Severability. If any section, subsection, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this local law, which remaining portions shall continue in full force and effect.

§ 5. This local law takes effect 60 days after it becomes law.

DSS  
LS #150  
9/11/15