

## Ohio Votes for the Decriminalization of Marijuana

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On November 7, 2023 Ohio voters approved the Issue 2 ballot initiative, which will make substantial revisions to Ohio's cannabis laws<sup>[1]</sup> and make Ohio the 24th state<sup>[2]</sup> to legalize recreational marijuana. Issue 2 was introduced by the Coalition to Regulate Marijuana Like Alcohol which, according to the group, sought to legalize and regulate the cultivation, manufacturing, testing and sale of marijuana and marijuana products to adults and also legalize home grow for adults. Reports suggest over two million Ohioans voted to approve Issue 2, a relatively high turnout given 2023 was an off-year election.<sup>[3]</sup>

Passage of Issue 2 creates Chapter 3780 in the Ohio Revised Code, which makes several changes to how Ohio law addresses marijuana, including:

Empowering a division within the Ohio Department of Commerce to regulate, investigate and penalize cannabis operators and laboratories;

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Legalizing and regulating the cultivation, manufacture, testing and sale of cannabis;

Decriminalizing the cultivation and growing of up to six plants per person and 12 plants per residence;

Permitting the sale of cannabis products in the form of plant material and seeds, live plants, clones, extracts, drops, lozenges, oils, tinctures, edibles, patches, smoking or combustible product, vaporization of product, beverages, pills, capsules, suppositories, oral pouches, oral strips, oral and topical sprays, salves, lotions or similar cosmetic products and inhalers;

Providing for a 10% adult use tax—which is separate from the sales tax—on the sale of cannabis, the proceeds of which will be deposited in the Adult Use Tax Fund and further distributed to four newly created funds:

- 36% to the Cannabis Social Equity and Jobs Fund

- 36% to the Host Community Cannabis Fund

- 25% to the Substance Abuse and Addiction Fund

- 3% to the Division of Cannabis Control and Tax Commissioner Fund;

Establishing the cannabis social equity and jobs program, which will focus on addressing historically disproportionate enforcement of marijuana-related laws through efforts such as licensing and financial assistance;

Authorizing landlords and employers to prohibit the use of cannabis in certain circumstances;

Creating a program for cannabis addiction services; and

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Designating Franklin County, Ohio courts as the venue for any court actions related to Chapter 3780.

The law becomes effective 30 days after passage of Issue 2.

The passage of Issue 2 will not be a *carte blanche* to cultivate, sell and possess marijuana/cannabis. Criminal penalties will also be enforced, including minor misdemeanors for the use of cannabis in public areas, criminal sanctions for fraudulent purchase by those under 21 years old, application of O.R.C. § 4511.19 (“OMVI”) against persons operating a vehicle or bike while using or under the influence of cannabis and application of O.R.C. § 2925.11 (“Possession of controlled substances”) against anyone possessing a greater amount of cannabis than authorized.<sup>[4]</sup> Unless cannabis is reclassified as a Schedule I Controlled Substance, it remains illegal under federal law.

People and entities seeking to operate as a cultivation facility or adult use dispensary will be required to apply for, and be granted, a certificate of operation. Licensure will occur through the Ohio Department of Commerce.<sup>[5]</sup>

Legally, Issue 2 was an “initiated statute”<sup>[6]</sup> that amended the Ohio Revised Code rather than amending the Ohio Constitution,<sup>[7]</sup> meaning the Ohio General Assembly could pass laws to modify the changes implemented under the ballot initiative. As such, the regulatory details of the legalization and sale of marijuana in Ohio is far from set in stone.

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Passage of Issue 2 presents a new and lucrative opportunity for Ohio entrepreneurs and businesses and Dinsmore attorneys have extensive experience in licensure and regulatory compliance of such facilities. If you have questions about applying for a certificate of operation, or whether your activities will comport with Ohio's new laws, please contact a Dinsmore attorney.

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[1] According to the [ballot initiative text](#), “adult use cannabis, cannabis, and marijuana are all defined to mean marihuana” as defined in O.R.C. § 3179.01.

[2] The District of Columbia, Guam, and the Northern Mariana Islands have also legalized recreational marijuana.

[3] Final Issue 2 count available [here](#).

[4] See O.R.C. §§ 3780.99(A)-(C), 3780.36(D)(1).

[5] O.R.C. § 3780.03.

[6] According to the [Ohio Secretary of State](#), “initiated statutes” allow citizens to submit a proposed law to the people of Ohio for a statewide vote

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if that citizen feels that an issue is not addressed properly in the Ohio Revised Code.

[7] On November 7, Ohio also voted on amendment of the Ohio Constitution relating to abortion and other reproductive decisions

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