

Publications

Cannabis Legalization in Key States: Virginia Passes Governor's Amended Bill to Legalize Possession in July, Sales in 2024

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Virginia has become the latest state to legalize adult recreational cannabis use, although the legislation will not be effective immediately. The law – House Bill 2312 – legalizes possession of up to one ounce of cannabis for adults over 21, with a maximum \$25 fine for possession in excess of that amount. It also permits home cultivation of up to four plants for personal use, though the plants cannot be visible to the public.

Cannabis sales will not be permitted for nearly another three years (until January 2024), but, based on a last-minute amendment by the Governor, possession will become legal in July 2021. Here are key issues that may impact cannabis business licensing and operations.

Fundamentals of Virginia's Retail Framework

Virginia's retail cannabis framework will be an extension of its existing system for alcohol sales, with the "Cannabis Control Act" adopted as a new subtitle of the "Alcoholic Beverage Control Act."

The state will create a "Cannabis Control Authority" ("the Authority") to oversee cannabis business licensing, which will be comprised of a Board of Directors, an Advisory Council, a CEO, and various employees and agents of the Authority. The Board will be responsible for issuing licenses, while the Advisory Council will monitor public health issues and recommend safe cannabis products and product warnings to the Board.

The law establishes a 21 percent sales tax on cannabis, with exemptions for sales between marijuana businesses, medical sales, and sales by industrial hemp and hemp extract growers, processors, and dealers. Localities also have the option to assess an additional tax of up to 3 percent on cannabis sales.

There will be five general categories of licenses: cultivation, manufacturing, testing, wholesale, and retail sale. Certain organizations are exempt from applying for licenses, specifically (i) licensed medical marijuana businesses; (ii) registered industrial hemp and hemp extract businesses; and (iii) people who cultivate cannabis at home for personal use.

The law provides that the Board may deny licenses if the applicant is a police officer, or if the business also sells alcohol or tobacco products. Creating ample room for the Board to further block licenses, the law permits it to deny licenses if the Board determines that the business, if granted a license, will "adversely affect or interfere with the normal, orderly conduct or affairs" of a variety of businesses: places of worship, hospitals, schools (public, private, or higher education), playgrounds, child day care, substance abuse treatment, and local, state, or federal government facilities. Chapter 8 § 4.1-809(c). The Board can also deny a license if the business "adversely affects real property values, or substantially interferes with the usual quietude and tranquility of such residence or residential area." Chapter 8 § 4.1-809(d)-(e).

Addressing Historic Inequities

Finally, like many other states' recent legalization efforts, Virginia's law is aimed at supporting communities historically impacted by cannabis prohibition. To address this interest, the legislation creates a "Cannabis Equity Reinvestment Board" responsible for "address[ing] the impact of economic disinvestment, violence, and historical overuse of criminal justice responses to community and individual needs." Article 29, § 2.2-2499.1. The law also creates a "Cannabis Equity Business Loan Program and Fund" that would distribute low- or zero-interest loans to "social equity qualified" businesses in need of start-up funds within communities disproportionately impacted by prohibition. Social equity business applicants will be given preference in the license application process as well, but the law does not articulate specifically how, leaving it to the Authority's Board of Directors to determine precisely how this preference would apply. People who have been convicted

of cannabis offenses will also be able to seal records of their convictions starting on July 1, 2021.

The Governor's Effort to Expedite Legal Possession

The new law demonstrates Governor Ralph Northam's efforts to deliver a clearer message to the public concerning the state's position on cannabis. Under the original bill, possession would not become legal until January 2024. People in Virginia would thus remain subject to civil arrest for possession for more than two years after legalization, while the state structures a legal cannabis industry. Some police leadership also expressed support for the amended bill, emphasizing the time and expense of pursuing misdemeanor cannabis offenders that will be saved once the law changes.

Virginia's delayed implementation of its sales and licensing scheme is a unique approach. But, as evidenced by the numerous states that rushed to open legal sales and then struggled to meet the demand for business licenses, setting up a functioning licensing program is a complex process with significant room for failure. Businesses interested in getting involved in the industry should closely track the Authority's development of its licensing program, and begin preparing applications well before 2024. Although sales will have to wait until January 1, 2024, the law requires the Authority to establish its licensing regulations by July 1, 2023, and permits the Authority to begin accepting business applications that same day.

Professionals

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