

Cannabis and Hemp Overview

October 2021

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- Co-Head Dentons US Cannabis Group
- Global Health Care Group Leader
- Counseling Clients in Cannabis Industry since 2014

Joanne Caceres

- Joanne counsels clients in the cannabis industry to attain their business objectives
- 100% time spent on clients in or impacted by legal cannabis or hemp/CBD industries
- Selected to Law360 “Rising Stars” for 2020 and as a Legal500 “Rising Star” for 2021



Agenda

- Cannabis, hemp, and CBD
- Hemp/CBD laws
- States' legalization
- US federal cannabis laws, enforcement & implications
- Opportunities and risks for ancillary businesses
- Employment issues
- Federal reform

What Is Cannabis in the U.S.?

Hemp (<0.301% THC)

“Marijuana” (>0.3% THC)



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

HEMP & CBD

Hemp in the U.S.

- **2014 Farm Bill** - State hemp pilot programs
- Led to commercialization of **CBD**
- **2018 Farm Bill** - Hemp no longer CS
- **International** changes as well

Hemp Regulations

- **USDA** - Testing rules for THC
- **DEA** - Interim Final Rule has created controversy
- **State Laws**
 - Most applying for USDA approval
 - Laws vary

CBD

- **FDA**

- Warned: CBD (or THC!) in product that is either ingestible or accompanied by a health claim is illegal
- Cease & desist letters
- Promised a legal pathway for some CBD products

- **FTC** - Warning letters and one lawsuit

- **State Laws** - vary on CBD, % THC and products

CBD - Future Regulation?

- **FDA's** draft guidance
- Fed Bill & State Ags - ↑ THC threshold to 1%
- **State Laws** - evolving

Huge Growth in State Legal Canna Sales



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13

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U.S. -- Still Federally Illegal

- **CSA**, secs. 841, 843, 856, 863, etc.
& related **AML** violations
- **But no enforcement** against state-law compliant licensees or their vendors
 - **AGs** Holder/Cole, Sessions, Barr, *Garland*
 - **Joyce amendment** to Spending Bill

14

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Some Implications of U.S. Illegality

- No **import/export** of THC products to/from U.S.
- Limited **banking** & impact on credit cards
- Limited **IP** protection
- No federal **bankruptcy** protection in U.S.
- Limited **access to capital**



15

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Many Ancillary Companies Involved

- **Cultivation**
 - Construction, HVAC, gardening, hydroponics
- **Products**
 - Extraction, infusion, ingredients, packaging, labeling, hardware
- **Retail/Dispensary**
 - POS software, all impacting other retailers
- **Commercialization Generally**
 - Real estate, accountants, lawyers, marketing, public relations, temp agencies, financial services

16

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Risks from Selling to Cannabis Companies

- **Criminal risks**
 - Aiding/abetting or conspiracy
 - Sale of products that could be considered paraphernalia
 - Real estate - sec. 856
 - AML - secs. 1956 & 1957, foreign \$; RICO
- Lack of diligence on customers' compliance with state law
- Lack of termination right if cannabis risk profile alters

Employers + Employees

- **Employment laws continue to evolve**
 - Increased acceptance of medical use and employee protections
- Workers' compensation and medical cannabis
 - Coverage required under several states
- **Reasonable accommodations** under ADA and State law
 - Anti-discrimination laws (IL medical cannabis)
- Drug testing? Applicants v. Employees

Employers + Employees

- **Safety considerations still matter**
 - Child care, drivers, forklift operators
- Drug-free workplace policies still permitted
 - Federal contracts or federal funding
- **How to evaluate impairment?**
 - Training more important than testing

FEDERAL REFORM?

President Biden's Position

- **Decriminalization**
 - Not full legalization
 - Expungement for past convictions
- **Increased cannabis research**
- **Schedule II**
 - Move cannabis from Schedule I to II under CSA

Booker-Wyden-Schumer Cannabis Administration and Opportunities Act

- Discussion draft, not yet a bill
- Solicits comments on several areas
- Formal bill filed later this year

De-schedules Cannabis

- Removes cannabis (marijuana) and its extracts from the Controlled Substances Act (CSA) and schedules of CSs
- Would eliminate 208E tax on cannabis
- Maintains hemp as different
- **State law** still governs production, distribution & possession
- **FDA & TTB** primary federal regulators

Regulators - FDA

- **FDA**
 - Primary regulator of cannabis and cannabis products and to act in interest of public health (broad!)
 - Charged with creating registration scheme
 - Center for Cannabis Products (excluding drugs)
 - Sets minimum national labeling, packaging, and advertising standards for cannabis and cannabis products (including rules for planting, growing, harvesting)

Regulators - TTB

- **TTB**

- Issues pertaining to diversion and taxations (similar to alcohol and tobacco)
- Deliver rules

- Would require federal approval of license transfers

Reparative Justice & Social Equity

- **Expungements** of non-violent cannabis convictions
- **Cannabis Justice Office** within the Department of Justice
- **Grant programs** to fund nonprofits that provide services to those adversely impacted by the War on Drugs and to aid state and local efforts to create equitable licensing programs and make loans to small businesses in the cannabis industry
- Funding through the **Small Business Administration** to aid social equity in licensing and social equity small businesses

Research

- Funding for:
- (1) Research into the **therapeutic applications** of cannabis through HHS and non-profit grants
- (2) Studies by the Comptroller on the **effects of legalization** (positive and negative)
- (3) Studies by DOT on **drugged driving**, methods of detecting impairment, and providing for law enforcement training, and public education

Taxes

- Over first 5 years, 10% → **25%** of wholesale price
- Then 25% of national prevailing price for ounce of flower or per mg THC for other products
- Lower rate/tax credit for **first \$20M** to help smaller companies

- Seems to seek parity with alcohol and tobacco

Tax Rates

Year	Top Rate	Rate on first \$20 million in sales
Enactment	10%	5%
Year 1	10%	5%
Year 2	15%	7.5%
Year 3	20%	10%
Year 4	25%	12.5%
Year 5	25%*	12.5%*

*Flower & THC rather than actual price

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Hemp/CBD

- CBD – to allow products under a **specific dosage** (to be determine by the FDA) meeting certain requirements
- **NDIs** will be required; would enable products to make certain structure function claims
- FDA would have the ability to require **safety-related labeling or packaging** requirements if needed and to take **enforcement** action against any noncompliant CBD-containing products

Primary Industry Concerns

- **FDA** as the primary regulator will make many in the industry nervous given how slow they have been to move on CBD, and many rules that will affect industry, including labeling, packaging, and advertising, have been left for the agencies to address, which creates a lot of uncertainty
- **Tax rates** too high; taxing flower and THC problematic; maintaining bond is complicated, expensive, and onerous

Additional Concerns

- Licensing and registration seem onerous, and no express presumption that state licensed entities will be approved
- Legal age is 21, without any express recognition of younger medical patients
- Prohibits “electronic cannabis product delivery systems” from containing natural or artificial flavors

Likelihood & Timing

- Challenges
 - Partisan Congress, filibuster in Senate
 - Chasm between support of legalization and bipartisan agreement about how
- 2021 = 0%, 2022 = 5%
- Likely in some form by 2026

OTHER BILLS – Most Significant

- **SAFE Banking Act**

- Would permit banks to work with licensed cannabis operators

- **MORE Act**

- Removes cannabis from list of Controlled Substances
- Social equity & reparative justice
- Likely trumped by CAO A

Q&A

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.)

Thank you

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