

Ohio Legalizes Adult-Use Marijuana

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On November 7, 2023, voters in Ohio approved [Ohio Issue 2, the Marijuana Legalization Initiative](#) (the Initiative), which legalizes marijuana for recreational use in Ohio. Among its key provisions, the Ohio Initiative creates a new Division of Cannabis Control (DCC) within the Ohio Department of Commerce (DOC) to regulate marijuana within the state. Individuals over the age of 21 will be permitted to purchase and possess up to 2.5 ounces of marijuana and will pay a 10% sales tax. Individuals will also be allowed to grow up to six plants at home, with a maximum of 12 plants allowed collectively under one roof. Below, we provide a high-level overview of the Initiative following this historic Ohio vote.

Legislative Oversight

The Initiative is not a constitutional amendment, which is one method by which some states have removed their prohibitions on marijuana and authorized a regulated market. Rather, it is an initiated statute, which means it is a new statute (or state law) that is subject to change by the Ohio legislature, just like any other state statute. That means that the legislature will have the power to make significant changes to the Initiative, both immediately after voters pass it and also far off in the unforeseeable future.

Such changes may be in store for Ohio's new Initiative. In a speech given on the Ohio Senate floor in mid-October, Senate President Matt Huffman (R) stated as much: "This initiated statute is coming right back before this body." In a follow-up interview with reporters, Huffman clarified that he would "advocate for reviewing it and repealing things or changing things that are in [the Initiative]." In other words, if the Ohio legislature does not repeal the voter-initiated statute completely, it may still push back on the new law by implementing timelines or underfunding the DCC.

Regulatory Oversight

Under the Initiative, the DCC has the authority to license and regulate, as well as investigate and penalize, cannabis operators, testing labs, and individual persons. Specifically, the DCC will undertake the following:

- Establish application, license, and renewal standards and procedures, plus fees
- Define processes for fines, suspensions, and revocation of licenses
- Outline requirements for cannabis testing, insurance, surety bonds, records, security, surveillance, and auditing standards
- Determine penalties
- Establish training standards

- Establish standards for consumer delivery, mobile and online ordering, packaging and labeling, and administering the cannabis social equity and jobs program
- Establish a THC content limit, which is no less than 35% THC for plant material and 90% THC for extracts (although the DCC can also increase or eliminate the content limits by amending the statute, as well)

License Types

Before diving into the new license types included in the Initiative, it is important to note the types of licenses that exist under Ohio's current law. Below are the existing license types under Ohio's medical marijuana control program (MMCP), according to the state's MMPC [website](#):

Cultivators

The DOC presently licenses and regulates medical marijuana cultivators. Level I cultivators are permitted to operate an initial marijuana cultivation area up to 25,000 square feet. Level II cultivators are permitted to operate an initial marijuana cultivation area of 3,000 square feet. Licensees may submit an expansion request pursuant to the cultivator rules.

Processors

The DOC also presently licenses and regulates medical marijuana processors. A processor manufactures medical marijuana products. At this time, there are three different types of processors in Ohio: standalone, vertically integrated facilities, and a plant-only processor, which is a cultivator that distributes plant material directly to dispensaries.

Dispensaries

The State of Ohio Board of Pharmacy presently licenses and regulates medical marijuana dispensaries, which are retail stores that sell cannabis to customers. The current application period for dispensaries is closed. For announcements of new application periods, sign up for updates on the MMCP homepage.

Established medical marijuana cultivators will have an initial opportunity to add adult-use dispensaries and to increase the square footage of their cultivation areas. This specific text from the Initiative clarifies the interplay between the Initiative's adult-use program and the existing MMPC:

[The Initiative] requires that, within nine months of the effective date of the Act, the following licenses be issued by the [DCC] if the application is in compliance with the Act and if an applicant, or their same owners, have a certificate of operation, or a medical provisional license that converts to a certificate of operation within two years, under the MMPC, as of the effective date of the Act:

- A dispensary shall be issued an adult-use dispensary license for the current location of the dispensary
- A level I cultivator shall be issued three adult-use dispensary licenses at locations designated in a license application and one level I adult-use cultivator license for the current location of the level I cultivation facility

- A level II cultivator shall be issued one adult-use dispensary license at a location designated in the license application and one level II adult-use cultivator license for the current location of the level II cultivation facility
- A dispensary shall be issued one adult-use dispensary license at a different location as designated in the license application if the dispensary does not have any common ownership or control with any level I adult-use cultivator, level II adult-use cultivator, or adult-use processor license applicant or licensee
- A processor shall be issued under this Chapter one adult-use processor license for the current location of the processor
- A testing laboratory shall be issued under this Chapter one adult-use testing laboratory license for the current location of the testing laboratory

To summarize, under the Initiative, Level I medical marijuana cultivators will be allowed to expand their current facilities to 100,000 square feet of cultivation area, and Level II cultivators will be permitted to expand to 15,000 square feet once an adult-use cultivator license is issued. The DCC could also allow for cultivation. An adult-use Level III cultivator will be allowed up to 5,000 square feet unless expanded by the DCC.

Existing medical marijuana dispensaries could get licensed to sell adult-use products at their current location. Processors could obtain an adult-use license but could not obtain dispensaries. Dispensaries that are not tied to a cultivator or processor could get an additional dispensary location.

While much of the Initiative focuses on allowing medical marijuana operators to enter the adult-use market, it would also grant new licenses to Level III cultivators and dispensaries. The DCC could issue additional adult-use cannabis licenses two years after the first adult-use operator license is issued.

Social Equity

The Initiative creates a cannabis social equity and jobs program, requiring the Ohio Department of Development to certify program applicants based on social and economic disadvantages. For purposes of the Initiative, the term “social disadvantage” means membership in a racial or ethnic minority group, disability status, gender, or long-term residence in an area of high unemployment. The DCC is required to provide preferential treatment for those who qualify for the social equity and jobs program by issuing 40 Level III adult-use cultivator licenses and 50 adult-use dispensary licenses.

Ownership Restrictions

No person will be able to obtain more than eight dispensary licenses, more than one cultivator license, and more than one processor license at one time unless permitted by the DCC. No person will be permitted to have ownership in more than one Level III cultivator license, and no cultivator processor may have ownership or control in a Level III cultivator license.

The Application

An applicant for a cannabis operator license will need to do all of the following:

1. Pass a criminal background check
2. Prove that it has no ownership or investment interest in, or compensation arrangement with, any testing lab or any applicant for a testing lab license
3. Demonstrate that it does not share any corporate officers or employees with any testing lab or any applicant for a testing lab license
4. Prove that the operation is not within five hundred feet of a prohibited facility (e.g., schools, houses of worship)
5. Prove compliance with applicable Ohio tax laws
6. Prove that it meets all other license eligibility conditions established in rules adopted under the Initiative
7. Show that it is not employed by a regulatory body of an Ohio governmental unit and, in that capacity, has significant influence or control, as determined by the DCC, over the ability of the applicant to conduct business in Ohio

The Initiative mandates that the DCC begin accepting applications within six months of the effective date of the Initiative.

The Takeaway

As policies develop, the Initiative may be amended or even repealed by the Ohio legislature. However, given that voters clearly favor legalizing recreational marijuana, it seems unlikely that the legislature would completely undermine the voters. The DCC could also significantly change what adult-use marijuana legalization will look like in Ohio. With all of the uncertainty surrounding the next steps, it may be a while before adult-use marijuana is available in Ohio. We will continue to track changes in Ohio and provide analysis to our readers.

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