

## Empire State Cannabis Update: Social & Economic Equity – What is it, Who Qualifies, and the Path to Licensure



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When New York State legislators passed the Marijuana Regulation and Taxation Act (MRTA) in March of 2021, the legislative intent of the bill was clear—“generate significant new [tax] revenue” and “make substantial investments in communities and people most impacted by cannabis criminalization to address the consequences of such criminalization.” While the tax revenue plan was cut and dry—a 13 percent gross tax on cannabis products (9 percent state and 4 percent municipal)—how the Cannabis Control Board (CCB) and Office of Cannabis Management (OCM) would accomplish its Social and Economic Equity Plan has been much less clear.

At the beginning of January 2022, however, New Yorkers received their first glimpse of the benefits social equity applicants will receive under the MRTA. As part of her State of the State address, Governor Kathy Hochul’s accompanying [State of the State Book](#) made a major commitment—a “\$200 million public-private fund. . . . [to] provide direct capital and startup financing to social equity applicants as the state takes meaningful steps to ensuring that New York’s cannabis industry is the most diverse and inclusive in the nation.”

In direct response to Hochul’s announcement, in its first meeting of 2022, the Cannabis Control Board addressed the adult-use program for the first time, focusing on the social and economic equity fund announced by the governor. As demonstrated by the CCB’s slide below, the fund’s initial purpose will be to “provide support to certain licensed social and economic equity entrepreneurs for the costs of establishing and operating adult-use cannabis retail dispensaries.”

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*This is just the beginning.*

In the coming months, the CCB will build out the essential elements of the social and economic equity program and how it will affect licensing in order to accomplish the goals of the MRTA. Still, the full spectrum of benefits this program will offer remain largely undefined. On the eve of adult-use regulations, it is important to underscore what we do know about the MRTA and social equity so prospective applicants can assemble the necessary materials to qualify for such treatment and reap the benefits of the program and the fund once applications go live. Below are the main facets of the MRTA’s social and economic equity program.

### **What are the MRTA’s goals for social and economic equity in New York’s adult-use marketplace?**

MRTA § 87(1) requires the CCB to create and implement a social and economic equity plan that “promote[s] racial, ethnic, and gender diversity when issuing licenses for adult-use cannabis related activities,” through mentoring and prioritizing those who qualify as social equity applicants. “The [CCB’s] social and economic equity plan shall also promote diversity in commerce, ownership and employment, and opportunities for social and economic equity in the adult-use cannabis industry.” MRTA § 87(2).

### **Who/what will qualify as a social and economic equity applicant?**

Pursuant to MRTA § 87(2), the following categories of businesses qualify as social and economic equity applicants:

- individuals from communities disproportionately impacted by the enforcement of cannabis prohibition;
- minority-owned businesses;
- women-owned businesses;
- minority and women-owned businesses;
- distressed farmers; and
- service-disabled veterans.

In order to qualify as one of these applicants, the owners of the business applying must be “at least fifty-one percent owned by one or more of the social equity members.” MRTA § 87(5).

Further, extra priority will be given those social equity applicants who demonstrate they:

- are a member of a community disproportionately impacted by the enforcement of cannabis prohibition;
- have an income lower than eighty percent of the median income of the county in which the applicant resides;
- and

- were convicted of a marijuana-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 marijuana-related offense.

This group may be subject to further expansion in 2022 because in December 2021, Senator Jeremy Cooney (D) filed two bills seeking to including [gay](#), [lesbian](#), [bisexual](#), [transgender](#), and [non-binary](#) people in the social and economic equity program.

## **What benefits will a social equity applicant or licensee receive?**

### **1. Priority in application**

MRTA § 87(2) establishes a goal of awarding “fifty percent of adult-use cannabis licenses” to social equity applicants.

### **2. Waived or Reduced Fees**

MRTA § 63(3) permits the CCB to “waive or reduce [application] fees . . . for social and economic equity applicants.” Given that surrounding states like New Jersey and Connecticut are charging between \$500 to \$1,600 to even be a part of the licensing process, and well into five figures for a license this could be a notable cost-saver for social equity applicants. For example, a cultivation license costs \$75,000 in Connecticut and up to \$50,000 in New Jersey, while a manufacturer’s license costs \$25,000 in Connecticut and up to \$50,000 in New Jersey.

### **3. Mentoring by the Board**

The CCB, in consultation with the chief equity officer and OCM executive director, is tasked with promoting social equity applicants to apply through, among other things, “mentoring potential applicants.” What form this mentoring will take is yet to be determined, but the idea of direct mentoring by the board that has the final decision on licensing could be a huge advantage for social equity applicants that take advantage of it.

### **4. Access to an Incubator Program**

In addition to mentoring during the application process, MRTA § 87(4) requires the CCB to “create an incubator program to encourage social and economic equity applicants to apply and, if granted an adult-use cannabis license, permit or registration, the program shall provide direct support in the form of counseling services, education, small business coaching and financial planning, and compliance assistance.”

### **5. Grants**

The grants discussed above in Governor Hochul’s State of the State Book will be made pursuant to MRTA § 99-kk(4), which empowers the state cannabis advisory board, a subset of OCM, to award this funding to social equity applicants. Since the grant program will be funded primarily by application fees and private funding, it is likely that grants will be available only post-application for supply side licensees. On the other hand, funds may be available to retail and on-site applicants during or immediately after the licensing process pursuant to the CCB’s plan to assist these applicants through the Social and Economic Equity Fund.

## **What restrictions are placed on social equity applicants?**

As evidenced by the benefits conferred upon social equity applicants in the licensing process, the MRTA is intent on doing whatever it can to ensure these businesses are successful. It also requires the CCB and OCM to scrutinize



applicants who may seek to take advantage of priority in the initial application process only to later become non-social equity operators.

Specifically, MRTA § 87(7) prohibits social equity licensees from transferring or selling their licenses “within the first three years of issue, except to a qualified social and economic equity applicant and with the prior written approval of the board.” Even with CCB approval, or after this three-year non-transferability period expires, if a social equity licensee seeks to transfer or sell its license to a non-social equity qualifier, the new license holder will be required “to pay to the [CCB] any outstanding amount owed by the transferor to the board as repayment of any loan . . . as well as any other fee or assessment as determined by the [CCB].” *Id.*

Further, if a licensee (social equity or not) undergoes any “change in ownership [or] substantial corporate change . . . without prior written approval of the [CCB],” where “substantial corporate change” means “a change of fifty-one percent or more of the ownership interest in the company,” the license will be voided and the licensee will be prohibited from operating.

## **Conclusion**

While the CCB’s social and economic equity program is still in its infant stages, the MRTA provides a number of support mechanisms to entice qualifiers to apply and succeed in New York’s adult-use marketplace, while also attempting to prevent predatory actions from non-qualifiers. With application season just around the corner, and New York’s adult-use market beginning to take shape, social equity applicants will have a lot to process. The earlier these potential licensees can begin organizing their businesses and assembling materials to show they qualify, the better prepared they will be for the overall application process.

Lippes Mathias’ [Cannabis Practice Team](#) will continue to monitor the developments in New York’s cannabis burgeoning industry, including additional developments for social and economic equity applicants, when adult-use regulations are published, and when applications are expected to be released. If you have any questions, please contact one of our attorneys.

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