



HB 150: The Delaware Marijuana Control Act

HB 150, 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 marijuana, including no more than five grams of concentrated marijuana. Home cultivation is not allowed.

Expungement

- Convictions for possession of marijuana or paraphernalia are eligible for mandatory expungement, provided the person has not been convicted of violent felonies.

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 social equity applicants and 10 microbusinesses
 - Five testing labs, including two to social equity applicants

Fostering a Just, Responsible, and Inclusive Marijuana Industry

- Defines, assists, and prioritizes social equity applicants, defined as 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.
 - Establishes a Social Equity Start-Up Fund with low-interest loans and grants.
- 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 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 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 will be restricted by regulation, including a prohibition on mass marketing likely to reach minors.

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.

Oversight Committee

- A 15-member Marijuana Control Act Oversight Committee would be established to report and advise on matters including statewide access to legal marijuana, 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 marijuana 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.
 - After regulatory costs, the legislature would decide how to appropriate funds.
- A non-refundable application fee of up to \$5,000 applies, 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.

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.
- Employers do not have to accommodate employees working under the influence or possessing marijuana anywhere the employee is working. Employers would not have to take any action that would result in federal penalties or a lost federal contract.

Prohibited Conduct and Penalties

- Cannabis that is possessed in a motor vehicle must be in sealed packaging and not be readily accessible. The penalty for violating this provision is a \$50 fine.
- Driving under the influence of marijuana remains illegal.
- Consuming cannabis in public or in a moving vehicle remains illegal and carries a penalty of a 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 marijuana business. The penalty is a \$50 fine.
- Underage possession of cannabis remains illegal and punishable by up to a \$100 fine.

Medical Cannabis Law

- The existing medical cannabis law would not be directly affected by HB 150.
- Medical cannabis compassion centers do not get a head start or automatically qualify as retailers. If a compassion center is selected for licensure, the adult-use establishment would be a separate and distinct business, governed by a different agency.