

MARIJUANA AND HEMP: THE EVER CHANGING LEGAL LANDSCAPE

Tom Haren

JUNE 2, 2020

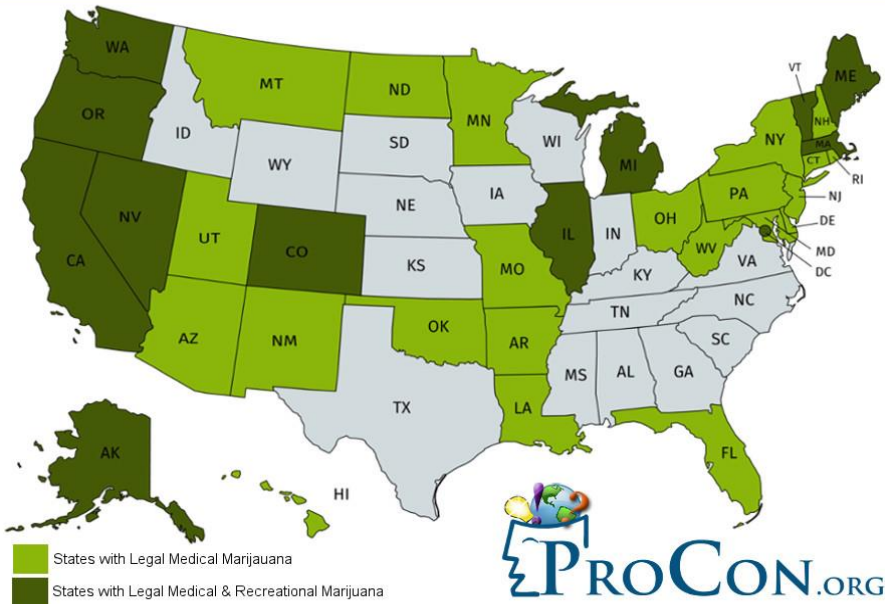


TOPICS TO COVER

1. Marijuana
2. Hemp
3. Outlook for additional reform: 2020 and beyond
4. Interesting cannabis-related litigation
5. Equipment used in cannabis production

MARIJUANA REFORM

33 Legal Medical Marijuana States & DC
11 Legal Recreational Marijuana States & DC



- States leading the way
 - Trend is to pass legislation as opposed to reliance on ballot initiatives
- Currently little to no resistance from the federal government
 - Rescission of Cole Memo mitigated by current funding prohibitions
- Common threads between various state programs, but still very clear differences in approaches
 - Businesses with operations in multiple states may have difficulty synthesizing policies across the country to comply with unique state laws
 - Ever-changing state laws make continued compliance difficult

CHANGES IN FEDERAL POLICY?

- Cannabis (other than hemp) remains illegal under federal law
- But November 2020 election results could portend major cannabis reform. States to watch include:
 - Ohio
 - Arizona
 - Florida
 - New York
 - New Jersey
 - Pennsylvania
- COVID-19 “shelter in place” orders have hampered signature collection efforts across the country
 - Some markets (such as Ohio and Florida) saw booms during COVID-19
 - Designation of cannabis businesses as “essential” reflects a definite change in states’ approaches to marijuana

CHANGES IN FEDERAL POLICY? (CONT.)

- Banking legislation (SAFE Act)
 - Proposed as a standalone bill, and also included in recent version of House COVID relief bill
- STATES Act
 - Bipartisan support in both chambers, also supported by President Trump
- Reform was progressing, but then derailed due to two significant developments:
 - Impeachment inquiry
 - COVID-19
- Joe Biden has signaled some support for reform, but has stopped short of supporting full commercial legalization

THE CAMPAIGN TO REGULATE MARIJUANA LIKE ALCOHOL

- Legalize possession of up to 1 ounce (8 grams of which can be in concentrate form) for adults 21 and older
- Current medical operators can begin selling to adults beginning July 1, 2021
- Department of Commerce can issue additional licenses once program implemented
 - Initial limit of 1 retail marijuana store per 60,000 residents
 - Initial limit of additional 1.5 million square feet of cultivation area
 - The above limits can be increased by the Department
- Tax revenue
 - 50% to State Local Government Fund
 - 10% back to communities in which retail sales occurred
- Localities can prohibit medical marijuana dispensaries from selling to adults
- Localities can:
 - Regulate the time, place, manner, and number of retail marijuana stores
 - Establish a schedule of operating fees for marijuana establishments
 - Establish civil penalties for violation of an ordinance governing the time, place, and manner of marijuana establishments
 - Prohibit the operation of establishments, provided that the prohibition must appear on the general election ballot during an even numbered year
 - Control zoning relating to marijuana establishments
- Nothing affects employer drug policies
- Property owners can restrict on-site use

WHAT IS HEMP?

- Hemp was poorly defined prior to 2014
- The 2014 Farm Bill permitted states to establish pilot programs to research hemp
 - Defined hemp as the cannabis plant, including its derivatives, with less than 0.3% THC
 - States decided to research not only the science of hemp, but the commercial viability of hemp markets
- In 2018, Congress passed the 2018 Farm Bill and expanded on the prior law
 - Removed hemp (and its derivatives) from the Controlled Substances Act
 - Permitted states to set up full commercial hemp programs, subject to USDA approval
 - USDA just released interim rules that will govern the 2020 hemp crop production
 - Did not alter the Food, Drug, & Cosmetic Act

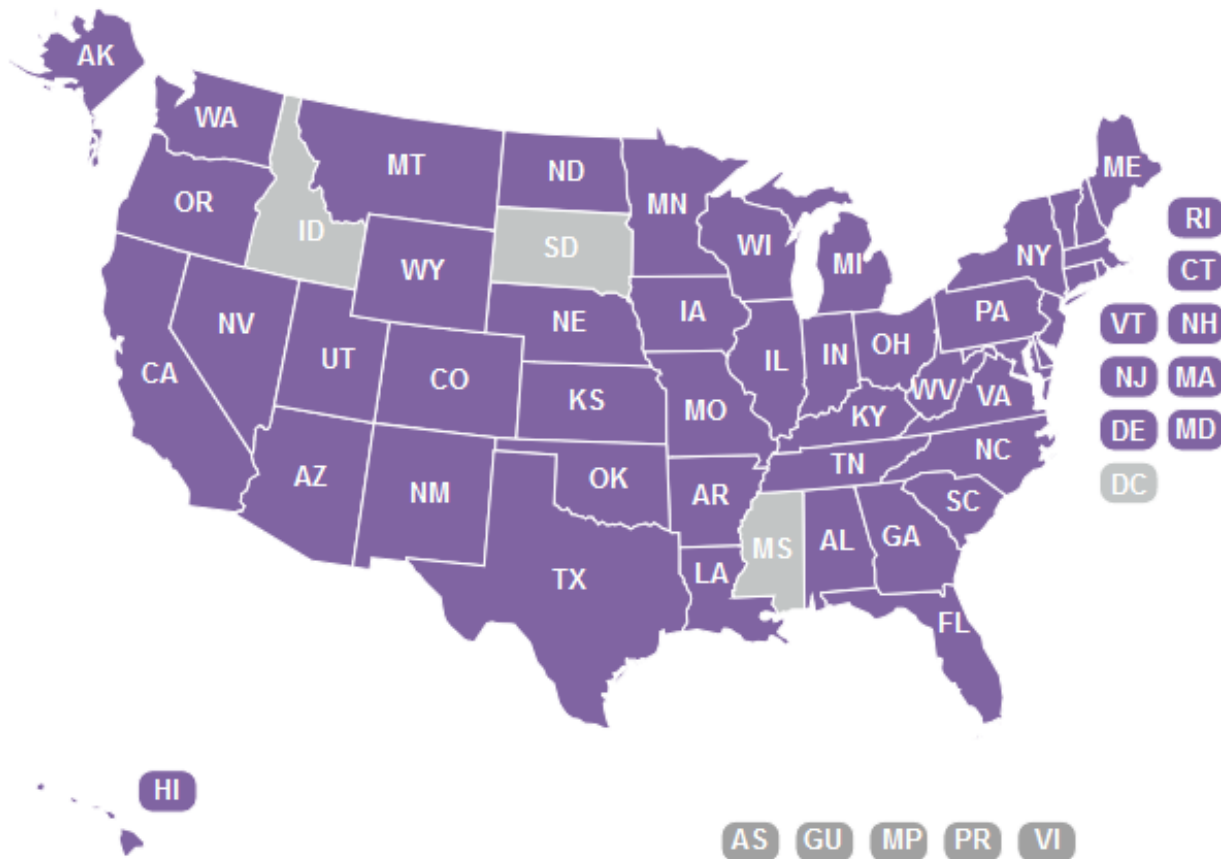
Key Term Cheat Sheet

- **Hemp** = cannabis with <0.3% THC
- **Marijuana** = cannabis with >0.3% THC
- **THC** = cannabis compound that produces a high
- **CBD** = one of the many non-intoxicating compounds in cannabis
- **Terpene** = aroma and flavor compound found in cannabis (also present in other plants)
- **Processing** = making hemp into a hemp product under Ohio law

NATIONWIDE HEMP REFORM

Allows cultivation of hemp for commercial, research or pilot programs

Does not allow cultivation of hemp.



FDA GUIDANCE ON CBD

- FDA approved a CBD-based epilepsy drug named Epidiolex
- Under the Food Drug & Cosmetic Act, one cannot introduce into interstate commerce any food (including any animal food or feed) that includes an active ingredient in an FDA-approved drug, or a drug undergoing substantial clinical investigations
 - So, FDA concluded that it is a prohibited act to introduce or deliver for introduction into interstate commerce any food (including any animal food or feed) to which THC or CBD has been added.
- FDA has issued regulations that authorize individual synthetic terpenes for use in food
- Many forms of botanical extracts are authorized for use in food in specific FDA regulations; botanical extracts from cannabis (hemp) are not included in these regulations
- FDA has advised that alcohol beverage industry members interested in using botanical extracts containing mixtures of terpenes sourced from hemp, or any other plant, should consider submitting a GRAS notice
- FDA has sent warning letters to various CBD companies that made health-related claims about their products – only enforcement action by FDA so far
- FDA is trying to find a “pathway” for the lawful introduction of CBD products into the market

HEMP REFORM AT STATE LEVEL

- States have three options to develop hemp programs:
 - Operate under 2014 pilot program for 2020 growing season
 - Develop new, commercial hemp program under 2018 Farm Bill
 - Cede control to USDA to regulate hemp
- Confusion abounds given the patchwork system
 - Hemp-derived products may be specifically legal under state law, while FDA still takes a different position
 - Testing requirements under 2018 Farm Bill differ from 2014 Farm Bill requirements
 - Banking access can still be a problem
 - Sourcing product can be difficult for manufacturers

CANNABIS LITIGATION

- **Product liability**
 - Hemp product THC levels too high
 - Vaping injuries
- **Class action**
 - Hemp products sold allegedly contrary to FDA guidance
 - Mislabeling claims (lower CBD than advertised)
- **Investor suits**
 - Stock prices for many marijuana companies down more than 60%
 - Many startups raising money through private placement memorandums have not succeeded
 - Lack of access to banking can complicate these suits
- **Administrative actions**
 - Ownership transfer restrictions and ownership disclosure requirements
- **Employment**
 - Many states have codified employee protections into their marijuana legislation
- **New theories of liability every day**
 - We are sure to see additional litigation and confusion as we learn more about the cannabis plant and its constituent parts

CANNABIS PRODUCTION EQUIPMENT

- Growing
 - Outdoor marijuana or hemp farms may use specialty farming equipment
 - Indoor cultivation facilities can be very high-tech
 - Fertilization and water purity
 - Automatic trimmers
 - Pre-roll machines
- Processing
 - Butane, CO2, ethanol extraction equipment
 - Commercial kitchens
- Packaging and labeling equipment

CONTACT US

Tom Haren

(216) 515-1664

tharen@frantzward.com

FOLLOW US



Cannabis Law Blog
cannabislawandpolicy.com



Twitter
[@FrantzWardLLP](https://twitter.com/FrantzWardLLP)
[@tom_haren](https://twitter.com/tom_haren)



Facebook
<https://www.facebook.com/frantzwardllp>



LinkedIn
<https://www.linkedin.com/company/frantz-ward>