

UPDATE ON CANNABIS LEGALIZATION IN OREGON

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Over the last two decades, Oregon has established a substantial, progressive framework for the development of legal medical and adult-use cannabis businesses. After voters passed Measure 91 at the ballot, the Oregon Legislature passed a series of laws to implement legalization in a way that's safe for communities, protects patients' access to medicine, and supports an important emerging business sector that can create good jobs in urban and rural Oregon. This effort has won strong bipartisan support in the Legislature.

This summary describes key aspects of laws we have enacted and what to expect in the coming months.

BACKGROUND

Oregon is now one of four states, in addition to the District of Columbia, where adult-use cannabis is legal. Twenty-three states have legalized medical cannabis.¹ In the November 2016 election, voters in at least ten more states are expected to vote on some form of legalization.²

Oregon legalized medical use of cannabis at the ballot in 1998. Today, over 75,000 Oregonians have medical marijuana cards, and over 300 medical dispensaries operate around Oregon.³ The 1998 vote made Oregon one of the first states to allow legal use of cannabis, and the state's innovation on the issue has continued. In November 2014, 56% of Oregon voters passed Measure 91, which legalizes adult-use of cannabis.⁴

Although cannabis is a Schedule I controlled substance under the federal Controlled Substances Act, the federal government has signaled interest in decreasing efforts to penalize cannabis use. In 2013, the United States Department of Justice issued a memorandum, the [Cole Memo](#), which provides that if a state chooses to legalize cannabis, the federal government will not use its authority to enforce federal laws prohibiting cannabis if the state acts vigorously to prevent drug-related crime, violence, diversion to other states, access by children, and other harms.

Starting in July of 2015, Oregon adults over age 21 could lawfully cultivate up to four plants at home and possess limited amounts of cannabis. The Legislature authorized sales of adult-use cannabis from participating medical dispensaries to begin in October 2015.

¹ Governing.com, Governing Data: State Marijuana Laws Map (2015)

² International Business Times, "Marijuana Legalization 2016: Which States Will Consider Cannabis This Year?" Dec. 30 2015

³ Oregon Health Authority Medical Marijuana Program January 2016 Statistical Snapshot

⁴ Ballotpedia, Oregon Legalized Marijuana Initiative, Measure 91 (2014)

According to ArcView Market Research, the economic value of the legal cannabis sector in the United States was \$5.4 billion in 2015, up from \$4.6 billion in 2014. By 2020, the legal cannabis market is expected to increase to \$21.8 billion, with \$985.2 million of the value originating from legal sales in Oregon.⁵ If legalized nationwide, ArcView predicts the total market value could reach \$36 billion, which would surpass the value of the organic food industry by a few billion dollars.⁶ Oregon's growing conditions and production expertise, refined over more than fifteen years under the Oregon Medical Marijuana Act, help position Oregon to have a strong role in the coming traded sector market.

LEGAL FRAMEWORK

Medical Cannabis in Oregon – Oregon Medical Marijuana Act

In 1998, Oregon voters legalized limited medical use of cannabis. The law, [ORS 475.300](#), allows patients to grow or receive cannabis from designated caregivers to treat medical symptoms. Many Oregonians have found relief from conditions related to epilepsy, chemotherapy, glaucoma, rheumatoid arthritis, post-traumatic stress disorder, and other conditions by using medical cannabis. In 2013, the state adopted [ORS 475.314](#), allowing growers to provide surplus medical cannabis to dispensaries, which may sell it to medical cardholders. As of 2016, Oregon has 376 medical marijuana dispensaries and over 75,000 medical patients registered with the Oregon Health Authority participating in this program.⁷

Adult-use Cannabis – Measure 91

[Measure 91](#), which the voters passed in November 2014, allows adults over age 21 to possess limited quantities of cannabis and to grow up to four plants at home. Measure 91 imposed a tax on the sale of adult-use cannabis and provided for distribution of tax proceeds to support education, public safety, and addiction prevention and recovery services, among other uses. While legalizing adult-use cannabis, the ballot measure included sideboards that allowed employers and landlords to continue prohibiting cannabis use among employees and tenants. Measure 91 was drafted to mirror the regulatory system of Oregon's liquor laws, directing the Oregon Liquor Control Commission (OLCC) to develop rules and licenses for the new recreational cannabis industry.

Legislative Action in the 2015 and 2016 Legislative Sessions

In the last two legislative sessions, the Oregon Legislature has worked to support safe, responsible implementation of legal cannabis in Oregon. The Legislature's work, developed largely in the Joint Committee on Marijuana Legalization, but with

⁵ ArcView Market Research, "The State of Legal Marijuana Markets, 4th Edition" Feb. 1, 2016

⁶ ArcView Market Research, "The State of Legal Marijuana Markets, 3rd Edition" Jan. 2015

⁷ Oregon Health Authority Medical Marijuana Program January 2016 Statistical Snapshot

important leadership from other committees and legislators, was shaped by a few key principles:

- Implement the will of the voters.
- Keep Oregonians safe as the state transitions to legalization.
- Create a regulatory framework that allows legal cannabis businesses to thrive and creates good jobs for Oregonians.
- Protect patients.

Below is a summary of highlights from the legislation passed to support responsible, safe implementation of legal cannabis in Oregon.

2015 Legislative Session

In 2015, the Oregon Legislature passed four bills: [HB 3400](#), [HB 2041](#), [SB 460](#), and [SB 844](#), codified in ORS 475B. This legislation was intended to address the following needs:

Implement Voters' Decision to Legalize Cannabis

- **Reduced gray market transactions** by requiring closer tracking and reporting of medical cannabis production. [HB 3400](#), ORS 475B.080.
- **Required seed-to-sale tracking** of adult-use cannabis under supervision of the Oregon Liquor Control Commission. [HB 3400](#), ORS 475B.150.
- **Authorized start of adult-use sales:** We allowed sales of seeds, starts, and flower to begin in October 2015 from medical dispensaries, even though OLCC-licensed shops will not open until late 2016. [SB 460](#), Sections 2 and 3, chapter 784, Oregon Laws 2015.
- **Reduced penalties for cannabis-related offenses.** Reflecting voters' decision to legalize cannabis, and aware of disparate enforcement that has harmed people of color around the country, the Legislature made it easier to expunge cannabis offenses in a step expected to help 50,000 Oregonians. [SB 844](#), ORS 419A.262.

Keep Communities Safe as Oregon Implements Legalization

- **Required rigorous testing** of cannabis products for contaminants and potency. [HB 3400](#), ORS 475B.555.
- **Required child-resistant packaging** and accurate dosage labeling. [HB 3400](#), ORS 475B.605, ORS 475B.615, ORS 475B.625.
- **Regulated and licensed processors** who work with flammable substances to create some cannabis products, as well as other businesses in the cannabis sector. [HB 3400](#), ORS 475B.090, ORS 475B.040.
- **Public health:** Directed state agencies to develop a drug use prevention campaign aimed at youth and a go-slow campaign aimed at adults. [HB 3400](#), ORS 336.241.

- **Provided environmental oversight** by creating a task force that will track energy and water usage by the cannabis sector and recommend strategies to incentivize efficient use of resources. [HB 3400](#), Section 132 and 175 (2), chapter 614, Oregon Laws 2015.

Craft Regulation that Allows Legal Businesses to Thrive

- **Supported careful tracking and testing** of adult-use cannabis, and required child resistant packaging and clear accurate labeling of dosage on products. [HB 3400](#), ORS 475B.555, ORS 475B.605, ORS 475B.615, ORS 475B.625.
- **Created a licensing framework** for adult-use cannabis pursuant to which the OLCC can regulate growers, processors, wholesalers, retailers and researchers in this arena. OHA is directed to provide oversight for similar categories of producers in the medical marijuana sector. [HB 3400](#), ORS 475B.040, ORS 475B.080.
- **Extended farm crop protection to adult-use cannabis businesses.** [HB 3400](#), ORS 475B.370.
- **Business tax deductions:** Allowed adult-use businesses to take standard Oregon business tax deductions. [HB 2041](#), ORS 316.680.
- **Established point-of-sale taxation** in response to industry and agency concerns that taxing product at the point of growth would be too hard to administer. [HB 2041](#), ORS 475B.705.
- **Affirmed that local governments** may impose reasonable time, place, and manner restrictions of cannabis businesses. [HB 3400](#), ORS 475B.340.
- **Allowed local taxation** of adult-use cannabis sales to encourage local communities to allow legal cannabis businesses. [HB 2041](#), ORS 475B.345.

Protect Patients

- **Ensured that medical cannabis is tested** for contaminants and accurately labeled for potency. [HB 3400](#), ORS 475B.440.
- **Directed OHA to implement regulation** that will not overwhelm small medical producers. [HB 3400](#), ORS 475B.420.
- **Allowed use of medical cannabis by hospice patients** and patients on organ donor transplant lists. [SB 844](#), ORS 475B.419, ORS 97.972.
- **Allowed discounts for veterans:** Allowed veterans with Post Traumatic Stress Disorder (PTSD) to obtain reduced-price medical cards. [HB 3400](#), ORS 475B.415.
- **Established a medical research task force** to study and report on the medical and public health properties of cannabis.

Opt-out Compromise: One controversial compromise was the decision to allow expanded tools for local governments to opt-out of allowing legal cannabis businesses in their jurisdictions, making it somewhat easier for communities that do not support legal cannabis to locally ban its sale. [HB 3400](#), ORS 475B.325.

2016 Legislative Session

In the 2016 Legislative Session, Oregon legislators passed seven additional cannabis-related bills. Four of the bills originated in the Marijuana Legalization Committee, where each received unanimous committee support.

Here is a summary of the key elements of the 2016 legislation: [HB 4014](#), [SB 1511](#), [SB 1598](#), [SB 1601](#), [SB 1524](#), [HB 4060](#), and [HB 4094](#).

Implement Voters' Decision to Legalize Cannabis

- **Right-size criminal penalties** and improve expungement opportunities. [HB 4014](#), [SB 1598](#).
- **Allow sale of edibles, extracts, and other consumables to begin** subject to satisfaction of safety and purity requirements. [SB 1511](#).
- **Allow responsible production of hemp.** Support development of the legal hemp sector in Oregon and to ensure it proceeds in a way that is compatible with production of legal cannabis. [HB 4060](#).

Keep Communities Safe as Oregon Implements Legalization

- **Prevent DUIIs and other dangerous conduct** by prohibiting and assigning strong penalties to dangerous behaviors like driving while consuming cannabis and using flammable materials to make extracts without a license. [HB 4014](#).
- **Protect youth:** Launch a major drug use prevention pilot program to prevent youth from using cannabis. This effort earned a \$3.9 million appropriation of funds and is expected to expand statewide in 2017. [HB 4014](#).

Craft Regulation that Allows Legal Businesses to Thrive

- **Remove residency restrictions** on who can own and run legal cannabis businesses in recognition that Oregon does not want to discriminate against people who have not lived here for two full years, and that in the absence of banking services, legal cannabis businesses need to be able to access capital to start and grow their businesses. [HB 4014](#).
- **Allow co-location of medical and adult-use sales:** Streamline regulation so that a business owner can serve adult-use and medical customers with one license from the OLCC. [SB 1511](#).
- **Help small businesses succeed** in the legal cannabis sector by directing OLCC to create a program that helps small producers enter the OLCC-regulated market. Steps will include a micro-business license with reduced fees and requirements, reduced red tape, and a few reduced land use barriers. [HB 4014](#), [SB 1598](#).
- **Business tax deductions:** Allow medical businesses to take typical Oregon business tax deductions. [SB 1601](#).

- **Extend farm crop protections** to all cannabis crops while allowing local jurisdictions to impose reasonable time, place, and manner restrictions. [SB 1598](#).
- **Support access to banking services:** Help businesses access banking services by removing the risk of Oregon criminal penalties for banks that serve legal cannabis businesses and by directing the Department of Consumer and Business Services to research how the state can support access to banking services. [HB 4094](#).
- **Affirm the state’s capacity to work with tribal governments** as they choose to implement legalization within their jurisdictions.

Protect Patients

- **Allow tax-free sales to OMMP patients from all stores** including both medical dispensaries and adult-use stores. [SB 1601](#).
- **Delay implementation of plant limit reductions** for medical and adult-use growers as businesses transition to the new regulatory framework. [SB 1511](#).
- **Offer discounts for all veterans** with a qualifying condition who need medical cannabis. [HB 4014](#).
- **Allow growers to maintain patient-grower relationships** even if they are moving to the OLCC-regulated adult-use market. [SB 1511](#).
- **Allow creation of a nonprofit distribution license**, which would enable provision of donated cannabis to low-income, high-need patients. [SB 1598](#).
- **Authorize issuance of a small RFP** (request for proposals) to support research into medical cannabis. [SB 1598](#).

UPCOMING MILESTONES

There are several milestones in the implementation of legal cannabis that elected officials and community members should expect:

- **Spring-Summer 2016:** Limited sales of edibles, extracts, and other consumables to adult-use customers will begin from participating dispensaries.
- **Summer-Fall 2016:** OLCC-licensed adult-use stores will open in late 2016.
- **November 2016:** Communities that have decided to opt out of legal sales pending a community vote will have those votes in November 2016. Right now 41 of Oregon’s 242 cities and 6 of its 36 counties, mostly in eastern Oregon, have imposed moratoriums on the sales of cannabis in their jurisdictions.⁸ Voters will decide whether to continue that prohibition or whether to opt in.
- **Next 12 months:** There will likely be some challenges to the reasonableness of time, place, and manner restrictions that local governments are imposing on legal cannabis businesses.

⁸ Oregon Health Authority and Oregon Liquor Control Commission 2016 opt-out data

- **Next 12 months:** Agency rulemaking will continue with help from stakeholders.

ISSUES TO WATCH

There are a few major unresolved issues in the cannabis sector. Some require resolution at a federal level. These issues affect the cannabis sector in Oregon, so we will remain vigilant in tracking them.

1. **Youth Marijuana-use Prevention:** The pilot project will require oversight and a statewide rollout in 2017.
2. **Banking Services:** Legal businesses still lack access to banking services. The best solution for this is federal, but with a bipartisan team of legislators from around the country, we can advocate to Congress to resolve this.
3. **De-scheduling Cannabis** from Schedule I of the Controlled Substances Act. This requires federal action as well.
4. **Cole Memo compliance:** Oregon will continue working to comply with the terms of the [Cole Memo](#), pursuant to which the State's legalization of cannabis receives no federal enforcement despite classification of marijuana as a Schedule I controlled substance.
5. **Ensuring enforcement of laws that do exist:** Oregon cannabis businesses, both medical and adult-use, are subject to all of the laws of the state that apply to other businesses. Oregon will work to ensure appropriate enforcement and compliance in areas like employment law, tax law, traffic safety, and other arenas.
6. **Oregon Health Authority oversight:** Some local advocates feel concerned OHA is setting dosage levels too low; this is a work in progress and it may require follow-up legislation.
7. **Use of revenue that the Oregon Medical Marijuana Program generates:** There is controversy over how some of this revenue is used to fund unrelated programs.
8. **Reasonableness of local time, place, and manner rules:** Communities must avoid excessive restriction that create de facto prohibitions.
9. **Cannabis cafes:** Many legalization advocates want these to be allowed, but public health advocates are concerned about weakening the Indoor Clean Air Act and worker well-being.
10. **Environmental Best Practices Task Force:** Appointed members of this task force will begin the work of tracking the environmental impact of the cannabis sector and will develop best practices recommendations.
11. **Cannabis Research Task Force:** The Legislature will need to act on the recommendations of the task force relating to cannabis research.
12. **Review rules:** The Oregon Health Authority and OLCC will soon complete rulemaking for their respective cannabis systems. The Legislature should continue to review these rules and provide input.

CONCLUSION

Oregon is at the forefront of a national, and even international change in how governments approach drug policy. Oregon voters, legislators, and stakeholders have taken substantial steps to establish a responsible, well-regulated system. The work is not over, and it will likely require some adjustments. At this stage, Oregon seems to be on a good path.

The community of criminal justice reform advocates, patients, farmers, public health workers, business people, and government workers that has collaborated on these issues has worked well to implement legalization in a positive way. The trust and good will stakeholders have built will support progress and adjustments in the future.

SPECIAL THANKS

This was a huge team effort over the last fourteen months. Here are some of the many people whose insights and ideas have shaped this work:

Committee Members:

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Sen. Ted Ferrioli
Rep. Carl Wilson
Sen. Floyd Prozanski
Rep. Peter Buckley
Sen. Jeff Kruse
Rep. Andy Olson
Sen. Lee Beyer
Rep. Ken Helm

Elected Officials:

Governor Kate Brown
Cong. Earl Blumenauer
Speaker Tina Kotek
Rep. Tobias Read
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