

NEW YORK STATE LEGISLATORS APPROVE MODIFIED HEMP BILL

Hemp & Medical Cannabis Alert
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With seemingly all the pieces in place—approval of the New York State Department of Health, backing of the Governor, popular support, and liberal control of the State Legislature—2019 appeared to be the year that legal cannabis would come to New York. As the 2019 legislative session progressed, and it appeared less and less likely that a comprehensive program would pass into law, the legislators submitted proposed bills to separately address hemp and medical cannabis—the less controversial aspects of cannabis. An expansion of New York’s much-maligned medical cannabis program quickly failed. But in the waning hours of the 2019 legislative session, lawmakers approved the cannabis “Plan B” bills, which included a hemp bill providing a regulatory framework for the growth, processing, manufacture, and sale of industrial hemp and cannabidiol (“CBD”) products.

Generally, there are three facets to legal cannabis: hemp, medical cannabis, and adult-use recreational cannabis. Both the Cannabis Taxation and Regulation Act (“CRTA” – proposed by Gov. Cuomo) and the Marijuana Regulation and Taxation Act (“MRTA” – sponsored by Assemblywoman Peoples-Stokes and Sen. Krueger) were broad cannabis legalization bills that sought to comprehensively address all three. Where the CRTA, and (later iterations of) the MRTA, sought to bring industrial hemp and CBD products under the purview of a future agency, the hemp bill that awaits Governor Cuomo’s signature amends the existing New York State Agriculture and Markets Law, and keeps the regulation of hemp under the current jurisdiction of the New York State Department of Agriculture and Markets (“NYSDAM”).

Two types of Hemp

The hemp bill creates two classes of hemp: “industrial hemp” and “hemp extract.” Consistent with the Agriculture Improvement Act of 2018, which became federal law in December 2018, industrial hemp is defined as the plant *Cannabis sativa L.*, and all parts and derivatives thereof, with a THC content of not more than .3% on a dry weight basis. Industrial hemp will be hemp that is used or intended exclusively for industrial purposes (e.g., fiber), and those food and/or food ingredients that are generally recognized as safe by the NYSDAM. Examples of food and/or food ingredients recently approved by the FDA include hulled hemp seed, hemp seed protein powder, and hemp seed oil.

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Cannabis & Hemp

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Hemp extract, under the pending hemp bill, is defined as any product made or derived from industrial hemp, used or intended for human or animal consumption or use for its CBD content. The allowable THC content will be set by future NYSDAM regulation. That the threshold was not set at .3% indicates it will likely be something higher.

Types of Licensure and Requirements

The hemp bill creates three types of hemp extract licenses: cannabinoid grower; cannabinoid manufacturer (*e.g.*, manufacture and sell CBD products); and cannabinoid extractor (*e.g.*, manufacture CBD oil). Subject to future requirements to be set by NYSDAM, license applicants will need to provide evidence of:

- (1) their ability to effectively control THC levels in the plants/products;
- (2) their ability to comply with all applicable state laws and regulations;
- (3) that they are ready, willing, and able to properly carry out the licensed activities; and
- (4) that they possess or have the right to use sufficient land, building(s), and equipment to carry out the licensed activity.

Applicants can, therefore, expect to make significant investments before even applying for a license. NYSDAM will have the authority to limit (by canopy, plant count, or other means) the amount of hemp extract grown, produced, and/or sold by a licensee. Licenses must be renewed every two years and will be subject to a fee based on the amount of hemp extract grown or produced, or by gross annual receipts. Unlike the CRTA and the MRTA, there is no prohibition on vertical integration in the hemp bill—meaning, nothing prohibits a prospective licensee from applying for, obtaining, and holding each class of license.

There are, however, certain limitations. A separate license will be required for each facility at which licensed activity takes place. Extractor licensees, however, are allowed to obtain a license allowing for the cultivation of hemp at the same property. Cannabinoid growers, manufacturers, and/or extractors will be permitted to produce industrial hemp products that are not intended for human or animal consumption. Industrial hemp licensees will be required to obtain an applicable cannabinoid license to produce hemp extract products.

Market Regulation

The hemp bill will also significantly impact the CBD retail market. Specifically, where they have previously operated with little to no oversight, retailers, wholesalers, and distributors will be required to obtain from the NYSDAM a permit authorizing them to sell hemp extract products. Violations will be subject to fines of up to \$1,000, \$5,000, and \$10,000 for the first, second, and third (and each subsequent violation), respectively.

The booming CBD market has generated two major criticisms: the lack of oversight and the regulation of consumer products. The hemp bill grants the NYSDAM authority to regulate the production, processing, packaging, and labeling of hemp extract products possessed and sold in New York State. Many of the specifics will be the subject of future rules and regulations.

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Currently, labels must contain: any health warnings required by NYSDAM; serving size; active CBD concentration per serving size; number of servings per container; and the growing origin of the hemp from which the product is derived. Growers are prohibited from using pesticides in the cultivation of hemp extract. Finally, all hemp extract products must be extracted and manufactured in accordance with the Good Manufacturing Practices promulgated by the FDA under the Federal Food, Drug, and Cosmetic Act.

CBD-Infused Beverages

With analysts projecting a billion dollar CBD-infused beverage market by 2020, the hemp bill specifically permits the sale of such products. Within 30 days of taking effect, the NYSDAM is required to approve the manufacture, distribution, and sale of CBD-infused beverages. The potency of those beverages will be limited to no more than 21 milligrams of CBD per 12 ounces. The law requires that any CBD or Hemp Extract used in infused beverages sold in New York State must be grown, extracted, and manufactured within the State. In order to be permitted to distribute or sell CBD products that are produced outside the State, it must be demonstrated that those products were manufactured in conformance with all of the standards and requirements established by the rules and regulations of the NYSDAM.

Once the bill is signed into law and takes effect, we anticipate there will be further clarifications issued by the NYSDAM. If you have any questions regarding recent developments in the hemp industry, or any other issues concerning hemp and cannabis law, please do not hesitate to contact us for assistance.

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