

CANNABIS in NY/NJ: Opportunities & Risks

Eric Berlin, Partner

Kathryn Ashton, Partner



Introduction

- **Co-Heads** of Dentons Cannabis Group
- **Eric Berlin**
 - 100% time spent on clients in or impacted by legal cannabis and hemp industries
 - Helped draft and pass Illinois and Ohio medical cannabis laws
- **Katie Ashton**
 - Head of Dentons Global Health Care Practice



Agenda

- Cannabis, hemp, and CBD
- States' legalization, including NY & NJ
- US federal laws on cannabis
- Hemp legalization & CBD
- Ancillary business opportunities & risks
- Impact on employers
- Conclusion and 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

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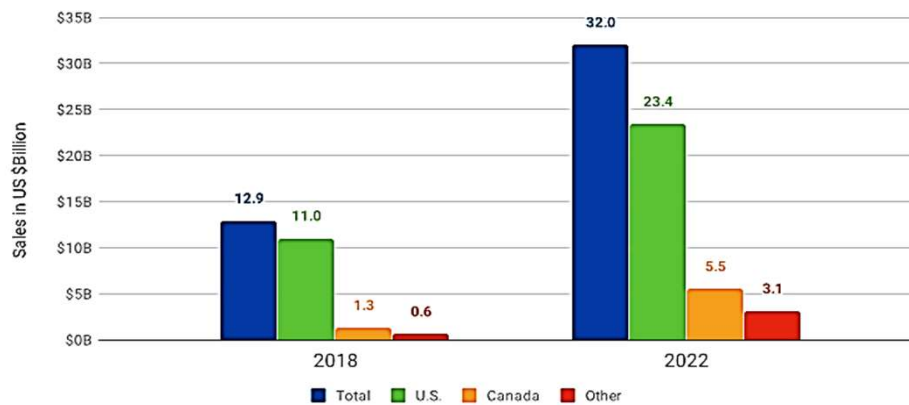
Cannabis Products



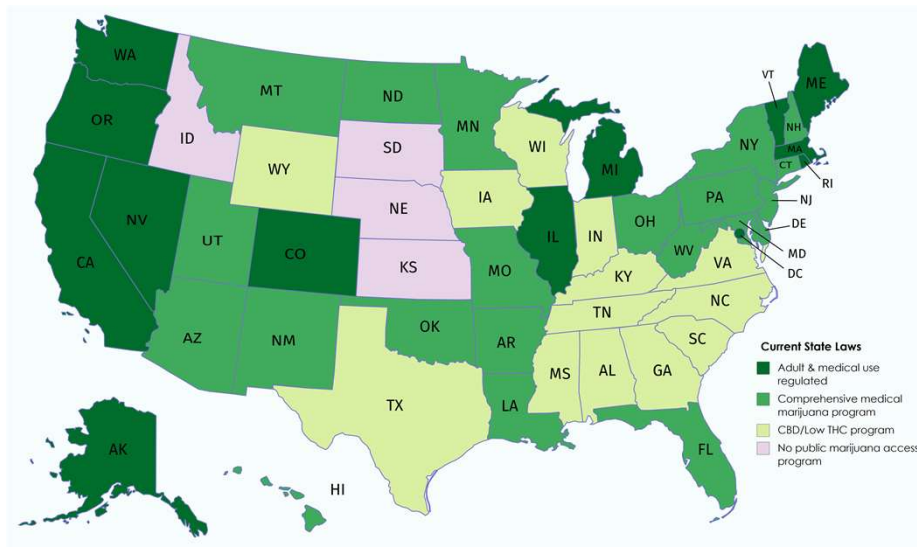
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The Global & U.S. Markets

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



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), **limits**, etc.

Medical Cannabis in New York

- Legalized July 2014
- Only 10 registered organizations
- Permitted forms: metered liquid or oil, solid and semisolid preparations (e.g., capsules), metered ground plant preparations, and topical forms and transdermal patches
- Permitted advertising: must be “true and accurate”; claims regarding efficacy subject to prior Department approval
- Home grow **not** permitted
- Adult use? Failed to pass this year; likely in next 2 years

Medical Cannabis in New Jersey

- Legalized January 2010; Expanded in July 2019 through “Jake Honig Compassionate Use Medical Cannabis Act”
- Only 6 Alternative Treatment Centers currently, NJDOH seeking to add up to 24 add'l ATCs (including 4 vertically integrated permits) through Aug. 2019 RFA
- Permitted forms: dried, oral lozenges, topical formulations, oral formulations. Transdermal, sublingual and tincture forms permitted by new expansion bill
- Permitted advertising: No advertising of price, no items for sale or gifts that reference marijuana
- Home grow **not** permitted
- Adult use? Failed to pass this year; likely in next 2 years

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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)
 - Control property on which cannabis trafficking knowingly occurs
- Conspiracy, Aiding & Abetting, AML, RICO

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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

Implications of Federal Illegality

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

Possible Federal Reform

- **Pending Bills**

- Many different aspects and kinds
- FAIR Banking
- STATES
- Equity/Expungement
- Insurance

- **Reform in 2019?**

- Likely no Congressional action beyond possibly banking

Hemp

- Industrial hemp research programs under **2014 Farm Bill**

- Morphed into research on commercialization of products with CBD

- **Epidiolex**

- **2018 Farm Bill** removed hemp and extracts of hemp from CSA

- 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
 - States can ban, but must permit hemp/extracts/products to pass through state
 - Awaiting USDA regs

FDA on CBD

- **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”
- **Product choice** implications
- **Labeling** implications
- **Cease & desist letters** issued

Hemp/CBD in NY/NJ

- **New York**
 - Hemp cultivation and processing: can grow and process under the Industrial Hemp Agriculture Research Pilot Program.
 - CBD: Can be sold as health supplements; new processors cannot use CBD concentration higher than in original plant extract. (NYC enforcement)
- **New Jersey**
 - Hemp cultivation and processing: new law passed Aug 2019 (regulations in process)
 - CBD: allows CBD products to the maximum extent permitted by federal law

Chain of Development, Production and Sale

- **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

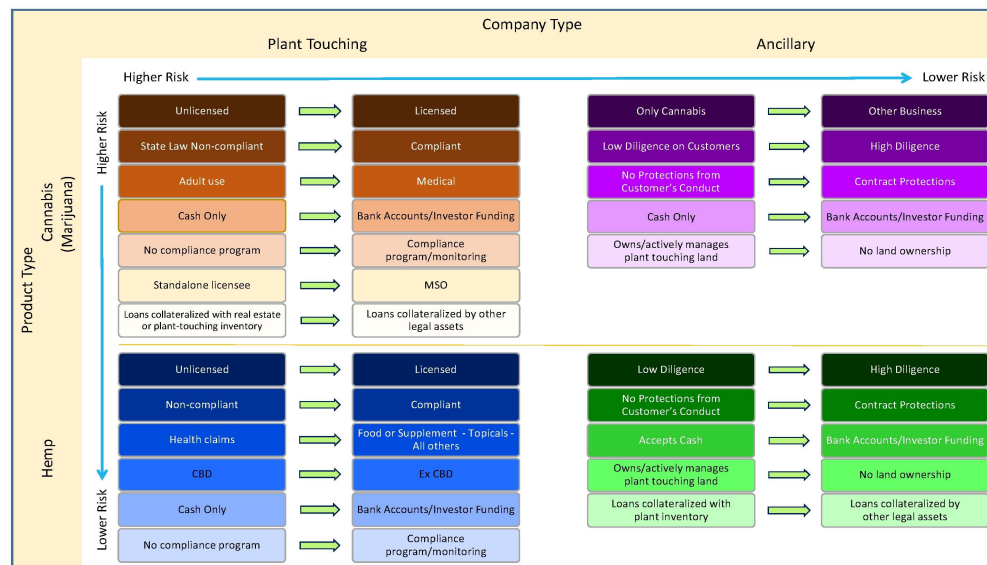
Ancillary Product/Service Suppliers

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

Risks from Selling to Cannabis Companies

- Sale of products that could be considered paraphernalia
- Lease space to cannabis manufacturers/distributors
- Lack of diligence on customers' compliance with state law
- Lack of termination right if cannabis risk profile alters

Risks Matrix



Employer Rights & Limitations

- States have taken **varied approaches**
 - **NY**: No adverse actions solely based on status as medical marijuana patient; may still enforce a policy prohibiting employee from performing duties while impaired
 - **NJ**: No adverse actions solely based on status as medical marijuana patient
- No requirement for **health insurance** to cover
- Most: 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**

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

Questions?



Q&A