



**Department
of Health**

New York State's Marijuana Regulation & Taxation Act

Background: Incremental Steps

1. Compassionate Care Act – Medical Marijuana Program (July 2014)
2. Impact Assessment (July 2018)
3. Industrial Hemp Bill (December 2019)
4. Cannabinoid Hemp Bill (January 2020)
5. Marijuana Regulation and Taxation Act (March 2021)

Medical Marijuana Program

- Restrictive and Highly Regulated
- 5 registered organizations, increased to 10
- 4 dispensing facilities each

Medical Marijuana Program

Patients with one of the following 10 severe debilitating or life-threatening conditions:

- Cancer
- HIV positive status or AIDS
- Amyotrophic Lateral Sclerosis (ALS)
- Parkinson's Disease
- Multiple Sclerosis
- Spinal cord damage with objective indication of intractable spasticity
- Epilepsy
- Inflammatory Bowel Disease
- Neuropathies
- Huntington's Disease

AND

Medical Marijuana Program

One of those 10 conditions is also clinically associated with:

- Cachexia (a “wasting disorder”)
- Severe or chronic pain
- Severe nausea
- Seizures
- Severe or persistent muscle spasms

Medical Marijuana Program

Limited Forms of Medical Marijuana:

- Approved forms of medical marijuana:
 - liquid or oil preparations for metered oromucosal or sublingual administration or administration per tube
 - metered liquid or oil preparations for vaporization
 - capsules for oral administration
- Smoking of marijuana was expressly prohibited
- All other forms of medical marijuana were prohibited

Medical Marijuana Program

Additional Limitations on Medical Marijuana:

- 5 brand maximum per registered organization
- All prices approved by the Commissioner of Health
- 30-day supply limitation
- No individual dose may contain more than 10mg of tetrahydrocannabinol (THC)

Medical Marijuana Program

As of October 26, 2021:

- 3,409 Registered Practitioners
- 150,841 Certified Patients

Impact Assessment (2018)

- The positive effects of a regulated marijuana market in New York State outweigh the potential negative impacts
- Areas that may be a cause for concern can be mitigated with regulation and proper use of public education that is tailored to address key populations
- Incorporating proper metrics and indicators will ensure rigorous and ongoing evaluation

Impact Assessment (2018)

The creation of a regulated marijuana program would enable NYS to better:

- control licensing
- ensure quality control and consumer protection,
- set age and quantity restrictions

Impact Assessment (2018)

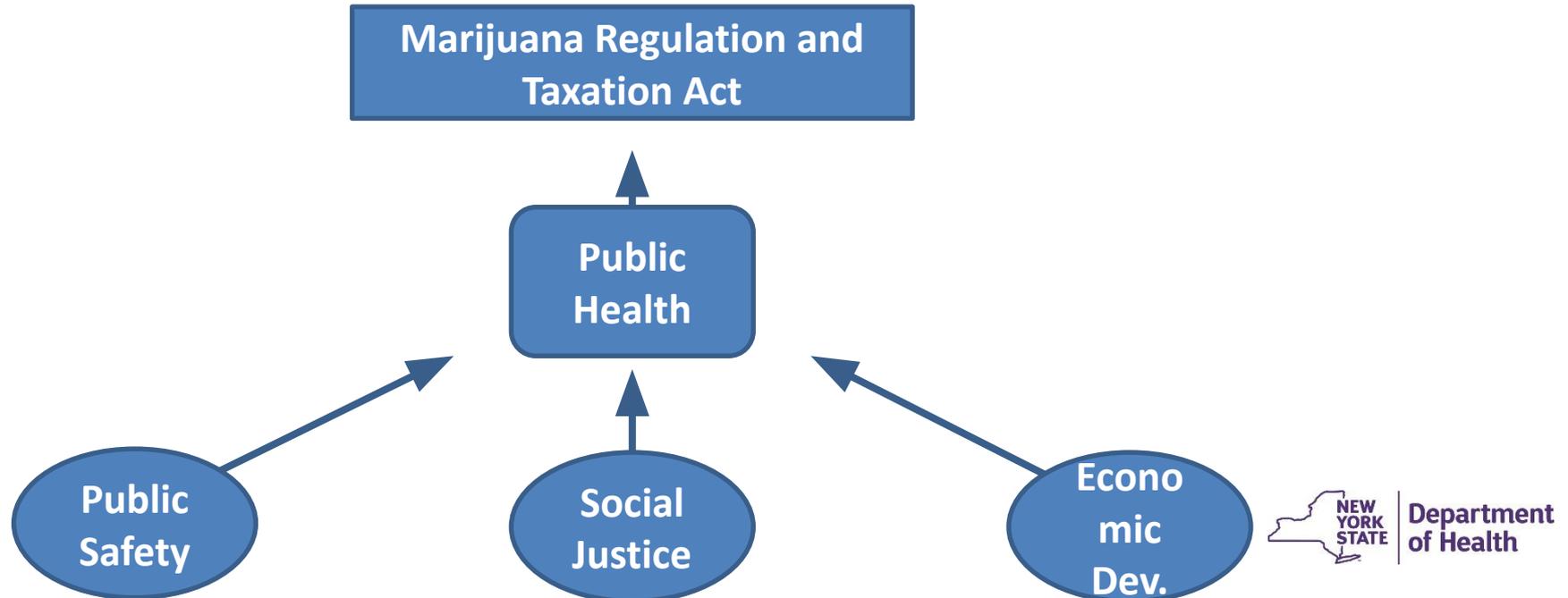
- Regulations would provide NYS with the ability to oversee the production, testing, labeling, distribution, and sale of marijuana
- NYS would be one of the largest potential regulated marijuana markets. As such, there is potential for substantial tax revenue in NYS

Hemp (2019-2020)

- Industrial Hemp: Pilot Program for Growers and Researchers
 - Cultivation regulated by Department of Agriculture & Markets
- Cannabinoid Hemp: Licensing framework for Processors and Retailers
 - Cannabinoid hemp is defined as any product that is used for its cannabinoid content (e.g. CBD) for human consumption or topical application
 - Does not include hemp seed, fiber or industrial products
 - Department of Health was regulatory authority.

Policy Shift: Public Health Framework

Multiple principles are driving recreational cannabis legalization but they all should be implemented through a public health lens



Marijuana Regulation and Taxation Act

- Signed into law on March 31, 2021
- Creates an all-new consolidated Law in New York, “Cannabis Law”

Article 1 SHORT TITLE; LEGISLATIVE FINDINGS AND INTENT;
DEFINITIONS

Article 2 NEW YORK STATE CANNABIS CONTROL BOARD

Article 3 MEDICAL CANNABIS

Article 4 ADULT-USE CANNABIS

Article 5 CANNABINOID HEMP AND HEMP EXTRACT

Article 6 GENERAL PROVISIONS

Establish the Office of Cannabis Management (OCM)

- New consolidated law: with a comprehensive regulatory framework governing
 - medical
 - adult-use
 - cannabinoid hemp
- Independent office: within the State Liquor Authority
- Executive Director: Appointed by the Governor with advice and consent of Senate. Charged with running the Office and any authorities delegated by the Board

Establish the Office of Cannabis Management (OCM)

Cannabis Control Board:

- 5-member board
- 3 appointed by the Governor including the chair
- 1 appointment for each house
- Board charged with authority to implement the law

Establish the Office of Cannabis Management (OCM)

Cannabis Control Board

Charged with authority to implement the law including:

- Market decisions (number of licenses, application periods, participation of ROs)
- Issuing final licensure
- Approval of social and economic equity plan
- Final decisions of any appeals
- Promulgating rules and regulations

Establish the Office of Cannabis Management (OCM)

Two Deputies named in statute:

Chief Equity Officer

- Confirmed by a vote of at least four Board members.
- Tasked with tracking the development and implementation of the OCM social and economic equity plan

Deputy Director of Public Health and Safety (healthcare professional)

Establish the Office of Cannabis Management (OCM)

Cannabis Advisory Board:

- 13 voting members
- 7 appointed by the Governor
- 3 from each House (Assembly and Senate).
- Agencies as ex-officio members
- Two major functions:
 - Providing recommendations to the Cannabis Control Board
 - Administering and governing the distribution of social equity and community reinvestment grants (40% of cannabis tax revenue)

Establish the Office of Cannabis Management (OCM)

Budget:

- \$37 million budget appropriation
- expanding up to 208 employees over implementation
 - Primary office in Albany
 - Satellite offices in New York City and Buffalo

Article 3: Medical Cannabis

- Repeal and replace the Compassionate Care Act from PHL:
 - program began sales in 2016, 10 operators, 38 dispensaries, 150,000 patients
- Registered organization participation in adult-use:
 - ROs allowed to participate in AU market subject to any conditions, fees or other requirements as dictated by the Board

Article 3: Medical Cannabis

Expands Medical Program:

- New medical conditions: autism, Alzheimer's, muscular dystrophy, arthritis, and any condition recommended by a patient's practitioner
- Increased number of caregivers allowed to be designated by a patient from 2 to 5
- Removes the prohibition on smoking and expressly states whole cannabis flower as a form of medical cannabis
- Mandates the office to increase the number of ROs (in underserved and underrepresented communities)
- Permits home cultivation of medical cannabis for patients (Board to issue regulations within 6 months)

Article 4: Adult-Use Cannabis

- Two-tier market structure:
 - similar to alcohol model, producers cannot own retail
 - limited licenses and supply management to control market roll-out. (protects market from monopolistic competition)
- License types:
 - cultivator, processor, distributor, nursery, cooperative, microbusiness, retail dispensary, on-site consumption, & delivery

Article 4: Adult-Use Cannabis

Selection criteria:

Applicants must demonstrate the following:

- labor peace agreement
- ability to contribute to communities harmed by War On Drugs
- environmental impact of facility
- history of compliance
- priority for licensees who use union labor on facilities
- social equity applicants

Article 4: Adult-Use Cannabis

Quality control, public health and consumer protections:

- lab testing
- packaging
- labeling
- marketing and advertising restrictions and requirements

Article 4: Adult-Use Cannabis

Social and economic equity program:

- encourage individuals disproportionately impacted by cannabis enforcement to participate in the industry
- Social equity applicants defined as members from disproportionately impacted communities, low income and having been convicted or had a family member convicted of a marijuana-related offense
- Social equity applicants also include minority and women owned businesses, service-disabled veteran-owned businesses and distressed farmers
- Goal of awarding 50% of all licenses to social and economic equity applicants

Article 4: Adult-Use Cannabis

Social and economic equity program:

- Establishes businesses development incubator program to provide direct support to applicants in the form of counseling services, education, small business coaching and financial planning, and compliance assistance
- All non-equity licensees are required as part of the application process, to develop and implement a social responsibility framework to contribute to equity goals

Article 5: Cannabinoid Hemp

Repeal and replaces that Cannabinoid Hemp Program from the PHL:

- proposed regulations issued Fall 2020, applications for processors and retailers launched in Q1 2021
- No major changes to hemp section which was chaptered in 2020, except for the express addition of hemp flower as a permitted form (was banned in proposed regulations)
- Flower in the form of a pre-roll, joint or marketed for “smoking” to be sold through adult-use dispensaries. Other hemp flower products (e.g., flower in a jar) can be sold by any cannabinoid hemp retail licensee

Article 5: Cannabinoid Hemp

Growing of hemp

- Still regulated by Dept. of Agriculture & Markets

Regulations:

- Currently working on assessment of public comment
- Plan to finalize revised regulations soon

Adult-Use Cannabis Taxation

- FY 2022 proposes a new cannabis tax structure from previous years
- Weight-based tax replaced with a **THC per mg tax** with different rates depending on **final product type**:
 - \$.03 per mg THC edible, \$.008 per mg THC concentrate and \$.005 per mg THC cannabis flower
 - Different rates for different products because THC mg consumed via ingestion (edibles) is metabolized differently than cannabis consumed in other forms on a per mg basis (e.g., smoking or vaping)
 - THC tax can help push consumers to lower potency products by making high potency products more expensive, helping achieve public health goals

Adult-Use Cannabis Taxation

- Wholesale excise tax moved to retail level (9% state excise)
- Local excise tax rate at 4% retail price. (25% to county, 75% to city/town/village)
- Villages within towns may establish their own revenue distribution agreements

Adult-Use Cannabis Tax Revenue

- Revenue distribution:
 - all cannabis taxes deposited in the New York state cannabis revenue fund
- First, revenue covers reasonable costs to administer the program and implement the law, including
 - costs to the OCM,
 - state police for DRE and police training
 - costs related to implementing incubators and business development for social and economic equity applicants

Adult-Use Cannabis Tax Revenue

- 40% to Education (supplement not supplant)
- 40% to Community Grants Reinvestment Fund
 - To issue grants to non-profit and community-based organizations in communities disproportionately impacted by cannabis prohibition, and other social equity initiatives
- 20% to Drug Treatment and Public Education Fund
 - To development and implement statewide public education campaigns and provide substance use disorder treatment programs for youth and adults

Economic Impact of Legalization

- Development of new industry has potential to create significant economic opportunities for the state
- Tax collections projected to reach \$350 million annually
- Jobs projected to reach 30-60,000
- Number of licenses TBD

Municipal Opt-out

- Cities, towns, and villages may opt-out of allowing adult-use cannabis retail dispensaries or on-site consumption licenses by passing a local law by December 31, 2021, or nine months after the effective date of the legislation
 - Municipalities cannot opt-out of adult-use legalization. Cannabis possession and use by adults 21 years of age or older in accordance with the law is legal in New York State
 - If a municipality does not opt-out by December 31, 2021, the municipality will be unable to opt-out at a future date
 - If it opts out timely, it can opt back in at any time

Municipal Opt-out

- Municipalities may choose to opt-out of both retail and on-site consumption adult-use licenses or just one type of license (cannot opt-out of other AU license types)
- All local laws passed by municipalities opting out of AU dispensaries and on-site consumption licenses are subject to a permissive referendum in accordance with the Municipal Home Rule Law

Adult-Use Cannabis & Local Control

Except for opt-out, all municipalities including counties, are preempted from adopting any law, rule, ordinance, regulation, or prohibition pertaining to the operation or licensure of adult-use, medical or cannabinoid hemp licenses

Adult-Use Cannabis & Local Control

- However, towns, cities and villages are permitted to pass local laws and regulations governing the **time, place and manner** of adult-use retail dispensaries and on-site consumption licenses provided that the local law and regulations do not make the operation of the license unreasonably impracticable as determined by the Cannabis Control Board
- For example, cities, towns, and villages are permitted to pass laws and regulations pertaining to local zoning and the location of licensees, hours of operations and adherence to local building codes
- Municipalities may not issue local licenses to cannabis licensees

Traffic Safety

- DOH to work with higher education research institutions to conduct a controlled research study designed to evaluate methodologies and technologies for the detection of cannabis-impaired driving
 - After completion of the research study DOH may promulgate rules and regulations to approve and certify a test for the presence of cannabis for the purpose of detecting indications of an actual and currently present impairing effect by cannabis on the physical and cognitive abilities of operators of motor vehicles

Traffic Safety

- Legislation directs a portion of the cannabis tax revenue to increase the number of trained and certified drug recognition experts within the state and provide increased drug recognition awareness and Advanced Roadside Impaired Driver Enforcement training under its drug recognition program
- Adds cannabis to the open container law (VTL 1227)
- Adds cannabis to the definition of drug S.114-a. Drug in VTL

Personal Possession & Home Cultivation

- Personal possession: 3 ounces cannabis and 24 grams of cannabis concentrate
- Home possession: 5 pounds cannabis (must be kept in a secure location away from children)
- Home grow: permitted under the bill:
 - 3 mature plants and 3 immature plants for adults over 21
 - 6 mature plants and 6 immature plants max per households (12 total)
 - Home grow is subject to the rules and regulations of the board

Personal Possession & Home Cultivation

- Medical home grow: 6 months from the effective date of the article the board shall issue regulations allowing home grow
- Adult-use home grow: 18 months from the first retail sale of AU cannabis, the board shall issue regulations governing home grow
- Not allowed to process or use volatile solvents to process cannabis at home

Criminal Justice and Record Expungement

Cannabis penalty framework restructured to avoid the criminalization seen in prohibition. Reduced penalties for possession and sale.

- Possession:
 - over 3 ounces to 1 pound = violation \$125 fine
 - over 1 pound = misdemeanor
 - over 5 pounds = class E felony
- Sale:
 - any sale = violation \$250 fine
 - over 3 ounces or to someone under 21 = misdemeanor
 - over 1 pound = class E felony

Criminal Justice and Record Expungement

- Legislation creates automatic expungement or resentencing for anyone with a previous marijuana conviction that would now be legal under the law. (Builds upon a 2019 decrim bill)
- Adds cannabis to the Clean Indoor Air Act, which establishes a baseline on where cannabis can be smoked or vaped
 - Municipalities and local governments are permitted to make laws that are more restrictive than the CIAA

Protections for the Use of Cannabis & Workplace Safety

- Unlawful discrimination prohibited
 - No school or landlord may refuse to enroll or lease to a person for conduct allowed under this chapter
 - Protections for
 - certified medical patients
 - parolees
 - custody, visitation or parenting time with a minor

Protections for the Use of Cannabis & Workplace Safety

- Workplace Safety
 - Mirror labor law 201-d, which lays out a framework for employer policies on substance use
 - Prohibits employers from discriminating against employees for the use of cannabis outside of work. (does not permit impairment during work hours)
 - Employers may still implement policies prohibiting cannabis use for select exceptions, including if it would cause an employer to commit any act that would cause the employer to be in violation of federal law or that would result in the loss of a federal contract or federal funding

Public Health and Education Campaign

- OCM to establish a robust Public Health and Education campaign:
 - Implementation and evaluation of evidence-based prevention and education programs that deformalize cannabis use among youth
 - Developing and implementing standards for regulating characteristics of legal cannabis products that may appeal to children and youth (e.g., flavors, shapes, forms, names)
 - Restricting advertising and promotion of commercial cannabis products in the broader community, particularly in venues and locations frequented by youth
 - Safeguarding pregnant and breastfeeding women through education about the potential harms related to cannabis use
- Regional Cooperation: with neighboring states and associations to coordinate actions and policies to protect public health and safety

OCM Board Meeting

October 5, 2021

- Top-line appointments and employment approvals
- Any medical provider who can prescribe controlled substances may certify patients
- 60-day supply
- Whole flower in Medical Marijuana Program
- Elimination of \$50 patient registration fee

OCM Board Meeting

October 21, 2021

- Filed regs for medical home grow
- up to 3 mature plants and 3 immature plants per person
- cap of 6 mature and 6 immature plants within any private residence
- 1 caregiver may grow up to 6 cannabis plants for 1 certified patient
- They will now be subject to a 60-day public comment period

OCM Board Meeting

October 21, 2021

- Approximately 203,000 marijuana related charges are presently being suppressed from criminal background searches and are in process of being expunged
- Adds to the approximately 198,000 records that were expunged as part of the first round of marijuana record expungement following legislation enacted in 2019

Bureau of Narcotic Enforcement

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