



# What is in the Law

## Social and Economic Equity

### Overview

On March 31, 2021, New York State legalized adult-use cannabis (also known as marijuana, or recreational marijuana) by passing the Marijuana Regulation & Taxation Act (MRTA). The legislation creates a new Office of Cannabis Management (OCM) governed by a Cannabis Control Board to oversee and implement the law (collectively referred to as “the OCM”). The OCM will issue licenses and develop regulations outlining how and when businesses can participate in the new industry. A major focus of the MRTA is social and economic equity. The MRTA incentivizes participation in the new industry for individuals disproportionately impacted by cannabis prohibition, automatically expunges an individual’s past marijuana convictions, and invests 40% of the adult-use cannabis tax revenue toward rebuilding communities harmed by the War on Drugs.

### Participation in the Cannabis Industry

The MRTA establishes a robust social and economic equity program to prioritize and provide resources to members of communities who have been disproportionately impacted by the policies of cannabis prohibition, to participate in the new industry through the implementation of a social and economic equity plan. The MRTA establishes the role of a Chief Equity Officer within the OCM, who will be responsible for overseeing the social and economic equity initiatives of the Office.

The Cannabis Control Board, in consultation with the Chief Equity Officer and the OCM’s Executive Director, and after receiving public input, will create and implement a social and economic equity plan to:

- Actively promote applicants from communities disproportionately impacted by cannabis prohibition, and promote racial, ethnic, and gender diversity when issuing licenses for adult-use cannabis related activities, including mentoring potential applicants and prioritizing applications from applicants who are members of communities disproportionately impacted by the enforcement of cannabis prohibition or who qualify as a minority or women-owned business, distressed farmer, or service-disabled veteran.
- Create an incubator program to encourage social and economic equity applicants to apply for licensure and to provide direct support in the form of counseling services, education, small business coaching, financial planning and compliance assistance.

The MRTA establishes a goal to award 50% of all adult-use licenses to social and economic equity applicants. Social and economic equity applicants include individuals who have lived in communities disproportionately impacted by the War on Drugs and other underrepresented groups including minority and women owned businesses, distressed farmers, and service-disabled veteran-owned businesses. The definitions of these groups as set out in the MRTA are outlined below. More details will be prescribed in future regulations promulgated by the Cannabis Control Board.

**(a) Individuals from communities disproportionately impacted by the enforcement of cannabis prohibition.**

- The Cannabis Control Board will issue guidelines to determine how to assess which communities have been disproportionately impacted and how to assess if someone is a member of a community disproportionately impacted.
- “Communities disproportionately impacted” means, but is not 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.

**(b) Minority-Owned Businesses**

- A business enterprise, including a sole proprietorship, partnership, limited liability company or corporation that is:
  - » At least fifty-one percent owned by one or more minority group members;
    - “Minority group member” is a United States citizen or permanent resident alien who is and can demonstrate membership in one of the following groups:
      - Black persons having origins in any of the Black African racial groups;
      - Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American of either Indian or Hispanic origin, regardless of race;
      - Native American or Alaskan native persons having origins in any of the original peoples of North America; or
      - Asian and Pacific Islander persons having origins in any of the far east countries, south east Asia, the Indian subcontinent or the Pacific islands.
  - » An enterprise in which such minority ownership is real, substantial and continuing;
  - » An enterprise in which such minority ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise;
  - » An enterprise authorized to do business in this state and independently owned and operated; and
  - » An enterprise that is a small business.

**(c) Women-Owned Businesses**

- A business enterprise, including a sole proprietorship, partnership, limited liability company or corporation that is:
  - » At least fifty-one percent owned by one or more United States citizens or permanent resident aliens who are women;
  - » An enterprise in which the ownership interest of such women is real, substantial and continuing;
  - » An enterprise in which such women ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise;
  - » An enterprise authorized to do business in this state and independently owned and operated; and
  - » An enterprise that is a small business.

**(d) Minority and Women-Owned Businesses**

- A firm owned by a minority group member who is also a woman may be defined as a minority-owned business, a women-owned business, or both.

**(e) Distressed Farmers**

- A New York state resident or business enterprise, including a sole proprietorship, partnership, limited liability company or corporation, that meets the small farm classification developed by the Economic Research Service of the United States Department of Agriculture, has filed a schedule F with farm receipts for the last three years, qualifies for an agriculture assessment and meets other qualifications defined in regulation by the board to demonstrate that they operate a farm operation as defined in section three hundred one of the agriculture and markets law and has been disproportionately impacted, including but not limited to incurring operating losses, by low commodity prices and faces the loss of farmland through development or suburban sprawl and meets any other qualifications as defined in regulation by board; or
- A New York state resident or business enterprise, including a sole proprietorship, partnership, limited liability company or corporation, that is a small farm operator and a member of a group that has been historically underrepresented in farm ownership and meets any other qualifications as defined in regulation by board.

**(f) Service-Disabled Veterans**

- A business enterprise, including a sole proprietorship, partnership, limited liability company or corporation that is:
  - » At least fifty-one percent owned by one or more service-disabled veterans;
  - » An enterprise in which such service-disabled veteran ownership is real, substantial, and continuing;
  - » An enterprise in which such service-disabled veteran ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise;
  - » An enterprise authorized to do business in this state and is independently-owned and operated;
  - » An enterprise that is a small business which has a significant business presence in the state, not dominant in its field and employs, based on its industry, a certain number of persons as determined by the director, but not to exceed three hundred, taking into consideration factors which include, but are not limited to, federal small business administration standards pursuant to 13 CFR part 121 and any amendments thereto; and certified by the office of general services.

**(g) Extra priority shall be given to applications that demonstrate that an applicant:**

- Is a member of a community disproportionately impacted by the enforcement of cannabis prohibition;
- Has an income lower than eighty percent of the median income of the county in which the applicant resides; and
- Was convicted of a cannabis-related offense prior to the effective date of this chapter, or had a parent, guardian, child, spouse, or dependent, or was a dependent of an individual who, prior to the effective date of this chapter, was convicted of a cannabis-related offense.

## **MRTA Market Structure Benefits Social Equity**

Social equity programs in other states have struggled due to barriers of entry for social and economic equity applicants, including having the access to capital to start a new business. To address this, the MRTA establishes a two-tier market structure which prohibits licenses from being vertically integrated and owning the majority of the market.

- This allows for multiple opportunities for social and economic equity applicants and small businesses to apply for licenses.
- The adult-use microbusiness, cooperative, on-site consumption and delivery license types are all examples of low barrier-to-entry licenses, which the MRTA prioritizes for social and economic equity applicants.
- Licenses issued under the social and economic equity plan cannot be transferred or sold within the first three years of issuance, except to another qualified social and economic equity applicant with approval from the Cannabis Control Board.
- Additionally, all non-equity licensees are required as part of the application process, to develop and implement a social responsibility framework, which is designed to contribute to communities disproportionately harmed by cannabis prohibition and to annually report this progress to the Cannabis Control Board. Adherence to this requirement, is a condition of license renewal.

## **Community Reinvestment and Correcting the Harms of Cannabis Prohibition**

The MRTA includes provisions to automatically expunge a previous cannabis conviction(s) from an individual's record. Building upon the marijuana decriminalization legislation signed by Governor Cuomo in 2019, the MRTA calls for the expungement of any marijuana conviction for conduct which is now legal under the law.

Additionally, the MRTA rethinks how cannabis should be regulated, removing provisions that have routinely been used to over-police and criminalize communities and people of color. Except for limited circumstances, the odor of cannabis can no longer be used as a pretext to further investigate a crime and the prohibition on using cannabis in public has been eliminated, reducing the interactions between communities of color and law enforcement.

The criminal penalties and corresponding possession limits for cannabis have been intentionally set at levels that only criminalize the possession or sale of large quantities of cannabis, clearly not intended for personal use. Additionally, the MRTA includes provisions allowing New Yorkers over 21 years old to grow their own cannabis at their personal residence, once regulations pertaining to home grow have been promulgated by the Cannabis Control Board.

The MRTA dedicates 40% of the adult-use cannabis tax revenue to the New York State Community Reinvestment Grant Fund. Through this fund, qualified community-based nonprofit organizations and local governments would be eligible to apply for funding to support several different community revitalization efforts, including, but not limited to:

- Job placement and skills services
- Adult education
- Mental health treatment
- Substance use disorder treatment
- Housing
- Financial literacy
- Community banking

- Nutrition services
- Services to address adverse childhood experiences
- Afterschool and childcare services, system navigation services
- Legal services to address barriers to reentry
- Linkages to medical care, women’s health services and other community-based supportive services
- To further support the social and economic equity program, furthering participation of equity applicants in the cannabis industry

The grants will be awarded by a newly established State Cannabis Advisory Board (Advisory Board). The Advisory Board consists of thirteen (13) voting members with seven (7) appointments from the Governor, three (3) from the Senate, and three (3) from the Assembly. The Advisory Board will include representation from individuals with 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. Additionally, the Advisory Board is required to include residents from communities most impacted by cannabis prohibition, people with prior drug convictions, the formerly incarcerated, and representatives from the farming industry, cannabis industry, and representatives of organizations serving communities impacted by past federal and state drug policies.

### Contact Us

Please visit our website or contact us using the e-mail and phone number below for more information.

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