



**STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL**

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Testimony of the New York State Office of the Attorney General

**Submitted to the
New York State Senate**

Subcommittee on Cannabis

Standing Committee on Finance

Standing Committee on Agriculture

Standing Committee on Investigations and Government Operations

October 30, 2023

Public Hearing: To examine issues in the New York State market related to consumer accessibility and retail sale of legal adult-use cannabis

Attorney General James would like to thank Subcommittee Chair Cooney, Committee Chairs Krueger, Hinchey, and Skoufis, and all subcommittee and committee members, for the opportunity to share testimony on the Marihuana Regulation & Taxation Act (MRTA or Cannabis Law) and the Office of Attorney General's (OAG) role in the law's implementation.

OAG's Role Implementing MRTA

Attorney General James and the OAG are deeply committed to the vision and mission of the MRTA. We appreciate the trust put in our office as one of the agencies helping to implement the landmark law and the funding committed to our office by the Legislature and Governor in support of that mission. We also recognize the significant amount of effort, creativity, and persistence applied by Chair Krueger,

Majority Leader Peoples-Stokes and the dozens of other individuals who were instrumental in making this law a reality in New York.

The OAG has two distinct responsibilities in connection with the MRTA – both of which relate to the OAG’s role as the attorney for the state and its executive agencies. OAG defends the laws, rules and actions of the state from legal challenges. In that capacity, we serve as defense counsel for the Office of Cannabis Management (OCM) in the various lawsuits challenging the MRTA and the rules promulgated pursuant to it. While we are not able to share details on current cases because they concern ongoing litigation, we do want to note that the office takes our role defending the MRTA with the utmost diligence, professionalism, and care.

In addition, OAG represents state agencies when they use the courts in an affirmative capacity, filing lawsuits to enforce the laws of the state. As part of that role, the MRTA gives the OAG the duty to enforce violations of the Cannabis Law on behalf of, and at the referral of, OCM. Since the inception of the law, OAG has worked closely with OCM to implement the state’s cannabis enforcement priorities. To facilitate this important collaboration, we developed OCM-OAG inter-agency practices and data sharing tools to promote effective legal and investigative protocol around the state.

Impact of 2023 MRTA Amendments

While the 2021 version of the MRTA provided OCM and OAG with certain specific civil enforcement authority over violations of the Cannabis Law, the May 2023 amendments to the Cannabis Law greatly expanded regulatory and enforcement authority and increased penalties for violations. We would like to take this opportunity to thank the legislature for amending the law in a way that has aided with enforcement efforts. Broader enforcement authority and stiffer financial penalties have enhanced the state’s ability to tackle the problem of unlicensed sales. For example, the recent amendments clarify that indirect sales (sticker sales and marijuana gifting) violate the Cannabis Law and that OCM has regulatory and enforcement authority over unlicensed sales. These important clarifications resolve without question that unlicensed sellers and those who engage in indirect sales are subject to penalties for violation of the Cannabis Law.

In addition to these and other important definitional clarifications, the recent Cannabis Law amendments include new enforcement provisions that we are utilizing to shut down unlicensed sellers. Specifically, the new Cannabis Law §16-a authorizes emergency relief and provides a powerful enforcement tool that enables OAG to seek a temporary closure order on an *ex parte* basis when OCM determines that the unlicensed activity presents a sufficient danger to the public. By way of example, earlier this year, OAG represented OCM in a §16-a summary proceeding filed in Wayne County Supreme Court seeking a temporary and permanent closure order of seven separate unlicensed cannabis shops owned by the same individual and operating under a common business name. In addition to seeking closure and significant monetary penalties against the owner and his business, including \$10,000 per day for unlicensed sales and \$20,000 per day for sales after an administrative closure order, we also brought *in rem* proceedings against the properties where the unlicensed sales were being conducted and against the owners of those properties. The threat of significant monetary penalties and a lien upon their property is an important tool in encouraging property owners to remove tenants engaged in unlicensed marijuana sales and a deterrent to renting their properties for unlicensed activity in the first place.

We are pleased to have been successful in securing a temporary closure order against the owner and his seven stores which are now padlocked and empty. But we know that there is much more work to do as other sellers brazenly engaging in high volume, unlicensed sales. We will continue our coordinated work with OCM to halt unlicensed businesses to allow the carefully planned ecosystem of the MRTA to develop and take hold.

Local Enforcement

In addition to OAG and OCM, the authority to seek emergency relief under Cannabis Law §16-a is also available to counties and municipalities who wish to file emergency proceedings to address the problem of sales in their own communities. We believe this is an important force multiplier in eliminating unlicensed sellers. To support counties and municipalities in their efforts and to promote statewide consistency, OCM is creating Cannabis Law §16-a training materials which will provide legal resources

and templates. OAG will collaborate with OCM supporting counties and municipalities interested in bringing §16-a actions.

Additional Avenues for Relief

In circumstances that don't necessitate the filing of an emergency relief proceeding, we are utilizing the other new cannabis enforcement provisions, such as Real Property Actions and Proceedings Law §715-a which permits an action to be brought against a property owner seeking the removal of a commercial tenant engaged in unlicensed retail cannabis sales as well as Cannabis Law §138-a which provides for judicial enforcement and monetary penalties for noncompliance with OCM administrative orders to cease unlicensed sales. While this will undoubtedly take some time, we are confident that our collective enforcement action will go a long way in addressing the problem of unlicensed sales and supporting our licensed dispensaries. We look forward to continuing to partner with OCM as well as our county and municipal partners in these ongoing efforts.

Conclusion

The OAG would like to thank OCM for working closely and collaboratively with our office to show unlicensed sellers that they will be held responsible for violating the law. And we thank the subcommittee and committees for convening this important hearing and the legislature for adopting strong enforcement tools that support the state's important interest in establishing a safe and equitable legal market and helping it to thrive.