Cannabis Guide for the USA & Canada

January 2021

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Cannabis Guide for the USA & Canada

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Cannabis Guide for the USA & Canada

Message from the Steering Committee

The Meritas U.S. & Canada Cannabis Guide is a comprehensive overview of national, local, and tribal laws affecting the cannabis, hemp, and CBD industries in the United States and Canada. It represents the hard work of dozens of experienced attorneys in the Meritas network, many of whom practice in the cannabis field on a regular basis. The U.S. & Canada Cannabis Steering Committee would like to thank them for their work and invaluable input.

Because the cannabis landscape is quickly changing, this guide represents a snapshot in time: unless otherwise noted, the laws are current as of January 1, 2021. The guide will be updated on a regular basis to reflect this.

In the United States, cannabis remains a Schedule I drug, and therefore illegal on the federal level. However, most U.S. states have some form of medical or adult use cannabis law in place, and with a new administration we expect to see changes in the months and years to come.

In Canada, the third anniversary of cannabis legalization this fall will see the start of a legislative review of the Cannabis Act and its impact on public health. This review could lead to significant policy and legislative changes to Canada's cannabis framework. Industry participants are also watching closely to see the results of recent consultations conducted by the federal government on issues such as new pathways to market for cannabis health products.

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United States (Federal)

Overview

The United States is a party to the United Nations' (a) Single Convention on Narcotic Drugs (1961), (b) Convention on Psychotropic Substances (1971), and (c) Convention Against Illicit Traffic in Narcotic and Psychotropic Substances (1988). Its obligations under the treaties are implemented through the Federal Controlled Substances Act ("CSA") of 1970,[1] 21 U.S.C.A. § 812(b)(1), which lists cannabis (or marihuana as it is known in the statute) on Schedule I. Therefore, the official stance of the U.S. Federal government is that the cultivation and sale of cannabis is illegal.

A Schedule I controlled substance (the most restrictive category) is a drug which (a) has a high potential for abuse, (b) has no currently accepted medical use in treatment in the United States, and (c) lacks safety in use under medical supervision. Thus, notwithstanding any current consensus in the medical community, as far as U.S. federal law is concerned, cannabis is no different than heroin, LSD, GHB or MDMA (but not cocaine, which has an accepted medical use, and is therefore listed on Schedule II).

There is a long list of federal (and some state) penalties, including significant jail time, that attach to the cultivation, manufacture, sale, and possession of Schedule I substances and their derivatives (as well as the aiding and abetting thereof). Those penalties, as well as the limited protections afforded to cannabis due to the choice of most states to allow its medical and recreational use, are beyond the scope of this summary. Attorneys in the United States can, subject to their respective jurisdictions' ethics rules, generally advise clients about the existence of these laws, but may not in any way assist their clients in circumventing them

Traditionally, the U.S. federal government did not distinguish between low-THC "hemp" and other high-THC strains of cannabis, and therefore most products containing hemp, and all products containing CBD, were presumptively illegal under U.S. law. This began to change in 2014, with the passage of the Agricultural Act of 2014, which carved hemp out from the general definition of cannabis based on THC content, and allowed for its lawful cultivation in connection with industrial research programs. The process was completed on

[1] Federal law did contain certain exceptions for categories of hemp-derived products, which is why things like hulled hemp seeds and articles of clothing manufactured from hemp fiber, were available on store shelves. *See, generally*, "Hemp as an Agricultural Commodity," Congressional Research Service (June 22, 2018), *available at* https://fas.org/sgp/crs/misc/RL32725.pdf; *Horn v. Medical Marijuana, Inc.*, 15-CV-701, at *8 (W.D.N.Y. Apr. 17, 2019) (noting that the prior definition of marijuana, under 21 U.S.C. § 802(16), excluded "certain parts of the plant that are incapable of germination: (1) the mature stalks of the Cannabis sativa plant, (2) fiber produced from the stalks of the Cannabis sativa plant, (3) oil or cake made from the seeds of the Cannabis sativa plant, (4) any compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, fiber, oil, or cake (excluding resin extracts), and (5) the sterilized seed of the Cannabis sativa plant.").

December 20, 2018, when President Trump signed the Agriculture Improvement Act of 2018 (the "2018 Farm Bill") into law, (Pub. L. No. 115-334), thereby (a) removing hemp (containing less than 0.3% THC) and its derivatives from Schedule I, (b) laying out how hemp may be legally cultivated in accordance with a plan adopted or approved by the U.S. Department of Agriculture ("USDA"), and (c) permitting transportation of hemp across state lines (notwithstanding any state-level prohibition on the cultivation or sale of hemp). *See* 2018 Farm Bill, §§7605, 10113, 10114, and 12619. Various states are in the process of implementing hemp cultivation plans. However, there is no federal framework for the distribution of high-THC medical or recreational cannabis in the United States, because any cannabis that is not low-THC hemp is federally illegal.

Therefore, all cannabinoids on the market are (at least in theory) derived from low-THC hemp. On the federal level cultivation of hemp is regulated by the USDA, which approves state-level plans for cultivation of the plant, and provides a framework for compliance principles on concentration of THC. The USDA recently published its final rule implementing the 2018 Farm Bill, which contains (among other things) certain testing and sampling requirements for hemp. The Justice Department's Drug Enforcement Administration ("DEA") is in the process of its own rulemaking, and has taken the position that hemp derivatives that exceed the 0.3% THC threshold during processing cease to be "hemp" derived (to the concern of industry participants and certain members of congress). Almost simultaneously with the passage of the 2018 Farm Bill the U.S. Food and Drug Administration ("FDA") reasserted its authority over CBD under the Federal Food, Drug, and Cosmetic Act ("FD&C Act") and section 351 of the Public Health Service Act ("PHSA"). A rulemaking with respect to permissible uses of CBD is ongoing. This does not preempt regulation of hemp and CBD on the state and local level, and many states have specific licenses for the processing and sale of hemp and CBD.

Federally Recognized

American Indian & Alaska Native Tribes

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Overview

There are currently 574 federally recognized American Indian and Alaskan Native tribes and villages recognized by the Bureau of Indian Affairs of the United States. These entities enjoy a special relationship within the United States federal system of government. A tribe's decisions regarding cannabis—its use, growth, distribution, and taxation—may be different than the state jurisdiction in which the tribe is located. Tribes within a state jurisdiction may vary considerably in their decisions regarding cannabis, and states have taken different positions regarding how to address tribes within their jurisdictions regarding cannabis. This summary is meant only to provide a general framework for understanding the regulation of cannabis in Indian Country.[1]

Current Regime

Federally recognized tribes are described as "domestic, dependent nations." The United States acts as trustee, and much of the land base of tribes is held by the United States for the benefit of the tribes. States have limited authority to regulate on Indian reservations. Tribes have the authority to regulate over their members and their reservation subject to the power of Congress to legislate and regulate.

Nowhere is this more significant than in the criminal law arena. Criminal enforcement of cannabis laws in Indian Country will depend on whose law is being applied: federal law (e.g., the Controlled Substances Act), state or local law, or the law of the tribe. Jurisdiction will also depend on whether the offender is Indian or non-Indian; whether there are victims; if so, whether the victims are Indian or non-Indian; and whether the state has been granted jurisdiction to enforce crimes in Indian Country.

[1] The term "Indian Country" is defined by 18 U.S.C. § 1151 as "(a) all land within the limits of an Indian reservation, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation, (b) all dependent Indian communities whether within the original or subsequently acquired territory, and (c) all Indian allotments, and including rights-of-way running through the allotment."

Marijuana is a Schedule 1 Controlled Substance, and federal laws related to marijuana are considered laws of general applicability, thus applicable in Indian Country. A tribe's engagement in the cannabis industry by decriminalizing or legalizing cannabis often began with the issuance of the Wilkinson Memorandum, a policy statement issued on December 14, 2014, by the U.S. Department of Justice, regarding enforcement of federal drug laws as they apply to marijuana in Indian Country.

The Wilkinson Memorandum reiterates the authority and jurisdiction of the United States to enforce federal law in Indian Country. It provides that, with respect to Indian Country, the federal government's limited investigative and prosecutorial resources should be focused on the eight priorities of marijuana enforcement described in a previous policy statement referred to as the Cole Memorandum.[2]

The priorities for enforcement of federal marijuana laws are directed at preventing:

1. distribution of marijuana to minors,
2. the influence of criminal enterprises in the marijuana business,
3. transportation from states that allow marijuana to states that do not allow marijuana,
4. the use of marijuana as a cover for other illegal activity,
5. violence and the use of firearms,
6. driving under the influence and other public health consequences,
7. growth of marijuana on public lands, and
8. possession and use on federal property.

Priorities 3 and 8 create significant ambiguity in their application to Indian Country.

Priority 3. The reservations of certain tribes include portions of more than one state. By example, the Navajo Nation includes portions of Arizona, New Mexico, and Utah and borders Colorado. Arizona, New Mexico, and Utah each permit some use of marijuana for medicinal purposes. Arizona and New Mexico allow cultivation of marijuana, while Utah allows importation of cannabis extract but does not allow cultivation within the state. Colorado

[2] In a memo dated January 4, 2018, the DOJ, through then Attorney General Jeff Sessions, issued the "Sessions Memorandum" which "rescinded" the Cole and Wilkinson Memorandum, and all previous guidance on marijuana enforcement. While the Sessions Memorandum at the time was interpreted by some as a sign that the federal government would start prosecuting marijuana crimes more vigorously, the DOJ's actions after the Sessions Memorandum has not borne this out. Furthermore, the Sessions memorandum still requires prosecutors to "weigh all relevant considerations" before bringing charges and these considerations are the "federal law enforcement priorities set by the Attorney General, the seriousness of the crime, the deterrent effect of criminal prosecution, and the cumulative impact of particular crimes on the community."

permits adult recreational use of marijuana, and effective January 2021, Arizona will also permit adult recreational use of marijuana. Reservation boundaries may complicate the application of this priority.

Priority 8. The term "federal property" includes tribal or allotment trust land.[3] If U.S. Attorneys were to prioritize enforcement of marijuana violation of federal law based on this priority, there would be no limitations on enforcement, as most of Indian Country would come under this priority.

The Wilkinson Memorandum specifically provides that, with respect to federal law enforcement of marijuana within an Indian tribe, the relevant U.S. Attorney should consult with the tribe and should provide notice to certain Washington D.C. officials. The Wilkinson Memorandum does not change federal law, does not provide a defense to prosecution, does not provide safe harbor, and can be revoked at any time.

In January 2018, the Department of Justice did just that. Then Attorney General Jeff Sessions issued the "Sessions Memorandum," which "rescinded" the Wilkinson Memorandum and all previous guidance on marijuana enforcement. The Sessions Memorandum stated that "prosecutors should follow the well-established principles that govern all federal prosecutions," and these principles require that federal prosecutors "weigh all relevant considerations, including federal law enforcement priorities set by the Attorney General, the seriousness of the crime, the deterrent effect of criminal prosecution, and the cumulative impact of particular crimes on the community."

Tribes' Experiences with Cannabis

Federal Raids

Even with the Wilkinson Memorandum still in effect, in 2015, federal agents raided two marijuana operations on federally recognized tribal lands at the Alturas Indian Rancheria and the XL Ranch in Modoc County, California. The agents seized 12,000 marijuana plants and over 100 pounds of processed marijuana. In its press release on why the raid occurred, the U.S. Attorney's office stated that the grow operations "were well in excess of the locally enacted marijuana cultivation limits applicable to county land," and "all of the marijuana cultivated at both facilities was intended to be distributed off tribal lands at various unidentified locations."

Successful Tribal Business Operations

Tribes that have successfully operated marijuana businesses have done so almost exclusively in states that have legalized marijuana in some form.

[3] See, e.g. 20 U.S.C. § 7713(5)(A)(ii)(I) ("the term 'federal property' means real property that is not subject to taxation by any State or any political subdivision of a State due to Federal agreement, law, or policy, and that is . . . held in trust by the United States for individual Indians or Indian tribes").

Tribes in Washington and Nevada have entered into "state-tribal compacts" to implement the tribes' regulatory programs and business enterprises. Under these compacts, tribes regulate tribal cannabis activities in partnership with, but not under, the state's licensing authority. Washington legalized recreational use of marijuana in 2012 and four tribes in Washington—Muckleshoot, Port Gamble S'Klallam, Puyallup, and Squaxin Island—have executed state-tribal compacts and opened successful cannabis businesses in the state. The state's compact with the Suquamish Tribe explains "the State and the Tribe have recognized the need for cooperation and collaboration with regard to marijuana in Indian country."

In Nevada, five tribes—Las Vegas Paiute, Pyramid Lake, Lovelock Paiute, Ely Shoshone, Yerington Paiute—have executed state-tribal compacts.

Because of the compact, the Las Vegas Paiute Tribe has constructed the NuWu Cannabis Marketplace, designed to be the largest cannabis dispensary in the world, and includes "drive-thru service (the first of its kind in the United States), online order and pick-up service, and cannabinoid-infused products for dogs."

California tribes are not so fortunate as the tribes are in Washington and Nevada. California, which legalized recreational marijuana in 2016, has failed to adopt compacting legislation and has issued regulations that require "tribes to waive sovereign immunity to participate in the state licensing system."

In March 2020, members of the Oglala Sioux Tribe voted to legalize medical and recreational marijuana, while voting down the legalization of alcohol. On October 27, 2020, the Oglala Sioux Tribal Council enacted the Marijuana Control Ordinance, creating a Marijuana Commission and adopting regulations for both medical and recreational use of marijuana. The Pine Ridge Reservation is located in South Dakota, which had yet to legalize any use of marijuana. Legalization of both medical and recreational use was passed by the South Dakota electorate on the state ballot on November 3, 2020.

Hemp Production in Indian Country

In 2015, federal agents seized 30,000 hemp plants from the Menominee Tribe in Wisconsin. The tribe brought suit against the government arguing that its hemp crop was grown legally in accordance with the 2014 Farm Bill, which allowed hemp cultivation. Despite Wisconsin not allowing hemp cultivation, the Tribe argued that they had the right to cultivate under its own laws. The Court rejected this argument by noting that as long as a state prohibits the activity, then a tribe will not be able to independently legalize the activity under its own laws.

Any lasting effect of the Menominee tribal decision is likely limited because the 2018 Farm Bill expressly allows tribes to create their own hemp programs regardless of the state laws as long as the tribes enter into a tribal regulatory plan with the U.S. Department of Agriculture (USDA). The USDA[4] has approved hemp production plans for a number of tribes including the Colorado River Indian Tribe, Confederated Tribes of Warm Springs, Flandreau Santee Sioux, Fort Belknap Indian community, Iowa Tribe of Kansas and Nebraska, La Jolla Band of Luiseno Indians, Oglala Sioux Tribe, Otoe-Missouria Tribe, Prairie Band of Potawatomi Nation, Pueblo of Picuris Tribe, Santa Rosa Band of Cahuilla Indians, Santee Sioux Nation, Seneca Nation, Sisseton-Wahpeton Oyate, Standing Rock Sioux Tribe, Turtle Mountain Band of Chippewa Indians, and the Yurok Tribe.

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[4] Farm Bill, P.L. 115-334, Section 10113.

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Medical Use

Arizona adopted medical marijuana use pursuant to the 2010 Arizona Medical Marijuana Act: Ariz.Rev.Stats. §§ 36-2801 et seq., as amended; and Regulations: 9 A.A.C. 17 (Ariz. Admin. Code §§ R9-17-101 et seq.) (the AMMA). The Arizona Department of Health Services (AZDHS) interprets and enforces the AMMA. It has authority to issue dispensary licenses and inspect dispensaries for noncompliance with the AMMA, with revocation of the license being the ultimate penalty through an administrative process, subject to judicial appeal. A dispensary exclusively owns, produces, cultivates, manufactures, and sells medical marijuana; thus, it is a vertically integrated regime. Although a dispensary may contract with businesses to cultivate plants or extract product, for example, each such business must be appointed by the dispensary and supervised by the dispensary.

Dispensary licenses (130) have been issued in two tranches: 2011 and 2016. Additional allotments may occur from time to time if the number of licensed pharmacies has increased statewide (licenses are issued on a ratio of ten pharmacies to one dispensary). It is likely that any such new licenses will be targeted for dispensary locations in underserved rural areas.

A dispensary must be operated on a nonprofit basis; thus, it pays no distributions or profits and typically has no members or owners, although it is often controlled and managed by a board of directors and/or officers or affiliated entities. A dispensary may only have one onsite and one offsite cultivation facility, and this is typically where production and extraction of edibles, tinctures, ointments, and other cannabis products occur. The dispensary is responsible for all activities of its cultivation, production, manufacturing, and kitchen facilities.

Dispensary licenses are nontransferable. However, the managing or controlling affiliated entities (or even their owners) may transfer their interests in a change of control transaction. There have been numerous such transactions in the past few years, and the Arizona market for acquisitions and dispositions continues to be robust, fueled by acquirers from outside Arizona as well as dispensary license holders interested in expanding their national or local footprints. These change of control transactions have pushed transfer prices to $10M - $30M.

Only persons who are licensed by the dispensary with AZDHS and who have been issued a dispensary agent (or principal) card may work for, manage or volunteer for or have a presence in a dispensary.

Patients must also be licensed by AZDHS following a medical professional's certification of the patient's debilitating medical condition. Typical costs for the examination and application range between $350 – $450, but the AZDHS patient card is good for two years. Caregivers to patients must obtain the patients' written designation and a caregiver card must be obtained from AZDHS. Caregivers may grow a limited number of marijuana plants on behalf of a limited number of patients.

Typical medical conditions eligible for qualification under the AMMA include cancer, epilepsy, HIV, Alzheimer's, hepatitis, glaucoma, and severe and chronic pain.

In addition to the AZDHS license to dispense medical marijuana, a dispensary must obtain various zoning permits and AZDHS approvals to operate. Generally, a dispensary may not be located near a park, school, house of worship or another dispensary.

As of November 2020, laboratory testing of medical marijuana and its products will be required.

Import/ Export

A dispensary may buy from and sell medical marijuana and its products to another dispensary. Patients may only buy from a dispensary. No marijuana may be imported from or exported to another state or country.

Market Size

Sales in 2019 yielded $333.6M, and total product sales increased 37% from the previous year. Licensed patients (220k) realized an increase of 18%. Anticipated growth is expected year over year. Total market value is estimated at between $400M – $500M.

Adult-Use Enacted Nov. 3, 2020

Efforts were initiated in 2016 to make recreational/adult cannabis use legal, but failed by a small margin. Proposition 207, the Smart and Safe Arizona Act, to legalize marijuana for possession and consumption by adults, was approved by the Arizona electorate on November 3, 2020, by a favorable vote of 59%. The Smart and Safe Act will permit current dispensary license holders to apply early (January 2021) for an adult-use license, which can be operated from the same location as its medical marijuana location. Where a county has fewer than two medical marijuana dispensaries (these are the rural counties of Apache, Graham, Greenlee, La Paz, and Santa Cruz), the Smart and Safe Act will also permit an early application where the applicant has selected a location. A social equity ownership program is another vehicle for obtaining a dispensary license, to which the Smart and Safe Act has allocated 26 licenses, but details on the program will not likely be issued by AZDHS until mid-2021.

The Act specifically provides as follows:

- Allows adult possession of up to an ounce of marijuana, with no more than five grams in concentrated form. Adults can grow six plants at home with no more than 12 plants in a house.
- For a person under 21, reduces the penalties for the unlawful use of marijuana to a civil penalty for first violation, petty offense for second violation, and class 1 misdemeanor for subsequent violations.
- Smoking marijuana remains illegal in public spaces and open spaces.
- Prohibits consuming marijuana while operating a vehicle.
- Prohibits any edibles from being marketed to children shaped like a "human, animal, insect, fruit, toy or cartoon."
- In addition to a sales tax, imposes a 16% excise tax on the sale of marijuana and marijuana products under this Act to fund community colleges, infrastructure, public safety, and public health programs.
- Establishes a process to expunge prior marijuana convictions that occurred before the date of the Act's passage.

- Allows Arizona employers to maintain a drug-free workplace. The employers may adopt "workplace policies restricting the use of marijuana by employees or prospective employees."
- Permits local jurisdictions to ban or restrict marijuana businesses within the locality boundaries.
- The Arizona Department of Health Services (DHS) is responsible for adopting rules to regulate adult-use, which include the licensing of retail stores and production facilities.

Investment Analysis

Numerous opportunities exist for persons/entities desiring to enter into or expand in this growing market. Some of these opportunities include the acquisition of control of a dispensary, equity or debt financing, purchase or management of real estate serving a dispensary or its cultivation or production facilities, the provision of services to a dispensary or its affiliated facilities, cultivation of marijuana, production of lotions, edibles, extracts and other marijuana derivatives, and various product or equipment contracts. Any such opportunity should be preceded by substantial and thorough due diligence activities and a financial analysis of key principals and entities involved. A background check and fingerprints are required to obtain dispensary principal and agent cards and persons with various felonies are precluded from gaining such cards.

Hemp

Until the passage of the Agricultural Improvement Act of 2018 by the President (the "2018 Farm Bill") removing hemp from the definition of "marijuana" in the Controlled Substances Act of 1970, Arizona's foray into hemp-based cannabidiol (frequently referred to as "industrial hemp") was limited to pilot programs conducted for research at certain universities. Ariz.Rev.Stats.§§ 3-311 et seq.; and Regulations: 3 A.A.C. 4; Ariz.Admin.Code §§ R3-4-1001 et seq. The Arizona Department of Agriculture (AZDOA) launched the Arizona Hemp Program on June 1, 2019, requiring hemp growers, harvesters, processors, and transporters (but not retailers) to obtain a license. "Hemp" is now considered an agricultural commodity, defined as all parts of the plant having less than 0.3% THC on a dry weight basis. And the term "hemp" is now broadly redefined to include its extracts, cannabinoids, and derivatives, thereby expressly de-criminalizing popular hemp-derived CBD products and opening interstate commerce to hemp and hemp product sales. Arizona farmers started planting hemp crops in late May 2019.

Like other hemp cultivators in the nation, Arizona's hemp farmers experienced substantial losses (41%, according to the AZDOA) in 2019 crops as a result of high THC content or inclement weather. However, cultivators and processors expect these issues to be resolved in the near term. The hemp industry is rapidly growing in Arizona, according to the Hemp Industry Trade Association of Arizona, doubling in 2020 to approximately 300 licensed cultivators.

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Medical Marijuana

April 14, 2020

The current law regulating licit marijuana use in Arkansas was the result of a November 8, 2016, ballot initiative. By a popular vote, Arkansans approved an amendment to the state constitution permitting use of marijuana to treat specific medical conditions. The law is known as the Arkansas Medical Marijuana Amendment of 2016 and is located at Ark. Const. Amend. 98, §§ 1–25. The Amendment is comprised of 25 sections defining its terms and laying out the regulatory framework for the state agencies to put the Amendment into action. The Amendment provides that certain persons are protected in the possession and use of marijuana so long as they meet the requirements set out in the Amendment with regard to quantity, medical condition, and registration. A qualified patient is a person who has been diagnosed by a physician as having one of the following medical conditions:

> Cancer, glaucoma, positive status for human immunodeficiency virus/ acquired immune deficiency syndrome, hepatitis C, amyotrophic lateral sclerosis, Tourette's syndrome, Crohn's disease, ulcerative colitis, post-traumatic stress disorder, severe arthritis, fibromyalgia, Alzheimer's disease, cachexia or wasting syndrome; peripheral neuropathy; intractable pain, which is pain that has not responded to ordinary medications, treatment, or surgical measures for more than six (6) months; severe nausea; seizures, including without limitation those characteristic of epilepsy; or severe and persistent muscle spasms, including without limitation those characteristic of multiple sclerosis.

Id. at § 2 (13). The patient must also register with the Arkansas Department of Health ("ADH") to receive their registry identification card prior to purchasing or using medical marijuana. *Id.* at § 5.

Qualified patients and designated caregivers are protected from arrest, prosecution, or penalty, including "civil penalty or disciplinary action by a business, occupational, or professional licensing board or bureau," *Id.* at § 3(c), so long as their use or possession is in accord with the other requirements of the Amendment, they are registered with ADH, and they do not possess more than 2.5 ounces. The Amendment permits a "dispensary" to accept, transfer, or sell marijuana seeds, plants, or usable product to and from dispensaries and cultivation facilities in Arkansas and across state lines when/if permissible by federal law. *Id.* at § 8.

Special protections were included to counteract housing, schooling, or employment discrimination based on the use of marijuana under the law. *Id.* at § 3(f). However, the law specifically provides that an employer may take action to prevent use of marijuana at work or during such time that an employee is under the influence of marijuana at work if that employee is in a safety sensitive position. *Id.* at § 3(f)(3)(B).

Three state agencies are involved in administering the new law. First, ADH is charged with administering patient and caregiver qualification and registration as well as controlling the labeling and testing standards for marijuana. *Id.* at § 5. Next, the Amendment provides that the Medical Marijuana Commission ("MMC") will license dispensaries and cultivation facilities. *Id.* at § 8(a). The Commission is required to license between twenty and forty dispensaries with no more than four in any one county and is required to license between four and eight cultivation facilities. *Id.* at § 8(h)–(i).

In the initial licensing process, the MMC elected to license five cultivation facilities and 33 dispensaries. At least 60% of the individuals "associated with" a dispensary or cultivation facility must have been residents of the state of Arkansas for the previous seven years. *Id.* at § 8(c). In addition, ownership of the dispensaries and cultivation facilities is limited by § 8(l), which prohibits an individual from owning more than one cultivation facility and one dispensary. Last, the Alcoholic Beverage Control Division ("ABC") is tasked with enforcing the Medical Marijuana Commission's rules regarding dispensaries and cultivation facilities. *Id.* at § 8(a)(3).

The sales tax and a special tax created by the Amendment on the sale of marijuana are distributed to the Arkansas Medical Marijuana Implementation and Operations Fund. *Id.* at § 17. This fund provides first for the payment of any expenses incurred by ADH, MMC, ABC, or any other state agency that has incurred expenses related to the Amendment. After distribution to state agencies, any leftover funds are added to the state general fund.

Recreational Use of Marijuana

Currently, Arkansas does not permit any recreational use of marijuana, but there is a ballot initiative proposed for the November 3, 2020, polls that would amend the state constitution to allow recreational use of marijuana by individuals over the age of 21. The initiative must receive 89,151 signatures before it will be permitted on the ballot. At this time, the initiative has not been approved to be added to the ballot.

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Overview

The cultivation, sale, and possession of cannabis for adult-use is legal in California, subject to compliance with detailed regulatory requirements. Cannabis was originally approved for medical uses in 1996 providing cannabis to qualified patients and approved caregivers. In 2016, California voters passed Prop 64, generally permitting adults 21 years of age or older to legally grow, possess, and use cannabis for non-medicinal purposes. In 2017, the California Legislature approved the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), which is a single, comprehensive regulatory system which governs the medicinal and adult-use cannabis activities and industries in California.

Adult-Use Cannabis Activity

The passage of Prop 64 in 2016, known as the Control, Regulate and Tax Adult-Use of Marijuana Act, decriminalized the use of cannabis and permitted adults over 21 years of age the personal possession and use of cannabis for recreational use. Prop 64 establishes the Bureau of Marijuana Control within the Department of Consumer Affairs to regulate and license the marijuana industry and it also provides for a means to tax and regulate the industry. While the regulations permit the use of cannabis, there also exist limitations of the lawful use and possession of cannabis (e.g. may not possess, process, transport or purchase more than eight grams in the form of concentrated cannabis, not more than six living marijuana plants, etc.).

Commercial Cannabis Activity

MAUCRSA is the primary regulatory framework for commercial cannabis activity in California. It requires anyone involved in the commercial cannabis industry to be licensed. MAUCRSA created the Bureau of Cannabis Control, the lead state agency for the regulation of commercial cannabis licenses for medical and adult-use cannabis in California. It is also responsible for licensing retailers, distributors, testing labs, microbusinesses, and temporary cannabis events. In addition, the Manufactured Cannabis Safety Branch, which is a division of the California Department of Public Health, is responsible for regulating and licensing all commercial cannabis manufacturing in California. The CalCannabis Cultivation Licensing, a division of the California Department of Food and Agriculture, is responsible for licensing cultivators of medicinal and adult-use recreational cannabis. They are also responsible for implementation of a track-and-trace system to record the movement of cannabis throughout the supply chain from seed-to-sale.

In January 2019, the Office of Administrative Law (OAL) officially approved state regulations for cannabis businesses across the supply chain. These regulations guide the process from cultivation to retail sales and replace the previous emergency regulations adopted by the Bureau of Cannabis Control, Department of Public Health and California Department of Food and Agriculture. The OAL regulations necessitate and outline the licensure process that authorizes the commercial cannabis activity and provides regulations throughout the supply chain. The OAL issued regulations related to premises locations and standards for conducting business, storage of inventory, record retention, track and trace reporting, marketing, and quality assurance.

MAUCRSA also enables local governments to regulate what activities are permitted in their jurisdiction. Many cities and counties in California regulate commercial cannabis through land use ordinances which impose location, operational, tax, and other requirements as part of a discretionary use permit process. Some cities and counties have chosen to ban commercial cannabis activity entirely.

Upcoming Regulations

The Bureau of Cannabis Control has submitted to the Office of Administrative Law (OAL) proposed emergency regulations as of February 3, 2020, requiring licensees to display a QR code certificate provided by the Bureau with their license and requiring those transporting or delivering cannabis to carry the QR code certificate to ensure visibility and customer access to QR Code.

This proposal is in response to the injury and deaths associated with using e-cigarette or vaping products. The CDC recommends that individuals using e-cigarette or vaping products not buy products from informal sources, and that retailers licensed by the Bureau only sell cannabis goods that have passed strict laboratory testing requirements. Because illegal retail commercial cannabis businesses can be difficult to identify, QR code certificates for instant verification of legal operations are proposed for consumer benefit. Additionally, the QR code will allow consumers, law enforcement, and other members of the public to use the QR code certificate to verify licenses of cannabis businesses for whom the employees work.

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Overview

Currently (as of March 2020), Colorado authorizes marijuana use for both medical and recreational purposes.

Colorado offers medical marijuana registration identification cards for patients with legitimate debilitating or disabling medical conditions; however, employers are not required to accommodate medical marijuana use in any place of employment.

Colorado has also authorized recreational marijuana use under a system that regulates marijuana according to a scheme similar to alcohol regulations. In 2018, the then attorney general rescinded the DOJ's 2013 memorandum announcing that it would not challenge state ballot initiatives in Colorado legalizing possession and use of marijuana under state law. While the DOJ is not currently under any orders to take specific action relating to prosecuting marijuana possession or use, federal prosecutors are under instructions to "weigh all relevant considerations" in deciding which cases to prosecute. In 2019, Colorado Governor Jared Polis signed off on legislation that would allow businesses in the state to apply for licenses that would create social marijuana use areas. The law is scheduled to take effect in 2020, pending approval from voters.

Colorado has operated an Industrial Hemp Program since 2015, under the 2014 Farm Bill. It will remain in place until the USDA-approved state plan under the 2018 Farm Bill is adopted November 1, 2020.

Marijuana

As amended January 1, 2020, the Colorado Marijuana Code now includes the provisions for both medical and retail marijuana use (C.R.S. §§ 44-10-101). Colorado allows for the cultivation, manufacture, distribution, sale, and testing of medical marijuana and retail marijuana, pursuant to the terms, conditions,

limitations, and restrictions contained in Article 18, Section 14 and Article 18, Section 16 of the Colorado Constitution, respectively.

Medical Marijuana

Colorado allows patients suffering from legitimate debilitating medical conditions to obtain a license to use medical marijuana. The law protects the licensed patients and their caregivers (including primary, advising, transporting, or cultivating caregivers) from prosecution for use and provides an avenue for establishing an affirmative defense to their use of medical marijuana.

Colorado also administers a medical marijuana health research grant program under the direction of the Department of Public Health and Environment. The grant program exists to address the need for objective scientific research regarding the efficacy of marijuana as part of a medical treatment.

Colorado law does not currently offer protections to employees regarding medical marijuana use, and employers are under no obligations to accommodate medical marijuana use in any place of employment (Colo. Const. art. XVIII, § 14(10)(b)). As affirmed by the Colorado Supreme Court in *People v. Crouse*, employees that test positive for marijuana despite having used the drug off-duty to treat a legitimate debilitating medical condition are not protected under the state's "lawful activities" statute (§ 24-34-402.5). 388 P.3d 39 (Colo. 2017).

Recreational Marijuana

Recreational marijuana use is regulated in a scheme largely similar to the regulation of alcohol (Colo. Const. art. XVIII, § 16). As such, individuals must be twenty-one years of age or older and show proof of age prior to the purchase of marijuana.

Under Colorado law, none of the below shall be considered unlawful or constitute an offense:

- The possession, use, display, purchase, or transport of marijuana accessories of one ounce or less of marijuana;
- The transfer of one ounce or less of marijuana without payment to a person twenty-one years of age or older;
- The consumption of marijuana (provided it is not conducted openly or in a manner that endangers others); and
- The possession, growth, processing, or transport of a maximum of six marijuana plants, three or fewer of which are mature, flowering plants.

Marijuana establishments are required to obtain licenses to operate and adhere to strict security, labeling, health and safety, and advertising requirements. The valid operation of marijuana-related facilities and ancillary activities such as the possession, display, transport, cultivation, harvest, or processing of marijuana and marijuana products are not unlawful under Colorado law nor do they constitute a basis for seizure or forfeiture of assets.

In 2019, Colorado passed HB19-1090, which repealed prior provisions prohibiting publicly traded corporations from holding a marijuana license. The bill will allow for greater investment flexibility in marijuana businesses, subject to state licensing requirements. Additionally, the passage of HB19-1230 in 2019 will also now allow for regulated social pot consumption, legalizing establishments such as marijuana cafes, and dispensary testing rooms. Dispensaries will be able to apply for tasting-room licenses similar to those used for breweries or restaurants.

Hemp

The only lawful pathway to grow industrial hemp in Colorado is through participation in the Colorado Department of Agriculture's Industrial Hemp Program, which was authorized under the 2014 Farm Bill. The Department also administers a certified seed program. The Industrial Hemp Program does not have jurisdiction over the processing, sale, or distribution of industrial hemp. The current Industrial Hemp Program will remain in place until the USDA-approved state plan under the 2018 Farm Bill is adopted November 1, 2020.

The Industrial Hemp Regulatory Program Act requires individuals wishing to grow or cultivate hemp for commercial purposes to register with the state (C.R.S. §§ 35-61-101 et seq.). Individuals are also required to adhere to strict reporting and testing requirements to ensure that the plants do not contain a THC concentration of more than 0.3% on a dry weight basis (8 C.C.R. 1203-23).

In 2019, Colorado passed SB19-240, which outlines new regulations concerning commercial products containing industrial hemp, and mandates a registration fee for any wholesale food manufacturer that produces an industrial hemp product.

Upcoming Legislative Agenda

Governor Polis has recently unveiled a new plan that would expand the number of banks and credit unions that work with the marijuana industry. Titled *The Roadmap to Cannabis Banking & Financial Services*, the legislation would shield banks from being penalized for accepting state-legal cannabis business accounts. Currently, federal prohibitions on cannabis prevent marijuana businesses from accessing conventional financial products and services that both limit opportunity and create risk. Cannabis companies still largely operate on a cash-only basis, making them targets for crime. The bill would rely on

legal guidance from the Attorney General regarding the provision of services under the Money Transmission Action and the Trust Companies Act.

Under the recently launched Carbon Dioxide Reuse Pilot Project, the Colorado Department of Public Health and Environment (CDPHE) will partner with the Colorado Energy Office to work to capture and store carbon dioxide emitted during the beer-brewing process for use by cannabis growers. Carbon dioxide is a key component in the plant growth process, and the project will allow both breweries and marijuana businesses to slash carbon dioxide emissions. The National Governors Association announced in late 2019 that it would be working with Colorado to establish best practices in energy efficiency in the marijuana market.

In January 2020, a bill was introduced to create protections for employees that use marijuana by preventing businesses from firing employees for partaking in legal activities that are only legal under state and not federal law. The bill would invalidate the Supreme Court's holding in *People v. Crouse*.

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Overview

Delaware marijuana laws are codified in Title 16 Chapters 47 and 49A of the Delaware Code. Chapter 47, the Uniform Controlled Substances Act, includes civil and criminal offense for possession and use of marijuana. In December 2015, Delaware House Bill No. 39, which decriminalized marijuana possession in Delaware, was signed into law by then-Governor Jack Markell. This law made possession of up to one ounce of marijuana a civil violation. In 2019, Governor John Carney signed Delaware Senate Bill No. 45 into law which expanded the decriminalization in Delaware to those under 21 years old. Chapter 49A, the Delaware Medical Marijuana Act (the "DMMA"), includes the qualification requirements for medical use of marijuana. The DMMA was effective July 1, 2011, with the first medical marijuana dispensary in Delaware opening in June 2015.

Criminal and Civil Marijuana Offenses

Delaware law allows marijuana offenses to be divided into civil and criminal offenses. Under 16 Del. C. § 4764(c)(1), possession of a "personal use quantity" of marijuana is classified as a civil offense for which violators are assessed a $100 fine. Further, under 16 Del. C. § 4764(c)(2), private use or consumption of a "personal use quantity" of marijuana is punishable by a $100 civil fine. "Personal use quantity" is defined in 16 Del. C. § 4701(36) as "1 ounce or less of marijuana in the form of leaf marijuana. 'Leaf marijuana' means the dried leaves and flowering tops of the plant cannabis sativa L."

As codified in 16 Del. C. § 4764(d), certain conditions will elevate a civil offense of possession of a personal use quantity of marijuana to a criminal offense. Under 16 Del. C. § 4764(d) it is a criminal offense to use or consume a personal use quantity of marijuana in an "area accessible to the public or in a moving vehicle." This statute provides examples of "areas accessible to the public" which include sidewalks, streets, alleys parking lots, outdoor locations within a distance of ten feet from a sidewalk, etc. Note, however,

that if a person is merely in possession of a personal use quantity of marijuana in these locations, it is still a civil offense. To be criminal, one must use or consume the personal use quantity of marijuana.

Under 16 Del. C. § 4764(b), possession of marijuana in a quantity greater than a personal use quantity, but less than 175 grams (a little over six ounces), is classified as an unclassified misdemeanor punishable by a fine of up to $575, three months incarceration, or both. Possession of 175 grams or more of marijuana is classified into "Tier" weights under 16 Del. C. 4751C. The penalty ranges for these "Tier" weights are established in 11 Del. C. § 4205(b). However, Delaware created the Delaware Sentencing Accountability Commission Benchbook (the "Benchbook") which establishes "presumptive sentences" for the various offenses that judges follow absent aggravating factors. A Tier 1 possession of marijuana charge is applicable for possessing 175 grams or more of marijuana. The offense of Tier 1 possession of marijuana is classified as a Class G Felony, punishable by up to 2 years of incarceration under the Delaware Code. However, the Benchbook provides for a presumptive sentence of up to twelve months Level II probation. Possession of a Tier 2 quantity of marijuana (i.e., 1,500 grams or more) in Delaware is categorized as a Class C Felony punishable by up to 15 years of incarceration under the Delaware Code. The Benchbook provides for a presumptive sentence of up to one-year incarceration. Lastly, Tier 3 possession is applicable for possession of marijuana in quantities of 5,000 grams or more. This offense is classified as a Class B Felony, punishable by 2 to 25 years of incarceration under the Delaware Code. The Benchbook provides for a presumptive sentence range of 2 to 5 years of incarceration.

Delaware has a different sentence structure for possession of marijuana for what are called "Super Weights." For possession of 15,000 grams of marijuana (slightly more than 33 pounds), the Benchbook provides for a range of incarceration of 4 to 10 years. For possession of marijuana in quantities of 37,500 grams (slightly less than 83 pounds), the Benchbook calls for a sentence of 6 to 12 years of incarceration. Lastly, for possession of 75,000 grams or more (slightly more than 165 pounds), the Benchbook calls for a sentence of 8 to 15 years of incarceration.

This analysis of Delaware marijuana laws focused entirely on the possession, use or consumption of marijuana. There is a different charge of Drug Dealing under 16 Del. C. § 4752 for individuals who manufacture, deliver, or possess with intent to manufacture or deliver. However, the Drug Dealing statute and the fact-intensive inquiry that is required for establishing "possession with intent" is beyond the scope of this analysis.

Medical Marijuana

In 2011, Governor Jack Markell signed into law the DMMA with an effective date of July 1, 2011. This Act is codified in Title 16 Chapter 49A of the Delaware Code. In February 2012, however, Governor Markell halted the implementation of the DMMA after a change in policy at the federal department of justice. It was not until June 2015 that the first medical marijuana dispensary in Delaware opened.

In order to qualify under the DMMA, an individual must have what is termed a "debilitating medical condition." This is defined under 16 Del. C. § 4902A(3) and includes, among others, conditions such as cancer, positive status for HIV, AIDS, PTSD, and seizure disorders. 16 Del. C. § 4906A allows any citizen to petition the Department of Health and Social Services to add conditions or treatments to the list of debilitating medical conditions that qualify under the DMMA.

Individuals seeking a marijuana prescription must first obtain an identification card from the Department of Health and Social Services (the "DHSS"). The DHSS will verify the information contained in the application and make a determination as to whether an identification card should be issued. Identification cards may not be issued to qualifying patients under the age of 18 unless that patient has, as a result of a terminal illness, pain, anxiety, depression or has intractable epilepsy or seizure disorder or other special conditions detailed in 16 Del. C. § 4909A(b). Further a qualifying patient who is under the age of 18 is only qualified to receive marijuana oil under 16 Del. C. § 4909A(c).

A patient who qualifies under the DMMA will be subject to a number of restrictions concerning the purchase and use of marijuana. For example, the identification card only allows individuals to purchase three ounces of usable marijuana every 14 days, for a total of six ounces per month. Further, the marijuana can only be purchased from one of six dispensaries within the State of Delaware and must contain a label from one of the dispensaries. In addition, those who are prescribed medical marijuana are not immune from prosecution for undertaking any task under the influence of marijuana when doing so would constitute negligence or professional malpractice. Nor are they immune from prosecution for engaging in the medical use of marijuana in a school bus, on the grounds of any preschool, primary or secondary school, in any correctional facility, or in any health care or treatment facility operated by the DHSS. Further, medical marijuana patients in Delaware can be prosecuted for smoking marijuana in any form of transportation or in any public place.

The DMMA also allows for designated caregivers to enroll in the program. These caregivers, upon obtaining an identification card from the DHSS, are authorized, on the patient's behalf, to possess medical marijuana purchased from an authorized dispensary. Further, the designated caregiver is entitled to dispense and assist in the administration of the marijuana to the patient.

There are currently a total of six marijuana dispensaries within the State of Delaware. Three of these dispensaries are located in New Castle County; one is located in Kent County; and two are located in Sussex County. In order to operate, dispensaries must obtain a valid registration certificate from the DHSS. The registration requirements for dispensaries are listed under 16 Del. C. § 4914A.

Finally, the DMMA has an Oversight Committee that evaluates and makes recommendations regarding the DMMA. This committee consists of nine members from a variety of backgrounds. One is appointed by the President Pro Tempore, one by the Speaker of the House, one is the Secretary of the Department of Health and Human Services or his or her designee, two medical professionals, one person appointed by the governor, and three individuals who are currently registered in the DMMA medical marijuana program. The committee's goal is to evaluate and make recommendations to the governor to further benefit the individuals enrolled in the program and to ensure access to marijuana is provided to those qualified patients.

Hemp

Hemp is the plant Cannabis Sativa L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with the federally defined delta-9 THC concentration of not more than three-tenths of one percent on a dry weight basis, or THC concentration for hemp defined in 7 U.S.C. § 5940, whichever is greater. Delaware considers hemp an agricultural commodity as a grain under Title 3 of the Delaware Code.

In August 2018, Delaware Senate Bill No. 266 was signed into law which allowed for the cultivation of hemp for agricultural or academic research. The 2018 Farm Bill, signed by President Trump, permanently legalized hemp and hemp products and reclassified them as agricultural commodities which removed them from the purview of the Controlled Substances Act. In 2019, Delaware established the Delaware Hemp Research Pilot Program to explore an alternative to traditional Delaware crops. The program required farmers to establish a research agreement with Delaware State University, to grow hemp under a research program. Production of hemp was limited to ten acres.

In January 2020, the USDA approved the State of Delaware Plan for a Domestic Hemp Production Program. As a result, Delaware no longer has to utilize the hemp research pilot program. Producers are fully able to enter the domestic hemp industry outside of the research component and there are no longer any acreage limits for producing hemp. The Delaware Domestic Hemp Production Program created three categories of licenses for which the Delaware Department of Agriculture may issue licenses: (1) producers; (2) processors; and (3) handlers. The contours of this application process and the governing regulations were authored by the Delaware Department of Agriculture. Upon selection into one of these categories, the Department of Agriculture will issue the participant an official card to prove credentials with law enforcement, if needed.

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Medical Use

Yes, 2013. D.C. Code, Human Health Care and Safety §§ 7-1671.01 et seq., as amended; and Regulations: D.C. Mun. Regs. Tit. 22-C, §100 et seq.

Current Regime

Since 2013, Washington D.C. has permitted the use of medical marijuana for qualifying patients with severe, debilitating, or life-threatening medical conditions as recommended by a healthcare provider who is licensed in D.C.

The laws governing healthcare providers who may recommend medical marijuana vary by provider type. For example, a physician may recommend marijuana to a patient only if the physician "has primary responsibility for the care and treatment of a qualifying patient," and the physician has a D.C. medical or osteopathy license in good standing. Physicians that recommend medical marijuana are required to keep certain patient records (generally, a complete medical chart for three years), and must make their recommendations using a specific form promulgated by the D.C. Department of Health.

In addition to physicians, advanced practice registered nurses, dentists, physician assistants, and naturopathic physicians may recommend medical marijuana under certain circumstances.

In order to recommend marijuana to a patient, a healthcare provider may not have any affiliation with a dispensary, cultivation center, or testing laboratory. A health care provider need not obtain a special registration.

In Washington, D.C., a dispensary must register with the Department of Health, comply with various regulations, and tender a significant initial fee as well as annual renewal fees. Dispensaries may distribute medical marijuana to qualified patients "in any form deemed safe." This regulation allows dispensaries to distribute edibles as well as inhalants.

Import/ Export

Dispensaries may only receive/purchase marijuana from a Cultivation Center registered in D.C. Cultivation Centers may only sell or distribute medical marijuana to a dispensary registered in the District of Columbia. Cultivation Centers may not sell medical marijuana from plants not grown at a registered location in D.C.

Market Size

6,179 registered patients. Anticipated continued growth year over year.

Current Context

D.C. passed the Marijuana Possession Decriminalization Act of 2014, which made the possession or transfer of marijuana (without remuneration) weighing one ounce or less a civil violation. See D.C. Code Ann. § 48-1201. D.C. also passed Initiative 71 (effective February 26, 2015), which legalized adult possession and home recreational use for any persons 21 years of age or older. It is lawful in D.C. to possess, use, purchase, or transport marijuana weighing two (2) ounces or less, to transfer to another person 21 years of age or older without remuneration marijuana weighing one ounce or less, and possess/grow marijuana in a house or rental unit no more than six (6) cannabis plants. See D.C. Code Ann. § 48-904.01 for intricacies related to use and possession. An important obstacle is that while marijuana is legal for recreational use in D.C., there is no way to purchase marijuana for recreational use. D.C.'s Mayor recently proposed the Safe Cannabis Act of 2019, legislation that would have permitted the sale of recreational cannabis in D.C. Congress has since intervened by imposing a rider on D.C.'s appropriations bill, which prohibits D.C. from using its local funds for enacting Initiative 71.

Investment Analysis

Although it appears that the move towards recreational use has been halted, in the event the Mayor eventually pushes the measure through, there will be opportunities for additional licenses for Cultivator, Manufacturer, Distributor, Off-Premise Retailer, and Testing Facility.

Hemp

The 2018 Farm Bill removed hemp from the definition of marijuana under the Controlled Substances Act. While commercial sale is prohibited in D.C., actual use of hemp-derived products is not prohibited.

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Overview

Currently, the state of Florida's primary body of marijuana law is the Compassionate Medical Cannabis Act, which allows qualified patients with debilitating medical conditions to use medical marijuana to treat specific qualifying conditions. The Florida Department of Health Office of Medical Marijuana Use is the primary agency governing the state's medical marijuana program; the Florida Department of Agriculture and Consumer Services (FDACS) has limited authority over specific aspects of the program—primarily relating to edibles—as well.

Since legalizing medical marijuana in 2014, Florida has become one of the most robust medical cannabis markets in the country. Amendment 2, a constitutional ballot initiative for legalization of medical marijuana, passed in November of 2018, with an overwhelming support of over 71% of Florida voters. Amendment 2, codified in Article X, Section 29 of the Florida Constitution, expanded the qualifying conditions for eligible patients statewide and created protections for qualifying patients, caregivers, Medical Marijuana Treatment Centers, and physicians from criminal or civil liability or sanctions under Florida law.

As of August 21, 2020, Florida has nearly 400,000 qualified patients, more than 2,500 qualified physicians that can issue certifications for medical marijuana use, and 270 dispensing facilities open statewide. Sales have boomed since Governor Ron DeSantis signed SB182 into law in 2019, permitting smokable medical marijuana products for qualified patients. The Marijuana Business Factbook estimates that 2019 sales totaled $450 million-$550 million.

In 2019, Governor DeSantis, signed Senate Bill 1020, creating an industrial hemp program in Florida and regulating the statewide cultivation and sale of hemp products. This new legislation was signed in the wake of the 2018 Farm Bill's removal of hemp from the Controlled Substances Act.

Despite efforts this past year to legalize recreational marijuana, recreational use of marijuana is still illegal and a criminal offense in Florida.

Medical Marijuana

The Compassionate Medical Cannabis Act and Florida Statute Section 381.986 govern and regulate medical marijuana in Florida.

The Compassionate Medical Cannabis Act allows qualified physicians to issue a physician certification for the medical use of marijuana by individuals with debilitating medical conditions (e.g., cancer, epilepsy, Crohn's disease, etc.). Florida defines cannabis as either low-THC cannabis or medical marijuana. In order to qualify as low-THC, the marijuana must contain 0.8% or less THC and more than 10% of cannabidiol (CBD) by weight. To issue a physician certification, the qualified physician must enter the patient's information in the state's medical marijuana use registry. Patients and legal representatives may not possess more than a 70-day supply of cannabis at any given time or possess more than 4 ounces of smokable cannabis at any one time.

Additionally, the Compassionate Medical Cannabis Act places a statutory cap on the number of dispensing facilities a medical marijuana facility may operate and requires that such medical marijuana facilities be vertically integrated. Such vertical integration requires that the licensed Medical Marijuana Treatment Centers cultivate, process, and distribute medical marijuana products to patients either through home delivery or in approved dispensing facilities. The caps and vertical integration requirements are still under legal challenge as of this writing.

Hemp

In 2019, Florida enacted SB 1020, which established the State Hemp Program (Florida Statue Section 581.217). Under this statute, a person or business seeking to cultivate hemp must apply for and obtain a license from the FDACS, provide the FDACS with a legal land description and GPS coordinates of the area where hemp will be cultivated, and only use seeds and cultivars

which are certified by a certifying agency or university. SB 1020, and rules promulgated under it, allow for the manufacture and sale of food containing hemp-derived CBD. Hemp, or hemp-derived products, must be tested by an independent testing laboratory to ensure that the THC concentration does not exceed 0.3 percent by dry weight and comply with specific labeling requirements (i.e., scannable barcode, the links to the testing lab's certificate of analysis, batch number, company website address, expiration date and the number of milligrams of each market cannabinoid per serving). Products intended for inhalation and contain hemp extract may not be sold in Florida to anyone under 21 years of age.

Hemp is also regulated by Florida Statute Section 1004.4473 (industrial hemp pilot projects) allowing certain universities to conduct industrial hemp research projects.

Recreational Marijuana

Currently, Florida does not allow the recreational use of marijuana. An effort to place a recreational use amendment on the 2020 ballot failed, while another effort remains pending for the 2022 ballot. Possession of marijuana for recreational use and recreational use of marijuana remain criminal offenses in Florida.

Legislative Updates

Florida lawmakers were reluctant to take action on any cannabis bills in the latest legislative session. On March 13, 2020, a bill to legalize cannabis for adult-use died. The legislative measure, SB 1860, would have allowed adults of 21 years or older to "possess, use, purchase, display, and transport up to 2.5 ounces of marijuana and marijuana accessories for personal use for any reason." Additionally, SB 1860 would have ended Florida's vertical integration regulatory scheme for medical cannabis. Currently, Florida's medical marijuana operators are required by law to be fully vertically integrated and control every facet of the operation from production to retail (seed-to-sale). Smaller operators in Florida argue that this regulatory scheme favors large companies and creates unreasonable barriers to entry in Florida's medical marijuana industry.

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Overview

The marijuana laws in Georgia are quickly changing. Although it is still illegal to grow and possess any amount of marijuana, with violators subject to stiff penalties,Georgia has recently laid the groundwork for medical marijuana and industrial hemp. Both programs are still being developed and new regulations are in the pipeline.

Since April 2015, Georgia has allowed some individuals to possess up to 20 fluid ounces of "low THC oil" for medical applications under the Haleigh's Hope Act. Yet eligible patients had to buy low THC oil in other states because the Haleigh's Hope Act did not authorize the production or sale of low THC oil. That changed in April 2019 with the Georgia Hope Act, which allows six private companies and two public universities to produce, distribute, and sell low THC oil.

Georgia authorized the industrial production of hemp in 2019. The Georgia Hemp Farming Act tasks the Georgia Department of Agriculture ("GDA") with regulating the hemp industry. Since then, GDA has implemented an extensive licensing and permitting regime for growers and processors.

Medical Marijuana

Haleigh's Hope Act, O.C.G.A. §§ 16-12-190 et seq., allows certain patients to possess up to 20 ounces of "low THC oil." The Act defines "low THC oil" as a cannabidiol-based oil with less than five percent by weight of THC and that does not have any plant material with the external morphological features of the Cannabis plant.

Who Can Possess Low THC Oil?

Only authorized patients who are registered with the Georgia Department of Public Health ("DPH") can lawfully possess up to 20 ounces of low THC oil. A patient is "authorized" if a physician has certified him or her as suffering from one of the medical conditions listed in O.C.G.A. § 31-2A-18(a)(3).

There are strict criminal penalties for the unauthorized possession of low THC oil. Possession by a patient, even if "authorized," of more than 20 ounces of low THC oil is a felony, with punishment ranging from one-year imprisonment and $50,000 fine to 20 years imprisonment and $1 million fine. O.C.G.A. § 16-12-191(c)-(d). Possessing marijuana in leaf form is still illegal. Finally, patients cannot ingest low THC oil in a manner that uses a heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means.

Regulation of Healthcare Providers

The Georgia Composite Medical Board ("Medical Board") and DPH regulate how physicians can add patients to the Low THC Oil Registry. See 360-36-.01 et seq. Physicians can only register patients on DPH's registry if they have a bona fide doctor-patient relationship, and if they certify that the patient suffers from one of the conditions listed in O.C.G.A. § 31-2A-18(a)(3). Additionally, the certifying physician must be treating the patient for that specific condition or in a hospice program. O.C.G.A. § 31-2A-18(d). Finally, the physician must have given the patient a Medical Board-approved waiver form that the patient has signed.

After a patient completes the waiver form, the physician must certify that they have a bona fide physician-patient relationship and that the patient is eligible for low THC oil.

Regulation of Producers, Distributors, and Dispensers

The Georgia Hope Act tasks the newly created Georgia Access to Medical Cannabis Commission ("Commission") with regulating the production, distribution, and dispensing of low THC oil. O.C.G.A. § 16-12-202. The Commission only recently appointed an executive director in May 2020, and has yet to promulgate any implementing regulations or launch the permit application process.

Industrial Hemp

Besides the Commission, the Georgia State Board of Pharmacy is tasked with developing annual, nontransferable licenses for pharmacies and retail outlets to dispense low THC oil to registered patients.

The Georgia Hemp Farming Act creates a licensing/permitting process administered by the GDA for hemp growers and processors. *See* O.C.G.A. §§ 2-23-1 *et seq.* GDA has promulgated regulations governing the Georgia hemp program, and started accepting applications for hemp processing permits and hemp growing licenses starting March 1, 2020.

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Overview

As of April 1, 2020, Illinois allows recreational and medical use of cannabis under the Cannabis Regulation and Tax Act[1] and SB1557[2] (the "Amendment" and collectively, the "Act") and the Compassionate Use of Medical Cannabis Program Act[3] (the "Compassionate Use Act"), respectively, while designating that the Industrial Hemp Act applies to hemp. The Act is unique as it was passed legislatively and seeks to accomplish social justice reform on a scale not previously seen in cannabis legislation. Consequently, it will likely serve as the blueprint for the drafting of subsequent, state-level cannabis legislation, provided that it successfully accomplishes that which it intends.

Under House Bill 1438 (HB1438 or The Cannabis Regulation and Tax Act) and SB1557, Illinois legalized recreational use of cannabis flower, cannabis-infused products and cannabis concentrate ("Adult-Use") by adults over 21 years old as of January 1, 2020.

Under House Bill 0001 (HB0001 or The Compassionate Use of Medical Cannabis Pilot Program Act), Illinois legalized medical use of cannabis on January 1, 2014. HB0001 was subsequently amended as of August 12, 2019 to convert this pilot program to a permanent program and change the name to "The Compassionate Use of Medical Cannabis Program Act," reflecting this revised status.[4] Further, the Opioid Alternative Pilot Program (the "OAPP") allows for the use of cannabis in the instance of a diagnosis for a qualifying medical condition for which opioids are within the standard of care.[5]

[1] 410 ILCS 705/1 *et seq.*

[2] P.A. 101-0593, effective 12/4/19.

[3] 410 ILCS 130/1 *et seq.*

[4] 410 ILCS 130.

[5] *Id.* at § 62.

The Act states[6] "cannabis and cannabis-derived substances regulated under the Industrial Hemp Act are not covered by this Act." The Industrial Hemp Act was enacted on August 26, 2018, and allows for the cultivation of hemp with a license, provided that the product has tetrahydrocannabinol ("THC") content below 0.3 percent.[7]

Employment issues related to recreational use are governed by 410 ILCS 705/10-50 and those related to medical use, by 410 ILCS 130/50. The afore-mentioned section of the Cannabis Regulation and Tax Act was among those addressed squarely by the amendments promulgated in SB1557, largely due to lack of clarity on whether cannabis drug-testing or zero-tolerance policies are permissible following legalization on January 1, 2020.

There is no pending legislation regarding recreational use, medical use or hemp use.

Adult-Use

Effective January 1, 2020, Illinois residents 21 years of age and older may possess the following for recreational use: 1) 30 grams of cannabis flower; 2) cannabis-infused product cumulatively containing up to 500 milligrams of THC; and 3) up to 5 grams of cannabis concentrate, whereas nonresidents may possess half of the aforementioned limits.[8] As to tax, flower and products with less than 35% THC content will have a 10% tax, cannabis-infused products will have a 20% tax and all products with THC concentration in excess of 35% will be taxed at a 30% rate—meaning consumers will pay approximately 20-41% tax at point of sale, depending on the potency.[9]

Following lawful purchase, use is allowed in one's home and in certain cannabis-related businesses. However, it is prohibited in any public place, any motor vehicle, on school grounds (with the exception of those using pursuant to the Compassionate Use Act), near someone under age, near an on-duty police officer, firefighter or corrections officer, anywhere a person, business or landlord forbids use on their private property and anywhere smoking is prohibited under the Smoke Free Illinois Act.[10]

Under the Act, Illinois began granting licenses in 2019 ("Early Approval Adult-Use Dispensing Organization License") for medical dispensaries to commence Adult-Use sales on January 1, 2020, provided that they comply with numerous

6 410 ILCS 705/10-10.

7 505 ILCS 89/5.

8 410 ILCS 705/10-10.

9 *Id.* at § 65-10.

10 *Id.* at § 10-35.

requirements.[11] These requirements include, most notably: establishment of a security plan; payment of a nonrefundable $30,000 fee to the Cannabis Regulation Fund (the "Regulation Fund") which funds the activities of a regulatory oversight officer as specified in the Act); payment of a nonrefundable fee of 3% of the dispensing organization's sales from June 1, 2018 to June 1, 2019, or $100,000, whichever is less, to be deposited into the Cannabis Business Development Fund (the "CBDF"); and commitment to substantially complete a plan seeking to foster social equity ("Social Equity Inclusion Plans") before the expiration of their license. The contribution of funds to the CBDF is significant because—unlike the Regulation Fund—it is not subject to "sweeps, administrative charge-backs, or any other fiscal or budgetary maneuver that would in any way transfer" funds to another fund of the state.[12]

Parties unaffiliated with a medical dispensary that seek a license ("Conditional Adult-Use Dispensing Organization License") have much lower financial requirements associated with the application process (for example, a $5,000 application fee), but must meet 30 requirements including a detailed business plan, employee training, a community engagement plan, a statement of no detrimental impact to the community, a diversity plan and a contract with an approved private security contractor, among others.[13] Compliance with the provisions for a Conditional Adult-Use Dispensing Organization License is the sole manner in which a license to sell following the expiration of the conditional period can be obtained ("Adult-Use Dispensing Organization License"). Applications for Conditional Adult-Use Dispensing Organization Licenses and Adult-Use Dispensing Organization Licenses will be evaluated on a 250-point scoring scale, 50 of which are reserved solely for those applicants that qualify as social equity applicants.[14] Comparable requirements for early approval, conditional and adult-use licenses apply to cultivation centers, with much less stringent prerequisites applying to craft growers, infuser organizations and transport organizations.

The Restore, Reinvest and Renew Program ("R3") is the next aspect of the Act central to its focus on the promotion of social justice. Within 180 days of the effective date of the Act, R3 shall designate target areas ("R3 Areas") based on analysis of data related to need, disproportionate impact of economic divestment, rates of violence and commitment/return rates to Illinois

[11] *Id.* at § 15-15 (stating the license holder must "maintain an adequate supply of cannabis and cannabis-infused products for purchase by qualifying patients, caregivers, provisional patients, and OAPP participants.") An adequate supply requires the license holder have inventory, in terms of type and quantity, on a monthly basis comparable to that which they maintained in the six months prior to the Act's enactment.

[12] *Id.* at § 7-10(a)(8)(c).

[13] *Id.* at § 15-25.

[14] *Id.* at § 15-30(c)(5).

Department of Corrections. R3 will "directly address the impact of economic disinvestment, violence, and the historical overuse of criminal justice responses," reduce poverty, reduce gun violence and promote community infrastructure, by making state funding available to local organizations in R3 Areas.[15]

Lastly, the Act seeks to address the injustice cannabis-related laws have caused by providing for expungement of "minor" offenses related to cannabis, some of which will occur automatically, depending on the charge.

Medical

Under HB0001 (The Compassionate Use of Medical Cannabis Pilot Program Act), Illinois legalized medical use of cannabis on January 1, 2014. It subsequently amended this bill, as of August 12, 2019, to convert it to a permanent program and revised the name accordingly to "The Compassionate Use of Medical Cannabis Program Act."[16]

As originally enacted, the Compassionate Use of Medical Cannabis Pilot Program Act allowed for medical cannabis use for a number of conditions and contained a sunset provision designating that the pilot program would cease in 2018 if the legislature declined to renew the program or create a new law. The Compassionate Use Act in its current form allows for the use of medical cannabis for a large number of ailments including, but not limited to, those defined therein as "[d]ebilitating medical condition[s,]" terminal illnesses not among those conditions with a diagnosis of 6 months or less, or any other medical condition or its treatment that is added by the Department of Public Health.[17]

Under the Compassionate Use Act, those with medical cards under 21 years of age are prohibited from purchasing combustible cannabis, whereas those over 21 years of age may and, additionally, may grow up to five cannabis plants for personal consumption as of January 1, 2020. Additionally, the OAPP was established on August 28, 2018 and, as of January 31, 2019, allows for the use of cannabis in lieu of opioids.[18] For a cannabis prescription under the OAPP, a licensed physician must certify that the patient's medical condition could be treated with opioids according to the applicable standard of care. These certifications last for 90 days and allow for the purchase of 2.5 ounces of medical cannabis every 14 days.[19]

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[15] *Id.* at § 10-40.

[16] 410 ILCS 130.

[17] *Id.* at § 45.

[18] *Id.* at § 62.

[19] *Id.*

Labor and Employment Issues Related to Recreational and Medical Use of Cannabis: Employment issues related to recreational use are governed by 410 ILCS 705/10-50 (which was amended by SB1557) and those related to medical use, by 410 ILCS 130/50. In this area, it is important to view these types of cannabis use separately because the rules are different.

SB1557 and 820 ILCS 55 (the "Right to Privacy Act") clarify questions regarding permissible employment policies following the legalization of recreational cannabis use in Illinois.[20] The Act allows employers to adopt reasonable zero-tolerance or drug-free policies—including procedures for withdrawal of a job offer, discipline and termination in the event of violation—concerning drug testing, smoking, consumption, storage, or use of cannabis in the workplace or while on call, provided that the policy is applied in a nondiscriminatory manner, subject to the rights afforded medical users under the Compassionate Use Act and the OAPP. Section 50(e)(1) of the Act, among the portions that were amended, states that no cause of action exists for actions under such a policy including discipline, termination or withdrawal of an offer due to failed drug tests by applicants or employees, provided that the testing is reasonable and nondiscriminatory or the discipline, termination or withdrawal was based on a good faith belief of impairment by, use or possession of cannabis, in the workplace and, in the instance of impairment, the employee is afforded a reasonable opportunity to contest the finding upon which the discipline was based.

Further, as amended, Section 5 of the Right to Privacy Act states an employer may not refuse to hire or discharge an individual for use of products that are legal under state law (which now includes cannabis) "off the premises of the employer during nonworking and non-call hours," "[e]xcept as otherwise specifically provided by law, ***including Section 10-50 of the Cannabis Regulation and Tax Act.***"[21] As stated above, therefore, an employer may adopt a reasonable zero-tolerance drug policy in order to prevent its employees from using cannabis outside of the workplace.

As to medical use of cannabis, the law is more clear, because neither the Compassionate Use Act nor the OAPP are exempted from the Right to Privacy Act.[22] Thus, as medical cannabis is lawful under state law, the Right to Privacy Act prohibits termination of an employee based on their use during nonworking and non-call hours. An employee is on-call when "when the

[20] 410 ILCS 705/10-50; 820 ILCS 55.

[21] 820 ILCS 55 (emphasis added).

[22] *Id.*

employee is scheduled with at least 24 hours' notice by his or her employer to be on standby or otherwise responsible for performing tasks related to his or her employment either at the employer's premises or other previously designated location by his or her employer or supervisor to perform a work-related task."[23] Further, the Act specifically states that it does not "enhance or diminish protections afforded by any other law, including, but not limited to the Compassionate Use [ ] Act or the [OAPP]."[24] Thus, a medical user may only be terminated based on an employer's good faith belief that, while on the employer's premises or during working hours, the employee used or possessed cannabis, or was impaired as a result of its use.[25]

Hemp

The Act does not apply to hemp; it defers to Industrial Hemp Act, specifically stating "[c]annabis and cannabis-derived substances regulated under the Industrial Hemp Act are not covered by this Act."[26] The Industrial Hemp Act was enacted on August 26, 2018, and allows for the cultivation of hemp with a license, provided that the product has THC content below 0.3 percent.[27]

Pending Litigation[28]

On February 18, 2020, a bill seeking to legalize cannabis home delivery to adult-use customers and recreational users was put before the State of Illinois House rules committee. Introduced by State Representative Sonya Harper, she is currently advocating for its approval, but it remains pending and has yet to be addressed by committee or Governor J.B. Pritzker.

[23] *Id.* at 55(a).

[24] 410 ILCS 705/10-50(f).

[25] *Id.*

[26] 410 ILCS 705/10-10.

[27] 505 ILCS 89/5.

[28] This area of law is dynamic and perpetually evolving, especially in the midst of the current COVID-19 crisis, which has given rise to the designation of cannabis-related businesses as "essential" and, additionally, urgent requests for approval of home delivery services.

More Information

For more information, please contact the attorneys at Goldberg Kohn in one of the following practice groups: Bankruptcy - Dimitri Karcazes; Corporate - Vanessa Bachtell and Keith Sigale; Employment, Labor and Litigation - David Morrison and Meredith Kirshenbaum; Finance - Chris Marquez and Devoy Dubuque; Intellectual Property - Marsha Hoover, Robert Leighton and Dani Johnson; Real Estate - Jami Brodey.

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Marijuana

In Indiana, the possession of marijuana in any amount is still a serious crime. The possession of any amount of marijuana is charged as a Class A misdemeanor, punishable by 180 days in jail with a fine of $1,000. The possession of less than 30 grams with a prior drug offense is punishable by one year in jail and $5,000 in fines. Possession of any quantity greater than this (with a prior drug offense) is a felony, with up to two-and-one-half years in prison and a $10,000 fine. Indiana has a conditional discharge program for first-time offenders, where they can be given probation over jail time and have the charges removed from their record.

A person in the presence of drug activity is charged with a misdemeanor, punishable by six months incarceration and a $1,000 fine. "Presence" is defined as where knowledge of drug activity occurs.

Cannabis

In Indiana, any sale of less than 30 grams of cannabis is a misdemeanor punishable by one year in prison and $5,000 in fines. Any sale of higher quantities is a felony with up to six years in jail and $10,000 in fines. The cultivation of personal cannabis, whether for recreational or medical use, is illegal in Indiana.

Hash & Other Cannabis Concentrates

In Indiana, hash and other cannabis concentrates are treated more severely than marijuana. The possession of more than five grams is a felony punishable by six months up to two-and-one-half years in prison, as well as potential fines of $10,000. If less than five grams are involved, the charge is a misdemeanor, which comes with up to one year in jail and $5,000 in fines. The manufacture of between five and 300 grams is a felony, punishable by between six months and two-and-one-half years in prison, and $10,000 in potential fines. When the

amount involved exceeds 300 grams, the minimum term of imprisonment is six months, the maximum is six years, and fines of up to $10,000 are possible.

Hemp

Since the passing of SB 357 in 2014, Indiana permits the production of industrial hemp for commercial and research purposes.

CBD

In 2018, Indiana Governor Eric Holcomb signed into law SB 52, a bill that establishes the use and sale of cannabidiol (CBD) products containing less than 0.3% tetrahydrocannabinol (THC) for any purpose.

Paraphernalia

In Indiana, the possession of paraphernalia is a civil infraction and carries no jail time, though it does carry a potentially massive fine of up to $10,000. A subsequent conviction is punishable by between six months in jail and two-and-one-half years in prison, as well as a possible $10,000 fine.

The sale of paraphernalia is a class A infraction punishable by a fine of up to $10,000. A person dealing in paraphernalia with a prior unrelated judgement or conviction can be punished by between six months and two-and-one-half years' imprisonment, plus a maximum $10,000 fine.

The manufacture of paraphernalia is likewise a class A infraction, punishable by a fine of up to $10,000. Subsequent offenses are level six felonies, and the maximum penalty is $10,000 in fines and between six months and two-and-one-half years imprisonment.

More Information

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Overview

Iowa's medical cannabidiol program was enacted by the Iowa legislature in 2017. The program is codified by Iowa Code §124E (the "Medical Cannabidiol Act") and §641-154 of the Iowa Administrative Code ("IAC") and administered by the Iowa Department of Public Health's (the "IDPH") Office of Medical Cannabidiol. The program is overseen by an advisory board representing the fields of neurology, pain management, gastroenterology, oncology, psychiatry, pediatrics, family medicine, pharmacy, and law enforcement. As of January 1, 2021, the program has less than 5,000 patients.

Iowa law does not permit the recreational use of marijuana. It is illegal to possess, manufacture, or sell marijuana or cannabidiol in Iowa except as expressly authorized by the Medical Cannabidiol Act or the Iowa Hemp Act (as defined below).

Medical Cannabidiol

Patients with a qualifying medical condition and their designated caregivers are eligible to register with the IDPH and receive a cannabidiol registration card which authorizes them to purchase medical cannabidiol. Physicians do not prescribe medical cannabidiol. Instead, they certify that a patient is eligible for the program based upon the patient's qualifying medical condition(s). The following have been determined by the Iowa legislature to be qualifying medical conditions: (1) cancer, if the illness or its treatment produces one or more of the following: severe or chronic pain, nausea or severe vomiting,

cachexia, or severe wasting; (2) seizures; (3) Crohn's disease; (4) ulcerative colitis; (5) chronic pain; (6) Multiple Sclerosis with severe and persistent muscle spasms; (7) AIDS or HIV; (8) amyotrophic lateral sclerosis (ALS); (9) Parkinson's disease; (10) any terminal illness with a probable life expectancy of under one year, if the illness or its treatment produces one or more of the following: severe or chronic pain, nausea or severe vomiting, cachexia, or severe wasting; (11) severe, intractable autism with self-injurious or aggressive behavior; (12) corticobasal degeneration; and (13) post-traumatic stress disorder. A patient may purchase medical cannabidiol containing up to 4.5 grams of tetrahydrocannabinol (THC) over a 90-day period, and can only exceed that amount if a doctor determines that amount is insufficient to treat the patient's condition, or if the patient is terminally ill. Iowa's program allows patients to take medical cannabidiol orally (tablet, capsules, liquids, tinctures), topically (gels, ointments, creams, lotions, transdermal patches), using a nebulizer, and as a suppository, and through vaporization. Iowa's program does not permit the smoking of medical cannabinol or the manufacture or sale of edibles.

The Medical Cannabidiol Act gives the IDPH the authority to license up to two medical cannabidiol manufacturers to cultivate, harvest, transport, package, process, and supply medical cannabidiol for the program, and up to five medical cannabidiol dispensaries to dispense medical cannabidiol to patients. As of January 1, 2021, Iowa currently has two medical cannabinol manufacturers and three dispensaries.

Hemp

Iowa's hemp program was also enacted by the Iowa legislature in 2017. The "Iowa Hemp Act" is codified by Iowa Code §204 and allows licensed growers to cultivate industrial hemp on up to forty (40) acres. This law legalizes the production, processing, and marketing of many, but not all, hemp products in Iowa. It does not legalize the recreational use of marijuana or smokable hemp, nor the use and sale of hemp and hemp derivatives for animals. The Iowa Hemp Act is administered by the Iowa Department of Agriculture and Land Stewardship and authorizes hemp production according to a plan approved by the United States Department of Agriculture. Farmers must have a license from the Iowa Department of Agriculture and Land Stewardship to grow hemp and are subject to various inspection, testing, and pre- and post-harvest regulations promulgated under Chapter 96 of the IAC. A person may engage in the retail sale of a hemp product if the hemp was produced

in either Iowa or another state in compliance with federal law. Under the Iowa Hemp Act, "hemp" is a plant of the genus Cannabis other than Cannabis sativa L., with a delta-9 tetrahydrocannabinol concentration of not more than three-tenths of one percent on a dry weight basis. Plants with THC levels above three-tenths of one percent are still considered controlled substances in the state of Iowa and must be destroyed.

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Overview

Currently (as of January 2021), Kansas prohibits both recreational and medical marijuana use, but does authorize the commercial sale of hemp. Several medical marijuana bills (HB 2163, SB 113, HB 2303, and SB 195) were proposed in the 2019 Kansas legislative session, and none received votes. After suspending its 2020 session early due to the COVID-19 pandemic, the Kansas legislature held a short special session on June 3. One item on the agenda for the June 3rd special session, HB 2017 (which would have legalized medical marijuana) failed to advance.

Governor Laura Kelly believes Kansas is not ready for recreational marijuana but does support the legalization of medical marijuana, stating "I think that there is some momentum in the Legislature to pass, to legalize medical marijuana. I think we would do it Kansas-style, where it would be well-regulated... I have always said that I want it well-regulated so that it's controlled so that it's not the first step to legalization of marijuana. I don't want that. I want it to be seen as a pharmaceutical and controlled as we do that... I do believe that medical marijuana needs to be legalized... It does have medical uses, and I think it would do a lot for our families who have these kids with Dravet syndrome, which is that severe, frequent epileptic seizures, and I also think that it would help with the opioid crisis."

Furthermore, Governor Kelly has stated she would "probably" approve recreational marijuana legalization if the Kansas Legislature sent her a bill, although it is not something she is "going to advocate for."

According to a 2019 survey conducted by Fort Hays State University, 61.3% of Kansans "strongly support" legalizing medical marijuana and 76% at least "somewhat support" legalizing medical marijuana.

Medical Marijuana

Medical marijuana is prohibited. However, a majority of Kansans, including Kansas Governor Laura Kelly, support legalizing medical marijuana.

In 2018 and 2019, after the passage of the 2018 Farm Bill, Kansas amended its definition of "marijuana" to exclude CBD and hemp under its controlled substances statute. CBD is defined as "cannabidiol (other trade name: 2-[(3-methyl-6-(1-methylethenyl)-2-cyclohexen-1-yl]-5-pentyl-1,3-benzenediol)," and hemp is defined as "industrial hemp as defined in K.S.A. 2018 Supp. 2-3901, and amendments thereto, when cultivated, produced, possessed, or used for activities authorized by the commercial industrial hemp act." K.S.A. § 21-5701(j).

In addition, Kansas enacted "Claire and Lola's Law," which prohibits the state or any political subdivisions from initiating proceedings to remove a child from the home of the child's parent or guardian based solely upon the parent's or child's possession or use of a cannabidiol treatment preparation. A cannabidiol treatment preparation is defined as oil containing cannabidiol and having THC of less than 5% relative to cannabidiol concentration in the preparation, verified by a third-party independent lab. K.S.A. § 65-6235. Furthermore, while the parent or guardian has possession of the cannabidiol treatment preparation, such person shall possess a letter dated within the preceding 15 months and signed by a physician licensed to practice medicine and surgery in Kansas who diagnosed the user of the cannabidiol treatment preparation with a debilitating medical condition. K.S.A. § 21-5706 (d).

Hemp

In 2018, Kansas enacted the Commercial Industrial Hemp Act. K.S.A. 2-3901, et seq. (the "Hemp Act"), which authorizes the commercial sale of hemp. The Hemp Act authorizes the issuance of licenses for the cultivation, processing, and distribution of industrial hemp, which is defined as "all parts and varieties of the plant cannabis sativa L., whether growing or not, that contain a delta-9 tetrahydrocannabinol concentration of not more than 0.3% on a dry weight basis." K.S.A. § 2-3901(b)(7).

As part of the Hemp Act, Kansas enacted regulations regarding the import and export of hemp. Under a "pilot program," Kansas limited the first two years of hemp sales to research purposes only. As such, someone licensed to possess hemp under Kansas law could not sell, transfer, purchase, or acquire hemp plants, plant parts, grain or seed to or from any individual or business entity outside Kansas who was authorized by an institution of higher education or a state department of agriculture under 7 U.S.C. § 5940, as amended, and the laws of that state. K.A.R. 4-34-15(b).

In 2020, the Kansas Department of Agriculture ("KDA") submitted a plan to the United States Department of Agriculture ("USDA") detailing how the KDA will monitor and regulate commercial hemp production, as required by K.S.A. §

2-3906. In April 2020, the USDA approved the KDA's proposed plan and Kansas codified the plan at K.A.R. 4-34-22 through K.A.R. 4-34-30. Starting January 8, 2021, the KDA will begin accepting applications and issuing licenses for the commercial sale of hemp, other than for research purposes.

In 2019, the first year of legal hemp production in Kansas, the KDA issued 207 licenses for growers, 20 licenses for distributors, 35 licenses for processors, and 9 licenses for researchers.

Although the State reported a 30% rise in the number of grower applications for 2020, the KDA ultimately issued 205 licenses for growers, 21 licenses for distributors, 24 licenses for processors, and 7 licenses for researchers. As of the date of this publication, the KDA has not released information regarding applications for 2021. More information regarding the active licenses can be found at https://agriculture.ks.gov/divisions-programs/plant-protect-weed-control/industrial-hemp/current-growers.

When analyzing the number of grower licenses, it is worth noting that the 2019 program limited growers to an 80-acre plot per license, requiring some growers to hold multiple licenses. However, the 2020 program increased the acreage limit to 230 acres per license.

In addition, growers reported experiencing difficulty in finding buyers for their 2019 hemp harvest. The processing and manufacturing of hemp in Kansas is lagging behind surrounding states which have all either decriminalized or fully legalized marijuana for medical or recreational use.

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Overview

Medicinal and recreational marijuana possession (a Class B misdemeanor under KRS 218A.1422), trafficking (KRS 218A.1421), and cultivation (KRS 218A. 1423) remain illegal in Kentucky. KRS 218A.005 et seq. govern controlled substances and criminal penalties related to such. Kentucky's Cabinet for Health and Family Services has authority (per KRS § 218A.020) to set Kentucky's schedules of controlled substances (902 KAR 55:015), which tracks to the federal schedule at 21 C.F.R. 1308.11.

"Marijuana" is defined in KRS § 218A.010(28), although the definition has received revision in recent years, starting with a change in 2013 to note that industrial hemp (as defined in KRS § 260.850) was not included. Notable changes came in 2014, with the exclusion of medicinal cannabidiol (CBD) prescribed by a hospital affiliated with a state-run university and any drug approved for clinical trials by the FDA. In 2017, the industrial hemp exclusion was clarified so that it applied to the possession, custody, or control of a person who held a license from the Department of Agriculture to do so, and so long as products made from it did not contain any living plants, leaves, flowers or viable seeds. CBD products derived from industrial hemp became legal that year, as did all prescribed CBD products approved by the FDA.

Medical Marijuana

No. House Bill 136, which would have legalized medicinal cannabis, passed the Kentucky House of Representatives in a 65-30 vote, but it stalled in the Senate and may not pass before the legislative session adjourns on April 15, 2020. The bill would have legalized the possession, growth, processing and use of medical cannabis for qualified medicinal users and related businesses. Medical cannabis has gained support in Kentucky in recent years, earning high profile advocates such as Gov. Andy Beshear and Senator Rand Paul.

Hemp

The statutes governing Kentucky hemp cultivation, processing, and sale are found in KRS 260.850 et seq. A license from the Kentucky Department of Agriculture is required to cultivate, handle, process, or market living hemp plants, viable seeds, leaf materials or floral materials derived from hemp. KRS 260.858(2). Hemp tetrahydrocannabinol must not exceed a delta-9 tetrahydrocannabinol concentration in excess of three-tenths of one percent (0.3%). Violators are subject to the same penalties as those who violate provisions of KRS 218A relating to marijuana.

History

Kentucky has been on the forefront of industrial hemp production since before the passage of the Agricultural Improvement Act of 2018, which removed industrial hemp from the definition of "marijuana" in the federal schedule of controlled substances.

In 2001, HB 100 created the Kentucky Industrial Hemp Commission to study industrial hemp and set up pilot programs at state universities under new Chapter 260 of the Kentucky Revised Statues, but KRS 260.865 also aligned the state's scheme with federal rules and regulations. In 2013, after federal law was amended to allow industrial hemp for the purpose of research by institutions of higher learning, Kentucky enacted SB 50, which legalized industrial hemp and created a licensing scheme for growers through the Department of Agriculture. Kentucky expanded this program in 2017, repealing, revising, and reenacting large swaths of KRS Chapter 260 to promote hemp, declaring it a "viable agricultural crop in the Commonwealth."

As of 2020, minor changes have been made, but the hemp program as expanded in 2017 continues.

Market Size

According to the Kentucky Department of Agriculture, the number of planted acres for hemp grew from 33 in 2014 to 26,500 in 2019; however, there were 60,000 acres approved for hemp production in 2019. Gross Product Sales for Hemp in 2019 reached $57.5 million, with more than 200 processors/handlers and about 978 approved growers.

Investment Analysis

Kentucky has seen great growth in hemp production since hemp has been legalized. Investment opportunities are available for those interested in growing, handling, processing, or cultivating hemp. However, the market is still in flux, and multiple processors declared bankruptcy in 2019 and 2020. The Kentucky Department of Agriculture acknowledges that persons in the hemp industry "are having difficulty finding a market for the expanded production." Persons or entities interested in being a hemp grower or processor need to obtain a license through the Kentucky Department of Agriculture.

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Medical Use

Yes, 2013 Natalie M. LaPrade Medical Cannabis Commission: Md Code Ann., Health-General §§ 13-3301 et seq., as amended; and Regulations: COMAR 10.62.01.01 et seq.

Current Regime

Maryland has legalized marijuana for medical purposes under certain conditions. In 2013, the legislature created a state-regulated medical marijuana program, the Natalie M. LaPrade Medical Cannabis Commission (the "Commission"). The Commission is responsible for overseeing and enforcing the state's medical marijuana program and promulgating regulations. Since its inception, the Commission has developed the framework for certifying health care providers and implemented the program that licenses growers, processors, and dispensaries.

Under Maryland law, only "qualifying patients" may use medical marijuana. A "qualifying patient" is someone who lives in Maryland or is physically present in Maryland for the purpose of receiving medical care, has been provided with a written certification from a certifying physician, and has a chronic or debilitating disease or medical condition that causes one of the following conditions: cachexia or wasting syndrome, anorexia, severe pain, severe nausea, seizures, severe or persistent muscle spasms, glaucoma, post-traumatic stress disorder, and chronic pain. The Commission's regulations permit a doctor to recommend marijuana for a patient if the doctor believes doing so would be in the patient's best medical interest. Maryland recently began permitting the sale of edible products. Edible cannabis products include products intended for oral ingestion that dissolve or disintegrate. Dispensaries are also permitted to sell products containing cannabis, related supplies, and other related products containing cannabis including tinctures, aerosols, oils or ointments.

In order to recommend that a patient qualify to use medical marijuana, a physician must register with the Commission. To obtain a registration, the physician must have an active and unrestricted license to practice in Maryland, be in good standing with the Board of Physicians, and be registered by the state to prescribe controlled substances. Registrations must be renewed every two years. At present, there is no fee for a provider to register with the Commission.

Maryland also requires that a "bona fide physician-patient relationship" exist between the physician and the qualifying patient. In order to qualify as a "bona fide physician-patient relationship," the physician must have ongoing responsibility for the assessment, care, and treatment of a patient's medical condition. At a minimum, the physician must see the patient once per year. A registered physician can then issue a "written certification" to a patient who qualifies for medical marijuana usage. Physicians are required to submit a copy of each written certification to the Commission.

Certifying physicians are restricted from accepting compensation from growers, processors, dispensaries, or other physicians.

Dispensaries that are licensed by the Commission are permitted to distribute medical marijuana in a processed form or in the form of a dried flower. Dispensaries may also sell devices that administer marijuana and offer delivery services to patients. Dispensaries are required to keep on file for five years the name and address of each recipient of marijuana; the quantity delivered to each recipient; and the name, strength, batch number, and lot number delivered to each recipient. Dispensaries are also required to submit quarterly reports to the Commission, including the number of patients served, their counties of residence, their medical conditions, the type and amount of medical marijuana dispensed, and (where available) a summary of clinical outcomes, including adverse events and any cases of suspected diversion.

Recent regulations have placed increased emphasis upon efforts to enhance supplier diversity among the pool of license applicants. The new regulations require the Commission to undertake an extensive list of outreach efforts to identify and encourage applications from minority-owned and women-owned business enterprises, and from ventures that include participation by diverse individuals. Moreover, the State has amended regulations that govern the Commission's review and scoring of medical cannabis license applications to include evaluation criteria for the award of up to 15 points based upon an applicant's diversity plan. Specifically, the regulations direct the Commission to evaluate prospective licensees for their various configurations for the inclusion of minority-owned and women-owned disadvantaged business enterprises, and diverse employees across various ethnic, gender, and geographic categories.

Import/ Export

Patients may only buy from a dispensary. No marijuana may be imported from or exported to another state or country. Marijuana may be acquired by Processors and Dispensaries from outside of Maryland only with permission from the Commission. Maryland also provides protections for license holders from being penalized or arrested under State law for its handling and intrastate transport of medical cannabis. See Md. Code Ann., Health- General §13-3306, §13-3307, and §13-3309.

Market Size

$254 million 2019 sales (increase from $96 million in 2018). 90,000+ licensed patients. Anticipated continued growth year over year.

Current Context

Efforts have been initiated towards enhancing diversity among selected licensees. Morgan State University was selected to analyze, score, and rank applications. The State also utilized independent investigators to review the process employed by Morgan State University before granting additional licenses. The independent investigation revealed that there was no evidence of bias or undue influence in the 2019 license application review process; however, they did find evidence of conflicts of interest. Ultimately, it was determined that there was no evidence that the conflicts resulted in any bias or special favorable treatment in the license application review process. Recreational use is not yet legal in Maryland; however, lawmakers have been investigating the possibility of legalizing recreational use. Maryland has also decriminalized possession of marijuana. Currently, a first finding of guilt for possession of marijuana of less than 10 grams (excluding medical) is considered a civil offense punishable by a fine not exceeding $100. See Md. Code Ann., Criminal Law, §5-601. Second and third findings of guilt are also civil offenses, but are subject to increased penalties. Institutions of higher education may also purchase medical cannabis for the purpose of conducting a bona fide research project. See Md. Code Ann., Health- General §13-3304.1.

Investment Analysis

Opportunities exist for acquiring grower, processor, and dispensary licenses. This is somewhat limited since applicants may only apply with an interest in one (1) of each application. Having a criminal background may also limit an opportunity to obtain a license. The legislature has opened up the market by permitting certain types of edible products. The Commission is in the process of finalizing regulations that will address requirements for processing, packaging, labeling, transporting, distributing, and selling edible cannabis products. Recently, private investment firms and licensees have initiated efforts and instituted programs aimed towards providing funding opportunities to support minority-owned businesses, and in certain cases, to become franchisees of existing license holders.

Hemp

In response to the Farm Bill of 2014, the Maryland General Assembly passed House Bill 698 which established an industrial hemp pilot program to be administered by the Maryland Department of Agriculture. Industrial hemp may only be grown or cultivated in Maryland for research conducted in connection with a pilot program established by the Maryland Department of Agriculture. Industrial hemp may not be grown for general commercial activity. Site registration can be obtained by institutions of higher education or those partnering with institutions of higher education for research purposes.

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Overview

Currently (as of January 2021), the primary bodies of marijuana law in Massachusetts are Mass. Gen. Laws Ch. 94I (Medical Use of Marijuana) ("Medical Act") and Mass. Gen. Laws Ch. 94G (Regulation of the Use and Distribution of Marijuana Not Medically Prescribed)("Recreational Act"). The Medical Act regulates the Massachusetts medical marijuana program and the Recreational Act regulates the adult-use of marijuana in Massachusetts for non-medical purposes.

Pursuant to the 2018 Farm Bill, and the Massachusetts 2020 Hemp Processor Policy, Massachusetts allows industrial hemp to be grown commercially. The provisions of Mass. Gen. Laws Ch. 128, Sections 116-123, and policies of the Massachusetts Department of Agricultural Resources also apply to certain commercial activities related to industrial hemp.

Medical Marijuana

The Medical Act (Mass. Gen. Laws Ch. 94I) became law in 2013. Regulations are codified in 935 Code Mass. Regs. 501.000. In 2018, oversight of the state's medical marijuana program transferred from the Department of Health to the Massachusetts Cannabis Control Commission ("MCCC").

The Medical Act allows medical practitioners to certify patients with serious debilitating medical conditions (like cancer, HIV, Crohn's Disease, or multiple sclerosis), allowing them to obtain a medical registration card. Once granted a medical registration card, the law protects the certified patient, and their designated caregiver, for possessing and transporting a 60-day supply of medical marijuana as prescribed by his or her doctor, up to a maximum of ten ounces (which cannot be consumed in a public place). As of March 31, 2020, Massachusetts had 69,008 registered medical marijuana patients.

The Medical Act also regulates the sale of medical marijuana, limiting the manufacturing and dispensing of medical marijuana in the state to licensed companies, referred to as Medical Marijuana Treatment Centers ("MMTCs") (formerly known as Registered Marijuana Dispensaries or "RMDs"). These MMTCs are subject to regulations prohibiting them from employing convicted felons, requiring them to manufacture marijuana in an indoor, enclosed, secure facility in Massachusetts, regulating laboratory testing, and mandating security and tracking measures. Prices are not regulated and vary from MMTC to MMTC, but advertising is regulated. MMTCs may offer home delivery, subject to regulations.

The number of MMTCs is not limited. As of May 31, 2019, Massachusetts had 50 MMTCs approved for sale of medical marijuana. Applications fees total $31,500 and are nonrefundable. A licensee may own no more than 3 MMTCs. A registration is valid for one year and is non-transferrable without approval from the MCCC. A $50,000 fee must accompany a renewal application, which must be filed at least 60 days before the expiration date of the current registration.

There is no right for medical marijuana patients to be impaired while at work. The patient's use of medical marijuana may require the employer and employee to work on a reasonable accommodation, if the patient's underlying condition qualifies him or her as a "handicapped person" under Massachusetts law.

The Recreational Act (Mass. Gen. Laws Ch. 94G) became law in 2017. Regulations are codified in 935 Code Mass. Regs. 500.000. The MCCC oversees the state's adult-use marijuana program.

Under the Recreational Act, adults over the age of 21 generally are permitted to possess, use purchase, or give away up to one ounce of marijuana, no more than five grams of which may be concentrates. Adults may cultivate no more than six plants individually, or no more than 12 plants per household. Adults may also possess up to ten ounces of marijuana at one's primary residence (plus any marijuana produced from their own plants); and to possess, manufacture, or purchase marijuana paraphernalia or sell it to other adults.

Adult-Use Marijuana

The Recreational Act also regulates the sale of adult-use marijuana, requiring licenses from the CCC for retail stores, cultivators, testing laboratories, research laboratories, transporters, microbusinesses, and manufacturers of products. Licensees are subject to various regulations prohibiting them from employing convicted felons, requiring them to manufacture marijuana in an indoor, enclosed, secure facility in Massachusetts, regulating laboratory testing, and mandating security and tracking measures. Prices are not regulated, but advertising is regulated. Retailers may offer home delivery, subject to regulations.

The number of licensees is not limited. As of January 2021, Massachusetts has approved 298 adult-use retailer licenses, 220 marijuana cultivator licenses, 170 marijuana product manufacturer licenses, 17 microbusiness and 9 testing laboratory licenses, among others. A licensee may own no more than 3 retail licenses. A registration is valid for one year and is nontransferable without approval from the MCCC.

Hemp

Currently, the only lawful pathway to grow industrial hemp in Massachusetts is through participation in the Massachusetts Industrial Hemp Program. It is administered by the Massachusetts Department of Agricultural Resources (MDAR). The MDAR Hemp Program provides oversight and regulation of legally grown hemp for commercial purposes under Mass. Gen. Laws Sections 116-123.

Massachusetts has submitted a plan for commercial hemp production for approval by the USDA, which was approved in May 2020.

MDAR requires a license for the following transactions: growing industrial hemp in Massachusetts; processing industrial hemp in Massachusetts; extracting hemp products directly from the hemp plant; sale of industrial hemp from Massachusetts-licensed grower to Massachusetts-licensed grower; sale of industrial hemp from Massachusetts-licensed grower to Massachusetts-licensed processor; and sale of industrial hemp from Massachusetts-licensed processor to Massachusetts retailer/store.

MDAR permits the sale of the following hemp-derived products in Massachusetts: hemp seed and hemp seed oil; hulled hemp; hemp seed powder; hemp protein; clothing; building material; items made from hemp fiber; and flower/plant from a Massachusetts-licensed grower to a Massachusetts-licensed processor. MDAR prohibits the sale of the following hemp-derived products in Massachusetts: any food product containing CBD; any product containing

CBD derived from hemp that makes therapeutic/medicinal claims; any product that contains hemp as a dietary supplement; animal feed that contains any hemp products; and unprocessed or raw plant material, including the flower that is meant for end use by a consumer.

More Information

For more information, please contact Travis McDermott or John Ottaviani of Partridge Snow & Hahn LLP.

DISCLAIMER: The possession, distribution, and manufacturing of marijuana are illegal under federal law. State law, which may in some jurisdictions decriminalize such activity under certain circumstances, is superseded by federal law. Violation of federal drug laws carries serious penalties, with the federal government reserving the right to seize and seek civil forfeiture of real or personal property facilitating the sale of marijuana and money or proceeds accruing from such transactions. Section 280E of the Internal Revenue Code also disallows deductions for amounts paid or incurred in the carrying on of a trade or business that consists of the "trafficking" of cannabis. Law or policy covering this industry may change at any time.

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Overview

Currently, Michigan's primary resource for information regarding marijuana law is the Marijuana Regulatory Agency ("MRA") under the Department of Licensing and Regulatory Affairs ("LARA"). The MRA administers, regulates and provides information regarding Michigan's medical marijuana and adult-use marijuana programs.

Since 2008, Michigan has regulated the use and cultivation of marijuana for medical use under the Michigan Medical Marijuana Act, which provides legal protection for qualified patients and primary caregivers. In 2018, the Medical Marijuana Facilities Licensing Act ("MMFLA") became effective and established a process for operating medical marijuana facilities within Michigan. The State has also been active in exploring the viability of the industrial hemp industry since passage of the 2018 Farm Bill.

Additionally, Michigan is one of a handful of states that has legalized adult-use marijuana. The Michigan Regulation and Taxation of Marijuana Act authorizes the use and cultivation of marijuana by persons 21 years of age and older. With the passage of evolutionary laws regarding marijuana cultivation, production and distribution, LARA has simultaneously adopted corresponding Emergency Rules to provide clarity for individuals and businesses seeking to comply with marijuana laws within the State.

Medical Marijuana

On November 04, 2008, Michigan voters approved the Michigan Medical Marijuana Initiative, which was enacted into law on December 04, 2008 as the Michigan Medical Marijuana Act ("MMMA"). With the passage of the MMMA, Michigan became the thirteenth state to legalize medical marijuana. The MMMA allows for protections for the medical use of marijuana, provides

for a system of registry identification cards for qualifying patients and primary caregivers, and allows affirmative defenses under state law for the medical use of marijuana.

The MMMA states that a qualifying patient, or a primary caregiver who is assisting a qualifying patient to whom they are connected through the Department's registration process, who has been issued and possesses a registry identification card, is not subject to arrest, prosecution, or penalty for the medical use of marijuana. The qualifying patient may not possess an amount of marijuana that exceeds a combined total of 2.5 ounces of usable marijuana and usable marijuana equivalents. Additionally, a qualified patient or a primary caregiver may cultivate a maximum of 12 marijuana plants that must be kept in an enclosed, locked facility.

There have been three amendments to the MMMA since its inception. House Bill 4856 (effective on December 27, 2012) requires medical marijuana to be stored in an enclosed case in the trunk of a car or in an enclosed case that is not readily accessible from the interior of the vehicle when being transported in an automobile. House Bill 4834 (effective April 1, 2013) requires proof of Michigan residency when applying for a Medical Marijuana Program Registry ID Card and makes the ID cards valid for two years instead of one. Lastly, House Bill 4851 (effective April 1, 2013) requires a "bona fide physician-patient relationship" for a physician to provide medical marijuana certification and protects a medical marijuana patient from arrest only if they have a valid Medical Marijuana Program Registry ID Card and photo ID.

The Michigan Medical Marijuana Program ("MMMP"), a state registry program facilitated by LARA, administers the MMMA. Additionally, MMMP issues Michigan Medical Marijuana Program Registry Identification Cards while keeping the confidentiality of participants.

On December 20, 2016, the Medical Marijuana Facilities Licensing Act ("MMFLA") became law in Michigan and has since been the predominant legal way to operate in the medical space in the state. Under the MMFLA, on December 15, 2017, Michigan began accepting applications for state medical marijuana licenses. The five types of businesses that may be licensed under the MMFLA are: 1) Growers, organized into three classifications (Class A: 1 to 500 plants, Class B: 500 to 1,000 plants; and Class C: 1,000 to 1,500 plants), 2) Processors, 3) Provisioning Centers, 4) Secure Transportation, and 5) Safety Compliance Facilities. Additionally, under the MMFLA, businesses or individuals licensed to operate in the cannabis space through LARA must also comply with all city, township or village-imposed requirements, which are in addition to those imposed by the MMFLA.

With adoption of the MMFLA, the Medical Marijuana Licensing Board ("MMLB") was created to administer the MMFLA. The five-person board, appointed by the Governor, was responsible for reviewing applications, issuing licenses, revoking/suspending licenses, renewing licenses, and investigating individuals who are applying for licenses or complaints received about someone who holds a license. On March 1, 2019, Governor Gretchen Whitmer abolished the MMLB with Executive Order 2019-7 in favor of the creation of the MRA.

Since the enactment of the MMFLA, several amendments have been passed. Senate Bill 1262 (effective January 1, 2019) expands the definition of "applicant" for marijuana licenses to include a company's managerial employees and officers, partners and stockholders who own at least 10%, and for a sole proprietor, his or her spouse. Additionally, the penalties for fraudulently selling marijuana without a state license increased to 93 days in jail and a fine between $10,000 and $25,000, and a felony for any subsequent violation. Further, Senate Bill 1263 (effective December 28, 2018) established sentencing guidelines for marijuana business license law violations.

Hemp

In 2014, former Governor Rick Snyder signed Public Acts 547 and 548 of 2014, removing industrial hemp from the state's legal definition of marijuana. After the passage of the 2014 Farm Bill, former Governor Snyder signed the Industrial Hemp Research and Development Act, which authorizes the Michigan Department of Agriculture & Rural Development (MDARD) to enter into research agreements with applicants, including Michigan universities, to allow for industrial hemp cultivation.

After the passage of the 2018 Farm Bill, the Michigan Industrial Hemp Research and Development Act of 2018, later became effective on January 15, 2019, establishing for the licensing of certain persons engaged in the growing, processing, and handling of industrial hemp. Under this Act, anyone who engages in the aforementioned activities must obtain a registration of license from MDARD. It is important to note that the MDARD industrial hemp program has not yet been approved by the United States Department of Agriculture (USDA), pursuant to the Interim Rules and Requirements promulgated by the Department of Agriculture in 7 CFR Part 990. It is expected that Michigan will submit its plan for approval barring any delays attributable to COVID-19.

Adult-Use Marijuana

Effective as of December 6, 2018, following ballot passage by a majority of Michigan voters, the Michigan Regulation and Taxation of Marijuana Act ("MRTMA") authorizes the personal possession and use of marijuana by persons 21 years of age or older. Additionally, MRTMA authorizes the lawful cultivation and sale of marijuana and industrial hemp, and the taxation of revenue derived from commercial marijuana facilities. This Act makes Michigan the tenth state to legalize marijuana use for adults, and the first state in the Midwest.

On July 3, 2019, MRA issued Emergency Rules designed to enforce and clarify MRTMA to citizens, business owners, and local governments. Under the emergency rules, there are different license types and application processes for individuals and businesses seeking to participate in the legal sale of retail marijuana. Additionally, the rules give guidance to municipalities for banning cannabis use in their communities and eliminates the capitalization requirements for adult-use licenses that usually apply to medical marijuana businesses. Moreover, the rules establish multiple tiers of licenses for industry participants as well as strict rules regarding how marijuana products can be transferred between different types of licensees. Although the rules were effective for six months, on December 18, 2019, Governor Whitmer extended the rules to remain in effect until July 3, 2020. Given the strain on government resources due to the onslaught of COVID-19 related issues, speculation suggests that these rules will be extended.

Upcoming Legislative Agenda

On January 29, 2020, MDARD submitted its comments on the USDA's Interim Final Rules on the Establishment of a Domestic Hemp Production Program to the Federal Docket. The rules detail provisions for the USDA to approve plans submitted by states and tribal organizations for validation of a federally sanctioned domestic hemp production program. During the comment period, MDARD, along with many other states, organizations and individuals, expressed concerns on the rules, heavy reliance on the Controlled Substance Act, the involvement of the U.S. Drug Enforcement Agency ("DEA") in the hemp industry, and how growers should appropriately handle or dispose of hemp with a greater than .3% THC level. MDARD's comments looked to encourage the USDA to evaluate typical hemp testing outcomes and, specifically, to take into account the low THC range found and documented for noncompliant hemp, even though that level may be greater the legal .3%. MDARD's comments, consistent with many of the thousands of comments received on the subject, urges the USDA to remove the DEA's involvement in the hemp industry or at a minimum have that involvement not hamper the growth of the industry.

More Information

For more information, please contact members of the Miller Johnson Cannabis Practice Group: Maxwell N. Barnes (co-chair), Shoran Reid Williams (co-chair), Sandra M. Andre, Chelsea M. Austin, Jason M. Crow, Keith E. Eastland, David A. Hall, Brittany R. Harden, Jeffrey G. Muth, Nathan D. Plantinga, Jordan K. Schwartz, and Eric R. Starck.

Thank you to Chelsea M. Austin for her research and assistance in creating this extract of the current state of Michigan's Cannabis law.

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Medical Cannabis

Minnesota's Medical Cannabis Program was enacted in 2014 (https://www.revisor.mn.gov/laws/2014/0/311/) and was amended in 2015 (https://www.revisor.mn.gov/laws/2015/0/Session+Law/Chapter/74/). In 2019, changes were made to the Medical Cannabis Program, summarized here: https://www.health.state.mn.us/people/cannabis/docs/rulemaking/2019legislativechanges.pdf.

The qualifying conditions are cancer (if the patient has severe pain, nausea, or wasting), glaucoma, HIV/AIDS, Tourette's, ALS, seizures, severe and persistent spasms, inflammatory bowel disease – including Crohn's disease, terminal illness with less than one year to live (if the patient has severe pain, nausea, or wasting), intractable pain, PTSD, autism, obstructive sleep apnea, and Alzheimer's disease. The law only allows administration via liquids, oils, and pills that are made of cannabis, including whole plant extracts and resins.

A legislative information brief on the Medical Cannabis Therapeutic Research Act, which also contains a summary of medical cannabis legislation in Minnesota, can be found here: https://www.house.leg.state.mn.us/hrd/pubs/MCTRA.pdf.

Per the Minnesota Department of Health website, in order to fully develop the details for this program, the Legislature authorized the Department of Health (MDH) to adopt rules. MDH had authority to use two types of rulemaking procedures. Initially, the Department could do expedited rulemaking, and for the longer range administration the Department will use regular formal rulemaking procedures. Administrative rules relating to medical cannabis in Minnesota are found in Chapter 4770 not the Minnesota Administrative Rules (https://www.revisor.mn.gov/rules/4770/).

The Office of Medical Cannabis provided policy guidance with respect to the certification of qualifying conditions in a June 30, 2015 Information Bulletin (https://www.health.state.mn.us/people/cannabis/docs/rulemaking/infobulletin1.pdf). In addition, in November 2015, MDH issued two Issue Briefs providing guidance for providers that are both state licensed and federally certified by the Centers for Medicare and Medicaid Services (https://www.health.state.mn.us/people/cannabis/docs/practitioners/medcannabiscertproviders.pdf) and for providers who are licensed by MDH but not federally certified (https://www.health.state.mn.us/people/cannabis/docs/practitioners/medcannabislicensedonlyproviders.pdf).

Adult Cannabis

Minnesota has not legalized non-medical cannabis use. A bill was introduced to the Minnesota Legislature on May 5, 2020 to permit non-medical adult cannabis use, but the bill did not advance before the legislature adjourned on May 18.

Industrial Hemp

The Minnesota Department of Agriculture oversees a hemp research pilot program. (https://www.mda.state.mn.us/plants/hemp). After the federal Farm Bill of 2014 was passed, Minnesota passed the Minnesota Industrial Hemp Development Act. (https://www.revisor.mn.gov/statutes/cite/18K). The act allowed the Department of Agriculture to establish the Industrial Hemp Pilot Program to study the growth, cultivation, and marketing of hemp as an agricultural crop. Until Minnesota develops a hemp program compliant with the 2018 Farm Bill, it will continue to operate under the Industrial Hemp Pilot Program.

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Overview

On November 6, 2018, the citizens of Missouri voted to approve Missouri Constitutional Amendment 2 as Article XIV of the Missouri Constitution ("Article XIV"), which provides a right to access medical use marijuana. Article XIV granted the Department of Health and Senior Services ("DHSS") the right to license and regulate medical marijuana in Missouri. The DHSS began accepting licensing applications for cultivation, infused-products manufacturing, dispensary, laboratory testing, seed-to-sale, and transportation facilities on August 3, 2019.

Article XIV and DHSS Rules are silent regarding employment protection for medical marijuana patients. As a result, Missouri Senator David Sater proposed SB 610, which permits an employer's termination of an employee who fails a random drug test for medical marijuana irrespective of whether the employee's physician prescribed the medical marijuana for a valid ailment. SB 610 further allows an employer to refuse employment to any person who fails a pre-employment drug test for valid medical marijuana use. SB 610 passed through the Missouri Senate's Small Business and Industry Committee in February of 2020.

Currently, the Missouri Department of Agriculture regulates the production and sales of viable industrial hemp. Missouri does not have an acre minimum or maximum limit to grow industrial hemp. Missouri began accepting Registered Producer and Agricultural Hemp Propagule and Seed Permits on January 2, 2020.

Medical Marijuana

Article XIV is codified in Title 19, Division 30 Chapter 95 of Missouri's Code of State Regulations (Mo. Code Regs. Ann. tit. 19, §§ 30-95.010-110).

Article XIV allows physicians to prescribe medical marijuana for a wide variety of qualifying medical conditions including cancer, epilepsy, glaucoma, migraines, HIV/AIDS, any terminal illness, a chronic medical condition causing severe pain, a chronic medical condition that is normally treated with a prescription that could lead to psychological or physical dependence, or the treatment of a medical condition in the professional judgment of a physician.

To receive a medical marijuana patient identification card a qualifying patient must complete a Patient/Caregiver Application with the DHSS. There is a $25.00 fee to submit the patient application with an additional $100.00 fee if the patient desires to cultivate their own marijuana. A patient or caregiver may purchase up to four (4) ounces of dried marijuana in a 30-day period and may only possess a 60-day supply of dried marijuana. A patient or caregiver may cultivate up to six (6) flowering plants and only possess a 90-day supply of cultivated, dried marijuana. Violation of any provision of Article XIV could result in the revocation of the patient's medical marijuana identification card. If a cardholder is found to be in possession of marijuana over the legal limit, the identification card may be revoked for up to one year. If a cardholder is convicted or pleads guilty of trafficking illegal drugs in Missouri or any other state, the identification card will be permanently revoked.

Article XIV also provides regulations for cultivation, infused-products manufacturing, dispensary, testing, seed-to-sale, and transportation facilities. Some of the key regulations include: 1) requiring the majority owner to be a resident of Missouri for at least one year prior to applying for a facility license; 2) requiring all facilities, except for transportation facilities, to be kept 1000 feet away from elementary, secondary or pre-schools and churches; 3) requiring all facility agents including owners, officers, managers, contractors, employees, and other support staff to obtain an agent identification card and keep the card and a government-issued photo ID accessible while performing work on behalf of the facility; 4) requiring each facility to use a DHSS certified facility to track medical marijuana from seed until it is purchased; and 5), requiring each facility to display its license at all times within 20 feet of the entrance.

Each facility must install security equipment to prevent and detect unauthorized entrance into limited access areas. Also, each facility must have video coverage of all entrances and exits to the facility, including windows, perimeter, and exterior areas. Video coverage is also mandated for at least 20 ft. of space around the perimeter, point of sale location, vaults or safes, and all medical

marijuana storage from at least two angles. Facilities must also have video cameras capable of recording in a resolution of at least 1920 x 1080 pixels at a rate of at least 15 frames per second, a printer capable of producing a clear still photo from every camera, and at least one call-up monitor.

The DHSS was required to award no less than 60 cultivation, 86 infused-products manufacturing, 10 laboratory testing, and 192 dispensary licenses. Each applicant paid a nonrefundable application fee of $10,000 (cultivation facility), $6,000 (dispensary and infused-products manufacturing facilities), $5,000 (laboratory testing facility), and $5,000 (transportation facility). As of April 2020, the DHSS has issued all facility licenses.

Missouri has not provided any discrimination protections for qualified patients in employment. If passed, Senator Sater's proposed bill would single out medical marijuana from every other prescription ordered by an employee's physician. Under SB 610 an employer may conduct both pre-employment and random drug testing of employees and terminate any employee who tests positive for marijuana. The termination would be valid if SB 610 is enacted since SB 610 explicitly treats medical marijuana differently than any other prescribed treatment method, and having a valid qualifying patient identification card would not remove a positive marijuana test from the test results.

Hemp

Missouri's Industrial Hemp Program is currently operating under the United States Department of Agriculture's one-year extension and will not submit an official plan until the end of 2020.

Missouri issued emergency rules for the 2020 hemp growing season. The emergency rules remove the acreage limit under the pilot program of 2000 acres statewide and the individual grow limit of between ten and 40 acres.

Under the emergency rules, to produce viable industrial hemp an entity must apply for a producer registration. To sell, distribute, or offer for sale any viable hemp, an entity must apply for an agricultural hemp propagule and seed permit. Each applicant must complete an approved application form and undergo a state and federal fingerprint and criminal background check. Third-party commercial transportation of viable industrial hemp is exempt from the registration and permit requirements.

A separate registration or permit is required for each noncontiguous parcel of land where viable industrial hemp will be produced, sold, distributed, or offered for sale. Parcels of land that are not owned or rented by the person applying for the registration or permit are not permitted. Each applicant must

pay a fee of $750 for each registration or permit application. If accepted the registration and permit are valid for three years. At the beginning of the second and third year, registered producers and permit holders must timely pay an annual fee of $750. All fees are nonrefundable.

Producers and permit holders must keep and maintain a monitoring system related to their operations as outlined in the regulations. Within 15 days before harvest, the industrial hemp is tested for its levels of delta-9 THC. To be considered industrial hemp the delta-9 THC level must be 0.3% or less. If the harvest tests outside the acceptable delta-9 THC level, the registered producer may request in writing that the laboratory retest the batch. If the retest exceeds the allowable limit or the registered producer fails to request a retest, the Department of Agriculture will order the destruction of the crop. Destruction must be completed within 15 days of receipt of the Department's order. The Missouri State Highway Patrol or local law enforcement must complete certification of the crop destruction.

Missouri's Department of Agriculture anticipates a change to Missouri's Industrial Hemp Program by the end of 2020.

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Overview

After a recent legislative overhaul that went into effect on July 1, 2020, Nevada statutory law governing medical and adult-use cannabis currently codified at Chapters 678A through 678D. NRS Chapter 678A generally provides for the administration of Nevada cannabis law, Chapter 678B governs cannabis licensing and control, Chapter 678C regulates the medical use of cannabis, and Chapter 678D relates to adult use.

Because Nevada first enacted a medical cannabis licensing scheme, regulatory authority was originally placed within the Nevada Department of Health and Human Services. Following the enactment of adult-use licensing, regulatory authority was transferred to the Nevada Department of Taxation – Marijuana Enforcement Division.

In 2019, the Nevada Legislature passed a legislative overhaul of Nevada marijuana law, which, among other changes (including a switch in terminology from "marijuana" to "cannabis"), created the Nevada Cannabis Compliance Board comprised of five members appointed by the Governor, and transferred regulatory authority to that body as of July 1, 2020, with the exception of some tax matters which remain subject to the Nevada Department of Taxation. The Board was tasked with the regulation, licensing and registration of cannabis businesses. Following an expedited rulemaking period, the Board enacted a comprehensive set of regulations, the Nevada Cannabis Compliance Regulations ("NCCR") 1 through 14. The Board is advised by the new Cannabis Advisory Commission, which will implement studies and make recommendations to the Cannabis Compliance Board related to the regulation of cannabis in the State of Nevada. By statute, the Advisory Commission is comprised of 12 members, including the Executive Director of the Cannabis Compliance Board, the Director of the Department of Public Safety, the Attorney General, the Executive Director of the Department of Taxation, and eight other Governor appointees with

specified areas of expertise. These bodies are modeled after Nevada's Gaming Control Board and Gaming Commission, and industry that was also historically regulated by the Nevada Department of Taxation.

Medical Use

Nevada first legalized the medical use of cannabis under certain circumstances in 2001; however, no business could legally sell medical marijuana—and there was no provision for the licensing or regulation of cannabis-related business—until July 1, 2013.

Nevada allows certain licensed health care providers to certify patients with serious medical conditions (including cancer, AIDS, glaucoma, opioid addiction, seizures, or sever or chronic pain or nausea, etc.) to obtain a registry card. Patients with valid registry cards and their designated primary caregivers are exempt from state prosecution for possession, delivery, and production of cannabis and paraphernalia under certain circumstances, as well as retail sales tax on cannabis sales. Patients and their caregivers are authorized to possess and transfer up to 2.5 ounces of usable cannabis and/or twelve cannabis plants within any one 14-day period.

NRS Chapter 678B provides for the licensing and regulation of four types of medical cannabis establishments: dispensaries, cultivation facilities, production facilities (which manufacture products infused with cannabis, such as oils and edibles), and independent testing laboratories. Dispensaries, cultivation facilities, and production facilities may be, and usually are, vertically integrated. The statues and regulations require medical cannabis establishments to observe strict security, employment, location, advertising, labelling, operating, and other requirements. In addition, all individuals who work in medical cannabis establishment are required to obtain a cannabis establishment agent registration card from the Cannabis Control Board. Individuals with certain felony offenses may not own or work in a medical cannabis establishment.

Adult-Use

The Regulation and Taxation of Marijuana Act was enacted by initiative petition in 2016. The Act decriminalized possession and personal use of cannabis and cannabis products, allowing individuals age 21 years and older to possess and transport up to one ounce of cannabis or one-eighth of an ounce of concentrated cannabis. Those provisions are currently codified in NRS Chapter

NRS Chapters 678B and 678D provide for the licensing and regulation of adult-use cannabis establishments, which categories generally includes the same categories as medical cannabis establishments: retail stores (corresponding to medical dispensaries), cultivation facilities, production facilities, and independent testing laboratories. Medical cannabis establishments of the same category

were given priority under the law to apply for the new adult-use cannabis licenses of the same type. Today, most businesses retain both type of licenses following recent legislative changes that streamlined the taxation process and allow for keeping both types of product in a single stream until the point of sale to the consumer, where the product is designated as either medical or adult-use and taxed accordingly.

However, because the Act was an initiative petition drafted by Nevada's licensed alcohol distributors, the Act also introduced a new type of licensed adult-use cannabis establishment, an adult-use cannabis distributor. In Nevada, only a licensed cannabis distributor is permitted to transfer cannabis and cannabis products between different cannabis establishments, including the transfer between a production room to a retail store with respect to a vertically integrated licensee. Because the Act granted priority in obtaining distributor licenses to businesses licensed to distribute alcohol, there was initially a shortage of distributors. This resulted in a shortage of product in retail stores, where integrated businesses were not permitted to move their product from their cultivation facilities to their own retail store front, even when these facilities were in different rooms in the same building, or different buildings on the same lot. The situation prompted the Nevada Governor to declare a State of Emergency in July 2017, authorizing the Department of Taxation to promulgate emergency regulations allowing existing medical and adult-use cannabis establishments to apply for and obtain distributor licenses. While there remain a few businesses that function solely as distributors, most cannabis establishments are fully integrated with their own distributor licenses, enabling them to move their own product into their stores and between facilities.

While the process to obtain a new license is restricted, highly involved, and highly competitive, the process to transfer both cannabis establishment licenses to new owners is simple and straightforward. Any new owner need only submit a few forms, attest that he or she does not owe child support, attest that the transfer of the license will not create a monopoly, and pass a standard criminal background check which will disqualify a potential owner only if he or she has been convicted of certain excludable felony offenses. Currently, there is no indication that the Cannabis Control Board will issue a new set of licenses, and the last round of licensing is currently undergoing litigation. Thus, the only way to obtain a Nevada cannabis license in the foreseeable future is to procure a transfer of a license or an ownership interest in the entity that owns a license.

As of January 2021, there are 739 operational cannabis establishment licenses within the State of Nevada, including 65 dually licensed dispensary/retail stores, and 45 provisionally approved medical certificate holders, grandfathered in under prior policies and regulations that are no longer in effect. A new law

effective July 1, 2019 required the Department of Taxation to publish the names of all owners of licensed cannabis establishments. While the list was initially published, it was removed in December 2019. The Cannabis Control Board recently debuted a searchable database listing the owners, officers, and/or board members of each licensee.

Cannabis is taxed by the State of Nevada as follows: the cultivator pays a 15 percent excise tax on the wholesale price; the retail store pays a 10 percent excise tax on the retail sale; and the consumer pays a retail sales tax at the local rate. Sales to medical users possessing a valid registry card are exempt from the 10 percent retail sales tax. Thus, only cultivators and retail stores file and pay Nevada cannabis taxes on a monthly basis.

Employment Protections

With certain exceptions, NRS 678C.850 generally requires employers to attempt to reasonably accommodate the medical needs of an individual who holds a valid medical cannabis registry card unless it would pose a threat of harm to person or property, impose an undue hardship, or prohibit the employee from fulfilling any of his or her job responsibilities.

NRS 613.132, effective January 1, 2020, prohibits an employer from failing or refusing to hire a prospective employee because a post-offer, pre-employment drug screen indicates the presence of "marijuana," unless a certain exemption is met. Notable exemptions include positions that require a commercial driver's license, positions covered by a conflicting collective bargaining agreement, and positions that are safety sensitive in the employer's determination. This law also allows an employee who is tested within the first 30 days of employment to provide a rebuttal test at the employee's expense, which results must be accepted and "given appropriate consideration" by the employer.

It is an open question whether NRS 613.333, Nevada's "lawful use" statute that was designed to prohibit employment discrimination against tobacco users, prohibits an employer from taking an adverse employment action on the basis of off-premises, off-duty use of cannabis, because it is unclear whether the use of cannabis is "lawful in this State" given the illegality under federal law. While California and Colorado have held that cannabis use is not protected by their respective lawful use statutes for that reason, Nevada's statute is materially different in its wording. Further, the legislative history of NRS 613.132, the cannabis pre-employment testing law, reveals that sponsoring legislators assumed off-duty, off-premises use was already protected by Nevada law, which is why they enacted new protections solely related to pre-employment testing or testing within the first 30 days of employment. Until a case requiring interpretation of the lawful use statute makes its way to the Nevada Court of Appeals or the Nevada Supreme Court, the law remains uncertain.

Hemp and CBD

Nevada recently adopted the U.S. Farm Bill, Section 7606 regulations, allowing eligible Nevada producers to carry out research projects relevant to the cultivation of industrial hemp under the guidance of the Nevada Department of Agriculture.

Nevada law also authorizes its Department of Agriculture to adopt certain regulations relating to the testing of crops of industrial hemp and commodities and products made using industrial hemp by independent testing laboratories who are licensed to test medical and retail marijuana. Those regulations are forthcoming.

In addition, statutory law recently transferred some of this authority to the Nevada Department of Health and Human Services to adopt regulations governing the testing and labelling of products made using CBD. Those regulations are also forthcoming. Until those regulations are in place, only licensed cannabis retail stores/dispensaries are permitted to sell CBD products whether the CBD is derived from cannabis or hemp..

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Medical Use

Yes, New Hampshire allows the use of cannabis for therapeutic purposes. See N.H. Rev. Stat. Ann. §§ 126-X:1 et seq. and N.H. Code Admin. R. He-C 401.01 to He-C 402.34 and Appendix. See description below.

Current Regime

In 2013, New Hampshire passed into law N.H. Rev. Stat. Ann. § 126-X, which authorized the use of cannabis for therapeutic purposes and exempted the use of cannabis—if in compliance with N.H. Rev. Stat. Ann. § 126-X—from state law criminal penalties. The law also created the Therapeutic Cannabis Program ("TCP") and tasked the New Hampshire Department of Health and Human Services ("DHHS") with administering it. The law allows patients with qualifying medical conditions to receive a cannabis registration card. The most common qualifying medical condition is moderate to severe pain. The registration card authorizes the holder—either the patient or their designated caregiver—to purchase cannabis. Qualifying patients may possess up to two ounces of cannabis. The law also created Alternative Treatment Centers ("ATC"), not-for-profit operations that cultivate, produce, and dispense cannabis to qualifying patients or their designated caregivers. DHHS issues cards to patients and their caregivers, maintains a registry of qualifying patients who have been certified by a medical provider, and oversees the ATCs. Currently, the law does not allow home cultivation of cannabis.

In 2017 New Hampshire lessened the criminal penalties for possession of three-quarters of an ounce or less of marijuana, five grams or less of hashish, and a "personal-use amount of a regulated marijuana-infused product." N.H. Rev. Stat. Ann. § 318-B:2-c. Pursuant to the statute, those found in possession of these substances are guilty of a violation which is subject to a $100 fine for a first and second offense, and a $300 fine for a third offense. A fourth offense within a three-year period rises to the level of a class B misdemeanor. N.H. Rev. Stat. Ann. § 318-B:2-c, V.

Import/ Export

The only legal use and possession of cannabis is for medical purposes, consistent with N.H. Rev. Stat. Ann. § 126-X. The state-certified ATCs cultivate, produce, and dispense the cannabis for use by qualifying patients. Therefore, there is no legal import or export of cannabis.

Market Size

Currently there are five ATCs. They are located in Dover, Merrimack, Lebanon, Plymouth and Conway. As of October 1, 2019, there were 8,566 qualifying patients; 488 designated caregivers; and 1,101 certified providers.

Current Context

There have been repeated efforts to legalize the recreational use of marijuana, but none has succeeded. In 2019, both the house and senate passed a bill that would have legalized the home cultivation of marijuana, but Governor Chris Sununu vetoed it, and the override vote was three votes short. Some proponents of legalization argue that state regulation of the marijuana industry could provide an important source of revenue for the state.

Investment Analysis

New Hampshire's medical marijuana market is limited to the five ATCs, and the state has not approved commercial recreational marijuana to date. However, since the passage of the 2018 Farm Bill, New Hampshire has seen a dramatic increase in the market for hemp and CBD products, and the New Hampshire legislature has expressly supported developing market opportunities in the cultivation of hemp and its extracts in the state.

Hemp

In 2019, New Hampshire adopted N.H. Rev. Stat. Ann. § 439-A with the intention that farmers and other businesses in New Hampshire could take advantage of the market opportunity afforded by the legalization of hemp and its cultivation under the 2018 Farm Bill. Under N.H. Rev. Stat. Ann. § 439-A, New Hampshire aligned its definition of "hemp" with the federal definition under the 2018 Farm Bill, and established hemp as an agricultural product that "may be grown as a crop, processed, and commercially traded in New Hampshire." N.H. Rev. Stat. Ann. § 439-A:1, 3. However, "[a]ny grower, processor, or commercial trader of hemp" must be licensed by the United States Department of Agriculture (USDA). N.H. Rev. Stat. Ann. § 439-A:3.

The legislature amended N.H. Rev. Stat. Ann. § 318-B:2-c, I(a), New Hampshire's Controlled Drug Act, to exclude "hemp grown, processed, marketed, or sold under N.H. Rev. Stat. Ann. § 439-A" from the definition of marijuana. The legislature also amended N.H. Rev. Stat. Ann. § 126-X:1, III to exclude "hemp grown, processed, marketed, or sold under N.H. Rev. Stat. Ann. § 439-A" from the definition of "cannabis" under N.H. Rev. Stat. Ann. § 126-X.

Additionally, the legislature established a committee to explore administrative mechanisms for permitting the cultivation of hemp in New Hampshire consistent with the federal Agricultural Improvement Act of 2018 and to determine labeling requirements for hemp products sold in New Hampshire. 2019 New Hampshire Laws Ch. 306 s. 5 (H.B. 459). The committee was tasked with deciding whether New Hampshire should establish its own oversight program for hemp production within New Hampshire's Department of Agriculture, Markets, and Food, or requesting the USDA to oversee hemp production as provided in the 2018 Farm Bill. 2019 New Hampshire Laws Ch. 306 s. 7 (H.B. 459).

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Adult-Use

On November 3, 2020, New Jersey Voters overwhelmingly approved a ballot measure to legalize cannabis for adult-use. As set forth in greater detail below, the legislature is currently revising and finalizing draft legislation that will be put to a vote in December of 2020. Once the enabling legislation has passed, the newly formed Cannabis Regulatory Commission will promulgate rules and regulations governing the licensing application process and the industry more generally.

Medical Marijuana

New Jersey's medical marijuana program, known as the Compassionate Use Medical Marijuana Act ("CUMMA"), N.J.S.A. 24::6I-1 et seq., was enacted in 2010. It was amended in 2013 by P.L.2013, c. 160. In July 2019, CUMMA was further amended by P.L.2019, c. 153, known as the "Jake Honig Compassionate Use Medical Cannabis Act." New Jersey's Medical Marijuana regulations are found at N.J.A.C. 8:64-1.1, et seq. Regulatory authority of New Jersey's medical marijuana program is currently vested in the Department of Health, Division of Medical Marijuana. However, all powers, duties, and responsibilities with regard to the regulation and oversight of medical marijuana activities shall be transferred from the Department of Health to the newly created Cannabis Regulatory Commission.

Hemp Program

In November 2018, the New Jersey Industrial Hemp Pilot Program was signed into law. The statute authorized the New Jersey Department of Agriculture to promulgate rules regulating the cultivation of industrial hemp in New Jersey for research purposes. Within weeks, Congress passed the Agriculture Improvement Act of 2018, also known as the 2018 Farm Bill. As a result, New Jersey enacted the New Jersey Hemp Farming Act, N.J.S.A. 4:28-6, which

repealed and replaced the New Jersey Industrial Hemp Pilot Program. The Hemp Farming Act complies with the 2018 Farm Bill, which authorized hemp producers to grow and sell hemp for commercial purposes. On December 27, 2019, New Jersey was among the first three states to have its Hemp Program approved by the United States Department of Agriculture. The Hemp Program regulations are found at N.J.A.C. 2:25-1.1, et seq. The Hemp Program is administered by the Department of Agriculture's Division of Plant Industry.

Adult-Use Marijuana

As of the time of this writing, it remains illegal to possess and/or sell marijuana in New Jersey, except as expressly authorized by CUMMA and its amendments. That is changing imminently, however.

On November 3, 2020, New Jersey voters approved a ballot measure that legalized the adult-use of cannabis within the state of New Jersey. The ballot measure is set to take effect on January 1, 2021, but New Jersey legislature has stated that it intends to hold a vote on enabling legislation by the end of December 2020.

Legislation will legalize possession of cannabis up to a certain amount and will also terminate any pending criminal prosecution for possession. It also provides a streamlined process to obtain expungements for qualifying cannabis-related offenses.

It is anticipated that there will be six categories of licenses available to cannabis businesses generally:

- Class 1 Grower
- Class 2 Processor
- Class 3 Wholesaler
- Class 4 Distributor
- Class 5 Retailer
- Class 6 Delivery

Each of the foregoing licenses has specific criteria for eligibility and will have their own unique regulations governing them. The licensing process will be overseen by the newly created Cannabis Regulatory Commission. The initial licensing process is supposed to begin at some point in 2021. We do not have any clarity as to precisely when that will happen given the current state political affairs and the amount of work that will need to be done by the Cannabis Regulatory Commission once it is fully empaneled.

As of the time of this writing, it is reported that the state will initially cap the amount of Class 1 grower/cultivation licenses at 37. We are not aware of any other hard caps on other types of licenses. The most recent draft of the legislation that reportedly contains this cap has not been made available to the public yet.

Additionally, the draft legislation working its way through the legislature authorizes the creation of cannabis "microbusiness" licenses. In order to be eligible for a microbusiness license, the business must not employ more than 10 employees and must operate a cannabis establishment occupying no more than 2,500 square feet. There are additional requirements pertaining to the amount of cannabis that can be grown and sold by microbusinesses, depending on the type of microbusiness license that is acquired.

The draft legislation currently working its way through the legislature is over two hundred pages and touches upon various areas of the law, including but not limited to criminal law, employment, housing, higher education, tax, zoning and land use, etc. Norris McLaughlin is currently in the process of preparing a more complete guide to New Jersey cannabis law, which we hope to complete shortly after the relevant enabling legislation has been signed by the governor.

Once the legislation is signed by the governor, the Cannabis Regulatory Commission will work to create the rules and regulations governing licensing and oversight of the nascent New Jersey cannabis industry. We anticipate that this will occur early in 2021, with the first round of licensing applications to be submitted by the end of 2021.

Medical Marijuana

The New Jersey Compassionate Use Medical Marijuana Act was enacted in January 2010. It was later amended, and most recently revised and expanded by Gov. Philip Murphy on July 2, 2019. It is now known as the Jake Hogin Compassionate Use Medical Cannabis Act, N.J.S.A. 24:6I-1, et seq., (the "Act"). The regulations are codified in Title 8, Chapter 64.

Patients with qualifying medical conditions in New Jersey are eligible to register with the Medical Marijuana Program ("MMP") and receive a registration card, which allows them to purchase medical marijuana authorized by a healthcare practitioner. Qualifying medical conditions are defined in N.J.S.A. 24:6I-3, and include conditions such as glaucoma, HIV, migraines, opioid use disorder, post-traumatic stress disorder, and chronic pain. The Act also allows the Cannabis Regulatory Commission, which has not been formed at the time of this publication, to add other medical conditions.

In order for a patient to register with the MMP, they must be a resident of New Jersey, and obtain a certification from a registered healthcare practitioner certifying that the patient suffers from one of the qualifying medical conditions. Until the expansion of the Act, in 2019, only physicians were allowed to register with the MMP to authorize medical cannabis; now, advanced practice nurses and physician assistants are also able to authorize.

Once a patient obtains a certification, they are able to register with the MMP and chose an Alternative Treatment Center ("ATC"), a licensed entity that is permitted to cultivate, manufacture, and/or dispense medical marijuana. At this time, there are seven ATCs that are open in New Jersey, and a patient must choose one from which they are going to obtain marijuana. They are able to change the designated ATC on their account. The registration fee for the MMP identification card is $100.00; however, senior citizens, veterans, and people on Social Security and financial assistance from the state may be eligible for the reduced fee of $20.00.

Currently the maximum dosage that a patient may obtain for a 30-day period is three ounces in weight, unless the patient is terminally ill or is receiving hospice care. A healthcare practitioner may issue an instrument authorizing medical cannabis to a patient for a 30-day supply. Since cannabis is still federally an illegal substance, a practitioner is unable to issue a prescription, thus they issue an instrument. While each instrument is limited to a maximum 30-day supply, a healthcare practitioner may issue multiple instruments at one time, not to exceed a one-year supply.

The Act prohibits employers from taking adverse employment actions against employees solely based on their status as medical marijuana patients. The Act clarifies that nothing in the law requires employers to allow the consumption of medical marijuana during work hours or do anything that could result in the loss of federal funding.

Hemp Program

In November 21, 2018, New Jersey enacted an Industrial Hemp Pilot Program. That program would be short-lived due to the federal government passing the 2018 Farm Bill. New Jersey's Industrial Hemp Pilot Program never got off the ground, and no regulations were promulgated thereunder.

On August 9, 2019, Governor Murphy signed into law the New Jersey Hemp Farming Act ("HFA"), and the Garden State then began working on its hemp program in earnest. The HFA allows hemp production, processing, and sale within the state of New Jersey. It allows possession, sale, and distribution of hemp and hemp-derived products that contain less than 0.3% Δ9 THC on a dry-weight basis.

The HFA declares that "hemp is a viable agricultural crop and potentially valuable agricultural commodity in the State, and that hemp should be cultivated handled, processed, transported, and sold in the State to the maximum extent permitted by federal law." N.J.S.A. 4:28-6. The purpose of the HFA is to "promote the cultivation and processing of hemp; develop new commercial markets for farmers and businesses through the sale of hemp products; promote the expansion of the State's hemp industry to the maximum extent

permitted by federal law; allow farmers and businesses to cultivate, handle, and process hemp, and to sell hemp products for commercial purposes; and to move the State and its citizens to the forefront of the hemp industry."

The HFA allows a "Hemp Producer" to cultivate, handle, or process hemp or hemp products in the state. "Hemp Producer" is defined as "a person or business entity authorized by the department to cultivate, handle, or process hemp in the State." Thus, the State permits only those who are recognized as "Hemp Producers" to engage in the foregoing conduct. The HFA explicitly states that "[i]t is unlawful for a person or entity that is not a hemp producer or an agent of a hemp producer to cultivate, handle, or process living hemp plants or viable seeds, leaf materials, or floral materials derived from hemp."

Any person or entity that is not a "Hemp Producer" engaged in the commerce of hemp faces the same penalties as those related for marijuana. Notably, this does not apply to the possession, transportation, or sale of hemp products or extracts, including hemp-derived cannabinoids, such as CBD or CBG. Thus, the HFA explicitly allows a robust marketplace for Farm Bill- compliant finished hemp products.

The HFA created four categories of licenses for which the New Jersey Department of Agriculture may issue licenses: (1) Growers; (2) Processors; (3) Handlers; and (4) Institutions of Higher Education. The contours of this application process and the governing regulations were authored by the New Jersey Department of Agriculture, which have already been approved by the U.S.D.A as of December 19, 2019.

New Jersey, along with Louisiana and Ohio, became the first states in the country to have USDA-approved hemp programs under the 2018 Farm Bill. The applicable regulations governing licensure and compliance with the HFA and the USDA's Interim Final Rules are complex and tailored to the particular field in which the person or entity is engaged. The applicable regulations largely track the USDA's Interim Final Rules with only minor deviation and additional detail.

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Overview

New Mexico authorized the use of medical cannabis under the Lynn and Erin Compassionate Use Act ("Act") (2007). Not only does the Act provide for the use of medical cannabis by qualifying patients, it sets forth a regulatory scheme for the cultivation, sale, and possession of medical cannabis, and charges the New Mexico Department of Health ("DOH") to regulate the same. Producers of medical cannabis have also had a hand in changing cannabis law, as they have successfully challenged cannabis regulations on at least two occasions. Since the inception of the Act, the legislature has worked to revise, update, and expand cannabis law. Despite such efforts, the only major body of cannabis law is the Act.

New Mexico has also operated an Industrial Hemp Research and Development Program, authorized by the Hemp Manufacturing Act, since 2015 and will continue to operate under the pilot program submitted to the USDA in 2014. New Mexico's Hemp Manufacturing Act was updated in 2019 (after the federal 2018 Farm Bill) to bring the hemp industry in compliance with federal law.

Minor changes in cannabis law have been made recently, and major changes are on the horizon. Following the lead of cities like Santa Fe, the legislature modified criminal laws regarding the possession of small amounts of cannabis for personal use in its 2019 session. However, other than the Act and modifications to criminal laws, no other protections for the cultivation, transportation, sale, or possession of cannabis exist. While some legislative measures have ironed out conflicts between areas of law (e.g. cannabis law, education law, and employment law), other measures, such as the Cannabis Regulation Act (which would legalize cannabis for personal use, and which

has been introduced at every legislative session for the past several years) continue to fail. Despite such failures, New Mexicans are looking toward the next full legislative session (2021) for major changes in cannabis law. (New Mexico alternates between 30-day legislative sessions in even-numbered years, focused mainly on the State's budget, and 60-day legislative sessions in odd-numbered years).

Medical Cannabis

The Act (NMSA 1978 § 26-2B-1, et. seq.) became law in 2007, was updated in 2019, and again in 2020. The Act allows health care practitioners to certify qualifying patients (only New Mexico residents) with debilitating medical conditions (22 enumerated in the Act as well as 6 approved by DOH) and designate the qualifying patient's primary caregiver. The Act further allows qualifying patients and their primary caregiver to apply for and obtain a registry identification card through DOH. Qualifying patients and their primary caregivers who successfully obtain a license may collectively possess a three-month quantity of cannabis at one time (no more than 230 "units," which equates to 230 grams, or approximately 8 oz), unless authorized for a different amount by DOH. As of January 2020, New Mexico has 81,771 active patients (about 4% of the population).

Additionally, the Act regulates the manufacture and sale of cannabis by restricting such activities to those holding licenses. The Act authorizes Personal Producer Licenses, issued to qualifying patients and primary caregivers, as well as Manufacture Licenses, issued to nonprofit entities referred to by DOH as "Licensed Nonprofit Producers (LNPP)." Each license type has a cap on the maximum number of plants one may possess at any one time. After a federal lawsuit, brought by one of the state's largest LNPPs, in which the LNPP successfully challenged the plant cap put in place by DOH on the basis that it was arbitrary, the plant count for LNPPs has been raised to 1,750 mature plants (up from the pre-lawsuit cap of 450, but down from the initial post-lawsuit cap of 2,500). Personal producer license holders are limited to four (4) mature female plants and a combined total of twelve (12) seedlings and male plants. Currently, there are only 34 LNPPs, and no additional LNPP applications are being accepted. 7,685 medical cannabis patients in New Mexico have personal producer licenses.

DOH also has regulations in place regarding cultivation facilities, harvesting and maximum water content, lab testing, manufacturing of cannabis-derived products, transportation of cannabis, retail facilities, as well as regulations regarding corrective actions after a violation is issued. DOH regulations can be found in Title 7, Chapter 34 of the New Mexico Administrative Code.

Hemp

The legal growth of industrial hemp is regulated through the New Mexico Environment Department's ("NMED") Hemp Pilot Program, authorized under the 2014 Federal Farm Bill. NMED is charged with creating rules regarding the cultivation of hemp and adopted the Hemp Final Rule on January 16, 2020. The Hemp Final Rule became effective January 28, 2020.

Adult-Use Cannabis

New Mexico has not yet passed legislation authorizing recreational cannabis. Outside the Lynn and Erin Compassionate Use Act, the cultivation, possession, and distribution of cannabis, a Schedule I drug, remains a criminal offense. NMSA 1978 § 30-31-6 (E). However, New Mexico has modified its criminal laws regarding possession of cannabis for personal use (less than 0.5 oz), subjecting the possessor to only a fine of $50. NMSA 1978 § 30-31-23 (B)(1). Possession of more than .5 oz but less than 1 oz is a petty misdemeanor (for a first offense), and misdemeanor (for a second or subsequent offense) NMSA 1978 § 30-31-23 (B) (2). Possession of more than 1 oz but less than 8 oz is a misdemeanor. Id at (B)(3). Possession of more than 8 oz is a fourth-degree felony. Id at (B) (4).

Upcoming Legislative Agenda

Recognizing the Act created conflicts in other areas of law, the legislature has passed minor measures to resolve such conflicts. For example, school personnel were unclear whether the Act authorized them to possess and administer medical cannabis to students who are qualifying patients. In 2019, the legislature passed NMSA 1978 § 22-33-5, which requires schools to administer medical cannabis to students who are qualifying patients and requires school boards to develop policies regarding the same. In the same legislative session, the legislature amended the Act to create employment protections, codifying that no adverse employment action may be taken against an employee based on conduct under the Act, unless failure to do so would cause the employer to lose a monetary or licensing-related benefit under federal law or federal regulations. NMSA 1978 § 26-2B-9.

In every legislative session for the past several years, the legislature has entertained a bill regarding the legalization of recreational cannabis. In its 2020 session, the legislature was presented with the Cannabis Regulation Act, authorizing the sale of recreational cannabis and taxing the same at 9% (with an additional tax of no more than 4% by municipalities) at the point of retail sale. The measure would also create a Cannabis Control Division of the Regulation and Licensing Department, whose charge would be to monitor and regulate the recreational cannabis industry under a similar scheme to the alcohol industry. Further, the Cannabis Regulation Act would set forth a regulatory scheme for the manufacture, distribution, and retail sale of recreational cannabis similar to what is in place under the Lynn and Erin Compassionate Use Act, with some differences.

While many thought 2020 would be the year recreational cannabis would be legalized, the measure failed to reach the Governor's desk. If it had, Governor Michelle Lujan-Grisham likely would have signed the bill, as she had publicly expressed her support for the measure. All attention has turned to 2021's legislative session to make recreational cannabis legal.

More Information

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Overview

As of January 1, 2021, New York State's primary body of marijuana law is the New York Compassionate Care Act (NYCCA). The NYCCA regulates New York's medical marijuana program and provides certified patients with serious medical conditions with employment protections under New York's expansive Human Rights Law.

New York has operated an Industrial Hemp Agricultural Research Pilot Program since 2016 (under the federal 2014 Farm Bill). New York has not submitted its own plan to the USDA under the 2018 Farm Bill because of concerns it has about the USDA's Interim Final Rule. As a result the Department advises growers interested in cultivating industrial hemp crops in 2021 to apply to the USDA directly for a producer license. In December of 2019, Governor Cuomo signed an amendment to the Agriculture and Markets Law imposing additional regulations on the production and sale of hemp extracts, including CBD. It split authority over hemp regulation between the Department of Agriculture (for supervision of hemp growers) and the Department of Health (for supervision of hemp extract). It also envisions the creation of a Hemp and Hemp Extract Workgroup. In October of 2020, New York published proposed regulations for the manufacture and sale of hemp derived CBD.

Under current law, limited protections exist for users of adult use marijuana in New York. As of August 28, 2019, New York decriminalized possession of small amounts of marijuana statewide, though still punishable as a violation subject to a fine. Since May of 2020 New York City has banned pre employment testing for THC in most jobs. The major exception is certain safety sensitive jobs. No protections exist for cultivation or sale of cannabis.

For the past two years New York has tried, and failed, to overhaul its cannabis laws as part of the Executive Budget process. Governor Cuomo included the "Cannabis Regulation and Taxation Act" in his draft Executive Budget. It was stripped out of the budget passed on March 31, 2020, due to the economic impact of the COVID-19. If reintroduced next year in similar form, the act will change New York's medical, adult use, and hemp, laws by centralizing their regulation at the newly established "Office of Cannabis Management" which would "control the manufacture, wholesale, and retail production, distribution, transportation, and sale of cannabis, medical cannabis, and hemp cannabis in the State of New York". It would include multiple new taxes on adult-use marijuana. A similar measure failed in 2019.

Medical Marijuana

The NYCCA (N.Y. Pub. Health Law §§ 3360 to 3369-E) became law on July 5, 2014. Regulations are codified in Title 10, Chapter XIII of the New York Code, Rules and Regulations. It contains a seven-year sunset provision, expiring on July 5, 2021 (although it may be extended if the regulatory regime is not otherwise overhauled).

The NYCCA allows medical practitioners to certify patients with serious medical conditions (like cancer, HIV, epilepsy, or PTSD), allowing them to obtain a registry card. Once granted a registry card, the law protects the certified patient, and their designated caregiver, for possessing and transporting a 30-day supply of medical marijuana (which cannot be consumed in a public place). According to the most recently available numbers, New York has 134,683 registered patients (about 0.5% of the population).

The current law also regulates the sale of medical marijuana, limiting the manufacturing and dispensing of medical marijuana in the state to licensed companies, referred to as Registered Organizations. Those Registered Organizations are subject to regulations prohibiting them from employing convicted felons, requiring them to manufacture marijuana in an indoor, enclosed, secure facility in New York State, regulating laboratory testing, and mandating security measures. Prices are regulated by the Department of Health (though they vary from dispensary to dispensary), and advertising is also regulated (and all but prohibited).

The number of Registered Organizations was initially limited to five, but was eventually expanded to ten. Each of the organization has several storefronts, and most offer home delivery. Applications are not currently being accepted, but come with a non-refundable $10,000 fee, and $200,000 registration fee for successful candidates. A registration is valid for two years, is non-transferrable, and must be renewed no more than six, and no less than four, months before expiration. Similar fees apply for renewal.

Registered patients are recognized as having a "disability" under New York's Human Rights Law (N.Y. Exec. Law §§ 290 to 301). This entitles patients to certain protection against discrimination, though the law on this has been sparse in New York. However, there is no right to be impaired while at work. The patient's use of medical marijuana may require the employer and employee to work on a reasonable accommodation. Beginning May 10, 2020, employers in New York City may not screen job applications for marijuana and THC.

Hemp & CBD

In 2020, the only lawful pathway to grow industrial hemp in New York State is through participation in New York's "Industrial Hemp Agricultural Research Pilot Program," which was authorized under the provisions of the 2014 Farm Bill and administered by the Department of Agriculture and Markets. New York treats industrial hemp as an agricultural commodity under New York's Agricultural and Markets Law.

The New York Department of Agriculture and Markets has outlined its reservations about the USDA's Interim Final Rule enacting the 2018 Farm Bill's objectives in an August 14, 2020, letter to growers. Because of its reservations New York has not submitted a plan to the USDA, and has advised growers to apply to the USDA directly for a grower license for the 2021 season.

In 2019 New York amended its Agriculture and Markets law in relation to the cultivation of hemp and regulation of hemp extracts. The new law includes a licensing scheme for growers, manufacturers, and extractors of cannabinoids, packaging and labeling requirements, and laboratory testing and advertising regulations.

In late 2020 New York published comprehensive proposed regulation for the manufacture, distribution, and sale of hemp-derived CBD. Once adopted, these rules will be Part 1005 to Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York, to effectuate the provisions of Article 33-B of the New York Public Health Law (PHL). The regulations establish a scheme for licensing manufacturers and retailers of CBD products, with the overall goal of instituting consumer protections ensuring products are manufactured, tested and labeled to comparative standards of similar products in the dietary supplement, food and cannabis industries.

Adult-Use Marijuana

Currently, New York does not have any legislation in place authorizing adult use of marijuana. New York has amended its penal law to make possession of less than two ounces of marijuana a violation, punishable by $50 ticket for an ounce or less, or $200 for an amount between one and two ounces. Marijuana was also added to the definition of tobacco for the purposes of the Public Health Law (New York's anti-smoking legislation). As noted above, in New York City, pre-employment testing for THC and marijuana is forbidden for most jobs.

Attempts to Overhaul Cannabis in New York

In 2019 and 2020 Governor Cuomo tried, and failed, to enact a version of the Cannabis Regulation and Taxation Act in his executive budget. In January 2021 he signaled his intend to reintroduce the measure this year, especially in light of New Jersey's legalization (and the view that tax revenue is being left on the table). An overview of prior proposals is helpful.

The Executive Budget is likely to propose a comprehensive cannabis regulatory framework, administered by the newly established Office of Cannabis Management (OCM) that centralizes all the licensing, enforcement and economic development functions in one entity. The OCM would administer all licensing, production, and distribution of cannabis products in the adult-use, industrial, and medical cannabis markets.

New York would impose three taxes on the adult-use of marijuana. The first tax would be imposed on the cultivation of cannabis at the rate of $1 per dry weight gram of cannabis flower and $0.25 per dry weight gram of cannabis trim. The second tax would be imposed on the sale by a wholesaler to a retail dispensary at the rate of 20 percent of the invoice price. The third tax would be imposed on the same sale by a wholesaler to a retail dispensary at the rate of 2 percent of the invoice price, but collected in trust for and on account of the county in which the retail dispensary is located.

In the adult-use cannabis market, the OCM would implement a three-tier model of distribution. Similar to the market for alcohol, the OCM would issue licenses for producers, distributers, and retailers. Producers would be prohibited from also owning retail cannabis establishments. The program would limit the number of producers and retail dispensaries to guard against a market collapse, encourage equity through craft growers and cooperatives, and provide training and incubators to ensure meaningful and sustained participation by communities disproportionately harmed by cannabis prohibition. In the hemp market, the OCM would administer the licensing, extraction, and distribution of wellness and pharmaceutical grade cannabis products.

A standalone legalization bill was also re-introduced in the New York Senate on January 6, 2021 (NY SB 854). It is viewed as somewhat less likely to pass than the Governor's version, which is attached to the budget.

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Overview

North Carolina has not legalized any form of adult-use or recreational use of marijuana. With the exception of the use of hemp extract for treatment of intractable epilepsy, the use of cannabis for medical purposes is not authorized in North Carolina.

Hemp production has been legalized in North Carolina, but only as part of the state's pilot program as allowed under federal law. The Agriculture Improvement Act of 2018 (known as the 2018 Farm Bill), which was signed into federal law on December 20, 2018, removed hemp as a Schedule I controlled substance under the Controlled Substance Act. The term "hemp" is defined in the 2018 Farm Bill as "the plant Cannabis sativa L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol (THC) concentration of not more than 0.3 percent on a dry weight basis." On October 31, 2019, the U.S. Department of Agriculture (USDA) issued an interim final rule (Interim Final Rule) establishing the domestic hemp production regulatory program to facilitate the legal production of hemp, as set forth in the 2018 Farm Bill. The Interim Final Rule outlines provisions for the USDA to approve plans submitted by the states for the domestic production of hemp. It also establishes a federal plan for producers in states that do not have their own USDA-approved plan.

As of today (December 2020), North Carolina has not submitted a hemp production plan to the USDA for approval under the 2018 Farm Bill. Accordingly for the 2021 growing season and until authority under the 2014 Farm Bill terminates on September 30, 2020, hemp production in North Carolina is governed by North Carolina General Statute Chapter 106, Article 50E (Industrial Hemp) that implements North Carolina's industrial hemp research program established under the 2014 Farm Bill.

Medical Marijuana

North Carolina has not authorized the medical use of Marijuana. In 2014, the North Carolina Epilepsy Alternative Treatment Act (N.C. Gen. Stat. 90-113.100–113.106) was signed into law, which permits the use of hemp extract as an alternative treatment for intractable epilepsy. To come within the definition of "hemp extract" under the Act, the extract must be composed of less than 0.9% tetrahydrocannabinol by weight and at least 5% cannabidiol (CBD) by weight. The Act will be repealed effective July 1, 2021.

Hemp

As stated above, hemp production has been legalized in North Carolina, but only as part of the state's pilot program as allowed under federal law. In 2015, and in response to passage at the federal level of the Agricultural Act of 2014 (Public Law 113-19) (2014 Farm Bill), the North Carolina general assembly passed Senate Bill 313 to establish an agricultural pilot program for the cultivation of industrial hemp in the State of North Carolina. The bill was passed to promote and encourage the development of an industrial hemp industry in North Carolina in order to expand employment, promote economic activity, and provide opportunities to small farmers for an environmentally sustainable and profitable use of crop lands. Among other things, Senate Bill 313 established the North Carolina Industrial Hemp Commission to establish an agricultural program to grow or cultivate industrial hemp in the state, to issue licenses to cultivate industrial hemp for commercial purposes consistent with federal law, and to propose rules and regulations for adoption by the Board of Agriculture to administer and supervise North Carolina's state pilot program. In July 2016, North Carolina law governing industrial hemp was further modified by House Bill 992, which, among other things, clarified that licenses were being issued for research, rather than commercial purposes. Further, North Carolina State University and North Carolina A&T State University were appointed by House Bill 992 as the entities charged with managing and coordinating the state's industrial hemp research program. The Industrial Hemp Commission adopted temporary rules for review in February 2017; these were approved by the Rules Review Commission of the Office of Administrative Hearings.

The statutory framework governing industrial hemp production is set forth in Chapter 106, Article 50E of the North Carolina General Statutes. As of this writing (December 2020), North Carolina continues to operate under the industrial hemp pilot program authorized under the 2014 Farm Bill.

Applications for cultivation of industrial hemp in North Carolina are currently handled and processed by the Plant Industry Division of the North Carolina Department of Agriculture and Consumer Services (NCDA) and reviewed for approval or denial at the next scheduled meeting of the Industrial Hemp Commission. Processors of industrial hemp in North Carolina are not licensed,

but processors must register with the Hemp Commission and, at the end of each calendar year, report the total weight and type of industrial hemp processed from the North Carolina Industrial Hemp pilot program to the Hemp Commission.

While the Industrial Hemp Commission oversees North Carolina's industrial hemp pilot production program and licensed growers, other divisions of the NCDA would regulate any retail uses of hemp or products derived from hemp. North Carolina does not have a comprehensive set of laws or rules that govern the legal status of CBD. The Food & Drug Protection Division of the NCDA takes the position that use of CBD in any food product or marketing it as a dietary supplement is expressly prohibited under both federal and state law. Hemp-seed-derived products (dehulled hemp seeds, hemp seed protein, and hemp seed oil), which contain de minimis levels of CBD, currently can be lawfully marketed in human food without the need for any further U.S. Food & Drug Administration (FDA) approval, provided the products do not make drug claims or claims that are false or misleading, and that they comply with all other applicable requirements. CBD oil, subject to other limitations provided under applicable law (such as THC concentration limits), can be legally sold in North Carolina, subject to the limitations discussed above and other applicable guidance. To a large extent, North Carolina looks to FDA guidance regarding the marketing and sale of CBD.

Adult-Use Marijuana

North Carolina has not legalized adult-use marijuana or any other form of recreational use. Marijuana is classified under the North Carolina Controlled Substances Act (N.C. Gen. Stat. 90-86 et. seq.) as a Schedule VI controlled substance. A person who possesses one-half of an ounce or less of marijuana is guilty of a Class 3 misdemeanor, but any sentence of imprisonment imposed must be suspended. Possession of more than one-half of an ounce, but not more than one-and-one-half ounces, is guilty of a Class 1 misdemeanor. If a person is found to possess more than one-and-one-half ounces of marijuana, the violation is punishable as a Class I felony.

Upcoming Legislative Agenda

As noted above, North Carolina does not currently (as of December 2020) have a hemp production regulatory plan approved by the USDA under the 2018 Farm Bill and its implementing regulations. It is expected that North Carolina will continue to operate its industrial hemp pilot program under the 2014 Farm Bill until at least September 30, 2021. Additional legislative action would be needed for North Carolina's hemp industry to continue to operate in its current form beyond such date.

More Information

Information regarding North Carolina's Industrial Hemp Pilot Program can be found at: https://www.ncagr.gov/hemp/index.htm

Additional information on hemp production and related issues can be found at the NC State University Extension Hemp web site: https://hemp.ces.ncsu.edu/

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Introduction

The legalization of cannabis by states across the nation has led to significant growth in the production and distribution of legal marijuana and an explosion of related service providers. The laws vary greatly from state to state and the sale of cannabis is still illegal under federal law. This guide is an overview for the state of Oklahoma and highlights practice areas impacting cannabis laws, including:

- Legislation
- Location & Zoning
- Business Formation
- Employment
- Taxation

Legislation

Oklahoma voters approved a ballot measure on June 26, 2018, legalizing medical marijuana law. The law, as amended, is codified as 63 Okla. Stat. § 420 et seq. (Medical Marijuana); the Unity Act, Title 63, Okla. Stat. Ann. § 427.1 et seq.; and, the Oklahoma Medical Marijuana Waste Management Act, 63 Okla. Stat. § 427a et seq. The law established the Oklahoma Medical Marijuana Authority (OMMA) as a division of the Oklahoma State Department of Health to ensure the health and safety of Oklahomans and provide regulation of medical marijuana. OMMA has established a number of regulations for patients and the industry, including dispensaries, growers, processors, transporters, researchers, laboratories, and licensure of the same, which are found in the Oklahoma Administrative Code (OAC) at OAC 310: 681-1-1 through 681-10-4. In addition to OMMA, all medical marijuana commercial licensees must complete an application and register with the

Oklahoma Bureau of Narcotics and Dangerous Drugs (OBNDD). Further, dispensaries, growers, and seed sellers must also obtain a nursery license or seed license from the Oklahoma Department of Agriculture, Food and Forestry.

Oklahoma law continues to develop in this area as the medical marijuana industry has grown. Proposed amendments are introduced to the above statutory and regulatory measures governing medical marijuana on a frequent basis. This makes it imperative to constantly monitor the current state of the law in this area..

Location & Zoning

As a condition of obtaining a license to operate a medical marijuana facility in Oklahoma, a business owner must prove that the location of the proposed business meets all requisite state law and local ordinance spacing requirements. Oklahoma law requires that any medical marijuana dispensary be at least 1,000 feet from the nearest public or private school as set forth in 63 Okla. Stat. § 425(G). To conclusively establish that the proposed location meets this requirement, OMMA requires submission of a radius report with an application. Such radius report should be prepared by a licensed surveyor and demonstrate that the shortest straight-line distance from any property line of a school is not closer than 1,000 linear feet from the property line of the proposed business. At present, this requirement has not been extended to growing or processing facilities.

In addition to the state-law spacing requirements set forth in 63 Okla. Stat. § 425, many communities in Oklahoma have their own local ordinances governing spacing. A second condition of obtaining a license to operate a medical marijuana facility in Oklahoma is the submission a Certificate of Compliance with the permit application. This Certificate of Compliance provides evidence to OMMA that the proposed location of the business meets all of the local ordinances related to the development, construction, and operation of the proposed business. The current form of the Certificate of Compliance requires signatures by all relevant local officials evidencing compliance.

In all communities, it is a requirement that the location of the proposed business be properly zoned to accommodate the proposed use. As such, any proposed medical marijuana business may only be operated on a properly zoned parcel. In addition to this zoning requirement, many of Oklahoma's largest communities including Oklahoma City, Tulsa, Sand Springs, Bartlesville, and Claremore have their own spacing requirements for location of a medical marijuana business. At present almost all of these ordinances are limited to dispensaries and do not affect growing or processing operations. These spacing requirements are often measured differently (i.e. – from the "nearest wall" of the building rather than the property line) and will likely require additional radius report(s) to satisfy local officials. In the event that zoning

relief is required, such relief must be obtained prior to submission of the Certificate of Compliance in most cases.

Construction of a medical marijuana facility in Oklahoma is governed by Section 681 of Title 310 of the Oklahoma Administrative Code. Under Subchapter 6 of this Section, there are broad requirements for ensuring security of the marijuana at all times. Required security measures are not specifically delineated but customarily include multiple security cameras and key-code or card locks as well as on-site security and use of logs. Many local officials have non-codified requirements for security that are imposed as a condition of approval for zoning relief. As such, most buildings constructed or renovated for commercial medical marijuana use are constructed or renovated in concert with a comprehensive 24-hour security plan. It should be noted that several sections of Subchapter 6 (Commercial Facilities) have been reserved for future use. Accordingly, it is expected that further rules related to construction and security of commercial facilities will be contemplated and enacted.

It should be noted that this concise review does not include analysis regarding location of waste disposal facilities. The requirements for waste disposal facilities are set forth in Subchapter 9 of Title 310, Chapter 681 of the Oklahoma Administrative Code and are different from the location requirements for other facilities.

Business Formation

A qualified individual or business entity may obtain a grower, processor, transportation, research, retail, or disposal license related to commercial medical marijuana. For a business entity to qualify for any medical marijuana license listed above, the entity cannot have any Oklahoma nonresident interest exceeding 25% as set forth in 63 Okla. Stat. § 421 et seq.

The business entities authorized by Oklahoma statutes do not materially differ from the common Delaware business entities. Oklahoma Corporations are authorized by 18 Okla. Stat. § 1001. Limited Liability Companies are formed under 18 Okla. Stat. § 2000. General and limited partnerships are governed by 54 Okla. Stat. § 1-100 and 1-1001 respectively. Common statutory requirements include (a) name, (b) registered agent for process service and physical address within the state, and (c) signature on formation documents. No operating or partnership agreement or corporate bylaws are required to be filed at the time of formation.

Employment

Medical marijuana has a protected status in Oklahoma law. The law provides an employer may not discriminate in employment against an applicant or employee solely upon the basis of that person's status as a "medical marijuana licensee." Common wisdom interprets that to mean a person who is a holder of a valid license (patient or caregiver) under Oklahoma's law.

In recognition of employers' concerns, the law provides that an employer may still prohibit the use and possession of marijuana, including medical marijuana, at the place of employment and during the hours of employment. In other words, no employer has to allow or even accommodate a person's possession or use of medical marijuana at work. Oklahoma law also advises owners of public places to post signs if they want to ban "marijuana smoking or marijuana vaping." 63 Okla. Stat. § 1-1525

The next issue is drug testing. For employees who are required to be tested under federal law (e.g., tested pursuant to the Department of Transportation regulations), federal law will govern. Under federal law, marijuana is illegal and the federal government does not recognize any state's law to the contrary.

Oklahoma permits employers to conduct drug testing under its Standards for Workplace Drug and Alcohol Testing Act, 40 Okla. Stat. § 551, et seq, which requires the policy be in writing. "Drug" under that law includes "cannabinoids" or a metabolite of" cannabinoids; in other words, marijuana.

Oklahoma law permits testing employees for marijuana, but provides that an employer may not impose adverse consequences for a positive test for marijuana components or metabolites (which would include medical marijuana), unless:

(1) the person is not in possession of a valid medical marijuana license,

(2) the licensee possesses, consumes, or is under the influence of medical marijuana or medical marijuana product while at the place of employment or during the fulfillment of employment obligations, or

(3) the licensee works in or is applying for a position involving safety-sensitive job duties, as defined defined 63 Okla. Stat. § 427.8(H). There is a definition of "safety-sensitive" found at 63 Okla. Stat. § 427.8(K).

Taxation

Sales, Use, and Excise Tax

An Oklahoma sales tax permit is obtained through the Oklahoma Tax Commission (OTC) by registering as a new business or retailer. A dispensary must either hold or obtain an Oklahoma Sales tax permit from the Oklahoma Tax Commission. OAC 710:65-9-1. A new business may register with the Oklahoma Tax Commission online at www. oktap.tax.ok.gov. Sales tax reports are filed on form STS20002-A and are due by the 20th day following the close of the prior month. The base Oklahoma sales tax rate is 4.5% in addition to the rate assessments that vary by county and municipality. An additional marijuana excise tax of seven percent (7.00%) is levied and

collected on all retail marijuana sales in addition to the normal sales tax on the gross sales price received by the seller. The additional excise tax is reported on a sep arate Medical Marijuana Return also due by the 20th day following the close of the prior month.

Sales Tax Exemptions
All gross receipts are presumed taxable unless the seller proves that the sale is exempt. Unless the purchaser proves otherwise, it is also presumed that personal property sold, leased, or rented by any person for delivery in Oklahoma is sold, leased, or rented for storage, use or other consumption in the state. There is a general sales tax exemption for sales to persons engaged in the business of reselling purchases. If the sale occurs to an Oklahoma resident, then the resident must possess a sales tax permit from OTC and the seller will be assessed the liability where an exemption certificate is found to be invalid as listed in 68 Okla. Stat. § 1357; OAC 7 10:65-13-200.

Agricultural Sales Tax Exemption Permit
Provided all other requirements are met, persons possessing a commercial grower license issued by the Department are eligible for an agricultural sales tax exemption permit. The applicant grower must provide the commercial grower the license number issued to the grower by the Department. OAC 710:65-19-201(e).

Manufacturer's Sales Tax Exemption Permit Ineligibility
The processing of marijuana is not commonly regarded as manufacturing; therefore, marijuana processors are not eligible for a manufacturer's sales tax exemption permit. However, processors are eligible for an Oklahoma sales tax permit, which will allow them to purchase marijuana and other marijuana products exempt from sales tax to be resold to dispensaries. Id. at (f).

Other Compliance Reporting
OMMA is a division of the Oklahoma Department of Health, established by the statutes codifying State Question 788, 63 Okla. Stat § 420, § 427 et seq. Any medical marijuana commercial licensee, research facility, education facility, waste disposal facility, or permitted waste disposal facility locations issued a license is required under Oklahoma law to obtain an OBNDD registration shall do so prior to possessing or handling any marijuana or marijuana product as set forth in Title 310:681-1-5(c), Administrative Rules for Okla. State Dept of Health.

OMMA requires monthly reports on production and sales from growers, processors, research facilities, and dispensaries. The reports are due by the fifteenth (15th) of each month for the preceding month.

Penalties

The penalty for failure to file a delinquent report within 30 days of written notice of such deficiency from OMMA will result in a $500 fine and any other administrative action and penalty authorized by law. A grossly inaccurate report that cannot be reasonably attributed to human error, may result in a $5,000 fine. A second grossly inaccurate report within two years will result in the revocation of the commercial license. OMMA has broad authority to impose fines and administrative penalties including revocation for noncompliance and criminal activity. Of course, a revocation of a medical marijuana commercial license renders all unlicensed activities criminal conduct subject to investigation and criminal prosecution. Marijuana grown in Oklahoma is accounted for as required under IRC § 280E.

Income Tax

The Oklahoma income tax statutory scheme generally conforms to the terms defined by the Internal Revenue Code (IRC) such as "Gross Income" and "Adjusted Gross Income" and by extension, IRC 280E to the extent of conformity to the underlying federal deduction or credit. To date, no examinations of Oklahoma medical marijuana business tax returns have resulted in the disallowance of ordinary and necessary business expenses within the ambit of §280E as bar to business expense deductions from gross income related to distributing a federally controlled substance.

Structure

Countless business structures are available to reduce civil or criminal liability, minimize income taxes, or scale operations. The optimal business structure depends on the goals of the principals and/or their individual circumstances.

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Overview

Oregon permits both medical and recreational marijuana. Medical marijuana in Oregon is governed by the Oregon Medical Marijuana Act: Ore. Rev. Stats. §§ 475B.785 et seq., as amended; and Regulations: Ore. Admin. Rules §§ 333-008-0010 et seq. Recreational marijuana in Oregon is governed by the Adult and Medical Use of Cannabis Act: Ore. Rev. Stats. §§ 475B.005 et seq., as amended; and Regulations: Ore. Admin. Rules §§ 845-025-1000 et seq.

The Oregon Health Authority (OHA) regulates medical marijuana, while the Oregon Liquor Control Commission (OLCC) regulates recreational marijuana. The OHA issues patient and medical grower licenses. The OLCC has the authority to issue recreational marijuana licenses, inspect businesses, and revoke licenses. The OLCC also regulates labeling, packaging and testing. Individuals in Oregon over the age of 21 are allowed to have up to four plants, eight ounces of useable marijuana, and additional amounts of solid and liquid cannabinoid products. Although Oregon has both medical and recreational marijuana, recreational marijuana is by far the larger market.

There are six recreational marijuana license types available in Oregon: producer (indoor and outdoor), processor, wholesaler, retail, laboratory, and research certificate. An individual or company may hold any number of license types, and that individual or company can associate each license with the same property (although only one outdoor production license may be issued on a single tax lot), but the OLCC will require segregation of each separate license and related business. All OLCC license types must register to use Oregon's Cannabis Tracking System for "seed to sale" tracking of mature plants. Medical growers with more than three registered patients must also use the tracking system.

There are strict guidelines regarding the placement of marijuana-related business. Statewide, neither a medical dispensary nor any recreational licensee may be located within 1000 feet of a K-12 school. Also, Oregon law grants cities and counties the opportunity to "opt out" of the legal marketplace and prohibit marijuana producers, processors, wholesalers, and retailers in their jurisdictions; and even when permitted, cities, and counties regulate the location of marijuana businesses through zoning codes. The first step in seeking any type of marijuana license is to confirm whether the city or county allows marijuana business and, if allowed, to seek a Land Use Compatibility Statement (LUCS) from the applicable governing body.

There are no limits on the number of medical dispensary licenses that OHA may issue. There is also no limit on the number of recreational licenses that OLCC may issue. However, due to a significant backlog in the processing of applications, on May 30, 2018, the OLCC announced that it would no longer process new recreational producer license applications filed after June 15, 2018. This moratorium was codified in 2019 by the Oregon legislature in SB218 and now remains in effect until January 2, 2022.

Licenses are nontransferable. A business may change its corporate or ownership structure, along with certain changes to those who have a financial interest. Changes in ownership of more than 51%, however, will require the business to submit a new license application to OLCC.

Individuals working for a producer, processor, wholesaler, or retailer under OLCC licensing must obtain a Marijuana Worker Permit. OLCC can deny a worker permit application for certain felony convictions within three years of the application or violations of the recreational marijuana statutes.

Oregon does not have a residency requirement for either being a licensee or working for a licensee. Thus, out-of-state investment in Oregon cannabis business is allowed and common.

The OLCC maintains a robust website with information for those interested in recreational marijuana in Oregon. OLCC Recreational Marijuana. The OLCC has also published a helpful guidebook for starting a marijuana business in Oregon. Recreational Marijuana Business Readiness Guide. The OHA also provides up-to-date information for patients, growers, physicians, and others. OHA Medical Marijuana.

Import/ Export

Generally, licensees of all types are free to sell products to one another, but there are certain specific restrictions, depending on the license type, and all transfers between licensees are strictly tracked and regulated. The import or export of marijuana products to or from Oregon remains illegal. Recreational marijuana is also legal in Oregon's neighboring states, Washington to the North and California to the South. The Oregon legislature passed a bill that would give the Governor power to enter into agreements with other states authorizing "cross-jurisdictional delivery of marijuana," but without a change in federal law under which cannabis remains strictly illegal, such agreements are unlikely to be made, or if they are made, will be difficult to implement.

Market Size

Combined sales of medical and recreational marijuana exceeded $640 million in 2018, and in 2019, combined sales were just shy of $800 million, almost a 25% increase. Sales in 2020 exceeded $1 billion. Because of the increased availability of recreational marijuana, medical sales have decreased significantly. With the outbreak of COVID-19, Marijuana businesses were deemed "essential" and allowed to stay open; as a result the market is booming, with sales exceeding $80 million per month beginning in March 2020 and continuing throughout the year. May 2020 through August 2020 saw combined sales exceeding $100 million per month, with July setting the record for sales in one month at $106,619,102. Oregon's annual tax revenue from recreational marijuana exceeds $100 million. The state collects 17% tax on retail cannabis sales, and cities or counties can apply a 3% tax.

Investment Analysis

The opportunity for investment remains strong for cannabis in Oregon and with no prohibition on nonresident investment, Oregon has seen an influx of investment by publicly traded, Canadian companies and out-of-state US companies. As an example, the recent acquisition of Oregon-based Cura Partners by Massachusetts Curaleaf Holdings, Inc. was valued at almost $400 million. The market is rapidly changing and adapting. Counties that initially opted out have begun to shift their position, allowing recreational marijuana licensing, and have seen their general funds benefit from such changes. After the legalization of recreational marijuana, Oregon experienced an abundant supply of marijuana, and this oversupply put significant downward pressure on pricing. As noted above, OLCC now has power to control the supply of marijuana in Oregon, and it has exercised that power, refusing to grant any new producer licenses until January 2022. The potential for interstate agreements to exchange marijuana products could help the markets deal more efficiently with over- or under-supply across states. But that potential will remain unrealized until there is a paradigm shift in Washington D.C. regarding marijuana legislation. Oregon Representative Earl Blumenauer and Oregon Senator Ron Wyden are strong proponents in Washington D.C. for change in the federal marijuana laws, including allowing access to banking and lending.

Hemp

The Oregon Department of Agriculture (ODA) regulates the hemp industry in Oregon. Oregon hemp growers, handlers, and seed producers must register with the ODA. Oregon hemp producers must also obtain a Hemp Processor endorsement from the OLCC. Hemp may not be grown on the same tax lot where marijuana is grown. ODA-registered hemp growers with an OLCC Industrial Hemp Certificate may transfer the industrial hemp to licensed OLCC processors and wholesalers. ODA-registered hemp handlers with the OLCC hemp certificate can transfer industrial hemp to OLCC licensed producers, wholesalers, and retailers. Before receiving hemp from an ODA-registered hemp grower or handler, the OLCC licensee must confirm through testing by an OLCC-licensed lab that the THC content is within specified limits. OLCC generally regulates packaging and labeling, so individuals selling items directly to consumers must comply with those OLCC rules.

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Overview

Pennsylvania began taking steps towards the legalization of marijuana in 2014 with Philadelphia's decriminalization of up to 30 grams of cannabis. The Commonwealth took another step forward on April 17, 2016, when Governor Wolf signed into law SB 3, Pennsylvania's compassionate medical cannabis legislation (the "Medical Marijuana Act"). The Medical Marijuana Act went into effect on May 17, 2016. Pennsylvania's first dispensaries began selling medicinal marijuana in early 2018.

Medical Use

Pennsylvania's medical marijuana program is regulated and implemented by an advisory board operating under the Pennsylvania Department of Health. The advisory board is charged with developing and implementing the program's rules, processing applications and issuing patient ID card and licenses. The advisory board is comprised of fifteen members, which must include three law enforcement officials, several health or medical experts, and at least one patient advocate.

Patients undergoing treatment can qualify to receive medical marijuana through a physician approved by the Pennsylvania Department of Health to certify patients for medical marijuana use. The physician will issue a certification during an in-person visit stating that the patient has a qualifying medical condition and that the physician believes the patient might benefit from medical cannabis.

Once a patient receives a certification from an approved physician, the patient can then use the Department of Health's online Patient and Caregiver Registry to pay for and obtain a medical marijuana ID card. Each marijuana

card expires after 12 months. At the end of that 12 month term, a patient can renew the medical marijuana ID card by obtaining a new certification from an approved physician and paying the annual fee. The fee for a medical marijuana ID card is $50 annually.

Qualifying medical conditions under the Medical Marijuana Act include the following: terminal illness; cancer, including remission therapy; HIV/AIDS; amyotrophic lateral sclerosis; Parkinson's disease; multiple sclerosis; epilepsy; inflammatory bowel disease; neuropathies; Huntington's disease; Crohn's disease; post-traumatic stress disorder; intractable seizures; glaucoma; autism; sickle cell anemia; damage to the nervous tissue of the CNS (brain-spinal cord) with objective neurological indication of intractable spasticity and other associated neuropathies; severe, chronic, or intractable pain; dyskinetic and spastic movement disorder; and addiction substitute therapy – opioid reduction.

Patients with medical marijuana ID cards are permitted to purchase up to a 30-day supply of medical marijuana. The following forms of medical marijuana are available for purchase at dispensaries: dried flower for vaporization, creams, gels, liquids, oils, ointments, pills or tinctures.

Growers/ Processors & Dispensaries

Patients registered for medical use with the Department of Health are protected from arrest, prosecution, and discrimination in child custody-cases.

The Pennsylvania Department of Health is currently authorized to issue no more than 25 combined grower/processor permits. Growers and processors are required to use seed-to-sale tracking, and must keep and retain thorough records.

The Medical Marijuana Act authorizes the Department of Health to issue permits to no more than 50 dispensaries, and each dispensary is permitted to have up to three locations. Thus, the total number of allowable dispensaries in Pennsylvania is 150.

Taxes & Fees

Pennsylvania applicants pay $5,000 for a dispensary application and $10,000 for grower/processor applications. Medical marijuana business licensees pay registration fees of $30,000 for each dispensary location and $200,000 for grower/processor locations. The grower/processor also pays a 5% tax on the sale of medical marijuana to any dispensary. Patients are charged $50 annually for medical marijuana ID cards, which can be waived for financial hardship.

Non-Medical Use or Distribution

Recreational use of marijuana is not permitted in Pennsylvania. The non-medical use of marijuana is a misdemeanor in Pennsylvania, although some local jurisdictions have passed ordinances decriminalizing the possession of small amounts of marijuana. The maximum penalty for possession of 30 grams or less is 30 days in jail and a fine of $500. The maximum punishment for possession of more than 30 grams is one year in jail and $5,000 in fines. Subsequent convictions can result in double the maximum penalties. Any possession-related conviction may result in the suspension of the offender's driver's license.

Similarly, the non-medical sale or distribution of 30 grams of marijuana or less is a misdemeanor in Pennsylvania. The maximum sentence is 30 days in jail and $500 in fines. The sale or distribution of more than 30 grams of marijuana in Pennsylvania is a felony, punishable by a minimum of 2.5 years in prison, and a maximum of five years and a $15,000 fine.

Private Cultivation

Pennsylvania does not permit private cultivation of marijuana. Any amount of marijuana privately grown in Pennsylvania constitutes a felony incurring a mandatory minimum sentence of one year in jail and a maximum of five, plus $15,000 in fines.

Employment Protections

The Pennsylvania Medical Marijuana Act protects registered patients from unfair discrimination in the workplace for their status as registered patients. However, Pennsylvania employers do not have to take any actions which would violate federal law, nor are Pennsylvania employers required to "make any accommodation of the use of medical marijuana on the property or premises of any place of employment."

Employers may prohibit employees from performing any task which the employer deems life-threatening to the employee or other employees while under the influence of marijuana. In addition, "[t]he prohibition shall not be deemed an adverse employment decision even if the prohibition results in financial harm for the patient."

Hemp & CBD

On July 20, 2016, Pennsylvania signed legislation, House Bill 967, into law which legalized the cultivation and production of industrial hemp. House Bill 967 also created the Hemp Research Board within the Pennsylvania Department of Agriculture. That board is responsible for developing regulations, applications for registration, inspections, a database of registered persons, registration fees, and guidelines for labeling and testing.

Following the passage in 2018 of the federal Farm Bill which legalized the commercial production of hemp under federal law, Pennsylvania followed suit – allowing farmers to grow unlimited amounts of hemp at .3% or less THC for commercial purposes, after obtaining a state permit. Pennsylvania requires both hemp growers and hemp processors to obtain permits from the Department of Agriculture. Currently there is no limit to the number of hemp permits issued, or the amount of hemp that may be cultivated or produced in any year.

There are no limits on possession of hemp-derived CBD products in Pennsylvania. Vape and smoke shops, pharmacies and health food stores commonly sell hemp-derived CBD products.

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Overview

As of January 2021, Rhode Island's primary cannabis law is the Edward O. Hawkins and Thomas C. Slater Medical Marijuana Act (the "Act"). The Act, R.I.G.L. § 21-28.6-1 et seq. regulates Rhode Island's medical marijuana program. Patients who possess a written certification from their physician recommending the use of medical marijuana are required to sign up with the state's confidential registry, which issues identification cards providing access to "compassion centers" where medical marijuana can be purchased commercially.

Since 2017, Rhode Island has also had a legal hemp growing and processing program. The Industrial Hemp Growth Act, R.I.G.L. § 2-26-1 et seq. governs the growth and processing of hemp products, including hemp-derived consumable CBD products. Rhode Island's industrial hemp program has operated under the federal 2014 Farm Bill, but in November 2020, Rhode Island submitted a new plan under the federal 2018 Farm Bill. The United States Department of Agriculture ("USDA") approved Rhode Island's new hemp plan in January 2021.

Rhode Island has decriminalized possession of small amounts (less than one oz.) of marijuana, with those violating the law subject to a civil fine of $150.

Medical Use

The Act went into effect in 2006. Regulations are codified at 216-RICR- 20-10-3.4 et seq.

Under the Act, individuals may register as medical marijuana patients with a doctor's certification that the individual suffers from one or more of the following conditions: (a) cancer or treatment thereof; (b) post-traumatic stress disorder (PTSD); (c) glaucoma or the treatment thereof; (d) HIV or the treatment thereof; (e) AIDS or the treatment thereof; (f) hepatitis C or the treatment thereof; (g) autism; (h) another chronic or debilitating disease or medical condition or its

treatment that produces one or more of the following: (i) cachexia or wasting syndrome; (ii) severe, debilitating, chronic pain; (iii) severe nausea; (iv) seizures; or (v) severe and persistent muscle spasms.

Once registered, a medical marijuana patient is permitted to cultivate up to 12 immature, non-flowering marijuana plants and up to 12 mature, flowering plants, provided each plant has a valid "tag" issued by the state. Patients may purchase marijuana products from state-licensed dispensaries known as compassion centers. Prior to 2021, there were three such centers licensed in the state. In 2019, Gov. Raimondo signed a budget tripling the number of compassion centers to nine. On December 15, 2020, the application period for the six (6) new licenses closed. The review of submitted applications is underway as of January 2021, pursuant to a regulatory regime wherein applications deemed "qualified" will be entered into a lottery system for the actual award of each of the six (6) licenses. A patient may also appoint a caregiver to cultivate and provide medical marijuana. Pursuant to March 2020 changes in the governing regulations, registered caregivers — who grow marijuana at home but are not patients — may grow for up to five (5) patients.

The Rhode Island Superior Court has held that the Act prohibits an employer from refusing to hire a potential employee solely because that potential employee holds a medical marijuana card. Additionally, while non-Rhode Island residents cannot register as Rhode Island medical marijuana patients, and thereby obtain a medical marijuana card, Rhode Island dispensaries may honor out-of-state medical marijuana cards.

Adult Recreational Use Marijuana

Possession of one (1) oz. or more of marijuana by those over 18 years old is a civil penalty punishable by a citation of $150 for the first offense. See the Rhode Island Controlled Substances Act, R.I.G.L. § 21-28-1.01 et seq. The fine increases if not paid in a timely manner. If an individual receives three citations within an 18-month period, he or she may be charged with a misdemeanor. Minors under the age of 18 are required to appear before family court and be evaluated for substance misuse disorder in addition to paying the $150 fine.

Hemp

In July 2016, Gov. Raimondo signed the Industrial Hemp Growth Act, which legalized the production and processing of industrial hemp for commercial purposes in the state. The bill was initially only to apply to state-licensed representatives of the Narragansett tribe but was eventually amended to apply to all Rhode Island residents. It went into effect January 1, 2017, establishing two (2) types of hemp license: growers and handlers. (R.I.G.L. § 2-26-1). Under the Hemp Growth Act, licensed growers produce (or grow)

hemp and licensed handlers produce or process hemp into commodities or manufacture hemp products. However, as originally enacted, neither license type in the statute addressed the manufacturing or production or sale of CBD products.

Those missing pieces were addressed in the state budget for 2020, which added "CBD Distributor" and "CSB Retailer" categories of licenses. The 2020 budget also expressly defined a CBD consumable as "any product meant for ingestion, including, but not limited to, concentrates, extracts, and cannabis-infused foods and products which contain cannabidiol derived from a hemp plant as defined in this section."

Both license types (CBD Distributor and CBD Retailer) give the holders permission to distribute or to sell consumable CBD products. Any consumable CBD is still required to be in compliance with applicable food safety regulations and requirements, including those promulgated by the Department of Health.

Rhode Island's Hemp Growth Act was enacted in 2016 under the 2014 Farm Bill. In November 2020, Rhode Island submitted a hemp cultivation plan to the USDA. The USDA approved Rhode Island's hemp plan in January 2021. The Rhode Island Hemp Plan is available from the USDA at: https://www.ams.usda.gov/sites/default/files/media/RhodeIslandHempPlan.pdf

Upcoming Legislative Agenda

There have been several efforts in the Rhode Island legislature to fully legalize the recreational use of marijuana. In 2017, the Adult-Use of Cannabis Act (http://webserver.rilin.state.ri.us/BillText/BillText17/HouseText17/H5555.pdf) was introduced but did not become law. In 2020, Gov. Raimondo introduced a plan to legalize marijuana with state-operated stores in her proposed annual budget. Many anticipate that there will be continued efforts to legalize recreational use in Rhode Island in coming legislative sessions.

More Information

For more information, please contact Travis McDermott or John Ottaviani of Partridge Snow & Hahn LLP.

DISCLAIMER: The possession, distribution, and manufacturing of marijuana are illegal under federal law. State law, which may in some jurisdictions decriminalize such activity under certain circumstances, is superseded by federal law. Violation of federal drug laws carries serious penalties, with the federal government reserving the right to seize and seek civil forfeiture of real or personal property facilitating the sale of marijuana and money or proceeds accruing from such transactions. Section 280E of the Internal Revenue Code also disallows deductions for amounts paid or incurred in the carrying on of a trade or business that consists of the "trafficking" of cannabis. Law or policy covering this industry may change at any time.

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Marijuana Medical Use

No, it is not allowed, as marijuana is still considered a banned "controlled substance." See SC Code Ann. Title 44, Chapter 53 "Poisons, Drugs, and Other Controlled Substances." In addition, anyone attempting to disguise marijuana as industrial hemp is guilty of a misdemeanor pursuant to The Hemp Farming Act. SC Code Ann. § 46-55-60 et seq.

Industrial Hemp

Regulatory Framework: The South Carolina Department of Agriculture (SCDA) administers the South Carolina Hemp Farming Program as authorized by SC Code Ann. § 46-55-10 et seq.

No person shall grow, process, or handle hemp in South Carolina without first obtaining the appropriate permit from SCDA. SC Code Ann. § 46-55-20.

Growing Statistics

Approximately 256 acres of hemp were grown in 2019 in South Carolina. Hemp is a labor-intensive crop, and the estimated input cost to grow hemp is between $10,000 and $15,000 per acre. This cost includes labor, seed, and "transplants" or "clones." Cloning is a modern method of hemp cultivation. A plant is taken from a mother hemp plant (cut from stem or tap-root) that later grows its own independent root system. Cloning increases consistency and speeds maturity of the plant. Hemp is then used to make a variety of commercial and industrial products including rope, clothes, food, paper, textiles, plastics, insulation, supplements, oils, cosmetics, and biofuel.

History

On May 10, 2017, Governor Henry McMaster signed 2017 Act No. 37 (H.3559) "Industrial Hemp Cultivation" into law, making it legal for 20 South Carolina farmers to grow up to 20 acres of industrial hemp in 2018 for research purposes, in accordance with the 2014 Farm Bill. For the first time, the South Carolina Department of Agriculture (SCDA) selected 20 farmers, representing 15 counties, to participate in the 2018 SC Industrial Hemp Pilot Program.

The Hemp Program, administered by SCDA and set forth by state law, originally only allowed for 40 permits for up to 40 acres each to be issued in 2019.

With the passage of the Agricultural Improvement Act of 2018 (the "2018 Farm Bill"), hemp was removed from the definition of "marijuana" in the Controlled Substances Act of 1970. Since the 2018 Farm Bill, "hemp" is considered an agricultural commodity, defined as all parts of the plant having less than 0.3% THC on a dry weight basis.

On March 28, 2019, South Carolina Governor Henry D. McMaster signed into law a bill which expanded the number of farmers who could participate in the state's Hemp Program and the amount of acreage they could grow. The law also provided the requirement for a state permit to cultivate, process, and handle hemp.

Under the new state law, prior 2019 applicants who were not originally selected could reapply in time for the 2019 growing season, so long as they successfully passed a federal and state background check and had accurately provided required information, specifically: the applicant's full name and address; the precise GPS coordinates for the location to be used for the growing of hemp; and a signed letter of intent with a purchaser. The new law also removed the cap on acreage, allowing permitted growers to grow an unlimited number of acres. After reapplying, successfully passing state and federal background checks, and attending a mandatory orientation, an additional 74 applicants were issued 2019 growing permits, bringing the total to 114 accepted to the SC Hemp Farming Program for 2019. Additionally, 43 hemp processors were permitted in 2019. Currently, to be a Permitted Hemp Farmer, you are required to be a State of South Carolina resident.

On October 31, 2019, the US Department of Agriculture ("USDA") released its 161-page interim final rule setting forth a national regulatory framework for hemp. The interim final rule governs the production of hemp under the 2018 Farm Bill and outlines provisions for the USDA to approve plans submitted by states and Indian Tribes for the domestic production of hemp.

In 2020, SCDA continued to permit hemp farmers, but did so under the 2018 Farm Bill and South Carolina's Hemp Farming State Plan ("State Plan") as approved by the USDA. In addition to hemp farmers, SCDA will also permit hemp processors and, for the first time this year, "hemp handlers," a category that includes transporters, seed dealers and suppliers, laboratories, and others who handle hemp such as brokers, researchers, and sales representatives. The category also includes owners of warehouse, storage, and drying facilities.

The State Plan sets forth the procedures and regulations to bring the state's three-year-old Hemp Farming Program into line with other states and establish more permanent regulations. The State Plan includes new lab testing methods to insure stricter compliance with the 0.3% THC threshold that separates hemp from marijuana. The State Plan also establishes new reporting and sampling requirements and mandates that SCDA staff sample every hemp field in the state no more than 15 days prior to harvest.

We would like to thank Alden Terry, Esq., General Counsel of the South Carolina Department of Agriculture, for her expertise and assistance in providing the latest updates regarding the 2018 Farm Bill, the South Carolina Hemp Farming State Plan, and South Carolina legislation regarding hemp.

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Overview

2020 was a big year for Cannabis in the state of South Dakota. In March, 2020, Governor Kristi Noem signed House Bill 1008 legalizing industrial hemp and CBD oil. Noem vetoed a similar measure in 2019. 2021 is proving to be a wild year for Cannabis in South Dakota.

In November 2020, South Dakotans voted to legalize recreational marijuana and medical marijuana, becoming the first state to vote on and pass both in the same election. Constitutional Amendment A legalized the possession of up to one ounce of raw marijuana, including up to eight grams of THC in its concentrated form, for persons over the age of twenty-one. Initiated Measure 26 set forth a statutory scheme to allow for the use of medical marijuana.

Governor Noem urged the head of the South Dakota Highway Patrol and other law enforcement officers to file a lawsuit challenging Amendment A as unconstitutional. On February 8, 2021, Judge Christina Klinger, appointed to the bench by Noem in 2019, issued a written ruling finding that Amendment A violated a statute requiring that an amendment address only a single subject. The proponents of the legislation have indicated their intention to appeal the decision to the South Dakota Supreme Court, likely delaying implementation beyond July 1, 2021.

As of the time of this writing, the possession, sale, or distribution of any form of marijuana, regardless of the purpose, remains illegal in South Dakota. Possession of more than two ounces of raw marijuana is considered a felony, as are all amounts with the intent to distribute marijuana. Possession of any form of concentrate is treated as a felony controlled substance, a class five felony. Both IM 26 and Amendment A were set take effect July 1, 2021, though both delay certain deadlines with regard to registration for the distribution

of marijuana and registration as a medical user. As of February 11, 2021, the South Dakota legislature, in active session, has proposed to delay the implementation of Measure 26 to 2022, citing concerns related to COVID-19 and implementing the required regulations and statutory changes.

Medical Marijuana

Initiated Measure 26 (IM 26) legalized the possession medical marijuana, allowing for the possession of up to three ounces of marijuana and additional amounts of marijuana products to treat or alleviate debilitating medical conditions for registered medical patients.

Patients must obtain a registration card from the South Dakota Department of Health. The effective date of IM 26 is July 1, 2021, but the Department of Health is provided with an additional 120 days to establish rules related to implementation, moving the effective date to October 29, 2021. The Department of Health is also directed to establish a limit on the quantity of cannabis products a person may possess. The legislature has initiated efforts during the 2021 legislative session to delay the implementation beyond 2021, citing concerns over implementation and the impact of COVID-19.

IM 26 defines 'debilitating medical condition' as, "A chronic or debilitating disease or medical condition or its treatment that produces one or more of the following: cachexia or wasting syndrome; severe, debilitating pain; severe nausea; seizures; or severe and persistent muscle spasms, including those characteristic of multiple sclerosis." It also allows the Department of Health to allow for additional qualifying conditions.

IM 26 also authorizes marijuana testing, manufacturing and cultivating facilities along with marijuana dispensaries.

Hemp

House Bill 1008 was incorporated into the South Dakota Statutes as SDCL 38-35-1 through 21 and effective March 27, 2020. SDCL 38-35-1(2) restricts industrial hemp to a delta-9 THC concentration of not more than three-tenths of one percent on a dry weight basis.

Any person seeking to grow, process, or obtain industrial hemp must apply for a license through the South Dakota Department of Agriculture. Each applicant must pass a background check. Each grower lot is subject to inspection and any rules or regulations passed by the State Departments of Agriculture, Health, and/or Public Safety. A permit is required to transport Industrial Hemp.

Adult-Use Marijuana

Possession of marijuana in any form remains currently illegal in South Dakota. South Dakota voters did, however, pass Constitutional Amendment A on November 9, 2020, which by operation of SDCL 2-1-12 becomes effective on July 1, 2021. Amendment A legalized the possession of marijuana of up to one ounce for anyone over the age of 21. The one-ounce limit includes up to eight grams of marijuana concentrate. An individual may possess up to three plants, including any harvest, so long as the harvest remains in a locked space not visible from a public place. A residence is further limited to no more than six plants, regardless of the number of inhabitants.

It remains illegal to operate a motor vehicle, boat, aircraft, or any other motorized transport while under the influence. It also remains illegal to smoke or consume marijuana on school grounds. The Amendment does not require an employer to allow marijuana consumption, nor does it regulate a landlord from prohibiting or regulating conduct within or upon his or her property.

The Amendment further obligates the legislature to pass additional laws regarding the licensure, inspection, and restrictions on the manufacture and sale of marijuana and edible products by April 1, 2022.

The Amendment set a fifteen percent excise tax for all gross receipts for the sale of marijuana, to be split equally between public schools and the general fund.

Upcoming Legislative Agenda

South Dakota Governor Kristi Noem voiced her disappointment over the passage of Amendment A and Initiated Measure 26. A lawsuit pending in South Dakota Circuit Court, filed by the Superintendent of the South Dakota Highway Patrol and Pennington County Sheriff, is currently challenging the passage of Amendment A, with the support of Governor Noem. The challenge alleges that Amendment A encompasses more than one topic. The South Dakota Attorney General's office requested the legal challenge be dismissed in a recent court filing. Judge Christina Klinger, however, sided with Governor Noem and the Plaintiffs, concluding that Amendment A did encompass more than one topic in violation of South Dakota law. The proponents of Amendment A have indicated they will be appealing the decision to the South Dakota Supreme Court, likely requiring a delay in the implementation of Amendment A beyond July 1, 2021.

The South Dakota Legislature has a significant amount of work to do in response to both Amendment A and IM 26. There are a number of existing statutes which will have to be amended to accommodate or eliminate conflicts with the provisions of both IM 26 and Amendment A. The expectation is that during the 2021 legislative term, that work will begin in earnest, though certain legislative deadlines are set for April 1, 2022. The Legislature, in active session in February, 2021, has already proposed to delay the implementation of IM 26 citing concerns over implementation and the impact of COVID-19. The legal

actions involving Amendment A will likely outlast the 2021 legislative session and put the legislature in the difficult position of passing something now or necessitating a special session following the Supreme Court's decision, the latter of which appears to be unavoidable.

By way of example, the existing criminal statutes make possession of two ounces or less of marijuana a class one misdemeanor. Amendment A, however, permits the possession of up to one ounce of raw marijuana. The current criminal statutes also consider the possession of any form of concentrate to be a class 5 felony. The existing criminal statutes will require a number of revisions to incorporate the requirements of both Amendment A and IM 26.

More Information

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Overview

Tennessee has not legalized medical or recreational marijuana. But Tennessee does permit the growth, distribution, and sale of hemp so long as it is done in accordance with Tennessee and federal law. Hemp-derived products, such as products containing hemp-derived CBD, are also legal under Tennessee law.

According to the Tennessee Department of Agriculture, as of November 1, 2019, there were approximately 3,800 licensed hemp growers in Tennessee cultivating as many as 51,000 acres of hemp throughout the state.

Medical Marijuana

Tennessee does not permit the medical use of marijuana in a fashion similar to other states that have adopted a broad licensing and regulatory framework.

But Tennessee does permit, at least in theory, possession and use of low-THC cannabis oil for medicinal purposes when used in connection with a clinical research study conducted by a college or university for the treatment of intractable seizures, cancer, or other diseases. See Tenn. Code Ann. § 39-17-402(16).

Hemp

Hemp is legal in Tennessee so long as it is cultivated in accordance with federal law, Tennessee's statutory framework, and the regulations promulgated by the Tennessee Department of Agriculture ("TDA"). See Tenn. Code Ann. § 43-27-101, et seq.; Tenn. Comp. R. & Regs. R. 0080-06-28-.01 et seq. To be legal, hemp must contain no more than 0.3% delta-9 THC on a dry weight basis.

Tennessee's current hemp regimen will expire on November 1, 2020. In July 2020, the USDA approved Tennessee's proposed hemp-production plan under the 2018 federal Farm Bill. This new regulatory framework took effect November 1, 2020.

Under both frameworks, a license is required to possess rooted hemp. A license must be issued for each physical address at which the licensee grows hemp. Applications for a growing license are administered by the TDA and are subject to an annual fee based on the size of the grow area at the licensed address. A movement permit is required before transporting rooted hemp plants. Processors are no longer required to obtain a specific license for processing hemp. Any person may possess, distribute, or store non-rooted hemp without a license. The TDA does not require any license for the sale of hemp flower, hemp oil, hemp-derived CBD products, or other processed hemp products.

Until November 1, 2020, testing of hemp samples measured only the amount of delta-9 THC. Starting November 1, 2020, Tennessee law will adopt the "total THC" standard under which total available THC will be derived and measured from the sum of delta-9 THC and THC-A.

Other notable changes that take effect November 1, 2020 include requirements that hemp brokers and hemp propagators obtain licenses from the TDA. For testing of THC levels, the TDA must collect samples from the hemp flower material within 15 days before anticipated harvest. A producer shall not harvest the hemp crop before samples are taken. The new regulations provide somewhat of a safe harbor for negligent violations of certain rules so long as the producer makes a reasonable effort to grow hemp and the cannabis does not have a THC concentration exceeding 0.5% on a dry weight basis.

Adult-Use

Tennessee does not permit adult or recreational use of marijuana.

Upcoming Legislative Agenda

For the past several years, cannabis advocates and cannabis-friendly legislators have attempted to pass various legislative proposals that would legalize medical marijuana in various forms to treat a limited number of severe illnesses and health conditions. None of these proposals has yet succeeded, but such efforts are expected to continue. There have also been recent efforts, including at the municipal level, to decriminalize possession of small amounts of marijuana. These efforts have also not succeeded in any meaningful fashion but are expected to continue as well.

More Information

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Overview

It is generally believed that Texas laws and regulations governing marijuana and hemp are some of the strictest in the nation, limiting the growth of the Texas marijuana market. While some limited medicinal marijuana use is allowed, medicinal marijuana products are not covered by health insurance, and the three licensed Texas medicinal marijuana companies face fresh competition with Texas' newly authorized hemp industry and the recent glut of unregulated CBD products available for sale in the state. Further, Texas was set to issue additional dispensary licenses in late 2019 but the effort was suddenly halted without explanation, and Texas is not currently accepting new dispensary license applications. Accordingly, any new venture into the Texas marijuana market should be preceded by substantial and thorough due diligence and a financial analysis of key principals and stakeholders.

The Texas Department of Public Safety ("DPS") is Texas' primary regulatory body with respect to marijuana. The DPS currently oversees the cultivation, prescription, and distribution of medicinal marijuana under rules outlined in the Texas Health and Safety Code and Texas Administrative Code. In this role, the DPS has authority to enter a licensed dispensary at any time during regular business hours to conduct inspections and issue written notices of violations.

In September of each year, the Department of State Health Services will provide a report to the DPS of every patient living in Texas who qualifies for treatment with medicinal marijuana prescriptive medicine, as well as an estimate of the recommended dosage for those patients. Using that information, the DPS will establish production limits for that year, which all licensed cultivators must adhere to. The DPS may increase or decrease that limit at any point to accommodate projected needs.

Medical Marijuana

As of 2019, Texas has legalized low-THC (0.3% to 0.5%) medicinal marijuana products for patients with intractable epilepsy, incurable neurodegenerative disease, terminal cancer, ALS, autism, multiple sclerosis, and Parkinson's disease. See Tex. Health & Safety. Code § 487.001 et seq. ("Texas Compassionate Use Act"); 37 Tex. Admin. Code § 12.1 et seq. The DPS maintains a Compassionate Use registry of all patients qualified to receive medicinal marijuana prescriptions. Qualified physicians, dispensing organizations, and law enforcement agencies may access the registry under certain circumstances, including verifying that a patient is in fact qualified to receive medicinal marijuana products. The DPS also maintains a registry of qualified registered physicians, as well as any prescription of a marijuana product they order for one of their patients.

Only physicians registered with the DPS may prescribe low-THC marijuana to qualifying patients. To register, a physician must be board certified in a medical specialty relevant to the treatment of the patient's particular qualifying medical condition, and must dedicate a significant portion of their clinical practice to the evaluation and treatment of that condition. No patient, however, is permitted to smoke marijuana flower, or grow any type of marijuana at home. As of January 2021, there are roughly 3,500 patients registered to use medicinal marijuana, up from roughly 600 in late 2018.

In order to become a licensed medicinal marijuana dispensary, Texas has stringent and costly operational application requirements. Applicants for licenses must be able to show substantial preparedness to operate, including evidence of HIPAA and OSHA compliance, the ability to maintain accountability for raw materials, finished marijuana products, and any by-products, sufficient security systems for cultivation and dispensing facilities, descriptions of any vehicles to be used to transport marijuana products, and sufficient financial assets to maintain operations for two years from the date of the application. Also, each employee of a licensed marijuana cultivation or dispensing facility (including directors or managers) must apply for registration. The application fee for a dispensing organization license is $7,356. A two year license fee for a dispensing organization is $488,520. The fee for the biennial renewal of the dispensing organization license is $318,511. The individual registration fee is $530 for both original registration and renewal. As of January 2021, only three dispensaries have received licenses from the DPS to dispense medicinal marijuana in Texas.

Hemp

The farming and cultivation of commercial hemp, for both fiber and CBD extract purposes, is legal in Texas. See Act of May 15, 2019, 86th Tex. Leg., ch. 764 (codified at chapters 121, 122, and 141 of the Texas Agriculture Code, and at chapters 431, 443, and 481 of the Texas Health and Safety Code); see also 4 Tex. Admin. Code §§ 24.1 – 24.50 (hemp regulations promulgated by the Texas Department of Agriculture).

The 2014 Farm Bill authorized hemp cultivation for research purposes only. Despite this authorization, Texas declined to develop any kind of regulatory regime for hemp research. The 2018 Farm Bill removed hemp from the federal list of controlled substances and authorized the states to regulate its cultivation. In 2019, the Texas Legislature almost unanimously passed House Bill 1325 which amended the Texas Agriculture Code and Texas Health and Safety Code to allow for the commercial cultivation of hemp in Texas and put the Texas Department of Agriculture ("TDA") in charge of regulating it. For the first time in our state's history, Texas farmers are now legally allowed to profit off their land by farming hemp, just as they do for corn, cotton, soy beans, and other staple crops. Texas' Agriculture Commissioner Sid Miller is a strong supporter of industrial hemp production as a new market opportunity for Texas farmers to expand their operations and grow alternative crops.

The federal Food and Drug Administration (FDA) approved TDA's hemp plan in January 2020. Shortly thereafter, in March 2020 TDA adopted its final hemp rules. On March 16, 2020, TDA began accepting applications for licenses to grow hemp. The Texas hemp industry will be heavily regulated, with broad investigatory and enforcement authority for TDA, as well as robust testing requirements. As with other jurisdictions in the United States, Texas distinguishes hemp from marijuana by its concentration of THC, the main psychoactive compound in marijuana. If a plant contains less than 0.3% of THC, it is hemp; over 0.3% and it is marijuana. Hemp farmers must have their crop tested by TDA before it can be harvested. If the tested plant contains more than 0.3% THC, then it is considered to be marijuana and all of the plants within the same permitted lot must be destroyed.

Anyone wishing to grow hemp will first need a general license to grow, and then a permit for each specific lot where the license holder intends to produce or handle hemp. A person who has been convicted of a felony related to a controlled substance under federal or state law within the past ten years cannot obtain a license. A license to grow hemp is $100, and must be renewed annually. A $100 "participation fee" is also required for each facility and lot upon which hemp is grown. The license holder must also pay all fees related to sampling, transport, and testing of hemp. Nothing in the Texas hemp regulations prohibits the export of harvested hemp, but the transport of hemp within the state's borders, as well outside the state's borders, will be heavily regulated.

Texas is not limiting the number of hemp licenses it will issue, and with abundant land currently used for farming there is ample opportunity to enter the nascent Texas hemp market. One report suggested that as of April 1, 2020, roughly 400 licenses had been applied for in Texas. That said, the market for hemp products, both fiber and CBD, is still relatively new and unstable, and therefore profits are difficult to project. There is also a possibility of a glut in supply with the large number of new market entrants. Also, it is yet to be seen how both hemp crops for fiber and CBD biomass will fare in Texas climates, and federally backed crop insurance is not currently available for hemp. Taken together, these factors make farming or investing in Texas commercial hemp a riskier endeavor than with other staple crops, and therefore investment decisions should be made with prudence and careful consideration of the risks involved.

Hemp farmers began planting Texas' first ever legal commercial hemp crops in spring 2020.

Adult-Use

Currently, Texas does not allow the sale or consumption of marijuana for any purpose other than those allowed by the Compassionate Use Act.

Upcoming Legislative Agenda

While several marijuana-related bills have been pre-filed in advance of the 2021 legislative session, these bills are unlikely to garner widespread support in the legislature. There is currently no formal upcoming legislative agenda surrounding medicinal or adult use marijuana. However, interested parties should expect the commercial cultivation of hemp to continue to grow given the state's support and the current trajectory of the hemp market.

More Information

For more information, please contact Cantey Hanger attorneys John D. Robinson (jrobinson@canteyhanger.com; +1-817 877-2831), Lee Kirner (lkirner@canteyhanger.com; +1-214 978-4135), or Sarah Walls (swalls@canteyhanger.com; +1-817 877-2811).

DISCLAIMER: The possession, distribution, and manufacturing of marijuana are illegal under federal law. State law, which may in some jurisdictions decriminalize such activity under certain circumstances, is superseded by federal law. Violation of federal drug laws carries serious penalties, with the federal government reserving the right to seize and seek civil forfeiture of real or personal property facilitating the sale of marijuana and money or proceeds accruing from such transactions. Section 280E of the Internal Revenue Code also disallows deductions for amounts paid or incurred in the carrying on of a trade or business that consists of the "trafficking" of cannabis. Law or policy covering this industry may change at any time.

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Medical Use

Yes, it is allowed under 18 V.S.A. § 4471 et seq., as amended; Vt. Admin. Code 17-2-3 et seq., as amended.

Current Regime: The Vermont Department of Health adopted and implemented rules to enable physicians to prescribe cannabis. The Department of Public Safety adopted and implemented rules to govern the registration and oversight of medical dispensaries, registered patients, and registered caregivers. The Review Board, comprised of three members—a physician appointed by the Medical Practice Board, a naturopathic physician appointed by the Office of Professional Regulation, and an advanced practice registered nurse appointed by the Office of Professional Regulation—periodically reviews studies, data, and other relevant information and may make recommendations to the Vermont General Assembly for adjustments or changes to the relevant laws.

At this juncture, the Department of Public Safety has issued five dispensary registration certificates. Once the number of registered patients enrolled with the Vermont Marijuana Registry reaches 7,000, the Department will accept applications for a sixth dispensary registration certificate. As of May 7, 2019 – the date of the latest available data – there were 5,209 patients enrolled with the Vermont Marijuana Registry. The dispensary application fee is $2,500. The Department of Public Safety grants dispensary certificates based on the overall health needs of qualified patients. After a dispensary is approved, it must pay a first-year registration fee of $20,000, and an annual fee of $25,000 in subsequent years.

The Department of Public Safety reviews applications to become a registered patient. In order to be eligible to become a registered patient, a health care professional must diagnose an individual with a "debilitating medical condition" in the course of a bona fide health care professional-patient relationship. A "debilitating medical condition" means cancer, multiple sclerosis, HIV, AIDS,

Crohn's disease, Parkinson's disease, glaucoma, and PTSD. In addition, a disease, medical condition, or its treatment may constitute a "debilitating medical condition" if it is chronic, debilitating, and produces cachexia or wasting syndrome, chronic pain, severe nausea, or seizures. If approved, a registered patient receives a registration card, which includes the patient's name and photograph, the patient's designated dispensary, if any, and a unique identifier for law enforcement verification purposes. The Department of Public safety, through the Vermont Marijuana Registry, must approve or deny any application in writing within 30 days of receipt of a completed application.

A registered patient may either designate a dispensary or elect to cultivate marijuana, but may not do both. If the patient chooses the former, he or she may only designate one dispensary, and may only change his or her designated dispensary once every 30 days. If the patient chooses the latter, he or she may obtain seeds or clones from a registered dispensary, but must cultivate cannabis in a single secure indoor facility. Patients may not consume cannabis in public places.

A Vermont resident, at least 21 years of age, may submit a signed application to the Department of Public Safety to become a registered caregiver of a registered patient. A caregiver is responsible for managing the well-being of a registered patient with respect to the use of cannabis for symptom relief. A caregiver may go to the registered patient's chosen dispensary and receive deliveries for the patient or aid with cannabis cultivation. If approved, the individual receives an authorization card, listing the caregiver's name, photograph, and a unique identifier. A registered caregiver may only serve one registered patient at a time. A registered patient may only have one registered caregiver at a time, unless the registered patient is under the age of 18, in which case he or she may have two registered caregivers. Notably, a registered patient may serve as a registered caregiver for another registered patient.

Applications to become a registered patient or caregiver carry a $50 filing fee. Registration cards expire one year after the date of issue. Patients may opt to renew their registration, provided they submit a new application (subject to approval by the Department of Public Safety) and pay the $50 filing fee.

Generally, a dispensary may possess up to 28 mature cannabis plants, 98 immature cannabis plants, and 28 ounces of usable cannabis at any one time. If a dispensary is designated by more than 14 registered patients, however, the dispensary may at any one time cultivate and possess up to two mature cannabis plants, seven immature plants, and four ounces of usable cannabis for every registered patient for which the dispensary serves as the

designated dispensary. A dispensary may only dispense up to two ounces of usable cannabis to a registered patient (or that patient's registered caregiver) during a 30-day period. Dispensaries must have sliding-scale fee systems that take into account a registered patient's ability to pay.

Municipalities may prohibit the establishment of a dispensary within its boundaries or regulate the time, place, and manner of dispensary operation through zoning or other local ordinances.

Notably, regulation of the medical cannabis program will move from the Department of Public Safety to the newly created Cannabis Control Board (*see infra*) on March 1, 2022.

Recreational Use

Yes, it is allowed. 18 V.S.A. §§ 4230–4230i, as amended.

Current Regime: Individuals age 21 or older may (a) lawfully possess up to one ounce of cannabis and up to five grams of hashish, and (b) cultivate up to two mature cannabis plants and up to four immature cannabis plants. Individuals under the age of 21 may not lawfully possess or cultivate cannabis. Cannabis may not be consumed in public. Municipalities may enact civil ordinances to provide additional penalties for the public consumption of cannabis. Landlords may ban the possession or use of cannabis in a lease agreement. Employers may prohibit the use of cannabis by their employees.

Each dwelling unit—defined as a "a building or the part of a building that is used as a primary home, residence, or sleeping place by one or more persons who maintain a household"—is limited to two mature and four immature plants, irrespective of how many 21-year-old persons reside in the dwelling unit. Notably, cannabis harvested from the two mature plants allowed does not count toward the foregoing one-ounce possession limit, provided it is stored in a secure indoor facility located on the property where it was cultivated. Further, reasonable precautions must be taken to prevent unauthorized access to the cannabis.

The sale of cannabis is currently illegal. "Gifting" cannabis is legal, although the Attorney General's office has advised that the transfer of cannabis for any legal consideration—e.g., buying a T-shirt and receiving a "gift" of cannabis in return—is considered a sale and thus prohibited.

Furnishing cannabis to an individual under the age of 21 is illegal. A person injured by an under-21-year-old who is impaired by cannabis has a civil cause of action against the individual that provided the cannabis to the under-21-year-old.

Current Context: While the sale of cannabis is currently illegal, a legal marketplace in Vermont is not too far away. A tax-and-regulate bill (S. 54) passed the Vermont Senate in 2019. On February 27, 2020, the Vermont House of Representatives approved S. 54, which then sent the bill back to the Senate for reconciliation. On March 12, 2020, the Senate considered and rejected the House's proposed amendments to S.54, instead requesting a Committee of Conference. The House and Senate adopted the Committee of Conference's Report in September of 2020, and sent the revised bill to the Governor. On October 7, 2020, Governor Phil Scott allowed the bill to become law (Act No. 164) without his signature. Recreational dispensaries could open as soon as October of 2022.

Act No. 164 creates a Cannabis Control Board tasked with regulating cannabis production and sale in Vermont. Participation in the legal cannabis market will require a license from the Cannabis Control Board. Act No. 164 created six types of licenses: cultivator, wholesaler, product manufacturer, testing laboratory, retailer, and integrated licensee. An applicant and its affiliates may only obtain one of each type of license, and each license shall permit only one location of the given establishment. By way of example, a business may only hold one retail license, and that retail license allows only one brick-and-mortar location. Licenses are valid for one year. A licensee may apply to renew the license annually.

Import/ Export

Medical dispensaries may acquire, possess, cultivate, manufacture, process, transfer, transport, supply, sell, and dispense cannabis, cannabis-infused products, and cannabis-related supplies and educational materials to registered patients, if the registered patient has designated the dispensary as his or her dispensary, and to the patient's registered caregiver. Dispensaries may acquire cannabis seeds or other parts of the cannabis plant capable of regeneration from registered patients, their caregivers, or another registered Vermont dispensary. Similarly, dispensaries may give cannabis seeds or other parts of the cannabis plant capable of regeneration to registered patients, their caregivers, or another registered Vermont dispensary.

Hemp

Yes, 6 V.S.A. § 561 et seq., as amended.

Current Regime: The planting, growing, cultivating, harvesting, selling, storing, and transporting of hemp is legal under Vermont law. "Hemp" is defined as the plant Cannabis sativa L. with the federally defined tetrahydrocannabinol concentration ("THC") level of hemp—currently Cannabis sativa L. with a THC concentration of not more than 0.3 percent on a dry weight basis. Hemp is considered an agricultural commodity.

The Agency of Agriculture, Food and Markets established the State Hemp Program to regulate the growing, processing, testing, and marketing of hemp and hemp products in Vermont. The Agency is also authorized to adopt rules to implement the various statutory requirements. The Agency must adopt rules to establish, inter alia, (1) how the Agency will conduct research within the hemp program, and (2) the requirements for registration of hemp growers and hemp processors. The Agency submitted the proposed Vermont Hemp Rules to the Secretary of State's Office on May 17, 2019. The comment period has since closed, although the rules have not yet been formally adopted.

Any individual that wants to grow, process, or test hemp must register annually with the Agency as part of the State Hemp Program. Registration fees vary depending on the applicant's proposed operation. For example, an application to grow less than 0.5 acres of hemp for personal use costs $25, while an application to grow or process greater than 50 acres or greater than 50,000 pounds of hemp commercially for floral material production, viable seed, or cannabinoids costs $3,000. Failure to register with the Agency subjects an individual to an administrative fine.

Investment Analysis

Since the legalization of adult-use cannabis possession and cultivation in July of 2018, medical dispensary sales have decreased. Unless a medical dispensary renounces or loses its license, or until the number of individual registered with the Vermont Marijuana Registry reaches 7,000, the number of licensed dispensaries in the state will remain at five. While hemp offers potential investment opportunities, particularly in CBD processing, the number of hemp growers (and total amount of hemp produced) in the first year of the State Hemp Program raised concerns of market saturation. Of course, the legalization of a tax-and-regulate system, which appears to be in the not-too-distant future, would open the door for a host of investment opportunities, although long-term business expansion and possibilities may be curtailed by the license limitatino contained in Act. No. 164.

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History

Washington's first cannabis laws, prohibiting and criminalizing cannabis possession with penalties up to ten years in prison for possession, were established in 1923. As cannabis use became more widespread in the 1960s, however, the state legislature loosened its cannabis laws, dictating that possession of less than 40 grams of the plant would be charged as a misdemeanor.

Though recreational use of cannabis remained illegal, as early as 1979, Washington courts began recognizing that medical exceptions may be permitted to justify possession and use of the plant. In State v. Diana, 24 Wn. App. 908, 604 P.2d 1312 (Wash. Ct. App. 1979), the Washington Court of Appeals held that an individual suffering from multiple sclerosis, who was arrested for possession of cannabis, should be given the opportunity to establish that the use of cannabis was medically necessary and, therefore, legally justifiable.

Despite the supportive ruling in State v. Diana, it was not until 1998 and passage of Initiative 692 ("I-692") by a 59% to 41% margin, that the prescription, cultivation, and use of medical cannabis was legalized. I-692, also known as the Medical Use of Marijuana Act, created an affirmative defense to violating state cannabis prohibition laws for individual use and possession of cannabis for medicinal purposes. Fourteen years later, in 2012, Washington became the first state (alongside Colorado) to legalize recreational use of cannabis, by passing Initiative 502 ("I-502").

Sale & Taxation of Cannabis

Licensing, Locations, and Taxation

The production, processing, and sale of cannabis within Washington is regulated by the Liquor and Cannabis Board (the "LCB"), which offers the following four principal cannabis licenses: (1) marijuana producer license; (2) marijuana processor license; (3) marijuana retailer license; and (4) marijuana research license. A marijuana producer license is required to produce cannabis for wholesale to cannabis processors and other cannabis producers. A producer license is also needed to produce immature cannabis plants, clones, and seeds to sell to medical cannabis cooperatives and certain qualifying medical cannabis patients. The license allows a business to produce, possess, deliver, distribute, and sell cannabis. Additional administrative rules for producers can be found in the Washington Administrative Code ("WAC") 314-55-075.

A marijuana processor license is required to process, package, and label cannabis concentrates, usable cannabis, and cannabis-infused products for sale at wholesale to cannabis processors and cannabis retailers. The license allows a business to process, package, possess, deliver, distribute, and sell cannabis and cannabis products. Additional administrative rules for processors can be found in WAC 314-55-077.

A marijuana retailer license is required to sell cannabis products at retail in retail stores. The license allows a business to possess, deliver directly to customers in a store, distribute, and sell cannabis products. Additional administrative rules for retailers can be found in WAC 314-55-079.

Research licenses allow a licensee to produce, process, and possess cannabis for: (1) testing chemical potency and composition levels; (2) conducting clinical investigations of cannabis-derived drug products; (3) conducting research on the efficacy and safety of administering cannabis as part of medical treatment; and (4) conducting genomic or agricultural research. More information on these licenses can be found in the Revised Code of Washington ("RCW") chapter 69.50.331 and RCW 69.50.372.

Retail Locations

While cannabis is legal for medical and recreational uses in Washington, the availability of cannabis retailers is dependent on local zoning ordinances. Many cities have adopted zoning laws to expressly allow cannabis stores, while other cities have enacted outright bans on cannabis retailers or require retailers to comply with "federal and all other applicable laws," effectively banning such retailers from selling cannabis products within the municipality.

Where local zoning allows for cannabis retail, acceptable locations for such stores are generally highly regulated with laws prohibiting stores within certain distances of certain public spaces such as schools or parks. Similarly, both state and local laws heavily regulate what content may appear on

public advertising for cannabis retail stores. More detail on cannabis retail advertising may be found in RCW 69.50.369.

Washington was established on lands belonging to American Indians and many tribal lands and reservations, containing their own unique laws, extend throughout the state. The State legislature permits Washington's Governor to enter into agreements concerning marijuana with these federally recognized tribes. Tribes must provide consent to the LCB before the LCB is allowed to issue any cannabis licenses within individual tribal lands.

An example of a tribal cannabis compact may be found at: https://lcb.wa.gov/publications/Marijuana/Compact-9-14-15.pdf.

Taxation
Cannabis is highly taxed in Washington, with retail cannabis products subject to a 37% excise tax. However, sales and use tax exemptions are provided for qualifying patients or their designated providers, so long as they possess a medical authorization card (further discussed in Section III).

Jurisdictions that do not ban the siting of cannabis businesses are eligible to receive a portion of the funds generated by the state retail marijuana excise tax. In 2019, state sales of cannabis totaled over $1 billion, producing an excise tax revenue of nearly $390 million.

Medicinal Use

Washington State initially legalized the medicinal use of cannabis in 1998, with passage of I-692, the Medical Use of Marijuana Act (the "Act"). Under I-692, qualified individuals who use and possess cannabis for personal medical purposes can assert an affirmative defense to violating state laws regarding cannabis, within the confines of the Act.

Qualifications for Medicinal Cannabis Use
Under RCW 69.51A.010, to qualify for medical use of cannabis, an individual must be: (1) a patient of a health care professional; (2) diagnosed by that health care professional as having a terminal or debilitating medical condition; (3) a resident of the State of Washington at the time of such diagnosis; (4) advised by that health professional about the risks and benefits of the medical use of cannabis; (5) advised by that health care professional that the individual may benefit from the medical use of cannabis; (6)(a) have authorization from such individual's health care professional; or (b) have entered into the medical marijuana authorization database and been provided a recognition card; and (7) be otherwise in compliance with the terms and conditions of state law.

"Terminal or debilitating medical conditions" for which individuals may be prescribed medical cannabis are conditions severe enough to significantly interfere with the patient's activities of daily living and ability to function, limited to a prescribed list that includes, but is not limited to: cancer, HIV, multiple sclerosis, epilepsy, Crohn's disease, anorexia, PTSD and glaucoma. A full list of terminal or debilitating medical conditions may be found in RCW 69.51A.010(24).

Medical professionals who may authorize medicinal cannabis use include licensed: physicians and physician assistants; advanced registered nurse practitioners; osteopathic physicians and osteopathic physician assistants; and naturopathic physicians.

Age and Other Restrictions

While recreational use of cannabis is restricted to those age 21-years and older, Washington prescribes no minimum age for medicinal cannabis use. Patients under the age of 18 may be authorized for medicinal cannabis use if the minor's parent or guardian participates and agrees to the course of treatment for the minor. In these cases, the parent or guardian must be the designated provider for the minor and have sole control over the minor's marijuana. In addition, supplementary restrictions and requirements are placed on the minor's health care provider who authorizes the minor's cannabis. A full list of restrictions may be found in RCW 69.51A.220. Qualifying patients between the ages of 18 and 21 with registration cards may purchase medicinal cannabis for their personal medical use without supervision or age-specific restraints.

Individuals who are actively supervised for a criminal conviction by a corrections agency or department that has determined such individual should not have access to medicinal cannabis, are disallowed to obtain medicinal cannabis regardless of their underlying condition or treatment recommendation from a medical professional.

Authorization Database and Cannabis Limits

To qualify for, and obtain, medicinal cannabis, a patient must either have an authorization form from their health care professional or must be registered in the medical marijuana authorization database (the "Database"). Authorization forms require patient and health care professional information, an optional recommendation by the healthcare professional for the number of plants the patient is allowed to grow, the date of issuance and expiration, and notice about lack of arrest protection if the qualifying patient is not entered into the Database.

To enter into the Database, qualifying patients may present their authorization form to any marijuana retailer holding a medical marijuana endorsement. Upon entry into the Database, and payment of a $1 fee, the qualifying

patient, or designated provider, will receive a recognition card. Recognition cards are valid for up to one year for patients age 18 years and older, and up to six months for patients under the age of 18 and their designated providers.

Entry into the Database allows for certain arrest and prosecution protections, for certain cannabis tax exemptions, and for authorized persons who dispense medical cannabis to access health care information on their patients. Additionally, those entered into the Database may grow up to 15 plants for their medical use and may possess three times the amount of cannabis permitted to recreational users. Qualified patients and designated providers who are not entered into the Database may still grow cannabis for their medical use; however, they are limited to four plants and six ounces of usable cannabis from those plants. They additionally do not receive the sales-tax relief available to patients and designated providers in the Database.

Qualifying patients and designated providers may also form cooperatives to share in the responsibilities of producing and processing cannabis. Cooperative locations must be approved by the LCB and such cooperatives are limited to a maximum of four members who must be at least 21 years of age and possess a valid recognition card. However, a designated provider for a minor may also join a cooperative. Each member of a cooperative must provide assistance in growing cannabis and each cooperative may grow the total number of plants authorized for each participant, up to a maximum of 60 plants. In addition, the cooperative may have on its premises as much usable cannabis as can be produced from the authorized number of plants, up to 72 ounces (4.5 lbs.). Cooperatives may not sell the cannabis they produce. Additional regulations concerning cooperatives may be found in RCW 69.51A.250.

No Employment Protections

Washington State does not offer employment protections for medical cannabis users. Employers may fire employees for their cannabis use, even where such use is prescribed by a doctor and does not occur during work hours. Although the Americans with Disabilities Act generally requires employers to provide reasonable accommodations to employees with disabilities, its protections do not extend to federally illegal drugs, such as cannabis.

Adult Recreational Use

CBD

Cannabidol ("CBD") is a type of cannabinoid that is believed to have potential health benefits and is the active ingredient in most regulated medical cannabis products. Today, CBD is most often found in lotions and oils, and sold without medical claims that would subject it to regulation by the FDA. Licensed marijuana producers and processors in Washington are unrestricted in their use of CBD products for the purpose of enhancing the CBD content of regulated cannabis products, provided such CBD products are lawfully produced by, or purchased from, an in-state producer or processor licensed by the LCB.

An LCB-licensed cannabis store may purchase CBD from outside of the LCB's regulated cannabis system so long as the THC level in the CBD does not exceed three-tenths of one percent THC and the CBD product has been tested for contaminants and toxins by an accredited testing laboratory licensed by the LCB.

Industrial Hemp

Following the 2018 Farm Bill which legalized the production of industrial hemp, Washington enacted RCW 15.140, which regulates hemp production in the state. "Industrial hemp" is defined as all parts and varieties of the genera Cannabis that contain a THC concentration of three-tenths of one percent or less by dry weight.

To grow hemp in Washington, individuals must obtain a license from the Washington State Department of Agriculture ("WSDA"). As of January 2021, annual licenses cost $1,200. However, individuals who have been convicted of a state or federal felony relating to a controlled substance within the past ten years are ineligible to obtain a license, with certain restrictions.

The WSDA has not established any minimum or maximum field size for hemp production; therefore, licensees may grow any amount of hemp they wish. In addition to complying with WSDA requirements, growers must also report their hemp crop acreage to the United States Department of Agriculture's Farm Services Agency.

Canada

Medical Use

Yes, Canada has had regulations in place to permit medical cannabis use since 2001.

Cannabis has been a controlled substance in Canada since 1923. In its decision in R. v. Parker in 2000, the Ontario Court of Appeal held that a failure to provide a viable medical cannabis exemption from the provisions of the Controlled Drugs and Substances Act (CDSA) violated the liberty and security of the person guaranteed by s.7 of the Canadian Charter of Rights and Freedoms, and was inconsistent with the principles of fundamental justice in that it forced individuals to choose between their liberty and their health. When leave to appeal to the Supreme Court of Canada was dismissed, the federal government enacted the Medical Marijuana Access Regulations (MMAR) in 2001.

Under the MMAR, persons with a declaration from their physician relating to a prescribed list of symptoms were able to access cannabis for medical purposes by growing it themselves, having someone grow it for them or by purchasing from a government supply. The MMAR faced numerous court challenges and resulting amendments over the following 12 years.

In 2013, the federal government "privatized" medical cannabis by introducing the Marijuana for Medical Purposes Regulations (MMPR). The MMPR replaced the MMAR and provided that the only legal source of medical cannabis was from a federally licensed cannabis producer. The MMPR also faced a number of legal challenges and was ultimately struck down (again, under s.7 of the Charter) due to its failure to provide a personal production option to medical cannabis patients. As a result, the Access to Cannabis for Medical Purposes Regulations (ACMPR) replaced the MMPR on August 24, 2016. The ACMPR provided patients with the option of growing their own cannabis (either themselves or through a designated grower) or purchasing it from a licensed producer. The provisions of the ACMPR were carried forward into regulations to the Cannabis Act when it was enacted in 2018.

Medical patients with a medical document from a healthcare practitioner may register with a federally licensed medical cannabis seller. Purchases may be made online or by phone, with mail-only delivery to patients. There are no permissible storefronts for medical cannabis. Medical cannabis patients are subject to a public possession limit of the lesser of 150g of dried cannabis (or equivalent) or a 30-day supply (based upon the daily amount set out in the patient's medical document).

As of September 2020, approximately 377,000 Canadians were registered to purchase cannabis from a medical seller, and another 43,000 were registered with Heath Canada to cultivate their own medical cannabis or have a designated grower do so on their behalf.

Recreational Use

Yes, it is allowed pursuant to the Cannabis Act which came info force on October 17, 2018.

Current Regime: On October 17, 2018, Canada became the 2nd country in the world (after Uruguay), and the 1st G7 nation, to legalize non-medical cannabis.

The Cannabis Act encompasses both medical and non-medical cannabis. Available licensing categories distinguish between various activities with cannabis (nursery, cultivation, processing, sale for medical purposes, analytical testing, research and manufacturing of cannabis [prescription] drugs). 'Micro' licence categories, with lower regulatory burdens, are available to small-scale cultivators and processors.

The Cannabis Act carves out a scope of permissible activities with cannabis and creates corresponding offences for activities falling outside of this scope. It imposes significant penalties (up to 14 years imprisonment) for the most serious offences while also attempting to reduce the burden on law enforcement and the criminal justice system by creating ticketing options for less serious offences.

For the first year after enactment, the permissible product types were limited to dried cannabis, fresh cannabis, cannabis oil with a restricted concentration of THC, cannabis plants and seeds. However, on October 17, 2019 regulatory amendments introduced three new product categories (edible cannabis, cannabis topicals and cannabis extracts). Products falling into these new categories became available for sale to consumer in late December, 2019, with an increasing array of products hitting shelves throughout 2020.

There are currently 570 licensed cannabis cultivators, processing and/or medical sellers in Canada. 150 analytical testing licences have been issued, along with 382 cannabis research licences.

Jurisdiction for the distribution and sale of non-medical cannabis rests with the provinces and territories. Each province and territory has enacted its own framework for the retail sale of cannabis (storefronts and online). There are a wide variety of approaches being taken across Canada on issues such as the minimum age to purchase and possess cannabis, who can sell (private vs. public stores), whether residents are permitted to grow up to four plants at home (as is provided in the Cannabis Act) and where cannabis can be consumed.

Goods and services tax applies to all cannabis purchases (medical and non-medical). The federal government has also imposed an excise duty on most cannabis products (generally, equal to the greater of $1/gram or 10% of the products price, or $0.01 per mg of THC, depending on the product format. An additional cannabis duty also applies in certain provinces. The excise duty does not apply to cannabis products containing <0.3%THC or prescription drugs containing cannabis.

Restrictive packaging and prescribed labelling applies to both medical and non-medical cannabis products. A universal cannabis symbol must be placed on every product containing cannabis with >0.3% THC, along with prescribed health warnings and product information. The Cannabis Act imposes significant restrictions on the ability to promote and advertise cannabis. Certain informational and brand-preference promotion can take place in adequately age-gated environments. Promotions depicting people, animals, characters, testimonials or endorsements, or which are appealing to children or contain lifestyle depictions are strictly prohibited (similar to restrictions on the promotion of tobacco).

The definition of cannabis in the Cannabis Act includes all parts of a cannabis plant (other than non-viable seeds, bare stalk and fibre derived therefrom, and roots) and specifically includes all phytocannabinoids found in the cannabis plant (even if synthetically produced). This means that cannabidiol (CBD), in and of itself, is regulated as cannabis and does not enjoy differential treatment as in many other jurisdictions.

Hemp

The licensed cultivation of approved hemp cultivars is addressed in the Industrial Hemp Regulations, which are regulations to the Cannabis Act. “Industrial hemp” is defined as cannabis plant, or any part of that plant, in which the concentration of THC is 0.3% w/w or less in the flowering heads and leaves. Hemp farmers can freely sell hemp stalk and seed for use in the manufacture of a variety of products. However, flowering heads, leaves and branches may only be sold to a federally licensed cannabis processor and these parts of the plant are then treated as “cannabis”.

Import/ Export Opportunities

The Cannabis Act permits licence holders to obtain permits to import and export cannabis for medical or scientific purposes only. No export or import of adult-use / recreational cannabis is permitted. This is presumably driven by international drug treaty obligations. Health Canada has issued an information bulletin on the importing and exporting of marijuana by licensed producers. In that bulletin, Health Canada set out a very restrictive position, stating that

Health Canada's general policy is to issue import or export permits only in limited circumstances, such as importing starting materials (e.g., seeds, plants) for a new licence holder, exporting cannabis products to another country that has a medical cannabis regime, or importing or exporting small quantities of cannabis for scientific purposes (e.g., research or testing).

The factors that will be considered by Health Canada before issuing an import or export permit include:

- Canada's obligations under international treaties;
- Whether the application is consistent with the relevant provisions in the Cannabis Act and its regulations;
- Whether the import or export will be used solely for medical or scientific purposes;
- In the case of exports, whether the country of final destination has issued an import permit;
- Whether there are risks to public health given that imported products are not subject to the same strict production standards or Health Canada inspections;
- Whether there are risks to public safety and security, including the risks of diversion; and
- For the import or export of drugs containing cannabis, whether import/export requirements of the Food and Drugs Act and its regulations have been met.

That being said, limited exports of medical cannabis have been reported to a variety of countries in Europe and elsewhere. In the quarter ending March 31, 2019, 179kg of dried cannabis and 81.25L of cannabis oil were exported from Canada (for medical or scientific purposes). Imports were nil.

The degree to which Health Canada will permit the importation of medical cannabis products for sale to Canadian patients in the future remains uncertain. At the very least, such importation would require proof that the products had been cultivated and processed to standards at least as stringent as the GPP standards imposed upon Canadian licensed processors.

Market Size

37.5 million people.

In the first year after legalization, sales of legal non-medical cannabis in Canada were nearly $908 Million, or $24 per capital.

Alberta

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Distribution of Recreational Cannabis

The Alberta Gaming, Liquor and Cannabis Commission (AGLC) is the sole distributor of recreational cannabis in Alberta. The AGLC is responsible for regulating private retail cannabis licensing, for the distribution of cannabis products from federally licensed growers to the province's specialized, privately owned and operated retailers and for the operation of the online cannabis store on behalf of the Alberta government.

The AGLC oversees the distribution of legal recreational cannabis products. The AGLC has also enacted legislation and published regulations regarding the sale of cannabis, including licensing criteria and other rules for private retailers.

Retail Sale of Recreational Cannabis

Albertans have two options for buying legal cannabis:

- Licensed privately run retail stores; or
- The AGLC-operated online storefront.

Physical stores are subject to government regulations and AGLC licensing terms. The AGLC sets terms and conditions on obtaining retail licences, inspects retailer stores and addresses any violations. Every licence granted by the AGLC is subject to a thorough due-diligence investigation.

Licensed retailers are the only stores that can sell recreational cannabis in Alberta. A retailer cannot sell cannabis if it also sells alcohol, tobacco or pharmaceuticals. A retail cannabis store must operate as its own separate business.

Online sale and delivery of recreational cannabis is only available through the AGLC-operated online storefront. The licensed retail stores are not

allowed to sell their products online, or offer delivery services, whether themselves or through a third party.

There are currently over 500 licensed retailers in Alberta. Initially, no single person, business or entity was able to hold more than 15% of retail cannabis licences in the province; however the AGLC lifted this restriction effective November 1, 2020.

The products initially available for sale included dried flower, milled flower, plant seeds, oil, capsules, and pre-rolls. Products such as soft gels, edibles and beverages were made widely available at the beginning of 2020.

The staff working at private retail cannabis stores must be at least 18 years of age, undergo a background check and complete an AGLC designed training program called "Sell Safe".

Alberta's municipalities have been given authority over the location and concentration of cannabis retail stores, subject to some minimum requirements set by the AGLC. This means municipalities may pass bylaws regulating the number of stores in a community, as well as where the stores may be located and how close they can be to one another. The provincial government only requires there to be at least one hundred metres between private recreational cannabis stores and schools and healthcare facilities.

General Prohibitions of Cannabis

- **Minimum Age:** You must be 18 years of age to buy or consume cannabis in Alberta. This is the same as Alberta's minimum age for purchasing and consuming alcohol and tobacco. Minors are prohibited from entering into cannabis stores, even if accompanied by an adult.
- **Home Growing:** Adults can grow cannabis at home; up to four plants per household (not per person) for personal consumption. This is consistent with the default position set out in the federal Cannabis Act. However, growing cannabis is subject to rental agreements and landlords have the right to make their properties cannabis-free.
- **Interprovincial Movement of Cannabis:** There are no restrictions. Adults over 18 can possess up to 30 grams (or equivalent of extract, edible or topical) of cannabis in a public place, in line with the federal possession limit.

  When cannabis is in a car, it must be secured in closed packaging and not within reach of any occupants.

Market Size

Alberta has a population of approximately 4.3 million people.

Legislation, Guidelines & Resources

- Gaming Liquor and Cannabis Act, RSA 2000 cG-1
- Gaming, Liquor and Cannabis Regulation, Alta Reg 143/1996
- Alberta Cannabis Framework Provincial Government website
- AGLC Cannabis website
- AGLC Cannabis Retailer Operational Manual
- AGLC-Operated Online Storefront
- SellSafe Cannabis Staff Training website

British Columbia

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Distribution of Cannabis

Pursuant to the Cannabis Distribution Act, 2018 (British Columbia), British Columbia's provincial government appointed the BC Liquor Distribution Branch ("LDB") as the sole wholesale distributor of non-medical cannabis. In addition, the LDB is the government retailer of recreational cannabis in the province.

Retailers in the province are not permitted to purchase any cannabis products directly from licensed producers or any other source other than the LDB.

Retail Sale of Cannabis

The LDB operates public cannabis stores and the sole online e-commerce in the province through the brand, BC Cannabis Stores: https://www.bccannabisstores.com. As of the date of writing, BC Cannabis Stores has opened twenty (20) publicly-run locations. BC Cannabis Stores continues to roll out additional stores in additional locations, with at least six having secured locations.

Additional cannabis retailers, which are run privately in BC, are licensed by the Liquor and Cannabis Regulation Branch ("LCRB"). As of the date of writing, there have been 264 private cannabis retail licenses issued. An applicant for a retail store license or group or related persons must not hold more than eight (8) total retail store licenses. Private cannabis retail store licensees are permitted to sell cannabis through an online system, or by telephone, so long as the transfer of possession of cannabis from the licensee to patrons takes place in the physical retail store (i.e. click-and-collect method).

The LCRB requires licensees to ensure that all employees complete the "Selling It Right" self-study course and hold valid training certificates in order to ensure responsible and socially responsible sale of cannabis in the province.

General Prohibitions of Cannabis

- **Minimum Age:** The Cannabis Control and Licensing Act (British Columbia) sets 19 as the provincial age minimum to purchase, sell, or consume recreational cannabis.
- **Home Growing:** The default position set out in the federal Cannabis Act has been maintained. British Columbia residents will be permitted to grow up to four (4) plants per household. However, any home grown plants must be kept out of sight of public spaces located off the property. In the event that a home doubles as a daycare, home cultivation will be banned. Landlords and strata councils also have the authority to restrict or prohibit home cultivation for residents.
- **Interprovincial Movement of Cannabis:** Cannabis must stay within Canada. There are no restrictions on interprovincial movement of cannabis other than the personal public possession limit of 30g of dried cannabis (or equivalent) per person.
- **Consumption:** Cannabis consumption in BC is permitted in public spaces where, generally speaking, smoking and vaping tobacco is not prohibited. However, there are certain exceptions to this rule.

  All forms of cannabis consumption, including ingestion of cannabis oil, are prohibited: (a) in or on school property, and on sidewalks, walkways or boulevards adjacent to school properties; (b) in private licensed cannabis stores and in BC cannabis stores; (c) while being a passenger in a vehicle or boat; or (d) while operating a vehicle or boat.

  Community care facilities, assisted living residences, and hospitals may designate specific rooms where residents or patients may consume cannabis. Hotels are similarly entitled to designate certain registered guests with an ability to smoke or vape in their hotel room.

  All consumption is subject to any restrictions which may be imposed on a municipal level.

Market Size

$3-$5 Billion

Manitoba

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General Comments

The Liquor, Gaming and Cannabis Control Act of Manitoba (the "Act") governs the distribution and sale of cannabis in the province, including on First Nations. Manitoba has established a hybrid government and private sector model. Wholesale distribution of cannabis is through Manitoba Liquor and Lotteries ("MBLL"). Regulation of the sale of cannabis is by the Liquor, Gaming and Cannabis Authority ("LGCA"). Retail stores are privately owned and operated subject to licensing and oversight by the LGCA. The LGCA has the authority to limit the number of retail stores and their locations. Initially, stores were established by parties who were successful in either a request for proposal or a cannabis retail opportunity draw. Effective June 1, 2020, the Province of Manitoba began accepting open applications. A list of all licensed stores is available on the LGCA website.

Distribution of Cannabis

The Manitoba government maintains exclusive control over the distribution of cannabis in the province including on First Nations lands. MBLL accesses cannabis from distributors authorized under the Cannabis Act (Canada), and manages its distribution throughout the province.

Retail Sales of Cannabis

Retail storefronts are privately owned. The licensing framework for retail locations is set out in the Act and administered by the LGCA.

There are two types of licences: age restricted and controlled access. An age-restricted licence applies to a stand-alone bricks and mortar store, and a controlled-access license applies to a cannabis location within a core business. Licensees may provide instore, telephone and online sales.

Licensing Process

Applications must be submitted to LGCA, one application per location. Applications for age-restriction licences may not exceed 15% of the total retail market. At present, there are thirty (30) licensed stores in Manitoba and therefore, an applicant may be licensed to operate no more than four (4) stores. Applicants must demonstrate financial capacity (between $75,000 and $100,000 for stores in Winnipeg and between $25,000 and $50,000 for stores outside of Winnipeg). Applications must identify a location and have local/municipal approval. New applicants are prioritized over existing applicants and are subject to a detailed background check. New applicants may be required to pay for such checks.

In addition to the above, applicants must have a registered business name, Certificate of Insurance and be registered with Worker's Compensation and have an "In Good Standing" letter.

A retailer must have a licence and an executed Cannabis Store Retailer Agreement prior to accessing the wholesale distribution system operated by MBLL. Further, new licensees must attend New Cannabis Regulatory Onboarding, either in person or virtually. Licenses are not transferable.

Ongoing Monitoring & Social Responsibility

MLBB will schedule quarterly monitoring either by telephone or email. LGCA has the authority pursuant to the Act to ensure that licensees comply with the Act and its regulations, including the authority to conduct inspections and audits and issue compliance orders. Retailers are required to post social responsibility notices prepared by the LGCA. The Government of Manitoba has announced its goal that 90% of all Manitobans have access to legal cannabis within a drive of thirty (30) minutes or less.

Fees

Cannabis sales are not subject to RST. Rather, they are subject to the Social Responsibility Fee ("SRF"). MBLL has set a 9% markup to all sales. The markup is intended to pay for administration costs related to the cannabis program. Any additional markup proceeds and the SRF are collected to protect vulnerable populations. The provincial government has taken the position that the markup and SRF are not taxes and therefore must be paid by First Nations. In addition, a $0.75/gram Canada-Manitoba Coordinated Tax is also charged on all sales.

Miscellaneous Information

Cannabis retailers are only permitted to sell cannabis purchased from the MBLL. Edibles are not currently available: however, edibles (once available) and topical-use products including TBC and/or CBD) must be sold by licensed retailers.

Cannabis and alcohol may not be sold alongside each other. Legally purchased cannabis may not be resold or consumed in stores. Possession limit of 30g is as set by the federal government. Cannabis may not be sold to an intoxicated person.

General Prohibitions of Cannabis

- **Minimum Age:** 19 years.
- **Home Growing:** Prohibited in Manitoba.
- **Interprovincial Movement of Cannabis:** No restrictions, but subject to the public possession limit of 30g of dried cannabis (or equivalent) per person for adult-use.

Market Size

$6.8M in March 2020.

New Brunswick

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Production of Cannabis

The production of cannabis in New Brunswick is controlled by the New Brunswick government under the Cannabis Control Act, SNB 2018, c 2.

Distribution of Cannabis

The New Brunswick government maintains exclusive legislative and regulatory control over the distribution of cannabis in New Brunswick. Cannabis NB Ltd., a subsidiary of Alcohol New Brunswick Liquor Corporation, was created under the Cannabis Management Corporation Act, SNB 2018, c 3 as the exclusive distributor and retailer of recreational use cannabis, or cannabis that is not used for medical purposes.

Retail Sale of Cannabis

The sale of cannabis is regulated under the Cannabis Control Act, SNB 2018, c 2. Currently in New Brunswick, retail recreational use cannabis is sold only by Cannabis NB in 20 retail locations across the province and via its website. In its first fiscal year of operation, 95.8% of Cannabis NB sales were made in its retail stores, and the remaining 4.2% were made online.

Cannabis NB sells the product in a variety of forms, including dried flower, pre-rolled, beverages, concentrates, oils and caps and topicals.

General Prohibitions of Cannabis

- **Minimum Age:** Consumers who are 19 years of age or older are entitled to purchase cannabis or cannabis accessories. No person who is 19 years of age or older can consume cannabis unless the person is in lawful possession of the cannabis and is in a private dwelling and has obtained the consent of the occupant, is on vacant land and has obtained the consent of the owner or occupant, or is in a place prescribed by regulation and in the circumstances prescribed by regulation, if any.

- **Home Growing:** A person who is 19 years of age or older may cultivate, or offer to cultivate, cannabis provided it is cultivated in his or her dwelling-house and the person is in lawful possession of the cannabis seeds or cannabis plants, the cannabis plants; if cultivated outdoors, are surrounded by a locked enclosure having a height of at least 1.52 m; and, if cultivated indoors, are cultivated in a separate locked space.
- **Interprovincial Movement of Cannabis:** No restrictions, but subject to the public possession limit of 30g of dried cannabis (or equivalent) per person for adult-use.

Newfoundland & Labrador

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Cannabis Sales

The Newfoundland and Labrador Government has given the Newfoundland and Labrador Liquor Corporation ("NLC") the authority to:

- Buy, import, and control the sale of cannabis;
- Control the possession, sale, and delivery of cannabis;
- Establish, maintain, and operate cannabis stores; and
- Issue licenses for the possession, sale, and delivery of cannabis.

These changes were effected by legislative amendments to the Provincial Liquor Corporation Act which received Royal Assent on May 31, 2018. The Cannabis Control Act, SNL 2018, c. C-41 and accompanying Cannabis Licensing and Operations Regulations, NLR 94/18 govern the framework for the distribution and possession of cannabis in the Province.

Authorizations to sell or supply cannabis to retailers issued by NLC. Any federally licensed producer of cannabis wishing to supply retailers in the province is required to obtain authorization from NLC. NLC may authorize a federally licensed producer of cannabis to sell or otherwise supply cannabis to a retailer in the province that indicates the classes, varieties, types, and brands of cannabis that may be sold or supplied. NLC may limit the number of authorizations it issues. During the 2018-2019 fiscal year, NLC negotiated supply agreements with eight providers of cannabis throughout Canada.

Retail of Cannabis. The NLC board is also responsible for the issuance of retail licences to sell cannabis. There are a variety of circumstances provided for under the Cannabis Control Act whereby the NLC shall not issue a retail licence, including among other things, where the management, equipment, accommodations, or facilities of the retail storefront would cause inconvenience to a place of worship, a school, or a hospital, or do not

conform to federal, provincial, or municipal laws. Once a retail licence is issued, the retailer is responsible for:

- keeping appropriate records of its sales and activities in the province;
- complying with the requirements of the cannabis tracking system established and maintained under the federal Cannabis Act;
- taking adequate measures to reduce the risk of cannabis sold being diverted to an illicit market or activity;
- paying to the NLC an annual fee; and
- reporting annually to the NLC.

Retail storefronts are privately owned. There are currently 25 stand-alone cannabis stores and retail locations operating in Newfoundland and Labrador.

Online Sales of Cannabis. In addition to being the exclusive distributor of cannabis, the NLC is the exclusive online cannabis retailer in the province (www.shopcannabisnl.com)/

General Prohibitions of Cannabis

- **Minimum Age:** The individual must be 19 years old to purchase or possess cannabis.
- **Possession:** A person shall not possess in a public place or in a vehicle in a public place more than 30 grams of dried cannabis without a licence.
- **Home Growing:** Maximum of four cannabis plants per household.
- **Consumption:** A person cannot consume cannabis in a public place; in a vehicle or a boat; or in a place in which smoking is prohibited under the province's Smoke-Free Environment Act, 2005.
- **Interprovincial Movement of Cannabis:** A person shall not bring into the province from outside the province cannabis that exceeds 30 grams of dried cannabis or the federal equivalent, or that was not lawfully obtained.

Northwest Territories

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Distribution of Recreational Cannabis

In the Northwest Territories (NWT), the Northwest Territories Liquor and Cannabis Commission (NTLCC) is responsible for the distribution and sale of cannabis.

The cannabis suppliers for the Northwest Territories are High Park, Canopy Growth and Aurora Cannabis.

Retail Sale of Recreational Cannabis

There are three options for buying legal, recreational cannabis products in the NWT:

- The NTLCC online store;
- The five NTLCC-run liquor stores; or
- NTLCC-approved private vendors.

The NTLCC online store only carries the product of one supplier (High Park) and all online sales are subject to Canada Post shipping charges. Age verification is required when individuals pick up cannabis from the post office.

The only products initially available for sale in NWT include dried cannabis flower, milled flower, cannabis oil and plant seeds. Edibles cannabis products were made widely available at the beginning of 2020.

Currently only five communities in the NWT have legal brick-and-mortar cannabis vendors: Fort Simpson, Fort Smith, Hay River, Norman Wells and Yellowknife.

The process for obtaining the NTLCC's approval to open a private recreational cannabis store is extensive and tightly controlled. Applicants must provide the NTLCC with the following:

- A detailed business plan, including site plans and an explanation of how the business will be run and make a profit;
- Three years' worth of financial statements, including copies of tax returns;
- Personal information, including criminal background checks, employment history and family history on all owners, investors, promoters, shareholders and their immediate family.

The NTLCC has currently approved a private vendor to begin selling recreational cannabis products in NWT. This private vendor will be located in Yellowknife. Additionally, a liquor store in Yellowknife has been approved to open a new storefront so as to separate its liquor and recreational cannabis sales.

General Prohibitions of Cannabis

- **Minimum Age:** You must be 19 years of age to buy or consume cannabis in the Northwest Territories.
- **Home Growing:** NWT has maintained the default position set out in the federal Cannabis Act that residents are limited to growing four plants per household. However, growing cannabis is subject to rental agreements and landlords have the right to make their properties cannabis-free.
- **Interprovincial Movement of Cannabis:** There are no restrictions. Adults over 19 can possess up to 30 grams (or equivalent of extract, edible or topical) of cannabis in a public place, in line with the federal possession limit.

Market Size

NWT has a population of approximately 44,000.

Regulations, Guidelines & Resources

- Bill 6: Cannabis Legalization and Regulation Implementation Act
- Legalizing Recreational Cannabis in the Northwest Territories (NWT Government Summary Document)
- NTLCC website
- NTLCC Online Store website

Nova Scotia

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Distribution of Recreational Cannabis

The Nova Scotia government, through the Cannabis Control Act, provides the Minister responsible for the Nova Scotia Liquor Corporation (NSLC) authority to supervise and manage cannabis sales.

The Nova Scotia Liquor Corporation is the only authorized retailer of recreational cannabis in Nova Scotia. Cannabis can be purchased at designated NSLC stores or online.

As of publication, there are 12 NSLC locations across Nova Scotia that sell recreational Cannabis. However, the corporation has announced that 14 additional locations will be undergoing renovations to allow those locations to offer cannabis products.

Though it is legal to purchase recreational cannabis products through the NSLC, individuals are limited in where they can smoke cannabis within Nova Scotia. Under the Smoke Free Places Act, persons cannot smoke in public spaces. Violators can be fined up to $2,000 for doing so.

Private Dispensaries

As in other provinces, Nova Scotia is home to a number of private cannabis dispensaries, often advertised as medical cannabis dispensaries. These dispensaries, however, are not licensed by the province. As such, regional police and municipalities, such as Halifax, are actively shutting these dispensaries down. Managers and employees of private dispensaries have been charged under the Cannabis Act. Halifax Regional Municipality has also ordered shut-downs as the dispensaries operate without permits (which they cannot obtain, because dispensing cannabis in this way is illegal).

General Prohibitions of Cannabis

- **Minimum Age:** 19.
- **Home Growing:** The default position set out in the federal Cannabis Act (ability to grow 4 plants per dwelling) has been maintained, subject to municipal by-laws.
- **Inteprovincial Movement of Cannabis:** No restrictions, but subject to the public possession limit of 30g of dried cannabis (or equivalent) per person for adult-use.

Research & Development

Research and development of cannabis-based life sciences products (e.g., topical pain treatment) are subject to the same research licensing as entities across Canada. Such research licences are provided subject to the Cannabis Act and Cannabis Regulations.

Market

Population: Approx. 940,600

Retail sales from October 2018-September 2019: $65.8 million CAD

Nunavut

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Distribution of Cannabis

The Nunavut Liquor and Cannabis Commission (the "NULC") regulates the distribution, purchase, and sale of recreational cannabis in Nunavut.

Under the Cannabis Act (Nunavut) and its Regulations, cannabis sold in Nunavut must be sourced through either Nunavut registered suppliers, agents of the NULC, and other Nunavut cannabis licence holders. It is important to note that this may exclude certain federally licensed producers who are not registered by Nunavut's Officer of the Superintendent.

Retail Sale of Recreational Cannabis

The NULC may sell cannabis remotely (both online and by telephone), in physical retail stores, and through an approved agent. As of the date of writing, the NULC's approved agents are Canopy Growth Corporation (Tweed) and AgMedica (Vertical Cannabis).

The government of Nunavut has contemplated a licencing scheme to licence private establishments that sell cannabis, including stores and lounges. Two classes of licences will be available for cannabis retail in Nunavut, online stores and physical stores.

Online stores are websites where cannabis and cannabis accessories may be sold and delivered directly to Nunavummiut. Physical Stores will be sorted into two sub-classes: "enclosed" and "integrated" cannabis stores. At enclosed stores, sensory display items may be used and products may be discussed with customers. These stores will not be accessible by the general public and will not permit entry by any minors. Integrated cannabis stores are accessible to the general public. These stores are only permitted to sell cannabis off a price list after the customer's age has been checked and verified. Nunavut cannabis retailers who are licensed to sell online may fulfill orders taken online through an online store or by other means of

telecommunications. Orders may be collected at the storefront or shipped through a common delivery carrier.

Prior to any stores being licensed, the Act requires that a community be consulted. Certain application information will be made public to the community.

As of the date of writing there are no approved physical retail cannabis stores in Nunavut.

General Prohibitions of Cannabis

- **Minimum Age:** Adults 19 and older may purchase and consume cannabis in Nunavut.
- **Home Growing:** Although Nunavut initially indicated that it would prohibit home cultivation, the default position set out in the federal Cannabis Act has been maintained. Nunavummiut may grow their own cannabis for personal use. Regardless of how many people live in a home, each home/dwelling may grow a maximum of four (4) plants.
- **Inter-Provincial Movement of Cannabis:** Under the Nunavut Motor Vehicles Act, no person shall drive or have the care or control of a vehicle on a highway while any cannabis is contained in or on the vehicle. There is an exception for (1) commercial vehicles; (2) when cannabis is in the possession of a passenger; (3) When cannabis is packed in baggage that is fastened closed or not otherwise readily available to any person in or on the vehicle; or (4) cannabis is contained in a sealed, tamper-proof container sealed by a lawful commercial manufacturer, distributor, or seller of cannabis. Movement across provincial borders is permitted so long as the federal public possession limit of thirty (30) grams of dried cannabis (or equivalent) per person is adhered to.
- **Consumption:** Under the Regulations, cannabis consumption in the Nunavut is not permitted in any public place, other than a cannabis lounge and/or a place for which a temporary licence which authorizes consumption of cannabis is in effect. Hotel and motel rooms, provided that room is used for sleeping accommodation only, are exempt from the public consumption prohibition.

  Nunavut's Regulations have contemplated a licensing scheme for cannabis lounges, although there have not been any approved cannabis lounges as of the time of writing.

Ontario

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Distribution of Cannabis

The Ontario government maintains exclusive control over the distribution of cannabis in Ontario. The Ontario Cannabis Retail Corporation (which carries on business as the Ontario Cannabis Store—OCS) was created by the Ontario Cannabis Retail Corporation Act, 2017.

Retail Sales of Cannabis

In addition to being the exclusive distributor of cannabis in Ontario, the OCS is the exclusive online cannabis retailer in the province (www.ocs.ca).

Retail storefronts are privately owned. The licensing framework for retail locations is administered by the Alcohol and Gaming Commission of Ontario (AGCO) in accordance with the Cannabis Licence Act, 2018 and its regulations. There are currently approximately 320 cannabis retail stores authorized to open in Ontario.

The Ontario government limited the initial allocations of stores due to a supply shortage. A lottery process for the first 25 stores took place in January 2019. A second lottery process took place in August 2019, with an additional 42 parties being given the right to apply for licensing.

In parallel to the lottery processes, an additional 26 applicants with proposed stores located on First Nations lands (with the explicit consent of Band council) were given the right to apply for retail store authorizations.

On January 6, 2020, the AGCO opened the application process for retail operator licences to the world at large. Applications for retail store authorizations opened on March 2, 2020. Thereafter, the AGCO began issuing twenty retail store authorizations per month, with this allocation doubling to forty retail store authorizations per month as of September, 2020 and doubling again to eighty per month in December, 2020.

Operators (including any affiliated operators) are currently limited to thirty stores. This will increase to 75 on September 1, 2021.

Federally licensed cultivators and processors (and their affiliates) are permitted to operate only one retail store, which must be located within the production site (i.e. farm-gate sales). No farm-gate stores have opened yet.

Cannabis retailers are permitted to sell only cannabis (which must be purchased from the OCS), cannabis accessories, and other cannabis-related products (which may be purchased from the retailers' suppliers of choice). No other products, including non-infused food or drink, may be sold. Online sales are not permitted, but "click and collect" services are permitted.

Cannabis retail stores may not be located within 150m of a school. Municipalities were provided a one-time opportunity to opt out of cannabis retail within their jurisdiction. Those that opted in are prohibited from passing by-laws which zone for cannabis retail use specifically or from creating any licensing regime for cannabis retail. Power over the location of cannabis retail stores is reserved to the province.

General Prohibitions of Cannabis

- **Minimum Age:** An individual must be 19 years of age to purchase cannabis.
- **Home Growing:** The default position set out in the federal Cannabis Act (ability to grow four plants per dwelling) has been maintained.
- **Consumption:** Consumption rules regarding possesssion, consumption and transportation of cannabis are found within the Cannabis Control Act, 2017 and the Smoke-Free Ontario Act, 2017. Smoking and vaping of cannabis is generally restricted in the same manner as tobacco.
- **Interprovincial Movement of Cannabis:** Currently no restrictions exist for interprovincial movement of Cannabis. However, all are subject to the public possession limit of 30g of dried cannabis (or equivalent) per person for adult-use.

Market Size

The current market size is 14.5M. $126 Million of legal cannabis products were sold in Ontario in the quarter ending June 30, 2020, 35% of which was sold online by the OCS and 65% of which was sold in retail stores.

Prince Edward Island

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Distribution of Cannabis

The Prince Edward Island government maintains exclusive control over the distribution of cannabis in Prince Edward Island. The Prince Edward Island Cannabis Management Corporation, which carries on business as PEI Cannabis (PEIC), was created by the Cannabis Management Corporation Act, RSPEI 1988, c C-1.3.

Retail Sales of Cannabis

In addition to being the exclusive storefront retailer of cannabis in Prince Edward Island, PEIC is the exclusive online cannabis retailer in the province (https://peicannabiscorp.com/).

Retail storefronts are publicly owned. There are currently four cannabis retail stores operating in Prince Edward Island.

Cannabis retailers are only permitted to sell cannabis, cannabis accessories and other products that are related to or used in the consumption of cannabis, such as lighters, storage containers, and rolling papers.

Power over the location of cannabis retail stores is reserved to the province.

General Prohibitions of Cannabis

- **Minimum Age:** An individual must be 19 years of age to purchase or possess cannabis.
- **Home Growing:** The default position set out in the federal Cannabis Act (ability to grow 4 plants per dwelling) has been maintained.

  Cultivation in private dwellings is permitted so long as enactments (including municipal bylaws) regarding health and safety, fire safety, and building codes are respected. Additionally, individuals who cultivate cannabis within a private dwelling must ensure that the cannabis plants

are inaccessible to persons under age 19, as well as any person who does not have an express or implied invitation to be within the private dwelling.

Outdoor cultivation is permitted so long as the cannabis plants are surrounded by a locked enclosure that is at least 1.52m high, and the cannabis plants are not visible from any public place outside the boundary of the property.

- **Interprovincial Movement of Cannabis:** There are no restrictions for interprovincial movement of cannabis, but subject to the public possession limit of 30g of dried cannabis (or equivalent) per person for adult-use.

Market Size

Prince Edward Island has a population of approximately 158,158 people.

Quebec

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Overview

The Quebec government maintains exclusive control over the distribution of cannabis in Quebec. The *Société des Alcools du Québec* ("SAQ") has the mission to ensure the sale of cannabis and carries that mission exclusively through the *Société québécoise du cannabis* ("SQDC").[1]

In addition to being the exclusive distributor of cannabis in Quebec, the SQDC is the exclusive online cannabis retailer in the province.[2]

On November 1, 2019, the *Act to tighten the regulation of cannabis*[3] passed in Quebec. Since this date, the legal age to possess or purchase cannabis, and to be admitted to the premises of the SQDC, is 21 years old.

There is no restriction as to interprovincial movement of cannabis, but transportation of cannabis is subject to the public possession limit of 30 g of dried cannabis (or equivalent) per person for adult-use.

The market size of cannabis in Quebec is estimated at more than 8.4 million.

Cannabis Retail in Quebec

An authorized producer in Quebec may sell cannabis only to the SQDC or to another producer, unless the authorized producer ships it outside Quebec. Only the SQDC is permitted to sell cannabis retail in Québec.

The first store locations of the SQDC were selected according to population density together with the collaboration of the municipalities. Each municipality concerned had to indicate its willingness to have an SQDC store within the city limits.

1 http://legisquebec.gouv.qc.ca/en/ShowDoc/cs/S-13 *(Act respecting the Société des Alcools du Québec)*

2 https://www.sqdc.ca/

3 https://laws-lois.justice.gc.ca/eng/regulations/SOR-2018-144/FullText.html

As of September 1, 2020 there are currently 56 cannabis retail stores operating in Quebec. In order to meet with the growing demand, the SQDC has set up a transactional website under which online purchases can be made.

SQDC store network will be expanding throughout Quebec in the upcoming years. The location of these stores has not yet been determined. The plans for the store network expansion are constantly evolving and will continue to be adapted to meet demand.

Although the sale of edibles, extracts and topicals is now legal in Canada since December 16, 2019, the Quebec government has ruled in order to ban the sale of topical cannabis products in the province. Consequently, Cannabis retailers' outlet of the SQDC are only permitted to sell dried cannabis, cannabis oil, fresh cannabis, cannabis resin, edible cannabis products, beverage and cannabis extract. The SQDC is also unauthorized to sell any vaping product as vaping is considered to cause health problems. No other products shall be sold in Quebec although others may be approved by the federal government.

All the types of cannabis cannot contain any additives or any other substances intended to modify its taste, colour, or odour, and all edible cannabis products sold in Québec shall not be sweet, nor in the form of a confectionery, a dessert, a chocolate or in any form being attractive to people under the age of 21 years old. The Quebec government has also ruled more restrictively than the federal government regarding edible products as all of such products shall not contain, in solid form, more than 10 mg of THC per package or more than 5 mg of THC per portion and, in liquid form, more than 5 mg of THC per container.

Cannabis retail stores may not be located within 250 metres of an educational institution providing preschool, elementary or secondary school instructional services. In the territory of Ville de Montréal, SQDC may not operate a cannabis outlet within 150 metres of an educational institution.

Adult-Use of Cannabis

Under the Cannabis Regulation Act,[4] Quebec prohibits possessing a cannabis plant and to cultivate cannabis for personal use although the federal government authorizes cultivating up to four cannabis plants per residence (not per person). However, as of September 3, 2019, it seems now legal in Quebec to grow cannabis at home in accordance with the federal law since the Superior Court of Quebec has ruled unconstitutional Quebec's prohibition to possess and cultivate cannabis. However, the Quebec government has appealed such decision on October 10, 2019 invalidating sections of the

[4] http://www.legisquebec.gouv.qc.ca/en/ShowDoc/cs/C-5.3

Cannabis Regulation Act and, consequently, some uncertainty might remain until the final ruling of such appeal with respect to cultivating cannabis at home in Quebec.[4]

An individual may however possess 150 grams of dried cannabis or its equivalent in a private residence, regardless of the number of persons living in such residence. Quebec also prohibits possessing cannabis in certain places, particularly places accessible mainly to minors.

As for the possession of cannabis in public areas, Quebec government has not regulated to reduce the amount of cannabis that a person may possess in such a public place as provided under the federal *Cannabis Act*, so it is possible to possess 30 grams of dried cannabis, or its equivalent, in a public place in Quebec. Under the *Act to tighten the regulation of cannabis*[5] it is forbidden to smoke or vape cannabis in any public place whether indoor or outdoor.

In the workplace, the *Cannabis Regulation Act* provides employers, pursuant to their decision-making prerogatives, the possibility to regulate the use of cannabis, and as such, employers may prohibit it entirely.

More Information

For more information, please contact BCF LLP.

4 http://www.legisquebec.gouv.qc.ca/en/ShowDoc/cs/C-5.3

5 http://www.assnat.qc.ca/en/travaux-parlementaires/projets-loi/projet-loi-2-42-1.html?appelant=MC

Saskatchewan

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Distribution of Cannabis

The laws governing the possession, distribution, and consumption of cannabis in Saskatchewan are governed by The Cannabis Control (Saskatchewan) Act (the "Act") and The Cannabis Control (Saskatchewan) Regulations (the "Regulations"). The Saskatchewan Liquor and Gaming Authority ("SLGA") is the designated provincial Cannabis Authority and is responsible for the administration and oversight of the provincial cannabis retail system.

Retail Sale of Cannabis

In Saskatchewan, there are two types of cannabis permits that may be issued. The first type of cannabis permit is a cannabis retail store permit. Retailers are required to operate a brick-and-mortar storefront and can also sell cannabis on a retail website for pick-up and delivery in Saskatchewan. A cannabis retail store is permitted to make deliveries subject to the Regulations. Retailers may also sell cannabis at wholesale to other permitted retailers located in the province.

The second type of cannabis permit is a cannabis wholesale permit. Permitted wholesalers can sell to permitted retailers and other permitted wholesalers but not to the general public. Wholesale operations must be physically located in Saskatchewan and product can only be sold and distributed within Saskatchewan.

The SLGA is now also accepting registrations for Licensed Producers. Only Licensed Producers registered with SLGA will be permitted to sell into the Saskatchewan market. Licensed Producers cannot sell to the general public but are permitted to ship directly from existing warehouse facilities to a Saskatchewan permitted wholesaler of retailer.

Licensing Framework

A limited number of retail store opportunities were initially made available in Saskatchewan when cannabis was legalized. The process of phasing in an open-market system when allocating cannabis retail permits in Saskatchewan is now underway. Beginning in April 2020, SLGA began accepting applications for cannabis retail permits in communities with populations less than 2,500 as well as from communities that were previously identified as eligible for permits but who did not proceed. In communities of 2,500 or more, cannabis retail stores must operate as standalone businesses. In communities under 2,500, stores may be standalone or integrated with another business.

As of September 1, 2020, SLGA began accepting permit applications for stores in all communities in the province. Interested individuals and businesses will still need to meet the permit requirements. If there is no existing retail store in the community, SLGA requires that the municipality or First Nation must approve the establishment of a retail store in the community before SLGA will issue a permit.

General Prohibitions of Cannabis

- **Minimum Age:** 19. There is a ticketing scheme in place for a minor purchasing, possessing or consuming cannabis as well as fines for selling to a minor.
- **Home Growing:** The default position set out in the federal Cannabis Act (Canada) (ability to grow 4 plants per dwelling) has been maintained. No one may possess any plants in a public place that are budding or flowering.
- **Travel:** Cannabis may not be consumed in vehicles. A ticketing scheme has been put in place to enforce this. Similar transportation laws to alcohol apply. Generally, no one may possess, consume or distribute cannabis in a vehicle. However an exception is that cannabis may be transported from the place it was lawfully obtained, to a place where it can be lawfully kept or consumed.
- **Consumption:** Cannabis can only be consumed in a private place. Cannabis cannot be consumed in a public place in Saskatchewan, except where specifically allowed in the Act, Regulations or an Act of the Parliament of Canada. There are specific prohibitions in schools and daycares. There may also be bans/orders in campgrounds, similar to alcohol (i.e. long weekend ban).

- **InterProvincial Movement of Cannabis:.** No restrictions, but subject to the public possession limit of 30g of dried cannabis (or equivalent) per person for adult-use. A person is permitted to purchase cannabis from a jurisdiction outside of Saskatchewan.
- **Location:** A municipality may designate locations in the municipality where prescribed activities that may otherwise be allowed by a cannabis permit are not permitted. First Nation bands may also prohibit prescribed activities that may otherwise be allowed by a cannabis permit in that municipality or reserve.

Yukon

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Distribution of Cannabis

The Yukon government controls the purchase and distribution of cannabis for retail sale. Under the Cannabis Control and Regulation Act, 2018 (the "Act"), the Yukon Liquor Corporation ("YLC") is designated as the distributor corporation for a period ending on March 31, 2024.

Retail Sale of Cannabis

The only legal online recreational cannabis e-commerce site in the Yukon is "Cannabis Yukon" https://cannabisyukon.org/, run by the YLC. The Act will allow for e-commerce private cannabis retail in the future; however, it has not yet been established.

Initially, Cannabis Yukon also ran a physical retail location. As of October 17, 2019, the publicly run retailer closed permanently and the focus was shifted to a private cannabis retail sector.

Now, brick and mortar storefronts are privately run. In order to operate a retail location in the Yukon, retailers must hold a valid cannabis licence issued by the Cannabis Licensing Board ("CLB") established by the YLC in accordance with the Act. The CLB has the sole authority to grant licences under the Act.

As of the date of writing, there are five (5) retail store locations across the territory, with another ten (10) applications either granted or with the CLB for review. There is no fixed cap on the number of retail licences available.

All licences are of the standard retail class, and there are two sub-classes of standard retail licences. Sub-class 1 licences are for "store-within-a-store" retail spaces and sub-class 2 licences are for stand-alone stores. Cannabis sold by private retailers must be purchased from the YLC, and that product must be sold in its original and sealed package. Stores may only sell cannabis and cannabis accessories; no other goods or services may be sold.

Under the Act, Cannabis retail stores must be located so that each point on each lot line of the premises of the cannabis retail store is more than 150m from an elementary or secondary school. Anything otherwise requires approval through a municipal bylaw or Ministerial Order.

General Prohibitions of Cannabis

- **Minimum Age.** Adults 19 and older may purchase cannabis in the Yukon.
- **Home Growing:** The default position set out in the federal Cannabis Act has been maintained. Yukoners may grow their own cannabis for personal use. Regardless of how many people live in a home, each home/dwelling may grow a maximum of four (4) plants. There are no restrictions on the size of the plant(s).
- **Consumption:** Cannabis consumption in the Yukon is only permitted on private property (indoor or outdoor), unless the home is used to run a daycare or a pre-school.

  Public consumption of cannabis is prohibited, and consumption of cannabis within licenced retailers is also not permitted.
- **Interprovincial Movement of Cannabis:** Cannabis must stay within Canada. There are no restrictions on interprovincial movement of cannabis other than the personal public possession limit of 30g of dried cannabis (or equivalent) per person.

Market Size

Approximately 3 million.

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