

Cannabis Guide for the USA & Canada

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Arizona, USA

FIRM

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Medical Use

Arizona adopted medical marijuana use pursuant to the 2010 Arizona Medical Marijuana Act: [Ariz.Rev.Stats. §§ 36-2801 et seq., as amended](#); and Regulations: [9 A.A.C. 17 \(Ariz. Admin. Code §§ R9-17-101 et seq.\)](#) (the AMMA). The Arizona Department of Health Services (AZDHS) interprets and enforces the AMMA. It has authority to issue dispensary licenses and inspect dispensaries for noncompliance with the AMMA, with revocation of the license being the ultimate penalty through an administrative process, subject to judicial appeal. A dispensary exclusively owns, produces, cultivates, manufactures, and sells medical marijuana; thus, it is a vertically integrated regime. Although a dispensary may contract with businesses to cultivate plants or extract product, for example, each such business must be appointed by the dispensary and supervised by the dispensary.

Dispensary licenses (130) have been issued in two tranches: 2011 and 2016. Additional allotments may occur from time to time if the number of licensed pharmacies has increased statewide (licenses are issued on a ratio of ten pharmacies to one dispensary). It is likely that any such new licenses will be targeted for dispensary locations in underserved rural areas.

A dispensary must be operated on a nonprofit basis; thus, it pays no distributions or profits and typically has no members or owners, although it is often controlled and managed by a board of directors and/or officers or affiliated entities. A dispensary may only have one onsite and one offsite cultivation facility, and this is typically where production and extraction of edibles, tinctures, ointments, and other cannabis products occur. The dispensary is responsible for all activities of its cultivation, production, manufacturing, and kitchen facilities.

Dispensary licenses are nontransferable. However, the managing or controlling affiliated entities (or even their owners) may transfer their interests in a change of control transaction. There have been numerous such transactions in the past few years, and the Arizona market for acquisitions and dispositions continues to be robust, fueled by acquirers from outside Arizona as well as dispensary license holders interested in expanding their national or local footprints. These change of control transactions have pushed transfer prices to \$10M - \$30M.

Only persons who are licensed by the dispensary with AZDHS and who have been issued a dispensary agent (or principal) card may work for, manage or volunteer for or have a presence in a dispensary.

Patients must also be licensed by AZDHS following a medical professional's certification of the patient's debilitating medical condition. Typical costs for the examination and application range between \$350 - \$450, but the AZDHS patient card is good for two years. Caregivers to patients must obtain the patients' written designation and a caregiver card must be obtained from AZDHS. Caregivers may grow a limited number of marijuana plants on behalf of a limited number of patients.

Typical medical conditions eligible for qualification under the AMMA include cancer, epilepsy, HIV, Alzheimer's, hepatitis, glaucoma, and severe and chronic pain.

In addition to the AZDHS license to dispense medical marijuana, a dispensary must obtain various zoning permits and AZDHS approvals to operate. Generally, a dispensary may not be located near a park, school, house of worship or another dispensary.

As of November 2020, laboratory testing of medical marijuana and its products will be required.

A dispensary may buy from and sell medical marijuana and its products to another dispensary. Patients may only buy from a dispensary. No marijuana may be imported from or exported to another state or country.

Import/ Export

Market Size

Sales in 2019 yielded \$333.6M, and total product sales increased 37% from the previous year. Licensed patients (220k) realized an increase of 18%. Anticipated growth is expected year over year. Total market value is estimated at between \$400M - \$500M.

Adult-Use Enacted Nov. 3, 2020

Efforts were initiated in 2016 to make recreational/adult cannabis use legal, but failed by a small margin. Proposition 207, the [Smart and Safe Arizona Act](#), to legalize marijuana for possession and consumption by adults, was approved by the Arizona electorate on November 3, 2020, by a favorable vote of 59%. The Smart and Safe Act will permit current dispensary license holders to apply early (January 2021) for an adult-use license, which can be operated from the same location as its medical marijuana location. Where a county has fewer than two medical marijuana dispensaries (these are the rural counties of Apache, Graham, Greenlee, La Paz, and Santa Cruz), the Smart and Safe Act will also permit an early application where the applicant has selected a location. A social equity ownership program is another vehicle for obtaining a dispensary license, to which the Smart and Safe Act has allocated 26 licenses, but details on the program will not likely be issued by AZDHS until mid-2021.

The Act specifically provides as follows:

- Allows adult possession of up to an ounce of marijuana, with no more than five grams in concentrated form. Adults can grow six plants at home with no more than 12 plants in a house.
- For a person under 21, reduces the penalties for the unlawful use of marijuana to a civil penalty for first violation, petty offense for second violation, and class 1 misdemeanor for subsequent violations.
- Smoking marijuana remains illegal in public spaces and open spaces.
- Prohibits consuming marijuana while operating a vehicle.
- Prohibits any edibles from being marketed to children shaped like a "human, animal, insect, fruit, toy or cartoon."
- In addition to a sales tax, imposes a 16% excise tax on the sale of marijuana and marijuana products under this Act to fund community colleges, infrastructure, public safety, and public health programs.
- Establishes a process to expunge prior marijuana convictions that occurred before the date of the Act's passage.

- Allows Arizona employers to maintain a drug-free workplace. The employers may adopt “workplace policies restricting the use of marijuana by employees or prospective employees.”
- Permits local jurisdictions to ban or restrict marijuana businesses within the locality boundaries.
- The Arizona Department of Health Services (DHS) is responsible for adopting rules to regulate adult-use, which include the licensing of retail stores and production facilities.

Investment Analysis

Numerous opportunities exist for persons/entities desiring to enter into or expand in this growing market. Some of these opportunities include the acquisition of control of a dispensary, equity or debt financing, purchase or management of real estate serving a dispensary or its cultivation or production facilities, the provision of services to a dispensary or its affiliated facilities, cultivation of marijuana, production of lotions, edibles, extracts and other marijuana derivatives, and various product or equipment contracts. Any such opportunity should be preceded by substantial and thorough due diligence activities and a financial analysis of key principals and entities involved. A background check and fingerprints are required to obtain dispensary principal and agent cards and persons with various felonies are precluded from gaining such cards.

Hemp

Until the passage of the Agricultural Improvement Act of 2018 by the President (the “2018 Farm Bill”) removing hemp from the definition of “marijuana” in the Controlled Substances Act of 1970, Arizona’s foray into hemp-based cannabidiol (frequently referred to as “industrial hemp”) was limited to pilot programs conducted for research at certain universities. [Ariz.Rev.Stats. §§ 3-311 et seq.](#); and Regulations: 3 A.A.C. 4; [Ariz.Admin.Code §§ R3-4-1001 et seq.](#) The Arizona Department of Agriculture (AZDOA) launched the Arizona Hemp Program on June 1, 2019, requiring hemp growers, harvesters, processors, and transporters (but not retailers) to obtain a license. “Hemp” is now considered an agricultural commodity, defined as all parts of the plant having less than 0.3% THC on a dry weight basis. And the term “hemp” is now broadly redefined to include its extracts, cannabinoids, and derivatives, thereby expressly de-criminalizing popular hemp-derived CBD products and opening interstate commerce to hemp and hemp product sales. Arizona farmers started planting hemp crops in late May 2019.

Like other hemp cultivators in the nation, Arizona's hemp farmers experienced substantial losses (41%, according to the AZDOA) in 2019 crops as a result of high THC content or inclement weather. However, cultivators and processors expect these issues to be resolved in the near term. The hemp industry is rapidly growing in Arizona, according to the [Hemp Industry Trade Association of Arizona](#), doubling in 2020 to approximately 300 licensed cultivators.

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DISCLAIMER: The possession, distribution, and manufacturing of marijuana are illegal under federal law. State law, which may in some jurisdictions decriminalize such activity under certain circumstances, is superseded by federal law. Violation of federal drug laws carries serious penalties, with the federal government reserving the right to seize and seek civil forfeiture of real or personal property facilitating the sale of marijuana and money or proceeds accruing from such transactions. Section 280E of the Internal Revenue Code also disallows deductions for amounts paid or incurred in the carrying on of a trade or business that consists of the "trafficking" of cannabis. Law or policy covering this industry may change at any time. Nothing herein may be construed as legal advice or tax advice, and is merely for informational purposes only.