

NJ Recreational Cannabis Licensing: The Road Ahead

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On Dec. 17, 2020, the State Assembly and, subsequently, the Senate, passed the New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act (known as “S21”). Here is an overview of the legal framework established by S21.

By **Lisa Gora and Michael F. Schaff** | December 30, 2020

New Jersey recently became the 12th state in our nation to legalize recreational cannabis. In November, voters approved an amendment to the New Jersey State Constitution to legalize recreational cannabis use, manufacture, possession, distribution, and sale of, to and by, adults 21 years of age and older. This amendment takes effect on Jan. 1, 2021, yet the practical implementation of this historic action requires several additional steps. In furtherance of this, on Dec. 17, 2020, the New Jersey State Assembly and subsequently, the Senate, passed the New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act (known as “S21”).

S21 establishes the legal framework for New Jersey to develop, regulate and enforce the recreational cannabis marketplace. As of the date of this article, S21 was awaiting the governor’s anticipated approval before it becomes law. While no timeline is set in stone, those familiar with the process anticipate the application process for recreational licenses will become available during the fall of 2021. This new recreational market will operate in parallel with New Jersey’s Medical Marijuana Program (MMP), which has dramatically grown in the number of registered patients since its enactment in January 2010. According to the *Cannabis Business Times*, supply for the MMP market is produced by 12 licensed alternative treatment centers that serve approximately 100,000 patients across the state.

This article explains the anticipated licensing process that will regulate commercial production and retail sales of recreational adult use cannabis as contemplated by S21.

Recreational Use Licensing Under S21

Regulations controlling the licensing process of the recreational adult use market must be implemented within 180 days from the date Governor Murphy signs S21 (“Signing Date”), or within 45 days from the appointment of five members of the Cannabis Regulatory Commission (CRC), whichever date is later. Within the 30 days that follow adoption of the regulations, the CRC will start accepting and processing applications for licenses. Each application will be scored and reviewed based on a point system (criteria to be determined by the CRC), and the CRC will then rank applications accordingly. Similar to that of the MMP, given the limited number of licenses to be awarded, applicants with the highest number of points will be given priority.

The form of application to be implemented for the CRC is not yet available; however, it is likely that the format will closely resemble the application relied upon for the licensure by the MMP. Notably, S21 indicates that applicants will be required to provide a description of their operating plans and other criteria referenced in S21.

The following is a timeline established by S21:

- Within 90 days from the Signing Date, or upon adoption of the implementing regulations, whichever occurs first, the CRC is to commence a licensing process for five clinical registrant permits. “Clinical registrant” is defined as an entity that has a written contract with an academic medical center to engage in clinical research related to the use of medical cannabis and the academic medical center (or its affiliate) will provide advice to the entity regarding areas such as patient health and safety, medical applications, and dispensing and managing controlled dangerous substances.
- If a municipality desires to prohibit cannabis businesses from operating within its borders, it must enact an ordinance banning or otherwise limiting recreational sales within 180 days from the Signing Date. If a municipality takes no action, all classes of cannabis licenses will be permitted to operate within the municipality for a five-year period (note that upon the expiration of the five-year period the municipality will have another opportunity to prohibit cannabis businesses from operating within the municipality’s borders).
- Within 30 days after the adoption of the implementing regulations, the CRC will start accepting applications for the seven types of licenses which are available under S21: (1) a cultivation license, (2) a manufacturing license, (3) a retail license, (4) a distribution license, (5) a wholesale license, (6) a delivery service license, and (7) a clinical registrant permit.
- Once the implementing regulations are adopted by the CRC, but prior to the commencement of the application process, the CRC will carry out a series of information sessions to educate communities about the responsibilities, opportunities, requirements, and the application process for licensure.

In addition to these seven licenses, S21 also provides for the creation of microbusiness licenses. Microbusiness licenses are being established to insure that small businesses, not just multi-state operators and dispensary chains, will be able to participate in the cannabis recreational market in New Jersey. To qualify for a microbusiness license, an applicant will have to certify that: (1) 100% of the business is owned by current New Jersey residents who have resided in New Jersey for at least the past two consecutive years; (2) at least 51% of the owners, directors, officers, or employees of the microbusiness are residents of the municipality in which the business is, or will be, located; (3) the business cannot employ more than 10 employees; (4) the business cannot operate in a space larger than 2,500 square feet; and (5) the business cannot possess more than 1,000 cannabis plants per month. There will also be a conditional license program to permit those with limited access to capital to secure licenses.

License Restrictions

At this time, the total number of licenses that will be available in New Jersey for the first request for applications has not been determined. However, S21 limits cultivation licenses to 37 over the next 24 months.

Based upon the application process related to the MMP, it is likely that guidance will be forthcoming for the recreational market licenses which will set forth the total number of licenses to be made available of each type and for each region (North, Central, or South New Jersey). To more fully understand the qualifications for each license, refer to the terms contained within S21, or contact an attorney familiar with S21 for guidance. Business entities interested in applying during the first round of recreational licensing will in most instances find that many of their questions will be answered in the instructions accompanying the applications. Additionally, as New Jersey continues down the road to legalization, please look out for our future articles over the next few months for more information on the genesis and full requirements of microbusiness licenses, conditional licenses, and the seven other licenses available under the recreational market. Of course, as with any state created cannabis industry, be reminded that cannabis remains a scheduled narcotic under federal law and anyone considering entering this field should consult with competent counsel first.

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