

Authored By:

Name: James V. Ferolo
Email: jvferolo@ktjlaw.com
Phone: (312) 984-6433

Name: Michael A. Marrs
Email: mamarrs@ktjlaw.com
Phone: (312) 984-6419

Name: Carmen P. Forte
Email: cpforte@ktjlaw.com
Phone: (312) 984-6435

Name: Caitlyn R. Culbertson
Email: erculbertson@ktjlaw.com
Phone: (312) 984-6414

Name: Elizabeth F. Brogan
Email: efbrogan@ktjlaw.com
Phone: (312) 984-6431

Recreational Cannabis Legislation Heading to Governor

As the Illinois General Assembly's legislative session galloped to a close last week, HB 1438 was amended to become the Cannabis Regulation and Tax Act (the "Act"). The amended bill received House and Senate approvals in the closing days of the legislative session, and is expected to be sent to the Governor and signed shortly.

There have been some changes to the Act from an earlier version amended to a Senate Bill several weeks ago. The following are some of the highlights of the Act as approved in amended HB 1438 that local governments should be aware of:

- Possession limits for Illinois residents who are 21+ years old are any combination of:
 - ◆ 30g of raw cannabis
 - ◆ 500 mg or less of THC of cannabis-infused products
 - ◆ 5g of cannabis product in concentrated form
- Home cultivation of up to five cannabis plants per household is allowed **ONLY** for medical cannabis patients and is subject to various conditions (this is scaled back from an earlier version)
- Municipalities may enact ordinances to prohibit or significantly limit a cannabis business establishment's location
- Municipalities may enact reasonable zoning ordinances or resolutions regulating cannabis business establishments

For any questions or comments you might have regarding this newsletter, please feel free to contact:

Chicago Office

20 N. Wacker Drive, Ste. 1660
Chicago, IL 60606

T: (312) 984-6400

F: (312) 984-6444

Orland Park Office

15010 S. Ravinia Ave., Ste 10
Orland Park, IL 60462

T: (708) 349-3888

F: (708) 349-1506

www.ktjlaw.com

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- Municipalities may enact reasonable ordinances or rules governing the time, place, manner and number of cannabis business establishment operations, including minimum distance limitations between cannabis business establishments and locations it deems sensitive, including colleges and universities, through the use of conditional use permits
- Municipalities may not prohibit home cultivation by medical cannabis patients or unreasonably prohibit use of cannabis authorized under the Act
- Municipalities may establish civil penalties for violation of an ordinance or rules governing the time, place, and manner of operation of a cannabis business establishment or a conditional use permit
- Municipalities may regulate the on-premises consumption of cannabis at or in a cannabis business establishment within its jurisdiction in a manner consistent with the Act
- Cannabis business establishments or other entities authorized or permitted by a municipality to allow on-site consumption shall not be deemed a public place within the meaning of the Smoke Free Illinois Act
- The Act includes Home Rule Preemption language, prohibiting all local governments from regulating or licensing the activities described in the Act, except as otherwise provided in the Act
- The Act allows municipalities to levy, by ordinance, on or after January 1, 2020, a Municipal Cannabis Retailers' Occupation Tax of up to 3% in 1/4% increments. Revenue received from the tax is collected by the Department of Revenue and deposited into the Local Cannabis Consumer Excise Tax Trust Fund. Revenues deposited are then redistributed by the Department of Revenue back to municipalities on a monthly basis based on the amount collected from sales made in the municipality during the second preceding calendar month

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- Employers are not prohibited from adopting reasonable zero tolerance, drug free workplace policies, or other drug-related policies provided the policies are applied in a nondiscriminatory manner
- Employers are not required to permit employees to be under the influence of or use cannabis in the workplace, or while performing job duties or while on call
- Employees may be disciplined for violating a workplace drug policy
- Driving under the influence of cannabis remains illegal, and law enforcement officials may use validated roadside chemical tests or standardized field sobriety tests approved by the National Highway Traffic Safety Administration when conducting investigations of a violation of Section 625 ILCS 5/11-501 of the Vehicle Code or a similar local ordinance by drivers suspected of driving under the influence of cannabis
- The originally proposed broad expungement provisions for previous offenders have been considerably scaled back in the amended version of the Act

The Governor is expected to sign the legislation shortly. The Act will take effect on January 1, 2020. Between now and January, KTJ will work with its local government clients on policy decisions, code amendments, procedures and forms related to allowing and regulating and/or prohibiting cannabis business establishments, zoning issues, taxation issues, employment law issues, DUI and other enforcement issues, expungements and the other aspects of the Act subject to local control.

KTJ will continue to provide updates as the Act becomes law and begins to be implemented.

You can view the full text of HB 1438, as amended, here:

[Cannabis Regulation and Tax Act](#)