



## Current Status of Law To Legalize Marijuana in Virginia

By: Hon. David B. Albo

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### BACKGROUND

There has been much in the press about Virginia legalizing the possession of up to 1 ounce of marijuana or up to four cannabis plants effective July 1, 2021. In this article, we explain the elements of the bill relating to licensure. Please note that the information provided below is not final because the law has not yet been finalized. Most people are surprised to learn that, with a few exceptions, the only component of the 250-page marijuana legalization bill that actually passed was the legalization. Nearly all of the remaining pages are subject to a reenactment in the 2022 legislative session. Thus, all the provisions on licensing, production, distribution, sales, and regulation, to name a few, did not pass into law. The "reenactment clause" requires the bill to pass again in the 2022 General Assembly session in the exact same form. The odds of this occurring are slim; therefore, we expect further amendments will be proposed when it is introduced again in advance of the 2022 session. These changes will be the result of work conducted this Summer and Fall once the Virginia Cannabis Control Authority Board is established.

### GENERAL STRUCTURE OF THE NEW MARIJUANA LEGALIZATION LAW

To understand how the eventual law may look, let's review what is in the bill now, keeping in mind that provisions will change. The bill establishes a new authority, the Virginia Cannabis Control Authority (CCA), which establishes criteria for licenses (including social equity licenses). In addition, it creates five types of licenses that will govern cultivation, manufacturing, testing, wholesale and retail sale. The bill also establishes a tax structure and directs revenue to various initiatives, including Pre-K programs, disadvantaged communities, substance abuse treatment and public health. By 2029, the estimated tax revenue will reach \$200 - \$300 million per year. While preliminary work on the regulatory structure will begin this Summer, if reenacted in 2022, the legal commercialization and retail sale of marijuana will not take place until January 1, 2024. All members of the CCA are appointed by the Governor and confirmed by General Assembly. The CCA will establish the following additional Boards: (1) the Cannabis Public Health Advisory Board, (2) the Cannabis Equity Reinvestment Board, and (3) a Joint

Legislative Oversight Committee. The CCA is required to develop regulations for each of the license types and to establish the license application process and regulations related to the transportation and sale of products.

## REQUIREMENTS FOR MARIJUANA LICENSES

The legislation was drafted with a few key principles in mind. First, that legalization of the recreational sale of marijuana will be an economic driver for minority communities, and second, the legislation includes many social equity provisions. The key components of the legislation demonstrate how social equity is an intended driver for the development of this industry in the Commonwealth.

The bill establishes a Cannabis Equity Reinvestment Fund which will be used to support persons, families, and communities historically and disproportionately targeted and affected by drug enforcement, among other requirements. Also established is a Cannabis Equity Business Loan Fund which will provide low and zero-interest loans to social equity qualified cannabis licensees to foster business ownership and economic growth within communities most disproportionately impacted by the former state prohibition of cannabis.

The legislation also establishes a structure for social equity licenses including giving early preference in the application process for those who meet the qualifications to be a ?social equity applicant.?

In addition to preferences for ?social equity applicants,? there will be a limitation on the number of licenses issued. The current version of the law sets the following caps:

- Marijuana Cultivation Facility License
  - Up to 450 licenses may be issued.
  - Must track the retail marijuana it cultivates from seed or immature marijuana plant until delivered or transferred.
- Marijuana Manufacturing Facility License
  - Up to 60 licenses may be issued.
- Marijuana Wholesalers License
  - Up to 25 licenses may be issued.
- Retail Marijuana Store License
  - Up to 400 licenses may be issued.
- Marijuana Testing Facility License
  - There is no license limit.

Finally, the current version of the law states that (except for current CBC/THCa oil pharmaceutical processors and ?small businesses,? which term has not yet been defined), no vertical integration is

permitted. In other words, each applicant will have to choose whether it wants to be a cultivator, a manufacturer, a retailer or a tester. The applicant cannot have an interest in more than one type of license. (Note: We expect that this will be a hotly debated issue this Summer and Fall. It was very controversial during the legislative session because many manufacturers want to grow their own plants ? just as a vintner may prefer to grow its own grapes, and in other states, manufacturers prefer to sell their marijuana blends at retail.)

## **STATUTORY PREFERENCES FOR LICENSES**

Given that the number of licenses is limited and that the bill gives preference to ?social equity applicants,? it is possible that the vast majority of licenses (and possibly all the licenses) will go to those who qualify as ?social equity applicants.?

What does ?social equity applicant? mean? The legislation provides the following guidance:

Social Equity License qualifications include:

- Applicant who has lived or been domiciled for at least 12 months in the Commonwealth and is either
1. an applicant with at least 66 percent ownership by a person or persons who have been convicted of or adjudicated delinquent for any misdemeanor marijuana crime;
  2. an applicant with at least 66 percent ownership by a person or persons who are the parent, child, sibling, or spouse of a person who has been convicted of or adjudicated delinquent for any misdemeanor marijuana crime;
  3. an applicant with at least 66 percent ownership by a person or persons who have resided for at least three of the past five years in a jurisdiction that is determined by the Board, after utilizing census tract data made available by the United States Census Bureau, to have been disproportionately policed for marijuana crimes;
  4. an applicant with at least 66 percent ownership by a person or persons who have resided for at least three of the last five years in a jurisdiction determined by the Board, after utilizing census tract data made available by the United States Census Bureau, to be economically distressed; or
  5. an applicant with at least 66 percent ownership by a person or persons who graduated from a historically black college or university located in the Commonwealth.

According to a recent Joint Legislative Audit and Review Commission (JLARC) report, since a person only has to meet one of these criteria. and the criteria are so broad, over 300,000 people in Virginia meet at least one of these social equity license criteria.

## **CONCLUSION**

The market structure and regulations outlined in the bill are subject to the re-enactment clause and must be passed by the General Assembly next year. The provisions of this law are a ?moving target.? And, to add an additional hurdle, much of what passes in the 2022 legislative session beginning in January 2022 depends upon whether the new Governor is a Democrat (presumably he/she would sign whatever

legislation is passed by the General Assembly) or a Republican (who could sign it, heavily amend it or veto it altogether.) Already, the General Assembly is proposing changes. Recently, the JLARC suggested a number of amendments, including the following:

Key recommendations:

- Restrict medical licenses to three adult-use retail locations.
- Eliminate special treatment of registered hemp processors (the current version of the bill creates a loophole with respect to license caps.)
- Timeline for starting commercial market ? move up date for drafting implementing regulations and accepting applications to January 1, 2023, thus allowing one year for a market to be established.
- Authorize a regulator to create different classes of licenses within each of the license types, and set separate license caps for these different classes
- Establish additional statutory requirements to ensure social equity grant program is effectively and transparently administered.
- Adjust social equity program eligibility criteria:
  - Narrow criteria could be better.
  - Eliminate social equity eligibility criterion related to some or all family members of convicted persons.
- CCA to develop a better / clearer definition of business ownership for social equity program.

FAQ's and other helpful information on regulations, the board, meetings and deadlines can be found **here**.

Elizabeth and Dave represent and advise businesses and individuals before the State General Assembly, State Executive Branch Agencies and Local governments. They provide their clients with decades of firsthand experience working in government. Prior to joining Williams Mullen, Elizabeth served as the Advisor for Community Development in the office of the Secretary of Commerce and Trade for the McAuliffe administration and as the Policy and Legislative Director at the Department of Housing and Community Development. Likewise, Dave Albo served as an elected member of the Virginia House of Delegates for 24 years. He was Chairman of the House Courts of Justice (?Judiciary?) Committee. Dave was the chief patron and author of the original bill allowing CBD and THCa Oil for certain medical purposes, which was the first step toward this 2021 bill legalizing Marijuana.

## Related People

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