

2019 Oklahoma Cannabis Bills



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HEMP

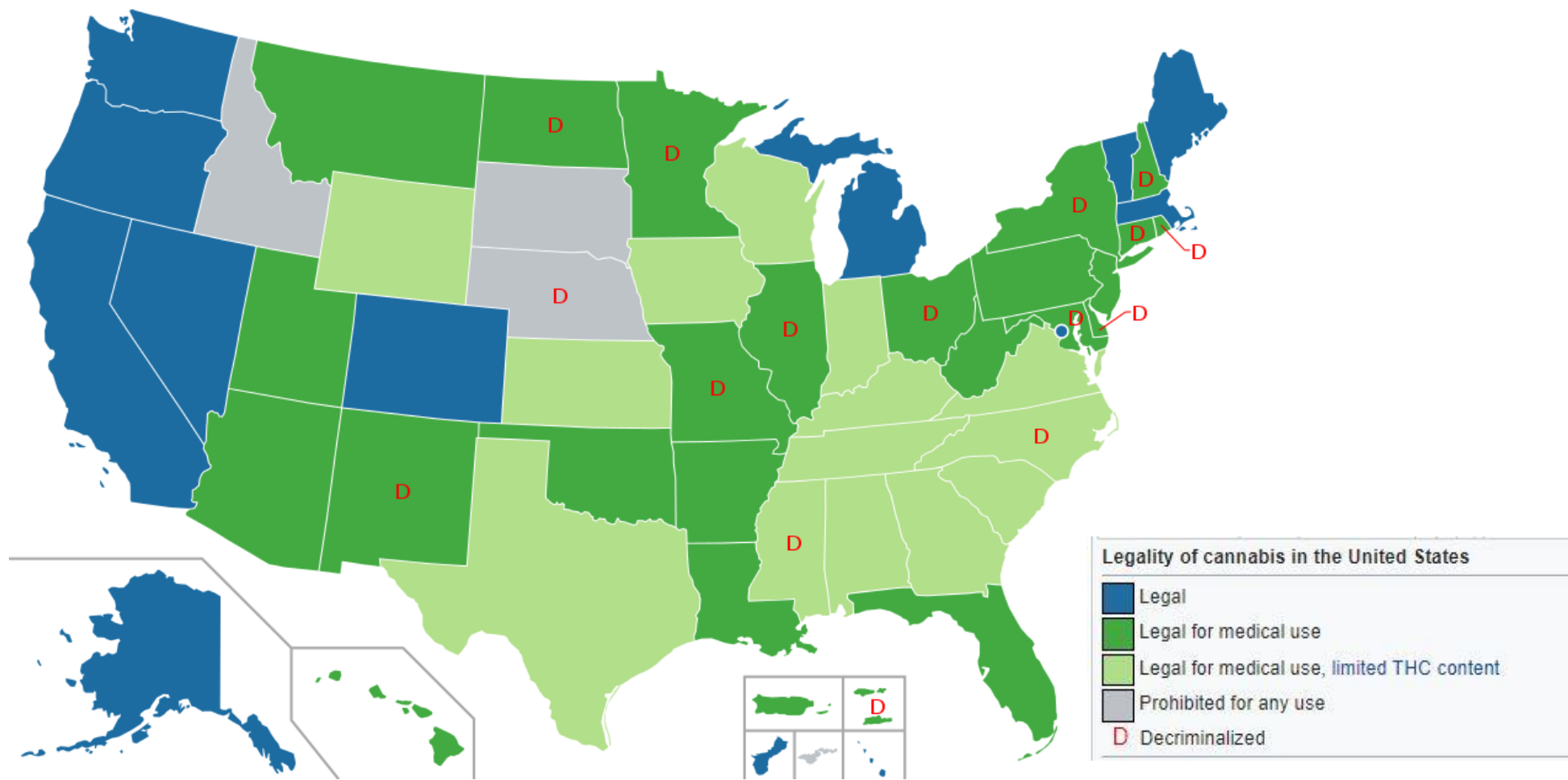
2018 Farm Bill (signed December 20, 2018) made cannabis under .3% THC legal for cultivation and production.



HB 2628

Industrial Hemp Act

- Act was originally passed in 2018 and amended in 2019
- Original act allows licenses (from the OK Dep. Of Agriculture, Food, and Forestry) to grow hemp
- 2019 Amendments add growth for research purposes and with approval of the US Dep. of Agriculture



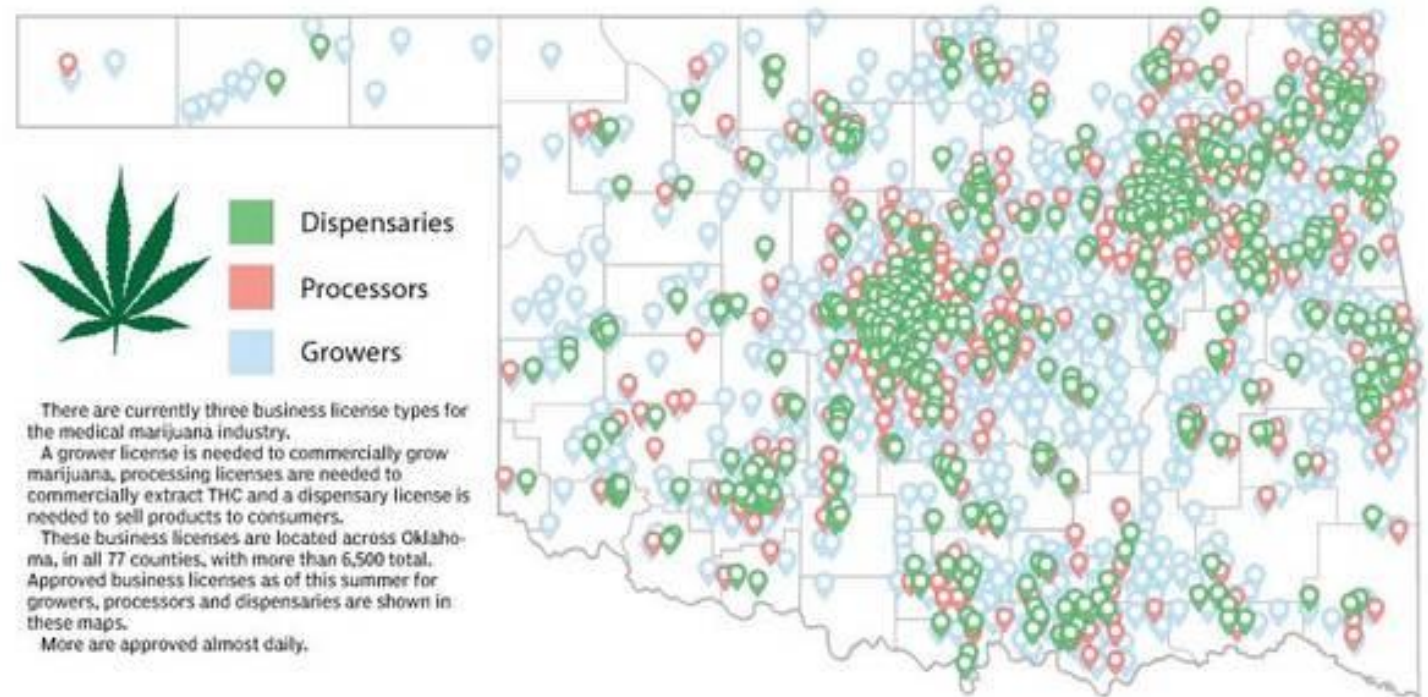


STATE QUESTION 788

- ▶ Passed June 26, 2018 it made Oklahoma the 30th state to approve medical marijuana
 - ▶ Passed 57%-43%
- ▶ Department of Health issued a controversial regulatory regime
 - ▶ E.g. prohibited smokable marijuana, required a pharmacist, restricting dispensary locations and prohibiting them from collocating with other businesses, and limiting the amount of THC
- ▶ Attorney General responded with a letter concluding that “the Board acted outside of its statutory authority in promulgating several rules”
- ▶ The Board then approved new rules, and created the Oklahoma Medical Marijuana Authority

SQ 788: WHAT DOES IT DO?

- ▶ Specifically is creates several types of licenses whereby holders are authorized to grow, use or possess marijuana
 - ▶ User License (requires signature by a board certified physician)
 - ▶ Dispensary license - to sell to individuals with Medical Licenses or caregiver
 - ▶ Commercial Grower License
 - ▶ Processing License -to distill or process plants into concentrates, edibles, and other forms for consumption
- ▶ 7% sales tax on marijuana
- ▶ Possession of up to 1.5 ounces of marijuana is a misdemeanor even without license if individual can state a medical condition



Source: Oklahoma Medical Marijuana Authority

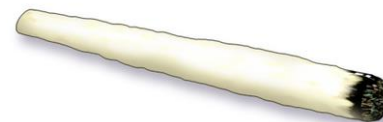
- ▶ No qualifying conditions
- ▶ Prosecutions and fines limited for consumption and possession without license
- ▶ No cap on licensing or plant growth

Liberal Regulatory Regime

Cannabis pills



Smokable cannabis



Baked goods

Skin cream



Forms of Medicinal Cannabis

HB2612: MEDICAL MARIJUANA UNITY BILL

- ▶ Originally introduced as a shell bill, this bill incorporated several other bills to set out a regulatory framework for the implementation of SQ 780 (already effective)
- ▶ Defines “Physician” as being licensed by the State Board of Medical Licensures and Supervision or the State Board of Osteopathic
- ▶ Grants broad authorities to the Oklahoma Medical Marijuana Authority (e.g. investigate, issue subpoenas, apply for injunctive relief, collect fees)
- ▶ Disciplinary actions may include revocation, suspension or denial of an application, license or final authorization, monetary fines, and other action deemed appropriate by the Department
- ▶ Municipal and county governing bodies may not enact medical marijuana guidelines which restrict or interfere with the rights of a licensed patient or caregiver
- ▶ A residential or commercial property or business owner may prohibit the consumption of medical marijuana or medical marijuana product by smoke or vaporization on the premises, within the structures of the premises or within ten (10) feet of the entryway to the premises.

HB2612: MEDICAL MARIJUANA UNITY BILL

- ▶ Unless otherwise required by federal law: 1) No employer may refuse to hire, discipline, discharge or otherwise penalize an applicant or employee solely on the basis of such applicant's or employee's status as a medical marijuana licensee; and 2) No employer may refuse to hire, discipline, discharge or otherwise penalize an applicant or employee solely on the basis of a positive test for marijuana components or metabolites, unless:
 - ▶ the applicant or employee is not in possession of a valid medical marijuana license,
 - ▶ the licensee possesses, consumes or is under the influence of medical marijuana or medical marijuana product while at the place of employment or during the fulfillment of employment obligations, or
 - ▶ the position is one involving safety-sensitive job duties.
- ▶ Nothing in this act shall:
 - ▶ Require an employer to permit or accommodate the use of medical marijuana on the property or premises of any place of employment or during hours of employment;
 - ▶ Require an employer, a government medical assistance program, private health insurer, worker's compensation carrier or self-insured employer providing worker's compensation benefits to reimburse a person for costs associated with the use of medical marijuana; or
 - ▶ Prevent an employer from having written policies regarding drug testing and impairment in accordance with the Oklahoma Standards for Workplace Drug and Alcohol Testing Act.

HB2612: MEDICAL MARIJUANA UNITY BILL

- ▶ Protection for physicians' licensing who make recommendations
- ▶ Requirements to purchase marijuana and medical marijuana products from an Oklahoma-licensed medical marijuana business, and shall not be purchased from any out-of-state providers
 - ▶ Do we want to recognize out-of-state licenses? (there are temporary licenses)
- ▶ Each medical marijuana business shall use a seed-to-sale tracking system
- ▶ Packaging requirements (e.g. minimize appeal to children, target individuals 21 years older or older, shall not make claims regarding health benefits)
- ▶ The State Commissioner of Health, the Oklahoma Tax Commission, the Banking Board, the State Treasurer, the Secretary of State and the Director of the Office of Management and Enterprise Services shall promulgate rules to implement the provisions of this act.



BY THE NUMBERS

- ▶ In June the state collected more than \$2.1 million in sales taxes (beer sales tax was \$2.8 million)
- ▶ More than 6,500 commercial business licenses issued
- ▶ Oklahoma surpassed 162,000 patients before the end of July (i.e. less than a year after SQ788's Roll Out)



Controlled Substances Act (1970)

Identified five schedules with varying qualifications for a substance to be included in each. It also created two federal agencies, the Drug Enforcement Administration (DEA) and the Food and Drug Administration (FDA).

Marijuana was classified as a Schedule I drug. Under the act, Schedule I drugs are defined as: i) has a high potential for abuse; ii) has no currently accepted medical use in treatment in the United States; iii) there is a lack of accepted safety for use of the drug or other substance under medical supervision.

FEDERAL ISSUES

- ▶ Rohrabacher-Farr amendment - through various funding bills since 2014, the U.S. Congress has prevented the DOJ from using funds to prevent certain “States from implementing their own State laws that authorize the use, distribution, possession, or cultivation of medical marijuana”. (emphasis added).
- ▶ On January 4, 2018, then Attorney General Jeff Sessions rescinded previous DOJ memos, including the 2013 Cole Memorandum, which adopted a non-interference policy with states that have legalized recreational or medical marijuana.
- ▶ Introduction of the SAFE Banking increase public safety by expanding financial services to cannabis-related legitimate businesses and service providers and reducing the amount of cash at such businesses.

LAWYERS

- ▶ Rule 1.2 of the Rules for Professional Conduct state that “A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.”
- ▶ Does helping a *client* set up a business, whose business model would violate federal law, be assisting or counseling conduct that the lawyer knows to be criminal?
- ▶ In several states where medical or recreational marijuana has been authorized under state law, state bar associations have issued opinions advising attorneys how to handle these issues.
- ▶ The amendment to Rule 1.2 passed at the OBA’s 2018 Annual Meeting was not adopted by the Supreme Court, and therefore remains ineffective.

Questions?

