



**Governor Ned Lamont
State of Connecticut**



FACT SHEET
2020 Legislative Session

**SENATE BILL 16
AN ACT CONCERNING ADULT-USE CANNABIS**

Summary of Proposal:

This proposal offers a comprehensive framework for the cultivation, manufacture, sale, possession, use, and taxation of cannabis that prioritizes public health, public safety, and social justice. The proposal builds on the significant work that the Legislature has done on adult-use cannabis in recent sessions and also ensures alignment with the approaches pursued by regional states.

This bill addresses the following components:

- **Section 1** is definitions. Cannabis and cannabis products do not include hemp.
- **Sections 2 and 3** establish possession limits and change the definition of infractions and misdemeanors related to cannabis possessions. Possession by those under the age of 21 is an infraction. Possession of up to 1.5 oz of cannabis, of which no more than 5 grams can be cannabis concentrate, is permitted for those age 21 and above. Possession of between 1.5 oz to 2 oz is an infraction, while possession above 2 oz is a class B misdemeanor. Individuals who possess cannabis do not have to prove that cannabis was bought at a cannabis retailer.
- **Sections 4 and 5** establish a process for the erasure of criminal records related to marijuana possession. Individuals with convictions for 4 oz or less before October 1, 2015, will have their convictions automatically erased, while those with convictions after that date will need to file a petition with the courts.
- **Sections 6-9** protect consumers and licensed cannabis establishments against enforcement of various state drug laws. Possession and sale of cannabis paraphernalia is permitted. Cannabis products can only be sold to consumers by licensed cannabis retailers, though consumers may gift cannabis products to one another.
- **Section 10** updates the criminal impaired driving statute, CGS 14-227a. This section incorporates drug influence evaluations in a similar manner to the current approach for a chemical test for alcohol. Specifically, this section allows for the admission in court of (1) the results of a drug influence evaluation performed by a certified drug recognition expert, and (2) refusal of the non-testimonial aspects of the drug influence evaluation. This section also permits courts to take judicial notice that THC can impair a person's

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ability to operate a motor vehicle. Unlike for alcohol, there is no systematic relationship between blood THC levels and impaired driving.

- **Sections 11-12** update the state's per se process following an impaired driving arrest, CGS 14-227b. The state's current per se process for impaired driving is designed for impairment from alcohol and must be updated so as to apply in situations when other drugs have been used. As in Section 10, these sections incorporate drug influence evaluations in a similar manner to the current approach for a chemical test for alcohol. A driver will be deemed to have consented to a drug influence evaluation, and the results of that evaluation or a refusal of the non-testimonial aspects of the drug influence evaluation may be grounds to suspend a license. Section 11 also (1) tightens the definition of elevated blood alcohol and (2) establishes a per se level for blood THC for individuals under age 21. First, the 0.08 BAC cutoff is lowered to 0.05 when an individual tests positive for other drugs. This is because polydrug use can cause impairment at lower levels of alcohol consumption. Second, an individual under 21 who tests positive for 0.5 ng/dL of THC or more after an impaired driving arrest will be deemed to have committed a per se violation. This "zero-tolerance" policy for under 21's serves as an important deterrent. There is a similar provision regarding alcohol, in which the BAC cutoff for under 21's is lowered to 0.02, and this change mirrors that policy for THC. These two changes only apply in the per se setting, and not in the criminal setting, in which the standard remains a 0.08 BAC or impairment as proven by an officer. Note that there is a drafting error in subsection (n), and that "per deciliter" must be added to the definition of elevated blood THC content.
- **Sections 13-14** apply the tightened definitions of elevated blood alcohol content and the zero-tolerance policy for under 21's from Section 11 to commercial drivers and drivers who transport children (excluding in personal vehicles). These sections are criminal violations.
- **Section 15** directs the state's traffic prosecutor, in consultation with other agencies, to develop information about drug influence evaluations and the drug recognition expert program to be provided to the Judicial Branch.
- **Sections 16-17** update the state's impaired boating laws in alignment with the changes made to the state's impaired driving laws in Sections 10-14.
- **Sections 18-19** establish a nine-member Equity Commission that will be supported administratively by the Department of Consumer Protection. My budget provides extra resources to DCP in order for the Department to adequately support the Equity Commission. The Equity Commission will promote and encourage full participation in the cannabis industry by persons from communities that have been disproportionately harmed by cannabis prohibition and enforcement. The Equity Commission will make legislative recommendations for the 20201 session, including:
 - The hiring of equity applicants by businesses in the cannabis industry;
 - Fees and timelines for equity applicants to apply for licenses;
 - Access to capital and training;
 - Whether to have micro business retailer and/or delivery licenses; and
 - How to distribute revenues to disproportionately impacted census tracts.

- The Equity Commission will have diverse membership, including two individuals with a background in civil rights or social justice, an individual appointed by the Legislature's Black and Puerto Rican Caucus, and commissioners of several departments.
- **Section 20** allows for individuals with non-violent drug convictions to have opportunities in the cannabis industry. Cannabis establishments shall encourage diverse employment and report on diversity in employment to the Equity Commission.
- **Sections 21-23** grandfather in existing producers in the medical marijuana market; permit cannabis retailers to be licensed from July 1, 2022, and allow only cannabis retailers to sell cannabis products to consumers; set a minimum age of 18 to work in the cannabis industry; and require licensing for employees and backers of cannabis establishments. Backers are investors, corporate owners, and others. Licensing of backers will ensure that the state can regulate and prevent anti-competitive actions in the market and can protect local small businesses.
- **Section 24** directs the Department of Consumer Protection to make legislative recommendations for the 2021 session regarding the market and licensing regime for cannabis. My budget for FY 21 has provided the funding necessary for DCP to study and make these recommendations. DCP's recommendations must:
 - Prevent overconcentration of retailers in any area;
 - Ensure that cannabis establishments use electronic inventory controls;
 - Establish online ordering and delivery. Delivery will be important to meet market demand and to displace the black market;
 - Protect children through limits on advertising, locations for retailers, product design, and requirements for child-resistant packaging;
 - Products must have warning labels, including that THC can impair driving ability;
 - Prioritize inventory for the medical marijuana market and determine whether a cannabis retailer may co-locate at an existing medical marijuana dispensary;
 - Eliminate the registration fee for medical marijuana patients and caregivers;
 - Determine whether a new cultivation license is necessary, or if the existing producer license is sufficient;
 - Restrict toxic or harmful ingredients and solvents, such as Vitamin E derivatives in vaping products, and establish health and safety standards for inhalation and vaporizer devices; and
 - Set standards for the amount of THC per serving and limits on how much product can be sold per transaction.
- **Section 25** allows for the licensing of cannabis product manufacturing facilities from July 1, 2022.
- **Section 26** prohibits public officials and staff who regulate the cannabis market from participating in the industry.
- **Section 27** authorizes municipalities to use their zoning code or zoning ordinances to regulate cannabis establishments, except for medical marijuana establishments. Municipalities may prohibit or restrict the hours and signage of such establishments. Municipalities may not prevent delivery of cannabis products when the delivery is made

pursuant to this and subsequent Acts. This section prohibits municipalities from entering into local benefit agreements with cannabis establishments. Municipalities are given further authority in Section 47.

- **Sections 28-29** allow cannabis establishments to partake in certain activities that would otherwise have been illegal, such as possessing or transporting cannabis products. Neither cannabis products nor paraphernalia may be displayed to the general public in a public right-of-way.
- **Section 30** makes technical adjustments to the statute regarding cannabis research programs.
- **Sections 31, 33, and 34** require cannabis establishments to establish policies and procedures regarding prevention of diversion and loss, handling recalls, etc.; require cannabis establishments to maintain four years of business records that can be audited by the Department of Consumer Protection; authorize DCP to enforce this Act by allowing DCP to enter and conduct inspections of cannabis establishments at any time; and authorize DCP to issue fines or revoke licenses of establishments in response to violations.
- **Section 32** allows medical marijuana patients to access products that may otherwise be prohibited in the adult-use market, such as high-potency products.
- **Section 35** allows DCP to adopt regulations to implement this Act.
- **Sections 36** requires DCP to make recommendations regarding home grow, on-site consumption, and state-run retailers, by January 1, 2023.
- **Sections 37-39** require several agencies to make recommendations by January 1, 2021. (1) Banking to make recommendations regarding enabling electronic payments at cannabis retailers and access to depository banking for cannabis establishments; (2) Insurance to make recommendations about insurance for cannabis establishments; and (3) a variety of agencies to make recommendations to mitigate the misuse of cannabis with a particular focus on individuals under twenty-one years of age. The Insurance Department will rely on findings from an ongoing NAIC review and study.
- **Section 40** requires DCP to pursue regulation that removes marijuana from the state's Schedule of Controlled Substances.
- **Section 41** requires DCP to make a determination regarding equivalence of different types of cannabis products to 1 oz of cannabis. This equivalence will help in enforcement of the possession laws in Sections 2 and 3 of this Act, since the possession limits are in ounces. Determination of equivalence is necessary because one ounce each of edibles, concentrate, flower, and other product types are very different in terms of number of servings and amount of THC.
- **Sections 42-44 and 47** update the state's indoor clean air act to incorporate cannabis smoking and cannabis vaping. These sections also strengthen the indoor clean air act in several ways: (1) prohibit smoking and vaping at places of employment and within 25 feet of buildings; (2) prohibit smoking and vaping in hotel and motel rooms; (3) prohibit smoking and vaping in psychiatric facilities and correctional facilities. Exceptions are maintained for smoking and vaping in outdoor portions of restaurants, but in Section 47 municipalities are authorized to prohibit the use of cannabis in the outdoor portions of

restaurants. Section 47 also authorizes municipalities to prohibit or otherwise regulate the consumption of cannabis in any public spaces within the municipality.

- **Sections 45 and 46** set policies for employers with regards to cannabis. Section 45 allows employers to maintain drug-free workplaces. Section 46 limits when employers can conduct drug screening for THC and how employers can act on those tests. Certain types of employers, such as employers with federal contracts or that have safety-critical positions like commercial drivers, construction workers, and medical professionals, are exempted from Section 46. Section 46 is enforced through a private right of action, not through DOL enforcement. Section 46 mirrors current law in Nevada and NYC and that is being considered in several other states.
- **Section 48** prevents higher education and lodging establishments from prohibiting consumption of non-smoking or non-vaping cannabis in non-public areas, such as one's dorm room or hotel room. This section is preempted by federal law for higher education institutions that receive federal funding.
- **Sections 49 and 50** are superseded by Sections 45 and 46 and should be removed from the bill.
- **Sections 51-54** establish the taxation and revenues structure for cannabis. The taxes include excise taxes at the wholesale level and sales taxes at retail. The standard sales tax rate will apply statewide and towns will collect a 3% sales tax for their own revenues. The excise taxes are \$1.25 per dry gram of flower, \$0.50 per dry gram of trim, and \$0.28 per gram for wet cannabis. The excise tax will be collected upon the first use, transfer, or sale of cannabis.
- **Sections 55-64** update chapter 228d of the General Statutes. First, Section 55 furthers the social justice aspect of this legislation by cancelling the existing tax penalties that have been assessed on individuals who have been arrested for cannabis possession. Second, these sections mirror language that has been proposed by Gov. Cuomo in his cannabis legalization bill. These sections prescribe civil tax penalties that may be assessed on individuals for cannabis possession in excess of the limits in Sections 2-3. Chapter 228d is existing statute that must be updated to align with the new revenue approach taken in this legislation. The rates in chapter 228d are intended to be similar or slightly higher than prices for cannabis in a well-regulated cannabis market.

Reason for Proposal:

Prohibiting the possession and sale of cannabis has produced a thriving illicit market and staggering racial disparities in the dispensation of justice. Massachusetts, Maine, and Vermont already have some form of a market for adult-use recreational cannabis, and nearby states including New York, Rhode Island, and New Jersey are on track to legalize adult-use recreational cannabis in the near future.

This bill brings Connecticut in line with neighboring states. Responsibly regulating adult-use cannabis will increase economic activity, reduce race-based disparities in the dispensation of justice, and protect public health and safety.

The prohibition of the possession and sale of cannabis has failed in its intent to stop the sale or use of cannabis. The War on Drugs is a similar failure and has led to a staggering racial disparity in the enforcement of laws criminalizing cannabis. African Americans were found to be 3.73 times more likely than whites to be arrested for cannabis possession, despite similar rates of use, according to a study by the ACLU.

Significant Impacts:

The passage of this bill means that licenses for cultivation, manufacture, and sale of adult-use cannabis products will be offered from July 1, 2022. Before that date, the Equity Commission, Department of Consumer Protection, and other agencies will make legislative recommendations regarding various aspects of the licensing regime. Other aspects of the legislation, including the expungement of convictions for cannabis possession, the updated indoor clean air act, employment rules and protections, and the updated traffic safety code, will be implemented before July 1, 2022, and do not require further legislative action.

The Governor's proposal was specifically crafted with a focus on public health, public safety, and social justice.

The proposal takes many steps to protect public health. The first, and most important, is that a well-regulated market for recreational cannabis, similar to the medical marijuana program already in place, will ensure that individuals have access to safe and high-quality products. Advertising and marketing will be limited so that children are not targeted. Retailers will be sited away from schools, parks, and other locations where children gather. The Governor's proposal proactively updates the state's indoor clean air act to incorporate both cannabis smoking and THC vaping to protect children and other individuals from secondhand smoke.

The proposal protects public safety by increasing the number of trained drug recognition experts in state and local police forces, updating traffic safety laws including banning cannabis consumption in vehicles, reforming the administrative process that follows an impaired driving arrest, and freeing the state's police, prosecutors, and other public safety officials to focus on more significant crimes.

In regards to social justice, the Governor's proposal takes the important step of automatically erasing all convictions prior to October 1, 2015 for possession of cannabis of 4 oz or less. Individuals with convictions for possession of 4 oz or less of cannabis from October 1, 2015 may petition for erasure. The Governor also proposes to empanel an Equity Commission to advise and oversee the implementation of the legal cannabis market. This Commission will develop guidelines and proposals regarding how individuals and neighborhoods that have been most affected by the War on Drugs can benefit from the creation of the legal cannabis market.