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## Social Justice & Equity in the Cannabis Industry:

- New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act
- marijuana regulation and taxation act

# Mercury.

Ansell Grimm & Aaron, PC

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# Legislative Intent

- NJCREAMMA

“Black New Jerseyans are nearly three times more likely to be arrested for marijuana possession than white New Jerseyans, despite similar usage rates;”

- (NY)MRTA

“Existing marihuana laws have disproportionately impacted African-American and Latinx communities.”

# Permits, and Licenses, and Registrations Oh my!

## New Jersey

- Class 1 Cannabis Cultivator
- Class 2 Cannabis Manufacturer
- Class 3 Cannabis Wholesaler
- Class 4 Cannabis Distributor
- Class 5 Cannabis Retailer
- Class 6 Cannabis Delivery
- Licensed Testing Laboratory
- Consumption Area Endorsement

## New York

- Cultivator License
- (RO) cultivator-processor-distributor-retail
- (RO) cultivator-processor-distributor
- Processor License
- Cooperative license
- Distributor License
- Retail Dispensary License
- Microbusiness License
- Delivery License
- Nursery License
- On-site consumption License
- Laboratory testing Permit

# Impact Zones

“based on past criminal marijuana enterprises contributing to higher concentrations of law enforcement activity, unemployment, and poverty...”  
(determined with 2019 data)

- Population: 120,000+
  - Top 40% for marijuana- or hash-related offenses
  - Crime index total of 825+
  - Top 15% for local average annual unemployment
- Municipality in county of 3rd class
  - Top 40% for marijuana- or hash-related offenses
  - Top 15% for local average annual unemployment
- Municipality in county of 2nd class
  - Population < 60,000
    - Top 40% of marijuana- or hash-related offenses
    - Crime index total of 1,000+
    - Bottom 85% for local average annual unemployment
  - 60,000 < Population < 80,000
    - Crime index total of 650+
    - Local average annual unemployment rate of 3%+

# Reporting to NJ Governor and Legislature

- Annually
  - Racial, ethnic, disabled veteran, and gender diversity for those issued and holding permits and licenses
  - Business development initiatives undertaken by Office of Minority, Disabled Veterans, and Women Cannabis Business Development (OMDVWCBD)
  - Statistics of arrests for drug offenses (including cannabis)
  - Statistics on motor vehicle stops
  - Proportion of sales that are deliveries
- Biannually (2 years)
  - Shall evaluate the number of medical cannabis permits and determine if any permit-holder has charged excessive prices
  - May evaluate the number of adult-use licenses

# Reporting to NY Governor and Legislature

- Findings
  - Number of registrations, licenses, and permits applied for, approved, and denied, by geographic region
  - Economic and fiscal impacts
  - Specific programs & progress in achieving goals of the social and economic equity plan, and other social justice goals
  - Demographic data of owners and employees
  - Impacts associated with public safety
- Recommendations
  - Appropriate level of taxation of adult-use cannabis
  - Changes to improve registration, licensing, and permitting
  - Promoting and encouraging social and economic equity applicants
  - Improve and protect public health and safety
  - Improve access for substance abuse treatment programs

# Office of Minority, Disabled Veterans, and Women Cannabis Business Development

- “Shall establish and administer, under the direction of the commission, unified practices and procedures for promoting participation in the medical cannabis and personal use cannabis industries by persons from socially and economically disadvantaged communities, including by prospective and existing ownership of minority businesses and women’s businesses, ... and disabled veterans’ businesses ...”
- “Shall sponsor seminars and informational programs, ... including information on business management, marketing, and other related matters.”
- Measure of success - 30%
  - 15% - certified minority business
  - 15% - women’s and disabled veterans’ businesses

# Cannabis Control Board, Office of Cannabis Management, & State Cannabis Advisory Board

- Cannabis Control Board
  - Sole discretion to limit the number of registrations, licenses, and permits in a manner that prioritizes social and economic equity applicants with a goal of 50%
  - Advise the OCM in making low interest or zero-interest loans to qualified social and economic equity applicants
- Office of Cannabis Management
  - Within division of alcoholic beverage control
  - Exclusive jurisdiction to exercise the powers and duties to enforce CCB industry regulations
- Chief Equity Officer
  - Development and implementation of social and economic equity plan
  - Establish education programming dedicated to those impacted by prohibition
- State Cannabis Advisory Board
  - Recommendations to CCB, OCM, and the legislature on cannabis & hemp cultivation, processing, distribution, transport, social and economic equity in the cannabis and hemp industries, criminal justice, public health & safety concerns, law enforcement related to cannabis and cannabis products, and on the testing and sale of cannabis and cannabis products



# Social Equity Application Considerations

- M/WBE Status
- Community impact, social responsibility, and research statement
  - Summarize the positive impact you will have on community
  - Description of record of social responsibility, philanthropy, and ties to proposed community
  - Description of any research, cannabis-related educational and outreach activities
- Workforce development and job creation plan
- Affiliation with a prisoner re-entry program
- \*Labor Peace Agreement\*
  - 200 days

# Social Equity Application Considerations

- Social and economic equity applicant
  - From community disproportionately impacted by the enforcement of cannabis prohibition
  - MWBE applicants
  - Distressed farmers
  - Service-disabled veterans
- A plan for benefiting communities and people disproportionately impacted by enforcement of cannabis laws
- Ability to increase climate resiliency and minimize or eliminate adverse environmental impacts
- The environmental and energy impact of the facility to be licensed for adult-use cultivators and processors
- Labor Peace Agreement

# Social and Economic Equity Plan and Incubator Program

- Shall promote diversity in commerce, ownership, employment, and opportunities for social and economic equity in the adult-use cannabis industry
- Actively promote qualifying applicants
  - Mentoring potential applicants
  - Prioritizing consideration of applications
- Extra priority for applicants:
  - Income lower than 80% of the median income of the county in which applicant resides
  - Was convicted or had parent, guardian, child, spouse, or dependent, or was a dependent of an individual convicted of a marijuana-related offence prior to the effective date of MRTA
- Incubator provides direct support to successful applicants
- Social and Economic Equity licenses can only be transferred to qualified Social and Economic Equity applicant first three years after issuance

# Impact Zone Applicant Considerations

- The impact zone has less than two licenses, so that there will be a prioritized distribution of licenses for at least two licensees per impact zone.
- Those who are current residents of an impact zone and have resided therein for three or more consecutive years at time of application.
- Those who plan to employ 25% of employees who reside in any impact zone
  - 25% of those residing in the nearest impact zone to licensed premises
  - 90 days from licensure to comply

- “Once regulations are adopted by the commission pursuant to subsection a. of this section, but prior to the commencement of the application process, the commission shall conduct a series of information sessions in every county in New Jersey to educate residents of New Jersey about the responsibilities, opportunities, requirements, obligations, and processes for application for a license to operate a cannabis establishment, distributor, or delivery service. The commission shall conduct an appropriate number of information sessions in each county considering the population of each county, but no fewer than one information session in each county. The commission shall publicize the day, time, location, and agenda of each information session broadly through television, radio, Internet, print, and local agencies.”
- “begin accepting and processing applications within 30 days after the commission’s initial rules and regulations have been adopted pursuant to subparagraph (a) of paragraph (1) of subsection d. of section 6. of P.L.2021, c. 16 (C.24:6I-34);”

# Microbusiness Licenses

- At least 10% of each Class
- At least 25% of total licenses
- No-cap on number
- Maximum fee is half of that charged to non-microbusinesses
- Microbusiness license not transferable
- Microbusiness status can be converted
- Status Conversion does effect statistics
- 100% ownership by New Jersey residents for at least past two years.
- No mutual ownership with other licenses
- 51% of owners, directors, officers, or employees reside in microbusiness municipality or a bordering municipality
- 10 employees maximum
- 2,500 square feet maximum
  - Grow area for cultivators
  - Total area for the rest
- 1,000 plants or pounds limits

# Vertical Integration in New York (Micro or otherwise)

- “A microbusiness license shall authorize the limited cultivation, processing, distribution, delivery, and dispensing of their own adult-use cannabis and cannabis products.”
  - “the granting of such licenses shall promote social and economic equity applicants ...”
- Registered organization adult-use cultivator processor distributor retail dispensary license
  - “... may only distribute its own products”
- Registered organization adult-use cultivator, processor and distributor license
  - “... may only authorize the distribution of the licensee’s own products.”

# Optional Social Equity Excise Fee

“There may be a Social Equity Excise Fee imposed by the commission on the cultivation of cannabis by any cannabis cultivator ...”

- If applied, must be on all transfers except to other cultivators
  - $\frac{1}{3}$  of 1% of Statewide average retail price of an ounce for consumer purchase.
  - Nine months after first transfer by non-ATC cultivator, rate can be adjusted annually
- Not applicable to transfers of medical cannabis
  - Not applicable to adult use cannabis transferred to ATC for medical use
  - Deposited into the Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Fund to be used for annual appropriations for investing in social equity programs



# Social Equity Excise Fee Funds

“ ... the commission shall consult and make recommendations to the Governor and Legislature for making social equity appropriation ... ”

- CRC will hold at least three public hearings throughout the State to solicit public input on social equity investments
  - Educational support: literacy programs, extended learning time programs, GED application and preparedness assistance, tutoring programs, vocational programming, financial literacy, etc.;
  - Economic development: stimulate economic activity, increase or preserve residential amenities, business marketing, job skills and readiness training, employment training and apprenticeships, etc.;
  - Social support services: food assistance, mental health services, substance use disorders treatment and recovery, youth recreation and mentoring services, life skills support services, reentry and other rehabilitative services, etc.;
  - Legal aid for civil and criminal cases
  - Can recommend that a portion is retained for Office of Minority, Disabled Veterans and Women Cannabis Business Development

# Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Fund

- Monies other than Social Equity Excise Fees
  - 70%+ for investments (grants, loans, reimbursements of expenses, etc.) in municipalities defined as “impact zones”
  - Remainder
    - Oversee development, regulation, and enforcement of activities associated with personal use cannabis
    - Assist with assuming responsibility from Dept. of Health
    - Reimburse expenses to counties and municipalities for training costs associated with Drug Recognition Experts
    - Further investments in “impact zones” and financial assistance to qualifying persons residing therein as recommended by CRC
  - Monies remaining after appropriation goes to State’s General Fund

# Article 20-C: NY Tax on THC

- Imposed on adult-use transfers from Distributors to ones who sells at retail
  - accrues at time of retail sale for microbusinesses and registered organizations
    - Flower: five-tenths of one cent per milligram of amount of total THC
    - Concentrate: eight-tenths of one cent per milligram of the amount of total THC
    - Edible Product: three cents per milligram of the amount of total THC
- Imposed at time of sale at retail
  - 9% - Cannabis Revenue Fund
  - 5% - local
- Not applicable to transfers to cannabis research licensees
- Quarterly tax-returns
- Taxes distributed to municipalities that opt-in
- Illicit cannabis penalty

# New York State Cannabis Revenue Fund

- Reasonable costs of the department of taxation and finance, the OCM, and the CCB
- Costs incurred related to administration of incubators and other assistance to social and economic equity applicants
- Reasonable costs of acquiring the data for annual reporting
- Reasonable costs of drug recognition expert programs and technology
- Reasonable costs to implement expungement provisions
- Remaining:
  - 40% for grants to eligible school districts
  - 20% in drug treatment and public education fund
  - 40% in community grants reinvestment fund

# The Waiting Game

## New Jersey

- 02/22/21: CREAMMA passes
- 08/21/21: Deadline for Rules
- 08/21/21: Local opt-outs
- 02/17/22: Latest sales start

## New York

- 03/31/21: MRTA passes
- 12/31/21: Local opt-outs
- 04/01/22: Article 20-C begins
  
- Law currently governing Medical & Cannabinoid Hemp will expire six months after CCB appointed



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