

Cannabis Law

Related Practices

Administrative Law & Regulation
 Business Services
 Gaming & Indian Law
 Government Policy & Practice
 Intellectual Property
 Labor & Employment
 Land Use & Zoning
 Leasing & Property Management
 Political Compliance, Elections & Campaign Finance
 Product Safety
 Real Estate
 Taxation

Related Industries

Financial Services Regulatory & Compliance
 Food & Beverage

Cannabis Law Practice

Dykema is a “go-to” firm for the full spectrum of legal and policy matters affecting the cannabis industry. Dykema attorneys and lobbyists have been working on matters relating to the cannabis sector for more than a decade, long before we officially launched our Cannabis Law practice in 2016. As a full-service firm representing many businesses in heavily regulated industries, Dykema is exceptionally well positioned to serve clients on cannabis-related matters. Dykema is widely admired for the quality of its work in practices such as licensing and regulatory, corporate and transactional matters, financial institutions, real estate, land use and zoning, tax, lobbying, political and policy, intellectual property, labor and employment, privacy and data security and food and beverage. Our Cannabis Law team includes members from each of these areas, in our offices throughout the United States.

Our work for clients involved in the business of growing, manufacturing, and selling cannabis and cannabis products is wide-ranging. It includes matters related to state and local licensing and regulatory compliance; mergers and acquisitions; real estate; capital raising and financing transactions; taxation; branding; and payments and banking matters. Many of these issues also affect clients not directly involved in cannabis businesses, but that engage in one or more ways with such businesses. In this regard, we advise entities such as financial institutions, commercial landlords, and lenders.

The cannabis industry presents exciting opportunities for established businesses as well as startups, as states and tribal governments have moved rapidly to authorize and regulate the cultivation, consumption and sale of cannabis for medical and/or recreational purposes. Yet, in particular, federal law remains a barrier. Apart from federal illegality, the constraints of federal law dramatically affect taxation of cannabis businesses and also impact financial institutions’ ability to serve customers in the cannabis space. Nevertheless, we foresee opportunities as well as challenges in this space, and have a top-flight team of professionals ready to help our clients achieve their business objectives.

Our Team

Dykema’s Cannabis practice is a cross-functional team comprised of attorneys and government policy advisors across a wide range of disciplines to best serve our clients in the cannabis industry. In addition to the team’s experience representing clients at Dykema, numerous members of our Cannabis team have served at the highest levels of government and prominent trade associations. This is reflected in the following senior positions they have held prior to joining Dykema:

- Counsel and Deputy Counsel to Governors of Michigan
- Chief Deputy Attorney General of the State of Michigan
- Chief of Staff to the Governor of Illinois
- General Counsel and Director of Strategic Affairs for the Michigan Senate

- Advisor to the Illinois Speaker of the House

Cannabis-Related Areas of Focus

Political and Policy Representation

With a bipartisan group of attorneys and registered lobbyists, as well as extensive relationships with lawmakers at the state and federal level, Dykema has a history of assisting cannabis-related clients with their political objectives. On behalf of clients, members of our Cannabis Law practice have played critical roles in establishing and helping to influence the creation and modification of state and local cannabis systems.

In 2007 and 2008, as counsel for the Coalition for Compassionate Care, Dykema helped draft and secure the overwhelming passage of the successful ballot initiative that created the Michigan Medical Marihuana Act, which was approved by Michigan voters by a more than 35 percent margin. Dykema attorneys and lobbyists were central to the passage of Michigan's Medical Marihuana Facilities Licensing Act in 2016, and to later amendments to allow for investment by public corporations. In Illinois, we have been involved in lobbying and licensing application work for cannabis industry investors.

We continue to lobby on behalf of cannabis associations and business clients today, representing cannabis-related clients in state and local legislative matters, educating lawmakers on cannabis-related issues, and testifying on cannabis-related proposals before state legislative committees and city councils. Dykema has also been involved in helping to draft or influence a number of local ordinances regarding cannabis.

Licensing and Regulatory Compliance

When it comes to licensing and regulatory matters, Dykema is uniquely positioned to assist cannabis-related clients. This is not the first industry in which Dykema played a lead role in citizen-led initiatives and the development of a regulatory regime — we built our casino gaming practice through the same type of early-stage involvement, starting with the development of a legislative and regulatory framework in Michigan and exporting that expertise to multiple other states.

Dykema attorneys have worked extensively with states to draft legislation and administrative rules in highly complex and highly regulated areas. As states continue to create cannabis-related regulatory structures, our experience with creating and working through the entire life cycle of regulated industries, combined with our cannabis-specific legal expertise, makes us an effective and strategic partner in the rulemaking process. Moreover, as state and local governments continue to enact heavily-regulated cannabis systems, we are able to assist clients with licensing applications from start to finish, including appeals, corporate entities and M&A, intellectual property, license agreements and real estate transactions. We are a leader in Michigan licensing activity, having successfully obtained state and local licensure for numerous clients, ranging from large vertically integrated corporations to single-owner standalone retail shops. As of September 2019, we represented over 50% of Michigan's licensed cultivation capacity.

And, our extensive experience in heavily-regulated industries, such as liquor and gaming, food and beverage, and pharmaceuticals, gives us the background to work with cannabis-related businesses and associations to assist in crafting programs to ensure that clients are in compliance with existing rules and regulations, or to work with clients to urge the creation of new rules or regulations.

Corporate and Transactional

The attorneys in Dykema's corporate and transactional practice group have extensive experience in a wide range of matters throughout the life cycle of a cannabis-related business, including entity formation, capital raising, financings, joint ventures, mergers, acquisitions and dispositions. Our attorneys also have prepared and negotiated many types of standard and customized agreements used by cannabis businesses, including term sheets and letters of intent, supply agreements, development agreements, investment/financial advisor engagement letters, distribution agreements, licensing agreements, employment agreements and independent contractor agreements. As a full-service firm, the corporate attorneys at Dykema work collaboratively with all of our specialists on corporate and transactional matters, including tax, real estate, environmental, intellectual property, labor and employment, employee benefits and insurance. Dykema's corporate practice group and its attorneys have been recognized as one of the premier corporate practice groups in the country. Because our

corporate attorneys have been advising cannabis businesses extensively, we have the experience and knowledge to advise cannabis clients in navigating the unique issues faced by such clients.

Real Estate and Land Use Entitlements

Long known as one of the largest and respected real estate groups in the Midwest, Dykema's real estate practice has become one of the most highly regarded practices in the country. Our attorneys represent clients with regard to the full array of real estate matters, including acquisition, construction, zoning and land use, leasing and property management, financing, regulatory compliance, and litigation.

Our real estate group continues to work on a broad variety of real estate acquisitions, leases, financial transactions and construction contracts involving the development of new cannabis related projects. Given the currently evolving statutory and regulatory environment, Dykema attorneys have focused on utilizing creative solutions to best serve property owners, tenants, developers and entrepreneurs is protecting their various interests while still moving the deal forward.

Dykema's land use and zoning team is recognized as leading the industry in obtaining land use entitlements. We routinely represent cannabis-related businesses with respect to zoning and land use approvals, including site plan approval, re-zoning, variances, special land use permits and related land use litigation and appeals.

As a result of our early and extensive involvement in this practice area, we have developed close relationships with title companies, contractors, insurance carriers and lenders who are finding unique solutions to serve cannabis related clients.

Taxation

Cannabis-related businesses face a complex task in complying with state and federal tax laws. Dykema's attorneys are well-versed to help clients comply with the evolving tax law landscape, as well as to assist with the structuring of cannabis businesses to achieve the most effective and efficient tax results.

Financial Institutions Regulation and Anti-Money-Laundering Compliance

Banking and payments issues are among the most pressing for participants in the cannabis industry: conducting business is difficult, to say the least, when money cannot be moved from one party to another through the usual banking and payments channels. And financial institutions themselves face daunting risks in attempting to serve customers in this space. To help clients navigate this reality, we offer a world-class team of attorneys widely recognized as leaders in financial institutions regulation, payments systems, and Bank Secrecy Act (BSA)/anti-money-laundering (AML) compliance.

Intellectual Property

While many aspects of intellectual property protection are governed by Federal Law, Dykema attorneys are experienced in providing counseling to protect cannabis-related businesses under state law using the state trademark registration systems and protecting ancillary products and services by securing federal trademark registrations, when possible. Dykema attorneys can advise businesses on steps to take to strengthen and position trademark rights for the future, including proactive steps to help businesses can take now to be "first in line" when changes in the law do come. Our trademark attorneys are also on the forefront of policy changes and stay abreast of developments to ensure we are positioned to obtain federal protection for trademarks in this evolving area. We also work with our policy and regulatory colleagues to provide counsel in this nuanced and ever-changing area.

Labor and Employment Counseling and Litigation

Whether your business operates in the cannabis industry or you otherwise have concerns about how the medical and recreational cannabis laws impact your workforce, Dykema can assist you with making critical risk averse decisions regarding your employees or independent contractors. Cannabis concerns range from modification of employee handbooks, to handling leave and/or disability issues, to implementing new drug-testing and screening practices that comply with emerging laws and industry regulations. We are constantly monitoring the legal treatment of medical and recreational cannabis laws at both the state and national level and providing our clients with the most up to date guidance. A simple

audit of your employment practices is an efficient first step to gauge whether your business is compliant with new laws and implementing best practices.

Privacy and Data Security

Businesses in the cannabis space face privacy and data security issues relevant to many businesses of other types, as well as those specific to the healthcare sector.

Our Privacy & Data Security attorneys bring to the table experience and knowledge of sectors and practice areas such as information technology, financial privacy, intellectual property, and health privacy and security. Several of our attorneys hold the CIPP certification, which represents the “gold standard” credential for privacy professionals.

With regard to patient healthcare information, Dykema’s interdisciplinary team of attorneys provides the full range of customized services and solutions for compliance with the Health Insurance Portability and Accountability Act (HIPAA) and the 2009 Health Information Technology for Economic and Clinical Health Act (HITECH), which was operationalized in January 2013 with the promulgation of an implementing Omnibus Rule. Our services include counsel on HIPAA requirements; preparation for and assistance with government HIPAA audits; assisting clients in responses to complaints and government HIPAA investigations; drafting and reviewing HIPAA and HITECH forms, policies, procedures and business associate agreements; designing and implementing HIPAA compliance plans; training staff; developing breach response plans; and managing HIPAA-protected information in litigation.

Food and Beverage

Dykema has experience with advising clients in the food and beverage industry as it relates to hemp and traditional cannabis derived products. Dykema attorneys regularly work with FDA and USDA regulators to explore and resolve cannabis product issues. Clients who wish to use hemp and cannabis derived products in foods, beverages and dietary supplements need to understand the nascent regulatory framework in which they are operating.

Experience Matters

A sampling of cannabis-related experience:

- Represented proponents of Michigan Proposal 1 of 2008, creating the state’s medical marijuana system.
- Advocated on behalf of a medical marijuana association with regard to legislation to create a regulated medical marijuana system in Michigan, the Michigan Medical Marijuana* Facilities Licensing Act.
- Represented dozens of Michigan companies in successfully obtaining medical marijuana facilities licenses, with a 100% success rate, including Michigan’s first licensed grower.
- Successfully challenged initial license denials by Michigan’s now defunct Licensing Board.
- Led mergers, acquisitions, capital raising, and financing transactions for numerous cannabis companies.
- Negotiated leases for large commercial cannabis grows, processing facilities, and retailers.
- Counseled cannabis-related clients with regard to intellectual property laws, including trademarking names and logos for cannabis-related businesses.
- Advocated on behalf of an entity seeking a medical marijuana industry licensure in Illinois.
- Served as counsel to medical marijuana organizations and companies seeking to influence local regulatory and zoning ordinances in Detroit, Lansing and numerous other Michigan municipalities.
- Oversaw zoning and real estate matters for an Illinois-based medical marijuana company.
- Represented a California business on business structure and capital raising activities.
- Represented a company with cannabinoid medications in pharmaceutical litigation.

Cannabis Law (Cont.)

- Counseled various business clients with regard to employment matters and policies related to employee cannabis use.
- Assisted various cannabis-related organizations with nonprofit and campaign finance compliance.
- Advised investors in dispensaries and CBD oil companies.
- Handled SEC-related issues for cannabis-related business executive.
- Represented manufacturers of cannabis derived products with FDA compliance issues.
- Represented growers with USDA compliance matters.
- Represented manufacturers of cannabis derived products with labeling and advertising issues.
- Updated employee handbooks to comply with emerging cannabis laws.
- Revised drug and alcohol policies to comply with new federal regulations regarding employees that are classified as “safety sensitive”.
- Assisted client with medical leave request by employee for drug treatment accommodation.
- Represented numerous property owners, tenants, entrepreneurs and business entities in the purchase, leasing, construction and development of cannabis grow, processing and dispensary facilities.
- Represented clients in successfully obtaining site plan approval, special land use permits and/or conditional zoning for cannabis grow, processing and dispensary facilities.

Leadership

Dykema and members of the firm are proud to serve as members of:

- The State Bar of Michigan Marijuana Law Section
- The National Cannabis Bar Association

Visit Our Cannabis Law Blog

Dykema’s Cannabis Law Blog discusses important cannabis-related legal developments, reviews the practical implications of those developments, and provides valuable insight for anyone interested in this area of law. www.cannabis-law-blog.com

Publications

“Cannabis Cos. Can’t Ignore TCPA Compliance”

August 28, 2020

Law360

“Cannabis Regulations and EHS – An Overview”

December 12, 2019

Cannabis Business Executive

"Outlook Hazy For Cannabis TMs Under Unlawful Use Doctrine"

August 22, 2019

Law360

“Marijuana in the Texas Workplace”

March 1, 2019

ACC Docket (South/Central Texas Edition)

"Weighing Investments in an Exploding New Industry"

February 2017

Marijuana Venture Magazine Vol. 4 No. 2

Cannabis Law (Cont.)

"Hazy Future for Federal Registration of Marijuana Marks"

January 4, 2017

Westlaw Journal Intellectual Property

"Cannabis on Tribal Lands: An Alternative to Michigan Regulation of Marijuana"

August, 2016

Michigan Bar Journal

Speaking Engagements

Next Steps under the Michigan Medical Marijuana Facilities Licensing Act: Rulemaking, Conference Chair, CLE International

Michigan Medical Marijuana Conference, Lansing, Michigan

April 24, 2017