

The logo for "The Cannabis Counselor" featuring a green leaf icon above the word "Cannabis" in a script font, with "THE" and "COUNSELOR" in a sans-serif font. Below it, "FEATURING ALEECE BURGIO" is written in a smaller sans-serif font.

THE Cannabis COUNSELOR

FEATURING ALEECE BURGIO

Episode 1: Intro and the Cannabis Regulation Taxation Act (CRTA)

Speaker: Aleece Burgio

Hey, everyone! This is a Barclay Damon Live broadcast. You're listening to the Cannabis Counselor and I'm your host Aleece Burgio. Let's get into it!

The Cannabis Counselor is going to be a podcast, 10 to 15 minutes, where we talk about the single issues of New York State, federal, anything in the surrounding states, that are important in the cannabis industry. This can be for attorneys, people looking to get into the industry, existing multistate operators, anybody who is looking for topics to make them a little bit more well versed in what's happening in cannabis. So let's talk about it!

Today's topic is going to be the Cannabis Regulation Taxation Act. That is the bill that was put on by Governor Cuomo. It's the third attempt for him to put it in his budget and it's got some issues with it. The Cannabis Regulation Taxation Act is to legalize adult-use cannabis for those who are 21 and over in New York State. Now, what does that mean for everyone who's either an attorney, an operator, somebody who's looking to switch their business and get into cannabis? Well, it's a couple different things.

First, we're going to be governed by this Office of Cannabis Management. It's kind of a first-impression type of management style. You're going to have an executive director, who's Norm Birenbaum, and you're going to have five members on a board. Those six people are going to determine who gets licenses, how many licenses are distributed, if they add additional licenses, if rules need to be changed, if you're going to get penalized for doing something against the legislation—they're your people who are going to be putting you under a scope.

The Office of Cannabis Management is going to be under the Liquor Authority. So it's its own little subsidiary; it's not going to be governed by the Department of Health—that's a super important thing to remember. Now, say you're just talking about it with your friends, you have investors, you're sitting around asking yourselves, "How do I get into this industry?" Let's break down the type of licenses that are going to be available for you.

First off, you can have a co-op. Say you and a couple neighbors are talking about growing your own marijuana (because this bill doesn't have any home grow; you're not going to be having a medical marijuana card and growing four plants—that's been eliminated). So you want to grow with some of your neighbors, some of your colleagues, you've got a big plot of land, you want to separate it out. That'll be an opportunity for you, which is a great way to start in without, you know, pretty crazy start-up costs. That's a good one.

The second thing to point out is that you will never be vertically integrated unless you're a microlicense—which we'll get into in a few minutes—or if you're going to maintain your registered organization status as a medical marijuana operator.



When I say the word “vertically integrated,” I don’t want to get too technical on you. So let’s break that down. Vertically integrated means you could be a producer, a processor, a distributor, and then a retailer; every single license—from soup to nuts—you could have. That’s not going to be allowed in New York for the general public. So if you were looking to have a license, you could have two separate ways. You could either be a producer and a processor and possibly get a distribution license or, scrap those, you could have three retail stores in three different locations. So that’s something to think about when you’re talking, “Am I more of a person who’s able to grow? Do I want to be in the consumer-facing business and have a retail store?” Something to think about.

Now, say you’re not looking at a large-scale operation. You’re not talking about 20,000 square feet, 15,000 square feet of grow, of canopy. You want to do something smaller. Maybe you’re talking about 1,000, 2,000. Let’s talk about a microgrow operation, which is, you can have a small canopy square footage—you could have a processor square footage, small—and then you would be able to sell on-site the weed that you’re growing and processing to a consumer. Kind of like a brewery, right? You think about that.

So you’re at Ommegang. You’re in Cooperstown. You check out the facility, it’s looking nice. You want to buy some of their beer to take home. That’s what we’re looking at with microgrows. You’d be able to go to a micro-operation. Could be, you know, in the center of the city. You tour the facility. You’re like, “Hey, I really like that Blue Crush. I’m going to go buy it.” You bring it home with you and then you smoke.

Now, you’re not going to be able to smoke it in the microgrow location. That’s not going to happen. There’s no on-site consumption lounge license, meaning, kind of think of it like a cannabis cafe or cigar bar. You go, you buy marijuana, and then you smoke it there. We’re not going to have that. So, you know, be careful smoking in public, smoking in your car, smoking in federal apartment buildings. That’s something that the OCM, the Office of Cannabis Management’s, going to have to lay out later on. And they’ve said they might have to add that additional license down the line because you have to be considerate of where you’re going to be smoking marijuana. And it’s not going to be where any of the licenses are currently.

So those are all things to think about. When I say that medical marijuana registered organizations can have a vertically integrated license, they’re going to have to competitively bid to get vertically integrated adult-use licenses. So, right now, medical marijuana has made no money. I feel terrible. They’ve been dead broke. For however many years, they’ve had this opportunity to be a medical marijuana holder for New York State. They have four dispensaries, but there’s no demand. Now, they’ll be able to competitively bid—per the CRTA—for an adult-use license. They can turn those four dispensaries into adult-use dispensaries. It’s a great way for Governor Cuomo to generate revenue in the first few years before licenses are up and going. But it’s going to be another toll on medical marijuana registered organizations where they now have to, you know, put forth a lot more money than, say, the everyday consumer to get this vertical integration.

Next big thing to think about: taxation. A big point of this is because it’s so brutal. Honestly, it’s brutal. The taxation for the CRTA is just nothing to write home about. There’s three tiers of taxes. One is going to be on the THC content. So the higher the THC content, the higher the bud is going to get taxed. And that’s from the wholesaler to the retailer. You’re going to have another tax, this is the second tax, that goes from the retailer to the consumer. It’s a 10.25 percent tax. And the third tax is this local sales tax that, you know, is going to be at the discretion of your local government.



Three tiers. It's not weight based. It's kind of based off a weight-based tax, but it's a little different. It's going to be a huge, contentious issue between now and April when the bill could get put into the budget, because nobody likes this tax. We want flat rates. Massachusetts is a flat rate. Jersey's talking about a tax rate as low as less than 7 percent. Oregon has flat tax rates. You want to be able to see revenue generated. If you tax it too high, operators are going to make little, you know, little to... It's going to be tough to make money. It's going to be tough to buy, you know, recreational when you have black market at a completely decreased amount. Say it's 50 percent less than what we're selling in the stores. What are people going to do? And there's a big public health issue with buying black market. So we need to incentivize the public to go into the recreational market, we need to incentivize operators to become legalized, and that all has to happen with a process that facilitates operators making money.

Finally, our last topic for the day is the social equity fund and the social equity principles for both the CRTA and the MRTA. Now, the CRTA has come forth and said that, within four years' time, there's going to be \$100 million put into a social equity fund, and that would help dictate the social equity applicants, any types of grants, any types of loans, employment opportunities, things like that. Now, a social equity applicant under the CRTA will include a member of the community who's been disproportionately impacted by the prohibition of cannabis, a minority as defined by New York State law, women, disadvantaged farmers, and finally disabled service veterans.

What's interesting about the disadvantaged farmers—and I want to talk briefly about this for a moment for anyone who's in hemp—is whether or not the hemp operators are going to be able to fall under this disadvantaged farmers category. I suspect that that is going to be possibly a loophole because, is there going to be any preferential treatment for hemp operators right now who want to transition into the adult-use space? Possibly? We don't know. But that could be an avenue for that to happen through if there isn't any direct language put in the bill, which at the moment there isn't. That's kind of the rumor mill that's going on right now.

Now, social equity is so important because these are the really big divides between the MRTA and the CRTA. Now, the MRTA takes a different approach and they go through the use of revenue. And use of revenue, Assemblywoman Stokes wants 50 percent to go back to a reinvestment fund. And so that fund would go to communities who have been disproportionately impacted. The other 25 percent goes to drug treatment. And the other 25 percent of that goes to the state lottery fund.

So, there are some big differences and I think they're going to have to meet in the middle in order to form a bill. You know, if the MRTA gets passed in the legislature, which is a very real possibility, and the CRTA is waiting for the budget, there will need to be some reconciliation between, you know, what can and can't be approved on the social equity part. It's going to be a rocky road and this has been an issue that has prevented either bill from getting passed over, you know, for Governor Cuomo the past two, three years, and Assemblywoman Stokes since 2013.

So, very big topic. Keep posted. And we'll see you for episode two!

Thank you for listening to episode one! New changes have come out, so we are putting out a second part of episode one, which is going to go down through the amendments. Stay tuned. It is going to be a breakdown; there's three big issues we talk about. Go follow and listen to it next. Thanks!

The Cannabis Counselor podcast is available on YouTube, LinkedIn, Apple Podcasts, Spotify, and Google Play. Like, follow, share, and continue to listen. Thanks!

