

SENATE No. 76

The Commonwealth of Massachusetts

PRESENTED BY:

Michael O. Moore

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.

PETITION OF:

NAME:

DISTRICT/ADDRESS:

Michael O. Moore

Second Worcester

Hannah Kane

11th Worcester

SENATE No. 76

By Mr. Moore, a petition (accompanied by bill, Senate, No. 76) of Michael O. Moore and Hannah Kane for legislation to enhance enforcement against unlicensed marijuana operators. Cannabis Policy.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE [Refile Branch], NO. OF 2019-2020.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Second General Court
(2021-2022)**

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

16 (b) The task force shall:

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

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

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

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

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

30 (vi) provide reports of affirmative investigative findings to the department of revenue for
31 the purpose of directing the commissioner of revenue to levy a forgone revenue tax assessment
32 in accordance with chapter 64O on illegal marijuana operators. At a minimum, such reports shall
33 include a summary of investigative findings, the total estimated forgone revenue numerically
34 expressed as the total aggregated percentage of all taxes established by chapter 64N multiplied
35 by the total value of the identified marijuana or marijuana products illegally cultivated,
36 processed, manufactured or distributed, and any other information necessary for the
37 commissioner of revenue to levy a forgone revenue tax assessment in accordance with chapter
38 64O. The total value of the identified marijuana or marijuana products illegally cultivated,
39 processed, manufactured or distributed shall be determined using the median sales price, as
40 defined in section 1 of chapter 64H, of all of equivalent marijuana or marijuana products sold by
41 marijuana retail establishments licensed under chapter 94G.

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

48 (d) The task force shall submit a report not later than March 1 of each year on the results
49 of its findings, activities and recommendations from the preceding year with the clerks of the
50 senate and house of representatives, the chairs of the joint committee on revenue, the chairs of
51 the senate and house committees on ways and means, the chairs of the joint committee on
52 marijuana policy, and the chairs of the joint committee on public safety and homeland security.

53 The annual report shall include, but not be limited to: (i) a description of the task force’s efforts
54 and activities during the previous year; (ii) identification of any administrative or legal barriers,
55 including any barriers to multi-agency action or enforcement efforts; (iii) the total of forgone
56 revenue tax assessments levied by the commissioner of revenue in the previous year; (iv) the
57 total revenue received by the commonwealth as a result of forgone revenue tax assessments in
58 the previous fiscal year; and (v) proposed legislative or regulatory changes necessary to
59 strengthen operations and enforcement efforts and reduce or eliminate any impediments to such
60 efforts.

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

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

64 Section 1. Definitions.

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

67 "Commissioner", the commissioner of revenue.

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

71 “Illegal marijuana operator”, a person or entity identified by the task force who
72 announces, establishes, maintains, operates, or holds themselves out as a marijuana

73 establishment without a valid license issued by the commission authorizing such person or entity
74 to engage in such activities as established by chapter 94G.

75 “Interest”, interest on past-due forgone tax revenue assessments will be assessed at a
76 monthly rate of .5%. Interest will be computed on the total forgone tax revenue assessment owed
77 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.

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

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

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

110 SECTION 3. Clause (vii) of subsection (a ½) of section 4 of chapter 94G of the General
111 Laws, as appearing in the 2018 Official Edition, is hereby amended by striking out the words “or
112 licensee;” and inserting in place thereof the following:-or licensee, including but not limited to
113 information on sales prices by marijuana or marijuana product type as necessary for the
114 commission to support the multi-agency illicit marijuana task force established by chapter 64N
115 in quantifying total estimated forgone revenue.

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

118 (c) Notwithstanding any general or special law to the contrary, the commission shall not
119 find unsuitable for licensure or registration any person on the sole basis of receipt of a notice of
120 forgone tax revenue assessment levied by the commissioner of revenue made pursuant to chapter
121 64O; provided however, the commission shall not license or register such persons until such
122 assessments, including all penalties and interest accrued and recorded by the department are paid
123 in full.

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

126 Section 13A. Operation of an Unlicensed Marijuana Establishment

127 (a) No person or entity shall announce, establish, maintain, operate, or hold oneself out as
128 a marijuana establishment without a valid license issued by the commission authorizing such
129 person or entity to engage in such activities. Each violation of this section shall be referred to the
130 task force established by chapter 64N and, at the direction of the task force, may be punishable
131 by a forgone tax revenue assessment levied by the commissioner of revenue pursuant to chapter
132 64O.

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

135 (c) Notwithstanding subsection (b), deposits to the fund from forgone tax revenue
136 assessments levied by the commissioner of revenue under chapter 64O shall not be subject to

137 further appropriation and shall be expended by the commission in equal part for the following
138 three purposes only: (i) municipal law enforcement marijuana training, including providing funds
139 to municipal law enforcement departments to defray costs associated with personnel coverage for
140 the purposes of allowing staff participation in such marijuana trainings, (ii) programming for
141 restorative justice, jail diversion, workforce development, industry specific technical assistance,
142 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.