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It's going to be months before the first legal **pot store** opens in WNY

Samantha Christmann; The Buffalo News, N.Y.

Feb. 13—Despite New York's aim to open cannabis adult-use retail dispensaries across the state by 2022, only three stores have opened statewide so far.

None of them are in Western New York.

Even if a legal injunction delaying local sales were to be resolved today, the first legal stores in the region likely won't open until midspring at the earliest.

"We are looking at several more months, even in a best-case scenario," said Patrick Hines, a partner at law firm Hodgson Russ.

Even at the best of times, it's not easy going into a new business. It's even more difficult joining a newly legitimized industry like cannabis that is still being built from scratch by the state. But Western New Yorkers in the cannabis business say they're up for the challenge.

"I think there's definitely an amount of pioneer spirit here," said Paal Elfstrum, CEO of Wheatfield Gardens, which grows and processes cannabis.

Here are five challenges they are facing right now.

Sales are on hold locally. After a long wait to start legally selling cannabis in Western New York, the region has been left behind as the retail market began to open up in other regions in the state.

Out-of-state company Variscite One NY says it was improperly kept out of the lottery to gain a Conditional Adult-Use Retail Dispensary License because it's based outside the state. It listed Western New York and four other regions as its preferred place to do business, so sales have been on hold there while the courts decide that case.

A recent motion to narrow the injunction and include just the Finger Lakes region would have freed Western New York to join CAURD sales, but that motion failed in court earlier this month. That leaves the injunction in place pending resolution of the lawsuit, or reversal on appeal, Hines said.

"The state's appeal is not moving forward with any particular expedience, and the state's brief is due at the end of March," he said.

It leaves New York pot sales in places like Western New York far behind schedule.

"If the lawsuit were resolved today, the state would still have to process and decide on the CAURD license applications submitted for the five affected regions," Hines said. "Even after those decisions are made, there is still additional information that needs to be submitted to the state before stores can officially open."

That means local companies have had to reimagine their plans while they wait. And it doesn't just affect those who were hoping to open legal cannabis stores — it affects all the companies that had planned to do business with them.

The wait has been maddening for all involved.

"There are great opportunities waiting, as well as the customer base that is waiting for the consumption of these products," Gov. Kathy Hochul said last month. "It's frustrating for us."

Growers have had to scramble to preserve cannabis flower it had planned to sell raw, now that there are far fewer places to sell it. They've also had to rethink how they process and store their product. At the same time, hopeful retail licensees have had to put their lives and business on hold while they wait for the court case to be resolved.

That's not stopping some would-be operators.

Gina Sepierski, co-owner of electronics sales and service company Blutusk Tech in Orchard Park, is looking for retail space for a dispensary. She didn't qualify for the first round of licensing, but she still is being proactive in hopes of winning a license during the second round.

She's planning an "express pickup" window where customers can collect online orders.

"We hope that our business experience and the level of trust that we have earned from our Orchard Park community will carry over to the dispensary," she said. "Our kids go to school in Orchard Park, it's home, and we would love to bring this new industry to the Southtowns in a way that makes people feel comfortable, able to ask questions and feel safe about the products they are purchasing."

Answers can be hard to come by. Rules governing adult-use retail sales have not yet been finalized, even though two dispensaries have already opened in New York City. Things have similarly been in flux for growers and processors.

It doesn't help that the Office of Cannabis Management was last month reprimanded by the state for its lack of transparency when it comes to public meetings. The New York Committee on Open Government issued an opinion saying the Cannabis Control Board posted agendas less than 24 hours before events, inconsistently limited public comments and other possible violations.

Competition from the illicit market. Black market growers and sellers of cannabis don't have to pay for testing, aren't required to label their products, guarantee potency, pay taxes or test for things like heavy metals and pesticides.

Even giant multistate operators like Curaleaf are getting pushed out by unlicensed growers and sellers. Curaleaf recently exited California, Colorado and Oregon, citing oversupply and competition from the illicit market.

"That creates an unlevel playing field for the companies that are operating in the regulated market and following the rules," Curaleaf CEO Matt Darin told MJBizDaily. "Those are tough markets as a regulated business and as a public company."

When the sale of cannabis was made legal, but before licenses to sell it were granted, so-called "sticker shops" popped up all over Western New York, operating in a gray area that allowed people to possess cannabis without legal ramifications. Stores would technically sell stickers, then gift the buyer with cannabis as part of the sale.

The state, however, has insisted again and again that such shops and practices are illegal, but there hasn't been a clear plan of action on how to get rid of them.

The state has promised a renewed push as licensed shops get their start, saying that the only way for legal shops to thrive is eliminate illicit ones. Doing this will be one of the biggest challenges facing the nascent industry.

Oversupply. The state's cultivators and processors are sitting on an estimated \$1.5 billion of cannabis, with fewer than half the expected dispensaries in which to sell it. Just 11 dispensaries were slated to receive licenses during the first round of awards, now even those are on hold because of the Variscite lawsuit.

Having too much marijuana has been a huge problem throughout the cannabis industry. Now, Western New York is starting off behind the 8-ball with that very problem.

Local growers have not been able to sell to the injunction-affected companies they'd already planned to do business with — leaving them scrambling to quickly forge new partnerships and store, preserve and process their cannabis crops. It also heightens the competition among the other five regions of the state that have been knocked out of the retail dispensary business by the lawsuit. And selling cannabis out of state is a no-go, since federal laws prohibit it.

In the most basic illustration of supply and demand, oversupply of weed has sent pot prices tumbling down in other states, leaving even the biggest and best weed companies struggling.

Tracking, tracing and testing. In New York, all licensed medical cannabis and adult-use cannabis licensees will be required to integrate their own inventory and/or sale tracking systems with the BioTrack tracking system to log the movement of cannabis as it is grown, manufactured into other products, packaged, tested and sold to qualifying patients or consumers.

They're also required to test cannabis for such things as moisture, heavy metals and pesticides.

Each process demands precision, but guidance from the state has been anything but precise.

"The rules around testing have been so nebulous," said Elfstrum.

It's not just cannabis testers that need to understand testing. Cultivators and processors have a lot to figure out, too.

"There are so many processes and requirements you need to think about to stay compliant," said Edward Lukaszek, founder of Biotrax Testing Laboratory in Cheektowaga.

This is where farm companies like Elfstrum's, which has a history in tracking and tracing its lettuce for the U.S. Department of Agriculture, get a leg up.

"Tracing and tracking goes back to our legacy, which is vegetables, and it's a stringent thing," he said. "When you get audited the USDA physically comes to the farm. They'll take a head of lettuce, drive out to the gate, call up and say "We found E.coli on your lettuce. What do you do now? If you don't know what to do, you're in big trouble. So having tracing capabilities is imperative to consumer safety."

It's a painstaking process — one that producers in the cannabis industry have to get correct from the start.

Plant Science Laboratories on Wyoming Avenue doesn't use the BioTrack system yet, so it relies on meticulous accuracy, spreadsheets and mounds of paperwork. The process of tracking and tracing can be daunting, but is hugely important, said Diane Cuervo, the lab's director.

"The USDA requires you to recall any product of their choosing within two hours. They're going to want to know, where did it come from? When did it come in? Where are all the certifications? And then where did it go?" she said. "And we're dealing with little capsules that are going to go everywhere, so you have to be able to trace that well."

---- **Index References** ----

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