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ASSOCIATION OF COUNTIES



MRTA SUMMARY



The Marihuana Regulation and Taxation Act: A Summary

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Executive Summary

On March 31, 2021, the Governor signed into law the Marijuana Regulation and Taxation Act, A.1248A (Peoples-Stokes)/S.854A (Krueger), which legalizes adult-use cannabis with the stated goal of generating significant new revenue. The new law makes substantial investments in communities and people most impacted by cannabis criminalization, reduces the illegal drug market and violent crime, ends the racially disparate impact of existing cannabis laws, creates new industries, increases employment, and strengthens New York's agriculture sector, among other goals.

Nothing in this legislation limits the authority of any district, government agency, or office or employers to enact and enforce policies pertaining to cannabis in the workplace, to allow driving under the influence of cannabis, to allow individuals to engage in conduct that endangers others, to allow smoking cannabis in any location where smoking tobacco is prohibited, to require any individual to engage in any conduct that violates federal law, to exempt anyone from any requirement of federal law, or to pose any obstacle to the federal enforcement of federal law.



Administration

The legislation creates an Office of Cannabis Management (OCM) and Cannabis Control Board. The Board will have five members: a chairperson and two more members appointed by the Governor; a member appointed by the Temporary President of the Senate; and a member appointed by the Speaker of the Assembly. The Board should, to the extent practicable, reflect the geographic and demographic diversity of the state.

The Executive Director (ED) of the Office of Cannabis Management is appointed by the Governor, with the advice and consent of the Senate. There is also a Chief Equity Officer (CEO) nominated by the ED, who requires the affirmative support of four of the five members of the Board.

In the first year of legalization, New York State expects to receive \$20 million in revenue from licensing fees.

When the MRTA is fully implemented, the State projects \$360 million in annual state revenue and \$75 million for local governments.

There is also an Advisory Board made up of 13 members, with seven appointments from the Governor, six from the Legislature, and the commissioners of the Department of Environmental Conservation, Department of Health, Office of Addiction Services and Supports, and Department of Agriculture & Markets 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.

Personal Cultivation

People over the age of 21 can have three mature and three cannabis plants within their private residence, with a limit of six mature and six immature plants per private residence. Plants can be stored within the person's private residence or on the grounds of their private residence. Home growers must take reasonable steps to ensure that the cultivated cannabis is in a secured place and not accessible by anyone under the age of 21. New Yorkers can have up to five pounds of cannabis in their private residence or on the grounds of their private residence.

Home growth is not authorized until 18 months after the opening of the first adult-use dispensaries in order to give the regulated cannabis market a chance to develop. Certified medical cannabis patients over the age of 21 and their designated caregivers may cultivate cannabis for their personal use beginning six months after the effective date of the legislation.

Counties, towns, cities, and villages can reasonably regulate personal cultivation of cannabis provided that a violation of any regulation approved by a county, town, city, or village constitutes no more than an infraction and can be punishable by no more than a discretionary civil penalty of \$200 or less. Counties, towns, cities, and villages cannot prohibit a person from engaging in personal cultivation.

Public Consumption

The MRTA allows cannabis to be smoked or vaped anywhere that smoking tobacco is permitted; however, state agencies and localities can more strictly regulate smoking in public pursuant to article 13-e of the public health law. Violations are subject to a civil penalty not to exceed \$25 or an amount of community service not exceeding 20 hours.

Local Opt-Out

Towns, cities, and villages can opt-out of allowing retail dispensaries and/or on-site consumption via local law, subject to permissive referendum. Towns, cities, and villages have until December 31, 2021 or nine months after the effective date of this legislation, whichever is later, to adopt a local law requesting the Cannabis Control Board prohibit the establishment of retail dispensaries and/or on-site consumption within their jurisdiction. Because the local law is subject to permissive referendum, voters who oppose the law will have the opportunity to gather enough signatures to put the measure on the ballot and potentially override the decision of the town, city, or village government. Town laws will apply to only the area of the town outside of any village within the town.

No local law can be adopted to prohibit these establishments after December 31, 2021 or nine months after the effective date of the legislation (whichever is later); however, localities can pass a local law to repeal a previously adopted prohibition after this date.





Taxation

The legislation imposes taxes on both the distributor and the customer.

The distributor of adult-use cannabis products pays a tax based on the per milligram amount of THC. Cannabis flower is taxed at a rate of \$0.005 per milligram, cannabis concentrate is taxed at \$0.008 per milligram, and edible cannabis products are taxed at \$0.03 per milligram.

There is also a 9% tax on retail sales that goes to the State and an additional 4% tax that goes to the localities where the dispensary is located (1% is retained by the county and 3% goes to the town, city, or village). The county is responsible for distributing the remaining 3% to cities, towns, and villages based on the proportionate share of sales by dispensaries in each jurisdiction (this will occur on a quarterly basis). If the retailer is located in a village where both the village and town allow cannabis retail sales, then the 3% is split pursuant to an agreement between the town and village. In the absence of an agreement, the 3% is divided evenly between the town and village.



Revenue

In the first year of legalization, New York State expects to receive \$20 million in revenue from licensing fees. When the MRTA is fully implemented, the State projects \$360 million in annual state revenue and \$75 million for local governments.

The legislation establishes a Cannabis Revenue Fund and two additional sub-funds (known as the Community Grants Reinvestment Fund and the Drug Treatment and Public Education Fund) where the revenues will be deposited.

The monies in the New York State Cannabis Revenue Fund can be used for:

- Reasonable costs incurred by the Department of Taxation and Finance for administering and collecting taxes;
- Reasonable costs incurred by the Office of Cannabis Management and the Cannabis Control Board for implementing, administering, and enforcing the MRTA;
- Actual and necessary costs incurred by the Office of Cannabis Management, the Cannabis Control Board, and the Urban Development Corporation related to the administration of incubators and other assistance to qualified social and economic equity applicants;
- Reasonable costs incurred by the Office of Cannabis Management, Department of Criminal Justice Services, State University of New York, and other state agencies will also receive funding for the purposes of data collection and reporting (beginning in FY 2022-23 and continuing through FY 2032-33);
- Reasonable costs incurred by the State Police and Department of Motor Vehicles to implement the MRTA and to expand and enhance the drug recognition expert training program and technologies used in the process of maintaining road safety;

- Reasonable costs incurred by the Office of Cannabis Management, Cannabis Advisory Board, and Urban Development Corporation to administer grants for qualified community-based nonprofit organizations and approved local government entities for the purposes of reinvesting in communities disproportionately affected by past federal and state drug policies (as allowed by the Community Grants Reinvestment Fund); and
- Reasonable costs incurred by the Division of Criminal Justice Services and the Office of Court Administration to implement the expungement provisions of the MRTA.

The remaining monies in the fund will be distributed into the state lottery fund (40%) and two additional sub-funds created within the Cannabis Revenue Fund, known as the Drug Treatment and Public Education Fund (20%) and the Community Grants Reinvestment Fund (40%). The 40% deposited into the state lottery fund will be used for additional lottery grants to eligible school districts and to increase the total amount of funding available for general support for schools.

The 20% deposited into the Drug Treatment and Public Education Fund can be used by the Office of Addiction Services and Supports, in consultation with the Department of Health, Office of Mental Health, Office of Cannabis Management, and Department of Education to develop and implement a youth-focused public health education and prevention campaign; develop and implement a statewide public health campaign focused on the health effects of cannabis and legal use; and provide substance use disorder treatment programs for youth and adults.

The remaining 40% deposited into the Community Grants Reinvestment Fund can be used by the State Cannabis Advisory Board to provide grants for qualified community-based nonprofit organizations and approved local government entities for the purposes of reinvesting in communities disproportionately affected by past federal and state drug policies. These grants can be used, including but not limited to, to support 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, afterschool and childcare services, system navigation services, legal services to address barriers to reentry, linkages to medical care, women's health services, and other community-based supportive services.

Adult-Use Cannabis Licenses

The legislation outlines several types of licenses that will be available under the adult-use cannabis program, including adult-use cultivator, adult-use processor, adult-use cooperative, adult-use distributor, adult-use retail dispensary, microbusiness, delivery, and nursery licenses. All licenses expire two years after the date of issue.

The MRTA places restrictions on the types of licenses a single person can have with the goal of creating a division between those who create the product, those who wholesale the product, and those who retail the product.





Public Health Protections

The Cannabis Control Board will promulgate rules and regulations to govern the advertising, branding, marketing, packaging, and unconventional methods of administration or ingestion of cannabis products. This will include rules pertaining to the accuracy of information and rules restricting marketing and advertising to youth. The rules will also require that packaging meets requirements similar to the federal Poison Prevention Packaging Act of 1970; products be labeled and placed in a resalable, child-resistant package prior to delivery or sale; and products not be made to be attractive or target persons under the age of 21; and products contain warning labels to warn consumers of any potential impact on human health resulting from the consumption of cannabis products.

Advertising and marketing cannot be false, deceptive, or misleading; promote overconsumption; depict consumption; be designed in any way to appeal to children or other minors; be within or readily observed within 500 feet of the perimeter of a school grounds, playground, child daycare providers, public park, or library; be in public transit vehicles or stations; in the form of an unsolicited internet pop-up; on publicly owned or operated property; make medical claims or product adult-use cannabis for a medical or wellness purpose; promote or implement discounts, coupons, or other means of selling adult-use cannabis products below market value or in a way that would subvert local and state tax collection; or be in the form of a billboard.

The Board will establish approved product types and forms and establish an application and review process to determine the suitability of new product types and forms, taking into consideration the consumer and public health and safety implications. There will be methods and procedures for determining serving sizes

for cannabis products, active cannabis concentration per serving size, the number of servings per container or package, and methods of separating or clearly delineating servings within a container or package. Adult-use cannabis producers will be required to contract with an independent laboratory to test the cannabis products they produce, and product labels must accurately display the total THC of each product. The use or integration of alcoholic beverages or nicotine in cannabis products is strictly prohibited.

There are also several restrictions related to retail stores and consumption sites. Cannabis retail stores and on-site consumption venues cannot be located within 500 feet of school grounds or within 200 feet of a house of worship. On-site consumption venues cannot permit or promote gambling, exposing or simulating, contests, fireworks, or other similar activities the Cannabis Control Board deems to be prohibited. Cannabis retail establishments cannot sell alcoholic beverages or possess a license or permit to sell alcoholic beverages on the same premises where cannabis products are sold. Valid proof of age will be required for all transactions.



Social and Economic Equity Plan and Incubator Program

The Cannabis Control Board will create and implement a social and economic equity plan; actively promote applicants from communities disproportionately impacted by cannabis prohibition; and promote racial, ethnic, and gender diversity when issuing licenses for adult-use cannabis related activities. This will include mentoring potential applicants and prioritizing consideration of applications who are from communities disproportionately impacted by the enforcement of cannabis prohibition or who qualify as a minority or women-owned business, distressed farmer, or service-disabled veteran.



The social and economic equity plan must promote diversity in commerce, ownership, and employment, as well as opportunities for social and economic equity in the adult-use cannabis industry. There will be a goal of awarding 50% of adult-use cannabis licenses to social and economic equity applicants and ensuring the inclusion of the following groups: communities disproportionately impacted by the enforcement of cannabis prohibition; minority-owned businesses; women-owned businesses; distressed farmers; and service-disabled veterans. Extra priority must be given to applicants who demonstrate that they are a member of a community disproportionately impacted by the enforcement of cannabis prohibition; have an income lower than 80% of the median income of the county in which they reside; or were convicted of a cannabis-related offense prior to the effective date of this legislation or had a parent, guardian, child, spouse, or dependent, or were the dependent of an individual who, prior to the effective date of the legislation, was convicted of a cannabis-related offense.

Finally, the Cannabis Control Board must create an incubator program to encourage social and economic equity applicants to apply for adult-use cannabis licenses, permits, and registrations and provide direct support in the form of counseling services, education, small business coaching and financial planning, and compliance assistance.

Expungement of Records and Re-Sentencing

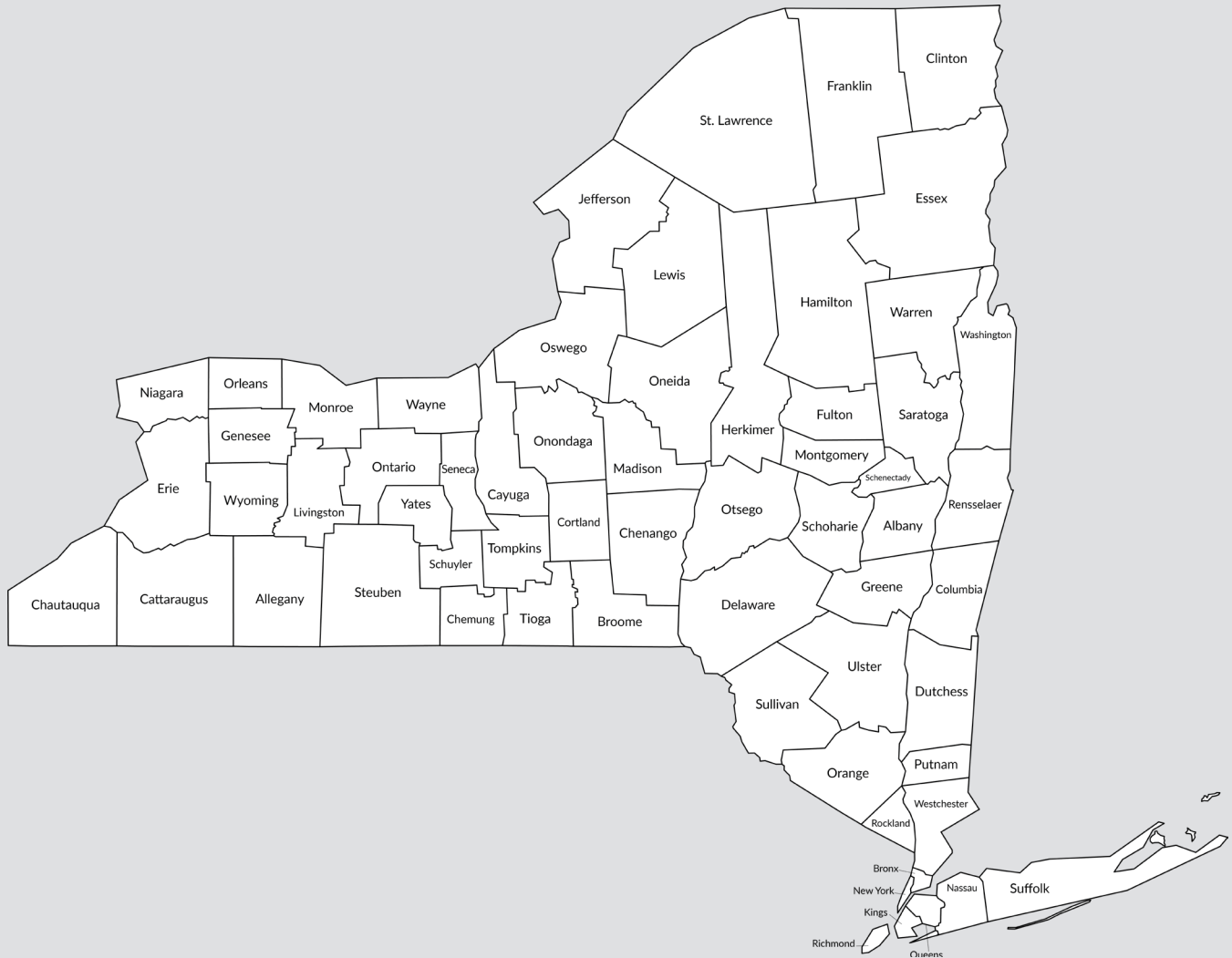
Under New York Law, expungement of criminal records is a term that means that an arrest, the action which led to the arrest, and a conviction resulting from such action are deemed to have never occurred in the eyes of the law. The actual expungement process can include both the sealing (with extremely limited ability to unseal) and/or the actual destruction of relevant criminal records.

In New York, prior to this legislation, only minor marijuana charges were subject to expungement. Accordingly, only violations (low level criminal charges) of unlawful possession of marijuana and certain related misdemeanors would be subject to automatic expungement of all records of this conviction. The legislation expands this expungement process in the following manner. New Yorkers will be allowed to possess 3 ounces of marijuana (the previous possession limited was up to 2 ounces) and grow up to three mature pot plants at home, with a limit of six per household. Any previous arrests/convictions that would be deemed legal today are subject to automatic expungement and re-sentencing. Under automatic expungement the State will notify the state Court System, DCJS, police, District Attorneys, and all applicable law enforcement agencies.



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