

New York State Legalizes Recreational Cannabis

April 1, 2021

On March 31, 2021, New York Governor Andrew Cuomo signed into law the Marijuana Regulation and Taxation Act (A1248/S854). New York joins 14 other states and the District of Columbia that have legalized cannabis for both recreational and medical use. The law takes effect immediately, though certain portions of the law will not be fully implemented for several months.

Governing Bodies and Roles. The MRTA establishes an independent Office of Cannabis Management, which will be overseen by a Cannabis Control Board with five members—three members will be appointed by the governor, and one member each will be appointed by the Assembly and Senate. Eventually, these entities will be responsible for granting licenses to producers, cultivators, processors, distributors and retailers of cannabis products.

Notably, the Cannabis Control Board is responsible for appointing a Chief Equity Officer, who will be responsible for developing and implementing a social and economic equity plan. Among other goals, that plan will aim to award 50 percent of adult-use cannabis licenses to “social and economic equity applicants,” which include individuals from communities disproportionately targeted by cannabis enforcement, minority- and/or women-owned businesses, financially distressed farmers and service-disabled veterans.

Lawful Conduct and Criminal Justice Reforms. Adults age 21 and older are now lawfully permitted to publicly possess or transport up to three ounces of cannabis and 24 grams of concentrated cannabis. Adults will also be able to purchase cannabis at licensed retailers, have cannabis delivered to them by retailers or use cannabis at consumption sites, though localities can pass restrictions on their operation. Once additional rules are in place, adults will also be able to grow limited amounts of cannabis in their private residences and possess up to five pounds of cannabis in their homes.

Several important criminal justice-related reforms will go into effect immediately. For instance, law enforcement officials will no longer be permitted to use the odor or possession of cannabis as reasonable cause to believe a crime has been committed (except in the case of driving while intoxicated). And new cases cannot be brought for

possession of cannabis within the new legal limits. The law also provides for the automatic expungement, promptly and at most within two years, of cannabis-related convictions that would have been legal under the new law.

Revenue and Economic Impact. Cannabis distributors will be taxed for transferring adult-use cannabis products to retailers based on the type of product. Cannabis retailers will also be charged a nine-percent state tax and four-percent local tax based on the amount of each sale of cannabis products to a consumer.

Revenue from licensing fees and taxes will be deposited into a cannabis revenue fund, which will be used to cover the costs of the program, including those for data collection, reporting and research, and those incurred by law enforcement and courts to implement relevant sections of the law. 40 percent of the remaining revenue will support public school districts, 20 percent will fund drug treatment and public education initiatives and 40 percent will support community grants. The cannabis industry is currently expected to bring in more than \$350 million annually in tax revenues.

Business Impact. New York's cannabis legalization law is expansive in terms of the new uses and business opportunities it authorizes. However, given cannabis remains a Schedule I substance under the federal Controlled Substances Act, it remains to be seen how New York's law will interact with federal enforcement as well as future federal legalization efforts. Financial services companies and other institutions with customers who pursue newly legal opportunities under New York's law should continue to be cognizant of the risks under federal law.

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Please do not hesitate to contact us with any questions.



Satish M. Kini
Partner, Washington, D.C.
+1 202 383 8190
smkini@debevoise.com



David G. Sewell
Counsel, New York
+1 212 909 6755
dsewell@debevoise.com



Andrew Field
Associate, Washington, D.C.
+1 202 383 8094
alfield@debevoise.com



Tara Raam
Associate, New York
+1 212 909 6857
traam@debevoise.com