

# Marijuana Landscape

PRESENTATION TO:

**STATE OF VERMONT**

**MARIJUANA COMMISSION**

**TAXATION AND REGULATION SUBCOMMITTEE**

**Michael Stratton**

**Douglas Friednash**

**Mark Bolton**

**Sarah Mercer**

Brownstein Hyatt Farber Schreck, LLP

Denver, Colorado

 Brownstein Hyatt  
Farber Schreck

# National Marijuana Landscape

- 9 states legalized use of recreational marijuana by adults.
- Vermont is the first state to do so by an act of the legislature.
- 30 states and District of Columbia have legalized medical or recreational marijuana.
- Newsweek reports that at least 12 states are poised to consider marijuana legislation in 2018.

# Federal-State Conflict

[Controlled Substances Act](#) prohibits the manufacture, possession, use, and distribution of marijuana. The conflict between state and federal law impedes the growth of the industry in significant ways, including:

- 1) The potential for marijuana business to be prosecuted, even if they are compliant with state law and regulation;
- 2) application of section 280E of the federal tax code that saddles the industry with an effective tax burden of 70% or more. [Section 280E](#) of the tax code does not allow ordinary business deductions by businesses that are in violation of the CSA; and,
- 3) the difficulty in obtaining banking services.

# Attorney General Sessions

Attorney General Jeff Sessions [rescinded](#) all DOJ guidance memoranda that had been issued during the Obama Administration. This now-rescinded 2013 guidance, which is commonly referred to as “the Cole Memo,” after Deputy Attorney General James Cole, established eight federal marijuana enforcement priorities intended to prevent:

- the distribution of marijuana to minors;
- revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels;
- the diversion of marijuana from states where it is legal under state law in some form to other states;
- state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;
- violence and the use of firearms in the cultivation and distribution of marijuana;
- drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;
- growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and
- marijuana possession or use on federal property.

# What Does Rescission of Cole Memo Mean?

U.S. Attorneys throughout the country have the discretion to prosecute federal marijuana-related offenses in their respective districts, regardless of whether that activity falls outside of the previously noted eight federal enforcement priorities or whether the activity complies with state regulation.

In that regard, Sessions' announcement may not have changed much from a prosecutorial standpoint, but it has been perceived by many as a sea-change which could spur Congress to act. We don't believe there will be a sea-change at DOJ.

We do anticipate several significant take downs of businesses operating in the black or gray markets and such charges could include violations of the CSA, anti-money laundering statutes, and the tax code.

# What about FinCEN's Guidance?

Attorney General Sessions also rescinded a February 14, 2014, "Memorandum for All United States Attorneys" titled: "Guidance Regarding Marijuana Related Financial Crimes." That same day, FinCEN issued [Guidance](#) regarding the provision of financial services to marijuana-related businesses. That guidance clarified expectations for financial institutions seeking to provide services to marijuana-related businesses in light of their federal suspicious-activity reporting (SAR) requirements, which was not rescinded.

Because the FinCEN guidance was premised, at least in part, on the Cole Memorandum and was a companion to DOJ's 2014 Financial Crimes guidance, it would not be inconsistent for FinCEN to withdraw its guidance. If that happens, significant uncertainty would permeate the financial services industry, including banks, credit unions, and investors, who may be concerned about violating federal anti-money laundering laws.

FinCEN, however, understands the benefit of having marijuana businesses in the banking system and intends to leave their guidance in place, at least for the immediate future. We understand that FinCEN and others at the Department of Treasury are studying this issue.

# Rohrbacher Amendment

For the last three years, Congress has enacted the Rohrabacher amendment, which prevents DOJ from using appropriated funds to take enforcement action against state-compliant medical marijuana businesses. That language is currently in effect. This language does not, however, apply to state-regulated recreational marijuana businesses.

# Gray & Black Market Enforcement

- Local, state and federal governments should develop working relationships to address the illegal marijuana trade.
- In Colorado, the legislature set aside millions of dollars in marijuana tax revenue to provide financial assistance to cover the cost of local law enforcement investigations and prosecutions. Funding is aimed at (1) rural areas; (2) large scale operations; (3) organized crime operations; and, (4) operations that divert marijuana outside of Colorado.



# Statewide Coordination Efforts

- In Colorado, 12 agencies are engaged in the execution of the state's adult-use and medical marijuana programs.
  - Governor, Revenue, Public Safety, Transportation, Public Health, Education, Human Services, Agriculture, Natural Resources, Information Technology, Local Affairs, Regulatory Agencies.
- Within the Governor's Office, one individual oversees all marijuana policy issues and coordinates interagency efforts.

# Department of Revenue

- Licensing
- Maintaining closed-loop system
  - Seed-to-sale tracking
  - Production management
  - Security requirements
- Compliance and enforcement

# Department of Public Safety

- Data collection and analysis
- Extra-regulatory enforcement
- Impaired driving enforcement

# Department of Transportation

- Impaired driving law enforcement training
- Impaired driving public education campaigns

# Department of Public Health and Environment

- Medical marijuana patient registry
- Public education campaigns
  - Youth use prevention
  - Safe, responsible and legal use

# Department of Agriculture

- Regulation of hemp production
- Pesticide testing and enforcement

# Role of Local Governments

- Opt in/Opt out
- Licensing and regulation
- Zoning
- Compliance and enforcement

# Community Impact

- Consumer protection
- Commercial opportunities
- Open and public consumption



# Consumer Protection

- Packaging, labeling, marking
- Products
  - Flower, edibles, concentrates
  - Equivalencies
  - Serving size
  - Potency
- Product restrictions
  - Enticing to kids
  - Health and wellness claims
  - Pesticides

# Commercial Opportunities

- Organic designation
- Delivery options
- Tourism opportunities
- Research money
- Entrepreneurs
- Private equity

# Open and Public Consumption

- Licensed public consumption
  - Language of state law
  - State and local Clean Indoor Air Act
  - Federal concerns
- Special events
  - 4/20 events
  - Trade shows
  - Charity auctions

# Foundational Steps

- Determine state and local tax structure
- Determine seed-to-sale tracking mechanism
- Determine whether to align medical and recreational statutes and regulations



# Brownstein Hyatt Farber Schreck

## **Michael Stratton**

mstratton@bhfs.com

303-223-5293

## **Mark Bolton**

mbolton@bhfs.com

303-223-1290

## **Douglas Friednash**

dfriednash@bhfs.com

303-223-1221

## **Sarah Mercer**

smercerc@bhfs.com

303-223-1139

Albuquerque

Atlantic City

Carson City

Denver

Las Vegas

Los Angeles

Orange County

Reno

Sacramento

San Diego

Santa Barbara

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