

Recreational Marijuana in Montana

A Summary of the Law after I-190 and HB 701

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... first, a little history

- ▶ 1970 - Federal Controlled Substances Act lists marijuana and tetrahydrocannabinol (THC), the active ingredient in marijuana, as Schedule 1 drugs.
- ▶ 2004 - Montana voters pass I-148 by almost 62%, legalizing the use of marijuana for debilitating medical conditions
- ▶ 2011 - Montana legislature passes SB 423, limiting each provider to 3 patients, prohibiting compensation for providers, and restricting number of patients that could be referred by a single doctor. MSC upheld most provisions in 2016.

... first, a little history

- ▶ 2016 - Montana voters pass I-182 by 57%, removing most restrictive provisions on medical marijuana.
- ▶ 2018 - Federal farm bill legalized cultivation of hemp and sale, transport, and possession of hemp products (includes CBD)
- ▶ 2020 - Montana voters pass CI-118 and I-190 by 57%, legalizing recreational marijuana in Montana
- ▶ 2021 - Montana legislature passes HB 701, modifying provisions of I-190 and I-182.

Medical Marijuana Framework (NOW)

- ▶ **Medical marijuana providers, dispensaries, and testing labs must obtain license from DPHHS**
- ▶ **DPHHS may deny the application if the proposed premises:**
 - ▶ is not approved by local building, health, or fire officials;
 - ▶ is within 500 feet of and on the same street as a place of worship or a school; or
 - ▶ prohibited by a local ordinance or resolution that bans the operation of dispensaries or storefront businesses (Section 50-46-328, MCA).

Medical Marijuana Framework (NOW)

Section 50-46-328, MCA

(1) A local government may regulate a provider that operates within the local government's jurisdictional area. The regulations may include but are not limited to inspections of registered premises and testing laboratories in order to ensure compliance with any public health, safety, and welfare requirements established by the department or the local government.

(2) A local government may adopt an ordinance or resolution prohibiting providers from operating dispensaries or as storefront businesses.

I-190/HB 701 - Possession

- ▶ As of January 1, 2021:
 - ▶ 21 and over may possess up to 1 oz and 2 plants with no state criminal penalties (cardholders can have 4 plants)
 - ▶ Not legal to buy or sell, except medical cardholders can buy up to 5 oz per month
 - ▶ All marijuana paraphernalia legal to possess, purchase, and sell for 18 and over

I-190/HB 701 - Sales, Cultivation, Manufacturing

- ▶ Beginning January 1, 2022, all “former medical marijuana licensees” (applied for license on or before November 3, 2020) may sell recreational marijuana in counties where majority of voters approved I-190. (§ 16-12-201(2)(b), MCA)
- ▶ FMMLs must get new license at first annual renewal date after January 1, 2022 and show compliance with statutory requirements and any local regulations in effect on or before January 1, 2022. (§ 16-12-201(1)(a), MCA)
- ▶ Until July 1, 2023, only FMMLs may apply for and receive new business licenses. (§ 16-12-201(1)(b), MCA)

I-190/HB 701 - Sales, Cultivation, Manufacturing

- ▶ All former medical marijuana licensees who continue to sell, cultivate, or manufacture exclusively to or for registered medical marijuana cardholders are grandfathered from local regulations adopted after July 1, 2021 until their first license renewal date after January 1, 2022 (§ 16-12-301(1)(c), MCA)
- ▶ All former medical marijuana licensees who engaged in outdoor cultivation before November 3, 2020, are grandfathered for outdoor cultivation in all jurisdictions (all other outdoor cultivation is prohibited). (§ 16-12-223(6), MCA)
- ▶ After transition to new system ends (July 1, 2023), all applicants must show compliance with local regulations to obtain new license or renew existing license (§ 16-12-207(3)(i), MCA)

I-190/HB 701

- ▶ Beginning July 1, 2023, new providers (includes existing medical marijuana providers that applied for license on or after November 4, 2020) may apply for license to sell adult-use marijuana
- ▶ In “red counties,” FMMLs can continue to sell, cultivate, and manufacture medical marijuana under existing license unless voters approve adult-use marijuana for those categories, but local regulations apply (I think!)

Red and Green Counties

- ▶ In county where I-190 did not pass (“Red Counties) adult-use marijuana sales will not be allowed unless residents of a local jurisdiction (county or municipality) petition and vote to allow it.
- ▶ In county where I-190 passed (“Green Counties”), a local government may regulate marijuana business within its jurisdictional area, including but not limited to inspections of licensed premises and testing laboratories in order to ensure compliance with any public health, safety, and welfare requirements established by the department or the local government.
- ▶ In all counties, residents can petition or governing body can place resolution on ballot for vote to allow or prohibit certain or all categories of recreational marijuana (or new medical dispensary)

Marijuana Business Categories subject to local regulation and state licensing

- ▶ cultivator;
- ▶ manufacturer;
- ▶ medical marijuana dispensary;
- ▶ adult-use dispensary;
- ▶ combined-use marijuana licensee;
- ▶ testing laboratory; and
- ▶ marijuana transporter facility.

Options for local regulation

- ▶ Generally same as for existing medical marijuana providers
- ▶ Option 1: prohibit entirely?
 - ▶ Not entirely clear language, but appears this must be accomplished by voters for each category or categories of marijuana businesses (see § 16-12-301, MCA)
- ▶ Option 2: use zoning or other ordinance (business license, marijuana ordinance) to regulate time, place, manner, and impacts of each category or categories of marijuana businesses

Preemption of Local Regulation

- ▶ Cannot prohibit the transportation of marijuana within or through its jurisdiction on public roads by any person licensed to do so by the department
- ▶ Cannot reduce the statutory 500-foot spacing between a marijuana business and a place of worship or a school
- ▶ Cannot impose new regulations on an existing medical marijuana provider that does not apply for licensure as an adult-use provider until it's first license renewal date occurring after January 1, 2022 or the expiration of any grace period granted by the locality
- ▶ Cannot allow any advertising of marijuana or marijuana products; marijuana business also cannot advertise on billboards
- ▶ DOR may impose more state-level requirements through rulemaking

DOR Rules

42-1031 - Medical marijuana registry updates and cross-reference clean up (adopted August 31, 2021)

42-1032 - Advertising (adopted September 28, 2021)

- ▶ May not market marijuana or marijuana products except in electronic advertising only
- ▶ Must comply with local sign regulations
- ▶ Prohibits billboards

42-1033 - Definitions and licensing (hearing 11/16; comments due 11/29)

- ▶ Need more specific language that applicants must comply with local regulations (similar to sign regulation/combined use license language)
- ▶ Are regulations more broadly grandfathering some businesses than provided in statute?

DOR Rules

42-1040 - Taxation, enforcement, reporting (hearing 11/30;
comments due 12/6)

- ▶ Notice of license suspension/revocation to local government?
- ▶ Local govt must notify DOR 90 days before effective date of local option tax or payments not required until end of following quarter

42-1042 - Additional registry updates and clean up (hearing 11/30;
comments due 12/6)

Final Notes

- ▶ Follow the rulemaking deadlines and comment on any concerns
- ▶ Get local regulations in place by January 1, 2022 if need to address existing medical marijuana providers - will start selling recreational that day until next renewal date.
- ▶ Remember emergency ordinance (§ 7-5-104, MCA) and interim zoning ordinance powers (§ 76-2-306 for cities and § 76-2-206 for counties)
- ▶ Send your newly adopted ordinances to DOR (and the League!)
- ▶ Fill out survey to provide contact information to DOR