

Public Health Authorities of State and Local Governments

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Overview of Presentation

- Origins of state authority to regulate intoxicating substances
- Variation in state recreational cannabis policymaking
- State policies to limit local cannabis policymaking
- Implications for research

U.S. States have broad – but not unlimited - authority to enact policies to protect public health and safety

- Unlike the specifically enumerated powers allocated to the federal government, states have general police power
 - “Conspicuous examples” include policies to protect “[p]ublic safety, public health, peace and quiet, law and order” (*Berman v. Parker*, 348 U.S. 26 (1954))
- Through the start of the 20th century, criminal law largely (although not exclusively) existed on the state level
- Public health policymaking “once resided exclusively in state and local governments” (Hodge 1997), although the federal government has played an increasingly important role over time

Federal government's myriad role in public health

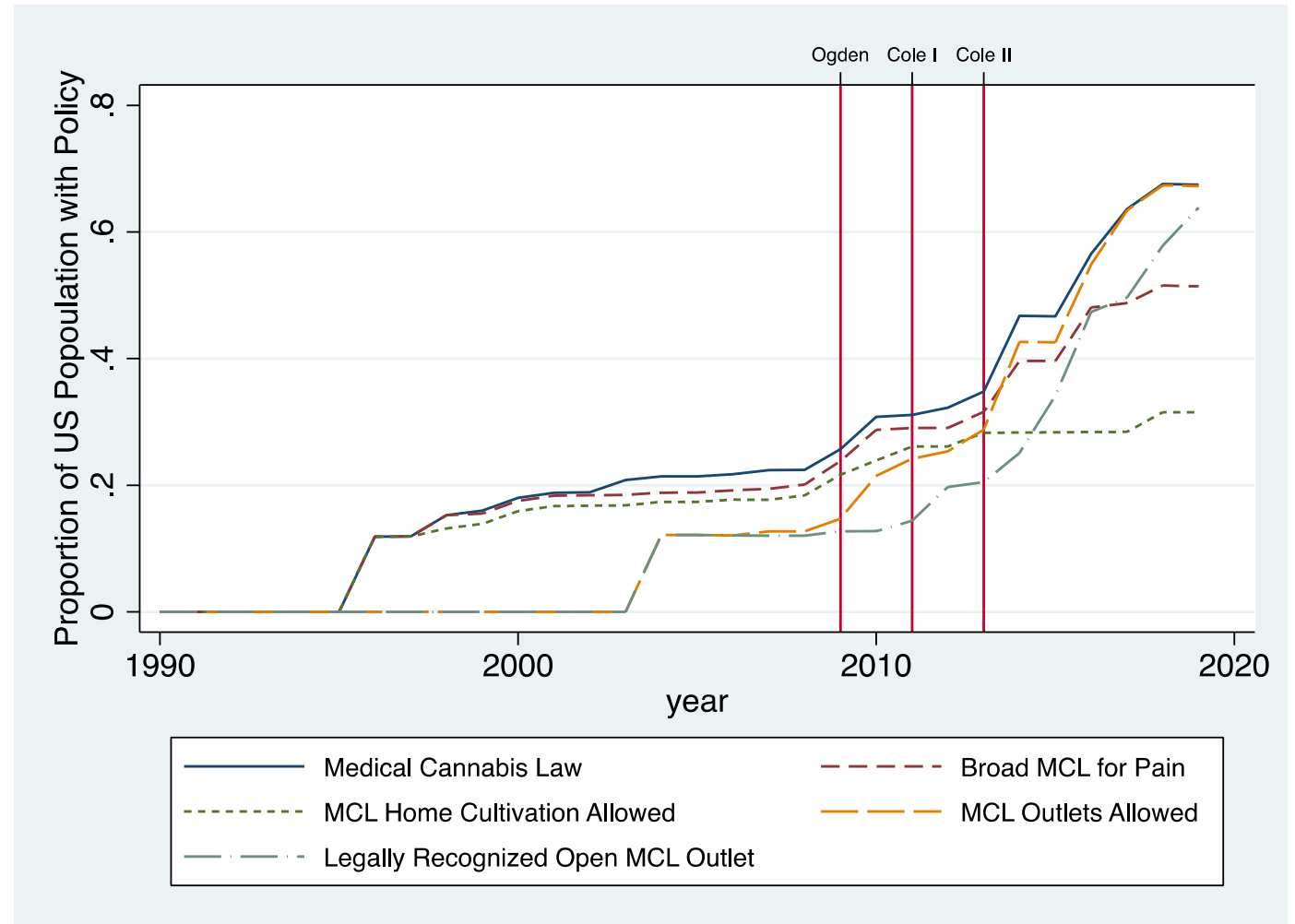


The federal government has several mechanisms for shaping state policymaking

- Can displace state and local law through **preemption**
 - Example: Protection of Lawful Commerce in Arms Act preempts state and local laws from being used to sue gun manufacturers for use of their products by third parties
 - Federal government can also use savings clauses to explicitly allow state policymaking
- Can **incentivize** state and local activities
 - Example: use of federal highway funds to encourage states to increase minimum legal drinking age to 21, upheld as Constitutional in *South Dakota v. Dole*, 483 U.S. 203 (1987)
- But the federal government is limited in their ability to mandate state actors to take certain actions under the anti-commandeering rule (Mikos 2009)

Federal policy has shaped state medical cannabis laws...

- Cannabis is currently a Schedule I substance under federal law, meaning it has no accepted medical use
 - This may change soon!
- Congress prevents DOJ funding from being used to prevent implementation of medical cannabis laws

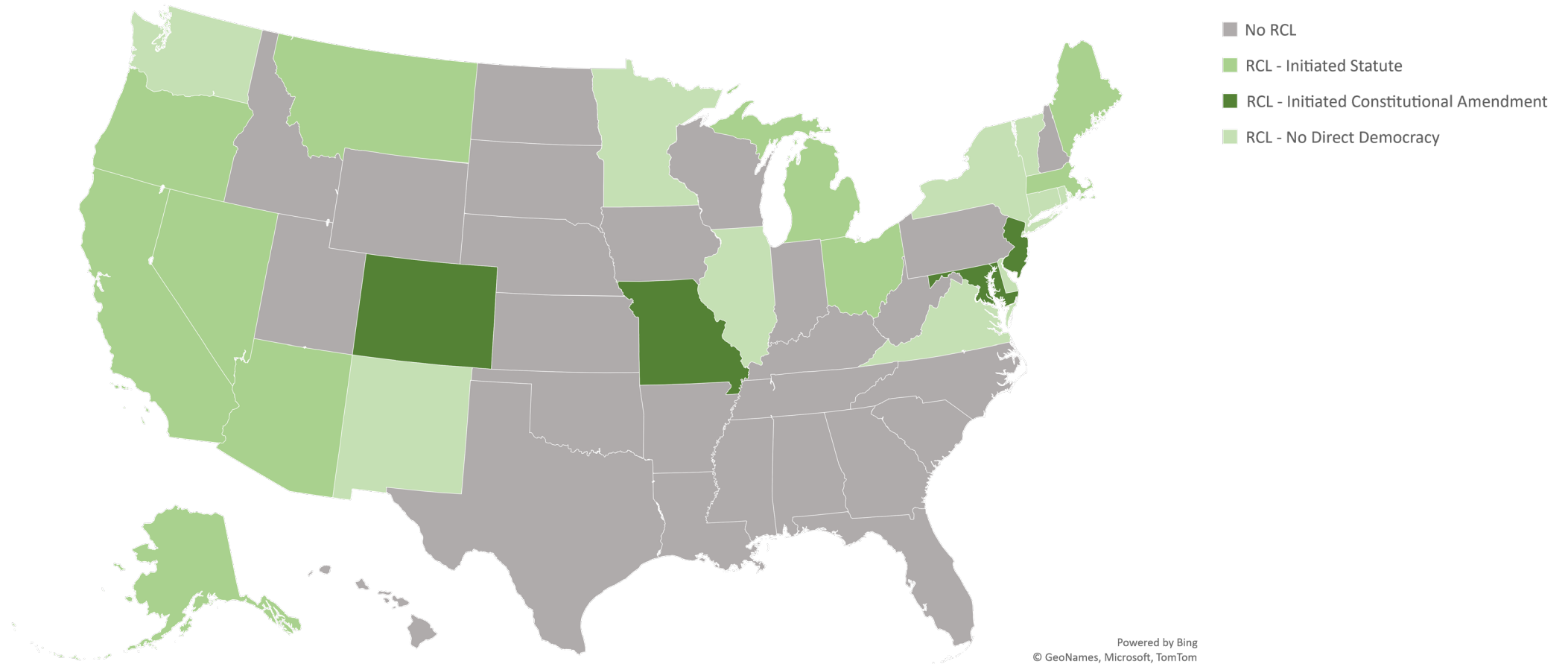


...but the impact on recreational cannabis laws (and associated public health effects) is still uncertain

- States have broad policymaking authority to make policy that could potentially impact access to cannabis (and consequently health impacts)
 - Recognizing what policies have been made is a critical first step towards identifying policies that work
- Especially important as effects of known provisions can be distorted by unobserved provisions



States may also be limited by the legal mechanism through which they adopted cannabis laws



What have states done with their ability to make cannabis policy?

- States have experimented extensively with mechanisms for regulating cannabis – although some promising mechanisms have not been used
- Cannabis Policy Scale (Blanchette *et al.*) – developed through a Delphi process involving a group of cannabis areas – identified specific cannabis policy topic areas, including:
 - Cultivators and manufacturers
 - Physical availability
 - Retail operations
 - Product design
 - Packaging and labeling
 - Possession
 - Youth access

Cultivators and Manufacturers

Highlighted Provisions

- Cap on size of each growing operation
- Limit on number of cultivation and manufacturing licenses
- Vertical integration prohibited

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(k) A cultivation center may not contain more than 210,000 square feet of canopy space for plants in the flowering stage for cultivation of adult use cannabis as provided in this Act.

Illinois, 410 ILCS 705/20-30(k)

(1) A marihuana grower license authorizes the marihuana grower to cultivate not more than the following number of marihuana plants under the indicated license class for each marihuana grower license the marihuana grower holds in that class:

- (a) Class A -" 100 marihuana plants.
- (b) Class B -" 500 marihuana plants.
- (c) Class C -" 2,000 marihuana plants.

Michigan, Mich. Admin. Code R. 420.102(1)

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Not widely used policy mechanism

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Cannabis producers, processors—No direct or indirect financial interest in licensed cannabis retailers.

Neither a licensed cannabis producer nor a licensed cannabis processor shall have a direct or indirect financial interest in a licensed cannabis retailer.

Washington, RCW 69.50.331

Physical Availability

Highlighted Provisions

- Home cultivation allowed
- Recreational outlets allowed and active
- Social consumption sites allowed
- Localities are allowed to prohibit or regulate recreational outlets

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(b) Cultivating cannabis for personal use is subject to the following limitations:

(1) An Illinois resident 21 years of age or older who is a registered qualifying patient under the Compassionate Use of Medical Cannabis Program Act may cultivate cannabis plants, with a limit of 5 plants that are more than 5 inches tall, per household without a cultivation center or craft grower license. In this Section, "resident" means a person who has been domiciled in the State of Illinois for a period of 30 days before cultivation.

Illinois, 410 ILCS 705/10-5

Physical Availability

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Retail cannabis sales begin in Vermont, new dispensary opens in Middlebury



Photo by Nadia Hare | The Middlebury Campus

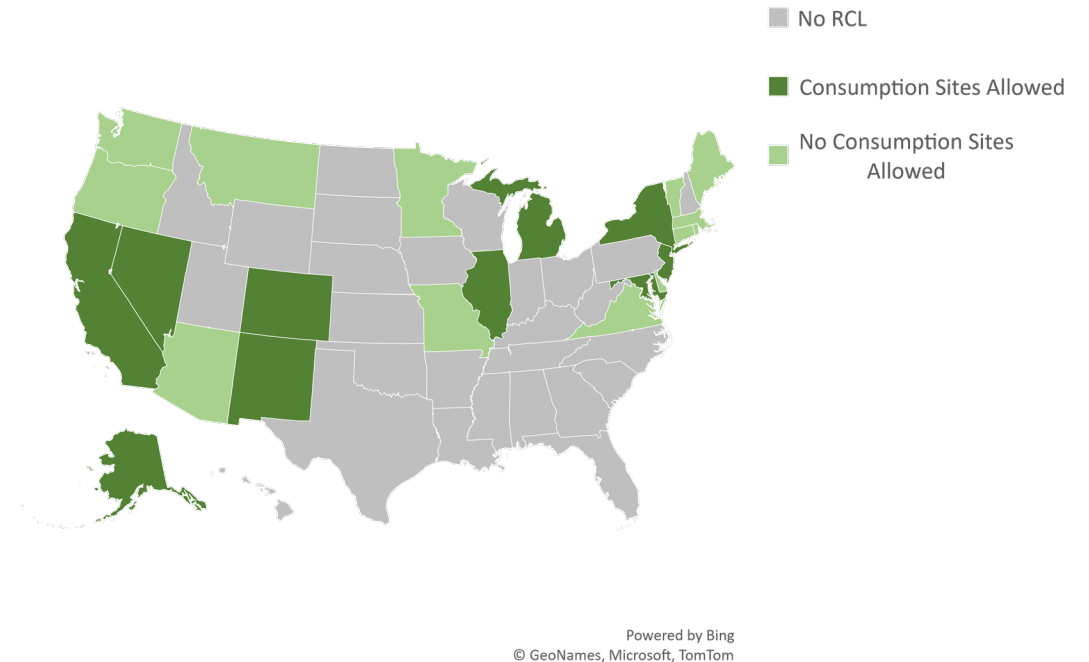
By [Ben Wagner](#)

October 13, 2022 | 6:00am EDT

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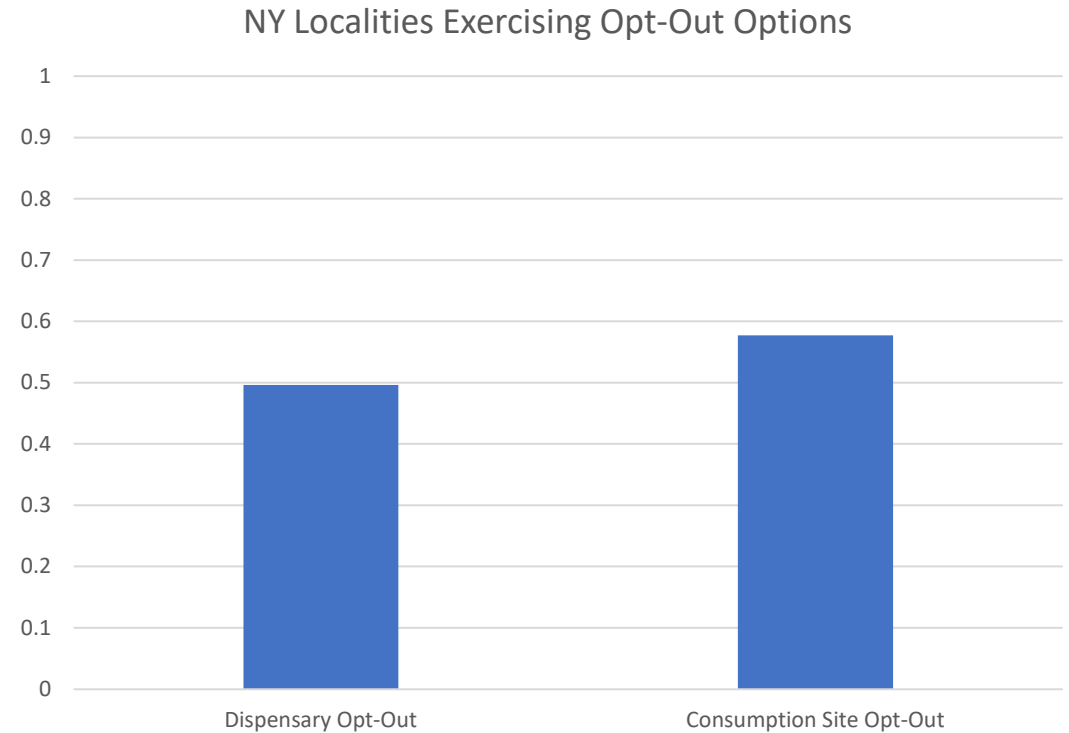
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Data from Rockefeller Institute

Retail Operations

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- Application and licensing fees
- Non-storefront retailers allowed
- Server training/Hours of operation

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(a) A retail marijuana store may not sell to any one person per day

- (1) more than one ounce of usable marijuana;
- (2) more than seven grams of marijuana concentrate for inhalation, or
- (3) more than 5,600 milligrams of THC in combined sales of marijuana and marijuana products.

Alaska, 3 AAC 306.355

NAC 453D.562 Prohibition on sale that exceeds maximum usable quantity of marijuana. ([NRS 453D.200](#)) A retail marijuana store shall not sell to any consumer an amount of marijuana or marijuana products which exceeds:

1. One ounce of usable marijuana other than concentrated marijuana;
2. One-eighth ounce of concentrated marijuana containing not more than 3,500 milligrams of THC; and
3. One-eighth ounce of concentrated marijuana or 3,500 milligrams of THC contained within one or more edible marijuana products.

(Added to NAC by Dep't of Taxation by R092-17, eff. 2-27-2018)

Nevada, NAC 435D.562

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Gross annual revenue	Application fee	License fee
Less than or equal to \$500,000	\$1,000	\$2,500
\$500,001 to \$750,000	\$1,000	\$5,500
\$750,001 to \$1,000,000	\$1,000	\$7,500
\$1,000,001 to \$1,500,000	\$1,000	\$11,000
\$1,500,001 to \$2,000,000	\$1,000	\$14,500
\$2,000,001 to \$3,000,000	\$1,000	\$22,500
\$3,000,001 to \$4,000,000	\$1,000	\$30,500
\$4,000,001 to \$5,000,000	\$1,000	\$38,500
\$5,000,001 to \$6,000,000	\$1,000	\$46,500
\$6,000,001 to \$7,500,000	\$1,000	\$57,000
More than \$7.5 million	\$1,000	\$96,000

California Department of
Cannabis Control

Retail Operations

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- Application and licensing fees
- Non-storefront retailers allowed
- Server training/Hours of operation

(a) A non-storefront retailer licensee shall be authorized to conduct retail sales exclusively by delivery as defined in Business and Professions Code section 26001(o).

California, Cal. Code Regs. tit. 4 § 15414

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(2) Marijuana Establishment Agent Training.

(a) Marijuana Establishments, including Independent Testing Laboratories, shall ensure that all Marijuana Establishment Agents complete minimum training requirements prior to performing job functions.

1. At a minimum, Marijuana Establishment Agents shall receive a total of eight hours of training annually. The eight-hour total training requirement shall be tailored to the roles and responsibilities of the job function of each Marijuana Establishment Agent.

2. A minimum of four hours of training shall be from Responsible Vendor Training Program courses established under 935 CMR 500.105(2)(b). Any additional RVT hours over the four-hour RVT requirement may count toward the eight-hour total training requirement.

Massachusetts, 935 CMR 505.105(2)

Product Design

Highlighted Provisions

- Restrictions on high potency cannabis products
- Restrictions on THC quantity per package for edibles/serving size
- Ban on flavored cannabis vaping products
- Ban on mixing alcohol or nicotine with cannabis

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§ 868. Prohibited products

(a) The following are prohibited products and may not be cultivated, produced, or sold pursuant to a license issued under this chapter:

(1) cannabis flower with greater than 30 percent tetrahydrocannabinol;

Vermont, 7 VSA § 868

Product Design

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A marijuana product manufacturing facility may not prepare a marijuana product with potency levels exceeding the following, as tested in compliance with [3 AAC 306.645](#):

- (1) for a single serving of a marijuana product, not more than 10 milligrams of active tetrahydrocannabinol (THC) or Delta 9;
- (2) in a single packaged unit of a marijuana product to be eaten or swallowed, not more than 10 servings or 100 milligrams of active THC or Delta 9; the THC content must be homogenous, or evenly distributed throughout the marijuana-infused product.

Alaska, 3 AAC 306.560



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- Ban on flavored cannabis vaping products
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Vermont prohibits “flavored oil cannabis products sold prepackaged for use with battery- powered devices and any cannabis flower that contains characterizing flavor that is not naturally occurring in the cannabis”

Vermont, 7 VSA 868(a)(2)

Product Design

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Vermont also prohibits “cannabis products that contain delta-9 tetrahydrocannabinol and nicotine or alcohol beverages”

Vermont, 7 VSA 868(a)(3)

Packaging and Labeling

Highlighted Provisions

- Plain packaging
- Labeling cannabis cartridges and edibles
- Agency approval of cannabis packaging and labeling

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(b) Limits on Packaging Design. Packaging for Marijuana or Marijuana Products sold or displayed for Consumers, including any label or imprint affixed to any packaging containing Marijuana, Marijuana Products or any exit packages, may not be attractive minors. Packaging is explicitly prohibited from:

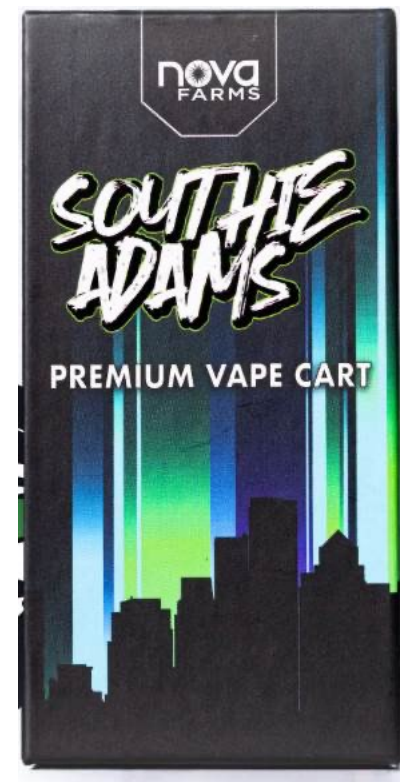
1. Using bright colors, defined as colors that are "neon" in appearance;
2. Imitating or having a semblance to any existing branded consumer products, including foods and Beverages, that do not contain marijuana;
3. Featuring cartoons;
4. Featuring a design, brand or name that resembles a non-cannabis consumer product of the type that is typically marketed to minors;
5. Featuring symbols or celebrities that are commonly used to market products to minors;
6. Featuring images of minors; and
7. Featuring words that refer to products that are commonly associated with minors or marketed to minors.

Massachusetts, 935 CMR 500.105(6)(b)

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(1) Cannabis-infused products for oral ingestion sold at retail must be labeled on the principal display panel or front of the product package with the "not for kids" warning symbol ("warning symbol") created and made available in digital form to licensees without cost by the Washington poison center (WPC). The warning symbol may be found on the WPC's website.

Washington, WAC 314-55-105



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PRE-APPROVAL PROCESS

- Licensees, registrants, and industrial hemp certificate holders who are packaging marijuana or hemp items for ultimate sale to a consumer, patient, or designated caregiver must have the packages and labels reviewed and approved by the OLCC. This applies to medical, recreational, and hemp products.
- Persons submitting package and label applications must receive approval from the OLCC before selling a marijuana or hemp item to a consumer or patient.

Oregon Liquor & Cannabis Commission
Packaging and Labeling Guide

Possession Limits

Notwithstanding any other provision of law, except as otherwise provided in this chapter, the following acts, by persons 21 years of age or older, are lawful and are not criminal or civil offenses under state law or the law of any political subdivision of the state or a basis for seizure or forfeiture of assets under state law:

(1) possessing, using, displaying, purchasing, or transporting marijuana accessories or one ounce or less of marijuana;

Alaska, AS 17.38.010

1. Notwithstanding any other law or provision of this act, and except as otherwise provided in section 4 of this act, the following acts by a person 21 years of age or older are not unlawful, are not an offense, are not grounds for seizing or forfeiting property, are not grounds for arrest, prosecution, or penalty in any manner, are not grounds for search or inspection, and are not grounds to deny any other right or privilege:

(a) except as permitted by subdivision (b), possessing, using or consuming, internally possessing, purchasing, transporting, or processing 2.5 ounces or less of marihuana, except that not more than 15 grams of marihuana may be in the form of marihuana concentrate;

Michigan, MCLS § 33.27955(5)

Youth Access



21+



COLORADO
Department of Revenue
Marijuana Enforcement Division

August 9, 2022

INDUSTRY-WIDE BULLETIN 22-04

RE: Preventing Underage Sales

The Marijuana Enforcement Division (MED) is issuing this Industry Bulletin to remind Licensees to remain diligent in their daily operations and measures taken to prevent unauthorized access to Regulated Marijuana.

To date this year, the MED has conducted over 190 underage compliance checks utilizing underage operatives. Among underage compliance checks completed, four (4) businesses have made sales to the underage operative. This demonstrates a 98% compliance rate. Unauthorized sale of Regulated Marijuana to an individual under the age of 21 is considered a license violation affecting public safety. Businesses must remain vigilant in establishing internal measures to prevent underage access, and as the MED continues to monitor licensee compliance, it will evaluate business practices licensees have adopted to prevent unauthorized/underage sales.

How is this variation represented in research?

- Most common approach is to represent cannabis legalization through a handful of binary variables
 - Some variation in relevant date: enactment date, effective date, available legal supply
- Some of the literature relies on direct measures of the market rather than legal variables (including outlet density) (e.g., Pedersen *et al.* 2021, Everson *et al.* 2019)
- A few papers have developed scales or typologies to provide a more nuanced measure of cannabis law (Chapman *et al.* 2016, Neely and Richardson 2022, Blanchette *et al.* 2022)

Local governments also have a number of mechanisms available to regulate recreational cannabis in their jurisdictions

- In particular, local governments often exercise a large degree of control in how land is used within their jurisdiction through zoning law
- But regulations in place may cover more than just location

1. **Marijuana Dispensary.** As provided in Section 11.3.9.F.2, a marijuana dispensary does not include a Marijuana Establishment. To the fullest extent allowable by law, the operation of a Marijuana Establishment is prohibited in the City of Tucson except where authorized for a dual licensee who:

- i) Operates both a nonprofit medical marijuana dispensary and marijuana establishment cooperatively in a shared location; and
- ii) Has not forfeited or terminated the nonprofit medical marijuana dispensary registration from the Department.

- a. The total maximum floor area of a marijuana dispensary shall not exceed 10,000 square feet.
- b. A marijuana dispensary shall be located in a permanent building and shall not be located in a trailer, cargo container, mobile or modular unit, mobile home, recreational vehicle, or other motor vehicle. "Building" shall have the same meaning provided in Section 11.4.3, *Definitions-B*.
- c. The permitted hours of operation of a marijuana dispensary are from 7:00 a.m. to 10:00 p.m.
- d. A marijuana dispensary shall have an interior customer waiting area equal to a minimum of 25% of the sales floor area. For purposes of this section, sales floor area is defined as any area open to customers for the sale of products. This does not include waiting areas, areas for production and storing of products, or offices.
- e. A marijuana dispensary shall not have outdoor seating areas.
- f. A marijuana dispensary may deliver marijuana, once rules permitting and regulating delivery are approved by the AZDHS and become effective, and shall comply with state law and all lawful, applicable health regulations, including those promulgated by the Arizona Department of Health Services and any other authorized regulatory agency.

Tucson, Ordinance No. 11828 (2021)

But states can limit (or explicitly allow) local policymaking

- Just as the federal government can preempt state and local laws, state governments can preempt local laws
- Some states include clauses that allow limited or unlimited local policymaking in their recreational cannabis laws

26200. (a) (1) Except as set forth in the Medicinal Cannabis Patients' Right of Access Act (Chapter 26 (commencing with Section 26320)), this division shall not be interpreted to supersede or limit the authority of a local jurisdiction to adopt and enforce local ordinances to regulate businesses licensed under this division, including, but not limited to, local zoning and land use requirements, business license requirements, and requirements related to reducing exposure to secondhand smoke, or to completely prohibit the establishment or operation of one or more types of businesses licensed under this division within the local jurisdiction.

California, CA Bus. & Prof. Code § 26200

Implications for Understanding Health Impacts

- Clearer accounting for state recreational cannabis laws will lead to a better understanding of their health impacts
 - Better identification of state laws
 - Avoid confounding
- Inform regulation on the state (and potentially federal) level by identifying impact of different provisions on public health

Thank you!!!



Special Thanks to:

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Questions/Comments:

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