

Voters in Three States Approve Marijuana Laws on Election Day

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Three states approved new marijuana laws on Election Day 2018. Voters approved medical marijuana laws in Missouri and Utah, while Michigan voters approved a recreational marijuana law.

Michigan: Recreational Marijuana

Michigan Proposal 1 was passed by a majority (approximately 55% “Yes” and 45% “No”).

Proposal 1, the Michigan Regulation and Taxation of Marijuana Act, legalizes recreational marijuana in the state for persons 21 years of age or older. The law generally will allow such persons to possess, use, purchase, transport, or process up to 2.5 ounces of marijuana (which cannot include more than 15 grams of marijuana concentrate). They also may possess, store, and process up to 10 ounces of marijuana in their residence, as well as marijuana produced by marijuana plants cultivated on the premises. They also may cultivate up to 12 marijuana plants in their homes.

The law does not impose any obligations on employers with respect to recreational marijuana use. The law states that it does not:

- Require employers to “permit or accommodate” recreational marijuana use, possession, or engage in other conduct authorized by the law in any workplace or on the employer’s property.
- Prohibit employers from disciplining an employee for violating the employer’s workplace drug policy or for working “while under the influence” of marijuana.
- Prevent employers from “refusing to hire, discharging, disciplining, or otherwise taking an adverse employment action against a person with respect to hire, tenure, terms, conditions, or privileges of employment because of that person’s violation of a workplace drug policy or because that person was working while under the influence of marihuana.”

The law is expected to take effect in December 2018 (10 days after the results are certified). The Michigan Department of Licensing and Regulatory Affairs must begin accepting applications for marijuana establishments within 12 months of the law’s effective date.

Missouri: Medical Marijuana

Missouri Amendment 2 was passed by a majority (approximately 65% “Yes” and 35% “No”).

The law will go into effect on December 6, 2018, but it will be months before medical marijuana is available in the state. The Missouri Department of Health and Senior Services will have up to 210 days from the effective date of the law to begin accepting applications for identification cards from qualifying patients and caregivers. The Department also will have 240 days from the effective date to start accepting

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applications from medical marijuana testing facilities, dispensaries, cultivation facilities, and the like.

“Qualifying medical conditions” for purposes of obtaining a medical marijuana card include:

- Cancer;
- Epilepsy;
- Glaucoma;
- Certain migraines;
- Chronic medical conditions that cause severe, persistent pain or persistent muscle spasms;
- Debilitating psychiatric disorders, such as post-traumatic distress disorder;
- HIV;
- Any terminal illness; and
- Any other condition that a physician determines to be chronic or debilitating.

The law allows qualifying patients to utilize marijuana in numerous ways, including smoking or vaporizing marijuana, applying ointments or balms, consuming “marijuana-infused food products,” ingesting teas, oils, or other marijuana-infused products, and any method recommended by the qualifying patient’s physician.

The law states that it does not create a cause of action against employers for wrongful discharge or discrimination based on:

1. An employer’s prohibition against employees or prospective employees being “under the influence of marijuana while at work”; or
2. An employer issuing discipline, up to and including termination from employment, to an employee for “working or attempting to work while under the influence of marijuana.”

The law is otherwise silent on employers’ obligations with respect to medical marijuana users.

The law’s language concerning employers’ obligations is troubling, because there is no definition of “under the influence of marijuana at work.” The best way for an employer to make this determination is to conduct drug testing, but a drug test cannot pinpoint the exact time that an individual used marijuana; rather, it will indicate that there was some usage in the last few days or weeks. Missouri employers, therefore, should exercise caution when addressing positive drug tests involving medical marijuana users, especially when the drug test is not a “reasonable suspicion” test.

Utah: Medical Marijuana

Utah Proposition 2 was passed by a majority (approximately 53% “Yes” and 47% “No”).

To receive approval to use medical cannabis under Proposition 2, the Utah Medical Cannabis Act, a person must have one of the conditions listed as a “qualifying illness” and receive a physician’s recommendation. The law requires the Utah Department of Health to begin issuing medical cannabis cards by no later than March 1, 2020. It does not expressly include any provisions related to employers.

The law defines “qualifying illnesses,” for purposes of obtaining a medical cannabis card,

to include “HIV, acquired immune deficiency syndrome or an autoimmune disorder; Alzheimer’s disease; amyotrophic lateral sclerosis; cancer, cachexia, or a condition manifest by physical wasting, nausea, or malnutrition associated with chronic disease; Crohn’s disease, ulcerative colitis, or a similar gastrointestinal disorder; epilepsy or a similar condition that causes persistent and debilitating seizures; multiple sclerosis or a similar condition that causes persistent and debilitating muscle spasms; post-traumatic stress disorder; autism; and a rare condition or disease that affects less than 200,000 persons in the United States, as defined ... by the Federal Food, Drug, and Cosmetic Act.”

In addition, individuals who suffer from chronic and debilitating pain may have a “qualifying illness” if they are unable to utilize opiate-based pain medication due to certain medical risks. Individuals who suffer from an illness that is not identified as a “qualifying illness” may seek approval to obtain a medical cannabis card from the Compassionate Use Board.

The law prohibits medical cannabis card holders from smoking marijuana or using a device that “facilitates cannabis combustion at a temperature greater than 750 degrees Fahrenheit.” Cannabis processing facilities are restricted from producing products that look like candy or otherwise intended to appeal to children.

Proposition 2 has been subject to extensive debate within the state. The law will become effective on December 1, 2018 (five days after the Governor expects to certify the results). However, the Governor has expressed his intent to call a special legislative session to consider and approve a “compromise” bill that would replace the ballot initiative.

Please contact Jackson Lewis with any questions about the new laws.

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