



Massachusetts' Adult-Use Marijuana Regulation Law

On November 8, 2016, Massachusetts voters approved Question 4 to legalize, tax, and regulate marijuana similarly to alcohol. The law took effect on December 15, 2016. In 2017, lawmakers proposed substantially changing the law. The legislature ultimately passed, and Gov. Charlie Baker signed, a compromise bill that largely respects the will of the voters.

Here is a summary of the law, as amended.

Adult-Use Possession and Cultivation Limits

- Adults who are 21 or older may:
 - possess, use, purchase, or give away (to other adults) up to one ounce of marijuana, no more than five grams of which may be concentrates;
 - cultivate no more than six plants (with no more than 12 per household);
 - possess up to 10 ounces at one's primary residence, and any cannabis produced from their plants; and
 - possess, manufacture, or purchase marijuana paraphernalia, or sell it to other adults.
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Other Legal Protections for Cannabis Consumers

- **Child custody:** State-legal cannabis-related conduct and testing positive for cannabis may not form the sole or primary basis for negative actions related to child custody, visitation, or similar rights unless there is clear evidence that the person's actions related to marijuana created an unreasonable danger to the minor's safety.
 - **Medical care:** Cannabis use may not disqualify a person from needed medical procedures or treatments, including organ donation.
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Sealing Marijuana Records

- Allows individuals to be eligible to immediately have their past records for marijuana possession sealed.
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Prohibited Conduct and Penalties

- **Public use:** Apart from consumption allowed under the medical cannabis law or social-use at a

location that is authorized by a town or city, marijuana cannot be consumed in public or smoked where tobacco smoking is prohibited. A violation carries a civil fine of up to \$100.

- **Open containers:** It is illegal to possess an open container of marijuana in the passenger area of a motor vehicle. “Open container” includes any package of marijuana or marijuana products with a broken seal or from which some contents have been removed. The trunk and locked glove boxes are not considered the passenger area. A violation carries a civil fine of up to \$500.
 - **Secure storage:** If a person possesses more than an ounce of cannabis at their residence, the amount exceeding an ounce must be secured with a lock. A violation carries a civil fine of up to \$100 and forfeiture of the cannabis.
 - **Sensitive locations:** The law does not allow cannabis to be possessed or consumed at a preschool or K-12 school, nor at any youth center, nor at any correctional or detoxification facility.
 - **Personal cultivation restrictions:** Cannabis plants may not be visible from a public place without the use of optical aids. Cannabis may only be cultivated in locations equipped with locks or other security devices. A violation carries a civil fine of up to \$300 and forfeiture of the plants.
 - **Dangerous extractions:** Other than a licensed product manufacturer, no one may manufacture cannabis or hemp using a liquid or gas, other than alcohol, that has a flashpoint below 100° Fahrenheit.
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Cannabis and Employers

- Employers do not have to allow marijuana-related conduct at the workplace.
 - Employers’ authority to restrict employees’ marijuana consumption is not affected.
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Private Property and Tenants

- A property owner may prohibit (or regulate) the consumption, display, manufacture, or sale of marijuana or accessories on property they own or manage.
 - A lease may not prohibit the non-smoked consumption of cannabis unless failing to do so would put the landlord at risk under federal law or regulation.
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Cannabis Businesses Licensing

- **Regulatory authority:** Creates the Cannabis Control Commission — a five-member appointed body with a hired staff — that is charged with licensing and regulating marijuana businesses.
 - The commission must include members who have experience in the following areas: corporate management; industry management; public safety; public health, mental health, or substance use; and legal, policy, or social justice issues related to a regulated industry.
- **Types of licenses:**
 - The statute required the commission to license at least four types of cannabis businesses: marijuana stores, cultivators, product manufacturers, and independent testing

laboratories.

- The commission created 11 tiers of cultivation licenses based on square feet, ranging from up to 5,000 square feet (tier 1) to up to 100,000 square feet (tier 11). Once a cultivator has sold 85% or more of its product for the past six months, it can apply to expand. Cultivators may also reduce production.
- There is also a license for craft cannabis cooperatives, which must be composed of individuals who have been Massachusetts residents for at least a year. The cooperatives may cultivate at multiple locations.
- The commission authorized additional types of licensed businesses: research laboratories, transporters, and microbusinesses, which operate both as a retailer and a small product manufacturer and/or a tier 1 cultivator.

- **Social equity:** The commission is required to take a number of measures to promote equity and diversity in the industry, including developing training programs to achieve meaningful participation by minorities, women, and veterans.
- **Farms and small businesses:** The commission was required to develop measures to promote full participation by farmers and businesses of all sizes.
 - A licensee may hold no more than three of licenses of any given class.
- **Applications:** Applicants must submit a number of materials, including:
 - documentation showing they conducted a community outreach meeting that was consistent with the commission’s guidance;
 - a management and operations profile, including a certificate of tax compliance, a proposed timeline for the business’s operations , a detailed summary of its business plan and its operating procedures and policies — including security, storage, inventory, preventing diversion, record-keeping, and diversity plans;
 - plans for alcohol, smoke, and drug-free workplaces;
 - plans for immediate dismissal of employees that divert marijuana (they must also be reported to law enforcement), engage in unsafe practices at the establishment, or were convicted of a felony drug offense; and
 - policies and procedures for energy efficiency and conservation.
- **Disqualifying convictions:** The controlling applicants for marijuana business licenses may not have a felony conviction unless it was for an offense that solely involved marijuana and did not involve minors.
- **Priority review:** The commission is required to prioritize review and licensing decisions for applicants (apart from testing applicants) that are:
 - registered medical marijuana dispensaries in good standing, or
 - economic empowerment applicants, which must meet three or more of these criteria:
 - a majority of ownership belongs to people who lived in an area of disproportionate impact for at least five of the past 10 years;
 - a majority of ownership belongs to people who were employed providing services to disproportionately impacted individuals or communities;
 - a majority of the ownership is of black or Latino descent;
 - at least 51% of current employees or subcontractors reside in areas of disproportionate impact — and by opening day, the ratio will be at least 75%;
 - a least 51% of employees or subcontractors have drug-related records but are employable in the cannabis industry; and
 - the applicant otherwise demonstrates significant past experience in or business practices that promote economic empowerment in areas of disproportionate impact.
- **Licensing:** The commission grants licenses with the goal of ensuring the Commonwealth’s

needs are met regarding access, quality, and community safety.

- **Timeline:** Within 90 days of the license application, the commission is supposed to either issue the license or a rejection. The commission will initially issue a provisional license; then it will complete inspections before issuing a final license.
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Cannabis Businesses Regulations

- **Generally:** All licensees must comply with the commission's regulations, including accounting standards; energy and environmental standards; and requirements for packaging, labeling, health and safety, recordkeeping, sanitation, and security. Licensees must also comply with requirements for liability coverage.
- **Inspections:** Commission representatives have the right to inspect at any reasonable time and audit the establishment's books. They may also utilize a secret shopper program, including conducting laboratory testing.
- **Security:** Among other requirements, licensees must:
 - adopt procedures to prevent loitering;
 - have proper lighting;
 - secure each entrance from unauthorized entry;
 - designate limited access areas where access is limited to the minimum number of employees needed for efficient operation;
 - store all finished marijuana products in a secure, locked safe or vault;
 - file an emergency response plan with the local fire and police departments;
 - report theft, diversion, loss, discrepancies in inventory, alarm activation, or security breaches to both the commission and local law enforcement authorities within 24 hours;
 - utilize 24-hour video cameras in all areas containing marijuana;
 - for locations with a building or greenhouse, use a perimeter alarm on all building entry points and perimeter windows along with a panic alarm; and
 - for outdoor cultivation, utilize a perimeter security fence, commercial grade locks, and a security alarm system that is continuously monitored.
- **Retailers:** Retailers must follow regulations and laws, including that they must:
 - make consumer education available;
 - not give away or donate cannabis or utilize coupons;
 - not sell marijuana products containing nicotine, or alcohol that would require an alcohol license;
 - have medical and adult-use sales in physically separate areas if they are also a licensed dispensary; and
 - take measures to ensure a sufficient supply for registered patients, including submitting information quarterly, if they are also a licensed dispensary.
- **Packaging and labeling:**
 - Cannabis-infused products must:
 - not include more than 5 mg of THC per serving;
 - not have more than 100 mg of THC per package (totaling 20 servings);
 - be easily separated into single servings;
 - state the number of servings, if applicable, and that there are multiple servings;
 - include a use-by date; and
 - not be designed to be especially appealing to those under 21. Product manufacturers may submit their product voluntarily for review.

- Marijuana and marijuana products must be packaged or labeled:
 - in plain packaging and without bright colors, cartoon characters, or other features designed to appeal to minors;
 - in a way designed to prevent the accidental ingestion by minors, including tamper- or child-resistant packaging;
 - in a way that does not imitate branded packaging;
 - with an easily recognizable symbol or mark — which the commission has chosen — to indicate the package contains cannabis; and
 - with a warning that reads: “This product has not been analyzed or approved by the FDA. There is limited information on the side effects of using this product, and there may be associated health risks. Marijuana use during pregnancy and breast-feeding may pose potential harms. It is against the law to drive or operate machinery when under the influence of this product. KEEP THIS PRODUCT AWAY FROM CHILDREN.”
- **Signs, advertising, and marketing:**
 - Cannabis businesses cannot use speakers on vehicles or on-site to advertise.
 - Websites must verify that the visitor is 18.
 - Unsolicited online pop-up ads are prohibited.
 - All advertising, marketing, and branding materials for cannabis must contain a health warning developed by the public health department. It must also say “Please Consume Responsibly.”
 - Logos cannot include colloquial references to marijuana or include images of medical symbols, marijuana, or paraphernalia.
 - Marketing or branding is not allowed on promotional items, including clothing.
 - Neon signs are forbidden.
 - Advertising cannot include pricing, but the retailer’s website and store may include a list of prices.
 - Advertising and marketing also:
 - may not be false or misleading;
 - may not show anyone under the age of 21;
 - may not include mascots, cartoons, brand sponsorships, or celebrity endorsements that are deemed to appeal to those under 21; and
 - cannot involve TV, radio, internet, billboards, or a print publication unless at least 85% of the audience is reasonably expected to be 21 years of age or older.
- **Laboratory testing:**
 - Marijuana and marijuana products may not be sold or marketed unless they have undergone testing at an independent testing laboratory. This may be waived in the case of island counties if doing so is unreasonably impracticable for them, in which case there must be alternate approved, on-island testing.
 - All sampling, testing, and analysis of marijuana and marijuana products must comply with commission-issued regulations. The standards must be based on the most recent standards as issued by the United States Pharmacopeial Convention and include terpenoids, pesticides, plant growth regulators, metals, microbiological contaminants, mycotoxins, and residual solvents.
 - Any contamination found by an independent testing laboratory must be reported to the commission within 72 hours.
 - No employee or agent of a lab may receive direct or indirect financial compensation, other than contractual fees for testing, from any business they conduct testing for. The same is true for their immediate family members.

- **Transportation:** Among the regulations for transportation are that:
 - two employees must staff each vehicle transporting cannabis;
 - the vehicle must be owned by the marijuana establishment;
 - no guns are allowed in the car;
 - the car must be marked as associated with marijuana;
 - marijuana products must be in a secure compartment; and
 - manifests must be in triplicate.
- **Training:** All marijuana establishment staff must be properly trained, with the training tailored for the actual responsibilities of the person's job function and must include a responsible vendor program. They must also receive at least eight hours per year of additional training. Areas of responsive vendor training include:
 - marijuana's physical effects, including the time to feel impairment
 - diversion prevention;
 - compliance with tracking requirements;
 - how to check identification and checking state ID; and
 - key state laws and rules, including notification requirements, health and safety standards, permitted hours of sale, privacy issues, and waste disposal.
- **Miscellaneous regulations:**
 - Marijuana establishments may not be located within 500 feet of a pre-existing school, unless the municipality has elected to implement a smaller buffer zone.
 - The commission will set up a means for receiving customer complaints.
 - Marijuana possession, sale, and display may not be visible to the public without the use of optical aids.
 - Minors are not allowed to volunteer or work for marijuana establishments.
- **Discipline:**
 - Marijuana establishment employees' ID cards can be revoked for violating the law including by distributing marijuana to an unauthorized person.
 - Cease and desist and quarantine orders may be issued where needed.
 - The commission may issue administrative fines of up to \$25,000 per violation.
 - Marijuana establishment licenses may be suspended or not renewed for a number of reasons, including submitting fraudulent information, failing to submit a plan of correction, substandard compliance with regulatory requirements, and failing to responsibly operate a marijuana establishment.

Recognizing Cannabis Businesses

- The commission will allow licensees to earn leadership ratings for the following.
 - Social Justice Leader — for businesses donating at least 1% of their revenue to the state's social equity training and technical assistance fund and that conduct at least 50 hours of educational seminars targeted to residents in areas that had disproportionate marijuana enforcement;
 - Local Employment Leader — for businesses where both 51% or more of employees and executives have been Massachusetts residents for at least a year;
 - Energy and Environmental Leader — for businesses that exceed their energy and environmental goals, comply with related best practices, and where all products were produced with 100% renewable energy.
 - Compliance Leader — for those with exceptional compliance records, including no written

deficiency statement and no quarantine orders.

Local Control

- Cities and towns may adopt ordinances governing the time, place, and manner of marijuana establishments.
 - Cities and towns may restrict the number of marijuana establishments. However, they may not limit the number of marijuana establishments allowed to less than 20% the number of locations allowed to sell alcohol at retail, or make certain other restrictions, unless voters approve doing so if either:
 - the majority of voters in the city or town voted for Question 4, or
 - the action is taken after December 31, 2019.
 - Cities and towns may not prohibit transportation of marijuana through the locality or make doing so unreasonably impracticable.
 - Marijuana establishments must execute a host agreement with the municipality where they are located. The agreement may include a community impact fee that is reasonably related to the costs imposed. The fee may not:
 - be more than 3% of the gross sales for the establishment; or
 - last more than five years.
 - The commission will send each license application to the city or town where it would be located for its review.
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Public Education

- The Department of Public Health, consulting with the commission, is required to establish science-based public awareness campaigns to:
 - educate the public about the responsible use of cannabis, including about edibles and the danger of manufacturing marijuana products at home; and
 - educate youth about marijuana, with the goal of reducing their use rates.
 - The Executive Office of Public Safety and Security is required to establish public awareness campaigns to:
 - educate the public about impaired driving including cannabis-impaired driving;
 - educate the public that it is illegal to sell one item and “give away” marijuana along with it; and
 - inform individuals who are eligible to have marijuana records sealed about the existence of marijuana record-sealing.
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Cannabis Business Fees

- Application fees are:
 - \$450 for a conversion from a registered medical marijuana dispensary;
 - \$300 for retailers, microbusinesses, manufacturers, transporters, testing laboratories, and research laboratories;

- \$100-300 for outdoor cultivation, depending on square footage;
 - \$200-600 for indoor cultivation, depending on square footage; and
 - for craft marijuana cultivation, the canopy-based fees apply, plus an additional \$100 (outdoor) to \$200 (indoor) fee applies for each location over six.
 - Application fees are waived for social equity program participants.
 - Annual licensing fees are:
 - \$5,000 for retailers, manufacturers, transporters, and testing laboratories;
 - \$1,000 for research laboratories;
 - \$625-12,500 for outdoor cultivation, depending on the square footage;
 - \$1,250-25,000 for indoor cultivation, depending on the square footage;
 - for craft marijuana cultivation, the above canopy-based fees apply, plus an additional \$1,250 (outdoor) to \$625 (indoor) applies for each location over six.
 - 50% of the sum total of otherwise applicable licenses for microbusinesses; and
 - the sum total of applicable licenses (such as retailers, manufacturer, and cultivator) for medical marijuana dispensaries.
 - Applicants must also pay monthly seed-to-sale tracking program fees, and fees for plant and package tags. Seed-to-sale monthly program fees are waived for economic empowerment applicants, craft marijuana cooperatives, and microbusinesses, but the plant and package tag fees are not.
 - Board members, directors, employees, executives, managers, and volunteers of marijuana establishments and testing laboratory employees must apply for a registry card, which costs \$50 per year. Fees also apply to criminal background checks they must undergo.
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Taxes and Tax Revenue Distribution

- **Excise tax:** A 10.75% excise tax is imposed on transfers of marijuana and marijuana products from a retailer.
 - **Standard sales tax:** The state's standard 6.25% sales tax also applies to cannabis.
 - **Optional local tax:** Localities allowing marijuana stores may impose a tax of up to 3%.
 - **Medical:** The above taxes do not apply to medical marijuana.
 - **Distribution of Revenue:**
 - The adult-use marijuana taxes and fees will be deposited in a Marijuana Regulation Fund.
 - A portion of the funding will be used for the public awareness campaigns.
 - The legislature may allocate funding to the Community Reinvestment Fund.
 - Local marijuana taxes will be returned to the city or town at least quarterly.
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Research and Reporting

- Working with the public health and education agencies, the commission will develop a research agenda to inform further decisions, including to help prevent illicit marijuana sales and to inform the commission on public health matters. Areas of study include:
 - patterns of use, modes of consumption, sources of purchase, and general perceptions among minors, college students, and adults;
 - the science regarding identifying a quantifiable level of marijuana-induced impairment on driving;

- incidents of impaired driving, hospitalization, and use of other health care services related to marijuana use;
 - economic and fiscal impacts of the law on governments;
 - trends in ownership and employment by racial, ethnic, and socioeconomic subgroups, including identifying barriers to participation; and
 - a market analysis of the illicit and legal markets, including comparing pricing and product availability in both markets.
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Cannabis Advisory Board

- The state created a Cannabis Advisory Board to study cannabis-related issues and make recommendations on regulating and taxing marijuana.
 - The board is chaired by the executive director of the Cannabis Control Commission and includes:
 - representatives from state agencies on Revenue, Public Health, Housing and Economic Development, Agricultural Resources, and the State Police;
 - representatives of the Massachusetts Municipal Association, the Massachusetts Patient Advocacy Alliance, and the ACLU of Massachusetts;
 - a registered qualifying patient, chosen by MPAA;
 - five individuals appointed by the treasurer and receiver-general: an expert in each marijuana cultivation, marijuana retailing, product manufacturing, laboratory sciences, and providing legal services to marijuana businesses;
 - five individuals appointed by the governor: an expert in each minority business development, economic development strategies for under-resourced communities, and individuals representing the interests of farmers, employers, municipal law enforcement; and
 - five individuals appointed by the attorney general including individuals with expertise in social welfare or social justice, criminal justice reform to mitigate the disproportionate impact of drug prosecutions on communities of color, minority business ownership, women-owned business ownership, and the prevention and treatment of substance use disorders.
 - The advisory board appointed subcommittees on the following:
 - public health, including products, labeling, marketing, packaging, and potency;
 - public safety and community mitigation;
 - the cannabis industry, including to develop recommendations on cultivation, processing, manufacturing, transportation, distribution, seed-to-sale tracking, and market stability; and
 - market participation, including to develop recommendations on women, minority, and veteran-owned businesses, local agriculture, and growing cooperatives.
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Additional Areas of Study or Working Groups

- **Equity:** The Cannabis Control Commission must conduct a study on participation in the legal marijuana industry, including by minority business enterprises, women business enterprises, and veteran business enterprises, including by compiling data on those that apply for and are

issued licenses, and by reviewing any evidence of discrimination or barriers to entry.

- If it finds evidence of discrimination or barriers, it shall adopt diversity licensing goals.

- **Farming and Small Businesses:** The Cannabis Control Commission, consulting with the Department of Agricultural Resources, must report to legislative committees on participation in the regulated marijuana industry by farmers and businesses of all sizes. In its first report, the commission will include recommendations to ensure farmers' access to marijuana licenses and to allow marijuana cultivation on farm or agricultural lands, including draft legislation.
- **Driving:** A 13-member special commission on impaired driving will conduct a comprehensive study on the issue, including reviewing law enforcement's ability to properly test impaired operators and prevent impaired operation of motor vehicles. Among other issues, it will study the current law, and the rate of success in stopping impaired operators, law enforcement training, relevant science, possible new technological forms of testing, civil liberties implications, the admissibility of evidence, the burden on law enforcement, and a cost analysis.
- **Environmental:** The Cannabis Control Commission will create a working group on environmental and energy issues that consists of a designee from the departments of Energy Resources, Environmental Protection and Agricultural Resources. The working group will make recommendations on best practices for the marijuana industry, including how to reduce energy and water usage and mitigate other environmental impacts, and annual energy audits.
- **Taxes:** The Cannabis Control Commission will collaborate with the Department of Revenue to study the feasibility of alternative approaches to taxes, including by weight, volume, or THC potency.
- **Community Reinvestment Funds:** A Citizen Review Committee will make recommendations regarding using funding for needs such as restorative justice programming, jail diversion, workforce development, industry-specific technical assistance, and mentoring services for economically-disadvantaged persons in communities disproportionately impacted by marijuana enforcement.

Miscellaneous

- Individuals offering state-legal marijuana-related professional services may not be subject to professional discipline for doing so.
 - The statute includes language to ensure state-legal marijuana-related contracts are enforceable in Massachusetts courts.
 - The law allows hemp, which may only be grown pursuant to regulations issued by the Department of Agricultural Resources.
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