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EDITOR'S PICK

TOPICAL

Could SMOKEOUT Act be the answer to shutting down unlicensed pot shops in NY?

Samantha Christmann

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The state Office of Cannabis Management has limited manpower to tackle the thousands upon thousands of unlicensed shops that have cropped up throughout New York. So far, it has inspected fewer than 500 shops and seized \$63 million in cannabis products.

Libby March, Buffalo News

Samantha Christmann

There are just 50 licensed cannabis dispensaries open in New York – only a handful of them in Western New York – but you wouldn't know it from the thousands of illegal operators statewide selling cannabis without a license everywhere you turn.

To combat those unlicensed business sales, a pair of bills have introduced legislation that would give local municipalities the power to shut down unlicensed operators and seize their property in the process.

Proponents of the bill say it will do more to shut down unlicensed shops faster and help licensed shops succeed. But critics said the “Stop marijuana over-proliferation and keep empty operators of unlicensed transactions Act,” or **SMOKEOUT Act**, saddles local law enforcement with added work, violates due process and won't do much to address the problem.

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State regulators with the Cannabis Control Board now have the authority to close unlicensed businesses. The legislation would expand that authority to local governments, allowing law enforcement to order the immediate closure of any business illegally selling or gifting cannabis, and to seize “property involved in the unlawful sale of cannabis,” including real estate.

The Office of Cannabis Management has limited manpower to tackle the thousands upon thousands of unlicensed shops that have cropped up throughout the state. So far, it has inspected fewer than 500 shops and seized \$63 million in cannabis products.

The SMOKEOUT Act would give local law enforcement more power to conduct their own inspections, adding manpower across the state.

“It can be extraordinarily frustrating because you have businesses that you know are operating outside of the confines of the law,” said Cheektowaga Police Capt. Jeffrey Schmidt. “But your hands are really bound with how you’re even able to move forward with any type of prosecution.”

When illegal shops get inspected, they are usually back up and operating soon afterward. Getting raided and fined is largely considered a cost of doing business in a very lucrative illegal market.

But SMOKEOUT provisions, which allow the physical stores themselves to be closed and seized, puts landlords at risk of losing their property, giving it more weight.

“Any type of legal authority that we’ll be able to enforce in order to stop someone from behaving illegally, we’re always in favor of,” Schmidt said.

By and large, though, local police departments are often overworked and understaffed. Law enforcement across the state have said their resources are already stretched thin, and they don’t have the resources it takes to close down unlicensed shops.

Cheektowaga has been one of the more active police forces when it comes to shutting down unlicensed shops.

“We take maximum enforcement effort that we can into those places. We’re not just going to sit here on our hands and and turn a blind eye to what’s going on,” he said.

“We are going to try and enforce it however we can. If we had more tools for that, that

would just make our job easier.”

Some shops are selling cannabis products at 100 times the legal limit of THC, Schmidt said.

“Our concern is that they’re not safe, they’re manufacturing these things in their back room or they’re getting them from other illicit sources,” he said.

But throughout the state, devoting resources to playing whack-a-mole over a legalized plant has been a lower priority.

Paula Collins, a tax accountant who counts unlicensed dispensaries among her clients, said the SMOKEOUT Act is rife with problems and sets the stage for future litigation.

For starters, the bill compounds a current problem, Collins said. The enforcement measures approved by the governor in May as part of the budget bill allowed for a business owner to refuse an inspection. The OCM regulations do not allow for that.

“So when an inspection – a raid – is in progress and a shop owner calls me, I am unable to quote the law,” Collins said.

The bill allows police to turn seized property over for sale. In Buffalo, the money from the sale of forfeited goods would go to the city’s general fund; outside the city, it would go to the county’s general fund.

The timeline laid out in the bill is confusing and seems to violate due process, according to Collins.

The bill lays out a proceeding to be conducted within 30 days, and allows seized goods to be sold with five days notice, but also gives unlicensed shops two years to try to recover seized property. If the property is already sold, they can get the money minus legal fees, but the property will already be gone.

Seizing goods for money can also encourage bad actors, Collins said.

“I have heard from shop owners that they have observed inspectors pocketing loose pre-rolls and other small items. I have also consistently heard that inspectors come in and immediately disable the security cameras,” Collins said. “I ask: What is it that they are doing that they don’t want us to see?”

Patrick Hines, an attorney and leader of the cannabis and hemp group at Hodgson Russ, said the SMOKEOUT Act is meant to relieve the burden on the OCM and deter landlords from allowing unlicensed activity at their properties.

“It will answer the questions some municipalities have about their own authority to enforce the Cannabis Law,” he said. “Under current law, there is some uncertainty about what cities and towns have the authority to do in response to the proliferation of unlicensed operators.”

The act also has new provisions that allow local law enforcement to shut down and seize property at otherwise legitimate businesses like head shops that sell cannabis.

“The problem is real, and I do think the act would add tools that were not already there,” Hines said.

By Samantha Christmann

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