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# Wheels Are in Motion for Recreational Marijuana in New Jersey and Several Other States

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The clear winner after the November 3 election was marijuana. In four states – New Jersey, Arizona, South Dakota and Montana – voters approved initiatives to legalize recreational marijuana. South Dakota and Mississippi also voted to approve medical marijuana. The legalization of adult-use marijuana in New Jersey puts significant pressure on other states in the region, including New York, Pennsylvania and Connecticut, to follow suit quickly or risk missing out on significant revenue from adult-use marijuana sales. The governors of each of those three states recently made statements about the need for their states to legalize recreational marijuana, particularly in an effort to aid economic recovery from COVID-19 and to prevent their residents from instead driving to New Jersey to buy legal marijuana.

In New Jersey, lawmakers wasted no time putting the wheels in motion on adult-use marijuana legalization after New Jersey voters last week approved a referendum to legalize adult-use marijuana in the Garden State. Late last week, just days after the vote, state lawmakers introduced legislation, S21/A21 (titled the New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act), to provide a framework for recreational marijuana legalization in New Jersey. Committee meetings on the bills took place on November 9, 2020 before the Senate Judiciary Committee and the Assembly Oversight Reform and Federal Relations Committee; both committees released the legislation. S21 and A21 are scheduled to be considered by the Senate Budget and Appropriations Committee and Assembly Appropriations Committee, respectively, on Thursday, November 12 and have been posted for a vote in the Senate and Assembly on Monday, November 16.

Also, on Friday, Governor Phil Murphy finally announced the appointment of several members of the state's Cannabis Regulatory Commission (CRC), which will oversee and regulate both the state's medical and adult-use programs. The governor appointed Dianna Houenou (a senior policy advisor in the governor's office and former ACLU-NJ counsel) as chair of the CRC and Jeff Brown (the current assistant commissioner of the New Jersey Department of Health in charge of the Division of Medicinal Marijuana) as the CRC's executive director. The governor also appointed Krista Nash (a social worker and the program director of the PROMISE program at Volunteers of America Delaware Valley) as a member of the CRC, upon the recommendation of Senate President Stephen Sweeney. Two spots on the five-person commission remain unfilled. While the commission was supposed to be up and running some time ago, the recent momentum following the legalization vote indicates that the final two members will likely be named soon and things may move quickly for the adult-use program in the coming months.

### **How New Jersey Got Here:**

While recreational marijuana use was always illegal in New Jersey, the state has allowed medical marijuana since 2010, when the state's Compassionate Use Medical Marijuana Act (CUMMA) was signed into law. However, it was not until early 2018, after Governor Murphy took office, that the state's medical marijuana program received its first kickstart. In January 2018, Governor Murphy issued Executive Order 6, ordering the Department of Health (DOH) to, within 60 days, "undertake a review of all aspects of New Jersey's medical marijuana program, with a focus on ways to expand access to marijuana for medical purposes." At that time, the state had only five operational medical marijuana alternative

treatment centers (ATC) serving what were then New Jersey's 15,000 registered medical marijuana patients.

In the nearly three years that followed, New Jersey's medical program expanded significantly, although it has still struggled to keep up with demand. By July 2019, there were over 49,000 registered patients in the state's medical marijuana program. On July 2, 2019, the governor signed the Jake Honig Compassionate Use Medical Cannabis Act, aimed at expanding the state's medical marijuana program. At the same time, the DOH sought applications for licenses to operate up to 24 new medical marijuana ATCs. Applications for those permits were due in August 2019 and approvals were expected to be issued shortly after. However, to date those applications remain tied up in litigation after a lawsuit was filed disputing the manner in which certain applications were rejected.

New Jersey lawmakers attempted to push legislation to legalize recreational marijuana, but after those efforts failed to gather enough support to pass in 2019, legislators put the task in the hands of the voters. Last week's election in New Jersey included a ballot question that asked voters whether they approve amending the state Constitution to legalize a controlled form of marijuana for adults 21 years or older. Not surprisingly, based on poll results preceding the election, the referendum passed with nearly 67 percent of the vote. By last count, there are roughly 95,000 enrolled patients in the state's medical marijuana program.

#### **Proposed Adult-Use Marijuana Law:**

To put into effect the voters' decision to amend the New Jersey Constitution to allow adult-use marijuana, the legislature needs to pass enabling legislation. Fortunately, before the vote even took place, legislation was already in the works.

Last week, Senator Nick Scutari and Senate President Sweeney introduced S21 and A21, dubbed the New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act, which aims to provide a framework for recreational marijuana legalization in New Jersey. Committee meetings on the bills took place on November 9, and the Senate Judiciary Committee and the Assembly Oversight Reform and Federal Relations Committee both released the legislation. One issue raised during the meetings related to workplace protections; specifically, the New Jersey Business Industry Association is seeking clarifying amendments related to workplace drug policies and critical infrastructure employers. Another issue that commentators raised is whether the bills go far enough in promoting social justice and equity. The bills have now been transferred to the Senate Budget and Appropriations Committee and Assembly Appropriations Committee, respectively, for further consideration. They are currently both on the committees' November 12 meeting agendas and they have also been scheduled for a vote before the Senate and Assembly on Monday, November 16. A Senate committee was also scheduled to consider two separate bills to decriminalize cannabis possession in the short term.

#### **What is Next?**

##### ***Recreational Marijuana Not Yet Legal:***

It is important to remember that recreational marijuana is not yet legal in New Jersey. First, the amendment permitting recreational marijuana does not take effect until January 1, 2021. Second, only regulated marijuana will be permitted – in other words, "street pot" that is grown and sold without a permit is not legal. Indeed, in interim guidance to prosecutors and law enforcement, New Jersey Attorney General Gurbir Grewal advised that the amendment "neither legalized, nor decriminalized, the sale or possession of 'unregulated' marijuana."

##### ***Final Passage of the Enabling Legislation:***

As far as enabling legislation, some lawmakers are optimistic the bill will pass both the full Senate and Assembly later this month. As noted above, meetings on the bill took place on November 9, and the Senate Judiciary Committee and the Assembly Oversight Reform and Federal Relations Committee both released the bills. The bills will now go to the

Senate Budget and Appropriations Committee and Assembly Appropriations Committee on November 12 and have been posted for a vote in the Senate and Assembly on Monday, November 16.

***Rules and Regulations by the Cannabis Regulatory Commission are Needed (Once the Remaining Members are Named):***

The remaining two members of the CRC still need to be named. Once that happens, the CRC will need to dig in and quickly create regulations and rules for the adult-use marketplace before it can begin issuing licenses.

***Supply Needs to Expand ... A Lot:***

It will be a while before new operators will be licensed to provide recreational marijuana, and current medical ATCs will likely get first crack at selling recreational marijuana. However, finding a sufficient supply of product to do so is going to be a big hurdle. Before they can consider opening their doors to potentially 1 million recreational buyers, New Jersey's medical marijuana ATCs must ensure that they can first meet the supply demands of the current 95,000 medical marijuana patients – something the limited number of ATCs have already struggled to do.

Senator Scutari commented last month that he hoped the existing medical marijuana dispensaries would begin to sell recreational marijuana to the public immediately after the bill became law, but that forecast was likely too optimistic. Indeed, the newly appointed CRC Executive Director Jeff Brown responded that medical dispensaries do not have the necessary supply and “opening up sales even a few months after the election would be a disaster and would really hurt access for patients who need this as medicine.”

By comparison, in last year's Biennial Report, the DOH observed that every ATC in New Jersey suffered supply shortages, and the department estimated that roughly 90 medicinal marijuana dispensaries would be needed to serve New Jersey's growing patient population, assuming full enrollment in the medical program reaches 180,000 patients. Currently, there are only 12 ATCs, and the next 24 medical licenses remain roadblocked by litigation that has completely stalled those additional permittees for roughly a year. That blockage may further delay the approval of much needed additional ATCs.

More to come on what the final New Jersey law will entail and what amendments may be considered or added. However, one thing is for sure, New Jersey is full steam ahead.

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