

Potential Risks And Benefits Of NY Cannabis Crop Rescue Act

By **Meaghan Feenan and William Wolfe** (June 5, 2023)

On April 20, New York Assembly Member Donna Lupardo introduced the Cannabis Crop Rescue Act. The act aims to assist struggling cannabis farmers by allowing them to sell their crop directly to consumers until Sept. 30, bypassing the traditional retail model.

The act also authorizes the state's Office of Cannabis Management to create a loan or grant program to help cultivators process cannabis into distillate.

Lupardo said she introduced the bill because the state's farmers are floundering after legal and other delays have limited the number of outlets to sell their products.

The act has faced much criticism as it seemingly pits the state's farmers against conditional adult-use retail dispensaries — many of which have recently received licensure from the OCM.

Direct sales allow farmers more control over pricing, potentially leading to increased profits. Farmers can also establish direct relationships with consumers, gaining valuable feedback and building brand loyalty. This approach empowers farmers to market their products according to their unique selling propositions, such as organic cultivation methods or specific strains, thereby differentiating themselves in a competitive market.

While the act acknowledges the financial challenges farmers face, it sparked concerns within the cannabis industry because it conflicts with the social equity retail licensure system supported by the OCM.

By examining the implications for cannabis retailers, we can gain a deeper understanding of the benefits and challenges associated with such a policy change.

Implications and Risks Associated with the Act

The direct sale of cannabis by farmers poses challenges for cannabis retailers. Retailers play a crucial role in product selection, quality assurance and customer education.

Cannabis retail employees, also known as budtenders, possess comprehensive knowledge about various strains, consumption methods and cannabis products available in the market. Their expertise allows them to guide consumers through an often overwhelming array of choices, helping them find products that suit their preferences and needs.

By removing retailers from the equation, consumers might face difficulties in accessing a diverse range of products and receiving professional guidance as to appropriate dosage, product strengths and other recommendations.

Cannabis retailers also face the risk of reduced revenue and potential business closures if customers opt for direct purchases from farmers.



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Furthermore, retailers may lose the opportunity to establish relationships with farmers, hindering their ability to negotiate distribution contracts or access exclusive products.

Allowing cannabis farmers into the retail space introduces new competition for the 12 established retailers in the state and the countless other conditional adult-use retail dispensary licensees who hope to be operable by September 2023.

Farmers, armed with their expertise and direct access to products, may offer lower prices, premium strains or niche products that attract consumers. This increased competition can lead to reduced market share and profit margins for traditional retailers.

Additionally, farmers may benefit from economies of scale, as they can leverage their existing cultivation infrastructure, resulting in cost advantages that are difficult for retailers to match.

Consequently, cannabis retailers may struggle to compete effectively, especially since many are still trying to establish themselves within the industry.

The act also flies in the face of the OCM's hard stance against vertical integration. The Legislature expressed its strong policy against vertical integration in passing the Marijuana Regulation and Taxation Act, which banned any persons or entities from having an interest in cross-tier entities.

In other words, those having a financial interest in an upstream producer, like a cultivator, cannot also have an interest in a downstream retail dispensary — and in some cases, neither can their spouses, parents or children.

The OCM has followed suit, drafting harshly worded guidance and regulations designed to prevent suppliers from exerting inappropriate control over retail dispensaries, the Cannabis Law places restrictions on the ability of an entity in one tier from having an interest in an entity in another tier of the industry.[1]

One of the core reasons for the state's unforgiving stance against vertical integration is to foster fair competition and encourage market diversity. By prohibiting companies from controlling more than one tier of the supply chain, the OCM aims to create a level playing field that allows smaller businesses and first-time entrepreneurs to participate in the industry.

The OCM's stance against vertical integration also aligns with the goal of stimulating job creation and promoting economic growth. By fostering a diverse and competitive market, the OCM encourages the establishment of numerous businesses across various sectors of the cannabis industry. This approach creates employment opportunities at different levels, from cultivation and manufacturing to retail and ancillary services.

Moreover, by allowing multiple businesses to thrive, the OCM generates a vibrant economic ecosystem that contributes to tax revenues and overall economic development in the state.

The OCM's stance on vertical integration is designed to prevent monopolistic practices and market domination by any one particular participant. By allowing cultivators to sell directly to consumers, the act consolidates retail power and allows upstream market participants to wield a control over the market that OCM sought to prevent, albeit for a limited period of

time.

In addition, the act raises questions about the overall regulatory framework, including product safety, taxation and quality control, as direct sales may require additional oversight and regulation. In short, allowing cannabis farmers to sell directly to consumers poses regulatory challenges for the industry.

Retailers are subject to strict packaging, sale and security requirements, ensuring product safety and quality. By circumventing the retail framework, farmers selling directly to consumers may undermine these regulations and create an unregulated market. This raises concerns about product quality, labeling, proper testing and accurate dosage, which could potentially harm consumers.

Retailers have already established compliance protocols and have invested significant resources in ensuring regulatory adherence. The elimination of this safeguard could lead to a fragmented market, undermining consumer trust and safety.

On the other hand, cannabis processors and cultivators across the state are facing the threat of financial instability, and must seek state law alternatives to bankruptcy due to cannabis still being illegal federally.

Countless licensees have been sitting on a surplus of product they can't sell for several months — stifled by the extremely slow pace in which the OCM has rolled out the conditional adult-use retail dispensary program. Though it has been more than two years since cannabis was legalized, to date, only 12 retail dispensaries are open throughout the state — some of which offer only delivery services.

Weighing Whether the Act Will Benefit the Industry

While the act, if passed, will undoubtedly affect the industry, consumer behavior plays a crucial role in shaping the cannabis market. While some consumers may value the expertise and curated product selection offered by retailers, others may prefer the convenience and potentially lower prices associated with buying directly from farmers.

This shift in consumer behavior may result in a decline in foot traffic to traditional retail stores, but that would change once the proposed Sept. 30 end date arrives. Retailers could then rely on in-person visits to establish brand loyalty, provide personalized recommendations and upsell complementary products.

The setting of a sunset date for the act helps mitigate any potential negative impact on cannabis retailers and allows farmers to get rid of their crop by either selling it or making it into the distillate.

Although direct sales by farmers could disrupt the retailer-consumer relationship, the impact will be short term, and likely will not completely limit opportunities for retailers to build long-term customer relationships. And the act will help ensure that hundreds of pounds of cannabis crops do not go to waste as the state continues to finalize a regulatory structure for the industry.

Conclusion

While direct sales may benefit farmers, providing increased profits and closer customer relationships, the act poses challenges for cannabis retailers that play a critical role in

providing product variety, quality assurance and customer education.

The New York Cannabis Crop Rescue Act exemplifies the ongoing debate and highlights the need for thoughtful consideration of the implications of such policy changes. Striking a balance between supporting farmers and maintaining a robust retail market will be crucial in shaping a sustainable and equitable cannabis industry.

Although many farmers support the act, many have criticized the short timeline and increased cost of setting up a retail-type presence on their farms that would only be operable for a few months. Supporters have advocated to extend the retail window past the Sept. 30 sunset date, which could further affect cannabis retailers.

If the act is passed, cannabis retailers should seek opportunities to collaborate with farmers. Proactively establishing partnerships and sourcing agreements with trusted farmers can enable retailers to offer exclusive products or ensure a consistent supply of high-quality cannabis once their shops are up and running.

By building solid relationships with farmers, retailers can leverage their expertise, reputation and networks to create mutually beneficial partnerships that benefit both parties in the long run.

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[1] <https://cannabis.ny.gov/system/files/documents/2023/02/guidance-for-adult-use-retail-dispensaries-2.1.pdf>.