



## Summary of HB 110: The Delaware Marijuana Control Act

HB 110, sponsored by Rep. Ed Osienski and Sen. Trey Paradee, would make cannabis legal for adults 21 and older, replacing prohibition with a system of regulation that focuses on public health and equity.

### Adult-Use Possession

- Adults who are 21 and older could possess up to one ounce of marijuana, no more than five grams of which may be of concentrated marijuana.
- Home cultivation is not allowed.

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### State Regulation and Licensing

- A Marijuana Commissioner, within the Division of Alcohol and Tobacco Enforcement, will be charged with licensing, regulating, and inspecting cannabis businesses. They could also suspend and revoke registrations.
- Four types of businesses — retailers, cultivation facilities, product manufacturers, and laboratories — will be licensed based on a competitive, scored process. Between 11 and 16 months after the effective date, the following number of licenses will be issued:
  - 15 retailers
  - five testing labs
  - 50 cultivators, no more than seven of which could be larger than 10,001 square feet in the case of indoor cultivation or 5.1 acres for outdoor cultivation
  - 30 product manufacturers, with additional product manufacturers licensed beginning two years after the effective date
- At set times — two years after the effective date for cultivators and three years for retailers — additional licenses can be issued if they are needed to meet demand.

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### Fostering a Just, Responsible, and Inclusive Marijuana Industry

- Licensees will be selected based on a scoring system that considers the applicants' plans for social responsibility — which includes diversity goals, an environmental and sustainability plan, and a plan for creating a working environment with fair scheduling, family-supporting wages, and benefits. Other considerations in the scoring process include security plans and the managing officers'/applicants' expertise and training.
- The commissioner would work with the Division of Small Business, Development and Tourism and the Department of Agriculture to connect cannabis businesses with farms and programs to support businesses owned by minorities, women, and veterans.
- Cultivation regulations could vary based on size to ensure small cultivators' viability.

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## Rules and Regulations to Promote Public Health

- Regulations will include: child-resistant packaging; banning products that look like candy or include cartoon characters; restricting toxic and addictive additives; limiting servings to 10 milligrams of THC or less; including a standardized symbol on cannabis products; warnings about how long the product takes to take effect; and warnings about the harms of cannabis, including the impact on developing brains, on an individual's ability to operate machinery, and any interference with prescription drugs.
- The commissioner would create procedures to hear consumer complaints.
- Retailers could not sell or give away any food or sodas — other than cannabis-infused edibles — or any products with nicotine or alcohol that require a liquor license.
- The Department of Health and Social Services will regulate the safe cultivation of cannabis and will set requirements for air quality, carbon dioxide, water use, and disposal of waste. It will ban pesticides that are not organic or federally approved.
- Cannabis cannot be added to foods in a way that would cause reasonable consumer confusion as to whether the product was a trademarked food product.
- The Marijuana Commissioner will promulgate testing and labeling rules.
- Advertising will be restricted by regulation, including a prohibition on mass marketing likely to reach minors.
- Regulators may create warning signs and require them to be posted.

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## Additional Regulations

- The Marijuana Commissioner would develop comprehensive rules, including governing transportation, storage, employee training, recordkeeping, lab testing, and security — including video, physical security, and alarms.
- Each staffer must be issued an ID badge. Seed-to-sale tracking is required.
- Retailers' hours of operation will be limited. Sales are also not allowed after 1:00 a.m. most days or on Sundays other than from noon to 10 p.m.
- Licenses cannot be issued if another license of that type is within 1,200 feet in a city or town, or within a mile in a rural or unincorporated area.
- New cannabis businesses cannot be licensed in the vicinity of a church, school, college, or substance abuse treatment facility.

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## Oversight Committee

- A 14-member Marijuana Control Act Oversight Committee would be established to report and advise on matters including statewide access to legal marijuana, the sufficiency of regulatory safeguards, the impacts of the law on decreasing illegal sales and public safety, and best practices on promoting diversity.
- The oversight committee includes heads of the divisions of Revenue, Public Health, Substance Abuse and Mental Health, the Medical Marijuana Program and Oversight Committee, the Division of Diversity and Inclusion, and seven individual appointees.

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## Transition Period

- Beginning 30 days after the effective date, compassion centers could sell up to 3.5 grams of cannabis to adults, with strong protections to prevent shortages for patients.
  - The medical marijuana program director would decide how much stock must be set aside for patients only. They could freeze adult-use sales if there's cause to believe patient demand wouldn't be satisfied otherwise.
- During the transition period, the tax rate would be 25% (it would be 15% later).
- These sales would end within 11 months, when permanent licenses are available.

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## Local Control and Protest Procedures

- Localities could enact regulations governing the time, place, manner, and number of marijuana establishments, or banning the businesses altogether.
- If 10 or more people who live in or own property within a mile of the proposed licensee file a protest within 30 days, the Marijuana Commissioner must hold a hearing on the application and the protest. They may choose to hold a hearing absent a protest.
- Licenses won't be granted if an objection or a group of objections indicates the licensee would have majority opposition among those residing within five miles of its location.
- The commissioner must hold public hearings to hear complaints if it receives a petition signed by 10 individuals who live in the neighborhood.

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## Taxation and Fees

- A non-refundable application fee of up to \$5,000 would be imposed on marijuana establishments, with the amount adjusted for inflation.
- Retailers, labs, and product manufacturers pay a \$10,000 biennial licensing/renewal fee. Cultivation facilities' biennial fees range from \$2,500 to \$10,000.
- During the transition, the tax would be 25% at the point of sale. After, the rate is 15%.
- Tax revenues would be deposited in a Marijuana Regulation Fund. First, they would be used to cover all regulatory costs. Then, all other funds would be allocated pursuant to a determination by the General Assembly.

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## Employers and Private Property

- Property owners could prohibit the possession and consumption of cannabis, except that in most cases landlords could not prevent tenants' non-smoked use of cannabis.
- Employers do not have to accommodate employees under the influence or possession of marijuana anywhere the employee is working. Employers would not have to take any action that would result in federal penalties or a lost contract, consistent with the Delaware Medical Marijuana Act.

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## **Prohibited Conduct and Penalties**

- Cannabis that is possessed in a motor vehicle must be in sealed packaging and not be readily accessible. The penalty for violating the provision is a \$50 fine.
- Consuming cannabis in public or in a moving vehicle remains illegal and carries a penalty of a fine of up to \$200, imprisonment for up to five days, or both.
- Driving under the influence of marijuana remains illegal.
- People under 21 may not enter a marijuana business. The penalty is a \$50 fine.

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## **Medical Cannabis Law**

- The existing medical cannabis law would not be affected by HB 110, except that pre-existing medical marijuana licensed businesses receive priority in licensing.

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## **Accessories**

- Removes penalties from the possession of cannabis accessories by individuals 21 and older and the sale of accessories to adults 21 and older.

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## **Expungement**

- Convictions for simple possession of marijuana or paraphernalia from before December 18, 2015 are eligible for mandatory expungement, provided the person has not been convicted of violent felonies.