

Troutman Pepper Cannabis Communications Newsletter — October 25, 2023

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Troutman Pepper's Cannabis Practice helps clients throughout their business cycle enter or expand into the cannabis space. Our team combines the resources of attorneys in areas such as licensing and taxation, regulatory compliance, corporate and transactional, intellectual property, and real estate, among others, to provide comprehensive services.

Our Cannabis Practice provides advice on issues related to applicable federal and state law. Marijuana remains an illegal controlled substance under federal law.

BANKRUPTCY UPDATES

BANKRUPTCY IN THE CANNABIS SPACE

By Jean Smith-Gonnell, [Gary Marsh](#), [Michael Lafleur](#), and [Tori Lynn Remington](#)

Though controversial, cannabis has steadily grown into a booming industry. Despite this rapid growth and the legalization of cannabis in numerous states, cannabis is still classified as a Schedule I drug under the Controlled Substances Act (CSA). As cannabis is illegal under federal law, individuals and companies involved or related to the cannabis industry face an uphill battle when insolvency issues arise. Federal forums that traditionally address insolvency matters, such as bankruptcy, have historically been unavailable to those engaged in the cannabis industry, forcing them to seek state-controlled alternatives, such as receivership. However, as more and more states have legalized commercial transactions involving cannabis in some form, bankruptcy courts have begun to adopt two distinct paths: one for individuals and entities directly engaged in growing, processing, distributing, or selling cannabis products, and one for entities that are associated with cannabis more indirectly, which the bankruptcy system recently has been more open to.

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STATE UPDATES

OREGON ASPERGILLUS TESTING NO LONGER REQUIRED, BUT REQUIREMENTS VARY ACROSS STATES

By Jean Smith-Gonnell, [Zie Alere](#), and Christina Sava

As a result of a legal challenge by the Oregon Cannabis Industry Alliance and cannabis cultivators in Oregon, the Oregon Health Authority's (OHA) aspergillus fungus testing rule for marijuana, marijuana products, and industrial hemp concentrates and extracts has been withdrawn, and 2,500 pounds of marijuana plus 65,000 units of infused pre-rolls that failed aspergillus testing were released from administrative hold.

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MARYLAND CANNOT REQUIRE HEMP PRODUCERS TO OBTAIN STATE CANNABIS LICENSE, FOR NOW

By Jean Smith-Gonnell, [Michael Jordan](#), and Christina Sava

On October 12, hemp producers and retailers notched an early win in litigation challenging the legality of Maryland's cannabis licensing program as it applies to hemp. By way of background, the Maryland General Assembly recently passed the Cannabis Reform Act (CRA), after voters gave their stamp of approval to recreational cannabis in the state via a 2022 referendum. Rather than create a separate licensing system for hemp products, the CRA requires anyone selling a "product intended for human consumption or inhalation that contains more than 0.5 milligrams of tetrahydrocannabinol per serving or 2.5 milligrams of tetrahydrocannabinol per package" to be licensed as a cannabis business. "Tetrahydrocannabinol" (THC) is defined to include delta-8, delta-9, and delta-10 THC. This lack of distinction between hemp- and marijuana-derived products results in the inclusion of existing producers and retailers of hemp-derived THC products into the new cannabis program.

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