

FBI Blocks Delaware Background Check, Stalling Cannabis Sales

Delaware's Adult Use Cannabis Sales Delay After FBI Rejects Background Check Plan, Throwing State's Timeline into Uncertainty

Delaware's plan to launch adult-use cannabis sales this spring has been significantly delayed due to an unexpected roadblock involving the FBI and the state's criminal background check process.

On March 31, state cannabis regulators from the Office of the Marijuana Commissioner (OMC) announced that the FBI had rejected their revised application for a service code required to begin fingerprinting individuals for mandatory criminal background checks for the upcoming adult-use cannabis market. The FBI's decision has upended Delaware's cannabis rollout timeline, pushing the state back in its efforts to kickstart legal sales of recreational marijuana.

The service code would have allowed Delaware officials to begin fingerprinting adult-use cannabis license applicants and run criminal background checks via the FBI database. This system is crucial to meeting the state's legal requirements for applicants to receive their licenses. Unfortunately, the FBI rejected the state's application because the existing legislation did not meet the agency's standards.

FBI's Rejection and the Road Ahead

The FBI's rejection stems from the state's failure to include specific language in the legislation defining which individuals are required to undergo criminal background checks. The OMC's announcement on March 31 explained that the FBI needed the Delaware statute to clearly identify the categories of people who need to be checked to prevent "overbreadth" in the process.

Delaware lawmakers will now need to amend the state's legal framework to align with the FBI's requirements, further delaying the timeline for adult-use cannabis sales. State legislators will be in session until June 30, 2025, offering a window of opportunity to address the issue, though the path forward is uncertain.

The Impact of the Delay

The delay comes nearly two years after former Democratic Governor John Carney allowed the Delaware Marijuana Control Act, a pair of bills legalizing adult-use cannabis, to be enacted without his signature in April 2023. However, with the recent FBI rejection, the state's cannabis program is now at a standstill.

The OMC had conducted lotteries in October and December 2024 to award 110 licenses for cultivation, manufacturing, testing, and social equity operators, as well as 30 dispensary licenses. However, the process

to grant final approvals to these licensees has been significantly disrupted.

The delay could have serious financial consequences for these cannabis operators, many of whom are paying for facilities that are not yet generating revenue.

Challenges for New Operators and Concerns About Equity

In addition to the issues surrounding criminal background checks, the OMC's previous proposal to allow existing medical cannabis operators to transition to the adult-use market is also causing concern. Some fear that this could give these operators an unfair advantage, as they would be able to start adult-use sales before the new operators are able to get their businesses up and running.

Zoe Patchell, executive director of the Delaware Cannabis Advocacy Network, voiced concerns about this possible advantage. She noted that it would be "fundamentally unfair" for existing medical cannabis operators to begin adult-use sales while new operators are waiting for their background checks to be processed.

Under the conversion legislation, medical cannabis businesses are required to pay a base conversion fee to transition to the adult-use market, with fees ranging from \$100,000 for manufacturing and retail permits to \$200,000 for cultivation permits. The fee structure is expected to raise more than \$4 million, which is earmarked for supporting social equity operators in the state.

Despite these challenges, Delaware's OMC remains committed to ensuring that the adult-use cannabis market proceeds in an equitable manner, though the timeline for this remains unclear. As of now, it appears the state's adult-use market will not be launching in spring 2025 as originally planned, and stakeholders are left awaiting further developments.

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