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:

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

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

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

§ 68-c. Conditional adult-use cultivator license. 1. A conditional adult-use cultivator license shall be subject to the same authorizations, restrictions and requirements applied to any adult-use cultivator pursuant to section sixty-eight 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 cultivator license, a cultivator must:

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

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

(c) as an individual applicant have an ownership interest of fifty-one percent or more, or as any other applicant have an ownership interest of 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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3. A conditional adult-use cultivator license shall authorize the cultivation of cannabis outdoors or in a greenhouse with no more than twenty artificial lights unless otherwise authorized by the office. A conditional adult-use cultivator licensee may cultivate up to forty-three thousand five hundred sixty square feet of flowering canopy outdoors or twenty-five thousand square feet of flowering canopy in a greenhouse. A cultivator may cultivate both outdoors and in a greenhouse provided the flowering canopy in a greenhouse is less than twenty-thousand square feet and the total flowering canopy is equal to or less than thirty-thousand square feet.

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

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

6. A conditional adult-use cultivator licensee shall have the temporary authority to minimally process and distribute cannabis products, provided that such final products shall be in the form of cannabis flower, without holding an adult-use processor or distributor license established pursuant to sections sixty-nine and seventy-one of this article; provided that the licensee complies with all requirements for the processing and distribution of cannabis products as set out by the board in regulations or in the terms and conditions of the conditional license. Such authority to minimally process and distribute cannabis products expires on June first, two thousand twenty-three. After June first, two thousand twenty-three, any conditional adult-use cultivator seeking to process and distribute cannabis products shall be required to apply for and receive a processor and distributor license to conduct this activity.

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

8. The office shall set out specific terms and conditions setting out requirements necessary to be awarded and maintain a conditional adult-use cultivator license, including but not limited to the requirement that a licensee agrees to participate in an environmental sustainability program and a social equity mentorship program. Such mentorship program shall be directed to train individuals interested in becoming licensed cultivators and shall leverage remote and in-person mentees with experience in agriculture business management, sustainable cannabis cultivation, and best practices. Candidates for the mentorship program must be at least eighteen years of age, must be a New York state resident, and must be individuals that would be considered social equity applicants as defined by section eighty-seven of this article. The license terms and conditions set out by the office shall include requirements that a licensee enter into a labor peace agreement with a bona-fide labor organization that is actively engaged in representing or attempting to represent the applicant's employees within six months of licensure, that the maintenance of such labor peace agreement shall be an ongoing material condition of licensure, and that licensees shall meet any other eligibility requirements established by the office.

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

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

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

(a) failure to abide by all the terms and conditions of the conditional adult-use cultivator license;

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

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

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

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

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

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

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

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

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

(b) such written notice shall include a proposed plan for closure. The plan shall be subject to office approval and shall include timetables and describe the procedures and actions the licensee shall take to properly destroy or otherwise dispose of all the licensee's supply of cannabis and/or cannabis products; and

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

13. No later than ninety days before the expiration of a conditional adult-use cultivator license, the office shall, pursuant to a request by the licensee, review the conditional adult-use cultivator licensee to determine whether they are in good standing with the office. Good standing shall include, but not be limited to, compliance with subdivision seven of this section. Any licensee found to be in good standing shall be eligible to apply for and receive an adult-use cultivation license, 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:

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

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

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

3. A conditional adult-use processor license shall authorize the processing and manufacturing of cannabis products provided the licensee complies with all requirements for the processing and manufacture of cannabis products as set out by the board. A conditional adult-use processor licensee shall only perform extraction activities if authorized to under the licensee's cannabinoid hemp processor license and all extraction methods are subject to office approval.

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

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

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

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

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

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

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

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

(a) failure to abide by all the terms and conditions of the conditional adult-use processor license;

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

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

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

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

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

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

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

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

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

(b) such written notice shall include a proposed plan for closure. The plan shall be subject to office approval and shall include timetables and describe the procedures and actions the licensee shall take to properly destroy or otherwise dispose of all the licensee's supply of cannabis and/or cannabis products; and

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

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

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

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

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

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