

Get ready now for cannabis industry to begin

NYS is preparing regulations for producing and selling decriminalized drug



Feenan

New York state officials have not finalized the licensing applications and regulations needed for the newly legalized cannabis industry, but experts say there is plenty to do to get ready for anybody planning to get into the industry.

The Rochester Business Journal on Thursday held an hour-long webinar focused on the business of cannabis with three attorneys who specialize in the field.

The panel included: David L. Cook, a partner at Phillips Lytle LLP; Meaghan Feenan, an attorney at Harris Beach PLL, and Patrick Hines, a partner and co-leader of the Hemp & Medical Cannabis Practice at Hodgson Russ LLP. The webinar was sponsored by DeJoy, Knauf & Blood LLP; Harris Beach PLLC; Hodgson Russ LLP; and Phillips Lytle LLP.

New York state lawmakers legalized marijuana in March, and the details of how the state will license and oversee the industry have not been developed yet. But the lawyers explained there is much that can be done to get ready for filing applications and planning your operation, whether it is manufacturing, processing, or retail sales.

Although New York and other states have legalized the recreational use of marijuana, cannabis is still illegal on the federal level. Hines explained that there are two pieces of legislation that could change that.

One is an attempt to legalize cannabis at the federal level, call the Marijuana Opportunity Reinvestment and Expungement (MORE) Act. The second piece of legislation is the Secure and Fair Enforcement (SAFE) Banking Act.

The MORE Act would remove cannabis from the federal schedule of controlled substances. Currently, cannabis is treated the same as hard drugs such as heroin, ecstasy and methamphetamine.

"It's the highest degree of regulation under the controlled substances act," Hines said. "This would change that and completely remove that from the schedule of controlled substances."

The proposal also includes provisions to expunge convictions for possession and use of cannabis. And it would impose a 5% sales tax to create an "opportunity trust fund" to help pay for programs to allow people who have been disproportionately impacted by the criminalization of marijuana to enter the industry.

The MORE Act also would allow for the prescription of medical cannabis for patients in the Veterans Administration health care system. It is not allowed now because cannabis is illegal under federal law.

"This would be a sea change for cannabis regulation at the federal level," Hines said.

Hines noted that currently, under federal law, businesses in the cannabis industry cannot deduct business expenses on their federal income tax returns.

"It creates huge expense and makes margins razor thin," he said.

The MORE Act would remove that barrier.

Because cannabis is still illegal at the federal level, financial service providers are hesitant to do business in the industry. There is federal legislation proposed that would protect financial services operating in the cannabis industry from federal scrutiny, but the proposal only protects depository institutions.

Stock exchanges and non-bank lenders would not be protected. Credit card merchants who are not depository institutions would not be protected.

"Even though federal regulators would not be able to take adverse action against financial institutions, there would still be a prohibition on business expense deductions, which would still make it very expensive to do business in this space," Hines said.

Hines estimated that it could be 12 to 16 months before industry regulations are finalized and licensing starts.

Plus, local jurisdictions can opt out of retail sales in their community, but that decision must be made by the end of this year.

Even without regulations in place, Feenan said anybody planning to do business in the cannabis industry should be getting ready now.

She suggested having an accountant and attorney lined up ahead of time and preparing the documentation you will likely need to file applications and meet regulatory standards.



Cook

Applicants can assume the state will want to see past tax returns, and information on all business partners. And entrepreneurs should have a business plan ready.

You should also have your location picked out and retail sites must show they can take possession of the property within 30 days.

Feenan said at least 40% of licenses in New York state are expected to go to socio-economically challenged applicants, such as minorities, women, distressed farmers, disabled veterans, and other people who were disproportionately impacted by the criminalization of marijuana.

All applicants must submit a plan on how they intend to benefit communities that have been disproportionately affected by criminalization, she said.

Cook said he expects there will be issues to address because of incongruence between local authorities and state and federal rules.

And he warned that some municipalities could impose a moratorium on cannabis businesses while they study these issues and seek public input.

"Municipalities are going to be hearing a lot of comment from the community — from neighbors — and much of that comment may not necessarily be driven by logic or law, but rather much more by emotions. The old 'not in my back yard' is going to be loud and clear in the days ahead," Cook said.