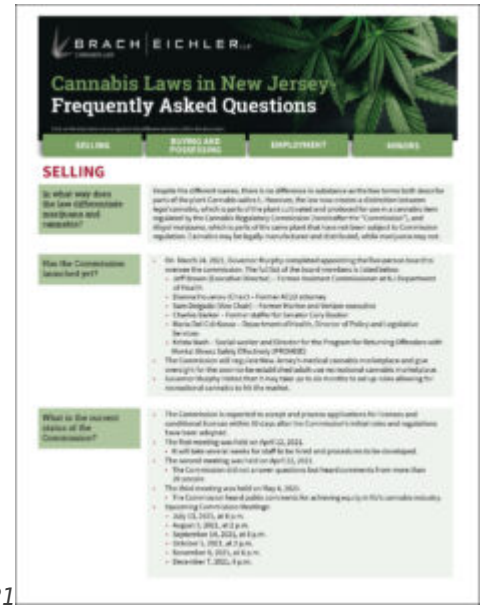
Cannabis Laws in New Jersey – Frequently Asked Questions (Archive)

THIS FAQ HAS BEEN UPDATED. CLICK HERE TO VIEW THE LATEST VERSION!



6/2/21

The rapidly developing Cannabis industry arising from laws permitting the use of medicinal cannabis, and, adult recreational use, brings with it a plethora of precedents yet to be set in the Garden State. This past April, the Cannabis Regulatory Commission met, kicking off the next steps in the long process of making legal cannabis sales a reality. Until the Commission adopts its rule and regulations, legal sales are on hold.

Brach Eichler receives numerous questions and inquiries regarding the current status of New Jersey cannabis sales, purchasing, consumption, and workplace regulations. To address your concerns, we have created *Cannabis Laws in New Jersey – Frequently Asked Questions*, a list of questions to keep you informed on the current state of affairs and policy developments in the cannabis industry.

Subscribe to our *Cannabis Insights* to receive the latest news and developments on the evolving New Jersey cannabis marketplace.

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SELLING

In what way does the law differentiate marijuana and cannabis?

Despite the different names, there is no difference in substance as the two terms both describe parts of the plant Cannabis sativa L. However, the law now creates a distinction between *legal cannabis*, which is parts of the plant cultivated and produced for use in a cannabis item regulated by the Cannabis Regulatory Commission (hereinafter the "Commission"), and *illegal marijuana*, which is parts of the same plant that have not been subject to Commission regulation. Cannabis may be legally manufactured and distributed, while marijuana may not.

Has the Commission launched yet?

- On March 24, 2021, Governor Murphy completed appointing the five-person board to oversee the commission. The full list of the board members is listed below.
    - Jeff Brown (Executive Director) – Former Assistant Commissioner at NJ Department of Health
    - Dianna Houenou (Chair) – Former ACLU attorney
    - Sam Delgado (Vice Chair) – Former Marine and Verizon executive
    - Charles Barker – Former staffer for Senator Cory Booker
    - Maria Del Cid-Kosso – Department of Health, Director of Policy and Legislative Services
    - Krista Nash – Social worker and Director for the Program for Returning Offenders with Mental Illness Safely Effectively (PROMISE)
- The Commission will regulate New Jersey's medical cannabis marketplace and give oversight for the soon-to-be-established adult-use recreational cannabis marketplace.
- Governor Murphy hinted that it may take up to six months to set up rules allowing for recreational cannabis to hit the market.

What is the current status of the Commission?

- The Commission is expected to accept and process applications for licenses and conditional licenses within 30 days after the Commission's initial rules and regulations have been adopted.
- The first meeting was held on April 12, 2021.
    - It will take several weeks for staff to be hired and procedures to be developed.
- The second meeting was held on April 22, 2021.
    - The Commission did not answer questions but heard comments from more than 20 people.
- The third meeting was held on May 4, 2021.
    - The Commission heard public comments for achieving equity in NJ's cannabis industry.
- Upcoming Commission Meetings:
    - July 13, 2021 at 6 p.m.
    - August 3, 2021 at 2 p.m.
    - September 14, 2021 at 6 p.m.
    - October 5, 2021 at 2 p.m.
    - November 9, 2021 at 6 p.m.
    - December 7, 2021 6 p.m.

What kind of licenses will the Commission issue once the rules and regulations have been adopted?

- Class 1 Cannabis Cultivator license
- Class 2 Cannabis Manufacturer license
- Class 3 Cannabis Wholesaler license
- Class 4 Cannabis Distributor license
- Class 5 Cannabis Retailer license

- Class 6 Cannabis Delivery license

When will cannabis license applications be available?

The Commission will begin accepting and processing applications within 30 days after the initial rules and regulations have been adopted.

What are the tax differences between adult-use recreational cannabis and medical marijuana?

- The sale of adult-use cannabis will be subject to the normal state sales tax of 6.625%. Additionally, local governments may impose 2% municipal tax if they want. Further, the Commission may institute a social equity excise tax at the cultivation level if it so chooses.
- For medical marijuana, sales tax imposed on sales will phase out over the next year as follows:
    - 4 % on sales made between July 1, 2020, and June 30, 2021
    - 2% on sales made between July 1, 2021, and June 30, 2022
    - 0% on sales made on and after July 1, 2022.

BUYING AND POSSESSING

So, can I buy cannabis now in New Jersey?

- No. The Commission must first promulgate and implement regulations governing the cultivation, production, processing, distribution, and consumption of cannabis. So, any
  Cannabis sativa L. cultivated and produced before that is considered marijuana and remains illegal and subject to seize.
- At the moment, New Jerseyans are allowed to possess up to 6 oz of marijuana or up to 17 grams of hashish; yet, they have nowhere to legally buy it.

Where can I legally purchase cannabis?

- The only dispensaries currently licensed to sell legal marijuana in New Jersey are limited to medical patients. Recreational cannabis is legal, but is not yet available for retail purchase, as regulations around the commercial sales market are yet to be established. Anyone else who comes into possession of marijuana has gotten illegal product from a drug dealer. While selling remains a criminal offense, possession of up to 6 oz is not.
- New Jersey's existing medical marijuana dispensaries will be given the first shot at sales, since they are already equipped to do so. New dispensaries will follow, as soon as
  the bidding process allows.

Is it legal to possess cannabis in New Jersey?

Yes. In November of 2020, the state constitution was amended to legalize the recreational use of marijuana for adults aged 21 and older. The new law removed criminal and civil penalties for possession of up to 6 oz for adults 21 and over. The constitutional amendment took effect on January 1, 2021.

How much cannabis can I legally possess?

Individual adults may legally possess up to 6 oz of marijuana, including any adulterants or dilutants, or up to 17 grams of hashish.

What is Hashish?

Hashish means the resin extracted from any part of the plant Cannabis sativa L. Under the new laws, marijuana and hashish are still defined as "controlled dangerous substance" but are largely decriminalized for non-distribution offenses. The laws eliminate existing prohibitions and create new, more lenient penalties for possessions and distribution that remain tiered based on weight. Individual adults may legally possess up to 17 grams of hashish.

How much can I legally buy from state-licensed dispensaries?

Each state-licensed cannabis dispensary will be able to sell up to 1 oz of cannabis per customer.

Can I give cannabis as a gift?

Yes. You can gift another adult 21 year of age or older up to 1 oz.

Can I get cannabis delivered to me?

Once dispensaries are open to the public, the state will also license delivery drivers to bring marijuana directly to customers.

Can I buy cannabis in a state where it is legally sold and bring it back to New Jersey?

No. Legally produced marijuana must stay within the state where it was grown. Marijuana remains illegal at the federal level, and so does bringing it over state lines. Furthermore, it would be illegal to get cannabis shipped from out of state.

Can visitors from other states buy cannabis in New Jersey and take it back with them?

No. Visitors who buy in New Jersey cannot legally take it back home, due to federal prohibition that blocks interstate travel with marijuana. Legal cannabis purchased in New Jersey should also be consumed in New Jersey.

Can you drive with marijuana?

Driving under the influence of marijuana is illegal. However, possessing up to 6 oz of marijuana or up to 17 grams of hashish in a car will fall under the same rules as a possession as long as the driver is not consuming it.

Can police officers search my car based on the smell of cannabis?

No. The odor of cannabis, either burnt or raw, by itself no longer constitutes "reasonable suspicion" to justify a continued stop of an individual under the age of 21, nor does it provide "probable cause" to search the person's personal property or vehicle.

Where can you smoke cannabis?

- Smoking or using cannabis in public places will be prohibited. Recreational cannabis can only be consumed in a private residency. However, the new law will allow the Commission to designate consumption areas or consumption lounges in the future.
- Consumption areas mean a designated location operated by a licensed cannabis retailer or permit holder for dispensing medical cannabis, for which both a State and local endorsement has been obtained, that is either:
    - an indoor structurally enclosed area of the cannabis retailer or permit holder that is separate from the area in which retail sales of cannabis items or the dispensing of medical cannabis occurs; or
    - an exterior structure on the same premises as the cannabis retailer or permit holder, either separate from or connected to the cannabis retailer or permit holder, at which cannabis items or medical cannabis either obtained from the retailer or permit holder, or brought by a person to the consumption area, may be consumed.

- 20% of the guest rooms of a hotel, motel, or other lodging establishment would be permitted by the person or entity that owns or controls that establishment.

Where is cannabis prohibited?

- With respect to consumption, the smoking, vaping, or aerosolizing of a cannabis item would be prohibited in any place pursuant to law that prohibits the smoking of tobacco, as well as any "indoor public place" as defined in the New Jersey Smoke-Free Air Act.
- Smoking, vaping, or aerosolizing cannabis could also be prohibited in:
    - private multifamily housing, as decided by the person or entity that owns or controls the housing;
    - the structure or specific units within the structure of a cooperative by the corporation of other legal entity that owns the structure; and
    - the units of a condominium, if approved by its association and a majority of all of the unit owners.

Can I grow cannabis plants at home in New Jersey?

- No. Personal cultivation of both medical marijuana and recreational cannabis is illegal in New Jersey. Cultivation or manufacturing requires a license and is for commercial uses
only.
- Note: On March 22, 2021, a new bill (S3582) was introduced that would allow anyone 21 and older to grow up to six marijuana plants at home, with a maximum of 12 plants per household. Also, medical patients could grow up to 10 plants. Currently, growing five plants or less can result in three to five years in prison and a $25,000 fine. Brach Eichler will continue to update the FAQ once we find out the bill gets passed or denied.

What are the major differences between adult-use recreational cannabis and medical marijuana?

- Consumer Considerations & Patient Registration
    - Adult-use recreational: 21 years of age
    - Medical marijuana: Medical conditions; Required physician registration
- Prescription Quantities & Patient Possession
    - Adult-use recreational: 1 oz
    - Medical marijuana: up to 3 oz per month
- Means of Legal Change
    - Adult-use recreational: Referendum followed by normal regulative action
    - Medical marijuana: Normal legislative action

EMPLOYMENT

Can an employer fire an employee for cannabis consumption?

- An employer would not be permitted to refuse to hire or employ a person, or discharge or take ***any*** adverse action against an employee because that person or employee does or does not use cannabis items.
- Under the new law, the presence of the cannabinoid metabolites in the body of a person engaged in permitted conduct

outside of work, could not form the basis for refusal to employ or otherwise penalize that person.

- However, an employer may terminate or refuse to hire an employee who uses cannabis if it would violate the terms of a federal contract or cause the employer to lose federal funding.

Can an employer require an employee to undergo a drug test?

- Yes. An employer may require the employee to undergo a drug test:
  - Upon reasonable suspicion of an employee's usage of a cannabis item while engaged in the performance of the employee's work responsibilities;
  - Upon finding any observable signs of intoxication related to usage of a cannabis item;
  - Following a work-related accident subject to investigation by the employer;
  - Random drug testing;
  - Testing as part of a pre-employment screening; or
  - Regular screening of current employees to determine use during an employee's prescribed work hours.

MINORS

What happens when my child under 21 gets caught for either possessing or consuming marijuana?

- **First Offense:** Anyone younger than 21 caught possessing or consuming marijuana will no longer be arrested or fined. Instead, young people will receive warnings that escalate. Upon a first offense, they will get a written warning for a first offense. The cleanup bill (S3565) that was signed into law on March 24, 2021 requires law enforcement to provide written notification to parent or guardian of person under age 18 who commits first offense of unlawfully possessing or consuming cannabis, marijuana, or hashish.
- **Second Offense:** Those younger than 21 caught a second time smoking marijuana or possessing marijuana will get another written warning, along with materials on community drug treatment services. For individuals under the age of 18, the officer shall provide the individual's parent or guardian with copies of the warning's issues for both the first and second offenses.
- **Third or Subsequent Offense:** Getting caught with such items for a third time or more means another written warning and more information on community drug treatment services. The written warning also will get sent to the community drug treatment program, for people between 18 and 21; while parents or guardians get copies of the following warning for those younger than 18.
- For those younger than 21, possession of more than 6 oz of marijuana or 17 grams of hashish still is a fourth-degree crime and may be issued a complaint summons and fingerprinted at their first court appearance.

Can my child under 21 get arrested for refusing to provide identifying information for the written warning or putting the marijuana in their pocket or concealing it in some way?

- Initially, the officer should take reasonable efforts to explain the situation to the underage individual if the underage individual refused to give their identifying information.
- If the underage individual continues to refuse, the law does not allow for the underage individual to be placed under arrest or taken into custody, unless the individual has engaged in some affirmative act of interference with the officer; simply refusing to turn over the marijuana does not constitute affirmative act.

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