

**CANNABIS LAW ALERT
SEPTEMBER 2017**

**MASSACHUSETTS RECREATIONAL MARIJUANA REGULATORY SCHEME
TAKES SHAPE: NEWLY APPOINTED CANNABIS CONTROL COMMISSION
BEGINS WORK**

In accordance with provisions of the comprehensive recreational marijuana legislation signed by Governor Baker in late July referred to as “an Act to Ensure Safe Access to Marijuana” (the Act), the Chairman and four other individual members of the new Cannabis Control Commission (CCC) that will broadly regulate both medical and recreational marijuana in the Commonwealth were appointed in early September 2017. The new Commissioners are:

- ▶ Steven Hoffman, Chair and former Bain and Company executive (appointed by Treasurer Goldberg);
- ▶ Jen Flanagan, former State Senator (appointed by Governor Baker);
- ▶ Britte McBride, former legal counsel to the Massachusetts Department of Public Safety; (appointed by Attorney General Healey);
- ▶ Kay Doyle, former deputy general counsel at the Massachusetts Department of Public Health and “primary counsel” for the medical marijuana program (consensus appointment by Governor, Attorney General, and Treasurer); and
- ▶ Shaleen Title, former head of cannabis consulting firm THC Group (consensus appointment by Governor, AG and Treasurer).

The initial meeting of the CCC was held on September 12, 2017. The CCC will need to move quickly to secure a full budget (approximately \$2.5 million has been approved to date), secure office space, hire professional staff, and begin working on the time sensitive regulatory matters assigned to them under the Act. To better understand the Act, we have developed the following summary of adult-use marijuana in Massachusetts.

OVERVIEW OF MARIJUANA LAWS IN MASSACHUSETTS

In November 2016, the voters of Massachusetts, by a 54%– 46% margin, approved Ballot Question 4, which allowed for the use, possession, home growing, and retail sale of recreational or adult use of marijuana. After debate, negotiation, and a fair amount of intrigue, the legislature passed a final adult-use marijuana law, and on July 28, 2017, Governor Baker signed the Act into law. Significantly, the Act not only changes the law as it pertains to adult-use marijuana, but it also modifies existing provisions applicable to medical marijuana.

The Act maintains three key provisions approved by the voters in November: (i) permission for adult-use by those 21 and older, (ii) possession limits, and (iii) rules applicable to home growing. In addition, the Act includes several significant changes in other areas.

I. REGULATORY AUTHORITY

A. CANNABIS CONTROL COMMISSION

The CCC is the regulatory authority governing adult marijuana use. This independent state agency will be housed in the office of the Treasurer and Receiver General and governed by five commissioners—split between political parties—who were appointed as of early September 2017. The five commissioners will elect an executive director, who will have significant responsibilities for oversight of the industry.

The CCC is given broad discretion to regulate the cannabis industry by adopting regulations in 30-plus specific subject areas, including the following:

- ▶ setting fees and fines;
- ▶ creating rules and regulations in line with minimum standards within the law;
- ▶ establishing policies to license, register, investigate, revoke, or suspend any marijuana establishment (both adult-use and medical);
- ▶ auditing marijuana licensees;
- ▶ adopting diversity licensing goals, including those applicable to minority, women, and veteran business enterprises; and
- ▶ establishing energy and environmental standards.

Licensing rules must be in place by March 15, 2018. Licensure applications should commence in April 2018, and licenses may not be issued earlier than June 1, 2018.

B. CANNABIS ADVISORY BOARD

The Act also establishes a Cannabis Advisory Board (CAB) comprised of 25 individuals with expertise in various areas relevant to the regulation of the cannabis industry. The CAB will advise the CCC and the Department of Revenue on the regulation and taxation of medical and adult-use marijuana and is designed to include individuals with expertise in a variety of specialties, including criminal justice, social welfare, cultivation and farming, business development, laboratory science and toxicology, minority ownership and others areas. The CAB will have standing subject matter subcommittees, including public health, public safety, and market participation by women, minorities, and veterans. Appointments to the CAB are currently being made.

C. SPECIAL COMMISSION ON LAW ENFORCEMENT ISSUES

The Act calls for creation of a special commission to address marijuana-related law enforcement and research issues, including how to define operating under the influence, how to test for impaired operators, cost-effectiveness of varying testing methods, and civil liberties issues. The 13 members of the special commission will include various political, public service,

and law enforcement officials or designees and appointees from the Governor and Secretary of Health and Human Services.

D. REGULATORY CONSOLIDATION OF MEDICAL AND ADULT-USE MARIJUANA

The Massachusetts medical marijuana program has been regulated through a division of the Department of Public Health (DPH). The new law consolidates in the CCC all regulation over both medical and adult-use.

E. HEAD START FOR CURRENT MEDICAL MARIJUANA LICENSEES

The Act provides for a single day for all interested businesses to apply for a recreational license, but expedites the review process for those businesses with existing medical use license. Under this scheme, a medical marijuana establishment seeking an adult-use license will only need to submit regulatory required information not previously submitted to the DPH. Moreover, subject to certain conditions, co-location of medical and adult-use marijuana establishments will be permissible, thereby likely further reducing permitting requirements and associated delays.

F. LICENSE TYPES AND LIMITS

The four available license types in Massachusetts are retail, manufacturer, cultivator, or testing facility. A licensee may hold up to three licenses in each category.

G. CONVERSION FROM NON-PROFIT

Any person holding a provisional or final certificate of registration as of July 1, 2017 to dispense medical marijuana, or any application pending before the DPH, is entitled to convert from a non-profit corporation into a domestic business corporation or other domestic entity. The entity conversion will not result in the imposition of any tax by the Commonwealth.

II. TAXATION

The tax rate established by the Act seeks to balance state and local revenue needs without creating excessive market prices that would encourage illegal black market use. The Act permits a local sales tax and requires host agreements between operators and the cities and towns in which they stipulate to all responsibilities between the host community and the marijuana establishment or treatment center.

The breakdown is as follows:

- ▶ 10.75% State Excise Tax
- ▶ 6.25% State Sales Tax
- ▶ Up to 3% option Local Sales Tax
- ▶ Host agreement with a cap of 3% on gross revenue

Importantly, medical marijuana remains untaxed.

III. ADVERTISING/MARKETING

The Act creates minimum standards for advertising, marketing, and branding for registered adult-use marijuana dispensaries. The basic advertising/marketing rules are as follows:

- ▶ no false, misleading or deceptive statements;
- ▶ no TV, radio, billboard, print, or internet advertisements unless at least 85% of audience is over 21 years of age;
- ▶ cannot appeal to anyone less than 21 years of age or depict anyone less than 21 years of age;
- ▶ prohibitions on certain promotional items as determined by the CCC;
- ▶ prohibitions on statements that products are safe, other than using labeling as regulated by the bill and CCC;
- ▶ prohibitions on neon signs and reasonable limitations on externally illuminated signs for marijuana premises;
- ▶ no marketing using vehicles with radio or loud speaker;
- ▶ can sponsor charitable, sports, or similar events, but must still meet the 85% threshold;
- ▶ websites shall verify user is 21 years of age or older; and
- ▶ must contain a standard health warning developed by DPH.

IV. PACKAGING AND LABELING

The Act gives guidance to the CCC in order to align, wherever possible, medical and adult-use marijuana laws applicable to packaging and labeling with existing medical standards for public health and product safety, including requirements of the federal Consumer Product Safety Commission. The Act also includes detailed minimum standards for packaging and labeling.

V. EMPLOYMENT GUIDANCE

The legalization of adult-use marijuana in Massachusetts does not undermine the ability of employers to enforce appropriate workplace policies.

- ▶ Employers need not tolerate adult-use marijuana possession or use on their premises. The Act does not give employees the right to possess or use marijuana in the workplace.
- ▶ Employers can still expect the best from their employees. The new law does not protect employees from discipline should adult-use marijuana use impair their ability to perform their job functions.
- ▶ For safety-sensitive positions, such as those requiring operation of motor vehicles or heavy machinery, it is still appropriate and legal to prohibit adult-use marijuana altogether (including off-premises and off-duty use) and to continue to drug-test for marijuana.
- ▶ Federal contractors and grantees and employers subject to statutory requirements (such as those employers governed by the Department of Transportation) must continue to drug-

test for and prohibit adult-use marijuana to meet applicable federal and state requirements.

The Act also calls for research regarding marijuana use and public safety and for public education to follow. Over time, more information will become available, which will be helpful to employers. In the meantime:

- ▶ Employers should consider eliminating marijuana from their standard drug-testing practices, except for safety-sensitive positions and as required by federal or state government.
- ▶ Employers should remember that employees for whom medical marijuana has been prescribed may be entitled to a reasonable accommodation in the absence of undue hardship to the employer.

VI. OTHER ISSUES

The Act is a large and complex legislation that addresses additional topics not detailed above, including:

- ▶ corporate limitations on the number of licenses issued;
- ▶ vertical integration and conversions from non-profit to for-profit status;
- ▶ provisions regarding independent testing laboratories;
- ▶ agricultural provisions applicable to hemp growing and the establishment of special “craft” cannabis establishments (modeled on craft beer breweries) that will furnish specialized cannabis products to cannabis licensees but not directly to consumers; and
- ▶ special provisions regarding adult-use establishments on Nantucket and Martha’s Vineyard that must be issued on or before May 1, 2018.

CONTACT

If you have any questions regarding items contained in this alert, please contact a member of our [Cannabis Law Practice](#).

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