

I. Relevant History

- A. **1970** - “Marihuana” included as a Schedule I controlled substance in the Controlled Substances Act (“CSA”).
- B. **1973** - Oregon decriminalized.
- C. **1998** – Washington Medical Marijuana (Initiate 692); Oregon Medical Marijuana (Measure 67).
- D. **2012** – Washington passes adult use (Initiative 502); Oregon failed adult use (Measure 80).
- E. **2014** – Oregon passes adult use (Measure 91); U.S. passes Farm Bill, which permitted (limited) cultivation of hemp.
- F. **2018** – U.S. passes Farm Bill, which broadly legalizes the cultivation and marketing of hemp.

II. What’s in a name? Hemp, Marijuana, and Cannabis

- A. Cannabis generally refers to all plant varieties of the plant species “L Cannabis Sativa.”
- B. Hemp is the name given to cannabis that generally lacks significant concentrations of delta-9 tetrahydrocannabinol (“THC”). THC is generally regarded as the primary intoxicating compound found within cannabis.
- C. Marijuana generally refers to cannabis not meeting the definition of hemp. The CSA uses the spelling “marihuana,” which is less commonly used today.

III. Hemp: The Basics

- A. The 2014 Farm Bill provided for the production of hemp under so-called pilot programs. The pilot programs were generally restricted to state departments of agriculture or higher education institutions.
- B. Oregon and the Oregon Department of Agriculture passed liberal laws and regulations delegating authority to produce hemp to private citizens.
- C. Washington had a limited activity pursuant to the 2014 Farm Bill.
- D. The 2018 Farm Bill broadly legalized the production and sale of hemp in the U.S. The 2018 Farm Bill amended the definition of “marihuana” in the CSA to explicitly carve out hemp. Hemp is generally defined as cannabis with a THC concentration of not more than 0.3 percent on a dry weight basis.

- E. The 2018 Farm Bill delegated rulemaking authority to the U.S. Department of Agriculture (“USDA”). The USDA issued final interim rules in late 2019, which have generated a significant amount of comments from stakeholders.
- F. Washington passes Senate Bill 5276, which provided the framework for commercial hemp production and sale.

#### IV. What’s the deal with CBD?

- A. Cannabidiol (“CBD”) is a non-intoxicating cannabinoid found in cannabis, including the hemp variety.
- B. CBD is listed as the active ingredient in Epidolex. Epidolex is an U.S. Food and Drug Administration (“FDA”) approved drug for the treatment of seizures.
- C. The current FDA position is CBD cannot be added to any item intended for human or animal consumption given its status as an approved drug.
- D. The FDA has limited authority over cosmetics and generally lacks authority to regulate CBD topicals.
- E. Washington regulators currently follow the FDA position, whereas, Oregon regulators broadly permit the marketing and sale of CBD food products.
- F. Regardless of the FDA position, the FDA has taken limited enforcement action against CBD companies. Most of its enforcement activities relate to unproven medical claims (*e.g.*, unproven claims that CBD cures or treats cancer).
- G. The FDA has previously ruled that certain parts of hemp are generally recognized as safe (“GRAS”).
- H. Food items with GRAS status are subject to limited oversight from the FDA.
- I. Congress has pressured the FDA to reconsider its position with respect to CBD and find a “workable” solution to including CBD in food products.

#### V. Washington Adult Use Laws and Regulations

- A. License Types
  - 1. Producer
  - 2. Processor
  - 3. Retailer
  - 4. Transportation
  - 5. Research

- B. License Application (RCW 69.50.331) Requirements
  - 1. Age: 21+
  - 2. Residency: At least 6 months in WA, if an entity look-through to owners
  - 3. Management/Agent: Must meet residency requirement
  - 4. Must be compliant with (child) support orders
  
- C. Vertical Integration – RCW 69.50.328 prevents a marijuana producer or processor from owning a direct or indirect interest in a retailer.
  
- D. Ownership Changes
  - 1. The proposed sale of 10 percent or more, or a proposed change in the officers, must be reported and approved by the LCB in advance. RCW 69.50.339(2). Administrative rules require advance reporting and approval of *any* ownership change. WAC 314-55-120.
  - 2. The transfer to a surviving spouse may be transferred without charge, but is still subject to approval by the LCB. RCW 69.50.339(1).
  - 3. Notice required upon any change in marital status. WAC 314-55-120(2).
  
- E. Death or Incapacity of a Marijuana Licensee (WAC 314-55-140)**
  - 1. Guardian, executory, administrator, trustee, or assignee must notify WSLCB in the event of death, incapacity, bankruptcy, or assignment of benefit of creditors.
  - 2. WSLCB *may* give the appointed guardian, executor, administrator, trustee, or assignee written approval to continue for the duration of the existing license and to renew upon expiry if (1) the person is a resident, and (2) passes a criminal background check.
  - 3. When the matter is resolved by the court, the true parties of interest must apply for a license for the business.

## VI. Oregon Adult Use Laws and Regulations

- A. License Types
  - 1. Producer
  - 2. Processor
  - 3. Wholesale
  - 4. Retailer
  - 5. Research

6. Laboratory

B. License Application – Grounds for Denial (ORS 475B.045)

1. Applicant is under 21 years of age.
2. In the habit of using alcoholic beverages, habit-forming drugs, marijuana or controlled substances *to excess*.
3. Has made false statements to the OLCC.
4. Is incompetent or physically unable to carry on management.
5. Has been convicted of violating federal law, state law, or local ordinance if conviction is related to fitness and ability to carry out licensed activities.
6. Is not of good repute and moral character.
7. Does not have a good record of compliance with OLCC laws/regulations
8. Is not the legitimate owner or fails to disclose owners.
9. Has not demonstrated financial responsibility.
10. Unable to understand the laws of the state relating to marijuana.

C. Application Process (OAR 845-025-1030)

1. If a legal entity is the applicant, look through rules generally apply to anyone holding a 10 percent or greater interest in the licensed entity. The applicant may need to disclose information with respect to anyone holding a less than 10 percent interest (direct or indirect).
2. OLCC has statutory authority to refuse to license producers based on supply and demand. OLCC is currently not issuing new producer licenses due to perceived oversupply.

D. Required Notice Provisions (OAR 845-025-1160)

1. Changes in contact information
2. Disciplinary proceedings
3. Temporary or permanent closures of the business
4. Arrest or conviction of an individual listed in an application (**w/in 24 hours**)
5. *Changes in financial interest or structure*
  - a) Must submit prior to change
  - b) A change in ownership that is 51 percent or greater requires a new application.

6. Change to operating location
7. Change or addition of trade name

**E. Death or Incapacity of a Licensee (OAR 845-025-1260)**

1. OLCC *may* issue temporary authority to operate a licensed business to a trustee or the personal representative of a deceased licensee *for a reasonable period of time to allow for orderly disposition of the business.*
2. Trustee or personal representative must provide certain information to the OLCC in order to obtain approval.
3. Temporary certificate initially issued for 60 days and may be extended for a reasonable amount of time to allow for the disposition of the business.

**VII. The Risks**

- A. Civil Asset Forfeiture
- B. Access to Banking
- C. Insurability
- D. Testamentary Capacity
- E. Conditional Benefits
- F. Applicable State Law