



January 11, 2022

## **BACKGROUND AND REGIONAL REVIEW OF MEDICAL MARIJUANA LAWS**

According to the National Conference of State Legislatures (NCSL), Kansas is one of three states<sup>1</sup> without public access to medical marijuana; recreational marijuana; or low-THC, high-cannabidiol (high-CBD) products.<sup>2</sup> However, several bills have been introduced in recent years to legalize medical or recreational marijuana use in Kansas. In 2021, House Sub. for SB 158, which would legalize medical marijuana in Kansas, was passed by the House of Representatives, and it currently resides in the Senate Committee on Federal and State Affairs. This memorandum reviews marijuana laws at the federal and state level, including laws of other states near Kansas.

### **Marijuana Law s at the Federal Level**

Marijuana possession, production, and usage was minimally regulated in the United States until passage of the Marihuana Tax Act in 1937. The statute effectively criminalized marijuana, restricting possession of the drug to individuals who paid an excise tax for certain authorized medical and industrial uses. The Supreme Court, in its 1969 decision *Leary v. United States*, declared the Marihuana Tax Act unconstitutional due to Fifth Amendment concerns.

Congress responded by repealing the Marihuana Tax Act and enacting the Comprehensive Drug Abuse Prevention and Control Act (Act). The Act repealed nearly all existing federal substance control laws and, for the first time, imposed a unified framework of federal controlled substance regulations. Title II of the Act is known as the Controlled Substances Act (CSA), which regulates certain drugs that are found to pose a risk of abuse and dependence. The CSA recognizes two competing interests related to drug regulation: on one hand, many drugs “have a useful and legitimate medical purpose and are necessary to maintain the health and general welfare of the American people.” On the other hand, “illegal importation, manufacture, distribution, and possession and improper use of controlled substances have a substantial and detrimental effect on the health and general welfare of the American people.”

The CSA established five categories of controlled substances, referred to as Schedules I through V. A lower schedule number corresponds to greater restrictions, so controlled substances in Schedule I are subject to the most stringent controls, while substances in Schedule V are subject to the least stringent controls.

---

1 The states of Idaho, Kansas, and Nebraska are listed as not allowing access to such products.

2 <https://www.ncsl.org/research/health/state-medical-marijuana-laws.aspx>. Note: THC is the primary psychoactive compound in marijuana.

Scheduling <sup>3</sup>	Abuse Potential	Medical Use	Safety/Dependence	Examples
Schedule I	High	Not currently accepted	Lack of accepted safety for use of the substance under medical supervision	<b>Marijuana</b> , heroin, LSD, MDMA, peyote
Schedule II	High	Currently accepted	Abuse may lead to severe psychological or physical dependence	Cocaine, methamphetamine, oxycodone, fentanyl, Adderall
Schedule III	Less than the substances in Schedules I and II	Currently accepted	Abuse may lead to moderate or low physical dependence or high psychological dependence	Ketamine, anabolic steroids, testosterone, Tylenol with codeine
Schedule IV	Low potential for abuse relative to the substances in Schedule III	Currently accepted	Abuse may lead to limited physical dependence or psychological dependence relative to the substances in Schedule III	Xanax, Valium, Ambien
Schedule V	Low potential for abuse relative to the substances in Schedule IV	Currently accepted	Abuse may lead to limited physical dependence or psychological dependence relative to the substances in Schedule IV	Cough medicines with codeine, certain antidiarrheal medicines, FDA approved drugs containing CBD

Because Schedule I drugs, including marijuana, are considered to have no accepted medical use, it is only legal to produce, dispense, and possess those substances in the context of federally approved scientific studies.

### Federal and State Policy Gap

An area of legal consideration for Congress and the Kansas Legislature is the growing divergence between federal and state law in the area of marijuana regulation. In 1996, California became the first state to legalize medical marijuana. Today, medical marijuana use is legal in 36 states and the District of Columbia. In 2012, Colorado and Washington became the first two states to legalize the recreational use of marijuana. Currently, 18 states have legalized the recreational use of marijuana, with several states having done so in 2021.

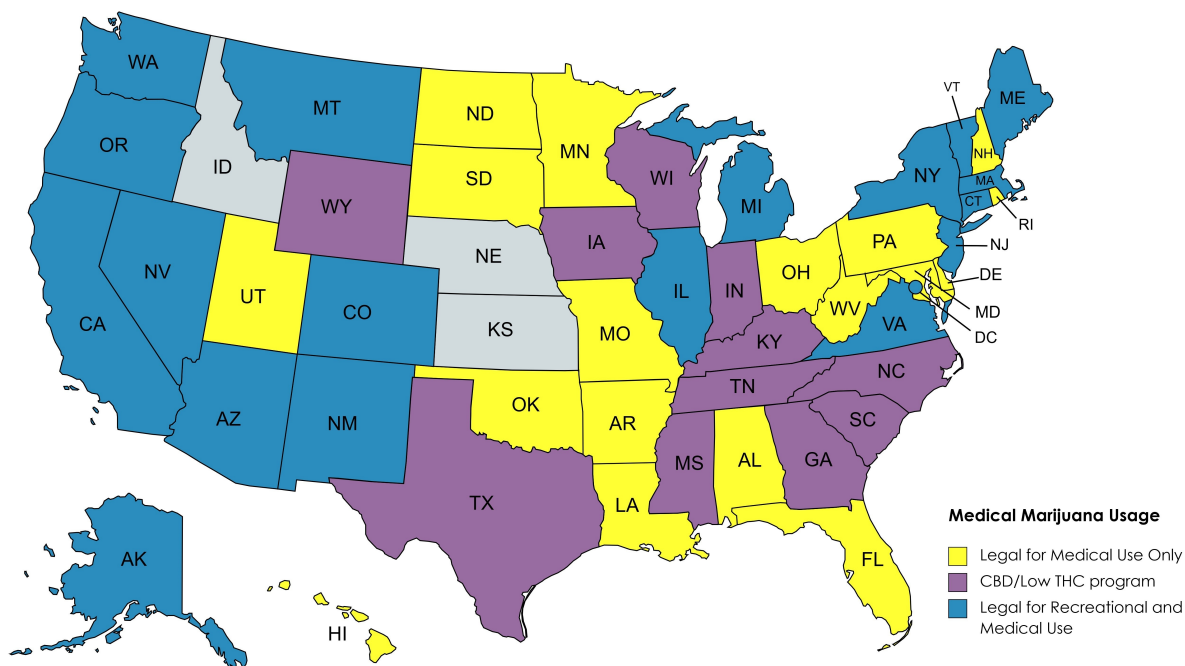
<sup>3</sup> <https://sgp.fas.org/crs/misc/R45948.pdf>

## State Medical Marijuana Laws

Laws in the 36 states, and the District of Columbia, that legalize medical marijuana programs generally provide the following:

- Protection from criminal penalties for using marijuana for a medical purpose;
- Access to marijuana through home cultivation, dispensaries, or some other system that is likely to be implemented;
- Allowance for a variety of strains, *i.e.* different botanical types of marijuana; and
- Allowance for either smoking or vaporization of marijuana products, plant materials, or extract.

Another 11 states allow for the use of low-THC, high-CBD products for specific medical conditions, or provide a legal defense for their possession. The states of Florida, Missouri, Oklahoma, Utah, and Virginia have recently enacted comprehensive medical marijuana laws after previously legalizing the use of low-THC products. In Mississippi, a successful ballot initiative in 2020 to legalize medical use of marijuana was overturned in 2021 by the Mississippi Supreme Court.



## Recreational Marijuana Use at the State Level

A total of 18 states, and the District of Columbia, have legalized the recreational use of marijuana. Connecticut, Illinois, New Jersey, New Mexico, New York, Vermont, and Virginia

legalized recreational use of marijuana through the legislative process, while Alaska, Arizona, California, Colorado, Maine, Massachusetts, Michigan, Montana, Nevada, Oregon, and Washington legalized recreational use through ballot measure. In South Dakota, a successful ballot initiative in 2020 to legalize recreational use of marijuana was ruled unconstitutional by a Circuit Judge in 2021, and the decision was upheld by the South Dakota Supreme Court.

#### Regional Medical Marijuana/Low-THC Program Laws<sup>4</sup>

State	Authorization	Patient Registry or ID Cards	Allows Dispensaries	Specifies Conditions	Recognizes Patients from Other States	Retail Sales/ Nonmedical Use Allowed
Arkansas	Constitutional Amendment, Issue 6 (2016)	Yes	Yes	Yes	Yes	No
Colorado	Constitutional Amendment 20 (2000)	Yes	Yes	Yes	No	Yes, Constitutional Amendment 64 (2012)
Iowa* <i>Less than 3 percent THC</i>	SF 2360 (2014), Repealed and replaced by HF 524 (2017)	Yes	Yes	Yes	Yes, for possession or use only, not for purchasing CBD in Iowa	No
Missouri	Constitutional Amendment 2 (2018)	Yes	Yes	Yes	Yes	No
Oklahoma	Ballot Initiative SQ 788 (2018)	Yes	Yes	Yes	Yes, but must apply as a temporary patient	No

#### Medical Conditions Specified in Missouri

The *Missouri Constitution* lists the following conditions as qualifying medical conditions for medical marijuana access:

- Cancer;
- Epilepsy;
- Glaucoma;
- Intractable migraines unresponsive to other treatment;
- A chronic medical condition that causes severe, persistent pain, such as Parkinson’s disease and Tourette’s syndrome;

4 <https://www.ncsl.org/research/health/state-medical-marijuana-laws.aspx>

- Debilitating diagnosed psychiatric disorders, such as PTSD;
- HIV or AIDS;
- A chronic medical condition that is normally treated with a prescription medication that could lead to physical or psychological dependence;
- Any terminal illness; or
- Any other debilitating condition, including hepatitis C, amyotrophic lateral sclerosis (ALS, also known as Lou Gehrig’s Disease), inflammatory bowel disease, Crohn’s disease, Huntington’s disease, autism, neuropathies, sickle cell anemia, agitation of Alzheimer’s disease, cachexia, and wasting syndrome.

### **Regional Medical Marijuana Licenses and Fees**

While fee structures vary by state, fees and licensure can be required of distributors, dispensaries, patients, caregivers, laboratories, and processors. Marijuana application and licensing fees can be set by statute or regulation, often including caps or guidance in the statutes. For a regional review of medical marijuana licenses, fees, and taxes in Arkansas, Colorado, Iowa, Missouri, and Oklahoma, see the table on the next page.

State	Cultivator	Distributor	Dispensary	Patient/ Caregiver	Taxes
Arkansas	<p>Application - \$15,000</p> <p>License - \$100,000 plus \$500,000 performance bond</p> <p>Renewal - same as license</p>	<p>\$5,000 plus \$100,000 performance bond</p>	<p>Application - \$7,500</p> <p>License - \$15,000 plus \$100,000 performance bond</p> <p>Renewal - \$22,500 plus \$100,000 performance bond</p>	<p>Patient - \$50 per year</p> <p>Caregiver - \$87 (includes background check fee), with a \$50 per year renewal fee</p>	<p>4.0 percent tax on sales, in addition to standard 6.5 percent state sales taxes and any local taxes</p>
Colorado	<p>Application - \$1,000</p> <p>License - \$1,830</p> <p>Renewal - \$1,830 to \$3,800+ based upon number of plants</p>	<p>Application - \$1,000</p> <p>License - \$4,400</p> <p>Renewal - \$4,700</p>	<p>Application - \$300</p> <p>License - \$1,830</p> <p>Renewal - \$1,830</p>	<p>Patient - \$25 per year</p> <p>Caregiver - \$25 per year</p>	<p>2.9 percent state sales tax, and any local taxes</p>
Missouri	<p>Annual Fee - \$25,933.05</p>	<p>Application - \$5,000</p> <p>License - \$5,000</p> <p>Renewal - \$5,000</p>	<p>Annual Fee - \$10,373.22</p>	<p>Patient - \$25.94 per year,</p> <p>Patient Cultivator - \$103.73</p> <p>Caregiver - \$25.94 per year</p>	<p>4.0 percent medical marijuana tax</p>
Oklahoma	<p>Application - \$2,500</p>	<p>Application - \$2,500</p>	<p>Application - \$2,500</p>	<p>Patient - \$100, reduced fee of \$20 for those on Medicaid, Medicare, or disabled veterans.</p> <p>Caregiver - no fee</p>	<p>7.0 percent retail sales tax on medical marijuana, 4.5 percent state sales tax, and any local taxes</p>