

Cannabis Industry Quarterly Update

A quarterly update from Benesch's Cannabis Industry Group

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Key Issues

The U.S. Department of Health and Human Services has recommended that the DEA reclassify cannabis to Schedule III

The U.S. Department of Health and Human Services (HHS) recommended that the U.S. Drug Enforcement Agency (DEA) reclassify cannabis from Schedule I of the Controlled Substances Act (CSA) to Schedule III. The recommendation came 10 months after the Biden Administration [called](#) on the Secretary of HHS and the Attorney General to review the scheduling of cannabis under federal law.

While industry watchers remain cautious when it comes to policy changes around cannabis, if adopted, it would represent the biggest change in federal cannabis policy in 40 years. Moving cannabis to Schedule III would provide a number of benefits to the industry. The most significant [change](#) would be that Section 280E would no longer apply to cannabis businesses and would create new tax opportunities. However, it would also open new avenues for research and medical uses and possibly shift public perceptions about the substance's safety and medical potential.

It is unclear whether HHS's recommendation will be adopted by the DEA, as it will conduct its own review to determine if cannabis should be rescheduled. [Some](#) expect the DEA to issue an initial proposed rule by the end of the year, with the process finished by next spring. The DEA is not bound by HHS's recommendation and has determined that cannabis failed to meet any of its criteria for rescheduling on four different occasions.

There is no timeline for the DEA to render its decision, but its next public step would be to publish a proposed rule in the Federal Register, triggering a notice-

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Key Issues (continued)

and-comment period—and potentially an administrative law hearing. If the DEA does reject the HHS recommendation, it then must issue a proposed change to the federal government consistent with the HHS' comprehensive scientific evaluation.

If the DEA adopts the recommendation, there will be more hurdles as a public comment period will be opened; the agency will then review those comments and respond before any changes take effect, which could result in lawsuits that could further delay implementation.

Ohio residents vote to pass Issue 2, legalizing recreational marijuana in the state



On Nov. 7, 2023, Ohioans took to the polls to vote on Issue 2 on the question of whether recreational marijuana should be legalized. [Voters approved the measure](#), making Ohio the 24th state in the country to legalize non-medical cannabis use. Spearheaded by the Coalition to Regulate Marijuana Like Alcohol, the new law allows adults 21 and over to buy and possess up to 2.5 ounces of cannabis flower and 15 grams of extract.

A recently published [study](#) from The Ohio State University Drug Enforcement and Policy Center estimates annual tax revenue from \$276 million to \$403 million in the fifth year of an operational cannabis market. Despite the potential tax revenue, many still oppose legalization.

The Ohio Chamber of Commerce, Ohio Business Roundtable and Ohio Manufacturers' Association [expressed](#) their opposition to the passage of Issue 2. The groups warn of an impact on the labor market including more workplace injuries, increased insurance premiums and that it would make it harder to find employees who can pass a pre-employment drug test. Backers of Issue 2 call the concerns scare tactics that do not reflect the realities of states that have already legalized marijuana.

The November vote came as Republicans in the state are [divided](#) on the issue. Governor Mike DeWine said he believed it would be a mistake, however, others in his party disagree, believing cannabis has some legitimate uses.

Some Republicans have threatened to block legalization in any way they can. Others believe it would be politically ill-advised to overturn the will of the voters. Ohio will likely make changes to the law and the manner in which recreational marijuana is to be implemented in the state. The Department of Commerce has 9 months to implement the new program.

New York State cannabis market rollout continues to experience delays



It has been two-and-a-half years since New York State legalized marijuana and, at this point, there were supposed to be more than 150 dispensaries in the state; however, only 23 legal dispensaries exist, and many only offer delivery services. Legalization has faced numerous delays, beginning with an impasse between former Governor Cuomo and the legislature over who should regulate cannabis businesses, to the latest delay which stems from a court order temporarily barring regulators from awarding and processing licenses. The court order [stems](#) from a lawsuit launched by a group of veterans who find issue with the state's past conviction criteria for awarding first dispensary licenses.

In early October, Governor Kathy Hochul [opened](#) the application period and announced partnerships with localities that will enable them to pursue padlocking orders against businesses illegally selling cannabis from state courts, as well as a new multi-agency initiative to target illegal operators for labor violations. Governor Hochul's administration says it is now focused on shutting down illegal storefronts, protecting the health and safety of children and helping small businesses thrive.

Key Issues (continued)

The CEOs of Acreage Holdings, Curaleaf Holdings, Green Thumb Industries and PharmaCann [asked](#) the governor to allow them to enter New York's adult-use market. In a letter sent to the governor, they cite government ineptitude and intransigence that allowed the state's adult-use marijuana legalization to stagnate. They call for the governor to instruct the state Office of Cannabis Management to allow their companies to enter the market to begin cultivation and dispensary operations without delay.

Industry Regulations

Federal

BENESCH OPINION

Government Takes First Steps Toward Federal Legalization

In a historic move by the federal government, the U.S. Department of Health and Human Services (HHS) on August 30 recommended that cannabis be moved from Schedule I to Schedule III of the Controlled Substances Act.

What is Schedule III?

Schedule I is reserved for drugs that have no medical use, a lack of accepted safety for use under medical supervision and a high potential for abuse. These drugs are federally illegal in all respects. Schedule III drugs have accepted medical uses and moderate-to-low physical dependence or high psychological dependence. Examples of Schedule III drugs include testosterone, anabolic steroids and acetaminophen with codeine.

What Still Has to Happen for Rescheduling to Occur?

The HHS recommendation, which was based on a scientific and medical evaluation by the FDA, was made to the DEA. The DEA will now conduct its own review and make a final determination. While the DEA has never been friendly to cannabis, the independent process is "guided by evidence," as noted by White House Press Secretary Karine Jean-Pierre. The agency will have to consider that evidence, which should be robust. The DEA will be hard-pressed to ignore FDA and HHS's medical and scientific findings.

What Does it All Mean?

The biggest immediate effect will be the removal of the immense tax burden that cannabis companies shoulder as a result of Section 280e, an IRS provision enacted to target illegal drug dealers but also applied to the cannabis industry by virtue of its Schedule I status. Rescheduling will also make cannabis much easier to study.

Otherwise, Schedule III status brings far more uncertainty than it does clarity. This change would not result in the cannabis industry as it exists today becoming fully legal. Schedule III drugs are subject to significant statutory requirements (pharmaceutical New Drug Applications, medical prescriptions, dispensation by pharmacies, etc.), requirements with which the industry is not designed to comply, especially in the 23 and counting states where cannabis is legal for adult consumption as well as medical use.

Industry Regulations (continued)

Some of the many questions brought about by a rescheduling include:

Will a Schedule III status encourage more banks to provide services to cannabis companies and otherwise loosen up capital for the beleaguered industry? It is reasonable to think so, although it remains to be seen if this will be enough for federally chartered banks to jump into the fray.

Will the removal of Schedule I enforcement risk expedite the speed with which current prohibition states enact their own medical and adult use programs, or will it increase the likelihood that such measures currently up for consideration in statehouses will pass? A rescheduling will certainly encourage the pro-legalization movements in each of these states.

What does Schedule III mean for cross-border transactions and the development of national brands? The highly regulated industry is very siloed, state by state, because raw materials and products cannot be taken across state lines. States that border with other legal states, in particular, may find themselves far more open to cross-border transactions.

Will Schedule III status encourage the United States Patent and Trademark Office (USPTO) to finally consider federal trademarks for cannabis brands? There is no reason to think so, given that the USPTO applies its strict approach to ingestible CBD as well, which was made legal under the 2018 Farm Act.

Will a parallel pharmaceutical industry begin to grow alongside the current cannabis industry? For pharmaceutical companies with the means to comply with Schedule III, the above issues, from banking to cross-border transactions to brand protection, disappear. In fact, if the federal government were to truly enforce Schedule III, the existing cannabis industry may be fully replaced by the pharmaceutical industry.

Nevertheless, a move from Schedule I to Schedule III would be a historic rejection of the past decades' War on Drugs. The industry could then find itself sitting in a Schedule III waystation of sorts until cannabis is finally de-scheduled and treated like alcohol. This was, in fact, the recommendation of the federal group of lawmakers and medical professionals appointed by President Nixon in 1970 to study and recommend how cannabis should be scheduled in the first place. The group's recommendation was ignored then, but there may be more momentum now.

Source: Benesch

Senate panel advances weed bill in historic step

The Senate Banking Committee advanced marijuana-related legislation to the floor for the first time.

The Secure and Fair Enforcement Regulation Banking Act would allow legal marijuana businesses to use major financial and banking institutions. The bill passed by a 14-9 vote with the support of Republicans Cynthia Lummis of Wyoming, Steve Daines of Montana and Kevin Cramer of North Dakota. Democrat Raphael Warnock of Georgia voted against approving the bill for floor consideration.

Senate Majority Leader Chuck Schumer, D-N.Y., said he would bring the legislation to the floor for full Senate consideration. Senators are then expected to have the chance to offer amendments. The fate of the SAFER Act in the House is less certain even if it passes the Senate.

Related: [Senate cannabis banking bill unveiled with key vote expected next week](#)—MJBizDaily

Source: NBC News

Industry Regulations (continued)

BENESCH OPINION

SAFER Banking Act Sees Positive Momentum in the Senate, But Will Its Passage Offer Meaningful Relief to the Cannabis Industry?

BRYNA DAHLIN, *Chair, Cannabis Industry Group*

In late September, the Secure and Fair Enforcement Regulations (SAFER) Banking Act successfully cleared the Senate Banking Committee, marking a historical first for the Senate. But the bill has a long way to go before it becomes law, and even if it does, meaningful relief for the cash-strapped cannabis industry is far from certain.

The Problem and Proposed Solution. While cannabis is legal for medical or adult use in dozens of states, its federal status has prevented operators from easily accessing banking. Federally chartered banks remain on the sidelines. The state-chartered banks and credit unions that do service the industry provide those services at a substantial cost, not to mention ever-present onerous paperwork and compliance burdens. And with customers still generally paying for their products in cash, safety issues abound. The SAFER Banking Act seeks to provide an imperfect solution to these challenges by providing a safe harbor to banks that wish to provide services to the industry.

The Limitations. The SAFER Banking Act is not a panacea. It remains unlikely that federally chartered banks will jump into the fray after passage. Cannabis remains federally illegal, after all. The same is true for credit card companies, so the cash-intensive nature of the business is unlikely to meaningfully change. The Act also does not address access to capital or eliminate the tax burdens of 280e, perhaps the two largest challenges for operators in the industry.

Unlikely to Pass in the Near Future. The bill still faces several hurdles before becoming law. It must pass through the full Senate and the House of Representatives before reaching the President's desk for signature. While the versions of the bill have passed seven times in the House with bipartisan support, there does not appear to be anywhere near enough enthusiasm for SAFER banking in the current Republican-controlled House. It may be that the bill, which has languished in various iterations for over a decade, will continue to do so.

US Congressman Introduces Bill to Withhold Federal Funding from States, Tribes with Adult-Use Cannabis Programs

U.S. Rep. Chuck Edwards, (R-N.C.), introduced the [Stop Pot Act](#), which would withhold certain federal funding from states and tribes with adult-use cannabis programs.

The bill would withhold 10% of federal highway funds for governments with laws permitting non-medical cannabis use.

"The laws of any government should not infringe on the overall laws of our nation, and federal funds should not be awarded to jurisdictions that willfully ignore federal law," Edwards said in a public statement. "During a time when our communities are seeing unprecedented crime, drug addiction and mental illness, the Stop Pot Act will help prevent even greater access to drugs and ease the strain placed on our local law enforcement and mental health professionals who are already stretched thin."

The legislation, which is endorsed by the Christian Action League and Smart Approaches to Marijuana Action (SAM Action), would not apply to jurisdictions that have legalized the use of cannabis for medical purposes.

Source: Cannabis Business Times

Industry Regulations (continued)

Marijuana in the military? A push in Congress would loosen cannabis rules, ease recruitment crisis

Bipartisan lawmakers in Congress are seeking to relax guidelines surrounding marijuana use for military members as a solution to bolster recruitment efforts for the armed services.

Conservative Matt Gaetz, (R-Fla.), is the latest lawmaker to propose a change to the military's standards when it comes to cannabis. The Florida representative introduced an amendment that would end cannabis testing for military members.

His proposed amendment was introduced as an addition to the National Defense Authorization Act, or NDAA, an annual reauthorization of military programs that Congress passes each year.

Gaetz's amendment proposes eliminating cannabis testing at the time of a service member's enlistment or when they are receiving commission as an officer.

Source: USA Today

Industry Regulations (continued)

State

The states that have voted to or may hold a vote to legalize adult-use marijuana since the last report include:



Minnesota Democratic Gov. Tim Walz [signed](#) a bill to legalize recreational marijuana for people over the age of 21, making Minnesota the 23rd state to legalize the substance for adults. Under the new law, cannabis is legal as of August 1 to possess, use and grow at home. Possession of cannabis flower will be limited to 2 pounds (0.9 kilograms) at home and 2 ounces (56 grams) in public. Other possession caps include 800 milligrams of THC in gummies and other edibles and 8 grams of cannabis concentrate.



Members of the Eastern Band of Cherokee Indians overwhelmingly [backed](#) the adult use of marijuana on their tribal land, even as they await the opening of a dispensary for those who seek it for medicinal use. The Eastern Band, which has about 14,000 members and operates two casinos, can pass rules permitting cannabis use regardless of state or federal prohibitions because it is a sovereign nation and federally recognized tribe. Marijuana use remains illegal in the rest of North Carolina.



Florida's Supreme Court recently [scheduled](#) oral arguments in a case that will decide whether a marijuana legalization initiative will appear on the state's 2024 ballot. If approved, the measure would change the state Constitution to allow existing medical cannabis companies in the state to begin selling marijuana to all adults over 21. It contains a provision that would allow—but not require—lawmakers to take steps toward the approval of additional businesses.



Five Pennsylvania state senators introduced [Senate Bill 846](#) which would legalize marijuana for recreational, adult use. The bill would create a Cannabis Regulatory Control Board that would take over some oversight powers from the Department of Health. The board would handle permits and applications from dispensaries that want to sell in the state.



South Dakota's attorney general [released](#) a draft summary of [an initiative to legalize marijuana](#) that advocates hope to place on the November 2024 ballot. The procedural development brings the campaign, South Dakotans for Better Marijuana Laws (SDBML), one step closer to being able to collect signatures to put the measure before voters next year.



A group led by a Nebraska state lawmaker [plans](#) to again try to put the question of legalizing medical marijuana before state voters in November 2024. It will be the third time Nebraskans for Medical Marijuana launch a petition effort after two previous efforts failed. The proposal would ask voters to legalize the possession, manufacture, distribution, delivery and dispensing of marijuana for medical reasons and would establish a commission to regulate a state medical cannabis program.

ATF: Until recreational cannabis is federally legalized, pot users cannot own guns



The St. Paul office of the Bureau of Alcohol, Tobacco, Firearms and Explosives sent an advisory warning that Minnesotans who use marijuana cannot legally own firearms, despite a state law legalizing recreational use. The agency noted marijuana is still a Schedule 1 controlled substance under federal law and until it is legalized federally, you cannot use the substance and own firearms and ammunition.

Source: CBS News

Industry Regulations (continued)

Focus on Ohio

Ohio Issue 2: What to know about the newly passed recreational marijuana legislation



On Nov. 7, 2023, Ohio Voters approved a ballot initiative legalizing recreational marijuana throughout the state, marking Ohio as the 24th state to allow adult cannabis use for non-medical purposes. The new law allows adults 21 and over to purchase and possess up to 2.5 ounces of cannabis while also allowing home grow of cannabis plants (6 plants per adult, with a maximum of 12 plants per household). Changes Issue 2 brings, as outlined in the certified ballot language, include:

- Define adult use cannabis to mean marijuana as defined in Section 3719.01 of the Revised Code and establish the Division of Cannabis Control (the “Division”) within the Department of Commerce;
- Authorize the Division to regulate, investigate and penalize adult use cannabis operators, adult use testing laboratories, and individuals required to be licensed;
- Legalize and regulate the cultivation, processing, sale, purchase, possession, home grow and use of cannabis by adults at least twenty-one years of age;
- Create additional protections for individuals who engage in permitted adult use cannabis conduct;
- Establish the cannabis social equity and jobs program and require the Department of Development to certify program applicants based on social and economic disadvantage;
- Define “social disadvantage” to include membership in a racial or ethnic minority group, disability status, gender or long-term residence in an area of high unemployment;
- Shield certain confidential information from disclosure to the public, including but not limited to any information reported to or collected by the Division that identifies or would tend to identify any adult use cannabis consumer and prohibit the Department of Development from releasing certain application information as public records;
- Require the Division to provide preferential treatment to applicants who have qualified for the cannabis social equity and jobs program based on social disadvantage when issuing level III adult use cannabis cultivator licenses and dispensary licenses;
- Prohibit certain local government entities from limiting specific research, levying a tax or charge on adult use operations, their owner or their property not generally charged on other business, and prohibit certain local government entities from prohibiting or limiting adult use cannabis home grow or prohibiting or restricting an activity authorized by the proposed law;
- Authorize a landlord or an employer to prohibit the adult use of cannabis in certain circumstances, and prohibit the operation of a motor vehicle while using or under the influence of adult use cannabis and from using any other combustible adult use cannabis while a passenger in a motor vehicle;
- Limit criminal liability for certain financial institutions that provide financial services to any lawful adult use cannabis operator or testing laboratory licensed under the proposed law;
- Require the Division to enter into an agreement with the Department of Mental Health and Addiction Services to create a program for cannabis addiction services;
- Provide for the creation of five funds in the state treasury: the adult use tax fund; the cannabis social equity and jobs fund; the host community cannabis fund; the substance abuse and addiction fund; and the division of cannabis control and tax commissioner fund;

Industry Regulations (continued)

- Provide for taxation of 10 percent on the sale of adult use cannabis by dispensaries in addition to usual sales taxes and require that all monies collected from the 10 percent tax levied to be deposited into the adult use tax fund and quarterly distributed as follows: 36 percent to the cannabis social equity and jobs fund; 36 percent to the host community cannabis facilities fund; 25 percent to the substance abuse and addiction fund; and three percent to the division of cannabis control and tax commission fund.

Related: [Ohio Marijuana legalization campaign sends cease and desist letters to TV stations airing opposition ads 'filled with lies'](#)—Marijuana Moment

Source: WKYC

Ohio Statehouse considers tweaks to state's recently passed recreational marijuana law



Ohio Statehouse legislators are discussing potential modifications to the state's recently passed recreational marijuana law, with a focus on revenue distribution and regulatory details. Bipartisan agreement exists on the need for some adjustments, but while the law goes into effect December 7, 2023, the exact timeline for implementing these changes remains uncertain.

Key issues include how marijuana tax revenue should be allocated, with proposals ranging from law enforcement training to mental health initiatives, education funding and support for local communities. While some lawmakers aim to finalize changes by December 7, others view this deadline as ambitious, suggesting that certain aspects like tax rates and revenue usage could be decided later.

The first dispensary license is expected to be issued in September 2024, providing additional time to resolve these details. If lawmakers do want to get something passed prior to the new law taking effect, it would require an emergency clause, which necessitates more than a simple majority to pass the House and Senate. Overall, the goal is to align the law with voter intent while ensuring clarity and practicality in its application.

Source: WCMH

Industry Regulations (continued)

Focus on New York

New York opens application period for new adult-use cannabis licenses



New York Governor Kathy Hochul wants to aggressively expand the state's legal cannabis market to eliminate illicit operators. On October 4, regulators began accepting applications for adult-use cannabis licenses. The state will accept applications for two months with hundreds of licenses available for growing, processing, distributing and selling cannabis.

The New York Office of Cannabis Management (OCM) already approved revised adult-use cannabis regulations to expedite market entrances for non-social equity applicants and pave the way for the state's 10 existing medical cannabis licensees—known as registered organizations (ROs)—to enter the market by the end of this year.

The move ends New York's licensing process for conditional adult-use retail dispensaries (CAURD), a process reserved exclusively for the state's designated social equity applicants under a Seeding Opportunity Initiative put forth in early 2022. The OCM had approved 463 CAURD licensees as of mid-September, but only 23 of them are currently operational.

The other 440 licensees remain in limbo pending a temporary restraining order that prohibits them from opening dispensaries until a lawsuit filed by four service-disabled veterans works its way through the legal process.

Source: Cannabis Business Times

Governor Hochul Highlights Plan to Aggressively Expand New York's Legal Cannabis Market and Crack Down on Illegal Sales



To combat illicit sales, the state AG's office and the Office of Cannabis Management are partnering with municipalities to provide training on how to utilize a provision that authorizes local governments to pursue padlocking orders against illegal businesses. A separate multi-agency initiative will ensure businesses suspected of selling cannabis without a license are compliant with labor and workers compensation laws.

Source: New York State

Industry Regulations (continued)

Why there are still so few places that (legally) sell marijuana in New York



At this time, two-and-a-half years after New York State legalized marijuana, there were supposed to be more than 150 dispensaries in the state; however, there are only 23 legal dispensaries—and many only offer deliveries. The latest setback came in August when a state court order temporarily barred regulators from awarding and processing licenses for new stores. The court order came after a group of veterans who became disabled during their military service filed a lawsuit challenging how the state was awarding its first dispensary licenses. At issue is a past conviction criteria. Another group, led by companies currently licensed to sell marijuana to medical patients, filed a similar suit.

An injunction was issued that freezes licensing until regulators open applications to the general public in the fall. Now applications are being accepted and beginning early next year, regulators are expected to issue as many as 1,500 licenses for businesses like plant nurseries, co-ops, dispensaries and distributors.

Legalization in the state has been marred by delays, beginning with an impasse between former governor Cuomo and the legislature over who should lead the cannabis regulatory agency. Since that time, regulators describe the roll out as building a plane as they are flying it.

Since the plan for the rollout was announced in March 2022, the state has faced additional hurdles, including:

- A Michigan man sued in federal court over the program's residency requirements and obtained an order that initially blocked licensing in five of the state's most populous regions.
- A plan for a state-led investment fund to provide start-up loans and secure storefronts struggled to find investors and landlords willing to use their properties for cannabis stores.

Source: The New York Times

Industry Regulations (continued)

California lawmakers send cannabis cafe bill to governor for signature



Assembly Bill 374, which would create cannabis cafes in the state, was approved by the California Senate. The bill now heads to Gov. Gavin Newsom.

The bill would remove a number of the state's restrictions on marijuana consumption lounges, including allowing operators to serve prepared foods and beverages and to host music events.

The law would go into effect Jan. 1, 2024, if Newsom signs the bill. The allowances would be applied only in jurisdictions that allow consumption lounges—a potential obstacle in many cities and counties.

Source: *MJBiz Daily*

Hemp

Amendment to proposed California hemp legislation could impose severe THC limits on finished products



The U.S. Hemp Roundtable is warning about an amendment to Assembly Bill 420 filed by the California Department of Health. While the legislation intends to clean up provisions in current laws and crack down on bad actors, the roundtable says it would create “draconian” THC limits that benefit marijuana monopolists and would effectively eliminate the marketplace for broad spectrum and full spectrum hemp products.

Specifically, the amendment limits products made from hemp to five servings per package and sets limits of total THC levels to 0.001 mg/g. This would cripple—if not completely collapse—the state's hemp-derived cannabinoid market, while also having a devastating impact on the industry nationwide, according to the roundtable.

Source: *Nutritional Outlook*

Kansas farmers rushed to grow hemp when it became legal, but now they're ditching it



A drop in CBD oil production in the state has led to a huge reduction in the number of farmers growing hemp. Initially, more than 200 farmers signed up when the state launched its program in 2019. However, this year, only 41 secured licenses.

The Kansas Department of Agriculture reported 90% of hemp produced in Kansas between 2019 and 2020 was used for CBD oil production. This year, that has dropped to less than 5%.

While demand has dropped for hemp to make CBD oil, industrial hemp experts say there is still a growing market for other hemp products like fiber for clothing or grain for animal feed.

Source: *KMUW Wichita*

Industry Regulations (continued)

Council for Federal Cannabis Regulation proposes to Congress a framework for FDA to regulate CBD

The Council for Federal Cannabis Regulation (CFCR) submitted a [26-page response](#) to a formal request for information on federal cannabinoid hemp regulation from the U.S House Committee on Energy and Commerce and the U.S. Senate Committee of Health Education, Labor and Pensions.

The CFCR's response included:

"Based on the experiences of CFCR members, the passage of the 2018 Farm Bill significantly changed the marketplace for CBD products and has not only allowed bad actors to participate in a market that is infrequently regulated but created confusion for consumers. Moreover, because of this intense competition, good faith manufacturers have been challenged to engage with consumers in a standardized way and are competing with inefficacious products and false labeling that creates mistrust. As a result, consumers have no ability to differentiate between a safe and unsafe product."

Source: Cannabis Business Times

North Carolina legislators and law enforcement agencies attempt to get delta-8 THC out of the hands of children



A combination of kid-friendly packaging and a lack of an age restriction for purchasing delta-8 THC products has promoted North Carolina lawmakers to introduce legislation to close loopholes allowing distributors to sell products that are more powerful than state or federal law intended.

State Reps. Wayne Sasser (R-Albemarle) and Jeffrey McNeely (R-Stony Point) have championed House Bill 563, which they say would put an end to what they describe as the "Wild West" of hemp products.

Their proposed legislation takes a similar approach to getting delta-8 and other hemp products out of the hands of high school and middle school students as state and federal agencies have used in recent years to tamp down on the appeal of e-cigarettes.

North Carolina's AG sued Juul, and the company settled with the state for \$40 million and agreed to abandon marketing and advertising campaigns designed to attract younger users to the flavored pods.

In its current form, House Bill 563 would not ban delta-8 THC or other novel cannabinoids.

Instead, the bill would require manufacturers, distributors and retail sellers of hemp-derived consumables to be licensed in North Carolina. Every batch of hemp-derived consumable products would need to be tested by a third-party laboratory to confirm that the THC concentrations fall under legal limits.

Source: NC Health News

Industry Regulations (continued)

Tennessee Gov. Bill Lee signs new law on delta-8 products. Here's what it does



Tennessee Gov. Bill Lee has signed a new law to regulate and tax delta-8 products in the state. The bill will also require stores to move hemp-derived products behind the counter, establish new product testing and packaging requirements and impose a 6% state tax on the products.

Age requirements, product location and sales tax are already in effect while businesses and government agencies were given until 2023 to implement some other regulations.

Source: *The Tennessean*

Payments

Mastercard moves to ban cannabis purchases on its debit cards

Mastercard told financial institutions to no longer allow marijuana transactions on its debit cards. The company said as the federal government considers sales illegal, the purchases will no longer be allowed on its systems.

The CEO of Sunburn Cannabis called the move another blow to the industry and patients/consumers, while Verano's president said the company will continue to advocate for cannabis reform in Washington through further dialogue with lawmakers.

Source: *Reuters, July 26, 2023*

Payment processor Square enters Canada's marijuana market through partnership with online sales platform Jane

Square unveiled a partnership with Jane Technologies, an online order service that allows customers to purchase marijuana for delivery or store pickup, that will see it enter Canada's cannabis market. In addition to the deal with Jane, Square is also opening an early access program for licensed dispensaries in Canada that will allow licensed retailers in the province of Ontario to test Square retail POS solutions.

Source: *Marijuana Moment*

General Cannabis Business Trends

Massachusetts hits \$5 billion marijuana sales milestone as state sees consecutive record-breaking monthly purchases



Since the state’s recreational market launched five years ago, Massachusetts retailers have now sold more than \$5 billion in adult-use marijuana. The Cannabis Control Commission noted sales reached \$139.3 million in August alone, with the year-to-date total at \$1.05 billion within the first eight months of 2023.

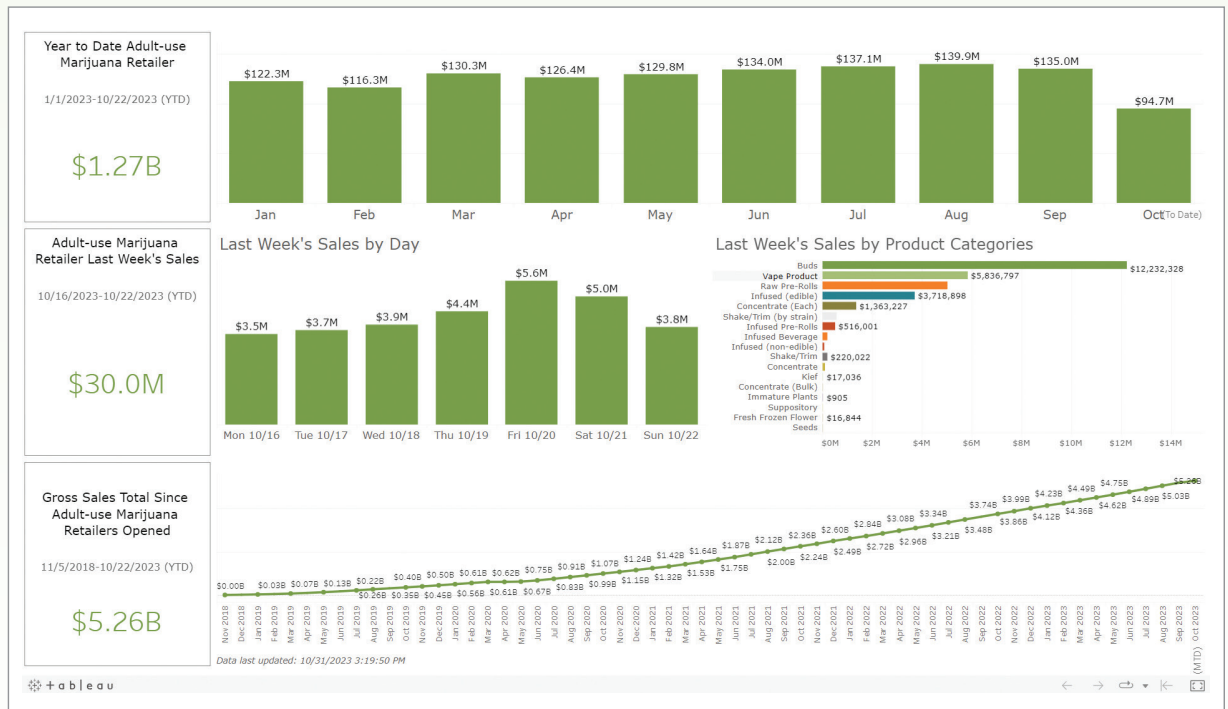
Source: Marijuana Moment

Change in how feds see marijuana could mean big tax cut for pot retailers

The Biden administration is rethinking how it classifies marijuana, which could help the industry by allowing it to save potentially billions in federal taxes each year as they could start to write off their business expenses. The proposal would also open up the possibility of medical researchers studying the benefits and risk of marijuana as a potential drug.

While advocates call the proposal a welcome development, they say it still falls short of reconciling the government’s ban on the drug and state laws that allow for the use of marijuana. A National Cannabis Industry Association spokesperson said the only way to truly resolve the numerous issues that come from the federal conflict with state law is to remove cannabis from the Controlled Substances Act and regulate the product in a manner like alcohol. By reclassifying the drug, cannabis would no longer be subject to an IRS rule that specifically prohibits tax write-offs for businesses “trafficking” controlled substances. According to the National Cannabis Industry Association, cannabis pay tax rates as much as 70%.

Source: ABC News



General Cannabis Business Trends (continued)

Marijuana MSOs expand Florida retail, betting on adult-use legalization



Multistate operators have been expanding their retail footprints in Florida, anticipating that adult-use legalization is on the horizon. However, MJBiz Daily warns investing in Florida marijuana retail could be a gamble. Medical cannabis dispensaries have been offering deep discounts in the Florida market and some reported flat sales at the end of the quarter ending June 30.

More competition is on the way as regulators have been reviewing license applications for a new batch of vertically integrated Medical Marijuana Treatment Centers, as operators are known in Florida.

Adult-use legalization is also not guaranteed, but that has not put a damper on companies deciding to open new retail outlets with Verano Holdings, Curaleaf and Ayr all having expanded or unveiled plans to expand in the state.

Source: MJBiz Daily

Cresco Labs launches first-ever cannabis advertisements on Spotify

Cresco Labs Inc., a provider of branded cannabis products with a portfolio of brands and the operator of [Sunnyside](#) dispensaries, announced it is the first cannabis company to launch cannabis advertisements on Spotify.

The ad campaign includes 30-second audio and in-app digital banners which aim to communicate the benefits of shopping at a Sunnyside dispensary and to drive the retailer's proprietary e-commerce platform.

Source: Cannabis Business Times

Cannabis firm Tilray buying 8 Anheuser-Busch beverage brands for \$85 million

Canadian cannabis company Tilray Brands acquired eight beverage brands from Anheuser-Busch. The acquisition includes current employees, breweries and brewpubs associated with the eight brands.

While the acquisition solidifies Tilray's position in the U.S. craft beer market, looking ahead, the company has an eye on the THC beverage market.

"Upon federal cannabis legalization," Tilray CEO Irwin Simon said, "we expect to leverage our leadership position, wide distribution network and portfolio of beloved beverage and wellness brands to include THC-based products and maximize all commercial opportunities."

Source: MJBiz Daily

Regulation/Enforcement

Fines sent to more than a hundred marijuana dispensaries



More than a hundred medical marijuana dispensaries are getting fines in the mail for having a sale that went over the legal limit between January and May of this year. Some dispensary owners said it came as a shock, and they do not know how they're going to afford the fine.

The owners of the licensed dispensaries have a court date set for November 8 to challenge the petitions from the Oklahoma Medical Marijuana Authority for having a sale that went over the legal limit. The regulator is seeking fines in all 161 cases and the revocation of licenses in 39 of those cases.

Source: KFOR Oklahoma

Investors say cannabis co. board hid SEC investigation

A proposed class claims cannabis and nicotine biotechnology company 22nd Century Group Inc. concealed their knowledge of a U.S. SEC investigation that harmed the company and its stock price when the truth came out. The suit alleges that while the company had disclosed that it was auditing and addressing weaknesses in its internal accounting through its public statements, it denied that it was subject to any SEC investigation.

Despite 22nd Century's denials, the SEC investigation was serious enough that the company retained counsel to represent it and its chief financial officer, and the SEC's denial of a Freedom of Information Act request indicated that the documents sought were important to an ongoing enforcement action.

Source: Law360

The U.S. has a chance to regulate delta-8 THC. Will it?

At the start of the year, the FDA said Congress must create regulations to rein in hemp-derived cannabinoids and in July, Congress responded by asking the administration how it should go about doing that. This comes as the DEA has been evaluating whether it will issue rules that would close the loophole that makes it legal for vendors to sell Delta 8 as long as it comes from hemp and not marijuana.

Since 2018, 15 states have enacted outright bans on products that contain delta-8 THC. A handful of other states, including Alabama, Kentucky, Michigan, Minnesota and South Dakota, are implementing restrictions from age limits to bans on delta-8 THC in certain products, such as those that appeal to kids.

The matter of Delta-8 regulation is not likely to be settled in the next farm bill, as it is meant to address raw commodities and not meant to include finished products. For now, regulation is expected to be left up to the states.

Source: NBC

Regulation/Enforcement (continued)

Nebraska authorities cracking down on hemp-derived THC sales



Authorities in Nebraska have seized products, paraphernalia and financial records from five stores as they have been investigating sales of hemp-derived cannabis products that contain over 0.3% of THC. The stores had previously failed compliance checks.

Authorities say store operators should expect more spot checks to come.

Source: *MJBiz Daily*

Navigating CBD regulation: U.S. Hemp Roundtable proposes limits and standards

The U.S. Hemp Roundtable submitted a [50-page document](#) in response to requests from Congress for information regarding the regulation of cannabidiol products. The document addresses questions about current market dynamics, how a lack of standards impacts the market, how products should be defined, public health impact, product standards and more.

The report calls for a discrete upper limit cap, rather than a percentage of weight or volume, and addresses the problem of synthetic cannabinoids, noting a framework for CBD regulation should encompass other cannabinoid products.

Source: *Business of Cannabis*

Hemp businesses hit with fines as owners grapple with new Virginia rules



Several Virginia businesses were hit with fines after a new state law tightening regulations on the hemp industry took effect. Businesses say they have found it a challenge to keep up with the state's ever-changing landscape of hemp and marijuana laws.

While in 2021, the state made it legal to grow or possess small amounts of marijuana, it has been unable to pass legislation to create a legal retail market. In 2022, the legislature passed legislation prohibiting the sale of THC products that were in "fun shapes" likely to appeal to children or in packaging that mimics trademarked brands. Legislators continued the crackdown this year, further tightening the rules for labels and packaging and requiring cannabis products to contain at least a 25-to-1 ratio of CBD.

Source: *The Virginian Pilot*

Alabama company files motion to halt medical cannabis licensing



Alabama Always, a company that was not selected for a medical cannabis permit, filed a motion claiming the state's regulators unfairly deliberated in a closed session.

The company was not among the new licensees announced in August or in the initial licensing round that was later voided and is now requesting the court grant a temporary restraining order and preliminary injunction.

Source: *MJBiz Daily*

Regulation/Enforcement (continued)

Connecticut lawsuit seeks repeal of Stamford, state marijuana legalization



A group of homeowners in suburban Stamford, Connecticut is suing to shut down local cannabis sales. The suit, launched by the Stamford Neighborhoods Coalition, asks a judge to block the cannabis industry throughout the entire state.

Connecticut's regulatory regime is considered one of the strictest in the country, and last month, Stamford officials tightened regulations applicable to smoke shops and the two adult-use marijuana stores in the city.

The lawsuit claims that since marijuana stores violate the federal Controlled Substances Act, any state law or local law that permits cannabis activity is unconstitutional.

Source: *MJBiz Daily*

Missouri cannabis regulators target 'lab shopping' in new rules



In an effort to crack down on the pressure labs face to say products have higher THC or lose business, Missouri is implementing an extra layer of testing or auditing of marijuana products. The Missouri Department of Health and Senior Services can now instruct the state's certified testing labs to double check each other's work.

Up to 10 times a year, the state will instruct the licensed testing labs to pick up marijuana samples from another lab and perform a test. The state will then review all the results to make sure they have similar results in THC potency—and that one lab isn't passing a marijuana sample for pesticide residue while another one is failing it.

Testing lab owners oppose the rule, claiming it is duplicative of current requirements, too vague and unduly burdensome. Another issue is a lack of federal regulation, as it is still considered an illegal substance federally.

Source: *Missouri Independent*

Maryland judge's ruling allows shuttered hemp businesses to reopen



A Maryland judge issued a preliminary injunction allowing certain shuttered hemp businesses to reopen. This ruling temporarily suspends enforcement of a portion of Maryland's cannabis law, which previously forced CBD shops to cease selling products with intoxicating THC levels derived from hemp. The law, which exclusively permitted medical marijuana companies to sell these products, faced challenges from the Maryland Hemp Coalition and other businesses. They argue that the state's recreational cannabis market regulations violate the Maryland Constitution's equal protection and anti-monopoly clauses by excluding them from the market. While the state seeks to dismiss this lawsuit, the judge's decision enables affected hemp retailers to resume operations.

The impact of this ruling is significant for both the hemp industry and Maryland's broader cannabis market. Businesses that were forced to close and suffered substantial revenue losses due to the new law can now potentially recover. Despite the state's efforts to regulate and create a social equity-driven cannabis market, several hemp business owners bemoan the severe financial and emotional toll the law has had on their operations. Meanwhile, Maryland officials, emphasizing consumer safety, express disappointment over the continuation of unregulated hemp-derived product sales. The state's cannabis market, which recently legalized recreational use, continues to evolve, balancing industry regulations with social equity objectives.

Source: *The Washington Post*

Regulation/Enforcement (continued)

Hemp retailers start seeing big fines as Virginia’s tougher THC law takes effect



A number of businesses in Virginia have been hit with five-figure fines as state officials began enforcing stricter new rules on the contents and labelling of hemp products. The Virginia Department of Agriculture and Consumer Services sent five non-compliance letters assessing penalties ranging from \$13,000 to \$97,500. The fines were issued under a civil penalty structure that gives business owners an opportunity to pay a reduced fine of \$10,000 if they agree to bring the stores into compliance and meet other conditions.

The hemp/THC legislation was one of the more complex and contentious bills the General Assembly passed this year, drawing strong opposition from critics who said the proposal was overly punitive and could threaten Virginia’s entire hemp industry.

Since the new law took effect, there have been several news reports about hemp-focused businesses scaling back plans in Virginia or leaving the state altogether. The penalty structure laid out by the regulation will see violations of THC limits carry the steepest fines. First violations can bring a \$1,000 penalty and potential referral to law enforcement. Subsequent violations carry a \$5,000 penalty.

Source: Virginia Mercury

Feds crack down on companies marketing weed edibles in kid-friendly packaging

The FTC said edible cannabis products that are sold in packages that resemble kids snacks like Doritos chips and Oreo cookies are deceptive and could pose a health risk to children.

The FTC and FDA have jointly called for companies to stop such marketing practices and sent cease and desist letters to six companies they say are selling Delta-8 THC products in packaging that imitates the packaging of food often consumed by children.

Source: CBS News



Benesch is pleased to announce that the firm’s Cannabis practice has been ranked in the 2023 edition of The Legal 500’s prestigious annual rankings.

The Legal 500 rankings are based on a series of criteria highlighting the practice area teams that are providing the most cutting edge and innovative advice to corporate counsel. Their research is based on feedback from 300,000 clients worldwide, submissions from law firms, interviews with leading lawyers and a team of researchers who have deep experience in the legal market.



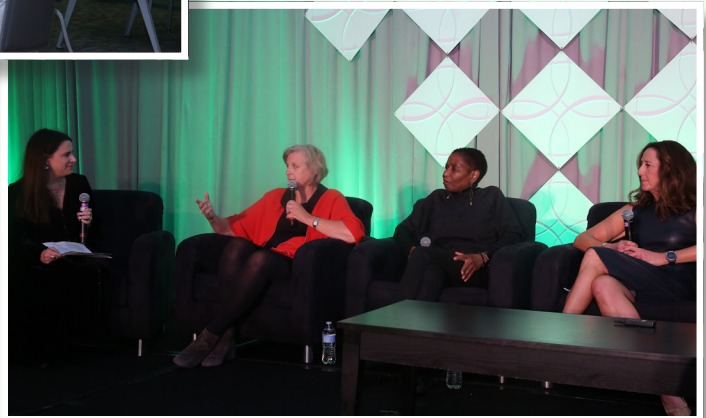
We are pleased to share that Benesch has been ranked nationally in Cannabis Law by Chambers USA 2023. Additionally, Bryna Dahlin, Chair of Benesch’s Cannabis Industry Team, received a nationwide ranking in Chambers USA 2023.

Chambers publishes a leading guide to the legal profession and has built a reputation for in-depth, objective research. Chambers ranks lawyers and law firms on several factors and considerations, all of which are investigated by a team of more than 200 researchers.

Benzinga Capital Conference



On September 28, Benesch Cannabis Chair Bryna Dahlin moderated a panel at the Benzinga Capital Conference. The panel, "The Bud Boardroom: Bringing Mainstream Industry Experience to the Top Cannabis Companies," featured industry experts Susan Thronson (Trulieve Cannabis Corp), Michele Roberts (Cresco Labs Inc), Wendy Berger (Green Thumb Industries Inc).



Marijuana Business MJBizCon

Benesch will be at MJBizCon in Las Vegas from Nov. 28 to Dec. 1. Reach out to bdahlin@beneschlaw.com if you would like to connect.

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