



On May 25, 2022, The Rhode Island Cannabis Act was signed into law, making Rhode Island the 19th state in the country to legalize the possession, home-growing and sale of small amounts of marijuana for recreational purposes. This Q&A is designed to provide some basic information about your rights under this law.

Q. How old do I have to be to possess or purchase recreational marijuana?

A. You must be at least 21 years old to legally possess or purchase marijuana in Rhode Island. *(R.I.G.L. §21-28.11-22(a))*

Q. How much marijuana am I now allowed to lawfully possess?

A. You can possess up to one ounce (1 oz.) of marijuana on your person, and up to ten ounces (10 oz.) in your home. You can cultivate up to three (3) mature and three (3) immature marijuana plants each in your home. You also can transfer up to one ounce (1 oz.) of marijuana to another adult of 21 years of age or older. *(R.I.G.L. §21-28.11-22(a))*

Q. What amounts of marijuana are unlawful to possess but have been decriminalized and constitute a civil rather than a criminal offense?

A. Under the new law, an adult possessing between 1 and 2 ounces of marijuana outside the home is guilty of a civil offense punishable only by a fine. *(R.I.G.L. §21-28-4.01(c)(2)(iv))* However, if you have what appears to be that amount of marijuana outside the home, you can be arrested if you fail to provide a police officer with identifying information about yourself. *(R.I.G.L. §21-28-4.01(c)(2)(viii))* If you are between the ages of 17 and 20 and possess two ounces or less of marijuana, that too qualifies as a civil offense with certain non-criminal penalties. *(R.I.G.L. §21-28-4.01(c)(2)(v))*

Q. Can I expunge my criminal record for past marijuana offenses?

A. If you have a civil violation or criminal conviction, including a nolo plea, on your record for a possession of marijuana offense that has now been decriminalized, the law provides for the expungement of that violation or conviction at no cost. The law requires the courts to expunge all such records by July 1, 2024. However, you can also petition the court for an expedited expungement of your record. *(R.I.G.L. §12-1.3-5)*

Q. Can my employer fire me for using marijuana during off-work hours?

A. Generally, no. Except for certain occupations, federal requirements, or pursuant to a collective bargaining agreement, employers are barred from disciplining or terminating employees based on their off-duty use of marijuana unless the person is under the influence at work. However, employers can ban employees from using marijuana up to 24 hours before a work shift in jobs that are “hazardous, dangerous or essential to public safety and welfare,” including such jobs as operating heavy machinery, driving vehicles, or working as “public safety first responders.” *(R.I.G.L. §21-28.11-29(d))*

Q. Can my employer require me to take a drug test to determine my marijuana use?

A. Generally, no. The new law does not affect Rhode Island's longstanding statute that prohibits random drug testing in the workplace as well as drug testing without reasonable suspicion to believe that the employee is impaired on the job. Again, there are exceptions for certain safety-sensitive federally regulated occupations. *(R.I.G.L. §28-6.5-1)*

Q. Can DCYF take action against me or my children because of my marijuana use?

A. The law bars the state from taking any adverse action against parents – including terminating parental rights or denying custody or visitation “or any other parental right or responsibility” – based on their marijuana use unless there is clear evidence that it has created “an unreasonable danger to the safety of a minor child.” This also means that a parent cannot face adverse action simply because traces of marijuana are found in their system after giving birth. *(R.I.G.L. §21-28.11-22(c))*

Q. Can police search my vehicle based solely on the presence of a marijuana odor?

A. Unlike recent legalization laws passed in other states, The Rhode Island Cannabis Act does not explicitly ban vehicle searches by police on this basis. However, such a search may violate constitutional protections against unreasonable searches and seizures. *(See, e.g., State v Li, --- (R.I. Super. Ct., 5/10/21))*

Q. Can I be involved with the recreational marijuana industry in Rhode Island if I have a past criminal record?

A. In general, a person cannot be disqualified from participating in the recreational marijuana industry based on their criminal history unless their record is “substantially related to the occupation” for which a license or employment is being sought. In those instances, the state commission responsible for licensing must consider a number of factors in deciding whether to disqualify the applicant, and the applicant has a further opportunity to provide a response as to why they should not be disqualified. *(R.I.G.L. §21-28.11-12.1)* However, another provision in the same section of the statute suggests there may be stronger grounds for disqualification in circumstances where the underlying crime involves marijuana possession. *(R.I.G.L. §21-28.11-12.1(d))*

Q. Does the law allow for public consumption of marijuana?

A. Smoking or vaping marijuana is prohibited in any public place that prohibits the smoking or vaporizing of tobacco products. *(R.I.G.L. §21-28.11-22(e))* Municipalities are also permitted to pass local ordinances banning the public smoking or vaporizing of marijuana. *(R.I.G.L. §21-28.11-16(b))*

Q. What are my rights as a tenant to possess and use marijuana?

A. If you live in private housing, your landlord may not prohibit your consumption of marijuana by non-smoked or non-vaporized means as long as you are otherwise in compliance with the possession limits set in the law. *(R.I.G.L. §21-28.11-29(h))* But if you live in public housing governed by federal rules, use of marijuana in any form may be barred. *(See, e.g., <http://portal.hud.gov/huddoc/med-marijuana.pdf>)*

Q. How does the new law affect the use of medical marijuana?

A. The state's longstanding medical marijuana program remains in effect. However, the new law eliminates most of the fees that had previously been imposed on medical marijuana patients, including registration fees and plant tag fees for cultivating marijuana at home. *(R.I.G.L. §21-28.6-5(d); R.I.G.L. §21-18.6-15(a))*

Q. What does the law say about marijuana use and medical treatment?

A. Using marijuana cannot disqualify you from “any needed medical procedure or treatment, including organ and tissue transplants.” (*R.I.G.L. §21-28.11-22(d)*)

Q. Are there any other protections in the law that I should be aware of?

A. Two other general protections that are worth noting are that you cannot be arrested, sanctioned or denied any benefit for employing people lawfully engaged in marijuana-related activities or for allowing your property to be used for such activities (*R.I.G.L. §21-28.11-22(b)*), and that a professional licensing board cannot discipline you for lawfully providing professional services to prospective or licensed cannabis establishments. (*R.I.G.L. §21-28.11-26*)

UPDATED DECEMBER 2022

For more information on discrimination, or if you feel your rights have been violated, visit www.riaclu.org or call (401) 831-7171.

American Civil Liberties Union
of Rhode Island
www.riaclu.org
(401) 831-7171