

A Tale of Two Bills: Comparing New York State Governor Cuomo's Proposed Cannabis Budget Legislations to Assembly Member Crystal Peoples-Stokes Assembly Bill A1248



February 12, 2021 | **CLIENT ALERTS**

New York State Governor Cuomo's proposed Budgetary Bill Chapter 7-A, Cannabis Regulation and Taxation Act ("CRTA") and Assemblymember Crystal Peoples-Stokes' Assembly [Bill A1248](#), Marihuana Regulation and Taxation Act ("MRTA") are the two major competing pieces of cannabis legislation currently being negotiated and soon to be voted upon this year.

While it is too early in the legislative process to determine which bill may be more likely to succeed and become law, a comparison of the two bills in their current forms reveals a number of stark differences which are likely to be contested points of negotiation in the coming months. A few of these differences are highlighted below as examples.

Program Structure & Powers

The definition of “Applicant” differs significantly between the two bills. In CRTA, an applicant is defined as “a person or entity that submits an application to become a registered and licensed organization.” In MRTA, the definition reads as “a resident of New York who is either a U.S. citizen or a person lawfully admitted for permanent residency over the age of 21.” While CRTA seems to leave open the notion that applicants are permitted from outside New York, MRTA seems to imply that New York should keep license applicants within state boundaries. Should MRTA be adopted, or a bill with a provision similar to that contained in MRTA, New York would not be the first state to attempt to control the origin of cannabis license applicants. Oklahoma is just one example of a state utilizing a stringent residency requirement in connection with its medical marijuana licensing program.

Both CRTA and MRTA establish the Office of Cannabis Management (“OCM”) and a five-member Cannabis Control Board (“CCB”); however, it is noteworthy that CRTA’s CCB is appointed entirely by the Governor, in his sole discretion, whereas in MRTA, the CCB is comprised of three members appointed by the Governor, but with the consent of the Senate, one member appointed entirely by the Senate, and the fifth and final member appointed by the Assembly. MRTA’s CCB appointments shall be geographically and demographically representative of New York’s communities historically affected by the war on drugs.

Adult-Use Licensing and Permit Limitations

Initially, it should be noted that CRTA’s CCB issues requests for proposals for adult-use licensure and permitting, whereas MRTA’s CCB reviews applications upon receipt and any person or entity may apply for a license or permit at any time. Additionally, CRTA does not provide for the issuance of any delivery or on-site consumption licenses or permits. MRTA’s provisions allow for both delivery and on-site consumption licenses.

CRTA does not include a home-grown cannabis option. MRTA permits persons over the age of 21 to grow up to six (6) mature cannabis plants within the confines of the home for personal consumption.

CRTA restricts retail dispensary sales of adult-use cannabis to individuals at one (1) ounce per individual customer per day. MRTA contains no such restriction; however, it leaves open the proposal that the CCB be authorized to promulgate regulations governing licensed adult-use dispensaries, including but not limited to, the hours of operation, size and location of the facility, potency and types of products offered and establishing a minimum and maximum margin for retail markups of products before selling to consumers.

Taxes

CRTA contains a robust, two-tiered tax structure that includes a 10.25% tax paid on the purchase of adult-use cannabis products by consumers at retail dispensary points of sale, and a distribution/wholesale tax on adult-use cannabis products sold to retail dispensaries based on the THC content reflected on product labels. MRTA does not currently provide for either of the aforementioned taxes; however, MRTA does contain a sweeping 18% statewide tax rate on sales from distributors/wholesalers to adult-use retail dispensaries, as well as additional local taxes of 3-4% based on the municipality’s population (municipalities with a population of one million or more people are designated with a 4% local tax).

Penal Law Applicability

MRTA specifically states that except in the investigation of motor vehicle accidents and impaired driving incidents, the odor of cannabis or burnt cannabis, suspicions of possession or possession of cannabis, possession of

cannabis or cannabis containers in proximity to cash or currency, or the planting, cultivating, harvesting, curing or processing of cannabis, shall not be used to constitute reasonable suspicion of the commission of a crime or be used as evidence or probable cause in any criminal investigation. CRTA remains silent as to its effect on criminal investigations or probable cause instances. Notably, CRTA increases the punishment for sales of cannabis to minors under the age of 21 from a misdemeanor to a Class D felony punishable by up to 2.5 years in prison. MRTA retains the misdemeanor punishment for such sales, similar to the current treatment of alcohol and cigarettes.

Ultimately, Crystal Peoples-Stokes is advocating for Governor Cuomo to move to pass MRTA and the Senate version of the bill sponsored by Senate Member Liz Krueger, Bill S854, first, which would make the cannabis legislation codified by statute and more permanently embedded in New York law, instead of attempting to pass cannabis legislation through the Executive Budget process, which would leave it subject to potential renegotiation each year and could be more tied to Governor Cuomo's tenure in office. In order to pass some form of cannabis legislation, whether through the standalone MRTA bill or the CRTA portion of the Executive Budget, Crystal Peoples-Stokes and Governor Cuomo will have reach some form of compromise. We anticipate a strong likelihood that both bills will change dramatically in the coming weeks.

Please contact any of the [Cannabis Team](#) members below with any questions about this client alert or any other cannabis-related questions.

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