

## The New Normal: Another Round of Competitive State License Applications Released

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The ink is barely dry on the New Jersey ATC and Missouri medical marijuana facility applications that so many of us assembled this August. Yet now, a new round of states have issued applications for competitive cannabis licenses. Below we discuss the qualifications, requirements, deadlines and other relevant information for the Illinois (adult use), Michigan (adult use) and Texas (medical; <.5% THC) applications.

### Illinois

#### Dispensaries

The Illinois Department of Financial and Professional Regulation (“IDFPR”) has posted its application form for conditional adult-use licenses for new dispensing organizations. Applications will be accepted from December 10, 2019 until January 2, 2020, and require a non-refundable \$5,000 fee. The IDFPR will award up to 75 licenses by May 1, 2020. The licenses will be divided up amongst 17 regions based on population, with up to 47 licenses being granted in the Chicago-Naperville-Elgin region and no more than 4 licenses being granted in any other region.

The licenses will be granted based on a competitive scoring process. There will be a total of 250 points available, divided as follows:

- Suitability of Employee Training Plan (15 points)
- Security and Record Keeping (65 points)
- Business Plan, Financials, Operating Plan, and Floor Plan (65 points)
- Knowledge and Experience in Cannabis or Related Fields (30 points)
- Status as a Social Equity Applicant (50 points)
- Labor and Employment Practices (5 points)
- Environmental Plan (5 points)
- Illinois Owner (5 points)
- Status as a Veteran (5 points)
- Diversity Plan (5 points)

In Illinois, Social Equity Applicant status could be determinative. Per the IDFPR:

A Social Equity Applicant means an applicant that is an Illinois resident that meets one of the following criteria:

- The applicant has at least 51% ownership and control by one or more individuals who have resided for at least 5 of the preceding 10 years in a Disproportionately Impacted Area;
- The applicant has at least 51% ownership and control by one or more individuals who:
  - ▶ Have been arrested for, convicted of, or adjudicated delinquent for any offense that is eligible for expungement under the

Cannabis Regulation and Tax Act; or

- ▶ Is a member of an impacted family
- The applicant has at least 10 full-time employees and at least 51% of whom:
  - ▶ Currently reside in a Disproportionately Impacted Area; or
  - ▶ Have been arrested for, convicted of, or adjudicated delinquent for any offense that is eligible for expungement under the Cannabis Regulation and Tax Act or a member of an impacted family.

If an applicant is selected for a conditional license, they will have 180 days to secure a location within their region. They will then need to pass an IDFPR inspection and pay a \$60,000 fee before they receive a final license entitling the organization to dispense cannabis. Fees for social equity applicants are 50% the amount of non-social equity applicants' fees.

Applicants can apply for multiple licenses in the same region or in multiple regions, however no person can hold a financial interest in more than 10 dispensing organizations.

The IDFPR is already accepting early approval adult-use dispensing organization license applications for organizations that currently hold a medical marijuana dispensing license. Successful early approval applicants will be allowed to begin dispensing adult-use cannabis on January 1, 2020.

### Other License Types

Cultivators, craft growers, infusers, and transporters are regulated by the Illinois Department of Agriculture. While the state has an early application process for existing medical cultivation centers to become licensed to cultivate adult-use cannabis, the Department of Agriculture has yet to release an application for new entrants into the cultivation, infusing, and transporting markets. The Department is expected to release applications for craft growers, infusers, and transporters by January 7, 2020. There is no guarantee that the Department will make additional cultivation center licenses available. The agency may decide to only license existing medical cultivation centers to cultivate adult-use cannabis.

## Michigan

The Michigan Marijuana Regulatory Agency ("MRA") recently released its application for adult-use marijuana establishments and will begin accepting applications on November 1, 2019. There is no cap to the number of licenses the MRA is allowed to issue, but there are some limits regarding how many marijuana establishments a person can have an ownership interest in. For example, no person can own more than five marijuana grower licenses, more than one microbusiness, or own a microbusiness and any other type of license.

As in Illinois, organizations that currently possess a medical marijuana operating license have a big leg up over new market entrants. Applicants without a current medical marijuana operating license can apply for the following adult-use license types:

- Class A Marijuana Grower;
- Marijuana Microbusiness;
- Designated Consumption Establishment;
- Marijuana Safety Compliance Facility;
- Marijuana Event Organizer; and
- Temporary Marijuana Event.

However, only current holders of operating licenses can apply for "Class B," "Class C," or "Excess" Grower licenses, processor license, retailer licenses, or transporter licenses.

Additionally, business entities must register as Michigan entities before applying for a Class A grower license or a microbusiness license.

The MRA has a two-step application process. During the "prequalification phase," the applicant must submit a prequalification application which provides the MRA with the information necessary to conduct background checks on the individuals and entities that are required to be disclosed. If the applicant passes the prequalification phase, it must submit a step-two license application for the license type(s) it seeks to hold.

## Texas

Following the Texas Legislature's passage of a bill that expands qualifying conditions and certifying physician requirements for patients in Texas' low-THC Compassionate Use Program, the Department of Public Safety issued an application for dispensing organizations. Applicants must be Texas registered companies, make a variety of disclosures, and provide the type and manner of standard operating procedures and operational documents required by most state applications. Texas applications are due November 1, 2019.

Foley Hoag has significant experience preparing winning applications in markets with competitive cannabis licensing processes. If you have questions, please **contact us**.

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