



**CANNABIS
TRENDS IN 2021:
CGL TAKES A
LOOK AHEAD**

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Jennifer Gumer

*CGL's Cannabis
Practice Area Expert*

As a partner at CGL and our Regulatory and Compliance Practice Lead, Jennifer provides strategic counseling, practical advice, and expert advocacy to clients with production needs. As an Adjunct Professor of Law and Bioethics, she is uniquely qualified to handle all interactions with federal, state, and local regulators who oversee product development, manufacturing, and marketing activities, including the FDA and Local Hemp Regulators.

Prior to joining CGL, Jennifer worked at the international law firm Gibson Dunn and Crutcher for more than six years. The focus of Jennifer's practice at Gibson was FDA, healthcare, and life sciences matters.

How We Went: Looking at Last Year's Predictions

[Last year, we predicted the reduced investor interest](#) in the US cannabis markets and increased pressure on lawmakers, amongst other things. Let's dive in to how we went with our predictions:

Prediction: Reduced Investor Interest in US Cannabis Markets

As predicted, investors weren't looking at the cannabis market in 2020. The unfavorable tax environment and high compliance costs means low profits, and reduced investor interest. When you throw in the pandemic, it wasn't surprising to see that investors weren't showing much interest.

However, the US cannabis market increased by 40% in 2020 - from \$13.2 billion to \$19.13 billion. In California, the cannabis tax revenues in Q3 increased by a record 80% year-over-year. We're expecting that this will reinvigorate investor interest in the coming year.

Prediction: Regulatory Changes to the Cannabis Market

We predicted that we'd see lawmakers take steps towards reducing the regulatory load for cannabis businesses and increased enforcement against black market cannabis sales. Here's what happened:

Moving Away From Black Market Sales

The huge increases in sales in 2020 indicate that consumers are moving away from the black market weed to the legal retailers. This move can't necessarily be attributed to enforcement, especially since policing efforts have been hindered by budgetary restraints. It's actually likely that the pandemic was the driving force behind the switch, as fewer consumers want to invite strangers to their home to purchase cannabis products.

The MORE Act Passed the House of Representatives

As for reducing the regulatory load, the MORE (Marijuana Opportunity Reinvestment and Expungement) Act has passed the House of Representatives. This Act would be geared towards reshaping the treatment of cannabis at a federal level, including:

- Descheduling cannabis from the Controlled Substances Act,
- Removing the Section 280E restrictions (and allowing cannabis businesses to deduct expenses ordinarily deductible from their gross income),
- Introducing a federal excise tax;
- Ignoring certain cannabis-related offences in the applications of immigrants;
- Preventing federal agencies from denying benefits due to ties with cannabis; and
- Pathways for resentencing for people convicted with cannabis-related offences.

Its fate rests with the Senate now. The results will come down to the outcome of the run-off election in Georgia.

CANNABIS IN 2020

The Year in Review

Prediction: Greater Certainty About The Legal Status of Hemp

2020 wasn't the year for greater certainty about hemp legality, but we're hopeful 2021 will be! The Drug Enforcement Agency (DEA) made an Interim Final Ruling (IFR) about hemp which is seemingly inconsistent with The Farm Bill 2018. In its current form, the ruling potentially criminalizes the processing of hemp. Hemp is defined as containing less than .3% THC. The DEA stated that hemp may be converted to 'marihuana', which is illegal at the federal level, if the THC concentration is increased to an amount above .3% threshold at any stage during processing. Given that hemp extracts are specifically allowed under the Farm Bill, it is hoped that the DEA will clarify its position in its final ruling. We expect that to be released in February.

CANNABIS IN 2020

The Year in Review

New & Noteworthy in 2020

UN Removes Cannabis from Schedule IV

In December, the United Nations Commission on Narcotic Drugs removed cannabis from Schedule IV status of the 1961 Single Convention on Narcotics. This change recognizes the medicinal benefit of cannabis - a standpoint backed by the World Health Organization.

Cannabis is still recognized as a Schedule I drug when it comes to recreational use - like Fentanyl.

The FTC's Operation CBDeceit

This year, the FTC cracked down on companies making deceptive claims about the use of CBD in treating various health conditions. Six settlements were reached with companies who had made unsupported claims about how cannabinoids can be used to treat everything from pain to cancer to Alzheimers.

KEY INSIGHT: Oklahoma Issued the Most Cannabis Licenses in 2020

Health Warnings Required in California from January 3rd

Cannabis products will be required to display the proposition 65 health warning from January 3, 2021. This mandate includes hemp-derived CBD products, a change which is expected to catch some distributors unawares.

Going forward, every company selling products that produce marijuana smoke or contain THC in California needs to comply with the health warning law. It isn't limited to companies producing smokable products



The cannabis industry has largely thrived throughout the pandemic. Swift adaptations were made to cater to any mandated changes. Meanwhile, many new entrants to the legal market contributed to massive growth.

COVID-19 Spurred Warnings from the FTC

The FTC sent out 13 warning letters to companies in the US and globally regarding their claims about COVID-19. These companies, according to the FTC, had made unsupported claims about the effectiveness of CBD in the treatment of COVID-19 or the alleviation of symptoms.

Cannabis Designated Essential

California, Colorado, Illinois, Maryland, Michigan, New Jersey, New Mexico, New York, Ohio, Oregon, and Washington State all deemed the cannabis industry to be essential. These states all saw massive growth in their cannabis market during the year too.

Online Orders, Curbside Pickups, & Delivery

To align with the essential designation, cannabis retailers moved towards online orders, curbside pickups, and delivery. This movement has been a driving force behind the uptick in legal cannabis sales and is partially responsible for the thriving market.

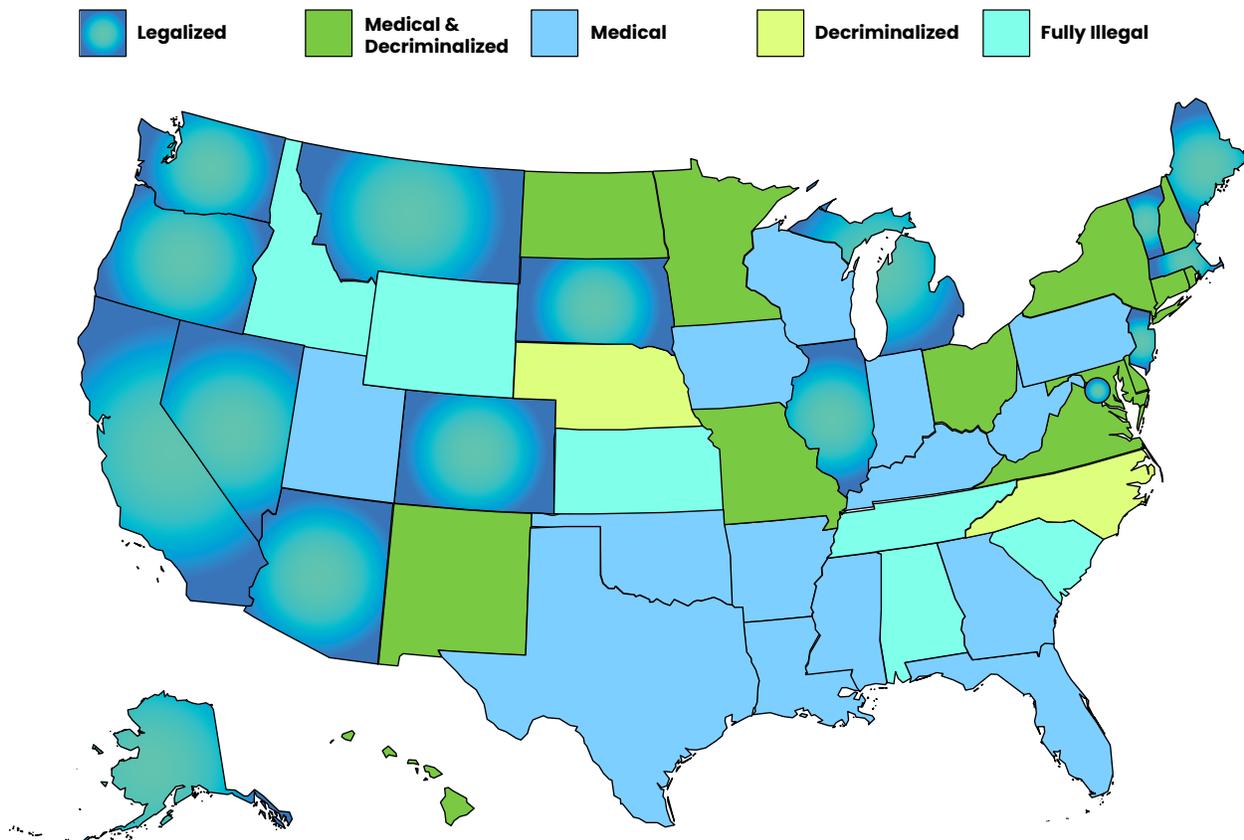
The market was likely headed in that direction in any event. But, like with many other industries, the pandemic accelerated change faster than we ever could have anticipated.

LEGAL STATUS ACROSS NORTH AMERICA

5 More States Legalized Cannabis in 2020

New Jersey, Arizona, Montana and South Dakota voted in favour of legalizing recreational cannabis usage.

Mississippi and South Dakota voted to approve medical markets for cannabis.



LEGAL STATUS ACROSS NORTH AMERICA



The State of Cannabis in California

The 2020 November Ballot saw more than 37 marijuana ballot questions in 35 cities in California. 31 of these were approved, demonstrating the growing support for cannabis legalization in California.

At present, fewer than one third of California cities and counties allow for legal cannabis operations. Many of the cities and counties which have legalized marijuana only support medical use.

A Note About Our Southern Neighbours in Mexico

The Mexican Senate approved a comprehensive marijuana legalization bill in mid-November 2020. Aimed squarely at legalizing recreational marijuana usage and industrial hemp, the Bill will be debated by the Mexican Lower House in February 2021.

It's widely expected that the Bill will undergo some further changes in February. From there, it will need to pass through the legislative approvals process again before being signed off by the President.

We expect it to take a few years before any meaningful changes occur. The bill requires a regulatory agency to be set up which, in turn, requires a budget and plenty of time. But, it does look like Mexico is on track to legalize cannabis for recreational use.

Overproduction in Canada

Canada's overproduction problem has led to an unprecedented increase in black market product crossing the border. 42,000 pounds of the drug were found by Buffalo customs between September 2019 and September 2020. Just 4,000 pounds were discovered in the previous 12 month period.

The majority of the product being illegally moved is high-quality marijuana with a significantly higher level of tetrahydrocannabinol (THC) than what's smuggled in from Mexico.

5 EXCITING PREDICTIONS FOR 2021

1 **CalCannabis Appellations Program will mean more niche products**

Governor Newsom signed the appellations program into law in September 2020. This law allows legacy cannabis farmers to market their product based on the unique character of the marijuana produced in their region. Mirroring the wine industry, cannabis growers will be permitted to highlight flavor and potency, while marketing different quality in the crop.

This paves the way for niche products to enter the market, creating greater diversity in pricing and demand. Premium growers can now charge premium prices for their sought after products. And will have the trademarks in place to protect their business.

2 **COVID-safe retail trends will continue**

Now retailers are permitted to sell products online and have them delivered, it's unlikely those rights will be taken away. We're expecting this move to attract further new entrants to the cannabis market.

Additionally, we'll likely continue to see consumers making larger orders – since online orders tend to be larger in both quantity and total dollar amount. We're looking forward to seeing the impact this has on the cannabis marketplace in 2021.

3 **Increased Social Equity**

The legalization of cannabis comes with two social responsibilities:

(i) The justice system must pave the way for those convicted of cannabis-related offences to be resentenced or have their convictions quashed.

(ii) Those most affected by cannabis criminalization must be given meaningful opportunities to participate in the legalized market.

Tiered licensing systems, alongside priority licensing for minority, women, and low-socioeconomic producers, are some of the mechanisms being used to achieve this at present. But, the industry should prioritize embedding these programs over the next 12 months.

5 EXCITING PREDICTIONS FOR 2021

4 **Legalization of recreational marijuana in 4 states**

New York looks poised to legalize recreational cannabis as early as possible in 2021.

Texas, as the second-most populous state in the US, is receiving significant attention from lobbyists. Meanwhile, more than one dozen bills have been introduced to either decriminalize or legalize recreational marijuana. There's plenty of hopeful people and politicians, but we'd be a little surprised if it passed through this year.

Connecticut, New Mexico, and Virginia are also taking strides towards legalization. Virginia, in particular, has considered two papers outlining the significant economic benefits legalized cannabis would offer the state - yet, it's only given 'slightly better than 50-50 odds' in the Senate.

Pennsylvania and Rhode Island are considering cannabis legislation, but both states face uphill battles. In Pennsylvania, the Republican-controlled Senate would be unlikely to pass any bill introduced. Meanwhile, the Rhode Island senate has previously opposed a plan introduced to legalize recreational use. The legislation was tabled in early 2020, but lawmakers seem more receptive to the proposal now - in light of the economic boost it offers.

5 **Improved access to financing**

The MORE Act promises to open up the traditional banking and financing services to the cannabis industry. If passed, it will pave the way for smoother transactions, increased liquidity, more competition, and higher valuations of cannabis companies.

As outlined in 'The Year In Review', the passing of this act would also legalize marijuana at the federal level. This paves the way for increased trade, while giving a further boost to competition by removing the 280E tax restrictions which currently prevent cannabis companies from deducting ordinary business expenses.

Looking for guidance navigating the Cannabis space?

Brian Boyle

Director of Business Development

Let's Talk

