



Brach Eichler's Observations to Presumed Cannabis Bill Agreement

A review of the proposed adult-use cannabis legislation announced on 3/12/19 elicited several observations from John Fanburg and Charles Gormally of Brach Eichler's Cannabis Law Practice. Mr. Fanburg and Mr. Gormally entered the cannabis dialogue early, representing medical cannabis clients from 2009 forward and notably issuing a white paper in 2017 that examined legal and business issues New Jersey would confront as the Murphy Administration works through the introduction adult-use cannabis.

- 1) The key obstacle to previous versions were urban legislators who did not see adequate attention to social and economic justice issues. The current bill provides encouragement of minority- and women-owned businesses, but creating micro-markets is unrealistic as consolidation of the bigger players doom any attempt to support players without scale. The bill does not limit the number of licenses, perhaps in an attempt to make their value low enough to attract entrepreneurs, but that is bound to undermine profitability.
- 2) New Jersey does need to adequately address the great disparity of arrests of minority offenders, but despite the bill's innovative expungement system, law enforcement and the courts could never deal with the burdens outlined in the current legislation.
- 3) Interestingly, the bill includes consumption lounges as part of each retail operator. They will be separate from, but connected to, a retail operation. However, this type of linkage will create even greater incentive for towns to not want to allow the business to locate in the town. Better practice would be to allow the market to develop first, demonstrate that cannabis can coexist with New Jersey, and then add consumption spots later.
- 4) One cannot discount the influence that the unexpectedly warm dynamic between Legislative leaders and the Administration surrounding the budget address has had on cannabis. With a \$100 million revenue line in the budget from cannabis activities, the budget dialogue requires an expedited solution to the cannabis issue.
- 5) Curiously, no farmland assessed property can be used and any real estate involved in cannabis cannot be part of a government enterprise or tax credit zone. Clearly, the intention is to attempt to not mingle cannabis with any other programs, which is also why it has its own separate bureaucracy.
- 6) Agreement on a five-member Cannabis Regulatory Commission suggests movement on both sides, indicating that the Legislature understands that cannabis regulation is the role of the Administration, and that the Administration understands that the Department of Health is ill-suited to absorb this new regime, which requires a specialized, separate platform for many practical and philosophical reasons.
- 7) There is a robust delivery service that is also adjunct to the retail location. This will be a hot area and business and we could see an efficient, organized provider offering this service to multiple retailers and making a significant profit. Retailers can organize websites to "order" and have the delivery effectuated by the service.

- 8) With a lack of criteria on testing, the lab business, already with a high capital barrier to entry, will not materialize.

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