

**LEGISLATIVE REPORT**

**CANNABIS REFORM**

*Best Practices for a Medical Cannabis Home Grow Program, On-site Cannabis Consumption  
Facilities, and Methods to Reduce Cannabis Use by Minors*

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**Maryland Medical Cannabis Commission**  
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## EXECUTIVE SUMMARY

Section 10 of Chapter 26 of the Acts of 2022 requires the Maryland Medical Cannabis Commission to study and identify best practices in adult use jurisdictions and the State’s medical cannabis program to make recommendations on the following:

- i. Home grow program for medical cannabis patients;
- ii. Establishment of on-site cannabis consumption facilities; and
- iii. Methods to reduce the use of cannabis by minors.

### Home Grow Program for Medical Cannabis Patients

Nineteen states and the District of Columbia have legalized adult-use cannabis. Of these, 16 out of 20 allow home cultivation as part of their adult-use program and three out of 20 (Connecticut, Illinois, and Washington) allow home cultivation only for qualifying medical patients. New Jersey is the only jurisdiction that has legalized adult-use cannabis and does not allow home cultivation under any circumstances.

Each state that allows home grow places limits on the amount an individual and/or household may lawfully cultivate. The per person limit ranges from four plants (Virginia) to 24 plants (Massachusetts and Rhode Island), and the per household limit ranges from four plants (Virginia) to 36 plants (Oregon). The median number of plants permitted across states is six plants per person and 12 plants per household. **Table 1** shows the limitations placed on home grow in adult-use jurisdictions.

**Table 1: Cultivation limits, by jurisdiction**

State	Plants per adult-use consumer	Plants per medical patient	Plants per household
<b>Alaska</b>	6 (3 mature)	6 (3 mature)	12 (6 mature)
<b>Arizona</b>	6	12	12
<b>California</b>	6	A reasonable amount related to medical need	Adult-use: 6 Medical: a reasonable amount related to medical need
<b>Colorado</b>	6	6	12
<b>Connecticut</b>	N/A	6 (3 mature)	12
<b>District of Columbia</b>	6 (3 mature)	6 (3 mature)	12 (6 mature)
<b>Illinois</b>	N/A	5	5
<b>Maine</b>	15 (3 mature)	18 (6 mature)	36 (12 mature)

<b>Massachusetts</b>	6	24 (12 mature)	12 (Adult-use only)
<b>Michigan</b>	12	12	12
<b>Montana</b>	4 (2 mature)	8 (4 mature)	Adult-use: 8 (4 mature) Medical: 16 (8 mature)
<b>Nevada</b>	6	12	12
<b>New Mexico</b>	12 (6 mature)	12 (6 mature)	12 (12 mature)
<b>New York</b>	6 (3 mature)	6 (3 mature)	12 (6 mature)
<b>Oregon</b>	4	18 (6 mature)	Adult-use: 4 Medical: 36 (12 mature)
<b>Rhode Island</b>	6 (3 mature)	24 (12 mature)	Adult-use: 6 (3 mature) Medical: 24 (24 mature)
<b>Vermont</b>	6 (2 mature)	9 (2 mature)	Adult-use: 6 (2 mature)
<b>Virginia</b>	4	4	4
<b>Washington</b>	N/A	6 (can be increased to up to 15 by healthcare provider)	15 (medical-only)

This report also considers registration requirements, restrictions on cultivation locations (e.g., indoors, or outdoors), and authority of a property owner to restrict home cultivation. The Commission also discusses public health and safety concerns of home grow such as accidental ingestion, poor indoor air quality, pesticide use and fire hazards.

*Recommendations:*

This section of the report makes seven recommendations on the implementation of a home grow program for medical patients. These recommendations are consistent with the home grow provisions in a majority of states and the General Assembly’s approach in Chapter 26 to prioritize decriminalization and health and safety.

1. *Allow qualifying medical patients to cultivate up to six cannabis plants, with up to three mature cannabis plants.*
2. *Expressly allow home cultivation outdoors, subject to certain security and public view restrictions.*
3. *Do not require a separate registration or certificate for medical patients to cultivate in their homes.*
4. *Consider establishing civil penalties for lesser violations of Criminal Law Article §5-601.2 pertaining to home grow.*
5. *Mandate the development of educational materials identifying the health and safety risks of home cultivation and home cultivation best practices.*

6. Clarify whether a landlord, condominium association, or homeowners' association may adopt a policy restricting or prohibiting home cultivation.
7. Clarify whether qualifying medical patients who are between the ages of 18 and 20 years are included within the adult patient population who may cultivate cannabis in their homes.

### Establishment of On-Site Cannabis Consumption Facilities

An on-site cannabis consumption facility is an indoor or outdoor location, which is open to the public, and licensed to allow individuals who are 21 years or older to consume cannabis on its premises. Under Maryland's medical cannabis statutes and regulations, qualifying patients may only smoke or consume cannabis in a private residence. This approach is consistent with initial adult-use cannabis legalization initiatives across the county, which expressly prohibited the use of cannabis in any place open to the public, largely out of concerns related to occupational safety, odor, impaired driving, and youth use. However, since 2016, at least 10 adult-use cannabis states have repealed these restrictions, passed laws establishing on-site consumption licenses, or granted authority to local governments to allow on-site consumption.

Due to a variety of factors, including pandemic-related delays and restrictive local zoning requirements, however, relatively few on-site consumption licenses have been issued nationwide. There is also significant variability within each individual states' on-site consumption laws, making it difficult to identify best practices to license and regulate these facilities. Therefore, the potential benefits and risks of on-site consumption facilities are not as well understood as other aspects of adult-use cannabis legalization. **Table 2** shows the variance in on-site consumption policies by the 10 states that have authorized these facilities.

**Table 2: On-site consumption facility policy, by jurisdiction**

Summary of On-Site Consumption Policies <sup>1</sup>	Licensing Structure		Source of Cannabis On-Site		Other Products		
	Allow with Retail Licenses	Distinct Licenses	Allowed to Bring Prior Purchased Cannabis Products	Allow Sale of Cannabis On-Site	Allow Alcohol	Allow Tobacco	Allow Food
<b>Alaska</b>	Yes	No	No	Yes	No	No	Yes
<b>California</b>	Yes	No	No	Yes	No	No	N/A
<b>Colorado<sup>2</sup></b>	No	Yes	Yes	Yes	No	No	Yes

<sup>1</sup> Adapted from Appendix 2

<sup>2</sup> Colorado has two categories of consumption licenses: the Marijuana Hospitality Business and Retail Marijuana Hospitality and Sales Business. The Marijuana Hospitality Business licensee cannot sell cannabis to customers, but

<b>Illinois</b>	Yes	No	Yes	Yes	No	Yes	N/A
<b>Massachusetts</b>	Yes	Yes	No	Yes	No	No	Yes
<b>Michigan<sup>3</sup></b>	No	Yes	No	Yes	N/A	No	Yes
<b>Nevada</b>	Yes	Yes	No	Yes	No	No	Yes
<b>New Jersey</b>	Yes	No	No	Yes	No	No	No
<b>New Mexico</b>	Yes	No	No	Yes	No	Yes	Yes
<b>New York</b>	No	Yes	No	Yes	N/A	N/A	N/A

In addition to the policy variables above, this section also considers the role of local governments, ventilation within the facilities, public health and safety concerns, and opportunities for social equity licenses.

*Recommendations:*

A majority of adult-use cannabis states have adopted laws allowing cannabis consumption facilities, and there is optimism among policymakers and advocates that consumption facilities may reduce cannabis use in outdoor public areas and impaired driving, while also increasing economic opportunities in the cannabis industry, particularly for small and minority businesses. Yet few facilities are operational nationwide and as a result there is little data on the health, safety, and economic impacts of consumption facilities. Absent evidence-based approaches to on-site consumption the Commission recommends that the General Assembly require the Cannabis Public Health Advisory Council to conduct additional study and make recommendations on whether and how to allow on-site consumption.

Alternatively, if the General Assembly chooses to authorize on-site consumption facilities during the 2023 legislative session, the Commission recommends the following:

1. *Prohibit the sale and use of alcohol and tobacco at on-site consumption facilities.*
2. *Prohibit a business that holds an on-site consumption license from owning or controlling a license to grow, process, or dispense cannabis.*
3. *Prioritize social equity businesses in the application process for on-site consumption licenses and require that a certain percentage of on-site consumption licensees be issued to social equity businesses.*
4. *Establish clear indoor air quality and ventilation standards to protect employees and consumers, and to prevent the spread of cannabis odor outside the licensed premises.*

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customers can bring their own cannabis to consume at the site. The Retail Marijuana Hospitality and Sales Business licensee can sell cannabis to customers to be consumed onsite.

<sup>3</sup> Michigan does not limit the designated consumption establishment license to licensed retailers. The regulatory language is general and refers to “a person” seeking applying for the license. At the same time there are no prohibitions on licensed retailers also applying for the consumption license.

5. *Establish zoning and planning requirements for on-site cannabis consumption facilities.*
6. *Establish employee training and consumer education requirements.*
7. *Consider adopting a process for establishing consumption facilities that prioritizes subject matter expert and public input.*

## **Methods to Reduce Cannabis Use by Minors**

The legalization of cannabis possession and use by persons 21 years or older commonly raises concerns about the potential impact such a policy change may have on youth and young adults (e.g., persons aged 18 to 20). To date, data from other U.S. jurisdictions indicate legalization does not lead to an increase in cannabis use among youth. This finding is supported through research and surveys conducted by a number of prominent public health and medical associations, including the American Medical Association (AMA), the National Institute on Drug Abuse, and the Centers of Disease Control and Prevention.

While legalization data do not indicate an increase in youth use, there are significant health and safety harms associated with cannabis use among youth, particularly for frequent or daily users. This section of the report introduces and briefly summarizes the best practices already implemented in the Maryland Medical Cannabis Program to reduce youth appeal of and access to cannabis, and outlines policy approaches in adult-use states to reduce cannabis use among minors.

Many of the best practices in other states are already reflected the State's current medical cannabis program in the areas of advertising, packaging and labeling, and product restrictions. (See Health-General Article §13-3313.1, COMAR 10.62.24 and COMAR 10.62.37.) Research and best practices from other states featured in this section include: advertising restrictions; potency limits; packaging; labeling; product specifications; point-of-sale controls; zoning; price controls; and public health education.

### *Recommendations:*

This section of the report contains four recommendations for the Maryland General Assembly when considering ways to limit youth appeal and use of cannabis under an adult-use program.

1. *Incorporate existing statutory and regulatory best practices from Maryland's Medical Cannabis Program into the State's new adult-use market, pertaining to:*
  - a. *Advertising controls;*
  - b. *Packaging and labeling; and*
  - c. *Point-of-sale controls.*
2. *Modify and strengthen the State's current medical cannabis statute to address youth access issues that are unique to an adult-use market.*
3. *Mandate that the State's cannabis regulator adopt further regulations to reduce use of cannabis products.*
4. *Direct the Public Health Advisory Council to study and consider certain other emerging regulatory trends to reduce cannabis use by minors.*

## **ACKNOWLEDGEMENT**

The Maryland Medical Cannabis Commission would like to extend its appreciation to the University of Maryland Francis King Carey School of Law for its invaluable contribution to this report. The legal research provided by the University of Maryland was critical to the development of the Commission’s findings and recommendations.

### **I. INTRODUCTION**

Section 10 of Chapter 26 of the Acts of 2022 requires the Maryland Medical Cannabis Commission (the “Commission”) to study and make recommendations on home cultivation for medical cannabis patients, on-site cannabis consumption facilities, and methods to reduce the use of cannabis by minors. Section 10 also requires the study and findings to identify methods adopted by the Commission through regulations for the State’s medical cannabis program and best practices implemented in other states.

In order to study and make recommendations regarding such disparate and wide-ranging issues as home cultivation, on-site consumption, and youth use, the Commission: (1) reviewed current Maryland law governing these issues, (2) evaluated laws and regulations in jurisdictions that have adopted adult-use cannabis legalization, and (3) consulted with subject matter experts, including state cannabis regulators in other jurisdictions. In support of this work, the Commission requested information from the Cannabis Regulators Association (CANNRA) – a nonpartisan national organization of state cannabis regulators that develops cannabis regulatory best practices – and awarded a competitively-solicited research contract to the University of Maryland Francis King Carey School of Law. The University of Maryland compiled and analyzed the statutory and regulatory provisions governing home cultivation, one-site consumption, and youth use across all adult-use cannabis jurisdictions for this report (see Appendices 1 through 9 for this research).

This report summarizes the Commission's findings and presents recommendations regarding home cultivation in Section II, on-site cannabis consumption facilities in Section III, methods to reduce cannabis use by minors in Section IV, and a report conclusion in Section V.



## II. HOME GROW PROGRAM FOR MEDICAL CANNABIS PATIENTS

### *a. Background*

Thirty-seven states and the District of Columbia have legalized the distribution, possession, and use of cannabis for medical purposes. A majority of these jurisdictions permit a patient or caregiver to cultivate cannabis for non-commercial purposes in a private residence or on private property commonly referred to as “home grow” or “home cultivation.” In Maryland, qualifying medical patients may only obtain cannabis from a licensed dispensary.<sup>1</sup> Cultivation by a patient or caregiver in a private residence or on private property is prohibited. Under the Criminal Law Article, any person, including a qualifying patient or caregiver registered with the Commission, could be subject to imprisonment, a monetary fine, or both for growing cannabis in their private residence or possessing cannabis obtained from a source other than a licensed dispensary.

Chapter 26 of the Acts of 2022 (“Chapter 26”) establishes that, subject to ratification by the voters of Maryland to legalize adult-use cannabis, a person 21 years of age or older may cultivate up to two cannabis plants. Cultivation would be limited to an enclosed, locked space on private property that is not visible to the public or another private property. Section 10 of the Act also requires the Commission to study and make recommendations on a home grow program to authorize qualifying patients to grow cannabis plants for personal use.

Proponents home cultivation for medical cannabis patients often promote that these programs facilitate access to cannabis for medical cannabis patients by making this important yet uninsured treatment more affordable and allowing for a wider availability of cannabis strains. For example, some medical cannabis patients have reduced work hours due to their medical conditions, and others are entirely unable to access medical cannabis due to cost. Despite these concerns, issues surrounding home grow programs also arise with respect to security of the home grow premises and prevention of diversion, as well as public safety and environmental health protection.

### *b. Home Grow Laws Across Adult-use Cannabis Jurisdictions*

Nineteen states and the District of Columbia have legalized adult-use cannabis. Of these, 16 out of 20 allow home cultivation as part of their adult-use program and three out of 20 (Connecticut, Illinois, and Washington) allow home cultivation only for qualifying medical patients. New Jersey is the only jurisdiction that has legalized adult-use cannabis and does not allow home cultivation under any circumstances.

While all adult-use cannabis jurisdictions except New Jersey permit home cultivation, laws governing home cultivation vary significantly across states. In order to make recommendations to the General Assembly, the Commission evaluated the home cultivation laws and regulations in adult-use cannabis jurisdictions across several categories:

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<sup>1</sup> Health-General Article §13-3304(g)(5)(i), Annotated Code of Maryland.

1. Individual and household cultivation limits;
2. Medical registration requirements;
3. Restrictions on cultivation location (e.g., indoors versus outdoors, secured or locked space, and visibility requirements); and
4. Authority of property owner to restrict home cultivation.

The following section summarizes the different approaches taken across adult-use cannabis states to each of these issues and identifies consensus approaches or trends, if applicable.

*1. Individual and household cultivation limits*

Each state that allows home grow places limits on the amount an individual and/or household may lawfully cultivate. The per person limit ranges from four plants (Virginia) to 24 plants (Massachusetts and Rhode Island), and the per household limit ranges from four plants (Virginia) to 36 plants (Oregon). (**Note:** If adult-use legalization is ratified by the voters in Maryland, Chapter 26 would establish a per person and per household cultivation limit of two cannabis plants). The median number of plants permitted across states is six plants per person and 12 plants per household.

A majority of adult-use jurisdictions establish higher cultivation limits for qualifying medical patients than adult-use consumers. Twelve out of 19 jurisdictions permit qualifying medical patients to cultivate more cannabis than adult-use consumers. Of these, nine states allow qualifying medical patients to cultivate at least two times the number of plants as adult-use consumers.

**Table 1: Cultivation limits, by jurisdiction**

State	Plants per adult-use consumer	Plants per medical patient	Plants per household
<b>Alaska</b>	6 (3 mature)	6 (3 mature)	12 (6 mature)
<b>Arizona</b>	6	12	12
<b>California</b>	6	A reasonable amount related to medical need	Adult-use: 6 Medical: a reasonable amount related to medical need
<b>Colorado</b>	6	6	12
<b>Connecticut</b>	N/A	6 (3 mature)	12
<b>District of Columbia</b>	6 (3 mature)	6 (3 mature)	12 (6 mature)
<b>Illinois</b>	N/A	5	5
<b>Maine</b>	15 (3 mature)	18 (6 mature)	36 (12 mature)
<b>Massachusetts</b>	6	24 (12 mature)	12 (Adult-use only)
<b>Michigan</b>	12	12	12

<b>Montana</b>	4 (2 mature)	8 (4 mature)	Adult-use: 8 (4 mature) Medical: 16 (8 mature)
<b>Nevada</b>	6	12	12
<b>New Mexico</b>	12 (6 mature)	12 (6 mature)	12 (12 mature)
<b>New York</b>	6 (3 mature)	6 (3 mature)	12 (6 mature)
<b>Oregon</b>	4	18 (6 mature)	Adult-use: 4 Medical: 36 (12 mature)
<b>Rhode Island</b>	6 (3 mature)	24 (12 mature)	Adult-use: 6 (3 mature) Medical: 24 (24 mature)
<b>Vermont</b>	6 (2 mature)	9 (2 mature)	Adult-use: 6 (2 mature)
<b>Virginia</b>	4	4	4
<b>Washington</b>	N/A	6 (can be increased to up to 15 by healthcare provider)	15 (medical-only)

2. *Medical cannabis registration requirements*

While most adult-use jurisdictions establish higher cultivation limits for qualifying medical patients, few place any additional restrictions on patients in order to cultivate larger amounts of cannabis in their homes. Four states (Arizona, Oregon, Rhode Island, and Washington) require a patient to obtain a registration card or certificate authorizing home cultivation for medical purposes. Typically, the home cultivation registration card or certificate must be conspicuously displayed at the cultivation site. In addition, Colorado and Massachusetts have voluntary home grow registration provisions that provide patients with added benefits, such as a hardship allowance to cultivate or possess more than the statutory limit. No other jurisdiction has established different or more stringent requirements in order for qualifying medical patients to cultivate cannabis in their homes.

3. *Restrictions on cultivation location (e.g., indoors versus outdoors, secured or locked space, and visibility requirements)*

In Maryland, Criminal Law Article §5-601.2 would limit home cultivation to individuals 21 years and older who cultivate cannabis (1) in an “enclosed locked space to which persons under the age of 21 years do not possess a key,” and (2) that is not “subject to public view...without the use of binoculars, aircraft, or other optical aids.” A person who violates these requirements is guilty of a criminal misdemeanor and subject to imprisonment not exceeding three years, a fine not exceeding \$5,000, or both.

In light of the restrictions established in Criminal Law Article §5-601.2, the Commission evaluated laws and regulations in other jurisdictions to determine whether home cultivation was limited to (1) enclosed or indoor locations, (2) secure or locked locations, and/or (3) locations not visible to the public. In addition, the Commission evaluated whether qualifying medical cannabis patients were subject to different location, security, or visibility requirements due to their status as

patients. Based on the laws in the 19 adult-use jurisdictions that permit home cultivation, the Commission determined:

- All jurisdictions (19 out of 19) allow home cultivation indoors;
- Sixteen out of 19 jurisdictions allow home cultivation outdoors. Of these, two states (Colorado and Massachusetts) allow home cultivation outdoors by qualifying medical cannabis patients only (e.g., adult-use consumers prohibited);
- Fourteen out of 19 jurisdictions require access to the cultivation location to be secure or establish specific security requirements (e.g., locked facility or location); and
- Fourteen out of 19 jurisdictions establish restrictions on home cultivation within public view for qualifying medical patients, adult-use consumers, or both. Of these, eight states (Arizona, California, Colorado, Connecticut, Maine, Nevada, Oregon, and Vermont) establish visibility restrictions on adult-use consumers only. Conversely, two states (New York and Rhode Island) have visibility restrictions placed on home cultivation by qualifying medical cannabis patients only.

Overall, home cultivation laws are more restrictive for adult-use consumers than qualifying medical patients. To date, two states have prohibited home cultivation outdoors, limited cultivation to a secure or locked space, and prohibited cultivation within public view for adult-use consumers (as Criminal Law Article §5-601.2 would establish in Maryland). Another 11 states have adopted two out of the three provisions. However, no jurisdiction has placed all three types of restrictions on qualifying patients, and a majority of jurisdictions place fewer burdens on qualifying patients compared to adult-use consumers.

#### *4. Authority of property owner to restrict home cultivation*

As home cultivation relates to activities conducted in a private residence, a common issue confronted across states is whether a landlord, homeowners' association, or condominium association ("landlord") may restrict or prohibit cultivation on a property under their control. Most states have not adopted express provisions governing home cultivation by adult-use consumers *and* qualifying medical patients in a private residence subject to a lease agreement or association bylaws. Absent express provisions, courts are left to consider the application of common law tort theories, such as nuisance, or the general statutory grant of authority to landlords and condominium and homeowners' associations balanced against a tenant's right to privacy.

Two states (Massachusetts and Montana) have adopted provisions expressly governing whether a landlord may restrict home cultivation on his property for both adult-use consumers and patients, and each state preserves a landlord's authority to restrict home cultivation on his property. In addition, five jurisdictions (California, District of Columbia, Maine, New Mexico, and Vermont) have adopted laws expressly preserving a landlord's authority to restrict home cultivation by adult-use consumers only, and three states (Illinois, Oregon and Rhode Island) have express provisions protecting a landlord's authority to restrict home cultivation by qualifying medical patients only. As of October 1, 2022, only New York prohibits a landlord from refusing to lease to, or otherwise penalizing, a qualifying medical patient or caregiver for home cultivation.

### *c. Public Health and Safety Concerns Associated with Home Cultivation*

Home cultivation does present potential health and safety risks, though the likelihood of these risks in noncommercial settings with a small number of plants has not been widely studied. One of the few comprehensive literature reviews completed on this issue was published by the National Collaborating Centre for Environmental Health in advance of national cannabis legalization in Canada. The 2018 report titled *Growing at Home: Health and Safety Concerns for Personal Cannabis Cultivation*<sup>2</sup> identifies several risks associated with home cultivation, including: (1) accidental ingestion or poisoning, (2) poor indoor air quality, (3) unsafe pesticide application, and (4) electrical and fire hazards. While the source information relied primarily on remediation efforts related to illegal cannabis grows prior to legalization, the same risks will be present during lawful home cannabis cultivation, harvesting, and/or handling. Each of these health and safety risks are explored in more detail below.

#### *1. Accidental ingestion or poisoning*

The presence of cannabis and cannabis plants in the home significantly increases the likelihood that children, pets, or adults may accidentally consume or overconsume cannabis. While edible cannabis products present the greatest risk of accidental ingestion, dried cannabis flower, resin, and concentrates are also commonly ingested, particularly by young children (e.g., birth to 5 years) and pets. Chapter 26 attempts to mitigate this risk by requiring a person who grows cannabis at home to take reasonable precautions to ensure the cannabis plants are secure from unauthorized access, including by cultivating the plants in an enclosed, locked space. Cannabis products produced in the home may also present increased risks compared to retail cannabis as they are not subject to potency limits, child-resistant packaging requirements, or health and safety warning requirements. Likewise, it can be challenging for patients and consumers to distribute cannabis evenly throughout a homemade infused edible product, leading to an increased risk of inadvertent overconsumption.

#### *2. Poor indoor air quality*

Indoor home cultivation may present significant risks to indoor air quality, including exposure to mold and unsafe levels of carbon monoxide. Immature and mature cannabis plants alike can increase indoor humidity levels, and depending on a variety of cultivation factors, including irrigation and ventilation practices, indoor cannabis cultivation may elevate humidity to unsafe levels. One study found that as few as four mature cannabis plants were adequate to create moisture issues in a home.<sup>3</sup> Similarly, indoor cultivation may also increase carbon monoxide levels in the home. Current commercial cultivation practices commonly use carbon dioxide (CO<sub>2</sub>) enrichment to increase plant growth, which can lead to carbon monoxide accumulation.<sup>4</sup> There are

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<sup>2</sup> National Collaborating Centre for Environmental Health, *Growing at Home: Health and Safety Concerns for Personal Cannabis Cultivation* (2018), available at <https://nceeh.ca/documents/guide/fact-sheet-environmental-health-risks-personal-cannabis-cultivation>.

<sup>3</sup> Johnson LI, Miller JD, *Consequences of large-scale production of marijuana in residential buildings*, *Indoor Built Environ.*, 2011, 21(4): 595-600.

<sup>4</sup> *Medical Cannabis Home Cultivation Guide*, New York State Office of Cannabis Management, September 26, 2022, available at <https://cannabis.ny.gov/system/files/documents/2022/09/medical-cannabis-home-cultivation-guide.pdf>.

several inexpensive carbon dioxide enrichment devices (e.g., CO<sub>2</sub> generators) available for noncommercial use, as well as internet tutorials on constructing a CO<sub>2</sub> generator out of common household supplies. Use of CO<sub>2</sub> enrichment devices in an indoor cultivation without proper ventilation or a carbon monoxide detector may increase the risk of carbon monoxide poisoning.

### *3. Unsafe pesticide application*

Pesticide use is regulated by the U.S. Environmental Protection Agency (EPA). Due to the ongoing federal prohibition on cannabis, the EPA has not evaluated the safety of any pesticide on the cannabis plant. Compounding matters, existing federal pesticide limits are based exclusively on ingestion, whereas a majority of cannabis patients and consumers use inhalable products. This means that for cannabis that is smoked or vaped there is no specific data on which pesticides may be safe or in what amount a particular pesticide may be safe.

Chapter 598 of the Acts of 2018 allows licensed medical cannabis growers to use certain minimum-risk organic pesticides that EPA has exempted from the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) which provides for federal regulation of pesticide distribution, sale, and use. However, home cultivators may not be aware of the list of approved minimum-risk organic pesticides, or the uncertain risks presented by using pesticides on cannabis plants that are only approved for use on ingested food crops.

### *4. Electrical and fire hazards*

Indoor home cultivation frequently requires high wattage grow lamps, temperature controls, and additional ventilation, which can overload electrical circuits and cause fires. (Note: use of LED lighting systems can reduce energy usage and heat output). The use of fertilizers, CO<sub>2</sub> generators, and dried plant material can also increase the risk of fire and the risk of explosion. Likewise, cannabis oil extraction methods commonly use butane or other highly flammable solvents that can trigger explosions.

#### ***d. Recommendations***

The recommendations in this report are based on information provided by states allowing adult-use cannabis, evaluating laws and regulations across the country governing home cultivation, and lessons learned over the past eight years developing, implementing, and administering the State's medical cannabis program. In light of this collective guidance, the Commission recommends that the General Assembly adopt the following proposals for a home grow program to authorize qualifying patients to grow cannabis plants for personal use:

- 1. Allow qualifying medical patients to cultivate up to six cannabis plants, with up to three mature cannabis plants*

Establishing higher cultivation limits for qualifying medical patients would be consistent with the approach to possession limits under current Maryland law and align with the home cultivation laws adopted in a majority of adult-use jurisdictions. In Maryland, qualifying medical patients may lawfully possess up to 120 grams of usable cannabis (4.23 ounces) or up to 36 grams

of delta-9-tetrahydrocannabinol (THC), or more if a certifying provider determines it would be inadequate to meet the patient's medical needs. In contrast, Chapter 26 establishes a personal use amount for adult-use consumers of 42 grams of usable cannabis (1.5 ounces) or up to 12 grams of delta-9-THC. Moreover, a majority of adult-use states that allow home cultivation (12 out of 19) establish higher cultivation limits for qualifying medical patients, and a plurality of states allow patients to grow at least two times as many plants as adult-use consumers. The median cultivation limit across states for qualifying medical patients is six plants.

The existing statutory framework authorizes qualifying medical patients to possess nearly three times the amount of cannabis as an adult-use consumer, and establishing a cultivation limit of six cannabis plants (three mature) would create a similar standard for home cultivation limits and align with the laws adopted in a majority of adult-use jurisdictions.

*2. Expressly allow home cultivation outdoors, subject to certain security and public view restrictions*

Establishing outdoor cultivation with reasonable security and public view restrictions will allow qualifying medical patients to grow cannabis in a safer, more sustainable manner. Air quality issues related to humidity, mold, and carbon monoxide poisoning can be eliminated by growing outside of the home. Cultivating outdoors or in a greenhouse also reduces the use of high wattage lamps, thereby reducing the risk of electrical and fire hazards. Indoor cultivation consumes a large amount of energy, although the use of energy-efficient LED lighting and an EPA Energy Star-certified dehumidifier and fan can significantly reduce the energy costs. The health and safety, security, and sustainability of outdoor home cultivation is reflected in its popularity across states that have legalized adult-use cannabis, with 16 out of 19 jurisdictions allowing patients and/or consumers to cultivate outdoors. Requirements that the cultivation site be on private property, locked or secured, and outside of public view have also been successfully applied to outdoor grow sites across several jurisdictions.

*3. Do not require a separate registration or certificate for medical patients to cultivate in their homes*

Requiring qualifying medical patients to register their private residence as a cultivation site places unnecessary burdens on patients and disincentivizes home cultivation. Many patients choose home cultivation to reduce costs or to ensure access to products or strains that may not be widely available at licensed dispensaries. Establishing additional registration or reporting requirements may discourage patients and adult-use consumers from pursuing home cultivation as a low-cost alternative to the illicit market. Moreover, if different home cultivation rules are established for qualifying medical patients compared to adult-use consumers, state and local law enforcement are already able to confirm whether an individual holds a valid medical cannabis registration in the State.

4. *Consider establishing civil penalties for lesser violations of Criminal Law Article §5-601.2 pertaining to home grow*

Pursuant to Chapter 26, Criminal Law Article §5-601.2(g) establishes comparatively stringent penalties for home grow versus cannabis possession violations. Section 5-601.2(g) provides that a person who violates any of the statutory requirements related to home cultivation is guilty of a misdemeanor and subject to up to three years imprisonment. Strict application of the statute would mean a person who cultivates three plants instead of two or who forgets to secure the lock to their enclosed indoor grow, could face up to three years imprisonment. In contrast, Criminal Law Article §5-601 establishes a person 21 years or older (1) may legally possess up to 1.5 ounces of usable cannabis, (2) is subject to a small civil fine for possessing more than 1.5 ounces but less than 2.5 ounces, and (3) is subject to a misdemeanor and up to six months imprisonment for possessing more than 2.5 ounces of cannabis.

The Commission recommends the General Assembly adopt an approach to home cultivation violations similar to that for possession, where a person cultivating a small amount over the legal limit may be subject to a monetary fine and only a person cultivating a large number of plants may be subject to a misdemeanor and imprisonment.

5. *Mandate the development of educational materials identifying the health and safety risks of home cultivation and home cultivation best practices*

Establishing clear and enforceable legal requirements for home cultivation – an activity performed predominantly indoors on private property – is challenging. This challenge is exacerbated by a lack of experience in home cultivation among qualifying medical patients and the public, and a lack of awareness of the health and safety risks associated with home cultivation. Public education initiatives are critical to safe home cultivation practices. Several jurisdictions, including Canada, Massachusetts, and New York, have developed public education campaigns to guide patients and consumers. Factsheets, video tutorials, and more in-depth materials can help to explain the laws and rules governing home cultivation, share tips for safe, energy efficient cultivation, educate the public about the cannabis plant and best practices for home cultivation, and promote secure storage and disposal.

6. *Clarify whether a landlord, condominium association, or homeowners' association may adopt a policy restricting or prohibiting home cultivation*

Health-General Article §13-3314 expressly allows a landlord, condominium association, or homeowners' association to adopt a policy prohibiting cannabis smoking in a unit. This provision has provided clear direction to property owners, renters, and owners' associations regarding cannabis smoking in multi-unit properties since its adoption. In contrast, Criminal Law Article §5-601.2(d) states "cannabis cultivation may only occur on property lawfully in possession of the cultivator or with the consent of the person in lawful possession of the property." The Commission recommends the General Assembly adopt the approach taken in at least 11 other adult-use cannabis jurisdictions and expressly state whether landlords, condominium associations and/or homeowners' associations may restrict or prohibit home cultivation in individual units or homes.



7. *Clarify whether qualifying medical patients who are between the ages of 18 and 20 years are included within the adult patient population who may cultivate cannabis in their homes*

Under current law, a person between the ages of 18 and 20 years may qualify as a medical cannabis patient and obtain cannabis from a licensed dispensary. However, Criminal Law Article §5-601.2 limits adult-use home cultivation to persons 21 years or older. the Commission recommends clarifying whether an adult medical cannabis patient between the ages of 18 and 20 years would be permitted to cultivate cannabis plants at home.

### III. ESTABLISHMENT OF ON-SITE CANNABIS CONSUMPTION FACILITIES

#### *a. Background*

An on-site cannabis consumption facility is an indoor or outdoor location, which is open to the public, and licensed to allow individuals who are 21 years or older to consume cannabis on its premises. Under Maryland’s medical cannabis statutes and regulations, qualifying patients may only smoke or consume cannabis in a private residence. This approach is consistent with initial adult-use cannabis legalization initiatives across the county, which expressly prohibited the use of cannabis in any place open to the public, largely out of concerns related to occupational safety, odor, impaired driving, and youth use. However, since 2016, at least 10 adult-use cannabis states have repealed these restrictions, passed laws establishing on-site consumption licenses, or granted authority to local governments to allow on-site consumption.

States are increasingly allowing on-site consumption facilities as a means to reduce cannabis smoking and vaping in outdoor areas open to the public, such as parks and sidewalks, and promote additional economic opportunities in the cannabis market. Laws restricting cannabis smoking or consumption to private property frequently prevent tourists, visitors or individuals subject to a lease or owners’ association policy from consuming cannabis in a lawful manner. For instance, in Denver, Colorado, public smoking citations increased nearly 500 percent post-legalization, in large measure because tourists, renters, and individuals living in multiunit housing properties were without a legal place to smoke or use cannabis. Additionally, consumption sites may expand economic opportunities in the cannabis market, particularly for small businesses, because they require significantly less initial capital investment than a cultivation, processor, or retailer license. Federal banking restrictions prevent most federally insured financial institutions from lending to cannabis businesses, and without access to traditional lending services small businesses face significant financial barriers to entry in the cannabis industry.

Due to a variety of factors, including pandemic-related delays and restrictive local zoning requirements, however, relatively few on-site consumption licenses have been issued nationwide. There is also significant variability within each individual states’ on-site consumption laws, making it difficult to identify best practices to license and regulate these facilities. Therefore, the potential benefits and risks of on-site consumption facilities are not as well understood as other aspects of adult-use cannabis legalization.

Absent evidence-based best practices or a consensus approach across states, this report will focus on summarizing on-site consumption laws in other jurisdictions, identifying important policy considerations for licensing and regulating on-site consumption facilities, and making recommendations for next steps the General Assembly can take as it considers whether and how to allow on-site consumption facilities. Specifically, the report will examine three critical policy variables related to licensing and regulating on-site consumption facilities: (i) licensing structure, (ii) sourcing of cannabis, and (iii) whether the facility may also serve alcohol, food, and/or tobacco; and present additional considerations related to local control, reduction of public consumption, and social equity.

### ***b. State Approaches to On-Site Consumption Facilities***

The Commission reviewed and evaluated the on-site consumption laws in all 18 states that have legalized adult-use cannabis and have a licensed market (the District of Columbia and Virginia have legalized adult-use cannabis, but do not have a licensed market). **Appendix 2** provides a summary of the laws in each state. In evaluating these laws, the Commission identified three key initial policy considerations related to licensing and regulating on-site consumption facilities (also referred to as “consumption lounges” or “on-site consumption establishments”):

1. Whether the State should allow retail dispensaries to operate on-site consumption facilities, or these facilities should fall under a separate, distinct license and framework that is independent of existing cannabis business categories;
2. Whether on-site consumption facilities may *only* allow consumption on the premises (e.g., allowing individuals to bring previously purchased cannabis products to the facility), or may be permitted to sell products for on-site use;
3. Whether other, non-cannabis consumable products, such as food, tobacco or alcohol, should be allowed to be sold or consumed at on-site consumption facilities.

Across these three axes there has yet to be a clear consensus approach in other states, as shown in **Table 2** on the following page.

**Table 2: On-site consumption facility policy, by jurisdiction**

Summary of On-Site Consumption Policies <sup>5</sup>	Licensing Structure		Source of Cannabis On-Site		Other Products		
	Allow with Retail Licenses	Distinct Licenses	Allowed to Bring Prior Purchased Cannabis Products	Allow Sale of Cannabis On-Site	Allow Alcohol	Allow Tobacco	Allow Food
<b>Alaska</b>	Yes	No	No	Yes	No	No	Yes
<b>California</b>	Yes	No	No	Yes	No	No	N/A
<b>Colorado<sup>6</sup></b>	No	Yes	Yes	Yes	No	No	Yes
<b>Illinois</b>	Yes	No	Yes	Yes	No	Yes	N/A
<b>Massachusetts</b>	Yes	Yes	No	Yes	No	No	Yes
<b>Michigan<sup>7</sup></b>	No	Yes	No	Yes	N/A	No	Yes
<b>Nevada</b>	Yes	Yes	No	Yes	No	No	Yes
<b>New Jersey</b>	Yes	No	No	Yes	No	No	No
<b>New Mexico</b>	Yes	No	No	Yes	No	Yes	Yes
<b>New York</b>	No	Yes	No	Yes	N/A	N/A	N/A

*1. Licensing Structure*

States are split as to whether a retail dispensary may allow on-site consumption within the dispensary or in an adjacent space, and if so, whether a separate and distinct license is required to offer on-site use. Allowing a retail dispensary to permit on-site use may assuage safety and security concerns around the source of cannabis (e.g., legal or illicit) used at a consumption facility. The ease and convenience of purchasing and consuming at the same location may also reduce the likelihood of individuals smoking or vaping cannabis in public outdoor spaces. However, allowing or requiring on-site consumption facilities to be located at, or adjacent to, retail dispensaries may reduce the economic opportunities associated with on-site consumption and expand the market share of existing cannabis businesses operating in the State. As discussed later in this report,

<sup>5</sup> Adapted from Appendix 2

<sup>6</sup> Colorado has two categories of consumption licenses: the Marijuana Hospitality Business and Retail Marijuana Hospitality and Sales Business. The Marijuana Hospitality Business licensee cannot sell cannabis to customers, but customers can bring their own cannabis to consume at the site. The Retail Marijuana Hospitality and Sales Business licensee can sell cannabis to customers to be consumed onsite.

<sup>7</sup> Michigan does not limit the designated consumption establishment license to licensed retailers. The regulatory language is general and refers to “a person” seeking applying for the license. At the same time there are no prohibitions on licensed retailers also applying for the consumption license.

consumption facilities offer a new licensing category with lower costs to entry that could benefit small businesses and be structured to promote greater equity in the cannabis industry.

As shown in the table above, eight of the 10 states authorizing on-site use licenses allow consumption facilities to be attached to a retail facility, while four of 10 set up a separate licensing category for these businesses. Nevada offers both Retail Cannabis Consumption Lounge<sup>8</sup> and Independent Cannabis Consumption Lounge licensing opportunities. A retail license is paired with the consumption lounge license and may not be transferred without the transfer of the other license. Further, these retail consumption facilities must be either attached to, or immediately adjacent to, the retail dispensary. In contrast, an independent cannabis consumption lounge may not be attached or adjacent to an adult-use store, and its ownership may not have an interest in any other cannabis business. As highlighted later in the subsection on Social Equity, independent cannabis consumption lounges may promote opportunities for small-, minority- and women-owned businesses.

Other states offer additional approaches to the retail/consumption issue. In Michigan a retail licensee can secure a consumption site license, but the consumption site cannot be on the retailer's premises. New York prohibits a cannabis retail licensee from holding a social consumption site license. Overall, five of 10 states have created distinct state licenses for consumption sites.

## 2. *Source of Cannabis for On-Site Consumption Facilities*

The majority of the state regulations examined for this report allow, or in many instances require the cannabis used at the facilities to be purchased directly on-site. This often takes the form of single-use and/or ready-to-consume cannabis products, which must be purchased and consumed at the facility. Nevada, which developed its regulations following 16 months of public meetings and input, defines ready-to-consume cannabis products as:

*“Ready-to-consume cannabis product” means an adult-use edible cannabis product that is:*

- 1. Prepared and/or infused on the premises of a cannabis consumption lounge;*
- 2. Presented in the form of a foodstuff or beverage;*
- 3. Sold in a heated or unheated state; and*
- 4. Intended for immediate consumption.*

*Ready-to-consume cannabis products include, but are not limited to, adult-use edible cannabis products that have been prewashed, precooked, or otherwise prepared for consumption and do not require additional cooking or preparation, including portioning.*

Regulations further require relevant agency approval and limit the amount of THC per serving. The Nevada definition for a “Single-Use Cannabis Product” further extends the types of products that may be sold at consumption facilities to include edibles, usable cannabis, tinctures, topicals, and other inhalable products.<sup>9</sup> These are the *only* allowable products to be sold in Nevada

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<sup>8</sup> Nevada Cannabis Compliance Regulations 15.100 Defines a “Retail cannabis consumption lounge” as a facility “attached or immediately adjacent to a cannabis sales facility.”

<sup>9</sup> Nevada Cannabis Compliance Regulations 1.222 Definition of “Single-Use Cannabis Product”

facilities, and relatedly, single-use and ready-to-consume products may not be removed from the facility. Under this model, Nevada has also outlined employee training and consumer education requirements, including mandating that employees of the lounge consult with the end-consumers “usage and needs”<sup>10</sup> consumption limits for individual products and consumers.

Conversely, Illinois statute provides authority to local governments to authorize on-site consumption at dispensing facilities in their jurisdictions. A local government may also authorize a retail tobacco store to allow on-premises consumption of cannabis in specially designated areas, or a cannabis-only consumption model. Illinois’s first consumption site, in Southern Illinois, fit under this model and did not have an existing retail cannabis consumption or dispensing license.<sup>11</sup> Potential concerns with this model include ensuring the legal acquisition of cannabis, increased difficulties with monitoring use, consumption, and dosage, and the use of cannabis with other substances, such as alcohol or tobacco. Colorado’s Marijuana Hospitality Business licenses also follow this model, where licensees cannot sell cannabis to customers, but customers can bring their own cannabis to consume at the site. Similarly, Michigan’s regulations do not limit a designated consumption establishment to licensed retailers and therefore could present opportunities for consumption-only licensees in the state as well. Although Colorado, Illinois, and Michigan all allow consumption-only facilities, these states also permit retail facilities to offer on-site consumption.

### *3. Allowing the Sales and Use of Other Products at On-Site Consumption Facilities*

While there is little consistency across states in their regulatory approaches to on-site consumption, no state permits the sale or consumption of alcohol in an on-site consumption facility, and only Illinois and New Mexico expressly permit the sale or use of tobacco in a cannabis consumption establishment. Additionally, a majority of states permit the sale and consumption of food and beverage products, as long as the business is compliant with state and local food safety regulations (some regulations are silent on the sale of food, others require that the food not be prepared on-site, but rather pre-packaged).

States have elected to restrict the concurrent sale of cannabis and alcohol together due in part to concerns surrounding the further intoxicating effects of using both substances simultaneously. Research from Canada suggests that there are additive effects of the two substances when used simultaneously that have deleterious effects on cognitive, psychomotor, and general driving performance. Generally, simultaneous use is found to be more harmful than use of either substance alone.<sup>12</sup>

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<sup>10</sup> Nevada Cannabis Compliance Regulations 15.030(6)

<sup>11</sup> Rehana, Joe. “Illinois’ First On-Site Consumption Cannabis Lounge Set to Open in Sesser.” WSIL, March 18, 2021, available at [https://www.wsilv.com/news/illinois-first-on-site-consumption-cannabis-lounge-set-to-open-in-sesser/article\\_cb68e859-d8c7-5e35-862a-9b1c4a7128a8.html](https://www.wsilv.com/news/illinois-first-on-site-consumption-cannabis-lounge-set-to-open-in-sesser/article_cb68e859-d8c7-5e35-862a-9b1c4a7128a8.html).

<sup>12</sup> Ontario Agency for Health Protection and Promotion (Public Health Ontario), Meyer W, Leece P. Evidence brief: risk factors for simultaneous use of alcohol and cannabis. Toronto, ON: Queen's Printer for Ontario; 2018.

Although laws may prohibit the concurrent sale of alcohol and cannabis, consumers may still seek to use the substances in combination. Nevada attempts to address this issue by requiring on-site consumption facility employees to be trained in, among other things:

- Methods for identifying signs of visible overconsumption of cannabis and/or impairment from alcohol and/or other drugs;
- Resources to mitigate impaired driving, including safe transportation options available to consumers;
- Strategies for inquiring about and understanding a consumer’s varying experience with cannabis and options for lower dose cannabis products;
- Signs of polysubstance interactions including but not limited to interactions of cannabis with alcohol, prescription, and over-the-counter medications and other substances; and
- Risks and potential responses to adverse events such as overconsumption, dehydration, polysubstance use, or other similar events.

However, anecdotal reports suggest that licensees in Nevada may be able to circumvent restrictions of concurrent sales of alcohol and cannabis by co-locating a nightclub and cannabis consumption lounge while establishing different ownership structures and business licenses.<sup>13</sup>

On-site consumption presents potential challenges for facilities and the State to limit polysubstance use. Conversely, establishing an environment where cannabis may be lawfully purchased and consumed also provides an opportunity for policymakers, regulators, and cannabis businesses to monitor the consumption of cannabis.

### *c. Further Policy Considerations*

#### *1. Local Control*

Many states provide significant input, or entirely delegate authority over on-site consumption facilities to county and municipal governments. Each state that allows on-site consumption has some aspect of local control, with either the state’s subdivisions able to opt-in to consumption sites through local ordinances, or to have local governments and their voters elect to allow or prohibit consumption sites within their boundaries.

Seven of 10 states subject consumption sites to state zoning restrictions. Six of these states’ subject consumption sites to general zoning restrictions that are applicable to multiple categories of licensees (Alaska, California, Massachusetts, Michigan, Nevada, and New Mexico). For example, Nevada subjects all cannabis establishments to a 1000-foot buffer zone around schools, a 300-foot buffer zone around community centers, and a 1,500-foot buffer zone around gaming facilities. New York is the only state that has zoning restrictions specific to consumption sites. New York requires a 500-foot buffer zone around schools and a 200-foot buffer zone around places

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<sup>13</sup> Maravelias, Patrick, Matt Lamers, and Kate Robertson. “Las Vegas Cannabis Industry Preps for Launch of Consumption Lounges.” MJBizDaily, August 8, 2022, available at <https://mjbizdaily.com/las-vegas-cannabis-industry-preps-for-launch-of-consumption-lounges/>.

of worship. Colorado, Illinois, and New Jersey do not have state zoning restrictions applicable to consumption sites. New Mexico’s zoning law is unique in that places a ceiling on local zoning authority. Rather than setting a default buffer zone, it allows locals to set a buffer zone up to 300 feet.

Regardless of the precise mechanism granting local control or oversight, most states provide political subdivisions with significant authority over on-site consumption facilities. In many instances, local control over on-site consumption facilities exceeds that of other cannabis businesses regulated by the state, such as growers, processors, dispensaries, and testing laboratories.

In general, California delegates significant authority over cannabis licensing and regulation to county and municipal governments, and this has led directly to different on-site consumption models developing throughout the State. For instance, San Francisco has three types of cannabis consumption permits: pre-packaged (no preparation); limited preparation, or cannabis smoking. West Hollywood has two different license categories for consumption: Edibles Only or Vaping, Smoking, and Edibles.

California municipalities also provide concrete examples of the challenges that on-site consumption facilities face. While West Hollywood authorized 16 consumption licenses in 2018, as of August 2022, only one has opened for business.<sup>14</sup> Similarly, West Hollywood and Oakland have placed additional public safety and regulatory requirements on consumption licensees. Oakland requires each consumption licensee to cover any police costs associated with the facility, and West Hollywood requires operators to provide a “neighborhood security guard patrol for a two-block radius surrounding the business” and regularly attend meetings with the city’s public safety officials to review any operational issues.

## *2. Ventilation and Other Occupational Health and Safety Issues*

According to the U.S. Centers for Disease Control and Prevention (CDC) “the known risks of secondhand exposure to tobacco smoke – including risks to the heart and lungs – raises questions about whether secondhand exposure to [cannabis] smoke causes similar health risks.”<sup>15</sup> Secondhand cannabis smoke may contain some of the same toxic and cancer-causing chemicals found in tobacco smoke.<sup>16</sup> Moreover, secondhand cannabis smoke contains THC and individuals exposed to secondhand cannabis smoke can experience psychoactive effects.

Several states establish odor and indoor air quality standards in their consumption facility provisions, with some states being more prescriptive on this front than others. For instance, Nevada provides explicit requirements for the ventilation of consumption facilities, with detailed

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<sup>14</sup> Casacchia, Chris, Matt Lamers, and Kate Robertson. “California Cannabis Consumption Lounges Poised for Takeoff.” MJBizDaily, August 1, 2022, available at <https://mjbizdaily.com/california-cannabis-consumption-lounges-poised-for-takeoff/>.

<sup>15</sup> U.S. Centers for Disease Control and Prevention, Secondhand Marijuana Smoke, available at <https://www.cdc.gov/marijuana/health-effects/second-hand-smoke.html> (visited on October 20, 2022).

<sup>16</sup> Moir D, Rickert WS, Lévasseur G, et al. A comparison of mainstream and sidestream marijuana and tobacco cigarette smoke produced under two machine smoking conditions. *Chemical Research in Toxicology*. 2008;21(2):494-502



instructions in statute as to the number of air-changes per hour, requirements for atmospheric monitoring of the space, and permissible filtration systems. Other states require a separate, designated space that maintains a locked door or other barrier (Illinois); a separate, smoke-free area in the retail store for employees to monitor the consumption of cannabis and, if indoors, ensure any ventilation for the consumption area is separate and through a filtration system that is “sufficient to remove visible smoke, consistent with all applicable building codes and ordinances, and adequate to eliminate odor at the property line” (Alaska).<sup>17</sup>

While not all states have addressed potential occupational health and safety issues, there is concern that continued, long-term exposure to second-hand cannabis smoke could present health risks to consumers and staff and have adopted regulations and health and safety warnings accordingly when establishing these types of licenses. Nevada requires cannabis consumption lounges that allow the inhalation of cannabis smoke to include a warning stating:

“WARNING: This is a smoking lounge. Occupants will be exposed to secondhand smoke. Secondhand smoke is hazardous to your health.”

Nevada further requires that the smoking areas of consumption facilities be separated from the rest of the facility and that the lounges create protocols and standards that minimize employee exposure to second-hand smoke.

Chapter 26, if ratified by the voters of Maryland, would amend the Clean Indoor Air Act (Health-General Article, §§24-501 – 24-510) to prohibit smoking cannabis or hemp in any indoor area open to the public or indoor place of employment. State law does not extend the prohibition to vaping products; however, certain counties and municipalities have banned the use of vaping products in indoor areas such as restaurants and bars. The Clean Indoor Air Act (CIAA) also expressly exempts certain locations from the ban on smoking, including retail tobacco businesses whose primary activity is the sale of “tobacco products and accessories.” Chapter 26 does not include any exception for retail cannabis businesses. Therefore, under current state law, on-site consumption facilities would be prohibited from allowing cannabis or hemp smoking, but could permit cannabis vaping. The recommendations outlined later in this section assume the ban on cannabis smoking in indoor areas open to the public and indoor places of employment included in Chapter 26 will apply to consumption facilities.

### *3. Social Equity*

In recent years, states have begun to amend and repeal laws restricting consumption facilities in order to expand economic opportunities in the cannabis industry. Consumption facilities are particularly attractive due to the lower financial cost of entry compared to other cannabis business categories. The combination of a new licensing category with lower costs to entry also has led states to pursue consumption facilities as a vehicle for greater social equity within the cannabis industry.

Massachusetts established a “Social Consumption Establishment Pilot Program” where consumption facility licenses are limited to businesses that meet certain social equity criteria and

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<sup>17</sup> 3 Alaska Administrative Code 306.370 - Onsite consumption endorsement for retail marijuana stores

these businesses are granted an exclusivity period. Under statute, these social equity licenses must be owned and controlled by individuals adversely impacted by the criminalization of cannabis. The initial exclusivity period is for 36 months; however, the Massachusetts Cannabis Control Commission may extend the exclusivity period indefinitely if it determines the goal of promoting and encouraging “full participation in the regulated marijuana industry by people from communities that have previously been disproportionately harmed by marijuana prohibition and enforcement of the law, by farmers, and by businesses of all sizes, has not been met.” The Cannabis Control Commission is also required to evaluate if the social equity goals of this pilot program are being met and report on these findings prior to the end of the 36-month period to determine whether the exclusivity under this statute should be extended.

Nevada also prioritizes social equity in its licensing structure for independent cannabis consumption lounges. The State defines a social equity applicant as an applicant who is at least 51 percent owned by one or more individuals that have been adversely affected by laws that criminalized activity relating to cannabis. The Cannabis Compliance Board must consider areas disproportionately impacted by cannabis prohibition, and prior cannabis convictions when determining social equity eligibility, and social equity applicants are subject to reduced fees during the application process. At least 10 of the first 20 independent cannabis consumption lounge licenses issued by the Cannabis Compliance Board must be awarded to social equity applicants, and at least one-half of all consumption lounge licenses must be to independent consumption lounges, rather than to existing retail businesses. As previously stated, Nevada’s independent consumption lounge license is exclusively for businesses without a grower, processor, or dispensary in the State.

Beginning in April 2021, Denver, Colorado reserved new licenses of all types, including consumption facilities, solely for social equity applicants. For a period of at least six years, social equity applicants will be eligible to apply for a hospitality establishment license. The city code defines social equity applicants as a person or persons who hold 51 percent or more ownership and have (i) resided for at least 15 years in a census tract designated as an opportunity zone or disproportionate impact area, or (ii) been arrested, or had a parent, legal guardian, sibling, spouse or child arrested or convicted of a cannabis offense. The social equity applicant also may not exceed certain annual income requirements.

#### ***d. Recommendations***

A majority of adult-use cannabis states have adopted laws allowing cannabis consumption facilities, and there is optimism among policymakers and advocates that consumption facilities may reduce cannabis use in outdoor public areas and impaired driving, while also increasing economic opportunities in the cannabis industry, particularly for small and minority businesses. Yet few facilities are operational nationwide and as a result there is little data on the health, safety, and economic impacts of consumption facilities. Absent evidence-based approaches to on-site consumption the Commission recommends that the General Assembly adopt the following:

- 1. Require the Cannabis Public Health Advisory Council to conduct additional study and make recommendations on whether and how to allow on-site cannabis consumption*

Given the dearth of data on the benefits and risks associated with on-site consumption facilities and the proliferation of state and local laws in other jurisdictions authorizing these facilities in the past 12 to 24 months, the Commission recommends additional study on this matter. If the voters ratify House Bill 1/Chapter 45 of the Acts of 2022, a Public Health Advisory Council (“Advisory Council”) will be established effective January 1, 2023, to study and make recommendations on certain health and safety aspects related to adult-use cannabis legalization. The Advisory Council will consist of legislators, representatives of the State departments of health, agriculture, and education, and public health, safety, and cannabis subject matter experts. The Advisory Council must submit statutory and regulatory recommendations to the General Assembly beginning in December 2023. Given the potential health and safety risks associated with secondhand cannabis smoke, the composition, scope of work, and timing of the Advisory Council make it well positioned to study and provide recommendations regarding on-site cannabis consumption in Maryland.

Alternatively, if the General Assembly chooses to authorize on-site consumption facilities during the 2023 legislative session, the Commission recommends the following:

1. *Prohibit the sale and use of alcohol and tobacco at on-site cannabis consumption facilities*

The only area of agreement that currently exists across states with on-site consumption facilities is that virtually all states prohibit the sale and use of alcohol and tobacco at the facilities. Given the emerging consensus among regulators elsewhere, Maryland would be best to follow these best practices due to health, safety, and increased intoxication concerns.

2. *Prohibit a business that holds an on-site cannabis consumption license from owning or controlling a license to grow, process, or dispense cannabis*

To fully maximize the social equity opportunities of a new class of cannabis business licenses, these new licenses should be distinct from the existing licensing structure. Prohibiting existing cannabis businesses from holding these new licenses would help to increase participation in the State’s cannabis market.

3. *Prioritize social equity businesses in the application process for on-site cannabis consumption licenses and require that a certain percentage of licensees be issued to social equity businesses*

Consumption facilities are particularly attractive vehicle for social equity businesses due to the new licensing category and lower costs to entry. The State should ensure this potential benefit is realized by traditionally marginalized communities by creating a system that prioritizes social equity applicants and further requires a certain share of these new license types to be awarded to them.

- 4. Establish clear indoor air quality and ventilation standards to protect employees and consumers, and to prevent the spread of cannabis odor outside the licenses' premises*

One of the challenges with establishment of consumption facilities is potential safety concerns for staff's exposure to smoke and cannabis odor extending beyond the facility itself. If the State elects to establish on-site consumption facilities, it should look to states like Nevada's establishment of strong indoor air quality and ventilation standards to address both concerns.

- 5. Establish zoning and planning requirements for on-site cannabis consumption facilities*

Health-General Article §13-3313.1 establishes a cannabis advertisement may not be placed within 500 feet of a primary or secondary school, substance use disorder treatment facility, or playground, library, or public park. Similar siting requirements should be considered for on-site consumption establishments.

- 6. Establish employee training and consumer education requirements*

Education of consumers as to how different products might affect them is important for the understanding and safe use of cannabis products. Employees at consumption lounges should be trained in the effects and signs of overconsumption, and impaired driver mitigation to provide a safe environment for cannabis consumption.

- 7. Consider adopting a process that priorities subject matter expert and public input*

Considering the various local, state, public health, safety, and stakeholder interests around the establishment of on-site consumption facilities, the State should allow for public comment in future reports pertaining to on-site consumption and throughout the regulatory process. Nevada developed their on-site consumption regulations following 16 months of public meetings and input.

## IV. METHODS TO REDUCE THE USE OF CANNABIS BY MINORS

### *a. Background*

The legalization of cannabis possession and use by persons 21 years or older commonly raises concerns about the potential impact such a policy change may have on youth and young adults (e.g., persons aged 18 to 20). To date, data from other U.S. jurisdictions indicate legalization does not lead to an increase in cannabis use among youth.<sup>18</sup> This finding is supported through research and surveys conducted by a number of prominent public health and medical associations, including the American Medical Association (AMA),<sup>19</sup> the National Institute on Drug Abuse, and the Centers of Disease Control and Prevention.<sup>20</sup> Contrary to concerns that efforts to legalize adult-use cannabis will lead to an increase in youth use, the study by the AMA further concluded that cannabis consumption by youth actually decreased in states with legal cannabis markets that had been in place for at least two years.

While legalization data do not indicate an increase in youth use, there are nonetheless significant health and safety harms associated with cannabis use among youth, particularly for frequent or daily users. The brain is actively developing during the teenage years and is not fully developed until approximately age 25, making youth particularly susceptible to the adverse impacts of cannabis use.<sup>21</sup> Early initiation of cannabis use and heavy use may harm the developing brain and have been linked with a number of increased health risks in adolescence and later in life. Concerningly, although the rates of cannabis use among youth have not increased across states, the 2013–2014 National Survey on Drug Use and Health (NSDUH) data indicated youth perceptions of risk decreased in many states that legalized cannabis. The perceived risk has consistently decreased among young people each year between 2015 and 2020 (latest data available).

The following sections of this report will (1) introduce and briefly summarize the best practices already implemented in the Maryland Medical Cannabis Program to reduce youth appeal of and use of cannabis, (2) outline policy approaches in adult-use states to reduce cannabis use among minors, and (3) make recommendations for advertising, packaging and labeling, product requirements, zoning, substance use treatment, and education efforts to reduce youth cannabis use.

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<sup>18</sup> Nguyen, Hai, Mital, Schweta, Bornstein, Stephen, Short-term Effects of Recreational Cannabis Legalization on Youth Cannabis Initiation, *Journal of Adolescent Health*, October 2022, <https://doi.org/10.1016/j.jadohealth.2022>.

<sup>19</sup> Anderson, Mark D., et al., “Association of Marijuana Laws with Teen Marijuana Use New Estimates From the Youth Risk Behavior Surveys” *Journal of American Medical Association*, July 2019.

<sup>20</sup> Centers for Disease Control and Prevention. (2020). *Youth Risk Behavior Surveillance – United States, 2019*. <https://www.cdc.gov/mmwr/volumes/69/su/pdfs/su6901-H.pdf>

<sup>21</sup> Anderson, Mark D., et al.

***b. Best Practices Currently Implemented in Maryland***

The General Assembly and the Maryland Medical Cannabis Commission have adopted comprehensive advertising, packaging and labeling, and product restrictions for the State's medical cannabis program. These provisions were adopted or amended between 2019 and 2022 and reflect cannabis industry best practices. As the General Assembly evaluates methods to reduce youth use and access to cannabis it should consider the existing, evidence-based approaches adopted for the medical cannabis program. In particular, the following approaches have been implemented in the State's medical cannabis program:

- Advertising:
  - Prohibit advertising that is attractive to children, including cartoon characters (Health-General Article §13-3313.1);
  - Require a cannabis-related website to adopt a neutral age-screening or age verification mechanism (Health-General Article §13-3313.1);
  - Require warning statements that cannabis is only for use by qualifying patients (Health-General Article §13-3313.1);
  - Prohibit cannabis-related advertisements within 500-feet of schools and other youth-focused areas (Health-General Article §13-3313.1); and
  - Prohibit therapeutic or medical claims unless supported by substantial clinical data (Health-General Article §13-3313.1).
  
- Packaging and Labeling:
  - Require child-resistant and tamper-evident packaging (COMAR 10.62.37.13)
  - Require use of universal symbol indicating the product contains THC (COMAR 10.62.24 and .37);
  - Require certain warning statements on the health and safety risks of cannabis and to keep out of the reach of children (COMAR 10.62.24. and 37);
  - Require the package to display the number of Maryland Poison Control (COMAR 10.62.24); and
  - Prohibit a product package from resembling any commercially available product, including a commercially available food or beverage (COMAR 10.62.24).
  
- Product Restrictions
  - Establish limit of 10 mg THC per serving and 100 mg THC per package for all edible cannabis products (COMAR 10.62.37.12);
  - Prohibit alcoholic beverages containing cannabis (COMAR 10.62.37);
  - Prohibit manufacture of edibles in a shape resembling a human, animal, or fruit, or that bears any likeness to real or fictional character, mascot, or cartoon rendering;
  - Prohibit non-cannabis additives that would increase potency or toxicity (COMAR 10.62.37);
  - Require each edible cannabis product serving to be physically separated in order to avoid accidental over-ingestion (COMAR 10.62.37); and
  - Require pre-market review and approval of edible cannabis products (COMAR 10.62.37).

### *c. Best Practices in Adult-Use States*

#### *1. Advertising Regulations*

Regulation of advertising is a key environmental strategy to prevent or reduce the appeal of cannabis and cannabis products minors. The importance of this strategy to reduce cannabis use by youth is evidenced by the widespread implementation of advertising regulations in the 20 jurisdictions (19 states and the District of Columbia) that have legalized adult-use cannabis.

The policy approaches on the regulation of advertising of adult-use cannabis are divided into three categories – medium restrictions, content restrictions, and physical restrictions;

- Medium Restrictions are restrictions specific to a particular advertising medium, such as:
  - Print, Radio, and Television Restrictions: At least 13 states limit or restrict cannabis advertising in print media or on radio and television, though they have adopted different regulatory approaches. A majority of states allow cannabis advertising only if a certain percentage of the audience is reasonably expected to be at least 21 years old. The audience composition percentage varies across states and ranges from a low of 70% (Oregon) to a high of 90% (Connecticut). Alternatively, states may restrict print, radio or television advertising using a broader standard, such as advertising is not permitted if there is a high likelihood it will reach a person under the age of 21, or limit ads unless the service is a subscription-based, and the subscriber is at least 21 years of age. Finally, at least one state, Montana, completely prohibits cannabis advertising in print and on radio or television.
  - Internet Advertising Restrictions: At least 14 states restrict internet advertising of adult-use cannabis, with a majority adopting the same approach as to print, radio, and television, which limits cannabis advertising unless a certain percent of the audience is reasonably expected to be at least 21. In addition, several states require that cannabis-related web pages adopt age-gate screening mechanisms to prevent access by individuals under age 21.
  - Event Sponsorship: Nine states restrict event sponsorship by adult-use cannabis companies, and six additional states only permit event sponsorship if a certain percent of attendees is reasonably expected to be at least 21.
  - Location-Based Marketing Restrictions: Location-based marketing (LMS) uses a mobile device's location to alert the device's owner about an offering from a near-by business. Seven states restrict LMS for cannabis. While all these states allow LMS, they require that the advertising is limited to individuals 21 years of age or older. In addition, six states require that the individual solicit the advertisement. For example, Connecticut limits LMS to applications installed by the owner of the device and that the applications have an easy opt out option.

- Content Restrictions focus on limitations and requirements placed on the message of the advertisement, including:
  - Content Targeting Children: Every state has an explicit prohibition against advertising content that targets children, but the specificity of the language used varies considerably across states. Several states simply prohibit advertising that targets, or is attractive to, individuals under the age of 21. Other states, such as New Jersey, adopted an alternative, more-detailed approach that restricts any depiction of a person under 21 years of age consuming cannabis items; the inclusion of objects, “such as toys, characters, or cartoon characters suggesting the presence of a person under 21 years of age, or any other depiction designed in any manner to be especially appealing to a person under 21 years of age.”
  - Product Warnings: At least 10 states require some form of product warning in adult-use cannabis advertisements. There are a broad range of required warnings including warnings related to the: possible impairment from the consumption of cannabis, intoxicating or addictive effects of cannabis, health risks associated with consumption of cannabis, use by pregnant or breast-feeding women, lack of approval by the U.S. Food and Drug Administration (FDA), age requirement of at least 21 years of age, and keeping cannabis and cannabis products away from minors.
- Physical Restrictions focus on the physical properties and the location of outdoor advertising, specifically:
  - Proximity to Schools: Eleven states establish advertising exclusionary zones or buffer zones around schools and other child focused locations where cannabis-related advertisements are prohibited. The distance of the exclusionary zone varies considerably across states, and ranges from 200 feet (New Jersey) to 1,500 feet (Connecticut). The most common distance is 1000 feet and is used by six states (Arkansas, California, Illinois, Maine, Nevada, and Washington). In addition to schools, states restrict the proximity of cannabis advertising to a variety of child focused locations, including. playgrounds, recreation centers, childcare facilities, public parks, libraries, and arcades that are not restricted to adults.
  - Signs on Public Property or Public Transportation: Nine states restrict adult-use cannabis advertising on public property and/or public transportation. Three states (Alaska, Illinois, and New York) completely prohibit advertising on public property.
  - Signs Visible to the General Public: Three states (Alaska, New York, and Washington) have general visibility restrictions placed on signs and/or billboards, and New York prohibits all billboards.
  - Size of Signs: Two states (Alaska and Washington) restrict size or other physical features of cannabis advertising signs.



- Illuminated Signs: Two states (Connecticut and Massachusetts) place time restrictions on the use of illuminated signs.

## 2. Potency

THC concentration in cannabis products has been steadily increasing for the past couple decades.<sup>22</sup> The legalization of cannabis has likely fueled this increase as adult-use cannabis businesses compete for market share and consumers who are often focused on potency and price. The adult-use market has typically offered more potent strains of cannabis, commonly above 20 percent THC, and sometimes considerably higher. The higher the THC amount, the stronger the effects on the brain. One major area of concern in rising THC levels is the increased potential for addiction, as high potency THC products carry an increased risk of dependency and addiction which has significant implications for treatment and intervention effectiveness. A landmark study from the United Kingdom also found that use of high potency THC >15 percent resulted in a three times increased risk of psychosis, and if the use was daily there was a five times increased risk.<sup>23</sup>

THC potency limits are a common policy consideration for states as they legalize adult-use. While each method of cannabis consumption (e.g., smoking, vaping, oral ingestion, etc.) presents some level of risk, edible cannabis products present unique challenges as these products are attractive to children and may resemble commercial food or beverage products. As a result, adult-use jurisdictions have experienced an increase in emergency room visits and calls to poison control associated with child ingestion of cannabis.<sup>24</sup> In addition, the delayed onset of cannabis edibles can lead to acute intoxication when consumers eat too much of the product. Certain THC potency limits that have been implemented include:

- Edible THC per Serving Size Restrictions: At least 17 states have adopted per serving limits on THC in edible cannabis products. Edibles typically have a 5 or 10 milligrams per serving limit. Specifically, 13 states limit the individual serving size to 10 mg of THC. Three states limit the serving size to 5 mg of THC (Connecticut, Vermont, and Virginia). Massachusetts limits a serving to 5.5 mg of THC.
- Edible THC per Package Restrictions: All 17 states with potency restrictions limit the total amount of THC in a single edible product or package of edible products. Edibles commonly have a 100 milligrams per package limit. Thirteen states set the total THC limit at 100 mg. Two states limit it to 50 mg of THC (Vermont and Virginia). Massachusetts limits edible cannabis products to 110 mg of THC. Michigan has set two edible cannabis product limits. For cannabis infused beverages, the limit is 100 mg of THC and the limit for solid edible products is 200 mg of THC.

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<sup>22</sup> Cascini, F, Aiello C, Di TG, (2012) Increasing Delta-9-tetrahydrocannabinol Content in Herbal Cannabis Over Time: Systemic Review and Meta-analysis, *Current Drug Abuse Review*, 5, 32-40.

<sup>23</sup> Di Forti, et al. Proportion of patients in south London with first-episode psychosis attributable to use of high potency cannabis: a case control study. *Lancet Psychiatry*, 2015 doi:10.1016/S2215-0366(14)00117-5.

<sup>24</sup> See e.g., John Ingold, Kids' emergency room visits for marijuana increased in Colorado after legalization, study finds, *The Denver Post* (July 26, 2016), <https://www.denverpost.com/2016/07/25/colorado-kids-emergency-room-visitsmarijuana-increased/>.

- THC Potency Tax: Given the dangers of high potency THC products, taxation on potency is another means that states have used to make it more difficult for minors to access high potency cannabis. Connecticut,<sup>25</sup> Illinois<sup>26</sup> and New York<sup>27</sup> tax cannabis based on level of THC content. Connecticut requires retailers to pay a potency excise tax. The tax rates are \$0.00625 per mg of total THC in flower; \$0.0275 per mg of total THC in edibles; and \$0.009 per mg of total THC in other cannabis products. Illinois has a cannabis potency tax of 10% of the purchase price for cannabis with delta-9-THC levels at or below 35% and 25% of the purchase price for cannabis with delta-9-THC levels above 35%. New York taxes cannabis flower at 0.5 cents per mg of total THC; concentrated cannabis at 0.8 cents per mg of total THC; and cannabis edible products at 3 cents per mg of total THC.

### 3. Packaging

Cannabis product packaging is a critical component for reducing the appeal of these products to youth. It is notable that plain packaging and efforts to restrict packaging that would be appealing to youth has resulted in lower rates of tobacco use by youth.<sup>28</sup> Edible cannabis packaging of food and beverages can be especially appealing to youth.

Packaging should be regulated in a manner that effectively reduces youth access. Best practices in cannabis packaging both nationally and in Maryland in its medical cannabis program include: child-resistant and tamper-evident packaging (according to federal standards); requirements for a universal symbol that indicates the package contains THC, and specific product warnings; health warnings alerting consumers that cannabis use may impair the ability to drive a car or operate machinery, may be associated with health risks, especially during pregnancy or breastfeeding, and that cannabis should be kept out of the reach of children and animals (See COMAR 10.62.24.01 and COMAR 10.62.29.01).

Cannabis can be made less attractive to youth by restricting names, flavors, images of people, animals, cartoon figures, bright colors, logos, and branding that may make the package attractive to children and prohibiting packaging that imitates non-cannabis products that are appealing to children such as candy or chips.<sup>29</sup> All of these packaging prohibitions exist in Maryland's regulations for its medical program (See COMAR 10.62.24.01C and COMAR 10.62.29.01C).

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<sup>25</sup> CONN GEN STAT § 12-33011.

<sup>26</sup> Illinois Revenue. (n.d.) Cannabis taxes.

<https://www2.illinois.gov/rev/research/taxinformation/other/Pages/Cannabis-Taxes.aspx>

<sup>27</sup> Newman, G., & Peleg, S. (2021). Tax issues and the New York Regulation and Taxation Act. *The National Law Review*, XI(90),

<sup>28</sup> Hammond, D., Wakefield, M., & Durkin, E.B. (2013). Tobacco packaging and mass media campaigns: Research needs for Articles 11 and 12 of the WHO Framework Convention on Tobacco Control. *Nicotine Tob Res*, 15(4), 817-831.

<sup>29</sup> Orenstein, D.G. & Glantz, S.A. (2018) Regulating cannabis manufacturing: Applying public health best practices from tobacco control. *Journal of Psychoactive Drugs*, 50(1), 19-32.

#### 4. *Labeling*

For the safety of consumers, essential information must be included on the labels of cannabis products so that consumers know what they are consuming. Labels of cannabis products commonly include information such as the name of the product, ingredients, strength of applicable cannabinoid and terpene compounds, quantity of cannabis dispensed, proper dosage, any directions for use of the product, instructions for proper storage and handling of the product, health warnings and the name of the licensee where the product was dispensed.

#### 5. *Other Methods to Reduce the Appeal of Cannabis to Minors*

##### a. Product Specifications

Studies have demonstrated that youth are attracted to food packaging that includes color; original and creative shapes; sweet, fruity, and candy-like flavors; cartoon characters; and youth brand identification.<sup>30</sup> A report from the University of Washington School of Law's Cannabis Law and Policy Project concluded the same factors that make food appealing to children would likely also apply to edibles.<sup>31</sup> The report included the following findings;

- Color is a key factor in children's food choices, with red, orange, yellow and green foods preferred;
- Food in novel shapes such as stars or animals is more appealing to children than food cut into slices or sticks;
- Children like foods that smell sweet, fruity or like candy; and
- Cartoon and other promotional characters powerfully influence children's food preferences.

Consequently, best practices for edible cannabis packaging typically prohibit these product features for edibles. Maryland's medical cannabis program incorporates best practices by regulating the appearance of edible cannabis products that may be appealing to children. COMAR 10.62.37.12C provides that a solid edible cannabis product may only be manufactured or distributed in geometric shapes. Regulation .12C also prohibits a licensed processor from manufacturing an edible cannabis product that due to its shape, design, or flavor is likely to appeal to minors. Further, this regulation prohibits the sale of edibles in the following shapes: 1) Human, animal, or fruit, 2) A shape that bears the likeness or contains characteristics of a realistic or fictional human, animal, or fruit, including artistic, caricature, or cartoon renderings, and 3) A commercially available food or beverage product that targets or is primarily marketed to children.

Moreover, the Public Health Institute recommends that states require pre-approval of cannabis products and any additives prior to the sale or distribution of the products. Product pre-approval helps reduce the likelihood of youth appealing products as new products and additives are brought to market. The Commission adopted pre-market review for edible cannabis products in the medical cannabis program in 2019.

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<sup>30</sup> University of Washington. (2016). Factors that might attract children to marijuana edibles. Science Daily.

<sup>31</sup> Id.

## b. Point-of-Sale Controls

A fundamental cornerstone for reducing youth access to cannabis is by establishing strong point-of-sale controls. All states that have legalized adult-use cannabis prohibit sales to minors under the age of 21 and require ID checks prior to purchase. Illinois and Nevada further require an ID scan to verify the age of the customer and to track purchases to ensure the customer does not purchase more cannabis than the State allows. Rigorous ID verification has been posited as being a lynchpin to establishing a cannabis regulatory framework that impedes cannabis use by youth following legalization.

All adult-use cannabis states impose penalties for the unauthorized sale of cannabis to minors. Each adult-use state has the authority to impose sanctions against the retailer's license and levy fines against the retailer for violations. The highest fine amounts are found in New Jersey (up to \$500,000); Colorado and Maine (up to \$100,000); Massachusetts (up to \$50,000); and Nevada (\$25,000-\$75,000). The remaining states established fines that are substantially less.

Similarly, existing tobacco control measures in Maryland include penalties for sales to minors. The clerk or licensee (or both) may be subject to a civil penalty or a criminal misdemeanor and a fine up to: \$300 for a first violation; \$1,000 for a second violation within two years of the first violation; \$3,000 for each subsequent violation occurring within two years of preceding violation.<sup>32</sup> Additionally, selling or distributing tobacco products *without* the appropriate licensure is a criminal misdemeanor subject to a fine up to \$1,000, and/or imprisonment up to 30 days.<sup>33</sup> (Laws should place accountability with retailers selling cannabis products and sanctions should not be applied to underage individuals for purchase, use or possession).<sup>34</sup>

Responsible vendor training has been successfully used in Maryland with alcohol (Training Intervention Procedures or "TIPS") and tobacco retailers (Maryland Responsible Tobacco Retailer Program [www.NoTobaccoSalesToMinors.com](http://www.NoTobaccoSalesToMinors.com)) and could be beneficial to adapt for cannabis retailers. Oregon is the only state that currently mandates cannabis retailer training by law. Programs educate vendors about social and physical effects of the product, teach techniques for accurately checking identification (ID checks), recognizing signs of over consumption, and refusing service/sales if necessary. Training also makes management and staff aware of the penalties for violations of the law. Responsible vendor training is supported by the American Society for Addiction Medicine (ASAM).<sup>36</sup> The Maryland medical cannabis program currently requires all dispensary agents to receive annual training (COMAR 10.62.26.07).<sup>35</sup>

The use of compliance checks to reduce youth cannabis access, similar to those used in tobacco control, is also supported by ASAM.<sup>36</sup> Underage "Sales to Minors" compliance checks

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<sup>32</sup> Md. Ann. Code Crim. Law §10-107 and Md. Ann. Code Health- General § 24-307

<sup>33</sup> Md. Ann Code Bus. Reg § 16.7-211(b)(1), Md. Ann Code Bus. Reg § 16.5-218, Md. Ann Code Bus. Reg § 16-214(b)(1)-(2)

<sup>34</sup> "2022 Policy Recommendations Guide - Astho." Tobacco Control Network. Accessed September 27, 2022.

Available at <https://www.astho.org/globalassets/pdf/tcn-policy-recommendations-guide.pdf>.

<sup>35</sup> Code of Maryland Regulations 10.62.26.07

<sup>36</sup> "Public Policy Statement on Cannabis Background - Asam." American Society of Addiction Medicine . Accessed September 27, 2022. Available at [https://www.asam.org/docs/default-source/public-policy-statements/2020-public-policy-statement-on-cannabis.pdf?sfvrsn=aa3c58c2\\_2](https://www.asam.org/docs/default-source/public-policy-statements/2020-public-policy-statement-on-cannabis.pdf?sfvrsn=aa3c58c2_2).

(e.g., shoulder taps) have been shown to reduce underage sales of alcohol and tobacco to minors.<sup>37</sup> Another tobacco control intervention that could be required for cannabis retail sales would be to require retailers to post age restriction signage in their establishments stating ‘No person under the age of 21 may be sold cannabis products’. This signage is statutorily required for tobacco products in Maryland.

#### c. Zoning

Cannabis zoning restrictions are primarily used to limit youth exposure to cannabis. At least 13 states impose zoning restrictions to regulate adult-use cannabis retailers. The required distance of the buffer zone varies considerably depending upon the targeted location (i.e., school vs. place of worship). The most common buffer zone size is 500 feet. States with buffer zones apply them to schools; playgrounds; public parks; day care; recreation centers; places of worship; and residential zones.

#### d. Price Regulations

Raising taxes on alcohol and tobacco has proven to be an effective way to reduce use by minors. Youth are more price sensitive than adults and increases in cost reduce youth use. Conversely, higher costs for cannabis may incentivize adult consumers to remain in the illicit market rather than purchase from a legal retailer.

Discounted cannabis may encourage purchases by minors who are generally of more limited financial means. States may consider bans or restrictions on price promotions such as coupons, two-for-one deals, happy hours as a way to control access by minors. Nine states prohibit licensees from offering gifts, prizes, or other inducements relating to cannabis sales. Seven states (Arkansas, California, Illinois, Massachusetts, Nevada, New Jersey, and Vermont) explicitly prohibit the gifting of free cannabis, cannabis products, and/or cannabis accessories.

#### e. Family, School, and Community Based Education

Education that raises awareness about the risks of substance use has historically been a way to reduce substance use among youth. Greater public acceptance and the significant decrease in the perceived harm associated with cannabis use found after legalization demonstrates the need for strong public health education about the risks of cannabis targeted at youth.

According to the National Council on Alcoholism and Drug Dependence, tested, age-appropriate messages can be effective in minimizing adverse outcomes in high-risk groups such as adolescents by correcting misconceptions, changing behaviors, and promoting harm reduction practices. Campaigns should be developed and implemented by experienced public health communications experts.

After school and community-based programs can strengthen protective factors that guard against future substance use. The PROSPER program (PROMoting School-community-

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<sup>37</sup> Erickson DJ, Smolenski DJ, Toomey TL, Carlin BP, Wagenaar AC. Do alcohol compliance checks decrease underage sales at neighboring establishments? *Journal of Studies on Alcohol and Drugs*. 2013;74(6):852-858.

university Partnerships to Enhance Resilience) has been shown to reduce the proportion of youth who ever use cannabis by age 19, the frequency of cannabis use among youth already using, and the use of cigarettes, alcohol, and several forms of illicit substances.<sup>38</sup>

Brief motivational sessions with a counselor have shown to strengthen protective factors and goal setting as well as to address misperceptions and norms regarding cannabis use and to provide initial skills training to help youth pursue healthy, substance-free activities. The “Teen Marijuana Check-Up” is a brief motivational enhancement intervention publicized as a non-pressured and confidential opportunity for the teen marijuana smoker to “take stock” of his/her use. It has been implemented with success in Colorado, Washington and several other states.<sup>39</sup> Additional curriculum-based modules, such as the Stanford University toolkit, provide classroom-based prevention.<sup>40</sup>

#### f. Substance Use Prevention Programs

Extensive literature has shown that youth substance use prevention programs can effectively reduce youth tobacco, alcohol, and other drug use, including cannabis use. Substance use prevention interventions typically center on positive youth development and building social-emotional competency (See the *Blueprints for Healthy Youth Development* and the *Surgeon General’s Report on Alcohol, Drugs, and Health*).<sup>41</sup>

The Blueprints for Healthy Youth Development (“Blueprints”) is a project within the Institute of Behavioral Science at the University of Colorado Boulder which identifies and promotes substance use prevention interventions with strong evidence of effectiveness. Blueprints has a comprehensive registry of these scientifically proven interventions that may be searched at [blueprintsprograms.org/program-search](http://blueprintsprograms.org/program-search). Some of the programs are designed specifically to reduce cannabis use by youth.

#### ***d. Recommendations***

##### ***1. Incorporate existing statutory and regulatory best practices from Maryland’s Medical Cannabis Program into the State’s new adult-use market***

Maryland has operated and regulated a successful medical cannabis market since 2017. During this time, the State’s statute and regulations have reflected many of the best practices used throughout the country in both medical and adult-use programs. These best practices to reduce youth appeal and use of cannabis should be directly incorporated into the State’s laws in the areas of advertising, packaging/labeling, and product restrictions as described in the Best Practices for Methods to Reduce the Use of Cannabis by Minors subsection of this report. These existing best

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<sup>38</sup> Spoth R. PROSPER Delivery of Universal Preventive Interventions with Young Adolescents: Long-term Effects on Emerging Adult Substance Misuse and Associated Risk Behaviors *Psychol Med.* 2017 Oct; 47(13): 2246–2259. Published online 2017 Apr 12. doi: [10.1017/S0033291717000691](https://doi.org/10.1017/S0033291717000691)

<sup>39</sup> Swan M. The Teen Marijuana Checkup. *J Soc Work Pract Addict.* 2008 Jul; 8(3): 284–302. doi: [10.1080/15332560802223305](https://doi.org/10.1080/15332560802223305)

<sup>40</sup> <https://med.stanford.edu/cannabispreventiontoolkit.html>

<sup>41</sup> U.S. Department of Health and Human Services (HHS), Office of the Surgeon General, Facing Addiction in America: The Surgeon General’s Report on Alcohol, Drugs, and Health, Washington, DC: HHS, November 2016.

practices are under Health-General Article §13-3313.1 for advertising (Appendix 7); and COMAR 10.62.24 (Appendix 8) and 10.62.37 (Appendix 9) for packaging/labeling and product restrictions.

a. Current Medical Cannabis Advertising Controls

Advertising restrictions, such as the ones currently governing the State’s medical cannabis program, are crucial to reduce youth appeal and consumption. Though cannabis presents health and safety risks to the developing brain, data indicate many youth do not believe cannabis use is harmful or is only slightly harmful and public perception of the risk and harms associated with cannabis use have decreased in recent years.<sup>42</sup>

There is also a well-established link between exposure to alcohol and tobacco marketing, branding, or advertising and increased use of those substances. States legalizing adult-use cannabis have successfully prevented increases in youth use by adopting similar advertising and marketing restrictions as those used on other age-restricted products such as alcohol and tobacco.

b. Current Medical Cannabis Packaging and Labeling Regulations

The State already requires plain packaging and labeling of certain medical cannabis products. Maintaining this requirement in the adult-use market would further reduce the appeal to minors. In tobacco, plain cigarette packaging and health warning labels reduce brand appeal to youth and increase health knowledge. Recent studies have shown similar effectiveness with cannabis products.<sup>43,44</sup>

Multiple adult-use states also follow the packaging limit of 10 mg THC per serving and 100 mg THC per package currently established by Maryland medical cannabis regulations for edible products. These standards limit high potency products which are particularly harmful to youth. Further, continuing Maryland’s strategy of prohibiting cannabis products and edibles in shapes, designs, flavors, and products that are likely to appeal to minors. For instance, COMAR 10.62.37.12C prohibits products shapes that are:

- (a) Human, animal, or fruit;
- (b) A shape that bears the likeness or contains characteristics of a realistic or fictional human, animal, or fruit, including artistic, caricature, or cartoon renderings; and
- (c) A commercially available food or beverage product that targets, or is primarily marketed to, minors.

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<sup>42</sup> Meich R et al. *Pediatrics*. 2017 Dec; Prevalence and Attitudes Regarding Marijuana Use Among Adolescents Over the Past Decade 140(6): e20170982. doi: [10.1542/peds.2017-0982](https://doi.org/10.1542/peds.2017-0982)

<sup>43</sup> Mutti-Packer S, Collyer B, Hodgins DC. Perceptions of plain packaging and health warning labels for cannabis among young adults: findings from an experimental study. *BMC Public Health*. 2018 Dec 10;18(1):1361. doi: 10.1186/s12889-018-6247-2. PMID: 30526539

<sup>44</sup> Samantha Goodman, Cear Leos-Toro & David Hammond (2022): Do Mandatory Health Warning Labels on Consumer Products Increase Recall of the Health Risks of Cannabis?, *Substance Use & Misuse*, DOI: 10.1080/10826084.2021.2023186

Continuing these regulations for adult-use products, and further limiting certain names or references to existing, youth-appealing products would continue to reduce the appeal of these products to minors.

c. Current Medical Cannabis Point-of-Sale Controls

The State currently maintains certain point-of-sale controls with medical dispensaries, such as restricting entry to qualifying patients or caregivers only (See COMAR 10.62.27.08), and requiring patients and caregivers to display a valid, government-issued ID in order to enter the dispensary. The existing practice can easily be modified to instead limit entry to individuals who are 21 years or older. Current regulations also restrict the sale of non-cannabis products, e.g., prohibiting the sales of food and alcohol. This best practice would also be well-adapted to an adult-use market in Maryland, given that retail outlets that are frequented by young people (e.g., convenience stores and other outlets in residential areas) increase the risk of youth access. Adult use businesses should be restricted to selling cannabis and related supplies and products only, with limited days and hours of sale. Conversely, only licensed cannabis dispensaries that are regulated by the State and follow existing best practices should be allowed to dispense cannabis.

*2. Modify and strengthen the State's current medical cannabis statute to address youth access issues that are unique to an adult-use market*

While the State's current law reflects many best practices, the legalization of adult-use presents the opportunity to modify or strengthen statutes and regulations in several key areas. Notably, advertising restrictions, as well as product packaging and labeling specifications will need to be amended or supplemented to address issues specific to adult-use and restricting appeal and access to youth.

Health-General Article §13-3313.1 limits advertising for medical cannabis businesses, products, and services, and as such prohibits advertising the recreational use or intoxicating effects of cannabis. The Commission recommends that this section be amended to *at least* allow for advertisements that represent recreational use if adult-use cannabis is authorized in the State.

The current medical cannabis statute prohibits advertisements that target children or are attractive to minors. The Commission recommends continuing this prohibition in statute, and adding other specific advertising limitations in statute that would further reduce the appeal and advertising of cannabis to youth, such as:

- Prohibit radio, television, digital, print, public transit and internet advertising (including pop-up, unsolicited, mobile and LMS ads) of adult-use cannabis unless at least 80 percent of the audience is reasonably expected to be at least 21 years of age based upon current audience composition data; and
- Prohibit event sponsorship by adult-use cannabis businesses.



The Commission further recommends strengthening Maryland’s current cannabis packaging and labeling requirements in certain areas. Specifically, the required health warnings under COMAR 10.62.24.01 should be:

- a) Prominently displayed directly on the packaging;
- b) Indelibly printed on or permanently affixed to the packaging; and
- c) Indelibly printed on or permanently affixed to the bottle, jar, canister, or other container that holds the medical cannabis product if the product has multi-layer packaging.

Additionally, the Commission recommends requiring the use of a universal symbol that indicates that the package contains cannabis, and a ‘Not Safe for Kids’ icon. Both these symbols could be approved and standardized by the regulatory agency, which would also establish regulations on the warning labels, color, height, size, and placement on packaging for adult-use products. Product labeling should also display all active ingredients, cannabinoid content (including THC), information on the processor who manufactured the product, and a delayed onset warning for certain products.

One emerging best practice is the use of rotating warning labels on products, rather than multiple and concurrent warnings. Research suggests that this allows for increased font size and increased likelihood of consumer viewing/reading. The Commission recommends that the ability to require rotating warning labels also be considered under additional regulatory authority.

*3. Mandate that the State’s cannabis regulator adopt further regulations to reduce youth use of cannabis products.*

Many of the best practices identified in this report are most-effectively implemented through the regulatory process, including point-of-sale controls, labeling, and other product specifications. Adult-use markets throughout the country vary significantly in their size, legal and regulatory framework. The cannabis industry is constantly introducing new products to the emerging market and the State’s regulatory body must be flexible to address new products, cannabinoids, additives, etc. Best practices from states allowing adult-use cannabis and from tobacco and alcohol control efforts in Maryland include:

- imposing sanctions against a retailer’s license and levy fines against the retailer for violations;
- requiring responsible vendor training;
- requiring retailers to post age restriction signage in their establishments; and
- conducting “Sales to Minors” compliance checks.

Regulations should limit the amount of cannabis or cannabis product a person may purchase in one transaction to limit incidences of diversion. This is consistent with the State’s current medical cannabis program, which restricts medical patients to purchasing no more than a 30-day supply of medical cannabis on a rolling basis. In addition, the “personal use amount” of cannabis established in Chapter 26 of 2022, should be used as a benchmark for the amount of cannabis any one individual is able to purchase, which is:

- Less than 1.5 ounces of useable cannabis;
- Less than 12 grams of concentrated cannabis; or
- Less than 750 milligrams of delta-9-THC.

4. *Direct the Public Health Advisory Council to study and consider certain other emerging regulatory trends to reduce cannabis use by minors*

As previously noted in the on-site consumption section of this report, Chapter 26 established the Cannabis Public Health Advisory Council (Advisory Council). This body is tasked with further research, study, and recommendations on public health and cannabis. Areas for future study and recommendations from the best practices to reduce youth consumption addressed throughout this report are:

- Implementing of THC limits on products other than edibles;
- Establishing an excise tax or other tax-based disincentive for high-THC products;
- Requiring the use of ID scanners at the point-of-sale for all cannabis purchases; and
- Restricting or limiting billboard advertisements, as several northeastern states have adopted.

In addition to research and recommendations, the Advisory Council directs the uses of the Cannabis Public Health Fund, which was also established in Chapter 26 of 2022. This fund would derive revenue from a portion of revenues from adult-use cannabis and these funds can be used for substance use prevention and primary prevention efforts, including public education and youth prevention campaigns and promoting healthy youth development.

## V. CONCLUSION

Chapter 26 requires the Maryland Medical Cannabis Commission to study and make recommendations in the areas of a home grow program for medical cannabis patients, the establishment of on-site cannabis consumption facilities, and methods to reduce cannabis use by minors. After careful review and research of best practices from other adult-use jurisdictions, as well as the State’s current medical cannabis program, the Commission proposes that the recommendations contained throughout this report provide a clear and evidenced-based path forward in an adult-use market.

The report’s recommendations in support of a home grow program for medical cannabis patients balance the needs of medical patients to access affordable medical cannabis treatment with safeguards to prevent diversion and protect public and environmental health and safety. Of the 19 jurisdictions and DC with adult-use cannabis programs, New Jersey is the only jurisdiction that does not permit home cultivation under any circumstances. Most jurisdictions that allow home cultivation allow medical patients to grow outdoors and grow more plants than adult use consumers. The home grow program recommendations contained in this report draw on the best practices in U.S. adult-use jurisdictions. These recommendations were also informed by Canada’s

guidance for mitigating potential health and safety risks associated with home cultivation based upon a comprehensive literature review published by the National Collaborating Centre for Environmental Health in advance of national cannabis legalization in Canada. The report's recommendations are to: (1) allow qualifying medical patients to cultivate up to six cannabis plants, with up to three mature cannabis plants; (2) expressly allow home cultivation outdoors, subject to certain security and public view restrictions; (3) do not require a separate registration or certificate for medical patients to cultivate in their homes; (4) consider establishing civil penalties for lesser violations of Criminal Law Article §5-601.2 pertaining to home grow; (5) mandate the development of educational materials identifying the health and safety risks of home cultivation and home cultivation best practices; (6) clarify whether a landlord, condominium association, or homeowners' association may adopt a policy restricting or prohibiting home cultivation; and (7) clarify whether qualifying medical patients who are between the ages of 18 and 20 years are included within the population who may cultivate cannabis in their homes.

Regarding the establishment of on-site cannabis consumption facilities, the Commission recommends requiring the Cannabis Public Health Advisory Council established by Chapter 26 to conduct additional study and make recommendations on whether and in what manner to allow on-site cannabis consumption instead of incorporating on-site consumption immediately into the State's adult-use program. However, if acted upon sooner by the legislature, the Commission recommends a number of important considerations for on-site cannabis consumption establishments, including: (1) prohibit the sale and use of alcohol and tobacco; (2) prohibit a business that holds an on-site cannabis consumption license from owning or controlling a license to grow, process, or dispense cannabis; (3) prioritizing social equity businesses in the application process for on-site cannabis consumption licenses and requiring that a certain percentage of on-site consumption licenses be issued to social equity businesses; (4) establish clear indoor air quality and ventilation standards; (5) establish zoning and planning requirements for on-site cannabis consumption facilities; (6) establish employee training and consumer education requirements; and (7) adopt a process for establishing on-site cannabis consumption facilities that prioritizes input from subject matter experts and the public.

The recommendations on methods to reduce cannabis use by minors are to: (1) incorporate existing statutory and regulatory best practices from Maryland's Medical Cannabis Program into the State's new adult-use market concerning advertising, packaging/labeling, and point-of-sale controls; (2) modify and strengthen the State's current medical cannabis statutes to address youth access issues that are unique to an adult-use market; (3) mandate that the State's cannabis regulator adopt further regulations to reduce the use of cannabis by minors, including penalties for sales to minors, conducting sales to minors compliance checks, and requiring responsible vendor training; and (4) direct the Cannabis Public Health Advisory Council to study and consider certain other emerging regulatory trends to reduce cannabis use by minors, such as THC limits on concentrates and restricting billboard advertisements. These recommendations were developed based upon a

robust array of best practices implemented by adult-use cannabis programs, the State’s medical cannabis program, and effective, evidence-based tobacco control programs in Maryland and nationally.

The Commission extends its gratitude to our legislative partners for their leadership in assisting the State to establish a responsible framework for adult-use and medical cannabis programs that best meet the needs of individuals and the State while seeking to rectify the legacy of social injustices arising from discriminatory laws surrounding the criminalization of cannabis.

The remainder of this document contains appendices and resources developed throughout the drafting and research of this report. The first nine of these products were delivered as part of the research contact with the University of Maryland Francis King Carey School of Law. The University of Maryland compiled and analyzed the statutory and regulatory provisions governing home cultivation, one-site consumption, and youth use across all adult-use cannabis jurisdictions for this report. The remaining three are existing Maryland statute and regulations for reference.

- Appendix 1: Survey of Home Cultivation Laws
- Appendix 2: Cannabis Consumption Sites in the Adult-Use Market
- Appendix 3: Advertising Restrictions for Adult-Use Markets
- Appendix 4: Product Potency Restrictions
- Appendix 5: Youth Access Regulations
- Appendix 6: Zoning Restrictions for Adult-Use Retailers
- Appendix 7: Survey of Cannabis Product Labeling Laws
- Appendix 8: Cannabis Packaging Restrictions in the Adult-Use Market
- Appendix 9: Cannabis Product Restrictions in the Adult-Use Market
- Appendix 10: Existing MMCC Advertising Statute
- Appendix 11: Existing MMCC Packaging and Product Regulations
- Appendix 12: Existing MMCC Edible Cannabis Product Regulations

# **Appendix 1**



CANNABIS

## Survey of Home Cultivation Laws

### Regulation of Home Cultivation in Adult-Use States



## I. Introduction

Home cultivation of cannabis is an important policy decision that states need to consider when legalizing cannabis for medical and/or adult-use. Home cultivation is a tool to increase access to cannabis when geographic or financial barriers exist. This is particularly relevant to the medical cannabis market. However, allowing home cultivation can create enforcement challenges, especially with regards to gray markets. For example, as New York stands up its adult-use retail outlets, unlicensed individuals are selling cannabis from their home grows.<sup>1</sup> This resource surveys the legal landscape surrounding medical and adult-use home cultivation in the 20 jurisdictions (19 states and the District of Columbia) that have legalized adult-use cannabis. The survey examines 10 variables: (1) does the state allow home cultivation, (2) individual cultivation limits, (3) household cultivation limits, (4) registration of medical grows, (5) permissibility of indoor grows, (6) permissibility of outdoor grows, (7) grow security, (8) visibility restrictions, (9) odor control, and (10) landlord authority. The medical registry requirement is only relevant to the state's medical cannabis program. None of the adult-use programs required individuals to register their home grow with the state. Section II of this resource provides a research summary that discusses the prevalence of each policy variable and the variation in policy within each. Section III contains a table that covers the policy approach of each state and allows side-by-side comparison of each state's medical and adult-use home cultivation programs.

## II. Research Summary:


This section examines the ten different policies that states use to regulate home cultivation within their medical and adult-use programs. The prevalence of each variable is explained, and a range of policy approaches is provided when necessary.

**Permit Home Cultivation:** 16 of 20 jurisdictions allow home cultivation as part of their adult-use program. While only 15 of the 20 jurisdictions have home cultivation provisions specific to their medical program. There are 4 jurisdictions that allow adult-use home cultivation but do not have a specific medical home cultivation provision (AK, DC, NM, and VA). Alaska, the District of Columbia, and Virginia allowed home cultivation for the first time when they legalized adult-use and did not create a separate medical cultivation system. New Mexico on the other hand repealed its medical home cultivation provision when it legalized adult use and created its more inclusive adult-use home cultivation provision. There also states that allow medical home cultivation but not adult-use home cultivation (CT, IL, and WA). New Jersey is the only jurisdiction that does not allow home cultivation at all.

**Individual Cultivation Limit:** Every jurisdiction that allows home cultivation places a limit on the amount of cannabis an individual can grow. However, these limits vary greatly between states. For example, Oregon allows an individual to grow up to 4 plants for personal use, while Michigan has set the limit at 12 plants. States will often treat medical and adult-use cultivation differently with regards to individual cultivation limits by allowing larger grows for medical purposes. For example, Arizona allows an individual 6 plants for adult-use and 12 plants if they are part of the medical program. Of the 12 jurisdictions that have specific home cultivation provisions for both medical and adult-use, 9 set a greater cultivation limit for their medical program and 3 utilize the same standard for both. Furthermore, some jurisdictions break down the individual grow limit into mature and immature plants. For example, New Mexico allows an individual to cultivate up to 6 mature and 6 immature plants at any given time. California has a unique limit for its medical home cultivation. The state originally placed a default limit of 6 mature and 12 immature plants. However,

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<sup>1</sup> *New York Lawmakers Take On The Cannabis Gray Market To Protect The State's \$4.2 Billion Industry*, Will Yakowicz, Forbes (April 29, 2022) available at <https://www.forbes.com/sites/willyakowicz/2022/04/29/new-york-lawmakers-take-on-the-cannabis-grey-market-to-protect-the-states-42-billion-industry/?sh=5b496e0d399d>.



this limit was found to be unconstitutional because it contravened the state constitutional provision enabling medical cannabis. Now a patient in California may cultivate an amount reasonably related to their medical needs.

**Household Cultivation Limit:** **15 of 16 jurisdictions** that allow adult-use home cultivation have a household cultivation limit. This limit is meant to cap the amount of cannabis that can be grown at one location regardless of the number of eligible individuals living at the location. Maine is the only state without a household limit. Interestingly, **10 of 15 jurisdictions** with specific medical home cultivation programs utilize a household cultivation limit for their patients. Regardless of the program, adult-use or medical, most states set the household limit twice as high as the individual limit. For example, in New York's adult-use program an individual can grow three mature and three immature plants at one time, while the household limit is set at six mature and six immature plants. However, in CA, MI, OR, R, VT, and VA the household limit is the same as the limit for one individual in the adult-use program. For example, in Virginia's an individual is allowed to grow up to four plants and the household limit is 4 plants regardless of the number of adults at the location. The medical home grow in Illinois also restricts a household to the grow limit of one individual. There are two outliers in household cultivation structures. First, as discussed above, California does not set a numerical restriction on its medical home grow. Instead, a patient is permitted to grow the amount of cannabis necessary to meet their medical needs. This baseline leaves the household limit without a clear numerical standard. Second, Colorado has three "household limits" for medical home cultivation. The default limit on a residential property is 12 plants. However, if a patient lives in a county that does not limit the number of plants that can be cultivated, they can grow up to 24 plants but must register their grow with the state and the local jurisdiction. Also, a patient can grow up to 99 plants if the grow occurs on non-residential property.

**Registration of Medical Grow:** **6 of 15 jurisdictions** (AZ, CO, MA, OR, RI, and WA) with medical home cultivation have registration provisions. Colorado and Massachusetts have voluntary grow registration provisions. In Massachusetts, a patient can register with the state to receive a Hardship Cultivation Registration. This registration is granted if the patient has verified financial hardships or challenges accessing transportation to a dispensary. Hardship Cultivation Registration allows the patient to grow sufficient plants to provide a 60-day supply of cannabis. Contrast this limit with the default of 12 mature plants and 12 immature plants. Registration of a medical home grow with the state is a requirement in the four remaining states.

**Indoor Cultivation:** If a jurisdiction does not explicitly restrict a cultivation location (indoor or outdoor), then it is assumed that cultivation is permitted in that location. Indoor cultivation is universally permitted in medical and adult-use home grow programs.

**Outdoor Cultivation:** If a jurisdiction does not explicitly restrict a cultivation location (indoor or outdoor), then it is assumed that cultivation is permitted in that location. **11 of 16** adult-use home cultivation programs permit outdoor grows. AK, CO, DC, MA, and RI prohibit outdoor adult-use home cultivation. **13 of 15** medical-use home cultivation program permit outdoor grows. CT and RI are the two states that prohibit the outdoor home cultivation.

**Secure Location:** For this variable, jurisdictions were included if they indicated that access to the grow had to be restricted, had to be secure, or provided for specific security measures such as a locked grow site. **11 of the 16** adult-use home cultivation programs required that the grow location be secure. **10 of 15** medical cannabis home cultivation programs required a secure grow location.



**Visibility Restrictions:** 10 of the 16 adult-use home cultivation programs and 5 of the 15 medical home cultivation programs require the grow be restricted from public view. For example, Oregon restricts adult-use home grows that “can be seen by normal unaided vision from a public place.”<sup>2</sup> Arizona provides another version of this prohibition by requiring that adult-use home “cultivation takes place in an area where the marijuana plants are not visible from public view without using binoculars, aircraft or other optical aids.”<sup>3</sup>

**Odor Control:** Only two medical home cultivation programs (RI and WA) require patients to undertake efforts to manage the odor from their grow. Rhode Island requires patients to take reasonable efforts “to prevent marijuana plant odors from exiting the building to an extent that would significantly alter the environmental odor outside.”<sup>4</sup> Washington prohibits medical home grows that can be “readily smelled from a public place or the private property of another housing unit.”<sup>5</sup>

**Landlord Provisions:** 7 of the 16 adult-use and 5 of the 15 medical home cultivation programs explicitly preserve a landlord’s authority to restrict home cultivation on their property.

### III. State Survey Research

This table contains the policy research for the twenty jurisdictions with adult-use cannabis. N/A stands for “not applicable.” N/A is used when the variable is not applicable because (1) the state does not permit home cultivation, (2) the state does not have rules for medical cultivation but has a system for adult-use cultivation, or (3) the variable is medical cannabis specific (medical registration) and the column is not relevant to the adult-use system. N/C stands for “not covered in statute or regulations.” This designation is only relevant to per home plant limit.

State	Citation	Allow Home Grow	Plants/Person	Plants/Home	Medical Registration	Indoor	Outdoor	Secure Location	Visibility Restriction	Odor Control	Landlord
AK	Adult: <a href="#">AK ST § 17.38.020(2) ALCOHOL &amp; MARIJUANA CONTROL OFFICE</a> (Indoor only) <sup>6</sup>	Y	6 (up to 3 mature)	12 (up to 6 mature)	N/A	Y	N	N	N	N	N
	Med.: No Med. Specific Provision	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
AZ	Adult: <a href="#">AZ ST § 36-2852(A)(2)</a>	Y	6	12	N/A	Y	Y <sup>7</sup>	Y	Y	N	N

<sup>2</sup> [OR. REV. STAT. § 475C.309.](#)

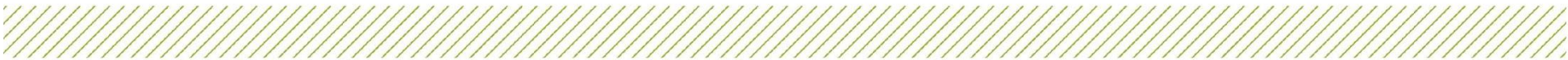
<sup>3</sup> [AZ ST § 36-2852\(A\)\(2\).](#)

<sup>4</sup> [230-RICR-80-05-1.12.](#)

<sup>5</sup> [RCWA 69.51A.260.](#)

<sup>6</sup> While Alaska’s statutory language does not restrict outdoor cultivation, the regulatory agency states that the grow must be “in-home” on its website.

<sup>7</sup> Arizona requires the grow to be in an “enclosed area” without clarifying the term. This could capture outdoor grows that are in a fenced enclosure.

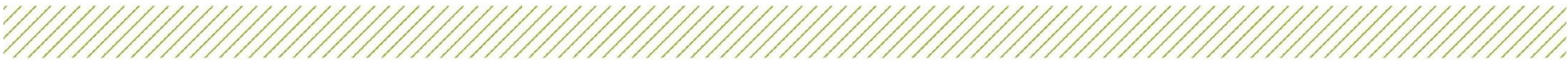


State	Citation	Allow Home Grow	Plants/Person	Plants/Home	Medical Registration	Indoor	Outdoor	Secure Location	Visibility Restriction	Odor Control	Landlord
	Med.: <a href="#">AZ ST § 36-2801</a> <a href="#">A.R.S. § 36-2804.02</a>	Y <sup>8</sup>	12	N/C	Y	Y	Y	Y	N	N	N
CA	Adult: <a href="#">CA Health &amp; Safety § 11362.2</a> <a href="#">CA Health &amp; Safety § 11362.45</a> (landlord)	Y	6	6	N/A	Y	Y	Y	Y	N	Y
	Med.: <a href="#">Cal. Health &amp; Safety Code § 11362.77</a> found to be unconstitutional by <a href="#">People v. Kelly 47 Cal. 4<sup>th</sup> 1008, January 21, 2010.</a>	Y	A patient may cultivate an amount reasonably related to their medical needs.	A patient may cultivate an amount reasonably related to their medical needs.	N	Y	Y	N	N	N	N
CO	Adult: <a href="#">CO CONST Art. 18, § 16(3)(b)</a> <a href="#">C.R.S. § 18-18-406</a> (private residence limit)	Y	6 (up to 3 mature)	12	N/A	Y	N <sup>9</sup>	Y	Y	N	N
	Med.: <a href="#">C.R.S. § 25-1.5-106</a>	Y	6	12 or 24 on residential property <sup>10</sup>  99 on nonresidential property	Y (voluntary)	Y	Y	N	N	N	N
	Adult: N/A	N	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
CT	Med.: <a href="#">C.G.S. § 21a-408d</a>	Y	6 (up to 3 mature)	12	N	Y	N	Y	N	N	N
DC	Adult: <a href="#">DC CODE § 48-904.01(a)(1)(C)</a>	Y	6 (up to 3 mature)	12 (up to 6 mature)	N/A	Y	N	N	N	N	Y

<sup>8</sup> Medical home cultivation is only allowed under if the patient lives greater than 25 miles from a dispensary.

<sup>9</sup> Colorado law states that cannabis must be grown in an enclosed and locked space. This cultivation cannot be conducted openly or publicly. The state has stated that this is a prohibition on outdoor grows <https://cannabis.colorado.gov/legal-marijuana-use/home-grow-laws>.

<sup>10</sup> The default limit on residential property is 12 plants. However, if a patient lives in a county that does not limit the number of plants that can be cultivated, they can grow up to 24 plants if they register their grow with the state and the local jurisdiction. A patient can grow up to 99 plants if the grow occurs on non-residential property.



State	Citation	Allow Home Grow	Plants/Person	Plants/Home	Medical Registration	Indoor	Outdoor	Secure Location	Visibility Restriction	Odor Control	Landlord
	Med.: <a href="#">DC ST § 7-1671.02</a> <sup>11</sup>	N	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
IL	Adult: N/A	N	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	Med.: <a href="#">410 ILCS 705/10-5</a>	Y	5	5	N	Y	Y	Y	Y	N	Y
ME	Adult: <a href="#">ME ST T. 28-B § 1501, 1502</a>	Yes <sup>12</sup>	3 mature, 12 immature, & unlimited seedlings	N/C	N/A	Y	Y	Y	Y	N	Y
	Med.: <a href="#">22 M.R.S.A. § 2423-A</a>	Yes	6 mature, 12 immature, & unlimited seedlings	12 mature, 24 immature, & unlimited seedlings <sup>13</sup>	No	Y	Y	Y <sup>14</sup>	N	N	N
MA	Adult: <a href="#">MA ST 94G § 7(a)(2) Cannabis Control Commission-Home Cultivation Guidance 935 CMR 500.840</a> (landlords)	Yes	6	12	N/A	Y	N	Y	Y	N	Y
	Med.: <a href="#">935 CMR 501.027 935 CMR 500.840</a> (landlords)	Yes	12 flowering & 12 vegetative	N/C	Y <sup>15</sup>	Y	Y	Y	Y	N	Y
MI	Adult: <a href="#">MI ST 333.27955</a>	Yes	12	12	N/A	Y	Y	N	N	N	N
	Med.: <a href="#">MI ST 333.26424</a>	Yes	12	N/C	N	Y	Y	Y	N	N	N
MT	Adult: <a href="#">MT ST 16-12-106</a>	Yes	2 mature & 2 seedlings	4 mature and 4 seedlings	N/A	Y	Y	Y	Y	N	Y
	Med.: <a href="#">MT ST 16-12-106</a>	yes	4 mature and 4 seedlings	8 mature and 8 seedlings	No	Y	Y	Y	Y	N	Y
NV	Adult: <a href="#">NV ST 678D.200</a>	Yes	6	12	N/A	Y	Y	Y	Y	N	N
	Med.: <a href="#">NV ST 678C.200</a>	Yes <sup>16</sup>	12	N/C	N	Y	Y	Y	N	N	N
NJ	Adult: N/A	No	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	Med.: N/A	No	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
NM	Adult: <a href="#">NM ST § 26-2C-25</a> (grow limits)	Yes	6 mature &	12 mature	N	Y	Y	N	N	N	Y

<sup>11</sup> D.C. restricts medical patient to cannabis sold at dispensaries. However, all adults are allowed to grow under the adult-use laws.

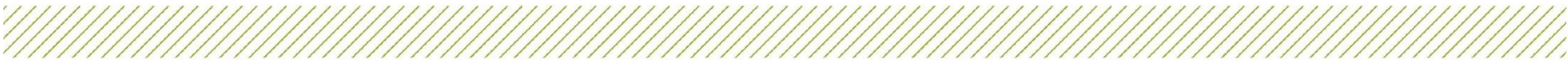
<sup>12</sup> Maine requires that each cannabis plant have a tag with the following information: the person's name, driver's license number or identification number, a notation that the marijuana plant is being grown for personal adult use, and if the cultivation is on a parcel or tract of land owned by another person, the name of that owner.

<sup>13</sup> Maine law limits a household to two cultivation areas if there are two or more patients growing their own cannabis at the location. This appears to permit a doubling of the individual cultivation limit.

<sup>14</sup> Maine indicates that access to the cultivation area must be restricted to the patient or caregiver. This infers that it must be secured to prevent access for others.

<sup>15</sup> In Massachusetts, a patient can register with the state to receive a Hardship Cultivation Registration. This registration is granted if the patient has verified financial hardships or challenges accessing transportation to a dispensary. Hardship Cultivation Registration allows the patient to grow sufficient plants to provide a 60-day supply of cannabis. Contrast this limit with the default of 12 mature plants and 12 immature plants.

<sup>16</sup> Medical home grows are only allowed under certain circumstances. First, you cannot home cultivate if there is a dispensary in your county. However, this restriction is waived if you live more than 25 miles from the dispensary, the dispensary closes, you are unable to travel due to illness or lack of transportation, or the dispensary cannot provide the quantity or cultivar needed.



State	Citation	Allow Home Grow	Plants/Person	Plants/Home	Medical Registration	Indoor	Outdoor	Secure Location	Visibility Restriction	Odor Control	Landlord
	<a href="#">NM ST § 26-2C-26</a>		6 immature								
	Med.: No Med. Specific Provision <sup>17</sup>	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
NY	Adult: <a href="#">NY PENAL § 222.15</a>	Yes <sup>18</sup>	3 mature & 3 immature	6 mature & 6 immature	N/A	Y	Y	Y	N	N	N
	Med.: <a href="#">CANNABIS LAW § 41 NY PENAL § 222.15</a>	Yes <sup>19</sup>	3 mature & 3 immature	6 mature & 6 immature	N	Y	Y	Y	N	N	N
OR	Adult: <a href="#">OR REV. STAT. § 475C.305(1-5) OR. REV. STAT. § 475C.309</a>	Yes	4	4	N/A	Y	Y	N	Y	N	N
	Med.: <a href="#">OR. REV. STAT. § 475C.806 OR. REV. STAT. § 475C.792</a>	Yes	6 mature & 12 immature	12 mature & 24 immature	Y	Y	Y	N	N	N	Y
RI	Adult: <a href="#">§ 21-28.11-22</a>	Yes	3 mature & 3 immature	3 mature & 3 immature	N/A	Y	N	Y	N	N	N
	Med: <a href="#">RI ST. § 21-28.6-4 230-RICR-80-05-1.12 Office of Cannabis Regulation Home-Grow Plant Tag System User Guide</a>	Yes	12 mature & 12 immature	24 mature	Y <sup>20</sup>	Y	N	Y	Y	Y	Y
VT	Adult: <a href="#">VT ST T. 18 § 4230e</a>	Yes	2 mature and 4 immature	2 mature and 4 immature	N/A	Y	Y	Y	Y	N	Y
	Med: <a href="#">VT ST. T. 7 § 952</a>	Yes	2 mature & 7 immature	N/C	N	Y	Y	N	N	N	N
VA	Adult: <a href="#">VA ST § 4.1-1101(A)</a>	Yes	4	4	N/A	Y	Y	Y	Y	N	N
	Med.: No Med. Specific Provision	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
WA	Adult: N/A	No	NA	N/A	N/A	NA	NA	N/A	N/A	N/A	NA
	Med.: <a href="#">RCW 69.51A.210 RCWA 69.51A.230</a> (Authorization database) <a href="#">RCWA 69.51A.260</a> (Household limit) <a href="#">DOH-FAQ regarding Home Cultivation</a>	Yes	6 <sup>21</sup>	15	Y	Y	Y	N	Y	Y	N


<sup>17</sup> New Mexico removed personal production license from medical program when adult-use was legalized.

<sup>18</sup> Home grow for consumer use is not allowed until regulations addressing the practice are passed. Regulations have yet to be proposed

<sup>19</sup> Home grow for patient use is not allowed until regulations addressing the practice are passed. Regulations have been proposed and last revised on 5/4/2022 available at <https://dos.ny.gov/system/files/documents/2022/05/050422.pdf>

<sup>20</sup> The grow site must be registered with the state and the patient must buy plant tags from the state for their plants.

<sup>21</sup> If the patient is registered in authorization database, they are limited to 6 plants. If they do not register, they are limited to 4 plants. Health care provider can increase the plant limit up to 15 plants.



**This document was developed by Mathew R. Swinburne, J.D., Associate Director for the Network for Public Health Law-Eastern Region and Brianne Schell, J.D., Staff Attorney for the Network for Public Health Law-Eastern Region. The Network for Public Health Law provides information and technical assistance on issues related to public health. The legal information and assistance provided in this document does not constitute legal advice or legal representation. For legal advice, please consult specific legal counsel.**

**Updated: September 16, 2022**

# Appendix 2



## CANNABIS


# Cannabis Consumption Sites in the Adult-Use Market

## State Regulation of Consumption Sites

### I. Introduction

This resource examines the regulation of cannabis consumption sites in states that have legalized adult-use cannabis. Cannabis consumption sites are licensed locations where individuals can legally consume cannabis in public. These locations are an emerging trend in cannabis policy. While often seen as a social venue, they are also a tool for increasing access to cannabis and the economic opportunities of the cannabis market. First, some individuals do not have a legal location to consume cannabis because of the prevalent policy of only allowing cannabis use on private property. This creates issues for individuals who live at properties with policies prohibiting cannabis use (see e.g., public housing). This can be particularly challenging for medical cannabis users. Second, consumption sites can be a low-cost point of entry into the cannabis market because they require a lower upfront investment than a cultivation, processor, or retailer license.

This resource focuses on 10 state policy variables. In addition, since states delegate a considerable amount of authority to local government with regards to consumption sites, this resource also examines the policies of five local jurisdictions in California. Section II of this resource provides a research summary for state and municipal regulation of consumption sites. Section III contains two research tables. One examines state policies and the other the municipal. These tables provide a brief overview of each jurisdiction's policy and allow side-by-side comparison. While 20 jurisdictions (19 states and the District of Columbia) have legalized adult-use



cannabis, the District of Columbia and Virginia do not have a licensed market. As a result, this resource focuses on the 18 states that have licensed adult-use markets.

## II. Research Summary:

### a. State Law


This section examines 10 state policy variables used to regulate cannabis consumption sites in states that allow adult-use cannabis. The prevalence of each variable is explained, and a range of policy approaches is provided when necessary.

**Allow Consumption Sites:** **10 of 18 states** allow consumption sites either as a separate license or as option for an existing licensee (AK, CA, CO, IL, MA, MI, NV, NJ, NM, and NY). **2 of these 10 states** provide multiple categories of consumption site license (CO and NV). Colorado has two categories of consumption site license: the Marijuana Hospitality Business and Retail Marijuana Hospitality Business. The Marijuana Hospitality Business licensee cannot sell cannabis to customers, but customers can bring their own cannabis to consume at the site. The Retail Marijuana Hospitality and Sales Business licensee can sell cannabis to customers to be consumed onsite. Nevada has two types of cannabis consumption site license: the retail cannabis consumption lounge (RCCL) and the independent cannabis consumption lounge (ICCL). A RCCL is a lounge that is attached or immediately adjacent to an adult-use cannabis retail store. A ICCL is a lounge that is not attached or immediately adjacent to an adult-use cannabis retail store. An ICCL must have at least one contract with an adult-use cannabis retail store for the purchase of the cannabis products for sale at the lounge.

**Allow at Retail Licensee:** Starting with this policy variable, the sample set will be restricted to states that allow consumption sites (10 states). **6 of 10 states** allow on-site consumption of adult-use cannabis at a retail licensee's location (AK, CA, IL, NV, NJ, NM). In Michigan a retail licensee can secure a consumption site license, but it cannot be on the retailer's premises. In Massachusetts, Social Consumption Establishment Licenses are limited to Economic Empowerment Priority Applicants or Social Equity Program Participants, Microbusinesses, and Craft Marijuana Cooperatives for the first 36 months. Economic Empowerment Priority Applicants or Social Equity Program Participants can be licensed as retailers. However, 935 CMR 500.050(8)(a) prohibits a retailer from selling cannabis for onsite consumption. When the exclusivity period ends, this prohibition will prevent the broader field of retailers from co-locating a consumption site at their retail location. New York prohibits a cannabis retail licensee from holding a social consumption site license

**Distinct License:** **5 of 10 states** have created a distinct state license for consumption sites (CO, MA, MI, NV, NY). In Colorado, both categories of consumption site license are restricted to food retail businesses. As discussed above, Massachusetts currently restricts consumption site licenses to social equity applicants and licensees. In the remaining jurisdictions, existing cannabis establishment licensees can receive a local endorsement to provide an onsite consumption space. However, in Illinois local governments can also allow retail tobacco stores to serve as consumption sites.





**Consumption Only License: 3 of 10 states** have created consumption site licenses that allow onsite consumption but prohibit onsite sales (CO, IL, MI). Colorado has two categories of consumption site license: the Marijuana Hospitality Business and Retail Marijuana Hospitality Business. The Marijuana Hospitality Business licensee cannot sell cannabis to customers, but customers can bring their own cannabis to consume at the site. The Retail Marijuana Hospitality and Sales Business licensee can sell cannabis to customers to be consumed onsite.

**Alcohol: 8 of 10 states** explicitly prohibit the sale and/or consumption of alcohol at a consumption site. Michigan and New York do not address the issue of alcohol in their laws.

**Food: 6 of 10 states** explicitly permit the sale of food at cannabis consumption sites (AK, CO, MA, MI, NV, and NM). In Colorado, both categories of consumption site license are restricted to food retail businesses. In Massachusetts, consumption sites are only allowed to sell pre-packaged and shelf-stable food and drink. New Mexico does not address food specifically but allows licensees to conduct any lawful activity or any combination of lawful activities at a licensed premises, except for the sale of alcohol. New Jersey prohibits consumption sites from operating as a retail food establishment. California, Illinois, and New York do not address the sale of food in their laws.

**Tobacco: 7 of 10 states** explicitly prohibit the sale and/or consumption of tobacco at cannabis consumption sites (AK, CA, CO, MA, MI, NV, and NJ). Illinois allows tobacco at consumption sites that are located at retail tobacco stores. New Mexico does not explicitly address tobacco in its laws. However, it allows licensees to conduct any lawful activity or any combination of lawful activities at a licensed premises. New York does not cover tobacco in its consumption site laws.

**Indoor:** Every state allows indoor consumption sites.


**Outdoor:** Every jurisdiction, except Michigan and New Jersey, permit cannabis consumption on the “premises” of the licensed consumption site. Premises is not defined in the consumption site provisions, but the general definition of the term includes “the building or buildings and surrounding land that a business or person owns or uses.”<sup>1</sup> New Jersey specifically states that both indoor and outdoor consumption sites are permitted. Michigan uses the term “designated areas” when addressing consumption sites.<sup>2</sup> However, this term is not defined in statute or regulation. This term is ambiguous and requires further clarification. Based on this ambiguity, **9 out of 10 states** have permitted outdoor consumption sites.

**Zoning: 7 of 10 states** subject consumption sites to state zoning restrictions. 6 of these states subject consumption sites to general zoning restrictions that are applicable to multiple categories of licensees (AK, CA, MA, MI, NV, and NM). For example, Nevada

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<sup>1</sup> Oxford's Learner Dictionary, *available at* [https://www.oxfordlearnersdictionaries.com/us/definition/american\\_english/premises#:~:text=premises%20%5Bpl.%5D.The%20police%20searched%20the%20premises.](https://www.oxfordlearnersdictionaries.com/us/definition/american_english/premises#:~:text=premises%20%5Bpl.%5D.The%20police%20searched%20the%20premises.)

<sup>2</sup> Mich. Comp. Laws § 333.27956



subjects all cannabis establishments to a 1000-foot buffer zone around schools, a 300-foot buffer zone around community centers, and a 1,500-foot buffer zone around gaming facilities. New York is the only state that has zoning restrictions specific to consumption sites. New York requires a 500-foot buffer zone around schools and a 200-foot buffer zone around places of worship. Colorado, Illinois, and NJ do not have state zoning restrictions applicable to consumption sites. New Mexico's zoning law is unique in that places a ceiling on local zoning authority. Rather than setting a default buffer zone, it allows locals to set a buffer zone up to 300 feet.

**Visibility Restrictions: 7 of 10 states** require that cannabis use at consumption sites be shielded from public view (AK, CA, CO, MA, NV, NJ, and NM). There are several approaches to restricting visibility. For example, California requires that cannabis consumption is not visible from any public place or nonage-restricted area. While Alaska, evaluates the use of sight obscuring walls or fences when determining if a site is suitable for an outdoor consumption site. Illinois, Michigan, and New York do not have visibility restrictions in their statutes or regulations.

### **b. Local Regulation**


To provide additional perspective, this resource surveys the policies of five municipalities in California. Each of these jurisdictions allows consumption sites. The five municipalities are San Francisco, Oakland, West Hollywood, the City of Alameda, and Port Hueneme. The local policies are analyzed with the same variables as the states, with one exception. Rather than looking at requirement of a distinct state license, this survey reviews the need for an additional local permit.

**Allow at Retail Licensee:** All the municipalities allow on-site consumption of adult-use cannabis at a retail licensee's location. This reflects the fact that state law only permits consumption sites at cannabis retailers and microbusinesses.

**Additional Permit: 3 of 5 municipalities** require the licensee to secure an additional local permit to operate a consumption site. The City of Alameda and Port Hueneme do not require an additional local permit. San Francisco has created three categories of permit. The first permit allows the consumption of pre-packaged cannabis products at the consumption site. The second permit allows the consumption of pre-packaged cannabis products and preparation of cannabis products on-site. Preparation of cannabis products is defined as the heating, re-heating, or serving of cannabis products, and does not include cooking or infusing. The third permit allows the consumption of all the aforementioned products and the use of smokable products.

**Consumption Only License:** None of the jurisdictions allow a consumption only license. Again, this reflects state law, which links consumption sites to retailers and microbusinesses.

**Alcohol:** Every municipality, except Oakland prohibits that sale and/or consumption of alcohol at a consumption site. Oakland does not address this issue in its ordinance. However, this issue may be addressed in another unearthed policy-document. Oakland's omission and local policy in this area are overshadowed by the state's prohibition of alcohol use at consumption sites.



**Food:** West Hollywood explicitly permits the sale of food at consumption sites. San Francisco does not explicitly state that food sales are permitted. However, it does require consumption sites follow the California Retail Food Code and discusses the possibility of further food safety regulation.<sup>3</sup> As a result, it appears that San Francisco allows food at consumption sites. The remaining jurisdictions do not address the issue of food in their ordinances. This should be viewed in conjunction with the state’s lack of explicit direction on this issue as well.

**Tobacco:** Every municipality except Oakland explicitly prohibits tobacco at consumption sites. Oakland’s omission and local policy in this area are overshadowed by the state’s prohibition of tobacco use at consumption sites.

**Indoor:** All jurisdictions allow the consumption area to be inside the licensed facility.

**Outdoor:** Only Port Hueneme specifically prohibits outdoor cannabis consumption. The remainder of the municipalities allow cannabis consumption on “premises”. As discussed above, this term denotes the structures and the surrounding land. As a result, premises denotes that outdoor consumption is permitted. In fact, Oakland defines premises in its cannabis ordinances to include the land and structures.<sup>4</sup>

**Zoning:** Only the City of Alameda and Port Huemene have zoning restrictions in their ordinances. Port Huemene has a 600-foot buffer zone around schools. This matches the state’s existing policy. However, the City of Alameda has a 1000-foot buffer zone around schools which is more protective than the state’s buffer zone. With regards to daycares and youth centers, the City of Alameda matches the state mandated 600-foot buffer zone. In addition, the City of Alameda requires a 600-foot buffer zone around tutoring centers which is not mandated by state law.

**Visibility Restrictions:** Oakland is the only municipality that does not specifically require that cannabis consumption is shielded from public view. However, Oakland’s omission and local policy in this area are overshadowed by the state’s requirement that cannabis use at consumption sites be shielded from public view.

### III. Research Tables

This section contains two tables: (1) State Consumption Site Laws and (2) On-site Consumption Ordinances from Select Jurisdictions in California. N/A stands for “not applicable.” N/A is used when the variable is not applicable because (1) the state does have a licensed adult-use market (D.C. and VA) or (2) the state does not allow consumption sites. N/C stands for “not covered in statute or administrative code.” N/C is only used when a jurisdiction does not address the use of alcohol, food, or tobacco at a consumption site.

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<sup>3</sup> See San Francisco Health Code 8A.6 (discussing the applicability of the California Food Retail Code to consumption Sites); See also San Francisco Health Code 8A.8 (discussing the regulatory authority and the ability to create more regulations pertaining to food safety).

<sup>4</sup> Oakland Municipal Code 5.80.010.

Table 1: State Consumption Site Laws

State	Citation	Allow Consumption Sites	Allow at Retail	Distinct License	Consumption only	Alcohol	Food	Tobacco	Indoor	Outdoor	Zoning	Visibility Restrictions
AK	<a href="#">Alaska Admin. Code tit. 3 § 306.200 (Local options)</a> <a href="#">Alaska Admin. Code tit. 3 § 306.370 (Onsite Consumption Endorsement)</a> <a href="#">Alaska Admin. Code tit. 3 § 306.010 (General Retail Zoning Restriction)</a>	Yes	Yes	No	No	No	Yes	No	Yes	Yes	500 feet <sup>5</sup>	Yes
AZ	<a href="#">Ariz. Rev. Stat.. § 36-2851</a>	No	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
CA	<a href="#">Cal.Bus. &amp; Prof.Code § 26200 (Local Control)</a> <a href="#">Cal.Bus. &amp; Prof.Code § 26054 (General Establishment Restrictions)</a>	Yes	Yes	No	No	No	N/C	No	Yes	Yes	600 feet <sup>6</sup>	Yes
CO <sup>7</sup>	<a href="#">Colo. Rev. Stat §44-10-609(Marijuana Hospitality Business)</a> <a href="#">COLO. CODE REGS §§ 212-3-6-905-940</a>	Yes	No	Yes	Yes	No	Yes	No	Yes	Yes	No	Yes

<sup>5</sup> Alaska applies a 500-foot buffer zone around schools, recreation or youth centers, places of worship, and correctional facilities. This buffer zone is not specific to consumption sites but is required of all cannabis establishments.

<sup>6</sup> California's zoning restriction applies a 600-foot buffer zone around schools, daycare centers, and youth centers. This buffer zone is not specific to consumption sites but is required of all cannabis retail establishments.

State	Citation	Allow Consumption Sites	Allow at Retail	Distinct License	Consumption only	Alcohol	Food	Tobacco	Indoor	Outdoor	Zoning	Visibility Restrictions
	<a href="#">Colo. Rev. Stat §44-10-610 (Retail Marijuana Hospitality and Sales Business)</a> <a href="#">COLO. CODE REGS §§ 212-3-6-905-940</a>	Yes	No	Yes	No	No	Yes	No	Yes	Yes	No	Yes
CT	<a href="#">Conn. Gen. Stat. § 19a-342 (Restrictions on cannabis smoking)</a> <a href="#">Conn. Gen. Stat. § 19a-342a (Restrictions on electronic cannabis delivery system)</a> <a href="#">Licensing and Enforcement: Department of Consumer Protection</a>	No	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
DC	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
IL	<a href="#">410 ILCS 705/55-25<sup>a</sup> (Local Authority)</a> <a href="#">410 ILCS 705/15-70 (Operational Requirements)</a> <a href="#">410 ILCS 82/10 (Retail Tobacco Definitions)</a> <a href="#">410 ILCS 82/35 (Retail Tobacco)</a>	Yes	Yes	No	Yes (retail tobacco stores)	No	N/C	Yes (retail tobacco stores)	Yes	Yes	No	No
ME	<a href="#">28-B Me. Rev. Stat. § 508</a> <a href="#">28-B Me. Rev. Stat. § 1501</a>	No	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
MA	<a href="#">Mass. Gen. Laws ch. 94G § 3 (Local Control)</a>	Yes	Yes	Yes	No	No	Yes	No	Yes	Yes	500 feet <sup>9</sup>	Yes

<sup>7</sup> Colorado has two categories of consumption licenses: the Marijuana Hospitality Business and Retail Marijuana Hospitality and Sales Business. The Marijuana Hospitality Business licensee cannot sell cannabis to customers, but customers can bring their own cannabis to consume at the site. The Retail Marijuana Hospitality and Sales Business licensee can sell cannabis to customers to be consumed onsite.

<sup>8</sup> In Illinois, local government can permit and regulate on-site consumption at dispensing organizations and retail tobacco stores.

<sup>9</sup> Massachusetts applies a 500-foot buffer zone around schools. This zoning restriction is not specific to consumption sites but is required of all cannabis establishments.

State	Citation	Allow Consumption Sites	Allow at Retail	Distinct License	Consumption only	Alcohol	Food	Tobacco	Indoor	Outdoor	Zoning	Visibility Restrictions
	<a href="#">935 Mass. Code Regs 500.050 (Pilot Program)</a> <a href="#">935 Mass. Code Regs 500.105 (General Establishment Requirements)</a> <a href="#">935 Mass. Code Regs 500.141 (Operational Requirements)</a> <a href="#">935 Mass. Code Regs 500.110 (zoning)</a>											
MI	<a href="#">Mich. Comp. Laws § 333.27956 (Municipal Power)</a> <a href="#">Mich. Comp. Laws § 333.27961 (Tobacco)</a> <a href="#">Mich. Admin. Code R 420.1 (definitions)</a> <a href="#">Mich. Admin. Code R 420.22 (Establishment Requirements)</a> <a href="#">Mich. Admin. Code R 420.203 (Food)</a> <a href="#">MICH. COMP. LAWS. § 333.27959 (zoning)</a>	Yes	No <sup>10</sup>	Yes	Yes	N/C	Yes	No	Yes	No <sup>11</sup>	1000 feet <sup>12</sup>	No
MT	<a href="#">Mont. Admin. R. 42.39.122</a> <a href="#">MCA 16-12-108</a>	No	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
NV	<a href="#">Nev. Rev. Stat. § 678A.087 (types of licenses)</a> <sup>13</sup>	Yes	Yes	Yes	No	No	Yes	No	Yes	Yes	1000 feet	Yes

<sup>10</sup> Michigan does not limit the designated consumption establishment license to licensed retailers. The regulatory language is general and refers to “a person” seeking applying for the license. At the same time there are no prohibitions on licensed retailers also applying for the consumption license.

<sup>11</sup> Michigan uses the term “designated areas” when addressing consumption sites. However, this term is not defined in statute or regulation. This term is ambiguous and requires further clarification.

<sup>12</sup> Michigan subjects all cannabis establishments to a 1,000-foot buffer zone around schools. This zoning restriction is not specific to consumption sites.

State	Citation	Allow Consumption Sites	Allow at Retail	Distinct License	Consumption only	Alcohol	Food	Tobacco	Indoor	Outdoor	Zoning	Visibility Restrictions
	<a href="#">Nev. Rev. Stat. § 678A.157 (Independent Cannabis consumption lounge)</a> <a href="#">Nev. Rev. Stat. § 678A.237 (retail cannabis consumption lounge)</a> <a href="#">Nev. Rev. Stat. § 678D.465 (visibility restriction)</a> <a href="#">N.C.C.R. § 15.040 (Food)</a> <a href="#">N.C.C.R. § 15.050 (Indoor consumption)</a> <a href="#">N.C.C.R. § 15.065 (Tobacco and alcohol prohibition)</a> <a href="#">N.C.C.R. § 15.090 (visibility restrictions)</a> <a href="#">Nev. Rev. Stat. § 678B.250 (zoning for all establishments)</a>										(schools) 300 feet (community centers) 1500 feet (gaming facilities) <sup>14</sup>	
NJ	<a href="#">N.J. Stat. Ann. § 24:6I-21 (Requirements)</a> <a href="#">N.J. Admin. Code. § 17:30-5.1 (Municipal Authority)</a>	Yes	Yes	No	No	No	No	No	Yes	Yes	No	Yes
NM	<a href="#">N.M. Stat. Ann. § 26-2C-12 (Local Control)</a> <a href="#">NM Code §16.8.2.8 (General Operational Requirements)</a> <a href="#">REQUIREMENTS</a>	Yes	Yes	No	No	No	Yes	Yes	Yes	Yes	300 feet <sup>15</sup>	Yes

<sup>13</sup> Nevada has two types of cannabis consumption lounge licenses: the retail cannabis consumption lounge (RCCL) and the independent cannabis consumption lounge (ICCL). A RCCL is a lounge that is attached or immediately adjacent to an adult use cannabis retail store. A ICCL is a lounge that is not attached or immediately adjacent to an adult-use cannabis retail store. An ICCL must have at least one contract with an adult-use cannabis retail store for the purchase of the cannabis products for sale at the lounge

<sup>14</sup> Nevada's zoning restrictions are not specific to consumption sites but is required of all cannabis establishments.

State	Citation	Allow Consumption Sites	Allow at Retail	Distinct License	Consumption only	Alcohol	Food	Tobacco	Indoor	Outdoor	Zoning	Visibility Restrictions
	<a href="#">NM Code §16.8.2.49 (Types of Consumption Sites)</a> <a href="#">NM Code §16.8.2.54 (Standards for Consumption Sites)</a>											
NY	<a href="#">New York Cannabis Law § 77</a>	Yes	No	Yes	No	N/C	N/C	N/C	Yes	Yes	500 feet (schools) 200 feet (places of worship) <sup>16</sup>	No
OR	<a href="#">Or. Rev. Stat. § 475C.377</a> <a href="#">Or. Admin. R 845-025-2840</a>	No	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
RI	<a href="#">R.I Gen. Laws §21-28.11-5(d)(5)<sup>17</sup></a> <a href="#">R.I Gen. Laws § 21-28.11-29</a>	No	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
VT	<a href="#">Vt. Stat. Ann. tit. 7 § 833</a> <a href="#">Vt. Stat. Ann. tit. 7 § 907</a>	No	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
VA	<a href="#">N/A</a>	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
WA	<a href="#">Wash. Rev. Code § 69.50.445</a> <a href="#">Wash. Rev. Code § 66.04.010(36)</a> <a href="#">Wash. Admin. Code § 314-55-086</a>	No	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A

<sup>15</sup> New Mexico allows local governments to set a buffer zone around schools and daycare centers. However, this buffer zone cannot exceed 300 feet.

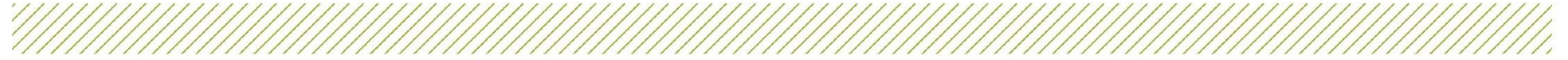
<sup>16</sup> New York's zoning restrictions are specific to consumption sites.

<sup>17</sup> Rhode Island has given the Cannabis Control Commission authority to study the need for consumption establishments.



Table 2: On-site Consumption Ordinances from Select Jurisdictions in California

Local Jurisdiction	Citation	Allow Consumption Sites	Allow at Retail Licensee	Additional Permit	Consumption Only	Alcohol	Food	Tobacco	Indoor	Outdoor	Zoning	Visibility Restrictions
West Hollywood, CA	<a href="#">WHMC 5.70.041</a>	Yes	Yes	Yes	No	No	Yes	No	Yes	Yes	No	Yes
Oakland, CA	<a href="#">Oakland MC 5.80.025</a>	Yes	Yes	Yes	No	N/C	N/C	N/C	Yes	Yes	No	No
San Francisco, CA	<a href="#">San Francisco Health Code §§ 8a.1-8A.8</a>	Yes	Yes	Yes	No	No	Yes	No	Yes	Yes	No	Yes
City of Alameda, CA	<a href="#">City of Alameda Municipal Code §§ 6-59.10 and 6-59.11</a>	Yes	Yes	No	No	No	N/C	No	Yes	Yes	1,000 Feet (schools)  600 Feet (youth centers, tutoring centers, and day care centers)	Yes
Port Hueneme, CA	<a href="#">Port Hueneme Municipal Code §§ 3983, 3987, 3989.6</a>	Yes	Yes	No	No	No	N/C	No	Yes	No	600 Feet (Schools)	Yes



**This document was developed by Mathew R. Swinburne, J.D., Associate Director for the Network for Public Health Law-Eastern Region. The Network for Public Health Law provides information and technical assistance on issues related to public health. The legal information and assistance provided in this document does not constitute legal advice or legal representation. For legal advice, please consult specific legal counsel.**

**Updated: September 22, 2022**

# Appendix 3



CANNABIS

## Advertising Restrictions for Adult-Use Markets

### State Regulation of Adult-Use Cannabis Advertising

#### I. Introduction

This environmental scan analyzes the advertising restrictions placed on the adult-use cannabis markets in the 20 jurisdictions (19 states and the District of Columbia) that have legalized adult-use. However, the sample set of regulatory systems is limited to 16 states. Arizona, D.C., Rhode Island, and Virginia are not included. Arizona does not utilize any of the 17 policy variables included in the survey. D.C. does not have a licensed adult-use market. Rhode Island has yet to develop its advertising regulations. Virginia does not have advertising restrictions because it did not reauthorize the 2021 Cannabis Control Act and as a result the advertising provisions that were included in the 2021 legislation are no longer in place. This resource is a companion to State Regulation of Adult-Use Cannabis Advertising Table. The table provides a side-by-side comparison of state approaches and includes citations for the state advertising laws. Maryland's medical cannabis program has been included in the table to permit comparison. However, Maryland's policies have not been incorporated in the analysis of adult-use advertising programs. In Section II of this environmental scan, there is a summary of 17 different state policies used to regulate cannabis advertising in adult-use programs. The prevalence of each variable is explained, and a range of policy approaches is provided when necessary. These policy approaches are divided into three categories. First, medium restrictions are restrictions specific to a particular advertising medium (e.g., broadcast, print, and internet). Second, content restrictions focus on limitations and requirements placed on the message of the advertisement. Third, physical restrictions focus on the physical properties and the location of outdoor advertising.



## II. Research Summary:

This section examines 17 different policies that states use to regulate cannabis advertising in their adult-use programs. The prevalence of each variable is explained, and a range of policy approaches is provided when necessary. As discussed above these policies are divided into medium restrictions, content restrictions, and physical restrictions.


**Utilize Advertising Restrictions:** Of the 20 adult-use jurisdictions, **16 states utilize advertising restrictions**. Rhode Island has yet to develop its advertising regulations. Virginia does not have any advertising restrictions because it did not reauthorize the 2021 Cannabis Control Act and as a result the advertising provisions that were included in the 2021 legislation are no longer in place. The District of Columbia does not have a licensed adult-use market. Arizona does not use any of the variables studied in this resource. Arizona requires that adult-use cannabis advertisements provide contract information for the business and if there is individualized communication, then there must be age verification.

**Regulatory Approval:** **Vermont is the only** adult-use cannabis jurisdiction that requires licensees to submit their advertisements for regulatory approval prior to disseminating them. The regulatory body may require a specific disclosure in the advertisement in a clear and conspicuous manner if the advertisement would be false or misleading without the disclosure. The state can also require changes to the advertisement that are necessary to protect the public health, safety, and welfare.

### **Medium Restrictions**

**Radio/Television Restrictions:** **13 of 16 states** restrict the broadcast advertising of adult-use cannabis. Alaska, Illinois, and Washington are the three states that have not adopted broadcast restrictions. All these states focus on restricting youth exposure to cannabis advertising. However, there are three varying approaches. First, **9 states** only permit broadcast advertising if a certain percent of the audience is reasonably expected to be at least 21, based on current audience composition data. However, the percentage of the audience that must be 21 varies considerably between jurisdictions. For example, Connecticut requires 90% of the audience to be at least 21 and Oregon requires 70%. These are the highest and lowest baselines used by the states. Second, Maine and New York use more general language regarding preventing child exposure to broadcast advertising. For example, Maine prohibits television, radio, print media or internet advertising in cases where there is a high likelihood it will reach person under the age of 21. Third, New Mexico prohibits the use of broadcast media for advertising unless it is a subscription service, and the subscriber is at least 21 years of age. Fourth, Montana completely prohibits the use of broadcast media.

**Print Media Restrictions:** **13 of 17 states** restrict advertising in print media. The regulator approach mirrors the approach used for broadcast media. **10 states** only permit print advertising if a certain percent of the audience is reasonably expected to be at least 21. States generally use the same percentage required for broadcast advertising. Again, Maine and New York have more general prohibitions regarding youth exposure. Montana is the only state that completely prohibits cannabis advertising in print media.



**Internet Advertising Restrictions:** **14 of 16 states** restrict internet advertising of adult-use cannabis. Again, the internet restrictions follow the regulatory approach of the broadcast and print based media restrictions. **10 states** only permit internet advertising if a certain percent of the audience is reasonably expected to be at least 21. States generally use the same percentage required for broadcast and print advertising. Again, Maine and New York have more general prohibitions regarding youth exposure. Alaska only requires licensee web pages to have appropriate measures to ensure that individuals visiting the web page are 21 years of age or older. Montana only allows advertising via the internet. However, it's only has two restrictions. First, licensee websites must have age verification. Second, licensee social media that advertises adult-use cannabis must be private and have a statement that only individuals 21 years of age or older may follow the account.

**Event Sponsorship:** **9 of 16 states** restrict event sponsorship by adult-use cannabis companies. **6 states** only permit event sponsorship if a certain percent of attendees is reasonably expected to be at least 21. Again, this percentage mirrors the states' other media-based restrictions discussed above. Massachusetts allows the sponsorship of sporting, charitable, and other similar events so long as the advertising at the event is targeted to participants reasonably expected to be 21 years of age or older. Michigan simply states that sponsorship targeting individuals under the age of 21 is prohibited.


**Location-Based Marketing Restrictions:** Location-based marketing (LMS) uses a mobile device's location to alert the device's owner about an offering from a near-by business. **7 of 16 states** restrict LMS. While all these states allow LMS, they require that the advertising is limited to individuals 21 years of age or older. **6 of these states** require that the individual solicits these advertisements. For example, Connecticut limits LMS to applications installed by the owner of the device and that the applications have an easy opt out option.

### **Content Restrictions**

**Therapeutic Claims:** **13 out of 16** states regulate the use of therapeutic or curative claims. **6 states** prohibit the use of therapeutic or curative claims in cannabis advertising (AK, IL, ME, NY, OR, and WA). The remaining **7 states** require the claims to be substantiated. The standard for substantiation can vary. For example, California simply prohibits false or misleading therapeutic claims, which infers a need for substantiation. While other states (CT, MA, MI, NJ, and NM) require that claims be supported by substantial scientific and/or clinical evidence. Michigan defines the level of required substantiation by referencing FDA standards. New Jersey requires that the claims be supported by at least two scientific studies.

**Safety Claims:** **6 out of 16 states** regulate safety and efficacy claims made by licensees. Four states (CO, ME, NJ, and OR) prohibit safety claims based on the fact that a product is regulated by the state and/or tested by a regulated testing facility. Massachusetts and New Jersey require that any safety claim be substantiated by scientific evidence, like their therapeutic claim standard. Finally, Montana prohibits all safety claims.

**Content Targeting Children:** Every state has an explicit prohibition against advertising content that targets children. The degree of detail in this prohibition varies considerably. Michigan simply prohibits advertising that targets individuals under the age of 21. New Jersey takes a more detailed approach by prohibiting a depiction of a person under 21 years of age consuming cannabis items; the inclusion of objects, "such as toys,



characters, or cartoon characters suggesting the presence of a person under 21 years of age, or any other depiction designed in any manner to be especially appealing to a person under 21 years of age.”<sup>1</sup>

**Validity of statements:** Every state except Montana has a provision explicitly prohibiting false and/or misleading statements. California goes further by defining what can create a misleading impression, such as ambiguity, omission or inference, or by the addition of irrelevant, scientific, or technical matters.


**Gifts:** **9 of 16 states** prohibit licensees from offering gifts, prizes, or other inducements relating to cannabis sales. **7 states** (AK, CA, IL, MA, NV, NJ, and VT) explicitly prohibit the gifting of free cannabis, cannabis products, and/or cannabis accessories. Washington does not explicitly mention cannabis but has a general prohibition on giveaways, coupon, and merchandise. New York prohibits promotions and coupons that would result in selling the product below the market value with reference to the avoidance of state and local tax revenue. New Jersey does not address cannabis and cannabis products but bans promotional gifts bearing symbol or reference to cannabis. Finally, Massachusetts explicitly bans customer loyalty programs.

**Product Warnings:** **10 of 16 states** require some form of product warning in adult-use cannabis advertisements. There are a broad range of required warnings including warnings related to the: possible impairment from the consumption of cannabis, intoxicating or addictive effects of cannabis, health risks associated with consumption of cannabis, use by pregnant or breast-feeding women, lack of FDA approval, age requirement of at least 21 years of age, and keeping cannabis and cannabis products away from minors.

### **Physical Restrictions**

**Proximity to Schools:** **11 of 16 states** advertising exclusionary zones around schools and other child focused locations. The distance of the exclusionary zone varies considerably. New Jersey has the smallest exclusionary zone which is within 200 feet of a grade school (k-12). Connecticut has the largest exclusionary zone at 1,500 feet. The most common distance is 1000 feet and is used by **6 states** (AK, CA, IL, ME, NV, and WA). In addition to schools, states restrict the proximity of cannabis advertising to a variety of child focused locations. For example, Illinois restricts advertising in relation to schools, playgrounds, recreation centers, childcare facilities, public parks, libraries, arcades that are not restricted to adults. New Jersey is the only state that limits the exclusionary zone just to schools. In addition, Colorado restricts advertising in proximity to substance abuse treatment centers.

**Signs on Public Property or Public Transportation:** **9 of 16 states** restrict adult-use cannabis advertising on public property and/or public transportation. Three states (AK, IL, and NY) completely prohibit advertising on public property. Oregon only restricts the distribution of handbills on public property. Eight of states prohibit advertising on public vehicles/mass transit. Oregon is the only jurisdiction that does not prohibit it. **Six states** prohibit advertising at locations related to transportation. For example, Washington restricts advertising at public transit shelters, bus stops, transit waiting areas, train stations, airports, and other transit related areas.



**Signs Visible to the General Public: 3 of 16 states** (AK, NY, and WA) have general visibility restrictions placed on signs and/or billboards. Alaska restricts cannabis establishment to no more than 3 signs that are visible from a public right of way. Two of these signs must be attached to the establishment or in the window of the establishment. New York prohibits all billboards. Washington defines a billboard as “a permanent off-premises sign in a fixed location used, in whole or in part, for the display of off-site commercial messages with a minimum size of five feet in height by 11 feet in width.”<sup>2</sup> Washington prohibits billboards that are visible from any street, road, highway, right-of-way, or public parking area. However, there is a large exception. It excludes billboards that are limited to three data elements: the name of the business, the nature of the business and the directions to retail outlet. In addition, Washington limits a cannabis retailer to two signs that are fixed to the business or a permanent structure. These signs can only identify the retail outlet by the licensee's business name or trade name, stating the location of the business, and identifying the nature of the business.

**Size of Signs: 2 of 16 states** (AK and WA) restrict size or other physical features of cannabis advertising signs. Alaska restricts signs for a cannabis establishment to 4,800 square inches. Washington limits the two permissible signs discussed in the previous section to 1,600 square inches each.

**Illuminated Signs: 2 of 16 states** (CT and MA) place restrictions on the use of illuminated signs. Connecticut prohibits advertising by means of an electronic or illuminated billboard between the hours of six o'clock a.m. and eleven o'clock p.m. Massachusetts prohibits the use of illuminated signs, except for the period of 30 minutes before sundown until closing.

This document was developed by Mathew R. Swinburne, J.D., Associate Director for the Network for Public Health Law-Eastern Region, with research assistance from Simon Liu, J.D. Candidate, at the University of Maryland Francis King Carey School of Law . The Network for Public Health Law provides information and technical assistance on issues related to public health. The legal information and assistance provided in this document does not constitute legal advice or legal representation. For legal advice, please consult specific legal counsel.

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<sup>1</sup> N.J. ADMIN. CODE § 17:30-14.2.

<sup>2</sup> WASH. ADMIN. CODE. § 314-55-155

# Appendix 4



CANNABIS

## Product Potency Restrictions


### THC limits for Adult-Use Cannabis Products

#### I. Introduction

Tetrahydrocannabinol (THC) is the primary intoxicant in cannabis products. Setting THC potency limits is a critical policy decision that states need to consider when legalizing cannabis for adult-use. While each manner of cannabis consumption presents some risk, cannabis edibles present unique challenges when it comes to product potency. Many edible products are attractive to children, despite state efforts to decrease the allure. As a result, some jurisdictions have experienced an increase in emergency room visits and calls to poison control associated with child ingestion of cannabis.<sup>1</sup> In addition, the delayed onset of cannabis edibles can lead to acute intoxication when consumers eat too much of the product. As a result of these risks, this resource will focus primarily on the potency restrictions related to edibles in the 20 jurisdictions (19 states and the District of Columbia) that have legalized adult-use cannabis. The resource examines 6 policy variables: (1) THC serving size for edible cannabis products, (2) Total THC limit for an edible cannabis product, (3) The cannabinoids included in a state's definition of THC, (4) THC homogeneity requirements for cannabis edibles, and (5) restrictions on the potency of cannabis concentrates and extracts, and (6) THC potency taxes. Section II of this resource provides a research summary that discusses the prevalence of each policy variable and the variation in policy within each. Section III contains a table that covers the policy approach of each state and allows side-by-side comparison of each state.

#### II. Research Summary:

This section examines 6 different policies that states use to regulate product potency for edible cannabis products and cannabis concentrates. The prevalence of each variable is explained, and a range of policy approaches is provided when necessary. The **research sample set for this analysis is 17 of the 20 adult-use jurisdictions**. D.C, New York, and Rhode Island are not included.



D.C. is excluded because it has not developed a retail market. Although Virginia lacks a licensed market, it has established regulatory guidance and is included. New York and Rhode Island have assigned authority to address product potency but have yet to draft the relevant regulations (NY and RI). However, New York has adopted a THC potency tax, which is discussed in the relevant section.


**Edible Serving Size Restrictions:** All **17 states** with potency restrictions limit the amount of THC in a serving of an edible cannabis product. **13 states** limit the individual serving size to 10 mg of THC. **3 states** limit the serving size to 5 mg of THC (CT, VT, and VA). Massachusetts limits a serving to 5.5 mg of THC.

**Edible Product Restrictions:** All **17 states** with potency restrictions limit the total amount of THC in a single edible product or package of edible products. For example, in California a cannabis infused chocolate bar could have 100 mg of THC. But the infused chocolate bar would need to be demarcated into 10 servings of 10 mg of THC. **13 states** set the total THC limit at 100 mg. **2 states** limit it to 50 mg of THC (VT and VA). Massachusetts limits edible cannabis products to 110 mg of THC. Michigan has set two edible cannabis product limits. For cannabis infused beverages, the limit is 100 mg of THC and the limit for solid edible products is 200 mg of THC.

**THC Isomers and Precursors:** States have different approaches to defining the cannabinoids that are included in their THC limits. **10 states** restrict their THC limit to delta-9 THC, the primary intoxicant found in the cannabis plant. States were included in this classification if they specifically limited THC to delta-9 or simply used the term tetrahydrocannabinol or THC without defining it further. **5 states** include tetrahydrocannabinolic acid (THCA) in their THC calculations. THCA is not an intoxicant but can convert into THC when exposed to heat through a process called decarboxylation.<sup>2</sup> In addition, **3 states** include isomers of delta-9 THC in their THC calculation (CT, MI, and NV). An isomer is a compound with the same chemical formula but a different arrangement of atoms in the molecule and different properties. Connecticut and Nevada include isomers of delta-9 THC and specifically list delta-7, delta-8, and delta-10. Michigan includes delta-8 and delta-9 THC when setting limits on edible products. It also limits the amount of delta-8 THC to ten percent of the products total THC.

**THC Homogeneity:** **9 states** explicitly require THC homogeneity in edible cannabis products (AK, AZ, CA, CO, CT, ME, MA, MI, and NV).

**Restrict THC percentage in Cannabis Concentrates or Extracts:** Cannabis concentrate is a broad term referring to all products that have been extracted from the plant. Although extract and concentrate are often used interchangeably, some define extract as a cannabis product manufactured using solvents.<sup>3</sup> These products have very high THC concentrations and can be vaporized and inhaled using a vape pen or by dabbing. None of the states in this survey have placed a THC concentration limit on these products.



**THC Potency Tax:** Three states tax cannabis and cannabis products based on their THC levels (CT, IL, and NY). Connecticut requires retailers to pay a potency excise tax. The tax rates are \$0.00625 per mg of total THC in flower; \$0.0275 per mg of total THC in edibles; and \$0.009 per mg of total THC in other cannabis products. Illinois has a cannabis potency tax of 10% of the purchase price for cannabis with Delta-9 THC levels at or below 35% and 25% of the purchase price for cannabis with Delta-9 THC levels above 35%. New York taxes: Cannabis flower at 0.5 cents per mg of total THC; concentrated cannabis at 0.8 cents per mg of total THC; and cannabis edible products at 3 cents per mg of total THC.

### **III. Research Table**

This table contains the policy research for the twenty jurisdictions with adult-use cannabis. N/A stands for “not applicable.” N/A is used when the variable is not applicable because the jurisdiction does not have a licensed adult-use market (D.C.). Although Virginia does not have a licensed market it has established regulatory guidance. N/C stands “not covered in statute or regulation.” N/C is used when an agency has been given authority to address product potency but has yet to draft the relevant regulations (NY and RI). As a result of these qualifications, **the research sample set is 17 states** for the analysis of each variable. However, New York has adopted a THC potency tax, which is discussed in the relevant section.



	Citation	Edible Serving	Edible Product	THC Isomers/Precursors	THC Homogeneity	Limit THC % in Concentrates	THC Potency Tax
AK	<a href="#">3 AK ADC 306.560</a> (Potency) <a href="#">3 AK ADC 306.645</a> (Lab Testing)	10 mg active THC or Delta-9	100 mg of active THC or Delta-9	No	Yes	No	No
AZ	<a href="#">ARIZ. ADMIN. CODE § 9-18-313</a> . (Edible Food Products) <a href="#">ARIZ. ADMIN. CODE §9-18-408</a> (Definition of Total THC)	10 mg of Total THC	100 mg of total THC	Yes <sup>4</sup>	Yes	No	No
CA	<a href="#">CAL. BUS. &amp; PROF. CODE § 26130</a> (serving) <a href="#">CAL. BUS. &amp; PROF. CODE § 26100</a> (testing)  <a href="#">CAL. CODE REGS. 4, § 17304</a> (serving and package)  <a href="#">CAL. CODE REGS. 4, § 15000</a> (definitions)	10 mg of THC	100 mg of THC	No	Yes	No	No
CO	<a href="#">COLO. REV. STAT. § 44-10-203</a> (serving and package) <a href="#">COLO. CODE REGS. § 212-3:1-115</a> (Serving and package) <a href="#">COLO. CODE REGS. § 212-3:4-125</a> (homogeneity)	10 mg of active THC	100 mg of active THC	No	Yes	No	No

CT	<p><a href="#">CONN. GEN. STAT. § 21a-240</a> (THC and Total THC Definitions)</p> <p><a href="#">CONN. GEN. STAT. § 21a-421j</a> (serving)</p> <p><a href="#">CONN. AGENCIES REGS. § 21a-421j-26</a> (homogenous)</p> <p><a href="#">CONN. AGENCIES REGS. § 21a-421j-32</a> (Serving and Package)</p> <p><a href="#">CONN. GEN. STAT § 12-330II</a> (Tax Rates)</p>	5 mg of THC	100 mg of THC	Yes <sup>5</sup>	Yes	No	<p>Yes- Potency-based excise tax</p> <p>\$0.00625 per mg of total THC in flower</p> <p>\$0.0275 per mg of total THC in edibles</p> <p>\$0.009 per mg of total THC in other cannabis products.</p>
DC	N/A	N/A	N/A	N/A	N/A	N/A	N/A
IL	<p><a href="#">410 ILCS 705/55-21(k)</a></p> <p><a href="#">8 ILL. ADM. CODE 1300.920</a></p> <p><a href="#">410 ILCS 705/65-10</a> (Tax Rate)</p>	10 mg of THC	100 mg of THC	No	No	No	<p>Yes- Cannabis Potency Purchaser Excise Tax</p> <p>10% of purchase price for cannabis with Delta-9 THC levels at or below 35%</p> <p>25% of the purchase price for cannabis with Delta-9 THC levels above 35%</p>



							20% of purchase price for all cannabis infused products.
ME	<a href="#">ME. REV. STAT. TIT. 28-B § 102</a> (definitions) <a href="#">ME. REV. STAT. TIT. 28-B § 703</a> (restrictions)	10 of mg THC	100 mg of THC	No	Yes	No	No
MA	<a href="#">935 MASS. CODE REGS. 500.002</a> (definitions) <a href="#">935 MASS. CODE REGS. 500.150</a> (Restrictions) <a href="#">935 MASS. CODE REGS. 500.160</a> (Product testing protocol)	5.5 mg of active THC	110 mg of active THC	No	Yes	No	No
MI	<a href="#">MICH. ADMIN. CODE R. 420.403</a> (homogeneous)  <a href="#">Cannabis Regulatory Agency-Technical Bulletin-Maximum THC Concentrations for Marijuana-Infused Products.</a>	10 mg of THC (edibles)  10 mg of THC (Beverages)	200 mg of THC (edibles)  100mg of THC (Beverages)	Yes <sup>6</sup>	Yes	No	No
MT	<a href="#">MONT. CODE. ANN. § 16-12-224</a> (THC limits) <a href="#">MONT. ADMIN. R. § 42.39.102</a> (Definitions)	10 mg of THC	100 mg of THC	No	No	No	No
NV	<a href="#">NEV. REV. STAT. § 678D.420</a> (THC Limits)	10 mg of THC	100 mg of THC	Yes <sup>7</sup>	Yes	No	No





	<a href="#">NEV. REV. STAT. § 678A.240</a> (THC definition) <a href="#">NEV. REV. STAT. § 453.139</a> (THC definition) <a href="#">NEV. ADMIN. CODE § 453D.784</a> (Homogeneous)						
NJ	<a href="#">N.J. STAT. § 24:6I-33</a> (definitions) <a href="#">N.J. ADMIN. CODE § 17:30-11.5</a> (THC limits)	10 mg of active THC	100 mg of active THC	Yes <sup>8</sup>	No <sup>9</sup>	No	No
NM	<a href="#">N.M. Admin. Code 16.8.1.7</a> (Definitions) <a href="#">N.M. Admin. Code 16.8.3.12</a> (THC limits) <a href="#">N.M. Admin. Code 16.8.7.15</a> (Homogeneity)	10 mg of total THC	100 mg of Total THC	No <sup>10</sup>	No <sup>11</sup>	No	No
NY	<a href="#">N.Y. Cannabis Law § 81</a> (Requiring Product Regulation) <sup>12</sup> <a href="#">N.Y. TAX LAW § 493</a> (TAX RATE)	N/C	N/C	N/C	N/C	N/C	Yes-potency excise tax Cannabis flower at 0.5 cents per mg of total THC  Concentrated cannabis at 0.8 cents per mg of total THC.



							Cannabis edible product at 3 cents per mg of total THC.
OR	<a href="#">OR. ADMIN. R. 845-026-0100</a> (Definitions) <a href="#">OR. ADMIN. R. 845-026-0210</a> <a href="#">OR. ADMIN. R. 845-026-0210 TABLE 1</a> (Product THC limits) <a href="#">OR. ADMIN. R. 333-064-0100</a> (calculating total Delta-9 THC)	10 mg of Total Delta-9-THC	100 mg of Total Delta-9-THC	Yes <sup>13</sup>	No	No	No
RI	<a href="#">R.I. GEN LAWS § 21-28.11-5</a> (Duties of the Commission) <sup>14</sup>	N/C	N/C	N/C	N/C	N/C	No
VT	<a href="#">VT. STAT. ANN. TIT. 7 § 881</a> (THC Limits) <a href="#">VT. CODE R. 26-1-2.9.2</a> (Potency Testing)	5 mg of THC	50 mg of THC	Yes <sup>15</sup>	No	No	No
VA	<a href="#">VA. CODE ANN. § 4.1-606</a> (THC limits) <sup>16</sup>	5 mg of THC <sup>17</sup>	50 mg of THC <sup>18</sup>	No	No	No	N/A
WA	<a href="#">WASH. ADMIN. CODE § 314-55-095</a> (THC Limits)	10 mg of active THC or Delta 9.	100 mg of active THC or Delta 9.	No	No	No	No

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- <sup>1</sup> See e.g., John Ingold, *Kids' emergency room visits for marijuana increased in Colorado after legalization, study finds*, THE DENVER POST (July 26, 2016), <https://www.denverpost.com/2016/07/25/colorado-kids-emergency-room-visitsmarijuana-increased/>.
- <sup>2</sup> See Helene Perrotin-Brunel, et. al., *Decarboxylation of D9 -tetrahydrocannabinol: Kinetics and molecular modeling*, Journal of Molecular Structure 987 (2011) 67–73.
- <sup>3</sup> National Institute on Drug Abuse, *Cannabis (Marijuana) Concentrates DrugFacts*, available at <https://nida.nih.gov/publications/drugfacts/cannabis-marijuana-concentrates>.
- <sup>4</sup> Arizona regulates the amount of Total THC in an edible product. Total THC is the sum tetrahydrocannabinolic acid (THC-A), multiplied by 0.877, and delta-9-tetrahydrocannabinol ( $\Delta$ 9-THC).
- <sup>5</sup> Connecticut limits the amount of total THC in an edible product. THC is defined as “tetrahydrocannabinol, including, but not limited to, delta-7, delta-8-tetrahydrocannabinol, delta-9-tetrahydrocannabinol and delta-10-tetrahydrocannabinol, and any material, compound, mixture or preparation which contain their salts, isomers and salts of isomers, whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation, regardless of the source.” Total THC means the “sum of the percentage by weight of tetrahydrocannabinolic acid, multiplied by eight hundred seventy-seven-thousandths, plus the percentage of weight of tetrahydrocannabinol.”
- <sup>6</sup> Michigan includes delta-8 and delta-9 THC when setting limits on edible products. It also limits the amount of delta-8 THC to ten percent of the products total THC.
- <sup>7</sup> Nevada defines THC as “delta-9-tetrahydrocannabinol and any structural, optical or geometric isomer thereof, including, without limitation.” The statute specifically references delta-7, delta-8, and delta-10.
- <sup>8</sup> New Jersey defines THC as delta-9-tetrahydrocannabinol and its precursor, tetrahydrocannabinolic acid.
- <sup>9</sup> N.J.A.C. 17:30–16.4 dictates that a testing laboratory shall analyze the samples according to the Cannabis Regulatory Commission’s Testing Guidance, which will be available on the Commission’s website. This testing guidance may address the need for THC homogeneity, but the guide is not yet available on the agency website.
- <sup>10</sup> New Mexico does not define the term “total THC”. However, it defines THC as “tetrahydrocannabinol, a cannabinoid that is the primary psychoactive ingredient in cannabis.” This indicates that isomers and precursors are not included in the serving and package THC restrictions.
- <sup>11</sup> See N.M. Admin. Code 16.8.7.15 (Table 1) (New Mexico only requires homogeneity testing of flower and trim. This testing requirement begins in 2024).
- <sup>12</sup> New York has directed the Cannabis Control Board to draft regulations pertaining to THC serving and package limits. The [proposed packaging and labeling regulations](#) do not address the issues covered in this survey. The policy variables may be addressed in future regulations.
- <sup>13</sup> Total Delta-9-THC is the sum tetrahydrocannabinolic acid (THC-A), multiplied by 0.877, and delta-9-tetrahydrocannabinol ( $\Delta$ 9-THC).
- <sup>14</sup> The Rhode Island Cannabis Control Commission as been tasked with drafting regulations pertaining to adult-use cannabis products. However, the commission has yet to draft these regulations.
- <sup>15</sup> In Vermont, the laboratory measurement of potency is determined by total theoretical THC. This number is calculated as follows: the sum of the concentration of delta-9 tetrahydrocannabinol added to the amount of tetrahydrocannabinolic acid after it is multiplied by 0.877 on a dry weight basis and reported to two significant figures. This calculation is not limited to combustible products.
- <sup>16</sup> Virginia did not reenact the legislation that would have created a regulated market, as a result there is little regulatory framework. See Virginia House Bill 950, *Cannabis control; retail market, penalties* (2022) available at <https://lis.virginia.gov/cgi-bin/legp604.exe?221+cab+HC10208HB0950+BREF> (Bill creating framework for adult-use cannabis industry died in the General Laws Committee).
- <sup>17</sup> The Virginia Cannabis Control Authority is tasked with drafting potency regulations for edible products. However, the maximum serving size is 5 mg of THC.
- <sup>18</sup> The Virginia Cannabis Control Authority is tasked with drafting potency regulations for edible products. However, the product limit is 50 mg of THC.

# Appendix 5




CANNABIS

## Youth Access Regulations

# Youth Access Regulations and Enforcement in Adult-Use States

## I. Introduction

In the United States, 19 states and the District of Columbia have legalized adult-use cannabis for people ages 21 years or older. States that have chosen to legalize adult-use cannabis have cited in their reasons for doing so, economic benefits as well as public policy concerns. For example, adult-use cannabis is likely to bring increased tax revenue, job growth, and investment opportunities to states with such laws. Public policy reasons, such as the disproportionate impact that cannabis laws have been used to criminalize communities of color, has also been discussed and considered. At the federal level, cannabis remains prohibited for any use under the Controlled Substances Act of 1970; however, the Justice Department has generally not enforced federal law in states that have legalized adult-use cannabis. In December 2020, [H.R.3617, Marijuana Opportunity Reinvestment and Expungement Act \(the MORE Act\)](#) was introduced to remove cannabis from the Controlled Substances Act and was passed by the House but was not voted on by the Senate. There have since been no other federal reform bills. Legalization of adult-use marijuana is a hotly contested and complicated issue and will likely remain high on legislative agendas for the foreseeable future. As more states discuss legalization, there are lessons to be learned from the states that have already begun the work. This resource surveys the legal landscape surrounding enforcement in the 20 jurisdictions that have legalized adult-use cannabis. The survey examines five variables, three of which have subcategories: (1) penalties for sale to an individual under 21 years of age including (a) fine amount, (b) sanction on license, (c) retailer training; (2) enforcement authority including (a) whether law enforcement has authority over licensed retailers and (b) whether a regulatory body retains authority over licensed retailers; (3) funding sources and purposes including whether it covers (a) youth access education, (b) retailer training, and (c) enforcement operations; (4) retailer training requirements; (5) whether ID scan is required for product purchase.



Section II of this resource provides a research summary that defines each policy variable and describes the variation in state law. Section III contains a table that compares the laws of each state and allows side-by-side comparison. Section IV provides pin cites and further details of the information provided in the chart, organized by state.

## II. Research Summary:

This section examines and describes the use of each variable and how states have regulated the specific issue. Although 20 U.S jurisdictions have legalized adult-use cannabis, Washington D.C. and Virginia have not yet enacted laws permitting and regulating licensed cannabis retailers. In Washington, D.C., possession under two ounces for people over age 21 is legal, but adult-use retailers are not. Since there are no legal adult-use retailers, the chart reads N/A for the variables surveyed. In Virginia, it is legal for adults over age 21 to possess less than an ounce of cannabis, but it remains illegal to distribute or sell it to another person. Therefore, retailers have not yet been legalized and the chart reads N/A for this jurisdiction as well. As a result of these qualifications the sample set for this survey is 18 states.

### A. Penalties for Sale to an Individual Under 21 Years of Age

This variable addresses the fines for selling product to a person under age 21, whether a license may be sanctioned for selling cannabis to an underage person, and if a retailer may be required to complete training as a consequence of the illegal sale.

#### i. Fine Amount

**Seventeen** states specify the amount a retailer may be fined for selling cannabis to a person under age 21. Arizona does not name a financial penalty for a retailer who effectuates such a sale. There is significant variation in financial penalties with a minimum of \$250 per sale in Alaska to up to \$500,000 in New Jersey. Six states include an escalating fee schedule for retailers who continue to violate the law within a specific period of time. The majority of states classify these sales as civil violations and penalties, however, a minority of states, namely Massachusetts and Connecticut, categorize these as criminal in nature.

#### ii. Sanction on License

In addition to financial penalties, **all jurisdictions**, but for Washington D.C. and Virginia, allow for sanctions on the retailer license such as suspension or revocation, if an underage sale is made.

#### iii. Retailer Training

**Oregon** is the only state that requires retailer training when a retailer is caught selling cannabis to a person under age 21.



## B. Enforcement authority

This variable indicates whether law enforcement and/or a governing body or agency have been granted authority by the state legislature to conduct enforcement efforts against adult-use cannabis retailers.

Each jurisdiction has either created a regulatory body or relies on an existing body/government agency to oversee the adult-use cannabis program and licensure. However, only **10 states also expressly reference law enforcement** as having authority to investigate or enforce any provisions of law relating to adult-use cannabis. In Massachusetts and Connecticut, a retailer commits a crime if it sells cannabis to a person under age 21. Therefore, sworn law enforcement retains authority to issue a criminal citation and/or criminal charges. These states are marked with a “Y.” California and New Jersey are marked with a “Y” because state law specifically requires retailer employees to present a retailer license and identifying information when requested by state and local law enforcement. Illinois, Michigan, and Montana include provisions that authorize law enforcement to enter the licensed facilities to conduct inspections or investigate unlawful activity. Oregon and Washington law contain provisions providing express authority to law enforcement to enforce provisions of the state code. In Vermont, law enforcement is specifically authorized to seize cannabis product in violation of the relevant titles. In states where the law is silent on law enforcement authority, there will be an “N” in that cell.


## C. Funding

This variable refers to whether there are provisions of law which establish funding sources for: (1) youth access education, (2) retailer training, (3) enforcement. Although Alaska has a dedicated fund relating to cannabis, it is not clear whether it is used for the purposes highlighted in this chart and is marked with an “N.”

### i. Youth Access Education

This subset refers to whether a state’s specified cannabis funding may cover efforts to provide education to youth and the public relating to youth use and access. **Six states** included funding for youth access education in their laws. This type of education is meant for retailers and the general population and includes lessons on things like the scientific basis for restricting access of cannabis and cannabis products to persons under age 21, public health and safety awareness and educational programs and campaigns, and evidence-based and evidence-informed substance use prevention and treatment and substance use early intervention services. These states include California, Illinois, Maine, Massachusetts, New Jersey, and Washington.

### ii. Retailer Training



**No jurisdiction** has funding designated specifically for retailer training purposes. However, some states do require retailer training which is discussed in greater detail in section D below.

### iii. Enforcement

This subset refers to whether funding is designated for regulatory enforcement efforts and/or oversee the adult-use program pursuant to existing law. **Every jurisdiction but for Washington, D.C., Virginia, and Alaska** require their cannabis funding to be used for enforcement-related efforts. For example, Arizona requires funding to be used to implement or enforce the provisions of this chapter (adult-use cannabis). California’s fund is used for the establishment and support of regulatory activities. All states use similar language when describing the enforcement purpose of their funding.

## D. Retailer Training Requirements

**Thirteen states** require retailer and/or employee training. However, the requirements differ significantly. **Nine states** (Alaska, California, Illinois, Massachusetts, Michigan, Montana, Nevada, New Mexico, Oregon) require training for the employees and not the licensee. However, **four states** (Colorado, New Jersey, Vermont, and Washington) require that the retailer/licensee obtain the training. In either circumstance, a “Y” appears in the chart. Some states require that the licensee submit and obtain approval from the regulatory agency/board when educating employees. Others require that retailers/employees complete a specifically named course. A few states require that the relevant actors complete a certain number of hours of training/education.

## E. ID scan required for purchase

**Illinois and Nevada** are the only states that require a person’s identification be scanned prior to making a sale, although all states require that identification be examined before completing a purchase. New York and Washington state law explicitly permit their state’s regulatory agency to issue regulations requiring that identification be electronically scanned, but neither state has yet adopted any such regulation.

## III. State Survey Research

This table contains the policy research for the twenty jurisdictions with adult-use cannabis. N/A stands for “not applicable” and is further explained in Section IV.



**Table#6: Regulation of Youth Access**

State	Penalties for Sale to an Individual Under 21 Years of Age			Enforcement Authority		Funding Provided For			Is Retailer Training Required	ID scan required for purchase
	Fine Amount	Sanction on License	Retailer Training	Law Enforcement	Regulatory Body	Youth access education	Retailer Training	Enforcement		
AK	\$250-\$1,000	Y	N	N	Y	N	N	N	Y	N
AZ	None specified	Y	N	N	Y	N	N	Y	N	N
CA	No less than \$1,000	Y	N	Y	Y	Y	N	Y	Y	N
CO	Up to \$100,000	Y	N	N	Y	N	N	Y	Y	N
CT	Up to \$2,000	Y	N	Y	Y	N	N	Y	N	N
DC	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
IL	Up to \$20,000	Y	N	Y	Y	Y	N	Y	Y	Y
ME	Up to \$100,000	Y	N	N	Y	Y	N	Y	N	N
MA	Up to \$2,000	Y	N	Y	Y	Y	N	Y	Y	N
MI	Up to \$10,000	Y	N	Y	Y	N	N	Y	Y	N
MT	Up to \$3,000	Y	N	Y	Y	N	N	Y	Y	N
NV	\$25,000-\$75,000	Y	N	N	Y	N	N	Y	Y	Y

NJ	Up to \$500,000	Y	N	Y	Y	Y	N	Y	Y	N
NM	Up to \$10,000	Y	N	N	Y	N	N	Y	Y	N
NY	Up to \$5,000	Y	N	N	Y	N	N	Y	N	N
OR	Up to \$10,000	Y	Y	Y	Y	N	N	Y	Y	N
VT	\$15,000-\$20,000	Y	N	Y	Y	N	N	Y	Y	N
VA	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
WA	\$1,250-\$7,500	Y	N	Y	Y	Y	N	Y	Y	N

#### IV. Pin Cites

The information in the chart in Section III is further explained below. All citations include active links to pin cites below. Because the information responsive to the variables were found in so many different laws and regulations in each state, it is easier to access the pin cite in the explanations for each state below.

#### Alaska

##### *Penalties for Sale to an Individual Under 21*

A licensed retail marijuana store may not sell, give, distribute, deliver, or offer to sell, give, distribute, or deliver, marijuana or a marijuana product to a person under 21 years of age. [3 Alaska Administrative Code 306.310](#)

The Marijuana Control Board located in the Department of Commerce, Community, and Economic Development sets a fine schedule and license suspension/revocation schedule that may be amended periodically. The most up-to-date schedule is available at [Marijuana Regulations, Board of Alcoholic Beverage Control \(alaska.gov\)](#).

##### *Enforcement Authority*

The Marijuana Control Board is established in the Department of Commerce, Community, and Economic Development shall control the cultivation, manufacture, and sale of marijuana in the state. [Alaska Statutes, § 17.38.121](#)



## *Funding*

There is a “Marijuana Treatment and Education Fund” referenced in the Marijuana Tax provision, however, it is not clear whether this goes toward youth access/education, and there is no express mention of retailer training or enforcement costs. [Alaska Statutes, § 43.61.010](#)

## *Retailer Training/ID Scan*

A marijuana establishment license application must include the applicant's operating plan, in a format the board prescribes, describing to the board's satisfaction the proposed marijuana establishment's plans for employee qualification and training. [3 Alaska Administrative Code 306.020](#)

Photographic identification is required for purchase, but it need not be electronically scanned. [3 Alaska Administrative Code 306.350.](#)

## **Arizona**

### *Penalties for Sale to an Individual Under 21*

The Responsible Adult Use Marijuana Chapter does not permit the sale to persons under age 21. [A.R.S. § 36-2851](#)

The Department of Health Services may take suspension/revocation action on the license if the marijuana establishment does not comply with law. [A.A.C. R9-18-316](#)


### *Enforcement Authority*

The Department of Health Services shall adopt rules to implement and enforce this chapter and regulate marijuana, marijuana products, marijuana establishments and marijuana testing facilities. [A.R.S. § 36-2854](#)

## *Funding*

A consumer law provides for the Smart and Safe Arizona fund which pays for administration of the law. Any extra money goes to colleges and public programs, but there is language that money can go towards “any other mandatory expenditure of state revenues required by this chapter to implement or enforce the provisions of this chapter.” It does not appear that money can go to youth access education and retailer training. [A.R.S. § 36-2856](#)

## *Retailer Training/ID Scan*



Age affirmation is required prior to engaging in dialogue with the consumer, but it need not be electronically verified. [A.R.S. § 36-2859](#)

## **California**

### *Penalties for Sale to an Individual Under 21*

Grounds for disciplinary action include, but are not limited to, the intentional and knowing sale of cannabis or cannabis products by an adult-use licensee to a person under 21 years of age. [California Business and Professions Code, Division 10, Chapter 3 26030](#)

The minimum fine amount for any disciplinary action shall not be less than \$1,000. [Department of Cannabis Control Disciplinary Guidelines](#)

The Department of Health may, as part of each citation, assess an administrative fine not to exceed five thousand dollars (\$5,000) per violation by a licensee and thirty thousand dollars (\$30,000) per violation by an unlicensed person. Each day of violation shall constitute a separate violation. [California Business and Professions Code, Division 10, Chapter 3 26031.5.](#)

### *Enforcement Authority*


There is in the Business, Consumer Services, and Housing Agency, the Department of Cannabis Control under the supervision and control of a director. The director shall administer and enforce the provisions of this division related to the department. [California Business and Professions Code, Division 10, Chapter 2 26010](#)

All retailer employees must present their retailer license and identification upon request to state and local law enforcement. [California Business and Professions Code, Division 10, Chapter 9, § 26090](#)

### *Funding*

The State Department of Health Care Services establishes and runs a public information program which describes the provisions of the Control, Regulate and Tax Adult Use of Marijuana Act of 2016, the scientific basis for restricting access of cannabis and cannabis products to persons under the age of 21 years, the penalties for providing access to cannabis and cannabis products to persons under the age of 21 years, information regarding the dangers of driving a motor vehicle, boat, vessel, aircraft, or other vehicle used for transportation while impaired from cannabis use, the potential harms of using cannabis while pregnant or breastfeeding, and the potential harms of overusing cannabis or cannabis products. [California Business and Professions Code, Division 10, Chapter 21 26211](#)

### *Retailer Training/ID Scan*



Upon initial application and application for renewal, the applicant must employ, or will employ within one year of receiving or renewing a license, one supervisor and one employee who have successfully completed a Cal-OSHA 30-hour general industry outreach course offered by a training provider that is authorized by an OSHA Training Institute Education Center to provide the course. [California Business and Professions Code, Division 10, Chapter 5 26051.5](#)

A retailer must examine a photographic idea to ensure that a consumer is over age 21, but it need not be electronically verified. [California Business and Professions Code, Division 10, Chapter 14, § 26140](#)

## **Colorado**

### *Penalties for Sale to an Individual Under 21*

Selling marijuana to a person under the age of 21 is a violation affecting public safety which is the most severe category. The range of penalties for this category of violation may include license suspension, a fine per individual violation, a fine in lieu of suspension of up to \$100,000, and/or license revocation depending on the mitigating and aggravating circumstances. Sanctions may also include restrictions on the license. [Code of Colorado Regulations 8-235](#)

### *Enforcement Authority*

The Marijuana Enforcement Division is tasked with licensing and regulating the Medical and Retail Marijuana industries in Colorado. [Marijuana Enforcement Division](#)

### *Funding*

The marijuana cash fund receives its money from fees, fines, and appropriations. It may be used to support funds for enforcement efforts. The marijuana tax cash fund is where the marijuana tax revenue is placed. The state was initially supporting agency operating costs with tax revenue, but eventually repealed these provisions and now relies on money it receives from fees, fines, and appropriations, which are placed in the marijuana cash fund to support enforcement efforts. [C.R.S.A. § 44-10-801](#)

### *Retailer Training/ID Scan*

Businesses shall comply with the 3-500 Series Rules to be designated a “responsible vendor” of Regulated Marijuana. To be designated a “responsible vendor” all Controlling Beneficial Owners with day-to-day operational control of the Licensed Premises, management personnel, and Employee Licensees involved in the handling and Transfer of Regulated Marijuana shall attend and successfully complete an Approved Training Program. [Code of Colorado Regulations 3-505](#)

A consumer must produce identification indicating that they are 21 years of age or older, but it does not need to be electronically examined.  
Code of Colorado Regulations 212-3-6-110

## **Connecticut**

### *Penalties for Sale to an Individual Under 21*

Any cannabis retail licensee or the licensee's employee who sells or delivers cannabis or cannabis paraphernalia to any person under 21 is guilty of a Class A misdemeanor. In Connecticut, Class A misdemeanors are the most serious misdemeanors, punishable by up to one year in jail and a fine of up to \$2,000. [Chapter 420h, Sec. 21a-421aaa](#)

A retailer license may face disciplinary action for failing to comply with any provisions of the law. [Chapter 420h, Sec. 21a-421p](#)

### *Enforcement Authority*

The Department of Consumer Protection is responsible for licensing and regulating medical and adult-use cannabis establishments in Connecticut. [Adult Use Cannabis Licensing Program](#) However, law enforcement retains some authority because it is a misdemeanor for a retailer to sell to a person under age 21.

### *Funding*

Beginning in the fiscal year ending June 30, 2023, fees collected by the Department shall be paid to the State Treasurer and credited to the General Fund or the Social Equity and Innovation Fund. Money in the Social Equity and Innovation Fund shall be allocated by the Secretary of the Office of Policy and Management to state agencies for the purpose of (A) paying costs incurred by the Social Equity Council and (B) administering programs to provide (i) access to capital for cannabis businesses, (ii) technical assistance for the start-up and operation of a cannabis business, (iii) funding for workforce education, and (iv) funding for community investments. [Chapter 420h, Sec. 21a-420f](#)

### *Retailer Training/ID Scan*

There is no retailer licensing requirement; however, the Social Equity Council, in coordination with the Department of Economic and Community Development and Labor Department, shall develop a workforce training program to further equity goals, ensure cannabis establishments have access to a well-trained employee applicant pool, and support individuals who live in a disproportionately impacted area to find employment in the cannabis industry. [Chapter 420h, Sec. 21a-421g](#)

The Commissioner of Consumer Protection may require a cannabis establishment to use an online age verification system, but it has not yet done so. [C.G.S.A. § 21a-421ggg](#)



## DC

Adult use recreational dispensaries are illegal in DC. Initiative 71 made it legal for a person 21 years or older to possess two ounces or less of marijuana; use marijuana on private property; transfer one ounce or less of marijuana to another person 21 or older, as long as no money, goods, or services are exchanged; and cultivate within a primary residence up to six marijuana plants, no more than three of which are mature. [Initiative 71](#)

## Illinois

### *Penalties for Sale to an Individual Under 21*

The Department may issue disciplinary or non-disciplinary citations for minor violations. Any such citation issued by the Department may be accompanied by a fee. The fee shall not exceed \$20,000 per violation. [410 ILCS 705/15-140](#) and [410 ILCS 705/45-5](#) and [410 ILCS 705/1-5](#)

### *Enforcement Authority*

The Department has the authority to suspend or revoke any program license for any violation found under this Article. [410 ILCS 705/25-25](#)

Dispensing organizations are subject to random and unannounced dispensary inspections and cannabis testing by the Illinois State Police and local law enforcement. [410 ILCS 705/15-135](#)


### *Funding*

The law created the Cannabis Business Development Fund with the purpose to provide opportunities for historically disadvantaged groups and communities to participate in the industry. However, this does not support the activities that are the subject of this survey. [410 ILCS 705/7-10](#)

[There is also a Cannabis Regulation Fund 30 ILCS 105/6z-112](#). The fund covers the indirect costs associated with the implementation, administration, and enforcement of the Cannabis Regulation and Tax Act as well as a public education campaign relating to educating youth and adults on the health and safety risks of cannabis.

### *Retailer Training/ID scan*

An applicant shall submit an application that includes a description of the training and education that will be provided to dispensing organization agents. [410 ILCS 705/15-25](#) and [410 ILCS 705/15-30](#)



Before dispensing cannabis to a purchaser, the agent shall verify the age of the purchaser by checking a government-issued identification card by use of an electronic reader or electronic scanning device to scan a purchaser's government-issued identification. [410 ILCS 705/15-85](#)

## **Maine**

### *Penalties for Sale to an Individual Under 21*

A licensee may not sell to a person under age 21. [28-B M.R.S.A. § 504](#). In addition to license suspension and revocation, a licensee may be required to pay the following fines: up to \$10,000 per minor license violation, not more than \$50,000 for a major license violation, and up to \$100,000 per major license violation affecting public safety. [28-B M.R.S.A. § 802](#)

### *Enforcement Authority*

The Department of Administrative and Financial Services is charged with implementing, administering, and enforcing the law. [28-B M.R.S.A. § 104](#) However, the Marijuana Advisory Commission is tasked with conducting a continuing study of the laws relating to marijuana and reporting to the Legislature its findings and recommendations on an annual basis. [28-B M.R.S.A. § 901](#)

### *Funding*

The Adult Use Marijuana Public Health and Safety and Municipal Opt-in Fund, in part, may be used to fund public health and safety awareness and education programs, initiatives, campaigns and activities relating to the sale and use of adult-use marijuana. [28-B M.R.S.A. § 1101](#)

Adult Use Marijuana Regulatory Coordination Fund may be used to implement, administer, and enforce the law. [28-B M.R.S.A. § 1102](#)

### *Retailer Training/ID scan*

A consumer must present a valid, government-issued identification to enable the sale. [28-B M.R.S.A. § 504](#)

## **Massachusetts**

### *Penalties for Sale to an Individual Under 21*

Whoever furnishes marijuana, marijuana products or marijuana accessories to a person less than 21 years of age, either for the person's own use or for the use of the person's parent or another person shall be punished by a fine of not more than \$2,000 or by imprisonment for not more than 1 year or both such fine and imprisonment. [M.G.L.A. 94G § 13](#)



Action may be taken against the license for repeated sales to minors. [Massachusetts Regulations 500.450](#)

### *Enforcement Authority*

The Cannabis Control Commission has all the powers necessary or convenient to carry out and effectuate its purposes. However, presumably law enforcement retains some authority because it is a misdemeanor for a retailer to provide marijuana to a person under age 21. [M.G.L.A. 94G § 4](#)

### *Funding*

There is a Marijuana Regulation Fund which is used for administrative purposes and leftover money goes to : (i) public and behavioral health including but not limited to, evidence-based and evidence-informed substance use prevention and treatment and substance use early intervention services in a recurring grant for school districts or community coalitions who operate on the strategic prevention framework or similar structure for youth substance use education and prevention; (ii) public safety; (iii) municipal police training; (iv) the Prevention and Wellness Trust Fund; and (v) programming for restorative justice, jail diversion, workforce development, industry specific technical assistance, and mentoring services for economically-disadvantaged persons in communities disproportionately impacted by high rates of arrest and incarceration for marijuana offenses. [M.G.L.A. 94G § 14](#)

### *Retailer Training/ID Scan*

The retailer must verify a government-issued photographic identification prior to completing a sale. This may be visually inspected. [935 CMR 500.140](#)

Marijuana establishment agents must complete a Responsible Vendor Training program. [935 CMR 500.105](#)

## **Michigan**

### *Penalties for Sale to an Individual Under 21*

A licensed retailer is only permitted to sell or transfer the product to a person age 21 or older. [Michigan Administrative Code, R. 420.104](#). A licensee may be fined up to \$10,000 or an amount equal to the daily gross receipts, whichever is greater, for any violation of law and/or rules. They may also face license suspension, revocation, and denial for any such violation. [Michigan Administrative Code, R. 420.806](#)

Additionally, [Michigan Compiled Laws, Section 333.27961a](#) creates a cause of action against a licensee, if a person suffers damage or is injured by a minor as a result of the licensee's sale to that minor.



### *Enforcement Authority*

The Marijuana Regulatory Agency has jurisdiction over the operation of all facilities. It may, through other agents or state police, enter the premises, offices, facilities, or other places of business of a licensee to ensure compliance with the law and rules. [Michigan Compiled Laws, Section 333.27303](#)

### *Funding*

The Marihuana Regulation Fund, [Michigan Compiled Laws, Section 333.27964](#), created by the Department of Treasury, includes all excise taxes and other fees collected. The money shall be expended for the implementation, administration, and enforcement of the Michigan Regulation and Taxation of Marihuana Act, and until 2022 or at least for two years and provide additional money to one or more clinical trials researching the efficacy of marihuana in treating certain medical conditions among veterans.

### *Retailer Training/ID Scan*

A customer may not purchase cannabis unless the marijuana sales location was presented with and examined a government-issued identification card with a photographic image that the person is at least 21 years of age. There is no identification scanning requirement. [Michigan Administrative Code, R.420.505](#)

Although licensees are not required to undergo training, their employees are required to receive education and training. [Michigan Administrative Code, R. 420.602](#)

## **Montana**

### *Penalties for Sale to Person Under Age 21*

If a licensee violates laws/rules, it faces a civil penalty up to \$3,000 and action against the license. Specifically, selling to a person under age 21 will result in a failure to renew or a revocation. [Montana Code, 16-12-109](#)

### *Enforcement Authority*

The Montana Department of Health and Human Services maintains the sole authority to enforce, regulate, and license the cultivation, manufacture, transport, and sale of marijuana. [Montana Code, 16-12-103](#) However, [Montana Code, 16-12-303](#), expressly states that nothing in this law shall be construed to limit a law enforcement agency's ability to investigate unlawful activity in relation to a person or individual with a license.



## *Funding*

The Marijuana state special revenue account contains license fees, civil penalties paid, and taxes collected pursuant to the Montana Marijuana Regulation and Taxation Act. This money is designated for the purpose of administering the provisions of law. Additionally, some money from the special revenue account is transferred to another account entitled “healing and ending addiction through recovery and treatment” which aims to address substance use disorder prevention, mental health promotion, and crisis, treatment, and recovery for substance use and mental health disorders. [Montana Code, 16-12-111](#)

## *Retailer Training/ID Scan*

Although the retailer or license holder is not required to obtain education or training, a marijuana worker permit is required for an employee who performs work for or on behalf of a marijuana business. To obtain a permit, the person must provide annual proof of having passed training that includes identification, prevention, and reporting for human trafficking, rules and regulations for legal sales of marijuana in the state, and any other training required by the department. [Montana Code, 16-12-226](#)

A marijuana dispensary licensee and its employees must request and examine a person’s unexpired, government-issued photo identification that shows a consumer is 21 years of age. However, they are not required to scan the document. [Montana Administrative Rules, 42.39.409](#)

## **Nevada**


### *Penalties for Sale to Individual Under Age 21*

The Nevada Regulations, 4.040, consider selling to a person under age 21, a Category II violation. For a first violation in the immediately preceding 3 years, a civil penalty of not more than \$25,000 may be imposed and a license suspension for not more than 20 days. For a second violation in the immediately preceding 3 years, a civil penalty of not more than \$75,000 may be imposed and a suspension for not more than 30 days. For a third or subsequent violation in the immediately preceding 3 years, revocation may be imposed. [Nevada Cannabis Compliance Regulations, 4.040](#)

### *Enforcement Authority*

The Cannabis Compliance Board has the sole authority and power to carry out the provisions of law. [Nevada Revised Statutes, 678A.440](#)

## *Funding*



The Administrator of the Division or his or her designee may apply for or accept any gifts, grants, donations or contributions from any source to carry out the provisions of this chapter governing the issuance of registry identification cards and letters of approval and the regulation of the holders of such cards and letters. However, this money is not guaranteed. [Nevada Revised Statutes, 678C.820](#). Any money the Administrator or his or her designee receives must be deposited in the State Treasury pursuant to [Nevada Revised Statutes, 678.830c](#) and accounted for separately in the State General Fund. It may only be carried out to: enforce the provisions of the chapter; fund programs for alcohol and substance use disorder, and allow research to be performed at Nevada System of Higher education on services relating to alcohol and other substance use disorders.

#### *Retailer Training/ID Scan*

The Cannabis Compliance Board requires any cannabis establishment to ensure that all employees have received training and instruction. [Nevada Cannabis Compliance Regulations 6.072](#)

Cannabis establishment employees must verify a customer's age by checking a government-issues identification card with an age verification scanner. [Nevada Cannabis Compliance Regulations, 7.015](#)

### **New Jersey**

#### *Penalties for Sale to Individual Under Age 21*


Selling cannabis to a person under age 21 is considered a major license violation and the license holder faces up to \$500,000 in civil money penalties. [New Jersey Administrative Code, 17:30-17.2](#) and [17:30-17.6](#). A licensee may also face suspension or revocation for selling to a minor in some circumstances. [New Jersey Administrative Code, 17:30-17-7](#) and [17:30-17-8](#)

#### *Enforcement Authority*

The Cannabis Regulatory Commission has all powers necessary to carry out its duties functions and powers, including the jurisdiction, supervision, and functions over any person who buys, sells, cultivates, produces, manufactures, transports, or delivers any cannabis or cannabis items within this State. [New Jersey Statutes, 24:6I-34](#)

Certified cannabis handlers are required to present the identification card upon request to State and local law enforcement. [New Jersey Statutes, 24:6I-44](#)

#### *Funding*



All fees and penalties collected by the commission, and all tax revenues on retail sales of cannabis items, and all tax revenues collected pursuant to the provisions of the “Jake Honig Compassionate Use Medical Cannabis Act,” except for amounts credited to the Property Tax Reform Account in the Property Tax Relief Fund as well as all revenues, if any, collected for the Social Equity Excise Fees, shall be deposited in a special nonlapsing fund which shall be known as the “Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Fund.” Among other things, the money shall be used to oversee the enforcement activities associated with personal use cannabis. 15% of the monies deposited must be placed into an account within the fund, known as the “Underage Deterrence and Prevention Account.” [New Jersey Statutes, 24:6I-50](#)

#### *Retailer Training/ID Scan*

In addition to any workplace trainings required by law, each owner and principal of a license holder that handles cannabis and each employee and volunteer and any management services contractor staff of a license holder shall complete at least eight hours of ongoing training each calendar year. [New Jersey Administrative Code, 24:6I-44](#)

The licensee and/or employees must examine a consumer’s photographic identification before making a sale, but scanning the ID is not required. [New Jersey Statutes, 24:6I-35](#)

### **New Mexico**

#### *Penalties for Sale to Individual Under Age 21*


For any offense involving the sale or distribution of cannabis to minors, a retailer faces a fine of up to \$10,000 and revocation of the license. [Code of New Mexico Rules, 16.8.12.13](#)

#### *Enforcement Authority*

The Cannabis Control Division is a government agency which regulates and licenses cannabis producers, manufacturers, retailers, couriers and testing and research laboratories operating in the medical and adult-use markets to ensure public health and safety. [New Mexico Statutes, 26-2C-3](#)

#### *Funding*

The state has a “cannabis regulation fund” which consists of appropriations, gifts, grants, donations and fees collected by the division pursuant to the Cannabis Regulation Act and the medical cannabis program. The money is for the purposes of carrying out the provisions of the Cannabis Regulation Act and the Lynn and Erin Compassionate Use Act. [New Mexico Statutes, 26-2C-39](#)



### *Retailer Training/ID Scan*

The licensee is required to develop and implement, with approval by the Cannabis Control Division, and educational training program for employees. [Code of New Mexico Rules, 16.8.2.39](#)

A licensed retailer must inspect a valid form of identification to confirm that an individual is at least 21 years of age before making a sale, however, ID scan is not required. [Code of New Mexico Rules, 16.8.2.40](#)

## **New York**

### *Penalties for Sale to Individual Under Age 21*

Retailers may not sell cannabis to a person under age 21. [9 NYCRR 116.3](#) and [McKinney's Cannabis Law § 85](#). A person may be required to pay a civil penalty of up to \$5,000 for violation of rule/law. [McKinney's Cannabis Law § 16](#)

Suspension and revocation action may be taken against the license for violations of law. [9 NYCRR 116.8](#)

### *Enforcement Authority*

The Cannabis Control Board has regulatory and enforcement authority. [McKinney's Cannabis Law § 10](#)

### *Funding*


The [New York State Cannabis Revenue Fund](#) includes all revenues received by the department of taxation and finance for taxes associated with adult-use cannabis. The money may be used for the reasonable costs associated with implementing, administering, and enforcing the Marijuana Regulation and Taxation Act. It may also be used to study the impact of the laws on public health, public safety issues relating to cannabis, cannabis use rates, among other things.

### *Retailer Training/ID Scan*

Retailers may scan ID but are not required to do so. [McKinney's Cannabis Law § 85](#)

## **Oregon**

### *Penalties for Sale to Individual Under Age 21*



The sale of cannabis to a person under 21 is a Category II(b) violation which may result in a civil penalty and/or suspension. The penalty for a licensee may be calculated by multiplying the number of days in a suspension by \$165. The penalty may not exceed \$10,000. The guidelines for penalties are listed in the regulations as Exhibit 1. For 1 violation in a 2-year period, the guideline is a 30-day suspension OR \$4,950 fine. For 2 violations in a 2-year period, the guidelines is a 30-day suspension. [Oregon Administrative Rules, 845-025-8520](#) and [Oregon Administrative Rules, OAR 845-025-8590](#)

A licensee may also be required to undergo training if the Commission finds or has reasonable grounds to believe that the licensee or representative sold to a minor. [O.R.S. § 475C.265](#)

#### *Enforcement Authority*

The Oregon Liquor and Cannabis Commission has the duties, functions, and powers necessary to carry out the functions at law. [O.R.S. § 475C.017](#) Law enforcement officers have express authority to enforce limited provisions of the code. [O.R.S. § 475C.413](#)

#### *Funding*

The Marijuana Control and Regulation Fund is appropriated to the Oregon Liquor and Cannabis Commission and is used to administer and enforce the provisions in the state code. [O.R.S. § 475C.297](#)

#### *Retailer Training/ID Scan*

The law permits the Oregon Liquor and Cannabis Commission to adopt rules establishing when an age verification scanner may be used to verify age, but it has not yet been required. [O.R.S. § 475C.109](#)

A marijuana worker permit may only be obtained after passing an examination. [OAR 845-025-5520](#)

### **Vermont**

#### *Penalties for Sale to Individual Under Age 21*

Providing cannabis to a person under age 21, subjects the licensee to the following penalties:

- 1<sup>st</sup> violation in immediately preceding 3 years: corrective action plan, up to \$15,000 administrative penalty, suspension not more than 20 days
- 2<sup>nd</sup> violation in immediately preceding 3 years: corrective action plan, up to \$20,000 administrative penalty, suspension not more than 30 days
- 3<sup>rd</sup> violation in immediately preceding 3 years: corrective action plan, suspension and/or revocation of license to be determined by Cannabis Control Board [Vt. Admin. Code 26-1-4:5](#)



### *Enforcement Authority*

The Cannabis Control Board is charged with safely, equitably, and effectively implementing and administering the laws enabling access to adult-use cannabis in Vermont. [7 V.S.A. § 843](#)

Cannabis possessed unlawfully in violation of this title may be seized by law enforcement and is subject to forfeiture. [7 V.S.A. § 832](#)

### *Funding*

The Cannabis Regulation Fund shall be maintained by the Cannabis Control Board and is composed of application fees, annual license fees, renewal fees, and civil penalties collected by the Board. Monies from the fund shall only be appropriated for the purposes of implementation, administration, and enforcement of law pursuant to Chapter 31 and Chapter 33. [7 V.S.A. § 845](#)

### *Retailer Training/ID Scan*

A licensee shall complete an enforcement seminar every three years conducted by the Board. [7 V.S.A. § 865.](#)

The retailer must confirm that a person is 21 years of age or older to complete a transaction, by examining a photographic identification card, but is not required to scan it for verification. [7 V.S.A. § 907](#)

## **Virginia**

Adults 21 years and older may possess not more than one ounce of cannabis in any public place and may grow up to four plants per household. Virginia's adult-use legalization law created a Cannabis Public Health Advisory Council to advise the Cannabis Control Authority (CCA) on all health-related matters. However, dispensaries are not yet legal and thus are not regulated.

The CCA, in collaboration with the Cannabis Public Health Advisory Council and interagency partners, is working on several public health initiatives including guidance on: (i) responsible adult consumption of cannabis; (ii) the health risks and dangers associated with cannabis consumption, including information on how cannabis consumption impairs a person's ability to operate a motor vehicle; and (iii) how cannabis consumption could have an adverse impact on ancillary matters such as causing a person to be ineligible for certain employment opportunities.

<https://www.cannabis.virginia.gov/>

## **Washington**

*Penalties for Sale to Individual Under Age 21*





Licensees face the following penalties for selling cannabis to a person under age 21:

1<sup>st</sup> violation: 5-day suspension OR \$1,250 monetary option

2<sup>nd</sup> violation in a two-year window: 10-day suspension OR \$,7,500 monetary option

3<sup>rd</sup> violation in a two-year window: 30- day suspension

4<sup>th</sup> violation in a two-year window: license cancellation

[WAC 314-55-521](#)

#### *Enforcement Authority*

The State Liquor and Cannabis Board carries out the state laws and regulations surrounding alcohol, tobacco, and cannabis. Law enforcement officers are also expressly named as having authority to enforce all provisions of law. [RCWA 69.50.500](#)

#### *Funding*

Washington has a “dedicated cannabis account” which outlines the appropriated amounts for multiple categories including for the “administration” of the relevant laws and the creation, implementation, operation, and management of cannabis, vapor product, and commercial tobacco product education and public health programming that contains programs that support development and implementation of coordinated intervention strategies for cannabis use by youth and cannabis cessation treatment services and media-based education campaigns that target youth and adults, that provide medically and scientifically accurate information about the health and safety risks posed by cannabis use. [RCWA 69.50.530](#) and [RCWA 69.50.540](#)

#### *Retailer Training/ID Scanner*

The Board must develop and implement compliance education for licensed businesses and employees. [RCWA 69.50.342](#) and [WAC 314-55-013](#)

Photographic and valid government identification are required to demonstrate that a person is at least 21 years of age, but scanners are not required. [WAC 314-55-150](#)

**This document was developed by Brooke Torton J.D., and Blair Inniss, J.D., Senior Staff Attorneys for the Network for Public Health Law-Eastern Region. The Network for Public Health Law provides information and technical assistance on issues related to public health. The legal information and assistance provided in this document does not constitute legal advice or legal representation. For legal advice, please consult specific legal counsel.**

**Updated: October 6, 2022**



# Appendix 6



CANNABIS

## Zoning Restrictions for Adult-Use Retailers

### State Zoning Restrictions


#### I. Introduction

In adult-use cannabis regulation, state zoning restrictions are primarily used to limit youth exposure to cannabis. This resource examines state zoning policies targeting adult-use cannabis retailers and focuses on 10 policy variables. Each of the variables is discussed in the Research Summary in Section II. Section III contains a table that examines the policy approach of each state and allows a side-by-side comparison of these approaches. While 20 jurisdictions have legalized adult-use cannabis, the District of Columbia and Virginia do not have a licensed market. As a result, this resource focuses on the 18 states that have licensed adult-use markets.

#### II. Research Summary:

This section examines 10 state zoning variables used to regulate adult-use cannabis retailers. The prevalence of each variable is explained, and a range of policy approaches is provided when necessary.

**Cannabis Retail Zoning Restrictions:** 13 of 18 states impose zoning restrictions on adult-use cannabis retailers. These zoning restrictions prohibit these businesses from operating within a certain buffer zone around targeted locations. The targeted locations are generally youth focused and the most common locations will be discussed below.



**Distance of Buffer Zones:** The required distance of the buffer zone varies considerably between jurisdictions. Some states have different sized buffer zone depending on the targeted location (e.g., school vs. a place of worship). The most common buffer zone size, used by **6 states**, is 500 feet (AK, MA, MT, NY, RI, and VT). **5 states** use a buffer zone of 1000 feet (ME, MI, NV, OR, and WA). California uses a buffer zone of 600 feet for all its protected areas. Nevada uses a buffer zone of 300 feet for community centers. New York uses a buffer zone of 200 feet for places of worship. As mentioned above, some states use different buffers zones depending on the protected area. For example, Nevada applies a buffer zone of 1000 feet to schools, 300 feet to community centers, and 1,500 feet to gaming establishments. In addition, **6 states** allow local government to decrease the size of the buffer zone by ordinance (ME, MA, MI, OR, RI, and WA). However, **3 of these states** set a lower limit for this modification (ME, OR, and WA). For example, Washington allows a local jurisdiction to decrease the 1000-foot buffer zone down to 100 feet if the change does not negatively affect law enforcement, public safety, and public health. Rather than allowing a smaller buffer zone, Montana allows local jurisdictions to create a larger buffer zone for cannabis retailers. New Mexico also has a novel approach. Rather than setting a default buffer zone, it allows locals to set a buffer zone up to 300 feet.

**Schools:** **All 13 states** with buffer zones, apply them to schools. However, definition of school varies amongst states. **6 states** define the term as covering kindergarten through 12<sup>th</sup> grade (CA, MA, MI, OR, RI, and WA). **3 states** cover pre-school through 12<sup>th</sup> grade (ME, MT, and NV). **4 states** use the term school without further clarifying it (AK, NM, NY, and VT). Montana is unique in that covers post-secondary educational institutions, in addition to pre-school through 12<sup>th</sup> grade.

**Playgrounds:** **2 of 13 states** apply their buffer zone to playgrounds (NV and WA).


**Public Parks:** **2 of 13 states** apply their buffer zone to public parks (NV and WA). Nevada also includes public pools in this restriction.

**Day Care:** **4 of 13 states** cover day care or childcare facilities in their zoning restriction (CA, NV, NM, and WA).

**Recreation Centers:** **4 of 13 states** include recreation, community, or youth centers in their zoning restrictions (AK, CA, NV, and WA).

**Places of Worship:** **4 of 13 states** include places of worship in their zoning restrictions (AK, MT, NV, and NY).

**Residential Zones:** **2 of 13 states** prohibit cannabis retailers in areas that are zoned exclusively for residential purposes (MI and OR).



**Preexisting Clause: 9 of 13 states** have a provision that protects a retailer if they preceded the placement of the protected location (AK, CA, ME, MI, MT, NV, NM, OR, and RI). For example, if the cannabis retailer was in existence and then a school was built within the buffer zone, the retailer would not be penalized and could remain at the site.

There are other areas covered by cannabis retailer zoning restrictions. However, these variables were only adopted by a single state, as a result they were not included in the Research Table in Section III. Alaska includes correctional facilities in its cannabis retailer zoning restrictions. Nevada covers establishments with a nonrestricted gaming licenses in its zoning restrictions. Washington includes several additional locations including libraries, game arcades that are not restricted to individuals 21 years of age or older, and public transit centers.

### **III. Research Table**

This table contains the policy research for the twenty jurisdictions with adult-use cannabis. N/A stands for “not applicable.” N/A is used when the variable is not applicable because (1) the state does have a licensed adult-use market (D.C. and VA) or (2) the state does not utilize zoning restrictions for adult-use retailers.

State	Citation	Retail Zoning Restrictions	Distance	School	Playground	Public Park	Day Care	Recreation Center	Place of Worship	Residential Zone	Preexisting Clause
AK	<a href="#">3 AAC 306.010</a>	Y	500 feet	y	N	N	N	Y	Y	N	Y
AZ	N/A	No	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
CA	<a href="#">Cal.Bus. &amp; Prof.Code § 26054</a>	Y	600 feet	Y	N	N	Y	Y	N	N	Y
CO	N/A	No <sup>1</sup>	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
CT	N/A	No	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
DC	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
IL	N/A	No	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
ME	<a href="#">ME ST T. 28-B § 402</a> <a href="#">ME ST T. 28-B § 403</a>	Yes	1,000 feet <sup>2</sup>	Y	N	N	N	N	N	N	Y
MA	<a href="#">935 MA ADC 500.110</a> <a href="#">935 MA ADC 500.002</a>	Yes	500 feet <sup>3</sup>	Y	N	N	N	N	N	N	N
MI	<a href="#">MI STAT. § 333.27959</a>	Yes	1,000 feet <sup>4</sup>	Y	N	N	N	N	N	Y	Y
MT	<a href="#">MT STAT. 16-12-207</a>	Yes	500 feet <sup>5</sup>	Y	N	N	N	N	Y	N	Y
NV	<a href="#">NV ST 678B.250</a>	Yes	1000 feet (School)	Y	Y	Y	Y	Y	Y	N	Y



			300 feet (Communi Center)  1,500 feet (Gaming Facility)								
NJ	N/A	No	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
NM	<a href="#">NM ST § 26-2C-12</a>	Yes	Locals cannot create a buffer zone greater than 300 feet	Y	N	N	Y	N	N	N	Y
NY	<a href="#">Cannabis Law §72</a>	Yes	500 feet (School) 200 Feet (Place of Worship)	Y	N	N	N	N	Y	N	N
OR	<a href="#">OR ST § 475C.101</a> <a href="#">OR ST § 475C.097</a> <a href="#">OR ST § 475C.105</a>	Y	1000 feet <sup>6</sup>	Y	N	N	N	N	N	Y	Y



RI	<a href="#">RI ST § 21-28.11-17.1</a>	Y	500 feet <sup>7</sup>	Y	N	N	N	N	N	N	Y
VT	<a href="#">VT ADC 26-1-2:8<sup>8</sup></a> <a href="#">VT ST T. 18 § 4237</a>	Y	500 feet <sup>9</sup>	Y	N	N	N	N	N	N	N
VA	N/A	N/A <sup>10</sup>	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
WA	<a href="#">WA ST 69.50.331</a>	Y	1000 Feet <sup>11</sup>	Y	Y	Y	Y	Y	N	N	N

**This document was developed by Mathew R. Swinburne, J.D., Associate Director for the Network for Public Health Law-Eastern Region. The Network for Public Health Law provides information and technical assistance on issues related to public health. The legal information and assistance provided in this document does not constitute legal advice or legal representation. For legal advice, please consult specific legal counsel.**

**Updated: September 22, 2022**

<sup>1</sup> While Colorado does not place zoning restrictions on adult-use retailers, licensed medical marijuana dispensary may not be located within 1,000 feet of a school; alcohol or drug treatment facility; the principal campus of a college, university, or seminary; or a residential child-care facility. [C.R.S.A. § 44-10-311](#).

<sup>2</sup> In Maine, a municipality or the Maine Land Use Planning Commission can reduce the buffer zone to 500 feet.

<sup>3</sup> Massachusetts allows municipalities to adopt ordinance that reduce the buffer zone below 500 feet.

<sup>4</sup> Michigan allows municipalities to adopt ordinances that reduces this distance requirement.


<sup>5</sup> Montana indicates that the establishment cannot be withing 500 and on the same street as a school of place of worship. It also allows local governments to require a greater distance.

<sup>6</sup> Oregon allows a retailer to be located closer than 1,000 feet if three conditions are met. First, the retailer cannot be closer than 500 feet. Second, Oregon Liquor and Cannabis Commission determines that there are physical or geographic barriers that are capable of preventing children from traversing the premises of the retailer. Third, the retailer was established prior to August 1, 2017, in accordance with city or county law.

<sup>7</sup> Rhode Island allows a city or town to adopt an ordinance or by-law that reduces the distance requirement.

<sup>8</sup> The citation provided is from Westlaw. The link to a publicly available source is to a different section but has the same information. It appears that one of these sources, has not updated to reflect the current organization of the administrative code.

<sup>9</sup> Vermont prohibits cannabis retailers within to be within 500 feet of a school on property that abuts that school. A property is considered to abut school if it shares a boundary with a school or is adjacent to school property and is separated only by a river, stream, or public highway.



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<sup>10</sup> Virginia did not reauthorize the 2021 Cannabis Control Act and as a result there are no provisions for a licensed adult-use market..

<sup>11</sup> Washington allows a local jurisdiction to pass an ordinance that reduces the buffer zone down to 100 feet, so long as it does not negatively impact law enforcement, public safety, and public health interests.

# **Appendix 7**



CANNABIS

## Survey of Cannabis Product Labeling Laws

### I. Introduction

This resource surveys cannabis product labeling laws in states that have legalized adult-use cannabis. Product labeling is a critical public health tool for consumer education and safety. Product labels help consumers make informed decisions and help prevent accidental ingestion. Cannabis product labels contain a broad spectrum of information. This resource focuses on 11 state policy variables used to regulate cannabis product labels in adult-use states. The variables are broken into three categories General Label Requirement, Health Warnings, and Universal Symbol Requirements. Section II of this resource provides a research summary that discusses the prevalence of each policy variable and the variation in policy within each. Section III contains a table that covers the policy approach of each state and allows side-by-side comparison.


### II. Research Summary:

#### a. State Law

This section examines 11 state policy variables used to regulate cannabis product labels in states that allow adult-use cannabis. The variables are broken into 3 categories General Label Requirement, Health Warnings, and Universal Symbol Requirements. The prevalence of each variable is explained, and a range of policy approaches is provided when necessary.

#### General Label Requirement

**Font Requirement for Label:** Ten jurisdictions have general text size and/or style requirements that apply to all required labeling on cannabis products. Text size requirements are described either as a font point-size or in inches. Most jurisdictions with text size



requirements (6 out of 10) describe them in inches, ranging from 1/10 inch to 1/16 inch, some specifying whether that measurement is based on lowercase letter “o” or uppercase letter “K.” Three jurisdictions describe text size requirements in font point-size, ranging from 4.5-point in New York to 8-point in Nevada. Maine describes text size with both font point-size (6-point) and inches (1/12). Two jurisdictions have font style requirements (i.e., Connecticut requires labels to be printed in Times New Roman).

### Health Warnings


**Font Requirements for Warnings:** Five jurisdictions have font size and/or style requirements that specifically apply to warning labels on cannabis products. Two states have the same or similar requirements for the label as a whole, as they do for warning labels (California and Maine). The remaining three states have font size and/or style requirements for warning labels only. New Jersey requires 6-point font, Illinois requires text to be of legible size, and New Mexico requires text to be in bold.

**Required Location for Warnings:** Only one jurisdiction, New Mexico, has a specific requirement for the location for required warnings on cannabis product labels. New Mexico requires warnings to be located on the principal display panel. The principal display panel on a product is the part of the label most likely to be displayed or examined under customary conditions of retail sale. Three jurisdictions, California, Illinois, and Maine, have general location requirements for warnings, including that they must be “visible,” “clear,” and “unobstructed and ambiguous.”

**Delayed Onset for Edibles:** Most jurisdictions (13) require labels on edible products to include a warning regarding the delayed onset of intoxication and other effects from consuming edible cannabis products. Warnings typically use two hours as a threshold, for example: “intoxicating effects may be delayed by 2+ hours” (Washington), “cannabis edibles can take up to 2 hours or more to take effect” (Oregon).

**Driving/Operating Machinery:** All but five jurisdictions require labels on cannabis products to include a warning about the dangers of driving or operating a vehicle while using the product. Most jurisdictions specify warning language such as “it is illegal to operate a motor vehicle while under the influence of cannabis” (Illinois), or “marijuana use...can impair an individual’s ability to drive a motor vehicle or operate heavy machinery” (Arizona). Of the remaining five jurisdictions, four do not yet have robust regulations for the legal cannabis market (D.C., New York, Rhode Island, and Virginia). Nevada is the only state without a required warning about driving or operating motor vehicles.

**Pregnant/Breastfeeding:** Fifteen jurisdictions require labels on cannabis products to include a warning about the dangers of using the product while pregnant or breastfeeding. Most jurisdictions have similar language, such as “do not use if pregnant or breastfeeding” (Vermont) or “marijuana should not be used by women who are pregnant or breastfeeding” (Alaska). Some include more detailed warning language such as “use by pregnant or breastfeeding women, or by women planning to become pregnant, may result in fetal injury, preterm birth, low birth weight, or developmental problems for the child” (Michigan). Michigan only requires the warning to be present on the product on a quarterly rotation with other health-related warnings but does require that the warning be on an extended content label, package insert, or accessible via QR code at all times.



**Children and Animals:** Three jurisdictions require labels on cannabis products to include a warning to keep away from children and animals, with basic language such as “keep this product away from children and pets” (Vermont). Thirteen more jurisdictions require labels only with warnings to keep away from children, again with basic language such as “keep out of reach of children.” Colorado has an exception to this requirement for cannabis vaporizing products, and Washington requires the warning to be located on the principal display panel of the product.

**Not Safe for Kids Icon:** Three jurisdictions require labels on cannabis products to include a “Not Safe for Kids Icon” generally resembling a red octagon containing “NOT SAFE FOR KIDS” in black text, Massachusetts, Vermont, and Washington. Again, Washington requires this warning to be located on the principal display panel of the product. While Connecticut does not require this icon, it does require an icon indicating that the product is only safe and legal for adults 21 and up (a circle containing “21+”).

### **Universal Symbol Requirements**

**Universal Symbol Required:** Twelve jurisdictions require labels on cannabis products to include a universal symbol indicating that the product contains THC. While each jurisdiction allows their regulatory agency to determine the appearance of the symbol, most resemble a triangle containing a cannabis leaf, with “THC” incorporated near the triangle. While Nevada is not one of the 12 jurisdictions with a universal symbol requirement, it does require products to be labeled with “THIS PRODUCT CONTAINS CANNABIS” or “THIS IS A MARIJUANA PRODUCT” in bold type.

**Required Size of Symbol:** Of the 12 jurisdictions that require a universal symbol on cannabis product labels, nine have minimum size requirements. Size requirements range from a minimum of one-fourth of an inch width and height to three-quarters of an inch width and height. The most common size requirement is a minimum of one-half inch width and height (four jurisdictions). California and Vermont have different size requirements based on the type of product.

**Required Location:** Of the 12 jurisdictions that require a universal symbol on cannabis product labels, four dictate that the symbol must be located on the principal display panel, the front of the product, or predominantly displayed. California simply requires the symbol to be “visible,” and the remaining seven jurisdictions do not have location requirements.

### **III. Research Tables**

N/A stands for “not applicable.” N/A is used when the variable is not applicable because the jurisdiction does not have a licensed adult-use market (D.C. and VA). NC stands for “not covered.” NC is used when the jurisdiction has not yet adopted regulations for the adult-use market (NY).

State	Citation	General Font Requirement for Label	Health Warnings							Universal Symbol		
			Font Requirements for Warning	Required Location	Delayed onset for edibles	Driving / operating machinery	Pregnant/ Breast-feeding	Children and Animals	Not Safe for Kids Icon	Universal Symbol	Required Size of Symbol	Required Location
AK	<a href="#">3 AAC 306.345</a> ; <a href="#">3 AAC 306.475</a> ; <a href="#">3 AAC 306.570</a>	No	No	No	No	Yes	Yes	Yes, children	No	No	No	No
AZ	<a href="#">AZ ST § 36-2854.01</a> ; <a href="#">AZ ADC R9-18-310</a>	No	No	No	No	Yes	Yes (by end of 2023)	Yes, children	No	No	No	No
CA	<a href="#">CA BUS &amp; PROF § 26120</a> ; <a href="#">CA BUS &amp; PROF § 26122</a> ; <a href="#">4 CA ADC § 17403</a> ; <a href="#">4 CA ADC § 17406</a> ; <a href="#">4 CA ADC § 17410</a>	6-point font	6-point font <sup>1</sup>	Clear and legible	Yes	Yes	Yes	Yes	No	Yes	1/4 inch high and 1/4 inch wide (cartridges and vaporizers); 1/2 inch high (edibles)	No <sup>2</sup>
CO	<a href="#">CO ST § 44-10-203</a> ; <a href="#">1 CO ADC 212-3:3-1005</a> ; <a href="#">1 CO ADC 212-3:3-1010</a> ; <a href="#">CO ADC 212-3:3-1015</a>	1/16 inch; unobstructed and conspicuous	No	No	Yes	Yes	Yes	Yes, children <sup>3</sup>	No	Yes	1/2 inch by 1/2 inch	No
CT	<a href="#">CT ST § 21a-421j-33</a>	Black Times New Roman on contrasting background; 1/10 inch	No	No	Yes	Yes	Yes <sup>4</sup>	Yes, children	No <sup>5</sup>	Yes	1/2 inch by 1/2 inch	No

State	Citation	General Font Requirement for Label	Health Warnings							Universal Symbol		
			Font Requirements for Warning	Required Location	Delayed onset for edibles	Driving / operating machinery	Pregnant/ Breast-feeding	Children and Animals	Not Safe for Kids Icon	Universal Symbol	Required Size of Symbol	Required Location
		based on capital "K"										
DC	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
IL	<a href="#">IL ST CH 410 § 705/55-21</a> ; <a href="#">8 IL ADC 1300.940</a>	No	Legible size	Readily visible, not obstructed	Yes	Yes	Yes	No	No	No	No	No
ME	<a href="#">ME ADC 18-691 Ch. 1, § 9</a>	6-point font or 1/12 inch	6-point font	Clearly written or printed; unobstructed and conspicuous	Yes	Yes	Yes	Yes, children (edibles only)	No	Yes	1/2 inch by 1/2 inch	Front or most predominantly displayed area of the package's marketing layer
MA	<a href="#">MA ST 94G § 4</a> ; <a href="#">935 MA ADC 500.105</a> ; <a href="#">935 MA ADC 500.150</a>	1/16 inch	No <sup>6</sup>	No	Yes	Yes	Yes	Yes, children	Yes	Yes	No	No
MI	<a href="#">MI ST 333.27958</a> ; <a href="#">MI ADC R 420.504</a>	No	No	No	No	Yes	Yes <sup>7</sup>	Yes, children	No	Yes	No	No
MT	<a href="#">MT ST 16-12-215</a> ; <a href="#">MT ADC 42.39.314</a> ; <a href="#">MT ADC 42.39.316</a> ; <a href="#">MT ADC 42.39.318</a>	Legible font; <sup>8</sup> 1/16 inch based on lowercase "o" <sup>9</sup>	No	No	Yes	Yes	Yes	Yes	No	Yes	1/3 inch high, 1/3 inch wide	No
NV	<a href="#">NV ST 678B.520</a> ; <a href="#">NV ADC 453D.800 through NV ADC</a>	8-point font; no italics <sup>10</sup>	No	No	Yes	No	Yes <sup>11</sup>	Yes, children	No	No <sup>12</sup>	No	No



State	Citation	General Font Requirement for Label	Health Warnings							Universal Symbol		
			Font Requirements for Warning	Required Location	Delayed onset for edibles	Driving / operating machinery	Pregnant/ Breast-feeding	Children and Animals	Not Safe for Kids Icon	Universal Symbol	Required Size of Symbol	Required Location
	<a href="#">453D.832, inclusive</a>											
NJ	<a href="#">NJ ST 24:6I-35; NJ ADC 17:30-13.3; NJ ADC 17:30-13.6</a>	No	6-point font	No	Yes	Yes	Yes	Yes, children	No	Yes	No	No
NM	<a href="#">NM ST § 26-2C-17; NM ADC 16.8.3.9; NM ADC 16.8.3.10</a>	1/16 inch based on lowercase "o;" unobstructed and conspicuous	Bold font	Principal display panel	Yes	Yes	Yes <sup>13</sup>	Yes, children	No	Yes	At least 1/2 inch by 1/2 inch	Principal display panel
NY	<a href="#">9 NY ADC 114.9</a>	4.5-point font	No	No	No	No	Yes	Yes, children	No	No	No	No
OR	<a href="#">OR ST § 475C.604; OR ADC 845-025-7030 through OR ADC 845-025-7145, inclusive</a>	1/16 inch based on capital "K;" typed; legible font; unobstructed and conspicuous	No	No	Yes	Yes	No	Yes, children	No	Yes	0.48 inches wide by 0.35 inches high	Principal display panel
RI	N/A	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC
VT	<a href="#">VT ADC 26-1-2:2</a>	No	No <sup>14</sup>	No	Yes	Yes	Yes	Yes	Yes	Yes	1/2 inch by 1/2 inch; for edibles, 25% of product size but no less than	No

State	Citation	General Font Requirement for Label	Health Warnings							Universal Symbol		
			Font Requirements for Warning	Required Location	Delayed onset for edibles	Driving / operating machinery	Pregnant/ Breast-feeding	Children and Animals	Not Safe for Kids Icon	Universal Symbol	Required Size of Symbol	Required Location
											1/4 inch by 1/4 inch	
VA	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
WA	<a href="#">WA ADC 314-55-105</a> ; <a href="#">WA ADC 314-55-106</a>	No	No	No	Yes	Yes	No	No	Yes <sup>15</sup>	Yes	3/4 inch by 3/4 inch; legible, readily visible	Principal display panel or front of the package

**This document was developed by Brienne Schell, JD, MA. The Network for Public Health Law provides information and technical assistance on issues related to public health. The legal information and assistance provided in this document does not constitute legal advice or legal representation. For legal advice, please consult specific legal counsel.**

**Updated: October 24, 2022**

<sup>1</sup> Edible cannabis products must include “cannabis infused” or “cannabis-infused” above the product identity on the primary label in bold type and a font size larger than size 6. 4 CA ADC § 17405.

<sup>2</sup> The universal symbol must be “visible” on cartridges and vaporizers.

<sup>3</sup> Except for vaporizers and the like.

<sup>4</sup> Only required on main product label on quarterly rotation with three other warnings; always required on extended label, package insert, or accessible via QR code.

<sup>5</sup> Does require an icon indicating that the product is only safe and legal for individuals over 21.

<sup>6</sup> Text must be “legible.”

<sup>7</sup> Must be legible and surrounded by a continuous heavy line.


<sup>8</sup> Law gives examples of legible fonts: Times New Roman, Arial, and Helvetica.

<sup>9</sup> Unless the product is small and does not have sufficient space.

<sup>10</sup> Text on accompanying materials and warnings must be at least size 12 font.

<sup>11</sup> Only needs to be included in accompanying warnings, not on the label.

<sup>12</sup> Must be labeled clearly and unambiguously with “THIS PRODUCT CONTAINS CANNABIS” or “THIS IS A MARIJUANA PRODUCT” in bold type.



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<sup>13</sup> Not required on principal display panel, only on information panel or accessed through QR code.

<sup>14</sup> There is a minimum font size of size 10 Times New Roman for the following warning: "KEEP OUT OF REACH OF CHILDREN"

<sup>15</sup> Must be placed on the principal display panel.

# Appendix 8



## CANNABIS

# Cannabis Packaging Restrictions in the Adult-Use Market

## I. Introduction


This resource surveys cannabis packaging restrictions in states that have legalized adult-use cannabis. Packaging design is a critical tool for reducing the appeal of cannabis products to children, especially edible cannabis products. With legalization, states have seen an increase in accidental consumption of cannabis products by children.<sup>1</sup> This is understandable given that cannabis edibles can easily be mistaken for regular food and candy without proper packaging and product regulation. Preventing accidental ingestion of cannabis products by children is critical because their smaller size puts them at higher risk for cannabis poisoning. This resource examines 8 policy variables related to packaging design and the appeal to children. Section II of this resource provides a research summary that discusses the prevalence of each policy variable and the variation in policy within each. Section III contains a table that covers the policy approach of each state and allows side-by-side comparison of each state.

## II. Research Summary:

### a. State Law

This section examines eight state policy variables used to regulate cannabis product packaging in states that allow adult-use cannabis. The prevalence of each variable is explained, and a range of policy approaches is provided when necessary.

**Plain Packaging: Three states** require that cannabis product packaging be plain (CT, MA, and NJ). Each of these states defines their plain packing requirement differently. Connecticut requires that the package be “entirely and uniformly one color, and shall not incorporate any information, print, embossing, debossing, graphic or hidden feature, other than (the required) labeling.” Connecticut also requires that packaging for edible cannabis products shall be entirely and uniformly white. Massachusetts simply requires that the



packaging be plain and prohibits the use of bright colors. New Jersey requires that the packaging be a single color and permits logos or symbols of a different color provided that the logo is no larger than one inch in length and one inch in height.

**Opaque Packaging:** **Nine states** require opaque packaging for cannabis products (AK, CA, CT, ME, MA, MI, MT, NV, NJ).

**Child-Resistant Packaging:** Every state requires that the packaging of cannabis products be child-resistant. The general approach taken by states is to incorporate the pre-existing federal standards established by the Poison Prevention Packing Act of 1970 (PPPA). However, this standard is incorporated in different ways. **California** has a thorough system for child-resistant packaging. The child-resistant requirement can be met in several ways. First, any package that has been certified as child-resistant under the requirements of the PPPA qualifies. Second, a single serving bottle will be considered child-resistant if it has “a pry-off, metal crown, cork-style bottle cap.”<sup>2</sup> Third, a single serving of cannabis or a cannabis product intended to be inhaled or a cannabis product that is applied topically can be packaged in plastic packaging that is at least four milliradians thick and heat-sealed without an easy-open tab, dimple, corner, or flap. California also places different child-resistant requirements for different products. Inhaled or topical products may use packaging that is “child-resistant only until first opened, if the package is labeled with the statement: “This package is not child-resistant after opening.””<sup>3</sup> Packaging for edibles, orally consumed concentrates, and suppositories need to be child-resistant for the life of the product. However, a multiple serving package does not need to be child-resistant if each serving is in child-resistant packaging. **Vermont** does not explicitly reference the PPPA. However, its definition for child-resistant packaging is taken from the PPPA.<sup>4</sup> **Washington** does not use the PPPA’s definition for child resistant packaging. It defines child-resistant packaging as “packaging that is used to reduce the risk of poisoning in persons under the age of 21 through the ingestion of potentially hazardous items including, but not limited to, cannabis concentrates, useable cannabis, and cannabis-infused products.” However, Washington then requires cannabis concentrates and cannabis edibles to be packaged in compliance with the PPPA.

**Tamper-Evident Packaging:** Tamper-evident packaging is packaging with indicators or barriers that if breached provide visible evidence that the packaging has been tampered with. **Three states** require tamper-evident packing for cannabis products (CA, CT, and ME).

**General Prohibition on Appeal to Children:** Every state except Connecticut, Illinois, and Nevada has general language that prohibits cannabis packaging from appealing to children. These prohibitions do not provide details on what qualifies as inappropriate packing. While these states lack general prohibitions, they still address the issue of appeal to children. Connecticut requires the packaging to be plain (as discussed above) and it prohibits specific imagery that is attractive to children. Illinois and Nevada do not have a plain packaging requirement, but they do ban specific images that appeal to children.

**Prohibit packaging that resembles any commercially available food:** In an effort to decrease accidental ingestion of cannabis products by children, **14 states** prohibit packaging that resembles commercially available food that appeals to children. Many states provide examples of these foods, including candy, snacks, baked goods, and beverages. Colorado, Maine, New Mexico, and Vermont

are the only states that do not have this prohibition. However, Colorado and Maine both have provisions that prohibit trademark violations generally.

**Prohibit images or words that may make the packaging attractive to children:** Going beyond a general prohibition on appealing to children, **13 states** ban specific images or words on cannabis product packaging to decrease their appeal. For example, Illinois prohibits packaging that “includes any image designed or likely to appeal to minors, including cartoons, toys, animals, or children, or any other likeness to images, characters, or phrases that are popularly used to advertise to children.”<sup>5</sup> Maine is less expansive in its examples and prohibits images of humans, animals, or fruit on the packaging. Arizona, Connecticut, and Michigan do not have a specific image prohibition. However, Connecticut has a plain packaging requirement that serves the same function. New York and Rhode Island have delegated rule making authority for packing but have yet to draft regulations that address this issue.

**Poison Control Number:** **Four states** require the poison control phone number on cannabis packaging (NJ, NM, VT, and WA). While Michigan does not require this information on the packaging, it must be provided on a pamphlet at the point of sale.

### III. Research Tables

N/A stands for “not applicable.” N/A is used when the variable is not applicable because the jurisdiction does have a licensed adult-use market (D.C. and VA). N/C stands for not covered in statute or regulation. N/C is used when a jurisdiction has assigned regulatory authority to address product packaging, but the relevant regulations have not been finalized (NY and RI).

State	Citation	Plain Packaging	Opaque Packaging	Child Resistant Packaging	Tamper Evidence Packaging	General prohibition on appeal to children	Prohibit packaging that resembles any commercially food	Prohibit images or words that may make the package attractive to children	Poison Control Number
AK	<a href="#">3 AAC 306.345</a> (Retail Packaging) <a href="#">3 AAC 306.565</a> (Manufacturing Packaging of Marijuana Products) <a href="#">3 AAC 306.510</a> (Prohibited manufacturing practices)	No	Yes	Yes	No	Yes	Yes	Yes	No
AZ	<a href="#">A.R.S. § 36-2860</a> (Packaging) <a href="#">AZ ADC R9-18-310</a> (Child Resistant)	No	No	Yes	No	Yes	Yes <sup>6</sup>	No	No
CA	<a href="#">4 CCR § 17411</a> (Packaging requirements)	No	Yes <sup>8</sup>	Yes	Yes	Yes	Yes <sup>9</sup>	Yes	No


State	Citation	Plain Packaging	Opaque Packaging	Child Resistant Packaging	Tamper Evidence Packaging	General prohibition on appeal to children	Prohibit packaging that resembles any commercially food	Prohibit images or words that may make the package attractive to children	Poison Control Number
	<a href="#">4 CCR § 17412</a> (Child Resistant Standards) <a href="#">4 CCR § 17408</a> (General Attractiveness to Children-label) <sup>7</sup> <a href="#">4 CCR § 15000</a> (Definitions) <a href="#">4 CCR § 15040</a> (Elements that Make a Package Attractive to Children)								
CO	<a href="#">CO ADC 212-3:3-1010</a> (Packaging and Labeling requirements)	No	No	Yes	No	Yes <sup>10</sup>	No <sup>11</sup>	Yes	No
CT	<a href="#">Conn. Agencies Regs. § 21a-421j-32</a> (Packaging)	Yes <sup>12</sup>	Yes	Yes	Yes	No	Yes <sup>13</sup>	No	No
DC	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
IL	<a href="#">410 ILCS 705/55-21</a> (Packing Requirements)	No	No	Yes	No	No	Yes	Yes <sup>14</sup>	No
ME	<a href="#">ME ST T. 28-B § 701</a> (Packaging)	No	Yes	Yes	Yes	Yes	No <sup>15</sup>	Yes	No
MA	<a href="#">935 CMR 500.105(6)</a> (Packaging)	Yes	Yes	Yes	No	Yes	Yes	Yes	No <sup>16</sup>
MI	<a href="#">MI ADC R 420.403</a> (Requirements and restrictions on marihuana-infused products; edible marihuana product)	No	Yes <sup>17</sup>	Yes	No	Yes	Yes	No	No <sup>18</sup>
MT	<a href="#">MONT. CODE ANN. § 16-12-208</a> (Packaging) <a href="#">Mont. Admin. R. 42.39.319</a> (Packaging) <a href="#">Mont. Admin. R. 42.39.320</a> (Custom Packaging Fees)	No <sup>19</sup>	Yes	Yes	No	Yes	Yes	Yes	No
NV	<a href="#">N.R.S. 678B.520</a> (Packaging) <a href="#">NAC 453D.805</a> (Edibles)	No	Yes	Yes	No	No	Yes <sup>20</sup>	Yes	No
NJ	<a href="#">N.J.S.A. 24:6I-35</a> (packaging) <a href="#">N.J.A.C. 17:30-13.2</a> (packaging) <a href="#">N.J.A.C. 17:30-13.5</a> (prohibitions)	Yes <sup>21</sup>	Yes	Yes	No	Yes	Yes	Yes	Yes




State	Citation	Plain Packaging	Opaque Packaging	Child Resistant Packaging	Tamper Evidence Packaging	General prohibition on appeal to children	Prohibit packaging that resembles any commercially food	Prohibit images or words that may make the package attractive to children	Poison Control Number
	<a href="#">NJ ADC 17:30-13</a> (poison control)								
NM	<a href="#">N. M. S. A. § 26-2C-17</a> <a href="#">N.M. Admin. Code 16.8.3.12</a>	No	No	Yes	No	Yes	No	Yes	Yes
NY	<a href="#">N.Y. CANNABIS LAW § 81</a> <sup>22</sup>	N/C	N/C	Yes	N/C	Yes	N/C	N/C	N/C
OR	<a href="#">OR ADC 845-025-7000</a> (Definitions) <a href="#">OR ADC 845-025-7020</a> (Packaging)	No	No	Yes	No	Yes	Yes	Yes	No
RI	<a href="#">RI ST § 21-28.11-5</a> (Authority of Cannabis Control Commission) <sup>23</sup> <a href="#">RI ST § 21-28.11-10.1</a> (Transition Period Authority) <sup>24</sup> <a href="#">230 RI ADC 80-05-1.5</a> (Medical Cannabis packaging Requirements) <sup>25</sup>	N/C	N/C	Yes	N/C	Yes	N/C	N/C	N/C
VT	<a href="#">7 V.S.A. § 907</a> (Retailer Requirements) <a href="#">VT ADC 26-1-2:2.9</a> (Packaging) <a href="#">Vermont Cannabis Control Board: Guidance on Packaging July 2022</a>	No	No	Yes	No	Yes	No	Yes	Yes
VA	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
WA	<a href="#">WA ADC 314-55-105</a> (Packaging) <a href="#">WA ADC 314-55-106</a> (Warning Symbol)	No	No	Yes	No	Yes	Yes	Yes	Yes <sup>26</sup>

This document was developed by Mathew Swinburne, J.D., Associate Director, Network for Public Health Law-Eastern Region. The Network for Public Health Law provides information and technical assistance on issues related to public health. The legal information and assistance provided in this document does not constitute legal advice or legal representation. For legal advice, please consult specific legal counsel.

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- <sup>1</sup> See e.g., Dilley JA, Graves JM, Brooks-Russell A, Whitehill JM, Liebelt EL, *Trends and Characteristics of Manufactured Cannabis Product and Cannabis Plant Product Exposures Reported to US Poison Control Centers, 2017-2019*, JAMA Netw. Open. 2021;4(5) (May 24, 2021), available at <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2780068>.
- <sup>2</sup> 4 CCR § 17412 (Child Resistant Standards).
- <sup>3</sup> Id.
- <sup>4</sup> Compare Vermont Cannabis Control Board: Guidance on Packaging July 2022, 2 available at [https://ccb.vermont.gov/sites/ccb/files/2022-07/Packaging.Materials.Guidance\\_FINAL.pdf](https://ccb.vermont.gov/sites/ccb/files/2022-07/Packaging.Materials.Guidance_FINAL.pdf) (defining child resistant packaging as “packaging that is designed or constructed to be significantly difficult for children under five years of age to open or obtain a toxic or harmful amount of the substance in the container within a reasonable time and not difficult for normal adults to use properly, but does not mean packaging that all children under five years of age cannot open or obtain a toxic or harmful amount of the substance in the container within a reasonable time.”) with 16 C.F.R. § 1700.1 (defining “special packaging”).
- <sup>5</sup> 410 ILCS 705/55-21(f)(5).
- <sup>6</sup> Arizona prohibits the sale or advertisement of marijuana or marijuana products with names that resemble or imitate food or drink brands marketed to children, or otherwise advertise marijuana or marijuana products to children.
- <sup>7</sup> California defines labeling as “any label or other written, printed, or graphic matter upon cannabis or a cannabis product, upon its container or wrapper, or that accompanies any cannabis or cannabis product.” As a result, its labeling restriction pertaining to attractiveness to children are included in this packaging survey. (4 CCR § 15000).
- <sup>8</sup> If the cannabis good is an edible product, the package shall be opaque.
- <sup>9</sup> The package shall not imitate any package used for products typically marketed to children.
- <sup>10</sup> Colorado prohibits labels from being attractive to children and from using cartoons. Given the blurring of lines between label and packaging this will be deemed relevant for this survey.
- <sup>11</sup> While Colorado does not specifically prohibit packaging similar to commercially available products targeting children, it does have a general prohibition against trademark infringement.
- <sup>12</sup> “Packaging shall be entirely and uniformly one color, and shall not incorporate any information, print, embossing, debossing, graphic or hidden feature, other than labeling required or permitted under section 21a-421j-33 of these Policies and Procedures, provided that the packaging of edible cannabis products shall be entirely and uniformly white. For the purposes of this provision, white and black shall be considered colors.”
- <sup>13</sup> Packaging shall not be visually similar to (A) any commercially similar product that does not contain cannabis, or (B) packaging used for any good that is marketed to an audience reasonably expected to be under twenty-one years of age.
- <sup>14</sup> Includes any image designed or likely to appeal to minors, including cartoons, toys, animals, or children, or any other likeness to images, characters, or phrases that are popularly used to advertise to children, or any packaging or labeling that bears reasonable resemblance to any product available for consumption as a commercially available candy, or that promotes consumption of cannabis.
- <sup>15</sup> May not be labeled or packaged in violation of a federal trademark law or regulation or in a manner that would cause a reasonable consumer confusion as to whether the marijuana or marijuana product was a trademarked product.
- <sup>16</sup> While packaging is not required to have poison control number, advertising is required to have this number.
- <sup>17</sup> This requirement applies to cannabis edibles.
- <sup>18</sup> Poison control’s number must be provided on a pamphlet at point of sale but not on the packaging ([MI ADC R 420.504](#)).



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<sup>19</sup> However, Montana tries to encourage generic packaging by charging an additional fee for the use of custom product packaging.

<sup>20</sup> This restriction applies specifically to cannabis edibles.

<sup>21</sup> New Jersey requires that the packaging be opaque, of a single color, and light resistant. However, the packaging may contain a logo or symbol of a different color or colors, provided the logo is no larger than one inch in length and one inch in height.

<sup>22</sup> This section of law discusses the regulatory authority of the New York Cannabis Control Board. The Board has been instructed to draft packaging regulations. These regulations have not been drafted but the statutory guidance indicates that child-resistant packaging is required, and packaging cannot target individuals under 21. The remaining policy variables have been marked N/C (not covered in statute or regulations) in anticipation of the Board's packaging regulations.

<sup>23</sup> The Rhode Island Cannabis Control Commission has been instructed to draft packaging regulations. This mandate requires that the packaging be child-resistant and that packaging that targets youth be addressed. The regulations have not been drafted yet and as a result the remaining policy variables have been marked N/C (not covered in statute or regulations).

<sup>24</sup> While the Rhode Island Cannabis Control Commission is drafting regulations for the new adult-use market, hybrid retailer and hybrid cultivators are subject to the packaging requirements of the state's medical cannabis program.

<sup>25</sup> The medical packaging requirements that are in place during the transition period include: opaque packaging, plain packaging (must be a neutral color), child resistant packaging, and poison control's contact information is required.

<sup>26</sup> Washington requires that cannabis products be labeled with the Washington Poison Control's "not for kids" warning symbol. This symbol includes the poison center's contact number. See Washington Poison Center, Not for Kids, available at <https://www.wapc.org/programs/services/not-for-kids/>.

# Appendix 9



## CANNABIS

# Cannabis Product Restrictions in the Adult-Use Market


## I. Introduction

This resource surveys cannabis product restrictions in states that have legalized adult-use cannabis. Product design is a critical tool for reducing the appeal of cannabis product to children, especially edible cannabis products. With legalization, states have seen an increase in accidental consumption of cannabis products by children.<sup>1</sup> This is understandable given that cannabis edibles can easily be mistaken for regular food and candy without proper regulation. Preventing accidental ingestion of cannabis products by children is critical because their smaller size puts them at higher risk for cannabis poisoning. This resource examines 5 policy variables related to product design and the appeal to children: (1) General prohibition on appealing to children, (2) Product color restrictions, (3) Product shape restriction, (4) Flavor restrictions, and (5) Prohibition of products that imitate non-cannabis products that appeal to children. Section II of this resource provides a research summary that discusses the prevalence of each policy variable and the variation in policy within each. Section III contains a table that covers the policy approach of each state and allows side-by-side comparison of each state.

## II. Research Summary:

### a. State Law

This section examines 5 state policy variables used to analyze cannabis products in states that allow adult-use cannabis. The prevalence of each variable is explained, and a range of policy approaches is provided when necessary. Although 20 U.S. jurisdictions have legalized adult-use cannabis, Washington, D.C. and Virginia have not yet enacted laws regulating the sale of adult-use products, although possession in small amounts is decriminalized. For this reason, the chart reads N/A in these jurisdictions. Additionally, in Illinois, although state laws and regulations governing adult-use cannabis exist, there are no such state laws or regulations which



cover the variables studied for purposes of this survey. These columns are marked with an “X.” Similarly, in Rhode Island, on May 25<sup>th</sup>, 2022, Governor McKee signed a bill into law legalizing adult-use cannabis. The law directs the state agency to establish requirements to order a prohibition on the sale of a cannabis products found especially appealing to persons under twenty-one (21) years of age. However, because bill was signed into law recently, the state agency has not yet issued regulations. Therefore, aside from the first variable, each column is marked with “NC” which means “not yet covered.”

**General prohibition on appealing to children:**

This variable addresses whether a state statute or regulation includes language that limits the sale and/or manufacture of a product that appeals to children/minors generally. Twelve of the 20 jurisdictions include such language: Alaska, California, Colorado, Connecticut, Maine, Massachusetts, Michigan, New York, Oregon, Rhode Island, Vermont, Washington. Of these 12 jurisdictions, four (Alaska, California, Colorado, Connecticut) prohibit the production and/or sale of cannabis products that would appeal to “children.” Seven states use language prohibiting the appeal to people under age 21 (Maine, Massachusetts, New York, Oregon, Rhode Island, Washington, Vermont). Michigan uses “minors” as well as “minors aged 17 and younger” when describing its prohibitions.


**Restrict specific colors (Red, Oranges, Yellow, Green):**

This variable aimed to identify whether states have statutes or regulations which prohibit the sale and/or manufacture of products which appear in certain colors. Interestingly, none of the laws or regulations in the 20 states with adult-use programs include language which limits or discusses the color of the actual product, though many address the packaging, labeling, and advertising

**Restrict novel shapes/May only be in geometric shapes:**

Nine states restrict the sale and/or production of products formed in certain shapes, though these jurisdictions take varying approaches. These states include Arizona, California, Colorado, Connecticut, Maine, Michigan, Montana, New Jersey, and Oregon. Only two states, Connecticut and Maine, expressly prohibit the sale and/or production of products in the shape of anything other than something geometric like a “cuboid or sphere.” Seven states prohibit the sale of products in the shape of some or all of the following items: human, animal, fruit, toy, cartoon, insect, character, or vehicle. These states include Arizona, California, Colorado, Maine, Michigan, New Jersey, and Oregon. Montana is the only states which does not specifically name a shape, but does note that the products cannot be in a shape “attractive to children.”

**Restrict specific flavors that appeal to children:**



Only one state, Oregon, has a law or regulation that expressly restricts the sale/manufacture of flavored products that appeal to children. Specifically, the rule states “A processor may not process, transfer or sell a marijuana or hemp item: that by shape, design, or flavor is likely to appeal to minors...” The only other state which makes mention of the sale/production of flavored products is Michigan. In that regulation, it states that “Edible marijuana products that are geometric shapes and fruit flavored are permissible.” However, there is no express restriction on flavors.

**Prohibits products that imitate non-cannabis products that are appealing to children:**

Twelve states include language that prohibits products that imitate non-cannabis products that appeal to children. These states include: Alaska, Arizona, California, Connecticut, Maine, Michigan, Montana, Nevada, New Jersey, New Mexico, Oregon, and Washington. There are differing approaches to the language used to communicate this restriction. Three states, Alaska, Arizona, and Washington prohibit products which “closely resemble a food or drink item marketed to children” or have “similarities to products marketed” to children/people under age 21. California, Michigan, and Montana note a prohibition on products that are “easily confused with commercially sold products.” Maine, Oregon, and Nevada prohibit products which are “modeled after non-cannabis products” sold to or marketed to children/those under age 21. New Jersey is an outlier and bans the use of a commercially manufactured or trademarked food product unless it is used in a way that “renders it unrecognizable in final ingestible” form. New Mexico is also an outlier and prohibits product designs that use cartoon characters to “mimic any other product brand.” Connecticut bans products which “bear notable likeness to a commercial product not containing cannabis.” In the section below, I address the language used in Connecticut in greater detail because similar descriptions are used in a handful of states. However, for purposes of this variable, it seems that Connecticut aims to ban products which have similarities to commercially marketed products.

**Other notes:**

Five states (Colorado, Connecticut, Michigan, Nevada, New Jersey) prohibit products which “bear the likeness” of specific characteristics appealing to children. Specifically, Colorado, Michigan, Nevada, and New Jersey use almost identical language and prohibit products which “bear the likeness or contain characteristics of a realistic or fictional human, animal, fruit, caricature, or cartoon renderings.” Interestingly, Colorado, Michigan, and New Jersey include similar but additional language to describe a ban on shapes that appear as humans, animals, fruit, etc. Connecticut also uses the term “bears notable likeness” but it refers specifically to a prohibition on designing products that look like other commercial products that are sold and appear to children, as discussed above.

### III. Research Tables

N/A stands for “not applicable.” N/A is used when the variable is not applicable because the jurisdiction does have a licensed adult-use market (D.C. and VA).


State	Citation	General Prohibition on Appealing to Children	Restricts Specific Colors	Novel Shapes/Geometric Only	Restrict Specific Flavors that Appeal to Children	Imitates non-cannabis products that are appealing to children	Notes
AK	<a href="#">AK ST § 17.38.190; 3 AAC 10</a>	Y	N	N	N	Y	
AZ	<a href="#">A.R.S. § 36-2860</a>	N	N	Y	N	Y	
CA	<a href="#">West's Ann.Cal.Bus. &amp; Prof.Code § 26130; 4 CCR § 17300; 4 CCR § 17408</a>	Y	N	Y	N	Y	
CO	<a href="#">1 Colo. Code Regs. § 212-3-6-110; C.R.S.A. § 44-10-203</a>	Y	N	Y	N	N	Bears the likeness of specific characteristics appealing to children
CT	<a href="#">C.G.S.A. § 21a-421j; Connecticut Regulations, Section 21a-421j-26</a>	Y	N	Y	N	Y	Bears the likeness of specific characteristics appealing to children
DC	N/A	N/A	N/A	N/A	N/A	N/A	
IL	X	X	X	X	X	X	
ME	<a href="#">28-B M.R.S.A. § 703; 18-691 CMR Ch. 1, § 3.8</a>	Y	N	Y	N	Y	
MA	<a href="#">MA ST 94G § 4; 935 CMR 500.335</a>	Y	N	N	N	N	



State	Citation	General Prohibition on Appealing to Children	Restricts Specific Colors	Novel Shapes/Geometric Only	Restrict Specific Flavors that Appeal to Children	Imitates non-cannabis products that are appealing to children	Notes
MI	<a href="#">M.C.L.A. 333.27206</a> ; <a href="#">M.C.L.A. 333.27961</a> ; <a href="#">Mich. Admin. Code R 420.403</a>	Y	N	Y	N	Y	Bears the likeness of specific characteristics appealing to children
MT	<a href="#">MCA 16-12-208</a>	N	N	Y	N	Y	
NV	<a href="#">N.R.S. 678B.520</a>	N	N	N	N	Y	Bears the likeness of specific characteristics appealing to children
NJ	<a href="#">N.J.S.A. 24:6I-35</a> ; <a href="#">N.J.A.C. 17:30-11.5</a>	N	N	Y	N	Y	Bears the likeness of specific characteristics appealing to children
NM	<a href="#">N. M. S. A. 1978, § 26-2C-20</a>	N	N	N	N	Y	
NY	<a href="#">McKinney's Cannabis Law § 83</a>	Y	N	N	N	N	
OR	<a href="#">OAR 845-025-3220</a>	Y	N	Y	Y	Y	
RI	<a href="#">RI ST § 21-28.11-5</a>	Y	NC	NC	NC	NC	
VT	<a href="#">7 V.S.A. § 881</a> ; <a href="#">7 V.S.A. § 866</a> ; <a href="#">7 V.S.A. § 868</a>	Y	N	N	N	N	
VA	N/A	N/A	N/A	N/A	N/A	N/A	
WA	<a href="#">WA ADC 314-55-077</a> ; <a href="#">WA ADC 314-55-105</a>	Y	N	N	N	Y	

**Alaska**

*AK ST § 17.38.190*



Provides the Marijuana Control Board with authority to implement reasonable restrictions on the advertising and display of marijuana and marijuana products and requirements to prevent the sale or diversion of marijuana and marijuana products to persons under the age of 21.

*3 AAC 306.510*

A licensed marijuana product manufacturing facility may not manufacture or sell any product that closely resemble a familiar food or drink item including candy or is packaged to look like candy or in bright colors or with cartoon characters or pictures that would appeal to children.

**Arizona**

*A.R.S. § 36-2860*

A retailer may not:

- Sell products that resemble a human, animal, insect, fruit, toy, or cartoon;
- Sell or advertise a marijuana product that resembles or imitates a food or drink brand marketed to children.

**California**

*West's Ann.Cal.Bus. & Prof.Code § 26130*

- The department shall promulgate regulations governing the licensing of cannabis manufacturers and standards for the manufacturing, packaging, and labeling of all manufactured cannabis products.
- Edible cannabis products shall be not designed to be appealing to children or easily confused with commercially sold candy or foods that do not contain cannabis.

*4 CCR § 17300*

The following cannabis products may not be sold:


- Any cannabis product that the Department determines, on a case-by-case basis, is attractive to children, as specified in section 17408;
- Any cannabis product in the shape of, or imprinted with the shape, either realistic or caricature, of a human being, animal, insect, or fruit.

*4 CCR § 17408*

If the product is an edible, the labeling may not contain a picture of the product.

**Colorado**

*1 Colo. Code Regs. § 212-3-6-110*



Edible products shaped like a human, animal, or fruit or bears the likeness or contains characteristics of a realistic or fictional human, animal, or fruit is prohibited.

*C.R.S.A. § 44-10-203 (effective until 1/1/23)*

In promulgating rules pursuant to this section, the state licensing authority may seek the assistance of the department of public health and environment before promulgating rules on the following subjects the prohibition on or regulation of additives to any regulated marijuana product designed to make the product more appealing to children.

### **Connecticut**

*C.G.S.A. § 21a-421j*

The commissioner shall adopt regulations prohibiting cannabis product types that appeal to children.

Connecticut Regulations, Section 21a-421j-26

- Edible cannabis products capable of maintaining a defined external form or outline shall be in cuboid or spherical form, or such other form as approved by the commissioner.
- Cannabis shall not bear notable likeness to a commercial product not containing cannabis.
- Cannabis shall not be designed, molded or created in a form that is obscene or indecent, may encourage use of cannabis by persons under the age of twenty-one, or is customarily associated with persons under the age of twenty-one.


### **Maine**

*28-B M.R.S.A. § 703*

Edible marijuana products:

- May only be sold in geometric shapes or in the shape of a marijuana leaf;
- May not be manufactured in the distinct shape of a human, animal or fruit;
- May not be specifically designed to make the product appeal to a person under age 21

*18691 R Ch. 1, § 3.8*



A cannabis products manufacturing establishment may not:

- Manufacture a cannabis product that by its shape or design is likely to appeal to persons under 21 years of age, including:
  - Products that are modeled after non-cannabis products commonly consumed by and marketed to persons under 21 years of age; or
  - Products in the distinct shape of a human, animal or fruit.

## **Massachusetts**

*MA ST 94G § 4*

The Cannabis Control Commission has the authority to implement rules including:

- Requirements to establish a process allowing the commission to order a prohibition on the sale of a marijuana product found especially appealing to persons under 21; and
- Requirements to establish a process allowing a marijuana product manufacturer to voluntarily submit a product, its packaging and intended marketing to the commission for review of whether the product is especially appealing to persons under 21.

*935 CMR 500.335*

The commissioner may remove products that are appealing to people under age 21.

## **Michigan**

*M.C.L.A. 333.27206*


The marijuana regulatory agency shall establish restrictions on edible marihuana-infused products to prohibit shapes that would appeal to minors.

*M.C.L.A. 333.27961*

No marihuana processor may process and no marihuana retailer may sell edible marihuana-infused candy in shapes or packages that are attractive to children or that are easily confused with commercially sold candy that does not contain marihuana.

*Mich. Admin. Code R 420.403*

A producer of edible marihuana product may not:

- 
- Produce an edible marihuana product in a shape or with a label that would appeal to minors aged 17 years or younger.
  - Produce an edible marihuana product that is associated with or has cartoons, caricatures, toys, designs, shapes, labels, or packaging that would appeal to minors.
  - Package edible marihuana products in a package that can be easily confused with a commercially available food product.
  - Produce edible marihuana products in the distinct shape of a human, animal, or fruit, or a shape that bears the likeness or contains.
  - Characteristics of a realistic or fictional human, animal, or fruit, including artistic, caricature, or cartoon renderings.
  - Edible marihuana products that are geometric shapes and fruit flavored are permissible.

### **Montana**

*MCA 16-12-208*

Edible marijuana products manufactured as candy may not be sold in shapes or packages that are attractive to children or that are easily confused with commercially sold candy that does not contain marijuana.

### **Nevada**

*N.R.S. 678B.520*

A cannabis production facility shall not product cannabis products that:


- Is/appear to be a lollipop
- Bears the likeness or contains characteristics of a real or fictional person, animal or fruit, including, without limitation, a caricature, cartoon or artistic rendering
- Is modeled after a brand of products primarily consumed by or marketed to children.

### **New Jersey**

*N.J.S.A. 24:6I-35*

The commission shall adopt rules and regulations requiring that edible cannabis products shall not be manufactured, marketed, or sold that are in the shape of, or a shape bearing the likeness or containing characteristics of, a realistic or fictional human, animal, or fruit, or part thereof, including artistic, caricature, or cartoon renderings.

*N.J.A.C. 17:30-11.5*

- 
- No ingestible product shall be in the shape of, or a shape bearing the likeness or containing characteristics of, a realistic or fictional human, animal, or fruit, or part thereof, including artistic, caricature, or cartoon renderings.
  - A commercially manufactured or trademarked food product shall not be used as an ingestible product, unless it is used in a way that renders it unrecognizable in the final ingestible product and the product is not advertised as containing the commercially manufactured or trademarked food product.

### **New Mexico**

N. M. S. A. 1978, § 26-2C-20

The agency shall promulgate rules that prohibit the advertising and marketing of products that use predatory marketing and advertising practices targeting minors or that are designed using cartoon characters or to mimic any other product brand.

### **New York**

*McKinney's Cannabis Law § 83*

No processor of adult-use cannabis shall produce any product which, in the discretion of the board, is designed to appeal to anyone under the age of twenty-one years.

### **Oregon**

*OAR 845-025-3220*

A processor may not process, transfer or sell a marijuana or hemp item:

- That by shape, design, or flavor is likely to appeal to minors including but not limited to:
  - Products that are modeled after non-cannabis products primarily consumed by and marketed to children;
  - Products in the shape of an animal, vehicle, person or character.

### **Rhode Island**


*RI ST § 21-28.11-5*

The Rhode Island Office of Cannabis Regulation shall establish requirements to establish a process allowing the commission to order a prohibition on the sale of a cannabis product found especially appealing to persons under twenty-one (21) years of age.

The agency has not yet issued regulations because the bill was signed into law in May of 2022.

### **Vermont**

*7 V.S.A. § 881*



The Board shall adopt regulations that address additives to cannabis and cannabis products that are toxic or designed to make the product more addictive and more appealing to persons under 21 years of age.

7 V.S.A. § 866

The Board, in consultation with the Department of Health, shall adopt rules in accordance with section 881 of this title to prohibit cannabis products or the packaging of such products that are designed to make the product more appealing to persons under 21 years of age;

7 V.S.A. § 868

Cannabis and cannabis products which are designed to make the product more appealing to persons under 21 years of age are prohibited.

### **Washington**

WA ADC 314-55-077

A cannabis processor may not infuse food or drinks with cannabis if the product design is similar to commercially available products marketed for consumption by persons under 21 years of age, as defined by WAC 314.55.105 (1)(c).

WA ADC 314-55-105

Products may not be “especially appealing to persons under the age of 21” which includes but is not limited to:

- The use of cartoons;
- Bubble-type or other cartoon-like font;
- A design, brand, or name that resembles a noncannabis consumer product that is marketed to persons under the age of 21;
- Symbols or celebrities that are commonly used to market products to persons under the age of 21;
- Images of persons under the age of 21; or
- Similarities to products or words that refer to products that are commonly associated or marketed to persons under the age of 21.

*This document was developed by Brooke Torton, Senior Staff Attorney at the Network for Public Health Law- Eastern Region. The Network for Public Health Law provides information and technical assistance on issues related to public health. The legal information and assistance provided in this document does not constitute legal advice or legal representation. For legal advice, please consult specific legal counsel.*

**Updated: October 24, 2022**



<sup>1</sup> See e.g., Dilley JA, Graves JM, Brooks-Russell A, Whitehill JM, Liebelt EL, *Trends and Characteristics of Manufactured Cannabis Product and Cannabis Plant Product Exposures Reported to US Poison Control Centers, 2017-2019*, JAMA Netw. Open. 2021;4(5) (May 24, 2021), available at <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2780068>



# **Appendix 10**

## Article - Health - General

§13–3313.1.

(a) All advertisements for medical cannabis, medical cannabis products, edible cannabis products, or medical cannabis–related services that make therapeutic or medical claims shall:

(1) Be supported by substantial clinical evidence or substantial clinical data; and

(2) Include information on the most significant side effects or risks associated with the use of cannabis.

(b) An advertisement for a grower, a processor, a dispensary, an independent testing laboratory, a certifying provider, or a third–party vendor may not:

(1) Make any statement that is false or misleading in any material way or is otherwise a violation of §§ 13–301 through 13–320 of the Commercial Law Article; or

(2) Contain a design, an illustration, a picture, or a representation that:

(i) Encourages or represents the recreational use of cannabis;

(ii) Targets or is attractive to minors, including a cartoon character, a mascot, or any other depiction that is commonly used to market products to minors;

(iii) Displays the use of cannabis, including the consumption, smoking, or vaping of cannabis;

(iv) Encourages or promotes cannabis for use as an intoxicant; or

(v) Are obscene.

(c) All advertising for medical cannabis, medical cannabis products, or edible cannabis products shall include a statement that the product is for use only by a qualifying patient.

(d) (1) Any website owned, managed, or operated by a certifying provider, dispensary, grower, or processor shall employ a neutral age–screening mechanism that verifies that the user is at least 18 years of age, including by using an age–gate, age–screen, or age verification mechanism.

(2) An advertisement placed on social media or a mobile application shall include a notification that:

(i) A person must be at least 18 years old to view the content; and

(ii) Medical cannabis is for use by certified patients only.

(e) (1) This subsection does not apply to an advertisement placed on property owned or leased by a dispensary, grower, or processor.

(2) Any advertisement for medical cannabis, medical cannabis products, edible cannabis products, or medical cannabis–related services may not be placed within 500 feet of:

(i) A substance abuse or treatment facility;

(ii) A primary or secondary school in the State or a child care center licensed or a family child care home registered under Title 9.5 of the Education Article; or

(iii) A playground, recreation center, library, or public park.

(f) The Commission shall adopt regulations to establish:

(1) Procedures for the enforcement of this section; and

(2) A process for an individual to voluntarily submit an advertisement to the Commission for an advisory opinion on whether the advertisement complies with the restrictions on advertisements for medical cannabis, medical cannabis products, edible cannabis products, and medical cannabis–related services.

# **Appendix 11**

# Title 10 MARYLAND DEPARTMENT OF HEALTH

## Subtitle 62 NATALIE M. LAPRADE MEDICAL CANNABIS COMMISSION

### Chapter 24 Medical Cannabis Finished Products Packaging

#### **.01 Packaging of Medical Cannabis Finished Product.**

A. All items shall be individually packaged at the original point of processing.

B. Packaging Requirements. A package of medical cannabis finished product shall:

(1) Be plain;

(2) Be opaque;

(3) Be tamper-evident, and if applicable or appropriate, child-resistant;

(4) Bear a finished-product lot number and an expiration date;

(5) Bear a clear warning that:

(a) The contents may be lawfully consumed only by a qualifying patient named on an attached label;

(b) It is illegal for any person to possess or consume the contents of the package other than the qualifying patient; and

(c) It is illegal to transfer the package or contents to any person other than a transfer by a caregiver to a qualifying patient;

(6) Include the following statements:

(a) "Consumption of medical cannabis may impair your ability to drive a car or operate machinery. Please use extreme caution.";

(b) "There may be health risks associated with cannabis use, especially during pregnancy or breastfeeding."; and

(c) "This package contains cannabis. Keep out of the reach of children and animals.";

(7) Display the following symbol or easily recognizable mark issued by the Commission that indicates that the package contains medical cannabis:



- (8) Bear the Maryland Poison Control Center emergency telephone number;
- (9) Bear the name of the licensee that packaged the medical cannabis finished product and the telephone number of the licensee for reporting an adverse patient event;
- (10) Bear any allergen warning required by law;
- (11) Bear a listing of the non-medical cannabis ingredients;
- (12) Bear an itemization, including weight, of all cannabinoid and terpene ingredients specified for the product, and concentrates of any cannabinoid of less than one percent shall be printed with a leading zero before the decimal point; and
- (13) Leave space for a licensed dispensary to attach a personalized label for the qualifying patient.

C. Packaging Prohibitions. A package of medical cannabis finished product may not bear any:

- (1) Resemblance to the trademarked, characteristic or product-specialized packaging of any commercially available candy, snack, baked good or beverage;
- (2) Statement, artwork or design that could reasonably mislead any person to believe that the package contains anything other a medical cannabis finished product;
- (3) Seal, flag, crest, coat of arms, or other insignia that could reasonably mislead any person to believe that the product has been endorsed, manufactured, or used by any State, county or municipality or any agency thereof; and
- (4) Cartoon, color scheme, image, graphic or feature that might make the package attractive to children.

# **Appendix 12**

# Title 10 MARYLAND DEPARTMENT OF HEALTH

## Subtitle 62 NATALIE M. LAPRADE MEDICAL CANNABIS COMMISSION

### Chapter 37 Edible Cannabis Products

(Selected Regulations)

#### .01 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Approved source" means a source of:

- (a) Medical cannabis approved, licensed, and regulated by the Commission; or
- (b) Food ingredients regulated by an approving authority.

(2) "Approving authority" means the agency designated in the laws of Maryland, another state, or another country to license or permit a food processing plant.

(3) "Commercially sterile" means the condition achieved by the:

(a) Application of heat, pressure, or other energy or matter that renders a food ingredient free of:

- (i) Microorganisms capable of reproducing in the food ingredient under normal non-refrigerated conditions of storage and distribution; and
- (ii) Viable microorganisms, including spores, that cause disease; or

(b) Control of water activity and the application of heat, pressure, or other energy or matter that renders the food ingredient free of microorganisms capable of reproducing in the food ingredient under normal non-refrigerated conditions of storage and distribution.

(4) "Cookware" means items used during the processing of ingredients or edible cannabis products, including pots, pans, utensils, and containers.

(5) "Critical control point" means a point in the receiving, storage, processing, or distribution of ingredients or edible cannabis products where there is a reasonable likelihood that improper control may cause, allow, or contribute to a hazard to public health.

(6) Critical Item.

(a) "Critical item" means a safety requirement that if violated requires:

- (i) Immediate correction;



(ii) Destruction of any ingredients or edible cannabis products which may be affected;

(iii) The cessation of some or all processing operations; or

(iv) Closure of the licensed premises.

(b) "Critical item" includes the following requirements:

(i) Food ingredients be obtained from an approved source and approved for human consumption by an approving authority;

(ii) Cannabis ingredients be obtained from an approved source;

(iii) All ingredients and edible cannabis products be protected from contamination;

(iv) All processes provide safe edible cannabis products with proper control at critical control points;

(v) Licensed processor sanitation be adequate, provide safety, and prevent illness transmissible through edible cannabis products or ingredients;

(vi) Equipment allows for proper processing and sanitation;

(vii) Edible cannabis products be packaged and labeled for safety;

(viii) A sufficient volume of potable hot and cold water supply under adequate pressure be available to facilitate proper handwashing procedures outlined in this chapter; and

(ix) Sewage be discharged in compliance with applicable laws and regulations.

(7) "Food" means any substance that is used as food or drink for human beings or as a component of food or drink for human beings.

(8) "Food ingredient" means a substance that is used as a component of food, including:

(a) Flavoring;

(b) Food coloring; and

(c) Preservatives.

(9) "Ingredient" means any component of an edible cannabis product that is intended for human consumption, approved by the Commission, and composed of:

(a) Food or food ingredients; or

(b) Medical cannabis.

(10) "Permit" means a permit issued by the Commission to a licensed processor for the purpose of manufacturing edible cannabis products.

(11) "Permittee" means a licensed processor authorized by the Commission to manufacture edible cannabis products.

(12) Potentially Hazardous Edible Cannabis Product.

(a) "Potentially hazardous edible cannabis product" means an edible cannabis product that requires temperature control because the product is in a form capable of supporting:

- (i) The rapid and progressive growth of infectious or toxigenic microorganisms; or
- (ii) The growth and toxin production of *Clostridium botulinum*.

(b) "Potentially hazardous edible cannabis product" does not include products with a water activity (aw) value of 0.85 or less.

(13) Potentially Hazardous Ingredient.

(a) "Potentially hazardous ingredient" means a natural or synthetic component of food or an edible cannabis product intended for human consumption that requires temperature control because the ingredient is in a form capable of supporting the:

- (i) Rapid and progressive growth of infectious or toxigenic microorganisms; or
- (ii) Growth and toxin production of *Clostridium botulinum*.

(b) "Potentially hazardous ingredient" does not include an ingredient with a:

- (i) Water activity (aw) value of 0.85 or less;
- (ii) pH level of 4.6 or below when measured at 75°F; or
- (iii) Commercially sterile ingredient in a hermetically sealed container.

(14) "Quarantine area" means an area within a licensed premise in which ingredients, medical cannabis, or medical cannabis finished products that may be contaminated are temporarily stored prior to disposal or collection by a public health agency.

## **.02 Categorization as Edible Cannabis Products.**

Food or a food ingredient that is mixed, infused, or comes into contact with medical cannabis is considered and regulated as an edible cannabis product under this chapter.

## **.12 Edible Cannabis Product Requirements.**

### **A. General Requirements.**

(1) A permittee shall obtain approval from the Commission for all edible cannabis products prior to offering the products for distribution or sale to a licensed dispensary by submitting a request in the perpetual inventory control system.

(2) A permittee seeking approval to offer an edible cannabis product shall submit:

- (a) A photograph, digital image, or digital rendering of the product, labeling, and packaging;
- (b) The varying levels of potency and dosing of the edible cannabis product;
- (c) The recipe, including the production process, for manufacturing the edible cannabis product; and
- (d) Any scientific studies or laboratory testing results supporting the stability and approximate expiration date of the edible cannabis product.

(3) The Commission shall review and approve each edible cannabis product before the product may be commercially manufactured or sold by a permittee, to ensure the:

- (a) Product complies with the requirements of this chapter; and
- (b) Safety of minors.

#### B. Dosage Requirements.

(1) Unless expressly authorized by the Commission, an edible cannabis product may not contain more than:

- (a) 10 milligrams of THC per serving; and
- (b) 100 milligrams of THC per package.

(2) A permittee is encouraged to manufacture varying levels of potency for each edible cannabis product the permittee distributes, including products containing:

- (a) 2.5 milligrams of THC per serving; and
- (b) 5 milligrams of THC per serving.

(3) Each single serving contained in a package of a multiple-serving solid edible cannabis product shall be physically separated in a way that enables a patient to determine how much of the edible cannabis product constitutes a single serving.

(4) A package containing more than one serving of non-solid edible cannabis product shall:

- (a) Have a resealing cap or closure; and
- (b) Include within the package a measuring device that is appropriate for the product form, such as a measuring cap or dropper for liquids or a measuring spoon for powders.

(5) A package containing more than one serving of a liquid edible cannabis product may have a non-opaque strip or measuring marks on the bottle or package, but the strip or marks do not suffice as a measuring device.

(6) A permittee seeking to manufacture an edible cannabis product containing more than 10 milligrams of THC per serving or 100 milligrams of THC per package shall submit a request, in a form prescribed by the Commission, that provides scientific or medical evidence or research that supports the use of higher doses of THC to treat a qualifying medical disease or condition.

(7) The Commission may deny a request under §B(6) of this regulation if:

(a) The request is facially insubstantial; or

(b) The Commission determines that:

(i) The scientific or medical evidence or research is inadequate; or

(ii) The potential risks to patients and to the safety of minors outweighs the potential benefits.

(8) An edible cannabis product consisting of multiple servings shall be homogenized so that each serving contains the same concentration of THC.

#### C. Appearance of Edible Cannabis Products.

(1) A solid edible cannabis product may only be manufactured or distributed in geometric shapes.

(2) A permittee may not manufacture an edible cannabis product that due to its shape, design, or flavor is likely to appeal to minors.

(3) The manufacture or sale of edibles in the following shapes is prohibited:

(a) Human, animal, or fruit;

(b) A shape that bears the likeness or contains characteristics of a realistic or fictional human, animal, or fruit, including artistic, caricature, or cartoon renderings; and

(c) A commercially available food or beverage product that targets, or is primarily marketed to, minors.

#### D. Prohibited Products.

(1) Edible cannabis products may not contain:

(a) Meat;

(b) Seafood;

(c) Unpasteurized eggs; or

(d) Unpasteurized dairy of any type.

(2) The following types of products may not be sold:

(a) Alcoholic beverages, as defined in Alcoholic Beverage Article, §1-101, Annotated Code of Maryland; and

(b) Any product containing any non-cannabis additive that would increase potency or toxicity, or that would create an unsafe combination with other psychoactive substances, including nicotine and caffeine.

(3) The prohibition in §D(2)(b) of this regulation does not apply to products containing naturally occurring caffeine, such as coffee, tea, or chocolate.

### **.13 Edible Cannabis Packaging Requirements.**

A. All edible cannabis product packaging shall comply with the requirements established in COMAR 10.62.24 and COMAR 10.62.29.

B. Any container or packaging containing edible cannabis products shall protect the contents from contamination.

C. Edible cannabis product packaging:

- (1) Shall be designed and installed to maintain product safety and integrity;
- (2) Shall be made from materials that are food safe, are appropriate for the intended use, and cannot migrate to or be absorbed by the edible cannabis product;
- (3) Shall comply with the food additive requirements established in 21 CFR §§174—178;
- (4) Shall be tamper-evident;
- (5) Shall comply with the child-resistant packaging requirements established in 16 CFR §1700;
- (6) If intended for multiple openings, shall be capable of being resealed and sustain being child-resistant after the container or package has been opened;
- (7) Shall be stored so that the edible cannabis product is protected from contamination; and
- (8) May not be reused.

D. Prior to use, a permittee shall evaluate the edible cannabis product packaging for:

- (1) Permeability to:
  - (a) Water;
  - (b) Water vapor;
  - (c) Oxygen; and
  - (d) Other gases; and
- (2) Tolerance to:
  - (a) Heat;
  - (b) Cold;
  - (c) Chemicals used in processing;
  - (d) Strength; and
  - (e) Elasticity.

E. Packaging of an edible cannabis product that contains multiple servings shall include a statement on the exterior of the package indicating the packaging contains multiple servings and the number of servings contained within.

#### **.14 Edible Cannabis Product Labeling Requirements.**

A. An edible cannabis product label shall comply with the requirements established in COMAR 10.62.24 and COMAR 10.62.29.

B. An edible cannabis product label shall include:

(1) A list of:

- (a) Ingredients and sub-ingredients in descending order of prominence; and
- (b) Any natural or synthetic preservative added;

(2) A statement of any common food allergens, as indicated in the Food Allergen Labeling and Consumer Protection Act of 2004, 21 U.S.C. §301 et seq., that an edible cannabis product may contain, including:

- (a) Eggs;
- (b) Soybeans;
- (c) Milk;
- (d) Wheat;
- (e) Peanuts;
- (f) Tree nuts;
- (g) Fish; or
- (h) Crustacean shellfish;

(3) The processing date;

(4) The expiration date, which shall be:

- (a) Supported by scientific evidence, such as formal stability or challenge studies conducted on similar conventional food products;
- (b) Supported by stability studies conducted following guidelines indicated in the Commission's current version of technical authority; and
- (c) Calculated based on a shelf-life approved by the Commission for the specific edible cannabis product; and

(5) A warning that states: "CAUTION: When consumed by mouth the effects of this product can be immediate or delayed by 2 or more hours."

C. Edible cannabis product labels shall be able to remain conspicuous, durable, and legible for the shelf-life of the edible cannabis product.