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The Incredible Edible: Protecting Businesses and Consumers in a Society of Legalized Cannabis

Brandon Mikhail Thompson*

INTRODUCTION

The legalization of recreational marijuana has proven to be a very lucrative decision for the American economy.¹ The financial appeal, coupled with its purported medicinal benefits, has allowed marijuana to rise above both its “noxious weed” moniker² and social stigma to become a product that is not only accepted but, in certain circumstances, recommended. Nonetheless, nothing exists in a single-faceted vacuum, and the legalization of marijuana is no exception.

Despite the pros mentioned above, marijuana is still considered a hazardous controlled substance³ with, as will be discussed shortly, chemical properties that carry many inherent dangers. As such, there are proponents who adamantly seek to have marijuana’s legalization rescinded.⁴ Conversely, there are others who would like to further expand to scope of the drug’s availability.⁵ And then, there are those who take no issue with marijuana’s legal status, but request provisions established from a liability perspective for consumers, manufacturers, and distributors alike.⁶ It is from the latter viewpoint that this article stems.

Part I of this Article will briefly discuss the history and origin of marijuana, or more precisely the cannabis plant, before branching into an examination of its chemical properties, forms, and uses. The section will conclude with a brief highlight of the differences between medical and recreational use of the drug.

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¹ In 2016, marijuana was a 6.7 billion-dollar industry in North America. It is expected to increase to \$20.2 billion by 2021. See Thomas Stufano, *Through the Smoke: Do Current Civil Liability Laws Address the Unique Issues Presented by the Recreational Marijuana Industry?*, 34 *TOURO L. REV.* 1409 (2018).

² See generally Univ. of Ga., *Hemp/marijuana (sativa): Cannabis sativa L*, CTR. FOR INVASIVE SPECIES & ECOSYSTEM HEALTH, <https://www.invasive.org/browse/subinfo.cfm?sub=5259> (last visited Jan. 26, 2020).

³ See *Controlled Substances - Alphabetical Order*, 2018 U.S. DEP’T OF JUSTICE, DRUG ENFORCEMENT ADMIN. 1, 10, https://www.deadiversion.usdoj.gov/schedules/orangebook/c_cs_alpha.pdf (last visited Jan. 26, 2020).

⁴ See Moira Gibbons, *The Cannabis Conundrum: Medication v. Regulation*, 24 *HEALTH LAW.* 1, 7–8 (2011).

⁵ *Id.*

⁶ *Id.*; see *infra* Parts III & IV.

Part II will provide a concise survey of the various effects—including adverse side effects—of cannabis use. Part III will then move into an introduction to products liability as it relates to drugs, in general, and then more specifically to the production and distribution of edibles. It will discuss some of the dangers that edibles pose to children. The focus will be primarily on issues with the marketing and presentation of edibles that have led to unintended cannabis consumption and, subsequently, symptoms of cannabis overdose. This section will also include a survey of the regulations on edibles in two jurisdictions that have legalized recreational marijuana. Part IV will open with a discussion of the current laws and regulations in Nevada, move to the author's thoughts on their effectiveness and adequacy from a civil liability standpoint, and conclude with a discussion of recommendations to mitigate any perceived inadequacies.

I. "WEEDING" THROUGH THE HAZE ONE PUFF, CHEW, SNIFF, OR GULP AT A TIME

A. Briefly "Smoking Out" Marijuana's History

The full and proper terms for the subspecies of cannabis referenced in this article are either *Cannabis sativa* or *Cannabis indica*.⁷ However, the majority of cannabis strains in the world today are hybrids of the two; their differences turning primarily on respective appearance and indigenous climates.⁸ Thus, for purposes of simplicity and to mitigate confusion, this article will utilize the umbrella term, cannabis, to reference both strains, unless otherwise indicated.

Research suggests that cannabis has been used and cultivated for approximately 6000 years and is the "most widely used illicit drug in the world."⁹ The plant was brought to the United States, in the form of hemp, by the Puritans in the 1600s for use in domestic weaving.¹⁰ This usage increased and expanded throughout the 1700s and 1800s to include maritime application for "cordage and sails for ships."¹¹

⁷ See Zerrin Atakan, *Cannabis, a Complex Plant: Different Compounds and Different Effects on Individuals*, 2 SAGE J. 241, 245 (2012), <https://doi.org/10.1177/2045125312457586>; Sian Ferguson, *Beginner's Guide to Marijuana Strains*, HEALTHLINE (Sept. 28, 2018), <https://www.healthline.com/health/beginners-guide-to-marijuana-strains#1> (Marijuana is generally divided into three categories: *indica*, *sativa*, and hybrid).

⁸ See Ferguson, *supra* note 7 (noting that the *sativa/indica* designations have become virtually obsolete, as both strains often share effects.); Steve Fiorillo, *What's the Difference Between Indica vs. Sativa?*, THE STREET (June 28, 2018, 2:30 PM), <https://www.thestreet.com/lifestyle/difference-between-indica-vs-sativa-14637324> (highlighting the following differences in the strains: the *sativa* strain, marketed for its sedative effects, originates in hotter climates and has "broader leaves and [a] shorter stature"; the *indica* strain, marketed for its invigorating "cerebral effects," comes from colder climates and is "taller and more spindly").

⁹ See Atakan, *supra* note 7, at 241.

¹⁰ See Gibbons, *supra* note 4, at 1, n.1.

¹¹ *Id.*

Modern cannabis appears in three main forms: marijuana¹², hashish, and hash oil.¹³ Marijuana, primarily, refers to the “dried leaves, flowers, stems, and seeds” of the cannabis plant.¹⁴ Hashish is created from the secreted gum, or resin, of the plant and the resulting thick, oily substance is used to form hash oil.¹⁵ In the United States, marijuana has earned the title of “the most commonly used illicit drug.”¹⁶ In 2015, it was estimated that approximately 11 million young adults, with ages ranging from 18 to 25, used marijuana.¹⁷ Ironically, despite marijuana’s status as the most widely referenced and known form of cannabis, it is the “least potent [form] of all the cannabis products.”¹⁸ Given cannabis’ extraordinary history and prolific use, many logically wonder what is so special about this plant? What creates the ‘mellowing’ effects that everyone is so fond of? And perhaps most importantly, are there any side effects or dangers to be wary of?

B. *A Chemical Romance*

The effects of cannabis are created by hundreds of complex-compounds, the primary two being terpenes and cannabinoids.¹⁹ Terpenes are primarily known for giving cannabis its numerous distinctive odors.²⁰ However, since

¹² It is important to note that many sources utilized herein use the term “marijuana” synonymously with “cannabis.” Unless directly quoting from these entities, this author will reserve use of “marijuana,” and other monikers, solely for those instances where that particular form and use of the cannabis plant is being referenced. See *Learning About Marijuana: What is Cannabis?*, U. WASH. ALCOHOL & DRUG ABUSE INST., <http://learnaboutmarijuana.org/factsheets/whatiscannabis.htm> (last visited Jan. 26, 2020) (highlighting the many popular *Cannabis* nicknames)(hereinafter *What is Cannabis?*).

¹³ See *id.*

¹⁴ See *Marijuana*, NAT’L INST. ON DRUG ABUSE 1, <https://d14rmgtrwzf5a.cloudfront.net/sites/default/files/drugfacts-marijuana.pdf> (last visited Jan. 26, 2020).

¹⁵ See *What is Cannabis?*, *supra*, note 12.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*; but cf. *Drugs of Abuse, A DEA Resource Guide: 2017 Edition*, 2017 U.S. DEP’T OF JUSTICE, DRUG ENFORCEMENT ADMIN. 1, 74, https://www.dea.gov/sites/default/files/sites/getsmartaboutdrugs.com/files/publications/DoA_2017Ed_Updated_6.16.17.pdf (last visited Jan. 26, 2020) (hereinafter *Drugs of Abuse*) (referring to marijuana as the “mind-altering (psychoactive) drug” of cannabis).

¹⁹ See *Anatomy of The Cannabis Plant: Cannabinoids*, BAS RESEARCH (April 27, 2018), <https://basresearch.com/science/anatomy-of-the-cannabis-plant-cannabinoids/> (hereinafter *Anatomy*) (“The Cannabis plant produces ... over four hundred complex-compounds”); *Drugs of Abuse*, *supra* note 18, at 74 (Cannabis “contains over 480 constituents”); *Learning About Marijuana: Cannabinoids*, U. WASH. ALCOHOL & DRUG ABUSE INST., <http://learnaboutmarijuana.org/factsheets/cannabinoids.htm> (last visited Jan. 26, 2020) (hereinafter *Cannabinoids*) (“There are over 480 natural components found within the Cannabis ... plant”); Fiorillo, *supra* note 8.

²⁰ *Id.*

there is very little research into these compounds, it is quite possible that they have further purposes yet undiscovered.²¹

The cannabis plant produces dozens, if not hundreds, of different types of cannabinoids.²² Cannabinoids are the chemical compounds that elicit the countless drug-like effects experienced during marijuana, hashish, or hash oil use.²³ These compounds are actually very common and can be found naturally in humans, animals, and other plants besides cannabis.²⁴ In humans and animals, these compounds are formally known as “endocannabinoids.”²⁵ Whereas in plants, like cannabis, their formal name is “phytocannabinoid.”²⁶

Humans and animals have an actual endocannabinoid system which, in humans, “consist[s] of cannabinoids and cannabinoid receptors . . . [that] influence[] physiological processes like appetite, pain sensation, mood, and memory.”²⁷ The cannabinoid receptors are found in the cells of the brain and nervous system, and exist in two types CB1 and CB2.²⁸ CB1 receptors influence the brain, and are responsible for the central and peripheral nervous system.²⁹ Aspects of bodily function and the immune system are affected by CB2 receptors.³⁰

1. “ABCD . . .,” THC, and CBD

The first cannabinoid was isolated in 1899 and was a minor compound called “cannabinol” (CBN).³¹ This was followed by the two primary and most well-known compounds, “cannabidiol” (CBD) and “delta-9-tetrahydrocannabinol” (d-9-THC or THC), which were found in 1963 and 1964, respectively.³² In terms of cannabis production by strain, the *sativa* strain

²¹ *Id.*

²² *Id.*; see *Cannabinoids*, *supra* note 19 (noting there are at least sixty-six of the over 400 compounds that are “classified as ‘cannabinoids’”); Atakan, *supra* note 7, at 241 (“[There are] over 400 chemical entities of which more than 60 of them are cannabinoid compounds”); *Anatomy*, *supra* note 19 (asserting the cannabinoid count to be over one hundred).

²³ See *Cannabis and Cannabinoids (PDQ)-Patient Version*, NAT’L CANCER INST., <https://www.cancer.gov/about-cancer/treatment/cam/patient/cannabis-pdq> (last updated Feb. 15, 2019) (hereinafter *Cannabis and Cannabinoids*).

²⁴ See Gibbons, *supra* note 4, at 3.

²⁵ See *Anatomy*, *supra* note 19.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*; see also *Cannabinoids*, *supra* note 19 (“[Cannabinoid] [i]nteractions tend to occur in our limbic system (... memory, cognition and psychomotor performance) and mesolimbic pathway (... feelings of reward) and ... areas of pain perception”).

³⁰ See *Anatomy*, *supra* note 19.

³¹ See Atakan, *supra* note 7, at 241.

³² *Id.* at 241–42; see Fiorillo, *supra* note 8 (“the two most widely known [cannabinoids] are THC and CBD”); *Anatomy*, *supra* note 19 (listing several known major and minor cannabinoids).

is suggested to produce more THC while the *indica* strain has a higher concentration of CBD.³³

THC is the primary agent that causes the intoxicating “psychoactive, or mood altering,” effects of cannabis.³⁴ The saturation, or concentration, of THC in cannabis varies from plant to plant, and also depends on the strain or strains (in the case of hybrids and cross-breeds) used. Nonetheless, it is widely understood and accepted that the highest concentration of the compound is found in “flowering tops, or ‘bud,’” of the female plant, followed by the leaves, the stalks, and the seeds.³⁵

Cannabidiol, or CBD, is similar to its companion cannabinoid, THC, in both abundance and chemical composition.³⁶ However, unlike THC, CBD produces no intoxicating effects.³⁷ CBD is the chemical in cannabis most sought after for its medicinal benefits in counteracting anxiety, inflammation, pain, and seizures.³⁸ This is because CBD does not directly activate the CB1 and CB2 receptors the way THC does.³⁹ Rather, it indirectly “signals” to the receptors.⁴⁰ Further, it can block harmful compounds—like the side effects associated with THC⁴¹—and increase the levels of naturally-produced endocannabinoids.⁴²

³³ See Atakan, *supra* note 7, at 245. The author would note again that differences in strains—even in their production of CBD and THC—is generally no longer recognized, due to the frequency and pervasiveness of cross-breeding and hybridization.

³⁴ *Id.* at 245, 247 (“THC is the main psychoactive ingredient,” “[T]hC is the main ingredient that causes the desired ‘stoned’ effect”); *Cannabinoids*, *supra* note 19 (“[THC] is the substance primarily responsible for the psychoactive effects of cannabis”); *Drugs of Abuse*, *supra* note 18, at 74 (“THC [] is believed to be the main ingredient that produces the psychoactive effect”); *Learning About Marijuana: Potency of Marijuana*, U. WASH. ALCOHOL & DRUG ABUSE INST., <http://learnaboutmarijuanawa.org/factsheets/potency.htm> (last updated June 2013) (hereinafter *Potency*) (“The main ingredient in marijuana responsible for its psychoactive, or mood altering, effects is ... THC”); *Anatomy*, *supra* note 19 (“[THC is] [t]he most abundant cannabinoid present in marijuana, ... responsible for cannabis’ most well-known psychoactive effects”).

³⁵ See Gibbons, *supra* note 4, at 1; *Potency*, *supra* note 34.

³⁶ See *Cannabinoids*, *supra* note 19 (noting that CBD “contribut[es] up to 40 percent of cannabis resin”); Nick Jikomes, *CBD (Cannabidiol): What Does it Do & How Does It Affect the Brain & Body?*, LEAFLY (Oct. 10, 2016, 2:39 PM), <https://www.leafly.com/news/science-tech/what-does-cbd-do/print/> (calling THC and CBD “chemical cousins”).

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*; see *Cannabinoids*, *supra* note 19 (“[CBD] may . . . lessen the psychoactive effects of THC”).

⁴² See Jikomes, *supra* note 36.

2. *Potential potencies*

Due to THC's psychoactive effects, it is the cannabinoid most sought after, most known, most likely to exhibit unwanted side effects, and most reported on and researched.⁴³ While these effects are determined by THC potency, common user experiences are: hypoactivity, hypothermia, short-term memory loss, euphoria, sedation, hallucinations, and depression.⁴⁴ How cannabis is prepared and used greatly determines THC potency and, by extension, the array of effects displayed.⁴⁵ Further, THC dissolves in fat which means that its presence in a user's body can vary far more drastically than something like alcohol.⁴⁶ If certain factors are present, THC can register in a person's blood for as long as thirty days or more.⁴⁷

Each of the modern forms of cannabis—marijuana, hashish, and hash oil—affect the THC potency and various effects on the user. Hash oil is the most potent with a general concentration between 15 percent to 30 percent THC.⁴⁸ Next is hashish, or simply “hash,” whose THC concentration ranges from 10 percent to 20 percent.⁴⁹ And finally, common marijuana has the largest concentration range, but lowest overall potency; from less than 1 percent up to around 20 percent.⁵⁰ Additionally, while all three forms may be added to food, “vaped,” or smoked, by some method or another, users will most likely find marijuana at standard dispensaries.⁵¹ For the most part, cannabis merchandise is the direct product of, or extraction from, the cannabis plant itself.⁵² However, there are

⁴³ See Atakan, *supra* note 7, at 245 (noting that the *sativa* strain's higher THC content increases user preference); Gibbons, *supra* note 4, at 1 (It is the “much-pursued high” from THC that draws *Cannabis* consumers).

⁴⁴ See Atakan, *supra* note 7, at 245; Gibbons, *supra* note 4, at 3. See also Hayley Dean, *Through the Haze: Fashioning a Workable Model for Imposing Civil Liability on Marijuana Vendors*, 49 GONZ. L. REV. 611, 615–16 (2013) (Noting that a person's memory can be affected when THC binds to certain receptors in the brain, as well as other general effects).

⁴⁵ See *Potency*, *supra* note 34.

⁴⁶ See Rae Ellen Bichell, *Scientists Still Seek a Reliable DUI Test for Marijuana*, NPR (July 30, 2017, 7:14 AM), <https://www.npr.org/sections/health-shots/2017/07/30/523004450/scientists-still-seek-a-reliable-dui-test-for-marijuana>.

⁴⁷ *Id.*

⁴⁸ See *Potency*, *supra* note 34.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ See *What is Cannabis?*, *supra* note 13 (“Hashish . . . can be added to food and eaten. Hash oil . . . is also smoked”); Patrick Bennett, *What is Hash and How Does it Relate to Cannabis?*, LEAFLY (Oct. 26, 2016, 1:46 PM), <https://www.leafly.com/news/cannabis-101/what-is-hashish/print/> (“[Hash can be] consumed orally, either as a solid or infused into a beverage . . . smoked . . . [or] vaporized on a hot surface”); *Marijuana*, *supra* note 14, at 1 (discussing the various methods of use displayed by common marijuana); *Drugs of Abuse*, *supra* note 18, at 74 (“Marijuana is usually smoked, . . . mixed with foods or brewed as a tea”).

⁵² See generally *id.*; *Marijuana*, *supra* note 14, at 1.

some items that are synthesized versions of various cannabinoids; specifically, THC and CBD.⁵³

C. *Take Two Puffs and Call Me in the Morning*

Prior to the availability of medical marijuana, the Food & Drug Administration (FDA) had officially approved the synthetic production of certain cannabinoids for various medical uses.⁵⁴ Dronabinol, also known as marinol, and nabilone were approved by the FDA for use in controlling nausea and vomiting experienced by treating cancer patients, as well as for appetite stimulation in AIDS patients.⁵⁵ However, the legalization of cannabis products—now encompassing approximately thirty-four U.S. states and territories⁵⁶—has opened new avenues and benefits for patients. Many people assert that cannabis has numerous medical benefits, the primary of which is pain control.⁵⁷ Additionally, as referenced above, the plant can be used to combat nausea and vomiting, as well as issues with decreased appetite.⁵⁸ Finally, there have been studies that show cannabis is useful in relieving anxiety and depression, correcting issues with attention disorders, improving sleep through sedative relaxation, and even treating forms of epilepsy.⁵⁹

Medical marijuana dispensaries differ from their recreational sisters, and those differences vary from state-to-state.⁶⁰ While both stores tend to offer the same general product types—edibles, drinkables, vaporizers, topicals, strain

⁵³ See generally Gibbons, *supra* note 4, at 3 (highlighting that cannabinoids can be fashioned synthetically).

⁵⁴ See *id.* (noting the FDA approval of “dronabinol and nabilone”); “Drugs of Abuse,” *supra* note 18, at 75 (referencing the FDA approved “marinol” as a Schedule III substance under the Controlled Substance Act).

⁵⁵ See “Drugs of Abuse,” *supra* note 18, at 75; “Cannabis and Cannabinoids,” *supra* note 23; see also *Denial of Petition to Initiate Proceedings to Reschedule Marijuana*, 81 FED. REG. 53692 (Aug. 12, 2016) (to be codified at 21 C.F.R. pt. 1301) (hereinafter *Denial*).

⁵⁶ See *Cannabis and Cannabinoids*, *supra* note 23 (most recent data as of Feb. 15, 2019); *State Medical Marijuana Laws*, NAT’L CONF. ST. LEGIS., <http://www.ncsl.org/research/health/state-medical-marijuana-laws.aspx> (last updated Mar. 5, 2019).

⁵⁷ See Mark Hunstman, *What’s the Difference Between Recreational and Medical Cannabis?*, LEAFLY (June 1, 2018, 1:33 PM), <https://www.leafly.com/news/cannabis-101/difference-between-medical-recreational-cannabis/print/>.

⁵⁸ See *Cannabis and Cannabinoids*, *supra* note 23; *Drugs of Abuse*, *supra* note 18, at 75; see generally Gibbons, *supra* note 4, at 3 (noting the therapeutic benefits against “chemotherapy-induced nausea and vomiting”);

⁵⁹ See *Cannabis and Cannabinoids*, *supra* note 23; Fiorillo, *supra* note 8; see also *FDA News Release: FDA Approves First Drug Comprised of an Active Ingredient Derived from Marijuana to Treat Rare, Severe Forms of Epilepsy*, U.S. DEP’T HEALTH & HUMAN SRVCS., FOOD & DRUG ADMIN., <https://www.fda.gov/newsevents/newsroom/pressannouncements/ucm611046.htm> (last updated June 25, 2018).

⁶⁰ See Huntsman, *supra* note 57.

variants, and concentrates⁶¹—a medical dispensary will more resemble a pharmacy than a typical consumer store.⁶² Generally, a customer will need to have on hand his or her physician recommendation letter, medical marijuana certification, and any other state-required documentation.⁶³ Medical marijuana stores are the only ones permitted to offer medical advice to customers.⁶⁴ Further, patients utilizing medical marijuana facilities receive many perks, including lower costs, increased potency limits on THC, increased quantity allowances, access to minors under certain medical circumstances, and permission to cultivate their own plants.⁶⁵

Overall, cannabis has shown itself to be a multi-faceted, multi-purpose plant whose full potential of benefits are still being discovered. Despite the reticence of the federal government to further explore what is before it, numerous states have taken it upon themselves to spearhead this necessary research, regulation, and dissemination of both physical product and information regarding this versatile herb.⁶⁶ Unfortunately, nothing in existence is one-dimensional. For every benefit there is often a detriment. Cannabis is no exception. Moreover, the potential ills of its presence in commerce extend far beyond a simple argument over its legalization.⁶⁷ In the proceeding section, this Article will address the snares and pitfalls of cannabis, physically and economically.

II. IT'S ALL FUN AND GAMES UNTIL SOMEONE OVERDOSES

A. *Not So Special Effects*

All cannabis is not created equal, nor are the effects displayed in its consumers. While this Article has addressed many advantageous results produced from cannabis use, there are also many harmful consequences. There are a multitude of reported side effects associated with cannabinoid interactions with en-

⁶¹ *Id.*

⁶² See Jeremiah Wilhelm, *Understanding Medical vs. Adult-Use Cannabis Dispensaries*, LEAFLY (Jan. 30, 2017, 1:58 PM), <https://www.leafly.com/news/cannabis-101/what-is-a-marijuana-dispensary/print/>.

⁶³ *Id.*

⁶⁴ See Huntsman, *supra* note 57 (noting that there is an exception to this rule for “dual-licensed” shops).

⁶⁵ *Id.*

⁶⁶ See John Jennings, *Current Topics in Colorado's Regulatory Landscape*, 92 DENV. U.L. REV. ONLINE 183, 184 (2015); see generally Bruce Kennedy, *Wasn't the DEA going to let others grow research-grade cannabis?*; LEAFLY, <https://www.leafly.com/news/science-tech/wasnt-the-dea-going-to-let-others-grow-research-grade-cannabis> (Aug. 19, 2019) (discussing the federal government's sluggish pace in complying with its own promise to open the field of cannabis-related clinical research); The Associated Press, *Billions at stake as Wisconsin discusses cannabis legalization*, LEAFLY, <https://www.leafly.com/news/politics/billions-at-stake-as-wisconsin-discusses-cannabis-legalization> (Sept. 30, 2019).

⁶⁷ See generally Stufano, *supra* note 1, at 1410–11 (remarking that socio-political focus on cannabis legalization has resulted in neglect for concerns of civil liability).

docannabinoid receptors, both physical and mental.⁶⁸ These can include, but are not limited to: tachycardia, low blood pressure, bloodshot eyes, dizziness, symptoms of narcolepsy, vivid hallucinations, paranoia, pre- and post-pregnancy child development issues, intense nausea and vomiting, and exacerbation of symptoms related to schizophrenia.⁶⁹

Many of these adverse effects stem from excessive THC doses while consuming edibles.⁷⁰ The THC in cannabis, when smoked, enters the bloodstream swiftly; meaning a user feels the effects of the high quickly.⁷¹ However, ingested THC can take up to an hour to produce effects, leading users to consume excessive amounts in an uninformed effort to expedite processing of the chemical.⁷² Additionally, research has shown that ongoing cannabis usage from a young age can lead to impaired thinking and memory, decreased learning aptitude and IQ, as well as a higher likelihood of addiction or chemical dependency.⁷³ Two other major concerns with cannabis use are ‘lacing’ and the synthetic THC compound K2, or Spice.

B. *Laced with the ‘Spice’ of Life*

Lacing is a common practice where one drug is mixed, or laced, with another substance.⁷⁴ This is primarily done for two reasons: to increase the base weight of a product for more profits and/or to enhance or diminish the psychoactive effects of a drug.⁷⁵ Unscrupulous cannabis purveyors have been known to lace products with all sorts of hazardous materials: metals, glass, fungus and bacteria, other (more dangerous) drugs, and laundry soap.⁷⁶ Many of these combinations can be extremely dangerous, even fatal.⁷⁷ This author acknowledges that many of these concerns have been alleviated with the legalization of recreational marijuana and the imposition of regulated production standards, but still feels that awareness of such dangers is necessary.⁷⁸

Synthetic THC products are laboratory created compounds—usually smuggled into the US from Asia—marketed as legal marijuana alternatives

⁶⁸ See *Cannabis and Cannabinoids*, *supra* note 23; “Marijuana,” *supra* note 14, at 3–4.

⁶⁹ *Id.*; see *Cannabis and Cannabinoids*, *supra* note 23.

⁷⁰ See *Marijuana*, *supra* note 14, at 3, 6.

⁷¹ *Id.* at 2.

⁷² *Id.* at 2–3.

⁷³ See *generally id.* at 3–6 (discussing the adverse effects (for teens and young adults) in brain development, and the drug’s potential as a “gateway drug” for more severe narcotics).

⁷⁴ See *generally* Meredith Watkins, *What Can Marijuana Be Laced With?*, AM. ADDICTION CTRS., <https://americanaddictioncenters.org/marijuana-rehab/what-can-marijuana-be-laced-with> (last accessed Mar. 20, 2019).

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.* (The source article’s author also stressed the need for consumers to be cognizant of the dangers associated with products received when shopping at stores, and with persons, not legally authorized in the sale of cannabis).

called K2 or Spice.⁷⁹ These products began appearing in the early 2000s as “herbal incense” and “potpourri.”⁸⁰ Unfortunately, despite the claimed association to authentic cannabis products, these compounds are fundamentally different at a chemical level.⁸¹ Further, the effect of the drug on the endocannabinoid system is more intense and vastly different in unpredictable ways, causing bizarre and serious side effects like convulsions, renal damage, cardiac toxicity, strokes, psychosis, and even death.⁸²

It is clear from the factors illustrated above that while cannabis use bears many benefits and advantages, it also brings with it consequences and hardships. This immediately begs the question of what legal options, if any, do victims of the adverse effects of cannabis use have? Do cannabis manufacturers and distributors have any protections?

As alluded to in the opening of Part II, many political and legal entities have been so concerned with the logistics of legalizing cannabis, that they have failed to properly consider the ramifications of civil damage and liability that may stem from the legalization. This next section will attempt to address that deficit and explain how the law applies to persons and entities affected by the use of chemical substances.

III. PRODUCTS LIABILITY- THE WHAT, WHY, AND HOW

Products liability is defined as “[a] manufacturer’s or seller’s tort liability for any damages or injuries suffered by a buyer, user, or bystander as a result of a defective product.”⁸³ Specifically, it is a “hybrid of tort law and contract law”⁸⁴ whose rules “define the legal responsibility of sellers and other commercial transferors of products for damages resulting from product defects and misrepresentations about a product's safety or performance capabilities.”⁸⁵ Further,

⁷⁹ See *Drugs of Abuse*, *supra* note 18, at 88.

⁸⁰ *Id.*

⁸¹ *Id.*; see also Rachel Rettner, *Why Synthetic Marijuana Like K2 or Spice Can Cause “Really Bizarre” Symptoms*, CBSNEWS (Feb. 4, 2017, 9:39 AM), <https://www.cbsnews.com/news/why-synthetic-marijuana-k2-spice-weed-isnt-safe/>.

⁸² *Id.* (discussing how synthetic compounds not only adversely activate the CB1 and CB2 receptors, but various others too); see *Drugs of Abuse*, *supra* note 18, at 88-89; see generally *Tuck v. Wixom Smokers Shop*, No. 330784, 2017 Mich. App. LEXIS 662 *1 (Ct. App. Mar. 16, 2017) (products liability suit for criminal acts committed while on, and attributed to, synthetic marijuana); *Estate of John Anthony Sdao v. Makki & Abdallah Invs.*, No. 322646, 2016 Mich. App. LEXIS 120 *1, n.1 (Ct. App. Jan. 21, 2016) (“The ... chemical AM-2201, present in 70 percent of K2 products ... is associated with behavioral disruptions, discomfort, and anxiety”).

⁸³ *Products Liability*, BLACK’S LAW DICTIONARY (10th ed. 2014); see also *Tuck*, 2017 Mich. App. LEXIS 662, at *4-5 (product liability is “based on a legal or equitable theory of liability brought for the death of a person or for injury to a person or damage to property caused by or resulting from the production of a product”).

⁸⁴ See Stufano, *supra* note 1, at 1413.

⁸⁵ See David G. Owen, *Products Liability Law* § 1.1, at 3 (2005).

this area of law appears in three main categories, the latter of which is the focus of this discussion: manufacturing defects, design defects, and failure to warn.⁸⁶

A manufacturer's or seller's duty to warn stems from the understanding that many products, no matter how carefully designed, cannot be made completely safe, but their benefits justify their production and distribution.⁸⁷ The concepts of "foreseeability" and "superior knowledge" play a large factor in this duty, as it is generally presumed that the creator of a product is the most knowledgeable about it and best able to forecast its potential effects on consumers.⁸⁸ For a warning to be adequate it must "be displayed in such a way as to reasonably catch the attention of the persons expected to use the product, . . . fairly apprise a reasonable user of the nature and extent of the danger, . . . [and] instruct the user as to how to use the product in such a way as to avoid the danger."⁸⁹

Manufacturers and companies who fail to adequately warn of their products' foreseeable defects and/or dangers can find themselves liable if taken to court by an injured party.⁹⁰ This can be extremely costly and damaging to a company, particularly so for small or newly-established ones.⁹¹ Moreover, providing adequate warning protects not only the companies, but their consumers; a win-win situation. Thus, it is important that these entities know what dangers to warn of, and what constitutes adequate warning.

A. *The Regrettable Edible*

As discussed earlier, edibles pose a unique issue for cannabis consumers, manufacturers, and sellers, particularly with regard to children.⁹² Edibles, by

⁸⁶ Restatement (Third) of Torts § 2 (AM. LAW INST. 1998).

⁸⁷ See David A. Fischer *et al*, *Products Liability: Cases and Materials* 268, n.2 (5th ed. 2014); Stufano, *supra* note 1, at 1416.

⁸⁸ See Frederick C. Schafrick, *Product Liability Suits for Failure to Warn of the Hazards of Regulated Products*, 32 TORT & INS. L.J. 833, 837–38 (1997); Stufano, *supra* note 1, at 1416; see generally Cara Brumfield, *A Generic a Day Keeps the Lawyer Away*, 17 NEV. L.J. 429, 440–41 (2017) (noting that "a manufacturer may still have a duty to warn about known dangers that might not be immediately apparent to consumers").

⁸⁹ Fischer, *supra* note 87, at 283, n.3; see also Schafrick, *supra* note 88, at 838 ("a warning must generally provide instructions for safe use and a description of the potential hazards if those instructions are not followed").

⁹⁰ See Caryn S. Tijsseling, *Cutting Product Liability Issues Down to Size: A Guide for Nevada Startups*, 23 NEV. LAW. 16, 17 (2015).

⁹¹ See *Putt v. CBS Corp.*, 2019 WL 4935830, at *2 (Cal.Super. 2019)(products liability plaintiff's verdict for "\$33,892,748.80 plus costs and interest"); see generally *Facts & Statistics: Product Liability*, INS. INFO. INST., <https://www.iii.org/fact-statistic/facts-statistics-product-liability> (last accessed Oct. 31, 2019); David W. Clark, *Life in Lawsuit Central: An over-View of the Unique Aspects of Mississippi's Civil Justice System*, 34 MISS. C. L. REV. 149, 170–71 (2015) (noting how the state's products liability laws adversely affect small local retailers).

⁹² See generally Part II(A), *supra*; *Acute Marijuana Intoxication*, CHILD. HOSP. COLO., <https://www.childrencolorado.org/conditions-and-advice/conditions-and-symptoms/conditions/acute-marijuana-intoxication/> (last accessed Oct. 31, 2019) (noting

definition, are made and marketed as everyday food products.⁹³ Consequentially, manufacturers of these products have become extremely skilled at mimicking common, household food products; often to the confusion and unintentional consumption of adults and children alike.⁹⁴ It is the inadvertent ingestion of edibles, by children, that poses the greatest threat to society, and the focus of a fair portion of the remainder of this article.⁹⁵

An estimated 2,000 children, under the age of six, were victims of cannabis exposure, predominately in the form of edibles, from 2000 to 2013.⁹⁶ Further, calls to poison control centers in states that legalized cannabis use increased by about 30 percent from 2005 to 2011.⁹⁷ Aside from children getting into their parent's "stash" and unknowingly eating cannabis-infused foods, many incidents of child exposure originate with innocent third-parties who are unaware of the presence of cannabis in various products.⁹⁸ Because of this increased danger to minors, many states have enacted statutes and regulations to obviate access to these products by children.⁹⁹ While the jurisdiction of main concern in this Article is the State of Nevada, understanding the issues faced in other areas and how they have dealt (or not dealt) with those matters can provide a great source of guidance. The next two sections will review the provisions of two states, as a model for implementing regulations here in Nevada.

B. Colorado's Take

The State of Colorado's Marijuana Enforcement Division (MED), under the Department of Revenue, is charged with the licensing and enforcement of

both the toxicity dangers to children and the prevalence to mistake edibles for candy or regular food)

⁹³ See Paul J. Larkin, Jr., *Marijuana Edibles and "Gummy Bears,"* 66 BUFF. L. REV. 313, 316 (2018).

⁹⁴ See *id.* at 319, 321 ("[A] cannabis culinary professional can infuse just about anything you want to eat with THC"; discussing edible that mimic common candy products, i.e. "Pot Tarts," "Buddafinger," "Munchy Way," or "Keef Kat"); see generally Complaint for Money Damages and Equitable Relief, *Hershey Co. v. Tincturebelle, LLC*, No. 1:14-cv-01564-WYD-MJW (D. Colo. June 3, 2014) (hereinafter "Complaint") (Complaint against an edible manufacturer for production of *Cannabis* products that mirror common candies produced by the Hershey Co).

⁹⁵ See, e.g., Larkin, *supra* note 93; "Complaint," *supra* note 94, at ¶ 2 ("[Defendant's edibles] create[] a genuine safety risk with regard to consumers, including children, who may not distinguish between Hershey's candy products and defendants cannabis- and/or tetrahydrocannabinol-based products, and may inadvertently ingest defendants' products thinking that they are ordinary chocolate candy").

⁹⁶ See Larkin, *supra* note 93, at 335.

⁹⁷ *Id.*

⁹⁸ *Id.* at 332 (noting that these "unwitting[]" third parties can be neighbors, friends, school-mates, babysitters, or family members).

⁹⁹ *Id.* at 339 (noting that four states forbid "the manufacture and packaging of products that could appeal to child and require[] that edibles be sold in child-resistant packing").

medical and recreational cannabis activities.¹⁰⁰ Through MED, the state promulgated regulations to protect minors, namely making it illegal to sell “any edible product in a form that resembles an animate creature.”¹⁰¹ Additionally, the state requires that products be conspicuously marked with standardized symbols to indicate that “it contains marijuana and is not for consumption by children.”¹⁰²

The state has established specific laws and regulations for the labeling of cannabis-infused food products.¹⁰³ Labels must include the date the food was made, a complete list of ingredients, and a disclaimer warning of the possible presence of common food allergens.¹⁰⁴ Additionally, all products require a label that warns of the presence of cannabis and advises of the THC per serving content, the number of servings per package, and the overall THC potency (highlighted).¹⁰⁵ Finally, Colorado also implemented a “seed-to-sale” tracking system that allows it to be aware of all actions taken on a cannabis plant, in all stages up to customer purchase in a retail store.¹⁰⁶

C. Washington’s Take

Following its legalization of cannabis, the Washington state legislature established provisions to house the regulation of cannabis under the then-Washington State Liquor Control Board (WSLCB),¹⁰⁷ giving it full regulatory authority over liquor, cannabis, and tobacco.¹⁰⁸ One of the first major dilemmas faced by the newly enhanced WSLCB was what to do about edibles.¹⁰⁹ Facing the same concerns as mentioned above,¹¹⁰ Washington found itself inundated with cannabis food products that impersonated commonly purchased candies and foods.¹¹¹ To combat the edibles issue, the WSLCB promulgated an array of

¹⁰⁰ See Jennings, *supra* note 66, at 184; *Annual Update*, COLO. DEP’T REVENUE, ENF’T DIV. — MARIJUANA 1, 4, https://www.colorado.gov/pacific/sites/default/files/2014%20MED%20Annual%20Report_1_1.pdf (last updated Feb. 27, 2015).

¹⁰¹ See Larkin, *supra* note 93, at 341; see also COLO. REV. STAT. § 44-12-202(3)(XXIV)(d)(VI) & (VII) (2018) (prohibiting the manufacturing of products “appealing to children” or “in the distinct shape of a human, animal, or fruit”).

¹⁰² COLO. REV. STAT. § 44-12-202(3)(XXIV)(e)(I) (2018).

¹⁰³ See *generally* COLO. REV. STAT. § 25-4-1614 (2018).

¹⁰⁴ *Id.*

¹⁰⁵ See COLO. REV. STAT. § 44-12-202(3)(VII) (2018).

¹⁰⁶ *Id.* at § 44-12-202(1).

¹⁰⁷ See 2d Substitute S.B. 5052, 64th Leg., 2015 Reg. Sess. (Wash. 2015) (creating the new regulatory board – Washington State Liquor and Cannabis Board (WSLCB, or the Board).

¹⁰⁸ See *Laws and Rules*, WASH. ST. LIQUOR AND CANNABIS BD., <https://lcb.wa.gov/laws/laws-and-rules> (last updated 2016).

¹⁰⁹ See *generally* Andrew H. Fuller, *Sugar High*, 11 WASH. J.L. TECH. & ARTS 461, 472–73 (2016) (remarking on how edibles posed the “highest risk” of cannabis products available).

¹¹⁰ See *supra*, Part III(A).

¹¹¹ *Id.* at 472.

regulations that heavily dictate and monitor how cannabis products, especially edibles, would be manufactured, packaged, and labeled.¹¹²

Unlike the laws and regulations enacted in Colorado, Washington's were far more comprehensive and detailed. At the onset, the state limited which types of food and beverage products were even allowed to be infused.¹¹³ All products must also be packaged in "[c]hild resistant packaging" or "heat sealed with no easy-open tab, dimple, corner, or flap."¹¹⁴ Additionally, individual servings in multi-serving solid products must be individually packaged, according to the above standards, within an all-encompassing outer package that was equally sealed.¹¹⁵

All products, regardless of type, size, form, and number of servings, must have a uniform label.¹¹⁶ These labels must include the business name (with its unique Washington state unified business identifier number), the identifier number from WSLCB's traceability system,¹¹⁷ and the number of servings and the amount of product per serving prominently displayed.¹¹⁸ The WSLCB mandated that a three-part disclaimer and universal marijuana symbol is also present on every item.¹¹⁹

To protect unsuspecting adults and minors alike, the WSLCB prohibited "any statement, depiction, or illustration" showing a child or other minor consuming a cannabis product.¹²⁰ This included any object, toy, or character that might even suggest "the presence of a child" or appeal to any child or minor person.¹²¹ The regulations also included specific definitions, to ensure that there was no confusion as to what was an unacceptable depiction.¹²² And as a final courtesy measure to all consumers, each product must also include¹²³ a label listing all ingredients,¹²⁴ major food allergens, and a "delayed effects" warning.¹²⁵

After reviewing the history and origins of cannabis, its numerous types, effects, and side effects, as well as how the foundation states of Colorado and Washington have each dealt with some of the troubles that sprang from canna-

¹¹² See WASH. ADMIN. CODE § 314-55-005 (2013).

¹¹³ *Id.* at § 314-55-077(9).

¹¹⁴ *Id.* at § 314-55-105(1)(b)(i).

¹¹⁵ *Id.*

¹¹⁶ WASH. ADMIN. CODE § 314-55-105(2)(a).

¹¹⁷ See *Traceability*, WASH. ST. LIQUOR AND CANNABIS BD., https://lcb.wa.gov/mjtrace/get_started_with_leaf-article (last updated 2016).

¹¹⁸ WASH. ADMIN. CODE § 314-55-105(2)(a)(iv).

¹¹⁹ *Id.* at § 314-55-105(2)(b).

¹²⁰ *Id.* at § 314-55-105(2)(a)(v)(D).

¹²¹ *Id.*

¹²² *Id.* at § 314-55-105(5).

¹²³ WASH. ADMIN. CODE § 314-55-105(2)(c)(iii).

¹²⁴ In descending order of predominance, by either weight or volume.

¹²⁵ "CAUTION: Intoxicating effects may be delayed by 2+ hours."

bis' legalization, this Article will now turn to address the state of primary interest: Nevada.

IV. PUFF OR PASS? – THE STATE OF NEVADA'S REGULATIONS

A. *Where We Are ...*

1. *Getting Started*

Since the legalization of recreational cannabis use in 2016, Nevada has enjoyed an economic boom.¹²⁶ Numerous jobs have been generated and the state has received tax revenues that exceed eight figures.¹²⁷ Coupled with Nevada's tourist and gambling industry, particularly in Las Vegas, cannabis is proving to be a major financial asset to the state. However, like all the other states—Colorado and Washington included—the question of civil liability and business/consumer protection is of utmost concern. This is especially true for new 'startup' companies, of which Nevada is seeing a lot of.¹²⁸ This immediately begs two questions: What provisions does Nevada currently have in place to protect its businesses and citizens from harm and/or liability caused by cannabis use? And what, if anything, could the state improve upon?

In its legalization of cannabis, the state issued a basic foundation law that, to be legal, all production and sale of cannabis, and cannabis products (1) shall be restricted to officially licensed businesses; (2) shall not be sold or given to any person under twenty-one years of age; (3) shall be restricted in use by time and place parameters; and (4) shall be tested and labeled.¹²⁹ The latter requirement will be the focus of the remainder of this Article.

2. *A Regulatory 'Model Student'*

Nevada's cannabis testing procedures are extensive, comprehensive, state-of-the-art,¹³⁰ and always improving¹³¹; geared toward not only adhering to established regulations, but also toward protecting consumers from harmful chemicals (i.e. lacing) entering the stream of commerce.¹³² All cannabis products must be tested in one of the nine licensed "state-approved independent

¹²⁶ Jacky Rosen, *Marijuana and Banking: The Next Step in Legitimization*, ELEVATE NEV., June 2018, at 35.

¹²⁷ *Id.* (revenues in the estimated "tens of millions").

¹²⁸ See generally Tijsseling, *supra* note 90, at 16.

¹²⁹ See NEV. REV. STAT. § 453D.020(3) (2017).

¹³⁰ See Kayla Anderson, *Cultivating Clean Cannabis: Lab Testing Brings Critical Legitimacy to Cannabis' Growth in the Silver State*, ELEVATE NEV., June 2018, at 28, 31 ("Nevada's testing requirements are on the vanguard in the country").

¹³¹ *Id.* at 30 (Noting how Nevada continues to look to other states as a guide for its regulations).

¹³² *Id.* at 28; Part II(B), *supra*.

testing lab[s],” regulated by the Nevada Department of Taxation.¹³³ The process is strenuous; aside from inorganic materials, testers screen for substances such as “E. coli, salmonella, total coliforms, total yeast[,] and mold.”¹³⁴ Finally, any sample that fails testing is immediately destroyed, or (depending of the cause of the failure) sent to an extraction facility.¹³⁵

Nevada’s labeling provisions greatly resemble Washington state’s, in terms of their comprehensiveness, specificity, and awareness of the dangers posed to children. All products require a bold “clear[] and unambiguous[]” label stating “THIS IS A MARIJUANA PRODUCT.”¹³⁶ Packaging and advertising are explicitly prohibited from using or displaying images that represent a “cartoon character, mascot, action figure, balloon or toy” or anything else that could “appeal to children.”¹³⁷

Moreover, like Washington, Nevada restricts the *forms* that an edible product may take. Prohibited are any forms that bear a likeness to “a lollipop or icecream . . . a real or fictional person, animal or fruit” or any “commercially available candy or snack food item other than dried fruit, nuts or granola.”¹³⁸ Further, allowed items—such as brownies or cookies—must be sealed in a non-transparent container.¹³⁹ Lastly, all edible products must have a conspicuous and clear label with the following: (1) “Keep out of reach of children”; (2) a list of all ingredients; (3) a list of all allergens; and (4) the total cannabis weight or THC concentration.¹⁴⁰

Nevada provisions do, however, extend consumer protections one final step further than either Colorado or Washington. In addition to the above protective labels, the state requires that each sale of any marijuana product provide an extensive “written notification” to the purchaser advising: (1) to keep the products away from children; (2) that said products can cause severe illness to children; (3) that failure to prevent access to the product by children may invoke an investigation, criminally and/or by child services; (4) that the effects of edibles can be delayed by two or more hours; (5) of the dangers of ingestion to pregnant women; (6) of the dangers of mixing the product with alcohol or any other drug; (7) of the dangers of operating a motor vehicle after consuming the product; and (8) that failure to heed item (7) can result in criminal prosecution.¹⁴¹

¹³³ See Anderson, *supra* note 130, at 28.

¹³⁴ *Id.* (Noteworthy is that Nevada has a “zero tolerance” standard for E. coli, salmonella, and various stains of *Aspergillus* (which can cause pulmonary infections)).

¹³⁵ *Id.* at 30.

¹³⁶ NEV. REV. STAT. § 453D.310(1)(a) (2019).

¹³⁷ *Id.* at §§ 453D.310(1)(b), 453D.310(5).

¹³⁸ *Id.* at § 453D.310(3).

¹³⁹ *Id.* at § 453D.310(4)(a).

¹⁴⁰ *Id.* at § 453D.310(4)(b).

¹⁴¹ NEV. REV. STAT. § 453D.310(7)(a) (2017).

B. ... And Where We Should Go

Overall, Nevada's cannabis regulations are extensive, comprehensive, and evolving. The degree of detail and obvious concern for the state's businesses and citizens is prevalent in every aspect of the regulatory scheme. So much so, that this author is hard-pressed to find any significant issues to remark on. Nonetheless, nothing is perfect. There are some items that this author believes could be enhanced, and other additions that could prove truly beneficial to the community as a whole.

1. Cannabis Retailers

Nevada's cannabis retailers are on the front line of the industry. Further, they often act as intermediaries between manufacturers and consumers. Thus, their efforts in upholding state regulations is a vital link in the chain. As such, this author agrees with one Nevada attorney who suggested that businesses should develop a quality assurance program coupled with a system for product monitoring and claims tracking.¹⁴²

An adequate quality assurance program offers benefits beyond simple customer service. Implementing a system of checks that require employees to follow and notate, when various regulatory obligations are completed (i.e. proper labeling, packaging, or notifications) will ensure that adequate warnings are provided to the consumers. Plus, it gives the business physical documentation of said warnings, in the event of a civil suit alleging harm to a consumer. Additionally, product and claims monitoring can alert a retailer of potential product issues stemming from a particular manufacturer.

This author notes that some scholars have suggested the implementation of what is known as "gram" shop liability provisions.¹⁴³ Succinctly, gram shop liability is an appropriation of "dram shop" liability that is fitted for cannabis retailers, instead of businesses who sell alcohol.¹⁴⁴ It operates under the premise that a seller of alcohol or cannabis can be held liable for harm caused by someone who was knowingly intoxicated (high) and still allowed to purchase product from the business.¹⁴⁵ This author, however, declines to promote their suggestions. Such restrictions and potential for liability on retailers could lead to an unwanted chilling effect on the cannabis industry. Moreover, the laws and regulations already in place, plus the suggestions offered herein, would prove to be more than sufficient protection to Nevada's consumers.

¹⁴² See Tijsseling, *supra* note 90, at 19.

¹⁴³ See Stufano, *supra* note 1, at 1425–30; Dean, *supra* note 44, at 616–21.

¹⁴⁴ *Id.* at 616–17; Stufano, *supra* note 1, at 1425–26.

¹⁴⁵ *Id.*; Dean, *supra* note 44, at 616–17.

2. Legislative Amendments

As already stated, the Nevada legislature has done a commendable job in fashioning laws and regulations for the cannabis industry. This author's offered suggestions are but a drop in the bucket against what has already been established. However, they still have some merit in mentioning. This Article proposes an amendment to state regulations and/or laws that provides annual updates/training on Metrc, the state's cannabis tracking and monitoring system,¹⁴⁶ as well as requiring that edibles only be manufactured and sold in single servings.¹⁴⁷

As Nevada's sole tracking and monitoring system it is critical that manufacturers and retailers be cognizant of Metrc's functions and value as a protection from civil liability. Furthermore, awareness of the state's system will aid businesses in establishing individual in-house systems of their own, as suggested in the previous subsection.¹⁴⁸

Regarding single-serving edibles, a lot of overdose incidents occur from consumers (a) not being aware of the THC content per serving, (b) not being aware of the delay in effects of ingested THC, as opposed to when inhaled, and (c) the inconsistency in product THC levels (despite efforts in homogeneity).¹⁴⁹ Requiring edibles to only be allowed in single servings at the manufacturing level helps to control THC concentration per item. Plus, it can help facilitate consumer awareness of, and compliance with, the need to ingest only the suggested serving amount. The author acknowledges that such a restriction may pose heavy financial burdens on some manufacturers and retailers, but feels that overall, such an amendment would prove more beneficial than prejudicial.

3. Nevada's Legal Community

Throughout this Article, the discussion has been focused on businesses and consumers. However, should any of the civil liability issues discussed come to pass, it is the legal community that will determine the outcome. Thus, their participation is equally crucial in regulatory endeavors. This Article seeks to urge the Nevada Supreme Court and Court of Appeals to make efforts, whenever possible, to increase the publication of court opinions on products liability issues stemming from cannabis use. Further, this author recommends that the legal community, in general, step up efforts in community awareness classes, as well as lawyer CLE training classes.

¹⁴⁶ See Metrc, <https://www.metrc.com/> (last accessed April 5, 2019).

¹⁴⁷ See Megan Brown, *Puff, Puff or Pass? Why the United States is Not Ready to Legalize Recreational Marijuana*, 24 SAN JOAQUIN AGRIC. L. REV. 93, 129 (2015).

¹⁴⁸ See *supra* Part IV(B)(i).

¹⁴⁹ See *supra*, Part I(B)(ii); "Marijuana," *supra* note 14, at 2–3; Bichell, *supra* note 46.

It is through the courts that case law and precedent are established, providing guidance and predictability on how certain matters will be adjudicated.¹⁵⁰ Due to the infancy of legalized recreational cannabis, the litigation guidance that attorneys and lay persons rely on is sorely absent. It is only through published opinions, when and if they present themselves at the appellate levels, that the legal community can gain needed information on how to advise clients of their legal causes of action and/or available remedies.

Similarly, lawyers, like cannabis manufacturers and retailers, need to keep abreast of the law and the ancillary components that help facilitate it. To be proper counselors and advocates for their clients, attorneys need to be aware of cannabis itself: its types, forms, and effects. They need to understand, at least at a basic level, the various products available and how they interact with each other and other substances. Finally, lawyers could also benefit from training in the Metrc system so as to be better equipped to advise clients of how certain business practices comply with state laws and regulations.

4. *Federal Intervention*

Like gram shop liability, some scholars have suggested various forms of federal intervention into state regulatory schemes as a means of increased compliance and business/consumer protection.¹⁵¹ However, like gram shop liability, this author declines to promote these suggestions. The balance struck between the federal illegality of cannabis juxtaposed against the rising number of states enacting legislation to legalize it, is tenuous at best.¹⁵² Soliciting federal intrusion into a matter that the Government has chosen, as of now, to stay out of may be compared to taunting the proverbial sleeping dog. In some cases, the best action is no action. Here, the author suggests leaving *that* door closed until the federal government decides to open it itself.

CONCLUSION

In the course of this Article, cannabis has been explored from origin to retailer. The types, form, effects, advantages, and disadvantages of this versatile and remarkable plant have been discussed and analyzed. Further, a review of civil and products liability has shown the need for adequate labeling and warnings to protect both business and consumer alike. And finally, a survey of two jurisdiction's regulatory schemes, as well as those in Nevada, has demonstrated both a need and a means for mitigating civil liability issues with respect to edi-

¹⁵⁰ See *Research Guides: Introduction to Legal Research*, GA. ST. U. L. LIBR., <https://libguides.law.gsu.edu/introductiontolegalresearch> (last updated Sept. 12, 2018).

¹⁵¹ See Larkin, *supra* note 93, at 343–81; Brown, *supra* note 147, at 126–29.

¹⁵² See generally Derek Connor, *Cole Memo Confusion: Attorney General Jeff Sessions Termination of Federal Memo Leaves Many Unanswered Questions for Nevada's Cannabis Industry*, ELEVATE NEV., Mar. 2018, at 32 (discussing the “guidance” provided to U.S. Attorneys regarding states with legalized cannabis).

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ble cannabis products. While there is still a long way to go in determining cannabis' ultimate status nationally, it is clear that the individual states are thoroughly committed to preserving this burgeoning industry. It can only be hoped for that Nevada continues to be a leader in this endeavor, ever adapting and protective of its people.