

Missouri, USA

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Greensfelder, Hemker & Gale

www.greensfelder.com

AUTHOR



Zackary G. Smith

St. Louis, Missouri

Tel +1-314 345-4741

zsmith@greensfelder.com

Overview

On November 6, 2018, the citizens of Missouri voted to approve Missouri Constitutional Amendment 2 as Article XIV of the Missouri Constitution (“Article XIV”), which provides a right to access medical use marijuana. Article XIV granted the Department of Health and Senior Services (“DHSS”) the right to license and regulate medical marijuana in Missouri. The DHSS began accepting licensing applications for cultivation, infused-products manufacturing, dispensary, laboratory testing, seed-to-sale, and transportation facilities on August 3, 2019.

Article XIV and DHSS Rules are silent regarding employment protection for medical marijuana patients. As a result, Missouri Senator David Sater proposed SB 610, which permits an employer’s termination of an employee who fails a random drug test for medical marijuana irrespective of whether the employee’s physician prescribed the medical marijuana for a valid ailment. SB 610 further allows an employer to refuse employment to any person who fails a pre-employment drug test for valid medical marijuana use. SB 610 passed through the Missouri Senate’s Small Business and Industry Committee in February of 2020.

Currently, the Missouri Department of Agriculture regulates the production and sales of viable industrial hemp. Missouri does not have an acre minimum or maximum limit to grow industrial hemp. Missouri began accepting Registered Producer and Agricultural Hemp Propagule and Seed Permits on January 2, 2020.

Medical Marijuana

Article XIV is codified in Title 19, Division 30 Chapter 95 of Missouri's Code of State Regulations (Mo. Code Regs. Ann. tit. 19, §§ 30-95.010-110).

Article XIV allows physicians to prescribe medical marijuana for a wide variety of qualifying medical conditions including cancer, epilepsy, glaucoma, migraines, HIV/AIDS, any terminal illness, a chronic medical condition causing severe pain, a chronic medical condition that is normally treated with a prescription that could lead to psychological or physical dependence, or the treatment of a medical condition in the professional judgment of a physician.

To receive a medical marijuana patient identification card a qualifying patient must complete a Patient/Caregiver Application with the DHSS. There is a \$25.00 fee to submit the patient application with an additional \$100.00 fee if the patient desires to cultivate their own marijuana. A patient or caregiver may purchase up to four (4) ounces of dried marijuana in a 30-day period and may only possess a 60-day supply of dried marijuana. A patient or caregiver may cultivate up to six (6) flowering plants and only possess a 90-day supply of cultivated, dried marijuana. Violation of any provision of Article XIV could result in the revocation of the patient's medical marijuana identification card. If a cardholder is found to be in possession of marijuana over the legal limit, the identification card may be revoked for up to one year. If a cardholder is convicted or pleads guilty of trafficking illegal drugs in Missouri or any other state, the identification card will be permanently revoked.

Article XIV also provides regulations for cultivation, infused-products manufacturing, dispensary, testing, seed-to-sale, and transportation facilities. Some of the key regulations include: 1) requiring the majority owner to be a resident of Missouri for at least one year prior to applying for a facility license; 2) requiring all facilities, except for transportation facilities, to be kept 1000 feet away from elementary, secondary or pre-schools and churches; 3) requiring all facility agents including owners, officers, managers, contractors, employees, and other support staff to obtain an agent identification card and keep the card and a government-issued photo ID accessible while performing work on behalf of the facility; 4) requiring each facility to use a DHSS certified facility to track medical marijuana from seed until it is purchased; and 5), requiring each facility to display its license at all times within 20 feet of the entrance.

Each facility must install security equipment to prevent and detect unauthorized entrance into limited access areas. Also, each facility must have video coverage of all entrances and exits to the facility, including windows, perimeter, and exterior areas. Video coverage is also mandated for at least 20 ft. of space around the perimeter, point of sale location, vaults or safes, and all medical

marijuana storage from at least two angles. Facilities must also have video cameras capable of recording in a resolution of at least 1920 x 1080 pixels at a rate of at least 15 frames per second, a printer capable of producing a clear still photo from every camera, and at least one call-up monitor.

The DHSS was required to award no less than 60 cultivation, 86 infused-products manufacturing, 10 laboratory testing, and 192 dispensary licenses. Each applicant paid a nonrefundable application fee of \$10,000 (cultivation facility), \$6,000 (dispensary and infused-products manufacturing facilities), \$5,000 (laboratory testing facility), and \$5,000 (transportation facility). As of April 2020, the DHSS has issued all facility licenses.

Missouri has not provided any discrimination protections for qualified patients in employment. If passed, Senator Sater's proposed bill would single out medical marijuana from every other prescription ordered by an employee's physician. Under SB 610 an employer may conduct both pre-employment and random drug testing of employees and terminate any employee who tests positive for marijuana. The termination would be valid if SB 610 is enacted since SB 610 explicitly treats medical marijuana differently than any other prescribed treatment method, and having a valid qualifying patient identification card would not remove a positive marijuana test from the test results.

Hemp

Missouri's Industrial Hemp Program is currently operating under the United States Department of Agriculture's one-year extension and will not submit an official plan until the end of 2020.

Missouri issued emergency rules for the 2020 hemp growing season. The emergency rules remove the acreage limit under the pilot program of 2000 acres statewide and the individual grow limit of between ten and 40 acres.

Under the emergency rules, to produce viable industrial hemp an entity must apply for a producer registration. To sell, distribute, or offer for sale any viable hemp, an entity must apply for an agricultural hemp propagule and seed permit. Each applicant must complete an approved application form and undergo a state and federal fingerprint and criminal background check. Third-party commercial transportation of viable industrial hemp is exempt from the registration and permit requirements.

A separate registration or permit is required for each noncontiguous parcel of land where viable industrial hemp will be produced, sold, distributed, or offered for sale. Parcels of land that are not owned or rented by the person applying for the registration or permit are not permitted. Each applicant must

pay a fee of \$750 for each registration or permit application. If accepted the registration and permit are valid for three years. At the beginning of the second and third year, registered producers and permit holders must timely pay an annual fee of \$750. All fees are nonrefundable.

Producers and permit holders must keep and maintain a monitoring system related to their operations as outlined in the regulations. Within 15 days before harvest, the industrial hemp is tested for its levels of delta-9 THC. To be considered industrial hemp the delta-9 THC level must be 0.3% or less. If the harvest tests outside the acceptable delta-9 THC level, the registered producer may request in writing that the laboratory retest the batch. If the retest exceeds the allowable limit or the registered producer fails to request a retest, the Department of Agriculture will order the destruction of the crop. Destruction must be completed within 15 days of receipt of the Department's order. The Missouri State Highway Patrol or local law enforcement must complete certification of the crop destruction.

Missouri's Department of Agriculture anticipates a change to Missouri's Industrial Hemp Program by the end of 2020.

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.