

Update: HF100, the Legalization of Adult-Use Cannabis in Minnesota

Alert

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For the first time in nearly a decade, one-party control returned to Minnesota in 2022, with the Democratic-Farmer-Labor (DFL) party taking control of all of the levers of state government. This led to an extraordinarily active legislative session that saw the passage of the vast majority of the DFL's agenda. Included in that agenda was [HF100](#): the legalization of adult-use (21+) cannabis. A 300+ page bill that represented years of effort by advocates and legislators, HF100 passed in May and was signed by Governor Walz May 30, 2023.

On August 1, 2023, the possession of cannabis becomes legal in Minnesota.

WHAT CONSUMERS SHOULD KNOW:

- While possession is legal, it will take some time for the cannabis industry to be set up in Minnesota. Licensing of cannabis cultivators, manufacturers, and retailers will likely not begin before Q1/Q2 of 2024, and retailers selling adult-use cannabis are not expected to be open until Q1 of 2025. It is expected that the Walz Administration will try to speed up these timelines, but given the relative lack of cannabis infrastructure in Minnesota, it is unclear how much this schedule can be accelerated.
- An individual may possess up to 2 ounces of cannabis on their person, and up to 2 pounds of cannabis in their home.
- Home cultivation of cannabis is legal. An individual may have up to four mature and four immature plants at any one time.
- Use of cannabis in public may be prohibited by local governments.

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For consumers who are not growing their own cannabis or are part of Minnesota's existing medical cannabis program, it will be some time before cannabis can be purchased from a state-licensed dispensary. Until that happens, consumers that are interested in legally consuming Tetrahydrocannabinol (THC) are able to purchase "edible cannabinoid products" that contain THC derived from hemp. Minnesota legalized such products in 2022 and they are widely available in the form of THC beverages and the classic "gummies." The adult-use cannabis legislation that was passed in May 2023 also adds additional regulations to the hemp-derived THC market that are effective immediately.

KEY CHANGES TO THE HEMP-DERIVED THC MARKET:

- On-site consumption of edible cannabinoid products at retailers that hold an on-sale liquor license is now allowed.
- Exclusive liquor stores may now sell edible cannabinoid products.
- There are new quality control testing and labeling requirements for edible cannabinoid products.
- A 10% gross receipts tax on cannabis products went into effect on June 30, 2023, and it applies to hemp-derived THC products.
- Manufacturers and retailers of hemp-derived THC products will have to register with the state on or before October 1, 2023. Significantly more aggressive enforcement around non-compliant products is expected. Infractions will be held against any purveyors of edible cannabinoid products that want to apply for a cannabis business license in the future.

WHAT MINNESOTA-BASED EMPLOYERS SHOULD KNOW:

- Employers may no longer require applicants to undergo cannabis testing as a condition of employment, unless otherwise required by state and federal law.
- Random cannabis testing is only allowed for employees in safety-sensitive positions, and for professional athletes if they are subject to a Collective Bargaining Agreement that permits random testing.
- There are other exceptions to the prohibitions on testing: peace officers, firefighters, individuals who work with children/vulnerable adults/patients who receive mental health care, positions requiring a commercial driver's license, positions funded by a federal grant and positions for which state/federal law requires testing.

SETTING UP THE CANNABIS INDUSTRY IN MINNESOTA:

Compared to other states that have legalized adult-use cannabis, Minnesota is unique in that it has minimal medical cannabis infrastructure (only two medical cannabis companies are licensed in Minnesota) to lean on while attempting to set up the adult-use cannabis industry. Another relatively unique attribute is the

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presence of the hemp-derived THC market, which up until the passage of HF100, had a very light regulatory footprint.

KEY TAKEAWAYS:

- HF100 was written with the goal to make it difficult for a small number of large operators to dominate the market.
- Vertical integration of cannabis businesses is only allowed under the "micro" and "mezzo" licenses.
 - "Micro" licenses are geared toward smaller operators and are envisioned as smaller 'mom and pop' operations that are allowed to cultivate, manufacture, and offer retail cannabis products.
 - "Mezzo" licenses are envisioned as mid-sized operators that are allowed to be up to three times the size of that which is allowed under the "micro" license.
- There are additional license types for cultivators, manufactures, retailers, and so on. For these license types, vertical integration is not allowed. An operator that holds a cannabis cultivator license, for example, can cultivate more square feet of cannabis than a micro or mezzo license holder, but cannot also hold any other cannabis business license.
- Licenses will be awarded based on the needs of the market; the number of licenses to be made available is not defined by statute.
- Licenses will be awarded based on a points system that gives credit for various attributes necessary to stand up a successful business. "Social equity applicants" are given a substantial advantage in this process, with status as a social equity applicant accounting for at least 20% of the total available points to be awarded.
- Social equity applicants are defined as:
 - An individual convicted of a cannabis offense prior to May 1, 2023.
 - An individual who had a parent, guardian, child, spouse, or dependent convicted of a cannabis offense prior to May 1, 2023.
 - Dependents of individuals convicted of a cannabis offense prior to May 1, 2023.
 - Veterans who lost honorable status due to an offense involving cannabis.
 - Residents for the last five years of areas disproportionately impacted by the enforcement of cannabis laws.
 - Residents for the last five years of areas where the poverty rate is 20% or more.
 - Emerging farmers.
- Local units of government may not prohibit the establishment or operation of a cannabis business that has been licensed by the state. Local units of government may adopt reasonable restrictions on the time, place, manner of the operations of a cannabis business.

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- All applicants applying for a cannabis business license, with the exception of a micro license, must include an attestation signed by a bona fide labor organization stating that the applicant has entered into a labor peace agreement.

KEY DATES:

- June 30, 2023: Gross receipts tax for cannabis products went into effect.
- July 1, 2023: Testing provisions for employers went into effect.
- August 1, 2023: Possession of cannabis becomes legal; home cultivation of cannabis becomes legal.
- Q3 and Q4 of 2023: Setting up of the Office of Cannabis Management (OCM).
- Late Q2/early Q3 of 2024: Likely timing for issuing of various cannabis business licenses commences.
- Q1 of 2025: Adult-use cannabis expected to be available for sale from state-licensed retail locations in Minnesota.

For more information on HF100, please contact [Bill Blauvelt](#), [Paul Cassidy](#), [Zane Gilmer](#) or the Stinson LLP contact with whom you regularly work.

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