



Delaware's Cannabis Legalization Laws

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On April 21, 2023, Gov. John Carney (D) announced that he will allow companion legalization bills — HB 1 and HB 2 — to become law without his signature. HB 1 took effect on April 23, 2023, while HB 2 becomes law on April 27.

Both bills were sponsored by Rep. Ed Osienski, and both passed the legislature by veto-proof supermajorities. Gov. Carney had vetoed a simple legalization bill in 2022.

Here is a summary of the new laws:

Adult-Use Possession and Sharing

- Adults who are 21 and older are allowed to possess up to one ounce of cannabis, 12 grams of concentrated cannabis, or products with 750 grams or less of delta-9 THC.
- Adults may also share up to the possession limit with other adults. It is not legal to “gift” cannabis if the “gift” is linked in any way or advertised alongside a purchase.

Prohibited Conduct and Penalties

- Home cultivation is not allowed.
- Driving under the influence of cannabis remains illegal.
- Consuming cannabis in public or in a moving vehicle remains illegal and carries a penalty fine of up to \$200, imprisonment for up to five days, or both.
- Cannabis in a moving vehicle must be stored in a closed container not readily accessible to anyone in the vehicle.

State Regulation and Licensing

- A Marijuana Commissioner will license, regulate, and inspect cannabis businesses.
- Four types of businesses — retailers, cultivation facilities, product manufacturers, and laboratories — will be licensed based on a competitive, scored process, which takes into account geographic diversity and population distribution.
- Requires cultivators’ fees and regulations to be varied based on their size.
- The Commissioner will begin accepting applications for licensure within 13 months of the effective date, with cultivation facilities licensed within 15 months.
- By 19 months after the effective date, the following number of licenses will be issued:
 - 30 retailers, including 15 to social equity applicants
 - 60 cultivators, including 20 to social equity applicants; half of the cultivation licenses are for under 2,500 square feet and half are for larger
 - 30 product manufacturers, including 10 to social equity applicants and 10 to microbusinesses (the other 10 are “open licenses”)
 - Five testing labs, including two to social equity applicants

- If 10 or more individuals near a proposed licensee file a protest, the Commissioner will hear an appeal. It may also hold a hearing without a protest.
- Starting two years after the effective date, the Commissioner may accept additional applications and then issue more licenses if either: 1) there are outstanding licenses allowed but not licensed; or 2) it determines additional licenses are needed.
- Creates conflict of interest and financial disclosure rules for the Commissioner, staff, and Appeals Commission.
- The Commissioner must approve changes in ownership.

Fostering a Just, Responsible, and Inclusive Cannabis Industry

- Defines, assists, and prioritizes social equity applicants — Delaware residents with 51% or more ownership by persons with certain prior cannabis convictions, a parent or spouse with certain past cannabis convictions, or who have lived in a disproportionately impacted area for a least five of the past 10 years.
 - Sets aside a significant number of licenses for social equity applicants.
 - Provides discounted application fees (\$1,000), licensing fees (40%), and a technical assistance program for social equity applicants.
- Seven percent of tax revenue generated will be allocated to a Justice Reinvestment Fund to administer grants, contracts, services, or initiatives with a focus on: restorative justice, jail diversion, workforce development, and industry-specific technical assistance or mentoring services for economically disadvantaged persons in disproportionately impacted areas; addressing the underlying causes of crime, reducing drug-related arrests, and reducing the prison population in this Delaware; and creating or developing technology to assist with the restoration of civil rights and expungement of criminal records.
- The Commissioner will 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.
- Creates a microbusiness license type, sets aside a significant number of licenses for them, and reduces application fee to \$3,000. Microbusiness will:
 - be 2,500 or fewer square feet
 - intend to have no more than 10 employees
 - have at least 51% ownership by Delaware residents
- Social equity applicants and microbusinesses may get conditional licensure, giving them 180 days to secure a location. The time may be extended due to hardship.

Rules and Regulations to Promote Public Health and the Environment

- Regulations will include: child-resistant packaging; banning products that look like candy or include cartoons; restricting toxic and addictive additives; limiting servings to 10 milligrams of THC or less; including a standardized symbol on cannabis products; mandating labels explaining 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, impacts on pregnant and breastfeeding people, and any interference with prescription drugs.
- Cannabinoids cannot be added to trademarked food products, and infused products cannot be designed in a way that will be confused with trademarked products.
- Educational materials must be disseminated to those buying infused products.
- Regulations must limit pesticide use and set standards for the use of water, waste disposal, and air quality.

- Delivery and internet-based sales are banned.
- Advertising and marketing are restricted by regulation, including a prohibition on mass marketing likely to reach minors.

Additional Regulations

- The Marijuana Commissioner must develop comprehensive rules, including governing transportation, storage, employee training, lab testing, labeling, warning signs, and security — including lighting, video, physical security, and alarms.
- Each staffer must be issued an ID badge.
- Cultivation facilities must track cannabis from seed to sale.
- Open licensees are required to execute a labor peace agreement with a union.
- Cultivation facilities could not exceed 12,500 sq. ft. indoors or 7.5 acres outdoors unless the Commissioner created additional tiers, which they cannot do for at least two years.
- Cultivation facilities can request a one-tier increase each time they apply for renewal of their licensure.
- The Commissioner cannot issue licenses for two cannabis businesses of the same type within 1,200 feet of one another.
- The Commissioner may also refuse to allow cannabis businesses near churches, schools, colleges, and/or substance abuse treatment facilities.
- Retail stores could only sell cannabis products and related accessories, non-consumable products (such as apparel), and cannabis related products (such as childproof containers). They could not sell or give away cigarettes or alcohol, or any non-infused sodas, candies, or baked goods.
- Adult-use cannabis sales are forbidden on Thanksgiving, Easter, or Christmas, after 1:00 a.m. every day, and on Sundays before noon or after 8:00 p.m. Cities with more than 50,000 residents may have some additional flexibility regarding hours.
- Licenses can be cancelled for several reasons, including violating the law or regulations, maintaining a loud or unsanitary establishment, selling deleterious cannabis products, and selling to minors.

Oversight Committee

- A 15-member Marijuana Control Act Oversight Committee will be established to report and advise on matters including statewide access to legal cannabis, the sufficiency of regulatory safeguards, the impacts of the law on decreasing illegal sales and public safety, best practices on promoting diversity, and research on health effects.

Local Control and Protest Procedures

- Localities could enact regulations governing the time, place, manner, and number of cannabis establishments or banning the businesses altogether.

Taxation and Fees

- A 15% tax is levied on retail sales. It does not apply to medical cannabis sales.
- The Commissioner establishes application fees.
- Retailers, labs, and product manufacturers pay a \$10,000 biennial licensing and renewal fee. Cultivation facilities' biennial fees are calculated based on their grow canopy and range from

\$5,000 to \$10,000.

- Licensing and renewal fees are reduced by 40% for social equity applicants and microbusinesses.
- All cannabis tax money and money received through fees will go to a Marijuana Regulation Fund.
 - Seven percent (7%) of the tax revenue will be credited to the Justice Reinvestment Fund.
 - After covering administrative costs, the legislature decides how to appropriate the remainder of funds in the Marijuana Regulation Fund.

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.
- Does not change employment law or require employers to accommodate cannabis use or change drug testing policies.

Prohibited Conduct and Penalties

- Manufacturing hazardous cannabis extracts without a license is a Class G felony, which carries up to two years.
- People under 21 may not enter a cannabis business. The penalty is a \$50 fine.

Medical Cannabis Law

- The existing medical cannabis law is not directly affected by either law.
- Medical cannabis compassion centers do not get a head start or automatically qualify as retailers, but they can apply for licensure. If compassion centers are selected, the adult-use establishment is a separate and distinct business, governed by a different agency.

Expungement

- Since it began debating legalization, the Delaware General Assembly has passed a series of bills to expunge cannabis convictions, both in standalone bills and as part of an omnibus Clean Slate Act.
- In 2018, 2019, and 2021, Gov. John Carney signed bills to expand expungement, including for cannabis convictions.
 - 2018's SB 197 allowed individuals with a single conviction for possessing up to an ounce of cannabis to automatically qualify to clear their record.
 - 2019's SB 37 allowed a single cannabis misdemeanor conviction to be expunged after five years and a single cannabis felony conviction to be expunged after seven years.
 - 2021's Clean Slate expungement bills — SB 111 and SB 112 — allow all misdemeanor cannabis possession convictions to be eligible for mandatory expungement. It also allows drug felonies to be eligible for mandatory expungement once 10 years have passed since the conviction.
 - Starting on August 1, 2024, the Clean Slate's expungement process becomes automatic for any offenses eligible for mandatory expungement — this includes all misdemeanor cannabis possession convictions and old drug felonies.