

Comprehensive Cannabis Legalization in New York: Round II

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On January 21, 2020, as part of his 2021 Executive Budget, New York State Governor Cuomo released his proposed Cannabis Regulation and Taxation Act (“CRTA” for short)—his vision of a regulated cannabis market in New York State. As readers probably know, comprehensive cannabis legislation failed to garner enough support to pass as part of the budget or as standalone legislation in 2019. The current version of the bill includes more detail than last year’s, no doubt benefiting from twelve months of additional consideration and discussion among the Governor’s office and the legislature. Here’s (some of) what you need to know.

The Office of Cannabis Management

The CRTA calls for the creation of a new “Office of Cannabis Management,” or “OCM,” which will be a part of the broader Division of Alcohol Beverage Control. The three main branches of the cannabis industry—medical, hemp, and adult-use—would all be brought under the OCM umbrella. The legislation charges the OCM Executive Director and four board members, all political appointees, with creating and maintaining the rules of the road for New York’s cannabis program.

OCM’s authority will be broad. For example, OCM has the power to set minimum mark-ups and maximum prices for products; set maximum doses and concentration of products; set a cap on the production or sales of certain licensees; dictate form and contents of labels and types of packaging; regulate advertising; regulate hours of operation; and approve the size and location of any type of registered facility. Anyone looking to operate a cannabis business, or even deal with cannabis businesses, needs to know and appreciate OCM’s rules as they are proposed, and when they will take effect.

Licensing

To enter the market for non-medical cannabis in New York, you will need to apply for one of several licenses, divided into cultivators, processors, distributors, and retailers. There are some other types of licenses, too. Successful applicants will need to show that they have the infrastructure and setup necessary to use the license. So if you want to be first to market, the time to act is “yesterday.”

Existing “Registered Organizations”—the 10 current medical cannabis companies in New York—will be permitted to grow, process, distribute, and sell at retail (also called “vertical integration”). Everyone else will have to make a choice. If you want a retail license, you cannot also have licenses to grow, process, or distribute product. OCM could also limit your ability to transfer or sell a license once you get it, so long-term planning is also important.

Sorry, the existing proposal does not allow you to grow recreational at home, with or without a license.

Hemp and Hemp Extracts

Hemp rules will also change. New hemp legislation passed in December 2019 takes effect this month. But if the CRTA passes, it will change all those rules again, effective January 2021. Processing hemp for hemp extract (CBD) will require a hemp processor license. And CBD distributors, wholesalers, and retailers will need permits authorizing them to sell hemp extract products. There is a great deal of uncertainty in the hemp industry, between federal guidelines still in flux, New York rules about to take effect, and a potential sea change on the horizon. Anyone currently in the hemp space, or thinking about making a play, needs to consistently stay on top of the regulatory landscape.

Taxes

The CRTA gives us a look at how cannabis will be taxed. For medical cannabis, the proposed law provides a 7% tax on gross receipts. For adult-use non-medical cannabis, all licensees will need to pay a \$600 registration fee with OCM and the New York Tax Department. Then, there is a two-tiered structure. Taxes based on product weight will accrue when cultivators sell or transfer their crops. Retail sales are subject to a 20% state tax, and an additional 2% local tax. However, those retail sales will not be subject to other existing state or local taxes.

What’s next?

There is no guarantee the current CRTA will be adopted as part of this year’s budget, but it is likely to become law if it does. Even after passage, there will be many months of rulemaking before you will be able to grow or sell cannabis for non-medical purposes. To be successful, cannabis businesses need to pay attention to that process, be ready to invest before it is finalized, and plan for the long term with adaptability along the way.

