

Are We There Yet? New York Adult-Use Cannabis Status Update



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New York is perhaps the closest it has ever been to legalizing recreational, adult-use cannabis. Beginning several weeks ago, Governor Cuomo showed a willingness to appease concerns made public by Assembly Majority Leader Crystal Peoples-Stokes that his proposed budget bill failed to adequately address a number of her concerns regarding the cannabis-specific portion of the bill.

More specifically, Peoples-Stokes took issue with the fact that the Governor's proposal (1) did not allow for certain ancillary services, especially delivery licenses and on-site consumption permits (similar to a catering permit); (2) failed to allow for any form of home-grown option for adults, thereby naturally creating some form of cost barrier for low-income individuals and neighborhoods most affected by the decades-long war on drugs; (3) unnecessarily heightened criminal penalties from a misdemeanor to a felony for the sale of cannabis to persons under the age of 21; and (4) failed to adequately fund the proposed social and economic equity program ("SEEP") by only allocating \$10 million to the program during the first fiscal year, with incremental increases of \$10 million every subsequent year up to \$50 million, with a total aggregate funding cap of \$100 million placed on the program.

Governor Cuomo has since amended his budget proposal to become more in line with Peoples-Stokes' standalone bill by now allowing for delivery services, keeping sales of cannabis under one pound a misdemeanor (sales over one

pound will remain a felony though), and providing further guidance on how the SEEP funds will be distributed to qualified community nonprofits in areas disproportionately impacted by the illegal status of cannabis.

Most recently though, Peoples-Stokes' standalone bill A1248 appears to have gained considerable traction given that any budget legislation, including the cannabis portion, would be up for renegotiation each year, which could be jeopardized by any change of leadership within NYS government. In just the past few days, state lawmakers confirmed they are close to an agreement on a standalone bill to legalize adult-use cannabis, with a final vote potentially occurring as early as next week. If approved, New York, while just the latest state to allow for the commercial sale of cannabis products, is anticipated to be the second largest, if not the largest market in this rapidly expanding industry.

Specific items that appear to remain outstanding include the number of plants to be permitted under the home-grown private allowance and what mechanisms will be used to determine if someone is driving impaired by or under the influence of cannabis. Much of the consideration surrounding the impaired-driving impasse stems from the lack of an immediate tool to detect impairment, something other states with mature adult-use cannabis programs have admittedly struggled with. Meanwhile, the tax revenues issue, an issue that killed past attempts at legalizing cannabis, has apparently been remedied. Governor Cuomo has proposed \$100 million of tax revenues be earmarked for SEEP in 2022 and dropping to \$50 million after four years. It remains unclear whether the tax revenue figures have been amended further.

What is clear is that the passing of a standalone bill would be a huge win for those who advocate for permanently embedding an adult-use cannabis regulatory framework in New York. The caveat remains that should adult-use cannabis become legalized over the coming days or weeks, if at all, it is almost certain to come bearing a complex regulatory structure touching every aspect of the plant from seed to sale, ancillary services, private consumption, and everything in between.

Both Governor Cuomo and Assembly Majority Leader Peoples-Stokes have advocated that the passing of an adult-use cannabis bill will open New York's market to more individuals and small businesses. With an estimated two years required from any legislation passing to the first recreational sales, it remains to be seen exactly how restrictive the license application process will be and the severity of any associated cost barriers and application fees. A final consideration, assuming legislation passes, centers on the municipal opt-out provision. We anticipate robust discussions within local governments across the state regarding whether adult-use cannabis sales will be permitted in their respective municipal jurisdictions immediately following the passage of any bill.

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

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