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The Voters Have Spoken: When and How NJ Will Give Life to the Cannabis Market

Two formal moves that will direct the establishment of an equitable adult-use cannabis market have brought New Jersey closer to an adult-use industry.

By **Guillermo Artiles, Patrick Harrity and Alexandra Viqueira** | November 27, 2020



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Horticultural, retail, biotech, pharma, and other companies located in the diverse cannabis industry have long anticipated and increasingly prepared for adult-use legalization in the state of New Jersey. Two formal moves have brought New Jersey closer to an adult-use industry: Governor Murphy's appointments to the coming Cannabis Regulatory Commission and the legislature's joint advancement of the New Jersey Cannabis Regulatory, Enforcement Assistance and Marketplace Modernization Act (the "Act"). Both moves will direct the establishment of an equitable adult-use cannabis market.

Only two days after New Jersey voters approved adult cannabis use, the Act was introduced in both the State Assembly and the State Senate.

As of Nov. 9, both bill versions have advanced from their respective oversight committees. A second committee consideration was set to take place Nov. 12, followed by full votes in both State Houses expected to take place as early as Nov. 16. However, as of this writing, voting has stalled. The Senate and Assembly are at odds as to whether the legislation should have any caps on the number of license holders in the state. Currently, the Senate and Assembly have different versions of the bill being considered. In order for the bill to land on the governor's desk for his signature (and ultimate passage into law), the Assembly and Senate bills must be identical and voted on as such.

Regarding participation in the expanding cannabis industry, the Act's highlights include:

Cannabis Regulatory Commission

This commission will, under the New Jersey Department of the Treasury, consist of five state-appointed governing members, an executive director, and other necessary personnel. The commission will oversee the policy development, regulation, and enforcement of both personal use and medical cannabis, assuming the Department of Health's present governance of alternative treatment centers and medical cannabis. Within 180 days, the commission will enact necessary administrative procedure for adult-use cannabis licensing.

Governor Murphy has filled two of four appointments allotted to the Executive Office:

- Senior Policy Advisor to the Governor, Dianna Houenou, will serve as Chair.
- Jeff Brown, the Deputy Health Commissioner currently responsible for overseeing medical cannabis programming, will serve as Executive Director.

State and Local Regulation

The Act covers licensing application procedures and fees, plant and cannabis item compliance, marketing restrictions, retail and handler certification, cannabis testing facility powers and procedures, and the promotion of minority, disabled veteran, and women actors in the growing, processing, testing, and sale of cannabis. Additionally, municipalities are provided with certain rights and prescribed certain limitations regarding prohibition of local cannabis establishments.

State and Local Tax

Exempting medical cannabis, the Division of Taxation will determine fees to be remitted on a monthly basis. Additional provisions for optional municipal taxes include:

- *Local transfer of sale and consumer retail receipts:* Rates may not exceed 2% of receipts from each sale by cannabis grower; 2% of processor receipts; 1% of wholesaler receipts; 2% of retail sales receipts.
- *Local user tax:* Tax may be applied to concurrent license holders or those operating more than one establishment equal to transfer tax rates—this may be imposed on cannabis items not otherwise subject to transfer tax *whether or not located within municipality.*

Marketplace Regulation

For an 18-month period after legalization, the Act prohibits simultaneously licensing for, operating, or having a financial interest in both cannabis retail and processing. Previously licensed medical marijuana dispensaries are exempted from this prohibition.

Licensing and Application Procedure

The Act outlines application provisions for annual and conditional Class 1 Grower, Class 2 Processor, Class 3 Wholesaler, and Class 4 Retailer licensing—in addition to handler and retail employee certifications. Limited applications will be scored and ranked, prioritizing New Jersey residents; labor agreements with cannabis workers; minority, disabled veteran, women applicants; impact zone residents; experience in highly regulated industries and alternative treatment centers.

Please note that the specifics included in this article are based on the current text of the Act and are subject to change based on any changes to the Act. Although the Act is moving swiftly through the legislature, there is an expectation of slow implementation among legislative leadership.

Counsel with experience in this area will be helpful to clients in the upcoming months regarding:

- **Ability to Purchase Recreationally:** Alternative care centers will have first priority, as their existing infrastructure and approvals may translate to retail sales. However, alternative care centers must first demonstrate sufficient medical cannabis supply and crop capacity.
- **Preparation for Application:** As we have seen in prior rounds of applications, applicants that wait until the application is announced to begin preparing their submission will be starting way behind many other applicants, and will have a much lower chance of success.
- **Timeline of the Act:** Trenton is building regulatory infrastructure from scratch—those companies that begin a dialogue and application preparation now will position themselves much more favorably for success upon the recreational application's launch.

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