



**A Briefing on the
Marketing of Recreational Marijuana
in the US States': Regulations, Risks, and
Responsible Compliance and
Considerations for Enforcement**

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Executive Summary

The purpose of this briefing is to give an aggregate and acute understanding of the “letter” and spirit of the state laws, rules, and regulations related to marketing cannabis products. This briefing should assist any stakeholder in this enterprise (for or against the legalization) to develop responsible compliance programs and official enforcement in the marketing of this controlled consumer product. While some opposition to legalize marijuana use for adults exists among people and organized groups, a confluence of influences has catapulted the “evil weed” into public policy favor, consequently more states will pass laws to legalize the product and create a need for more oversight of the enterprise. It is important to note that even those groups that are avid supporters of legalizing use of cannabis believe that minors (defined by almost all state laws as under 21 years of age) should not have access to (sale or given) the substance and should not use it until they become informed adults on the effects of its use. While those supporting normalizing use of marijuana ostensibly do not want minors to smoke or use the substance, the history of how tobacco, alcohol, and vaping products have been advertised is a story of cat and mouse regulation, compliance, end enforcement. It is a history that should not be repeated as abuses of cannabis use will likely lead us to yet another public health crisis in the US. Therefore, one would hope that states that have passed laws or will pass laws to legalize marijuana include direct, clear, and unambiguous regulations on how to market the product, especially avoiding marketing practices that attract youth.

I conducted a close review of the laws and regulations by states that legalized marijuana, after which an *amalgamation* of the specific marketing (usually advertising) guidelines’ language was made. Results should give any stakeholder-- current or future—an acute and realistic profile of marketing restrictions and expectations of regulators for the communities served. The four major areas of regulation identified from this review are:

- To Whom the Product is Marketed
- The Channel Used for Marketing
- Where the Marketing Takes Place
- The Nature or Manner of the Marketing
- Explicit Wording Required on the Product
- Sponsorship

An overall finding in the language used in these state laws to restrict marketing to control youth access is commendable. The guards set up are robust and the language is clear. State legislators have made reasonable and responsible guards against attracting youth to this product. The marketing of these products, according to the letter of the law, is restrictive. However, to keep to the letter and intent of the law in action, I give *useful actions* for a compliance officer and state officials to consider, one of which is setting up a *Sales to Minors Compliance Check Program*. While there are many risks to consider and compliance priorities for a cannabis retail business enterprise, attracting minors to use and buy this product must be the highest priority. The metric that compliance officers and public officials need to use in the marketing and sales aspect of this business is *zero tolerance*, thus calling on any compliance officer in this business to work toward a high-quality marketing retail compliance program and for public officials to exercise strict enforcement of youth advertising and access restrictions.

Purpose of This Study

The purpose of this briefing is to give cannabis retailers in the US, and others involved in the marketing and sale of the product, and public officials charged with enforcing state oversight laws an acute understanding of both the “letter” and the spirit of the laws, rules, and regulations related to marketing cannabis products (advertising, promotion, public relations, direct marketing, and personal selling). The briefing should:

- a) assist a compliance officer in the development of a responsible compliance program in the area of marketing their products.
- b) have stakeholders consider the range of sociocultural, political, and ethical issues likely to arise when marketing marijuana in any community in the US.
- c) remind stakeholders that there is a history of health groups (government and nonprofit) critical of those responsible for the marketing of tobacco, alcohol, and recently vaping products that ostensibly have had strict laws to control their use, yet there have and continue to be shortcomings in efforts to stave youth access to tobacco, alcohol, and now vaping products. Many are skeptical that the cannabis retailer enterprise will not try to attract youth to use their product, and history shows that enforcement will be a cat and mouse exercise, for these “forbidden fruit” to youth substances.

Background and Rationale for This Briefing

After the November 2020 election in the US and into the first quarter of 2021, there were 15 states and 3 territories that approve the use of cannabis for adults. All but one state says adult purchase is set at 21 years of age and older. (National Conference of State Legislators, 2021). People across the world and time have had a range of attitudes toward the use of marijuana—medicinal or recreational. Beliefs, attitudes, use, and control of marijuana in the US have ranged from believing it is an elixir; to a harmless, mood-altering substance; to a substance with high potential for abuse, thus needing tight control; to recently hailed as having medicinal value for those seriously ill with a disease or condition. Beliefs, attitudes, and behaviors in the use of cannabis has changed dramatically in the US, as noted above. However, today the fact remains that marijuana is a Schedule I substance that has a high potential for abuse and has no medicinal value, thus it needs to be considered a controlled substance. Controlling the access of marijuana, no doubt, is similar to the rationale, awareness, education, public policies, and strategies used in the long and enduring challenge of youth access to tobacco.

The tension to resolve how we treat marijuana fits within the broader enduring tension between the American ideology of respect we have for strong individualism with the consideration we have for the common good. The fight to legalize marijuana in the US has been long and storied. The rationale to normalize use of marijuana ranges from the presumptions that adults are free to be foolish to recognition that there is some health risk to its use, but if used in moderation by the right people, in the right place, and at the right time, it should be legal. Furthermore, some argue that the restrictions for its use need to be no different than restrictions on adult use of tobacco, alcohol, and vaping products.

While some opposition to legalizing marijuana use for adults exists among people and organized groups, a confluence of influences has catapulted the “evil weed” into public policy favor. These include:

- successfully arguing that cannabis has medicinal value, thus 35 states have approved its use for medicinal purposes at some level (National Conference of State Legislators, 2021)
- dramatic change in public opinion in favor of adults using cannabis, but with strict controls (Quinnipiac, 20 April 2017; Shilton, 24 April 2021); Van Green 16 April 2021).
- state legislatures and governors acquiescing to its use, given much needed tax dollars that can be gained by states, and sometimes municipalities, that can be used for general-fund spending (Dsouza, 2020).
- investors looking to make money on a product they know will have loyal customers and a steady stream of new ones (Newsweek, 2016; p. 64-93).
- criminal justice advocates who aim to decriminalize its use and gain some financial restitution as many young minority men have been harmed by restrictive laws. They wish to share in the economic gains of this new enterprise (Newsweek, 2016, 58-63; 67).

More states will likely pass recreational marijuana laws for adults; thus, the demand for cannabis will grow and subsequently the need for more cannabis retailers will grow. Therefore, concerns about the marketing of cannabis in any way being attractive to youth and the access to these products should be a public policy and administrative oversight concern, given the history of other “forbidden fruit” products for our youth.

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Method of Review

To meet the purpose of this study as explained above, a close review of the laws and regulations by states that legalize marijuana was undertaken, after which an *amalgamation* of the specific marketing (usually advertising) guidelines language is made, thus giving any stakeholder—current or future—a realistic profile of marketing restrictions and expectations. I reviewed three main sources to understand the laws, rules, and regulations given by current states to control marketing of recreational marijuana. (See the group of activities that make up marketing, below.)

- National Conference of State Legislators at <https://www.ncsl.org/research/health/state-medical-marijuana-laws.aspx>
- Britannica ProCon.org <https://medicalmarijuana.procon.org/legal-medical-marijuana-states-and-dc/>

Each of these two nonprofit organizations (NCSL and Britannica) have credible information and links on their websites about state laws concerning recreational marijuana. Information on the laws regulating cannabis sales in these states is gained from moving around the many resources posted on these two sites. Both websites have links to the statutory language for each state’s law, or documents about a voter referendum or change in the state’s constitution.

Other information includes:

- name of bill, ballot, initiative, and year passed;
- dates passed and in effect;
- possession and cultivation limits;
- list of approved conditions for use; and
- link to other laws for cannabis use.

Another resource I used for this briefing is a review of the websites of the several entities designated by state law charged with writing rules and regulations for the sale of cannabis—through the pipeline. These entities have names such as department, office, bureaus, authorities, commissions, and programs.

In using these three sources, I closely reviewed the language in either the law or promulgated rules and regulations or both to determine what is expected of a retailer (do's and don'ts) in marketing this controlled product. (Raw data is available if requested.). It is important to understand the variance in the labels used for “marketing” any product. The marketing mix is traditionally made up of a group of activities:

- Public relations
- Advertising
- Sales promotion
- Direct marketing
- Personal selling

People tend to use the term “advertising” generally when they mean any way of promoting a product or service. For example, “We need to get the word out more [regarding a product or service] by doing more advertising.” Attributes in advertisements are not simply about the product but talk about the tangible features of a product/service to the demonstrated benefits gained by the user of the product/service, to the overall value perceived by the consumer, during or after using the product or service. I conducted word searches for each of the five terms above, plus the term “marketing” for any official documents directing retailers on the rules and regulations for marketing marijuana or cannabis.

Laws, and the subsequent rules and regulations, for marketing cannabis understandably focus on what not to do; almost to the point where one wonders why not simply state in the law what can be done to market the product. Given the health risks, regardless of some who argue the nature and extent of the risks of its use, rules, and regulations to de-market the products, so to speak, focus on:

- limiting messaging to those underage (21; 18 in one state) and making sure the messaging is targeted to adult users;
- guarding against the nature and extent of overselling the product for what it can do, i.e. not making health claims;
- making sure consumers know the health risks, including potential for addiction; and
- controlling where the product can be marketed, again mainly addressed in the advertising.

In reading the results of this close read of official language used by the states, a compliance officer and any official enforcement and oversight public entity should recommend to the owners of a cannabis retail stores the guards needed to prevent and mitigate risk in marketing their products to youth.

Findings

The findings from this close review of language used in the 15 states that legalize use of marijuana is organized in six major areas:

- To Whom the Product is Marketed
- The Channel Used for Marketing:
- Where the Product is Marketed
- The Nature or the Manner of Marketing
- Explicit Wording
- Sponsorship

An overall finding the language used in these state laws to restrict marketing to control youth access is commendable. The guards set up are robust and the language is clear. State legislators have made reasonable and responsible guards against attracting youth to this product. The marketing of these products, according to the letter of the law, is restrictive.

However, to keep to the letter and the spirit of these guards, in the full manuscript, I propose several recommendations that a compliance director can use to keep a retail store in line with state laws and most important demonstrate that the retail stores take seriously youth onset and purchase of cannabis products.

Summary and Implications

This briefing conducted a close read of the state laws and regulations of marketing (advertising, promotion, public relations, and personal selling) cannabis in the US (15 states to date). The language of the regulations is direct, clear, and unambiguous. I presented an *amalgamation of the marketing regulations explicated in these laws*. The regulations can be categorized into the following major areas:

- To Whom the Product is Marketed
- The Channel Used for Marketing
- Where the Marketing Takes Place
- The Nature or Manner of the Marketing
- Explicit Wording Required on the Product
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This briefing should give compliance officers and public officials charged with enforcement an acute understanding of the regulations in marketing cannabis in a current state that has legalized marijuana sales or for a retailer that is considering operating in a state that has recently legalized the sale of this product. In the full report, each area has *useful actions* for the compliance officer and enforcement officials to consider. One that is essential is setting up

a *Sales to Minors Compliance Check Program*, to thwart youth access to this product, and to demonstrate to community members that retailers take seriously the concerns about youth access to marijuana. Expecting this nascent industry to act responsibly to “control” minors’ use of these products is naïve. We have had decades of experience with youth onset to forbidden fruits — tobacco, alcohol, now vaping — and we know that the public health and school systems are no match for these enterprises’ marketing tactics.

While there are many risks to consider and compliance priorities for a cannabis retail business enterprise, attracting minors to use and buy this product must be the highest priority. Retailers of the cannabis products, and subsequently compliance officers of these businesses, must appreciate the hostility many legislators, community leaders, educators, substance abuse workers, and most of all parents have for the sale of cannabis in their community. The metric that compliance officers need to use in the marketing and sale aspect of this business is *zero tolerance*. There is no room or excuse for error in keeping to the marketing regulations, and there is no room or excuse for a sale to minors from these stores. While much is debated about the health effects, including addiction, of cannabis use, its overall safety, its value to society, and the ability of the industry to control its sales, this is a business where perception by those with all points of view may trump reality. Therefore, it is critical that any compliance officer in this business needs to work toward a high-quality marketing retail compliance program.

**For a copy of this full manuscript replete with references
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