



Business Cannabis  
Regulation and  
Local Zoning



Cannabis County  
Retailer Occupation  
Tax



Local Enforcement  
and Criminal Record  
Expungement



# Insight

## Cannabis Regulation and Tax Act

**On May 31, 2019, the Illinois General Assembly adopted the Cannabis Regulation and Tax Act legalizing the sale, possession and use of marijuana for recreational purposes by adults over age 21. Illinois is the 11th state to legalize marijuana and the first state to do so by legislative action rather than by public referendum. The new law is being called the most progressive in the country. The Act takes effect immediately for regulatory and licensing purposes, but the sale and possession of cannabis will not become legal until January 1, 2020.**

The Cannabis Regulation and Tax Act legalizes the sale, possession and use of cannabis by persons 21 and older for recreational purposes and provides for a rapid expansion in the number of cannabis retailers. The Act sets tax rates on both wholesale transactions by cultivators and retail sales by dispensaries. It also authorizes counties and municipalities to impose local taxes on retail sales.

Primary licensing authority for cannabis businesses is reserved to the state, while local governments are granted limited authority to regulate cannabis businesses through zoning.

The Act also tasks state and local law enforcement agencies with expunging decades of criminal records involving minor cannabis offenses. The provisions of the Act requiring expungement of minor

cannabis offenses were narrowed to exclude felony convictions and the time period to complete the expungement process was extended.

One surprising late addition to the Act was the ability for cannabis businesses to allow on-premises consumption subject to local permission. This research brief focuses on how legalization of cannabis will impact local governments in Illinois.



## Cannabis Dispensaries

There are currently 55 cannabis dispensaries and 20 cannabis cultivation centers in Illinois serving the state's 46,000 medical cannabis patients. It is expected that the majority of these facilities will apply to the state for "early approval" licenses to allow them to supply the recreational market starting on January 1, 2020.

In addition, existing dispensaries will be permitted to apply for a "secondary site" license to open a second dispensary location within the same regional area. Applicants for "secondary site" licenses will be required to demonstrate that their proposed use complies with local zoning rules. **NOTE:** Interestingly, dispensaries seeking "early approval" licenses for their existing locations will not be required to demonstrate to the state that they will be allowed to sell cannabis for non-medical purposes under their current zoning. This may result in conflicts between the state licensing agencies and municipalities that have narrowly defined dispensaries solely as medical facilities.

The issuance of "secondary site" licenses could double the number of licensed dispensaries in the state by Jan. 1, 2020. After that, the Illinois Department of Financial and Professional Regulation (IDFPR) will have the authority to issue up to 500 total dispensary licenses on a staggered basis through 2022.

In addition to significantly expanding the number and capacity of licensed dispensaries and cultivation centers, the Act establishes new categories of business licenses for cannabis transporters, infusers, processors and craft growers, which are smaller-scale cultivate operations that can also operate an on-site dispensary.

## Cannabis Regulation and Tax Act

### What will be allowed?



As of January 1, 2020, Illinois residents over age 21 will be allowed to possess up to 30 grams of raw cannabis, 5 grams of cannabis concentrate or cannabis-infused products containing up to 500 milligrams of THC. All permitted cannabis products must be purchased from a licensed dispensary.

*Adults 21 and over will be allowed to consume cannabis on private property away from minors and certain prohibited areas.*

### What will be prohibited?

- Consumption of cannabis in any "public place." A "public place" is defined as "any place where a person could reasonably be expected to be observed by others" but excludes private residences
- Consumption of cannabis on school grounds
- Consumption "in close physical proximity" to persons under 21
- Smoking cannabis in any location where smoking is prohibited by the Smoke Free Illinois Act (410 ILCS 82), including hospitals, restaurants, retail stores, offices, commercial establishments, etc.
- Sale of cannabis to minors under the age of 21
- Home delivery of cannabis to a consumer by a cannabis business
- Possession and consumption by a minor under the age of 21 (other than for legal medical purpose)
- Possession of cannabis in motor vehicle unless the cannabis is in a "sealed, odor-proof, child resistant, tamper-evident cannabis container" and "reasonably inaccessible"
- Driving under the influence of cannabis (DUI)

**As with alcohol-related offenses, the enforcement and prosecution of most cannabis offenses will be the responsibility of local governments.**

*Most importantly, the right of unlicensed private citizens to grow cannabis for personal use in their own home was removed from the Act. It allows only medical-marijuana patients to grow their own.*



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## Local Authority Over the Sale and Consumption of Cannabis

The preamble of the Cannabis Regulation and Tax Act declares the regulation of recreational cannabis sale and consumption is a matter of statewide concern, effectively preempting local governments, including home-rule units, from imposing regulations that conflict with, or are more stringent than, the Act. Nevertheless, the Act does grant local governments limited authority over certain aspects of recreational cannabis.

### Zoning

First, and most importantly, a municipality may "prohibit or significantly limit" the location of cannabis businesses by ordinance. It is expected that this provision will be interpreted to allow municipalities to impose a generally applicable prohibition on recreational cannabis businesses from locating in any zoning district. This authority includes the ability to allow certain classes of cannabis businesses (e.g., cultivation centers or processors) while prohibiting others (e.g., dispensaries). **NOTE:** The Illinois Compassionate Use of Medical Cannabis Pilot Program Act still requires municipalities to allow medical cannabis facilities to locate and operate pursuant to reasonable zoning restrictions.

If a municipality chooses to permit cannabis businesses to locate and operate within its borders, it may also enact reasonable zoning regulations that are not in conflict with the Act. This authority would include permitting cannabis businesses to locate in certain zoning districts but not others, and imposing generally applicable off-street parking requirements.

*Further, the Act explicitly authorizes municipalities to impose limits on the "time, place, manner, and number" of cannabis business by requiring the businesses to obtain conditional or special use permits. These limits must be reasonable and may not conflict with the requirements of the Act.*

Although requiring cannabis businesses to obtain a conditional or special use permit will be useful to local zoning authorities, determining whether a local restriction conflicts with the Act may be more difficult than the drafters anticipated. For instance, the Act allows dispensaries to operate between 6 a.m. and 10 p.m. It is uncertain whether a municipality would be allowed to require shorter hours of operation as a condition of issuing a conditional use permit for a dispensary. Similar questions arise with regard to separation requirements. The Act prohibits new dispensaries from locating within 1,500 feet of another dispensary. Whether a municipality could require a greater separation distance is not clear. Finally, the ability to limit the "number" of cannabis businesses through a conditional use permit process raises the question of whether a municipality could impose a hard numerical cap on the number of conditional use permits the municipality would be willing to issue.



## Business Licensing

Although licensing of cannabis businesses will be the exclusive domain of states agencies such as the Department of Agriculture (cultivation centers, processors, infusers, transporters, and craft growers) and the IDFPR (dispensaries), local governments may still enforce generally applicable business registration requirements for cannabis businesses and conduct inspections of premises to ensure compliance with local building codes.

One area in which municipalities appear to have been granted broad regulatory authority is on-premises consumption. Early versions of the Act only allowed for consumption of cannabis in private residences, but the final version allows for on-premises consumption of recreational cannabis in a licensed cannabis business, subject to local permission and regulation.

**Bill author and principal sponsor Rep. Kelly Cassidy (D-Chicago) clarified that this would permit smoking lounges as accessory uses to dispensaries, but the decision of whether, and to what extent, to allow them would be left to local governments.**



If a municipality chooses to allow on-premises consumption through the grant of a local license or permit, it is expected that the municipality could impose significant restrictions on the location, security, and environment in which such consumption would occur.

Requiring cannabis dispensaries to obtain a local "on-premises consumption" license will also provide municipalities with a legitimate justification to periodically inspect the licensed premises to ensure compliance with local regulations.

## REGULATING PERSONAL POSSESSION AND CONSUMPTION

The Act provides municipalities with the authority to locally regulate possession and consumption of cannabis by private citizens in a manner consistent with the Act.

Accordingly, municipalities should evaluate whether to adopt the prohibitions and penalties of the Act into their local codes. This will give the local governments the ability to enforce and prosecute these offenses (with the exception of DUIs) through local adjudication or the circuit court, so long as the penalties do not exceed those provided for in the Act.

### Possession limit for Illinois residents:

- 30 grams of cannabis flower;
- 5 grams of cannabis concentrate; and
- No more than 500 milligrams of THC contained in a cannabis-infused product;
- Registered patients in the medical cannabis pilot program may possess more than 30 grams of cannabis if it is grown and secured in their residence under certain conditions.

### Possession limit for non-Illinois residents:

- 15 grams of cannabis flower;
- 2.5 grams of cannabis; and
- No more than 250 milligrams of THC contained in a cannabis-infused product.



*These avenues for enforcement will become increasingly important if state's attorneys' offices follow the lead of Cook County and decline to devote ongoing resources to prosecution of low-level cannabis offenses by individuals.*



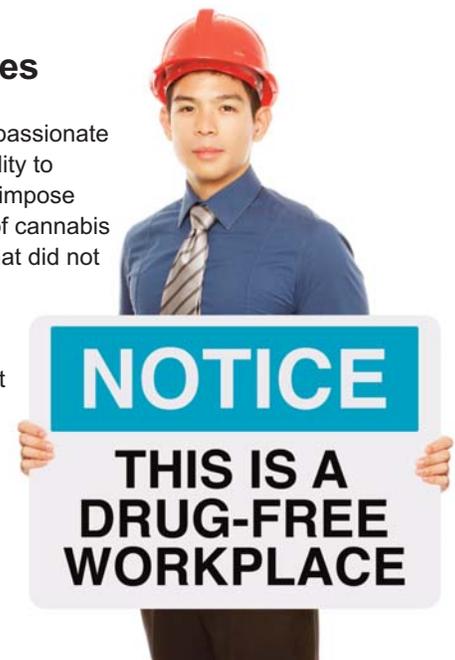
**The possession limits are to be considered cumulative.**

The legalization of adult use cannabis does not alter the state's medical cannabis pilot program. Cultivators and dispensaries will be required to reserve sufficient supply to ensure patient access to product is not interrupted.

## Labor and Employment: Drug Free Work Zones

The Act maintains important protections for employers previously established under the Compassionate Use of Medical Cannabis Pilot Program Act of 2013 (Medical Cannabis Act), including the ability to enforce reasonable workplace policies such as "drug free" or "zero tolerance" policies and to impose discipline up to, and including, termination if an employee is impaired or under the influence of cannabis while in the workplace. The Act's final language resolves ambiguity caused by earlier drafts that did not expressly authorize "drug free" and "zero tolerance" policies.

The Act's employment provisions differ from the Medical Cannabis Act in two main respects. First, the Act precludes employees from being impaired or under the influence of cannabis not only in the workplace, but also if they are "on call." Employees are considered to be "on call" if they are scheduled to be on standby with at least 24 hours' notice or otherwise responsible for performing work-related tasks. Second, the Act amends the Illinois Right to Privacy in the Workplace Act, which protects employees from adverse employment actions related to their use of "lawful products" outside of working hours, to clarify that recreational cannabis is considered a "lawful product." It is unclear how this provision is intended to interact with the Act's authorization for employers to impose "zero tolerance" policies, so it will be important to carefully monitor how courts will strike a balance between the competing rights of employers and employees.



# taxation

Recreational cannabis will be subject to multiple layers of taxation, on top of existing state, county and local sales taxes. In addition to state taxes on wholesale cannabis sales by cultivation centers and retail sales by dispensaries, counties and municipalities may impose local retailer occupation taxes on dispensary sales.

Non-home rule counties are authorized to impose a tax of up to 0.75 percent in incorporated areas and 3.75 percent on sales emanating from unincorporated areas. Cook County, the only home-rule county in the state, is authorized to impose a tax of 3 percent regardless of whether the sale occurs in an incorporated or unincorporated area. Municipalities are likewise authorized to impose a 3 percent retailer occupation tax on final sales to consumers. All local taxes will be collected by the state and deposited into dedicated funds that will be protected from budgetary sweeps. These revenues will be disbursed to local governments in the same manner as local sales tax revenues.



## ALL TAXES ARE DEPOSITED IN THE NEW CANNABIS REGULATION FUND

### Cultivation Privilege Tax

- 7% of the gross receipts from the sale of cannabis by a cultivator or a craft grower to a dispensing organization

### Cannabis Purchaser Excise Tax

- 10% of the purchase price – Cannabis with a THC level at or below 35%
- 20% of the purchase price – All cannabis infused products
- 25% of the purchase price – Cannabis with a THC level above 35%
- This tax is not imposed on cannabis that is subject to tax under the Compassionate Use of Medical Cannabis Pilot Program Act
- This tax shall be in addition to all other occupation, privilege, or excise taxes imposed by the State of Illinois or by any municipal corporation or political subdivision thereof.

### Municipal Cannabis Retailers' Occupation Tax

On and after January 1, 2020, the corporate authorities of a municipality may, by ordinance, impose a tax on all persons engaged in the business of selling cannabis at retail location in the municipality on the gross receipts from these sales. If imposed, the tax shall be imposed in 0.25% increments and may not exceed 3% of the gross receipts from these sales.

## ALLOCATION OF STATE REVENUE

State agencies responsible for administering the adult use cannabis program will receive resources to cover administrative costs from the taxes collected by the program.

### All remaining revenue will be allocated as follows:

- 35% will be transferred to the General Revenue Fund,
- 25% will be transferred to the Criminal Justice Information Projects Fund to support the R3 program,
- 20% will be transferred to the Department of Human Services Community Services Fund to address substance abuse and prevention and mental health concerns,
- 10% will be transferred to the Budget Stabilization Fund to pay the backlog of unpaid bills,
- 8% will be transferred to the Local Government Distributive Fund to support crime prevention programs, training, and interdiction efforts, including detection, enforcement, and prevention efforts, relating to the illegal cannabis market and driving under the influence of cannabis, and
- 2% will be transferred to the Drug Treatment Fund to fund public education campaign and to support data collection and analysis of the public health impacts of legalizing the recreational use of cannabis.



## Cannabis County Retailers Occupation Tax

On and after January 1, 2020, the corporate authorities of a county may, by ordinance, impose a tax on all persons engaged in the business of selling cannabis at retail locations in the county on the gross receipts from these sales. If imposed, the tax shall be imposed in 0.25% increments. The tax rate may not exceed:

- 3.75% of the gross receipts of sales made in unincorporated areas of the county
- 0.75% of the gross receipts of sales made in a municipality located in a non-home rule county
- 3% of the gross sales receipts made in a municipality located in a home rule county.



## Community Investment

The proposal establishes a new grant program, the Restore, Reinvest and Renew (R3) program, to address the impact of economic disinvestment, violence, and the historical overuse of the criminal justice system.

After enforcement and administrative costs are paid, the bill earmarks 25% of the remaining cannabis tax revenues to the R3. Program funds (grants) will be used to address economic development, violence prevention services, re-entry services, civil legal aid and youth development.

## License Types

### New entrants to the adult use cannabis market

**Dispensary:** provides cannabis products to adult consumers

**Processor:** infuses products such as edibles with cannabis extract

**Transporter:** transports cannabis between business licensees

**Craft Grower:** can grow between 5,000 and 14,000 square feet of canopy space and may be separately licensed as a processor and a dispensary at the same facility

**Cultivation Center:** can grow up to 210,000 square feet

License fees vary. Application fees will be \$100,000 for cultivators and \$30,000 for dispensaries with lower fees for social equity partners. There is also a separate business development fee of 5% of total sales or \$750,000, whichever is less, for cultivators and up to \$200,000 for dispensaries, again both with lower fees for social equity applicants.

## Expungement of Law Enforcement Records Minor Cannabis Offenses



As part of its broad social justice focus, the Act mandates that certain criminal records must be automatically expunged by law enforcement agencies and creates a process for expunging many other records that do not qualify for automatic expungement. The Act's expungement provisions differ significantly from the expungement provisions that were in previous version of the Act.

The Act mandates that the Illinois State Police and other law enforcement agencies automatically expunge all criminal history records of an arrest, charge not initiated by arrest, order of supervision, or order of qualified probation for a "minor cannabis offense" if:

1. one year or more has elapsed since the date of the arrest or law enforcement interaction documented in the records
2. no criminal charges were filed relating to the arrest or law enforcement interaction or criminal charges were filed and subsequently dismissed or vacated or the arrestee was acquitted

Minor cannabis offenses" are violations of **Section 4 or 5** of the Cannabis Control Act concerning not more than 30 grams of any substance containing cannabis, provided the violation did not include a penalty enhancement under Section 7 of the Cannabis Control Act and is not associated with an arrest, conviction or other disposition for a violent crime as defined in subsection (c) of Section 3 of the Rights of Crime Victims and Witnesses Act. Because "minor cannabis offenses" are defined as violations of the Cannabis Control Act, the automatic expungement mandate does not appear to include local ordinance violations.

**The Act provides that law enforcement agencies must automatically expunge qualifying records pursuant to the following schedule:**

1. records created prior to the effective date of the Act, but on or after Jan. 1, 2013, shall be automatically expunged prior to Jan. 1, 2021
2. records created prior to Jan. 1, 2013, but on or after Jan. 1, 2000, shall be automatically expunged prior to Jan. 1, 2023
3. records created prior to Jan. 1, 2000, shall be automatically expunged prior to Jan. 1, 2025

Therefore, it appears that law enforcement agencies will have significant time to automatically expunge decades worth of qualifying records. That said, it is unclear how these deadlines will interact with the state's standard expungement processes which require an order from a circuit court before a law enforcement agency is required to expunge its records.

The Act provides two other avenues for persons who are not eligible for automatic expungement. First, the governor is authorized to grant pardons and order the expungement of arrest records for offenders who were actually convicted of minor cannabis offenses. Second, offenders who were arrested for, charged with or convicted of more serious violations of the Cannabis Control Act may petition the circuit court for expungement.

## CURRENT LAW AND CATEGORY OF EXPUNGEMENT THAT EACH FALLS UNDER

### Section 4 (Possession) – Unlawful for any person knowingly to possess cannabis in the following amounts.

(a) <10g	Civil Law Violation	Fees; May be given probation and charges dismissed §10(a)	Governor's Clemency Authority / Automatic Law Enforcement Expungement
(b) 10-30g	Class B Misdemeanor	<6 months; May be given probation and charges dismissed §10(a)	Governor's Clemency Authority / Automatic Law Enforcement Expungement
(c) 30-100g	Class A Misdemeanor	<1 year; May be given probation and charges dismissed §10(a)	Individual / State's Attorney Motions to Vacate
(d) 100-500g	Class 4 Felony	1-3 years	Individual / State's Attorney Motions to Vacate

### Section 5 (Manufacture, deliver or intent to deliver) – Unlawful for any person knowingly to manufacture, deliver, or possess with intent to deliver or manufacture cannabis in the following amounts.

(a) <2.5g	Class B Misdemeanor	<6 months; May be given probation and charges dismissed §10(a)	Governor's Clemency Authority / Automatic Law Enforcement Expungement
(b) 2.5-10g	Class A Misdemeanor	<1 year; May be given probation and charges dismissed §10(a)	Governor's Clemency Authority / Automatic Law Enforcement Expungement
(c) 10-30g	Class 4 Felony	1-3 years; May be given probation and charges dismissed §10(a)	Governor's Clemency Authority / Automatic Law Enforcement Expungement

**NOTE:** Possession amounts were different pre-2016.

## Projected Revenue

The Department of Revenue projects that this industry will generate over \$57 million in tax revenue and licensing fees in FY20. This figure represents the combined revenue projections that Governor's Office received from the Department of Revenue concerning the taxation of cannabis as well as the application and licensing fees estimated by the Department of Agriculture and the Department of Financial and Professional Regulation.



### Breakdown

- DOR tax revenue: \$34 million (midpoint of the range project by DOR: 10-58 million)
- DOA estimate: \$12.7 million
- IDFPR estimate: \$10.78 million

The Department of Revenue estimates that the state will generate \$140.5 million in tax revenue in FY21. This excludes agencies' application and licensing fees as the program continues to expand. As the cannabis market matures, the state could generate \$253.5 million in FY22, \$323.5 million in FY23, and \$375.5 million in FY24.

*The cannabis market has already delivered \$1 billion in revenue to Colorado. Marijuana Business Daily projects the Illinois recreational market potentially will eclipse \$2 billion in annual sales, factors including tourist traffic, among others.*

## RESOURCES



### **Holland & Knight** [www.hklaw.com](http://www.hklaw.com)

Holland & Knight's Local Government Advocacy Team has an extensive history of representing cities, counties, transportation agencies, education districts, and other public entities across the United States. The legalization of cannabis for recreational use will impact local governments across Illinois. Holland & Knight attorneys are ready to advise you on issues that may arise.

### **Ancel Glink** [www.ancelglink.com](http://www.ancelglink.com)

For over 80 years, Ancel Glink has built and modernized the practice of local government law in Illinois. From litigation to land use and labor relations, their clients enjoy access to top attorneys and large firm resources in a small, personalized setting. Ancel Glink attorneys are available to present legal advice of the Cannabis Regulation and Tax Act in a form that can be easily understood, evaluation and applied.

### **Marijuana Policy Project** [www.mpp.org](http://www.mpp.org)

The Marijuana Policy Project (MPP) is the largest organization in the U.S. that's focused solely on enacting humane marijuana laws. MPP's mission is to change federal law to allow states to determine their own marijuana policies without federal interference.



## Useful websites for information on cannabis regulation

### **Department of Revenue** [www.revenue.state.il.us](http://www.revenue.state.il.us)

Responsible for enforcing and collecting taxes associated with the sale of cannabis.

### **Department of Agriculture** [www2.illinois.gov/sites/agr](http://www2.illinois.gov/sites/agr)

Responsible for licensure and oversight of cultivation centers, craft growers, infusers, and transporting organizations and for authorizing laboratories that test cannabis.

### **Department of Public Health** [www.dph.illinois.gov](http://www.dph.illinois.gov)

Develops recommendations surrounding health warnings and facilitates the Adult Use Cannabis Public Health Advisory Committee

### **Department of Financial and Professional Regulation** [www.idfpr.com](http://www.idfpr.com)

Responsible for licensure and oversight of dispensing organizations.

### **Illinois State Police** [www.isp.state.il.us](http://www.isp.state.il.us)

Conducts background checks on everyone involved in the licensed cannabis sector. Reviews security plans for all licensed entities. Responsible for reviewing all criminal history record information and identifying all individuals with minor violations of the Cannabis Control Act that are eligible for expungement.

### **Department of Commerce and Economic Opportunity** [www2.illinois.gov/dceo](http://www2.illinois.gov/dceo)

Administers a low-interest loan program, a grant program, and technical assistance for social equity applicants. Identifies 'disproportionately impacted areas'.

### **Department of Human Services** [www.dhs.state.il.us](http://www.dhs.state.il.us)

Administers programs that address substance abuse and prevention and mental health. Makes recommendations to the Adult Use Cannabis Public Health Advisory Committee regarding drug treatment and prevention. Responsible for administering a public education campaign and collecting data and conducting analysis of the public health impacts of legalizing the recreational use of cannabis.

*Sources: Illinois General Assembly P.A. 101-0027, Office of the Governor Adult Use Cannabis Summary. Insight overview of the Cannabis Regulation and Tax Act provided by Holland & Knight Attorneys (Stewart Weiss, Andrew Fiske, Benjamin Schuster).*

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