

Practice Update

Cannabis Legalization is the Big Winner on Election Day

November 5, 2020

Election Day 2020 proved that marijuana is no longer a partisan issue, with adult-use and medical marijuana ballot measures passing by overwhelming majorities in both red and blue states. Every state that had a marijuana initiative on their ballot was approved by that state's voters. New Jersey, Arizona, and Montana all legalized adult-use (or recreational) cannabis; while Mississippi voters approved medical marijuana. And, in a historic vote, South Dakota voters approved both medical and adult-use cannabis measures. With the passage of these cannabis measures, over one-third of Americans will now live in a state that permits adult-use marijuana. Additionally, including low-THC/high-CBD states like Georgia and Texas, almost every state in the country permits cannabis for medical purposes.

Here is a look at the marijuana ballot initiatives that passed.

In Arizona, approximately 60 percent of voters approved Proposition 207, which allows adults 21 and older to purchase and possess up to 1 ounce of cannabis, as well as to grow up to 6 plants at home for personal use. Arizona's adult-use marijuana program will be regulated by the Arizona Department of Health, which already oversees the state's medical marijuana program. Under Prop 207, Arizona must launch its adult-use program by June 1, 2021. Interestingly, Prop 207 will keep Arizona's

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vertical integration requirement intact and will require the Department of Health to issue licenses to businesses to cultivate, process, and dispense adult-use cannabis. The licensed medical marijuana operators in Arizona will have an advantage in that they will be considered early applicants to these new licenses. Furthermore, Prop 207 will require the state to impose a 5.6 percent sales tax and a 16 percent excise tax on adult-use cannabis, with a portion of the proceeds required to be used to fund public health, expungement efforts, nonprofit services, and social equity efforts. Some believe Arizona's adult-use program could result in almost \$300 million in sales in 2021.

After years of trying, approximately 67 percent of New Jersey voters approved Public Question No. 1, a ballot referendum to legalize adult-use cannabis for adults 21 and older. Unlike Arizona's Prop 207, New Jersey's adult-use ballot initiative did not lay out a regulatory framework for New Jersey to implement adult-use marijuana cultivation, processing or sales. New Jersey's Cannabis Regulatory Commission, which was first established to oversee the state's medical marijuana program, will also be responsible for regulating the state's adult-use marijuana program. All adult-use marijuana sales would be subject to the state's sales tax. The amendment takes effect on January 1, 2021; however, lawmakers must first legislatively determine details for the program, which includes but is not limited to restrictions and regulations, as well as the licensing process. New Jersey Governor, Phil Murphy, has been a strong proponent of Public Question No. 1, and has indicated he would like to see the New Jersey Legislature immediately take up legislation to implement the referendum. New Jersey's adult-use program will not impact the state's medical marijuana program and is estimated to result in more than \$350 million in sales in 2021.

Approximately 57 percent of Montana voters approved MT Initiative 190 and MT Constitutional Initiative 118, a package of referendums to legalize

adult-use marijuana cultivation, production, and sale to adults 21 and older. The referendums will take effect on January 1, 2021, and will immediately permit adults 21 or older to possess up to 1 ounce of cannabis flower and up to 8 grams of concentrates. Additionally, Montana will now permit residents to possess up to 4 mature plants and 4 seedlings per individual (with a maximum of 8 plants per household) for home grow/ personal consumption purposes. The Montana Legislature will now be tasked with implementing regulations, restrictions, and licensure procedures. Additionally, adult-use cannabis will be taxed at a flat rate of 20 percent and there will be a 1-year moratorium on new licenses for out of state companies. Many estimate adult-use sales will not begin until January of 2022.

South Dakota voters made history by overwhelmingly approving ballot measures to legalize both medical and adult-use marijuana. South Dakota Amendment A, which was approved with approximately 53 percent of the vote, will create a taxed and regulated adult-use cannabis market for adults 21 or older. The adult-use initiative takes effect July 1, 2021, and requires the state legislature to adopt rules and regulations for the adult-use program, including licensure requirements. Adult-use sales of cannabis will have a 15 percent excise tax imposed with proceeds being used to fund implementation of the cannabis program. Simultaneous with passage of adult-use in South Dakota, approximately 70 percent of voters approved medical marijuana in the state. Under the medical marijuana initiative, the state Health Department has 120 days to enact program rules, including regulations and licensure requirements for the cultivation, processing, and sale of medical marijuana to patients suffering from various chronic or debilitating diseases or medical conditions.

In one of the clearest indications that cannabis legalization efforts are agnostic to political ideology, approximately 74 percent of Mississippi voters approved Initiative 65, which legalizes medical

marijuana in the state. Under Initiative 65, the Mississippi Department of Health will be responsible for developing regulations for the program by July 1, 2021, and issuing approved patient cards by August 15, 2021. The initiative approves medical marijuana use for Mississippi residents who have at least 1 of 22 qualifying conditions; such as cancer, ALS, epilepsy, Parkinson's, chronic pain and post-traumatic stress disorder, and others. Additionally, Initiative 65 contained a number of other provisions that will establish the regulatory framework to implement the state's medical marijuana program.

Akerman has a number of qualified and knowledgeable professionals ready to assist you with any of your cannabis-related needs. If you have any questions regarding these new initiatives or anything related to an adult-use or medical marijuana program anywhere in the United States, please don't hesitate to contact us.

Disclaimer

Possessing, using, distributing, and/or selling marijuana or marijuana-based products is illegal under federal law, regardless of any state law that may decriminalize such activity under certain circumstances. Although federal enforcement policy may at times defer to states' laws and not enforce conflicting federal laws, interested businesses and individuals should be aware that compliance with state law in no way assures compliance with federal law, and there is a risk that conflicting federal laws may be enforced in the future. No legal advice we give is intended to provide any guidance or assistance in violating federal law.

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