

Sweet Seventeen: New York Finalizes Bill to Become Seventeenth State to Legalize Recreational Cannabis



March 29, 2021 | **CLIENT ALERTS**
Cannabis Bill Breakdown

New York reached a finalized bill to become the seventeenth state to legalize adult-use cannabis. All that is left is a vote to ratify the bill into law this week, which is anticipated to be a formality at this point, given New York's Assembly and Senate are under unified democratic control. Following several failed attempts over past years, New York is paving the way for itself to become the leader in an anticipated \$4.2 billion industry that could create tens of thousands of jobs and become the largest market in the country. A summary of the bill's key components is below:

Regulatory Framework

- "Applicant" for registration, licensure or permit is an individual or entity that has a significant presence in NY, either individually or by having a principal corporate location in the state; is incorporated or otherwise organized under the laws of NY; or a majority of the ownership are residents of NY.
- Establishes the Cannabis Control Board ("CCB") as a five-member board, three members of which are to be selected by the Governor and one member each from the Senate and Assembly. The CCB has full discretion to expand or limit the number of licenses issued for a given class.
- Establishes the Office of Cannabis Management ("OCM") as an independent regulatory authority under the

umbrella of New York State Liquor Authority. The OCM prescribes the form of application for licenses and permits.

- Chief Equity Officer shall be elected by the CCB to assist with the development and implementation of a social and economic equity program (“SEEP”) for priority applicants and to establish public education programs within communities historically adversely impacted by the prohibitions on marijuana.
- Together, the CCB and OCM shall establish NY Cannabis Advisory Board (“Advisory Board”) consisting of thirteen (13) appointed voting members, along with a representative from the department of environmental conservation, department of agriculture and markets, office of children and family services, department of labor, department of health, division of housing and community renewal, office of addiction services and supports, and department of education, which will serve as non-voting members. The Advisory Board shall make recommendations to the CCB on market trends and licensure, public safety, health, criminal justice, research and testing, and enforcement concerns. The Advisory Board shall have statewide geographic representation that is balanced and diverse in its composition.
- The CCB shall establish a scaled application, licensing, and renewal fee system based upon the cost of enforcing MRTA and the size of the cannabis business being licensed. All registration and licensure fees shall be set dependent on the size and capacity of the applicant and for SEEP applicants such fees may be assessed to accomplish the goals of MRTA.
- The OCM shall engage with other states, territories, and jurisdictions in order to coordinate and establish uniform policies and best practices in cannabis regulation.

Types of Adult-Use Licenses

- The following types of licenses shall be available:
 - Cultivator
 - Processor
 - Cooperative (allows for acquisition, possession, cultivation, processing, distribution and sale from the premises to a duly licensed distributor, on-site consumption site, and/or retail dispensary, but not directly to cannabis consumers)
 - Distributor
 - Retail Dispensary
 - Delivery
 - Nursery
 - On-Site Consumption
 - Registered medical organizations have the ability to apply for two different vertical licenses: (1) full-vertical adult-use cultivator, processor, distributor, retail dispensary license; and (2) adult-use cultivator, processor, and distributor license
 - Microbusiness license available for any cultivator, processor, cooperative, distributor, and retail dispensary license based on size and scope of the business applicant.

Licensing Restrictions and Regulations

- Licenses are valid for two (2) years from the date of issuance.
- Applicants for retail dispensary, on-site consumption, and registered organization verticals containing retail dispensing licenses must provide notice to local municipalities in which the proposed applicant facility will be located not less than thirty (30) days and no more than two hundred seventy (270) days before filing an application for licensure.
- Retail dispensing and on-site consumption licenses are prohibited from operating within five hundred (500) feet from any school and two hundred (200) feet from any place of worship.
- Adult-use cultivators, processors, and distributors are prohibited from acquiring interests in retail dispensaries or retail dispensary licenses.

- Cultivator licenses are limited to one (1) per person; however, a person holding a cultivator license may also obtain one (1) processor, one (1) distributor license, and one (1) nursery license.
- Persons holding a registered organization vertical license that contains an adult-use retail dispensary license are prohibited from obtaining an additional retail dispensary license.
- Processor licenses are limited to one (1) per person; however a person holding a processor license may obtain one (1) distributor license for distribution of its own products. Processor licenses may permit processing to occur at multiple locations, but not through more than one (1) license.
- Cooperative licenses are limited to one (1) per member of the cooperative and cooperatives are prohibited from having any direct or indirect interest in any retail dispensary.
- Distributor licensees with an interest in a cultivator or processor shall only distribute products cultivated or processed by such licensee. The bill is silent as to the number of distributor licenses permitted to be obtained by a single person or entity.
- Retail dispensary licenses are limited to three (3) per person. Holders of retail licenses are prohibited from obtaining direct or indirect interests in any other license type except for instances involving registered medical organization license holders.
- Microbusiness license holders may not hold any direct or indirect interest in any other license and may only distribute its own cannabis and products to dispensaries. Size and scope of eligibility for microbusiness licenses shall be determined by the CCB in accordance with SEEP prioritization efforts.
- Delivery licenses may have a total of no more than twenty-five (25) individuals providing full-time paid delivery services to cannabis consumers per week under one license. Delivery licenses are limited to one (1) per applicant. Delivery and sale cannot occur simultaneously. Consumers will likely have to place orders online and have products delivered thereafter.
- Nursery licenses are likely to fall under SEEP priority and no specific regulations surrounding license limits are provided yet but are likely to be set forth by the CCB once the program matures.
- On-site consumption licenses for cannabis café-type operations are limited to no more than three (3) per person. Holders of on-site consumption licenses are prohibited from holding retail, cultivation, processor, microbusiness, cooperative or distributor licenses.

Social and Economic Equity Plan

- The CCB shall create and implement SEEP to actively promote applicants from communities disproportionately impacted by cannabis prohibition, and promote racial, ethnic, and gender diversity when issuing licenses for adult-use cannabis activities, by prioritizing consideration of applicants from communities disproportionately impacted or who qualify as a minority or women-owned business, distressed farmer, or service-disabled veteran.
- The CCB shall promote diversity in commerce, ownership and employment, and opportunities for SEEP, with a goal to award 50% of adult-use licenses to SEEP applicants and ensure inclusion of minorities, women, distressed farmers, service-disabled veterans, or individuals previously convicted of marijuana-related offenses.
- CCB shall create a SEEP incubator program to provide direct support in the form of counseling services, education, and small business coaching and financial planning, and compliance assistance.
- The CCB shall actively promote applicants that foster racial, ethnic, and gender diversity in their workforce.

General Provisions

- Employers and local municipalities will be able to regulate cannabis consumption in similar manners to the regulation of alcohol and tobacco (i.e., prohibiting using cannabis in the workplace, no smoking in public parks, restrooms, indoor areas, etc.). Employers are prohibited from basing job offers or terminations solely on the legal use of cannabis.
- **Local Opt-Out; Municipal Control and Preemption:** The establishment of a retail dispensary and/or on-site consumption license can be opted-out by a town, city or village, on or before December 31, 2021 or within nine (9) months after the effective date of this bill, by local municipal law.
 - All county, town, city and village governing bodies are preempted from adopting any law or ordinance

prohibiting the operation and licensure of any other adult-use, medical, or hemp license.

- Municipalities may pass laws regulating the time, place and manner of the operation of licensed retail dispensaries and/or on-site consumption operations, provided such regulation does not make the operation unreasonably impracticable as determined by the CCB.
- Except for driving-while-impaired investigations, no finding or determination of reasonable cause to believe a crime has been committed shall be based solely on the evidence of the existence of (1) the odor of cannabis; (2) odor of burnt cannabis; (3) possession or suspicion of possession of cannabis products; (4) possession of multiple containers of cannabis without evidence of concentrated cannabis amounts authorized under this bill; (5) the presence of cash in proximity to cannabis; (6) the planting, cultivating, harvesting, drying, processing or possessing cultivated cannabis.
- Adults over the age of twenty-one (21) may cultivate no more than six (6) mature and six (6) immature cannabis plants with or on the grounds of a person's private residence.
- A person may lawfully possess up to five pounds (5 lbs) of cannabis in their private residence.
- Possession over lawful amounts on a person or within a private residence may result in a civil fine for a discretionary amount ranging from \$125 to \$200.
- Criminal possession of threshold amounts ranges from class A misdemeanor to class D felony.
- Criminal sale and sale to minors are class E and D felonies respectively. Aggravated criminal sale is a class C felony.
- New York's criminal procedure law is amended to allow for motions for resentencing and vacating sentences for persons convicted of certain marijuana offenses.

Taxes and Revenue Allocation; Miscellaneous

- Taxes of \$0.08 per milligram of THC on cannabis flower; \$0.05 per milligram of THC on concentrated extract; and \$0.03 per milligram of THC on edible products. This tax shall apply to products sold by a distributor to a retailer and shall accrue at the time of such sale or transfer. If the distributor is a licensed microbusiness or registered organization, such person shall be liable for the tax, and such tax shall accrue at the time of retail sale to consumers.
- Retailers shall be taxed at nine percent (9%) state rate and a four percent (4%) local rate.
- Creates the New York state cannabis revenue fund for the purpose of holding cannabis tax revenues.
- The monies in the revenue fund shall be spent to cover the reasonable and necessary costs of operating the MRTA program.
- Beginning in the 2022-2023 fiscal year and continuing through the 2032-2033 fiscal year, after dispersal of monies necessary to cover costs, the remaining funds shall be deposited into the state lottery fund and two (2) additional sub-funds created within the cannabis revenue fund known as the drug treatment and public education fund and the community grants reinvestment fund as follows:
 - Forty percent (40%) deposited in the state lottery fund for additional grants to school districts;
 - Twenty percent (20%) deposited in the drug treatment and public education fund; and
 - Forty percent (40%) deposited in the community grants reinvestment fund.
- CCB retains full discretion to review any licensee's progress in giving back to communities disproportionately impacted by cannabis prohibition and/or diversity efforts when considering whether to grant a license renewal.
- New York state urban development corporation is authorized, on the recommendation of the CCB, to provide low interest or zero-interest loans to qualified SEEP applicants and to provide funds necessary for the provision of such loans.
- Medical patients are able to cultivate medical marijuana at home within six (6) months after the bill is enacted.
- Smokable flower will be permitted under the medical program for medical patients.

Please contact the attorneys below with any questions regarding this client alert.

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