### CHAPTER 1. MARIJUANA OVERVIEW

- § 1:1 Overview
- § 1:2 Terminology
- § 1:3 Public opinion and marijuana legalization
- § 1:4 Psychoactive properties and effects of marijuana
- § 1:5 Medical use of marijuana
- § 1:6 Marijuana and driver impairment

# CHAPTER 2. MARIJUANA REGULATION IN THE UNITED STATES

- § 2:1 Overview
- § 2:2 Prohibition of marijuana
- § 2:3 —History of federal legislative marijuana policy—The Marihuana Tax Act of 1937
- § 2:4 —The Boggs Act of 1951 and The Narcotics Control Act of 1956
- § 2:5 The Controlled Substances Act of 1970 and The shafer commission
- § 2:6 The Rohrabacher-Farr amendment of 2014
- § 2:7 The 2014 and 2018 United States Farm Bills— The 2014 Farm Bill
- $\S~2:8$  — The 2018 Farm Bill
- § 2:9 —Marijuana and the Supreme Court of the United States—Leary v. United States (1969)
- § 2:10 ——U.S. v. Oakland Cannabis Buyers' Cooperative (2001)
- § 2:11 ——Gonzales v. Raich (2005)
- § 2:12 The Controlled Substances Act Of 1970—CSA Provisions and Penalties
- § 2:13 ——Marijuana as a Schedule I Drug
- § 2:14 ——Hemp and CBD regulation under the CSA
- § 2:15 —Enforcement of the CSA—Drug Enforcement Administration and the CSA
- § 2:16 ——Department of Justice and the CSA
- $\S 2:17$  — The 2009 Ogden memo
- $\S~2:18$  ———The 2011 Cole memo
- § 2:19 ———The 2013 Cole memo
- § 2:20 ———The 2014 Cole memo
- § 2:21 ———The 2018 Sessions memo
- $\S~2:22~$  —Marijuana research and clinical studies under the CSA

§ 2:23 -Food and Drug Administration and the CSA -Banking and taxation of marijuana as schedule I § 2:24 controlled substance—Financial institutions § 2:25 — —Taxation State decriminalization, legalization, and preemption— § 2:26 Changing public opinion - State decriminalization of marijuana § 2:27 § 2:28 — — Medical use states ——Recreational use states § 2:29 —Federal preemption and state legalization of § 2:30 marijuana

### CHAPTER 3. BRIEF HISTORY OF MARIJUANA LEGALIZATION IN MASSACHUSETTS

- § 3:1 Overview
- § 3:2 Decriminalization of marijuana possession
- § 3:3 Medical use marijuana
- § 3:4 Adult use marijuana
- § 3:5 Regulation of hemp & CBD—Definitions
- § 3:6 —Regulation of hemp
- § 3:7 —Regulation of CBD

# CHAPTER 4. MARIJUANA IN MASSACHUSETTS: LEGISLATION, STATUTES, AND REGULATIONS

- § 4:1 Overview
- § 4:2 Enabling legislation
- § 4:3 Statutes
- § 4:4 Regulations
- § 4:5 Medical use marijuana
- § 4:6 —Qualifying patients & medical conditions
- § 4:7 —Qualified patient registration
- § 4:8 —Clinicians & Health care Providers
- § 4:9 —Personal caregivers
- § 4:10 —Caregiving institutions & institutional caregivers
- § 4:11 —Use of medical marijuana: locations & methods
- § 4:12 —Marijuana treatment centers
- § 4:13 ——Licensing
- § 4:14 ——Operational requirements
- § 4:15 —Home cultivation—Hardship cultivation registrations
- § 4:16 —Home delivery
- § 4:17 —Advance contactless ordering
- § 4:18 —Governmental oversight & reporting

§ 4:19 —Enforcement & penalties § 4:20 —Medical use marijuana program online system § 4:21 Adult use marijuana § 4:22 —Personal use § 4:23 —Marijuana establishments § 4:24 —Marijuana establishment agents § 4:25 —Colocated operations § 4:26 —Licensing § 4:27 —Oversight & enforcement

# CHAPTER 5. CANNABIS CONTROL COMMISSION

•	O 1112	
§	5:1	Overview
§	5:2	Enabling legislation & statutory authority
§	5:3	Purpose of the CCC
§	5:4	Structure & function of the CCC—Appointment & role
		of a Commissioner
§	5:5	—Removal of a Commissioner
§	5:6	—Administrative functions of the CCC
§	5:7	—Cannabis Advisory Board
§	5:8	—Cannabis Social Equity Trust Fund
§	5:9	Licensure—Role of the CCC in licensure
§	5:10	—Overview of license types
§	5:11	—Limits on licensure
§	5:12	Social equity provisions
§	5:13	—Social equity program
§	5:14	—Certified economic empowerment priority applicant
§	5:15	—Benefits of social equity provisions
§	5:16	—Suitability for social equity provisions
§	5:17	—Inclusion of underrepresented groups
§	5:18	CCC rulemaking & regulation
§	5:19	—The rulemaking process
§	5:20	—Sources of proposed regulations
§	5:21	—Judicial review of regulations
§	5:22	—Guidance documents
§	5:23	Oversight
§	5:24	—Audits
§	5:25	—Complaint process
§	5:26	—Inspections & compliance
§	5:27	—The secret shopper program
§	5:28	—Warrantless inspections & the fourth amendment
§	5:29	—Subpoena power & compulsory process
§	5:30	Enforcement
§	5:31	—Deficiency statements & plans of correction
8	5.32	—Enforcement mechanisms

	Marijuana and					
§ 5:33	Adjudicatory proceedings with the Cannabis Control					
§ 5:34	—Right to a hearing for adverse actions taken by the CCC					
§ 5:35	—Process for adjudicatory hearings					
§ 5:36	—Review of a CCC final decision					
§ 5:37	Public access to the CCC					
§ 5:38	—Freedom of Information Act & Massachusetts Public Records Law					
§ 5:39	—Open meeting laws					
	CHAPTER 6. LOCAL ZONING &					
MUN	VICIPAL ISSUES					
§ 6:1	Overview					
§ 6:2	Bylaws and ordinances					
§ 6:3	Limits on local control—Banning or limiting marijuana treatment centers and marijuana establishments					
§ 6:4	Bylaws and ordinances—Limits on local control— Conversion from medical use to adult use					
§ 6:5	<ul> <li>— Buffer zones, transportation, and signage</li> </ul>					
§ 6:6	—General vs. Zoning bylaws & ordinances					
§ 6:7	Zoning for marijuana facilities					
§ 6:8	—Traditional Zoning vs. Overlay Districts					
§ 6:9	—Agricultural uses					
§ 6:10	Municipal role in marijuana licensing—Community Outreach Meeting					
§ 6:11	—Local permitting					
§ 6:12	<ul> <li>Minimum acceptable equity standards governing municipalities and host communities</li> </ul>					
§ 6:13	——Promoting full participation in the industry					
§ 6:14	——HCA negotiations with equity parties					
§ 6:15	<ul> <li>— Equity standards for host communities to</li> </ul>					
	positively impact communities that were disproportionately harmed by marijuana prohibition and enforcement					
§ 6:16	—Host community agreements—CCC oversight					
§ 6:17	— —Waivers					
§ 6:18	——Basic terms and conditions					
§ 6:19						
§ 6:20						
§ 6:21	<i>v</i> 1					
§ 6:22	- · · · · · · · · · · · · · · · · · · ·					
§ 6:23						
§ 6:24	—Delivery of medical marijuana					
§ 6:24 § 6:25	—Delivery of adult use marijuana					
S 0.20	—Delivery of addit use marijuana					

Home cultivation—Home cultivation for adult use

—Home cultivation for medical use

§ 6:26

§ 6:27

- Appendix 6A. Cannabis Control Commission Municipal Zoning Tracker
- Appendix 6B. Example of Marijuana Zoning Ordinance Zoning Ordinances of the City of Cambridge

## CHAPTER 7. BUSINESSES IN THE MARIJUANA INDUSTRY

- § 7:1 Overview 8 7:2 Types of busin
- § 7:2 Types of businesses—Medical use
- § 7:3 —Adult use
- § 7:4 — Marijuana cultivator
- § 7:5 ——Craft Marijuana Cooperative
- § 7:6 — Marijuana Product Manufacturer
- § 7:7 — Marijuana Retailer
- § 7:8 ——Marijuana Transporter
- § 7:9 — Marijuana research facility
- § 7:10 ——Laboratories
- § 7:11 ——Microbusiness
- § 7:12 ——Marijuana Courier & Marijuana Delivery Operator
- § 7:13 ——Social consumption establishment
- § 7:14 Application and licensing process—Cannabis Control Commission
- § 7:15 —Community outreach meeting
- § 7:16 —Host Community Agreements
- § 7:17 —Zoning and bylaw compliance
- § 7:18 —CCC application process
- § 7:19 Operations—Agents
- § 7:20 —Products: Flower, Edibles, Oil, Wax, Tinctures, Infusions
- § 7:21 —Testing
- § 7:22 —Compliance
- § 7:23 —Seed-to-Sale tracking
- § 7:24 —Other operational issues
- § 7:25 ——Banking & taxation
- $\S~7:26$  ——Insurance
- § 7:27 ——Contracts
- § 7:28 ——Liability under RICO
- § 7:29 ——Intellectual property protections
- § 7:30 ——Transport of marijuana and marijuana products
- § 7:31 Enforcement

# CHAPTER 8. BANKING, TAXATION, AND THE MARIJUANA INDUSTRY

§ 8:1 Overview

§ 8:2	Banking and the marijuana industry—Lack of access to banking
§ 8:3	—The Controlled Substances Act and financial institutions
§ 8:4	—Federal banking laws and marijuana
§ 8:5	—Federal guidance for financial institutions
§ 8:6	—Proposed federal legislation
§ 8:7	—Marijuana-Related businesses and financial institutions in Massachusetts
§ 8:8	Taxation and the marijuana industry—Federal issues with taxation
§ 8:9	——280E: Denial of business expense deductions and credits
§ 8:10	— —Cost of goods sold deductions
§ 8:11	——Tax issues for purchasers of marijuana
§ 8:12	——Proposed legislation
§ 8:13	—Taxation in Massachusetts

### CHAPTER 9. LANDLORD/TENANT ISSUES

- § 9:1 Overview
- § 9:2 Marijuana and commercial landlord tenant issues— Lease agreements and marijuana industry tenants
- § 9:3 —Liability under the Racketeering Influenced Corrupt Organizations Act
- § 9:4 —Risk of asset forfeiture
- § 9:5 Marijuana and residential landlord tenant issues— Consumption, home cultivation, and lease agreements
- § 9:6 —Medical marijuana and reasonable accommodations
- § 9:7 Public housing admission, existing residents and medical marijuana—Admission to public housing
- § 9:8 Marijuana and residential landlord tenant issues— Public housing admission, existing residents and medical marijuana—Existing public housing residents

## CHAPTER 10. EMPLOYMENT AND MARIJUANA

- § 10:1 Overview
   § 10:2 Employer rights—Policies prohibiting marijuana use
   § 10:3 —Workplace drug testing—Employer's interest in drug testing for marijuana use
   § 10:4 —Employee's reasonable expectations of privacy
- and public employers
  § 10:5 — Difficulties of testing for marijuana
- § 10:6 —Pre-employment inquiries
- § 10:7 Employee rights—Recreational use outside of the workplace
- § 10:8 —Reasonable accommodation for medical use— Americans with Disabilities Act

§ 10:9 — Massachusetts protections against handicap discrimination
 § 10:10 — Union protections
 § 10:11 — Worker safety
 § 10:12 — Worker's compensation and medical marijuana
 § 10:13 — Termination—Wrongful termination
 § 10:14 — Unemployment

# CHAPTER 11. PROFESSIONAL RESPONSIBILITY FOR LAWYERS

- § 11:1 Overview
- § 11:2 Representing marijuana related businesses—Conflict between state and federal law
- § 11:3 —IOLTA issues
- § 11:4 Investment in marijuana related businesses
- § 11:5 Lawyers and personal use of marijuana

### CHAPTER 12. MASSACHUSETTS CRIMINAL MARIJUANA STATUTES AND PENALTIES IN MASSACHUSETTS

- § 12:1 Overview
- § 12:2 Effect of decriminalization and legalization of marijuana
- § 12:3 —Reasonable suspicion
- § 12:4 ——The stop
- § 12:5 ——Exit order
- § 12:6 ——Patfrisk
- § 12:7 Probable cause
- § 12:8 Effect of decriminalization and legalization of marijuana—Probable cause—Warrantless motor vehicle search
- § 12:9 ——Search incident to arrest
- § 12:10 ——Search based upon warrant
- § 12:11 ——Criminal complaint
- § 12:12 Possession, distribution, cultivation and trafficking— Simple possession
- § 12:13 ——Identification of marijuana as a substance
- § 12:14 —Possession with intent to distribute
- § 12:15 ——Proof of intent to distribute
- § 12:16 ———Social sharing
- § 12:17 ———Quantity
- § 12:18 ———Packaging
- § 12:19 ———Items associated with distribution
- § 12:20 ———Lack of smoking paraphernalia
- § 12:21 ———Expert testimony
- § 12:22 —Unlawful cultivation

§ 12:23	— —Medical marijuana	
§ 12:24	—Trafficking	
§ 12:25	Open containers	
§ 12:26	Diversion purusant to G.L.	c. 111E, § 10
§ 12:27	Drug court	
§ 12:28	Use of marijuana while on	probation
§ 12:29	—Use of medical marijuan	a
§ 12:30	—Adult use of marijuana	
§ 12:31	Criminal record sealing an	d expungement
Appendix	Cultivation with	tion Regarding Unlawful Medical Marijuana tion Registration: Sixty-
Appendix	Cultivation with	tion Regarding Unlawful Medical Marijuana tion Registration:

# CHAPTER 13. OPERATING UNDER THE INFLUENCE OF MARIJUANA

§ 13:1	Overview
§ 13:2	Elements of OUI—Marijuana
§ 13:3	—Operation
§ 13:4	—Public way
§ 13:5	Under the influence of marijuana
§ 13:6	Elements of OUI—Under the influence of marijuana—Per Se Laws
§ 13:7	Proof of impairment
§ 13:8	Elements of OUI—Under the influence of
	marijuana—Proof of impairment—Chemical testing
	for marijuana
§ 13:9	— — — Circumstantial evidence
§ 13:10	— — — Opinion evidence
§ 13:11	———Drug recognition experts
§ 13:12	————Development & validation of the DRE
	program
§ 13:13	———DRE training & certification
§ 13:14	————DRE impairment, drug classification, and
	the DRE drug matrix
§ 13:15	————The 12-Step DRE protocol
§ 13:16	————The scientific reliability of the 12-Step DRE
	protocol
§ 13:17	————DRE case law comparison
§ 13:18	————DRE case law in massachusetts
§ 13:19	Diversion pursuant to G.L. c. 111E, § 10
§ 13:20	Registry of motor vehicles

- § 13:21 —Immediate threat suspensions
- § 13:22 —OUI—Marijuana suspensions

Appendix 13A. Model Jury Instruction Regarding Roadside
Assessments for Use in Prosecutions for
Operating While Under the Influence of
Marijuana

### CHAPTER 14. MARIJUANA IMPAIRMENT AND DRIVING

- § 14:1 Overview
- § 14:2 Chemical properties of THC
- § 14:3 Pharmacokinetics of THC
- § 14:4 Correlation between THC and THC-COOH blood concentrations and time of use
- § 14:5 Metabolism of THC
- § 14:6 Retrograde extrapolation
- § 14:7 Physiological effects of THC
- § 14:8 Marijuana use and driving performance
- § 14:9 —Report to Congress on Marijuana-impaired driving
- § 14:10 —Virginia Beach study
- § 14:11 —Drummer et al. study
- § 14:12 —Tables

# CHAPTER 15. PHARMACOLOGY OF MARIJUANA

- § 15:1 Overview
- § 15:2 Source of marijuana and active cannabinoid compounds
- § 15:3 Pharmacokinetics
- § 15:4 —Absorption & distribution
- § 15:5 —Metabolism and elimination
- § 15:6 Pharmacodynamics
- § 15:7 —Mechanisms of action—Receptor sites
- § 15:8 —Effects of marijuana
- § 15:9 ——Physiological & behavioral effects
- § 15:10 ——Duration of effects
- § 15:11 Medical & therapeutic uses—Medical uses in massachusetts
- § 15:12 —Therapeutic use of marijuana & marijuana products
- § 15:13 Dependence, abuse & withdrawal—Dependence & abuse
- § 15:14 —Withdrawal

#### Table of Laws and Rules

#### **Table of Cases**

### Index