

## Update: Proposed New York State Cannabis Legislation



February 2, 2021 | **CLIENT ALERTS**

New York Governor Andrew Cuomo released a proposal on January 19, 2021 to legalize and create a comprehensive system to oversee and regulate cannabis in New York. After two failed attempts at cannabis legalization, Cuomo is hoping that the third time is the charm. Below are some key points from the proposed legislation.

### **LICENSES**

The Office of Cannabis Management (“OCM”) would be created to oversee the new adult-use program, as well as the state’s existing medical and cannabinoid hemp programs. The OCM will be comprised of an executive director and a board of directors with one chairperson and four voting members. The members of the board would be tasked with, among other things, determining the number and types of licenses to be issued. While many of the details of the licensing parameters remain vague, we do know the following from the proposed legislation:

- The legislation creates six adult-use licenses as follows: cultivator, processor, distributor, retail dispensary, cooperative, and microbusiness.
- The legislation does not allow vertical integration for adult-use cannabis businesses. However, this prohibition on vertical integration is not applicable to existing licensees operating a medical cannabis business.
- The legislation limits the number and type of licenses that can be held by one entity.
- The legislation has two categories of licenses: retail and anything that is not retail.
- Cultivators, processors and distributors may only hold or have an interest in one of the same type of license and they may not hold a retail license.
- A retail license holder will have to obtain a separate license for each of its locations and cannot hold or have an interest in more than three retail dispensary licenses.
- Licenses issued to minority or women-owned businesses and social equity applicants are not transferable for a period of two years except, with approval of OCM, to another qualified minority or women-owned business or social equity applicant.

## TAXES

The new legislation proposes (1) a tax on the sale from wholesaler to retail dispensary; (2) a surcharge tax on the sale from dispensary to consumer; and (3) that all adult-use cannabis sales would additionally be subject to normal NYS and other local taxes.

The tax on the wholesaler would be based on the milligram concentration of total THC in cannabis products. The tax rate would change based on the type of cannabis being sold (i.e., edibles, concentrates and flower).

The tax on the retail purchaser is 10.25% applied at the time of sale.

Most counties in New York have a combined state and local sales tax rate of 8%. As a result, many New York State adult-use consumers would be taxed at 18.25%.

## SOCIAL AND ECONOMIC EQUITY

Under the current draft of the legislation, applicants who qualify as a minority or women-owned business, a social equity applicant, or a disadvantaged farmer would receive priority in obtaining adult-use cannabis licenses.

A “social equity applicant” is defined as a person who: (1) is a member of a community or area disproportionately impacted by the enforcement of cannabis prohibition, as determined by OCM; (2) has an income lower than 80% of the median income of the county in which the applicant resides; and (3) was convicted of (or had a family member charged with) a marijuana-related offense.

The draft legislation will be further negotiated prior to the budget vote in April so look for further updates and changes prior to the vote.

Any questions regarding the cannabis industry in New York State? Please contact either of our Cannabis Team Leaders below.

## Related Team



**Thomas B. Hughes**  
Senior Associate |  
Team Co-Leader -  
Cannabis



**Ryan V. Stearns**  
Senior Associate |  
Team Co-Leader -  
Cannabis



**Lippes  
Mathias**  
Wexler Friedman LLP

**ALBANY** | 54 State Street, Suite 1001 • Albany, NY 12207 • 518.462.0110

**BUFFALO** | 50 Fountain Plaza, Suite 1700 • Buffalo, NY 14202 • 716.853.5100

**CHICAGO** | 332 S. Michigan Ave., 9th Floor • Chicago, IL 60604 • 872.254.5500

**GREATER TORONTO AREA (PRACTICE FOCUSED ON U.S. LAW)** | 1100 Burloak Drive, Suite 300 • Burlington, ON L7L 6B2 • 905.319.8964

**JACKSONVILLE** | 10151 Deerwood Park Blvd. , Bldg. 300, Suite 300 • Jacksonville, FL 32256 • 904.660.0020

**NEW YORK CITY** | 477 Madison Avenue, 6th Floor • New York City, NY 10022 • 646.673.8633

**WASHINGTON, D.C.** | 1900 K Street, NW, Suite 730 • Washington, DC 20006 • 202.888.7610