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Illinois Cannabis Industry Snapshot: 2023

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The cannabis landscape in Illinois has grown more challenging in the past year as market conditions have tightened and state regulations continue to create obstacles for start-up growers and retailers. Here are some developments to watch in Illinois:

1. The state will soon award 55 new conditional dispensary licenses.

The Illinois Department of Financial and Professional Responsibility ("IDFPR") began accepting Social Equity Criteria Lottery applications for 55 available Conditional Adult Use Dispensing Organization Licenses on January 30, and that window will close April 21.

2. But without legislative or executive action, over half the conditional licenses currently held will fail.

The Cannabis Regulation and Tax Act provides only one year for holders of conditional dispensing licenses to build out and open their doors. At that time, the regulators are bound to follow the law, which requires permanent revocation of licenses that are not operational. For many operators, that deadline will come in July 2023. So the stakes are high and the clock is ticking for those who have made big investments in site selection and build-out, and those still searching for partners to fund operations. State legislators can act to stop this by amending the law, or the governor could step in with an executive order similar to the actions he took in 2020 to extend various cannabis-related deadlines. But barring any intervention, many license holders are at risk. While over 190 conditional licenses were awarded through lotteries and litigation, only 10 or so have managed to become operational thus far.

3. The Social Equity Cannabis Loan Program continues to be stalled for dispensary operators, and raising money is harder than ever.

While the state has made funds available to cultivation operations, dispensaries are still waiting to receive the loans and grants promised to those who won conditional licenses. This support is crucial because the market has changed, making it very difficult for these operators to find funding. This challenge is made all the harder by regulatory restrictions on investments. Regulators currently prohibit new investors from taking any ownership in conditional licenses. This has forced conditional license holders lucky enough to find partners willing to wait for their equity to incur significant costs in creating transaction structures that work from a regulatory perspective.

4. Success is more location dependent than ever.

Litigation forced the state to award significantly more licenses per Bureau of Labor Statistics (BLS) region than originally intended. Some regions are now oversaturated while others still offer unrealized potential. Regions in central or southern Illinois may not have the population to support the number of licenses that have already been awarded, and those dispensaries also have to contend with municipalities that have opted out completely. Regions bordering Missouri, where licensed recreational cannabis sales began in February, will struggle to compete with that state's lower taxes. On the other hand, regions bordering Wisconsin and Indiana, where legalization is a long way off, may provide a more favorable outlook. Chicago continues to be a challenge due to the onerous zoning process. New applicants should select their location with care.

5. The canopy cap will continue to hinder the success of craft growers.

The Illinois Department of Agriculture currently limits craft growers to 5,000 square feet of canopy space for plants in the flowering state, and many smaller cultivation facilities that were issued licenses within the past two years are struggling to attract investors and effectively compete at this size. State regulators have limited authority to raise the cap, up to 15,000 square feet, but they have yet to exercise that authority. The state legislature would have to take action to change the cap across the board and allow all craft cultivators to expand their canopy space to better align with the demands of the market. There is a rumored additional round coming for craft grow licenses, but without the ability to scale up, the value of these licenses is in question.

Takeaway: New entrants to the industry in Illinois will continue to struggle due to regulatory restrictions and market conditions, which allows the existing players to reap the benefits of the state's robust adult use and medical programs. Eventually, many more licenses will come online and more product will be available, causing prices to drop substantially. But we are not likely to see that in 2023.

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