

What has changed for individual adults after the passage of HB1 & HB2

- It is now legal for adults over the age of 21 to possess a personal use quantity of marijuana – defined as up to one ounce of leaf marijuana, 12 grams of concentrated cannabis, cannabis products containing 750 milligrams of Delta 9 THC, and paraphernalia for the consumption of marijuana.
- It is legal for adults to share personal use amounts of marijuana with another adult, so long as the gift is not contingent upon any other transaction, purchase, or exchange of services.
 - In layman’s terms, this makes legal the type of gifting that has often occurred with alcohol such as the gift of a bottle of wine to a dinner party host.
- No longer is the otherwise lawful owner of a firearm automatically considered a “person prohibited” merely for possessing a personal use amount of marijuana.
- It is now legal to transport a personal use amount of marijuana or paraphernalia in a motor vehicle, so long as the marijuana is within a closed container and neither is readily accessible to anyone inside the motor vehicle. Think of this as a requirement to keep marijuana and paraphernalia within the trunk or a *locked* compartment such as a glove box or center console.
- It is now legal for adults to produce their own marijuana extractions at home so long as they use water, glycerin, propylene glycol, vegetable oil, or food grade ethanol. It is not legal to make ethanol-based extractions in the presence of an open flame. Think of this as making it legal for adults to produce a marijuana infused vegetable oil, in their own home kitchen, for use in baked goods or pastries.
- The use of an electronic device which creates aerosols or vapors in any form, is considered smoking.
- Landlords may not prohibit the possession of marijuana nor its consumption by non-smoked means unless one of the following is true:
 - The building is the primary residence of the landlord, and no more than 3 rooms are rented to tenants and no more than 3 tenants reside in the building.
 - The residence is student housing provided by a school, a long-term care facility, or merely incidental to the provision of medical, geriatric, educational, religious, and counseling services, or legal detention such as prison.

- Failing to prohibit marijuana possession or consumption would violate Federal law and regulations or cause the landlord to lose a monetary or licensing-related benefit under federal law or regulations.

What has not changed after the passage of HB1

- It is **still illegal** to operate a motor vehicle under the influence of marijuana
- It is **still illegal** to consume marijuana in an area accessible to the public. This includes moving vehicles.
- **Employers may still enforce** a drug-free workplace. This includes pre-employment screening for marijuana.
- It is **still illegal** to possess more than personal use amount of marijuana unless the individual is acting on behalf of a licensed marijuana business or state agency.
- It is **still illegal** to cultivate or sell marijuana to adults over 21 without holding the appropriate state license. It is illegal for anyone to sell marijuana to those under 21.
- It is **still illegal** for children or adults under the age of 21 to possess or consume any amount of marijuana, unless they possess a valid Delaware medical marijuana card.

Delaware's Adult Use Recreational Marijuana Market FAQs

Q. When will HB 2 go into effect?

A. When the Controller General publishes notice in the Register of Regulations that the funds required to implement this act have been appropriated. This publication occurs after the passage of the Fiscal Year 2023 Budget on **July 1st 2023**.

Q. Who is in charge of Delaware's Recreational Marijuana Market?

A. HB 2 creates a new Office of the Marijuana Commissioner within the Division of Alcohol & Tobacco Enforcement under the Department of Safety & Homeland Security. The Commissioner is responsible for promulgating the rules and regulations for all aspects of Delaware's Recreational Marijuana Market as directed by HB2.

Q. What kinds of Marijuana businesses will be legal in Delaware?

A. HB2 creates four different license types totaling an initial count of 125 potential Licenses. Assuming there exists enough qualified applicants, the Commissioner shall issue:

- **60 Cultivation Licenses** charged with growing leaf marijuana for retail sale and use in manufacturing. The license fee will range from **\$2,500 to \$10,000** biennially, depending on the size of the cultivation area.
- **30 Product Manufacturing licenses** which allow for the extraction of leaf marijuana into concentrates and the manufacturing of products made with concentrates. The license fee will be **\$10,000** biennially.
- **5 Testing Facility Licenses** responsible for the testing of leaf marijuana, marijuana concentrates, and marijuana products, as mandated by HB2's Seed to Sale tracking and consumer protection provisions. The license fee will be **\$10,000** biennially. These testing facilities will ensure that all retail marijuana stores are selling uncontaminated, unadulterated, and high-quality leaf marijuana and marijuana products.
- **30 Retail Licenses** tasked with ensuring that adults who choose to purchase leaf marijuana and marijuana products are provided the required educational information to understand the health risks of consumption and make appropriate dosage decisions, and given child safe packaging to help prevent inadvertent consumption by children and pets. The license fee will be **\$10,000** biennially. These Retail License holders are tasked with collecting a retail tax of 15% at the point of sale and remitting these tax payments to the Department of Revenue.

Q. Who can apply for licenses and how will they do so?

A. The licenses available will be spread between 3 different pools of applicants, each with different eligibility requirements:

- **Open Licenses** do not have any eligibility restrictions for those applying. These applicants will pay a non-refundable application fee of **\$5,000**. The Commissioner shall issue **20** Cultivation, **10** Product Manufacturing, **15** Retail, and **3** Testing Facility Licenses to Open License Pool Applicants.
- The **Social Equity License** pool shall be issued **20** Cultivation, **10** Product Manufacturing, **15** Retail, and **2** Testing Facility Licenses. These applicants will pay a discounted application fee of **\$1,000**. If selected, these applicants are eligible for Conditional licenses, which grant a 180-day waiver on the licensing requirement to identify a physical location. If selected, these applicants will receive a **40% discount on the equivalent Open License Fee**. Social Equity licenses will only be available to applicants which have at least 51% ownership and control by someone who meets either of the following criteria:
 - Resided in at least 5 of the last 10 years in a “disproportionately impacted area.”

- Was convicted of a marijuana related offense, or the child or spouse of a person convicted of a marijuana related offense (other than delivery to minors or Tier 3 quantity possession or intent to distribute).
- The **Microbusiness License** pool shall be issued **10** Cultivation and **10** Product Manufacturing Licenses. These applicants will pay a discounted application fee of **\$3,000**. If selected, these applicants are eligible for Conditional licenses, which grant a 180-day waiver on the licensing requirement to identify a physical location. If selected, these applicants will receive a **40% discount on the equivalent Open License Fee**. Microbusiness licenses will only be available to applicants which have at least 51% ownership and control by someone who has resided in Delaware for 5 of the last 10 years and will employ no more than 10 employees.

The Commissioner is charged with promulgating the application for licenses and the competitive scoring criteria which will be used to rank the applications for licenses if more qualified applicants apply than the Commissioner is allowed to license. HB 2 lays out a broad goal that the Commissioner should aim to achieve in their design of the competitive scoring criteria:

“A Competitive scoring process ... that ensures applicants will follow best practices for community engagement, consumer protection, food safety, worker safety, family support jobs, diversity, public safety, and environmental stewardship. The competitive scoring process for retail marijuana stores must be varied to account for geographic distribution or population density, or both”

Additionally, HB 2 lays out specific scoring criteria that the Commissioner shall include. The scoring criteria the commissioner shall include for **all license types** are:

- The applicant’s comprehensive business plan, including an annual budget and pro forma financial statements.
- The experience, training, and expertise of the applicant and managing officers.
- The applicant’s plans for safety, security, and the prevention of diversion.
- The applicant’s plans for operations, training, and staffing, including all of the following:
 - a. A social responsibility plan outlining diversity goals, including plans to recruit and hire people of color, women, and veterans and to support their ownership and promotion within the organization, as well as the percent of employees it plans to hire from within the respective city or region of the State.

- b. A plan to provide a safe, healthy, and economically beneficial working environment with fair scheduling practices, family-supporting wages, and benefits for its employees.
- c. Any criminal, civil, or regulatory history encountered by other entities the applicant and managing officers have previously controlled or managed.
- d. The suitability of the proposed location for the facilities.
- e. Any other criteria deemed appropriate by the Commissioner.

The Commissioner shall include the following scoring criteria for **Open License** types:

- The applicant's submission of an attestation signed by a bona fide labor organization stating that the applicant has entered into a labor peace agreement with such bona fide labor organization.
- For applications for **marijuana cultivation facility license and marijuana product manufacturing facility license only**, an environment and sustainability plan, including efforts it will take to minimize the environmental impact, and resources needs of its facilities and other business operations, such as plans to minimize water usage, employing organic cultivation methods, and adoption of other sustainable business practices.

Q. How will the Marijuana Commissioner prevent the diversion of marijuana to the illegal market?

A. In addition to the competitive scoring criteria requirement for the Commissioner to evaluate a licensee's plan to prevent the diversion of marijuana from their establishment, The Commissioner is charged promulgating regulations establishing a Seed to Sale tracking system.

This system will require that every seed used in the recreational market will be tracked at all times from its point of origin until it exits the system via sale or destruction. This system will enable the Marijuana Commissioner to know the exact location of every plant in the state at all times. In DATE's fiscal note for HB 2, they planned to hire 11 law enforcement officers to specifically work under the Marijuana Commissioner. These officers will be charged with inspecting facilities for compliance with security regulations as well as investigating any discrepancies in the seed to sale system.

Q. What efforts will the Marijuana Commissioner make to prevent marijuana from getting into the hands of those under 21, particularly children?

A. HB 2 requires that all marijuana and marijuana products are sold within opaque and continuously child-resistant packaging, which is explicitly labeled as not for children. The Commissioner is required to promulgate product manufacturing regulations which include the following protections:

- bar the use of additives which make products more appealing to children
- prohibit the manufacture of products that look like candy or cartoon characters
- creation of a standardized symbol which must appear on all marijuana products designating them as such.
- Ban the production of edible products and packaging which resemble a trademarked food product.

The Commissioner must promulgate regulations which restrict any advertising or marketing which have a high likelihood of reaching children, and which prevent the display of marijuana or marijuana products in such a way that would make them visible from the public right of way.

Marijuana possession and consumption remains illegal for persons under 21, and the Commissioner is charged with promulgating regulations which will guide employees in preventing the sale of recreational marijuana for persons under 21, including a training program for recognizing valid identification cards.

The Commissioner is given the authority by HB2 to refuse to grant a license to applicant who plans to locate within the vicinity of a church, school or college. This is another tool the Commissioner may use to limit the exposure of children and adults under 21 to marijuana.

Q. How will the Commissioner educate the public about the potential risks of marijuana consumption?

A. Under HB2, the Marijuana Commissioner has a broad responsibility to ensure that public is provided with the necessary information they need to make informed decisions around the consumption of marijuana. HB2 requires the Commissioner to promulgate educational materials which must be disseminated to consumers at the point of sale. These materials must including the following:

- Information to educate consumers, including evidence-based information about how to interpret the information on the required labels, health effects, and potential interactions with prescription and nonprescription medications

Additionally, the Commissioner must promulgate a series of labels which must be present on all marijuana packaging sold in licensed retailers. The information on these labels includes:

- The length of time it typically takes for a product to take effect.
- The amount of marijuana in the product
- The serving size, not to exceed 10 mg per serving

- The number of servings in each package, not to exceed 10 servings,
- Ingredients and possible allergens.
- A nutritional fact panel.
- The specific batch number of the product. This batch number will come from the Seed to Sale tracking program.
- the impact on developing brains
- the impact on an individual's ability to operate machinery
- the impact on pregnant and breastfeeding women
- potential interference with prescription drugs
- an indicator that this product is not for children

Q. Do local community members or municipalities have any say in this market?

A. HB 2 grants municipalities the ability to prohibit the operation of any recreational marijuana license type either through ordinance or referred ballot measure. Additionally, Municipalities make pass ordinances which govern the hours of operation, permissible locations, manner in which they operate, and number of licensed marijuana establishments allowed within a municipality.

HB2 creates two opportunities where local residents may request a hearing to level complaints against a marijuana establishment.

Within 30 days of receiving an Application for license, the Commissioner must grant a public hearing when 10 or more residents of the area within 1 mile of the proposed location file a petition opposing the granting of the license. The Commissioner is required to hear the objections of the community, and within their written decision they must show how they took community objections into account and how they were given due consideration when issuing their decision.

HB2 requires the Commissioner to hold public Appeal Committee hearings to review an operational licensed marijuana establishment, when they receive a petition signed by at least 10 residents of the same neighborhood in which an establishment is located. This hearing may result in the suspension or cancellation of a license, based on the level of misconduct displayed by the license holder.

Timeline for the launch of Delaware's Adult Use Recreational Marijuana Market

- July 1st, 2023 – HB 2 takes effect upon publication, in the Register of Regulations, of a notice by the Controller General that the funds required to implement this Act have been appropriated.
- September 29, 2023 – Deadline for the Governor to make their initial nomination for the Marijuana Commissioner.

- July 1st, 2024 – Deadline for the adoption of regulations required to administer the licensing of recreational marijuana businesses.
- August 1st, 2024 – The Commissioner shall begin accepting applications for all licenses.
- September 1st, 2024 – The Commissioner shall *begin* issuing licenses (the first date the commissioner is allowed to issue licenses of any type).
- October 1st, 2024 – The Commissioner shall issue 60 Cultivation Facility Licenses, provided that many qualified applicants exist in total, spread amongst the three applicant pools. (deadline for when the Commissioner must issue these licenses).
- November 1st, 2024 – The Commissioner shall issue 30 Product Manufacturing Licenses, provided that many qualified applicants exist in total, spread amongst the three applicant pools (deadline for when the Commissioner must issue these licenses)
- February 1st, 2025 – The Commissioner shall issue 30 Retail Licenses and 5 Testing Facility Licenses, provided that many qualified applicants exist in total, spread amongst the two applicant pools. (deadline for when the Commissioner must issue these licenses).
- July 1st, 2025 – At any time after this date, the Commissioner may accept applications for any type of license and issue licenses in excess of the numbers identified in HB2 if either the Commissioner determines additional stores or facilities are needed or the number of active licenses in a particular category is under the number permitted by HB 2.