



Cannabis Advisory Board Overview of 2017 Law

AGENDA

- History of the Law
- Basic Summary
- Limits on Regulations
- Medical v. Adult
- State v. Federal FAQ
- Q & A

DRAFT--FOR DISCUSSION PURPOSES ONLY

This presentation has not been reviewed or approved by the Cannabis Control Commission.



Cannabis Advisory Board

Overview of 2017 Law: History

History of Massachusetts Adult Use of Marijuana Law

- In November, 2016, Massachusetts voters voted on a ballot petition for the adult use of marijuana, commonly referred to as “Question 4.” The 2016 ballot petition became Chapter 334 of the Acts of 2016.
- In December, 2016, the Massachusetts legislature amended the 2016 law to delay certain deadlines by 6 months, clarify how municipal land use regulations would treat the cultivation of marijuana, and authorize a baseline study of certain issues.
- In the Spring of 2017, the Massachusetts House and Senate proposed different bills amending the 2016 law. A Joint Committee was appointed to reconcile the two bills. After further debate, the Legislature approved H.3818, which became Chapter 55 of the Acts of 2017.



Cannabis Advisory Board Overview of 2017 Law: **History**

The 2017 Law requires the development of regulations:

The Cannabis Control Commission is charged with developing regulations to implement adult use of marijuana, which will be promulgated in 2018.

The Department of Agricultural Resources is charged with developing regulations to implement an industrial hemp program.

The 2017 law also requires that the 2012 law be rescinded when the Medical Use of Marijuana Program moves from the Department of Public Health to the Cannabis Control Commission. In its place, the 2017 law created G.L. c.94I.



Cannabis Advisory Board Overview of 2017 Law: **Basic Summary**

Basic Summary

- Creation of the Cannabis Control Commission
- Creation of the Cannabis Advisory Board
- Regulations
- Licensing
- Miscellaneous Topics
- Civil Penalties Overview



Cannabis Advisory Board Overview of 2017 Law: **Basic Summary**

Creation of the Cannabis Control Commission

- 5 Members
 - 1 appointed by the Governor
 - 1 appointed by the Treasurer (Chairman)
 - 1 appointed by the Attorney General
 - 2 joint appointments by majority vote of the Governor, Treasurer and Attorney General

In future years, the terms of the Commissioners will be 5 years. The terms of the initial appointees differ, except for the Chairman.



Cannabis Advisory Board Overview of 2017 Law: **Basic Summary**

Creation of the Cannabis Advisory Board

- 25 Members
 - 10 chosen by their office (e.g. Commissioner of DPH)
 - 5 appointed by the Governor
 - 5 appointed by the Treasurer
 - 5 appointed by the Attorney General
- Two year terms



Cannabis Advisory Board

Overview of 2017 Law: **Basic Summary**

Cannabis Advisory Board divided into 4 subcommittees:

- **a subcommittee on public health** to develop recommendations on products, labelling, marketing, advertising, related public health issues, potency, which may include a recommended maximum limit for individual servings of marijuana products, and packaging, which may include the development and implementation of a public health warning to appear on marijuana products;
- **a subcommittee on public safety and community mitigation** to develop recommendations on law enforcement, property, business and consumer issues;
- **a subcommittee on the cannabis industry** to develop recommendations on cultivation, processing, manufacturing, transportation, distribution, seed-to-sale tracking and market stability; and
- **a subcommittee on market participation** to develop recommendations on women, minority and veteran-owned businesses, local agriculture and growing cooperatives.



Cannabis Advisory Board

Overview of 2017 Law: **Basic Summary**

Possession Restrictions

An individual 21 years of age shall not be arrested, prosecuted, penalized, sanctioned or disqualified under the laws of the commonwealth in any manner, or denied any right or privilege and shall not be subject to seizure or forfeiture of assets for:

- **Personal Possession:** possessing, using, purchasing, processing or manufacturing **1 ounce or less of marijuana**, *except* that not more than 5 grams of marijuana may be in the form of *marijuana concentrate*;
- **Residential Possession:** within the person's primary residence:
 - possessing **up to 10 ounces of marijuana**;
 - possessing, cultivating or processing not more than **6 marijuana plants per person** and any marijuana produced by marijuana plants cultivated on the premises;
 - maximum of 12 plants per residence; AND
 - IF that person possesses more than 1 ounce of marijuana or marijuana products within their place of residence, the marijuana and marijuana products must be secured by a lock.



Cannabis Advisory Board

Overview of 2017 Law: **Basic Summary**

Home Cultivation

- An individual over 21 years of age may grow 6 plants in their home.
- If more than one individual over 21 years of age lives in the residence and wish to grow marijuana, the maximum number of plants that may be grown at the residence is 12 plants.
- The plants must be grown in an area that is equipped with a lock or security device.
- The plants cannot be visible from a public place without the use of binoculars, aircraft or other optical aids.
- An individual cannot manufacture at home marijuana or hemp by means of any liquid or gas, other than alcohol, that has a flashpoint below 100 degrees Fahrenheit.



Cannabis Advisory Board

Overview of 2017 Law: **Basic Summary**

Landlord –Tenant Issues

- A lease agreement cannot prohibit a tenant from consuming marijuana by means *other* than smoking on or in property in which the tenant resides, unless failing to do so would cause the landlord to violate a federal law or or if the property is owned by the Commonwealth, county, city or town, or a state or local government agency.
- The Commonwealth, a county, city or town, or a state or local government agency may prohibit or otherwise regulate the possession or consumption of marijuana or marijuana accessories within a building owned, leased or occupied by it.
- The 2017 law prohibits a landlord from being arrested, prosecuted, penalized, sanctioned or otherwise denied any benefit or being subject to seizure or forfeiture of assets for allowing property the landlord owns, occupies or manages to be used for any of the activities conducted lawfully under the 2017 law or for enrolling or employing a person who engages in marijuana-related activities lawfully under the 2017 law.



Cannabis Advisory Board

Overview of 2017 Law: **Basic Summary**

Taxes

Excise tax of 10.75% is set on sale of marijuana or marijuana products for adult use by a *marijuana retailer* to anyone *except* another marijuana establishment. There is also a state sales tax of 6.25%.

- A city or town that accepts the 2017 Law may also impose a local sales tax upon sale or transfer of marijuana or marijuana products by a *marijuana retailer* operating within the municipality to anyone *other* than a marijuana establishment of no greater than 3% of the total sales price.
- The marijuana retailer pays the local sales tax to DOR at the same time and in the same manner as the sales tax due to the Commonwealth. DOR will distribute the local sales taxes to municipalities.
- Like other medicines, marijuana for medical use is considered exempt from taxation.
- The undistributed taxes collected go to a fund called the “Marijuana Regulation Fund.”
- Money in the Fund shall be subject to appropriation by the Massachusetts Legislature.
- The commission will review the tax rate annually and may make recommendations.



Cannabis Advisory Board

Overview of 2017 Law: **Basic Summary**

Taxes

The 2017 Law sets out the following priorities for monies from the Fund:

- First, money in the fund shall be expended for the implementation, administration and enforcement of this chapter by the commission and by the department of agricultural resources for the implementation, administration and enforcement of the industrial hemp program and the provision of pesticide control.
- Thereafter, money in the fund shall be spent on:
 - public and behavioral health including but not limited to, evidence-based and evidence-informed substance use prevention and treatment and substance use early intervention services in a recurring grant for school districts or community coalitions who operate on the strategic prevention framework or similar structure for youth substance use education and prevention;
 - public safety;
 - municipal police training;
 - the Prevention and Wellness Trust Fund established in section 2G of chapter 111; and
 - programming for restorative justice, jail diversion, workforce development, industry specific technical assistance, and mentoring services for economically-disadvantaged persons in communities disproportionately impacted by high rates of arrest and incarceration for marijuana offenses.



Cannabis Advisory Board

Overview of 2017 Law: **Basic Summary**

Municipalities

- A city or town may adopt ordinances and bylaws that impose reasonable safeguards on the operation of marijuana establishments, provided they are not unreasonably impracticable
- A city or town may not adopt bylaws or ordinances that operate to prevent the conversion of a medical marijuana establishment licensed on or before July 1, 2017 and engaged in the cultivation, manufacture or sale of marijuana or marijuana products to a marijuana establishment engaged in the same type of activity for adult use



Cannabis Advisory Board

Overview of 2017 Law: **Basic Summary**

Municipalities

- Cannot prohibit the transportation of marijuana or marijuana products
- Cannot adopt an ordinance or by-law that makes the transportation of marijuana or marijuana products unreasonably impracticable.
- Required to enter into host community agreements with marijuana establishments or RMDs. Agreements can include a community impact fee, but must be reasonably related to costs imposed upon the municipality and is capped to no more than 3% of the gross sales of the establishment or be effective for longer than 5 years.
- Cost imposed by the operation of a marijuana establishment on a municipality must be documented and considered a public record.



Cannabis Advisory Board

Overview of 2017 Law: **Basic Summary**

Municipalities Cannot

Municipalities cannot propose to adopt a bylaw or ordinance without submitting the bylaw or ordinance to the voters if that municipality voted “Yes” on Question 4 in 2016 that:

- prohibits the operation of 1 or more types of marijuana establishments within the city or town;
- limits the number of marijuana retailers to fewer than 20% of the number of licenses issued within the city or town for the retail sale of alcoholic beverages (known as package stores); or
- limits the number of any type of marijuana establishment to fewer than the number of medical marijuana treatment centers registered to engage in the same type of activity in the city or town



Cannabis Advisory Board

Overview of 2017 Law: **Basic Summary**

Licensing

No licensee shall be granted more than:

- 3 *marijuana retailer* licenses,
- 3 *medical marijuana treatment center* licenses,
- 3 *marijuana product manufacturer* licenses, or
- 3 *marijuana cultivator* licenses.

Unless the Commission determines a particular license should have a longer term, a license will last 1 year for a registrant in good standing.



Cannabis Advisory Board

Overview of 2017 Law: **Basic Summary**

Licensing

A marijuana cultivator is an entity licensed to:

- cultivate, process and package marijuana
- to deliver marijuana to marijuana establishments
- to transfer marijuana to other marijuana establishments, but not to consumers.



Cannabis Advisory Board

Overview of 2017 Law: **Basic Summary**

Licensing

A craft marijuana cultivator cooperative is a type of marijuana cultivator

- comprised of residents of the commonwealth organized as an LLC or LLP, or an appropriate business structure as determined by the CNB
- that is licensed to cultivate, obtain, manufacture, process, package and brand marijuana and marijuana products to deliver marijuana to marijuana establishments, but not to consumers.
- Note: co-ops will have a limitation on ownership interests, a limit on total marijuana produced, and “reasonable” fees



Cannabis Advisory Board

Overview of 2017 Law: **Basic Summary**

Licensing

An *independent testing laboratory* is a laboratory that is licensed by the commission and is:

- accredited
- independent financially from any medical marijuana treatment center or any licensee or marijuana establishment for which it conducts a test
- qualified to test marijuana in compliance with regulations promulgated by commission pursuant to this chapter.



Cannabis Advisory Board

Overview of 2017 Law: **Basic Summary**

Licensing

A marijuana product manufacturer is an entity licensed:

- to obtain, manufacture, process and package marijuana and marijuana products
- to deliver marijuana and marijuana products to marijuana establishments
- to transfer marijuana and marijuana products to other marijuana establishments, but not to consumers.



Cannabis Advisory Board

Overview of 2017 Law: **Basic Summary**

Licensing

Marijuana products are products that have been manufactured and contain marijuana or an extract from marijuana, including:

- concentrated forms of marijuana
- products composed of marijuana + other ingredients for use or consumption (edible products, beverages, topical products, ointments, oils and tinctures).



Cannabis Advisory Board

Overview of 2017 Law: **Basic Summary**

Licensing

A marijuana retailer is an entity licensed

- to purchase and deliver marijuana and marijuana products from marijuana establishments
- to deliver, sell or otherwise transfer marijuana and marijuana products to marijuana establishments and to consumers.



Cannabis Advisory Board

Overview of 2017 Law: **Basic Summary**

Licensing

The 2017 law also authorizes, but does not require, the Commission to create additional types of licenses, including licenses for:

- Limited cultivation, processing, manufacture, possession or storage of marijuana or marijuana products
 - Limited delivery of marijuana or marijuana products to consumers
 - The consumption of marijuana or marijuana products on the premises where sold
 - The consumption of marijuana at special events in limited areas and for a limited time
 - Licenses intended to facilitate scientific research or education.
- Review and licensing will be prioritized for applicants who demonstrate experience in or business practices that promote economic empowerment in communities disproportionately impacted by high rates of arrest and incarceration for marijuana offenses



Cannabis Advisory Board

Overview of 2017 Law: **Basic Summary**

Priority Licensing

- Review will be expedited for license applicants who are “accredited,” i.e. hold a provisional or final certificate of registration under the medical marijuana program
- Review and licensing will be prioritized for applicants who demonstrate experience in or business practices that promote economic empowerment in communities disproportionately impacted by high rates of arrest and incarceration for marijuana offenses



Cannabis Advisory Board

Overview of 2017 Law: **Basic Summary**

Security Requirements for Marijuana Establishments

- Work must be done at a physical address approved by the commission, within an area that is enclosed and secured in a manner that prevents access by persons not permitted by the marijuana establishment to access the area.
- A greenhouse or outdoor marijuana cultivation area must have sufficient security measures to demonstrate that outdoor areas are not readily accessible by unauthorized individuals, including perimeter security fencing designed to prevent unauthorized entry.
- Marijuana establishments are prohibited from allowing cultivation, processing, manufacture, sale or display of marijuana or marijuana products to be visible from a public place without the use of binoculars, aircraft or other optical aids.
- Marijuana establishments are required to allow inspectors from the Cannabis Control Commission to inspect their premises at any time to ensure compliance.



Cannabis Advisory Board

Overview of 2017 Law: **Basic Summary**

Inclusivity Requirements

- Procedures and policies to promote and encourage full participation in the regulated marijuana industry by people from communities that have previously been disproportionately harmed by marijuana prohibition and enforcement and to positively impact those communities.
- Procedures and policies, in cooperation with the department of agricultural resources, to promote and encourage full participation in the regulated marijuana industry by farmers and businesses of all sizes



Cannabis Advisory Board

Overview of 2017 Law: **Basic Summary**

Regulations cannot:

- Directly conflict with a clear mandate under the 2017 law
- Require a customer to provide a marijuana retailer with identifying information other than to prove the customer's age;
- Require a marijuana retailer to acquire or record personal information about customers other than information typically required in a retail transaction;
- Prohibit a medical marijuana treatment center and an experienced marijuana establishment operator from operating a medical marijuana treatment center and a marijuana establishment at a shared location;



Cannabis Advisory Board

Overview of 2017 Law: **Basic Summary**

Regulations cannot:

- Prohibit marijuana establishments from transferring or acquiring marijuana seeds, clones, cuttings, plants or plant tissue from other marijuana establishments or from medical marijuana treatment centers
- Prohibit a marijuana establishment from transferring or otherwise selling marijuana to a marijuana retailer, a marijuana product manufacturer or a marijuana cultivator
- Prohibit marijuana establishments from using non-organic cultivation methods.



Cannabis Advisory Board

Overview of 2017 Law: **Medical v. Adult**

	Medical	Recreational
Age	Registered qualify patients 18+ special procedures for patients under 18	21
Personal Possession Amount	10 oz for 60 days or other amt certified by healthcare provider	1 oz
Residential Possession Amount	10 oz for 60 days Plants necessary to create 60 day supply	10 oz 6 marijuana plants + any marijuana produced by marijuana plants cultivated on the premises If more than one 21+ adult in residence, max of 12 plants per residence
Registration Requirement	Yes	No
Business Model	Vertically-Integrated	Split into marijuana cultivators, product manufacturers and retailers
Testing Required	Yes	Yes



Cannabis Advisory Board

Overview of 2017 Law: **State v. Federal FAQ**

Federal Controlled Substances Act: Marijuana is a Schedule I drug

- The drug or other substance has a high potential for abuse.
- The drug or other substance has no currently accepted medical treatment use in the U.S.
- There is a lack of accepted safety for use of the drug or substance under medical supervision.



Cannabis Advisory Board

Overview of 2017 Law: **State v. Federal FAQ**

Pre-emption: Why doesn't federal law pre-empt state laws allowing use of marijuana? Courts examining the issue have determined there is no direct conflict because:

- State marijuana laws provide protection from prosecution or other penalties under state law
- State marijuana laws do not provide protection from prosecution or other penalties under federal law



Cannabis Advisory Board

Overview of 2017 Law: **State v. Federal FAQ**

Cole Memorandum

<https://www.justice.gov/iso/opa/resources/3052013829132756857467.pdf>

Enforcement Priorities:

- Preventing the distribution of marijuana to minors
- Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs and cartels
- Preventing the diversion of marijuana from states where it is legal to other states
- Preventing state-legal marijuana activity to be used as a pretext for the trafficking of other illegal drugs or activities
- Preventing violence and the use of firearms in the cultivation and distribution of marijuana
- Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use
- Preventing the growing of marijuana on public lands
- Preventing marijuana possession or use on federal property



Cannabis Advisory Board

Overview of 2017 Law: **State v. Federal FAQ**

Rohrabacher-Blumenauer Amendment (formerly known as Rohrabacher-Farr Amendment)

- Budget amendment that restricts spending of funds by the Department of Justice to interfere with implementation of state medical marijuana programs
- First passed in 2014
- Currently expires on December 8, 2017



Cannabis Advisory Board Overview of 2017 Law

Q & A