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Cannabis Predictions for 2024

Client Bulletins

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It’s 2024, and while nothing ever stays the same in the world of cannabis, in a lot of ways, 2024 feels just like 2023, and 2022. More states have established medical and recreational cannabis programs, of course, but the major struggles crippling the cannabis industry remain: the heavy tax burden of IRS 280E; the inability to ship across state lines; no access to US institutional capital or public markets; devalued and depressed stock prices on the CSE and TSX; expensive back-office administration (aka, the “Cannabis tax”); price compression; unpaid bills; high interest rates for funding and real estate; cash flow (or lack thereof); crime; fraud; closures; break-ups; litigation; and the battle against the illicit market. That said, there are some significant things happening in the industry that will change things up in 2024 (for better or for worse or both).

1. Rescheduling: A Seismic Shift

The most significant change to the cannabis industry is likely coming this year. Within the next eight months, cannabis is likely to be rescheduled under the federal Controlled Substances Act^[1], from Schedule I, where it sits next to heroin, LSD and Ecstasy; to Schedule III, where it would sit next to Tylenol with codeine, ketamine, and anabolic steroids. The process began when President Biden directed the Secretary of Health and Human Services (HHS) to review the Schedule I designation in October 2022.^[2] HHS in turn recommended to the Drug Enforcement Agency (DEA) that cannabis be moved to Schedule III in August 2023. Since then, the cannabis industry has been closely watching and anticipating DEA’s response. Every week someone online who is “in the know” tells us that “this is the week” DEA will accept HHS’s recommendation. Alas, DEA has not done so yet but according to Michael Miller, DEA’s lead liaison to Congress, as of December 2023 “DEA [was] conducting its review...”^[3] Given that President Biden just spoke about cannabis in his State of the Union address on March 8,^[4] and despite the (expected) internal disagreements at DEA reported the other day,^[5] it seems clear that rescheduling is a priority for Biden’s reelection campaign.

While rescheduling does not legalize cannabis under federal law or allow for the sale of cannabis across state lines, it eliminates the massive tax burden imposed by IRS 280E that is crippling the growth of the industry.^[6] By prohibiting “normal” business deductions like payroll, rent, and marketing, regulated cannabis companies effectively pay taxes on their **entire gross income**, making profitability virtually impossible. To put this in perspective, in 2022, the top 10 multi-state cannabis companies (MSOs) owed a combined \$507M to the government in back taxes and penalties (that number is even higher now of course). When this was reported, [Green Market Report](#) analyzed the numbers and determined that if any of the MSOs were forced to fully pay their federal tax bills at that time, only one of the 10 – Green Thumb Industries – would have had more than 10 months’ worth of cash left with which to continue operating.^[7]

So, what could go wrong? Well, a lot of things. If DEA accepts HHS’s recommendation, the rescheduling decision will then undergo a notice-and-comment rulemaking process in which DEA will accept public comments for a period of time, likely 60 days.^[8] Additionally, DEA can hold a formal

administrative hearing in which interested parties may participate. The hearing is not on a timeline the way public comments are, so this could add to delays in rescheduling. Once the process is over, DEA could also request that HHS reevaluate cannabis considering additional information and comments, as DEA did with hydrocodone combination products, a process that stretched from 2004 until 2014.

Upon the conclusion of the comment period and administrative hearing, DEA will then review the entire record and issue its final rule. Depending on the outcome, judicial review is also a possibility. It is also possible that DEA does not accept HHS's recommendation, of course, despite the pressure being brought to bear by the public and President Biden.

Our Prediction: If rescheduling is to occur before the November presidential election, DEA will need to accept the recommendation by May to allow for the notice and comment period, potential hearings, and the effective date of the final rule, which will not occur until at least 30 days after it is published in the Federal Register.

2. Will SAFE Banking – the “Susan Lucci of Cannabis” – Finally Get a Win?

Not unlike actress Susan Lucci, who was nominated 19 times for an Emmy for her role as Erica Kane in soap opera *All My Children* before she finally won in 1999,[9] the SAFE Banking Act may finally take home the gold. The Act[10], which passed the House seven times and the Senate Banking Committee once (in the form of the SAFER Banking Act[11]) protects banking institutions that provide services to state-licensed, regulated cannabis companies, despite their federal illegality. Those services include access to mortgages, loans, low-cost bank accounts, and other banking-related needs. Senate Majority Leader Chuck Schumer (D-NY) told [Marijuana Moment](#) that a cannabis banking bill is a “very high priority” and that senators are “having very productive conversations” with House members to work out a deal for passage this year.[12] With the fire power of lobbyists for Amazon, Uber, PayPal, American Express and the American Bar Association behind the legislation, as noted in each of their 2023 Q4 public disclosures,[13] it seems that the SAFER Banking Act has more support than ever before.

The one-two punch of rescheduling cannabis and the enactment of the SAFER Banking Act would positively change the broken cannabis financial ecosystem that exists today. While banking is available, it is mostly through credit unions with exorbitant monthly fees just to maintain a small business account. On top of that, given the risk involved, cannabis companies are subject to what is essentially a constant audit of every dollar coming in and going out, as well as costly extras, like quarterly and annual audits. And, despite all of this, most cannabis companies cannot even access loans or other funding from their banks. The end result of the banking situation is that a significant amount of legitimate cannabis companies operate in all cash, leading to fraud, theft, violent crime, unpaid bills, and the overall impression that cannabis is still a “shady” business.

So, while rescheduling relieves the heavy tax burden, SAFER helps with the day-to-day financial operations and health of a cannabis business. Neither federally legalizes cannabis, but together, they have a significant positive and tangible impact.

Our Prediction: SAFER finally gets the gold; but don't expect institutions like J.P. Morgan Chase and Citibank to jump in until cannabis is federally legal.

3. Hemp-Derived D9 THC Will Finally Get Some Respect

Products containing hemp-derived Delta 9 (D9) THC,[14] the primary cannabinoid responsible for getting people “high,” entered the market with The Agriculture Improvement Act of 2018. Better known as the “2018 Farm Bill,” the law deems any *Cannabis Sativa L* plant testing at 0.3% Delta 9 THC or less on a dry weight basis to be “hemp.”[15] Anything testing higher (pun intended) is deemed a federally illegal drug under the CSA. After the 2018 Farm Bill passed, savvy extractors and manufacturers began using low-THC hemp and its derivatives (legal under the 2018 Farm Bill) to make high-THC distillate, which could be infused into products like edibles and had the same effect as higher-priced gummies purchased at a licensed and regulated cannabis dispensary. Suddenly, the

“regulated cannabis industry,” already hurting from the aforementioned list of woes (see page 1), had another competitor trying to take away market share. Worse yet, none of these hemp companies paid their dues (literally) the way the regulated cannabis operators did; they could ship across state lines; and they were coming up with new intoxicating cannabinoids all the time, some naturally occurring in the plant (albeit in tiny amounts) like Delta 8 (D8); and some synthetically created with other cannabinoids, like THC-O. It was new and controversial territory. It still is.

Depending on your perspective, hemp-derived THC is either the savior of the regulated cannabis industry, or part of its downfall. Whatever your view, there is no denying the economics. “The global market for hemp-based products is expected to account for a value of US \$1.8B in 2023 and jump to a size of US \$16.2B by the end of 2033. Sales of hemp-based products are expected to skyrocket at a CAGR[16] of 24.5% from 2023 to 2033.” [Hemp Based Products Market Size, Trend, Forecast 2023 to 2033 \(factmr.com\)](#).

But while the hemp industry is exploding, state legislation restricting intoxicating hemp products is exploding at the same time, and it is starting to look like an all-out assault. Legislation and regulation aimed at banning, or creating regulatory structures around, certain cannabinoids and/or products are pending all over the country, including South Carolina, Illinois, Florida, Texas, and Iowa, to name a few. In some places, like South Carolina, we have seen legislation to legalize medical cannabis pending at the same time as a bill banning most hemp products. Even though the stakeholders are fighting over the same *Cannabis Sativa L.* plant, their interests are very different.

At the federal level, legislators took a pass on amending the 2018 Farm Bill to prohibit intoxicating cannabinoids; but the opportunity to do so will come up again in September 2024. In the meantime, the hemp industry will continue to grow at warp speed while state legislators try to catch up and reign it in.

Ironically, all of this growth will be propelled by many of the same large cannabis MSOs that have spent years and significant money trying to achieve state-level bans on intoxicating hemp-derived products. One by one, large cannabis companies like [Kiva](#) and [Curaleaf](#), are launching hemp D9 versions of their best-selling regulated cannabis products so they can sell across state lines and direct-to-consumer. What changed their mind? Revenue, of course; but the success of THC beverage companies, many of which started out using regulated cannabis to infuse their drinks and sell to dispensaries (like [Cann](#)), and then moved to hemp D9 in order to expand nationally and direct-to-consumer online, gave the hemp industry the legitimacy it needed to attract MSOs.

Our Prediction: Products carrying hemp-derived cannabinoids like D8 and D9 are here to stay, especially with some of the biggest brands in regulated cannabis launching hemp-derived versions of their best-selling regulated cannabis products; however, compliance will be more important than ever before. *Side note:* We predict a decrease in D8 sales this year, but an increase in D9.

4. Hemp-Derived THC Beverages – the “Gateway Drug” for MSOs

2024 promises to be a big year for beverages infused with water soluble, hemp-derived D9 THC (“THC Beverages”). Increasingly, mainstream liquor stores and other shops across the country are starting to carry THC Beverages, which can also be shipped directly to your door in around 33 states. Some states, like Minnesota, have specifically legislated that THC Beverages belong in liquor stores with caps on the amount of THC per serving that can be sold (e.g., 5mg THC). Putting THC beverages in liquor stores next to beer and other alcoholic beverages has made Minnesota the No. 1 THC Beverage market - not because Minnesotans love their THC Beverages more than the rest of the country, but because of the accessibility of these beverages in liquor stores (sitting next to beer) versus the inaccessibility of dispensaries.

In other states, established beer, wine, and liquor stores are starting to carry THC Beverages without the benefit of a law like the one in Minnesota. In Illinois, major liquor-store chains like Binnys have started selling THC Beverages in their stores, demonstrating their belief that the financial upside to

adding THC Beverages to their stores far outweighs the downside risk, which could presumably include loss of their liquor license and/or insurance.

Our Prediction: We will see: (i) states passing laws like the one in Minnesota; (ii) established beer, wine, and liquor distributors and stores begin sales of THC Beverages, even without state legislation confirming legality; and (iii) THC beverages continue to be a small but important part of the overall industry, not just from a dollar perspective, but by bringing together former foes under one roof and creating a healthier alternative to alcohol.

5. THCA is in Trouble

Speaking of hemp-derived products, THCA became a hot topic and product in 2023, but it left everyone a bit confused as to how a preroll that looks, smokes, and has the same effect as a “normal joint” could be federally legal. THCA is the precursor to D9 THC, which is present in hemp and regulated cannabis. The “A” in THCA stands for acid, and until it is heated (or “decarboxylated” in lab terminology), it is legal under the 2018 Farm Bill, which only restricts D9 THC and does not mention THCA. Put another way, if you ate the plant material in a joint (THCA), you would not get high. To release the psychoactive effects of THCA, you need to heat it – e.g., roll a joint and light it on fire - and *voilà!* Non-intoxicating THCA becomes intoxicating D9 THC.

Because the 2018 Farm Bill does not mention THCA, and it is not prohibited under the federal Controlled Substances Act (CSA), shops carrying hemp-derived products across the country have capitalized on this language and sell “THCA prerolls” which, when smoked, have THC levels that are identical to prerolls coming from state-licensed, regulated cannabis operators. Understandably, licensed cannabis operators are up in arms that THCA prerolls are being sold in stores and online, as are state regulators who are catching on that consumers can buy the same THCA prerolls online (shipped to their door in another state, no less) as they can at a dispensary - and for a lower price.

The result? Draft amendments to existing state hemp laws, new regulations, and legislation across the country to restrict THCA prerolls by requiring that the post-decarboxylation test results be used to determine if the THCA is hemp under the Farm Bill. Post-decarboxylation THCA prerolls will test far above the 0.3% dry weight THC limit and therefore become illegal under these new rules.

Our Prediction: THCA becomes widely illegal by operation of various state laws, amendments, and regulations.

6. Cannabis Goes Global

Rounding out our predictions, 2024 will be the year cannabis goes global in a big way. The US and Canadian cannabis markets have matured, so it's no surprise that all eyes are on international markets. A **report** from Fortune Business Insights projected that the global cannabis market size was valued at US \$43.72B in 2022 and is projected to grow from US \$57.18B in 2023 to US \$444.34B by 2030, exhibiting an impressive CAGR of 34.03% during the forecast period.

To back up a bit, and to fair, cannabis is already global. Uruguay became the first country to legalize cannabis in 2013, with pharmacies beginning to sell cannabis four years later. Canada was the second country to legalize in 2018. In 2021, Malta became the first country in the European Union (EU) to legalize cannabis, followed by Luxembourg in June 2023, albeit only for “home grow” (up to four plants) and personal possession. Cannabis is also decriminalized in many EU countries, but not legalized in any official form. In the Netherlands, for example, cannabis is free flowing and available for purchase, but technically illegal. The Netherlands is just now beginning a regulated cannabis pilot program where “coffee shops” would only purchase plant material from cultivators approved and licensed under a new regulatory framework.

The EU country to watch this year, however, is Germany, which just voted to **legalize cannabis** in a two-phase approach, becoming the first major (and largest) EU country to permit the possession and purchase of small amounts of cannabis for recreational purposes, and using a “cannabis social club”

approach to selling. While Germany is poised to be one of the largest markets in Europe with robust imports, we are also watching the Czech Republic, which decriminalized cannabis possession in 2010, and has pending legislation that goes farther than Germany in terms of legalizing, with provisions for domestic cultivation, the establishment of social clubs, and the licensed sale of cannabis for people over the age of 18.

Outside of Europe, all eyes are on Colombia and Thailand. In Colombia, previous failed attempts at legalization have been resurrected in a bill supported by the President that is predicted to finally pass. Colombia is expected to become a major exporter of cannabis to other countries, due to its cheap labor and conducive growing environment.

Thailand, on the other hand, went from 0 to 100 mph, surprising the world with broad recreational legalization in June 2022 which resulted in an overnight market of cannabis growers and retailers, but without any regulation. In August 2023, a new conservative party came into power, running in part on a platform of rolling back the Thai cannabis market to medical only, causing whiplash for businesses and operators. Despite this, given the time that has passed since cannabis was legalized, and the potential export and tourism business, we believe the Thai government will pass regulations for tighter control rather than banning adult use altogether.

Like Thailand and Colombia, Africa is also poised to become a major exporting player given its growing conditions, weather, expansive and cheap land, water, electricity, labor costs, and ability to export. In 2017, Lesotho became the first country to legalize the cultivation, exportation, and use of medical cannabis in Africa. The land-locked country's high altitude and the government's focus on expanding irrigation systems supports the growth of cannabis companies like [Prosperity Farm](#), who are already growing at scale and exporting to other countries.

Our Prediction: 2024 will see an explosion of investment, partnerships, joint ventures, and acquisitions of international cannabis companies. *Side note:* We predict that THC Beverages will also grow dramatically in international markets with imports of brands from the US, and that this will further solidify THC Beverages as an important part of the domestic and global cannabis industry.

Every year in the cannabis industry is a bumpy ride - whether you are a plant touching company, an ancillary business, or an employee - but 2024 may be the bumpiest yet. Time to buckle up...again.

For additional information, please reach out to: **Alissa "Ali" Jubelirer** at ajubelirer@beneschlaw.com or **312.506.3442**.

[1] [21 U.S. Code § 812 - Schedules of controlled substances | U.S. Code | US Law | LII / Legal Information Institute \(cornell.edu\)](#)

[2] [Statement from President Biden on Marijuana Reform | The White House](#)

[3] [DEA tells House lawmakers marijuana review is ongoing \(punchbowl.news\)](#)

[4] [Biden touts cannabis moves in State of the Union \(Newsletter: March 8, 2024\) - Marijuana Moment](#)

[5] [DEA Officials Reportedly At Odds With Biden Admin Over Marijuana Rescheduling Push - Marijuana Moment](#)

[6] Rescheduling would also ease some of the strict controls on cannabis research and the licensing restrictions imposed by DEA as to both growers and producers of cannabis for research, as well as for the researchers themselves.

[7] [10 Multistate Cannabis Companies Owe Half a Billion in Federal Taxes \(greenmarketreport.com\)](#)

[8] Under 21 U.S.C. 811(d), DEA can skip the comment period, like it did when it rescheduled Epidiolex in 2018, but we believe this to be unlikely given the magnitude and significance of the change.

[9] [Susan Lucci - IMDb](#)

[10] [H.R.2891 - 118th Congress \(2023-2024\): SAFE Banking Act of 2023 | Congress.gov | Library of Congress](#)

[11] [Secure and Fair Enforcement Regulation Banking Act, S.2860 - 118th Congress \(2023-2024\): Secure And Fair Enforcement Regulation Banking Act | Congress.gov | Library of Congress](#)

[12] <https://www.marijuanamoment.net/schumer-touts-very-productive-marijuana-banking-talks-with-house-and-top-sponsor-says-bill-has-momentum-to-pass-this-year/>

[13] [Uber, Colorado Governor, Amazon, PayPal And Others Report Marijuana Lobbying On Banking, Rescheduling And More - Marijuana Moment](#)

[14] Delta-9-tetrahydrocannabinol is the cannabinoid that creates the feeling of euphoria or “high” when consumed or smoked. [What Is Delta-9? Safety, THC Effects, Legality \(healthline.com\)](#)

[15] The 2018 Farm Bill defines hemp as “the plant Cannabis sativa L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 [THC] concentration of not more than 0.3 percent on a dry weight basis.” [Text - H.R.2 - 115th Congress \(2017-2018\): Agriculture Improvement Act of 2018 | Congress.gov | Library of Congress](#)

[16] Compound Annual Growth Rate.

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