



CANNABIS LEGALIZATION

POLICY PRIMER ON “SMART LEGALIZATION” FOR CANNABIS

By David Clement, Yaël Ossowski, Bill Wirtz, Fred Roeder

Legalizing cannabis for medical and recreational consumption has boosted consumer choice and, at the same time, successfully deterred continued crime and black market activity in several parts of North America. The Consumer Choice Center welcomes cannabis legalization as a step towards more consumer choice, but stresses the importance of smart regulatory policy in each jurisdiction where it is considered.

Thanks to our experience in working on cannabis legalization in several U.S. States and Canada, we would like to share the following lessons and policy recommendations for the dozens of European, South American, Asian, and African countries now considering legalization of medical or recreational cannabis.

RETAIL REGULATION

From a consumer’s point of view, the adoption of a private retail model is a significant win for consumer choice, and more importantly, consumer access. The reason why consumer access matters, especially in the case of cannabis, is that the aim is to encourage cannabis consumers to transition from how they currently purchase cannabis, in the illegal (black) market, to purchasing it in the legal market. Allowing for private retail sale, specifically un-capped private retail sale, means the retail market for cannabis will be able to more accurately respond to consumer demand, which will help transition people away from the black market. This is opposed to a public retail model, wherein various state jurisdictions own, operate, and control the cannabis trade in their jurisdiction.

In Canada, critics of private retail sale often suggest the public retail model is safer, in terms of IDing, and access to minors. But evaluating the evidence reveals it is far from true. This is due to the incentives created to encourage best practices in a private

retail model. For example, if a private retailer of an age-prohibited good (such as alcohol, tobacco, or lottery tickets) fails to ID a customer by checking their age, that establishment loses its license to sell that product. When a state-run store fails to ID a customer, the store continues to operate, and the person responsible may or may not lose their job. Herein, we see that private retailers are more likely to ID than state-run stores, and have greater incentives to do so. The [most recent data](#) from Canada shows that private retailers, such as Ontario convenience stores, have a 95 percent ID rate, while the Liquor Control Board of Ontario (LCBO), run by the province, has an ID rate that is significantly less.

Given this, we are confident that private retail outlets and private online sales will better ensure access and consumer choice without compromising on sales to minors. We also endorse a streamlined process to issue permits for private retailers and caution authorities to not to cap the number of private retail outlets. Rather, consumer demand should determine the right number of retail outlets per city or county.

Therefore, the Consumer Choice Center suggests to:

- Allow private brick and mortar and online retail
- Refrain from capping the amount of retail permits issued

PUBLIC CONSUMPTION

The Canadian experience shows clearly why modest forms of public consumption should be legal. In Ontario, Canada's largest province, initial legislation was tabled that would have banned all forms of public consumption of cannabis. Banning all forms of public consumption unfairly targets low-income residents. For the most part, low-income residents rent their homes and apartments, and are prohibited from smoking indoors because of rules set by landlords. If all forms of public consumption are banned, then low-income residents have nowhere to consume, because they cannot consume in their own home, and cannot consume outdoors, all while indoor smoking in commercial settings remains illegal. Luckily, prior to legalization day, the Ontario government

changed its policy and now allows for cannabis consumption in any place where cigarette smoking is legal.

Unfortunately, in U.S. states where cannabis is legal, such as [Colorado](#) and [Washington State](#), public consumption remains illegal. In California, current [law](#) stipulates that cannabis consumption is illegal wherever tobacco consumption is also illegal, allowing some outside areas to be cannabis friendly. In Colorado, several lodging providers have [allowed](#) cannabis consumption on their property, and many lounges and clubs [allow](#) consumption as well.

In regards to consumption, one missed opportunity from the Canadian example is the absence of cannabis lounges for consumption. Many provinces failed to see the usefulness of lounges, which are age-restricted commercial settings where consumers can consume cannabis, such as those offered in the state of Colorado. Now, after legalization, Canadian provinces returning to the drawing board for new regulations, slowing down the path for consumption lounges. These lounges and establishments play an important role in legalization because they allow for cannabis consumers to consume cannabis in an age-restricted space, as opposed to being forced to consume outdoors, which could irritate others.

Therefore, the Consumer Choice Center suggests to:

- Allow the consumption of cannabis in the same places where tobacco consumption is also legal
- Allow for the creation of cannabis lounges and establishments

SELLING TO NON RESIDENTS

Residential clauses are often introduced in order to prevent the effect of increased cross-border drug trafficking, as well as tourism for the purpose of consumption. The Netherlands, under its Toleration Policy regarding soft drugs, has a [general residential clause](#) on the sale of cannabis in coffee shops. In general, only residents of the Netherlands are allowed to purchase the product in coffee shops, requiring shop owners

to check the relevant papers of the customers. However, a number of cities, such as Utrecht or Amsterdam, have introduced exceptions for tourists, due to unintended consequences of the residence clause. Faced with increased cross-border trafficking and tourists buying illegally from a continuing black market, tourists were exempt from the rule.

The costs of preventing forged residency papers, employing security guards in coffee shops who check the papers, and dealing with increased black market trade in border regions, can be avoided, particularly since preventing willing consumers from getting the product is impossible. Not allowing for non-resident purchases also invites previously uninvolved residents to become dealers to tourist consumers.

In addition, in order to thwart potential abuse of cannabis by minors and other age groups, jurisdictions should provide necessary resources and educational materials, such as those [provided](#) by the state of Oregon's Health Authority. These measures help address concerns of medical practitioners and parents, and provide guidelines for safe and healthy use of cannabis.

Therefore, the Consumer Choice Center suggests to:

- Allow non-residents to buy cannabis
- Use resources to prevent substance abuse of minors and invest in education

TAXATION

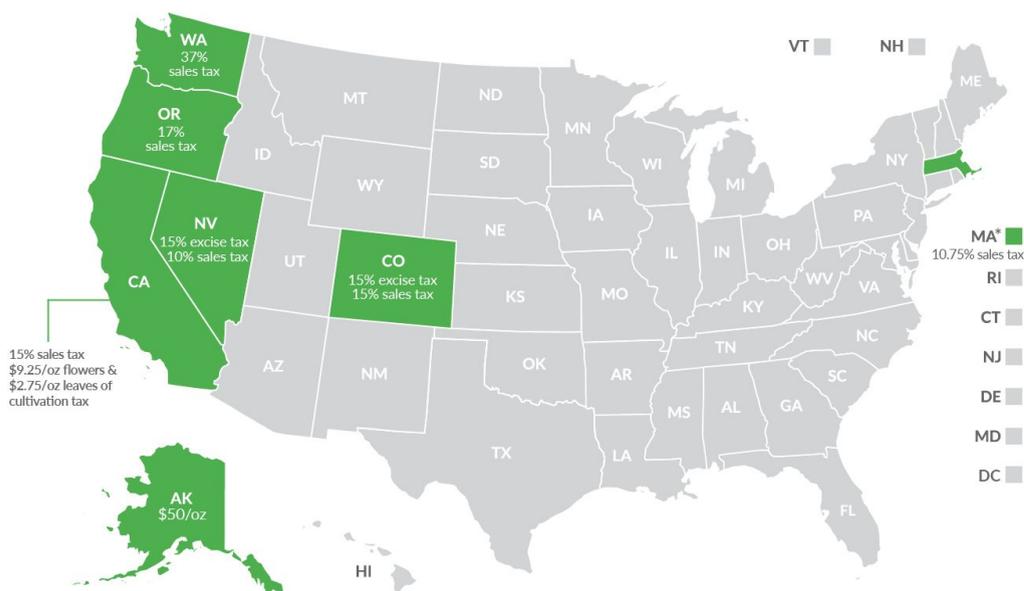
An important lesson from Canada is the need to keep taxation moderate. In Canada, cannabis consumers face a 10 percent excise tax, sales taxes upwards of 15 percent, and local or [regional 'sin' taxes](#) that range in amount. Consumers in the Canadian province of Manitoba pay a tax rate of 29 percent on legal cannabis, which doesn't include the nearly [half a billion dollars](#) in compliance fees applied to licensed providers in the production process before cannabis ever reaches the consumer. It is

important for legislators to remember that price is one of the key factors in shifting consumer behavior. Legal cannabis must compete with, and ultimately overcome, the black market, and in order to do so, taxation must be modest. One uncomfortable example of the tax problem comes from the Canadian province of New Brunswick. On legalization day in New Brunswick, the [first person](#) in a cannabis shop actually left without making a single purchase, citing that prices at the store were out of their price range.

A study [produced](#) by the Tax Foundation examined the sales and excise taxes on cannabis in U.S. states where it is legal and found varying levels. Alaska is the only state that does not charge sales or excise taxes on cannabis, and the next lowest are California (at [15 percent](#)) and Massachusetts (now [updated](#) to 17 percent). Colorado, with a combined tax rate of 30 percent on cannabis, netted more than \$244.9 million in tax revenue from its \$1.3 billion in [sales](#) (from January to October 2018).

How High Are Marijuana Taxes in Your State?

State Recreational Marijuana Excise Tax Rates, January 2018



Note: (*) Massachusetts has not yet begun recreational sales.

D.C. voters approved legalization and purchase of marijuana in 2014 but federal law prohibits any action to implement it. The New Hampshire Legislature voted this year to legalize the possession and growing of marijuana, but sales are not permitted. Alabama, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Minnesota, Nebraska, Oklahoma, Rhode Island, Tennessee, and Wisconsin impose a controlled substance tax on the purchase of illegal products. Vermont legalized the possession of recreational marijuana legislatively in January 2018, but is not implementing a legal recreational market. Maine legalized recreational marijuana in November 2016 by ballot initiative, but the state has not implemented a legal recreational market. Legislation is pending that would create a taxing structure.

Source: Tax Foundation, "Massachusetts Increases Marijuana Tax Rate" (2017); state statutes; Bloomberg BNA.

TAX FOUNDATION

@TaxFoundation

Though tax revenue is an important and strategic factor to consider in legalizing cannabis, it should not be the sole aim of jurisdictions looking to open its markets to cannabis. By maintaining a low and competitive tax rate, jurisdictions can ensure legal consumption, significant investment, and avoid cross-border trade for tax savings. That, along with eradicating the black market, will prove to be both lucrative and attractive for both tax collection and general investment in the overall economy.

If the aim is to rid the legalizing country of the black market for cannabis, then legal cannabis shouldn't be in direct price competition with the black market. However, increased consumption taxes on cannabis, based on public health concerns or not, would increase the influence of black market actors, and diminish any positive effects of legalization.

Therefore, the Consumer Choice Center suggests to:

- Keep cannabis taxation reasonably low

NUMBER OF LICENSES FOR GROWERS TO ISSUE

It is important for countries choosing to legalize cannabis to adopt a market and consumer-friendly regulatory process for cannabis producers. A lot is at stake, as a good regulatory regime ensures that supply can keep pace with demand, which is vital for shifting consumers away from the illegal market and into the legal market. For producers, licensed growers should have light-touch regulation.

Drawing on the example of Canada, legalizing countries should be wary of replicating such strict guidelines. In Canada, Licensed Producers (LPs) must essentially grow cannabis inside of a bank vault. Burdensome and copious amounts of red-tape and security regulations have prevented the legal market from keeping pace with demand, which is evident in Quebec, Canada's second largest province, where state-run cannabis stores were forced to [close](#) Monday-Wednesday because of supply shortages. Supply shortages are one of the few reasons why approximately [35 percent](#) of Canadian

cannabis consumers have stayed in the black market, and why only 47 percent of Quebecers [have the intention](#) of even using the legal cannabis market.

A straightforward and streamlined process that allows entrepreneurs to become licensed producers in order to meet supply needs, rather than by government forecasting, is therefore the recommended path for countries to take. Added to this, considering the cannabis trade is now international, countries should allow retailers to purchase from suppliers in other jurisdictions that already have mature cannabis regulations. This will lead to greater fruits of trade and commerce to all jurisdictions that have legalized cannabis, and promise yet more benefits to states with taxing authority.

Therefore, the Consumer Choice Center suggests to:

- Avoid supply shortages through sensible by keeping regulations on growing cannabis low
- Allow for a large amount of growers
- Allow for importation of cannabis from legal, licensed producers from countries or states that have already legalized cannabis

BRANDING

In states such as Washington and Colorado, public advertising of cannabis products has become fairly commonplace. Seen on billboards, ads in magazines, and on bus stops, consumers are able to benefit from more information being made available and thus equipping them to make more informed decisions on the cannabis they purchase. In Washington State, [advertising laws](#) ensure consumers can differentiate between different cannabis dispensaries and products, and allow entrepreneurs wide parameters on their own branding. Colorado's laws are [somewhat more restrictive](#), but still allow significant branding on packages and retail stores.

One mistake Canada has made when it comes to legalization are the [strict marketing](#), branding and packaging rules that are applied to legal cannabis. With a few

minor differences, legal cannabis packaging in Canada is treated in the same way as tobacco products. The Government of Canada rolled out a plain packaging mandate for legal cannabis which significantly limits branding on cannabis packaging. This is [problematic](#) for consumers for two reasons.

The first is that brands convey knowledge, like a product's desired impact. For many, cannabis is a new product, and we want those new consumers making informed decisions when purchasing an intoxicant like cannabis. Allowing for branding ultimately means that consumers will have a better understanding of the products available to them and make a more informed choice.

[Secondly](#), branding matters in this instance because neutral packaging makes it easier for criminals to pass off their product as legal. Branding on packaging acts as an anti-counterfeiting measure, which is important if the goal is moving consumers away from illegal sources of cannabis.

Therefore, the Consumer Choice Center suggests:

- Refrain from branding bans, and follow Washington-style policies on brands and advertising
- Allow for visible branding, making it possible for consumers to establish loyalty and rooting out bad apples

CONCLUSION:

More jurisdictions are now opting for the legalization of medical or recreational cannabis products. By following an approach of smart regulation and thus allowing consumers to access legal cannabis products in a more convenient and safe way than illegal cannabis products, black markets and organized crime can be eradicated. If legalization is executed in a half-hearted approach that strays from these recommendations, we fear that illegal options will remain available and thus jeopardize public support for legalization overall. However, by following these guidelines, states can ensure they will offer a cannabis market that furthers consumer choice and safety.

About the Authors:

David Clement is an Ontario-native and North American Affairs Manager of the Consumer Choice Center. He is featured regularly on Canadian TV, radio, and print media advocating for the smart regulation of cannabis. He holds a Master's Degree in Political Science from Wilfrid Laurier University in Waterloo, Ontario.

Yaël Ossowski is a Quebec-born journalist who grew up in North Carolina. He is Deputy Director of the Consumer Choice Center and writes about consumer policy in English and French in both Canada and the United States. He holds a Master's Degree in Philosophy, Politics, and Economics from the CEVRO Institute in Prague, Czech Republic.

Fred Roeder is a German Health Economist and Managing Director of the Consumer Choice Center. He has been consulting governments, non profits, and the private sector on patient-centric healthcare reform and opening up healthcare systems in two dozen countries with a strong focus on emerging markets and post-communist countries.

Bill Wirtz is a journalist from Luxembourg, Policy Analyst at the Consumer Choice Center, and regularly writes in French, English, German, and Luxembourgish on consumer-related policies. He is a vocal supporter of cannabis legalization in his home country and is featured regularly in media outlets such as Le Monde, Le Figaro, Die Welt, and RTL.

About the Consumer Choice Center

The mission of Consumer Choice Center is to empower consumers to raise their voice in media, the Internet, and on the streets and to facilitate activism toward a more empowered consumer. CCC represents consumers in over 100 countries across the globe. We closely monitor regulatory trends in Washington, Brussels, Ottawa, London, Geneva, Brasilia, and other hotspots of regulation and inform and activate consumers to fight for #ConsumerChoice.



2221 S Clark St. 12th Floor Arlington, VA 22202, USA

info@consumerchoicecenter.org • consumerchoicecenter.org