

Cannabis Guide for the USA & Canada

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Carter Ledyard & Milburn LLP

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Overview

Currently (as of February 2020), New York State's primary body of marijuana law is the New York Compassionate Care Act (NYCCA). The NYCCA regulates New York's medical marijuana program and provides certified patients with serious medical conditions with employment protections under New York's expansive Human Rights Law.

New York has operated an Industrial Hemp Agricultural Research Pilot Program since 2015 (under the federal 2014 Farm Bill). It will remain in place until the USDA approves a New York hemp cultivation plan under the 2018 Farm Bill (as of January 28, 2020, New York has not submitted a plan). In December of 2019 Governor Cuomo signed an amendment to the Agriculture and Markets Law imposing additional regulations on the production and sale of hemp extracts, including CBD.

Under current law, limited protections exist for users of adult use marijuana in New York. As of August 28, 2019, New York decriminalized possession of small amounts of marijuana statewide, though still punishable as a violation subject to a fine. In New York City employers will not be able to test job applicants for marijuana and THC beginning May 10, 2020, outside of certain safety sensitive jobs. No protections exist for cultivation or sales.

In 2020, New York will try to overhaul its marijuana laws (again). For the second time Governor Cuomo included the "Cannabis Regulation and Taxation Act" in his Executive Budget. The act would change New York's medical, adult use, and hemp, laws by centralizing their regulation at the newly established "Office of Cannabis Management" which would "control the manufacture, wholesale, and retail production, distribution, transportation, and sale of cannabis, medical cannabis, and hemp cannabis in the State of New York". It would include multiple new taxes on adult-use marijuana. A similar measure failed in 2019.

Medical Marijuana

The NYCCA (N.Y. Pub. Health Law §§ 3360 to 3369-E) became law on July 5, 2014 and will expire on July 5, 2021. Regulations are codified in Title 10, Chapter XIII of the New York Code, Rules and Regulations.

The NYCCA allows medical practitioners to certify patients with serious medical conditions (like cancer, HIV, epilepsy, or PTSD), allowing them to obtain a registry card. Once granted a registry card, the law protects the certified patient, and their designated caregiver, for possessing and transporting a 30-day supply of medical marijuana (which cannot be consumed in a public place). According to the most recently available numbers, New York has 113,465 registered patients (about 0.53% of the population).

The current law also regulates the sale of medical marijuana, limiting the manufacturing and dispensing of medical marijuana in the state to licensed companies, referred to as Registered Organizations. Those Registered Organizations are subject to regulations prohibiting them from employing convicted felons, requiring them to manufacture marijuana in an indoor, enclosed, secure facility in New York State, regulating laboratory testing, and mandating security measures. Prices are regulated by the Department of Health (though they vary from dispensary to dispensary), and advertising is also regulated (and all but prohibited).

The number of Registered Organizations was initially limited to five, but was eventually expanded to ten. Most offer home delivery. Applications are not currently being accepted, but come with a non-refundable \$10,000 fee, and \$200,000 registration fee for successful candidates. A registration is valid for two years, is non-transferrable, and must be renewed no more than six, and no less than four, months before expiration. Similar fees apply for renewal.

Registered patients are recognized as having a “disability” under New York’s Human Rights Law (N.Y. Exec. Law §§ 290 to 301). This entitles patients to certain protection against discrimination, though the law on this has been sparse in New York. However, there is no right to be impaired while at work. The patient’s use of medical marijuana may require the employer and employee to work on a reasonable accommodation. Beginning May 10, 2020, employers in New York City may not screen job applications for marijuana and THC.

Hemp

Currently, the only lawful pathway to grow industrial hemp in New York State is through participation in New York’s Industrial Hemp Agricultural Research Pilot Program, which was authorized under the provisions of the 2014 Farm Bill. It is administered by the Department of Agriculture and Markets. New York treats industrial hemp as an agricultural commodity under New York’s Agricultural and Markets Law.

The New York Department of Agriculture and Markets has outlined its reservations about the Interim Final Rule proposed by the USDA in October of 2019. The Interim Final Rule allows states to submit plans for commercial hemp production for approval by the USDA, but New York has opted not to do so at this time due to concerns it has about the rule.

In 2019 New York amended its Agriculture and Markets law in relation to the cultivation of hemp and regulation of hemp extracts. The new law includes a licensing scheme for growers, manufacturers, and extractors of cannabinoids, packaging and labeling requirements, and laboratory testing and advertising regulations. The Department is accepting applications for researchers who want to grow industrial hemp for fiber, grain, and CBD. The application fee is \$500, and the authorization is valid for three years.

Adult Use Marijuana

Currently, New York does not have any legislation in place authorizing adult use of marijuana. New York has amended its penal law to make possession of less than two ounces of marijuana a violation, punishable by \$50 ticket for an ounce or less, or \$200 for an amount between one and two ounces. Marijuana was also added to the definition of tobacco for the purposes of the Public Health Law (New York's anti-smoking provisions). As noted above, in New York City, pre-employment testing for THC and marijuana will also be phased out beginning May 10, 2020.

Upcoming Legislative Agenda

In 2019 Governor Cuomo tried, and failed, to enact a version of the Cannabis Regulation and Taxation Act in his executive budget. He will try to do so again in 2020.

The Executive Budget proposes a comprehensive cannabis regulatory framework, administered by the newly established Office of Cannabis Management (OCM) that centralizes all the licensing, enforcement and economic development functions in one entity. The OCM will administer all licensing, production, and distribution of cannabis products in the adult-use, industrial, and medical cannabis markets.

This bill would impose three taxes on the adult-use of marijuana. The first tax is imposed on the cultivation of cannabis at the rate of \$1 per dry weight gram of cannabis flower and \$0.25 per dry weight gram of cannabis trim. The second tax is imposed on the sale by a wholesaler to a retail dispensary at the rate of 20 percent of the invoice price. The third tax is imposed on the same sale by a wholesaler to a retail dispensary at the rate of 2 percent of the invoice price, but collected in trust for and on account of the county in which the retail dispensary is located.

In the adult-use cannabis market, the OCM will implement a three-tier model of distribution. Similar to the market for alcohol, the OCM will issue licenses

for producers, distributors and retailers. Producers will be prohibited from also owning retail cannabis establishments. The program will limit the number of producers and retail dispensaries to guard against a market collapse, encourage equity through craft growers and cooperatives, and provide training and incubators to ensure meaningful and sustained participation by communities disproportionately harmed by cannabis prohibition. In the hemp market, the OCM will administer the licensing, extraction, and distribution of wellness and pharmaceutical grade cannabis products.

More Information

For more information, please contact members of the [Carter Ledyard Cannabis, Hemp & CBD Industry Group](#): [Guy Lander](#) (co-chair), [Alex Malyshev](#) (co-chair), [Steven Paul McSloy](#), [Michael Shapiro](#), [Marc Kushner](#), [Ted McDonough](#), [Aaron Cahn](#), [Pang Zhang-Whitaker](#), [Anup Khatri](#), and [Matt Schwartz](#).

DISCLAIMER: The possession, distribution, and manufacturing of marijuana are illegal under federal law. State law, which may in some jurisdictions decriminalize such activity under certain circumstances, is superseded by federal law. Violation of federal drug laws carries serious penalties, with the federal government reserving the right to seize and seek civil forfeiture of real or personal property facilitating the sale of marijuana and money or proceeds accruing from such transactions. Section 280E of the Internal Revenue Code also disallows deductions for amounts paid or incurred in the carrying on of a trade or business that consists of the “trafficking” of cannabis. Law or policy covering this industry may change at any time.