



Marijuana Regulation and Taxation Act Part 1: Licensing Guidelines

Phillips Lytle is committed to keeping you informed of the latest developments and will issue a series of alerts designed to assist businesses with the ever-evolving regulatory framework associated with marijuana regulations.

INTRODUCTION

As discussed in more detail in our April 2021 client alert [“New York State Legalizes Marijuana for Adult Use,”](#) New York State Governor Andrew Cuomo signed the Marijuana Regulation and Taxation Act (“Act” or “MRTA”) into law on March 31, 2021. The Act provides the framework for the licensure, cultivation, production, distribution, sale and taxation of adult-use marijuana within New York State.

Since the Act was signed into law, hopeful licensees question how and when they can obtain licenses and what information will be required in the licensure process. Unfortunately, there is no definitive answer on timing, as the answer will come from the newly created Cannabis Control Board (“CCB”). Similarly, the CCB has not yet released license applications or outlined potential license fees. However, the Act does provide guidance to the CCB regarding information required to be included in the licensing process, and this guidance may provide businesses with insight into the form and content of applications to be issued by the CCB. Below is a summary of all application processes outlined in the Act.

LICENSE APPLICATION INFORMATION

The Process: Application Submissions, Review, and Preliminary and Final Determinations

All license applications will be submitted to the Office of Cannabis Management (“OCM”). While the CCB will issue the form of the license, the OCM will administer and receive applications. After receipt, the OCM will complete an initial review and provide the license application, along with a recommendation and all relevant application information, to the chairperson of the CCB. The CCB chairperson will then issue a preliminary decision regarding whether the license shall be granted, denied or held for further action. If no objections are made by any board member, the chairperson’s preliminary determination shall take effect.

General License Information: License Fees, When Licenses Will Expire, and Changes to a License After It Is Issued

All license applications must be accompanied by a non-refundable check (or another form of payment). The CCB will determine the fees based on license type and potentially based on cultivation and production volume. The CCB may reduce or waive the fee for social and economic equity applicants (50% of licenses are targeted to social and economic equity applicants). All applicants must be over 21 years of age. All licenses will expire after two years, with a renewal application issued at least 90 days prior to expiration. Once granted, licenses are non-transferable and non-assignable. The Act specifically requires agency approval for changes in license ownership, location and substantial corporate changes (defined as 51% or more change in stockholders, members, officers, directors or partners).



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The CCB Powers

The CCB has the discretion to limit (or not limit) the number of registrations, licenses and permits of each license class to be issued within the State, in a manner that prioritizes social and economic equity applicants. The CCB has the power to set the application fee for each type of license, as well as the power to waive or reduce fees for social and economic equity applicants. The CCB also has the power to add additional requirements to those outlined below.

Required License Application Information Under the Act

In addition to any rules and regulations from the CCB, information regarding the following topics will be required:

- The applicant's identity, including racial, ethnic and economic diversity.
- Ownership and investment information, including the corporate structure of the entity.
- The applicant's (and all involved persons') good moral character, which includes the submission of fingerprints to the New York State Division of Criminal Justice Services.
- The applicant's finances, including financial statements.
- The premises that will be licensed, including the land, building and facilities to be used.

Factors to Be Considered Under the Act

In addition to any rules and regulations from the CCB, information regarding the following topics will be considered:

- The applicant's ability to maintain effective controls against the illegal use of cannabis.
- The applicant's ability to comply with all applicable State laws and regulations.

- The applicant's willingness to carry on the activities for which a license is sought, including assistance from the social and economic equity and incubator programs (where applicable).
- Whether it is in the public interest that the license should be granted, which looks at a variety of criteria.
- Whether the applicant will contribute to communities and people disproportionately harmed by the enforcement of cannabis laws, through the social responsibility framework.
- Whether the applicant is a social and economic equity applicant.
- The number of licenses already issued in a certain geographic area.

Conclusion

As shown above, the Act alone provides plenty of requirements for potential applicants to take note of before applying for a license. In summary:

- Detailed license application requirements will be provided in the forthcoming CCB and OCM regulations.
- The MRTA sets forth licensure standards to encourage ownership by New York State residents.
- At a minimum, current owners, officers, directors and principals of potential entities should expect to provide: personal information, including fingerprints and demographic details; corporate information, including structure, investment information and financial statements; and information about the premises to be used by the entity.
- All initial licenses will be valid for a two-year term, with the option to renew.



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As always, we continue to monitor this changing landscape on a regular and frequent basis, and will provide updates to this series regarding additional license application requirements as they are issued.

Additional Assistance

For further assistance, please contact a member of the Cannabis Practice Team or the Phillips Lytle attorney with whom you have a relationship. ■



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