



Massachusetts Medical and Adult Use Cannabis Laws and Regulation:

Where We Are and Where We Are Going

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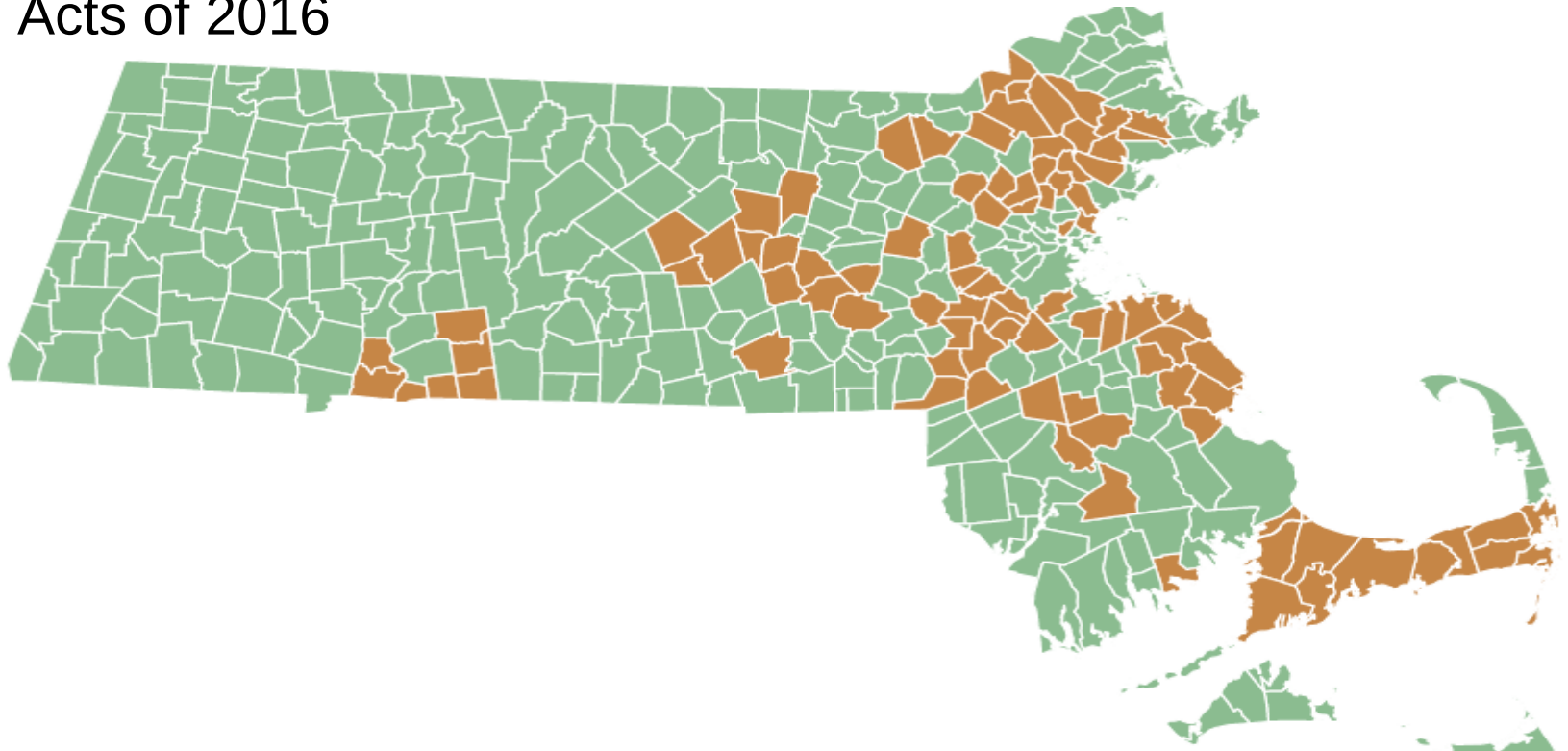
- Overview of the Adult Use Law: Chapter 334 of the Acts of 2016
- Legislative Developments
- State of the Massachusetts Market and Major Outstanding Questions



Overview of the Adult Use Law: Chapter 334 of the Acts of 2016

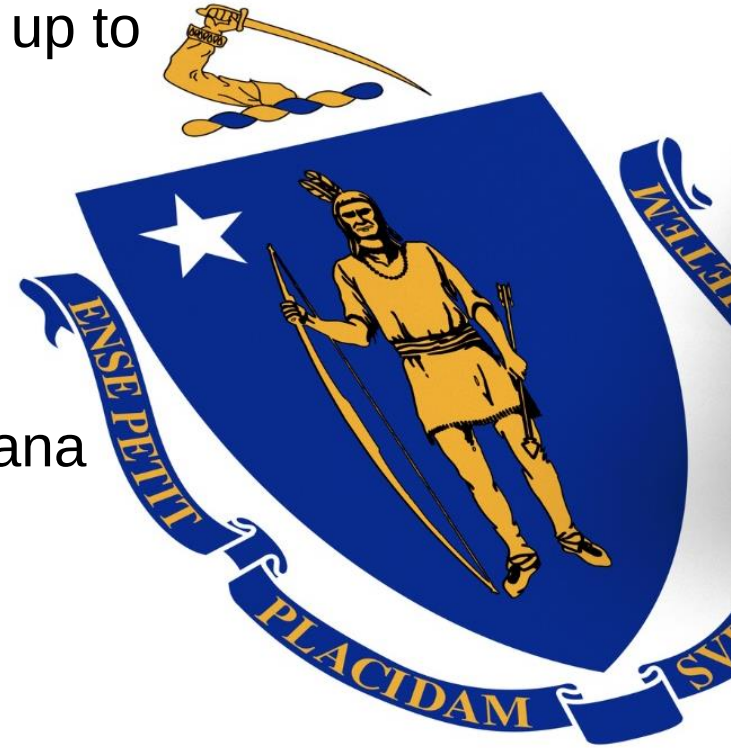
Overview of Adult Use Law

- Ballot Question 4 passed by Massachusetts Voters 53.6% to 46.4% in November
- 260 municipalities voted yes; 91 voted no
- Enacted December 15, 2016 as Chapter 334 of the Acts of 2016



What it does

- Allows cultivation in primary residence up to 12 plants and 10 ounces
- Allows personal possession up to 1 ounce
- Creates regulatory framework for licensing of marijuana retailers, marijuana cultivators, marijuana product manufacturers, and marijuana testing facilities and sets deadlines
- Unlike medical marijuana, recreational system does not provide for vertical integration



Cannabis Control Commission

- Three members appointed by State Treasurer (one Commissioner, two Associate Commissioners)
- No more than two from same political party
- Commissioner's term is same as Treasurer's
- Appointed based on expertise in:
 - Public health, law enforcement, social justice, business regulation, regulation of marijuana production and marijuana products
- Commission may appoint investigative and enforcement staff

Cannabis Control Commission

- Responsibilities include:
 - Promulgation of initial regulations prior to licensing
 - General supervision of industry
 - Implementing State Licensing System
 - Issuing licenses to operate
 - Investigating and enforcing violations



Current Regulatory Structure

■ Cannabis Control Commission

- State Licensing Framework

- CCC Receives initial applications from retailers, cultivators, and product manufacturers
- CCC must determine if applicant is qualified within 90 days:
 - **Regulatory requirements** (i.e., background checks, capital requirements, security rules) to be adopted by CCC
 - **Note:** Qualifications must be “directly and demonstrably related to operation of marijuana establishment and similar” to requirements for state licensure of alcohol businesses
 - Notice to municipality and requirement that municipality notify Commission if marijuana use is prohibited where proposed
 - Location is not within 500 feet of school, unless municipality adopts local ordinance reducing the distance

Cannabis Advisory Board

- Appointed by Governor to study relevant issues and make recommendations to CCC on regulations, guidelines, and any changes it considers necessary
- 15 Members
 - 1 expert in cultivation
 - 1 expert in retailing
 - 1 expert in product manufacturing
 - 1 expert in testing
 - 1 board member of a medical marijuana treatment center operating in the Commonwealth
 - 1 consumer representative
 - 2 experts in public health
 - 2 experts in law enforcement
 - 2 experts in social justice
 - 2 attorneys with experience in industry

Taxes

- Up to **12% Total**
- **State Excise Tax**
 - **3.75% of sales**
 - Excise revenues deposited into Marijuana Regulation Fund, along with licensing fees and interest earned
 - Marijuana Regulation Fund used for administration and enforcement of law by CCC and cities and towns with marijuana establishments
- **State Sales Tax of 6.25%**
- **Optional Marijuana Local Tax**
 - Municipalities may impose a **maximum** 2% sales tax on marijuana establishments

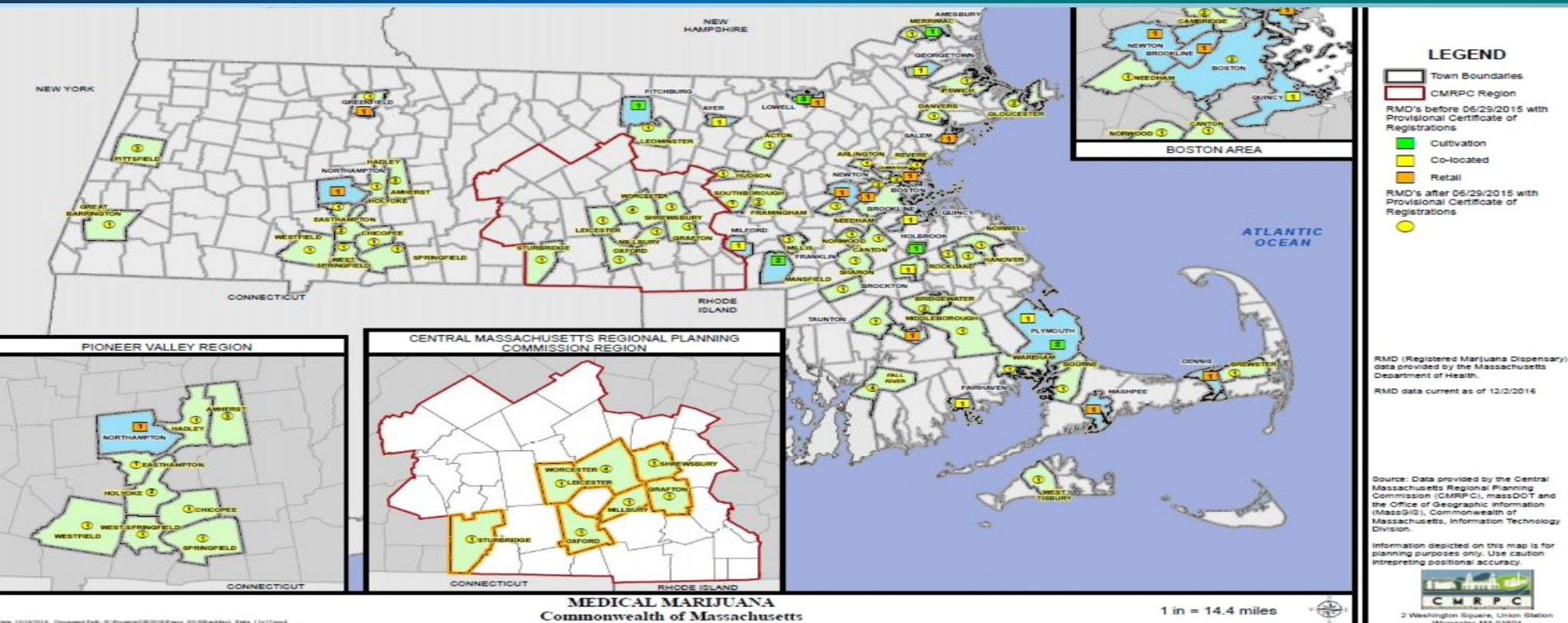
Relation to Registered Medical Marijuana Dispensaries (“RMDs”)

- RMDs are licensed by the Department of Public Health (“DPH”)
- RMDs must be Massachusetts **not-for-profit corporations** with complex restrictions on related party transactions and revenue sharing
- RMDs may receive three certificates of registration that entitle the nonprofit corporate to operate three retail dispensary sites and up to three cultivation sites (which may be co-located with dispensaries or located remotely, and are subject to other restrictions)
- RMDs must be vertically integrated, i.e., must both dispense and cultivate, with wholesaling allowed in limited circumstances

Relation to RMDs

- **“Head Start” for “Experienced Marijuana Establishment Operators”**
 - Any RMD currently operating in “good standing” with the DPH or
 - Any entity that has applied before Oct. 1, 2015 to operate a RMD and received a provisional certificate of registration before Dec. 15, 2016
 - May apply one year earlier than all other applicants for one retailer and one product manufacturer license and two years earlier than all other applicants for one cultivator license

There are Dozens of “Experienced Marijuana Establishment Operators”



■ Note: Map is outdated; for illustration purposes only.

Co-Location of Medical and Adult Use Operations

- The CCC may not prohibit a registered RMD and an experienced marijuana establishment operator (any registered RMD or entity that held a PCR before Dec. 15, 2016 and who applied before Oct. 1, 2015)

“from operating a medical marijuana treatment center and a marijuana establishment at a shared location.” G.L. c. 94G, § 4(c)(16).

Automatic RMD “Trigger” if CCC fails to implement regulations

- If the CCC fails to implement the initial regulations necessary to implement the state licensing system for adult use applicants by **July 1, 2018**, then:

“each medical marijuana treatment center may begin to possess, cultivate, process, manufacture, package, purchase or otherwise obtain and test marijuana and marijuana products and may deliver, sell or otherwise transfer marijuana to any person who is at least 21 years of age until the commission adopts the regulations necessary for implementation of this chapter and begins to issue licenses to operate marijuana establishments” Stat. 2016 c.. 334, § 6.

Municipal Control Options and Limitations

- Municipalities may pass reasonable zoning ordinance bylaws and other “time, place and manner” regulations on adult use marijuana establishments
 - **Temporary moratoria enacted in** Mansfield, Scituate, Hamilton, Ashland, W. Bridgewater, and dozens more proposed
- **Provided they are *not* “unreasonably impracticable”**
- **“Unreasonably Impracticable”** local ordinances are those that:
“subject licensees to unreasonable risk or require such a high investment of risk, money, time or any other resource or asset that a reasonably prudent businessperson would not operate a marijuana establishment” G.L. c. 94G, § (1)(p).

Municipal Control Options and Limitations

- Municipalities may not pass zoning bylaws or other regulations that prohibit locating an adult use establishment “*in any area in which a medical marijuana treatment center is registered to engage in the same type of activity.*” G.L. c. 94G, § 3(a)(1).

Municipal Control Options and Limitations

- A municipality's elected officials (i.e., a City Council or Board of Selectmen) may not
 - Prohibit the operation of any type of adult use marijuana establishment;
 - Limit the number of marijuana retailers to fewer than 20% of the number of alcohol package stores licenses in the municipality;
 - Limit the number of adult use marijuana establishments to fewer than the number of RMDs "registered to engage in the same type of activity in the city or town."
- **These restrictions can only be done by citywide referendum.**
- **Towns passing bans include: Foxboro, Westborough, Millbury, Medfield, North Reading, Westwood, Hamilton, Norwood, Stoughton with many more scheduled to vote**

Municipal Control Options and Limitations

■ Host Community Agreements (which have become standard on the medical side to induce municipalities to support RMD zoning applications and register “non-opposition” with DPH) **may not**

- Require a marijuana establishment to pay a fee “*that is not directly proportional and reasonably related to the costs imposed upon the city or town by the operation of a marijuana establishment.*” G.L. c. 94G, § 3(d).



Legislative Developments: “The Law It Is A Changin’”

Deadlines Delay

Almost immediately after enactment, the Legislature passed (and Gov. Baker signed) a bill to postpone all deadlines in the Referendum by 6 months



Deadlines Delay

- **Sept. 1, 2017.** The state treasurer must make initial appointments to the Cannabis Control Commission (*previously March 1, 2017*)
- **Aug. 1, 2017.** The governor must make initial appointments to the Cannabis Advisory Board—a panel without regulatory authority that makes recommendations to the Commission (*previously Feb. 1, 2017*)
- **March 15, 2018.** The CCC must promulgate initial regulations (*previously Sept. 15, 2017*)
- **April 1, 2018.** The CCC must begin accepting licensing applications for one dispensary, cultivator and/or product manufacturer license from experienced marijuana establishment operators (*previously Oct. 1, 2017*)
- **April 1, 2018.** The CCC must begin accepting licensing applications for marijuana testing facilities (*previously Oct. 1, 2017*)
- **April 1, 2019.** The CCC must begin accepting applications from all retail and manufacturer applicants (*previously Oct. 1, 2018*)
- **April 1, 2020.** The CCC must begin accepting applications from all cultivator applicants (*previously Oct. 1, 2019*)

Joint Committee on Marijuana Policy Appointed in Legislature to Consider Bill Amending Referendum

- Members are a mix of supporters and opponents of Question 4
- Senate Chair Patricia Jehlen was supporter
- House Chair Mark Cusack took no position and is “fully open minded on the issue”



Timeline for Bill to Amend

- Governor Baker asked for bill “end of May”
- Joint Committee is expected to unveil a bill in June
- Joint Committee has completed public hearings and is working on bill



Governor Baker's Stated Priorities

- **Expanded local control** – supports giving cities and towns greater latitude, while not explicitly calling for repeal of the citywide vote requirement to prohibit operations; worried about “business density” and supports a cap that limits the number of retailers per neighborhood to avoid clustering in low-income communities
- **Cap on Potency** – supports a cap on potency similar to “liquor proof system”
- **Child safety** – supports strict packaging requirements
- **Tracking System** – supports legislatively mandated “seed to sale” tracking system, as he sees it, to ensure no product is diverted to black market in other states.

Areas Most Likely to Change

■ Structure of Regulatory Body

- House Chair Cusack supports creating an “independent” commission with different members appointed by Governor, AG, and Treasurer modeled after Gaming Commission
- Sen. President, House Speaker and *Boston Globe* support idea
- Pushback from the authors of the referendum, Treasurer, State Auditor, and other media based largely on potential delay and additional expense it would cause
- Governor, Treasurer, Sen. President and House Speaker now reportedly seeking a hybrid where CCC is controlled by Treasurer with Independent Commissioners or Overseers appointed by others

The Boston Globe

Lawmakers may strip treasurer of pot authority



JOHN TLUMACKI/GLOBE STAFF/FILE 2016

State Treasurer Deborah Goldberg in her State House office.

By [Joshua Miller](#) | GLOBE STAFF APRIL 03, 2017

“...proponents of the effort to strip much of the authority from Goldberg argue that one of the main reasons to change the regulatory structure would be to dilute the authority of any single elected official. That would thus minimize the influence the industry might have over regulators.”

“Goldberg has publicly argued against taking away her power, saying her office has already spent substantial time preparing to oversee the industry and preparing an infrastructure to protect public health and safety.”

“Advocates expressed worry that taking authority away from Goldberg would push the opening of retail shops further into the future.”

Areas Most Likely to Change

■ Local Control

- Elimination of citywide vote requirement; allow municipal elected officials (City Councils or Boards of Selectmen) to prohibit marijuana operations within municipality
- Senate Chair Jehlen opposes the proposed change
- Gov. Baker is inclined to support it
- Powerful Mass. Municipal Assoc. heavily lobbying for change

The Boston Globe

Marijuana panel chair aims to kill off black market quickly



PAT GREENHOUSE/GLOBE STAFF

State Senator Patricia D. Jehlen spoke about marijuana regulation.

By [Joshua Miller](#) | GLOBE STAFF APRIL 20, 2017

““I want to immediately — as fast as possible — make possible a safe, legal market for adults who want access to get it,” State Senator Patricia D. Jehlen said to *The Boston Globe*.

“Local legislative bodies, such as the Boston City Council, should have final say on whether or how many pot shops can come to town, just like they do over other major zoning decisions, said Geoffrey C. Beckwith, the association's executive director and chief executive.”

“If you want to have a legal market, it has to have access for people who want to buy it,” she said. “If there's nobody within 30 miles, or 50 miles, or 100 miles in Western Mass., if nobody is selling in a legal, safe market, the black market stays.” Jehlen said to *The Boston Globe*.

Areas Most Likely to Change

■ Taxes

- Increase of maximum state excise and/or local tax rate is favored by many legislators
- Senate Chair Jehlen opposes
- Gov. Baker has also signaled he is lukewarm to an increase



Areas Difficult to Predict

■ The Medical “Head Start”

- Head Start could be eliminated:
 - Senate Chair Jehlen recently told the *Boston Globe* the head start was “an artificial leg up” that she favored eliminating
 - She said small farmers and minority communities disadvantaged by Drug War politics should not be disadvantaged by the head start





State of the Market in Massachusetts and Outstanding Questions

- **11 Open RMDs**
 - Massachusetts needs dozens of more medical dispensaries
 - Rollout has been *very* slow due to botched rollout and slow local permitting
- **95 RMDs with Provisional Certificates**
 - Siting Medical Dispensaries in local communities remains a significant challenge
- Values of entities that applied before Oct. 1, 2015 to operate a RMD and received a provisional certificate of registration before Dec. 15, 2016 has **increased** because the law provides that they receive a head start
- Licensing for Recreational to begin April 1, 2018
 - Legislature unlikely to change that date
- Various towns considering recreational moratoriums and bans
- Other towns refusing to license RMDs until there is greater clarity on local authority in adult use law

Major Outstanding Questions

- Will the “head start” entities be able to reorganize as for-profits; or assign the right to apply early?
- Will “head start” entities be able to apply for more than one recreational dispensary?
- Will Medical and Recreational be regulated by the same entity?
- Will Municipalities gain additional siting control for recreational that creates the same issues as siting for medical?
- Will RMDs have a streamlined application process?
- Will there be restrictions on wholesaling?
- Will there be additional categories of licenses?
- Will there be deadline delays if regulatory structure changes?

Massachusetts Marijuana Counsel

April 27 2017

Jesse Alderman Publishes Guest Column in Cannabis Business Times

By Foley Hoag

April 24 2017

It's probably a losing battle, but the Auditor and Lowell Sun Agree: Keep regulation with the Treasurer

By Jesse Alderman

April 21 2017

Say What? Sen Jehlen Wants to Eliminate the Start.

By Jesse Alderman

April 18 2017

Upcoming Webinar: Massachusetts Medical and Adult Use Cannabis Laws and Regulation

By Foley Hoag

Latest regulatory updates and our analysis

www.massachusettsmarijuanacounsel.com



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