



## Summary of The Regulation and Taxation of Marijuana Act

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*On November 8, 2016, Massachusetts voters passed Initiative Petition 15-37, The Regulation and Taxation of Marijuana Act. The Act: legalizes the possession of one (1) ounce or fewer of marijuana for people age twenty-one (21) and older and the personal possession of ten (10) ounces and not more than twelve (12) plants cultivated in a person's primary residence for personal use; establishes a Cannabis Control Commission with the authority to license, regulate and tax retail recreational marijuana establishments "in a manner similar to alcohol;" places certain limits on the authority of municipalities to regulate retail operations through local zoning; sets a maximum tax rate of 12% on marijuana establishments (6.25% state sales tax; 3.75% state excise tax; and 2% local tax); and establishes deadlines for the Cannabis Control Commission to promulgate regulations, accept applications for operation of marijuana establishments (including retail, product testing, production and cultivation facilities), and to issue licenses.*

### Other Highlights:

- Allows registered medical marijuana dispensaries to operate as retail, marijuana product manufacturing or cultivators on the same premises.
- Allows licensed marijuana businesses under the state's medical marijuana law to apply for retail, product manufacturing, and cultivation licenses on October 1, 2017.
- Requires applications from all other proposed businesses to be accepted either January 1, 2018 or October 1, 2018.
- Allows cities and towns to pass commercially reasonable local zoning ordinances, but not to prohibit marijuana establishments without a citywide or town wide vote.

**SECTION 1.** Establishes the broad purpose of the Act to legalize the possession and distribution of marijuana for persons older than 21, prevents sale and use to persons under the age of 21, and to generally regulate marijuana "in a manner similar to alcohol."

**SECTION 2.** Titles the Act "The Regulation and Taxation of Marijuana Act."

**SECTION 3.**

- Authorizes the Treasurer to appoint three (3) members of a Cannabis Control Commission (the “Commission”), only two of which shall be from the same political party, with qualifications in public health, law enforcement, social justice, commercial regulation, and marijuana production (inserting G. L. c. 10, § 76).<sup>1</sup>
- Authorizes the Governor to appoint fifteen (15) members to a Cannabis Advisory Board to advise the Commission and make policy recommendations (inserting G. L. c. 10, § 77).

**SECTION 4.**

- Establishes a mandatory 3.75% excise tax (in addition to the state sales tax of 6.25%) on all sales by a marijuana retail establishment, except for sales to a marijuana testing facility, marijuana product manufacturer, or marijuana cultivator. (inserting G. L. c. 64N, § 2).
- Allows any city or town to impose a local sales tax of not more than 2% on all sales by a marijuana retail establishment, except for sales to a marijuana testing facility, marijuana product manufacturer, or marijuana cultivator (inserting G. L. c. 64N, § 3).
- Exempts from the excise and local sales tax, sales by medical dispensaries and personal caregivers registered under Chapter 369 of the Acts of 2012 (inserting G. L. c. 64N, § 4).

**SECTION 5 – Creating New Chapter 94G, Regulation of the Use and Distribution of Marijuana Not Medically Prescribed.****§ 1.**

- Sets operative definitions (described in this summary where applicable).

**§ 2.**

- Clarifies that laws prohibiting Operation under the Influence of Marijuana are unamended; knowing sale of marijuana to person under the age of 21 remains unlawful; manufacture of marijuana without a license by a liquid or gas, except alcohol, with a flashpoint below 100 degrees Fahrenheit is prohibited.
- Authorizes a landlord to prohibit or otherwise regulate the use of property for marijuana purposes, except a residential lease may not prohibit the use of marijuana by a tenant by non-smoking means.
- Prohibits the possession or consumption of marijuana on the grounds of any public or private K-12 school or correctional facility.
- Authorizes employers to enforce workplace policies prohibiting marijuana consumption.
- Authorizes actions for negligence arising out of the conduct of person under the influence of marijuana, and the imposition of civil, criminal, or other penalties for such negligent conduct.
- Does not exempt marijuana or marijuana products from laws relating to the adulteration or misbranding of food, drugs and other commercial products.

**§ 3.**

- Allowing cities and towns to pass zoning or other ordinances and bylaws that place reasonable time, place and manner restrictions on the operation of marijuana establishments (retail, product manufacturing, product testing, and cultivation facilities) provided they are not “**unreasonably impracticable**,” which is defined as a

<sup>1</sup> Note this is the same general framework for organization of Alcoholic Beverages Control Commission, which also is appointed and overseen by the State Treasurer. See G. L. c. 138.

Note also that the Act makes no appropriation for the establishment and operation of the Cannabis Control Commission.

measure that would “subject licensees to unreasonable risk or require such high investment of risk, money, time or any other resource or asset that a reasonably prudent businessperson would not” go forward. (G. L. c. 94G, § 1).

- Restricting cities and towns from prohibiting operation of a marijuana establishment (retail, product manufacturing, product testing, or cultivation) in the “same area” in which a registered marijuana dispensary is registered.
- Providing that cities and towns may only (i) prohibit operation of any type of marijuana establishment (retail, product manufacturing, product testing, or cultivation); (ii) limit the number of marijuana establishments to 20% of the total number of alcohol licensees; or (iii) limit the number of marijuana establishments to fewer than the number of registered medical dispensaries **by majority vote of the entire city or town**.
- Providing that cities and towns must place on the ballot a question, if proposed by no fewer than 10% of voters, whether retail establishments allowing on-site marijuana consumption may be permitted in the city or town. A no vote is binding on the city or town.
- Allowing agreements between marijuana establishments (retail, product manufacturing, product testing, or cultivation) for payment, except that the amount of payment must be “directly proportional” to actual costs to the city or town imposed by operation of the establishment.

#### § 4.

- Requiring the Commission, through notice and comment rulemaking, to promulgate regulations for:
  - Licensing procedures and fees;<sup>2</sup>
  - Licensing and minimum qualification for marijuana establishment employees, provided that qualifications shall be “similar” to those for the alcohol and a marijuana-related conviction (except sale to a minor) shall not preclude licensure;
  - Security, prevention of sales to minors, record-keeping, product disposal requirements;
  - Health, safety, and sanitation standards for cultivation and manufacturing;
  - Packaging and labeling requirements, including child-proofing and appropriate serving sizes;
  - Product testing for contamination;
  - Reasonable restrictions on signs and advertising;
  - Procedures for transfer of licenses to different owners or locations;
  - Enforcement regulations, including license suspensions and revocations, and civil penalties, provided license suspensions and revocations require a written notice of violation and an opportunity for an adjudicatory hearing and judicial review under G. L. c. 30A.
- Allowing, but not requiring, the Commission to promulgate regulations for:
  - Establishment of different classes of licenses (other than marijuana retail, product manufacturing, product testing, and cultivation), including but not limited to delivery licenses, special event licenses, and others;
  - Establishment of regulations for sale, processing, distribution, and cultivation of hemp;
  - Limits on the amount of cultivation, but only after study of demand by the Commission;
  - Make recommendations to the Legislature for an adjustment to the 3.75% excise tax and 2% maximum local tax rates.

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<sup>2</sup> Fees may not exceed \$3,000 for a preliminary application; \$15,000 for a full application for a marijuana retail, product manufacturing, or cultivation establishment, and \$10,000 for product testing facility.

- Prohibiting regulations that:
  - Are “**unreasonably impracticable**,” which is defined as a measure that would “subject licensees to unreasonable risk or require such high investment of risk, money, time or any other resource or asset that a reasonably prudent businessperson would not” go forward. (G. L. c. 94G, § 1);
  - Require customers to supply identifying information other than age verification;
  - Prohibit operation of a marijuana establishment (marijuana retail, product manufacturing, product testing, or cultivation) at the same location as a registered medical dispensary;
  - Prohibit transfer of seeds, plants, plant tissue, etc., among marijuana establishments;
  - Prohibit the use of inorganic cultivation methods.

#### § 5.

- Establishes a framework for licensing in which an applicant submits a license to the Commission, which is forwarded to the City or Town. The City or Town has 90 days to inform the Commission whether the proposed marijuana establishment is in compliance with all ordinances and bylaws. The Commission has 90 days to act on an application.
- Prohibits a marijuana establishment from being located within 500 feet of a public or private school, unless exempted by local ordinance or by-law.
- Prohibits any “controlling person,” defined as a person with a 10% voting or financial interest, from having a felony conviction except a possession of marijuana offense.

#### § 6.

- Sets one-year term for licenses, with annual renewal.

#### §§ 7-11.

- Legalizes the possession of one (1) ounce or fewer of marijuana for people age twenty-one (21) and older and the personal possession of ten (10) ounces and not more than twelve (12) plants cultivated in a person’s primary residence for personal use.
- Authorizes possession and sale of marijuana accessories.
- Legalizes retail sale, cultivation, product manufacturing and product testing of marijuana.
- Makes contracts relating to marijuana enforceable in the courts of the Commonwealth of Massachusetts.
- Prohibits any person providing services to a marijuana establishment from being subject to discipline by a state licensing board.

#### § 12.

- Establishes minimum security requirements for marijuana establishments.

#### § 13.

- Establishes civil penalties for personal cultivation of plants visible from a public place; personal possession of more than one (1) ounce of marijuana; smoking marijuana in a public place where smoking tobacco is prohibited; having an open container of marijuana in a motor vehicle; and possession of marijuana by a minor (who shall attend a mandatory drug awareness program and, if under age 18, have his or her parents notified).

#### § 14.

- Establishes a Marijuana Regulation Fund to be funded by application fees and civil fine payments.

**SECTION 6.**

- Provides that if the Commission fails to promulgate regulations by January 1, 2018, registered marijuana dispensaries may begin retail sales of marijuana.

**SECTIONS 7-12.**

- Establishes deadlines, including
  - State Treasurer must make appointments to the Commission by **March 1, 2017**.
  - Governor must make appointments to the Cannabis Advisory Board by **February 1, 2017**.
  - The Commission must promulgate regulations by **September 15, 2017**.
  - The Commission must accept applications for marijuana testing facilities by **October 1, 2017**.
  - The Commission must accept applications to operate marijuana establishment (retail, product manufacturer, or cultivation) from any business currently registered under the medical marijuana law, Chapter 369 of the Acts of 2012 by **October 1, 2017**.
  - If fewer than 75 licenses for registered medical dispensaries have been issued on October 1, 2017, the Commission must accept applications from all applicants on **January 1, 2018**.
  - If more than 75 licenses for registered medical dispensaries have been issued on October 1, 2017, the Commission must accept applications from all applicants on **October 1, 2018**.
  - The Act becomes effective on **December 15, 2016**.

For more information  
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