



ML Strategies Alert

Marijuana Legislation Reaches Governor's Desk for Approval

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Surpassing a self-imposed deadline of July 1st to have compromise legislation on Governor Baker's desk, the Massachusetts House and Senate reached an accord and voted to approve a reconciled recreational marijuana bill on July 19, 2017. The 75-page bill addresses key issues on the minds of legislators including setting a 20% tax rate on recreational marijuana purchases and a compromise local control option that hinges on whether a city or town's voters approved of recreational marijuana when it was on the ballot in November of 2016.

Below are highlights from the legislation:

Taxation Rate

The bill before the Governor contains a total tax rate on recreational marijuana and products sold by marijuana retailers of up to 20%. This compromise rate reflects a daily excise tax rate of 10.75%, up from a 3.75% rate established in the ballot initiative language. The Senate legislation left the ballot initiative rate untouched, while the House version increased the rate to 16.75%. The daily excise tax rate of 10.75% is in addition to the already existing 6.25% sales tax and can be increased by a local tax rate of up to 3%, reflecting a 1% increase over the voter approved rate for the local option.

The legislation also allows for cities and towns to bank additional funds collected through an optional community impact fee. These fees are permissible under mandated host community agreements executed between municipalities and marijuana retailers, which can reach a rate of 3% on a shop's gross sales. A municipality hosting a marijuana establishment that includes the maximum community impact fee in their agreement with the retailer may well see a significant increase in dollars flowing to the town above and beyond the 3% local tax. The combination of impact fee and local taxes may influence cities and towns to open their doors to the new industry.

Local Option

With the House and Senate on opposite ends of the spectrum in regard to whether to change the voter approved local option process, the reconciled bill encompasses a true compromise. The ballot initiative language required a town-wide referendum in order to ban recreational retailers from a community, a plan supported by the Senate. The House, however, shifted that power to local officials. The bill before Governor Baker strikes a balance between this ideological split by allowing municipal officials to vote to ban recreational establishments only if the town voters opposed the ballot question. In towns where the ballot initiative was adopted, a town-wide vote would be required in order to prevent such shops from opening. Some stakeholders have queried whether this system is constitutional, as voters are treated differently from town to town, based solely on the voice of that town's majority. For now, however, the two-tiered system stands. It should also be noted that, regardless of the new local option system, medical marijuana facilities already licensed but seek to expand to the recreational market are protected, as the legislation prohibits towns from pursuing a ban on such an expansion.

Cannabis Control Commission and Advisory Board

The Cannabis Control Commission (CCC) will become the sole body overseeing the recreational and medical marijuana industries, as the legislation shifts oversight of the medical use program, currently under the purview of the Department of Public Health, to the newly minted Commission. The CCC, an independent body, closely mirrors the Gaming Commission in its composition. The 5-member Commission is made up of appointments by the Treasurer – who is granted the Chair appointment - the Attorney General, and the Governor. In addition to the authority to grant licenses, the CCC will have audit power over all marijuana entities, collect fingerprint and criminal background checks on applicants, impose fees, fines and sanctions for violations of law, and establish minimum security and liability insurance standards, among other controls.

The Cannabis Advisory Board, tasked with studying and making recommendations to the Commission on the regulation and taxation of marijuana, is a 25-member body that will include subcommittees on public health, public safety, cannabis industry practices and market participation. The Board will preliminarily be tasked with advising the CCC on the preparation of regulations for the recreational and medical marijuana industries. Appointments to the Board are set to be made by August 1st, a mere day after the 10-day window Governor Baker has to sign the legislation.

Other Noteworthy Provisions

Notably, the legislation allows for the transfer of a license for a marijuana establishment to another person or location so long as approved by the CCC, similar to certain alcohol license transfers. However, this provision should be viewed in the context of the mandated host community agreements, which may be drafted to bar transfers of licenses to other people or locations during the duration of the contract. This could present as a major topic in the drafting and negotiations of host community agreements as the industry develops.

Additionally, the bill, among many other provisions, includes the following: increases the amount of marijuana legally allowed to be possessed from 1 to 2 ounces; allows for sealing of criminal records related to marijuana charges for offenses that have been decriminalized; stringent guidelines for marijuana laboratory testing; establishment of the industrial hemp industry; and funding for behavioral health and substance use prevention and treatment, public safety, municipal police training, the Prevention and Wellness Trust Fund, and programs for restorative justice, jail diversion and workforce development.

What's Next?

Governor Baker has 10 days to sign the legislation, send it back with amendment, or veto it. With the first licenses under the law to be issued starting June 1, 2018, it is likely the Governor approves the bill and begins the process of appointing members to the CCC and Advisory Board, which are set to be made by September 1st and August 1st, respectfully. The CCC has until March 15th, 2018 to promulgate regulations, and will begin accepting applications for licensure April 1st with priority given to medical marijuana entities with a provisional or final license already granted by the Department of Public Health.

ML Strategies will closely monitor the process moving forward and will report on prominent industry issues, including energy and environmental regulations for marijuana establishments, “sham” gifts, testing for marijuana use by employers and license transfer matters throughout the coming months.

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