



HB 305: The Delaware Marijuana Control Act

HB 305, sponsored by Rep. Ed Osienski, 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 cannabis, including no more than five grams of concentrated cannabis. Home cultivation is not allowed.
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State Regulation and Licensing

- A Marijuana Commissioner, within the Division of Alcohol and Tobacco Enforcement, would license, regulate, and inspect cannabis businesses.
 - Four types of businesses — retailers, cultivation facilities, product manufacturers, and laboratories — would be licensed based on a competitive, scored process.
 - By 19 months after the effective date, the following number of licenses would 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 over 2,500 square feet and half are for under 2,500 square feet
 - 30 product manufacturers, including 10 to social equity applicants and 10 microbusinesses
 - Five testing labs, including two to social equity applicants
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Fostering a Just, Responsible, and Inclusive Cannabis Industry

- Defines, assists, and prioritizes social equity applicants — applicants with 51% or more ownership by persons with a past cannabis conviction, a parent or spouse with a past cannabis conviction, or who have lived in a disproportionately impacted area.
 - 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 would 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 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.

Rules and Regulations to Promote Public Health

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

- The Marijuana Commissioner would develop comprehensive rules, including governing transportation, storage, employee training, recordkeeping, lab testing, labeling, warning signs, and security — including video, physical security, and alarms.
 - Each staffer must be issued an ID badge. Seed-to-sale tracking is required.
 - 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.
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Oversight Committee

- A 15-member Marijuana Control Act Oversight Committee would 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.
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Local Control and Protest Procedures

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

- A 15% tax is levied on retail sales. It does not apply to medical cannabis sales.

- A non-refundable application fee of up to \$5,000 is imposed, which can be adjusted for inflation.
 - Retailers, labs, and product manufacturers pay a \$10,000 biennial licensing and renewal fee. Cultivation facilities' biennial fees range from \$2,500 to \$10,000.
 - 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 would decide how to appropriate the remainder of funds in the Marijuana Regulation Fund.
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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.
 - Does not change employment law or require employers to accommodate cannabis use or change drug testing policies.
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Prohibited Conduct and Penalties

- 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.
 - Manufacturing hazardous cannabis extracts without a license is punishable by up to three years in prison and/or a fine of up to \$5,000.
 - People under 21 may not enter a cannabis business. The penalty is a \$50 fine.
 - Underage possession of cannabis remains illegal and punishable by a fine of up to \$100.
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Medical Cannabis Law

- The existing medical cannabis law would not be directly affected by HB 305.
 - 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 would be a separate and distinct business, governed by a different agency.
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