

KANSAS CITY BUSINESS JOURNAL

Lawyer: Business law in the cannabis industry is tricky

JAMES DORNBROOK
STAFF WRITER
KANSAS CITY BUSINESS JOURNAL

Setting up a medical marijuana business in Missouri involves wading into a host of unclear legal areas. Getting it wrong could lead to serious problems down the road.

State regulations require that a Missouri resident control at least 51% of a medical marijuana business. The law also requires an applicant's team to include at least one person with legal cannabis business experience, much of which is coming from other states and countries.

All of that leads to interesting business agreements when federal law still deems cannabis illegal, said Steve Levine, a Husch Blackwell LLP partner who specializes in cannabis, corporate, M&A and securities law.

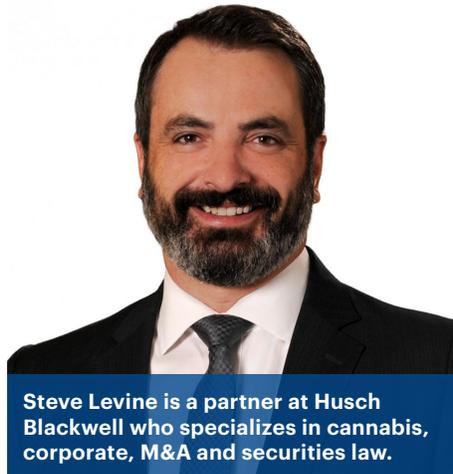
Missouri's pretty barebones rules don't help, either.

"In Colorado, (cannabis business) regulations are about 800 pages long, but Missouri only has about 15 to 20 pages so far," said Levine, who is based in Denver. "So there is a lot to get fleshed out yet."

'You're kind of guessing'

With the state deadline for accepting applications Aug. 3, there is no way a comprehensive set of regulations will all be ready in time.

"So to structure a deal right now, you're kind of guessing," Levine said. "You don't know what the final rules and regulations are, and frankly, even when the rules are finalized, they're going to change every eight months. Colorado is going through another



Steve Levine is a partner at Husch Blackwell who specializes in cannabis, corporate, M&A and securities law.

major overhaul of all its rules and regulations as we speak."

Levine said the lack of clear rules in Missouri easily could lead to creative contracts in which a Missourian has 51 percent ownership but is just a figurehead, with all the profits going to minority owners who fronted all the cash and do all the work.

"Effectively, what's going to happen is people are going to structure around the residency requirement in atypical ways that are just not normal business relationships," Levine said. "In Colorado, we've seen that all lead to partnership disputes and tons of litigation from people doing weird work-around deals. The people involved didn't really think out the ramifications of those deals and end up suing each other."

Partners from two different states trying to sue each other probably will want to avoid federal court: A judge might decide to invalidate the entire contract because U.S. law says it involves an illegal business.

Tricky leases

Missouri medical marijuana regulations

also lead to thorny legal issues involving leases. The rules require a medical marijuana applicant to occupy a properly zoned property for the business. But because officials expect about 10 times more people applying for licenses than there are licenses available, that's a lot of property deals that aren't going to have a viable business in them. In other words, it generates a lot of sketchy leases.

"Applicants should ask for a contingency, where they lock up the property short term but don't engage a long-term lease unless they get a license," Levine said. "I guarantee you, though, that there are plenty of people out there who will just sign long-term leases, and they're going to be bound by them."

Some failed marijuana applicants might be thinking they'll just declare bankruptcy with their newly formed venture and escape the lease that way, but bankruptcy is all federal law. Even if an applicant failed to get a license and never started operating a marijuana business, a federal judge might rule that it intended to, which could be enough for a dismissal.

That said, applicants/tenants could walk away and leave the landlord suing an empty shell corporation with no assets and no viable business.

No matter which side you're on, Levine advised not getting involved in the medical marijuana industry with the expectation of going to court to get your money back.

"Paying an attorney to take something to trial is extremely expensive and could cost as much as what they owe you," Levine said. "It's why we focus mainly on helping people make smart decisions and avoid court in the first place."