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Client Alert

To: Local Government Clients
From: Ancel Glink

Is Your Community Ready for Recreational Cannabis?

On May 31, 2019, both chambers of the Illinois General Assembly passed House Bill 1438, which means that when Governor J.B. Pritzker signs the bill as expected, the Cannabis Regulation and Tax Act will be effective immediately, beginning preparation for the lawful use and sale of recreational cannabis by adults after January 1, 2020.

The new law would allow state residents over the age of 21 to possess up to 30 grams of cannabis beginning January 1, 2020. The Act would allow personal cannabis use in most private residences, but not in prohibited areas including any public place or in close physical proximity to underage persons. An earlier proposal allowed households to grow up to five cannabis plants, but this new law would limit home cultivation to medical cannabis patients.

The Act includes several changes since it was first publicly introduced last month, but it does not change the important questions local governments will consider while preparing to manage cannabis in their communities.

Will your Community Allow Cannabis Businesses?

The proposed law allows local governments to “opt-out” by prohibiting or significantly limiting cannabis businesses in their jurisdiction, including dispensaries, cultivation centers, craft growers, processing organizations, and transportation organizations. However, unlike in earlier proposals, the new law would not impose a time limit or require a referendum for local governments to prohibit or significantly limit cannabis business locations.

How will your Community Regulate any Allowed Cannabis Businesses?

The new law would allow local governments to adopt (1) reasonable zoning ordinances that do not conflict with the Act; and (2) ordinances and rules governing the time, place, manner, and number of cannabis businesses consistent with the Act. Possible regulations include requiring conditional or special use permits, distance restrictions between cannabis businesses and other sensitive places, hours of operation, or caps on the number of cannabis businesses allowed within the jurisdiction. However, home rule and non-home rule units alike would be unable to regulate these activities in a manner more restrictive than provided in the Act. For example, two cannabis business establishments cannot be closer than 1,500 feet apart and cannot locate closer than 1,000 feet from the perimeter of school grounds, a playground, a public park or a public library.

Will your Community Allow Cannabis Lounges?

The proposed law grants local governments broad authority to authorize and regulate privately-owned facilities where cannabis and cannabis products may be consumed on-site. Possibly similar to hookah lounges, local governments may consider whether to allow these “cannabis lounges” and how to exercise their broad authority to regulate this novel use.

Will Your Community Tax Recreational Cannabis?

After January 1, 2020, both home rule and non-home rule municipalities can adopt ordinances to impose a local tax on the operation of a cannabis dispensary. The rate of tax cannot exceed 3% of the dispensary's gross receipts from the sale of non-medical cannabis. If imposed, the tax may only be imposed in 0.25% increments. The municipal cannabis sales tax will be collected and enforced by the Department of Revenue, which is entitled to retain 1.5% of the amount distributed to each municipality as an administrative fee. To collect the tax a municipality must adopt and file a tax ordinance with the Department before June 1. Any new tax or rate changes will be implanted after September 1.

How will your Community Engage in Crime Prevention?

In a change from prior proposals, the Cannabis Regulation Fund will now transfer 8% of the state tax revenue to the Local Government Distributive Fund to fund 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. Rules will be developed to administer the use of this money and the award of grants.

How will your Community Prosecute Cannabis Use and Possession?

Communities should review their ordinances to ensure they are consistent with the Act. While local ordinances may not prohibit home cultivation for medical use or unreasonably prohibit personal cannabis use, local governments can regulate these activities consistent with the Act and should consider adopting ordinances enforceable through prosecutions in administrative adjudication or circuit court.

What Law Enforcement Records Should be Automatically Expunged?

In a significant change from prior proposals, expungements will now take place in three different processes: petitions, pardons from the Governor, and automatic expungements. Only the automatic expungements will directly affect local governments.

Local law enforcement agencies must automatically expunge records involving non-violent minor cannabis offenses of simple possession of no more than 30 grams of cannabis if (1) one year or more has elapsed since the date of the arrest or law enforcement interaction documented in the records; and (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.

We anticipate that many of the records covered by this obligation will relate to municipal code violations. These records will be required to be expunged according to a schedule described in the bill that will give municipalities until January 1, 2025 to expunge records that precede

January 1, 2000.

How will you Manage Recreational Cannabis and your Employees?

Employers will likely want to update their personnel policies once the new law becomes effective. Employers will have the authority to adopt zero tolerance policies or other policies concerning drug testing, smoking, consumption, storage, or use of cannabis in the workplace provided that the policy is applied in a nondiscriminatory manner. In addition, employers will have the power to discipline or terminate an employee for violating an employer's employment policies or workplace drug policy. The Act also stipulates that an employer may consider an employee to be impaired or under the influence of cannabis if the employer has good faith belief that the employee manifests specific, articulable symptoms while working that decrease or lessen the employee's performance of the duties or tasks. However, the law requires employers to offer employees an opportunity to contest the basis for any discipline arising from alleged cannabis impairment. Additionally, the law prohibits discrimination against employees for use of "lawful products" like cannabis during nonworking and non-call hours.

Contact Ancel Glink

Ancel Glink is prepared to help you navigate these questions and the many others that will arise as you prepare for recreational cannabis in your community. Please contact Daniel J. Bolin (dbolin@ancelglink.com) or your regular Ancel Glink attorney. For more on the new recreational cannabis law, listen to the latest episode of Ancel Glink's [Quorum Forum](#) podcast.

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