



ML Strategies Alert

Massachusetts House and Senate Tackle Marijuana Policy

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On June 21st, 2017, after considering [118 amendments](#), the House passed sweeping legislation ([H.3768](#)) by a vote of 126 to 28 refining the laws governing the legalization of adult-use cannabis.

The voters approved the adult use of recreational marijuana by way of a ballot initiative in November of 2016. A new legislative session began in January of 2017 and shortly thereafter came the announcement of a new committee aimed at addressing issues relative to marijuana use. The Joint Committee on Marijuana Policy, chaired by Representative Mark Cusack of Braintree and Senator Patricia Jehlen of Somerville, held hearings across the state, eliciting public feedback on 27 bills relative to marijuana policy and changes to the language of the ballot initiative before reporting out bills to the Senate and House on June 19th, 2017.

Notably, the engrossed House bill increased the total tax rate to 28 percent; increased the number of appointees to the Cannabis Control Commission (from 3 to 5); established the Commission as an independent agency (removing it from the Treasurer's control); and gave local elected officials authority to ban or limit marijuana facilities by municipal vote, rather than by a local ballot question.

The following day, the Senate addressed its version of the bill. Senators filed [111 amendments](#) and passed the bill by a vote of 30 to 5. The Senate bill differed in several key ways from the House's version. The Senate legislation more closely mirrors the ballot law passed in November of 2016, as it leaves the tax rate undisturbed and leaves in place the town-wide referendum required to ban or limit marijuana establishments. Breaking with the House, the final Senate bill increased the number of appointees to the Cannabis Control Commission (from 3 to 5), but left it in the Department of the State Treasurer. Additionally, it increased the amount of marijuana legally allowed to be possessed from 1 to 2 ounces, and allows for expungement of criminal records related to marijuana charges for offenses that have been decriminalized.

Below is a summary of highlights and differences between the House and Senate legislation:

Taxation Rate

The House proposal increases the taxes created by the 2016 ballot question to a total of 28 percent. It raises the statewide excise to 16.75 percent and the local excise — which is returned to the originating municipality — to 5 percent, while leaving the statewide sales tax for marijuana products undisturbed at 6.25 percent. The Senate bill did not change the tax rates set forth in the ballot initiative, leaving the maximum tax level at 12 percent. The statewide excise tax remains at 3.75 percent and municipalities may still add up to 2 percent in a local tax to the 6.25 percent statewide sales tax.

The House dedicates \$50 million in expected revenue to substance abuse services, while the Senate plan does not dedicate revenue. Rather, the Senate bill directs revenues, without dedicated earmarks, to substance use

prevention, the municipal police training committee, restorative justice programming, and jail diversion and workforce development, among other priorities.

Cannabis Control Commission and Cannabis Advisory Board

The ballot initiative created a 3-member Cannabis Control Commission with all appointments to the Commission made by the Treasurer. The 5-commissioner model adopted by both the House and Senate includes one appointment by the Governor, one by the Attorney General and one by the state Treasurer. The additional two members would be selected by a majority vote of the Governor, Attorney General and Treasurer. Both branches direct the Treasurer to appoint the Chair. However, the House's version creates an independent Commission, similar to the Gaming Commission, while the Senate places the Commission within the office of the Treasurer. Additionally, both the House and Senate create a Cannabis Advisory Board, but the House tasks the Board with making recommendations to the Commission and the Department of Revenue on the regulation and taxation of medical and adult use of marijuana while the Senate language limits recommendations solely to the Commission.

Local Option

The House paved the way for municipalities to vote to ban recreational and medical cannabis establishments, cultivation operations and product manufacturers without a local referendum, which was required under the language adopted by voters in November of 2016. An amendment adopted on the House floor removed language that prevented municipalities from creating ordinances or by-laws that "prohibit sitting a cannabis establishment in an area in which a medical use cannabis establishment has been previously zoned and licensed." This change could allow cities and towns to limit recreational or other cannabis establishments even if the municipality has already allowed for medical ones. This has the possibility of limiting business growth for medical entities that wish to expand into the new recreational market. The Senate did not change the ballot initiative framework.

Other Noteworthy Provisions

The House bill creates, within the Cannabis Control Commission, an investigation and enforcement bureau responsible for enforcement of civil matters related to the industry. Additionally, the House legislation establishes a Division of Cannabis Enforcement within the Attorney General's office, responsible for taking action on referrals for criminal prosecution from the Commission or other law enforcement bodies, assisting the Commission with regulations and rules, alongside other matters relating to the implementation of the law. The Senate did not include either of these enforcement units in their bill, but, rather, tasked the Commission with establishing provisions for enforcement of marijuana laws and regulations.

Both the House and Senate, with minor differences, adopted amendments to create craft marijuana cultivator cooperative programs in order to promote full participation in the industry by farmers, and both open the door to the industrial hemp industry by permitting farmers to grow and produce hemp products. Additionally, both branches include language aimed at preventing deceptive marketing and advertising, with a focus on ensuring that advertising and marijuana packaging is not geared towards youth or those under the age of 21. Both bills also create a commission to study and make recommendations on ways to handle drivers that may be under the influence of marijuana or other illicit drugs.

The Senate bill included a provision directing the Cannabis Control Commission to provide recommendations related to the costs associated with the purchase of medical marijuana by military veterans and those who receive VA benefits. The House bill contained no similar provision.

What's Next?

On June 23rd, 2017 the House and Senate each appointed members to a 6-member conference committee that will be tasked with resolving the differences and agreeing on a final version of the legislation. The House members appointed are Ron Mariano (D, Quincy), Mark Cusack (D, Braintree) and Hannah Kane (R, Shrewsbury). The Senate members include Patricia Jehlen (D, Somerville), William Brownsberger (D, Belmont) and Richard Ross (R, Wrentham). Conference committees tend to meet in closed door negotiations and release a final, reconciled bill after a majority vote of the appointed conferees. The engrossed versions of the bills, which incorporate the various

amendments adopted on the floor of each chamber, get new bill numbers. The numbers of the final bills under consideration by the conference committee are [H.3776](#) and [S.2097](#). Senate and House leadership have indicated a desire to resolve their differences and get a final product to the Governor's desk by July 1st, 2017.

ML Strategies will continue to monitor this issue and report on developments after the conference committee files a final version of the legislation.

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