

Illinois Approves the Cannabis Regulation and Tax Act: What that Means & What Happens Next

Cannabis Business Legal News

By Darren Grady on June 3, 2019

Capping off a historic legislative session, last Friday afternoon, the Illinois House voted to approve the Cannabis Regulation and Tax Act ("CRTA"), which will legalize the use of cannabis for recreational purposes by individuals 21 and older. The State Senate approved the bill earlier in the week. Governor J.B. Pritzker, who has championed the legalization of adult use recreational cannabis, is expected to sign the bill into law. Legal sale (from licensed sellers) and possession of cannabis is scheduled to begin on January 1, 2020. While Illinois is the 11th state to legalize the sale of recreational cannabis, it is the first to do so via legislative process (rather than voter referendum).

So what does this mean for those already in the medical cannabis business in Illinois and those now wanting to jump in to this nearly open market? Here are some of the basics:

Currently existing licensed medical marijuana cultivation facilities will be licensed to grow recreational cannabis initially. In 2020, new growers may apply for licenses to cultivate. New cultivation licenses will be applied for by businesses located in areas disproportionately affected by the war on drugs (e.g., the South and West sides of Chicago) will be given some preference.

Current medical marijuana dispensaries and new retail stores (who will have to apply) will be licensed to sell cannabis. Some industry insiders have anticipated that nearly 300 retail locations will be open by 2020 (there are only 60 medical dispensaries now).

The following types of new cannabis licenses will be issued:

- Dispensary: Provides cannabis products to adult consumers.
- Processor: Infuses products such as edibles with cannabis extract.
- Craft Grower: May grow between 5,000 and 14,000 square feet of canopy space (may also be separately licensed a processor and a dispensary at the same facility).

- Cultivation Center: May grow up to 210,000 square feet.
- Transporter: Transports cannabis between the aforementioned license holders.

The State tax rate for recreational cannabis will depend in part on the potency and product type; 10% percent tax rate for cannabis with THC levels at or less than 35%; 20% percent tax rate for infused products; and 25% for THC concentration exceeding 35%. Of course, recreational cannabis will also be subject to the typical state and local sales taxes. Additionally, municipalities will be allowed to add special taxes of up to 3%, counties may add up to 3.75% (in unincorporated areas), and Cook County may add up to 3% additional tax in municipalities *within Cook County*.

Illinois residents who are 21+ may possess up to 30 grams or about 1 ounce of flower, 5 grams of cannabis concentrate, or 500 mg of THC (i.e. in the form of edibles, tinctures, etc.). Adult visitors, aka cannabis tourists, may possess up to 50% of the aforementioned amounts.

Medical cannabis patients may now grow up to five cannabis plants at a time. Personal cultivation is not allowed for recreational users.

Local governments (municipalities and counties) cannot ban individual possession of recreational cannabis. They can, however, ban cannabis retail and cultivation within their borders. Businesses and landlords may ban consumption on private property.

Consumption is still basically prohibited in all public places (any place where a person could reasonably be expected to be observed by others) and in automobiles. Essentially, users are allowed to consume cannabis in the privacy of their own home. Cities, however, can also opt-in to having on-site cannabis consumption (commonly known as cannabis cafés). The law does not allow for the delivery of cannabis

As for social justice reform, Gov. Pritzker can pardon those with prior convictions for possession less than 30 grams (and is expected to do so). The State Attorney General will then expunge public records of convictions or arrests for these simple possession crimes. Those with possession convictions 30 grams and up (up to 500) may petition for vacation and expungement. A Judge will hear those cases and be the final say.

While Illinois already has a law that makes drivers with THC blood concentration of five nanograms or more guilty of DUI (regardless of whether the driver is *actually* impaired), the new legislation will create a DUI Task Force to examine options and best practices for roadside testing of THC intoxication.

Illinois Approves the Cannabis Regulation and Tax Act: What that Means & What Happens Next

The known timeline for the implementation of the CTRA is as follows:

- 1/1/20 - Sale of recreational cannabis begins. Existing medical cannabis cultivators and dispensaries will cultivate and provide product to adult consumers until additional licensees can apply and receive approval.
- 1/7/20 - Applications for processors, transporters, and craft growers will be published for new business applicants.
- 3/15/20 - The state will begin receiving applications for and processing new licenses.
- 5/1/20 - New dispensary licenses will be issued. Illinois will begin a "disparity and market study" of the industry. Once the study is complete, Illinois can issue additional licenses if necessary.
- 7/1/20 - Up to 40 craft grower and processor licenses will be issued, along with of transporter licenses (unlimited).

These dates will be upon us quickly. Prospective applicants should begin planning now. It takes a tremendous amount of time and effort to prepare a viable and complete application, and we expect competition for cultivation and dispensary licenses to be fierce. It is also important, of course, to remember that cannabis is still *illegal* in the eyes of the federal government. While law enforcement at the federal level has typically not focused on individuals in possession of relatively small amounts of cannabis or state licensed businesses in strict compliance with state law, it is critical that entrants to this market are aware of this problematic legal dichotomy and the issues it can raise. Securing knowledgeable legal counsel is the first step in navigating these now open legal waters in Illinois.

Illinois
Approves
the
Cannabis
Regulation
and Tax Act:
What that
Means &
What
Happens
Next