

A Watershed Year For Recreational Marijuana Industry's Growth

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In November 2016, four more states – Nevada, California, Maine and Massachusetts – legalized recreational marijuana use, sparking the roll-out of state and local regulations as new recreational markets opened in 2017, marking a turning point for the industry.

Of the four states that legalized recreational marijuana in 2016, Nevada's market is furthest along in its evolution. Legal recreational sales began in most parts of the state on July 1, 2017, but Las Vegas' rapidly-expanding reputation as a hub of marijuana tourism presents unique legal issues. While purchasing marijuana is now legal, state and city regulations prohibit the use or consumption of marijuana in public places, creating an unusual catch-22 for Sin City tourists. While early sales figures have exceeded expectations, state legislators are beginning to look into altering regulations to allow for legal consumption in more locations.

In June 2017, California's state legislature integrated numerous regulatory frameworks to create the omnibus Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA). MAUCRSA now allows the state's Bureau of Cannabis Control (BCC) to issue licenses related to the cultivation, manufacture, distribution and laboratory testing of marijuana, as well as those for retail and microbusinesses. Currently, only temporary licenses are being issued as California continues to refine the regulations, and would-be marijuana businesses can face a significant wait because of a backlog of license registrations. This has not stopped legalized recreational shops from sprouting up. The BCC has also exercised its power to stress the importance of proper licensing. In March 2018, the BCC sent a cease and desist order to a major online advertiser of dispensaries to stop advertising for unlicensed operators. That is in addition to nearly 1,000 cease and desist letters that have been sent to unlicensed plant-touching companies since enforcement began several months ago.

In Massachusetts, disagreements over the marijuana tax rate slowed down the regulatory implementation process. However, in July 2017, the governor signed the bill into law, and at least a dozen marijuana shops are expected to open for business during the summer of 2018.

But legalization is not moving forward unabated in all states. For example, despite a successful ballot initiative that approved legalization in Maine, the governor vetoed the proposed regulatory framework. Because the legislature had made several key changes to the voter-approved framework, the veto now requires that the legislature revert to the language of the ballot initiative and begin the legislative process again. By consequence, recreational sales in Maine are now unlikely before some time in 2019.

Finally, it should be noted that while the specter of increased federal enforcement still exists, as the industry solidifies, it seems less and less likely that the Trump administration will take drastic action to curtail marijuana business activity that is legal at the state level.

Key Takeaways

- Nevada, California, Maine and Massachusetts are in the process of legalizing recreational marijuana sales.
 - States have a variety of licensing and regulatory requirements that manufacturers, distributors, sellers and marketers should be aware of as they begin their businesses.
 - While the current administration has made statements indicating that it opposes state-level marijuana activity, there has been no significant federal enforcement thus far.
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Possessing, using, distributing, and/or selling marijuana or marijuana-based products is illegal under federal law, regardless of any state law that may legalize or decriminalize such activity under certain circumstances. Although federal enforcement policy may at times defer to states' laws and not enforce conflicting federal laws, interested businesses and individuals should be aware that compliance with state law in no way assures compliance with federal law, and there is a risk that conflicting federal laws may be enforced in the future. No legal advice we give is intended to provide any guidance or assistance in violating federal law.