STATE OF NEW YORK

7045--A

2023-2024 Regular Sessions

IN SENATE

May 17, 2023

Introduced by Sens. COONEY, CLEARE -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the cannabis law and the state finance law, in relation to enacting the "cannabis adult-use transition act"

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

Section 1. Short title. This act shall be known and may be cited as the "cannabis adult-use transition act".

§ 2. Legislative findings and intent. Chapter 92 of the laws of 2021, known as the Marijuana Regulation and Taxation Act, legalized and regulated cannabis for adult-use; expanded and improved the medical cannabis program and the hemp program; established the Cannabis Control Board and the Office of Cannabis Management, and codified historical social and economic equity policies. Chapter 18 of the laws of 2022 created the conditional adult-use cultivator and processor licenses to jump start New York's adult-use cannabis market with small New York farmers.

The legislature recognizes that due to a variety of circumstances beyond the control of New York's cannabis licensees and applicants, there have been delays and unforeseen challenges with the implementation of various components of the state's cannabis markets. Conditional cultivators cannot afford to process their cannabis or sell their finished products; conditional processors are struggling with limited retail outlets; conditional adult-use retail dispensary licensees and applicants do not have access to capital, locations, or the resources they need to become operational; and the state's medical registered organizations and patients are facing a diminishing medical cannabis market. As a result, the state's cannabis industries are losing value and jobs, patients are being left behind, and the illicit market is growing.

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

LBD11444-03-3

§ 3. Subdivisions 2 and 3 of section 14 of the cannabis law are amended to read as follows:

2. The state cannabis advisory board shall consist of [~~thirteen~~] **seventeen** voting appointed members, along with a representative from the department of environmental conservation, the department of agriculture and markets, the office of children and family services, the department of labor, the department of health, the division of housing and community renewal, the office of addiction services and supports, and the department of education, serving as non-voting ex-officio members. The governor shall have [~~seven~~] **eleven** appointments, the temporary president of the senate and the speaker of the assembly shall each have three appointments to the board. The members shall be appointed to each serve three year terms and in the event of a vacancy, the vacancy shall be filled in the manner of the original appointment for the remainder of the term. The appointed members and representatives shall receive no compensation for their services but shall be allowed their actual and necessary expenses incurred in the performance of their duties as board members.

3. Advisory board members shall have statewide geographic representation that is balanced and diverse in its composition. Appointed members shall have an expertise in public and behavioral health, substance use disorder treatment, effective rehabilitative treatment for adults and juveniles, homelessness and housing, economic development, environmental conservation, job training and placement, criminal justice, and drug policy. Further, the advisory board shall include residents**, one retailer, one certified patient, one service disabled veteran, and one supply tier licensee** from communities most impacted by cannabis prohibition, people with prior drug convictions, the formerly incarcerated, and representatives from the farming industry, cannabis industry, and organizations serving communities impacted by past federal and state drug policies.

§ 4. Paragraph (c) of subdivision 3 of section 99-ii of the state finance law, as added by chapter 92 of the laws of 2021, is amended to read as follows:

(c) Actual and necessary costs incurred by the office of cannabis management and the cannabis control board, and the urban development corporation, related to the administration of incubators and other assistance to qualified social and economic equity applicants including the administration, capitalization, and provision of low and zero interest loans to such applicants [~~pursuant to~~]**, including the conditional adult-use retail dispensary licensees. The office of cannabis management shall administer theses resources in accordance with the social equity and economic plan mandated pursuant to article four of the cannabis law and in accordance with** section sixteen-ee of the urban development corporation act. Such costs shall be paid out of revenues received, including, but not limited to, from special one-time fees paid by registered organizations pursuant to section sixty-three of the cannabis law.

§ 5. Section 39 of the cannabis law is amended to read as follows:

§ 39. Registered organizations and adult-use cannabis. The board shall [~~have the authority to~~] grant [~~some or all of the~~] registered organizations [~~registered with the department of health and~~] currently registered and in good standing with the office, the ability to obtain adult-use cannabis licenses pursuant to article four of this chapter **and** subject to any [~~fees, rules or conditions~~] **regulation** prescribed by the board [~~in regulation~~].

§ 6. Subdivision 1-a of section 63 of the cannabis law is amended to read as follows:

1-a. The [~~board shall also have the authority to assess a registered organization with a~~] one-time special licensing fee for a registered organization adult-use cultivator processor, distributor retail dispensary [~~license. Such fee shall be assessed at an amount to adequately~~] licensed pursuant to section sixty-eight-a of this article, shall be twenty million dollars, an amount to be used exclusively to fund social and economic equity and incubator assistance pursuant to this article and paragraph (c) of subdivision three of section ninety-nine-ii of the state finance law. Such fee shall be payable in five million dollar installments, the first of which upon licensure, and thereafter within thirty days of each one hundred million dollars in revenue generated by such licensee until paid in full, or such obligation expires on December thirty-first, two thousand thirty, whichever occurs first. At least fifty percent of the total fees collected shall be administered by the office as grants or zero or low interest loans to the conditional adult-use retail dispensary licensees. Conditional adult-use retail dispensary licensees who accept zero or low interest loans shall be allowed to prepay such loans without penalty. Provided, however, that the board shall not allow registered organizations to dispense adult-use cannabis from more than three of their medical cannabis dispensing locations. [~~The timing and manner in which registered organizations may be granted such authority shall be determined by the board in regulation.~~] An eligible registered organization shall be authorized as a registered organization adult-use cultivator processor distributor retail dispensary pursuant to section sixty-eight-a of this article upon approval of an application to the office that must be available to such registered organizations no later than August first, two thousand twenty-three and remain available thereafter. The office must approve or deny such application within thirty days of its submission or it shall be deemed approved. A registered organization adult-use cultivator processor distributor retail dispensary licensee shall be authorized to cultivate, process, and distribute in the adult-use cannabis market, provided however, that each licensee's first co-located dispensary shall not offer adult-use cannabis for retail sale until or after December twenty-ninth, two thousand twenty-three; the second co-located dispensary shall not offer adult-use cannabis for retail sale until or after January first, two thousand twenty-four; and the third co-located dispensary shall not offer adult-use cannabis for retail sale until or after April first, two thousand twenty-four. These licensees must submit a plan to the office demonstrating their commitment to diversifying the co-located dispensary shelf space for adult-use with cannabis products from adult-use cultivators and processors licensed pursuant to sections sixty-eight, sixty-eight-b, sixty-eight-c, sixty-nine, sixty-nine-a, seventy, and seventy-three of this article.

§ 7. Subdivision 3 of section 68-c of the cannabis law, as added by chapter 18 of the laws of 2022, is amended and two new subdivisions 16 and 17 are added to read as follows:

3. A conditional adult-use cultivator license shall authorize the cultivation of cannabis outdoors or in a greenhouse or aquaponics facility 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 or aquaponics facility. A cultivator may

cultivate both outdoors and in a greenhouse **or aquaponics facility** provided the flowering canopy in a greenhouse **or aquaponics facility** is less than twenty-thousand square feet and the total flowering canopy is equal to or less than thirty-thousand square feet.

16. Notwithstanding any other provision of this chapter, a conditional adult-use cultivator or processor licensee shall be authorized to sell tested, packaged, and sealed cannabis products to registered organizations for retail sale at up to three of such registered organizations' existing medical cannabis dispensing facilities until June first, two thousand twenty-four, provided however that the conditional cultivator or processor licensees shall prioritize wholesaling to conditional adult-use retail dispensaries. A registered organization selling conditionally grown and processed cannabis products at any of its cannabis dispensing facilities shall pay three percent of any such sales through June first, two thousand twenty-six, to the state, with two-thirds of such funds used toward grants authorized pursuant to paragraphs (c) and (d) of subdivision three of section ninety-nine-ii of the state finance law to offset tax obligations of the conditional adult-use retail dispensary licensees and the remaining one-third of such funds used at the discretion of the office in implementing social and economic equity programs. Such payments by the registered organizations shall account to the special one time licensing fee assessed pursuant to section sixty-three of this article.

17. The office is authorized to create a loan program for conditional adult-use cultivators for the purpose of having any cannabis grown under a conditional adult-use cultivator license in two thousand twenty-two processed into shelf stable formats. The end-product of such processing shall be returned to the licensee for future use.

§ 8. Subdivision 6 of section 72 of the cannabis law is amended to read as follows:

6. No cannabis retail licensee shall locate a storefront within five hundred feet of a school grounds as such term is defined in the education law or within two hundred feet of a house of worship. **The board and/or office shall not establish additional setback requirements.**

§ 9. The cannabis law is amended by adding a new section 72-a to read as follows:

§ 72-a. Conditional adult-use retail dispensary license. 1. The following minimum requirements must be met to become an eligible applicant for this license:

(a) an applicant must demonstrate:

(i) a significant presence in New York state, either individually or by having a principal corporate location in the state;

(ii) it is incorporated or otherwise organized under the laws of New York state; or

(iii) a majority of the ownership of the applicant are residents of New York state by being physically present in the state no less than one hundred eighty calendar days during the current year or five hundred forty calendar days over the course of three years;

(b) if the applicant is an individual, or an entity with one or more individuals, at least one individual must:

(i) be justice involved, which means an individual that:

(A) was convicted of a marihuana-related offense in New York state prior to March thirty-first, two thousand twenty-one;

(B) had a parent, legal guardian, child, spouse, or dependent who was convicted of a marihuana-related offense in New York state prior to March thirty-first, two thousand twenty-one; or

(C) was a dependent of an individual who was convicted of a marihuana-related offense in New York state prior to March thirty-first, two thousand twenty-one; and

(ii) provide evidence of the primary residence of the justice involved individual at the time of such individual's arrest or conviction; and

(iii) hold or have held, for a minimum of two years, at least ten percent ownership interest in, and control of, a qualifying business, which means a business that had net profit for at least two of the years the business was in operation; or

(c) if the applicant is a nonprofit organization, or wholly owned and controlled by one, the nonprofit organization must:

(i) be recognized as an entity pursuant to section 501(c)(3) of the Internal Revenue Code;

(ii) intentionally serve justice involved individuals and communities with historically high rates of arrest, conviction, incarceration or other indicators of law enforcement activity for marihuana-related offenses;

(iii) operate and manage a social enterprise that had at least two years of positive net assets or profit as evidenced in the organization's tax returns;

(iv) have a history of creating vocational opportunity for justice involved individuals;

(v) have a justice involved individual or individuals on its board or as officers; and

(vi) have at least five full-time employees.

2. At least fifty-one percent or more of the applicant shall be owned, in the aggregate, by:

(a) at least one individual that satisfies the requirements for an eligible applicant as set forth in paragraphs (a) and (b) of subdivision one of this section or an entity that satisfies the requirements for an eligible applicant as set forth in paragraphs (a) and (c) of subdivision one of this section; and

(b) any other additional individuals, if any, who are justice involved; and

(c) at least one individual that satisfies the requirements for an eligible applicant as set forth in paragraphs (a) and (b) of subdivision one of this section or an entity that satisfies the requirements for an eligible applicant as set forth in paragraphs (a) and (c) of subdivision one of this section shall own at least thirty percent of the applicant and such individual or entity shall have sole control of the applicant or licensee.

3. An eligible applicant shall be evaluated based on any of the following criteria which shall be weighted as determined by the office:

(a) if the applicant is an individual, or an entity with one or more individuals, whether the justice involved individual was themselves convicted of a marihuana-related offense as set forth in regulation;

(b) the justice involved individual's primary residence at the time of such individual's arrest or conviction:

(i) relative to areas with historically high rates of arrest, conviction, or incarceration for marihuana-related offenses;

(ii) relative to areas with historically low median income; or

(iii) was provided by a public housing authority in New York state or New York city; and

(c) the qualifying business based on:

(i) the number of employees employed by the business;

(ii) the number of years the business has been in operation;
(iii) the profitability of the business;
(iv) type of business and whether the business was a retail business, or sold products or services directly to the end-consumer;
(v) whether the business had a physical location; or
(vi) whether the business received or resolved any violations, fines or fees assessed against the business by state or federal regulatory authorities; and
(d) any other factors as determined by the office.
4. The office may create regional geographic zones for the scoring of applicants. Applicants may be asked to rank a number of preferences of regional geographic zones to be considered for a license. For regional geographical zones where there are more applicants than available licenses, the office may select from eligible applicants who indicated first preference for the given region based on weighted scoring of the evaluation criteria set out above. In the event there is a tie between two or more candidates or there are more applicants than available licenses after the evaluation criteria has been applied, the office is authorized to use a random selection process to identify the final applicants to recommend to the board for licensure.
5. The office shall approve, deny, or request additional information in regards to a conditional adult-use retail dispensary licensee's submission for location approvals within thirty days of receipt or the location request shall be automatically approved so long as it complies with the setback requirements of this chapter.
6. The office and dormitory authority shall make the list of addresses for any executed lease agreements entered into and potentially available to eligible conditional adult-use retail dispensary licensees publicly available on their websites, and upon request. Such list shall be updated each week to maximize the transparency for retail dispensary licensees securing store locations and shall not include or block any locations without an executed lease.
7. The office shall promulgate any rules and regulations to fully implement this section and any rules and regulations adopted prior to the enactment of this section shall not be invalidated.

§ 10. This act shall take effect immediately; provided, however, that the amendments to section 68-c of the cannabis law made by section seven of this act shall not affect the repeal of such section and shall be deemed repealed therewith.