

# Updates to the NY Empire State of Cannabis: Cannabinoid Hemp Licenses Go Live and Amendments to Governor's Adult-Use Legislation

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In step with all things cannabis, New York is making changes to its proposed legislation and regulations at a fast and furious pace. Earlier this month, the New York Department of Health opened the application process for cannabinoid hemp retailers and cannabinoid hemp processors, building on the groundwork for the country's most-regulated hemp program. Then on Tuesday, February 16, 2021, Governor Cuomo announced a slew of 30-day amendments to his adult-use legislation in a move indicating he is listening and willing to work with the state Legislature, which has been pushing for defined social justice initiatives.

## Cannabinoid Hemp Retailer Licenses

Spas, supermarkets, bodegas, smoke shops, pharmacies and flower stores take notice: Under New York's cannabinoid hemp regulations, businesses selling cannabinoid hemp products in New York first must obtain a Cannabinoid Hemp Retail License before selling products to consumers. This licensure requirement applies to in-state brick-and-mortar retailers as well as in-state and out-of-state retailers who sell their products directly to consumers online.

The application process is now live, and according to the regulations, retailers selling cannabinoid hemp products, including tinctures, oils, topicals, pills, foods and beverages, must apply for a license before April 1, 2021. The fee for a retail license is \$300 per location. This means that if a retailer owns outlets selling hemp products, they must apply for and obtain a license for each location. Failure to comply could result in stiff penalties: \$1,000 for the first violation, \$5,000 for a second violation, and \$10,000 for a third violation and each subsequent violation thereafter.

## Cannabinoid Hemp Distributor Permits

There are new permit requirements for distributors of cannabinoid hemp products as well. Before selling or distributing cannabinoid hemp products manufactured outside of New York to licensed cannabinoid hemp retailers, distributors must first obtain a Cannabinoid Hemp Distributor Permit. This will ensure that all cannabinoid hemp products brought into the state will comply with the state's stringent packaging and labeling regulations. The regulations put the onus on cannabinoid hemp

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retailers to only purchase hemp products from licensed cannabinoid hemp distributors.

Out-of-state hemp brands entering into distribution agreements with New York distributors should ensure that their distributor of choice has its Cannabinoid Hemp Distributor Permit secured. If not, this oversight could be costly, given that the distributor will be unable to sell any hemp product to retailers.

## **Cannabinoid Hemp Processor Licenses**

Businesses extracting or manufacturing cannabinoid hemp in New York now must obtain a Cannabinoid Hemp Processor License. The processor license is issued in two distinct types, “Extracting and Manufacturing” and “Manufacturing Only.” The extracting license is required for businesses that concentrate or isolate one or more cannabinoids from hemp. Meanwhile, the manufacturing license is required for businesses that prepare, treat, modify, compound, process, package or otherwise manipulate hemp or hemp extract into a cannabinoid hemp product.

To be approved by the Department of Health, businesses must meet a handful of requirements, including providing (1) proof of workers’ compensation insurance, (2) proof of product liability insurance, (3) proof of a good manufacturing practices audit, and (4) ownership and management information for the business.

Licensing fees depend on whether the business extracts and manufactures cannabinoid hemp products or just manufactures cannabinoid hemp products. Fees for the former include a \$1,000 application fee plus a \$4,500 license fee. A Manufacturing Only license will cost \$500 to apply and \$2,000 for the license.

While the regulations are not yet final and therefore not yet in effect, retailers, distributors and processors should get a head start in the application process and apply as soon as possible in anticipation of a potential backlog at the Department of Health.

## **Amendments to the Cannabis Regulation and Taxation Act**

Cuomo’s proposed adult-use legislation – the Cannabis Regulation and Taxation Act (CRTA) – was met with skepticism among fellow Democrats who felt that the bill did not go far enough on social justice issues. In response to the criticism, Cuomo unveiled new amendments to the legislation.

According to a press release from Cuomo’s office, the new amendments “detail how the \$100 million in social equity funding will be allocated, enable the use of delivery services, and refine which criminal charges will be enforced as it relates to the improper sale of cannabis to further reduce the impact on communities hit hardest by the war on drugs.”

Through the Social Equity Fund, qualified community-based nonprofit organizations and local governments can apply for funding to support various revitalization efforts, including job placement and skill services, adult education, mental health treatment, substance use disorder treatment, financial literacy, and afterschool and childcare services. The New York Department of State will be tasked with allocating the funding through grants administered by the Empire State Development Corporation.

Another amendment will allow for cannabis delivery services. Initially, delivery permits were left out of Cuomo’s bill, but the new addition will allow for delivery “as a way to open up access to this new

industry even further so more New Yorkers can participate as it grows.” Importantly, local jurisdictions will have the opportunity to opt out of delivery services occurring within their borders.

Finally, Cuomo’s amendments reduce penalties for improper sales of marijuana:

- Criminal sale of marijuana in the third degree (sale of marijuana to a person under 21 years of age) will be a class A misdemeanor
- The sale of more than 16 ounces of marijuana or 80 grams of concentrate will be a class E felony
- The sale of more than 64 ounces of marijuana or 320 grams of concentrate will be a class D felony.

Taken together, these amendments demonstrate Cuomo’s willingness to negotiate with state legislators, a step he has been unwilling to take in years past. Following hearings that began on February 23, 2021, the state Senate and Assembly are expected to release their own budget proposals.

With these new amendments, perhaps the third time really *is* the charm.

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