

## **Marijuana FAQs**

**How will legalizing recreational marijuana shut down the black market? Where did the 15% above street value figure come from? How will Delaware keep organized crime from controlling legal marijuana?**

The best way to combat the black market is through competition, namely by offering a high-quality product at comparative prices that eliminates the inherent risks involved with those sources.

This legislation takes numerous steps to this end: Keeping the tax rate comparatively low; incentivizing lower-cost, outdoor-grown marijuana; and requiring seed-to-sale tracking on all plants to prevent diversion of product to the black market. All of this will make locally grown legal marijuana cheaper than marijuana grown illegally or legally-grown marijuana diverted from other states.

The Tax Foundation recommends setting a rate between 10-25%. The proposed 15% rate (line 1047) fits that guideline while still being a lower rate than any currently legal recreational state, ensuring our cannabis market is competitive with both the black market and the existing legal market.

Organized crime will be prevented from controlling legal marijuana through both a competitive licensing process and DATE's enforcement arm.

**How will this bill address driving under the influence and training for officers? Is there a measurable, provable way to determine whether someone is impaired?**

Marijuana would be allowed in a vehicle ONLY if it is in sealed packaging or not readily accessible to anyone in the motor vehicle (**lines 158-161**). Motorists would still be subject to existing laws related to driving under the influence of marijuana or the consumption of cannabis in a motor vehicle (**lines 189-193**).

The bill does not change existing the portion of Delaware Code that already states it is "illegal for a person's blood to contain any amount of illicit or illegal drugs within four hours of driving due to the consumption of an illicit or recreational drug prior to or during driving."

Officers now and in the future would be able to pull over a motorist who is driving erratically and can make an arrest based on compelling evidence, such as the presence of paraphernalia and the odor of marijuana, and may test the driver's motor skills through several field sobriety tests. Nothing in this legislation would change those long-accepted practices.

Funding for training and enforcement would be provided through the General Fund. Marijuana revenue, similarly to lottery and gaming revenue, should never be treated as stable revenue source that can be used to guarantee a specific funding level for agencies.

## **What restrictions or protections are in place regarding transportation or consumption of marijuana in public?**

Nothing in the bill changes current laws on public consumption of marijuana, in or out of vehicles, nor are there any alterations to the Clean Indoor Air Act to allow for indoor consumption outside of private residences.

Within the bill (**lines 158-161**), marijuana and marijuana accessories must be in either sealed packaging or in such a position as to not be readily accessible to anyone inside the vehicle. A violation of this law is subject to a \$50 civil citation.

## **How much money will this raise for the state? Why does revenue go to the General Fund?**

The original HB 110 projections placed revenue between \$9 million and \$50 million, based on Colorado's methodology of demand estimates and its tax structure.

This legislation would diverge significantly from that methodology, making an estimate much harder to gauge.

There are a couple issues with determining the revenue that marijuana sales will raise for the state:

- This is a completely new market in an untested region of the nation, making it difficult to use other states as examples.
- Estimates cannot take into account the impact of legalization among surrounding states.
- Delaware's small size makes it difficult to compare market sizes and the limited number of enterprises that would be allowed under this legislation.
- Initial revenue from compassion centers will be difficult to estimate based on previous revenues, which are encumbered by the medical marijuana licensing procedures.

As for the allocation of revenue, Delaware is a general fund revenue state. As such, revenues from other similar fees and taxes are traditionally directed into the state's General Fund. This bill would follow that same pattern, similar to unstable sources such as revenues from slot machines, as well as alcohol and tobacco taxes.

## **What are the restrictions concerning rental properties, hotels, etc.?**

Private property owners are permitted to bar all consumption of marijuana on the premises they own with the exception to certain residential rental properties. Exceptions to the residential rental rule include dormitories, long-term care facilities, and rental properties in which the landlord also resides. (**§ 1308. Private property rights, lines 200-212**)

**Can an employer restrict a worker's ability to ingest recreational marijuana? Can they fire someone they suspect is under the influence regardless of whether there's proof?**

Delaware will remain an at-will employment state, meaning employers will have practically all of the power to control their workforce as they do today. Employers would still be able to drug test workers for marijuana to ensure any zero-tolerance policies are being followed. They also will be able to discipline workers for being under the influence while on the job site. And, of course, they will be able to prohibit the consumption of marijuana at work. **(lines 176-188)**

**Why are there fewer retailers, cultivation facilities and manufacturing facilities than in the previous bill?**

This a burgeoning industry that would be introduced in the state for the first time. For those reasons, the legislation takes great care to ensure a careful, controlled and reasonable licensing process that also will prevent oversupply and ensure adequate resources are being directed toward enforcement as the market grows.

**Why can compassion centers sell recreational marijuana? Won't this deplete the medical supply and cause a shortage?**

This provision has been added to prevent a large supply gap during the period in which marijuana is legal to buy, but there are not yet retail sites legally permitted to sell cannabis. In addition, the higher tax amount on this form of recreational marijuana will help offset startup costs for the new DATE office.

By the effective date of the bill, the Director of the Delaware Medical Marijuana Program must indicate how much stock compassion centers need to reserve for consumers with medical cards in order to prevent a shortage. Compassion centers have one month after the effective date of the Act in order to prepare for recreational sales. This will ensure that dispensaries are able to continue providing cannabis for medical marijuana patients, while also dismantling the black market by providing a competitive source of marijuana.

Additionally, the Director of the Medical Marijuana Program may freeze recreational sales in a compassion center if there is cause to believe the compassion center cannot meet demands of its cardholders due to recreational marijuana sales. **(lines 633-644)**

**How many retailers will there be and where?**

The legislation allows for up to 15 retail licenses to be issued within 16 months of the bill's effective date. The competitive scoring process used to award those licenses requires the commissioner to take into account geographic distribution of those retailers. After three years from the effective date of the Act, the commissioner has the power to issue additional licenses to meet demand either statewide or in a specific geographic area. **(lines 616-629)**

### **Can my town opt out of having marijuana stores?**

Yes. The bill allows municipalities to prohibit the operation of marijuana facilities within their borders through local ordinances regulations that are not in conflict with regulations enacted under this law within a municipal corporation. **(lines 812-818)**

Cities with a population of 50,000 or more also may limit sales on Sunday to a maximum of four hours on Sundays and may set closing hours earlier than provided for by state law. **(lines 251-257)**

Residents of the state's municipalities also will have the ability to demand additional transparency and other considerations. People who live or own property within one mile of the proposed location may petition the Commissioner's office within a month of a license being received. If at least 10 petitions are received, the Commissioner may grant a hearing on the license application. **(lines 823-828)**

### **How many jobs will this create?**

It is difficult to calculate the number of jobs this bill will generate. However, the competitive licensing process will favor marijuana establishments that work to generate jobs for surrounding communities most negatively impacted by marijuana prohibition and provide jobs with living wages, fair scheduling practices, and benefits. Jobs in the marijuana industry will be socially conscious and provide benefits for their surrounding communities.

The competitive licensing process would use a scoring system that encourages and reward applicants that pay a living wage, provide employer-paid health insurance, provide a defined benefit pension plan, provide sick and paid leave to workers, hire more full-time workers, focus on diversity of workforce, and other factors. **(lines 465-486)**

### **Won't this result in more children being exposed to marijuana?**

The bill includes safeguards to prevent this from occurring, such as making it unlawful for an individual under the age of 21 years to knowingly enter or remain in an establishment licensed under the chapter. **(lines 194-199)**

The bill also requires the Marijuana Commissioner to promulgate regulations:

- Setting standard requirements for opaque, child-resistant packaging designed to be difficult for children under 5 years of age to open. **(lines 505-518, 522-526)**
- Prohibiting edibles in the shape of candy and cartoon characters, as well as prohibiting additives designed to make the product more appealing to children. **(lines 530-535)**
- Placing restrictions on advertising, marketing, signage of marijuana, including mass-marketing that have a high likelihood of reaching minors. **(lines 541-545)**

## **Why are we cracking down on opiates but legalizing marijuana?**

Opiates are physically addictive and can cause overdose leading to death. Marijuana is not physically addictive and does not lead to fatal overdose. Keeping marijuana illegal does, however, ensure we spend our resources fighting a losing battle when legalization, regulation and taxation have proven to be a far more effective strategy.

## **Will I be able to grow my own marijuana?**

Homegrown cultivation is not allowed under this bill.

## **Why is Delaware Alcohol and Tobacco Enforcement better than a standalone agency? How much will this cost and how many new officers will DATE have to hire and train?**

- **Timing:** The bill gives the state 10 months to prepare for recreational marijuana (regulations, hiring a Commissioner, preparing and hiring personnel, equipment purchases).
- **Reputation:** DATE has already established a reputation for being responsive and professional. Additionally, avoiding the creation of a new bureaucracy will help eliminate public perception of an increase to the size of government.
- **Smoother Implementation:** DATE is an accredited law enforcement agency with established policies and procedures, eliminating need to reinvent the wheel. The proposed legislation calls for a tiered system, similar to what DATE agents currently work with. DATE agents also work in a uniformed and undercover capacity routinely and can easily transfer those skills over to marijuana investigations for administrative and criminal purposes. (Bill creates new chapter (Chapter 13) in Title 4 of Delaware Code under Alcoholic Liquors.)
- **Fewer Costs Generally:** Fewer new positions would be needed to properly staff a new marijuana unit within DATE rather than creating an entirely new division. A new division also would require significant startup costs for office and technological infrastructure, which would not be required under this bill.
- **Fewer Start Up Costs:**
  - DATE has sufficient space in its existing facility to accommodate new staff.
  - Essential security features for the building and evidence room are already in place, and the evidence room only needs to be expanded.
  - The Salesforce system can be modified instead of completely creating a new program for a new Division.