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Researching Marijuana Law

By Seth Quidachay-Swan

This article provides a brief overview of the current legal framework governing the regulation of marijuana at the federal and state levels in the United States. It also provides an overview of the state of Michigan's current regulatory framework and resources for attorneys interested in learning more about marijuana regulation.

Federal aspects

Marijuana regulation at the federal level is largely governed by the Controlled Substances Act of 1970 (CSA).¹ The act created Title 21 of the United States Code and a mechanism and classification system for all controlled substances regulated under federal law. The classification system created five schedules for controlled substances.² Under the act, marijuana is considered a Schedule I drug, meaning that it has no currently accepted medical use and a high potential for abuse.³ Under the CSA, possession, cultivation, and distribution of marijuana is prohibited except for authorized research. Despite these prohibitions, various presidential administrations have not prioritized enforcement of the prohibitions due to legalization of marijuana for medical and recreational purposes by an expanding number of states.⁴ Marijuana also interacts with federal law in several other areas such as housing, employment, taxes, and banking.⁵ While laws relating to regulation of marijuana at the federal level have changed little, enforcement has varied depending on executive branch priorities.

State aspects

In 1996, California became the first state to legalize medical marijuana.⁶ Since then,

almost every state (47 out of 50) has legalized access to marijuana for medical purposes in some form or another.⁷ Additionally, 14 states have legalized the recreational use of marijuana and 27 states have pursued some form of decriminalization.⁸ State regulation of marijuana varies widely, and state-specific practitioner treatises appear to be available for a wide range of states. The National Survey of State Laws and LexisNexis both publish 50-state surveys that highlight various state laws and regulations pertaining to marijuana and are a useful starting point for state-specific research.⁹

Marijuana in Michigan

Michigan legalized medical marijuana in 2008 by voter initiative as the Michigan Medical Marihuana Act (MMA).¹⁰ The law legalized marijuana for medical purposes; however, it did not address many regulatory issues. The MMA faced pushback, most notably in 2013 when the Michigan Supreme Court ruled that medical marijuana dispensaries were not exempt from public nuisance claims under the MMA and allowed

townships to ban them.¹¹ Townships took various approaches, with some cracking down on dispensaries while others continued to allow them. The passage of Public Acts 281, 282, and 283 in 2016 launched more uniform regulation of medical marijuana at the state level. The acts amended the MMA and set up a regulatory and tracking system for medical marijuana.¹² The Medical Marihuana Facilities Licensing Act established the Michigan Marijuana Regulatory Agency as the primary state hub for the licensing and regulation of marijuana.¹³

In 2018, Michigan voters passed the Michigan Regulation and Taxation of Marihuana Act¹⁴ legalizing adult recreational use of marijuana. Despite legalization at the state level, possession, cultivation, and sale of marijuana is still a federal crime.¹⁵

Related issues

Another area related to laws governing marijuana that may interest lawyers and clients is the recent legalization of hemp. The federal 2018 Farm Bill removed hemp and hemp seeds from the controlled-substances

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schedules and directed the U.S. Department of Agriculture (USDA) to issue regulations and guidance related to production of hemp throughout the country.¹⁶ The USDA issued its final rules regulating hemp earlier this year; those regulations took effect March 22.¹⁷

Additional resources

Below are various resources to aid practitioners in getting up to speed and staying current with the changing law surrounding the regulation of marijuana:

Primer:

- Osbeck & Bromberg, *Marijuana Law in a Nutshell* (St. Paul: West Academic Publishing, 2017).

Treatises and guides:

- Jones & Shore, *Marijuana Regulation* (New York: LexisNexis, 2021).
- Uelmen & Haddox, *Drug Abuse and the Law Sourcebook* (Eagan: Thomson Reuters, 2021).
- Asebey & O'Reilly, *Legal Guide to the Business of Marijuana: Cannabis, Hemp and CBD Regulation* (New York: Practising Law Institute, 2020).

Current awareness tools:

- *Cannabis Law & Regulation Reporter* (Argent Communications Group) <<https://argentco.com/cannabis-law-regulation/>> [<https://perma.cc/6QLW-ZDBL>].
- *Marijuana Business Daily* (LexisNexis) <<https://plus.lexis.com/api/permalink/c521405b-aa70-4e8a-8868-acb9e8746fee/?context=1530671>> (subscription required).
- *Cannabis Law* (Emerging Areas of Practices Series: Westlaw) <[https://www.westlaw.com/Browse/Home/SecondarySources/TextsTreatises/EmergingAreasofPracticeSeries/CannabisLaw?transitionType=Default&contextData=\(sc.Default\)&VR=3.0&RS=cblt1.0](https://www.westlaw.com/Browse/Home/SecondarySources/TextsTreatises/EmergingAreasofPracticeSeries/CannabisLaw?transitionType=Default&contextData=(sc.Default)&VR=3.0&RS=cblt1.0)> (subscription required).
- *Cannabis Newsletter* (Law360.com) <<https://www.law360.com/cannabis>> [<https://perma.cc/C3NJ-UD9Q>].

Michigan-specific resources:

- *Michigan Marijuana Laws Annotated* (Charlottesville: LexisNexis, 2020).
- Marijuana Regulatory Agency, Mich Dep't of Licensing and Regulatory Affairs <<https://www.michigan.gov/mra/>> [<https://perma.cc/MGG4-LQ88>], which provides a variety of resources relating to regulation of marijuana in the state. ■

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ENDNOTES

1. *The Controlled Substances Act*, US Drug Enforcement Admin <<https://www.dea.gov/controlled-substances-act/>> [<https://perma.cc/C8QZ7RRQ>]. All websites cited in this article were accessed June 14, 2021.
2. *Id.*
3. *Drug Scheduling*, US Drug Enforcement Admin <<https://www.dea.gov/drug-scheduling/>> [<https://perma.cc/5RQ3-XFV8>].

4. *Timeline of marijuana reform in the United States*, The Marijuana Policy Project <<https://www.mpp.org/policy/federal/>> [<https://perma.cc/DS9D-LDRV>].
5. *Marijuana Deep Dive*, Nat'l Conference of State Legislatures <<https://www.ncsl.org/bookstore/state-legislatures-magazine/marijuana-deep-dive.aspx>> [<https://perma.cc/C6JV-5CGA>].
6. *State by State Medical Marijuana Law How to Remove the Threat of Arrest*, Medical Marijuana Project <<https://www.mpp.org/assets/pdf/issues/medical-marijuana/State-by-State-Laws-Report-2015.pdf>>.
7. Hartman, *Cannabis Overview*, Nat'l Conference of State Legislatures (April 8, 2021) <<https://www.ncsl.org/research/civil-and-criminal-justice/marijuana-overview.aspx>> [<https://perma.cc/44X8-FA8G>].
8. *Id.*
9. *Marijuana Laws*, National Survey of State Laws, University of Michigan. See also *Taxation of Marijuana (Cannabis Taxation)* and *Taxation of Marijuana Related Businesses*, Lexis Multistate Tax Charts with Analysis (subscription needed).
10. MCL 333.26421 *et seq.*
11. *State of Mich v McQueen*, 493 Mich 135; 828 NW2d 644 (2013).
12. MCL 333.27101 *et seq.* and MCL 333.27901 *et seq.*
13. 2016 PA 281.
14. MCL 333.27951 *et seq.*
15. *Cannabis Overview*.
16. Agriculture Improvement Act of 2018, Pub L No 115-334.
17. Dept of Agriculture, *Establishment of a Domestic Hemp Production Program*, 86 Fed Reg 5596 (March 22, 2021) (to be codified at 7 CFR 990).

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