

Obstacles to State-Run Cannabis Stores



The Marijuana Policy Project strongly supports the legalization of cannabis for adults 21 and older. Legalization treats adults like grown-ups. It increases freedom, includes health and safety regulations, creates jobs, and generates hundreds of millions in tax revenue each year. However, to realize these benefits, the model of legalization needs to work.

Unfortunately, there is a very significant chance that the novel approach to legalization passed by the Pennsylvania House of Representatives will prove a costly boondoggle that doesn't result in operational cannabis stores. Unlike every operational law, HB 1200 has the state itself operate cannabis stores. Pennsylvania could spend well over \$200 million setting up stores that never open.

Federal preemption would likely nullify a state-run stores law.

Several preemption challenges to laws legalizing medical or adult-use cannabis have failed. Under the 10th Amendment and the "anti-commandeering" rule, states are free to remove their own penalties. However, a law relying on the state selling cannabis would likely be preempted. The Colorado Supreme Court ruled requiring police to return seized cannabis was preempted because it was impossible for them to comply with both state law — which *required* the transfer of cannabis back to its owner — and federal law — which prohibits distribution. The same reasoning would likely nullify a law relying on state workers to sell cannabis.

Pennsylvania and its employees could face actual or threatened arrest, prosecution, asset forfeiture, and claw-backs of federal funding.

The sale of cannabis remains a federal felony. While we generally have not seen prosecutions of state-legal cannabis operators and workers since 2013, there is no guarantee that will continue. Asset forfeiture is another possibility, which was used against cannabis bank accounts and properties prior to 2013. Federal funds could also be clawed back, as happened to the town of Hancock, Maryland, which partnered with a cannabis business and received 5% of its proceeds.

Pennsylvania would face numerous challenges related to operating a federally illegal enterprise, including relating to banking and payment processing.

Running a federally illegal business includes numerous risks and complications. Cannabis businesses are not allowed to accept credit or debit cards. Most banks will not bank cannabis, fees are excessive, and accounts are often shut down. Retirement accounts, payroll processing, insurance, and other services can also be denied or dropped. RICO suits brought by private individuals may also be a possibility.

Implementation may stall due to these issues, possibly after enormous expense.

Several states have failed to implement laws with direct involvement in cannabis distribution, and at least three states stalled implementation of medical cannabis laws due to concerning statements from U.S. attorneys under the Obama Administration and Trump's first presidency. If a state-run law passes, but the state backs out after beginning implementation, it could entail vast amounts of wasted taxpayer expenses and the financial ruin of licensed growers and product manufacturers who would not have a market for their products.

For a full memo with citations and any questions, contact Alex Rahn of Ax Advocacy at arahn@axadvocacy.com or Karen O'Keefe of the Marijuana Policy Project at kokeefe@mpp.org