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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). 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. 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. 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. Marijuana also interacts with federal law in several other areas such as housing, employment, taxes, and banking. 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. Since then, almost every state (47 out of 50) has legalized access to marijuana for medical purposes in some form or another. Additionally, 14 states have legalized the recreational use of marijuana and 27 states have pursued some form of decriminalization. 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.

Marijuana in Michigan

Michigan legalized medical marijuana in 2008 by voter initiative as the Michigan Medical Marihuana Act (MMA). 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. 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. The Medical Marihuana Facilities Licensing Act established the Michigan Marijuana Regulatory Agency as the primary state hub for the licensing and regulation of marijuana.

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

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 list.
schedules and directed the U.S. Department of Agriculture (USDA) to issue regulations and guidance related to production of hemp throughout the country. The USDA issued its final rules regulating hemp earlier this year; those regulations took effect March 22.

**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:**

**Treatises and guides:**

**Current awareness tools:**

**Michigan-specific resources:**
- Marijuana Regulatory Agency, Mich Dep’t of Licensing and Regulatory Affairs <https://www.michigan.gov/mra/> [https://perma.cc/5MG4-LQ88], which provides a variety of resources related to regulation of marijuana in the state.

Seth Quidachay-Swan is head of collection development and access services and reference librarian at the University of Michigan Law Library. He received his law degree from the University of Minnesota and his master’s degree in library sciences from Southern Connecticut State University. He is a licensed attorney in Connecticut.

**ENDNOTES**

2. Id.