

NY State Legislation S.854-A (A.1248-A)

A Legal Summary

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Formatted by HOOG™;
Original summary draft by David Kuriakose of Jafri Law Firm;

Abstract

The following is a legal summary of the legislation signed into law by New York State Governor Andrew Cuomo on March 31st, 2021. The purpose of this summary is to give a high-level overview of the key parts of the legislation and make clear the potential implications to both HOOG™ and other prospective OCM-licensees; S.854-A alone is one hundred and twenty-eight (128) pages long, so HOOG™ asked our original law firm to prepare for us a summary of all the details we'd need to know going forward.

As part of our commitment to open-sourcing cannabis knowledge, we're proud to provide this summary to the open internet for free.

1 Change Log

v0.1 published Monday, June 7th 2021

v0.2 June 28th 2021 - typo/grammar corrections, additional info on 3 topics:

1. License application fees (yet to be defined)
2. Combined License types and related rules
3. Waiting period for medical users to legally begin growing at home

v0.3 New household limits

v0.4 Details about the two funds that will benefit from tax revenue

2 Quick Facts

- The Governor of New York signed a bill into law on March 31, 2021 which legalizes recreational cannabis (ie: marijuana) in the Empire State (New York, USA). This bill also allows for a regulated market of distribution and sale of recreational cannabis.

- NY Legislation (S.854-A/A.1248-A) is a bill under the name of: Marijuana Regulation and Taxation Act (MRTA).
- This bill restricts access to marijuana for anyone under 21 years of age.
- This bill creates the Office of Cannabis Management (OCM) which will provide oversight, instill regulations, and issue licenses.
- The OCM will operate as part of the NYS Liquor Authority but will be an independent office
- The OCM will be governed by a five-member board (3 members appointed by the Governor and one appointment by each house of State Congress).
- In regard to medical cannabis, the bill allows people with a larger list of medical conditions to access medical marijuana, increases number of caregivers allowed per patient, and permits home cultivation of medical cannabis for patients (with certain restrictions, see below).

3 Cannabis in the Home — Possession & Growing

- **Personal possession outside of the home:** up to three (3) ounces cannabis flower **and** twenty four (24) grams of cannabis concentrate.
- **Home possession:** amends limit of what is permitted in the home, which must be kept in a secure location away from anyone under the age of 21, to:
 - 5 lbs (2,267.96 grams) inside a private residence or on the grounds of it, which must be kept in a secure location away from anyone under the age of 21.
- **Home Growth:** permitted and subject to possession limits in 18 months after first adult-use sales begin for adult recreational use. Up to 6 months for medical users.
 - There is a limit of 3 mature plants and 3 immature plants for per household adult over 21, for up to 2 adults per household.
 - The **maximum** amount of plants **per household** is 6 mature plants and 6 immature plants.
 - Medical users cannot grow their own cannabis immediately and will have to wait at the most 6 months for regulations from the date this legislation was made effective.

4 Licensing

- This bill creates licenses for producers and distributors and other entities. The issuance of licenses will be for producing, processing, testing, dispensing, distributing, and delivering cannabis.
- This bill creates a two-tier licensing structure that separates growers and processors from also owning retail stores- which will allow for a large range of producers.
 - If your business falls under a specific type of organization then you can hold just one **combined** license which is referred to in detail in § 68-a which states:
 - *”No person holding a retail dispensary license may also hold an adult-use cultivation, processor, microbusiness, cooperative or distributor license pursuant to this article or be registered as a registered 22 organization pursuant to article three of this chapter, except for such organizations licensed pursuant to sections sixty-eight-a and sixty-eight-b of this article.”*
 - § 68-a. **Registered organization adult-use cultivator processor distributor retail dispensary license** lists provisions around these types of businesses such that this is the only license you are able to hold.
- This bill also implements quality control, public health and consumer protections (see below for details).
- A social and economic equity program facilitates individuals who are disproportionately impacted by cannabis enforcement and a goal of 50% of licenses going to a minority or woman owned business enterprise is discussed.
- License application fees were not set forth in the legislation; the OCM board will determine those amounts, per § 63:
- *”The board shall have the authority to charge applicants for licensure under this article a non-refundable application fee. Such fee may be based on the type of licensure sought, cultivation and/or production volume, or any other factors deemed reasonable and appropriate by the board to achieve the policy and purpose of this chapter. However, there are no fee provisions set forth in the legislation.”*

5 Taxation

- This bill replaces a weight-based tax with a tax per mg of THC at the distributor level with different rates depending on the final product type.

- The existing wholesale tax will be moved to retail level with a 9% state excise tax. The local rate will be 4% of the retail price.
- Counties will receive 25% of the local retail tax revenue and 75% will go to the corresponding municipality.
- All cannabis taxes will be deposited in the NYS cannabis revenue fund. The revenue covers reasonable costs to administer the program and implement the law, with the remainder being split up in three ways:
 1. Education System Spending (40%)
 2. Community Grants Reinvestment Fund (40%) used to:
 - (a) provide grants for qualified community-based nonprofit organizations and approved local government entities for the purpose of reinvesting in communities disproportionately impacted by the failed State and Federal drug policies of the past.
 - (b) provide grants to support job placement programs, job skills services, adult education, mental health treatment, & substance use disorder treatment
 - (c) as well as grants to support housing, financial literacy, community banking, nutrition services, after school and child care services, services to address adverse childhood experiences, system navigation services
 - (d) as well as grants to provide legal services related to expungement, vacatur, substitution, and re-sentencing of marijuana-related convictions
 - (e) as well as grants to provide linkages to medical care, women's health services, & other community-based support programs and services.
 3. Drug Treatment and Public Education Fund (20%), used to:
 - (a) develop & implement a youth-focused public health education & prevention campaign, including early intervention, school-based prevention, & health care services.
 - (b) develop & implement a public state-wide campaign focused on the health effects of cannabis use as well as legal use itself.
 - (c) reduce the risk of cannabis & other substance use by children.
 - (d) provide substance use disorder treatment programs for youths & adults, including programs that:
 - i. are culturally & gender competent
 - ii. are trauma-informed, evidence-based
 - iii. provide a continuum of care
 - iv. provide screening & assessment for substance use disorder as well as mental health

- v. provide early intervention, active treatment, family involvement, & case management
- vi. provide overdose prevention, prevention for communicable diseases related to substance use, and relapse management for substance use & other co-occurring behavioral health issues

6 Quality Control & Public Health Measures

- Cities, villages, and towns can opt-out of allowing cannabis use retail dispensaries or on-site consumption licenses by passing a local law by December 31, 2021. However, they cannot opt-out of the legalization of recreational usage.
- The use of cannabis is prohibited while driving and will carry the same penalties that it does currently.
- In regard to traffic safety, NYS Department of Health will conduct research studies to evaluate and detect cannabis-impaired driving. After the research study is completed, the Department of Health may create and implement rules and regulations to approve/certify a test for presence of cannabis in drivers.
- This bill also includes additional funding for drug recognition experts and law enforcement to ensure safety of our traffic and roadways.