

What's Notable In Connecticut's New Cannabis Laws

By **Sarah Westby and Deanna McWeeney** (August 22, 2023)

At the conclusion of the 2023 legislative session on June 7, the Connecticut Legislature passed four bills containing cannabis provisions that were later signed by the governor.

These new laws contain several changes affecting the cannabis industry, some of which became effective immediately.

The changes are a mixed bag for existing and prospective cannabis businesses, depending primarily on the license type a particular business holds and the progress it has made toward final licensure.

This article will discuss some of the more significant changes affecting Connecticut cannabis business operations.

House Bill 6699

H.B. 6699, also known as the cannabis omnibus bill, amends several sections of the Responsible and Equitable Regulation of Adult-Use Cannabis Act.

The key changes address the adult-use cannabis licensing lottery process, provisional license deadlines, CBD and hemp regulation, social equity requirements, and labor peace agreements, to name a few.

Here is a summary of the key changes and the impact that they will have on existing and prospective cannabis businesses:

Provisional License Deadlines

The amendments extend the provisional license deadline from 14 to 24 months for all lottery applicants issued a provisional license before June 30, 2023. Notably, the amendments also eliminate the 14-month provisional license deadline for Section 149 social equity cultivators. Provisional licenses are nonrenewable and nontransferrable, except in limited circumstances.

The extension of provisional license periods will affect businesses differently. While this may come as welcome news for some who are working to secure funding or having difficulty finding suitable real estate, others may view this change as injecting uncertainty into the competitive landscape, permitting additional businesses to survive that might not have become operational otherwise.

Lottery Application Limits

In the next round of cannabis licensing, the state Department of Consumer Protection, or DCP, will only allow one application per company.

However, an applicant in the social equity lottery may still be entered into the general lottery if that applicant is not selected in the social equity lottery without violating this



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provision.

In addition, all applicants that are business entities must register with the Connecticut secretary of state prior to submitting the application and attest that they have so registered.

The purpose of this change was to even the playing field for applicants — and, in particular, social equity applicants — that do not have the financial resources to submit hundreds or even thousands of lottery applications, as the state experienced in the first round of licensing.

Clarification of Percentage Requirements for Social Equity Applicant Control

H.B. 6699 defines "control" with respect to cannabis establishments as the direct or indirect "power to direct, or cause the direction of, the management and policies of a cannabis establishment."

Notably, the amendments clarify that the percentages associated with ownership — 65% and 50% for social equity applicants and equity joint ventures, respectively — do not apply to control.

Rather, social equity applicants and equity joint ventures must simply be controlled by the individual or individuals who meet the social equity criteria.

In effect, this means that those qualifying social equity individuals must control at least 51% of the business.

New Requirements for Labor Organizations

The bill establishes new requirements for labor organizations and labor peace agreements.

Under Section 40 of the bill, the DCP is required to establish a list of bona fide labor organizations, and cannabis establishments may only enter into labor peace agreements with organizations included on the list.

In order to be included on the list, each labor organization must attest that it meets certain criteria, similar to those required for a union to represent public employees in the state.

Some of the criteria include that the labor union:

- Is actively seeking to represent employees in the state;
- Represents employees in the state with regard to wages, hours and working conditions; and
- Has been recognized or certified as the bargaining representative for cannabis employees employed at cannabis establishments in the state.

A labor union may be included on the approved list if it meets a certain number of these criteria.

These changes may limit the unions that cannabis establishments can contract with in order

to satisfy the requirement of entering into a labor peace agreement for final licensure.

However, it is important to keep in mind that any labor peace agreements entered into on or before Sept. 30, 2023, will be grandfathered in, meaning that they will still be valid and will satisfy the labor peace agreement requirement even if the union does not ultimately make the DCP's list.

Expansion of Manufacturing Activities

Product manufacturers will be permitted to manufacture foods and beverages containing cannabis, and likewise, food and beverage manufacturers will be permitted to manufacture other cannabis products. This change essentially collapses the two manufacturing license types into one.

Manufacturers looking to expand into food and beverage or product manufacturing must pay a fee of \$5,000.

New Restrictions on High-THC Hemp Products

The bill reclassifies certain high-THC hemp products as cannabis products based on volume of total THC rather than percentage of total THC by dry weight. These high-THC hemp products will be treated like cannabis, subject to DCP licensure and regulation.

For example, hemp products such as edibles and tinctures cannot contain more than 1 milligram of total THC per serving, otherwise they will be classified as cannabis and cannot be manufactured or sold without a cannabis license. They also must contain additional warnings.

If enacted, these restrictions would have profound effects on full-spectrum CBD products, which often have trace amounts of THC exceeding the new thresholds.

Since there is currently no separate license type or licensing process for high-THC hemp products, manufacturers of those products will either need to reformulate or discontinue them.

Packaging and Labeling

Cannabis product labeling need not indicate that a product contains cannabis any longer, but the packaging must instead indicate that the product contains THC and is not safe for consumption by individuals under age 21.

Packaging must be tamper-resistant and light-resistant — terms that are specifically defined — and distinguishable from products that do not contain cannabis. Packaging also must contain additional warnings. In addition, edibles must be individually wrapped.

Connecticut regulators have continued to focus on improving product safety and keeping cannabis products out of the hands of minors. Many manufacturers, packagers and retailers, however, view compliance with the myriad packaging and labeling requirements as challenging because the requirements are constantly evolving and limit creativity in branding.

Delivery Service Employees

The bill limits the requirement that delivery services employ full-time employees to businesses with 12 or more employees.

Regardless of size, however, all cannabis delivery service businesses still must enter into a labor peace agreement with a bona fide labor organization.

Definition of Disproportionately Impacted Area

The bill also amends how a disproportionately impacted area, or DIA, is defined. The new method uses census records to exclude communities with poverty rates less than the statewide rate. Then, the remaining communities are ranked in order based on historical rates of drug-related offenses, from communities with the most offenses to the least offenses.

These requirements are designed to better capture the population of individuals most affected by cannabis prohibition.

The DIA map will no longer need to be updated annually, which will provide certainty and predictability to prospective applicants about who qualifies as a social equity applicant, and precisely where DIA cultivators must be located.

In addition, this means that future applicants will not need to worry that they might qualify as a social equity applicant one year but not the next.

The Social Equity Council published the new map on Aug. 1.

House Bill 6941

H.B. 6941, the biennial state budget bill, was signed into law on June 12. The bill repealed the angel investor tax credit for qualifying cannabis businesses, effective July 1, 2023, but it changed state tax law allowing licensed cannabis businesses to deduct ordinary business expenses from their state taxes.

While the repeal of the angel investor credit eliminates a significant financial benefit to some investors, Connecticut is offering some relief to cannabis businesses by decoupling Section 280E of the Internal Revenue Code from Connecticut's business and income tax provisions.

Cannabis businesses are not permitted to deduct ordinary and necessary expenses paid in carrying on their trade or business for federal tax purposes under Section 280E because cannabis remains classified as an illegal Schedule I controlled substance under federal law.

However, effective for the tax year beginning Jan. 1, 2023, and thereafter, Connecticut will permit cannabis licensees to deduct ordinary and necessary business expenses from their Connecticut taxes — personal income or corporate business tax.

This means that cannabis companies will pay a lower effective tax rate to the state, decreasing their state tax burden and increasing the chances that the business can become

profitable over time.

Connecticut has now joined a number of other states, including Massachusetts and New York, that have recently decoupled from the federal prohibition on deducting such expenses in an effort to provide some tax relief.

House Bill 6700

H.B. 6700 affects the sale of hemp products. Notably, the final bill does not allow hemp cultivators to convert their licenses to adult-use cannabis licenses, which was a controversial and closely watched proposal.

The bill did, however, include provisions that would allow manufacturers of hemp products to sell their products in dispensaries, retail facilities and hybrid retail facilities.

Under H.B. 6700, manufacturer hemp products, which are largely manufactured consumables such as edibles and tinctures, can be sold or distributed within dispensary facilities, whereas producer hemp products — raw or fiber-based hemp products — cannot.

The provisions of the bill stipulate that manufacturer hemp available for sale must be stored separately from cannabis, separated by a physical barrier in any display area, and displayed with signage approved by the DCP.

Moreover, the products must be tested by a laboratory that meets the standards for accreditation and testing, and be clearly labeled to distinguish the product as a manufacturer hemp product, which is subject to different testing standards than cannabis.

This change will allow certain hemp products increased exposure and potentially increased sales since they can now be purchased at the same time and in the same location as cannabis products.

Consumers may be more willing to try hemp products, and feel more secure in the quality of product they are consuming, if those products are available for purchase in a licensed retail store.

In addition, consumers will have better access to product education and related resources on hemp products when purchasing them from a cannabis retail store, as opposed to an average grocery or convenience store.

On the other hand, cannabis retailers need to be aware of the different rules and regulations affecting hemp products in order to minimize product liability risks.

House Bill 6718

H.B. 6718 requires the Connecticut Department of Mental Health and Addiction Services to administer a public awareness campaign regarding safe storage of cannabis products and the dangers drugs pose to children, as well as tactics to reduce and eliminate these dangers.

The bill also exempts cannabis products from a new requirement that opioids and other controlled substances contain conspicuous labels or warning stickers regarding dangers to children.

The latter provision comes as welcome news to cannabis brands — including manufacturers, packagers and retailers — since it is one less warning they need to include.

Nevertheless, all cannabis businesses in the distribution chain should be aware of the state's increased enforcement activity related to unlicensed and misbranded hemp and cannabis products, and ensure that their products comply with all manufacturing, packaging and labeling requirements when they leave the warehouse or shelves.

Concluding Thoughts

Cannabis laws and regulations are constantly evolving, and Connecticut is no exception.

Monitoring and navigating these changes is challenging and resource-intensive. The 2023 legislative session provided some much-needed relief and clarification for cannabis businesses, but also imposed some significant new restrictions.

Affected businesses will need to think through how these new provisions affect their existing operations.

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