

A New Leaf: Cannabis Legalization in Minnesota

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Hennepin County Law Library



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Agenda

Changes to
Criminal Law

Expungement of
past Cannabis
Convictions
(automatic and
non-automatic)

Licensing for
Businesses

Regulation of
already-legal
Hemp-Derived
THC Edibles
and Beverages



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Changes to Criminal Laws



- Adult-use (21+), possession, and home growth of marijuana legalized August 1, 2023
- Legalized sales of marijuana, subject to licensing (expected early 2025)
- Marijuana is a schedule III controlled substance by state code; still scheduled I under federal law.

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Legalized Possession, Transportation, Use Rules - Minn. Stat. 342.09

- Possession Rules
 - Paraphernalia legal
 - 2 oz. of cannabis flower in public
 - 2 lbs. of cannabis flower at private residence
 - Can share cannabis flower in public in an amount that is legal
- Possession, Transport Rules
 - 8 g. cannabis concentrate
 - Edibles infused with 800 mg. of THC
- Use Rules
 - Private residence, including yard
 - Other private property if not prohibited
 - Establishments/events with permit for on-site consumption
 - But NOT any location where smoke would be inhaled by a minor.

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Criminal Penalties
for Possession,
Transportation,
Use -
Minn. Stat.
152.0263-0264

- Possession Crimes – 152.0263
 - 1st Degree – Felony
 - 2+ lbs. of cannabis flower
 - 160 g. cannabis concentrate
 - 16-200 g. of THC of edibles, hemp-derived
 - 2nd Degree – Gross Misdemeanor
 - 1-2 lbs. of flower, other than private residence.
 - 80-160 g. cannabis concentrate
 - 8-16 g. of THC of edibles, hemp-derived
 - 3rd Degree – Misdemeanor
 - 4 oz. – 1 lb. of flower, other than private residence.
 - 16-80 g. cannabis concentrate
 - 1,600 mg. – 8 g. of THC edibles, hemp-derived
 - 4th Degree – Petty Misdemeanor
 - 2-4 oz. of flower, other than private residence.
 - 8-16 g. cannabis concentrate
 - 800-1,600 mg. THC edibles, hemp-derived
- Illegal Use in Public – PM
- Transportation – Open Package Law (Minn. Stat. 169A.36) – Misdemeanor
 - Msd. if use in MV

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Home Cultivation Rules –

- Minn. Stat. 342.09 – Up to 8 cannabis plants, max 4 mature, flowering plants may be grown at a private residence without a license.
 - Cultivation must be in an enclosed, locked space not open to public.

Cultivation Crimes – Minn. Stat. 152.0265

- 1st Degree Felony – Max 5 years/\$10K fine – 24+ cannabis plants
- 2nd Degree Gross Misdemeanor – Max 364 days/\$3K fine – 17-23 plants

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Automatic Expungement of Certain Cannabis Convictions – Minn. Stat. 609A.055

- Eligible Records –
 - 152.18 disposition
 - Arrested and dismissal prior to PC finding
 - Resolved in favor
 - Poss. In MV (1.4 g.) misd. conviction
 - Small Amount (42.5 g.) PM conviction
- BCA to identify these records
- BCA sends notice to court
 - BCA shall seal within 60 days
 - Court shall seal and order LE, city within 60 days
 - Limitations that typically apply to expungement orders not applicable
 - No petition required
- NO automatic sealing of DHS or Dept. of Health records

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Expungement or Re-Sentencing of Felony Cannabis Convictions – Minn. Stat. 609A.06 – Not Automatic

- Cannabis Expungement Board – Chief Justice, AG, PD, Comm. Corr., public member
 - Review records and determine if drug crime is now a lesser offense or not illegal
 - Determine if vacate, dismiss, expunge or resentenced to a lesser offense.
 - Determine if gun rights restoration is appropriate
- Eligible Offenses –
 - 1st-5th Degree Sale or Possession Crimes
 - Did not involve a weapon or an assault
 - Would now be a lesser offense or no offense at all
 - No appeal, appeal denied, or time period to appeal has lapsed
- BCA identifies the records and then notifies the Board
- Monthly meetings, open to public – access to all records and subpoena power
- Notice to Court, then Court shall issue order
 - Order to each agency and reasonable/good faith effort to person
- Resentencing – With or without a hearing

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Cannabis Business Licensing

- Merit application licensing system
- Goal was craft industry; no vertical integration except for small businesses
- Municipalities can limit but not ban
- New Office of Cannabis Management (OCM) needs to promulgate rules and publish applications
- Dispensaries won't open until early 2025 (?)



Though possession is now legal, NO ONE is allowed to sell it unless and until they are a licensed retailer

- Tribes can establish their own licensing requirements (and have!)
- Gifts (be careful)



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Hemp-Derived THC Products



- Made legal by a definitional change in 2022
- Limits:
 - 5 mg per serving of hemp-derived THC.
 - 21+
 - Beverages and edibles (no flower or vapes)
- Rapidly-growing market
- HF100 calls them “edible cannabinoid products”
- Remain legal with additional tax, licensing, & testing requirements
 - Registration requirement October 1
 - Thereafter, licensing (to come) by OCM



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As of August 18, 2023, what's legal under Minnesota law?

Legal:

- Possession of small amounts
- Home grow, within set limits
- Purchase & sale of hemp-derived products

Not Legal:

- Possession in excess of limits
- Use in car, or possession in car within reach of driver (open container laws)
- Sales! (except tribes)

And remember: Marijuana remains illegal under federal law. Some implications:

- Airports and other interstate activity
- Immigration
- Federal jobs
- Problems for the industry in banking, IP, tax, etc.

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Q & A

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