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 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.
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.
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 DUlIs) 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.

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.
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.

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. The tax rate may not exceed:
- 3.75% of the gross receipts made in unincorporated areas of the county
- 0.75% of the gross receipts 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.

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,
- 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.
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.

<table>
<thead>
<tr>
<th>Amount</th>
<th>Category</th>
<th>Conditions</th>
<th>Authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>&lt;10g</td>
<td>Civil Law Violation</td>
<td>Fees; May be given probation and charges dismissed §10(a)</td>
<td>Governor’s Clemency Authority / Automatic Law Enforcement Expungement</td>
</tr>
<tr>
<td>10-30g</td>
<td>Class B Misdemeanor</td>
<td>&lt;6 months; May be given probation and charges dismissed §10(a)</td>
<td>Governor’s Clemency Authority / Automatic Law Enforcement Expungement</td>
</tr>
<tr>
<td>30-100g</td>
<td>Class A Misdemeanor</td>
<td>&lt;1 year; May be given probation and charges dismissed §10(a)</td>
<td>Individual / State’s Attorney Motions to Vacate</td>
</tr>
<tr>
<td>100-500g</td>
<td>Class 4 Felony</td>
<td>1-3 years</td>
<td>Individual / State’s Attorney Motions to Vacate</td>
</tr>
</tbody>
</table>

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.

<table>
<thead>
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<th>Amount</th>
<th>Category</th>
<th>Conditions</th>
<th>Authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>&lt;2.5g</td>
<td>Class B Misdemeanor</td>
<td>&lt;6 months; May be given probation and charges dismissed §10(a)</td>
<td>Governor’s Clemency Authority / Automatic Law Enforcement Expungement</td>
</tr>
<tr>
<td>2.5-10g</td>
<td>Class A Misdemeanor</td>
<td>&lt;1 year; May be given probation and charges dismissed §10(a)</td>
<td>Governor’s Clemency Authority / Automatic Law Enforcement Expungement</td>
</tr>
<tr>
<td>10-30g</td>
<td>Class 4 Felony</td>
<td>1-3 years; May be given probation and charges dismissed §10(a)</td>
<td>Governor’s Clemency Authority / Automatic Law Enforcement Expungement</td>
</tr>
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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.

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.

NOTE: Possession amounts were different pre-2016.

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 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.
Useful websites for information on cannabis regulation

Department of Revenue
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
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
Develops recommendations surrounding health warnings and facilitates the Adult Use Cannabis Public Health Advisory Committee.

Department of Financial and Professional Regulation
www.idfpr.com
Responsible for licensure and oversight of dispensing organizations.

Illinois State Police
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
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
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).