

CANNABIS LAW

NJ's Framework for Social Equity Within the Adult-Use Recreational Cannabis Industry

By **Chirali Patel and Lisa Gora**

New Jersey became the 13th state to legalize adult-use cannabis on Feb. 22, 2021, after Governor Phil Murphy signed legalization and decriminalization bills into law. Much like the 12 states before it that decided to establish a legal adult-use recreational cannabis industry, New Jersey sought to find a pathway of equity for those who were disenfranchised by the War on Drugs. This article explores the initiatives the Garden State has taken to ensure access for such individuals who have ambitions of participating in the new regulated industry, and the plans in place to award recreational cannabis licenses to the historically disadvantaged groups.

Leveling the Playing Field: The Microbusiness License

First and foremost, the term “social equity” cannabis operator applicant does not apply in New Jersey; the applicable terminology is a “microbusiness” license. The microbusiness license is a “reduced” form of one of the six recreational licenses that allows for the maintenance of a smaller cannabis business operation concerning capacity and quantity.

More importantly, two microbusiness license requirements limit the ability of multi-state operators to obtain such licenses, creating an entry point to the regulated recreational market for residents of New Jersey who have been disproportionately marginalized and/or disadvantaged socially or economically by the War on Drugs.

The microbusiness license requires that: (1) 100% of the ownership in the microbusiness be held by New Jersey residents who have resided in New Jersey for at least two years prior to the submission of the microbusiness application; and (2) at least 51% of the owners, directors, officers or employees of the microbusiness must reside in the town, or the neighboring town, where the microbusiness will operate.

These two requirements establish a path for New Jersey entrepreneurs to avoid competing with established multi-state operators. In fact, pursuant to the New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act (CREAMMA), microbusiness license applicants will only compete with other microbusiness applicants



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and not against full license applicants that are often well capitalized and experienced multi-state operators who provide the same or similar cannabis services in other states. Additionally, CREAMMA provides that at least 25% of the total number of cannabis licenses in aggregate, no matter the class, shall be awarded to microbusinesses, with at least 10% of the total licenses issued to each class of cannabis license issued to microbusinesses.

Beyond the heightened restrictions imposed on the microbusiness license, it is a license class that will enable individuals with less capital, experience and resources to operate a recreational cannabis business with lower overhead due to applicable size limitations. The criteria set forth in

CREAMMA for a microbusiness are as follows:

- A microbusiness cannot employ more than 10 individuals.
- Microbusiness operations cannot be more than 2,500 square feet; for cultivators, the vertical height of the grow cannot be more than 24 feet.
- A microbusiness cannot possess more than 1,000 cannabis plants each month; cannabis distributors are not subject to this limit.
- A microbusiness manufacturer cannot acquire more than 1,000 pounds of usable cannabis each month.
- A microbusiness wholesaler cannot acquire for resale more than 1,000 pounds of useable cannabis each month.
- A microbusiness retailer cannot acquire more than 1,000 pounds of usable cannabis each month.
- No owner, director, officer, or other person with a financial interest who also has decision making authority for the microbusiness can hold any financial interest in any other licensed cannabis business (whether a microbusiness or not).
- A microbusiness cannot sell or transfer its license.
- A microbusiness licensee or applicant is not required to enter into a labor peace agreement with a labor organization.

Significantly, there is no cap on the overall number of microbusiness licenses that can be awarded as opposed to the two-year cap on cultivation licenses, which stands at 37. Additionally, the application fee for microbusinesses is currently capped

at 50% of the fee charged for non-microbusiness licenses. Importantly, microbusinesses are not restricted from growth as these license holders retain the ability to convert to a full-scale license, based upon criteria to be defined by the Cannabis Regulatory Commission (CRC). This aspect allows microbusiness owners to expand their footprint as their microbusiness grows, instead of staying static in perpetuity. Lastly, among the noteworthy initiatives created by CREAMMA, the law provides that the CRC must award at least 30% of the total number of recreational cannabis licenses to minorities, women and disabled veterans. The regulations governing the license application process are expected to be finalized by Aug. 21, 2021.

In addition to the creation of a license category intended to promote social equity, the legislation provided for the establishment of the Office of Minority, Disabled Veterans, and Women Cannabis Business Development (the Office), which will be housed within the CRC. The Office will be responsible for establishing practices and procedures to promote participation in the recreational cannabis market by persons from socially and economically disadvantaged communities. The Office will be responsible for certifying businesses as minority-owned, women-owned, or disabled veteran-owned businesses. Additionally, it will conduct advertising and promotional campaigns to increase participation in the industry by persons from socially and economically disadvantaged communities.

The Office will also be responsible for evaluating the effectiveness of the measures designed to promote diverse participation in the recreational cannabis industry. The effectiveness of the Office's measures will be assessed by considering whether the measures have resulted in not less than 30% of the total number of licenses issued by the CRC being issued to minority, women's, and disabled veterans' businesses. CREAMMA does not identify what would happen if the 30% benchmark is not achieved; however, this may be addressed in the regulations currently being promulgated by the CRC.

Operating a Microbusiness in New Jersey 'Impact Zones'

New Jersey plans to utilize a substantial portion of its anticipated tax revenue derived from the adult-use recreational market to promote social equity initiatives as described further below. The proposed social equity excise fee would apply only to cannabis cultivators and remains a discretionary fee within the control of the CRC. If imposed, the fee could be paid by the cultivator or the purchaser. Additionally, at least 70% of all tax revenues generated from retail sales of recreational cannabis will be used for grants, loans, reimbursement of expenses and other financial assistance in municipalities defined as "impact zones." To be deemed an impact zone, the municipality must demonstrate that it has an elevated number of cannabis crimes, overall crime rate, and unemployment. Priority will be given to applications for businesses or microbusinesses that seek to operate within an

impact zone, with considerations for individuals who resided in an impact zone for three or more years prior to submission of the application.

Any excise fee revenue that is collected shall be used for annual appropriations for investing in social equity programs, which are to be recommended by the CRC. These will aim to create, expand or promote educational and economic opportunities and activities, as well as programs that promote the health and well-being of both communities and individuals. A few of the categories of social equity programs that the CRC may recommend are (i) educational support, (ii) economic development, (iii) social support services, and (iv) legal aid in civil and criminal cases.

- Educational support services include literacy programs, extended learning time programs that endeavor to close the achievement gap and provide services for enrolled students after the traditional school day, GED application and preparedness assistance, tutoring programs, vocational programming and financial literacy programs.

- Economic development services include programs that encourage and support community activities so as to stimulate economic activity or increase or preserve residential amenities and business marketing and job skills.

- Social support services include food assistance, mental health services, substance use disorders treatment and recovery, youth recreation and mentoring services, life skills

support services and reentry, and other rehabilitative services for adults and juveniles being released from incarceration.

The CRC may also recommend that it retain a portion of the social equity excise fee to administer startup grants, low-interest loans, application fee assistance, and job training programs through the Office. The CRC will be required to obtain annual appropriations act approval before doing so.

The ‘Conditional’ License Protects Smaller Businesses

Lastly, another way that the legislature attempted to protect the smaller business entrepreneur is by creating the “conditional” license. The conditional license allows local inexperienced players to enter the recreational cannabis market with much less capital. It is intended to make licenses available to those with lower income levels and those not yet in a position to meet all of the conditions of full licensure, provided the applicant can meet the requirements and criteria of the specific license within 120 days from the issuance of the conditional license. For example, if an applicant cannot secure property or establish site security prior to the date of submission of the application, they would apply for a conditional license, which would grant the applicant 120 days from the date the conditional license was issued to establish site control or site security.

The full set of qualifications for a conditional license has not yet

been set forth in CREAMMA, but to be eligible for a conditional permit, each person with a financial interest and decision-making authority for the proposed cannabis business cannot have an adjusted gross income of more than \$200,000, or more than \$400,000 if filing jointly.

It is apparent that New Jersey sought a path to ownership in the recreational cannabis marketplace for historically disadvantaged individuals and communities. Governor Murphy further confirmed the state’s commitment to social equity by selecting Dianna Houenou as the CRC Chairwoman. Her background as policy counsel for the ACLU-NJ may make her uniquely qualified and capable of shaping the regulations to provide for social equity. Through her duties as chairwoman, and in concert with the other members, the CRC has held public meetings and discussed social equity as one of the topics on which they have invited public comment.

Disclaimer: Cannabis remains a scheduled narcotic under federal law and anyone considering entering this field should consult with competent counsel first.

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