



THE **Cannabis** COUNSELOR
FEATURING ALEECE BURGIO

Episode 4: “New Jersey’s Cannabis Legislation”
Speaker: Aleece Burgio with guest Gabby Figueroa

[Aleece] 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!

[Aleece] What’s up, everybody? This is Episode 4 of the Cannabis Counselor. I’m your host Aleece Burgio. Today, we’re going to talk about New Jersey’s cannabis regulations. Back on February 22, three different bills were signed by Governor Murphy: a legalization bill, a decriminalization bill, and one for criminal penalties for those who are possessing cannabis that are underage. We have a lot to talk about today and we’re interviewing Gabby Figueroa, an associate here at Barclay Damon that is basically our go-to source for all New Jersey regulations. Thanks for listening, and we’re going to start with our interview with Gabby right now.

[Aleece] Hi, Gabby! Thank you so much for joining us for Episode 4 of the podcast. We’re talking about New Jersey regulations in the cannabis space. Gabby, thanks for coming and tell us a little bit about yourself and what you do at Barclay Damon.

[Gabby] Aleece, I’m so excited to be here to talk to you about this today. So I joined Barclay Damon in 2019, and I have a about a little over a decade of experience in New Jersey regulatory work. So I was very excited to join the team at Barclay Damon and to be linked up with Aleece and the cannabis service team. It’s given me the opportunity to work on the preparation of applications for companies that want to provide medical marijuana in a number of states including New Jersey, and I have to say that the past almost two years here have been absolutely fantastic.

[Aleece] That’s great to hear. So Gabby, as you know, on February 22, there were three bills that were signed by Governor Murphy to expand and legalize and decriminalize cannabis legislation. Can you kind of go through the process of those three bills and kind of the turbulent timeline we’ve had of getting these signed and the process of it?

[Gabby] So even going back before these bills were finally signed by Governor Murphy on February 22, this past November the New Jersey voters overwhelmingly by over two-thirds voted to amend New Jersey’s Constitution to allow the adult use of recreational marijuana. So as of January 1, as far as the New Jersey Constitution was concerned, adult use of marijuana was legal. However, the statutes making marijuana a criminal penalty were still on the books and we also didn’t have any law implementing this new scheme to sell recreational cannabis to adults. So a few different things had to happen with the legislature before New Jersey could officially say, “It’s good and we’re legal.”



[Aleece] That's super interesting. You know, in New York, we have kind of a different scheme where we have decriminalized marijuana, but we're not quite there yet with legalization. We're hoping to see a bill passed by April 1, but can you tell us a little bit how they're operating having these two bills happen simultaneously. What have we seen through the decriminalization process in New Jersey?

[Gabby] So because of the lag in getting the legislation signed, unfortunately several—I think about 6,000—people were arrested for cannabis . . . adults arrested for cannabis-related crimes, because while the Constitution said it was legal, the statutes said it was still illegal and the police still had the authority to arrest people—and so they did. The good news is that the Attorney General, right after Governor Murphy signed the bills, issued a notice to all the prosecutors in the state directing them to drop all pending marijuana charges for adults, which is fantastic news for all those people who were arrested and even people who were arrested, you know, prior to the voters making their voices heard.

[Aleece] Yeah. It's such an interesting scenario, right? Because I think what I read was that the prosecutors were told, "Don't prosecute any more cases regarding possession and marijuana." But the law enforcement officials didn't have that exact same guidance until these bills were signed and so that's why the arrests kept happening. And I think there's like this massive disconnect between what police officers want to do for purposes of like furthering searches. Have you kind of come into that problem? Or I think the police enforcement are using almost odor and smell as like a gateway into looking for other avenues.

[Gabby] I think it's a really common tactic that, you know, an officer will say that they smell marijuana and that will be a gateway to, you know, a stop-and-frisk or some other type of search. However, under the legislation that was passed, the odor of marijuana can no longer be used as a pretext for a search, which I think is like really interesting and very important, because if marijuana is legal, it goes . . . it follows, therefore, like the smell of marijuana is, therefore, not . . . doesn't necessarily implicate in criminal activity because it's not illegal.

[Aleece] Right. It's like saying, if I'm smelling it, it shouldn't matter because it's legal. So you're allowed to smell it on somebody without thinking that they've committed a crime.

[Gabby] That's right. That's right.

[Aleece] Very cool. So let's talk about the legalization bill. I think this is a massive point for New York State and anyone who's listening in any of the northeast territories right now. New Jersey is, you know, second to Massachusetts where we're seeing legalization in play. Can you kind of break down the bill a little bit for us? We can kind of go step by step, but some interesting aspects of it that I think our listeners could really benefit from.

[Gabby] So the legalization bill is massive, and it sets up a number of new different licensing schemes including for delivery of recreational cannabis. I'll note that the Department of Health, during the COVID pandemic, created an exception for delivery to medical cannabis patients. But now this is in the law, it's going to be a whole separate license to have cannabis delivered. There's going to be, there will allow 37 growers in the state, but that includes the existing growers. So there's going to be a few less licenses issued on that front.

[Aleece] So that just seems crazy. Right? 37 growers is so small.



[Gabby] Yeah.

[Aleece] There's like 560 municipalities in New Jersey and they're going to have 37 growers. And how many of them are already medical?

[Gabby] I think there's at least nine and there maybe three more upcoming. The problem though right now is that the medical growers and the medical marijuana distributors are really very burdened providing care to the existing medical cannabis patients in the state, and the way this law's written and the way that the new Cannabis Regulatory Commission is going to work is the priority is going to be given to medical cannabis patients first. So while there's the opportunity for the existing dispensaries to possibly sell, you know, on a recreational level, if they don't have the supply it's not going to happen.

[Aleece] Of course!

[Gabby] And right now they don't have the supply.

[Aleece] And I think there's always that like push and pull. Right? Because you saw Oregon, and Oregon had this insane supply that happens after the legalization. There was four times the amount of weed as there were people in Oregon at the time, and I think now new states—with New Jersey being like the 15th state to legalize marijuana—they're learning from the mistakes of prior legalization policies. But you're almost in this like nerve-wracking like . . . You've got to have some supply. If we're talking about still supplying medical and recreational, we can't just do 37 growers. That's insane. What are they doing for dispensaries?

[Gabby] So I don't think there's a cap on dispensaries, and I do want to caution to you like the cap on growers is only for the first two years.

[Aleece] OK.

[Gabby] I think the other thing that we all need to keep in mind is that the micro businesses aren't part of that cap.

[Aleece] Oh, that's good.

[Gabby] So there's an opportunity for the smaller business segment that New Jersey's really trying to support and push to fill in some of those gaps. And I think that, you know, there's a few other pieces at play here, too. The first is that we don't have regulations yet to go with this bill. So this gives growers a little bit of time to start ramping up while those regulations are being drafted under the bill. They're supposed to be out for review and comment within six months of passage. It could take a little bit longer than that. And even once those regulations are published for review and comment, there's still going to be time before the regulations are final. So it could be at least a year before we actually see, you know, purchase of recreational marijuana in New Jersey.



[Aleece] That's super interesting. Now, in New York State, we're talking about having this oversight board and . . . the Office of Cannabis Management, which is going to have an executive director and then five members of the cannabis board. Is New Jersey going to have any sort of oversight team like that and have they filled those positions?

[Gabby] Yes, they finally filled the positions for the new Cannabis Regulatory Commission, the CRC. So those gaps have been filled. Right now, or up until this bill and up until the CRC was seated, cannabis . . . medical cannabis was under the Department of Health. And so now it's got its own regulatory body overseeing it, we also have five individuals, they've all finally been appointed. So I'm kind of hopeful that they can hit the ground running, but there's still a lot to be done here and there's still a lot to digest in terms of what these bills allow and, you know, there's also the possibility of new legislation coming down that, you know, changes what we have so far.

[Aleece] Absolutely. It's funny, because I think in New York State we've been talking about this legalization bill for so long and these five open positions. I can't even tell you one name right now that's even being talked about. So it's interesting to me; I feel like they all have to happen at the same time, but it seems weird that you don't know anybody who could be, you know approving your application, telling you, "You don't have . . . you're in fault of your application." Or, "Your license is getting revoked." And so it's very interesting that New Jersey has kind of done those at the same time. I also kind of want to talk to you about the different components of like the taxation, because with bordering states between New Jersey and New York taxation is so huge because if New York has a bad taxation policy, they're going to just drive right over the bridge and go to New Jersey. What does New Jersey's tax plan look like right now?

[Gabby] Right now, as far as the state is concerned, there is the state sales tax of 6.625 percent. The municipality can charge a 2 percent tax on a grower. And then there's going to be a sliding-scale tax depending on the amount of cannabis that's purchased and this is for growers as well. It's somewhere, it's either, it goes from \$10 an ounce up to \$60 an ounce depending on the price of marijuana. This seems, you know, on my review, is relatively low compared to the tax schemes in other states. However, I do know, and there's a lot of rumbling about reforming the tax regime to make sure that the state is pulling in enough funds, and also I think there are some parity issues and maybe some pushback from neighboring states. They're saying, "Hey like, I mean, we're going to clog up the path if you don't clean this up a little bit." So . . .

[Aleece] No, I know. It's interesting because . . . so Norm Birenbaum is the executive director for New York State's Office of Cannabis Management and I actually watched him on a clinical legal education not too long ago. And this topic was brought up, right, about New Jersey's taxation and how if it's too low New York better just like call it quits right now because nobody's going to want to enter into the New York market when New Jersey is bound to have so many more consumers. And Norm kind of like alluded to the fact that he thinks that New Jersey's going to kind of find a way to boost up those tax rates so there's not such a deficit between what New York might have and what New Jersey has. And I think what you're talking about on this sliding-scale is kind of like a little bit of a door opening for New Jersey to maybe see what's happening in other states and make sure that maybe they're little bit lower than the state next to them. But probably not so low where it's just a complete imbalance in terms of neighboring states. Would you agree with that or do you think that's far-fetched?



[Gabby] I think we're going to see tax reform in New Jersey, for sure, in terms of marijuana sales. I think that a lot of states, including New Jersey, are really hurt after the COVID crisis, and this is a really easy way for the state to bolster revenues and I think that people will pay it.

[Aleece] Lastly . . . The final topic I kind of want to dive into is this home grow provision. Do they have any home grow legislation as part of the bill or was it omitted?

[Gabby] Home grow was prohibited under the bills that were passed. So it's not a thing, but it is something that a number of state legislators are very interested in implementing and it ties a lot in to some of the social justice concerns and costs. You know, there are going to be people who may need access to cannabis and maybe don't fit into some of the medical schemes and who would be burdened by the current tax rate, and so I do think there's a possibility of legislation down the road that would allow some small-scale home grow. But right now it's not part of the it's not part of the legalization efforts.

[Aleece] And I think that I read somewhere that it was introduced into the assembly for six plants, but again, that's just been an introduction of a bill that isn't necessarily going to get passed by the senate or signed by Governor Murphy. It's interesting because—and for listeners—in Episode 2 we talk about the Marijuana Regulation Taxation Act. That bill also allows up to six plants for home grow. So it's interesting that those would kind of be parallel. Prior states, I would say, didn't have that many plants for home grow. I know Oregon's was four at the time, back in 2016. So I think it's super curious to see if that will happen. There's really a polarity on companies and whether or not they want home grow to happen because, like, I'm almost positive that, like, the big registered organizations in New York State came out and were against home grow because they think that it'll almost take away from the recreational program. Also, they think that it could possibly be problematic for consumer ingestion because people don't know how to grow and things like that, but you have people on the other side of the coin who were basically like, "No. It should be their right." It's for insurance purposes. You know, it could be cheaper, more accessible. So home grow is just such a very interesting issue, I think, across the board on where it'll land and if New Jersey does it, I think New York might have a good opportunity to think about that along the way. Well, Gabby, thank you so much for coming in today and interviewing. Everyone, this is Episode 4, we talked about New Jersey. Gabby Figueroa, if you need her go on the Barclay Damon website. She is anybody's game for regulatory practice, for cannabis, and we loved having you today.

[Gabby] Thank you so much, Aleece, thank you!

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

