

Table of Contents

About the Authors	vii
Table of Chapters	ix
Preface	xix
Acknowledgments	xxi

Chapter 1 The Big Picture

§ 1:1	The Opening Questions	1-1
§ 1:2	Federal Laws Regulate Marijuana.....	1-10
§ 1:2.1	Early Federal Regulation.....	1-10
§ 1:2.2	The Controlled Substances Act.....	1-10
§ 1:2.3	The Drug Enforcement Administration and Other Federal Agencies	1-11
§ 1:3	State Regulation of Marijuana	1-12
§ 1:4	Federal Preemption	1-12
§ 1:5	International Regulation of Cannabis	1-13
§ 1:6	Nationwide Marijuana Decriminalization Prospects....	1-15
§ 1:7	Lessons from Other Nations.....	1-15
§ 1:7.1	Lessons from Canada.....	1-15
§ 1:7.2	Lessons from Mexico	1-16
§ 1:8	Complications Arising from the Illegal Marijuana Market.....	1-16

Chapter 2 Elements of Federal Conflict with State Marijuana Legislation

§ 2:1	Contrasts of Federal and State Legislation	2-1
§ 2:2	What Is Federal Preemption?	2-4
§ 2:3	How Could Congress Change the Status of Marijuana?	2-5
§ 2:3.1	Political Challenges.....	2-6
§ 2:3.2	Use of the Appropriations “Rider” System.....	2-7
§ 2:4	State Ballot Initiatives and Federal Preemption.....	2-9

Chapter 3 Understanding the Diverse Terms of State Marijuana Legislation

§ 3:1 Survey of the Popular Terms in Marijuana Statutes 3-1

§ 3:2 State Definitions and Inclusions..... 3-2

§ 3:3 State Exclusions and Hemp 3-3

§ 3:4 State Medical Marijuana Provisions..... 3-4

§ 3:5 Growing, Licensing, and Siting Issues 3-6

 § 3:5.1 Advising on the License Selection Process..... 3-7

§ 3:6 Inspections 3-9

§ 3:7 Statutory Limitations 3-9

§ 3:8 State Criminal Statutes and “Decriminalization” 3-10

§ 3:9 Laws Allowing Recreational Non-Medical Use 3-11

 § 3:9.1 Where, When, and How Non-Medical Use Is Permitted 3-11

 § 3:9.2 Why Legalization of Recreational Use Is Supported..... 3-12

 § 3:9.3 Adoption of State Recreational Marijuana Statutes..... 3-13

 § 3:9.4 What Has Been Learned in the Transitions Among Laws? 3-14

Chapter 4 Medical and Prescribing Issues for Marijuana Patients

§ 4:1 Current Medical Discussions on Marijuana Benefits and Harms..... 4-1

§ 4:2 Current Medical Norms on Prescribing/ Recommending Marijuana..... 4-3

§ 4:3 Role of the Prescriber and the State Medicinal Marijuana Statute..... 4-4

§ 4:4 Medical Conditions for Which Marijuana May Be Prescribed 4-6

§ 4:5 Limited Quantities Allowed to Be Purchased..... 4-7

§ 4:6 Dispensary Controls and Safeguards..... 4-8

§ 4:7 Licensure 4-10

§ 4:8 Caregiver Registration to Obtain Marijuana for Patients 4-12

§ 4:9 Dispensary-Processor Supply Chains for Filling Prescriptions..... 4-12

§ 4:10 Enforcement Sanctions on Dispensaries..... 4-13

§ 4:11 Implications of Marijuana Use for Hospitals and Clinics 4-13

Table of Contents

§ 4:12 Health Fraud Problems with Medical Benefit
Claims for Cannabis Products 4-14

§ 4:13 Costs of Facilities for Medical Marijuana..... 4-14

§ 4:14 Public Health Issues 4-15

Chapter 5 Roles of Criminal Law

§ 5:1 Criminal Statutes Continue in Force 5-1

§ 5:2 Marijuana Possession and Quantity 5-2

§ 5:3 Constitutional Rights Defense..... 5-4

§ 5:4 Marijuana Odor and Searches..... 5-4

§ 5:5 Pre-Trial Diversion and Youthful Offender Provisions 5-5

§ 5:6 Prosecution As a Means of Enforcing Medical
Marijuana Limits..... 5-5

§ 5:7 Inter-Relationship of Marijuana Use and Crime 5-5

§ 5:8 The Special Case of Synthetic Cannabis Products 5-6

§ 5:9 Sentencing 5-6

§ 5:10 Public Housing and Consequences of Use
of Marijuana..... 5-7

**Chapter 6 Non-Smoked Forms of THC Delivery: Pills, Oils,
Food, and E-cigarettes**

§ 6:1 Overview 6-1

§ 6:2 Which Regulator Governs Which Product? 6-2

§ 6:3 Forms of Delivery 6-4

 § 6:3.1 Edibles 6-4

 [A] Difficulty of Regulating Food As a THC
 Delivery System..... 6-5

 [B] Defining a “Dose” of a Food Infused with THC..... 6-7

 § 6:3.2 THC in Pills and Tablet Forms 6-9

 [A] Would Investors Fund Drug Approval Testing
 for a THC Pill? 6-11

 § 6:3.3 Oils, Gels, Patches, and Liquid Forms of THC 6-12

 § 6:3.4 Electronic Cigarettes 6-13

 § 6:3.5 Cannabis Analogue Products 6-14

§ 6:4 Marketing, Packaging, and Labeling..... 6-14

 § 6:4.1 Barriers to Nationwide Marketing of
 Cannabis-Derived Products..... 6-14

 § 6:4.2 Marking THC Edibles..... 6-15

 § 6:4.3 Safety Packaging of THC or CBD Foods..... 6-16

Chapter 7 The Business of Marijuana

§ 7:1 Federal Law and Movement of Marijuana Sale
 Proceeds..... 7-1

 § 7:1.1 Overview..... 7-1

 § 7:1.2 Federal Criminal Risk of Drug “Proceeds”
 Seizure 7-2

 § 7:1.3 State-Law Legality of Sale Transactions..... 7-3

 § 7:1.4 DEA Use of State-Required Marijuana Sales
 Reports..... 7-4

§ 7:2 Federal Financial Crimes Policy Related to Marijuana..... 7-5

§ 7:3 Alternative Options for Handling Marijuana
 Business Proceeds 7-8

§ 7:4 Business Development and Competitive Factors 7-9

 § 7:4.1 Commercial Aspects of Marijuana Retail
 Operations 7-9

 § 7:4.2 Marketing Under Restrictions..... 7-11

 § 7:4.3 Dispensary Operations 7-11

 § 7:4.4 The Role of Price Competition..... 7-12

 § 7:4.5 Growth of the Marijuana Industry 7-12

 § 7:4.6 Recreational Marijuana Distribution 7-13

 § 7:4.7 Seller’s Liability for User’s Accidents..... 7-13

Chapter 8 Tax Issues

§ 8:1 Background..... 8-1

§ 8:2 IRS Status of Dispensary and Grower Transactions 8-2

§ 8:3 Taxation Benefits for States 8-3

 § 8:3.1 State Tax Experience 8-4

§ 8:4 Local Taxing Powers..... 8-5

Chapter 9 Employment Issues

§ 9:1 Discipline and Termination 9-1

 § 9:1.1 Overview..... 9-1

 § 9:1.2 Employer Options..... 9-4

 § 9:1.3 Discipline for On-the-Job Impairment..... 9-5

 § 9:1.4 Controls on Marijuana-Related Violations of
 Employer Disciplinary Rules 9-6

 § 9:1.5 Termination..... 9-7

§ 9:2 Unions 9-8

 § 9:2.1 Union Effects Upon Employer Discipline
 Options 9-8

Table of Contents

§ 9:2.2 Unions May Decline to Pay for Marijuana
Grievance Cases 9-9

§ 9:2.3 NLRB Response to Employee Termination
Complaints 9-10

§ 9:3 Refusal to Hire: Effect of State Marijuana Legislation..... 9-10

§ 9:4 EEOC Responses to Marijuana-Related Employment
Conflicts 9-11

§ 9:5 Marijuana Industry Employees: Federal Law Risks
and Restrictions 9-12

§ 9:6 Workers' Compensation 9-13

§ 9:7 Predictions of Future Worker Rights 9-13

Chapter 10 Growing and Processing of Marijuana

§ 10:1 Agricultural Controls and Limitations on
Growers of All Crops 10-1

§ 10:2 How Legal Marijuana Growers Operate in
Permitted States 10-2

§ 10:3 Agricultural Worker Credentials Review 10-3

§ 10:4 Elements Necessary for Growing Marijuana 10-4

§ 10:5 Federal CSA Conditions and Exemptions 10-4

§ 10:6 State Site Limitations 10-5

§ 10:7 Agricultural Equipment Finance Needs 10-5

§ 10:8 Environmental Issues 10-6

§ 10:9 Water Use for Cannabis Growing 10-8

§ 10:10 Growing Indoor Marijuana Crops..... 10-8

§ 10:11 Hemp Production Is Not Marijuana Growing..... 10-9

§ 10:12 Processing Cannabinoids 10-10

§ 10:13 Real Estate Issues 10-11

§ 10:14 Liability Aspects of Marijuana Growing..... 10-12

§ 10:15 Individuals Growing Marijuana for Personal Use 10-12

Chapter 11 Vehicle Driving Risks and Enforcement

§ 11:1 Overview 11-1

§ 11:2 Effects of Impairment 11-3

 § 11:2.1 Medical Evidence of Effects of THC Use on
 Driving 11-3

 § 11:2.2 Marijuana and Alcohol Combined Effects..... 11-5

§ 11:3 Driver Safety Regulations 11-7

 § 11:3.1 Congressional Interest in Marijuana-Related
 Driver Safety 11-7

 § 11:3.2 State Regulation 11-8

§ 11:3.3	Use of Alternate Proofs of Impairment	11-9
§ 11:3.4	Defenses Available Under State Laws	11-9
§ 11:4	Traffic Stops and Vehicle Searches	11-11
§ 11:4.1	Arrest for “Per Se Impaired” Status, Despite Lack of Test.....	11-11
§ 11:4.2	Probable Cause for Police Search for Marijuana in Vehicle.....	11-12

Chapter 12 Professional Licensure and Ethical Constraints

§ 12:1	Overview	12-1
§ 12:2	Physicians and Nurses.....	12-2
§ 12:3	Pharmacists.....	12-3
§ 12:4	Dispensaries	12-4
§ 12:5	Hospitals and Clinics	12-4
§ 12:6	Attorneys.....	12-5

Chapter 13 Transportation, Customs, and Delivery Issues

§ 13:1	Moving Marijuana Poses Federal/State Preemption Conflicts.....	13-1
§ 13:2	Effect of Court Decisions.....	13-2
§ 13:3	Documentation of Source and Delivery Under State Laws	13-3
§ 13:4	Volume Limitations for Marijuana Shipments.....	13-4
§ 13:5	Criminal Risks to Marijuana Transporters	13-4
§ 13:6	Customs, ICE, and Shared Jurisdiction	13-5

Chapter 14 Role of Local Regulators and Administrators

§ 14:1	Shared Jurisdiction	14-1
§ 14:2	Marijuana and Zoning of Dispensaries, Growers, and Processors	14-1
§ 14:3	Intrastate Preemption of Local Controls	14-3
§ 14:4	Local Taxing Powers.....	14-4
§ 14:5	Effects of Voter Referendum/Initiative Elections	14-4

Chapter 15 Products Liability and Cannabis Products

§ 15:1	State Requirements for Product Labeling	15-1
§ 15:2	Liability Consequences of Inadequate Labeling.....	15-3
§ 15:3	Packaging Defense Against Child Ingestion.....	15-4

Chapter 16 Regulation of Hemp and CBD

§ 16:1 Key Definitions Relevant to the Regulation of Hemp and Cannabinoids..... 16-2

 § 16:1.1 The Definition of Hemp and Its Regulatory History..... 16-3

§ 16:2 Can I Grow Hemp Without Accidentally Growing Marijuana? 16-5

§ 16:3 The 2018 Farm Bill: Major Provisions Regarding Hemp 16-6

 § 16:3.1 The 2018 Farm Bill: What It Did Not Change..... 16-8

 § 16:3.2 How FDA Exercises Authority Over CBD 16-8

§ 16:4 Final Rule: Establishment of a Domestic Hemp Production Program 16-13

§ 16:5 Delta-8-THC and the Other Minor Cannabinoids..... 16-18

 § 16:5.1 State Regulatory Status of Delta-8 THC 16-19

 § 16:5.2 Legal Argument for the Lawful Production and Sale of Delta-8..... 16-20

§ 16:6 State Regulation of Hemp, CBD and Other Hemp-Derived Cannabinoids 16-22

 § 16:6.1 When Federal Rules Conflict with State Hemp and CBD Legislation..... 16-23

 § 16:6.2 Varying State Enforcement of Federal Hemp Rules..... 16-24

§ 16:7 How the FDA Approval of Epidiolex Impacted the Dietary Supplement CBD Market..... 16-24

§ 16:8 Marketing of CBD Products..... 16-24

 § 16:8.1 Accidental Ingestion of CBD Products 16-25

 § 16:8.2 Contaminant and Pesticide Residue Problems 16-25

 § 16:8.3 Regulation of CBD Marketing Benefit Claims..... 16-25

 § 16:8.4 FDA Enforcement and Warning Letters..... 16-26

§ 16:9 Importation to the United States of Hemp and CBD 16-26

 § 16:9.1 International CBD Markets and Regulation..... 16-27

§ 16:10 USDA Crop Insurance for Hemp..... 16-28

§ 16:11 Projected Future Growth for Hemp and Hemp Derivatives 16-28

Appendix A	Agricultural Improvement Act of 2018: Selected Provisions	App. A-1
Appendix B	Department of Agriculture, Agricultural Marketing Service, Final Rule: Establishment of a Domestic Hemp Production Program	App. B-1
Appendix C	Selected State Cannabis, Hemp, and CBD Laws and Regulations	App. C-1
Index		I-1