

DELAWARE BECOMES 22ND STATE TO LEGALIZE RECREATIONAL MARIJUANA USE

On April 23, 2023, Delaware became the 22nd state to legalize recreational marijuana use. Over two-thirds of the Delaware General Assembly passed two cannabis-related bills: House Bill 1 and House Bill 2. Despite Gov. John Carney's veto of similar legislation last year, he allowed the two bills to become law without his signature.

House Bill 1

- Legalizes the “personal use quantity” of marijuana, which varies by cannabis form, for people ages 21 and older.
- “Personal Use Quantity” is defined as 1 ounce or less of leaf marijuana, 12 grams or less of concentrated cannabis, or cannabis products containing 750 milligrams or less of delta-9-tetrahydrocannabinol.
- Purchasers will need to provide a government-issued ID.
- Possession by those under 21 years of age can result in a fine up to \$100 for the first offense.
- Drivers can transport marijuana within Delaware so long as the product is kept in a sealed container and beyond reach of all occupants in the car.
- Transporting marijuana across state lines is illegal at the federal level, even if between two states that have legalized marijuana.
- Growing marijuana without a license remains illegal.
- Consuming marijuana in public remains illegal.
- Penalties for driving after consuming marijuana are the same as for drunk driving.

House Bill 2

- Creates a regulatory framework for the recreational marijuana industry in Delaware.
- Within 16 months of the legislation going into effect, the state will distribute licenses through a competitive bidding process.

PEOPLE

Eric M. Suttly

Eric M. Walter

SERVICES AND INDUSTRIES

Cannabis Law

- The state will issue 30 retail licenses for dispensaries, 30 manufacturing licenses and 60 cultivation licenses.
- Delawareans can begin applying for licenses to sell, test, or cultivate marijuana in 13 months, with the first licenses handed out in 14 months.
- Licenses will cost \$10,000 every two years.
- There will be a marijuana control enforcement fee of 15% (retail tax); 7% of the marijuana tax revenue will go into a Justice Reinvestment Fund to create grants and services that focus on restorative justice and reducing the state's prison population.
- Employers remain allowed to maintain a zero-tolerance policy.

Delaware anticipates that this new legislation could create an industry realizing multi-millions of dollars in tax revenue. Neighboring state New Jersey has already legalized recreational marijuana use and sales in New Jersey totaled over \$228 million and brought in nearly \$20 million in tax revenue in 2022 alone. Maryland, another neighbor, also has legalized recreational marijuana use. Pennsylvania, however, has not legalized recreational marijuana use, but does allow medical marijuana use.

The new legislation will likely necessitate assistance from legal counsel in several different areas, including advising clients on how to obtain a license given the competitive nature; comply with Delaware's new regulatory scheme, real estate and zoning assistance for acquisition of a physical location to conduct marijuana business; tax advice in order to navigate challenging cannabis-related tax issues; entity formation; and counseling regarding labor and employment law issues related to marijuana operations and zero-tolerance in the workplace.

Armstrong Teasdale is an international law firm with lawyers across all of the aforementioned key legal practice areas. Importantly, our Cannabis and Hemp Law team has significant experience in guiding clients through the extremely competitive licensure process and has successfully secured multiple licenses for our clients in other jurisdictions. The scope of our practice is broad and [outlined in further detail online](#), though we would be happy to discuss your specific needs. Please contact one of the authors listed below for additional information.