

Recreational Cannabis in Illinois

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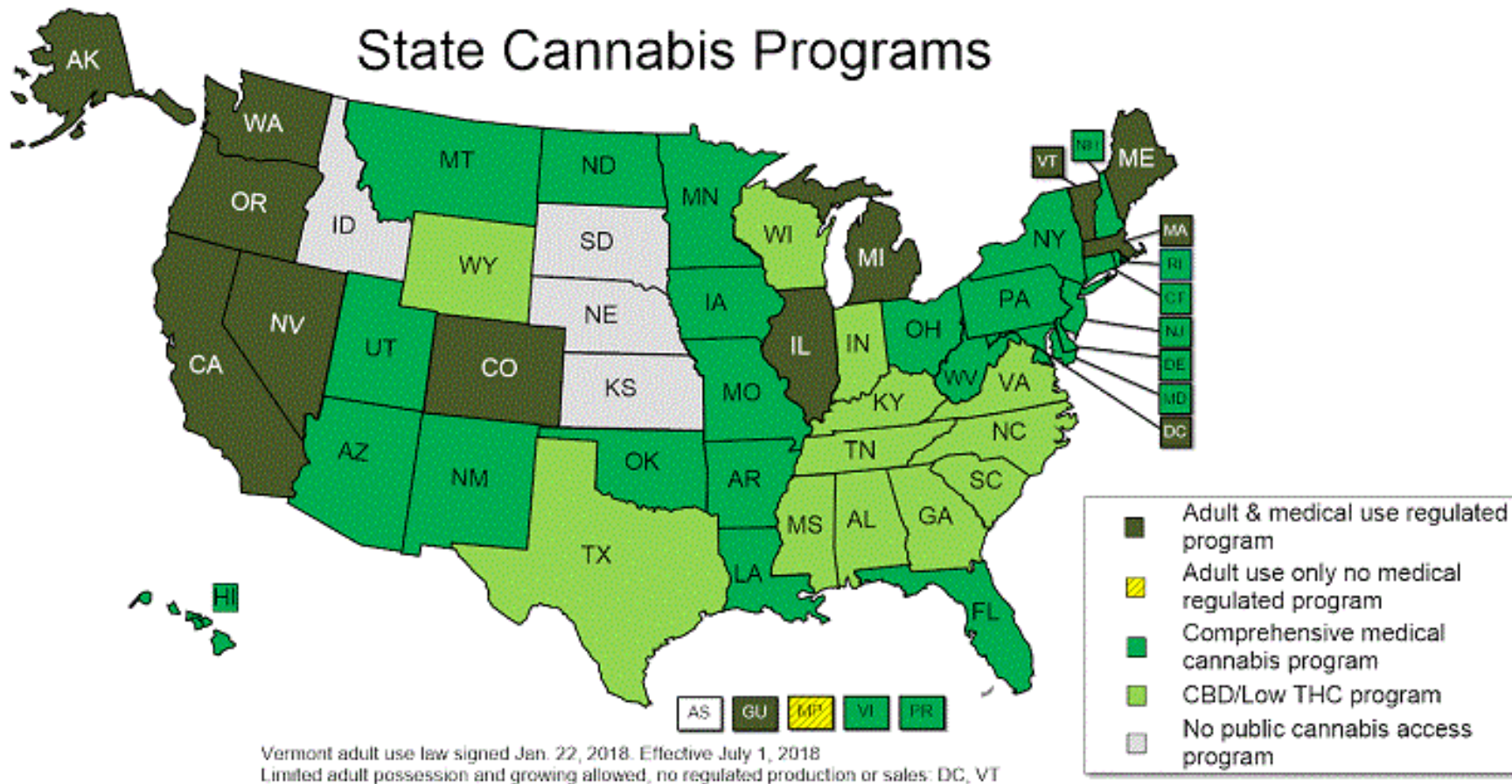
Legal Council

Illinois State Senate Republican Staff

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The National Picture as of June 2019



Cannabis Regulation and Tax Act

- ▶ Cannabis Regulation and Tax Act (410 ILCS 705) creates the financial and regulatory framework for the sale and use of cannabis in Illinois.
- ▶ House Bill 1438 passed the Illinois General Assembly on June 4, 2019
- ▶ Legislation signed by Gov. Pritzker on June 25, 2019, which is the Effective Date of the Act
- ▶ “Trailer bill” anticipated as early as Fall 2019
- ▶ Administrative Rules will be issued by state regulatory agencies charged with implementing the Act, which will further flesh out the details.

Conflict with Federal Law

Under the Controlled Substances Act (CSA), it remains unlawful to manufacture, distribute, dispense, or possess any controlled substance, including cannabis, under federal law. This leads to many conflicts, including:

- ▶ Banking, especially federally-chartered banks
- ▶ Universities and Community Colleges, especially those receiving federal grants
- ▶ Hospitals, especially those receiving Medicare reimbursements
- ▶ Insurance challenges, ranging from legality issues to coverage deficiencies
- ▶ Tax issues, especially for cannabis operators who are otherwise lawful entrepreneurs in their state (i.e., no deductions or credits for prohibited business activities under 26 U.S.C § 280E)

Legalization Overview

- ▶ Legal Possession Limit after January 1, 2020
- ▶ *Illinois Residents* who is 21 years or older:
 - ▶ 30 grams of raw cannabis;
 - ▶ cannabis-infused product or products containing a total of no more than 500 mg of THC;
 - ▶ 5 grams of cannabis product in concentrated form;
 - ▶ Medical patients only: 5 cannabis plants and the cannabis produced from those 5 plants, secured within the residence or dwelling unit.
- ▶ *Non-Residents* who is 21 year of age or older limited to half of possession limit

Personal Use: Possession

	Illinois Resident	Non-Illinois Residents
Cannabis flower	30 grams	15 grams
THC contained in cannabis-infused products	500 milligrams	250 milligrams
Cannabis concentrate	5 grams	2.5 grams

Prohibited Use

- ▶ General Rule- public use is prohibited
- ▶ "Public place" is defined as any place where a person could reasonably be expected to be observed by others.
- ▶ The following are still civil or criminal penalties:
 - ▶ *smoking cannabis* in any public place where a person could reasonably be expected to be observed by others;
 - ▶ *possessing cannabis and using cannabis* on school grounds;
 - ▶ driving under the influence of cannabis;
 - ▶ Medical patients giving or transferring medical cannabis to non-patients;
 - ▶ using cannabis by a law enforcement officer, while on duty; and
 - ▶ using cannabis by a Commercial Driver's License while on duty.

Motor Vehicle & Underage Use

- ▶ Guiding principle is to treat Cannabis similar to Liquor Violations
- ▶ No driver may:
 - ▶ use cannabis in the passenger area of a vehicle in motion
 - ▶ possess opened cannabis in a moving vehicle
- ▶ Underage use (Age 21 and under) is treated similar to Alcohol:
 - ▶ Possession prohibited
 - ▶ Use of Fake Ids prohibited
 - ▶ Possession and use while in a motor vehicle prohibited
- ▶ Parents have no social host protections for underage use:
 - ▶ Class A Misdemeanor and \$500 fine;
 - ▶ If bodily harm occurs penalty increase to Class 4 felony

Home Grow - Medical Patients Only

- ▶ Every registered patient under the Compassionate Use of Medical Cannabis Pilot Program Act may grow 5 plants per household under certain conditions:
 - ▶ The grower is an adult aged 21 or older,
 - ▶ The grower owns the residence or has permission from the owner,
 - ▶ The grower must keep cannabis in a separately locked room away from members of the household who are under 21, and
 - ▶ The grower is prohibited from growing cannabis in public view.
- ▶ New Tobacco 21 Law applies to Medical Cannabis
- ▶ Municipalities may not prohibit medical home grow, but may still enforce violations

Home Grow- Penalties

- ▶ Section 10-5. Personal use of cannabis; restrictions on cultivation; penalties:
 - ▶ (9) A registered qualifying patient who cultivates more than the allowable number of cannabis plants, or who sells or gives away cannabis plants, cannabis, or cannabis-infused products produced under this Section, *is liable for penalties as provided by law, including the Cannabis Control Act, in addition to loss of home cultivation privileges as established by rule.*
- ▶ Expect State Agencies to expand and clarify with JCAR rules.

Compassionate Use of Medical Cannabis Program Expansion

- ▶ Public Act 101-0363 (SB 2023) amended the Act making the Medical Cannabis Program permanent and adds new eligible medical conditions to the program:
 - ▶ Autism
 - ▶ Chronic pain
 - ▶ Irritable bowel syndrome
 - ▶ Migraines
 - ▶ Osteoarthritis
 - ▶ Anorexia nervosa
 - ▶ Ehlers-Danlos syndrome
 - ▶ Neuro-Bechet's autoimmune disease
 - ▶ Neuropathy
 - ▶ Polycystic kidney disease (PKD)
 - ▶ Superior canal dehiscence syndrome
 - ▶ Ulcerative colitis
- ▶ Veterans with a current prescription for an opioid from a VA medical facilities are eligible to register.

Recovery, Reinvest, and Renew Program

- ▶ Illinois Criminal Justice Information Authority (ICJIA) will designate “R3 Areas” or locations where applicants will be eligible to apply for state funding through the R3 Board.
- ▶ Areas will be based on:
 - ▶ Data showing disproportionately impacted by historical economic disinvestment;
 - ▶ ravaged by gun injury, unemployment, child poverty rates, and commitments to Department of Corrections;
 - ▶ ICJIA will review the selected communities every 4 years.
- ▶ 25% of State Cannabis revenues will be allocated to fund the R3 Grant program.

Social Equity Applicants

- ▶ DCEO will establish a social equity applicant status for licensing. A social equity applicant is an Illinois resident that meets one of the following criteria:
 - ▶ Applicant with at least 51% ownership and control by one or more individuals who have resided for at least 5 of the preceding 10 years in a disproportionately impacted area.
 - ▶ Applicant with at least 51% ownership and control by one or more individuals who have been arrested for, convicted of, or adjudged to be a ward of the juvenile court for any offense that is eligible for expungement under this Act or member of an impacted family;
- ▶ Social equity applicants will receive waivers and additional benefits in licensing process

Expungement of Records

- ▶ Several stand-alone offenses will be eligible for expungement by January 1, 2025
- ▶ **Section 4 Possession** (unlawful for any person to knowingly possess cannabis in the following amounts)
 - ▶ Less than 10 grams (civil law violation, penalty fees)
 - ▶ 10-30 grams (Class B misdemeanor, penalty 6 months prison)
- ▶ **Section 5 Manufacturer/Deliver** (unlawful for any person knowingly to manufacture, deliver, or possess with intent to deliver or manufacture cannabis in the following amounts)
 - ▶ Less than 2.5 grams (Class B misdemeanor, penalty 6 months prison)
 - ▶ 2.5 grams to 10 grams (Class A misdemeanor, penalty one year prison)
 - ▶ 10 to 30 grams (Class 4 Felony, penalty 1-3 years prison)

Licensing

- ▶ January 1, 2020- Medical cannabis dispensaries begin selling recreational cannabis
 - ▶ Must apply for a license and follow local zoning regulations
- ▶ May 1, 2020- DFPR awards remaining licenses:
 - ▶ **75 new dispensing locations**
 - ▶ Allocated regionally Chicago-Naperville-Elgin (DuPage): 47
 - ▶ Total increased to 110 after December 21, 2021; 500 after January 1, 2022.
 - ▶ **30 cultivation centers** (up to 210,000sq ft of grow space)
 - ▶ **40 craft growers** (5,000sq ft to 14,000sq ft of grow space)
 - ▶ Increase to 100 after December 21, 2021
 - ▶ **40 Processing Organization**
 - ▶ Increase to 100 after December 21, 2021
 - ▶ **Unlimited Transporting Organizations**

Licensing (Cont.)

- ▶ Each license has a location restriction between one another. In DuPage, no license of the same type may operate within 1,500 ft. of one another.
- ▶ All licensing information is subject to disclosure under the Freedom of Information Act.
- ▶ Limitations on ownership:
 - ▶ No person or entity shall hold any legal, equitable, or beneficial interest, directly or indirectly, of more than 3 cultivation centers
 - ▶ No person or entity shall hold any legal, equitable, or beneficial interest, directly or indirectly, of more than 10 dispensing organizations.

Employer & Employee Rights

- ▶ Employers may adopt reasonable zero tolerance employment policies.
 - ▶ May include prohibitions on smoking, consumption, storage or use of cannabis in the workplace.
- ▶ Employers may discipline employees or applicants that refuse to be drug tested.
- ▶ Employers may discipline or terminate an employee for violating the employer's employment policies or workplace drug policy.
- ▶ Prohibition includes “on-call employees” and “workplaces” as defined by the employers.
- ▶ Employers may comply with federal or state requirements if failure to do so would lose funding or a contract.

Employer Rights

Section 10-50. Employment; employer liability:

“(a) Nothing in this Act shall prohibit an employer from adopting reasonable zero tolerance or drug free workplace policies, or employment policies concerning drug testing, smoking, consumption, storage, or use of cannabis in the workplace or while on call provided that the policy is applied in a nondiscriminatory manner.

(b) Nothing in this Act shall require an employer to permit an employee to be under the influence of or use cannabis in the employer's workplace or while performing the employee's job duties or while on call.

(c) Nothing in this Act shall limit or prevent an employer from disciplining an employee or terminating employment of an employee for violating an employer's employment policies or workplace drug policy.”

Employer- Identifying Cannabis Symptoms (Section 10-50(d))

- ▶ Employers may consider an employee to be under the influence of cannabis if they have a “good-faith belief” that the employee manifests specific, articulable symptoms that decrease or lessen the employee’s performance listing the following symptoms:
 - ▶ impairment of speech, physical dexterity, agility, coordination;
 - ▶ unusual behavior or demeanor;
 - ▶ negligence or carelessness in operating equipment or machinery;
 - ▶ disregard of the employee’s own safety or the safety of others;
 - ▶ involvement in any accident that results in serious damage to equipment or property;
 - ▶ disruption of a production or manufacturing process; or
 - ▶ carelessness that results in any injury to the employee or others.

Employee Rights

- ▶ The Cannabis Regulation and Tax Act amends the Illinois Right to Privacy in the Workplace Act to clarify that recreational cannabis is considered a "lawful product."
 - ▶ The Act protects employees from adverse employment actions related to their use of "lawful products" outside of working hours.
- ▶ Employees have the right to challenge an employers "good-faith belief" of influence of cannabis.
- ▶ Municipalities should keep an eye on how courts will strike a balance between the competing rights of employers and employees in the coming years.

Community College Cannabis Program

- ▶ The Department of Agriculture will administer a vocational pilot program.
- ▶ Starting in the 2021-2022 academic year, community colleges can be awarded Program license for a Career in Cannabis Certificate. The program will include:
 - ▶ Students working with, studying, and growing live cannabis plants.
 - ▶ Potential work-study programs within the industry.
- ▶ Department of Agriculture will create rules pertaining to the provision in the Act.
 - ▶ Rules are still pending.
- ▶ Community colleges must agree to inspections and prevent cannabis from leaving the facility.

State Taxation

- ▶ 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, craft grower, or processor 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%
- ▶ Taxes are in addition to all other occupation, privilege, or excise taxes imposed by the State of Illinois or by any municipal government

Local Government Taxation

- ▶ Municipal Cannabis Retailer's Occupation Tax:
 - ▶ Municipalities may enact a purchaser excise tax up to 3% in increments of 0.25%
- ▶ County Cannabis Retailer's Occupation Tax:
 - ▶ A County may levy an excise tax up to 3% (3.75% in unincorporated) in increments of 0.25%
- ▶ Medical Cannabis is exempt from both State and Local taxes.

Allocation of State Revenue

- ▶ Tax revenue will be allocated in the following order:
 - ▶ First, State agencies responsible for administering the adult use cannabis program will receive resources to cover administrative costs from the taxes collected by the program.
 - ▶ Second, State Police and State Attorneys will receive funding to pay for cost for expungement
 - ▶ All remaining revenue will be allocated by the following percentages:
 - ▶ 2% will be transferred to the Drug Treatment Fund to fund public education and awareness.
 - ▶ 8% will be transferred to the Local Government Distributive Fund to create a law enforcement funding for crime prevention, training, and interdiction efforts.
 - ▶ 20% will be transferred to a fund that will support mental health and substance abuse services at local health departments,
 - ▶ 25% will be transferred to the Recovery, Reinvest, and Renew Program for community reinvestment,
 - ▶ 35% will be transferred to the General Revenue Fund,
 - ▶ 10% will be transferred to the Budget Stabilization Fund (*backlog of unpaid bills*)
- ▶ The entire funding formula will be reviewed by the General Assembly in FY 2024.

Local Government Distributive Fund

- ▶ There is a trailer bill coming in Veto Session that is reviewing several issues in which the LGDF issue is included.
 - ▶ Expect this section to change and see clarifying language before January 1, 2020.
- ▶ The Department of Revenue has not yet released their JCAR rules which should provide guidance for municipalities.
- ▶ General Assembly's intent was for law enforcement funds to be distributed identically to formula in the current LGDF.
- ▶ The Illinois Municipal League has asked the statute to be changed to provide guidance on how to comply with the law or to create a new fund to disperse law enforcement funds.
- ▶ Legislators have not decided on a final solution.

Revenue Estimations

- ▶ GOMB FY2020 Revenue estimates range from \$50 to \$140 million.
- ▶ Pew Charitable Trusts urges caution when using estimated revenues
- ▶ “The hurdles of forecasting recreational marijuana revenue will persist,” according to the report. “Given how unpredictable the marijuana market is, states should exercise caution in budget planning to ensure that the money strengthens, rather than weakens, their long-term fiscal position.”
- ▶ Initial revenue projections have historically proven volatile:
 - ▶ Nevada outpaced projections by 40% for the first six month of sales
 - ▶ California was 45% lower than expected.
- ▶ Illinois is expected to take at least 5 years before market is fully saturated.

Local Governments Controls

- ▶ Local Governments, including a home rule unit or any non-home rule county within the unincorporated territory of the county, may enact ordinances at any time that:
 - Regulate the time, place, manner, and number of cannabis business establishment operations
 - includes minimum distance limitations between cannabis business establishments and locations it deems sensitive, including colleges and universities, through the use of conditional use.
 - Prohibit (opt out) or significantly limit a Cannabis Business Establishment's location.
 - Includes all cannabis licenses, not just dispensaries.
 - Regulate the on-premises consumption of cannabis at or in a cannabis business establishment within its jurisdiction.
- ▶ However, no unit of local government may unreasonably prohibit home cultivation or the use of cannabis

Social Use Spaces

- ▶ Are Social Use Spaces Allowed?
 - ▶ Yes, but there are two conflicting interpretations within the General Assembly.
- ▶ Interpretation #1:
- ▶ The law allows units of local government to regulate what are known as “social use spaces.”
- ▶ They are intended to be businesses that permit the use (but not sale) of cannabis products within their facilities.
- ▶ Interpretation #2:
- ▶ The law allows units of local government to allow consumption of cannabis at “cannabis business establishments” only.

Social Use Spaces (Cont.)

Section 55-25. Local ordinances:

- ▶ (3) A unit of local government, including a home rule unit, or any non-home rule county within the unincorporated territory of the county may regulate the on-premises consumption of cannabis at or in a cannabis business establishment within its jurisdiction in a manner consistent with this Act. A cannabis business establishment or other entity authorized or permitted by a unit of local government to allow on-site consumption shall not be deemed a public place within the meaning of the Smoke Free Illinois Act.

Municipalities should consult with your legal council, but also expect clarification in the trailer bill.

Governing State Agencies

- ▶ Cannabis Regulation Oversight Officer
- ▶ Department of Revenue
- ▶ Department of Agriculture
- ▶ Department of Financial and Professional Regulation
- ▶ Illinois State Police
- ▶ Department of Public Health
- ▶ Department of Commerce and Economic Opportunity
- ▶ Department of Human Services
- ▶ Illinois Criminal Justice Information Authority (ICJIA)

Thank You

▶ Questions?