



New York's Marijuana Regulation and Taxation Act (2021)

On March 31, 2021, Governor Andrew Cuomo signed legislation (S.854-A/A.1248-A) legalizing adult-use cannabis in New York.

The law will establish the Office of Cannabis Management to implement a comprehensive regulatory framework that will cover medical, adult-use, and cannabinoid hemp. The law will also expand New York State's existing medical marijuana and cannabinoid hemp programs. Below is a summary of key provisions.

Legal Possession and Personal Liberty

- Personal possession limit of up to three ounces of cannabis and 24 grams of cannabis concentrate. Legal possession of up to three ounces is **effective immediately**.
 - Home cultivation: A maximum of 12 plants can be grown per household with more than one adult.
 - Three mature plants and three immature plants for adults over 21
 - Six mature plants and six immature plants maximum per household
 - Home growing will not take effect until regulators set rules for it. Regulators have a maximum of six months to do so for medical patients and must do so for adult-use consumers no later than 18 months after the first retail adult-use sales begin.
 - Police cannot use the odor of cannabis to justify searches.
 - Legislation permits the sale of hemp flower in the cannabinoid hemp program and allows for smokeable forms only when adult-use retail stores are operational.
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Expungement, Release, and Resentencing

- Legalized conduct will be automatically expunged.
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Delivery

- Retailers, microbusinesses, and delivery licensees are allowed to deliver to cannabis consumers.
- Cultivators are prohibited from holding delivery licenses.
- No entity may hold an interest in more than one delivery license.
- No more than 25 full-time employees per delivery licensee.
- The granting of delivery licenses shall promote social and economic equity applicants.

Licensing and Regulatory Structure

- Legislation establishes the New York State Cannabis Control Board and the Office of Cannabis Management.
- The Office of Cannabis Management — a new independent agency operating as part of the New York State Liquor Authority — is responsible for regulating the adult-use cannabis market as well as the existing medical marijuana and hemp programs and will be overseen by a five-member Cannabis Control Board. The governor shall select three members, including the chairperson. The President of the Senate and Speaker of the Assembly shall select one member each.
- A goal is set of 50% of licenses going to social and economic equity applicants. Social equity applicants are defined as people from “communities disproportionately impacted by the enforcement of cannabis prohibition,” as well as minority- and women-owned businesses, disabled veterans, and financially distressed farmers.
- Regulators may allow existing medical cannabis businesses to convert no more than three of their existing storefronts to dual use if they pay a one-time "special licensing fee" to fund social and economic equity and incubator assistance.
- Social consumption sites and delivery services are permitted.

Taxation and Revenue Distribution

- Legislation imposes a hybrid tax, with both a potency-based tax on distributors and a point-of-sale tax:
 - levies a tax on distributors at 0.5 cents per milligram of THC for flower, 0.8 cents per milligram of THC for concentrates, and 3 cents per milligram of THC for edibles; and
 - imposes a point of sale retail tax of 9% state tax and a 4% local tax (75% of the local earnings would go to municipalities and 25% to counties).
- After regulatory and administrative costs, 40% of cannabis revenue will go to community grants reinvestment, 20% to schools, and 40% to drug treatment facilities and public education, including for a youth-focused public health education and prevention campaign, a statewide public health campaign on the health effects of cannabis, and for substance use disorder treatment.

Local Control

- 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.

Improving Medical Access

- The state's existing medical cannabis program will be changed to expand the list of qualifying conditions and allow patients to smoke marijuana products.
 - Patients can also obtain a 60-day, rather than a 30-day, supply.
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