

# HOUSE . . . . . No. 4168

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## The Commonwealth of Massachusetts

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PRESENTED BY:

***Hannah Kane***

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*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act to enhance enforcement against unlicensed marijuana operators.

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PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Hannah Kane</i>	<i>11th Worcester</i>	<i>4/8/2019</i>
<i>Kimberly N. Ferguson</i>	<i>1st Worcester</i>	<i>4/11/2019</i>
<i>William L. Crocker, Jr.</i>	<i>2nd Barnstable</i>	<i>4/12/2019</i>
<i>Colleen M. Garry</i>	<i>36th Middlesex</i>	<i>4/11/2019</i>
<i>Susan Williams Gifford</i>	<i>2nd Plymouth</i>	<i>4/12/2019</i>
<i>Bradley H. Jones, Jr.</i>	<i>20th Middlesex</i>	<i>4/17/2019</i>
<i>Dean A. Tran</i>	<i>Worcester and Middlesex</i>	<i>4/12/2019</i>

# HOUSE . . . . . No. 4168

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By Mrs. Kane of Shrewsbury, a petition (subject to Joint Rule 12) of Hannah Kane and others relative to unlicensed marijuana operators. Cannabis Policy.

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## The Commonwealth of Massachusetts

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In the One Hundred and Ninety-First General Court  
(2019-2020)  
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An Act to enhance enforcement against unlicensed marijuana operators.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1           SECTION 1. Chapter 64N of the General Laws is hereby amended by inserting after  
2           section 5 the following section:-

3           Section 6. Multi-Agency Illicit Marijuana Task Force.

4           (a) There shall be a multi-agency illicit marijuana task force, the purpose of which shall  
5           include, but not be limited to, coordinating efforts to combat illicit marijuana cultivation,  
6           processing, manufacturing and distribution. The task force shall seek to foster compliance with  
7           the state's marijuana licensing and taxation laws in order to maximize state and local tax  
8           revenues and ensure appropriate public health and public safety protections, including, but not  
9           limited to, reducing youth usage rates. The task force shall support, coordinate, and conduct  
10          targeted investigations and enforcement actions against illicit marijuana operators. The task force  
11          shall be co-chaired by the the commissioner of revenue or a designee and the colonel of the state  
12          police or a designee and shall also consist of: the attorney general or a designee; executive

director of the cannabis control commission or a designee, the state treasurer or a designee; the commissioner of public health or a designee; the commissioner of agriculture or a designee; and two municipal chiefs of police appointed by the governor.

(b) The task force shall:

(i) accept referrals of potential investigative interest from state and municipal law enforcement, the department of public health, the department of agriculture, local boards of health, other state and municipal agencies and the general public;

(ii) facilitate timely information sharing among state agencies in order to advise or refer matters of potential investigative interest;

(iii) identify where illicit marijuana cultivation, processing, manufacturing, and distribution is most prevalent and target task force members' investigative and enforcement resources against such illicit marijuana operators, including through the formation of joint investigative and enforcement teams;

(iv) assess existing investigative and enforcement methods in the commonwealth and in other jurisdictions in order to develop and recommend strategies to improve such methods;

(v) solicit the cooperation and participation of other relevant enforcement agencies and establish procedures for referring cases to prosecuting authorities as appropriate; and

(vi) Provide reports of affirmative investigative findings to the department of revenue for the purpose of directing the commissioner of revenue to levy a forgone revenue tax assessment in accordance with chapter 64O on illegal marijuana operators. At a minimum, such reports shall include a summary of investigative findings, the total estimated forgone revenue numerically

expressed as the total aggregated percentage of all taxes established by chapter 64N multiplied by the total value of the identified marijuana or marijuana products illegally cultivated, processed, manufactured or distributed, and any other information necessary for the commissioner of revenue to levy a forgone revenue tax assessment in accordance with chapter 64O. The total value of the identified marijuana or marijuana products illegally cultivated, processed, manufactured or distributed shall be determined using the median sales price, as defined in section 1 of chapter 64H, of all of equivalent marijuana or marijuana products sold by marijuana retail establishments licensed under chapter 94G.

(c) The task force shall meet at times and places to be determined by the co-chairs and may establish working groups, meetings, forums or any other activity deemed necessary to carry out its mandate. Due to the sensitive, investigative nature of the task force's work, meetings of the task force shall not be subject to chapter 30A, and all materials other than the Task Force's annual report required by subsection (d) shall not, unless otherwise determined by the co-chairs be considered a public record as defined by clause Twenty-sixth of section 7 of chapter 4.

(d) The task force shall submit a report not later than March 1 of each year on the results of its findings, activities and recommendations from the preceding year with the clerks of the senate and house of representatives, the chairs of the joint committee on revenue, the chairs of the senate and house committees on ways and means, the chairs of the joint committee on marijuana policy, and the chairs of the joint committee on public safety and homeland security. The annual report shall include, but not be limited to: (i) a description of the task force's efforts and activities during the previous year; (ii) identification of any administrative or legal barriers, including any barriers to multi-agency action or enforcement efforts; (iii) the total of forgone revenue tax assessments levied by the commissioner of revenue in the previous year; (iv) the

total revenue received by the commonwealth as a result of forgone revenue tax assessments in the previous fiscal year; and (v) proposed legislative or regulatory changes necessary to strengthen operations and enforcement efforts and reduce or eliminate any impediments to such efforts.

SECTION 2. The General Laws are hereby amended by inserting after chapter 64N the following chapter:-

Chapter 64O: Forgone Tax Revenue Assessment on Illegal Marijuana Operators

Section 1. Definitions.

As used in this chapter, the following words shall, unless the context clearly requires otherwise, have the following meanings:

"Commissioner", the commissioner of revenue.

"Forgone tax revenue assessment", the tax assessment to be levied by the commission on illegal marijuana operators identified and reported to the commissioner by the task force. Such assessments shall equal the total estimated forgone tax revenue, trebled.

"Illegal marijuana operator", a person or entity identified by the task force who announces, establishes, maintains, operates, or holds themselves out as a marijuana establishment without a valid license issued by the commission authorizing such person or entity to engage in such activities as established by chapter 94G.

"Interest", interest on past-due forgone tax revenue assessments will be assessed at a monthly rate of .5%. Interest will be computed on the total forgone tax revenue assessment owed on the assessment date. In the event that the commissioner makes an adjustment of the total

78 forgone tax revenue assessment owed after the assessment date, the commissioner shall reassess  
79 the interest based on the adjustment in the amount of forgone tax revenue assessment owed.  
80 Interest will not be assessed on interest or penalties.

81 "Marijuana," "Marijuana establishment," and "Marijuana product", as defined in section 1  
82 of chapter 94G.

83 "Penalties", penalties on past-due forgone tax revenue assessments will be assessed at a  
84 monthly rate of .5%. Penalties will be computed on the total forgone tax revenue assessment  
85 owed on the assessment date. In the event that the commissioner makes an adjustment of the  
86 total forgone tax revenue assessment owed after the assessment date, the commissioner shall  
87 reassess the penalties based on the adjustment in the amount of forgone tax revenue assessment  
88 owed. Penalties will not be assessed on interest or penalties.

89 "Sales price", as defined in section 1 of chapter 64H.

90 "Task force", the multi-agency illicit marijuana task force as established by section 6 of  
91 chapter 64N.

92 "Total estimated forgone tax revenue", the total estimated forgone revenue issued to the  
93 commissioner by the task force as the the total value of all illegally cultivated, processed,  
94 manufactured or distributed marijuana or marijuana products identified multiplied by the  
95 maximum tax rate established under chapter 64N . Said total value shall equal the median sales  
96 price of all of equivalent marijuana or marijuana products sold by marijuana retail establishments  
97 licensed under chapter 94G.

98 Section 2. Forgone tax revenue assessment.

(a) Upon receipt of a report of affirmative investigative findings from the task force, the commissioner shall levy a forgone tax revenue assessment on the illegal marijuana operator and shall notify such an operator of the amount of the assessment and the requirements of this section. The illegal marijuana operator shall have up to 90 days to pay such assessment before the department shall begin to assess interest and penalties. Such interest and penalties shall be assessed monthly. Not less than annually, the commissioner shall notify the illegal marijuana operator of interest and penalties owed on past-due forgone tax revenue assessments.

(b) No enforcement action taken under this section shall be construed to limit any other criminal or civil liability of any illegal marijuana operator.

(c) Assessments collected under this section shall be deposited into the marijuana regulation fund established in section 14 of chapter 94G.

SECTION 3. Clause (vii) of subsection (a ½) of section 4 of chapter 94G of the General Laws, as appearing in the 2016 Official Edition, is hereby amended by striking out the words “or licensee;” and inserting in place thereof the following:-or licensee, including but not limited to information on sales prices by marijuana or marijuana product type as necessary for the commission to support the multi-agency illicit marijuana task force established by chapter 64N in quantifying total estimated forgone revenue.

SECTION 4. Section 5 of said chapter 94G, as so appearing, is hereby amended by inserting the following subsection:-

(c) Notwithstanding any general or special law to the contrary, the commission shall not find unsuitable for licensure or registration any person on the sole basis of receipt of a notice of forgone tax revenue assessment levied by the commissioner of revenue made pursuant to chapter

64O; provided however, the commission shall not license or register such persons until such assessments, including all penalties and interest accrued and recorded by the department are paid in full.

SECTION 5. Said chapter 94G of the General Laws is hereby amended by inserting after Section 13 the following section:-

Section 13A. Operation of an Unlicensed Marijuana Establishment

(a) No person or entity shall announce, establish, maintain, operate, or hold oneself out as a marijuana establishment without a valid license issued by the commission authorizing such person or entity to engage in such activities. Each violation of this section shall be referred to the task force established by chapter 64N and, at the direction of the task force, may be punishable by a forgone tax revenue assessment levied by the commissioner of revenue pursuant to chapter 64O.

SECTION 6. Section 14 of said chapter 94G, as so appearing, is hereby amended by inserting after subsection (b) the following subsection:-

(c) Notwithstanding subsection (b), deposits to the fund from forgone tax revenue assessments levied by the commissioner of revenue under chapter 64O shall not be subject to further appropriation and shall be expended by the commission in equal part for the following three purposes only: (i) municipal law enforcement marijuana training, including providing funds to municipal law enforcement departments to defray costs associated with personnel coverage for the purposes of allowing staff participation in such marijuana trainings, (ii) programming for restorative justice, jail diversion, workforce development, industry specific technical assistance, and mentoring services for economically-disadvantaged persons in communities



143 disproportionately impacted by high rates of arrest and incarceration for marijuana offenses  
144 pursuant to chapter 94C, and (iii) substance use prevention and treatment and substance use early  
145 intervention services in a recurring grant for school districts or community coalitions who  
146 operate on the strategic prevention framework or similar structure for youth substance use  
147 education and prevention. Deposits and expenditures of money collected under this section shall  
148 be separately accounted for, and shall be separately reported on in reports required under section  
149 63 of chapter 55 of the acts of 2017.