

BOND

HOSPITALITY INFORMATION MEMO

MAY 14, 2021

Key Considerations for Joining the Adult-Use Cannabis Industry

New York State officially passed and signed into law a bill that legalizes the production, distribution, and adult-use of cannabis in the state (S.854A/A.1248A).

The new legislation, known as the Marijuana Regulation and Taxation Act (the Act), allows those who are at least 21-years of age to use, smoke, ingest or consume cannabis products. It also allows those 21 and over to possess up to three ounces of cannabis or 24 grams of concentrated cannabis without penalty.

This memo is intended to highlight key considerations for clients interested in joining the adult-use cannabis industry. Additional regulations are expected with respect to the Act, although nothing has been published to date.

Obtaining a License

Businesses interested in entering the cannabis industry will be required to obtain a license from New York State. Different types of licenses will be available to those wishing to enter the industry. There will be separate licenses for growers, wholesale distributors and retail sellers. The Act prohibits one company from handling all parts of a recreational transaction, although a single party may be both a grower and wholesale distributor.

Adult-use dispensaries will be responsible for the direct sale of cannabis products to individuals for recreational use. Adult-use consumption sites may also be created, which will allow individuals to purchase and consume cannabis on site. However, such dispensaries and consumption sites will not be legally permitted until the state issues licenses to the cultivators, processors, distributors and retailers.

The Office of Cannabis Management

The Act has authorized the formation of the Office of Cannabis Management (OCM). The governor and legislative leaders will appoint members of the board of the OCM. The OCM is tasked with overseeing the state's cannabis industry. It is given the authority to implement and enforce regulations governing medical, adult use, and cannabinoid hemp.

Once the OCM implements regulations and issues licenses to various actors in the cannabis industry, recreational sales of adult-use cannabis may commence at dispensaries and consumption sites. The Act does not provide a specific timeline for the opening of dispensaries or consumption sites, but the state's first legal sales are not expected for at least a year.

Accordingly, although several parts of the Act became effective immediately, the sale of cannabis products will remain illegal until sometime in 2022, at the earliest.

Medical Marijuana

The Act expands the list of medical conditions justifying access to medical marijuana. Patients will no longer be prohibited from smoking medical marijuana, as has been the case since the state legalized medical marijuana in 2014. The Act also allows patients to receive up to a 60-day supply of cannabis, doubling the current cap.

Prioritization of Social and Economic Equity

The Act sets a target of ensuring that 50% of marijuana licenses be issued to either minority or woman owned business enterprises, distressed farmers or service-disabled veterans.

Taxation and Revenue

The Act provides that New York State will set a 9% sales tax on cannabis, a 3% local tax and a 1% county tax. Additional taxes may be imposed based on the level of THC, the active ingredient in marijuana.

Revenue raised from the sale of adult-use and medical cannabis will be deposited into a new Cannabis Revenue Fund. Administration of the medical, adult-use, and cannabinoid (CBD) hemp programs will be paid out of the Cannabis Revenue Fund. The remaining funding will be split in three ways: (1) 40% to the State Lottery Fund for Education; (2) 20% to the Drug Treatment and Public Education Fund; and (3) 40% to the Community Grants Reinvestment Fund.

Local Law Opt-Out

Cities, towns and villages may regulate the use and sale of cannabis more strictly, including by passing a local law to opt out of allowing adult-use dispensaries and consumption sites in their communities. Municipalities will have until Dec. 31, 2021 to exercise this ability to opt out.

Federal Law Considerations

Under federal law, although the U.S. Department of Justice has relaxed enforcement, marijuana remains illegal and is classified as a Schedule I controlled substance under the federal Controlled Substances Act. The differences between state and federal law will need to be continuously monitored in order to ensure compliance with the law.

The attorneys at Bond, Schoeneck and King can help you further understand the new legislation discussed in this memo. Please contact [Jeffrey B. Scheer](#) or the attorney at the firm with whom you are regularly in contact for more information.

