

Episode 22: “NYS’s Hemp Program, Featuring Assemblywoman Donna Lupardo”

Speakers: Aleece Burgio, host, Barclay Damon, and
guest Donna Lupardo, NYS Assemblywoman

[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 22 of The Cannabis Counselor. I’m your host, Aleece Burgio. And today we’re going to be talking with Assemblywoman Donna Lupardo who represents 123rd District of New York State. Assemblywoman Lupardo is literally the champion, the pioneer of cannabis legislation here in New York State. And so we’re going to sit down and talk with her just about what’s going on with these rules and regulations, what we foresee happening in the next year or so and its interaction with adult use cannabis. So stay tuned.

[AB] Assemblywoman Lupardo, thank you so much for jumping on for Episode 22. How are you doing today?

[Donna Lupardo] Thank you very much. Good to see you.

[AB] I’m extremely excited to have you on. I think of all the legislators that we’ve talked to, the majority leader and Senator Cooney, you are by far the most knowledgeable and experienced on the hemp industry, really being the pioneer for the hemp pilot program back in 2015. It looks like there’s a comment period that’s about to end next week for public comment on the extraction rules and regulations, where do you foresee kind of hemp moving along as we enter into this now new world of adult use?

[DL] I’m really hoping for great things with industrial hemp. Of course, we always viewed this as—I always refer to it as the three-legged stool of cannabis. And I was always the lead on the industrial workhorse, which we viewed as the hemp plant—and medical cannabis was the other leg. And, of course, finally, adult use, which people insist on calling recreational marijuana. We keep trying to basically wrap this all around the cannabis plant and all of its various types and variants. But for hemp, hemp went through a tough stretch. Obviously. Initially, I had great hopes for the fiber and grain part of the hemp industry to really take off when everyone got into the cannabinoid/hemp/CBD varieties, which, as you know, flooded the market. So we’re hoping for a market correction so that we have the amount of cannabinoid hemp or CBD hemp plants growing for the consumer need. With these strict consumer protections and labeling standards, we think New York is positioned to be in a really good spot for being a leader for the country and also for consumers to have confidence in what



they're buying. So I see that stabilizing. But at the same time, we need to spend a lot of time with our economic development team and others portraying the benefits of fiber and grain. We're hoping to do perhaps a good collaboration, maybe the Fashion Institute of Technology on the textile side. We really want to have people see the grain side as well as how valuable this can be as a food source. So, that's my next challenge is to really get people focusing on at this point, the less popular varieties of industrial hemp.

[AB] That's very interesting. And I think we've kind of focused in on the CBD, the extraction component or the variants of different cannabinoids that we're looking at, right. So it's either the CBD, it's the Delta 8, it's the CBG. And every time we move forward, there's a new cannabinoid that you focus on. You're totally right. And what we forget about is the fact that hemp has so many other really important qualities to it. It can be construction materials. It can be for clothing. It can be for food, for animals. There's a multitude of agricultural aspects, which is why, when you think about it, it's an agricultural commodity at the federal level, because there are so many other aspects to that.

[DL] To follow up, if I could, to follow up on the regulations. We found it necessary to, while we were keeping agricultural markets, overseeing the growing of all of these cannabinoids and all of these cannabis varieties, we had to move the CBD and other potential hemp cannabinoids over into the new Office of Cannabis Management, because it got complicated. Initially, the Department of Health, as you know, is overseeing it. We hope these regulations really put this into a very, very solid framework going forward, but it doesn't cut out agricultural markets, but we definitely need this part overseen by a different group of people on the hemp extract.

[AB] Yeah. That's such a great point. The Department of Health has been such a ... I almost call it like a "bailer." They've just been holding on to this hemp program for the year while they wait for it to transfer to the Office of Cannabis Management. And then they took it from Department of Agriculture, and they're doing a great job with it. But it's going to be the first impression right now with the governing body, that's going to oversee hemp, medical, and adult use. But I think that's really the way it should be, because as we talked about, it's one plant that we're kind of spacing out in different aspects, and it's a THC level that really determines whether or not it's hemp or whether it's marijuana. And I wonder if down the line, because we have such an integrated program, if we're going to see hot hemp that's testing high and transfers into marijuana, whether or not that'll be something that could be utilized in the, you know, adult use space to prevent waste. I think it's tough to watch when there's a whole crop that's eliminated because it went to .32 of Delta 9 concentration.

[DL] Currently, my understanding is currently a processor can, in fact, sell distillate into the medical market. What we would like to be able to see is farmers basically wholesale it over to the medical market as well. Yes. That's definitely on my radar. And we're going to be making sure we need to keep tweaking this law, that we will do so—certainly that's one of the things I have in mind.

[AB] So I think there's been a lot of chatter recently about, especially we see with the New York Growers & Processors Association. They're looking to see whether or not there will be any benefit to being a hemp operator in either the grow or processing space to transfer into the adult use market. Do



you see there being any overlap or what are your thoughts on that?

[DL] Well, there had better be! I mean, there certainly had better be. We have a skilled group of professionals out there who have done a lot of work, who know this industry, and I really do not want to see them overlooked in any way, shape, or form. Also, you may have noticed in the bill itself, I was very specific in the social equity section of the bill to make sure that distressed farmers were lined out specifically. And we want to make sure that a special consideration goes to MWBEs, and people who have been disproportionately affected by the war on drugs—on cannabis in particular. But I spent a lot of time wordsmithing that section. So it didn't discuss disadvantaged farmers, because I think that evokes a different feeling among farmers. But distressed farmers, especially those in the hemp industry, who overgrew, who got caught up in the rush to put plants in the ground for CBD, who were hurt by this by dropping commodity prices and crop losses, for example. So not only do we have a skilled group of people, we have a group of first risk-takers, who really need to be acknowledged for their expertise, but also for the role they played in getting us to this point.

[AB] Absolutely. And, you know, if you ever really think about how people have kind of transitioned into this industry, you're encouraged to get more involved in hemp at this moment, because right now we're looking at an 18, 20 month program to have those set of skills to be able to transition either to stay in hemp or to be entering into the anticipated \$3.5 billion adult use market. They're the same skills; working in a grow operation for hemp will help you in a grow operation in cultivation for adult use. Same goes for any processing, any retail stores. They're the same set of skills. And I think that educational component that you're talking about is one of the most crucial parts of this adult use cannabis legislation, because ... to be able to have an interactive and really powerful economic program, there has to be that educational component so people feel comfortable entering in. And I think that's crazy ... for that Fashion Institute to be part of it. I think that's great. Cornell, obviously, has always been a huge proponent. And then, as we see now, a lot of these partnerships kind of flourish. We're seeing a lot with community colleges who are starting to put these "ag" classes on the curriculum.

[DL] Yeah. It's very exciting stuff.

[AB] Absolutely. Is there anything that you think has been kind of a lot of pushback through the rules and regulations comment period. What have been some of the most prominent lobbying efforts that you would say for some ... for the changes?

[DL] Well, I can tell you that from the beginning of this quest to legalize all things cannabinoid I never anticipated there would be this level of pushback regarding the flower of the plant. When we initially legalized all forms of hemp, including flower and CBD, we fully expected when the regs came out that we were regulating the sale of flower as well, because in the meantime, an entire industry had cropped up, people were purchasing flower for variety of uses, and businesses were thriving. And then the regulations from the Department of Health came out that would have basically outlawed the sale of flower. And so I would say the probably three quarters of the comments came on that very topic right there. And so that was my entire initiative during the negotiation over the MRTA Bill was to make sure that flower was clear, that we were going to sell it. It turns out that the issue for the Department of Health was smoking. They don't like smoking in any shape or form. And when they got the idea



that people were buying flower to primarily smoke it, that was where they drew the line. And I had to do some education that people weren't just buying it for smoking. They were using it for all kinds of purposes. So that was a huge pushback. And a big win for us. Kind of an odd compromise. You may be aware of this unusual compromise that we had to strike ...

[AB] ... that it's in the adult use dispensaries, right?

[DL] Actually, you can sell flower if it's packaged and if it's certainly touched properly.

[AB] If it's not pre-rolled ...

[DL] Correct. But if it's pre-rolled, you have to buy it in a dispensary and it's a little...nuanced. Well, honestly, it's sort of like going into your local CVS or your local Walgreens and buying loose tobacco in the aisles, and then you need to go to the pharmacy to buy cigarettes. But if that's a comfort level that we've reached, that if you're specifically purchasing it to smoke and they're more comfortable with being in the dispensary for the time being... I'll underline that. That's the compromise that we're after. And I think the industry was very happy with that— disappointed over the Delta 8, obviously, that kind of snuck in under the radar. But we're certainly happy about flower. And I think a lot of businesses were breathing a huge sigh of relief that got squared away.

[AB] Absolutely. And I want to touch briefly just on Delta 8. It's been quite a transition period. And I think New York is right in the thick of it. I know that six states right now are reworking their legislation. There's been 11 in the past that I think have been tackling the Delta 8 bans or reworking that language if they're in an adult use state. Do you foresee Delta 8 having any type of power in an adult use market, or do you think people are kind of just maybe utilizing it now as a workaround?

[DL] Both. They're certainly using it as a workaround. But I'm beginning to understand that there's a certain quality to it that people really like. It's not all CBD, which a lot of people may not enjoy, and it doesn't pack the bunch of the THC. So it's sort of new to me, new to a bunch of us. So I do think there's going to be a place for it, but certainly not sold where hemp flower is sold, it seems.

[AB] Right. Yeah. It'll be interesting to see what happens at the federal level, which we're really in this interesting space right now, especially New York, having such progressive measures with the food and beverage language, which is really putting New York, I think, on the map, at least in our aspect. As an attorney, I get a lot of people who say, well, we want to be in New York because we could put it in food and bev.

[DL] You're welcome.

[AB] Yes! Exactly. Thank you, thank you. But the beverage language, especially there was all these studies that were coming out from Canada about putting CBD in bev. Obviously, that's a canopy thing that they've been talking about that for so long for years and years. And now a lot of out-of-state operators are like, well, we're going to get licensed in New York because of that language. But there's always that little air of a gray cloud because of the FDA. And I think it's great right now that New York is capitalizing on this language while we don't have federal oversight. But do you foresee New York having to work things around once FDA at some point takes ownership of hemp as an agricultural



commodity?

[DL] Well, I hate to speculate, because it's been just one bob and weave all the way along ... I do know that some lawyers are going to be looking at this. I might as well flag something you'll find fascinating on the food and beverage. On the beverage side, it turns out it has to be shelf stable. Okay. So not really understanding anything about "shelf stable," I had to get a little bit more in the weeds on that. And it turns out that a place like Cornell University has to authorize what is "shelf stability" I mean, they know how to define it, but, yes, you can't just say, "Oh hi, this is my product... it's shelf stable." It has to go through trials, and Cornell—has I think it's up at AgriTech. They have a whole lab where people bring their products for certification for shelf stability.

[AB] Right. That's so interesting. So there's a catch. Do labs also say it's shelf stable or just Cornell?

[DL] I'm only aware of Cornell Food Labs that do this. But again, I'm just now starting down this path now that I realize this is a wrinkle, because Cornell is ... there's a problem with them doing the certification with this product because of federal guidelines. So back to your original question about the FDA and federal oversight ... Cornell is, it's unclear whether they're going to be able to certify shelf stability for some of these products. So ...

[AB] Very interesting.

[DL] It probably was not on your radar, but I felt obliged to let you know ...

[AB] It was not.

[DL] I don't want panic out there. We're going to try to sort this one out, but there's always something.

[AB] There is something—it changes all the time. I think the rules and regs have been getting adjusted and ... I might be under-shooting, but since January minimum, maybe even a little bit before that. I know some of the research partners right now are a little bit in a panic because their research partner licenses end in September, and then their grow licenses end at the end of September, and they haven't been awarded their now cannabinoid hemp processing or manufacturing, retail, well retails have been appointed, but do you think that all kind of situate itself out? I know Department of Health said maybe first week of August, which would be great for things. Do you think after this comment period, we're going to start seeing a little bit of a roll?

[DL] Yes.

[AB] Okay. Good.

[DL] My heart has been broken in the past, however.

[AB] Oh, I know. Same, same when you're talking to people, they're like biting their nails, they're like, do you think we're going to get it? I'm like, oh man ...



[DL]] But I don't sit on the sidelines. I'm in touch with them usually every week or so just to check in and make sure everything's on track because really you have to be the squeaky wheel in this business. That's how we wound up with food and beverage. That's how we wound up with flower. It really does take a couple of people who are just going to insist on this because of New York—the advantage and the market that we have here. It's really going to be quite something. But again, I just need to circle back to provide a sincere thank you to those early investors and early risk-takers because some of them got hurt in this process and going to try our best to make it right and to acknowledge what they did.

[AB] Well, thank you so much for jumping on. This has been really a pleasure having you and I actually learned a lot just from speaking with you. And once again, you being the queen or champion of hemp has been huge in New York State. And I know Binghamton has probably been so gracious to have you in the Southern Tier. So again, thanks for jumping on and we will probably bring you back in at some point after these rules and regs get situated. So thanks so much.

[DL] That'd be great. I appreciate it. Thanks.

[AB] Alright.

[DL] Bye.

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