

Marijuana in Montana

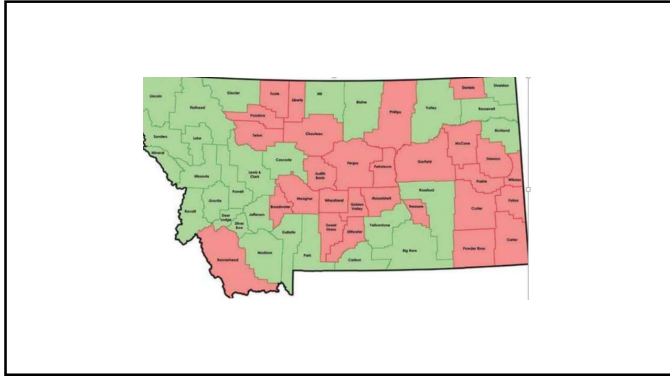
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Federal Statistics
18 States have legalized recreational use
Tax Revenue has exceeded 10.4 billion dollars
68% of Americans believe it should be legal (however only 18% admit to using it)

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Montana Statistics
January 2022 22.6 Million in sales which equates to 2.96 Million in tax revenue
Estimated 411 Dispensaries in 29 Counties
Average pay in Montana is \$66,603 annually compared to \$78,257 nationally (according to Zip Recruiter)
\$72.9 Million in cannabis products have been sold in Montana as of the Department of Revenue report released April 9, 2022

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Tax Distribution

The 20% Adult-Use Cannabis Tax and 4% Medical Marijuana tax are distributed at the state level:

- \$6 million to the Healing and Ending Addiction through Recovery and Treatment (HEART) account established in 16-12-122 MCA.
- After the HEART distribution, the remainder goes to:
 - 20% to Department of Fish, Wildlife, and parks to be used solely as funding for wildlife habitat
 - 4% to the state park account
 - 4% to trails and recreational facilities account
 - 4% to the nongame wildlife account
 - 3% or \$200,000, whichever is less, to the veterans and surviving spouses state special revenue account
 - \$150,000 to the board of crime control to fund crisis intervention team training
 - The remainder to the general fund

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Title Escrow Position on insuring/closing Cannabis Transactions:

Controlled Substance Act

Marijuana is a Schedule 1 substance under the Controlled Substances Act

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History - Controlled Substances Act of 1970

- Controlled Substances Act of 1970 – 21 USC §801
- §812 (c) defined Schedule I substances as those with
 - High potential for abuse
 - No currently accepted medical use
 - Lack of accepted safety for use
 - List includes hallucinogenic substances, including tetrahydrocannabinols (THC)
- §842 identifies Prohibited Acts
- §848 Defines Continuing Criminal Enterprise



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Controlled Substances Act of 1970

- “ ... it shall be unlawful for any person knowingly or intentionally to manufacture, distribute, or dispense, ... a controlled substance.” 21 USC §841(a)
- The penalty for 1000 kilograms of substance with detectable marijuana, or 1000 or more plants, is not less than 10 years plus fines up to \$10 million for individuals and \$50 million for others
- “Any person who attempts or conspires to commit any offense defined in this subchapter shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy.” 21 USC §846



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Some Reasons Why Handling a Cannabis-Related Transaction Might be a Problem

- “Anyone in any state who possesses, distributes, or manufactures marijuana for medical or recreational purposes (or attempts or conspires to do so) is committing a federal crime. The federal government can prosecute such offenses for up to five years after they occur.”
- United States v. McIntosh (9th Cir. Court of Appeals)



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Congressional Limits on Funding Prosecution

- **Limited scope of protection**
 - Rohrabacher-Farr Amendment (To the Omnibus Appropriations Bill of 2017)
 - prohibits the U.S. Department of Justice from spending money to interfere with implementation of state medical marijuana laws
 - no change in status of marijuana as Schedule I drug under Controlled Substances Act
 - remains in effect pursuant to budget resolutions



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Federal Developments – STATES Act

Strengthening the Tenth Amendment Through Entrusting States

- S. 3032 - Introduced in June 2018 by Sens. Warren, Gardner, Paul, Cortez-Mastro, Booker, Murkowski, Sullivan and Bennet
- Proposed amending the Controlled Substances Act by removing marijuana from Schedule I for any state that had enacted a law permitting manufacture, production, possession, distribution, dispensation, administration, or delivery of cannabis products
- Bill was never reported out of the Judiciary Committee



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Federal Developments – CLAIM Act

Clarifying Law Around Insurance of Marijuana

Re-introduced as HR 2068 on March 18, 2021, again with bipartisan support

Provisions would:

- Prohibit penalizing or discouraging an insurer from providing coverage to a state-sanctioned and regulated cannabis business, or an associated business (such as an lawyer or landlord providing services to a legal cannabis business)
- Prohibit the termination or limitation of an insurer's policies solely because the insurer has engaged in the business of insurance in connection with a cannabis-related business
- Prohibit recommending, incentivizing, or encouraging an insurer not to engage in the business of insurance in connection with a policyholder, or downgrade or cancel the insurance offered to a cannabis or cannabis-related business
- Prohibit the federal government from taking any adverse or corrective supervisory action on a policy to an owner or operator of a cannabis-related business or real estate or equipment that is leased to a cannabis-related business, solely because the owner or operator is engaged with a cannabis or cannabis-related business
- Protect employees of an insurer from any liability solely for engaging in the business of insurance with a cannabis or cannabis-related business



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Federal Developments – SAFE Act

Secure and Fair Enforcement Banking Act of 2021

- H.R. 1996 - Passed out of the House of Representatives with significant bipartisan support (180 cosponsors) on April 19, 2021, and is now pending in the Senate. A companion bill has also been introduced in the Senate, S. 910 with the same title, on March 23, 2021, and it has 39 cosponsors.
- Proposes creation of a safe harbor for depository institutions providing financial services to state authorized cannabis businesses
- Amended to also create a safe harbor for insurers who are engaged in the business of insurance
- Includes a safe harbor for an entity that performs a financial service “for or in association with a depository institution”
- Expands safe harbor to ancillary businesses by declaring that proceeds from a transaction with a cannabis related legitimate business or service provider will not be considered as proceeds from an unlawful activity
- Removes the penalty of forfeiture for any depository institution that has a legal interest in the property of a cannabis-related legitimate business or service provider as collateral for a loan



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Where Things Stand Today

Many Underwriters are still wary of the downside risk of insuring cannabis-related facilities.

There are considerations that make it attractive:

- Great opportunity to develop market share
- Establish reputation as an innovator and collaborator
- Establish name recognition through early adoption of an industry that’s destined to grow

Risk management strategy

- Special Purpose Exception
- No CPL for ongoing operations
- Discourage agents from providing escrow services for ongoing operations
- Centralized supervision and review of all files (a corporate Drug Czar)



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Westcor Underwriting Guidelines

1. Property located in a state where state law permits growing, processing and dispensing cannabis products.
2. Policy amount of \$20 million or less.
3. Standard Coverage only.
4. No CPL.
5. Escrow to be handled by outside attorney or escrow office.
6. Submit with Cannabis Approval Request Form
7. Approval by corporate underwriting counsel.



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Thank You!
