



PHILLIPS LYTLE LLP CLIENT ALERT

CANNABIS

OCTOBER 2021



Cannabis Growers Currently Unprotected by New York State's Seed Law

New York became the 15th state to legalize recreational adult-use cannabis following the passage of the Marijuana Regulation and Taxation Act (MRTA). Among other things, the MRTA established the Cannabis Control Board (CCB) and Office of Cannabis Management (OCM) to create and implement a regulatory framework integrating New York State's adult-use cannabis program with its medical cannabis and cannabinoid hemp markets. To date, most of the attention directed at the CCB and OCM has been focused on the forthcoming regulations and licensure processes that will govern participants in the various cannabis programs. Unfortunately, far less attention has been directed to the equally important issue of how New York's *existing* laws will be applied to participants in the legalized recreational cannabis market.

NEW YORK STATE'S SEED LAW

One such existing law that is crucial to maintaining a strong cannabis market is New York State's Seed Law, codified in Article 9 of the Agriculture and Markets Law. As explained in an [earlier article](#), this law provides a regulatory mechanism that authorizes the State to sample, identify and remove seeds from commerce. The law sets minimum germination and purity standards and requires that each container of seed sold, offered for sale, or transported in New York State for planting purposes have attached to it a label containing certain information, including the germination rate of the seed. Vendors are responsible for accurately labeling the seed and are prohibited from affixing false or misleading labeling to their seed, or otherwise disseminating false or misleading advertising about the seed.

The Seed Law does not create a private right of action for growers. Rather, it grants the New York State Department of Agriculture and Markets ("Department") broad enforcement powers to regulate the seed sold within New York State's borders. Among other things, the Department can prohibit sales or seize and destroy seeds that have such low germination rates as to be unfit for seeding purposes. It can also issue stop sale orders against vendors not in compliance with the labeling and/or advertising provisions of the Seed Law.

REGULATION OF MARIJUANA SEEDS UNDER THE SEED LAW

As it stands now, the Seed Law seemingly excludes cannabis from its protections. The Seed Law applies to all "agricultural seeds" sold in New York State and requires labels affixed to these seeds to identify the "kind" of seed therein. The Department's regulations applicable to the Seed Law require that "Cannabis sativa L." seeds be labeled as "hemp." The Seed Law does not define "hemp," but does state that agricultural seeds encompass "industrial hemp," as defined in Article 29 of the Agriculture and Markets Law. That Article does not define "industrial hemp," but does define "hemp" as any part of the Cannabis sativa L. plant, including its seeds, with a delta-9 tetrahydrocannabinol (THC) concentration of no more than 0.3% on a dry weight basis. Accordingly, any part of the Cannabis sativa L. plant with a THC content greater than 0.3% is, necessarily, "cannabis" and does not currently fall within the purview of the Seed Law.



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Interestingly, cannabis and hemp both belong to the Cannabis sativa species. These two terms are simply different names for the same species of plant—their distinguishing factor being THC content. The Seed Law does not acknowledge this naming distinction within the Cannabis sativa species and thus, by its own terms, applies only to plants of this species with a THC content of less than 0.3%.

The impending legalization of the cultivation, processing, distribution and sale of cannabis and cannabis seed will be an economic boon to the State and undoubtedly create an influx of seed vendors. Failing to include cannabis as a protected seed under the Seed Law will leave growers without a powerful tool to protect themselves from

unscrupulous vendors, and the State without the ability to seize and destroy destructive cannabis seeds unfit for planting. We expect the Department of Agriculture and Markets and the CCB (the entity responsible for regulating cannabis packaging and advertising) to address this dilemma under the Seed Law in the near future. Phillips Lytle's Cannabis Team will continue to monitor the changing legal landscape and issue updates as needed.

Additional Assistance

For further assistance, please contact [David L. Cook](#), [Tara Ward](#) or the [Phillips Lytle attorney](#) with whom you have a relationship. ■



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