

# New York, USA

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## Overview

As of January 1, 2021, 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 2016 (under the federal 2014 Farm Bill). New York has not submitted its own plan to the USDA under the 2018 Farm Bill because of concerns it has about the USDA's Interim Final Rule. As a result the Department advises growers interested in cultivating industrial hemp crops in 2021 to apply to the USDA directly for a producer license. 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. It split authority over hemp regulation between the Department of Agriculture (for supervision of hemp growers) and the Department of Health (for supervision of hemp extract). It also envisions the creation of a Hemp and Hemp Extract Workgroup. In October of 2020, New York [published](#) proposed regulations for the manufacture and sale of hemp derived 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. Since May of 2020 New York City has banned pre employment testing for THC in most jobs. The major exception is certain safety sensitive jobs. No protections exist for cultivation or sale of cannabis.

For the past two years New York has tried, and failed, to overhaul its cannabis laws as part of the Executive Budget process. Governor Cuomo included the "[Cannabis Regulation and Taxation Act](#)" in his draft Executive Budget. It was stripped out of the budget passed on March 31, 2020, due to the economic impact of the COVID-19. If reintroduced next year in similar form, the act will 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. Regulations are codified in Title 10, [Chapter XIII](#) of the New York Code, Rules and Regulations. It contains a seven-year sunset provision, expiring on July 5, 2021 (although it may be extended if the regulatory regime is not otherwise overhauled).

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 134,683 registered patients (about 0.5% 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](#). Each of the organization has several storefronts, and 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 & CBD

In 2020, 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 and 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 USDA’s Interim Final Rule enacting the 2018 Farm Bill’s objectives in an August 14, 2020, [letter to growers](#). Because of its reservations New York has not submitted a plan to the USDA, and has advised growers to apply to the USDA directly for a grower license for the 2021 season.

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.

In late 2020 New York published comprehensive proposed regulation for the manufacture, distribution, and sale of hemp-derived CBD. Once adopted, these rules will be Part 1005 to Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York, to effectuate the provisions of Article 33-B of the New York Public Health Law (PHL). The regulations establish a scheme for licensing manufacturers and retailers of CBD products, with the overall goal of instituting consumer protections ensuring products are manufactured, tested and labeled to comparative standards of similar products in the dietary supplement, food and cannabis industries.

## 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 legislation). As noted above, in New York City, pre-employment testing for THC and marijuana is forbidden for most jobs.

## Attempts to Overhaul Cannabis in New York

In 2019 and 2020 Governor Cuomo tried, and failed, to enact a version of the Cannabis Regulation and Taxation Act in his executive budget. In January 2021 he signaled his intent to reintroduce the measure this year, especially in light of New Jersey's legalization (and the view that tax revenue is being left on the table). An overview of prior proposals is helpful.

The Executive Budget is likely to propose 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 would administer all licensing, production, and distribution of cannabis products in the adult-use, industrial, and medical cannabis markets.

New York would impose three taxes on the adult-use of marijuana. The first tax would be 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 would be imposed on the sale by a wholesaler to a retail dispensary at the rate of 20 percent of the invoice price. The third tax would be 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 would implement a three-tier model of distribution. Similar to the market for alcohol, the OCM would issue licenses for producers, distributors, and retailers. Producers would be prohibited from also owning retail cannabis establishments. The program would 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 would administer the licensing, extraction, and distribution of wellness and pharmaceutical grade cannabis products.

A standalone legalization bill was also re-introduced in the New York Senate on January 6, 2021 (NY SB 854). It is viewed as somewhat less likely to pass than the Governor's version, which is attached to the budget.

**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.