

# CANNABIS IN ILLINOIS

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**CLE SEMINAR FOR IN-HOUSE COUNSEL**  
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## Introduction

- **Co-Heads of Denton's Cannabis Group**
- **Eric Berlin**
  - First "Big Law" cannabis lawyer - 100% time spent on clients in or impacted by legal cannabis industry
  - Helped draft and pass Illinois and Ohio medical cannabis laws
- **Katie Ashton**
  - Head of Dentons Global Health Care Practice



## Agenda

- What is cannabis and the cannabis industry?
- Current US federal laws on cannabis and hemp
- States' legalization
- Medical & adult use of cannabis in Illinois
- Impact on employers & other businesses
- Q&A

## What is Cannabis?

Hemp (not > .3% THC)



“Marijuana”



+ Extracts from glands on flowers & leaves containing cannabinoids, terpenes and flavonoids

# Medical Cannabis?

- Does cannabis have **medicinal properties**?

- Effective as analgesic and for nausea
- CBD for epilepsy
- Some positive studies for Crohn's, Multiple Sclerosis, Alzheimer's, Parkinson's & diabetes

- Is cannabis **safe**?

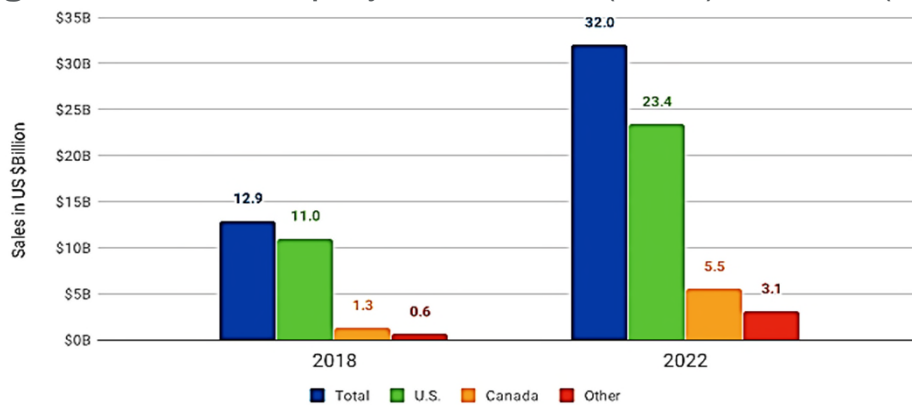
- DEA's chief ALJ: "one of the safest therapeutically active substances known"
- In states with medical cannabis programs, each of the following has declined significantly:
  - Opioid overdoses
  - Medicare prescriptions for conditions treated by cannabis
  - Absences from work due to illness

# Cannabis Products



## The Global & U.S. Markets

- Annual global cannabis market (inc. black market) = **\$150 billion**
- **Legal** retail sales & projected: \$13B (2018) to \$32B (2022)



## U.S. Federal Law

- Cannabis = **Schedule I drug**, “Controlled Substances Act”
- **Illegal** to:
  - Manufacture (grow), sell, or possess
  - Advertise (print, internet, and communication facilities [e.g., TV and radio])
  - Sell paraphernalia (not authorized by state)
- Conspiracy, Aiding & Abetting, AML, RICO

## Federal Enforcement

- Feds **not enforcing** vs. state compliance businesses
- **History of Non-Enforcement**
  - Cole Memo
  - Rohrabacher (Joyce) protection for medical cannabis
  - Sessions rescission of Cole Memo
  - AG Barr pledged not to “go after” state law compliant companies
- **Reform in 2019?**
  - Likely no Congressional action beyond possibly banking

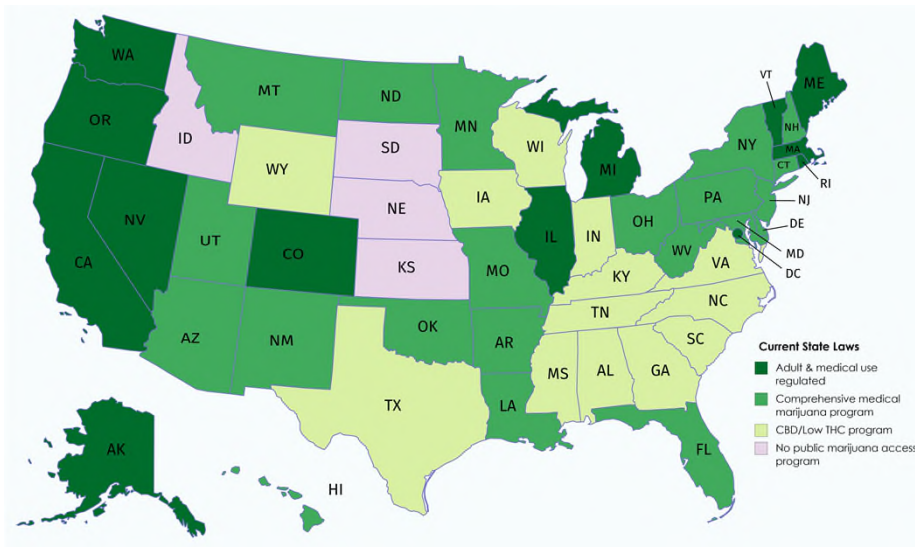
## Implications of Federal Illegality

- Limited **banking**
  - Fin-CEN guidance
- **Tax Code 280E**
- Limited **IP** protection
- No federal **bankruptcy** protection
- **Interstate** commerce limitations

## Hemp

- Industrial hemp research programs under **2014 Farm Bill**
- **2018 Farm Bill** removed hemp and extracts of hemp from CSA
  - Created for hemp farmers and producers, expands banking options, expands IP protection, decreases tax liabilities, and makes crop insurance available
  - “Grandfathers” 2014 Farm Bill programs at least one year
  - Does not make sales of hemp or CBD nationally legal; awaiting USDA regs.
- **FDA** has claimed full jurisdiction
  - Illegal to add CBD to food, beverage or supplement
  - Illegal to make my health claim about CBD product
  - Plans to enforce only against the most “egregious, over-the-line claims”

## Current U.S. State Laws



## No Two States The Same

- **Permit Process:** Open vs. Competitive
- **Vertical Integration:** Required vs. Prohibited  
cultivator → processor → distributor → testing lab → dispensary
- Different **advertising** standards
- **Home grow** permitted vs. not
- Different **forms** (smoking, vaping, oils, edibles)

## Common Licensing Requirements

- **Background checks**
- **Operations** and **security** plans
- **Environmental** compliance and **water** plans
- License **fees**, bond, and taxes
- Local and/or multi-agency **approvals**

## Illinois Medical Use

- **Qualifying Conditions**

- >40, including PTSD, cancer, Crohn's
- Not for general pain or anxiety
- Opioid alternative program

- All permitted **forms** of intake

- **Licenses**

- 16 cultivation centers - seed/cutting through sale to dispensary
- 50+ dispensaries

## Illinois Medical Use (cont'd)

- **Purchase limits** - up to 2 ½ ounces every two weeks
- **Public consumption** prohibited
- **No home grow** - Up to 5 plants (if passed)
- Permission for **attorneys** to practice



## Illinois Adult Use Bill

- **Licenses** - early approval cultivation and dispensing (legacy medical facilities) and cultivation center, craft grower, infuser, dispensary, and transporter (also college cannabis vocational pilot)
- **Application - Early Approval**
  - Medical cannabis cultivators and dispensaries can apply for early approval adult use licenses within 60 days of the effective date (TBD)
  - Early approval cultivation centers can begin selling to dispensaries on December 1, 2019; dispensaries can sell to the public January 1, 2020

## Illinois Adult Use Bill (cont'd)

- **Application - Timing for Other Licensees**
  - New dispensaries (October 1, 2019)
  - Infusers & transporters (January 7, 2020)
  - Community colleges (February 1, 2020)
  - New cultivation centers (after January 1, 2021)
  - [Craft growers timing missing, but sometime before July 2020]

### Number of Licenses

- 75 new dispensing organizations by May 1, 2020
- 40 infusers and 40 craft growers by July 1, 2020
- 60 additional infusers and craft growers by December 21, 2021

## Illinois Adult Use (cont'd)

- **Purchase Limits** - up to 30 grams, 5 grams of concentrates and 500 milligrams of THC contained in cannabis-infused products (half as much for non-residents).
- **Public consumption** prohibited; contemplates private facilities for social consumption if permitted by local government.
- **Home Grow** - up to 5 flowering plants (medical patients only), kept in enclosed, locked facility.

## Employer Rights & Limitations

- States have taken **varied approaches**
- No requirement for **health insurance** to cover
- Illinois employers **may not discriminate**
  - No employee right to use cannabis at work
  - Workplace safety and federal law considerations
- Review existing drug policies; training to spot **impairment**

## Ancillary Product/Service Suppliers

- Federal **vs.** state law
- **Risks** of aiding/abetting, conspiracy, money laundering
- **Low enforcement** risk
- **Banking** implications
- **Real estate**

## International Legalization

- **Uruguay** first country to legalize for adults
- **Canada** – Medical, and adult use added October 17, 2018
- **Medical legalization:** Mexico, Argentina, Columbia, Chile, Jamaica, Germany, Denmark, Greece, Italy, Catalonia, Croatia, Czech Republic, Macedonia, Poland, Turkey, Australia, Israel, South Africa, Thailand

## Industry Future

- **Disrupt Several Sectors:**
  - Alcohol, beer, pharma, health & wellness, food ingredients
- **Life Science/Pharma**
  - CBD, cannabinoids, ratios, terpene mixes, testing
- **Adult/Recreational Use**
- **Health & wellness/ingredients**

## Questions?



Q&A

# Thank You



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## Dentons Cannabis Group

- **Global** presence to meet Global demand
- **Sophisticated corporate clients**
  - In, serving, impacted by, or exploring cannabis industry
- **Multi-disciplinary:** solutions addressing full spectrum of clients' needs
  - Strategic counseling and risk mitigation
  - Compliance (cannabis regulations, FDA, IP, employment, etc.)
  - Corporate/transactional (formation, funding, M&A, real estate, public listing, etc.)