

Cannabis & The Law

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Don Edwards Inns of Court Feb. 2020

Terminology

- **Cannabis** – The umbrella term, family of plants that includes marijuana and hemp.
- **Marijuana** – *Cannabis sativa*, contains high amounts of THC and also contains CBD.
- **CBD** (“cannabidiol”) – can come from either marijuana or hemp
- **THC** – a compound found in cannabis plants, contains a psychoactive compound, often used therapeutically in its whole flower state
- **Hemp** – lower in THC (less than .3%)



California Cannabis Law

- Medical marijuana use was legalized in CA in 1996. CA had almost 1800 dispensaries at the time Prop 64 was enacted.
- California's Proposition 64 legalized growing, selling, and using marijuana for recreational purposes in November of 2016. CA began issuing licenses on Jan. 1, 2018.
- Prop 64 created the Bureau of Cannabis Control.
(www.cannabis.ca.gov) #weedwise
- California collected \$288M in tax revenue from cannabis in the fiscal year ending June 2019. (Source LA Times Dec. 24, 2019)

Legalization of Marijuana Use in the U.S.

- Marijuana is legal for recreational use in 11 states for adults over the age of 21, the most recent being Illinois in Jan 2020;
- Marijuana is legal for medical use in 33 states.

Source: Business Insider

The Green Wave

- Even in states where recreational or medical marijuana use is not legal, it may be decriminalized;
- Each governor in New York, New Mexico, Vermont, Connecticut, Pennsylvania and Rhode Island supports recreational cannabis use. All but Rhode Island's state legislature are either considering legislation or intend to draft bills to do just that in 2020. (source Newsweek)
- Only 8 states in the country where it remains a crime: Idaho, Wyoming, South Dakota, Kansas, Tennessee, Alabama, South Carolina, and Wisconsin Source: DISA (drug screening company)

The Farm Bill of 2018

- In December of 2018, the 2018 Farm Bill was signed into law. It removed “hemp” defined as *cannabis sativa L.* and derivatives of cannabis with extremely low concentrations of the psychoactive compound delta-9-tetrahydrocannabinol (THC) no more than .3% THC on a dry weight basis from the definition of marijuana in the Controlled Substances Act (CSA).
- “I cannot overstate how significant of a policy sea change this has been.”
Testimony of Amy Abernathy M.D., PhD Principal Deputy Commissioner FOOD AND DRUG ADMINISTRATION (July 25, 2019)

Source: FDA.gov

Recent Bankruptcy Cases

- *Garvin v. Cook Investments* (9th Cir.) May 2019
- *In Re: Way To Grow Inc.* (Dist. Colorado) Sept. 2019
- *In Re: Andrick* (Bank. Colorado) July 2019
- *In Re: Burton* (9th Cir. BAP) Jan. 2020



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Types of businesses that derive income from marijuana:

- Landlords of warehouses, growhouses, dispensaries, stores, packaging facilities.
- Any party in the stream of commerce: grower, processor, distributor, sales channel.
- Any employees who work for marijuana businesses.

Conclusion:

- The “green wave” will continue to bring new challenges for the state to regulate the economic and environmental impacts.
- On a federal bankruptcy level, the cases show that courts are reluctant to delve too deeply into a plan or deny relief if the marijuana-related income is indirect and will not require involve administration from the Trustee or the court. The greater the amount of income derived from the marijuana related business, the less likely a plan of reorganization could be successful without that income--thereby necessitating a denial.