

Cannabis Legalization Sweeps the United States

While the votes are still being counted for the presidential election, the results are in for cannabis ballot initiatives. Voters around the country voted in favor of legalizing recreational and medicinal cannabis in each state that had a ballot initiative related to cannabis. Fifteen states now permit recreational use of cannabis within their borders.

The new rules are an economic omen. States that legalized cannabis in one form or another typically impose an excise or sales tax on retail sales of the products, which could generate tens of millions of dollars of needed revenue for states facing budget shortfalls due to the coronavirus pandemic. The new cannabis markets also have the potential to create jobs and to help reform the criminal justice system with measures to reduce prosecution and incarceration for cannabis-related offenses. These are the new programs.

Recreational Cannabis

New Jersey

Public Question No. 1 legalized the possession and use of recreational cannabis for adults who are at least 21 years old, and is anticipated to create one of the largest cannabis markets in the country. The Cannabis Regulatory Commission, which is the state agency that oversees New Jersey's medicinal cannabis program, will also regulate recreational cannabis use in the state. A 6.625 percent sales tax will be imposed, and no other state taxes may be applied (though additional local taxes may apply), which positions New Jersey to have one of the lowest state tax rates to be applied to cannabis in the country.

New Jersey's law will take effect January 1, 2021. The state attorney general has cautioned residents that possessing or using cannabis within the scope of the new law will remain illegal until the law goes into effect.

New Jersey's recreational cannabis program puts pressure on New York and Pennsylvania to follow suit. Both Governor Tom Wolf of Pennsylvania and Governor Andrew Cuomo of New York support creating similar programs. If passed, they would help keep customers — and revenue — within their borders and could bring criminal justice reform for related offenses. For more on Governor Wolf's proposed program, see our [previous Alert](#).

Arizona

Proposition 207 legalized the possession and use of recreational cannabis for adults who are at least 21 years old and permits residents to grow their own cannabis with up to six plants at their residences. The Arizona Department of Health Services will regulate the new program. A 16 percent excise tax on sales of recreational cannabis will be imposed, possibly in addition to transaction privilege tax and use tax. In addition, anyone convicted of specific crimes related to possession, consumption, cultivation, and transportation of cannabis may petition for the expungement of their criminal record starting on July 12, 2021.

Arizona has an existing medicinal cannabis program, and the legalization of recreational cannabis evidences the gradual shift in public approval of cannabis. Proposition 207 was passed with almost 60 percent of the vote, while Arizona's 2016 attempt to legalize recreational was narrowly defeated with just over 51 percent of voters voting against it.

Montana

Initiative I-190 legalized the possession and recreational use of one ounce or less of cannabis or 8



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grams or less of cannabis concentrate for adults who are at least 21 years old. Residents would also be able to grow up to four cannabis plants at their residences. The Montana Department of Revenue will regulate the new program, and will be accepting applications for providers and dispensaries by January 1, 2022. A 20 percent tax would be imposed on sales of recreational cannabis. In addition, people serving cannabis-related sentences that would no longer be crimes under the new law or would carry a lesser punishment may request resentencing or expungement.

Medicinal Cannabis

Mississippi

Despite opposition from Governor Tate Reeves and State Health Officer Dr. Thomas Dobbs, 74 percent of the electorate in Mississippi voted to pass Initiative 65, which legalizes the use of medical cannabis by people with “debilitating medical conditions” and allows for qualifying patients to possess up to 2.5 ounces of marijuana per two week period. To qualify for a medical marijuana card in Mississippi, a person must receive a physician diagnosis of one of 22 identified medical conditions. In addition, Initiative 65 allows health care providers to prescribe medical cannabis for patients who suffer from “another medical condition of the same kind or class to those above and for which a physician believes the benefits of using medical marijuana would reasonably outweigh potential risks.” The Mississippi Secretary of State’s Office has 30 days after Election Day to officially announce the results of the vote, at which point Initiative 65 will become part of the state constitution.

Like New Jersey’s recreational cannabis program, Mississippi’s program does not go into effect right away. The state’s cannabis program will be regulated by the Mississippi State Department of Health, which must create applicable rules after the law goes into effect in July 2021. Medical cannabis patient cards must be issued no later than August 15, 2021. Residents should be cognizant that possessing, using, or distributing cannabis as authorized under the new law before it goes into effect is still illegal under state law.

South Dakota

On election day, South Dakota voters legalized both recreational and medicinal cannabis. Measure 26 establishes a medical cannabis program and registration system for patients with qualifying health conditions. The measure passed with a landslide vote of approximately 70 percent in favor of the program, in a sharp contrast to the state’s rejection of medicinal cannabis four years ago. South Dakota now joins neighboring states in legalizing marijuana for several qualifying medical conditions. Under the measure, those with delineated “debilitating medical conditions” are allowed to possess up to three ounces of marijuana.

Passing by a smaller margin, Amendment A legalizes the possession and use of recreational cannabis for adults who are at least 21 years old. Amendment A permits local governments to ban cannabis cultivators, testing facilities, wholesalers, or retail stores from operating within their limits; however, residents who live in a jurisdiction without licensed retail stores are permitted to grow up to three plants at their home. Amendment A will impose a 15 percent excise tax on marijuana sales that will primarily be split between public schools and the state’s general funds, with a certain percent also being used to fund the costs of implementing the amendment.

On the Horizon

While Pennsylvania and New York may likely be the next states to enact broader cannabis laws, other states are likely not far behind. Connecticut Governor Ned Lamont supports expanding the state’s cannabis program, and proposed Connecticut Bill No. 16 could create a recreational cannabis program for adults who are at least 21 years old and implement related criminal justice reforms. The combination of budget shortfalls and budding markets around them may be the impetus needed to push Connecticut and other states to move quickly to create similar programs.

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.

