



"Isaacson & Nicolazzo: Risky 'gray' market emerges to fill cannabis license void" authors Jonathan Isaacson, Adam Nicolazzo, Long Island Business News, 12-22-2022

Adult-use cannabis has been legal in New York since March 2021, yet the regulatory framework needed to allow for broad market participation has remained illusory. As a result, many New Yorkers have lost patience and have chosen to participate in what has become a vibrant cannabis "gray" market. [FULL ARTICLE AT LINK BELOW](#)

Cannabis and cannabis-containing products are being cultivated, grown, processed, produced and sold without any of the regulatory oversight contemplated by New York's Marijuana Regulation & Tax Act. However, many individuals involved in this "gray" market may not be aware of the legal implications and potential risks they face from their involvement in the cannabis industry without proper licensure.

Under the MRTA, each phase of the cannabis supply chain – from growing and processing through distribution, sales and delivery – requires a state-issued license. The entire cannabis program from seed to sale was intended to be tightly regulated to ensure that cannabis production and sales are done in a way that maximizes public health and safety, economic development and social justice. However, the Office of Cannabis Management, which is charged with issuing licenses for businesses to participate in New York's adult-use cannabis industry, has only issued a relatively small number of conditional licenses to certain segments of the cannabis supply chain, which has been insufficient to feed New York's voracious appetite for all things cannabis.

The void has been filled through the proliferation of unlicensed businesses operating outside the bounds of the MRTA. In many cases, confusion and misinformation regarding how the MRTA is intended to operate, coupled with a lack of practical enforcement measures in some parts of the state, has caused sellers and consumers to believe that they are engaging in "legitimate" cannabis transactions, when in fact, they are not.

While penalties for possession of unlawful amounts of cannabis and/or the unauthorized sale are far less severe than they were prior to passage of the MRTA, there are still restrictions in place which could carry a range of fines and penalties. For example, possession above the legal limit of up to three ounces of cannabis or twenty-four grams of concentrated cannabis (such as edibles) could result in a fine of up to \$125, while possession of more than 10 pounds of cannabis or four pounds of concentrated cannabis could result in a class D felony.

The sale of cannabis in any amount without the necessary license carries penalties ranging from a fine of up to \$250 to a class C felony. Individuals caught smoking cannabis anywhere where tobacco is prohibited could face a penalty of up to \$25 or up to 20 hours of community service.

In addition, legislation has been proposed that would preclude businesses who choose to engage in the unlicensed sale of cannabis from later obtaining a license and participating legally in the state's regulated industry. If such legislation passes, those who reap the short-term gains of participating in the unlicensed "gray" market may risk their ability to participate in what will eventually be the licensed and regulated adult-use cannabis market.

Finally, when purchasing cannabis products in the "gray" market, consumers do not have the comfort of knowing that the cannabis products they use and ingest were subject to the stringent regulatory testing and labeling requirements contemplated by the MRTA. Such lack of oversight increases the possibility of unsafe products finding their ways into the stream of commerce.

Any individual or business interested in participating in the adult-use cannabis industry in New York should take the time to review and understand the MRTA and the ongoing developments in order to ensure compliance with the applicable law.

Jonathan Isaacson is partner at Kaufman Dolowich & Voluck in Woodbury, where his practice focuses on liability litigation, insurance and cannabis matters. Adam Nicolazzo is an associate at Kaufman Dolowich & Voluck in Woodbury, and his practice focuses on

liability defense, insurance coverage and commercial litigation matters.