

11 Easy Steps to Start a Cannabis Business Entity in California*

Starting a New Cannabis Business Checklist

by Jonathan Storper, Esq.

1. Choose an Entity Type & Business Name

Determine the right type of entity for your business and the name that you wish to give your business. Your choice of entity type will have an effect on how your business and its participants are taxed; your ability to transfer assets and ownership interests; manage and run the business; your personal liability; and possibly the type of license that you may obtain from state or local agencies.

2. Register Your Business with the Secretary of State

If the business entity is of a type that must be registered with the California Secretary of State, you must file organizational documents with the California Secretary of State and pay the appropriate fee(s). Corporations (including for profit and nonprofit), Limited Liability Companies (LLCs), Limited Partnerships (LPs), Limited Liability Partnerships (LLPs) and Cannabis Cooperative Associations (CCA) must file. Forms with instructions and fee information for most entity types are available on the California Secretary of State website at lcbizfile.sos.ca.gov. However, these forms generally are insufficient for structuring business that scale and assistance from competent legal and tax counsel is recommended in order to appropriately structure a cannabis business.

3. Register a Fictitious Business Name (If Necessary)

If your business is not doing operating under its legally registered name, it may file a fictitious business name statement and do business under that fictitious name. A business may choose to conduct business under a name other than its legal name, or it may be required to do business under a different name to obtain business licenses and permits. In California, fictitious business names are filed with the county clerk/recorder where the business is located.

4. Obtain Required City and/or County License, Permit or Other Authorization

Your cannabis business may need necessary licenses to conduct cannabis-related activities. California has a dual licensing system and cannabis businesses will be required to obtain a city, county, or city and county license, permit, or other authorization, before a business can apply for a state license. Check with your local city and county in which the cannabis-related activities will take place to determine what steps your business may need to take to obtain a required license, permit, or other authorization for the cannabis-related activities that your business will be conducting. If a state license is required to operate your cannabis business, the local jurisdiction must also permit the business for it to obtain a state license.

5. Obtain a Seller’s Permit and Cannabis Tax Permit from the California Department of Tax and Fee Administration (If Necessary)

If you sell cannabis or cannabis products, you must register with the California Department of Tax and Fee Administration (CDTFA) for a seller’s permit. Cannabis cultivators, processors, manufacturers, retailers, microbusinesses, and distributors making sales are required to obtain and maintain a seller’s permit as a prerequisite for applying for a license with the California Department of Food and Agriculture, the California Department of Consumer Affairs, or the California Department of Public Health. Distributors of cannabis and cannabis products also must register with the CDTFA for a cannabis tax permit to report and pay two new cannabis taxes to the CDTFA. The cannabis tax permit is in addition to your seller’s permit.

6. Obtain Required State License(s)

If the cannabis-related activities that your business will be engaged in require a state license, you must apply for and obtain any required state license(s) prior to conducting those cannabis-related activities. There are three (3) state agencies charged with licensing cannabis-related activities, each overseeing different cannabis-related activities. Those licensing agencies are as follows:

Bureau of Cannabis Control	CalCannabis Cultivation Licensing Program	Manufactured Cannabis Safety Branch (MCSB)
The Bureau licenses Testing Laboratories, Distributors, Retailers, Micro-Businesses, and processors.	CalCannabis licenses cannabis cultivators and administers the Track-and-Trace system.	MCSB licenses Manufacturers of cannabis products, such as edibles.

7. Employer Responsibilities

If you intend to have employees for your business, you must register your business as an employer and obtain a federal Employer Identification Number (EIN). As an employer, there are obligations to consider such as payroll taxes, wage withholding requirements, matching employer withholding requirements and employee employment eligibility requirements, along with requirements for State Disability (workers’ compensation) Insurance, Unemployment Insurance, and equal employment opportunity.

Additional Resources:

- Internal Revenue Service (IRS)
www.irs.gov/businesses/small-businesses-self-employed/how-to-apply-for-an-ein
- California Franchise Tax Board (FTB)
www.ftb.ca.gov/businesses/filing-information.shtml
- California Employment Development Department (EDD)
www.edd.ca.gov/Payroll_Taxes/Am_I_Required_to_Register_as_an_Employer.htm

8. Tax Information

There are several agencies that administer a variety of taxes for businesses in California, which should be consulted to determine any obligations that your business may have.

Taxing Agency Information and Resources:

- **Internal Revenue Service (IRS)** administers all federal taxes except alcohol, tobacco, and customs duties irs.gov
- **Franchise Tax Board (FTB)** administers two of California's major tax programs essential to our state—Personal Income Tax and Corporation Tax; phone: (800) 852-5711 ftb.ca.gov/cannabis
- **Employment Development Department (EDD)** administers four state payroll taxes—Unemployment Insurance (UI), Employment Training Tax (ETT), State Disability Insurance (SDI), and Personal Income Tax (PIT) http://edd.ca.gov/Payroll_Taxes/Cannabis_Industry_Payroll_Tax_Reporting.htm
- **California Department of Tax and Fee Administration (CDTFA) (formerly BOE)** administers business permits and taxes including Seller's Permits, Sales and Use Taxes, Excise Taxes and other special taxes <http://cdtfa.ca.gov/>
- **California State Board of Equalization (BOE)** reviews and adjusts assessments for property taxes boe.ca.gov
- **California Tax Service Center** is a partnership of tax agencies that have joined together to streamline and improve taxpayer resources and educational programs sponsored by the California Fed State Partnership taxes.ca.gov

9. Ongoing Business Registration Requirements

Every corporation and limited liability company is required to file a Statement of Information with the California Secretary of State within the first 90 days of registering with the California Secretary of State and annually thereafter for California stock corporations (including cannabis cooperative associations) and foreign (formed outside of California) corporations and every two years for California nonprofit corporations and all limited liability companies based on the calendar month of the entity's registration date.

10. Trademarks and Service Marks

Once your service or product is lawfully in use in commerce within California, you may wish to register your trademark or service mark with the California Secretary of State's office. Some may wish to seek federal registration depending on eligibility. A trademark or service mark helps to identify and distinguish the source of the goods or services of one party from those of another and can help protect your brand. For further information including forms, fees, restrictions and registration instructions, please visit the California Secretary of State's Trademark and Service Mark webpage (<http://www.sos.ca.gov/business-programs/ts/>).

11. Insurance

Don't forget to obtain proper insurance coverage for your business. Insurance such as error and omissions, and product liability, directors and officers, cybersecurity, employers liability, should all be considered and discussed with a competent insurance broker. Expect lessors to require payment of lessor's risk insurance coverage as well which was recently approved for issuance by the California Department of Insurance.

Summary

Starting a cannabis business in California is complex. Competent legal counsel should be consulted to assist in structuring and setting up your business.

For more information or if you would like to schedule a consultation, please contact:



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