



New York State Legalizes Marijuana for Adult Use

After many attempts and much debate, New York has become the 15th state to legalize the adult use of recreational marijuana. The State Senate and Assembly voted to approve the “Marihuana Regulation and Taxation Act” (“Act”) on Tuesday, March 30, 2021. Governor Andrew Cuomo signed the bill into law the following morning and reiterated his support for the Act: “New York has a storied history of being the progressive capital of the nation, and this important legislation will once again carry on that legacy.”

The Governor’s Office estimates that legalization could bring the State approximately \$350 million annually, with planned allocations of 40% to a community grants reinvestment fund, 40% for education, and 20% for a drug treatment and public education fund.

The Act creates a new cannabis law, and will consolidate the adult-use cannabis program with the existing medical cannabis and cannabinoid hemp programs, which will be under the control of the Act’s Cannabis Control Board (CCB) and the Office of Cannabis Management (OCM). The CCB and OCM will be placed under, but operate independently from, the New York State Liquor Authority.

Although the legislation took effect immediately upon the Governor’s signature, it is estimated that it may take anywhere from 12 to 18 months for retail sales to start, with legalized home growing to follow later than retail.

The following are a few key elements of the legislation.

OFFICE OF CANNABIS MANAGEMENT

- The Act establishes the OCM to oversee the regulatory framework encompassing adult-use cannabis, medical cannabis and cannabinoid hemp products.
- The OCM will be an independent agency operating within the State Liquor Authority’s jurisdiction.
- The OCM will be governed by the five-member CCB, with the Governor appointing three members and each legislative chamber appointing the remaining two members.
- The CCB is responsible for creating the regulations for each of the cannabis programs, and the OCM is responsible for implementing these regulations.
- The CCB Chair approves licensing and permit recommendations made by the OCM, and other CCB members will have 14 days to object to any such decision.
- The CCB is also responsible for regulating the packaging and advertising of cannabis products, as well as overseeing the issuance of certain special permits.
- The OCM is responsible for managing the licensing of entities wanting to participate in the various cannabis programs.

MARKET STRUCTURE

- The Act proposes a tiered market structure comparable to the structure of the State’s alcohol industry.
- The Act includes a goal of 50% of licenses being issued to social equity applicants in the adult-use program. Such applicants include those from communities



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historically impacted by cannabis prohibition, minority and women-owned businesses, distressed farmers and service-disabled veterans.

- The potential license categories include:
 - Adult-use cultivator licenses for farming cannabis.
 - Adult-use processor licenses for converting raw cannabis into various products, such as tinctures, concentrates, edibles and smokable products. Processor licensees will also be responsible for complying with State labeling guidelines, including the amount of THC present.
 - Adult-use distributor licenses for wholesaling and distributing products between the processors and the retail licensees. Distributors will also be responsible for collecting and remitting the THC-based excise tax.
 - Adult-use dispensary licenses for the retail sale of cannabis products to adults 21 years of age and older for personal use. These licensees are also responsible for collecting and remitting the retail taxes.
 - Adult-use consumption site licenses, which are retail locations that allow individuals to use cannabis products at the location.
- The OCM will establish licensing fees for each of the licenses, the cost of which will be released at a later date.
- Vertical integration is **prohibited for entities licensed in the adult-use cannabis program**, with limited exceptions, to protect the retail sector from being controlled by larger cannabis producers.
- Other suggested licenses include:
 - Cooperative licenses that allow groups of individuals to cultivate and process cannabis products;
 - Nursery licenses that allow for immature plants to be grown and sold to other licensees; and

- Microbusiness licenses that allow the license holder to cultivate, produce and retail their own cannabis products, but such licensees will be limited in number.

TAXATION

- The Act provides for the following taxes on adult-use cannabis:
 - A distributor would pay the following excise tax based on the per-milligram amount of THC (per a lab analysis and as labeled):
 - 0.5 cents (\$0.005) for cannabis flower;
 - 0.8 cents (\$0.008) for cannabis concentrate; and
 - 3.0 cents (\$0.03) for edibles.
 - A 9% tax will be added to retail sales, which goes to the State, with another 4% tax to be added upon retail sales, which goes to the localities (1% goes to the county, and 3% is divided at the local level based on retail sales).
 - Counties will receive 25% of the local tax, and 75% will go to the municipality.

HOME GROWTH

- The Act allows individuals to conduct home growing of cannabis plants.
- Each person will be permitted to grow up to three mature plants and three immature plants, indoors or outdoors.
- The maximum number of plants per household is six mature and six immature plants, for a total of 12 plants.
- Regardless of the number of plants, the Act sets a maximum possession limit of five pounds for home growers.



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- Localities are able to create regulations around home growth, but are not permitted to ban it altogether.
- The CCB is expected to issue regulations on unsafe growing practices that would be banned.
- For patients in the medical cannabis program, the ability to home grow would begin six months after the effective date of the Act.
- Adult-use home growing is expected to be authorized 18 months after the opening of the first adult-use dispensaries to allow the regulated cannabis market time to develop.

CONCLUSION

Upon the enactment of this legislation, the CCB and OCM have officially been established. In the coming months, the CCB and OCM will provide further guidance for entities and individuals seeking to become part of the industry. Phillips Lytle will provide further analysis as soon as such guidance is issued.

Additional Assistance

For further assistance, please contact [Tristan D. Hujer](#), [Mary-Jane R. Morley](#), [Joseph Schafer](#) or the [Phillips Lytle attorney](#) with whom you have a relationship. ■



Albany Omni Plaza 30 South Pearl Street Albany, NY 12207-1537 (518) 472-1224

Buffalo One Canalside 125 Main Street Buffalo, NY 14203-2887 (716) 847-8400

Chautauqua 201 West Third Street Suite 205 Jamestown, NY 14701-4907 (716) 664-3906

Garden City 1205 Franklin Avenue Plaza Suite 390 Garden City, NY 11530-1629 (516) 742-5201

New York City 340 Madison Ave 17th Floor New York, NY 10173-1922 (212) 759-4888

Rochester 28 East Main Street Suite 1400 Rochester, NY 14614-1935 (585) 238-2000

Washington, DC 1101 Pennsylvania Avenue NW Suite 300 Washington, DC 20004-2514 (202) 617-2700

Canada The Communitel Hub 151 Charles Street West Suite 100 The Tannery Kitchener, Ontario N2G 1H6 Canada (519) 570-4800