

DMMC, in working with our lobbyists, invited Josh Horeled, Legal Counsel to Senate Republican Staff to give an overview of the adult-use recreational cannabis legislation. Mr. Horeled, a staff attorney assigned to this legislation for the past year, assisted with negotiations on the current legislation. Mr. Horeled will be assigned to the Recreational Cannabis trailer bill which is expected this fall during Veto Session.

Please note that this is not a transcript, but rather an overview. Municipalities should consult with their attorneys to clarify questions regarding their municipality. In providing an overview of Recreational Cannabis in Illinois, Mr. Horeled recognized that DMMC does not have a position on the legality of recreational cannabis. Mr. Horeled provided information on the Cannabis Regulation and Tax Act (Act) which creates the financial and regulatory framework for the sale and use of recreational cannabis in Illinois. This Act was signed by the Governor in June and a trailer bill is anticipated this fall. Administrative Rules will be forthcoming.

Mr. Horeled explained that Act conflicts with Federal Law. Under the Controlled Substances Act (CSA), recreational cannabis remains illegal. However, after January 1, 2020, Illinois residents who are 21 years or older may possess cannabis in certain quantities. Mr. Horeled noted that public use of cannabis is prohibited, and that cannabis violations will be treated like liquor violations.

Mr. Horeled stated that the Act allows home grow of 5 plants for medical patients only and explained that plants must be 6 inches to be considered as part of the 5-plant limit. Saplings under 6 inches would be permitted without limit. Mr. Horeled detailed the expungement of records portion of the Act. He stated that the expungement process will be a five-year process.

Mr. Horeled stated that starting January 1, 2020, medical dispensaries can begin selling recreational cannabis but must apply for a license and follow local zoning regulations. On May 1, 2020, 75 licenses will be awarded to non-medical dispensary license holders who apply for a recreational license and meet licensing requirements.

Mr. Horeled highlighted employer and employee rights noting that employers may adopt reasonable zero tolerance employment policies. Employers may discipline employees violating the employer's employment policies or workplace drug policy as well as deny employment to applicants that refuse to be drug tested. This applies to "on-call employees" as defined in the statute. Employers should comply with federal or state requirements if failure to do so would lose funding or a contract. Employers may consider an employee to be under the influence of cannabis if they have a "good-faith belief" that the employee manifests specific, articulable symptoms that decrease or lessen the employee's performance. Mr. Horeled explained that the Act amends the Illinois Right to Privacy in the Workplace Act to clarify that recreational cannabis is considered a "lawful product", which protects employees from adverse employment actions related to their use outside of working hours. Members are encouraged to review employment requirements of the statute with their legal counsel.

Mr. Horeled stated that municipalities may enact a purchaser excise tax up to 3% in increments of 0.25% and this would be in addition to any sales tax currently imposed by a community. A

county may levy an excise tax up to 3% (3.75% in unincorporated) in increments of 0.25%. Furthermore, medical cannabis is exempt from both State and local taxes.

Mr. Horeled detailed the allocation of State revenue in that State agencies are responsible for administering the adult use cannabis program and will receive resources to cover administrative costs from the taxes collected by the program. There will be 8% transferred to the LGDF to create law enforcement funding for crime prevention, training, and interdiction efforts. The funding formula will be reviewed by the General Assembly in FY 2024. Mr. Horeled expects a trailer bill during Veto Session that will clarify the LGDF revenue.

Mr. Horeled stated that municipalities including both home rule and non-home rule can prohibit or significantly limit a cannabis business establishment's location and regulate the on-premises consumption of cannabis at or in a cannabis business establishment within its jurisdiction. No unit of local government may unreasonably prohibit home cultivation or home use for medical participants.

Q: Is the 3% purchaser excise tax in addition to existing sales taxes?

A: Yes.

Q: Will personal use be permitted in residents' yards (font yard/backyard)?

A: Not in front yards or back decks. Any place where the person can be observed from a public place is not a permitted place for personal use.

Q: Are there zoning requirements for infuser locations?

A: There is a 1,500 ft. set back between facilities, but this is still a work in progress.

Q: What does "close proximity" mean in terms of personal consumption?

A: A person cannot smoke or consume on a back deck or front porch as a school bus can pass the home and a minor can witness consumption.

Q: How will law enforcement funds be transferred? Will the law enforcement funds be transferred through LGDF or through the training boards directly?

A: This was not addressed in the original bill but a new fund for law enforcement is being discussed. LGDF does not have the limits on spending required by the statute.

Q: What is the expungement schedule for cannabis convictions?

A: Dates of expungement include: (2020) convictions from 2016 to current, (2021) convictions from 2013-2016, (2023) convictions from 2000-2013, and (2025) convictions from before the year 2000. Mr. Horeled explained that there are still penalties associated with possession, manufacturing, and delivering cannabis.

Q: Can current medical dispensaries that receive a license for recreational dispensaries change the location of their dispensary?

A: No. The facility must remain at the same location.

Q: Does the Act address issues pertaining to consumption by law enforcement and on-duty shootings?

A: The Act does not address this.

Q: How will data be tracked for sales?

A: Only State Police will have access to that information and local police will not have access to it. Section 15-75 of the Act creates the Inventory control System. Dispensing organizations are required to create an account of each day which will record all inventory, acquisitions, sales, disposal, and ending inventory. If the dispensary finds an "imbalance" (term used in Act), the dispensary must report the problem immediately. Additionally, under Section 20-30, a dispensary must report any loss or theft to the State police within 24 hours.

Q: How will local compliance checks be accomplished?

A: Local compliance checks will not be prohibited but State Police is the only agency permitted to go on to some facilities, which differentiates cannabis sales from liquor sales. Under Section 25-30, the State Police have a right to inspect any licensed location. Also, a license holder consents to allow the State Police to do random inspections which includes any enclosed and locked facilities.

Q: With regard to the 47 initial licenses awarded, what is the breakdown of retail (recreational) vs. medical?

A: The 47 licenses are exclusively for retail. Medical license would a separate license.

Q: Is there a local licensing fee in addition to the \$30,000 State licensing fee?

A: The \$30,000 licensing fee is a State fee and local licensing fees are not allowed. Only the State can license.

Q: Does this Act provide a mechanism for local control? For example, what measures can be taken for an individual who buys from multiple dispensaries in one day?

A: Section 15-40 has specific requirements for all employers and employees at dispensary locations. Specifically, all managers, owners, employees, and agents of a dispensary must complete a Cannabis Retail Sales training program and a Responsible Vendor Program. The training program, which is being developed, must include training on prohibited sales to minors, quantity limitations, and identifying fake ids. If a dispensary violates the Act and sells over 30 grams to an individual at one time, the dispensary risks renewing their license as violations can be grounds for refusing renewal. On an individual basis, possession over 30 grams is still illegal under the Act. If local law enforcement were stop an individual who had stopped at several dispensaries, that individual would be in violation of the Act and could be charged under the Cannabis Control Act.

Q: With onsite consumption, will the law apply similarly to liquor overconsumption at a bar?

A: Yes.

Q: Can employees be prohibited from consuming cannabis outside of the workplace?

A: This depends on whether the employer has a reasonable zero tolerance policy. If an employer has a reasonable zero tolerance policy, then the employer can prohibit cannabis use outside of the workplace. Mr. Horeled anticipates that these employment policies will be the subject of future litigation in which the courts will decide the interpretation. Employers should contact their attorneys.

Q: What type of licenses will be awarded in January and May 2020?

A: Current medical dispensary licenses will be awarded the opportunity for recreational licenses in January 2020. New retail site (recreational) applications will be awarded licenses in May 2020.

Q: Can municipalities require local enforcement agreements on private property?

A: This was not addressed but may be considered in a trailer bill as a voluntary agreement.

Q: Is the use in public places rule the same for smoking and infused products?

A: The use in public places rule is the same for all cannabis products, no consumption of any cannabis product is allowed in public.

Q: Would infusers and craft growers be allowed to sell their products?

A: Yes, as long as the municipality approves it and they are licensed by the State.

Q: Are transporting vehicles also allowed to store cannabis?

A: No, transporting vehicles are only to be used for delivery from point A to B and not storage.

Q: Can a medical dispensary be within 1,500 ft of a recreational dispensary?

A: Yes, because they have different license types.

Q: What is the licensing fee for transporting?

A: \$10,000.

Q: What date do you recommend for municipalities to make decisions to opt in?

A: Before January 1, 2020 if you plan to opt in.

Q: Have the applications for licenses closed?

A: The applications for the current medical license holders to apply for recreational licenses has closed. The retail licensing applications, for applicants who do not have medical dispensaries, are still available to complete.

Q: If you require drug tests upon employment, can a person refuse a drug test and can the employer refuse to hire them?

A: If a person refuses a drug test, the employer can refuse to hire them if the employer has a reasonable zero tolerance policy in place. Again, employers should contact their attorneys.

Q: If a potential employee fails a pre-employment drug test, can the employer refuse to hire them?

A: Yes, the employer can refuse to hire them if there is a reasonable zero tolerance policy in place. Again, employers should contact their attorneys.

Q: Is the medical program exempt from all sales taxes?

A: Yes.

Q: If taxes are too high, and product is not being purchased as a result, will the State and local governments need to reduce their tax amount?

A: Currently, legislators allow municipalities to tax up to 3% and do not want municipalities to over tax out of fear of the product being overpriced resulting in more black market use. California, for example, reduced their tax to encourage legal use.

Q: Zero tolerance policy outside the workplace is unclear, can this extend to employees who are "on call"?

A: A reasonable zero tolerance policy can extend to employees who are "on call". However, an employer cannot discriminate based on medical consumption. Again, employers should contact their attorneys.

Q: For personnel who are "on call" but there is a list they get called from, how would the zero-tolerance policy apply?

A: This would be best discussed with the unions and attorneys.

Q: Are there locations that are prohibited from cultivation?

A: Cultivation cannot be in residential areas.