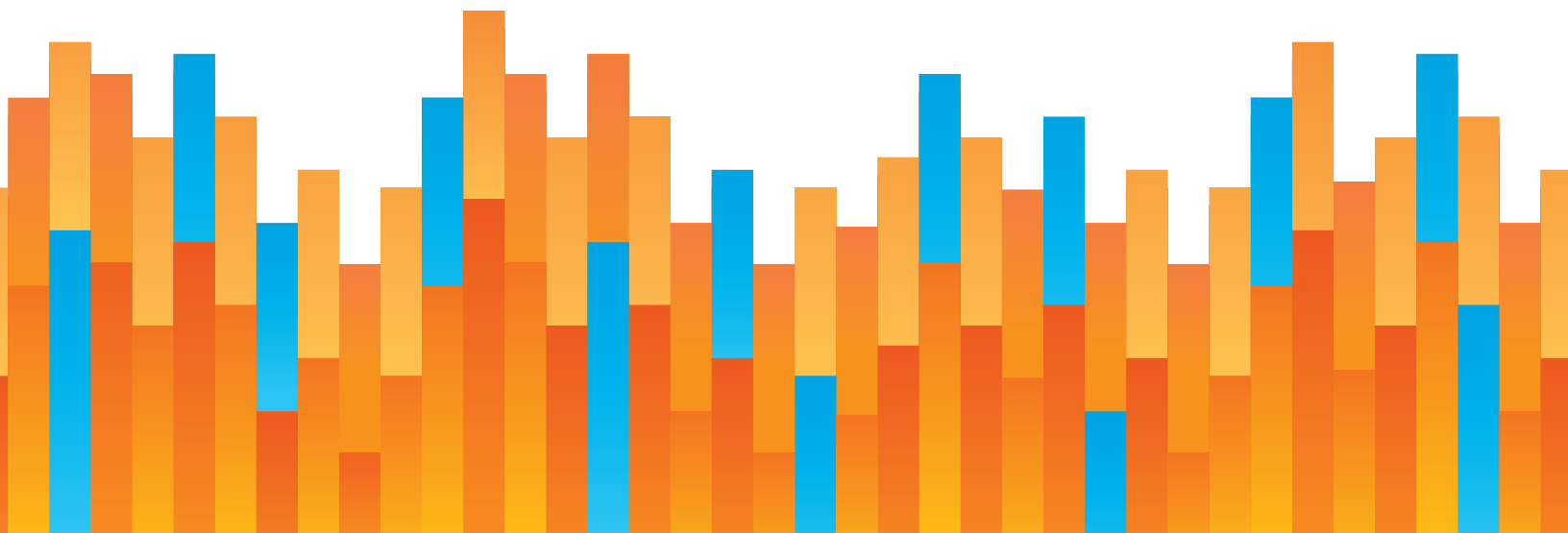




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OCCUPATIONAL AND BUSINESS LICENSING OF RECREATIONAL MARIJUANA

by Allie Howell
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OCCUPATIONAL AND BUSINESS LICENSING OF RECREATIONAL MARIJUANA

LICENSING COMES AT A COST

Occupational licensing, while presented as a form of consumer protection, is oftentimes a tool used by industry incumbents to prevent competition and keep wages high.¹ In a new industry like recreational marijuana, there are few incumbents. Rather than preventing *new* market entry by adding licensing requirements to existing professions, occupational licensing for marijuana reduces *all* market entry by raising application costs and requirements. Not only can this reduce economic opportunities, but by preventing a legal market from developing, the black market will continue to be the chief supplier of recreational marijuana—fundamentally undermining the goals of legalization.

¹ Carpenter II, Dick M. et al. “License to Work.” *The Institute for Justice*. May 2012.
https://www.ij.org/images/pdf_folder/economic_liberty/occupational_licensing/licensetowork.pdf

In the U.S., only nine states and Washington D.C. have legalized recreational marijuana, and marijuana businesses are legal in seven (Maine, Vermont, and D.C. do not have laws in place for legal sales). In the states with regulations for legal sales to take place (Alaska, California, Colorado, Massachusetts, Nevada, Oregon, and Washington), starting a business that cultivates, distributes, or sells retail marijuana requires a state-issued license (see appendix for specific licensing regulations for these states).

Licensing for marijuana businesses is presented as necessary for public safety by ensuring those involved in the new industry meet high standards of safety and quality. Requiring licenses makes it easier for the state to regulate the marijuana industry and limit the supply of marijuana.² Fees to start a marijuana business, in addition to taxes, are an incentive for states to implement a legal recreational market as well.

It is important to realize, however, that all government regulations and licensure processes come with a cost. All state and local license applications must be approved or denied by government employees. In California, the Bureau of Cannabis Control had 102 positions authorized for FY 2017–2018 and 215 have been approved for FY 2018–2019.³ The Bureau’s budget proposal states that if only half of the proposed licensing staff had been approved, “The Bureau will not be able to issue licenses in a timely manner. This may encourage prospective licensees to remain in the illegal market.”⁴

“

It is important to realize, however, that all government regulations and licensure processes come with a cost.

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² Murphy, Patrick and John Carnevale. “Regulating Marijuana in California.” *Public Policy Institute of California*. April 2016. http://www.ppic.org/content/pubs/report/R_416PMR.pdf

³ Budget Request. Bureau of Cannabis Control. *State of California*. http://web1a.esd.dof.ca.gov/Documents/bcp/1819/FY1819_ORG1111_BCP2413.pdf; email correspondence with the Bureau of Cannabis Control.

⁴ Budget Request. Bureau of Cannabis Control.

The Department of Cannabis Regulation in Los Angeles claimed to need to quadruple its three-person staff to keep up with licensing demands.⁵ This spring, 21 new positions were approved.⁶ In Oregon, the Liquor Control Commission stopped taking new applications in June 2018 so licensing staff can focus on license renewals and deal with application backlog.⁷

Government's quest to collect as much revenue as possible from new marijuana industries creates an incentive to raise license fees. Limiting entry into the market with other burdensome requirements also can make enforcement easier for government agencies. While reducing the size of the legal market and maximizing revenue benefits governments in the short run, it also results in higher marijuana prices and consequently enables the black market to continue to be the main supplier of marijuana. The goals of occupational licensing must be balanced with the costs imposed on taxpayers and harms to the legal marijuana market.

OVERVIEW OF STATE LICENSING

The complexity of licensing varies by state. In California, three different agencies oversee various aspects of the industry. State license applications typically require a detailed description of the building layout, plans for security, information on financial investors, and many more invasive details. The Bureau of Cannabis Control oversees retailers, distributors, testing labs, microbusinesses, and temporary cannabis events while edible manufacturers are licensed by the Manufactured Cannabis Safety Branch, a division of the California Department of Public Health, and cannabis cultivators are licensed by CalCannabis Cultivation Licensing, a division of the California Department of Food and Agriculture.⁸

⁵ Fox, Hayley. "LA's Cannabis Office Is Woefully Understaffed, Chief Says." *Leafly*. Feb. 16, 2018. <https://www.leafly.com/news/politics/los-angeles-cannabis-office-is-woefully-understaffed-chief-says>

⁶ Fox, Hayley. "Can LA's Expanded Cannabis Staff Bring Equity to the Industry?" *Leafly*. March 5, 2018. <https://www.leafly.com/news/politics/can-las-expanded-cannabis-staff-bring-equity-to-the-industry>

⁷ "OLCC Will Pause Acceptance of Marijuana License Applications Focus Will Be on Existing Licensees and Current Applicants." News Release. *Oregon Liquor Control Commission*. May 30, 2018. https://www.oregon.gov/olcc/docs/news/news_releases/2018/Application_temp_stop_final.pdf

⁸ "Apply for a License." *California Cannabis Portal*. <https://cannabis.ca.gov/apply-for-a-license/>

State licensing authorities grant a license to each business. Potential entrepreneurs apply as a sole proprietor, partnership, corporation, or other business structure. Some states also require occupational licenses for business owners, managers, or employees. In Colorado, for example, licenses are established for both businesses and individuals. Each marijuana establishment must be owned by at least one direct beneficial interest owner who holds an associated key license.⁹ Those who wish to start a new marijuana business must apply for both a business and individual license.¹⁰

RESTRICTIONS ON WHO CAN APPLY

Even when regulating a new market, some states have found ways to protect incumbent industries from competition. Two of the most recent states to regulate legal sales, Massachusetts and Nevada, have drastically limited who can apply for licenses.

In Nevada, there are five types of establishment licenses: cultivation, distributor, retail store, testing, and product manufacturing. License applications (except for distributor licenses) have only been accepted from people already in possession of a medical marijuana establishment registration certificate. The state currently has no plans to open up these licenses to other applicants.¹¹

Distributor licenses were originally only granted to those who already had a wholesale dealer license for liquor, as mandated in the state's regulation for at least the first 18 months.¹² The rule was meant to ensure that marijuana was regulated the same way as alcohol. Yet after two weeks of legal sales, distributors were unable to keep the state's 47

⁹ Code of Colorado Regulations. 1 CCR 212-2. <https://www.colorado.gov/pacific/sites/default/files/ColoradoRegister.pdf1%20CCR%20212%20-2%20Retail%20Effective%2002022018.pdf>

¹⁰ "Retail Marijuana Business License Application." *Colorado Department of Revenue*. June 6, 2017. <https://www.colorado.gov/pacific/sites/default/files/DR%208548e%20Retail%20Application%206-2017.pdf>

¹¹ Nevada Revised Statutes (NRS). Chapter 453D. <https://www.leg.state.nv.us/NRS/NRS-453D.html#NRS453Dsec230>; "Getting a License." *Marijuana in Nevada*. <http://marijuana.nv.gov/Businesses/GettingALicense/>; email correspondence with Nevada Department of Taxation.

¹² NRS Chapter 453D.

legal retailers stocked.¹³ While the Nevada Department of Taxation expanded the distributor licenses to non-alcohol distributors, the Nevada Supreme Court issued an injunction in October 2017 requiring the state to again issue distributor licenses only to alcohol distributors.¹⁴

Massachusetts opened applications for all establishment license types in April 2018 for priority applicants only.¹⁵ Priority applicants are registered medical marijuana dispensaries or economic empowerment applicants, which are applicants who “demonstrate experience in—or business practices that promote—economic empowerment in communities disproportionately impacted by high rates of arrest and incarceration for offenses under state and federal laws, including the Controlled Substances Act.”¹⁶ Applications for non-priority applicants opened up on May 1 for cultivators, microbusinesses, craft marijuana cooperatives, testing laboratories, and research facilities while transporter, retailer, and product manufacturing licenses did not open up to all until June 1.¹⁷

Coincidentally, the industries positioned to be harmed by legalization are the ones that received preferential treatment in licensing. Medical marijuana sales decreased in Colorado when recreational marijuana became legal and are expected to do so in California as well.¹⁸

¹³ Robinson, Melia. “Nevada Sold Out of Legal Marijuana so Quickly, the Government Used a ‘Statement of Emergency’ to Bring in More Weed.” *Business Insider*. July 13, 2017. <http://www.businessinsider.com/nevada-marijuana-shortage-statement-of-emergency-2017-7>

¹⁴ “Nevada Supreme Court Halts Distribution Licenses for Non-Alcohol Distributors.” *Lexology*. Nov. 2, 2017. <https://www.lexology.com/library/detail.aspx?g=b79a3372-2a05-43a4-a707-c5f4826f46a6>; email correspondence with Nevada Department of Taxation.

¹⁵ “Licensure as a Marijuana Establishment.” *Massachusetts Cannabis Control Commissions*. <https://mass-cannabis-control.com/wp-content/uploads/2018/04/Guidance-for-Marijuana-Establishment-Licensure-Applicants.pdf>

¹⁶ “Summary of Equity Provisions.” *Massachusetts Cannabis Control Commission*. <http://mass-cannabis-control.com/wp-content/uploads/2018/03/UPDATED-Guidance-Summary-of-Equity-Provisions-with-6th-criterion-added-1.pdf>

¹⁷ “Licensure as a Marijuana Establishment.”

¹⁸ “Medical Marijuana Sales Down In Colorado.” *Green Market Report*. Jan. 18, 2018. <https://www.greenmarketreport.com/medical-marijuana-sales-colorado/>; Rogers, John. “How Big of a Hit Will California’s Medical Marijuana Market Take From Adult-Use Sales?” *The Cannabist*. Dec. 28, 2017. <https://www.thecannabist.co/2017/12/28/california-medical-marijuana-dispensaries-recreational-sales/95497/>

Similarly, marijuana has been shown to supplant alcohol, with alcohol sales averaging a 15% drop in states with medical marijuana laws.¹⁹

CRIMINAL CONVICTIONS

All states restrict who will be issued a marijuana business license based on criminal conviction history. Some states only look at recent criminal history, such as the ten-year look-back period for completed sentences in Nevada and Washington. Most states have some limited exemptions for past marijuana crimes built into the law. Alaska specifically prevents those that have “within two years before submitting an application, been convicted of a class A misdemeanor relating to selling, furnishing, or distributing marijuana or operating an establishment where marijuana is consumed contrary to state law” from obtaining a license.²⁰ All states but California and Washington prevent people with certain criminal convictions from even being employed in marijuana establishments.

Researchers estimate that 8% of the U.S. population has felony convictions and 33% of the African American male population has a felony conviction. California, Massachusetts and Washington were three of the top five states for African Americans convicted of felonies.²¹ While good data on how this impacts marijuana business ownership is lacking, there is evidence that burdensome occupational licensing for convicted criminals makes recidivism more likely. A study conducted by the Center for the Study of Economic Liberty at Arizona State University examined the relationship between occupational licensing laws and new crime recidivism rates (new crime recidivism does not include technical violations such as a parole violation). States with the highest occupational licensing burdens, including prohibitions on ex-prisoners receiving licenses, saw an increase in three-year new crime recidivism of 9.4% between 1997 and 2007. This is in comparison to a 2.6% average

¹⁹ Pellechia, Thomas. “Alcohol Sales Dropped 15% In States With Medical Marijuana Laws.” *Forbes*. Jan. 22, 2018. <https://www.forbes.com/sites/thomaspellechia/2018/01/22/alcohol-sales-dropped-15-percent-in-states-with-medical-marijuana-laws/#4815eec45f22>

²⁰ Alaska Administrative Code. 3 AAC Chapter 306. <https://www.commerce.alaska.gov/web/Portals/9/pub/MCB/StatutesAndRegulations/MarijuanaRegulations.pdf>

²¹ Flurry, Alan. “Study Estimates U.S. Population With Felony Convictions.” *UGA Today*. Oct. 1, 2017. <https://news.uga.edu/total-us-population-with-felony-convictions/>

increase in survey states and 4.2% decrease in states with the lowest occupational licensing burden.²²

Supporters of keeping those with certain criminal convictions out of the new industry claim that doing so makes legal marijuana reputable. Last year, the CEO of medical marijuana provider Patriot Care wrote: “Permitting those who have demonstrated the interest and willingness to ignore state and federal drug laws sends the wrong signals to those who would participate in the legal, regulated industry.” The CEO’s statement was in response to efforts in Massachusetts to remove the ban on convicted drug felons in the medical marijuana program. Ironically, as pointed out in *Forbes*, all marijuana businesses—including Patriot Care—are in violation of federal law.²³

FEES

Another consistent aspect of state marijuana licensing is expensive fees to enter the industry. All states require an application fee and an annual license fee. Only Nevada and Colorado reduce some license fees after the first year of business.

Fees range based on business type. Some states determine fees using a tiered system for production capacity or, in some California licenses, gross revenue. State-specific information on licensing fees is provided below. The cheapest annual license fee is in California: \$500 for a distributor transport only self-distribution license with no more than \$3 million in operations. Also in California is the highest annual license fee: \$200,000 for a distributor license with more than \$120 million in operations.²⁴

²² Slivinski, Stephen. “Turning Shackles into Bootstraps.” *Center for the Study of Economic Liberty at Arizona State University*. Nov. 7, 2016. <https://research.wpcarey.asu.edu/economic-liberty/wp-content/uploads/2016/11/CSEL-Policy-Report-2016-01-Turning-Shackles-into-Bootstraps.pdf>

²³ Zhang, Mona. “Cannabis Industry Struggles With Hiring People With Past Pot Convictions.” *Forbes*. Oct. 4, 2017. <https://www.forbes.com/sites/monazhang/2017/10/04/cannabis-industry-hiring-people-past-pot-convictions/#3069de2a5cd4>

²⁴ California Code of Regulations. Title 16. Division 42. Bureau of Cannabis Control., <https://cannabis.ca.gov/wp-content/uploads/sites/13/2018/06/Readopt-Text-Final-Clean-6.7.18.pdf>

TABLE 1: LICENSE FEES FOR MARIJUANA AND ALCOHOL BY STATE*

State	Marijuana License Fee Range	Alcohol License Fee Range
Alaska	\$1,000–\$5,000	\$400–\$2,500 ²⁵
California	\$500–\$200,000	\$8–\$1,537 ²⁶
Colorado	\$1,500–\$4,400 (yearly renewal fee)	\$25–\$750 ²⁷
Massachusetts	\$625–\$25,000 ²⁸	\$22–\$10,000 ²⁹
Nevada	\$3,300–\$10,000 (yearly renewal fee)	\$75–\$500 ³⁰
Oregon	\$1,000–\$5,750	\$50–\$500 ³¹
Washington	\$1,480	\$20–\$2,500 ³²

* This does not take temporary licenses, duplicate licenses, local license fees, license fee upcharges, or specialty endorsements into account.

²⁵ “Alcohol and Marijuana Control Office.” *Department of Commerce, Community, and Economic Development: Alcohol and Marijuana Control Office*.
<https://www.commerce.alaska.gov/web/amco/AlcoholLicenseApplication.aspx>

²⁶ The cheapest fee is for wine at a bed and breakfast and the charge is \$8 per room. 2018 License Fee Schedule On-sale. *California Department of Alcoholic Beverage Control*. Jan 1, 2018.
<https://www.abc.ca.gov/permits/2018%20On%20Sale%20Fee%20Schedule.pdf>; 2018 License Fee Schedule Off-sale. *California Department of Alcoholic Beverage Control*. Jan 1, 2018.
<https://www.abc.ca.gov/permits/2018%20Off%20Sale%20Fee%20Schedule.pdf>; email correspondence with Alcoholic Beverage Control.

²⁷ “Liquor Enforcement Division Fee Schedule.” *Colorado Department of Revenue*. Aug. 1, 2018.
<https://www.colorado.gov/pacific/sites/default/files/Fee%20Schedule%2008-01-2018.pdf>

²⁸ Massachusetts fees may vary because microbusiness annual license fees are 50% of all applicable fees.

²⁹ “Different Types of Alcoholic Beverage State Licenses (ABCC).” *Mass.gov*.
<https://www.mass.gov/service-details/different-types-of-alcoholic-beverage-state-licenses-abcc>

³⁰ “Liquor Taxes and FAQs.” *State of Nevada Department of Taxation*.
https://tax.nv.gov/FAQs/Liquor_Taxes__FAQ_s/

³¹ “License Types.” *Oregon Liquor Control Commission*.
https://www.oregon.gov/olcc/LIC/docs/license_types.pdf

³² “Applicant FAQs.” *Washington State Liquor and Cannabis Board*.
<https://lcb.wa.gov/licensing/applicant-faqs>

A national study of occupational licensing conducted by the Institute for Justice explored licensing requirements for 102 occupations. The average license cost \$209—less than all marijuana annual licenses and most application fees. The study was published in May 2012 and did not look at marijuana licensing.³³

In most legal states, the argument has been used that marijuana should be regulated like alcohol with a three-tiered system of distributors, producers, and sellers who are kept separate and regulated by the state. This argument could theoretically justify license fees for marijuana similar to liquor license fees. Yet in comparison with state licenses for the selling, distribution, and production of alcohol, marijuana licenses are typically more expensive in all states, as shown above.

While all business endeavors are risky, the marijuana business has extra risks including that it remains illegal under federal law. Expensive licenses for marijuana can be especially burdensome for would-be-entrepreneurs because of extremely limited access to bank financing. Fees limit the pool of potential entrepreneurs to those who independently have start-up cash or can access non-bank financing. Further, marijuana entrepreneurs cannot write off business expenses on their federal taxes, and growers have a hard time accessing crop insurance.³⁴ Adding a yearly payment to the state just to do business may keep many from entering the market, and the black market will remain the chief supplier of marijuana.

LOCAL CONTROL

Through zoning and land-use regulations, local governments have the authority to regulate where marijuana businesses can operate. Localities can also ban marijuana businesses altogether. An extreme example of communities opting to “go dry” can be seen in California with approximately 85% of communities banning recreational marijuana sales.³⁵

³³ Carpenter II, Dick M. et al. “License to Work.” May 2012.

³⁴ Weed, Julie. “California Marijuana Start-Ups, Shut Out From Banks, Turn to Private Backing.” *The New York Times*. Dec. 27, 2017. <https://www.nytimes.com/2017/12/27/business/smallbusiness/california-marijuana-start-ups.html>

³⁵ White, Martha C. “Growing like a weed? California marijuana market off to slow start.” *NBC News*. April 20, 2018. <https://www.nbcnews.com/business/business-news/growing-weed-california-marijuana-market-slow-start-n867871>



An extreme example of communities opting to “go dry” can be seen in California with approximately 85% of communities banning recreational marijuana sales.



Many localities require entrepreneurs to obtain an occupational license from both the state and city. In Portland, Oregon, application fees for marijuana businesses are \$750 or \$975 for the initial application and \$500 or \$750 for renewal. License fees are \$3,500 or \$4,975.³⁶ These fees are on top of state licensing fees which range from \$1,000–\$5,750 and a \$250 application fee.

Local government license approval can also add a bottleneck to the licensing process. As of December 26, 2016, Portland had received 537 applications but only 128 were fully licensed. As well, 112 applicants were awaiting city action and 31 had been denied. The city only provides data on the number of applicants denied or awaiting city action for December 2016.³⁷ For other months, the only data available are total applications accepted and either total licenses active or issued. The graph below shows the disparity between total applications accepted by the city and the active licenses in Portland. As a result of the city’s slow licensing process, many businesses (especially those that lack funding) will relocate rather than wait for a license in Portland.³⁸ One especially concerning aspect of the Portland licensing process is the apparent inability to license medical dispensaries. As of September 14, while 171 medical dispensary applications have been accepted, there were no active medical dispensary licenses.³⁹

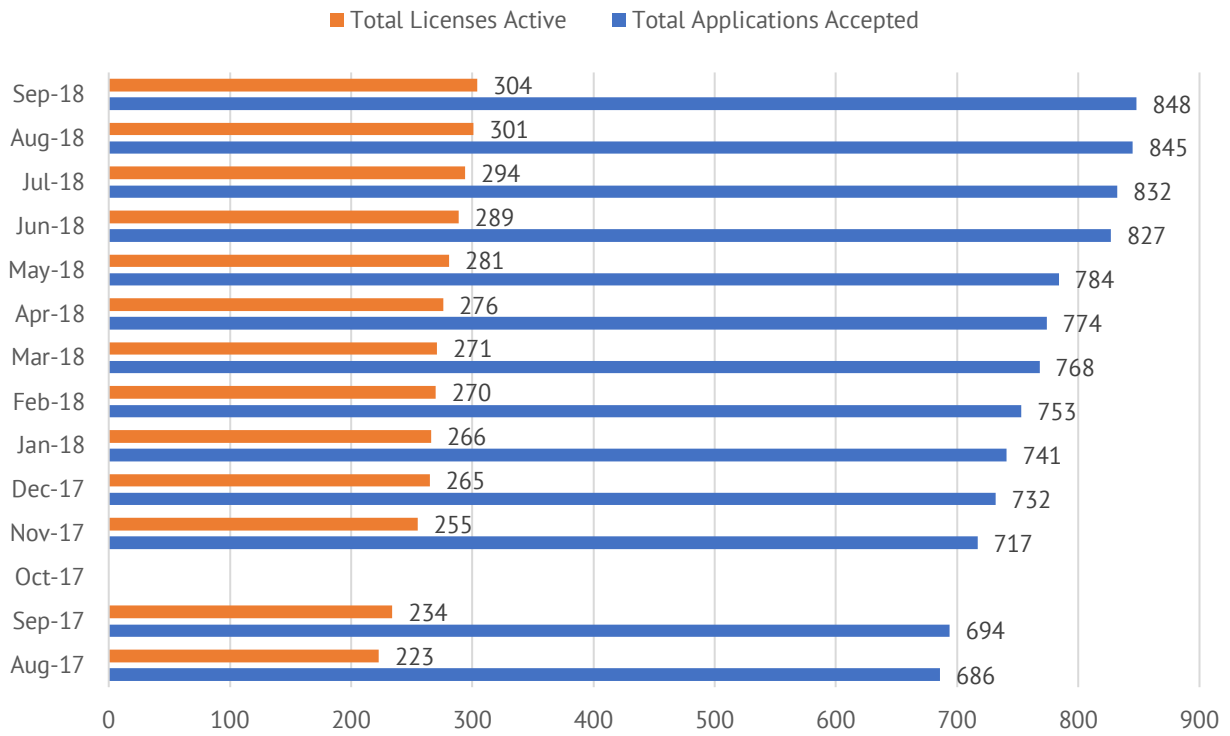
³⁶ “Marijuana Regulatory License Fees.” *City of Portland Office of Neighborhood Involvement*. Dec. 14, 2016. <https://www.portlandoregon.gov/citycode/article/548906>

³⁷ “December 2016.” *City of Portland Office of Neighborhood Involvement*. <https://www.portlandoregon.gov/oni/article/636997>

³⁸ McVey, Eli. “Chart: License Delays Plaguing Portland, Oregon, Recreational Cannabis Businesses.” *Marijuana Business Daily*. Feb. 27, 2017. <https://mjbizdaily.com/chart-license-delays-plaguing-portland-oregon-rec-businesses/>

³⁹ “September 2018.” *City of Portland Office of Neighborhood Involvement*. <https://www.portlandoregon.gov/civic/article/697328>

FIGURE 1: PORTLAND MARIJUANA LICENSES



Data for Oct 2017 are not available

Source: City of Portland, Office of Neighborhood Involvement

One limitation on local control is found in Massachusetts regulations. Local governments cannot use zoning or local ordinances to prevent medical marijuana dispensaries from converting to adult use facilities.⁴⁰

POTENTIAL IMPACT ON ECONOMIC GAINS

Burdensome occupational licensing, along with other complex regulations, has the potential to reduce the economic benefits of legalization. In California, sales for 2018 were originally projected to reach \$3.8 billion, but expectations have now been adjusted by 50%

⁴⁰ “Guidance for Municipalities Regarding Marijuana for Adult Use.” *Massachusetts Cannabis Control Commission*. January 2018. <https://mass-cannabis-control.com/wp-content/uploads/2018/01/010918CNB-Guidance-Municipalities-Adult-Use.pdf>

to only \$1.9 billion.⁴¹ Chris Beals, president and general counsel for Weedmaps, told *NBC News* that “The biggest problem has been that there’s been a complete failure of local governments to issue licenses.” As a result, an estimated 85%–90% of the California marijuana industry is still operating illegally.⁴²



Burdensome occupational licensing, along with other complex regulations, has the potential to reduce the economic benefits of legalization.



CONCLUSIONS

The goals of marijuana legalization are typically to reduce harms from black markets and allow for legal jobs in the marijuana industry. Unfortunately, there are few publicly available justifications for current licensing regimes that explain how the regulation serves the public. In order to allow new marijuana markets to flourish, occupational licensing must be constrained to the bare essentials. Licensing burdens justified as public health measures are actually detrimental when the legal market is stifled.

Applying for a marijuana license is a complex, expensive process. Marijuana license fees are much higher than average occupational licenses in the U.S. and are even higher than most liquor license fees in each respective state. Further, there are limitations on who can apply based on criminal conviction history.

⁴¹ McGreevy, Patrick. “A Lot Less Pot is Being Sold in California Than Initially Estimated, Analyst Says.” *Los Angeles Times*. May 22, 2018. <http://www.latimes.com/politics/essential/la-pol-ca-essential-politics-may-2018-a-lot-less-pot-is-being-sold-in-1527014398-htmllstory.html>

⁴² White, Martha C. “Growing like a weed? California marijuana market off to slow start.” April 20, 2018.



In order to allow new marijuana markets to flourish, occupational licensing must be constrained to the bare essentials. Licensing burdens justified as public health measures are actually detrimental when the legal market is stifled.



Local control potentially adds another layer of burdensome licensing requirements. While decentralization and local level decision making are typically preferable, too much local control for marijuana will undermine the development of a functioning legal market.

As currently legal states consider revisions to their regulations, it would be wise to open up employment opportunities in the marijuana market and to reduce fees to levels at least comparable to alcohol. With high licensing fees and burdensome regulations, the problems facing California should serve as a cautionary tale.

These recommendations could be especially useful to New Jersey policymakers. Legislators have discussed regulations containing many of the same problems that have undermined legalization in other states. These include sweeping local control, criminal conviction restrictions, and onerous wealth restrictions and residency requirements for licensure. These restrictions will reduce entry into the industry, which will hinder development of a legal market.

APPENDIX: WANT TO START A NEW MARIJUANA BUSINESS?

Licensing and Business Restrictions by State*

Alaska... 15

California... 16

Colorado... 17

Massachusetts... 19

Nevada... 21

Oregon... 22

Washington... 23

Note: This list does not include all licensing, registration, and fees that may be required to do business in each state.

STATE:

ALASKA⁴³

License Fees?

Yes – \$1,000 application fee, \$600 renewal fee, and annual fees are \$1,000 or \$5,000

Residency Requirement?

Yes – the sole proprietor, each business partner, each member of limited liability company, and all shareholders in a corporation must be state residents.

Criminal Background Requirements?

Yes – establishments may not be licensed to owners, officers, or agents with a felony conviction in the last five years or those still on parole for felony convictions. Also banned are those who have sold alcohol without a license or to someone under 21, those with certain misdemeanors within the last five years, and people with certain class A misdemeanors for marijuana within the last two years.

Local Control?

Yes – local jurisdictions can ban marijuana retailers completely. Local governments may protest applications, use zoning to regulate marijuana establishments, and additional local licensing may be required.

Restrictions on Changes to Business?

Yes – \$250 fee to request approval on changes to business name, ownership, licensed premise diagram, operating plan, or new marijuana product.

Additional Occupational Licensing?

Yes – marijuana handler permits are required for licensees, employees, and agents physically present at a marijuana establishment. Valid for three years, costs \$50, those with felonies within the last five years, certain class A misdemeanors within the last two, and those on parole for a felony, or under indictment for a disqualifying offense are not eligible. Applicant must complete education course.

⁴³ 3 AAC 306; Alaska Statutes. Chapter 17.38 – The Regulation of Marijuana.
<https://www.commerce.alaska.gov/web/Portals/9/pub/MCB/StatutesAndRegulations/AS17.38.pdf>;
“Marijuana Handler Permit Application Instructions.” *Alcohol and Marijuana Control Office*. July 3, 2018.
<https://www.commerce.alaska.gov/web/Portals/9/pub/MCB/MJHandlerPermit/Marijuana%20Handler%20Permit%20Application%20Instructions.pdf>; “Marijuana Handler Permit Notice of Upcoming Changes.” *Alcohol and Marijuana Control Office*.
<https://www.commerce.alaska.gov/web/Portals/9/pub/MCB/MJHandlerPermit/MHCBackground.pdf>

STATE:

CALIFORNIA⁴⁴

License Fees?

Yes – application fees range from \$135–\$8,655 and licenses require a yearly fee ranging from \$500–\$200,000.

Residency Requirement?

No

Criminal Background Requirements?

Yes – license may be denied for convictions “substantially related to the qualifications, functions, or duties of the business.” Controlled substance convictions that are not substantially related and for which the sentence and probation are completed cannot be the sole reason for license denial.

Local Control?

Yes – local jurisdictions can ban marijuana retailers completely. Local jurisdictions can use zoning to regulate marijuana establishments and localities may require additional local licensing.

Restrictions on Changes to Business?

Yes – physical modifications to retailers, distributors, testing labs, microbusinesses, and temporary cannabis event premises require approval and \$500 fee. Certain changes to edible manufacturing premise operations require a \$1,000 fee. Modifications to cultivation businesses also require approval but have no fee as long as license type does not change.

Additional Occupational Licensing?

No

⁴⁴ California Code of Regulations. Title 16. Division 42. Bureau of Cannabis Control.; California Code of Regulations. Title 3. Food and Agriculture. Division 8. Cannabis Cultivation. <https://cannabis.ca.gov/wp-content/uploads/sites/13/2018/06/CA-Department-of-Food-and-Agriculture-Final-Text-of-Readopted-Emergency-Regulations.pdf>; California Code of Regulations. Title 17. Division 1. Chapter 13. Manufactured Cannabis Safety. <https://cannabis.ca.gov/wp-content/uploads/sites/13/2018/06/CA-Department-of-Public-Health-Final-Text-of-Readopted-Emergency-Regulations.pdf>; Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA). California Law. [https://leginfo.legislature.ca.gov/faces/codes_displayexpandedbranch.xhtml?tocCode=BPC&division=10.&title=&part=&chapter=&article](https://leginfo.legislature.ca.gov/faces/codes_displayexpandedbranch.xhtml?tocCode=BPC&division=10.&title=&part=&chapter=&article;); email correspondence with CalCannabis, the Manufactured Cannabis Safety Branch, and the Bureau of Cannabis Control.

STATE:**COLORADO⁴⁵****License Fees?**

Yes – New business application fees range from \$500–\$5,000 and associated key license application fees are \$725 or \$4,925. Application fees or background check fees for other types of owners such as investors, indirect beneficial interest owners, or other affiliated interests range from \$75–\$400. For businesses, initial and renewal licenses cost between \$1,500 and \$4,400. There is a \$300 fee for business license renewal applications. Associated key licenses cost \$500 for renewal. Finally, additional fees for expanded production capacity range from \$1,000–\$6,000 initially and \$800–\$5,000 for renewal.⁴⁶

Residency Requirement?

Yes – each marijuana establishment must have at least one direct beneficial interest owner who holds an associated key license and has been a state resident for at least one year. Businesses can have an unlimited number of direct beneficial interest owners if they have been residents for one year. U.S. citizens who are not Colorado residents may apply for an associated key license only if there has been a “finding of suitability.” Businesses with non-resident owners can only have 15 owners. The associated key license application fee for non-residents is \$4,925 and \$725 for residents.

Criminal Background Requirements?

Yes – ineligible from occupational licenses are people subject to or discharged from felony convictions in five years preceding their application and felony controlled substance convictions in the ten years preceding their application date or five years from May 28, 2013 (whichever is longer). Those with state marijuana possession or use felony convictions which would no longer be felonies can still get a license.

Local Control?

Yes – local jurisdictions can ban marijuana retailers completely. Local jurisdictions can use zoning to regulate marijuana establishments and localities may require additional local licensing.

⁴⁵ 1 CCR 212-2.; Colorado Revised Statutes, Title 44, Article 12, Colorado Retail Marijuana Code. <https://advance.lexis.com/container?config=0345494EJAA5ZjE0MDIyYy1kNzZkLTRkNzktYTkxMS04YmJhNjBINWUwYzYKAFBvZENhdGFsb2e4CaPI4cak6laXLCWyLBO9&crd=64307c29-3261-4006-bd9f-388580b25721&prid=79ee81ce-e5d6-4fe4-9505-04e8b69ff999>

⁴⁶ Fees may be higher for licensees with expanded production due to licensing upcharge for each additional tier of plants over a tier of five.

Restrictions on Changes to Business?

Yes – substantial changes require approval and a fee. Fees vary depending on modification. A few examples are a \$100 fee for premises modifications, \$50 fee to change trade name, and an \$800 fee to change corporation or LLC structure.

Additional Occupational Licensing?

Yes – in addition to owners, all managers and employees working in a marijuana establishment must be licensed. Managers can hold associated key licenses or a key employee license. All other employees require a support employee license. Key and support employees must be residents of Colorado and face the same criminal background restrictions as owners. There is a potential workforce development or training exemption to the residency requirement for support and key licenses. For a key license, the application fee is \$225 and the license costs \$25. The application fee for a support license is \$50 and the license costs \$25. Occupational licenses must be renewed every two years (renewal fees are \$75 for both employee licenses). Associated key licenses for owners must be renewed every year.

STATE:

MASSACHUSETTS⁴⁷

License Fees?

Yes – application fees range from \$100–\$600 and annual license fees range from \$625–\$25,000⁴⁸ (microbusiness annual fees are 50% of all applicable fees). Application fees are waived for social equity program participants.

Residency Requirement?

Yes – the majority of microbusiness members or executives and all craft marijuana cooperative members or shareholders must have resided in the state for 12 months prior to application. Applicants for the social equity program also must be residents.

Criminal Background Requirements?

Yes – no person who has been convicted of a felony in Massachusetts or in another state that would still be a felony in Massachusetts can be a controlling person in a business. Prior convictions solely for marijuana or another controlled substance possession are exempt from this rule unless the conviction was distribution. The commission may determine that the applicant is not suitable for licensure based on a suitability criterion for other legal issues.

Local Control?

Yes – local governments can regulate marijuana establishments through zoning, impose local licensing, and ban or limit the number of establishments. Applicants must conduct a community outreach meeting before their application is approved and enter into a “host community agreement” with the locality. Local governments cannot prevent medical marijuana establishments from converting to adult use.

⁴⁷ 935 Code of Massachusetts Regulations. Cannabis Control Commission. <https://www.mass.gov/files/documents/2018/03/27/935cmr500.pdf>; “Guidance for Applicants on Community Outreach.” *Massachusetts Cannabis Control Commission*. <https://mass-cannabis-control.com/wp-content/uploads/2018/04/Community-Outreach-Guidance-and-Forms.pdf>; “Guidance for Municipalities Regarding Marijuana for Adult Use.” *Massachusetts Cannabis Control Commission*. January 2018. <https://mass-cannabis-control.com/wp-content/uploads/2018/01/010918CNB-Guidance-Municipalities-Adult-Use.pdf>

⁴⁸ Fees for craft marijuana cooperatives may be higher due to an application and license fee upcharge for each additional location after six locations.

Restrictions on Changes to Business?

Yes – certain changes must be approved. Fees for changes are as follows: \$100 for a name change, \$500 for a change in building structure, \$500 for a change in business ownership or control, and 50% of the license fee for a change in location.

Additional Occupational Licensing?

Yes – all employees, board members, directors, executives, managers, and volunteers must be registered for each marijuana establishment. Marijuana establishment agents cannot have been convicted of an offense involving the distribution of a controlled substance to minors in Massachusetts or any other state/territory. The commission may determine that the applicant is not suitable for licensure based on a suitability criterion for other legal issues. Criminal conviction restrictions are more stringent for laboratory agents. Registration is \$50 and must be renewed annually.

STATE:

NEVADA⁴⁹**License Fees?**

Yes – application fees are \$5,000. Initial license fees are \$10,000–\$30,000 and annual renewal fees range from \$3,300–\$10,000.

Residency Requirement?

No

Criminal Background Requirements?

Yes – owners, officers, or board members convicted of an “excluded felony offense” may not obtain a license. This includes convictions that would constitute a category A felony if convicted in Nevada or convictions for two or more offenses that would constitute felonies if committed in Nevada. Sentences completed more than ten years prior and offenses for conduct that would be immune from penalty under medical marijuana law (unless the conduct occurred before Oct. 1, 2001 or was prosecuted by another authority) do not count.

Local Control?

Yes – local jurisdictions can ban marijuana retailers completely. Local jurisdictions can use zoning to regulate marijuana establishments and localities may require additional local licensing.

Restrictions on Changes to Business?

Yes - changes in ownership, location and premises need approval. The fee is \$111 per hour for review.

Additional Occupational Licensing?

Yes – all owners, board members, officers, contractors, employees, and volunteers must obtain a marijuana establishment agent card. Applicants also cannot have an “excluded felony offense.” Applications cost \$75 and agent registration cards are valid for one year.

⁴⁹ NRS. Chapter 453D.; Approved Regulation of the Department of Taxation. LCB File No. R092-17. <http://marijuana.nv.gov/uploadedFiles/taxnvgov/Content/FAQs/Marijuana-Perm-Reg-LCB-File-No-R092-17.pdf>; “Marijuana Establishment Agent Card Application and Checklist.” *State of Nevada Department of Taxation*. Nov. 18, 2017. <https://tax.nv.gov/uploadedFiles/taxnvgov/Content/Forms/Agent%20application.pdf>; “Getting a License.” *Marijuana in Nevada*. <http://marijuana.nv.gov/Businesses/GettingALicense/>; “Working for a Marijuana Business.” *Marijuana in Nevada*. http://marijuana.nv.gov/layouts/Page_Style_1.aspx?id=200849; email correspondence with the Nevada Department of Taxation.

STATE:

OREGON⁵⁰**License Fees?**

Yes – application and renewal fees are \$250 and annual license fees range from \$1,000–\$5,750. Adding a medical canopy at the same location as one’s producer license costs \$100.

Residency Requirement?

No

Criminal Background Requirements?

Yes – convictions “substantially related to the fitness and ability of the applicant to lawfully carry out activities under the license” may result in application denial. Convictions for marijuana manufacturing or delivery to persons 21 and older may not be considered during application review if the conviction is from two years prior or there is only one conviction. Marijuana possession convictions may also not be considered.

Local Control?

Yes – local jurisdictions can ban marijuana retailers completely. Marijuana establishment licenses may require additional local licensing. New applicants must receive a land use compatibility statement from local governments which states that the application is consistent with local laws and zoning.

Restrictions on Changes to Business?

Yes – the commission must be notified of changes. For change in location, the fee is \$1,000. There are also fees for new approval or changes to previously approved packaging and labels.

Additional Occupational Licensing?

Yes – marijuana worker permits are required for employees carrying out certain tasks. Applicants may be denied permits based on certain felony convictions within the past three years (five years for more than one conviction). All marijuana possession convictions and marijuana delivery/manufacturing convictions from two years prior do not count. Employees must pass required exam with 70%. Permits cost \$100 and are good for five years.

⁵⁰ Oregon Revised Statutes. Chapter 475B. Cannabis Regulation. https://www.oregonlegislature.gov/bills_laws/ors/ors475B.html; Oregon Administrative Rules. Oregon Liquor Control Commission. Division 25. Recreational Marijuana. https://www.oregon.gov/olcc/marijuana/Documents/Rules/OAR_845_Div_25_RecreationalMarijuana.pdf; “OLCC Marijuana Program: Frequently Asked Questions (all).” *Oregon Liquor Control Commission*. https://www.oregon.gov/olcc/marijuana/Documents/MJ_FAQS.pdf; email correspondence with Oregon Liquor Control Commission.

State:**Washington⁵¹****License Fees?**

Yes – application fees are \$250 and annual licenses cost \$1,480. Specialty endorsements cost \$250 for transportation and research licenses and \$895 for a marijuana-infused edibles processor. Adding a processor license to a producer license costs \$250.

Residency Requirement?

Yes – sole proprietor or all members of other business organization structure must have resided in the state six months prior to application. Managers, spouses, and persons expecting a share of profit also must meet residency requirement.

Criminal Background Requirements?

Yes – points are given to an applicant based on severity of offense. Applicants with eight points or more may not receive a license. People currently under federal or state supervision for a felony receive eight points. A felony conviction within the past 10 years is 12 points, a gross misdemeanor within three is five points, and a misdemeanor within three years is four points. Two federal or state marijuana possession misdemeanors in the previous three years do not count toward points in the initial application. State possession convictions accrued after December 6, 2013 exceeding allowable amounts of marijuana still count towards points. A single state or federal conviction for marijuana growing, sale, or possession will be considered for mitigation on the initial application. A decision to mitigate is made on an individual basis and is based on the quantity of marijuana involved and other circumstances.

Local Control?

Yes – local jurisdictions can ban marijuana retailers completely. Local jurisdictions can use zoning to regulate marijuana establishments and localities may require additional local licensing. Local governments can object to licenses applications.

⁵¹ Washington Administrative Code. Title 314. Chapter 314-55. Marijuana Licenses, Application Process, Requirements, and Reporting. <http://apps.leg.wa.gov/wac/default.aspx?cite=314-55>; Revised Code of Washington. Title 69. Chapter 69.50. <http://app.leg.wa.gov/RCW/default.aspx?cite=69.50>; Shortt, Daniel. “Washington Cannabis: Court Rules that Counties Can Prohibit Recreational Sales.” *Canna Law Blog*. March 21, 2018. <https://www.cannalawblog.com/washington-cannabis-appeals-court-rules-that-counties-can-prohibit-recreational-sales/>; “Marijuana Licensing.” *Washington State Liquor and Cannabis Board*. <https://lcb.wa.gov/mjlicense/marijuana-licensing>; “Specialty endorsements.” *State of Washington Business Licensing Service*. <https://bls.dor.wa.gov/specialtylicenses.aspx>

Restrictions on Changes to Business?

Yes – substantial changes such as changes to operating plans or ownership requires an application and \$75 or \$80 fee.

Additional Occupational Licensing?

No

ABOUT THE AUTHOR

Allie Howell is a research intern at Reason Foundation. Previously, she was a Burton C. Gray Memorial intern at Reason and an economic policy intern at the Manhattan Institute. Allie has been published on Economics21.org, the Foundation for Economic Education, and Reason. She is a recent graduate of Hillsdale College where she majored in economics and mathematics. Allie is a student at Notre Dame Law School in the fall of 2018.

