

# OFFICIAL BILL RELEASED: GOVERNOR CUOMO AND LEGISLATIVE LEADERS ANNOUNCE LONG-AWAITED AGREEMENT TO LEGALIZE RECREATIONAL CANNABIS IN NEW YORK

*Hodgson Russ Hemp and Medical Cannabis Alert*  
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On Saturday March 27, after weeks of negotiations, Governor Cuomo and lawmakers finally reached a deal to legalize cannabis in New York. The highly anticipated legislation would legalize adult-use cannabis after years of failing to reach an agreement. The foundation for the final bill is based on the Marijuana Regulation and Taxation Act (“MRTA”) promoted by longtime legislative sponsors of the bill, Assembly Majority Leader Crystal Peoples-Stokes and Senator Liz Kruger. The social justice provisions of the MRTA, such as dedicated funds for communities impacted by the war on drugs, are much more robust than Governor Cuomo’s competing bill, the “Cannabis Regulation and Taxation Act.”

The final text provides that regulation of all cannabis—recreational, medical, and hemp—will be brought under the purview of a new Office of Cannabis Management (“OCM”). The OCM would operate under the New York State Liquor Authority, overseen by a five-member Cannabis Control Board. Three members of the Board would be appointed by the governor, and the Senate and Assembly would each appoint one member.

## Licensing

The bill provides a licensing structure for commercial cultivators, processors, distributors, retail dispensaries, cooperatives, and nurseries. It also provides licenses for on-site consumption (i.e., “cannabis bars”) and delivery services. Section 39 of Article 3 provides that registered organizations under the medical program can obtain a limited amount of adult-use cannabis licenses. The full list of licenses are as follows:

- Adult-use Cultivator License
- Registered Organization Adult-use Cultivator Processor Distributor Retail Dispensary License
- Registered Organization Adult-use Cultivator Processor and Distributor License

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## Practices & Industries

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- Adult-use Processor License
- Adult-use Cooperative License
- Adult-use Distributor License
- Adult-use Retail Dispensary License
- Microbusiness License
- Delivery License
- Nursery License
- On-site Consumption License

There is a general ban on vertical integration between licenses, with the exception of microbusinesses. The takeaway is that a cultivator, processor, or distributor licensee cannot also hold a retail dispensary license.

The bill also provides a series of special use permits for the industrial use, transportation, and storage of cannabis.

#### **Tax Structure and Revenue**

As previously proposed, cannabis products would be subject to both state and local taxes, and a THC tax based on the type of product. All cannabis would be subject to a state tax of 9%, and a local tax of 4%. The bill provides that 75% of the local tax earnings would go to the municipalities, with the remaining portion directed to the counties.

Distributors would pay a THC tax based on the product type: Flower at 0.5 cents per milligram; concentrate at 0.8 cents per milligram; and edible products at 3 cents per milligram.

Tax revenue from sales would first cover the costs associated with administering the program. Then, 40% of all revenue would go to a “community reinvestment fund,” 40% would go to the public schools, and 20% would fund drug treatment and public education programs.

#### **Opt Out**

The bill echoes previous proposals by providing an opt-out option for individual jurisdictions. Cities, towns, and villages can opt out of retail dispensary licensing and on-site consumption licensing, but must do so before the end of 2021.

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### Homegrow

In addition to purchasing cannabis products from licensed retailers, the bill provides that adults over the age of 21 could eventually cultivate up to six plants for personal use, three of which may be mature at any one time. A household with more than one adult could grow a maximum of twelve plants.

Patients certified under the medical program who are over the age of 21 could also cultivate cannabis for personal use. In addition, caretakers over the age of 21, caring for certified patients younger than 21 or whose physical or cognitive impairments prevent them from cultivating their own plants, may cultivate cannabis for use by the patients.

But don't start planting in your backyard yet. The bill provides that the OCM must produce regulations governing home cultivation within six months of the first recreational sales for certified patients, and within eighteen months for adult-use consumers.

### Possession and Driving Impaired

Under the bill, there would be no penalty for possession of up to three ounces of cannabis, or 24 grams of marijuana concentrate (such as tinctures or oils). In addition, police could no longer use the odor of cannabis to justify searches.

The State Department of Health would be tasked with overseeing a study of technologies for detecting cannabis-impaired driving. The Department would also approve and certify the use of a test.

### Social Equity

The bill aims to issue 50% of cannabis business licenses to social equity applicants. Under Article 4, section 87, social equity applicants are minority and women-owned businesses, disabled veterans, financially-distressed farmers, and people from "communities disproportionately impacted by the enforcement of cannabis prohibition." The social and economic equity plan seeks to "promote diversity in commerce, ownership and employment, and opportunities for social and economic equity in the adult-use cannabis industry."

Governor Cuomo has stated "after years of tireless advocacy and extraordinary hard work, that time is coming to an end in New York State" and he "looks forward to signing this legislation into law."

Votes in the legislature are expected to take place sometime this coming week – perhaps as soon as tomorrow, Tuesday, March 30.

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