

# Business of CANNABIS

ST. LOUIS  
BUSINESS JOURNAL

## TABLE OF EXPERTS



SPONSORED BY



**KEVIN ELLISON**

Kevin Ellison is CEO and co-founder of Cannabis Security and Technology Solutions (CST), a Springfield, Missouri, based security and technology firm that provides security systems, video, fire, access control, guards and loss prevention solutions for companies nationwide. Over the past two decades Kevin has led security, information technology and application development teams in industries such as healthcare, retail and banking. Most recently, he was the Chief Information Officer for the largest U.S. manufacturer of security systems and worked with the security teams from some of the nation's largest companies.



**GAYLE SMITH MERCIER**

Gayle Smith Mercier is a partner with the Thompson Coburn law firm where she serves as vice chair of the firm's real estate group and is an active member of its cannabis group. Gayle provides counsel on a myriad of real estate issues faced by clients in the cannabis industry. The firm represents marijuana producers, sellers and investors on their formation and operation, provides cannabis law guidance to property owners, equipment providers, insurers, software companies and consulting firms and leverages its experience to promote the long-term success of its cannabis clients.



**ADAM PREST**

Adam Prest is a principal in the Anders CPAs + Advisors tax services group, working with closely-held businesses and their owners on individual and corporate tax consulting. He advises small and mid-size businesses, including many in the hospitality, real estate and professional services industries. Adam is leading the firm's efforts in expanding expertise and service offerings for businesses in the cannabis industry.

**As medical cannabis businesses are gearing up to be operational for the first time in Missouri, what are the biggest challenges they will face?**

**Kevin:** Some of the biggest difficulties is trying to balance the regulations, banking challenges and all of the advice from contacts in other states. It's almost like being a new parent and getting advice from everyone on how to be a good parent. You're always trying to wade through what's good advice and what's not.



DILIP VISHWANAT | SLBJ

“ Our firm has offices in Los Angeles and Chicago that have been working with cannabis businesses for a long time. We call them for insight and input on a variety of topics. It gives us an advantage there. ”

**GAYLE SMITH MERCIER,**  
Thompson Coburn

**Adam:** Obviously, working in an industry that is still federally illegal presents regulatory challenges. These companies are going to be closely scrutinized by regulatory bodies like the Internal Revenue Service. I see our role as CPAs and advisors as working

with our clients to optimize their profitability while still remaining compliant with all the rules and regulations that apply to their business.

**Gayle:** In my opinion, one of the biggest challenges is whether or not you will be awarded a license. These companies are spending time, money and resources to be prepared to file an application with the risk of possibly not being awarded a license. Simply filing an application does not guarantee that you will be awarded a license, there are no guarantees. Moreover, navigating through the multitude of regulations will be challenging. The proposed rules are comprehensive and incredibly detailed. Many of the individuals desiring to operate a cannabis business are business people, with little or no experience with regulatory and compliance issues at this high of a level. These individuals simply want to start up a business to grow and/or sell cannabis, but what they need to understand is that it's just not that easy. There are challenges from finding the right real estate, zoning, business formation, taxation, banking, security, transportation and HIPAA, nearly each and every aspect of the process is going to be riddled with obstacles.

**Kevin:** They also will have HIPAA concerns because doctors are involved. That's an extra level of complication that a lot of people aren't used to.

**As you work with Missourians on starting a medical cannabis**

**business, what are the biggest concerns you're hearing from them?**

**Adam:** At this point, most people are still hyper focused on the application process. At the same time, they are also focused on doing as much as possible to position themselves to move quickly once licenses are granted later this year as being quick to market will provide early competitive advantages.

**Gayle:** This is unique because there are so many facets that must be navigated in a very small window of time without the benefit of seeing what the actual application even looks like. Potential licensees should be completing business plans, weighing financing alternatives, purchasing or leasing property in permissibly zoned districts, and figuring out how to satisfy the security requirements for each of the cannabis related businesses and so many of the steps need to be done right now. The process can be incredibly overwhelming.

**Kevin:** Many of my customers are challenged in finding a location. How do you even sign a lease if you don't know you'll get a license? After December 31, they may not need a building at all.

**Gayle:** That's where we come in on the real estate side of things. We are educating our clients with respect to the intricacies and complex regulations regarding zoning, property ownership and landlord/tenant issues in the cannabis space. We work with clients by communicating directly with zoning and planning commissions as well as city and county councils to help them understand permissible zoning districts, property ownership and leasing issues on both the landlord and tenant sides.

**How is Anders CPAs + Advisors supporting Missouri cannabis businesses?**

**Adam:** Beyond traditional tax, audit, accounting, and technology services, we can provide value in three phases of a Missouri cannabis business. First is working with the applicant's attorneys and other advisors during the application process to assist with the accounting and tax component of the business plan. Second is helping to implement policies, procedures, internal controls and accounting systems after licenses are awarded, but prior to opening. Third is assisting the business with its ongoing

tax, advisory and financial reporting needs. It's important to note that the accounting for cannabis versus non-cannabis businesses is very different and requires additional expertise.

**How do taxes and accounting for medical cannabis businesses differ from non-cannabis businesses?**

**Adam:** The biggest difference is Internal Revenue Code Section 280E, which limits deductions for businesses trafficking in controlled substances as defined by the Controlled Substances Act. Without these tax deductions, the tax burden for cannabis businesses is significant, with effective tax rates often being well over 50 percent. We work with our clients to ensure that all business expenses are classified correctly to maximize deductions, minimize taxes and mitigate any potential risk with the Internal Revenue Service down the road.

**Many banks are unwilling to work with companies that will be working with license holders. How do you and your company navigate that challenge?**

**Kevin:** My partners and I have been in our individual fields for 20-30 years. We're relying on that experience to allow us to not need to work with banks. We've created partnerships with vendors we have worked with in previous jobs to avoid the overhead of inventory and can avoid some of those complications. In other states, specific to security, vendors worked with applicants once they got licenses and then banks start monitoring for cannabis-related activities. The banks may force vendors to refinance their building or trucks somewhere else or not take on that cannabis client. It could put the vendors and the cannabis business in a tough spot.

**Gayle:** Normally in real estate, you go to your bank of choice and obtain a loan to acquire a property or you find space to lease. But in the cannabis business, it's just not that easy. Current federal law prohibits any federally regulated banking institution from lending to a cannabis related business. That said, unless you have non-conventional financing or investors, it may be difficult to purchase real estate for your cannabis related business. Additionally, individuals who own property subject

to mortgages held by federally regulated banking institutions may have difficulty leasing property to a cannabis business. Further, landlords may be hesitant to lease property to a cannabis business due to the federal illegality associated with cannabis. However, this is where we can help businesses find private investors, to work with landlords to understand and mitigate certain risks and with tenants to negotiate lease provisions to entice a landlord to want to rent to a cannabis-related business.

**How is Thompson Coburn able to help cannabis businesses navigate location/lease issues?**

**Gayle:** We're a full-service law firm with a cannabis group, which is sort of unique. Our cannabis group includes folks from every area of law. Our attorneys represent developers, lenders and businesses in complex real estate matters and transactions in Missouri and across the country. We help clients structure and negotiate leases of all sizes and represent both landlords and tenants in the cannabis space. We work closely with our clients to help understand their individual needs and to creatively resolve issues to close deals efficiently and effectively. Additionally, we routinely work with municipalities on zoning and planning issues and can help the client understand local zoning and use restrictions.

**Can companies have multiple cannabis businesses under the**



DILIP VISHWANAT | SLBJ

“ At this point, most people are still hyper focused on the application process.. At the same time, they are also focused on doing as much as possible to position themselves to move quickly once licenses are granted later this year as being quick to market will provide early competitive advantages. ”

**ADAM PREST,**  
Anders CPAs + Advisors

**same roof?**

**Gayle:** According to DHSS, one commonly controlled company can hold up to eight licenses under one roof, however, you must satisfy all of each cannabis business license security, size, location, layout, design and flowing plant requirements for each license under the common roof. Ideally, you could have a grow facility and a dispensary or a grow facility and an infused products manufacturing facility and a dispensary together. That said, you must still comply with the regulations for each type of facility so there would be a lot of moving pieces with multiple licenses under the same roof, but it's certainly doable.

**Can you expand on some of the security requirements?**

**Kevin:** Missouri picked a nice balance to make sure the cannabis and employees are always protected. There are a lot of requirements such as having two cameras on all growing cannabis

**AS A NEW INDUSTRY TAKES ROOT IN MISSOURI, EXPERIENCE MATTERS**

With offices in Illinois and California, we've been on the ground floor serving clients in the legal cannabis industry for more than 5 years.

**THOMPSON COBURN LLP**

**TOTAL COMMITMENT TO NEW OPPORTUNITIES**

thompsoncoburn.com

Chicago | Los Angeles | St. Louis | Southern Illinois | Washington, D.C.

The choice of a lawyer is an important decision and should not be based solely upon advertisements.

**ST. LOUIS**

**SL BJ CRANE WATCH**

SPONSORED BY **Poettker Construction**

Commercial construction is on the rise in St. Louis, with development and redevelopment projects of all types underway or proposed. To help keep track, the *St. Louis Business Journal* has launched **Crane Watch**, an online map that will enable readers to get a snapshot of the commercial development throughout the city. By clicking on icons that mark the locations of projects, readers will get summaries that include a description of each project, including information such as the developers behind it, estimated cost, anticipated completion, links to stories and more.

VIEW THE MAP OF THE BIGGEST CONSTRUCTION PROJECTS IN THE ST. LOUIS REGION:  
[bizjournals.com/stlouis/feature/crane-watch](http://bizjournals.com/stlouis/feature/crane-watch)

**ALWAYS GROWING**

We're Anders, a team of CPAs and industry-focused advisors. And just as you're growing and expanding into new industries, so are we.

The cannabis industry is growing rapidly, with unique challenges and opportunities arising each day. Being one of the most regulated industries in the country, it is important to have an experienced team on your side.

**WHAT DO YOU WANT TO ACHIEVE TODAY?**

We can help you make it happen.

**ANDERS**  
CPAs + ADVISORS

[anderscpa.com](http://anderscpa.com) | (314) 655-5500

Watch your dreams grow.

And let us take care of the nightmares.

Security Solutions, Technology Solutions, Anti-Diversion Solutions.

**CST SOLUTIONS**

CANNABIS SECURITY AND TECHNOLOGY SOLUTIONS  
HTTP://CST.GROUP • 417-597-4538

CONTINUED FROM PREVIOUS PAGE

and the entire checkout space. You must provide specific access to rooms with cannabis in it and keep records of everyone going into the rooms.

**Gayle:** DHSS' recent proposed rules outline a variety of security measuring, including intrusion alarm security systems, exterior lighting requirements, detailed electronic video monitoring requirements, including at least one 19 inch or greater call up monitor and video cameras with at least 1920 x 1080 resolution and 15 frames per second that are capable of being remotely accessed by DHSS or law enforcement upon request. The rules regarding security also require keycard or biometric system controlled entry to any restricted access areas, methods of immediate and automatic notification to law enforcement of unauthorized breach of security and manual silent alarm requirements at all points of sale, reception areas, vaults and security monitoring stations. As you can see, satisfying security requirements will likely be one of the biggest issues companies in the cannabis space will need to figure out.

**Kevin:** The video rule is an interesting challenge. Video manufacturers have their own proprietary software to operate their cameras. If there are five dispensaries in a city using different camera manufacturer, how can law enforcement manage having all five video programs on all computers? And not many camera manufacturers can give real time access to any DHSS or law enforcement staff at any time. It may mean revising the rule to say law enforcement can have access when there's a specific incident at a site. Most places don't want non-employee individuals viewing security cameras in their business at any time, which is totally opposite what is being asked of Missouri Cannabis businesses.

#### **Is there federal legislation that you are following that is significant to the cannabis industry?**

**Adam:** With the current political landscape, it seems unlikely that we will see cannabis legalized at the federal level soon. However, one current piece of legislation that would be a huge win for the cannabis industry and bankers is the "SAFE Banking Act of 2019." It would essentially prevent federal officials from punishing banks simply because they provide services to legitimate cannabis-related businesses. It has bi-partisan support and is currently working its way through the House, but most experts think it will have difficulty passing the Senate.

**Gayle:** At least people are talking about it and considering it as opposed to being off the table.

#### **Do zoning ordinances and/or building specifications affect where a medical cannabis business can be located?**

**Gayle:** Yes, zoning ordinances and building specifications will certainly affect the location of a medical cannabis business. We are starting to see more and more municipalities begin to amend their zoning ordinances to address permissible zoning and use districts. For example, the City of O'Fallon recently passed an ordinance amending certain provisions of the land use and zoning code. O'Fallon's amendment closely followed DHSS' proposed rules, but does allow cannabis related businesses to be operated within 750 feet of any school, child day-care or church, as opposed to DHSS's suggested 1000 feet. The City of O'Fallon's code also limits the number of Medical Marijuana Dispensary Facilities to no more than 10 within the city limits of O'Fallon, notwithstanding that Amendment 2 allows 24 dispensaries per congressional district. I believe that as we get closer to the June 4th application date and beyond, we will continue to see more local governments addressing their zoning and use codes.

**Kevin:** In Springfield, the planning and zoning committee finalized what they'll send to the city council. For dispensaries and infused production facilities, they're proposing 200 feet between businesses. If they make it easier for businesses to come to Springfield, then that helps them. Otherwise, the business may go to other cities and they'll lose that tax revenue.

#### **Which is more important to serve the cannabis business – industry experience or cannabis experience?**

**Kevin:** IT and security are very mature industries, so we've learned a lot there, but cannabis is relatively new. Diversion has helped retailers deal with theft for years. Like diamonds, cannabis is a small product with a high value, so looking at that experience really helps. On the flip side, you still have to know about cannabis. For instance, using infrared cameras for night videos may be standard practice, but using infrared in a grow room can affect the plant growth. Someone who knows about the plants and the industry standards for security in general is important. One of my partners has worked with companies in Colorado and I have worked with



DILIP VISHWANAT | SLBJ

“

*Many of my customers are challenged in finding a location. How do you even sign a lease if you don't know you'll get a license? After December 31, they may not need a building at all.*

**KEVIN ELLISON,**  
Cannabis Security and  
Technology Solutions (CST)

”

some in Washington state, so we see what works and what doesn't. Building a safe room with a bank style vault is a newer trend that has been very successful. An Oklahoma business kept their cannabis products from being stolen recently when someone drove a truck through a brick wall, but the safe room prevented the theft. Missouri and a lot of states are now adopting new rules as issues are solved in other states, so we use that knowledge.

**Gayle:** Our firm has offices in Los Angeles and Chicago that have been working with cannabis businesses for a long time. We call them for insight and input on a variety of topics. It gives us an advantage there.

**Adam:** I think it's important to find a balance of both. This is a new industry in Missouri and still relatively new nationwide. Even experienced advisors have a relatively short history representing cannabis companies. From a tax perspective, these businesses will need CPAs who are knowledgeable about the cannabis industry and its unique rules and regulations while at the same time having a long track record of successfully representing clients before the IRS.

#### **What else should cannabis business owners be concerned about?**

**Adam:** One thing that comes to mind for me is cash flow. In my conversations with hopeful applicants, many seem to be under the impression that these businesses will be very profitable in the short term. But because of the high cost of entry and the significant limitations on tax deductions, this will likely not be the case for many of these businesses. My advice would be to look at these businesses as long-term plays and be prepared for potential cash flow shortages in the first few years. While many smaller businesses or individuals are interested in getting in at the onset, it appears the price for entry will be millions of dollars.

**Kevin:** It's important for people to look at other states – Ohio and Maryland – where they've grown their business and have a lot of patients. When they open, they may only have six to eight patients a day, so there's a ramp-up. It could be two to three years before it's lucrative. People also miss the HIPAA issue. What's transmitted between Department of Health and doctors is protected. For example the dispensary will be recording information about patients coming in and purchasing medical cannabis. Since a doctor will have to certify that the individual is a patient in order for the person to get a patient card, all the notes and information from the dispensary about that patient will have to be protected.

**Gayle:** This is not going to be a cash cow Day 1. Don't be misled by folks that are claiming immediate positive cash flow; that won't happen overnight. Some think they'll complete an application, get a license and be up and running by the end of 2019, but I don't think that will happen. DHSS's proposed rules require that every owner, manager, officer, agent, contractor and employee (essentially everyone who works at or for a medical cannabis business) must obtain an agent identification card. The earliest that DHSS anticipates accepting applications for these cards is February 15, 2020. That said, I think we may be looking

at a timeline of April or May 2020 before we start seeing medical cannabis business commence operation and sometime thereafter before becoming profitable.

**Kevin:** Ultimately, there will be a lot more applications than licenses. The winning applications will have to be far better than their competitors to get the license.

**Gayle:** According to a February 20 release, DHSS claimed that approximately 239 pre-paid dispensary application fees had been received. To put that into perspective, this means that in District 5, which includes Kansas City, Independence and Lee's Summit, as of February, there were 2.42 prepaid application fees for every one dispensary license to be awarded in that district. The competition is real and no one is guaranteed a license. That's another reason why finding the right location is so important.

#### **How will this new business help or hurt Missouri economically?**

**Gayle:** We're hoping to see the vacancy rate for abandoned property decrease. Some of the more distressed areas around downtown might be good for grow facilities and spawn the economy around it. It can help bring people into the area. The need for more specialized, industry related-businesses has increased as well.

**Kevin:** We started our business because of this industry. My two partners and I were all working in the private sector before Amendment 2 passed and other new businesses are starting because of this, too. Those with correct expectations will be successful. I think it will help Missouri as a whole.

**Adam:** Medical cannabis could be a real economic driver for the state of Missouri. Some analysts are projecting that by 2025, Missouri will see more than \$100 million in annual sales and close to 3,000 new cannabis-related jobs. In addition, the increase in sales tax will provide a benefit to local communities.

**Kevin:** Maryland is almost the same size as Missouri in population. They expected \$60-\$70 million in cannabis sales their first year, but they gained more than \$100 million. That's a lot of additional revenue.

#### **Is there potential for fraud? What is their protection?**

**Adam:** Fraud is a serious concern for most businesses, especially for companies that work almost exclusively with cash. It will be critical for these cannabis companies to have strong procedures and internal controls in place to ensure that all transactions are properly accounted for and reconciled to avoid any irregularities.

**Kevin:** In earlier states, they saw that up to 90 percent of fraud was internal from current and previous employees. You need to have strong partners to ensure you're running your business tightly. DHSS also expects authorities to be notified within 24 hours for any loss.



–Bonita L. Tillman