

BLIP CLINIC OVERVIEW OF THE NEW YORK “MARIHUANA REGULATION AND TAXATION ACT”

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INTRO:

In late March 2021, the New York State Legislature voted on the “Marihuana Regulation and Taxation Act” (MRTA) and signed it into law. That bill, S854-a is the product of seven years of work spearheaded and sponsored by Senator Liz Krueger. The MRTA is to be situated in New York’s Consolidated Laws as Chapter 7-A, or the “Cannabis Law.” Chapter 7-A creates a “Cannabis Control Board” (referred to as “Board” below) and will consist of a chairperson “nominated by the governor and with the advice and consent of the senate, with one vote, and four other voting Board members.”¹ The governor will be permitted to directly appoint two people to the Board, and the temporary president of the senate and the speaker of the assembly will each get to directly appoint one person to that Board as well.² Positions within the Board will have a term of three years and are to be both geographically and demographically representative of the state and communities historically affected by the war on drugs.³ Note that “registered organizations” referred to below are organizations that are registered under Article 3 of Chapter 7-A, i.e., the medical cannabis chapter.

While the MRTA itself takes effect immediately, the sale of adult-use cannabis is not projected to become legal for “another year or two” as regulators in New York craft a detailed framework for its newly created cannabis industry.⁴

1. Who can apply for a license to operate a cannabis-related business? Does it matter if I have a prior criminal conviction?

- a.** Any person aged twenty-one or over⁵ may be issued a license to cultivate, process, distribute, deliver, or dispense cannabis within New York State.⁶ While the Board is authorized to request, receive and review the criminal history of applicants, criminal convictions under certain sections of the NYS Penal Code⁷ alone will not disqualify applicants from receiving licenses.⁸ Those sections include Article 220 of the Penal Code or §240.36 of the Penal Code (prior to the date Article 221 of the Penal Law took effect), Article 221 itself, and Article 222 of the Penal law. Article 220 of the Penal Code pertains to offenses regarding

¹ Article 2 §7.

² *Id.*, §7. Article 2 §7.

³ *Id.* Article 2 §7.

⁴ *New York’s Legalization of Recreational Marijuana Will Have Immediate Impact on Employers*, XI NAT’L L. REV. 120 (Apr. 19, 2021), <https://www.natlawreview.com/article/new-york-s-legalization-recreational-marijuana-will-have-immediate-impact-employers>.

⁵ Art. 4 §65.

⁶ *Id.*, §61. Art 4 §61.

⁷ A violation of Article 220 of the Penal Code or §240.36 of the Penal Code (prior to the date Article 221 of the Penal Law took effect and/or a violation of Article 222 of the Penal Law after the effective date of Chapter 7-A of the Consolidated Laws – Cannabis Law.),

⁸ Art. 4 §61(3).

controlled substances,⁹ and §240.36 of the Penal Code specifically deals with loitering while using or possessing a controlled substance.¹⁰ Article 221 of the Penal Law is titled “Offenses Involving Marihuana.”¹¹ Article 222 of the Penal Law is a new section of the NYS Penal Law that is *created by* Chapter 7-A of the Consolidated Laws (i.e. the “Cannabis Law” detailed in Senate Bill S854) and creates a new set of rules to determine what will be considered criminal offenses relating to cannabis. Applicants for cannabis-related registrations, licenses, permits and authorizations will be fingerprinted for the purpose of conducting a criminal history search and *may* also be submitted to the FBI for a national criminal history check.¹²

2. What information will be requested from me as an applicant for a cannabis-related license?

- a. The Board is authorized to establish what information is to be included on applications for licensure.¹³ This information might contain questions about the applicants’ racial and ethnic identity, their ownership and investment interests, evidence of the applicants’ good moral character (including fingerprints as referenced above), information about the premises where the licensee plans to carry out their activities, and financial statements.¹⁴ However, this list is not final nor required, and the Board is authorized to ask additional information beyond what is listed here.¹⁵

3. Will I be required to pay a fee to apply? Will it be a one-time fee?

- a. Similar to requests for information in connection with license applications, the Board will have the authority to charge applicants fees to file their applications.¹⁶ Those fees will be non-refundable.¹⁷ While a numerical figure for those fees has not been proposed, the fees may vary by the type of licensure sought, the volume of production and/or cultivation, and other factors deemed “reasonable and appropriate” by the Board.¹⁸ In sum, it’s fairly open-ended as of now.
- b. In addition to application fees, the Board is authorized to charge a registered organization¹⁹ (i.e. an organization that has applied for, received, and accepted a license to dispense marijuana for medical purposes) a “one-time special licensing fee.”²⁰ Registered organizations to which this is likely to apply are: adult-use cultivators, processors, distributors, and retail dispensaries.²¹ While there is no guidance as to how much this fee will be, the purpose of the fee is to adequately fund social and economic equity programs and incubator assistance programs, as

⁹ <http://ypdcrime.com/penal.law/article220.htm#p220.00>

¹⁰ https://newyork.public.law/laws/n.y._penal_law_section_240.36

¹¹ <https://www.nycourts.gov/judges/cji/2-PenalLaw/221/art221hp.shtml>

¹² Article 5 § 138.

¹³ Article 4 §62(2).

¹⁴ *Id.* Art. 4 §62(2).

¹⁵ *Id.* Art. 4 §62(2).

¹⁶ *Id.*, §63(1). Art. 4 §63(1).

¹⁷ *Id.* Art. 4 §63(1).

¹⁸ *Id.* Art. 4 §63(1).

¹⁹ “Registered Organization” means an organization registered under article three of this chapter. Art. §3(43).

²⁰ Art. 4 §64 (1-a).

²¹ *Id.* Art. 4 §64 (1-a).

well as the cannabis revenue fund set forth in §99-ii of the N.Y.S. Finance Law.²² S854 creates §99-ii of the N.Y.S. Finance Law referenced, which establishes a cannabis revenue fund.

- c. Finally, the Board will likely have the authority to charge licensees a license fee every other year.²³ That fee should be based on the amount of cannabis to be handled by the respective licensee, or the gross annual receipts of the licensee for the previous license period, plus any other factors the Board finds reasonable and appropriate.²⁴ The Board must waive or reduce fees for licensees who applied as social and economic equity applicants.²⁵

4. What are the types of licenses that will be available?

- a. Before diving into the various types of licenses that will be available (there are a lot), it's important to note that “a separate license [will] be required for each facility at which cultivation, processing, distribution or retail dispensing is conducted.”²⁶ For example, just because a license-holder has a license to cultivate in Location A does *not* automatically mean that the license-holder may also cultivate in Location B. Furthermore, just because a license-holder has a cultivator's license does *not* mean that the license-holder may also perform processing activities without a separate processor's license. However, there are some exceptions to this rule.
- b. **Adult-use cultivator license:** For purposes of licensing, “cultivator” includes, but is not limited to: “the agricultural production practices of planting, growing, cloning, harvesting, drying, curing, grading and trimming of cannabis.”²⁷ The cultivator license authorizes the license holder to perform these activities as well as distribute the cultivated cannabis to licensed processors in New York State.²⁸ It is possible that the Board will create regulations which allow cultivators to perform certain minimal processing functions without a processor's license, but it is too soon to tell.²⁹ However, as the proposed legislation is currently written, a person who has an adult-use cultivator's license may apply for one processor's license.³⁰
 - i. **Limits on adult-use cultivator licenses:** As we will explain, there are various restrictions on how and when licenses for multiple kinds of operations may be held. For example, there is a strict separation between holding a cultivator's license and holding a retailer's license. A person who holds a cultivator's license may *not* also hold a retail dispensary license.³¹ Additionally, a person who holds a cultivator license may not have a direct or indirect interest (as defined by Article 4 §68(4)) in a premises licensed as a retail dispensary, a business licensed as a retail

²² *Id.* Art. 4 §64 (1-a).

²³ *Id.* §63(2). Art. 4 §63(2).

²⁴ *Id.* Article 4 §63(2).

²⁵ *Id.*, §63(3). Art. 4 §63(3).

²⁶ *Id.*, §61(2). Art. 4 § 61(2).

²⁷ *Id.*, §68(2). Art. 4 § 68(2).

²⁸ *Id.*, §68(1). Art. 4 § 68(1).

²⁹ *Id.* Art. 4 § 68(1).

³⁰ *Id.*, §68(3). Art. 4 § 68(3).

³¹ *Id.*, §68(4). Art. 4 § 68(4).

dispensary, or any organization that is registered pursuant to the rules governing medical cannabis.³² Those holding cultivator's licenses also cannot hold distributor's licenses and cannot have a direct or indirect financial (or controlling) interest in *more than one* cultivator's license.³³ Simply put, a person may only hold interest in one cultivator's license.

- c. **Registered organization adult-use cultivator processor distributor retail dispensary license:** These licenses will grant the same authorizations to their holders as the cultivator, processor, distributor, and retail dispensary licenses offer their respective holders.³⁴ However, these licenses contain some important limitations.
 - i. **Limits on registered organization adult-use cultivator processor distributor retail dispensary license:** Sales of the cannabis products cultivated, processed, or distributed by organizations holding these licenses will be limited to dispensaries that *belong to* that organization.³⁵ The location of those dispensaries will be limited to the organization's medical dispensaries and all other facilities authorized by New York State's regulations regarding medical cannabis.³⁶ Basically, this license will allow its holder to perform nearly all aspects of the cannabis cultivation, production, and retail sale process, but the product must be sold at that organization's dispensaries and *only* its medical cannabis dispensaries.³⁷ The organization holding such license must also maintain its medical cannabis license and continue to offer medical cannabis "to a degree established by regulation of the Board."³⁸
- d. **Registered organization adult-use cultivator license:** This license grants the same authorizations as an "adult-use cultivator" license, but applies to medical cannabis registered organizations.³⁹ This license limits the sale of adult-use cannabis to licensed adult-use processors and does not qualify the organization for any other adult-use license.⁴⁰ This likely means that medical cannabis registered organizations can obtain these adult-use cultivator licenses and sell their product to adult-use processors despite their status as *medical* cannabis organizations. However, registered organization adult-use cultivator license holders cannot obtain other adult-use licenses.
- e. **Adult-use processor license:** For purposes of licensing, "processing" includes, but is not limited to: "blending, extracting, infusing, packaging, labeling, branding and otherwise making or preparing cannabis products," but does *not* include the

³² *Id.* Art. 4 § 68(4)

³³ Art. 4 § 68(3).

³⁴ *Id.*, §68-a(1); Art. 4 § 68-a(1).

³⁵ *Id.* Art. 4 §68-a(1).

³⁶ *Id.* Art. 4 §68-a(1).

³⁷ *Id.* Art. 4 §68-a(1).

³⁸ *Id.* Art. 4 §68-a(1).

³⁹ *Id.*, §68-b; Art. 4 §68-b.

⁴⁰ *Id.* Art. 4 § 68-b.

“cultivation of cannabis.”⁴¹ This license allows its holders to obtain cannabis from cultivators, process it, and then sell the processed cannabis to distributors.⁴²

i. Limits on adult-use processor licenses: Processors may not conduct any other business on their licensed premises, with the exception of persons who hold *both* a cultivator or distributor license as well as a processor’s license.⁴³ Persons who hold both a cultivator or distributor’s license as well as a processor’s license may operate all licensed activities on the same premises.⁴⁴ Cannabis processor licensees may not hold more than one processor’s license, though a single license may authorize processor activities at multiple locations.⁴⁵ A licensee who holds an adult-use processor’s license *cannot* have an interest in any premises or business licensed as an adult-use retail dispensary, nor in any registered organization.⁴⁶

f. Small business adult-use cooperative license: The cooperative license will authorize the “acquisition, possession, cultivation, processing and sale from the licensed premises of the adult-use cooperative” by the license holder to “duly licensed distributors, on-site consumption sites, and/or retail dispensaries; **but not** directly to cannabis consumers.”⁴⁷ What this appears to mean is that cooperative license holders may wear multiple hats – including that of cultivator, processor, and distributor – where possessing multiple types of these licenses simultaneously would otherwise be prohibited. However, there is a long list of qualifications that cooperative license applicants must meet, including: (1) cooperative members must be residents of NYS as an LLC or LLP (or other business structure that the Board authorizes), (2) members must subordinate capital (regarding both control over the cooperative, as well as the ownership of monetary benefits that arise out of the cooperative), (3) be democratically controlled by its members, with each member receiving *one* vote, (4) give “increases”⁴⁸ in proportion to the active participation of each member in the cooperative, and (5) the cooperative has to adhere to the seven cooperative principles that were published by the International Cooperative Alliance in 1995.⁴⁹ Furthermore, cooperative members need to be *natural persons* (i.e. they must be human beings, rather than a corporation, etc.) and cannot be a member of more than one small business adult-use cooperative.⁵⁰

i. Limits on small business adult-use cooperative license: Members of small business adult-use cooperatives may not have a direct or indirect financial or controlling interest in *any other* kind of adult-use license.⁵¹

⁴¹ *Id.*, §69(2). Art. 4 §69(2).

⁴² *Id.*, §69(1). Art. 4 §69(1).

⁴³ *Id.*, §69(3). Art. 4 §69(3).

⁴⁴ *Id.*, Art. 4 §69(3).

⁴⁵ *Id.*, §69(4). Art. 4 §69(4).

⁴⁶ *Id.*, §69(5). Art. 4 §69(5).

⁴⁷ *Id.*, §70(1) (emphasis added). Art. 4 §70 (1) (emphasis added).

⁴⁸ It is unclear in the bill’s texts precisely what “increases” means. It is possible it means increases in ownership, increases in salary, or something else.

⁴⁹ *Id.*, §70(2). Art. 4 §70(2).

⁵⁰ *Id.*, §70(3). Art. 4 §70(3).

⁵¹ *Id.*, §70(4). Art. 4 §70(4).

Similarly, small business adult-use cooperatives cannot have direct or indirect interests (including stock ownership, mortgages or liens, etc.) in any *premises* that is licensed as an adult-use retail dispensary or any *business* that is licensed as an adult-use dispensary.⁵² As of now, it seems as though the Board will also promulgate additional regulations governing these cooperative licenses that will be designed to incentivize the use and licensure of such cooperatives.⁵³

- g. Adult-use distributor license:** A distributor license will allow its holder to sell cannabis obtained from adult-use cultivators, processors, small business adult-use cooperatives, or microbusinesses to retail dispensaries.⁵⁴

- i. Limits on adult-use distributor license:** Anyone holding this license cannot have a direct or indirect economic interest in any adult-use dispensary, adult-use cultivator, adult-use processor, or any registered medical cannabis organization.⁵⁵ This restriction will not, however, prohibit a medical cannabis organization that is *currently* registered and in good standing from being granted a license to distribute adult-use cannabis products “cultivated and processed by the registered [medical cannabis] organization to licensed adult-use retail dispensaries owned and operated by [that] registered organization.”⁵⁶ In other words, currently registered medical cannabis organizations may apply for an adult-use distributor license even though that organization also cultivated and processed the cannabis product itself. In contrast, new applicants for an adult-use distributor license may *not* also have an interest in an adult-use dispensary, cultivator, or processor license, nor may a new applicant have an interest in a medical cannabis organization.

- h. Adult-use retail dispensary license:** Retail dispensary licenses will authorize the “acquisition, possession, sale and delivery of cannabis” from the premises of the licensed dispensary to cannabis consumers.⁵⁷

- i. Limits on adult-use retail dispensary license:** Adult-use retail dispensary license holders may not have an interest (direct or indirect financial or controlling) in more than *three* retail dispensary licenses. In short, anyone holding a retail dispensary license is limited to three licenses – even where that person does not hold the license themselves and merely has a financial or controlling interest in a license.⁵⁸ Anyone who holds a retail dispensary license may not also hold an adult-use cultivator, processor, microbusiness, cooperative, or distributor license.⁵⁹ However, this limitation does not apply to businesses that are registered as adult-use cultivator processor distributor retail dispensaries or registered

⁵² *Id.*, §70(5). Art. 4 §70(5).

⁵³ *Id.*, §70(6). Art. 4 §70(6).

⁵⁴ *Id.*, §71(1). Art. 4 §71(1).

⁵⁵ *Id.*, §71(2). Art. 4 §71(2).

⁵⁶ *Id.* Art. 4 §71(2).

⁵⁷ *Id.*, §72(1). Art. 4 §72(1).

⁵⁸ *Id.*, §72(2). Art. 4 §72(2).

⁵⁹ *Id.*, §72(3). Art. 4 §72(3).

organization adult-use cultivator licensees.⁶⁰ This makes sense, considering both of those exempted licenses seem to have the purpose of allowing holders of such licenses to wear multiple hats when doing so would otherwise be prohibited. Furthermore, retail licenses will only be granted if the applicant for such license can show that they are either: (1) the owner of the premises, or (2) can prove that the person will be in possession of the premises *within 30 days* of the initial approval of the license via a “lease, management agreement or other agreement giving the applicant control of the premises, in writing, for a term *not less than the license period*.”⁶¹ Put simply, anyone applying for a retail dispensary license must be **ready to show proof** that they have obtained a premises on which the retail dispensary will be located. That person must also show that the owners of the premises have agreed to lease (or otherwise convey) the premises to the dispensary operation for **at least** the duration of the retail dispensary license’s term itself.

ii. **Limits on where the retail dispensary can be located:** A premises (except microbusiness licensees) may not be granted a license to sell cannabis products **unless** it is “located in a store, the principal entrance to which shall be from the street level and located on a public thoroughfare.”⁶² The street-level premises must be one which “may be occupied, operated or conducted for business, trade or industry.”⁶³ In addition, the premises **may not** be *within 500 feet* of a school grounds.⁶⁴ While there is no definition for “school grounds” in the education law, “school” is defined as follows: “‘School’ means any public elementary or secondary school, universal pre-kindergarten program authorized pursuant to [§3602-e] of this chapter, an approved provider of preschool special education, any other publicly funded pre-kindergarten program, a school serving children in a special act school district as defined in [§4001] of this chapter, an approved private school for the education of students with disabilities, a state-supported school subject to the provisions of article [85] of this chapter, or a state-operated school subject to the provisions of article [87] or [88] of this chapter.”⁶⁵ Thus, if you are thinking of applying for a retail dispensary license, do your research before securing a premises!

i. **“On-site Consumption License”:** While this license has not been described in detail in the MRTA, it will likely be fleshed out in regulations. However, we do know a few things about it so far: alcohol may not be sold on premises,⁶⁶ you must be 21 years old or older to enter,⁶⁷ you will not be able to have a “direct or

⁶⁰ *Id.* Art. 4 §72(3).

⁶¹ *Id.*, §72(4) (emphasis added). Art. 4 §72(4) (emphasis added).

⁶² *Id.*, §72(5). Art. 4 §72(5).

⁶³ *Id.* Art. 4 §72(5).

⁶⁴ *Id.*, §72(6). Art. 4 §72(6).

⁶⁵ N.Y. C.L.S. Educ. §2-D(1)(e); <https://www.nysenate.gov/legislation/laws/EDN/2-D>

⁶⁶ *Id.*, §85(3). Art. 4 §85(3).

⁶⁷ *Id.*, §77(13). Art. 4 §77(13).

indirect financial or controlling interest” in more than three licenses,⁶⁸ the premises may not be located within 500 feet of school grounds or 200 feet from a house of worship,⁶⁹ gambling will not be allowed on premises,⁷⁰ though this list is non-exhaustive.

- j. **Microbusiness license:** This license will allow its holder to perform all of the roles in the cultivation to retail sale process in limited quantities.⁷¹ This includes cultivation, processing, distribution, and dispensing to customers.⁷² Those holding microbusiness licenses may *not* have an interest in any other licenses and are only permitted to distribute *their own* cannabis products to dispensaries.⁷³ The Board will determine the “size and scope” of microbusinesses by regulation, and microbusiness licenses must promote social and economic equity applicants.⁷⁴
- k. **Delivery license:** These licenses will allow their holders, regardless of whether the holder has another adult-use cannabis license, to deliver cannabis and cannabis products.⁷⁵ New York State’s cannabis advisory Board will provide recommendations on how the application process might be run, as well as potential license criteria and a more defined scope of the activities a licensee can carry out later.⁷⁶
 - i. **Limits on the delivery license:** A delivery license holder may employ up to 25 people per week.⁷⁷ The license holder will likely be authorized to pay their (up to) 25 employees full-time for providing delivery services.⁷⁸ However, a license holder may *not* hold more than one delivery license, nor have a direct or indirect financial or controlling interest in more than one delivery license.⁷⁹ These licenses must promote social and economic equity applicants.⁸⁰
- l. **Nursery license:** The nursery license will likely authorize the “production, sale and distribution of clones, immature plants, seeds, and other agricultural products used specifically for the planting, propagation, and cultivation of cannabis.”⁸¹ Like the delivery licenses, recommendations for how the application process should look as well as the license criteria and scope of licensed activities under this class of license are to be determined later.⁸² These licenses must also promote social and economic equity applicants.⁸³ A person or entity who holds a

⁶⁸ *Id.*, §77(2). Art. 4 §77(2).

⁶⁹ *Id.*, §77(4). Art. 4 §77(4).

⁷⁰ *Id.*, §77(9). Art. 4 §77(9).

⁷¹ *Id.*, §73(1). Art. 4 §73(1).

⁷² *Id.*, §73(1). Art. 4 §73(1).

⁷³ *Id.*, §73(2). Art. 4 §73(2).

⁷⁴ *Id.*, §73(3). Art. 4 §73(3).

⁷⁵ *Id.*, §74. Art. 4 §74.

⁷⁶ Art. 4 §74.

⁷⁷ *Id.* Art. 4 §74.

⁷⁸ *Id.* Art. 4 §74.

⁷⁹ *Id.* Art. 4 §74.

⁸⁰ *Id.* Art. 4 §74.

⁸¹ *Id.*, §75 (1). Art. 4 §75(1).

⁸² *Id.* Art. 4 §75(1).

⁸³ *Id.* Art. 4 §75(1).

cultivator's license may apply for one nursery license to sell cannabis “directly to other cultivators, cooperatives, [or] microbusinesses[.]”⁸⁴

5. So if I obtain a license and want to renew it, what do I need to know?

- a. All types of licenses will expire two years after the date they were issued.⁸⁵ No less than 90 days prior to the expiration of a license holder's current license, the Board will provide an application for renewal of the license.⁸⁶ The Board will be authorized to limit the amount of cannabis a licensee can grow, process, distribute, or sell “by canopy, plant count, square footage or other means.”⁸⁷
- b. Every type of license may be renewed, pursuant to the processes outlined in the legislation, which include a renewal application and the payment of a renewal fee.⁸⁸ As part of the renewal process, the applicant will have to submit documentation of the “racial, ethnic, and gender diversity” of their employees and owners, *prior to* having the license be renewed.⁸⁹ Following this information, the Board will create a social responsibility framework agreement (after consulting with the state cannabis advisory Board and chief equity officer) and will make adherence to that agreement a “conditional requirement” of the license renewal.⁹⁰
- c. Applicants for license renewal will be required to maintain a labor peace agreement with a labor organization which represents (or attempts to represent) its employees and maintaining that labor agreement will be a “material condition” of licensure.⁹¹
- d. If a change of ownership, substantial corporate change, or change in location occurs without prior written approval of the Board, the license will become void.⁹²

6. What are some additional limitations on licensure that depend on the type of license I am applying for?

- a. Applicants for an adult-use retail dispensary license, registered organization adult-use cultivator processor distributor retail dispensary license, or on-site consumption license must notify the municipality in which the premises will be located *prior to* filing the application.⁹³ You will be responsible for notifying the appropriate municipality “[n]ot less than [30] days nor more than [270] days” before filing your application to become licensed.⁹⁴ This means you will have to tell the clerk of the village, town or city, your intent to apply for licensure within the time constraints.⁹⁵ This mandate changes slightly for New York City applicants, who will have to notify the “community Board.”⁹⁶ In the event the notified municipality expresses an “opinion for or against the granting of such

⁸⁴ *Id.*, §75(2). Art. 4 §75(2).

⁸⁵ *Id.*, §65(5). Art. 4 §65(5).

⁸⁶ *Id.*, §66(3). Art. 4 §66(3).

⁸⁷ *Id.*, §65(4). Art. 4 §65(4).

⁸⁸ *Id.*, §66(1). Art. 4 §66(1).

⁸⁹ *Id.*, Art. 4 §66(2).

⁹⁰ *Id.*, Art. 4 §66(2).

⁹¹ *Id.*, §66(5). Art. 4 §66(5).

⁹² *Id.*, §67(3). Art. 4 §67(3).

⁹³ *Id.*, §76(1). Art. 4 §76(1).

⁹⁴ *Id.*, Art. 4 §76(1).

⁹⁵ *Id.*, Art. 4 §76(1).

⁹⁶ *Id.*, Art. 4 §76(1).

registration, license or permit application,” it will be entered into the record that the office will use to make its recommendation to either grant or deny the application.⁹⁷ The municipality *will* be responsible for explaining why they arrived at their opinion.⁹⁸

- b. Those seeking adult-use on-site consumption licenses will be prohibited from also holding an adult-use retail dispensary, cultivator, processor, microbusiness, cooperative, or distributor license as well.⁹⁹ A premises operating under an adult-use on-site consumption license may *not* have an opening or entrance for “persons or things” between the licensed premises and “any other room or place in the building containing the licensed premises.”¹⁰⁰ However, this may be permissible if entrance and exit of customers through the opening or entrance is restricted by an employee, agent of licensee, or “other method approved by the Board of controlling access to the facility.”¹⁰¹ Simply put, a person or entity operating an on-site consumption premises pursuant to an on-site consumption license must carefully consider where entrances and exits between rooms exist and how they will be monitored.

7. Ok, I’m eligible to apply for a license and I know what is needed from me. What now? What will be the selection criteria that the Board will use to decide whether to grant me a license?

- a. The Board will ultimately develop the regulations that determine whether an applicant will be granted a license.¹⁰² There is some guidance on what these decisions will be based on, yet the list in the legislative text is non-exhaustive. Some of the criteria will include whether:
 - i. the applicant is a social and economic equity applicant;
 - ii. the applicant appears to be able to “control against the illegal diversion of cannabis”;
 - iii. the applicant appears able to comply with all applicable regulations;
 - iv. the applicant and its officers are “ready, willing, and able to properly carry on the activities for which a license is sought including with assistance from the social and economic equity and incubator program, if applicable”;
 - v. the applicant, if not already qualifying as a social and economic equity applicant, sets out a plan to benefit communities and persons disproportionately impacted by cannabis laws in the past;
 - vi. “it is in the public interest that such license be granted”;
 - vii. the applicant and the applicant’s officers are of good moral character and have complied with the rules regarding controlling interests in licenses set forth throughout the legislation;

⁹⁷ *Id.*, §67(4). Art. 4 §76(4).

⁹⁸ *Id.* Art. 4 §76(4).

⁹⁹ *Id.*, §77(3). Art. 4 §77(3).

¹⁰⁰ *Id.*, §77(10). Art. 4 §77(10).

¹⁰¹ *Id.* Art. 4 §77(10).

¹⁰² *Id.*, §64(1). Art. 4 §64 (1).

- viii. the applicant has entered into a labor peace agreement with a “bona-fide labor organization” that is representing or attempting to represent its employees;
 - ix. the applicant will contribute to communities and persons disproportionately harmed by prior cannabis laws including (but not limited to) the social responsibility framework that is outlined in §66 of the legislation and reports those contributions to the Board;
 - x. the applicant for an adult-use cultivator or processor license’s environmental and energy impact complies with energy standards;
 - xi. the applicant meets other conditions that the Board will later determine;
 - xii. the applicant, if a medical cannabis organization, maintains an effort to manufacture and/or dispense and/or research medical cannabis for certified medical cannabis patients and their caregivers.¹⁰³
- b. The state cannabis advisory Board is authorized to recommend the total number of licenses that will be issued pursuant to the legislation to the Board.¹⁰⁴ The goal in such recommendation is to ensure a competitive market, where “no licensee is dominant in the statewide marketplace or any individual category of licensing.”¹⁰⁵ Further, the recommendation will seek to actively promote social and economic equity applicants.¹⁰⁶

8. Will priority be given to certain categories of applicants?

- a. The short answer is yes. A goal of the adult-use cannabis legislation is to award 50% of adult-use cannabis licenses to social and economic equity applicants.¹⁰⁷ This goal is to ensure the inclusion of individuals from communities disproportionately impacted by previous cannabis prohibition, applicants seeking to establish minority-owned businesses, women-owned businesses, minority *and* women-owned businesses, distressed farmers, and service-disabled veterans.¹⁰⁸ Under the social and economic equity plan, extra priority will be given to: (1) members of communities disproportionately impacted by cannabis prohibition, (2) persons whose income is lower than 80% of the median income in the county where that applicant lives, and (3) persons who were convicted of cannabis-related offenses prior to the passage of this legislation, or had a “parent, guardian, child, spouse, or dependent, or were the dependent of an individual” who was convicted of a cannabis-related offense.¹⁰⁹
- i. The definition of “communities disproportionately impacted” will include but will not be limited to: “a history of arrests, convictions, and other law enforcement practices in a certain geographic area, such as, but not limited to, precincts, zip codes, neighborhoods, and political subdivisions, reflecting a disparate enforcement of cannabis prohibition during a certain time period, when compared to the rest of the state.”¹¹⁰ The Board will

¹⁰³ *Id.*, §64(1). Art. 4 §64(1).

¹⁰⁴ *Id.*, §64(3). Art. 4 §64(3).

¹⁰⁵ *Id.* Art. 4 §64(3).

¹⁰⁶ *Id.* Art. 4 §64(3).

¹⁰⁷ *Id.*, §87(2). Art. 4 §87(2).

¹⁰⁸ *Id.* Art. 4 §87(2).

¹⁰⁹ *Id.*, §87(3). Art. 4 §87(3).

¹¹⁰ *Id.*, §87(5)(g). Art. 4 §87(5)(g).

assess which communities have been disproportionately impacted and whether a person is a member of such community, following recommendations from the state cannabis advisory Board, chief equity officer, and executive director.¹¹¹

- b. Furthermore, efforts will be undertaken to promote applicants from communities disproportionately impacted as well as promote “racial, ethnic, and gender diversity” when issuing licenses.¹¹² That promotion will include mentoring potential applicants, prioritizing the consideration of applications by applicants “from communities disproportionately impacted by the enforcement of cannabis prohibition or who qualify as a minority or women-owned business, distressed farmers, or service-disabled veterans.”¹¹³ The Board will accept recommendations from the state cannabis advisory Board, as well as the chief equity officer and executive director when determining those qualifications.¹¹⁴
- c. Finally, the Board is to create an incubator program aimed at encouraging social and economic equity applicants to apply.¹¹⁵ If those applicants are granted a license, the program will provide direct support through “counseling services, education, small business coaching and financial planning, and compliance assistance.”¹¹⁶
- d. Note, that licenses issued under the social and economic equity plan *cannot* be transferred or sold within the first 3 years of their operation except to “a qualified social and economic equity applicant,” and prior written approval of the Board will be required for such sale or transfer.¹¹⁷ Furthermore, if a social and economic equity applicant wishes to transfer or sell their license to a person or entity that does not qualify as a social and economic equity applicant, the new license holder must pay the Board any outstanding amount owed by the original license holder to the Board.¹¹⁸ The new owner will also be responsible for repaying any loan issued by the Board, as well as any other fees or assessments that the Board determines.¹¹⁹

¹¹¹ *Id.* Art. 4 §87(5)(g).

¹¹² *Id.*, §87(1). Art. 4 §87(1).

¹¹³ *Id.*, §87(1). Art. 4 §87(1).

¹¹⁴ *Id.* Art. 4 §87(1).

¹¹⁵ *Id.*, §87(4). Art. 4 §87(4).

¹¹⁶ *Id.* Art. 4 §87(4).

¹¹⁷ *Id.*, §87(7). Art. 4 §87(7).

¹¹⁸ *Id.* Art. 4 §87(7).

¹¹⁹ *Id.* Art. 4 §87(7).