



NEW YORK STATE SENATOR

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SENATOR BIAGGI AND SENATE MAJORITY PASS LEGISLATION TO LEGALIZE ADULT-USE RECREATIONAL MARIJUANA

ALESSANDRA BIAGGI March 31, 2021

ALBANY, NY – Yesterday the Senate Democratic Majority passed legislation that will end the prohibition on adult-use marijuana in New York State. The [Marijuana Regulation and Taxation Act](#) (MRTA) will establish a new office for the regulation of cannabis and decriminalizes the use of adult-use marijuana.

State Senator Alessandra Biaggi (D-Bronx/Westchester) issued the following statement:

"For decades, New York's existing marijuana laws have failed to protect the welfare of our Black and Latinx communities. Thousands of New Yorkers have been pushed into the criminal justice system and denied access to housing, voting, student loans, and employment opportunities. Passing the MRTA is the first step towards rectifying the harm caused by the war on drugs and centering the communities disproportionately harmed by Marijuana prohibition. I am proud to co-sponsor the MRTA and join my colleagues in passing this momentous legislation."

The MRTA creates a new Cannabis Law, and will consolidate the newly-created adult-use cannabis program with the existing medical cannabis program, and the existing cannabinoid hemp program, which will be under the control of the newly created Cannabis Control Board (the Board) and the Office of Cannabis Management (OCM). The Board and OCM will be

placed under the State Liquor Authority (SLA), but the SLA has no involvement with the Cannabis program.

The MRTA creates the framework that will build a regulated industry that will replace the illegal market while also preventing large companies from dominating the market. Additionally, this legislation will establish equity programs that will provide loans, grants, and incubator programs to ensure broad opportunities for participation in the new legal industry by people from communities that have been disproportionately impacted by marijuana prohibition as well as by small farmers. MRTA will automatically expunge records for people with previous convictions for activities that are no longer criminalized. MRTA will establish an Office of Cannabis Management with a board of 5 members - 3 appointed by the Governor and 1 by each legislative house, with the chair subject to Senate confirmation. This legislation will also establish an Executive Director who will be appointed by the Governor and confirmed by the Senate, and a Chief Equity Officer subject to approval by at least 4 members of the board.

There is also an Advisory Board made up of 13 members, 7 appointed by the Executive, 6 by the Legislature, with commissioners of DEC, DOH, OASAS, and the Attorney General as ex-officio non-voting members. The Advisory Board members must have balanced statewide geographic representation and be diverse in its composition. The appointed members are required to have expertise in several fields relating to health, social equity, and the cannabis and agricultural industries.

The Cannabis Advisory Board will represent a broad range of communities of interest, which will be responsible for approving grants from the Community Reinvestment Fund as well as making policy recommendations and reporting on the state of the cannabis program. MRTA grants the Office of Cannabis Management powers to evaluate license applicants using a broad range of metrics, including social equity status, commitment to environmentally

sound policies, public health, and fair labor practices. It also expands the medical cannabis program allowing for additional licensees, expanded patient access, and a broader range of product types and allows current Registered Organizations limited access to the adult use market in exchange for licensing fees that will help fund equity programs.

The legislation prohibits vertical integration for all other licensees except micro-businesses, and the Registered Organizations currently operating in the Medical program, to protect the retail sector from being controlled by larger cannabis producers, and establishes a goal of 50% of licenses going to equity applicants. This legislation will allow limited homegrow of three mature and three immature plants for both medical patients and in the adult use program, subject to regulation by the Office of Cannabis Management.

The MRTA provides funding for training drug recognition officers and expands traffic safety protections, including the development of roadside testing technology and is subject to appropriations. Allows for localities to opt out of retail sales at the city, town, and village level. Sets a 9% sales tax on cannabis, and an additional 4% tax split between the county and city/town/village, plus an additional tax based on THC content as follows: 0.5 cents per milligram for flower, 0.8 cents per milligram for concentrated cannabis, and 3 cents per milligram for edibles.

Powers of the Board and OCM:

- The Board is responsible for creating the regulations for each of the cannabis programs and the Office of Cannabis Management is responsible for implementing these regulations.
- The Chair approves licensing and permit recommendations made by the OCM staff, and other Board members would have 14 days to object to any such decision.

- The Board is also responsible for regulating the packaging and advertising of cannabis products, as well as overseeing the issuance of certain special permits.
- The OCM is responsible for managing the licensing of entities wanting to participate in the various Cannabis programs.

Social Equity:

There is a goal of 50% of licenses being issued to social equity applicants involved in the adult-use program. Extra priority is given to applicants impacted by the war on drugs, who are low-income and who have, or a close relative has, a marijuana-related conviction. Preferences for licensing are also granted for licensees that set out a plan for benefiting communities and people disproportionately impacted by enforcement of cannabis laws.

Social Equity Applicants include:

- Applicants are from communities that have been impacted by cannabis prohibition;
- Women-owned businesses; minority-owned businesses;
- MWBEs;
- Distressed farmers; or service-disabled veterans.

In evaluating applications from entities with 25 or more employees, the OCM must give priority to applicants that have peace labor agreements in place, or use union labor to construct its licensed facility. The Board will also have the power to review all licensees two years into the program, to determine whether any one licensee has gained a large control of

the market and is undermining the aim of providing business opportunities to as many equity licensees as possible

Adult-Use Licenses:

The Adult-use program envisions a number of license types, with the main license types being:

- Adult-use cultivator licenses, for those farming cannabis.
- Adult-use processor licenses, for those converting raw cannabis into various products, such as tinctures, concentrates, edibles, smokable products, etc. These licensees are also responsible for labelling products, including with the amount of THC present.
- Adult-use distributor licenses, for those who would wholesale and distribute products between the processors and the retail licensees. Distributors are also responsible for collecting and remitting the THC based tax..
- Adult-use dispensaries, responsible for the direct sale of cannabis products to individuals for personal use. These licensees are also responsible for collecting and remitting the retail taxes.
- Adult-use consumption sites, which are retail locations that also allow individuals to use cannabis products at the location.

Additional Licenses:

- Adult-cooperative license, which would allow for groups of individuals to form cooperatives that could cultivate and process cannabis products;

- Nursery license, which allows someone to grow immature plants and sell them to other cannabis licensees;
- A delivery license, which allows a business to make direct at home deliveries from retail locations; and
- A microbusiness license. A microbusiness license would allow the holder to cultivate, produce, and retail their own cannabis products but such licensees would be severely limited in their size.

The MRTA attempts to follow the 3-tier model seen in the alcohol market, in which there is meant to be a division between those who create the products, those wholesaling the products, and those retailing products. Someone with a microbusiness license can both cultivate, process, and dispense their own products, but these are meant to be very small licenses. Someone who obtains a cultivator license can also gain a processor license, and a distribution license, but they would only be able to distribute their own products.

Additionally, someone with a processor license but does not have a cultivator license can also obtain a distribution license, but they can only self-distribute.

Medical cannabis is currently provided by several registered organizations, referred to as RO's. To be part of the medical cannabis program, these ROs were required to carry out all three tiers, which is commonly called being "vertically integrated." MRTA will allow these RO's to enter the adult-use market in two ways. After paying a special fee set by the Board they would enter with limited vertical interaction and would be allowed to have up to three co-located (adult-use and medical) retail locations of their own, but also have the ability to distribute their own products to all other retail dispensaries. The RO's can also obtain a license that will grant them the ability to distribute, cultivate and process but they will only

be allowed to distribute their own products. The RO's are required to have a maintenance of effort in manufacturing/dispensing/researching medical cannabis, to ensure they continue operating in the Medical program if they choose to enter into the adult-cannabis program.

Cannabinoid Hemp:

The Cannabinoid hemp program created in 2019 would shift from being under the supervision of the Department of Agriculture and Markets to being under the supervision of the OCM. The only change made to this program is to allow for the sale of cannabis hemp flower products. Sales of these products would be limited to those over 21 years old, and any products meant to be smoked would have to be sold at adult-use cannabis dispensaries.

Medical Cannabis Program:

The administration of the Medical program is being moved from the Department of Health to the OCM.

The program is also being expanded which includes:

- Expanding the list of conditions eligible for Medical Cannabis and allows practitioners to prescribe for any other appropriate condition,
- Allows for medical cannabis to be grown “outdoors,”
- Expands possession limits of Medical Cannabis to a 60-day supply (current law is 30 days),
- Creates a new “designated caregiver facility” designation to allow for facilities to administer medical cannabis to patients/residents,
- Allows for up to 4 patients per designated caregiver, and removes the restriction on “smoking” medical cannabis and allows for a greater selection of medical cannabis products.

In addition, Medical Patients will be able to begin “home-grow” within 6 months of the enactment of the bill and designated caregivers will be able to grow on behalf of their patients.

Local Opt-Out:

- Cities, towns, and villages would be given the option to opt-out from having adult-use dispensaries and/or adult-use social consumption sites located in their communities.
- The opt-out would take the form of a vote by the governing body passing a local law opting out. Any such local law would be eligible for a permissive referendum, meaning that those who oppose such a law would have an opportunity to gather enough signatures to require a referendum to be held on the issue.
- Any opt out laws would have to be passed by December 31, 2021 or within 9 months of the effective date of this legislation, whichever is later.

Home Grow of Cannabis:

- The MRTA allows individuals to conduct home growing of cannabis plants. The current agreement allows each person to grow up to three mature plants and three immature plants, whether it be indoors or outdoors.
- There is also a maximum number of plants per household of six mature and six immature plants, for a total of twelve plants. Regardless of the number of plants they have, there is a five pound maximum possession limit at home for individuals.
- Localities would be able to create regulations around home grow, though they could not ban it.

- The Board will also be able to issue regulations on certain unsafe growing practices that would be banned.
- For patients in the medical cannabis program, the ability to home grow would begin six months after the effective date of this legislation.
- Adult-use home grow would be authorized eighteen months after the opening of the first adult use dispensaries, in order to give the regulated cannabis market a chance to develop.

Criminal Penalties and Vehicle and Traffic Law Issues:

The MRTA establishes a new range of criminal penalties for unlawful possession and sale of cannabis, which have been agreed to by the Executive.

- The penalties for possession start as a violation for three ounces of flower or 24 grams of concentrated cannabis and escalate to a Class D felony for more than 10 pounds of flower or four pounds of concentrated cannabis.
- The penalties for sale start as a violation for unlawful sale of any weight of cannabis and escalate to a Class C felony for unlawful sale of over 100 pounds of flower or concentrated cannabis.
- The MRTA incorporates impairment by cannabis into the infraction of Driving While Ability Impaired, the lowest degree of Driving While Intoxicated, but otherwise does not change existing law for Driving While Intoxicated.
- The MRTA allows the odor of cannabis to be used as reason to suspect that a driver is intoxicated, but prohibits using odor as a justification for searching a car for contraband.

Vehicle and Traffic Law: Drug Recognition Experts (DREs) will be allowed to use enhanced field testing techniques to determine if a driver is operating a vehicle under the influence of marijuana. In addition, the Senate has proposed funding a study to develop accurate saliva testing, which would then be automatically implemented once the Department of Health has certified its accuracy. This would be in addition to the funding included in the MRTA to increase the number of DREs in the state.

Taxation of Adult Use Cannabis:

The MRTA would impose taxes on adult use cannabis as follows: a distributor would pay the following tax based on the per milligram amount of THC (per a lab analysis and as labeled):

- 0.5 cents (\$0.005) for cannabis flower
- 0.8 cents (\$0.008) for cannabis concentrate
- 3.0 cents (\$0.03) for edibles

In addition, a 9% tax is added upon retail sale, which goes to the State, and another 4% tax is added upon retail sales, which goes to the localities (1% goes to the County, and 3% is divided at the local level based on retail sales).

If a village and town both opt in and the retailer is located in the village, then the 3% is split between the town and revenue either per an agreement between the two, or is otherwise split 50-50.

Cannabis Revenues and their Use:

All revenue raised from the sale of adult-use and medical cannabis would go into a new Cannabis Revenue Fund. Cannabis-related expenses of the Department of Taxation and Finance, the Office of Cannabis Management, the Cannabis Control Board, Urban

Development Corporation (UDC), DCJS, SUNY, State Police, OCA, would come out of the Cannabis Revenue Fund, subject to appropriation. Other purposes paid for from the Cannabis Revenue Fund include the hiring and training of additional DREs and for an incubator program (through the UDC) to give social equity access applicants the necessary application and business management skills necessary.

Remaining revenues would flow into three funds:

- 40% to the State Lottery Fund for Education.
- 20% to the Drug Treatment and Public Education Fund, which would finance additional drug treatment programs, school-based prevention, early intervention, and health care services and programs, as well as public health campaigns to teach the public about responsible cannabis use.
- 40% to the Community Grants Reinvestment Fund, which would be used to further support the social and economic equity program as established by the Board.

The Community Grants Reinvestment Fund is administered by the Advisory Board. The money in this fund would 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.

The categories of approved uses include:

- Job placement;
- Job skills services;
- Adult education;

- Mental Health treatment;
- Substance use disorder treatment;
- Housing; Financial literacy;
- Community banking; Nutrition services;
- Services to address adverse childhood experiences;
- After School and Child Care services;
- System navigation services; and legal services to address barriers to reentry (including for expungement, vacatur and resentencing).

Every February 1, the OCM produces a report detailing how the funds were utilized and must include:

- The amount of money disbursed and how;
- The recipients that received awards and how much they received;
- The purpose of the award; and
- A summary financial plan including estimates of all receipts.

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