Legislative Briefing: Marijuana Legalization

March 3, 2021
Agenda

• Overview of New Laws
  – P.L. 2021, c. 16 “New Jersey Cannabis Regulatory, Enforcement Assistance and Marketplace Modernization Act”
  – P.L. 2021, c. 19, which regraded and decriminalization of certain future marijuana and hashish offenses
  – P.L. 2021, c. 25 “clean-up bill” underage possession or consumption of marijuana, hashish, and alcohol

• Questions
Classes of Licenses

• Class 1 – Cannabis Cultivator
• Class 2 – Cannabis Manufacture
• Class 3 – Cannabis Wholesaler
• Class 4 – Cannabis Distributor
• Class 5 – Cannabis Retailer
• Class 6 – Cannabis Delivery Service
Cannabis Cultivator (Class 1 License)

• **Cannabis grower**
  
  – grows, cultivates, or produces cannabis in New Jersey, and sells
  
  – sells and may transport to other cannabis growers, processors, wholesalers or retailers, but not consumers.
Cannabis Manufacture (Class 2 License)

• Cannabis manufacture
  – processes cannabis items in New Jersey by purchasing or otherwise obtaining usable cannabis, manufacturing, preparing, and packaging cannabis items, and selling
  – optionally transporting these items to other cannabis processors, wholesalers or retailers, but not to consumers.
Cannabis Wholesaler (Class 3 License)

- **Cannabis wholesaler**
  - purchases or otherwise obtains, stores, sells or otherwise transfers
  - may transport, cannabis items for the purpose of resale or other transfer to either another cannabis wholesaler or to a cannabis retailer, but not to consumers.
Cannabis Distributor (Class 4 License)

- **Cannabis distributor**
  - transports cannabis items in bulk intrastate, from one licensed cannabis establishment to another licensed establishment.
  - may engage in temporary storage as necessary to carry out transportation activities.
Cannabis Retailer (Class 5 License)

- **Cannabis retailer**
  - purchases or otherwise obtains usable cannabis from cannabis cultivators and cannabis items from cannabis manufacture or cannabis wholesalers, and sells these to consumers from a retail store.
  - may use a cannabis delivery service or a certified cannabis handler for the off-premises delivery of cannabis items and related supplies to consumers.
  - Must accept consumer purchases to be fulfilled from its retailer store that are presented by a cannabis delivery services to be delivered to the consumer.
Cannabis Delivery
(Class 6 License)

• **Cannabis delivery service**
  – provide courier services for consumer purchases of cannabis items fulfilled by cannabis retailer
  – make deliveries of cannabis items and related supplies to consumers

• **Delivery**
  – transportation of cannabis items and related supplies to a consumer.
  – includes the use by a licensed cannabis retailer of any 3rd party technology platform to receive, process, and fulfilling orders by consumers
    • provided that any physical acts in connection with filling the order and delivery must be accomplished by a certified cannabis handler performing work for or on behalf of the licensed cannabis retailer.
Local Cannabis Tax

• By ordinance
• Cannot exceed:
  – 2% cannabis cultivator
  – 2% cannabis manufacture
  – 1% cannabis wholesaler
  – 2% cannabis retailer
• Percentage based on receipts on each sale
Local Cannabis Tax

• Percentage based on receipts on each sale
• Paid directly to municipality (CFO) in manner prescribe by municipality
• Delinquencies same as property taxes
• Does not apply
  – Transfers involving distributors for purpose of bulk transportation or
  – Delivery services to consumers
License Applicant

• An applicant must:
  – Have at least 1 significantly involved person who lives in NJ for at least 2 years as the date of the application, and provide proof they are 21 or older
  – Must meet the requirements of any rule or regulations adopted the Commission
  – The owner, unless they hold less than 5%, any director, any officer, and employee undergo a criminal history record background check
License Background Check

- Each person must submit to being fingerprinted.
- No check of criminal history record background information unless written consent of applicant.
- If a person refuses cannot be considered for the license.
- Each person must bear the cost of the criminal history record background check including all cost to administer and process.
Applications

• Must include, amongst others items:
  – Quality control & quality assurance
  – Recall plans
  – Water management & Waste disposal plans
  – Odor mitigation practices
  – Safety & Security plan
  – Community Impact, Social responsibility & Research Statement
License Process

• Submitted to Cannabis Regulatory Commission
• Require to forward a copy of the application to the municipality within 14 days
• Municipality must determine whether the application complies with local restrictions on times of operation, location, manner, and the number of cannabis businesses.
License Process

• Municipality must inform the Commission whether the application complies with local restrictions on times of operation, location, manner, and the number of cannabis businesses.

• Commission must approve a license that meets the requirements of this law
  – unless they find by clear and convincing evidence that the applicant would be manifestly unsuitable to perform the activities for the license class sought
• Commission cannot consider
  – any conviction of a crime or offense involving a controlled dangerous substance or controlled substance analog that occurred prior to the effective date of the bill or
  – any offense that is now legal under this bill

• Commission must consider any conviction involving
  – fraud,
  – deceit,
  – Embezzlement
  – Employing a minor in a drug distribution scheme,
  – Similar indictable offense in this or another jurisdiction involving the use of a minor to dispense or distribute a controlled dangerous substance or controlled substance analog.
Cannabis Regulatory Commission

• Members:
  – Dianna Houenou, Commission Chair
  – Krista Nash
  – Maria Del Cid
  – William Wallace
  – Sam Delgado

• Determines date on which retailers can begin retail sales

• Adopt rules and regulations
  – Initial rules within 180 days (August 22, 2021)
Cannabis Regulatory Commission

• Adopt rules
  – governing licenses eligibility, application and evaluation
  – Number of permissible licenses of each type
  – Security requirements for licensees
  – Labeling & packaging requirements
  – Cannabis retailer employee eligibility requirements
  – Advertising & marketing limitations
Municipal Regulations & Ordinances

• May enact ordinances that
  – Govern times of operation, location, manner & number of type of cannabis businesses
  – Establish civil penalties for ordinance violation
  – Permit consumption areas for retail licenses with municipal endorsement

• Cannot prohibit cannabis delivery services (Class 6 Licenses)

• Nulls and voids any ordinance previously enacted ordinances prohibiting cannabis related activities
Limitations of Locations

- Grocery stores
- Delis
- Indoor food markets
- Other stores engaging in retail food
- Premises licensed for retail sales of alcoholic beverages
Opt-Out Ordinance

- 180 days from February 22, 2021
- Prohibiting one or more types of cannabis businesses
- Otherwise
  - Class 1-4 & Class 6 would be permitted use in all industrial zones
  - Retail selling of cannabis (Class 5) conditional use in all commercial zones or retail zones
- Must wait 5 years to adopt ordinance to opt-out
Municipal Regulations & Ordinances

• Repeals statute N.J.S.A. 40:48-1.2
  – Effectively prohibits municipalities from adopting an ordinance prohibiting underage consumption of alcohol & cannabis on private property
Microbusinesses

• **Microbusiness**
  – person or entity licensed
  – cannabis grower, processor, wholesaler, distributor, retailer, or delivery service.
  – Has no more than 10 employees;
  – Operate in space of no more than 2,500 square feet area
    • except a grower can operate in space of no more than 2,500 square feet measured on a horizontal plane and grow no higher than 24 feet above that plan.
  – Process no more than 1,000 cannabis plants each month
    • except a distributor’s possession for transportation.
  – Cannabis processor cannot acquire and process no more than 1,000 pounds of cannabis in dried form each month.
  – Cannabis wholesaler cannot acquire for resale no more than 1,000 pounds each month. Cannabis retailer cannot acquire for sale no more than 1,000 pounds each month.
Impact Zones

– any municipality

– based on past criminal marijuana enterprises contributing to higher concentrations of law enforcement activity, unemployment, and poverty within part parts, or throughout, that

  • has a population of 120,000 or more;

  • Based upon data from calendar year 2019 ranks in the top 40% of municipalities for marijuana or hashish related arrest;

  • has a crime index of 825 or higher in the annual Uniformed Crime Report;

  • has a local unemployment rate that ranks in the top 15% of all municipalities for the calendar year next preceding that effective date;

  • Is located within a county of the third class, based upon most recent census population data, that meets all criteria above except having an 825 or higher crime index; or

  • Is located in a county of the second class, based population date of the most recent census and meets other crime and population standards
Underage possession or consumption

- Alcoholic beverage, marijuana, hashish, or any cannabis item
- 1\(^{\text{st}}\) violation
  - Written warning, without notification to parent or guardian.
- 2\(^{\text{nd}}\) violation
  - Written warning,
  - Information and materials on social services must be provided to offender.
  - If offender is under 18 notice is provided to parent or guardian.
- 3\(^{\text{rd}}\) or subsequent violation
  - A write up.
  - Information and materials on social services must be provided to offender.
  - Write up comes with a referral to these social service organization allowing the organization to reach out to the individual, or the parent or guardian if individual is under 18.
• Underage legal age
  – not capable of giving lawful consent to search to determine possession or consumption violation
• Police officer not permitted to request a consent to search.
• Odor would not constitute
  – reasonable articulable suspicion to initiate an investigatory stop,
  – probable cause to initiate search of person or their personal property.
• Plain sight would not constitute probable cause to initiate search of person or their personal property
Resources

• NJLM sample opt-out ordinance
• Attorney General Marijuana Decriminalization & Legalization Resource Page
• Upcoming Seminars:
  – March 9 Cannabis in the Workplace
  – April 9 MLUL and Cannabis
• NJLM Cannabis page (frequently updated)
Questions
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