

# Cannabis & Hemp Overview

CLE SEMINAR FOR IN-HOUSE COUNSEL  
2021

## Eric Berlin

- Co-Head Dentons US Cannabis Group
- 100% time spent on clients in or impacted by legal cannabis or hemp/CBD industries
- Helped draft/pass Illinois & Ohio medcanna laws



## Katie Ashton

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

## Agenda

- **Intro to cannabis, hemp, and CBD**
- **Hemp/CBD laws**
- **State and federal landscapes for cannabis legalization**
- **Implications of federal cannabis prohibition**
- **Opportunities and risks for ancillary businesses**
- **Employment issues**

## 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

## Cannabis/Hemp/CBD Products



## HEMP & CBD

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### 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

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## Hemp Regulations

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

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## 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

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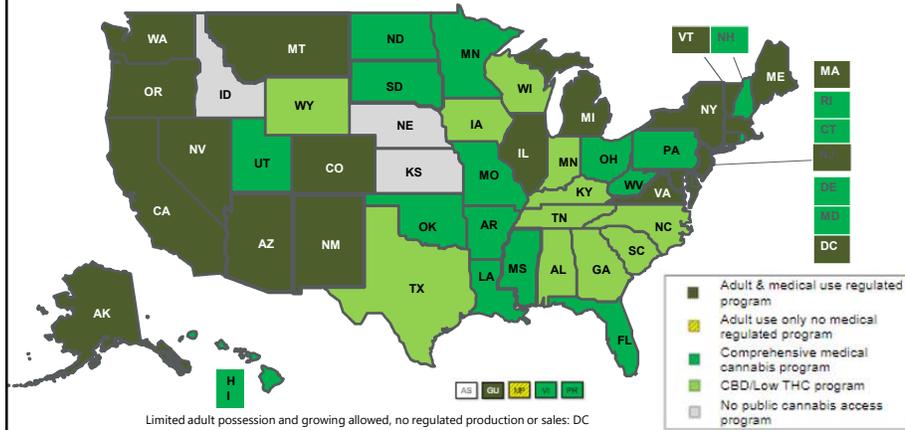
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## CBD - Future Regulation?

- **FDA's** draft guidance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

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## Current U.S. State Laws



## Huge Growth in State Legal Canna Sales



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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

## President Biden's Position

- **Decriminalization**
  - Not full legalization
  - Expungement for past convictions
- **Increased cannabis research**
- Move cannabis from **Schedule I** to **II** under CSA
- **Federal bills**: SAFE Banking, Booker-Wyden-Schumer

## 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**



## 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

## 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

## 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.)

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## Thank you

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