

The Green Wave: Cannabis Legalization

A New Day: New York Legalizes Recreational Marijuana, New Mexico On The Verge

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On March 31, 2021, New York Governor Andrew Cuomo signed the New York State Cannabis/Marijuana Regulation & Taxation Act (the “Act”), [S.854-A/A.1248-A](#), legalizing adult-use cannabis for individuals 21 and older and creating a regulated adult-use cannabis market in New York. Governor Cuomo signed the legislation after plans for legalization collapsed in 2019 and 2020, due in part to disagreements over how to regulate the industry and the COVID-19 pandemic.

The New Regulatory Framework

The Act establishes the Office of Cannabis Management (the “OCM”), which will exist as an independent agency operating as a part of the New York State Liquor Authority. Under the Act, oversight of the medical marijuana and cannabinoid hemp programs shall transfer from the New York Department of Health to OCM. OCM will be responsible for both programs, as well as for regulating the recreational cannabis market. While the NY Department of Health will no longer have oversight over the medical marijuana and cannabinoid hemp programs,

all of the department's rules, regulations, acts, orders, determinations, and decisions pertaining to medical marijuana, cannabinoid hemp, and hemp extract will continue in full force and effect until/if OCM decides to modify or abrogate such governing laws and/or regulations.

Licenses for recreational adult-use cannabis ("adult-use cannabis") fall under several categories. Organizations that seek to cultivate, process, distribute, or dispense adult-use cannabis are required to obtain an adult-use cultivator license, an adult-use processor license, an adult-use distributor license, or an adult-use retail dispensary license, respectively. The Act places certain limitations on vertical integration. Under the Act, no organization (i) holding a retail dispensary license may hold an adult-use cultivator, processor, or distributor license, or (ii) have a financial or controlling interest in more than three adult-use retail dispensary licenses. However, an organization applying for an adult-use cultivator license may also apply for a processor's license and distributor's license, and vice versa.

Organizations of a certain size will be able to apply for a microbusiness license. Organizations with a microbusiness license shall be permitted to cultivate, process, distribute, deliver, and dispense adult-use cannabis products. OCM will set forth regulations specifying the size and other eligibility criteria required to obtain a microbusiness license at a later date.

Under the Act, organizations licensed to manufacture and dispense medical marijuana in New York ("Registered organizations") may also cultivate, process, distribute, and dispense adult-use cannabis, provided such organizations obtain a Registered organization adult-use cultivator processor distributor retail dispensary license. A Registered organization that acquires such license will be permitted to cultivate, process, distribute, and dispense adult-use cannabis. However, a Registered organization will only be able to dispense adult-use cannabis at a maximum of three of its authorized medical dispensaries. Additionally, a Registered organization with such license is not permitted to hold an adult-use cannabis retail dispensary license

or own any direct or indirect interest in any premises or business licensed as an adult-use cannabis retail dispensary.

It is not yet clear whether existing Registered organizations will be provided with a shortened application process. In addition, pursuant to the Act, OCM will make several changes to the medical marijuana program, including but not limited to, expanding the list of qualifying conditions and allowing patients to smoke marijuana products. Cannabis products will be subject to a state tax of 9%, plus an additional 4% local tax that would be split between counties and cities/towns/villages. Distributors will also face a THC tax based on the type of product, as follows: 0.5 cents per milligram for flower, 0.8 cents per milligram for concentrated cannabis and 3.0 cents per milligram for edibles.

Under the Act, local municipalities will have until December 31, 2021 to opt out of the establishment of retail dispensary licenses. Laws repealing such "opt outs" may be adopted after 2021.

Criminal Justice Reform

In addition to the new regulatory framework discussed above, the Act also focuses on reforming the criminal justice system. Effective immediately, there shall be no penalties for (i) public possession of up to three ounces of cannabis or twenty-four grams of marijuana concentrates, and (ii) storing up to five pounds of cannabis at home. Unlawful sale of cannabis or concentrated cannabis is punishable by a fine of up to \$250 and, in certain circumstances, is still punishable as a criminal offense. The Act also provides an avenue for vacating and expunging marijuana-related offenses.

In addition to other policies aimed at ending discriminatory practices and ensuring justice for marginalized communities, the Act sets a goal of having 50% of marijuana business licenses issued to people from "communities disproportionately impacted by the enforcement of cannabis prohibition" as well as minority- and women-owned businesses, disabled veterans, and financially distressed farmers.

What to Expect

The Act stipulates that OCM is obligated to promulgate initial regulations related to at-home cultivation for medical use within six months of the Act's effective date. Regulations related to at-home cultivation for recreational use must be implemented within eighteen months after the first recreational sale. Unlike other states, such as New Jersey, the Act does not provide a timeline by which OCM is obligated to promulgate regulations related to commercial cultivation, processing, distribution, delivering, dispensing, or testing of cannabis products. It is expected that such regulations may be published later this year, with sales by adult-use licensed dispensaries to begin as early as December 2022.

New Mexico

On March 31, New Mexico state legislature sent a package of cannabis bills to Governor Michelle Lujan Grisham, who is expected to sign the proposed legislation. In addition to legalizing recreational marijuana, the bill would also expunge the criminal records of people who possessed marijuana for personal use. Under the law, people over 21 would be permitted to have up to two ounces of marijuana, and individuals could have six plants at home, or up to 12 per household. Sales would begin no later than April 2022 and be taxed at 12%, eventually rising to 18%, plus gross receipts taxes.

Goodwin will provide updates on the regulatory process as it unfolds.

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