

NJ Gears Up to Regulate Adult Use Recreational Cannabis Market

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Exactly how will New Jersey establish its legal recreational cannabis market? This article provides an overview of what comes next and the process for establishing the legal framework upon which this market will be defined and regulated.

By **Lisa Gora and Michael F. Schaff** | November 20, 2020

In the long road to legalization, on Nov. 3, 2020, 67% of New Jersey voters approved the proposed amendment to the state's Constitution to legalize a regulated adult use recreational cannabis market. Establishing a historic legal milestone in the state's history, New Jersey became the 12th state and first in the Northeastern United States to legalize adult use cannabis. Known as the Senate Concurrent Resolution 183, the Amendment becomes effective on Jan. 1, 2021. However, despite broad public support for the initiative, the recreational sale, use and possession of cannabis remains illegal throughout the state, and will remain so until a legal framework has been established.

Subsequent to the reported election results, New Jersey Attorney General Gurbir Grewal issued interim guidance to all chief law enforcement clarifying that the Amendment does not legalize or decriminalize the sale or possession of unregulated recreational cannabis. First, New Jersey must establish and implement the legal framework to accommodate what is projected to become a rapidly growing retail market with anticipated sales in the billions of dollars within the first few years.

So exactly how will New Jersey establish its legal recreational cannabis market? This article provides an overview of what comes next and the process for establishing the legal framework upon which this market will be defined and regulated as lawmakers address the myriad of concerns, including all aspects of the licensing process, legal amounts of possession and sale, lawful locations for growing and selling recreational cannabis, and balancing supply and demand around New Jersey's existing medicinal marijuana program.

The Cannabis Regulatory Commission

The sale and use of recreational cannabis in New Jersey will be subject to regulation by the Cannabis Regulatory Commission, an entity created by the Jake Honig Law to oversee the medical cannabis program and the anticipated adult use recreational market. Once fully formed, the five-member Commission will unite three members appointed by Governor Murphy and one each by Senate President Steve Sweeney, and Speaker of the House Craig Coughlin.

On Nov. 6, 2020, Governor Murphy announced the appointments of Jeff Brown to serve as Executive Director and Dianna Houenou to serve as Chair. Brown currently serves as the

Assistant Commissioner at the New Jersey Department of Health, where he oversees the Division of Medicinal Marijuana, and Houenou serves as a senior policy advisor and associate counsel to the Governor's office, and is known as a long-time advocate of racial justice and criminal justice reform. Governor Murphy has said he will also appoint Krista Nash, a social worker, as a third member of the Commission upon the recommendation of Senate President Steve Sweeney. When appointments are completed, the Commission will activate to establish the legal framework in which the adult use recreational cannabis will operate.

Senate Bills S-21 and S2535

On Nov. 6, 2020, Senate Judiciary Chairman Nicholas Scutari introduced Senate Bill 21 ("S-21") as the proposed enabling legislation that creates the organizational and regulatory system to oversee the operations of the adult use recreational cannabis business in New Jersey. As of the week of Nov. 9, 2020, S-21 was approved by the Senate Judiciary Committee and the Assembly Oversight, Reform, and Federal Relations Committee. Upon approval by Appropriations committees in the respective chambers of the Senate and Assembly, the full Senate and Assembly will review and vote on the terms and provisions of S-21, which is expected to involve extensive negotiations among the Senate and the House, resulting in amendments and supplements arising from a myriad of public concerns regarding regulation before passing. Some industry experts indicate that keeping social justice provisions at the forefront of the legislation may expedite the law's passage. Once the enabling legislation (i.e., the statute) is approved and enacted, the Commission will develop the regulations to enforce the intent of the statute. Subsequently, the licensing process will unfold, which is likely to be similar to that regulating the medicinal marijuana market. Reportedly, some industry experts and those closely involved in the legislative process indicate that this process may take up to a year to complete.

A Nov. 5 article published by *The New Jersey Law Journal* projected a timeline based on reporting by those involved in the legislative process and medicinal market of just over a year with recreational sales beginning in the first quarter of 2022. The projection includes the reasonable expectation that by the end of the first quarter in 2021 we will see the enactment of legislation and establishment of the regulatory and licensing frameworks.

Along with S-21, S2535 (the "Decriminalization Bill") was approved by the Senate Judiciary Committee. The Decriminalization Bill is a robust measure to decriminalize possession, sale and manufacture of up to a pound of cannabis, downgrade other cannabis offenses, and remove records and related collateral consequences and stigma for prior offenses. More specifically, among its various terms, the Decriminalization Bill proposes to:

- i. Reduce the penalty for possessing up to a pound of cannabis to a civil penalty carrying a written warning for a first offense and a \$25 fine for a second or subsequent offense; those who cannot afford the fine may instead perform an equivalent of community service as explained in the bill;
- ii. Reduce the penalty for manufacture, distribution and possession with the intent to distribute one pound or less to be the same as the penalties for possession of up to a

pound. The current penalty is a fourth degree crime, carrying a penalty of imprisonment of up to 18 months, a fine of \$10,000, or both;

- iii. Create an expungement process for prior arrests and convictions for possession, manufacturing or distribution of no more than a pound; and
- iv. Eliminate employer's ability to consider convictions for possession, manufacture or distribution of no more than a pound when making employment decisions. As of the date of this publication, the committee hearings have not yet been scheduled.

The Medicinal Market Landscape

In New Jersey, just 12 dispensaries are licensed to grow, process and dispense medicinal cannabis to the approximately 100,000 enrolled patients in the New Jersey medical cannabis program. An influx of new patients is anticipated due to COVID-19, leading to concerns about balancing supply and demand as the recreational market evolves. Once the regulatory framework is established for recreational use, these twelve operators will be permitted to also sell retail cannabis provided they certify that their facilities have adequate supply of cannabis to serve their medical cannabis patient population.

Certification by these 12 dispensaries seems unlikely at the current time, based on statements by Jeff Brown on Oct. 27 during a live Q&A on *NJ.com*'s Facebook feed hosted by *NJ Cannabis Insider*: “[Some dispensaries] literally do not even have the space to accommodate the level of demand that personal-use sales would bring.” Brown continued, “I could say unequivocally that opening up [retail] sales even a few months after the election would be a disaster and would really hurt access for patients who need this as medicine. My number one priority is to ensure that the patients have access—that’s going to be our priority first and foremost.” Based on this statement and similar statements by other industry insiders, the supply of current licensed operators would fall short of the projected demand for adult use recreational sales.

Satisfying Supply and Demand

Expansion of the current canopies at existing operators, as well as new dispensaries and operators are likely to be needed to accommodate the current medical cannabis population and the burgeoning adult use recreational market. To meet the current demand by the medical cannabis population and the anticipated demand of an operational, regulated recreational market, industry experts have seen existing operators begin investing in cultivation build-outs to multiply cultivation capacity and extraction to expand product lines. Additionally, industry experts hope that the Cannabis Regulatory Commission will quickly enact its enabling legislation and regulatory framework to specify the number of licenses to be made available in each region and define the criteria for obtaining a recreational cannabis license.

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