

Alert | New York Government Law & Policy



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NY Marijuana Regulation and Taxation Act to Legalize, Tax, and Regulate Adult-Use Cannabis Signed into Law

On March 31, Governor Cuomo signed the [Marijuana Regulation and Taxation Act \(MRTA\)](#) into law. The MRTA creates a new framework to regulate the production and sale of cannabis. The Law creates a new adult-use cannabis program and expands the existing medical cannabis and cannabinoid (CBD) hemp programs.

The Office of Cannabis Management

The MRTA places the three programs under the control of the Office of Cannabis Management (OCM), within the Division of Alcohol Beverage Control. The OCM will be led by an executive director, assisted by a chief equity officer and governed by a five-member Cannabis Control Board (the Board).

There will also be a 13-member Advisory Board to include experts in several fields including health, social equity, cannabis, and agriculture, with geographic and diverse membership.

The powers of the OCM include the establishment of cultivation and processing standards, caps, and limitations; the licensure of all business entities in the production and distribution process; the inspection and enforcement of the adult-use, medical, and CBD hemp programs; and the promulgation of all associated regulations. The OCM will determine details such as the types of products allowed in each

program, advertising and marketing rules, product labeling rules, the number of licenses, the process for licensure, and the implementation of a social equity program.

Market Structure

For the adult-use cannabis program, the MRTA includes a tiered market structure, similar to the structure of the state's alcohol industry. Generally, vertical integration (i.e., engaged in multiple license categories) is prohibited for entities licensed in the adult-use cannabis program, with limited exceptions for the Registered Organizations operating in the medical cannabis program and microbusinesses.

License categories include cultivation, processing, distribution, retail dispensaries, consumption sites and delivery. There is also a cooperative license category that will authorize groups of individuals to cultivate and process cannabis products, and a nursery license to allow for immature plants to be grown and sold to other licensees. A microbusiness license will allow the holder to cultivate, produce, and retail their own cannabis products, but will be limited in size.

For new applicants to the adult-use cannabis program, the OCM will assess licensing fees on the applicants. Applicants can seek licenses for both cultivation and processing, and/or for distribution, or for retail, but may not be vertically integrated. Furthermore, entities with retail licenses may not have direct or indirect ownership in more than three retail locations.

Social equity is a noteworthy feature of the MRTA and includes a goal of 50% of licenses being issued to social equity applicants in the adult-use program. Such applicants will include those from communities impacted by cannabis prohibition; minority- and women-owned businesses; distressed farmers; or service-disabled veterans.

Local Control, Taxes, and Social Equity Fund

The MRTA provides cities, towns, and villages with an option to opt out from having adult-use dispensaries and/or adult-use social consumption sites located in their communities and will require the appropriate governing body to pass a local law in order to opt out. Any opt-out laws will need to be passed by Dec. 31, 2021 (or within nine months of the effective date of the legislation, whichever is later). In addition, any local law opting out of adult-use retail or consumption sites can be overturned by a local referendum process.

The MRTA imposes a requirement that adult-use distributors remit taxes based on the per milligram amount of THC (0.5 cents for cannabis flower, 0.8 cents for cannabis concentrate, 3.0 cents for edibles). In addition, a 13% tax is imposed upon retail sale (4% of the tax is allocated to localities (1% goes to the county, and 3% is divided at the local level based on retail sales). [See GT's Tax alert on the MRTA here.](#)

All revenue raised from the sale of adult-use and medical cannabis will go into a new Cannabis Revenue Fund. Administration of the medical, adult-use, and CBD hemp programs will be paid out of the Cannabis Revenue Fund. Remaining revenue will flow into three funds:

- 40% to the State Lottery Fund for Education
- 20% to the Drug Treatment and Public Education Fund
- 40% to the Community Grants Reinvestment Fund

The Community Grants Reinvestment Fund will be administered by the Advisory Board. The money in this fund will be used for grants for qualified community-based organizations and approved local government entities to reinvest in communities disproportionately affected by past federal and state drug policies.

Conclusion

Now that the MRTA is law, the process to appoint members to the Board and set up the OCM will begin in earnest. Oversight of the existing medical cannabis and hemp CBD programs will transition to the OCM with cooperation from the existing regulators. As for the adult-use rollout, there are a number of issues that will be implemented through the regulatory process, but the tax provisions are effective April 1, 2022, indicating a target date for sales to launch.

Authors

This GT Alert was prepared by:

- [Lynelle K. Bosworth](#) | +1 518.689.1469 | bosworthl@gtlaw.com
- [Katharine J. Neer](#) | +1 518.689.1491 | neerk@gtlaw.com

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