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Proposed Regulation of Cannabis Activities in New Jersey under S3195/A4872

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Legislation Status

- Introduced in Senate May 18, 2017 by Senator Scutari
- Referred to Senate Judiciary
- Introduced in Assembly May 22, 2017 by Assemblymen Gusciora, Eustace and Kennedy
- Referred to Assembly Judiciary

Effective Date and Transitional Period

- Effective the 360th day following enactment, during which time regulators will establish the regulatory regime to implement the law.
- Recreational marijuana sale by the state's currently operating medical marijuana facilities would become lawful almost immediately upon enactment, who are authorized to immediately apply for a retail license to operate to distribute medical marijuana to a person who is not a medical marijuana patient. Not clear who will issue: DME or DOH?

Transitional Provisions

- The bill would also immediately upon enactment decriminalize the possession of up to 50 grams (1.75 ounces) of marijuana and make it a civil violation not subject to arrest, and limited to a fine of up to \$100.

Legalization of Possession, Transfer, and Consumption by General Public

- Section 3 of the bill allows any person 21 years of age or older:
 - to possess, use, display, purchase, or transport one ounce or less of marijuana and certain other related products;
 - to transfer of one ounce or less of marijuana or other related products to a person who is 21 years of age or older;
 - to consume marijuana, provided that nothing in the bill would permit consumption that is conducted openly and publicly; or
 - to assist another person 21 years of age or older in any of the acts described above.

Legalization of Cultivation, Processing and Sale by Licensees

- Creates several licensing categories:
 - marijuana producer must have a Class 1 Marijuana Cultivation Facility license issued by the division for the premises at which the marijuana is produced.
 - marijuana processor must have a Class 1 Marijuana Product Manufacturing Facility license issued by the division for the premises at which the marijuana is processed.
 - marijuana wholesaler must have a Class 2 Marijuana Wholesaler license issued by the division for the premises at which the marijuana is warehoused.

License Categories, cont.

- marijuana retailer must have a Class 3 Marijuana Retailer license issued by the division for the premises at which the marijuana is retailed.
- marijuana transporter must have a Class 4 Marijuana Transportation license issued by the division.
- licensing to operate a marijuana testing facility.
- licensing to supply training.
- the bill does not require licensure, registration or background checks of property owners and landlords who do business with MRBs.

Legalization of Ancillary Products/Leases

- The bill legalizes the manufacture, possession, and purchase of marijuana accessories and the sale of marijuana accessories to a person who is 21 years of age or older.
- The bill legalizes leasing or allowing the use of property owned, occupied or controlled by any person, corporation or other entity for any of lawfully conducted marijuana activities.

Contract Enforceability

- No contract shall be unenforceable on the basis that manufacturing, distributing, dispensing, possessing, or using marijuana is prohibited by federal law. No contract entered into by a licensee, its employees, or its agents as permitted pursuant to a valid license issued by the division, or by those who allow property to be used by a licensee, its employees, or its agents as permitted pursuant to a valid license issued by the division, shall be deemed unenforceable on the basis that the actions or conduct permitted pursuant to the license are prohibited by federal law.

Other Protections

- Individuals and licensed marijuana establishments shall not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including but not limited to civil liability or disciplinary action by a business, occupational, or professional licensing board or bureau, solely for conduct permitted under the act.

Other Protections

The presence of cannabinoid metabolites in the bodily fluids of a person engaged in conduct permitted by the bill by

- a student, employee, or tenant, shall not form the basis for refusal to enroll or employ or lease to or otherwise penalize that person, unless failing to do so would put the school, employer, or landlord in violation of federal law or cause it to lose a federal contract or funding;
- a patient, shall not constitute the use of an illicit substance resulting in denial of medical care, including organ transplant, and a patient's use of marijuana may only be considered with respect to evidence-based clinical criteria; iii. a parent or legal guardian of a child or newborn infant, or a pregnant woman, shall not form the sole or primary basis for any action or proceeding by the Division of Child Protection and Permanency, or any successor agencies.

State Regulation – Division of Marijuana Enforcement

- Sections 6 to 9 describe the powers and duties of the newly created Division of Marijuana Enforcement (DME) within the Attorney General's Office and the regulation of marijuana generally.
- Director of the DME is appointed by Governor, subject to Senate advice and consent, serves for term of Governor and until successor appointed.
- No defined requirements for Director: could be an attorney or non-attorney.
- AG has the authority to organize office, hire and support DME.

Regulatory Authority/Limits

- The DME's regulations "shall not" prohibit the operation of marijuana establishments, either expressly or through regulations that make their operation "unreasonably impracticable."
- DME may appoint an expert task force to recommend contents of regulations.

Required Regulations

- Procedures for the application, issuance, denial, renewal, suspension, and revocation of a license to operate a marijuana establishment, with approval or denial in 90 days and issuance of license 30 days thereafter.
- Establishment of license application fees and civil penalties for failure to comply with established regulations.
- Licensing goals for (i) New Jersey residents, and (ii) minority owned and female owned businesses.
- Security requirements for marijuana establishments.
- Requirements to prevent the sale or diversion of marijuana and marijuana products to underage persons.

Required Regulations

- Prescribed “methods of producing, processing and packaging” and “standards of ingredients, quality and identity of marijuana items and approved pesticides.
- Labeling and packaging requirements.
- Health and safety regulations and standards for the manufacture and sale of marijuana products.
- Advertisement restrictions, with a focus on prohibiting advertising to minors.
- Procedures for the DME to conduct unannounced visits to marijuana establishments.
- A requirement that only marijuana, marijuana based products and paraphernalia be available for sale at a marijuana establishment.
- Licensing of server and seller training programs for retail employees.

Required Regulations

- **Cradle to Grave Tracking:** A system for tracking the transfer of marijuana items between licensed premises capable of tracking the propagation of immature marijuana plants, the processing of marijuana by a processor, the receiving, storing and delivering of marijuana items by a wholesaler, the sale of marijuana items by a marijuana retailer to a consumer; the purchase and sale of marijuana items between licensees, the transfer of marijuana items between licensed premises; and the collection of taxes imposed upon the retail sale of marijuana items.

Other Regulatory Protections

- No consumption of marijuana items on premises of any marijuana establishment except as permitted by the DME.
- Set dosage, potency and serving size limits (standard serving is no more than 10mg of active THC and no edible may contain more than 100mg).
- Childproof package required.
- Screening, hiring and training of employees who sell, manufacture or handle marijuana items.
- Security and safety protocols for retailers and all marijuana establishments.
- Marijuana establishment may only sell marijuana items and paraphernalia. (Sorry WaWa).

Marketing/Advertising Restrictions

- Extremely detailed in bill
- No retail signage on window, door or outside except a single sign less than 1600 square inches identifying the retailer by its business trade name.
- No advertising on TV, radio or internet between 6am and 10pm.
- No marketing to location based devices (cellphones) except to a app installed by the owner who is 21 or older and includes a permanent and easy opt out feature.
- No sponsorship of charitable, sports, music, cultural event unless reliable evidence that no more than 20% of audience is under legal age.

Marketing Restrictions

- No advertising within 200 feet of elementary/secondary school, rec center, arcade, child care center, park, playground, public pool, library, public transit vehicle or shelter. Does not expressly include high schools.
- No advertising on or in “publicly owned or operated property.”

Testing

- In addition to extensive labeling requirements, all cultivators and processors must submit representative samples to licensed testing labs to certify compliance.
- Schedule for testing to be set by DME.
- DME to examine or commission research on influence of marijuana on ability to drive and appropriate blood THC level.

Who Can Be Licensed

- Any corporation, partnership, or nonprofit must be formed under NJ law. (But no provision for LLCs)
- Any person doing business as a sole proprietorship must be lawfully resident of NJ for 2 years prior to applying.
- Qualifications must be “directly and demonstrably related” to the operations.
- Any criminal history requirement cannot consider convictions under NJSA 2C:35-10(a)(3) and (4), NJSA 2C:35-5(b)(10)(b), (b)(11) and (12).

Employee Permitting

An individual who performs work for or on behalf of a person who holds a license shall have a valid permit issued by the division if the individual participates in:

- the possession, securing, or selling of marijuana items at the premises for which the license has been issued; or
- the recording of the possession, securing, or selling of marijuana items at the premises for which the license has been issued.

How Many Licenses?

DME will set the number of licenses in each category:

- At least one retailer per county, assuming sufficient qualified applicants.
- Will set a maximum number of retailers per municipality considering (i) population distribution (and considering seasonal fluctuations to ensure adequate premises during peak seasons), and (ii) provision of “adequate access to licensed sources of useable marijuana and marijuana products to discourage purchases from the illegal market.”

Limit on Vertical Integration

- Unlawful for any owner, part owner, stockholder, officer, or director of any corporation, or any other person interested in any marijuana cultivation facility, marijuana testing facility, or marijuana product manufacturing facility, or any wholesaler of marijuana, to conduct, own either in whole or in part, or be directly or indirectly interested in the retailing of any marijuana in New Jersey, and such interest shall include any payments or delivery of money or property by way of loan or otherwise accompanied by an agreement to sell the product of said marijuana cultivation facility, marijuana testing facility, or marijuana product manufacturing facility, or any wholesaler of marijuana.
- Identical restriction on owner, part owner, stockholder, officer, or director of any corporation, or any other person interested in any retailing of marijuana.

Limit on Number of Licenses

- No person, partnership, employee cooperative, association, nonprofit corporation, corporation, or the agents thereof, shall hold more than three marijuana establishment licenses at any time.

Minors

Persons under 21:

- cannot be licensed to operate a facility
- cannot be employed to work in a marijuana establishment
- cannot purchase marijuana
- cannot enter or remain on premises of a marijuana retailer unless accompanied by parent or guardian

Marijuana Regulation Review Commission

The bill establishes a Marijuana Regulation Review Commission responsible to review and approve regulations developed by the division or to order regulations.

The commission shall consist of one member appointed by the Governor, who shall be the presiding officer, one member appointed by the President of the Senate, who shall be a member of the Senate, and one member appointed by the Speaker of the General Assembly, who shall be a member of the General Assembly. The concurrence of two of the members of the commission shall be necessary to validate all acts of the commission.

Taxing

- Section 10 of the bill establishes a tax levied upon marijuana “sold or otherwise transferred by a marijuana retailer” at 7% initially for “first year after enactment of bill.” Note: sponsor statement says the tax is levied when cultivator sells to processor or retailer.
- 10 percent in year two; 15% in year three; 20% in year four; and 25% in year five and beyond. No tax on medical MJ sales.
- In lieu or in addition to sales tax? Not clear yet.
- Local share: 1% to local government entity in which the marijuana establishment is located in first year tax is collected; 2% in year 2 and 3% thereafter.
- Treasury to establish procedures for collection of all taxes levied.

Local Regulatory Powers

- Not later than 1 year following the effective date, local gov't entity may prohibit the operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, or marijuana retailers through the enactment of an ordinance.
- Failure to enact allows the operation of a “marijuana retail establishment” for a five year period. At the end of the five year period, municipality may prohibit the operation of a marijuana establishment.

Local Regulatory Powers

A local governmental entity may enact ordinances or regulations, not in conflict with the bill:

- governing the time, place, manner, and number of marijuana establishment operations;
- establishing civil penalties for violation of an ordinance or regulation governing the time, place, and manner of a marijuana establishment that may operate in such local governmental entity.

Local Licensing Failsafe

The bill allows for direct licensing by local governments in the event the DME fails to adopt regulations or process and issue licenses.

- Within 1 year after effective date, adopt ordinance or regulation specifying the entity within the local governmental entity responsible for processing applications and for issuance of licenses.
- May enact procedures for the issuance, suspension, and revocation of a license issued by the local governmental entity and establishing a schedule of annual operating, licensing, and application fees for marijuana establishments.

THANK YOU!!