

2024: Another Big Year for Cannabis in Ohio and Beyond

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2023 was a big year for cannabis and Ohio continues to be center stage for cannabis as the state looks to shape the future of its adult-use recreational cannabis program. With Issue 2 passing in November, Ohio became the latest state to legalize adult-use of cannabis. Though the legislature and the applicable executive agencies have yet to announce definitive aspects of what the full-scale program will look like, we know that 2024 will soon see the first adult-use sale of cannabis in Ohio as the state looks to capitalize on another aspect of taxable revenue, while navigating the challenges that come with a new recreational endeavor. The first two months of 2024 have come and gone and it is clear that in Ohio, and across the country, cannabis will be at the forefront of legislative and business activity.

Ohio is one of many states working toward implementation of recreational cannabis. More states may look to pass some manner of recreational use in 2024 while others may jump into the cannabis market with a medical program. Legislative efforts across the country will continue to shape cannabis legalization in 2024.

Federally, the rescheduling of cannabis continues to be deliberated as lawmakers and executive agencies look to move cannabis down from a schedule one drug. Additionally, we may finally see some movement on updates to banking and financing laws to help jump start a capital market that has been lacking for cannabis businesses for quite some time.

2024 looks prime to be another year closer to full scale legalization of cannabis across many states and at the federal level.

OHIO

Legalized Adult Use Cannabis Is Here.

With the passage of Issue 2 on November 7, 2023, Ohio became the 24th state to allow adult cannabis use for non-medical purposes. The new law allows adults 21 and over to purchase and possess up to 2.5 ounces of cannabis while also allowing home grow of cannabis plants (6 plants per adult, with a maximum of 12 plants per household). The statute became effective on December 7, 2023, but rules still need to be implemented. More information on the initiated statute can be found at Benesch's client alert [here](#).

As an initiated statute and not a constitutional amendment, the law is subject to change, however, and members of the Ohio legislature and the Governor have expressed support for changes that may come before the law allows sales to begin in September of 2024.

There are multiple proposals pending in the Ohio General Assembly with the Ohio Senate passing their version which repeals and replaces the initiated statute and a different strategy coming from

the House of Representatives which contemplates minor changes to the initiated statute passed by the voters in November. Some of the differences between the two Houses contemplate taxes, home grow, and how adult-use licenses are distributed to current medical cannabis providers. Further, certain interested parties are pushing for legislative enactment of a law that would grant current medical marijuana processors a cultivation license. No modifications to the initiated statute have passed in Ohio as of yet.

Given the lead time to establish the adult-use program, there have been talks of the Governor passing an emergency rule to allow adult-use sales to begin at current licensed medical dispensaries immediately before the full set of rules for the adult-use program are established. This would be an effort by the executive branch to curtail the growth of an illicit cannabis market while customers wait for legal establishment of licensed adult-use facilities. At this stage, these are just early discussions and we have yet to see any formal enactment of such emergency rule.

At the state administrative level, Department of Commerce Director Sherri Maxfield announced the appointment of Jim Canepa as the first Superintendent of the new Ohio Division of Cannabis Control (“DCC”). Mr. Canepa most recently served as the Superintendent of Liquor Control and has had various leadership roles in state government throughout his career. To begin the implementation of the adult-use program, the DCC released its first draft of rules for stakeholder comment that would make changes to the medical program. These draft rules contemplate eliminating the state patient and caregiver fees in the medical program, reducing the renewal fee for marijuana processor license holders, and setting forth a lottery process to determine how adult-use licenses will be distributed to current medical license holders.

Further, On January 29, 2024, the DCC issued proposed draft rules for the initial phase of Ohio’s adult use cannabis program. This first phase would serve to facilitate the licensing of current medical marijuana business for adult use cannabis operations. In summary, the proposed rules set forth a two round application process: (1) a conversion of existing medical marijuana facilities to dual-use facilities to allow these existing entities to participate in both medical and adult-use cannabis operations; and (2) a lottery-based dispensary license process for “10(b) dispensary” entities. An entity is an eligible 10(b) dispensary entity and may participate in this new lottery drawing process if it is one of the following:

1. A Level I medical marijuana cultivator with a certificate of operation of a provisional license;
2. A Level II medical marijuana cultivator with a certificate of operation or a provisional license; or
3. A medical marijuana dispensary with a certificate of operation or provisional license, which does not have any common ownership or control with any cultivator or processor.

Comments on these proposed rules were due by the general public by February 9, 2024. DCC is currently reviewing those comments and will seek to finalize the rules for this first phase of adult-use cannabis licensing in the coming weeks.

For those interested parties that do not currently own a medical marijuana facility license, a future application round for new entrants will be forthcoming and we expect more information from the DCC by early fall.

FEDERAL AND BEYOND

More Legalization Coming in 2024?

Legislative efforts may be in overdrive in 2024 as we look to more states pushing for medical and adult-use program enactments. States like Florida, Hawaii, South Dakota, and Pennsylvania may be the next states to push adult-use legislation or ballot initiatives in 2024. Additionally, a close eye is being turned to Wisconsin, Nebraska, and Idaho as the next states that may enact some sort of medical-cannabis program by the end of 2024. Election day will be all that more important to watch in November as we see if more progress is being made for cannabis across the country.

Rescheduling Efforts are Gaining Steam.

It is becoming ever more likely that 2024 will finally be the year that cannabis is rescheduled. Near the end of 2024, we say that the U.S. Department of Health and Human Services recommended to the U.S. Drug Enforcement Agency to reclassify cannabis from Schedule 1 to Schedule 3 of the Controlled Substances Act. Though we still wait for the DEA to act on HHS's recommendation, in documents released in early 2024, it has been shown that HHS determined that cannabis poses a lower public health risk than other controlled substances and offers possible medical benefits. This determination was based on an analysis conducted by the Food and Drug Administration.

Moving cannabis to Schedule III would provide a number of benefits to the industry. The most significant change would be that Section 280E would no longer apply to cannabis businesses and would create new tax opportunities. However, it would also open new avenues for research and medical uses and possibly shift public perceptions about the substance's safety and medical potential.

With this recommendation and the underlying analysis it is based on, it is becoming harder and harder for the DEA to justify the Schedule 1 classification.

SAFER Banking Nearer Than Ever?

Cannabis advocates wait with bated breath to see if Congress finally makes more concrete movement on the SAFER Banking Act. The Secure and Fair Enforcement Regulation Banking Act (SAFER) Banking Act is designed to ensure that all businesses-including State-sanctioned cannabis businesses-have access to deposit accounts, insurance and other financial services. Passage of the SAFER Banking Act would significantly improve the ability of cannabis business to obtain banking services through bank's being provided protections or "safe harbors" from certain criminal and administrative penalties that they would otherwise face due to the federally illegal status of cannabis. Early 2024 may see the SAFER Banking Act make it to the Senate floor for an all-important vote.

CONCLUSION

In 2024, the cannabis industry is primed for a drastic change in Ohio, other states, and at the federal level. With the legislature looking to act, it is possible that Ohio's adult-use program will face some sort of change by the time a consumer is able to walk into a local dispensary and purchase adult-use cannabis. With numerous states planning to have initiatives on the 2024 ballot and state legislatures looking to capitalize on a growing tax revenue stream, more states may come online for some aspect, whether medical or full-blown recreation, of a cannabis program. Finally, with the

legislative and executive branches entertaining changes to cannabis law and policy, 2024 may finally see the long-awaited rescheduling of cannabis and the opening of the flood gates for significant legal improvement for the status of cannabis businesses nationwide.

As you go into 2024, Benesch's [Cannabis Industry Group](#) can assist with all aspects of your cannabis business. We are actively engaged in representing a number of clients in the space in Ohio and across the country. For additional information, please reach out to a member of the team:

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