



Legislative Changes Significantly Impact Ownership and Financing of Colorado Marijuana Businesses

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Introduction

In 2010 the Colorado General Assembly enacted the Colorado Medical Marijuana Code, C.R.S. § 12-43.3-101 *et seq.* It included a requirement that owners of state-licensed medical marijuana businesses be residents of Colorado for at least two years prior to applying for a new license or change of ownership. C.R.S. § 12-43.3-307(1)(m). In 2014 the General Assembly extended this two-year residency requirement to ownership of retail marijuana licenses. C.R.S. § 12-43.4-306(1)(k).

Effective January 1, 2017, Senate Bill 16-40 (SB 16-40) removes this two-year residency requirement and permits citizens of other states to own Colorado state-licensed medical and retail marijuana businesses. This legislative change provides new opportunities for Colorado Licensees to obtain financing and will likely spur consolidation within the industry as well-funded individuals and entities from other states seek to enter the Colorado market.

This article summarizes SB 16-40 and other recent state legislation that will significantly impact Colorado marijuana law in 2017.

SB 16-40 Overview

SB 16-40 permits a medical or retail license owner to be either a one-year resident of Colorado or a United States citizen as of the date of the application after January 1, 2017, and forbids an owner from being a publicly traded company. The prohibition on ownership of licenses by publicly traded companies stems from the requirement that each beneficial owner possess good moral character based on criteria established by statute and the Colorado Department of Revenue Marijuana Enforcement Division (“MED”). *See* C.R.S. § 12-43.4-306 (setting forth good moral character requirement for retail marijuana license owners).

SB 16-40 also defines three new categories of MED-recognized investors and owners. These categories include:

“Direct Beneficial Interest Owner”--a person or closely held business entity that holds an ownership interest in a licensed marijuana business, including officers, directors, managing members, or partners of the licensed marijuana business. A Direct Beneficial Interest Owner who is a natural person must have been a Colorado resident for at least one year prior to the application date, or be a United States citizen prior to the application date. A marijuana business can be comprised of an unlimited number of Direct Beneficial Interest Owners who are Colorado residents. Licensees that have one or more Direct Beneficial Interest Owners who have not been Colorado residents for at least one year prior to their application must have at least one officer who has been a Colorado Resident for at least one year prior to the application, and all officers that have day-to-day control over the marijuana business must also have been Colorado residents for a year before the application. These businesses cannot have more than fifteen Direct Beneficial Interest Owners. And if a Direct Beneficial Interest Owner is an entity, the entity must be owned entirely by U.S. Citizens prior to the application date.

Additionally, a person who intends to apply as a Direct Beneficial Interest Owner and is not a Colorado resident for at least one year prior to the date of application must first submit a request to the MED for a finding of suitability as a Direct Beneficial Interest Owner prior to submitting their MED application.

“Qualified Limited Passive Investor”—a natural person who is a United States citizen and passive investor owning less than five percent of a marijuana business.

“Indirect Beneficial Interest Owner”—includes current Permitted Economic Interest Holders (an existing statutory category mostly comprised of holders of convertible promissory notes); recipients of commercially reasonable royalties associated with the use of intellectual property by a Licensee, an employee who receives a share of the profits from an employee benefit plan, a qualified institutional investor, or other similar persons as determined by the MED. This category opens up myriad new possibilities for branding arrangements with celebrities and companies that operate in multiple states.

SB 16-40 expressly excludes publicly traded companies from owning any portion of a marijuana business. It then provides for an exception, stating that Qualified Institutional Investors (*i.e.* banks, insurance companies, etc.) can own up to thirty percent of a licensed marijuana business.

These new provisions and categories are complex, SB 16-40 was sixteen pages long and redlined MED rules implementing the statute clocked in at close to 50 pages. Attorneys would be well advised to study the text of SB 16-40 and implementing rules closely prior to advising clients regarding these new provisions, or to seek the advice of experienced co-counsel.



House Bill 16-1211: Marijuana Transporter License

HB 16-1211 created two new categories of state licenses--Medical Marijuana Transporter Licenses and Retail Marijuana Transporter Licenses--effective January 1, 2017. These Licensees can transport marijuana to and from licensed premises and store marijuana at licensed premises. They cannot sell marijuana themselves. Transporter licenses are valid for two years and cannot be transferred. These Licensees can contract with multiple marijuana business.

House Bill 16-1261: Retail Marijuana Sunset

The Sunset Bill made the following notable changes to the Retail Marijuana Code:

- Allows for trade people within a licensed premise to be reasonably monitored, rather than requiring them to be accompanied on a full-time basis;
- Implements a new license type—Retail Marijuana Establishment Operator--defined as an entity or person that is not an owner and that is licensed to provide professional operational services to a retail marijuana establishment for a portion of profits;
- If a Licensee's product tests positive for substances injurious to health, the Licensee will quarantine the product and notify the MED, which will give the Licensee an opportunity to remediate the product if the test indicated the presence of microbial issues. If the product cannot be remediated, it must be destroyed;
- Changes marijuana labeling requirements;
- Sales tax bonds are no longer required;
- Allows profit-based performance incentives for employees;
- Non-edible, non-psychoactive retail marijuana products (including ointments, lotions, balms, and other non-transdermal topical products) are not subject to the limitation of one ounce per sale;
- All customers can purchase up to an ounce equivalent of marijuana flower product, regardless of what state the customer is from;
- In reviewing applications the MED will now examine whether the applicant is current on their medical or retail marijuana taxes, rather than on any payments owed to the Department of Revenue in general.

Conclusion

The statutory changes described above allow for non-residents to hold an ownership stake in state-licensed Colorado marijuana businesses, open the way for new financing and licensing opportunities, and create whole new categories of licenses. Colorado attorneys who represent Licensees, financiers or owners of ancillary businesses should become familiar with new statutory provisions and regulations now in order to prepare for a flurry of new transactions and applications for licensure in 2017.