

Marijuana Advertising in Arizona

As of July 20, 2021

Arizona Law

Arizona's Medical Marijuana Act was approved by Arizona voters in November, 2010. Recreational marijuana (Proposition 207 – the “Smart and Safe Arizona Act”) was subsequently and similarly approved by Arizona voters in November, 2020.

The Smart and Safe Arizona Act contains the following provisions relating to the advertising of marijuana in Arizona:

ARS 36-2850(1) defines advertising as follows:

"Advertise," "advertisement" and "advertising" mean any public communication in any medium that offers or solicits a commercial transaction involving the sale, purchase or delivery of marijuana or marijuana products.

ARS 36-2859 further provides:

A. A marijuana establishment or nonprofit medical marijuana dispensary may engage in advertising.

B. An advertising platform may host advertising only if all of the following apply:

- 1. The advertising is authorized by a marijuana establishment or nonprofit medical marijuana dispensary.*
- 2. The advertising accurately and legibly identifies the marijuana establishment or nonprofit medical marijuana dispensary responsible for the content of the advertising by name and license number or registration number.*

C. Any advertising under this chapter involving direct, individualized communication or dialogue shall use a method of age affirmation to verify that the recipient is twenty-one years of age or older before engaging in that communication or dialogue. For the purposes of this subsection, that method of age affirmation may include user confirmation, birth date disclosure or other similar registration methods.

D. It is unlawful for an individual or entity other than a marijuana establishment or dual licensee to do any of the following in a manner that is not authorized by this chapter or rules adopted by the department pursuant to this chapter:

- 1. Facilitate the delivery of marijuana or marijuana products.*
- 2. Solicit or accept orders for marijuana or marijuana products or operate a platform that solicits or accepts orders for marijuana or marijuana products.*
- 3. Operate a listing service related to the sale or delivery of marijuana or marijuana products.*

E. A marijuana establishment that violates this section is subject to disciplinary action by the department pursuant to section 36-2854, subsection B. A nonprofit medical marijuana dispensary that violates this section is subject to disciplinary action by the department pursuant to section 36-2816.

F. In addition to any other penalty imposed by law, an individual or entity other than a marijuana establishment or nonprofit medical marijuana dispensary that advertises marijuana or marijuana products in violation of this section or otherwise violates this section shall pay a civil penalty of \$20,000 per violation to the smart and safe Arizona fund established by section 36-2856. This subsection may be enforced by the attorney general.

ARS 36-2860 further states:

A. A marijuana establishment may not:

- 1. Package or label marijuana or marijuana products in a false or misleading manner.*
- 2. Manufacture or sell marijuana products that resemble the form of a human, animal, insect, fruit, toy or cartoon.*
- 3. Sell or advertise marijuana or marijuana products with names that resemble or imitate food or drink brands marketed to children, or otherwise advertise marijuana or marijuana products to children.*

B. A marijuana establishment that violates this section is subject to disciplinary action by the department pursuant to section 36-2854, subsection B.

Consequently, with the enactment of these provisions in Arizona, a marijuana establishment that has been registered and approved by the Arizona Department of Health Services may engage in advertising only pursuant to these provisions of law. As described, the advertising must accurately and legibly identify the duly-authorized establishment by name, license number or registration number. Moreover, the advertising must also utilize a method of age verification when required pursuant to these provisions.

Federal Law

Under Federal law, however, the possession, use and sale of marijuana (whether for medical or recreational use) continues to be unlawful as a Schedule I drug under the Controlled Substances Act. Moreover, federal law prohibits any written advertisement placed in a newspaper, magazine, on the internet, or in any other publication which as the purpose of “seeking or offering illegally to receive, buy, or distribute” [marijuana]. Additionally, other federal laws such as anti-money laundering provisions prohibit and criminalize financial transactions relating to violations of the Controlled Substances Act.

Importantly, subsequent to Arizona’s adoption of the Medical Marijuana Act in 2010, the U.S. Department of Justice provided some comfort to individuals in those states, including Arizona, which had legalized marijuana for medical purposes. Under what became known as the “Cole Memorandum” and related policies and directives, the U.S. Department of Justice advised that federal resources would not be utilized to prosecute individuals in those states which had legalized marijuana if acting in compliance with state law. Unfortunately, however, those official directives were rescinded during the Trump Administration by then U.S. Attorney General Jeff Sessions - and have never been officially reinstated by subsequent Attorneys General or the current Administration. While Department of Justice practices continue to appear consistent with the Cole Memorandum and related directives, no official position providing protection to individuals acting in compliance with state law has been officially enacted or adopted. Moreover, while federal legislation has been introduced before the US Congress to either exempt those states that have legalized marijuana from federal enforcement under the Controlled Substance Act or would simply declassify marijuana as a Schedule I drug, no such federal legislation has yet advanced to passage. As a result, the conflict between state and federal law continues in Arizona.

Conclusion

While advertising of marijuana is allowed as prescribed by Arizona law, such advertising continues to be prohibited and illegal under current Federal law. As a result, until this conflict of laws is resolved by the U.S. Congress or the Courts, the ANA must continue to advise its members to avoid the risk of acting in violation of federal law.

Note: The information provided herein does not, and is not intended to, constitute legal advice; instead, all information, content, and materials herein are for general informational purposes only. ANA members should contact their own legal counsel to obtain specific legal advice with respect to any particular legal matter, including the subjects discussed herein.