

## Second Minnesota Adult-Use Marijuana Bill Survives House Committee

Sixteen states, along with the District of Columbia, have now legalized the adult, or recreational, use of marijuana. Unlike many states, including its neighbor, South Dakota, where voters have decided the issue themselves, Minnesota does not have an initiative and referendum process requiring the Minnesota Legislature to propose a constitutional amendment or enact a new law. Accordingly, proponents found a standard bearer in Minnesota State Senator Ann Rest who introduced S.F. 39 in 2019, a bill that would have brought Minnesota into this growing consortium, had it not died in Senate Committee. On February 2, 2021, Minnesota House Majority Leader Ryan Winkler took up the cause and introduced H.F. 600. Similar in many respects to the deceased S.F. 39, H.F. 600 would establish a framework for legal use of recreational marijuana in Minnesota. Having passed through the House Commerce and Finance Policy Committee on February 18, 2021, along a divided 10-7 party-line vote, it appears that Minnesota will be considering legal use of recreational marijuana for the second time in two years.

The push forward on legalization of marijuana in Minnesota follows on the heels of what many observers claim to be the failure of the state's highly restrictive medical marijuana program, requiring multiple legislative amendments since enactment in 2015. Minnesota's legislation was the most restrictive of its kind in the nation, authorizing use to a very limited set of nine medical conditions (largely, extremely rare conditions or life-threatening ones in which the patient was confronting end-of-life circumstances) and only for those patients who received a recommendation from a Minnesota-licensed physician certified by the state's medical board. Additionally, Minnesota has licensed only two manufacturers and dispensary operators (Leafline Labs and Vireo Health of Minnesota) (by contrast, Ohio launched its medical marijuana program with 24 cultivator licenses and 60 dispensary licenses with no requirement that a cultivator also be in the business of retail dispensing). To further compound matters, Minnesota's medical marijuana law prohibits a patient from purchasing product from other medical marijuana programs in other states or from other sources and includes a blanket prohibition of edible products.

Critics claim that the program serves few people and is cost prohibitive for most. In fact, after nearly six years in existence, only 30,739 are currently active in the state's registry (by contrast, Ohio's medical marijuana program reports 148,861 active patients after just two years of operation, and New Jersey reports 104,253 active patients in the same time period as Minnesota). With legalization in Minnesota, an adult resident could now (a) possess up to 1.5 ounces of marijuana in public and up to 10 pounds in a private residence, (b) possess concentrates and marijuana-derived products, subject to differing quantity limits, and (c) grow up to eight marijuana plants within a private residence.

The bill provides for the licensing and regulation of recreational marijuana cultivating, processing, transporting, and selling in either direct sales operations or by wholesaling. It contemplates issuing a limited number of operating licenses through an application process that prioritizes "social equity applicants" and certain "craft" or "micro" operations by minimizing barriers of entry into the industry. A social equity applicant is defined as (a) a military service veteran that lost honorable status following a marijuana-related criminal offense or (b) a Minnesota resident who, during the preceding five years, lived in an area in which the most recent U.S. census data reveals either (i) the poverty rate was 20 percent or more in such area or (ii) the median family income did not exceed 80 percent of the area's median income.

In addition to licensing and legalization, the bill also seeks to redress inequities by offering grants for engagement and assistance to marijuana entrepreneurs and providing new criminal record expungement options for those convicted of marijuana possession crimes. Here, expungement of



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criminal records would be automatic for misdemeanor possession convictions without any requirement that the convicted person petition the court for relief. The bill authorizes creation of a special expungement review board to review felony marijuana possession cases.

Licensed operators would be eligible for business expense deductions at the state level, which deductions are currently prohibited at the federal level under Section 280E of the Internal Revenue Code. The ability of a licensed operator in Minnesota to deduct against income qualifying business expenses otherwise prohibited under federal tax law is an important improvement over current practice and should help fledgling operators survive the startup challenge. Further, the bill would generate revenue for the state through a 10 percent tax upon gross retail sales and a 10 percent tax on marijuana used or stored, but not otherwise sold at the retail level, if obtained other than from a retailer or microbusiness that paid the tax. The allure of tax revenue created by the bill might be rooted in real world experience, as Colorado now reports the generation of \$1.6 billion in taxes on nearly \$10 billion in total sales since 2014. Colorado collects a 2.9 percent sales tax from both medical and recreational marijuana sales and a 15 percent excise tax on retail marijuana, suggesting that Minnesota's taxation could be similarly profitable for the state, all things being equal.

A copy of H.F. 600 can be [found here](#).

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**Cozen O'Connor will continue to monitor H.F. 600 and related developments as they occur.**

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DISCLAIMER: Cannabis is still classified as a Schedule I controlled substance by the U.S. Drug Enforcement Agency, and as such it remains a federal crime to grow, sell, and/or use cannabis. Any content contained herein is not intended to provide legal advice to assist with violation of any state or federal law.