

SUMMARY OF HOUSE ADULT USE CANNABIS BILL

Note: The following summary is based on an unofficial advance version of the House Bill. The official version will be introduced on June 14, 2017. This is a House bill. The Senate may rewrite or amend this bill, if passed. This does not summarize all provisions of the House Bill, but selected sections of particular relevance.

- **Fully Repeals the Entire Referendum.** The bill does not amend individual sections of the adult use cannabis referendum, Chapter 334 of the Acts of 2012; it repeals the referendum in its entirety.
- **Increases Tax Rate on Adult Use Licensees to 28%; Medical Cannabis Is Not Subject to the Additional Taxes.** The referendum provided that state sales tax of 6.25% applied to all *adult use* cannabis wholesales or retail sales, as well as a 3.75% state excise and optional 2% municipal tax for an effective tax rate of 12%. Under the House Bill, the 6.25% state sales tax *plus* a daily surtax of 16.75% *plus* a mandatory 5% municipal surtax would equal an effective tax rate of **28%** for any adult use cannabis licensee. The House Bill also disqualifies cannabis licensees from receiving certain state tax credits and grants. *Medical marijuana* licensees are exempt from paying the 16.75% state surtax and 5% municipal surtax.
- **Retains Medical Program / Transfers of Oversight to CCC.** The bill also repeals the medical marijuana law, Chapter 369 of the Acts of 2012, and transfers all regulatory authority for the medical use program from the Department of Public Health (“DPH”) to a newly constituted Cannabis Control Commission (“CCC”). The medical use program remains separate from the adult use program, and will be subject to different regulations. The DPH regulations will remain in place until such time as the CCC can promulgate new medical use regulations. The CCC may not promulgate new medical use regulations more “restrictive” than the current DPH regulations. DPH staff working on the medical use program will be transferred to the CCC by December 31, 2018 or earlier.
- **Changes CCC to “Independent Commission” Model.** The CCC is removed from being housed entirely within the Office of the State Treasurer and its members appointed by her, as provided in the referendum. The CCC is now an independent commission, with:
 - one member appointed by the governor who must have a public health or toxicology background;
 - one member appointed by the Attorney General with a public safety background;
 - one member appointed by the Treasurer with a corporate finance background; and
 - two members appointed by consensus of the governor, attorney general, and treasurer, one with experience in legal issues for regulated industries and one with business experience in regulated industries.

- **Keeps Deadlines.** The CCC must have regulations drafted by **April 1, 2018.** The CCC must begin receiving applications from **all** applicants for any type of adult use cannabis license (retail, cultivation or product manufacturing) on **May 1, 2018.**
- **Eliminates “Head Start” for Provisionally Licensed Medical Marijuana Applicants.** The referendum provided that operating medical marijuana treatment centers or medical marijuana applicants who received a provisional certificate of registration (“PCR”) prior to December of 2016 would be allowed to apply *one* year early for adult use retailer and product manufacturer licenses and *two* years early for cultivation licenses. This “head start” has been **eliminated.**
- **“Streamlines” License Application for Provisionally Licensed Medical Marijuana Applicants.** Entities that hold a PCR of Final Certificate of Registration from the DPH that apply for any type of adult use license will be presumed to be “accredited” and cannot be subjected to any application requirements already functionally completed as part of the DPH licensure process. Presumably, there will be a shorter application and expedited review for this category of applicants compared to general applicants.
- **Restricts Business and Individuals from Investing, Operating, or Controlling More Than One Cannabis License.** Section 19(a)(5) of the House Bill appears to limit any person or business entity that holds a cannabis license from holding any investment, control or management position, or even operational interest in another person or entity’s cannabis license. This could have implications for affiliated companies that want to hold multiple licenses or types of licenses (e.g., related companies that want to hold medical and adult use licenses under different corporate entities with certain shared management, control or funding sources, or related companies that want to hold, for instance, a retail and cultivator license under different corporate entities with certain shared management, control, or funding sources). The provision also raises questions for whether consultants or other contractors could work for multiple licensees.
- **Allows CCC to Waive Any Licensing Requirement for Operating Medical Marijuana Treatment Center.** The CCC has the authority to waive **any** licensing requirement (presumably including the limitation to only one license) for medical marijuana treatment centers operating under a registration with the DPH (i.e., operating medical marijuana treatment centers, not those that are provisionally licensed).
- **Eliminates the Requirement that Medical Marijuana Licensees Be Not-For Profit Corporations.** The bill removes the requirement that medical marijuana licensees organize as not-for-profit corporations and limit their ability to share revenue with investors. The bill provides procedures for not-for-profit RMDs to convert to for profit corporations consistent with Massachusetts law.
- **Eliminates the City-wide/Town-wide Vote Requirement for a Municipality to Prohibit All Cannabis Establishments.** Cities may now prohibit the siting and operation of a marijuana business of any kind by a vote of the City Council ***and*** approval of the Mayor or City Manager (whichever is applicable.). Towns may now prohibit the siting and operation of a marijuana business of any kind by a vote of the Board of Selectmen

and the attendees of Town Meeting. The referendum required a municipality to hold a city- or town-wide vote to prohibit cannabis businesses.

- **Requires a “Host Community Agreement” with Municipality.** Any licensee must execute a “host community agreement” with the municipality in which it is located, which must include payment of an “impact fee,” reasonably related to reimbursing the municipality for its costs.
- **Municipalities May Not Prohibit Adult Use Cannabis Businesses Where Medical Marijuana Businesses Have Been Previously “Zoned or Licensed.”**
- **Municipalities That Prohibit Cannabis Businesses May Not Prohibit Delivery Into the Municipality.**
- **Requires “Suitability” Investigation Into The Applicant, Its Officers, Close Associates and Investors.** As a condition of receiving a license, the CCC will first conduct a suitability investigation into the financial suitability of the applicant, its background and business ability, including compliance issues, as well as the background, character, and reputation of its “qualifiers.” Qualifiers include the applicant’s:
 - Managers and/or officers;
 - close associates;
 - any person or entity holding more than a 5% financial stake in the applicant; and
 - any institutional investor holding more than a 15% financial stake in the applicant.
- **Creates an “Investigation and Enforcement Bureau.”** The CCC will house a law enforcement bureau that investigates the background, financial suitability, character, business practices, and general integrity of applicants and their “qualifiers” and investigates wrongdoing among licensees and applicants. The IEB can issue fines and order licenses suspended or revoked, subject to administrative appeal to the CCC.
- **Requires the CCC to pass regulations:**
 - Requiring testing through certified independent testing laboratories and related reporting requirements;
 - Establishing potency limits;
 - Restricting advertising and marketing;
 - Creating a “seed to sale” tracking system;
 - Creating labeling requirements.