OPINION

Offer legal future to legacy market

Steve DeAngelo
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As 2021 drew to a close, towns and municipalities throughout New York had a decision to make. State laws legalizing cannabis earlier in the year provided an opt-out clause, allowing localities to prohibit dispensaries and consumption in their communities, even before the state developed and implemented regulations for the sale and distribution of cannabis. As of Dec. 31, 47 percent of New York's 1,521 municipalities had said they would prohibit the opening of dispensaries, and 54 percent said no to consumption sites.

There's an unfortunate precedent to this situation, one that provides additional lessons for New York and other states as they develop their cannabis regulations. Seven years earlier, I worked with dozens of other California cannabis activists to write an initiative that would create a win-win legal market for all key stakeholders, including those operating in the medical and legacy (unlicensed) markets. That effort was successful, but the financial sponsor of what ultimately became Prop 64 hired a group of Sacramento lobbyists to run the campaign. They watered down our draft and inserted provisions we never would have proposed.

Facing a sustained, multi-year federal campaign to close down California's medical cannabis dispensaries, I and many others reluctantly supported passage of the law as worded.

Today it seems that was a mistake. The California cannabis industry is in a state of disarray. It is estimated that nearly 75 percent of cannabis transactions take place in the legacy market, not the licensed legal one. The price for legal cannabis in the state can be 50 percent or more expensive than illegal weed. High taxes and absurd licensing requirements are strangling legal growers and retailers. Lack of local retailers — only 161 of California's 482 municipalities and 24 of the 58 counties have opted to allow commercial cannabis activity of any sort — preserves a huge market for unlicensed transactions.

So what happened and how can we create a better system in New York and other states?

There were major problems with Prop 64. Though a majority of voters supported legalization, Prop 64 provided local jurisdictions with the option to opt-out. Local jurisdictions that did opt-in could set cannabis taxes at whatever level they wished. Over-regulation made it impossible for most small growers and retailers to get licensed. Most importantly, the complete absence of any provisions to incorporate the existing traditional and legacy cannabis communities to the new legal market created an unequal playing field and discriminated against the communities — many of them communities of color — where these legacy operators lived and worked.

Many pointed this out at the time, though others — including myself — decided to support Prop 64, hoping we could amend the law through regulations down the line. Regrettably, we were wrong. The shortcomings of the regulated market created by Prop 64, and the devastating effect that it has had on the legacy community and the legal market in California, is a lesson for other states, even those like New York that have recognized early on the need to create a system that provides opportunity for legacy operators and communities.

The answer is a comprehensive approach to proactively welcome New York's legacy operators into the legal market. The main features of that approach should be an amnesty program that will allow for a fresh start; first-priority licensing so existing operators can preserve the markets they have created, and generous financial and training support to provide the skills and resources needed for mainstream success.

This isn't just the right thing to do. It is smart policy. Legacy operators won't suddenly disappear if they are left out of the legal system. Instead, free from the costs of regulation and taxation, they will out-compete the legal system by selling at far lower prices. This is exactly what is happening in California, where legislators favored large corporations over small farmers, where diversity in the legal industry has decreased and where the underground market remains four to five times as large as the regulated market.

New York has pledged to create legal opportunities for legacy operators. But without a dedicated, concerted effort to address the challenges these underground entrepreneurs face, even the best of intentions will likely fall short.

The opt-out provision is one real world example. Half of New York is now off limits to retail sales — exactly where the majority of legacy operators work and feel most comfortable seeking a license. Another example is the current plan to allow the 10 corporate multi-state operators who hold all of New York's medical cannabis licenses to be the first to open new adult-use shops, ahead of the legacy operators already serving those communities. These two examples alone will eliminate hundreds of opportunities to transform legacy cannabis operators into legal businesses — and other pitfalls await even regulators with the best of intentions.

We failed to meet those challenges in California — though the industry is organizing for change — but still have an opportunity in New York and other states to create an equitable and sustainable legal market model. The best — and only — way to do that is by offering a legal, successful future to the legacy operators who built New York's cannabis market in the first place.

Steve DeAngelo lives in Oakland, Calif.