

CANNABIS

ELECTION RESULTS: 4 STATES PASS ADULT USE MARIJUANA BALLOT INITIATIVES, 1 STATE FAILS; 4 STATES PASS MEDICAL MARIJUANA BALLOT INITIATIVES, 0 STATES FAIL

by Bret D. Kravitz

On November 8, 2016, residents in 9 states voted on ballot initiatives to legalize adult use or medicinal marijuana. Arizona, California, Maine, Massachusetts, and Nevada voted to decide whether to legalize marijuana for adult use. Arkansas, Florida, Montana, and North Dakota voted to decide whether to legalize marijuana for medicinal use. The results of the voting in those states resulted in the passage of 8 of the 9 state marijuana-related ballot initiatives. The state summaries included in this Client Alert highlight those 9 ballot initiatives and their outcomes.

Adult Use Ballot Initiatives

Arizona: Proposition 205 (FAIL)

Residents of Arizona voted down Proposition 205, an initiated state statute that would have permitted adults 21 years of age and older to possess and use 1 ounce or less of marijuana for adult use and grow up to 6 plants in their home. Proposition 205 would have established a Department of Marijuana Licenses and Control to regulate the cultivation, manufacturing, testing, transportation, and sale of marijuana. Retail marijuana sales would have been taxed at a rate of 15%.

California: Proposition 64 (PASS)

Residents of California voted to pass Proposition 64, an initiated state statute that will permit adults 21 years of age and older to possess and use up to 1 ounce of non-medical marijuana and 8 grams of non-medical marijuana concentrates for adult use and grow up to 6 plants in their home for non-medical use. Under Proposition 64, businesses will be required to acquire a state license to sell marijuana for adult use. Additionally, local governments can also require businesses to obtain a local license to sell. Proposition 64 will impose a 15% excise tax on all retail sales of marijuana, both medicinal and adult use.

Maine: Question 1 (PASS)

Residents of Maine voted to pass Question 1, an indirect initiated state statute that will permit adults 21 years of age and older to possess and use up to 2.5 ounces of marijuana for adult use. Additionally, Question 1 will permit adults age 21 and older to cultivate up to 6 flowering marijuana plants within the person's residence. Because Maine's state legislature did not act on the proposed signature-driven law, the question was placed on the state's statewide ballot and the voters decided its fate. The new law will provide for the licensure of retail facilities and marijuana social clubs, but is designed to legalize, regulate, and tax marijuana in the state as an agricultural product. The initiative will enact a 10% tax on adult use marijuana sales.

Massachusetts: Question 4 (PASS)

Residents of Massachusetts voted to pass Question 4, an indirect initiated state statute that will permit adults 21 years of age and older to possess and use under 10 ounces of marijuana inside their homes and under 1 ounce in public for adult use. They will also be able to grow up to 6 marijuana plants in their homes. The new law will create the Cannabis Control Commission that will impose a 3.75% tax on marijuana sales on top of the 6.25% Massachusetts sales tax. Additionally, the Cannabis Control Commission will permit cities and towns to add a local tax up to 2%.

Nevada: Question 2 (PASS)

Residents of Nevada voted to pass Question 2, an indirect initiated state statute that will permit adults 21 years of age and older to purchase, possess, and consume 1 ounce or less of marijuana or one-eighth of an ounce or less of concentrated marijuana. Individuals 21 and older will also be permitted to grow up to 6 marijuana plants for personal use, so long as the grow takes place in an enclosed area with a lock. For the first 18 months of licensing, Nevada's Department of Taxation will only accept license applications for marijuana stores, production facilities, and cultivation facilities from registered medical marijuana establishments. During the same time period, only registered wholesale liquor dealers will be permitted to apply for marijuana distributor licenses. Furthermore, the initiative will impose a 15% excise tax on wholesale marijuana sales.

Medicinal Use Ballot Initiatives

Arkansas: Issue 6 (PASS)

Residents of Arkansas voted to pass Issue 6, an initiated constitutional amendment that will legalize the medical use of marijuana to treat a number of qualifying medical conditions. The Amendment will allow for the establishment and regulation of marijuana dispensaries and cultivation facilities, but voters will be permitted to ban dispensaries and cultivation facilities from being located in their municipalities.

Florida: Amendment 2 (PASS)

Residents of Florida voted to pass Amendment 2, an initiated constitutional amendment that will allow doctors to prescribe marijuana as a treatment for patients suffering from a broader range of illnesses and conditions than currently allowed. Amendment 2 enumerates 10 specific diseases, as well as the ability to prescribe marijuana for "other debilitating medical conditions of the same kind or class as or comparable to those enumerated."

Montana: Initiative I-182 (PASS)

Residents of Montana voted to pass Initiative I-182, an initiated state statute that will repeal the existing three-patient limit on medical marijuana providers and permit physicians to prescribe marijuana to more than 25 patients per year. Initiative I-182 will also require annual inspections of facilities by the state, thus repealing law enforcement's power to conduct unannounced inspections of medical marijuana facilities.

North Dakota: Initiated Statutory Measure No. 5 (PASS)

Residents of North Dakota voted to pass Initiated Statutory Measure No. 5, an initiated state statute that will allow qualified patients to purchase up to 3 ounces of medicinal marijuana to be used for the treatment of defined medical conditions, or, if living more than 40 miles from the nearest registered dispensary, grow small amounts at home. Measure No. 5 will create procedures for monitoring, inventorying, dispensing, and cultivation and growing of marijuana to be regulated and enforced by the Department of Health.

Dickinson Wright Summary

The cannabis industry has become one of the fastest-growing markets in the country. Currently, 28 states, plus the District of Columbia, have legalized cannabis for either medicinal or adult use. Dickinson Wright is one of the few full-service law firms that provide specialized counsel both to clients operating with state-issued licenses and to businesses providing goods and services to the industry.

The Dickinson Wright team can help clients navigate the increasingly complex legal landscape surrounding this emerging market. While many states have decriminalized some or all forms of cultivating, distributing, dispensing, possessing and using cannabis, the federal Controlled Substances Act, along with other federal laws, continues to prohibit manufacturing, distributing, dispensing and possessing marijuana.

Our lawyers provide the timely and proactive advice that clients need to clearly understand the practical implications these state and federal laws present for their businesses. With our guidance, clients are able to pursue their business objectives while avoiding unnecessary risk.

This client alert is published by Dickinson Wright PLLC to inform our clients and friends of important developments in the field of cannabis law. The content is informational only and does not constitute legal or professional advice. We encourage you to consult a Dickinson Wright attorney if you have specific questions or concerns relating to any of the topics covered in here.

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