

STATE OF NEW YORK

8084--A

IN SENATE

January 25, 2022

Introduced by Sens. HINCHEY, KRUEGER, RAMOS -- read twice and ordered printed, and when printed to be committed to the Committee on Agriculture -- reported favorably from said committee and committed to the Committee on Rules -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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

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

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

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

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

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

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

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

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

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

1 ongoing material condition of licensure, and that licensees shall meet
2 any other eligibility requirements established by the office.

3 9. The board shall establish a non-refundable application and license
4 fee, in a manner consistent with section sixty-three of this article,
5 for the conditional adult-use cultivator license. No such license shall
6 be issued after December thirty-first, two thousand twenty-two and such
7 license shall only be valid through June thirtieth, two thousand twen-
8 ty-four.

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

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

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

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

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

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

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

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

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

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

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

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

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

53 13. No later than ninety days before the expiration of a conditional
54 adult-use cultivator license, the office shall, pursuant to a request by
55 the licensee, review the conditional adult-use cultivator licensee to
56 determine whether they are in good standing with the office. Good stand-

1 ing shall include, but not be limited to, compliance with subdivision
2 seven of this section. Any licensee found to be in good standing shall
3 be eligible to apply for and receive an adult-use cultivation license,
4 provided the licensee can meet all requirements of the new license. Such
5 a licensee will receive, at minimum, an adult-use cultivator license for
6 the size of flowering canopy that they were licensed to grow pursuant to
7 their conditional adult-use cultivator license or a larger size flower-
8 ing canopy and authorization to use artificial light as may be set out
9 by the board in regulation. A licensee may not separately apply for any
10 license type under this article permitting the cultivation of adult-use
11 cannabis while holding a conditional adult-use cultivator license.

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

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

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

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

25 2. For purposes of this section, processing shall include, but not be
26 limited to, blending, extracting, infusing, packaging, labeling, brand-
27 ing and otherwise making or preparing cannabis products. Processing
28 shall not include the cultivation of cannabis.

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

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

39 5. No adult-use cannabis processor shall have a direct or indirect
40 interest, including by stock ownership, interlocking directors, mortgage
41 or lien, personal or real property, management agreement, share parent
42 companies or affiliated organizations or any other means, in any prem-
43 ises licensed as an adult-use cannabis retail dispensary or in any busi-
44 ness licensed as an adult-use cannabis retail dispensary or in any
45 registered organization registered pursuant to article three of this
46 chapter.

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

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

51 § 69-a. Conditional adult-use processor license. 1. A conditional
52 adult-use processor license shall be subject to the same authorizations,
53 restrictions and requirements applied to any adult-use processor pursu-
54 ant to section sixty-nine of this article for the duration of the condi-
55 tional period of the license, as well as to any new terms and conditions
56 imposed by the board and office.

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

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

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

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

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

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

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

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

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

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

1 9. The board shall establish a non-refundable application and license
2 fee, in a manner consistent with section sixty-three of this article,
3 for the conditional adult-use processor license. No such license shall
4 be issued after December thirty-first, two thousand twenty-two and such
5 license shall only be valid through June thirtieth, two thousand twen-
6 ty-four.

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

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

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

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

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

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

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

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

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

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

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

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

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

51 13. No later than ninety days before the expiration of a conditional
52 adult-use processor license, the office shall, pursuant to a request by
53 the licensee, review the conditional adult-use processor licensee to
54 determine whether they are in good standing with the office. Good stand-
55 ing shall include, but not be limited to, compliance with subdivision
56 seven of this section. Any licensee found to be in good standing shall

1 be eligible to apply for and receive an adult-use processor license,
2 provided the licensee can meet all requirements of the new license.

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

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

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

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