



THE **Cannabis** COUNSELOR  
WITH ALEECE BURGIO

**Episode 17: : “Delta 8 Update”**

Speakers: Aleece Burgio, host and Barclay Damon Attorney

**[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.

**[AB]** What’s up, everybody? This is Episode 17 of The Cannabis Counselor. I’m your host, Aleece Burgio, and today we are going to be talking about Delta 8, and its possible ban in New York State.

So a couple weeks back, New York State had drafted its proposed regulations, they’re revised. We’re in a comment period now until July 19. But these rules and regulations are not a good look for those who are in the Delta 8 community. And so these are all of the hemp extractors, producers, who might be growing for Delta 8 that have kind of gotten the knockdown. And what I mean by that is, for a long time we’ve been operating in this industry where Delta 8 has been an entirely gray area. What I mean by that is, we haven’t necessarily had the legislation and the regulations, especially in New York State, that has specifically identified Delta 8 as accounting towards the THC.

So let’s kind of talk about what Delta 8 is, right. A cannabis plant has more than 100 cannabinoids in it. One of the cannabinoids that everyone’s a little bit more familiar with is Delta 9 THC, which is the ... the THC calculation that we look at—the difference between hemp and marijuana. And what I mean by that is the way that it’s regulated, and the way that it’s written in legislation right now is, hemp is defined as ... .3% or less THC Delta 9 concentration in a plant. Makes no mention of Delta 8. And so when you send your samples to the lab, sometimes they don’t even show any type of percentage of Delta 8. They really are just looking at that Delta 9 concentration. Well, I think that’s about to stop. And why it’s about to stop is because Delta 8 is being used right now as kind of a gateway into Delta 9, with the murky areas of it being not necessarily regulated like Delta 9.

So you’ll see this when you walk into the CBD stores, and it’s a hot craze right now, it is a very hot craze. People are going into CBD stores, they’re going into head shops, and they’re looking for Delta 8 gummies, for vapes, whatever, to get a high. And consumers will say like, “Hey, we’re getting pretty high off of Delta 8 right now, ,” ... you know, not like CBD hemp-derived high, like, adult use cannabis, you know, psychoactive high. And so New York has kind of caught on, and they revised their proposed rules to suggest that there’s now a ban on basically the use of Delta 8 through the process of isomerization, because Delta 8 is an isomer. And really, Delta 8 and Delta 9 are very, very



similar: they're both naturally occurring in the plant. But the big difference is where they're kind of double-bonded, kind of in the molecular if you're looking at it as like a molecular compound, where it's double-bonded is what's the difference between where Delta 9 and Delta 8 are. for a little science talk... And for those of you who are wondering, yes, I did not do well in science in high school. Got a C! Larry Schiro. Williamsville East. Not a big deal. Anyway.

So what we're knowing and what we're finding out about Delta 8 is that people are using this as they would for any type of adult use products. And so New York is cracking down. That's not to say that there isn't a comment period right now. It's not the finalized rule. But I think New York kind of has a hold on it and they're joining a bunch of other states who have already been banning Delta 8. I think six states are in the process right now of revising their regulation. Eleven states, I think, have already been talking about it in general. So, you know, I think it's kind of a crackdown if you think about it about, about like, synthetic cannabinoids and not to say that Delta 8 is synthetic, because it is naturally occurring in the plant, but there's not enough of it in the plant for it to be extracted and, you know, in its entirety. So it does have to be synthesized so that it's being taken from Delta 9 in that way.

Overall, I think it kind of brings us to the most important point of this, which is, when you think about this, we have 17 states talking about Delta 8 bans. New York is creating some of the craziest cannabis regulation in terms for both marijuana and for hemp. I mean, the OCM is going to be this first-impression board that's going to be governing cannabinoid hemp and cannabinoid marijuana, and it's going to regulate medical adult use and hemp under one structure, the Office of Cannabis Management. Right now, New York is still requiring it—and one of the only states to do so—to show you have a license for growing, processing, manufacturing, distributing, and retail. And so there's a very strict oversight component that other states don't have, and the problem with that is we don't have the federal guidance. We don't have an oversight agency. The FDA will not take a hold of hemp, which it should, to kind of make this a little bit easier. If you ask a lawyer right now what their thoughts are on Delta 8 I mean, you might get a mixed batch of commentary. Some might say, "Hey, Delta 8 is kind of still legal because there's some work-arounds through the definition." Some might say, "No, it's a derivative, Delta 8, so you can't get away with it at the federal level and now in New York, you definitely can't get away with it."

And, you know, it's this uncertainty that I think plagues the hemp industry as a whole. I mean, it's supposed to be operating as an agricultural commodity. And ... reality of it is that it's not, because federal government won't take a hold of this product. And if it goes over, you know, .31% above the legal limit— it's considered a schedule I substance, it's considered marijuana. And it's, you know, taken as if it was heroin, right? Because heroin, marijuana are both schedule I, which is an absolute joke.

This is a ban that I think everyone kind of saw coming. You know, I get this question a lot: What is the deal with Delta 8? It seems to be the most profitable right now for a lot of CBD retailers. Even processors would say, "Hey, we've been growing a lot. We've been extracting a lot of Delta 8 to sell, because that seems to be the hot ticket." And it's cracking down now, and it's not doing any favors to any retailers to do so.



But I think it makes sense in New York because New York really wants to focus on this adult use space. But Delta 8 has got to be part of that, whether they regulate it as opposed to a full-out ban, whether they regulate it through the adult use process, and now you have to be an adult use operator to handle it, that would make more sense. But right now, the rules and regulations are a little, you know, they're still gray in the sense they haven't been finalized yet. We don't know what's going to happen with its interaction with adult use rules and regs.

Overall, Delta 8 is a very confusing topic for those who are both in state and out of state in New York. And we'll continue to bring you guys updates on this topic. But for now, I would stay clear. It's better to be safe than sorry if you are a licensed hemp retailer, distributor, processor, or grower in New York State. Thanks for listening.

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