

STATE OF NEW YORK

9283

IN ASSEMBLY

February 11, 2022

Introduced by M. of A. PEOPLES-STOKES, LUPARDO, BRONSON, WALKER, WOERNER
-- read once and referred to the Committee on Economic Development

AN ACT to amend the agriculture and markets law and the cannabis law, in relation to providing a conditional adult-use cultivator license and a conditional adult-use processor license; and providing for the repeal of certain provisions upon the expiration thereof

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Section 520 of the agriculture and markets law is amended
2 by adding a new subdivision 3 to read as follows:

3 3. The department shall, to the extent practicable, share data and
4 documentation related to an agricultural research pilot program with the
5 office of cannabis management.

6 § 2. The cannabis law is amended by adding a new section 68-c to read
7 as follows:

8 § 68-c. Conditional adult-use cultivator license. 1. A conditional
9 adult-use cultivator license shall be subject to the same authori-
10 zations, restrictions and requirements applied to any adult-use cultiva-
11 tor pursuant to section sixty-eight of this article for the duration of
12 the conditional period of the license, as well as to any new terms and
13 conditions imposed by the board and office.

14 2. To be eligible to apply for a conditional adult-use cultivator
15 license, a cultivator must:

16 (a) have held a valid industrial hemp grower authorization from the
17 department of agriculture and markets, as of December thirty-first, two
18 thousand twenty-one, which authorized the growing of cannabinoid hemp,
19 and is in good standing with the department of agriculture and markets;

20 (b) have grown and harvested hemp for at least two of the past four
21 years pursuant to that license and be able to provide proof, as defined
22 by the office, of the amount of hemp planted by the applicant during
23 each of the two years that hemp was grown; and

24 (c) as an individual applicant have an ownership interest of fifty-one
25 percent or more, or as any other applicant have an ownership interest of
26 fifty-one percent or more of the entity that is the licensee.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 3. A conditional adult-use cultivator license shall authorize the
2 cultivation of cannabis outdoors or in a greenhouse with no more than
3 twenty artificial lights unless otherwise authorized by the office. A
4 conditional adult-use cultivator licensee may cultivate up to forty-
5 three thousand five hundred sixty square feet of flowering canopy
6 outdoors or twenty-five thousand square feet of flowering canopy in a
7 greenhouse. A cultivator may cultivate both outdoors and in a green-
8 house provided the flowering canopy in a greenhouse is less than twen-
9 ty-thousand square feet and the total flowering canopy is equal to or
10 less than thirty-thousand square feet.

11 4. A conditional adult-use cultivator licensee must comply with any
12 environmental standards and requirements mandated by the office.

13 5. The cultivation of cannabis shall only be permitted within the same
14 or an adjacent county in which the conditional adult-use cultivator
15 licensee had previously been authorized by the department of agriculture
16 and markets to grow hemp.

17 6. A conditional adult-use cultivator licensee shall have the tempo-
18 rary authority to minimally process and distribute cannabis products,
19 provided that such final products shall be in the form of cannabis flow-
20 er, without holding an adult-use processor or distributor license estab-
21 lished pursuant to sections sixty-nine and seventy-one of this article;
22 provided that the licensee complies with all requirements for the proc-
23 essing and distribution of cannabis products as set out by the board in
24 regulations or in the terms and conditions of the conditional license.
25 Such authority to minimally process and distribute cannabis products
26 expires on June first, two thousand twenty-three. After June first, two
27 thousand twenty-three, any conditional adult-use cultivator seeking to
28 process and distribute cannabis products shall be required to apply for
29 and receive a processor and distributor license to conduct this activ-
30 ity.

31 7. For the duration of the conditional period of the conditional
32 adult-use cultivator license, the ownership or organizational structure
33 of the entity that is the licensee shall not be amended, except pursuant
34 to the provisions of subdivisions two, three and four of section sixty-
35 seven of this article.

36 8. The office shall set out specific terms and conditions setting out
37 requirements necessary to be awarded and maintain a conditional adult-
38 use cultivator license, including but not limited to the requirement
39 that a licensee agrees to participate in an environmental sustainability
40 program and a social equity mentorship program. Such mentorship program
41 shall be directed to train individuals interested in becoming licensed
42 cultivators and shall leverage remote and in-person mentees with experi-
43 ence in agriculture business management, sustainable cannabis culti-
44 vation, and best practices. Candidates for the mentorship program must
45 be at least eighteen years of age, must be a New York state resident,
46 and must be individuals that would be considered social equity appli-
47 cants as defined by section eighty-seven of this article. The license
48 terms and conditions set out by the office shall include requirements
49 that a licensee enter into a labor peace agreement with a bona-fide
50 labor organization that is actively engaged in representing or attempt-
51 ing to represent the applicant's employees within six months of licen-
52 sure, that the maintenance of such labor peace agreement shall be an
53 ongoing material condition of licensure, and that licensees shall meet
54 any other eligibility requirements established by the office.

55 9. The board shall establish a non-refundable application and license
56 fee, in a manner consistent with section sixty-three of this article,

1 for the conditional adult-use cultivator license. No such license shall
2 be issued after December thirty-first, two thousand twenty-two and such
3 license shall only be valid through June thirtieth, two thousand twen-
4 ty-four.

5 10. A conditional adult-use cultivator license shall be deemed to have
6 been surrendered to the board and a conditional adult-use cultivator
7 licensee shall be deemed not to be in good standing, as determined in
8 the discretion of the executive director in a written notice, effective
9 upon delivery to the licensee at the licensee's last known address on
10 file with the office, for reasons including but not limited to:

11 (a) failure to abide by all the terms and conditions of the condi-
12 tional adult-use cultivator license;

13 (b) failure to adhere to all requirements set out in regulations and
14 guidance, including those promulgated after receiving the conditional
15 adult-use cultivator license;

16 (c) failure to submit information, records, or reports;

17 (d) failure to correct deficiencies in accordance with an approved
18 corrective action plan;

19 (e) deviation from regulations, licensing terms, or standard operating
20 procedures in a manner that the office determines may jeopardize health
21 or safety of the public, or the quality of products grown or produced;

22 (f) failure to provide office employees with access to the premises;
23 and

24 (g) failure to begin operations within six months of the date of the
25 issuance of the license.

26 11. A licensee whose conditional adult-use cultivator license has been
27 deemed surrendered may within ten days of the delivery date of such
28 notice appeal the determination of the executive director to the board
29 pursuant to subdivision eighteen of section ten of this chapter. The
30 board shall have sole discretion to determine the conduct of the appeal,
31 which shall include notice and an opportunity to be heard. Upon review
32 by the board, the board shall issue a final written determination which
33 may then be reviewed pursuant to section one hundred thirty-five of this
34 chapter and article seventy-eight of the civil practice law and rules.

35 12. In the event that a conditional adult-use cultivator licensee
36 elects to cease operation of all permitted activities or to surrender
37 its license, the following provisions shall apply:

38 (a) the conditional adult-use cultivator licensee shall notify the
39 office in writing at least thirty days prior to the anticipated date of
40 closure;

41 (b) such written notice shall include a proposed plan for closure. The
42 plan shall be subject to office approval and shall include timetables
43 and describe the procedures and actions the licensee shall take to prop-
44 erly destroy or otherwise dispose of all the licensee's supply of canna-
45 bis and/or cannabis products; and

46 (c) the licensee or former licensee must maintain and make available
47 to the office all records related to the cultivation of cannabis for a
48 period of three years.

49 13. No later than ninety days before the expiration of a conditional
50 adult-use cultivator license, the office shall, pursuant to a request by
51 the licensee, review the conditional adult-use cultivator licensee to
52 determine whether they are in good standing with the office. Good stand-
53 ing shall include, but not be limited to, compliance with subdivision
54 seven of this section. Any licensee found to be in good standing shall
55 be eligible to apply for and receive an adult-use cultivation license,
56 provided the licensee can meet all requirements of the new license. Such

a licensee will receive, at minimum, an adult-use cultivator license for the size of flowering canopy that they were licensed to grow pursuant to their conditional adult-use cultivator license or a larger size flowering canopy and authorization to use artificial light as may be set out by the board in regulation. A licensee may not separately apply for any license type under this article permitting the cultivation of adult-use cannabis while holding a conditional adult-use cultivator license.

14. For the purposes of this section, the office has the authority to define terms including but not limited to "greenhouse", "immature plant", "flowering canopy" as part of the terms and conditions of the conditional adult-use cultivator license.

15. Nothing herein shall limit the authority, power, or other rights or remedies of the board or office.

§ 3. Section 69 of the cannabis law is amended to read as follows:

§ 69. Adult-use processor license. 1. A processor's license shall authorize the acquisition, possession, processing and sale of cannabis from the licensed premises of the adult-use cultivator by such licensee to duly licensed processors or distributors. A person holding an adult-use processor's license may apply for, and obtain, one distributor's license solely for the distribution of their own products.

2. For purposes of this section, processing shall include, but not be limited to, blending, extracting, infusing, packaging, labeling, branding and otherwise making or preparing cannabis products. Processing shall not include the cultivation of cannabis.

3. No processor shall be engaged in any other business on the premises to be licensed; except that a person issued an adult-use cannabis cultivator, processor, and/or distributor license or a processor who has also been issued a hemp grower license by the department of agriculture and markets or a cannabinoid hemp processor license under this chapter may hold and operate all issued licenses on the same premises.

4. No cannabis processor licensee may hold more than one cannabis processor license provided a single license may authorize processor activities at multiple locations, as set out in regulations by the board.

5. No adult-use cannabis processor shall have a direct or indirect interest, including by stock ownership, interlocking directors, mortgage or lien, personal or real property, management agreement, share parent companies or affiliated organizations or any other means, in any premises licensed as an adult-use cannabis retail dispensary or in any business licensed as an adult-use cannabis retail dispensary or in any registered organization registered pursuant to article three of this chapter.

6. Adult-use processor licensees are subject to minimum operating requirements as determined by the board in regulation.

§ 4. The cannabis law is amended by adding a new section 69-a to read as follows:

§ 69-a. Conditional adult-use processor license. 1. A conditional adult-use processor license shall be subject to the same authorizations, restrictions and requirements applied to any adult-use processor pursuant to section sixty-nine of this article for the duration of the conditional period of the license, as well as to any new terms and conditions imposed by the board and office.

2. To be eligible to apply for a conditional adult-use processor license, a processor must:

1 (a) have applied for a cannabinoid hemp processor license pursuant to
2 section ninety-two of this chapter before January first, two thousand
3 twenty-two;

4 (b) hold an active cannabinoid hemp processor license issued by the
5 office; and

6 (c) as an individual applicant have an ownership interest of fifty-one
7 percent or more, or as any other applicant have an ownership interest of
8 fifty-one percent or more of the entity that is the licensee.

9 3. A conditional adult-use processor license shall authorize the proc-
10 essing and manufacturing of cannabis products provided the licensee
11 complies with all requirements for the processing and manufacture of
12 cannabis products as set out by the board. A conditional adult-use
13 processor licensee shall only perform extraction activities if author-
14 ized to under the licensee's cannabinoid hemp processor license and all
15 extraction methods are subject to office approval.

16 4. A conditional adult-use processor licensee must comply with any
17 environmental standards and requirements as mandated by the office.

18 5. The processing of cannabis shall only be permitted at the same
19 location in which the conditional adult-use processor licensee is
20 authorized to process hemp, unless expressly authorized by the office.

21 6. A conditional adult-use processor licensee shall have the authority
22 to distribute cannabis products without holding an adult-use distributor
23 license established pursuant to section seventy-one of this article
24 until June first, two thousand twenty-three, provided that the licensee
25 complies with all requirements for the distribution of cannabis products
26 as set out by the office. After June first, two thousand twenty-three,
27 any conditional processor seeking to distribute cannabis products shall
28 be required to apply for and receive a distributor license to conduct
29 this activity.

30 7. For the duration of the conditional period of the conditional
31 adult-use processor license, the ownership or organizational structure
32 of the entity that is the licensee shall not be amended, except pursuant
33 to the provisions of subdivisions two, three and four of section sixty-
34 seven of this article.

35 8. The office shall set out specific terms and conditions setting out
36 requirements necessary to be awarded and maintain a conditional adult-
37 use processor license, including but not limited to the requirement that
38 a licensee agrees to participate in an environmental sustainability
39 program and a social equity mentorship program. Such program shall be
40 directed to train individuals interested in becoming licensed processors
41 and shall leverage remote and in-person engagement to provide mentees
42 with experience in processing techniques and good manufacturing prac-
43 tices. Candidates for the mentorship program must be at least eighteen
44 years of age, must be a New York state resident, and must be individuals
45 that would be considered social equity applicants as defined by section
46 eighty-seven of this article. The license terms and conditions set out
47 by the office shall include requirements that a licensee enter into a
48 labor peace agreement with a bona-fide labor organization that is
49 actively engaged in representing or attempting to represent the appli-
50 cant's employees within six months of licensure, that the maintenance of
51 such labor peace agreement shall be an ongoing material condition of
52 licensure, and that licensees shall meet any other eligibility require-
53 ments established by the office.

54 9. The board shall establish a non-refundable application and license
55 fee, in a manner consistent with section sixty-three of this article,
56 for the conditional adult-use processor license. No such license shall

1 be issued after December thirty-first, two thousand twenty-two and such
2 license shall only be valid through June thirtieth, two thousand twen-
3 ty-four.

4 10. A conditional adult-use processor license shall be deemed to have
5 been surrendered to the board and a conditional adult-use processor
6 licensee shall be deemed not to be in good standing, as determined in
7 the discretion of the executive director in a written notice, effective
8 upon delivery to the licensee at the licensee's last known address on
9 file with the office, for reasons including but not limited to:

10 (a) failure to abide by all the terms and conditions of the condi-
11 tional adult-use processor license;

12 (b) failure to adhere to all requirements set out in regulations and
13 guidance, including those promulgated after receiving the conditional
14 adult-use processor license;

15 (c) failure to submit information, records, or reports;

16 (d) failure to correct deficiencies in accordance with an approved
17 corrective action plan;

18 (e) deviation from regulations, licensing terms, or standard operating
19 procedures in a manner the office determines may jeopardize health or
20 safety of the public, or the quality of products produced;

21 (f) failure to provide office employees with access to the premises;
22 and

23 (g) failure to begin operations within six months of the date of the
24 issuance of the license.

25 11. A licensee whose conditional adult-use processor license has been
26 deemed surrendered may within ten days of the delivery date of such
27 notice appeal the determination of the executive director to the board
28 pursuant to subdivision eighteen of section ten of this chapter. The
29 board shall have sole discretion to determine the conduct of the appeal,
30 which shall include notice and an opportunity to be heard. Upon review
31 by the board, the board shall issue a final written determination which
32 may then be reviewed pursuant to section one hundred thirty-five of this
33 chapter and article seventy-eight of the civil practice law and rules.

34 12. In the event that a conditional adult-use processor licensee
35 elects to cease operation of all permitted activities or to surrender
36 its license, the following provisions shall apply:

37 (a) the conditional adult-use processor licensee shall notify the
38 office in writing at least thirty days prior to the anticipated date of
39 closure;

40 (b) such written notice shall include a proposed plan for closure. The
41 plan shall be subject to office approval and shall include timetables
42 and describe the procedures and actions the licensee shall take to prop-
43 erly destroy or otherwise dispose of all the licensee's supply of canna-
44 bis and/or cannabis products; and

45 (c) the licensee or former licensee must maintain and make available
46 to the office all records related to the cultivation of cannabis for a
47 period of three years.

48 13. No later than ninety days before the expiration of a conditional
49 adult-use processor license, the office shall, pursuant to a request by
50 the licensee, review the conditional adult-use processor licensee to
51 determine whether they are in good standing with the office. Good stand-
52 ing shall include, but not be limited to, compliance with subdivision
53 seven of this section. Any licensee found to be in good standing shall
54 be eligible to apply for and receive an adult-use processor license,
55 provided the licensee can meet all requirements of the new license.

1 14. For the purposes of this section, the office has the authority to
2 define terms including but not limited to "extraction" as part of the
3 terms and conditions of the conditional adult-use processor license.

4 15. Nothing in this section shall limit the authority, power, or other
5 rights or remedies of the board or office.

6 § 5. The cannabis control board shall provide a report on the condi-
7 tional cultivator and processor licenses as provided for by this act.
8 Such report shall include, but not be limited to: the number of condi-
9 tional licenses applied for by geographic region and approved by the
10 board; the revenue received from such conditional licenses from fees and
11 taxation related to cultivation, distribution, and eventual sale of
12 adult-use cannabis; the number of individuals, if any, that transition
13 from a conditional license to other licenses issued by the board and the
14 types of licenses awarded; the number of applicants determined to be
15 social equity applicants that applied for and received a conditional
16 cultivator and processor license; the effectiveness and participation
17 data related to the social equity mentoring program; and other such data
18 and information that the board deems necessary and appropriate. Such
19 report shall be published on the office's website and presented to the
20 governor, the majority leader of the senate and the speaker of the
21 assembly, no later than January 1, 2023 and again on January 1, 2024.
22 Nothing shall preclude the office from providing such reporting as part
23 of the annual report required by the board pursuant to section ten of
24 the cannabis law, provided, however, that the information required by
25 this act shall be clearly separate from other reporting.

26 § 6. This act shall take effect immediately, provided however, that
27 the provisions of sections two and four of this act shall expire on June
28 30, 2024 when upon such date the provisions of such sections shall be
29 deemed repealed.