

Regulatory Issues for Cannabis Businesses

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Overview

- Legal Framework
- Current Status of the Industry in Florida
- Future Issues and Challenges

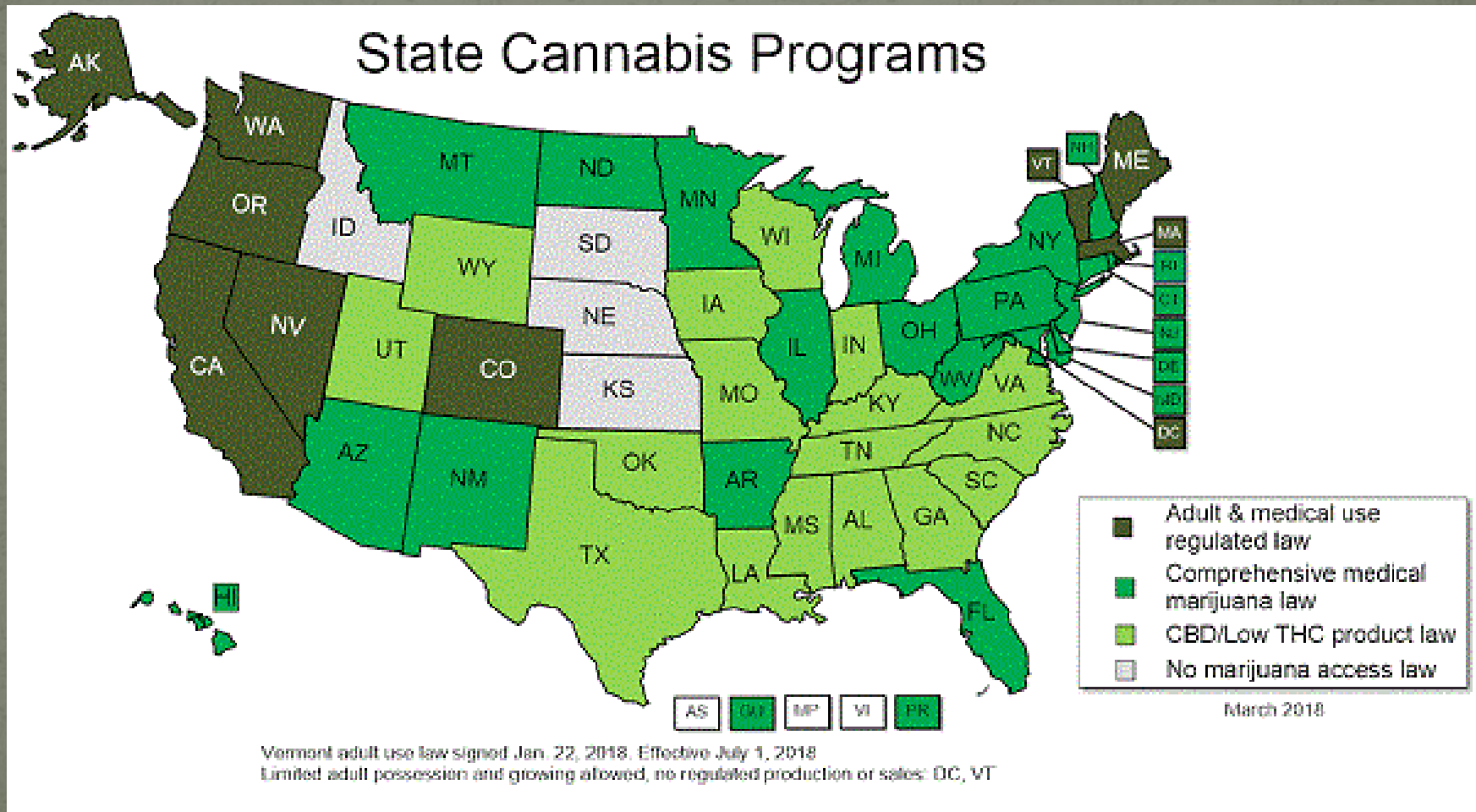
Federal Law

- Controlled Substances Act (CSA), 21 U.S.C. § 801 et seq.
- Cole Memoranda (2013 and 2014)
 - Identified 8 enforcement priorities to guide prosecutors:
 - Prevent distribution of marijuana to minors
 - Prevent marijuana revenue from funding criminal enterprises, gangs or cartels
 - Prevent marijuana from moving out of states where it is legal
 - Prevent use of state-legal marijuana sales as a cover for illegal activity
 - Prevent violence and use of firearms in growing or distributing marijuana
 - Prevent drugged driving or exacerbation of other adverse public health consequences associated with marijuana use
 - Prevent growing marijuana on public lands
 - Prevent marijuana possession or use on federal property

Federal Law

- Rescission of Cole Memoranda (January 4, 2018)
- Rohrabacher-Blumenauer amendment (6 month extension on March 21, 2018)
 - The Rohrabacher-Blumenauer Amendment prohibits the Department of Justice from using federal funds to prevent states with medical cannabis regulations from implementing laws that authorize the use, distribution, possession or cultivation of medical cannabis.
 - The amendment applies to medical cannabis but not recreational cannabis, and does not change the designation of cannabis as a Schedule 1 drug.

Overview of State Laws



Florida Cannabis Laws (2014-2016)

- Compassionate Medical Cannabis Act of 2014
 - Low-THC cannabis for patients with cancer or seizures
 - Must be seen for 90 days by a licensed physician
 - Vertically integrated system for licensed dispensing organizations
- Chapter 64-4, F.A.C.
 - Established selection process for dispensing organizations
- Chapter 2016-123, Laws of Florida
 - Cannabis with no THC limits for terminal patients
 - Two physicians required
 - Patients allowed access to 45 day supply

Constitutional Amendment (2017)

- Makes use of medical cannabis legal
- Expands definition of qualifying conditions
- Contemplates MMTCs, not dispensing organizations
- Administered by the Department of Health
 - 6 months to promulgate regulations
 - 9 months to issue patient identification cards
 - Provides standing for any citizen to sue the Department for failure to comply within 9 months
- Contemplates caregivers may also have possession
- Effective January 3, 2017

SB 8A

- Passed during 2017 Special Session
- Became law on June 23, 2017
- Enacts the Constitutional Amendment
- Significant rewrite of section 381.986, Florida Statutes

SB 8A – Number of MMTCs

- 7 Existing MMTCs at the time SB 8A was enacted
- Authorized 10 additional MMTCs
 - Certain previous applicants – 6 licenses granted to date
 - 4 new applicants to be determined competitively
 - Preference for members of black farmers class action litigation
 - Preference for citrus processing facilities

***Note: the state has failed to issue those new MMTC licenses by the statutory deadline of October 3, 2017**

- Permits contingent licenses-- 4 new MMTCs for every 100,000 patients in the registry
 - Currently 114,878 patients; adding over ~450 patients per day

SB 8A: MMTC Dispensary Caps

- Each MMTC can have a maximum of 25 dispensaries
- Allotments to MMTCs based upon regional population
- Can buy and sell dispensaries to alter caps
- Caps increase by 5 for every 100,000 patients registered
- Caps sunset on April 1, 2020

SB 8-A: Preemption

- Regulation of any MMTC facility is preempted to the state, except as follows:
 - Cultivating, processing or dispensing facilities cannot be located within 500 feet of a school (public or private, elementary/middle/secondary)
 - Counties or cities can:
 - Ban dispensaries
 - OR
 - Allow and regulate the same as pharmacies
- Can impose land use regulations, but no more stringent than those applied to pharmacies

Local Regulations Authorized

- “A [local government] may determine by ordinance the criteria for the location of, and other permitting requirements that do not conflict with state law or department rule for, medical marijuana treatment center dispensing facilities located within [its] boundaries.”
- Local governments can ensure compliance with the Florida Building Code and Florida Fire Prevention Code, including local amendments.

SB 8-A: Miscellaneous

- 90-day waiting period eliminated for patients
- Seed-to-sale tracking required
 - *Currently being procured by the Department*
- Independent laboratory testing required
 - *Note: no real standards have been established by the state, industry is currently “self-regulated”*
- No sales tax

Who are the current MMTCs?

- Trulieve
- Surterra Therapeutics
- Curaleaf
- Liberty Health Science
- The Green Solution
- Knox Medical
- GrowHealthy
- 3 Boys Farm
- Vidacann
- Plants of Ruskin, Inc.
- Sunbulb Company, Inc.
- Treadwell Nursery
- KSGNF, LLC

Where is dispensing taking place?

- Bradenton
- Clearwater
- Deltona
- Edgewater
- Fort Myers (2)
- Gainesville (2)
- Jacksonville (2)
- Kendall
- Lady Lake
- Lake Worth (2)
- Miami Beach
- Miami (2)
- New Port Richey
- North Port
- Orlando (3)
- Pensacola (2)
- St. Petersburg (4)
- Summerfield
- Tallahassee (3)
- Tampa (3)
- Vero Beach

Number of Dispensaries by MMTC

- Trulieve – 15 of 25
 - Knox Medical – 6 of 25
 - Surterra – 8 of 25
 - Curaleaf – 5 of 25
 - Liberty Health Science – 3 of 25
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- 13 MMTCs brings a potential for 325 dispensaries
 - 100,000 patients brings potential for 65 more dispensaries

The Future: Federal Response

- Currently unknown
 - Watch DOJ
 - Watch prosecutions
 - Look for guidance from Treasury
- September vote on budget amendment

The Future: Florida Response

- Administration change
- Rules and regulations being promulgated
- New application cycle
- Statutory changes in 2019 or 2020
 - Early session in 2020
 - Dispensary caps expire April 1, 2020

The Future: Litigation

- Redner v. DOH (home grow)
- People United v. DOH (smoking)
- Tropiflora v. DOH (citrus provision)
- Bill's Nursery v. DOH (application process)
- Florigrown v. DOH (constitutionality of limiting MMTCs)
- PPA v. DOH (vertical integration/limit on MMTC licenses)