

Marijuana Update from Oregon

(July 16, 2017)

Three items:

1. Lessons Learned

A. Engage

It is a huge temptation, especially for local law enforcement and county public health, to run away. Don't do it. Engage, engage, engage. Otherwise, the marijuana industry will fill the void with its own version of what's good for public health, public safety, prevention, and local control. Engage directly with your legislature, and get into the middle of all of it. Make yourself a vital and central player. In the end, your legislators will thank you for it, even if they find you a nuisance on occasion.

B. Urge Your Legislature to Set up a Special Marijuana Legislative Committee

Your ballot measure needs a lot of amendments, if not a complete rewrite. It was written by lawyers who only cared about the ballot title to ensure its support of a majority of your voters. Now it must be fixed to make it actually work. This is a BIG job. If it is parceled out to a litany of standing legislative committees, you won't be able to get the comprehensive rewrites that you need.

C. Protect and Enhance Local Options

If you don't, nobody will. This is an entirely unique regulatory environment. The state will be issuing licenses to businesses to commit federal crimes. There is no precedent for that. It's not like the end of federal alcohol prohibition in 1933 - federal prohibition of marijuana continues. The whole marijuana industry house of cards is predicated on Obama Administration prosecutorial discretion memos (including the "Cole Memo") that basically tell federal prosecutors not to shut down state medical and recreational marijuana systems if they comply with eight federal concerns. That house of cards could fall, or be adjusted, at any moment, by the Trump Administration, or a federal court in a challenge by a local government with standing. Thus, it is vital to maintain all local control options so that the apple cart does not get upset by giving anyone legal standing to take the whole thing down. Thus far, no state has stepped on local control to the point they force locals to accept marijuana businesses they don't want. There is a good reason for that: It would all be preempted by federal law, and that's what a federal court would likely say. It's your job to protect County X's right to have 1,000 MJ businesses, and County Y's right to have none. The marijuana industry, in large part, doesn't get this, and they likely never will. Only you can protect local control for the greater good.

D. Ensure Locals Get Marijuana Taxes

Most of the impacts of marijuana legalization are felt locally, by law enforcement, public health, addiction treatment, prevention, land use, etc. The marijuana industry wants low taxes, but they don't generally fight marijuana taxation. They also won't fight very hard about where tax revenues go. If left to your legislature, the state will try to take as much as they can for the state general fund. Only your strong engagement can prevent that from occurring. Many, if not most, impacts of marijuana legalization are felt, and dealt with, locally. Marijuana tax revenues, therefore, should flow accordingly.

E. Shifting the Focus of Marijuana Enforcement at a Local Level

With legalization, the focus needs to shift from individual enforcement to enforcement that helps reduce the black market. For many states, that means taking on rogue growers operating outside of the regulated seed-to-sale tracked system, who are often acting under cover of a medical marijuana program that has huge regulatory holes that need to be filled.

F. Urge Congress to Fix Federal Law

Even if Congress and/or DEA/FDA continues to refuse to de-schedule or down-schedule marijuana under the federal Controlled Substances Act, Congress needs to immediately fix federal banking laws so we can get the cash out of the system for public safety, and black market accountability, and amend the internal revenue code (Section 280E) so normal business deductions can be taken. There is a new Congressional marijuana caucus that your Congressional delegation needs to join to help get those things done.

2. AOC Marijuana Web Site

AOC Legal Counsel maintains the following web page

<http://oregoncounties.org/news/publications/marijuana/>

which contains many AOC marijuana publications, including those related to Oregon marijuana laws, recent Oregon marijuana legislation, Oregon marijuana offenses, and the history and overview of marijuana regulation in Oregon.

3. Brief Update on 2017 Oregon Marijuana Legislation

AOC was again heavily involved in a third round of rewriting and improving Oregon's marijuana laws in the aftermath of the passage of Ballot Measure 91 in November of 2014, which legalized, taxed, and regulated recreational marijuana under Oregon law. A full list of the key cannabis bills passed in 2017 can be found on AOC's [marijuana web page](#). AOC Legal Counsel continues to be directly involved in the development of marijuana law and policy, in the [legislature](#), with the [federal government](#), and [elsewhere](#). Although full integration of the medical and recreational systems has not yet occurred, here are the primary cannabis bills enacted by the 2017 legislature:

SB 1057 (The Omnibus Bill)

Chapter 183 - effective 5/30/17

A significant policy bill that was a major focus of the [Joint Marijuana Committee](#) early in the session, SB 10578 was designed, in part, to address Oregon’s leaking medical marijuana production system. Among many other things, the bill:

- Reduces maximum plant count limits for designated medical growers.
- Requires designated medical growers with more than 12 mature plants to be in the OLCC seed-to-sale tracking system known as METRC, and allows OLCC to inspect those grows.
- Directs OHA to create database for sharing information with OLCC.
- Allows an OLCC licensee to convert their license to “medical only.”
- Allows OLCC licensee, under certain conditions, to exhibit marijuana items at trade show, State Fair, or similar event.

SB 56 (The Miscellaneous Bill)

Chapter 476 - effective 6/23/17

SB 56 was designed to be a cleanup bill with a wide array of non-controversial items that were unopposed by any significant stakeholder. Among many other things, the bill:

- Permits OLCC to immediately suspend a license if there is probable cause to believe the licensee has sold marijuana into the black market.
- Requires OLCC and OHA to maintain telephone hotlines for cities and counties to inquire about the status of a marijuana business.
- Allows certain small OLCC licensed producers to engage in some limited primary processing.
- Allows city or county to amend its opt out ordinance, without an election, to add the new categories of OLCC “medical only” businesses created by SB 1057.

HB 2198 (The Medical Bill)

Chapter - effective on passage

HB 2198 was designed to address ongoing issues with the functionality of the Oregon Medical Marijuana Program (OMMP). Among other things, the bill:

- Crawls back some of the provisions in SB 1057 relating to maximum plant counts for designated medical growers.
- Allows designated medical growers with more than 12 plants to sell up to 20 pounds of excess marijuana per year to an OLCC licensed processor or wholesaler, thus reinstating a path for the sale of excess medical marijuana that largely disappeared when most medical dispensaries converted to OLCC licensed retailers.
- Establishes the Oregon Cannabis Commission to study the OMMP and make recommendations to the legislature about possible restructuring of the OMMP.
- Allows marijuana retailers and dispensaries to be located within 1,000 feet of school only if OLCC determines that there is physical or geographic barrier in between, such as a river or a freeway.
- Allows city or county to amend its opt out ordinance, without an election, to add the new categories of OLCC “medical only” businesses created by SB 1057.

SB 1015 (The Hemp Transfer Bill)

Chapter 531 - effective 10/5/17

SB 1015 allows an ODA licensed industrial hemp grower to sell certain and hemp products to an OLCC licensed marijuana processor or wholesaler.

HB 2197 (The State-Tribal Tax Bill)

Chapter 495 - effective 10/5/17

Allows DOR to enter into an agreement with a federally recognized Indian tribe for purpose of making rebate payments for estimate of tax on marijuana items.

HB 3470 §§ 30-37 (The Tax Distribution Bill)

Chapter - effective on passage

Rewriting the state marijuana tax distribution formula from Measure 91 became a necessity for the State, as well as counties and cities. The formula, as written in Measure 91, had erroneous references, as well as limitations that could not be carried out as a practical matter. The rewrite eventually took the form of **SB 845**. However, the contents of that bill, after some minor modifications that only affected the State, were stuffed into the “Program Change” bill, HB 3470, at the end of the session. Among other things, the bill:

- Retains the original intent of Measure 91 by providing that the 10 percent distribution to counties for taxes collected prior to July 1, 2017, will flow to all counties based on population.
- The 10 percent distribution of taxes collected after July 1, 2017, will be disbursed only to counties that have not opted out, with:
 - Half based on total OLCC producer canopy size in each county as compared to the whole state.
 - Half based on the number of OLCC licensed processors, wholesalers, and retailers located within each county as compared to the whole state.
- Eliminates any restriction on county use of distributed funds.

SB 302 (The Marijuana Offense Bill)

Chapter 21 - effective 4/21/17

Largely crafted by AOC Legal Counsel, SB 302 removes marijuana from the state Controlled Substances Act and rewrites nearly all marijuana offenses, as well as creating some new and revised offenses to deal with arson incident to manufacture, as well as unlawful exportation. The new offenses went into effect on April 21, 2017, so AOC Legal Counsel provided Oregon law enforcement with a training video as well as materials posted on AOC’s [marijuana web page](#).

SB 303 (The Minor in Possession Bill)

Chapter 20 - effective 4/21/17

SB 303 is the companion to SB 302, and clarifies and creates consistency in prohibitions and procedures related to minors possessing, purchasing, attempting to purchase or acquiring alcoholic beverages or marijuana items. The bill was crafted by AOC Legal Counsel at the request of the Juvenile Directors and the Municipal and Justice Court Judges.
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