Workshop 16

Cannabis Leasing: Business Opportunity and Legal Conundrum

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REAL ESTATE AND CANNABIS: FINANCIAL OPPORTUNITY OR UNMANAGEABLE RISK?

Setting the Stage – The Ever-Changing Legal Landscape of Medical and Recreational Marijuana Businesses

Before discussing the legal commercial real estate issues related to marijuana businesses, it is worthwhile to note the current business landscape which, despite the legal issues described below, is growing dramatically and shows no signs of slowing. Even if near-term growth diminishes under the new administration, the long-term prognosis for the industry is strong.

“Commercial real estate developers say they have never seen a change so swift in so many places at once. From Monterey, California to Portland, Maine, the new industry is reshaping once blighted neighborhoods and sending property values soaring. In some Denver neighborhoods, the average asking lease price for warehouse space jumped by more than 50% from 2010 to 2015, according to an industry report. In the city overall, there are five times as many retail pot stores as stand-alone Starbucks shops.” New York Times, Sunday, April 2, 2017

The sharp rise in property prices follows the booming market for legal marijuana. Sales of legal cannabis are expected to top $20 billion by 2021, according to ACRVIEW Market Research.

The New York Times article describes the market in Denver, Colorado as follows:

“Denver has emerged as America’s de facto pot capital. Since Colorado legalized marijuana for recreational use in 2012, hundreds of stores selling pot have opened and enormous growing operations have set up shop. Legal cannabis sales topped $1 billion in the state last year. From 2009-2014, 36% of new industrial tenants were marijuana businesses, according to the report on the city from CBRE Research, a commercial real estate company. Nearly four million square feet of industrial space was being used for cultivation in 2015 according to the report, about 3% of the city’s warehouse space. Retail spaces are just as hot. By 2015, there were upward of 200 marijuana stores in Denver, occupying high-end storefronts and former gas stations. The spike in demand has been good for landlords, who often charge 2-3 times market rates for spaces used for cultivation or sales.”

The last sentence in the quote above signals why, notwithstanding perceived federal legal hurdles, marijuana business leasing is increasingly likely to cross the desks of lawyers across the country (or at least in 29 out of 50 states, as of today). In a real estate market depressed by falling demand for retail space, how long will it be before marijuana stores have a presence in strip malls and regional centers? An interesting real estate market note: because marijuana is still illegal federally (as discussed below), all marijuana to be sold in a state where it is legal must be grown in the same state. Crossing state lines with marijuana grown in another state violates federal law. As a result, the demand for warehouse space in Denver is as high as noted above. Presumably, this is also the case in other northern states where medical or recreational marijuana is legal but outdoor growing conditions are less than ideal. When federal law ultimately allows sale and use of medical and recreational marijuana, the “crossing state lines” issue will disappear and cultivation in more climatically accommodating states (e.g., California) will explode, while demand for warehouses in those northern states should decrease.

The New York Times article goes further to describe the nature of the current retail marijuana outlets.

“A short drive away in Brookline, the store in an old Beaux Arts bank was also doing a brisk business ... the [retailer] wanted some pizazz for the customer experience, so it leased a bank. Inside, skylights and tall arched windows flood the former bank lobby with sunlight. Gilded Corinthian columns reach up to a domed turquoise ceiling. Where bank tellers once handed out cash, employees now hand over buds of Tangerine Haze and Master Kush. The decision to lease the former bank wasn't cheap for the [retailer]. The group entered into a lease years ago and paid rent while it sat empty. ‘The holding costs there were significant,’ said Norton Arbelez, Director of Government Affairs for the [retailer].
But, Mr. Arbelez said, ‘we wanted to take this industry out of the shadows’ and a flashy retail space was one way to make that happen. So far, it seems to be working. On a busy day, the [retailer] can sell marijuana buds, pre-rolled joints and cannabis infused chocolates worth as much as $100,000.”

Currently, marijuana is legal for medical purposes in 29 states and the District of Columbia, and in eight states and the District of Columbia (Colorado, Washington, Oregon, Arkansas, California, Nevada, Massachusetts and Maine) for recreational use. Few predict a reversal of this trend toward legalization at the state level and many believe, ultimately, at the federal level.

A Brief Overview of Federal Legality and Illegality Issues

Under the 1970 Controlled Substances Act (21 U.S.C. § 800 et seq.), marijuana is listed as a Schedule 1 drug. Schedule 1 drugs are considered the most dangerous. Its current federal status puts marijuana in the same category as heroin, cocaine and opium, in sharp contrast to its legality in the early 1900s. Of particular interest to commercial property owners is 21 U.S.T.C. § 856 (the “crack house statute”) which provides that using or allowing real property to be used for unlawfully manufacturing, storing, distribution, or using a controlled substance is a federal crime, the penalty for which may include forfeiture. It is the fear of breaking federal law and, potentially, losing their property that quite logically has made landlords reluctant to lease to marijuana businesses even in states where it is legal.

Supremacy Clause

The supremacy clause of the U.S. Constitution (U.S. Constitution Article 6, Clause 2) provides that the federal law is the supreme law of the land and, as a result, the federal laws criminalizing marijuana use and sale preempt any state statute legalizing use. It is beyond the scope of this article to discuss potential arguments for exclusion from the preemption clause, but for purposes of this article, it will be assumed that federal preemption is in effect and unchanged. Federal preemption would appear to freeze in its tracks any state efforts to legalize marijuana. If so, why is the marijuana business currently a multi-billion dollar business, and growing? The answer lies in the prior administration’s approach to enforcement of the Controlled Substances Act with respect to marijuana.

The two seminal federal actions relaxing the impact of preemption are the Cole Memorandum and the Rohrabacher Blumenauer Amendment.

The Cole Memorandum

The Cole Memorandum is a U.S. Department of Justice memorandum dated August 29, 2013, issued under the Obama administration by James M. Cole, Deputy Attorney General. The title of the subject memorandum is “Guidance Regarding Marijuana Enforcement.” The Cole Memorandum was intended to provide guidance to federal prosecutors regarding enforcement of marijuana laws under the Controlled Substances Act in the aftermath of growing state legalization of medical and recreational marijuana use. Paying lip service to the fact that marijuana remains a Schedule 1 controlled substance and, therefore, possession and use constitutes a federal crime, the Cole Memorandum states, “the Department [of Justice] is … committed to using its limited investigative and prosecutorial resources to address the most significant threats in the most effective, consistent and rational way.” In effect, the Cole Memorandum states that enforcement of marijuana laws is not the highest Department of Justice priority. The Cole Memorandum highlights the enforcement priorities which the Department of Justice has with respect to marijuana, and these priorities are as follows:

“Preventing the distribution of marijuana to minors;

Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs and cartels;

Preventing the diversion of marijuana from states where it is legal under state law in some form to other states;

Preventing state authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;

Preventing violence and the use of firearms in the cultivation and distribution of marijuana;
Preventing drug driving and the exacerbation of other adverse public health consequences associated with marijuana use;

Preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and

Preventing marijuana possession or use on federal property."

The Cole Memorandum directs federal prosecutors to direct their prosecution efforts only to the categories described above. The Cole Memorandum notes that, traditionally, enforcement of marijuana laws with respect to small quantities has been left to the states. The Cole Memorandum also assumes that in those states where legalization exists, the states will otherwise implement regulatory enforcement systems to protect the public safety and public health. The Cole Memorandum concludes with this direction to prosecutors: “The primary question in all cases – and in all jurisdictions – should be whether the conduct at issue implicates one or more of the enforcement priorities listed above.” As is obvious from the description of the priorities in the Cole Memorandum, medical and recreational marijuana cultivation and retail sale, as contemplated by state laws, can be undertaken without violation of the priorities listed in the Cole Memorandum and, therefore, seemingly without risk of Federal prosecution. It should be noted, however, that the Cole Memorandum is a directive by a Deputy to prosecutors in the Department of Justice and is not a federal law or regulation. At the risk of stating the obvious, it should also be noted that the Cole Memorandum was drafted and distributed under the Obama administration and, given the recent change in administrations and priorities, there is a risk that the Cole Memorandum could be withdrawn or modified by Attorney General Sessions.

On January 4, 2018, Attorney General Sessions issued a memorandum for all United States Attorneys pertaining to marijuana enforcement. Although Sessions rescinded the series of guidance documents discussed above, he left actual prosecution to the individual federal prosecutors’ determination, consistent with Chapter 9-27.000 of the U.S. Attorneys’ Manual. The manual requires federal prosecutors to examine a number of factors in determining whether to bring a prosecution, including federal law enforcement priorities, the seriousness of a crime, the impact of a crime on the community and the deterrent effort of the prosecution.

**Rohrabacher Blumenauer Amendment**

With Attorney General Jeff Sessions rescinding the Cole Memo the Rohrabacher-Blumenauer amendment has been the only federal law standing in the way of a potential crackdown on medical marijuana. On March 21, 2018 it was extended for another six (6) months.

First passed in 2014, Rohrabacher-Blumenauer (then known as Rohrabacher-Farr) is an amendment to the annual appropriations bill that prohibits the Department of Justice from using federal funds to interfere with state-legal medical marijuana programs. It provides in § 537 of the Consolidated Appropriations Act of 2018 that "none of the funds made available in this Act to the Department of Justice may be used with respect to any of the states [and the states legalizing medical and recreational marijuana are listed] to prevent any of them from implementing their own laws that authorize the use, distribution, possession or cultivation of medical marijuana.” The Department of Justice cannot use appropriated funds to enforce federal marijuana laws.

The Rohrabacher Blumenauer Amendment language withholding appropriations to fund implementation and enforcement of federal marijuana laws in states where use is legal has given comfort to the marijuana wholesale and retail industry. It is against this backdrop of federal disinclination to enforce that the marijuana wholesale and retail industry has exploded in the United States.

Sen. Cory Booker [D-NJ] recently introduced a bill that would not only terminate the federal prohibition on marijuana via a multi-faceted approach but would, according to Sen. Booker, directly tackle drug policies that have disproportionately impacted communities of color. In his bill, Sen. Booker removes marijuana from the schedule of controlled substances in the Controlled Substances Act, removes the prohibition on importing and exporting marijuana as per the Controlled Substances Import and Export Act, and conforms amendments to the Controlled Substances Act. National Forest System Drug Control Act of 1986 and Interception of Communications, accordingly (e.g. removing references to marijuana). Moreover, this bill incentivizes states to adjust their marijuana laws by making certain federal funds unavailable to states where marijuana-related offenses disproportionately arrest or incarcerate minorities or low-income individuals. A Community Reinvestment Fund would also be created, whereby the funding would be reinvested in communities most affected by the war on drugs through job training programs, reentry services, health education programs, community centers and other community programs. The funds would consist of amounts not provided to states
whose laws still disproportionately affect the aforementioned communities and individuals and “any amounts otherwise appropriated to the Fund.” This legislation would be retroactive, providing for federal courts to “issue an order expunging each conviction for a marijuana use or possession offense entered by the court before the date of enactment” and enabling courts to rehear and reduce sentencing for current inmates incarcerated for marijuana offenses. There is a House companion bill introduced January 17, 2017, whose main sponsor is Barbara Lee (D-CA) that has 24 cosponsors. A summary of all pending federal cannabis legislation is attached as the Appendix hereto.

Other Federal Issues

There are other federal law issues relating to the operation of a marijuana retail facility which are beyond the scope of this article, but are worth noting in passing.

IRS/Taxes

With respect to business expenses and, more particularly, deduction of business expenses incurred by a marijuana retail operator, I.R.C. § 280(E) prohibits deduction of expenses from a trade or business on federal tax returns. The inability to deduct such expenses, including lease payments, obviously has a significant impact on profitability of retail marijuana outlets and effectively means marijuana stores pay higher taxes than other retailers.

Department of Treasury/Banking

There are significant issues under federal law with respect to banking and marijuana retail facilities. As noted above, the volume of money changing hands in retail sales was estimated to be $6.7 billion in 2016. Both Department of the Treasury regulations and case law (Fourth Corner CU v. Federal Reserve Bank of Kansas City, District Court Colorado 15-CB-01633) (2016) hold that banks cannot facilitate criminal activity; therefore, because possession and sale of marijuana is illegal, under federal law, banks cannot accept deposits from marijuana wholesalers and retailers. As a result, retail marijuana businesses are cash-only businesses. Because of the volume of money involved, the safety and security issues surrounding a retail marijuana business are significant. Because of the cash-intensive nature of the business, marijuana business owners are also subject to suspicious activities reports (SARs) under the Financial Crimes Enforcement Network (“FinCEN”) regulations, which provide that cash deposits in excess of $10,000 must be disclosed to FinCEN.

FinCEN has issued regulations with respect to marijuana-related businesses. A Department of the Treasury FinCEN Guidance was issued on February 14, 2014 regarding treatment of marijuana-related businesses. The basis of the Department of Treasury FinCEN Guidance is the Cole Memorandum. If the current administration reverses the Cole Memorandum, the validity of the Department of Treasury FinCEN Guidance will come into question.

The following is a summary of the FinCEN Guidance due diligence requirements for banks wishing to open accounts with marijuana businesses: As a precondition to opening accounts and conducting business with a marijuana related business, banks are required to (a) verify with state authorities that the business is duly-licensed and registered; (b) review the license application related documentation; (c) request state licensing and enforcement authorities to provide information regarding the business; (d) develop an understanding of the activity of the business, including types of products sold and type of customers to be served; (e) on an ongoing basis, monitor publicly available sources for adverse information regarding the party; (f) conduct ongoing monitoring for suspicious activity; and (g) update due diligence materials on a regular basis. Part of the due diligence described requires determining whether the business violates the Cole Memorandum priorities.

In the unlikely event that a financial institution agrees to undertake the above-described due diligence requirement, and open a bank account with a marijuana business, that institution will also be required to file suspicious activity reports (“SARs”) for its client’s deposits. Applicable federal regulations require SARs to be filed whenever a financial institution receives funds from a criminal activity. Because marijuana businesses are illegal, SARs must be filed with respect to all marijuana business deposits. Red flags described by the Treasury which require special SARs and, potentially, greater due diligence include, without limitation, (a) use of a state licensed marijuana-related business as a front for money laundering; (b) receipt by the business of substantially more revenue than may be reasonably expected; (c) the business receives more revenue than its competitors; (d) the business is depositing more cash than commensurate with revenue reported for tax purposes; (e) inability to document income is derived only from marijuana and not from sale of other drugs; (f) excessive deposits or withdrawals relative to competitors; (g) deposits believed to be structured to avoid currency transaction reports (“CTRs”); (h) rapid movement of funds, cash in and cash out; (i) third party deposits unrelated to the account.
holder; (j) commingling of funds with personal accounts; (k) transactions appearing to be on behalf of undisclosed third parties; (l) financial statements inconsistent with actual account activity; and (m) surges by third parties offering goods and services. Other areas which financial institutions are required to red flag include failure of the business to produce satisfactory documentation of licensing; efforts of marijuana-related businesses seeking to conceal or disguise their operation; due diligence revealing “negative information” such as criminal record, involving in illegal purchase of drugs, violence and other potential connections to illicit activity.

Given the Treasury regulations, it is no surprise that marijuana businesses are cash only and do not involve the use of customary banking arrangements.

Trademark/Patents

Trademarks are only permitted with respect to lawful commerce. As a result, registration of trademarks relating to sale of marijuana is not permitted.

Bankruptcy

Relief under federal bankruptcy laws is not available to marijuana businesses which are insolvent (in re Arenas (Bankruptcy District Colorado (2014)). In addition, there is also a Department of Justice letter dated April 26, 2017 directed to bankruptcy trustees, stating “it is the policy of the U.S. that Trustees shall move to dismiss or object to all cases involving marijuana assets.”

Individual States

California

Medical marijuana use has been legal in California for over ten years.

California statutes passed in 2015 and 2016 replace the structure created by the Compassionate Use Act and Medical Marijuana Program Act previously in place. On November 8, 2016, the California voters passed Proposition 64, which was entitled “The Adult Use of Marijuana Act.” Proposition 64 was preceded by the Medical Cannabis Regulation Safety Act passed in October of 2015. These statutes create a legal safe harbor for both marijuana operators and real property owners under state law. Under these statutes, if an operator of a retail marijuana facility is not licensed as required by the state, the Landlord may also be liable for both criminal and civil penalties (California Health & Safety Code Section 11366.5). These penalties may also include state asset forfeiture laws (Health & Safety Code Section 11470(g)). It is clear under the recently-passed legislation that there is no state preemption of local laws with respect to marijuana facilities (Business and Professions Code § 26200(a)). As a result, local jurisdictions, through zoning laws and other local laws, may prohibit or severely restrict the presence of marijuana businesses in their communities.

The safe harbor provided by the two statutes provides immunity from arrest, prosecution, fines, and seizure of assets to property owners who, in good faith, allow their property to be used by a licensee under a state license and a local permit (Business and Professions Code § 19317(b) and 26037(b)). As is obvious from the federal preemption discussion above, this safe harbor in California does not protect operators or real property owners from federal prosecution. Under federal law, an “innocent owner” defense (Title 18 U.S.C. §983(d)) does exist if the owner of real property can show that they did not know of the conduct giving rise to the forfeiture or upon learning of the conduct giving rise to the forfeiture did all that reasonably could be expected under the circumstances to terminate the use of the property. This federal “innocent owner” defense is of little value in California, as California statutes require that property owners expressly consent to cannabis activity on their property (Business and Professions Code § 19322(a)(3) and 26056). The state safe harbor requires a knowing consent to the activity and the federal safe harbor is only available to real property owners who have no knowledge of the activity. The federal and California safe harbors are at odds with each other; satisfying the California requirements of the state safe harbor rule will expose the owner to liability under federal law, and vice versa: owners satisfying the federal innocent owner defense will fail to qualify for the safe harbor under California law.

California Taxes

A material component of the legalization process in California was the ability of state and local governments to tax marijuana. Currently, different tax regimes are in place throughout the state and growing daily. Proposition 64 established a 15% excise tax on all sales, a $9.25/oz. cultivation tax on flowers, a $2.75/oz. cultivation tax on leaves, and a sales tax of 8%. There have been other additional local and other taxes springing up throughout
the state. Local cultivation taxes have been running in the range of $15-30/foot. Other examples of taxes include Sacramento imposing a 4% gross receipts tax. On the regulatory front, in California, the following agencies have jurisdiction over, and require compliance by, marijuana retail facilities: Bureau of Medical Cannabis Regulation, Department of Food and Agriculture, Department of Public Health, State Water Resources Control Board, Department of Fish and Wildlife and Department of Pesticide Regulation. Many California commentators have opined that the precipitously rising tax and regulatory burden on the industry may drive a material segment of the marijuana industry back into the shadows.

**Colorado**

In 2000, Colorado approved Amendment 20, legalizing the use of medical marijuana. In 2012, Amendment 64 was passed, legalizing recreational marijuana and creating the first recreational marijuana marketplace in the United States. In response to Amendment 64, Colorado's Marijuana Enforcement Division created the state's Retail Marijuana Code, governing businesses that cultivate and sell retail marijuana. Beginning January 1, 2014, state-licensed marijuana dispensaries started opening for business across the state.

Colorado differentiates between medical marijuana and retail marijuana establishments, cultivation facilities, products manufacturing facilities, testing facilities, and dispensaries. Each licensed cultivation or dispensary location must have a distinct address, and licensed operations may not relocate without regulatory authorization. It is not permissible to sublet or materially modify any part of a licensed facility without amending the initial application and obtaining approval from the local jurisdiction. In order to obtain a license, applicants must prove they have lawful possession of the property (via deed, lease, etc.). There is no statewide restriction on where a marijuana business may be located. However, product manufacturing facilities cannot coexist at a location that is operating as a food establishment.

Colorado has strict laws regarding surveillance and has set minimum guidelines for security requirements. Applicants are responsible for installing a fully operational video surveillance and camera recording system as well as security alarm systems and must ensure the licensed premises are continuously monitored.

Property owners may prohibit or otherwise regulate the possession, consumption, use, and growth of marijuana on their property. The use of marijuana on a business’s property could be considered public use, which remains illegal in Colorado. Business owners may choose to restrict or ban the use of marijuana on their property in a manner that is more restrictive than state law. Some cities have placed limits on how late retail dispensaries may remain open, such as Denver (7pm), Aurora (10pm), Edgewater (12am), and Glendale (12am).

**Colorado Taxes**

In Colorado, total marijuana tax revenue includes a retail and medical marijuana sales tax, a marijuana excise tax, and retail/medical marijuana application and license fees. Medical marijuana is subject to a 2.9% state sales tax and any applicable local sales taxes. The recent passage of legislation increased the retail marijuana sales tax rate from 10% to 15%. However, retail marijuana and retail marijuana products sold on or after July 1, 2017 are now exempt from the 2.9% state sales tax. Local taxes and special district taxes were unaffected by this legislation and still apply. Sales or transfers between retail marijuana business licensees are still subject to the 15% state excise tax, but sales or transfers between licensed cultivation facilities are now exempt from the state excise tax. Legislation passed in 2016 no longer requires marijuana business to obtain or provide proof of surety bonds to guarantee the payment of sales taxes or excise taxes.

**Massachusetts**

Medical marijuana has been legal in Massachusetts since 2012. In November 2016, Massachusetts voters passed ballot initiative Question 4, and since December 15, 2016, the use of recreational marijuana has been legal in the state. Additionally, Massachusetts law now explicitly recognizes that contracts related to the operation of marijuana establishments are enforceable regardless of whether such action is prohibited by federal law.

Under Massachusetts law, only marijuana dispensaries (not product manufacturers, testing facilities, or cultivators) are able to sell marijuana products directly to consumers. Once required licensing procedures are put in place, retail marijuana dispensaries will be permitted to open beginning in July 2018. Massachusetts law prohibits marijuana establishments from being located within 500 feet of a pre-existing public or private school providing education in kindergarten or any of grades 1 through 12, unless a city or town adopts an ordinance or bylaw reducing such distance.
Cities and towns in the state may adopt ordinances governing the time, place and manner of marijuana establishment operations and restricting the number of marijuana establishments. Notably, a vote is needed for a city or town to reduce the number of permissible marijuana facilities to fewer than 20% of the number of alcohol establishments in that community or to fewer than the number of operating medical marijuana establishments in that same city or town. However, voters can limit the type (or all types) of marijuana establishments within the city or town. For a person to legally consume marijuana in a marijuana establishment, the law requires the city or town to have voted to allow consumption on the premises.

Commission agents are permitted at any time to inspect the premises or books and records, and tenants have an obligation to secure restricted areas for employees, commission agents, and law enforcement. Tenants also must secure inventory so as to deter theft and must ensure any outdoor or greenhouse operations are not readily accessible by unauthorized individuals. The operations of any marijuana facility cannot be visible from a public place.

**Massachusetts Taxes**

The state currently subjects recreational marijuana to the state sales tax rate of 6.25%, but the state excise tax rate is 10.75% and localities are permitted to levy a rate of up to 3%. Governor Baker (R) signed the bill on July 28th, 2017.

**Ohio**

On June 8, 2016, Gov. John Kasich signed into law H.B. 523, making Ohio the 25th state to adopt a workable medical marijuana law. The House approved the measure on May 10, 2016, and the Senate passed it 15 days later, on May 25. Legislators passed the bill in response to pressure from the ballot initiative being proposed by Ohioans for Medical Marijuana, backed by the Marijuana Policy Project. Ohio continues the roll-out processes for its emerging medical marijuana program. On November 30, 2017, the state awarded a total of 25 cultivation licenses. On June 4, 2018, the state awarded a total of 56 cultivation licenses. The state is expected to award up to 40 processor/manufacturer licenses in June of 2018. Ohio continues the roll-out processes for its emerging medical marijuana program, but the program is expected to be up and running in late 2018/early 2019.

**Ohio Taxes**

According to estimates from Marijuana Business Daily, if between 1%-2% of Ohioans join the medical marijuana registry, as much as $400 million could be generated as the market ages. At the current sales tax rate of 5.75%, over $23 million in tax revenues may be collected.

**LEASE ISSUES AND MODEL CLAUSES**

Leasing to a state-licensed marijuana facility is fraught with complexity. Notwithstanding a facility’s full compliance with state and local law, landlords and tenants entering into leases for the operation of a marijuana facility are advised to consider and address the unique aspects of these leasing relationships when drafting their leases.

From a landlord or property owner perspective, the ability to charge above-market lease rates to marijuana-related tenants, as compared to other non-marijuana related tenants, is a significant inducement. It is not uncommon for marijuana lease rates to be two to three times more than the leasing rates charged to other tenants in the same building or real estate market; however, this market rate differential may not be so prevalent in cities where marijuana retails sales have become a competitive business. Retail prices have decreased in cities, like Denver, where there is an abundance of supply.

For some landlords and property owners, the day-to-day difficulties and elevated financial (and criminal) risk associated with leasing to a marijuana-related business outweigh the lucrative leasing rates. Most notably, because marijuana continues to be listed as a Schedule I drug under the federal Controlled Substances Act, property owners leasing to marijuana-related businesses expose themselves to the Civil Asset Forfeiture Reform Act of 2000. Under the Act, any real property that is associated with violations of the Controlled Substances Act may be seized and the subject property owners imprisoned. Enforcement of the forfeiture laws is largely dependent upon the nature of the underlying marijuana operations, and the federal government’s propensity to enforce such violations, which, under the current administration, remains unclear.
The key to leasing to a marijuana-related business is incorporating specific marijuana leasing provisions that mitigate the criminal, financial, and operational risks. The following lease provisions should be considered by both landlords and tenants during the negotiation and drafting of a retail dispensary lease.

**Permitted Use**

Property owners and tenants should first address what the tenant's anticipated use of the premises will be. Landlords should ensure that the tenant obtains the appropriate state and local licenses and permits for a marijuana-related business, maintains such licenses and permits in good standing and provides proof of good standing on an ongoing basis. The lease should limit the permitted use to that which is allowed by the tenant’s state-issued, and in certain jurisdictions locally-issued, licenses and permits, as they may be amended or changed by the applicable state-regulating authority.

**Lease Example for Permitted Use**

“The Premises shall be used by Tenant to carry out a lawful cannabis business in accordance with [insert relevant state marijuana law and regulations] for the following uses that Landlord has initialed next to the listed item and for no other purposes. [List agreed upon permissible uses, including whether recreational sales are permitted].”

“**Permitted Use.** Agricultural growth, propagation, processing and dispensing of agricultural materials (including cannabis), industrial and office space, in accordance with current zoning for the Premises and in conformity with all Applicable Laws (as defined below). Permitted Use shall include the cultivation, propagation and processing of cannabis plant parts and resins into products, the storage of same for transport, operation of a registered cannabis dispensary, and such other related use or uses permitted under Applicable Laws. As used herein, the term “license” shall mean and refer to this certain license issued by the applicable governmental agency with jurisdiction over the Permitted Use under which Tenant is authorized to engage in the agricultural growth, propagation, processing and/or dispensing of cannabis for medical use purposes.”

“This is a nonsmoking premises. No smoking, including medical or recreational marijuana, inside or on the Premises is permitted. However, consuming medical marijuana with a vaporizer or in cannabis edibles, tonics, or concentrates is permitted.”

“No recreational or medical marijuana may be consumed on the Premises by the Tenant(s) or Tenant’s guests and invitees without the prior written consent of the Landlord.”

“Unless otherwise consented to by Landlord, in writing, Tenant shall be prohibited from operating a recreational or adult use marijuana dispensary on the Premises, regardless of state law.”

“Tenant shall at all times during the term of the Lease or any extensions thereof, have a copy of Tenant’s state-issued marijuana license at the Premises and shall be available during working hours to present such license, which shall be in good standing with the applicable state governmental regulating authority. Upon each renewal of Tenant’s state-issued marijuana license, Tenant shall provide a copy of such license to Landlord within twenty-four (24) hours of receipt.”

A lease should specifically describe the activities that may occur on the premises. A landlord may want to limit those activities to those that align with the specific type of license the business possesses. A landlord may also want to restrict or forbid the use of any marijuana products on the premises. Tenants should be required to diligently monitor employees, patients, customers, invitees and agents to ensure that no product is used on the premises contrary to the permitted use.

**On-Site Cash**

For security purposes, the lease should limit the amount of cash a tenant is allowed to keep on the premises. For example, a lease may limit the amount of cash a tenant is allowed to keep on hand at any given time or may require the tenant to remove cash reserves from the premises at the end of each day. Landlords should also consider requiring a reputable armored cash transfer service for the movement of all cash and restricting the tenant's ability to have an ATM on the premises.
Lease Example:

“Tenant shall use its best efforts to ensure that patients, customers, employees, agents, and owners of Tenant and Tenant’s dispensary neither loiter, nor use, smoke, vape, dab, consume, in any form or fashion, any THC and/or CBD marijuana product in the Premises or Building, on the Property or in any adjacent properties. Tenant shall remove cash from the Premises at the end of each day, so that at no time shall Tenant have in excess of $[___] on the Premises. Tenant shall provide Landlord with Tenant’s daily cash transfer schedule and procedures and shall update such information to Landlord within twenty-four (24) hours of any changes to Tenant’s cash transfer schedule and procedures.”

Payment of Rent

Landlords should require tenants to pay rent, additional rent, and any other amounts due the landlord in the form of a check or wire transfer. Although marijuana tenants can only accept cash and sometimes would prefer to pay their expenses in cash, landlords will want to protect themselves from being subject to suspicious activity reports (SARs), which financial institutions are required to issue on any cash deposits greater than $10,000 or upon their discretion.

Lease Example

“Tenant shall pay all Rent, Additional Rent and any other amounts due to Landlord by check or wire transfer on the date set forth in this Lease. Unless otherwise agreed by Landlord, Tenant shall not be permitted to pay Rent, Additional Rent or any other amounts due Landlord in cash.”

Utilities

Landlords may require a tenant to pay for excessive utility consumption and provide additional security in case a tenant vacates the premises without paying outstanding utility charges.

Lease Example:

“Any excessive consumption of water or electricity shall be at Tenant’s sole cost and expense. No utilities user sharing the meter for electricity or water, as the case may be, shall be obligated to pay a disproportionate share of utilities. If Landlord determines that the only reasonable means for proper allocation of electricity/gas/water usage costs is the installation of a separate meter, Tenant shall pay the expense of the meter and its installation within five business days of the date upon which Landlord informs Tenant of its election to install a separate meter.”

Inspection of Premises

Generally, access to areas containing marijuana products are highly restricted by state statutes. Landlords are typically not permitted to access certain areas without the applicable regulatory body's approval. Tenants should be required to give landlords access to the premises to the extent allowed by law and to assist landlords in receiving governmental approval for entry into any restricted spaces. Landlords should consider including a lease provision requiring the tenant to accompany the landlord during any inspections of the premises and to pay any costs associated with such inspections.

Lease Examples:

“If approval from the [insert relevant state and local regulators] or any other governmental authorities is necessary in order for Landlord or any mortgagee to inspect the Premises, Tenant shall use its best efforts to support obtaining such approvals for inspection, time being of the essence. If Landlord’s access to certain space in the Premises is conditioned on Landlord being accompanied by a member of Tenant's management team, Tenant shall provide such access to the Premises as soon as reasonably possible, after Landlord request.”

“Landlord shall have the right, at any time any portion of the Premises is occupied by Tenant’s principals, agents, or contractors, including at times when the Premises is not open for business
to the public, to enter the Premises for the purposes of ensuring compliance with the covenants, warranties, and representations of Tenant under this Lease. In accordance with state licensing rules, Landlord must be accompanied by authorized Tenant personnel while inspecting limited access areas. Landlord may photograph or video-record in any medium the activities of Tenant, subject to privacy restrictions under HIPAA and state laws and so long as such visual records are not provided to anyone with an interest in possessing Tenant's trade secrets (other than government entities)."

**Indemnification**

The indemnification section should cover specific issues that may arise from marijuana retail sale activities. Tenants should indemnify the landlord from and against any expenses related to any criminal enforcement or asset forfeiture (as permitted under the Controlled Substances Act), including reimbursement of attorney’s fees and expenses related to any investigation regardless of whether a claim is brought. Landlords may also want to include provisions protecting themselves from property damage caused by robberies, break-ins, and burglaries.

**Lease Example:**

“Except to the extent caused by or resulting from Landlord's gross negligence or willful misconduct, Tenant shall save Landlord harmless, and will exonerate and indemnify and defend Landlord from and against any and all civil, criminal, or other claims, liabilities, or penalties, including attorney’s fees, asserted by or on behalf of any person, firm, or public or governmental authority on account of or based upon Tenant’s use of the Premises or any injury to a person, or loss of or damage to property, sustained or occurring within the Premises.”

**Signage/Marketing**

Many state enabling statutes heavily regulate the way marijuana products may be marketed and displayed. Landlords should require tenants to not only abide by state laws, but to also show proof that any proposed signage meets the appropriate state standards and regulations.

**Lease Example:**

“At all times during this Lease, Tenant shall comply with all applicable statutes and regulations involving [insert facility type] advertising, signage and marketing of the [insert facility type] business.”

**Odors**

Marijuana products may cause odors that migrate to other tenant spaces or off site. Tenants should have the duty to mitigate odors, which may include installing additional ventilation systems. This may not be a concern for every landlord depending on the building, proposed use, or neighboring tenants.

**Lease Example:**

“Tenant shall undertake reasonable and diligent steps to mitigate any odor emanating from marijuana located on the Premises.”

“Except for odors and fumes that are consistent with the prior course of dealing and are not otherwise a violation of any Applicable Laws or CC&Rs, Tenant shall not cause or permit (or conduct any activities that would cause) any release of any odors or fumes of any kind from the Premises. Tenant shall, at Tenant’s sole cost and expense, provide odor eliminators and other devices (such as filters, air cleaners, scrubbers and whatever other equipment may in Landlord’s judgment be necessary or appropriate from time to time) to abate any odors, fumes or other substances in Tenant’s exhaust stream that emanate from Tenant’s Premises to a commercially reasonable level consistent with the Permitted Use. Any work Tenant performs under this Section shall constitute Alterations. Tenant’s responsibility to remove eliminate and abate odors, fumes and exhaust shall continue through the Term.”
**Tenant Improvements/Build-Out**

The layout and buildout of marijuana facilities is often controlled by certain rules specific to the intended uses. Landlords should require tenants to obtain assurances or approvals of the design of the premises prior to commencing any construction. A lease should include a provision that relieves landlords of the duty to reimburse tenants for the cost of any improvements that are unique to marijuana operations and do not have any value to subsequent tenants. Landlords may also want to include language in the lease requiring a tenant to remove any improvements the landlord wants removed at the tenant's expense.

**Lease Examples**

“The parties acknowledge that the Premises are not currently fit for the permitted use and that the alterations listed in Attachment A will have to be construed to render the Premises fit and that:

a. Tenant shall, at its sole expense, but with the good faith and reasonable cooperation of Landlord, secure all licenses, permits, and other approvals required to make such alterations;

b. Tenant shall not be entitled to reimbursement from Landlord for making any alterations or improvements that are unique to the operation of a Cannabis business and provide no residual value to a subsequent tenant; and

c. Tenant shall remove, at its sole expense, any and all alterations that Landlord designates for removal at the end of the Lease term.”

“Tenant’s covenant to comply with all applicable Mandates shall apply equally to dismantling Tenant’s operations at the end of the term and surrender of the Premises.”

“Tenant hereby covenants to dispose, according to Mandates, all unused inventory, refuse, and scrap materials and thereafter to clean to commercially acceptable standards (including sterilization of impermeable surfaces, wall to wall and ceiling to floor) all floors, walls, immovable fixtures, and air ducts serving the Premises.”

**Events of Default**

It should be a default if the tenant loses its marijuana permit or if any action is brought against the tenant for its activities. Landlords should specify which events terminate the lease. Early termination events may include federal criminal prosecution, enforcement actions, administrative proceedings, changes in enforcement priorities, property seizures, “nuisance” claims, bank foreclosures, or actions by cotenants. A landlord should also consider including a “Force Majeure” clause in case local authorities change local zoning, permitting, or licensing laws requiring a change to the rental agreement.

**Lease Example:**

“…Tenant’s failure to maintain the [insert facility type] license in good standing with the applicable governmental authorities,”

“…the initiation of any Federal enforcement investigation or action involving Tenant, Tenant’s affiliates or Tenant’s use of the Premises as a result of operating as a marijuana [insert facility type],”

**End of the Lease Term**

Landlords should require a tenant to turn over the premises in a condition that will not subject the landlord to any liability relating to the activities performed on the premises.

**Lease Example:**

“Tenant shall remove, coordinate, and/or destroy, as permitted and directed by the applicable governmental authorities, all medical marijuana products remaining in the Premises upon expiration or earlier termination of this Lease.”

**Duty to Report**
Landlords should require the tenant to report any issues that arise on the premises or relate to the tenant’s business or use of the premises. Landlords should ensure that the tenant involves appropriate authorities as necessary.

**Lease Example:**

“Tenant shall be required to report to Landlord within twenty-four (24) hours, including providing copies of any written notices, of any complaints received by Tenant, including but not limited to, patients, employees, agents, or owners, loitering, or using, smoking, vaping, dabbing, or consuming, in any form or fashion, any THC and/or CBD marijuana product in the Premises or Building, on the Property or on any adjacent properties. If Tenant receives any notices from the [insert relevant state and local regulators] or any other governmental authorities, regarding Tenant’s [insert facility type] license or use of the Premises as a [insert facility type], Tenant shall submit such notices to Landlord within twenty-four (24) hours.”

**Definition of ‘Laws’**

Many lease forms define ‘laws’ very broadly and prohibit activities which are ‘illegal’. In a marijuana lease, any reference to ‘laws’ (or any reference to crime, rules, regulation, etc.) needs to be re-defined to pertain only to state laws (which permit marijuana use) and exclude federal law (where such use remains illegal). Leases should be crafted to require tenant compliance with all federal laws not involving the growth, storage, and sale of marijuana.

**Lease Example:**

“‘Applicable Laws’ means all federal (to the extent not in direct conflict with applicable state, municipal or local cannabis licensing and program laws, rules and regulations), state, municipal and local laws, codes, ordinances, rules and regulations of governmental authorities, committees, associations, or other regulatory committees, agencies or governing bodies having jurisdiction over the Premises or any portion thereof, Landlord or Tenant, including both statutory and common law, hazardous waste rules and regulations and state cannabis licensing and program laws, rules and regulations.”

“Tenant’s obligation hereunder shall include (i) all state and local laws and regulations from any governmental authority with jurisdiction over Tenant’s use, including but not limited to [relevant state law and regulations] and local zoning ordinances; and (ii) all federal laws to the extent those laws are not inconsistent with state and local laws allowing Tenant to use the Premises for the specified permitted uses. The covenant to comply encompasses all applicable laws that become effective before and during the Lease term, as may be extended (collectively, the “Mandates”), regardless of the cost of such compliance. Tenant’s inability to comply with the Mandates shall be grounds for termination of this Lease.”

**OTHER AREAS OF CONCERN**

**Insurance**

Insurance policies for marijuana tenants can be very expensive and typically contain many carve-outs regarding what is actually covered. Landlords will want to require tenants to obtain a robust insurance policy. However, landlords should be sensitive to what types of polices and coverages tenants can actually obtain.

**Security**

Landlords should be aware of the additional security concerns that come with leasing to marijuana tenants. Landlords should consider either requiring tenants to pay for additional security systems for the premises (which may include the hiring of a security guard) or building-in such costs to the lease. With regard to security guards, landlords should ensure a tenant hires an insured and reputable security company, or possibly require the hiring of off-duty policemen. Landlords also may want to specify whether security guards are permitted to be armed. (Note: This may be subject to state law specifics).

**Limitation of Liability**
Landlords will not want to limit their recovery for any breach of the lease or damages from the tenant's activities to exclude recovery from any partner, shareholder, member, trustee, or beneficiary of the tenant. Landlords should consider lease guaranties.

**Landlord Reservations**

Landlords should reserve the right to terminate the lease upon changes in laws related to the tenant’s activities, including changes to applicable local, state, and federal laws, or upon revised official guidance concerning enforcement priorities from the Department of Justice (rescission of the Cole Memorandum).

**Governing Law**

Both landlords and tenants need to confirm applicability of laws governing the location of the marijuana activity and that counsel knowledgeable about the specific local requirements (such as zoning regulations) has reviewed the lease.

**Waiver of Defense**

Both landlords and tenants should waive any defense based on violation of federal laws and should stipulate that federal illegality based on the presence of marijuana is not a valid defense to a claim arising under the lease. Many states that allow marijuana cultivation require this term to be included in the lease, thus negating any federal “innocent owner defense” for a landlord.

**Warranty of Suitability**

Landlords may want to remove warranties that the premises are suitable for a tenant’s proposed use, since this may require significant alterations to the premises, such as building code and zoning alterations and inspections. Tenants should be responsible for all necessary permits, licenses, and approvals.

**Environmental Concerns**

Both landlords and tenants should agree upon proper procedures for the disposal and storage of herbicides, pesticides, and fertilizers in addition to light and water use.

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H.R.1855 — 114th Congress (2015-2016)
Small Business Tax Equity Act of 2015
Committees: House - Ways and Means
Latest Action: House - 04/16/2015 Referred to the House Committee on Ways and Means.

S.987 — 114th Congress (2015-2016)
Small Business Tax Equity Act of 2015
Committees: Senate - Finance
Latest Action: Senate - 04/16/2015 Read twice and referred to the Committee on Finance.

H.R.1810 — 115th Congress (2017-2018)
Small Business Tax Equity Act of 2017
Sponsor: Rep. Curbelo, Carlos [R-FL-26] (Introduced 03/30/2017) Cosponsors: (44)
Committees: House - Ways and Means
Latest Action: House - 03/30/2017 Referred to the House Committee on Ways and Means.

S.776 — 115th Congress (2017-2018)
Marijuana Revenue and Regulation Act
Sponsor: Sen. Wyden, Ron [D-OR] (Introduced 03/30/2017) Cosponsors: (0)
Committees: Senate - Finance
Latest Action: Senate - 03/30/2017 Read twice and referred to the Committee on Finance.

Marijuana Revenue and Regulation Act
Committees: House - Ways and Means
Latest Action: House - 03/30/2017 Referred to the House Committee on Ways and Means.

H.R.1841 — 115th Congress (2017-2018)
Regulate Marijuana Like Alcohol Act
Latest Action: House - 04/24/2017 Referred to the Subcommittee on Conservation and Forestry.

H.R.975 — 115th Congress (2017-2018)
Respect State Marijuana Laws Act of 2017
Committees: House - Judiciary, Energy and Commerce
Latest Action: House - 02/10/2017 Referred to the Subcommittee on Health.
S.1152 — 115th Congress (2017-2018)
Secure and Fair Enforcement Banking Act or the SAFE Banking Act
Sponsor: Sen. Merkley, Jeff [D-OR] (Introduced 05/17/2017) Cosponsors: (17)
Committees: Senate - Banking, Housing, and Urban Affairs
Summary: https://www.congress.gov/bill/115th-congress/senate-bill/1152

S.1689 — 115th Congress (2017-2018)
Marijuana Justice Act of 2017
Sponsor: Sen. Booker, Cory A. [D-NJ] (Introduced 08/01/2017) Cosponsors: (5)
Committees: Senate - Judiciary
Latest Action: Senate - 08/01/2017 Read twice and referred to the Committee on the Judiciary.
Summary: https://www.congress.gov/bill/115th-congress/senate-bill/1689

H.R.4815 — 115th Congress (2017-2018)
Marijuana Justice Act of 2018
Committees: House - Judiciary, Energy and Commerce, Agriculture, Natural Resources, Financial Services
Latest Action: House - 02/08/2018 Referred to the Subcommittee on Conservation and Forestry.
Summary: https://www.congress.gov/bill/115th-congress/house-bill/4815

H.R.4779 — 115th Congress (2017-2018)
Restraining Excessive Federal Enforcement & Regulations of Cannabis Act of 2018 or the REFER Act of 2018
Committees: House - Judiciary, Financial Services, Energy and Commerce
Summary: https://www.congress.gov/bill/115th-congress/house-bill/4779
Other Proposed Legislation as of June 13, 2018
“bills that target marijuana reform on the Federal level.”

H.R.5050 — 115th Congress (2017-2018)
Sensible Enforcement of Cannabis Act of 2018
Committees: House - Judiciary
Summary is in progress: https://www.congress.gov/bill/115th-congress/house-bill/5050
To direct the Attorney General, in enforcing the provisions of the Controlled Substances Act relating to marijuana, to focus on certain enforcement priorities.

H.R.5853 — 115th Congress (2017-2018)
Preserving Welfare for Needs Not Weed Act
Committees: House - Ways and Means
Latest Action: House - 05/16/2018 Referred to the House Committee on Ways and Means.
Summary: https://www.congress.gov/bill/115th-congress/house-bill/5853
To prohibit assistance provided under the program of block grants to States for temporary assistance for needy families from being accessed through the use of an electronic benefit transfer card at any store that offers marijuana for sale.

H.R.3391 — 115th Congress (2017-2018)
Medical Marijuana Research Act of 2017
Committees: House - Energy and Commerce, Judiciary
Summary: https://www.congress.gov/bill/115th-congress/house-bill/3391
This bill amends the Controlled Substances Act to establish a new, separate registration process to facilitate research with marijuana for medical purposes. The Drug Enforcement Administration must register: (1) practitioners to conduct medical marijuana research, and (2) manufacturers and distributors to supply marijuana for such research.

The Department of Health and Human Services must continue to produce marijuana through the National Institute on Drug Abuse Drug Supply Program and offer to sell immature plants and seeds to researchers until manufacturers and distributors can provide a sufficient supply of marijuana for medical research.

S.780 — 115th Congress (2017-2018)
Responsibly Addressing the Marijuana Policy Gap Act of 2017
Sponsor: Sen. Wyden, Ron [D-OR] (Introduced 03/30/2017) Cosponsors: (0)
Committees: Senate - Finance
Latest Action: Senate - 03/30/2017 Read twice and referred to the Committee on Finance.
Summary: https://www.congress.gov/bill/115th-congress/senate-bill/780
This bill amends various provisions of law and sets forth new provisions:
- to eliminate regulatory controls and administrative, civil, and criminal penalties under the Controlled Substances Act for marijuana-related activities authorized by state or tribal law (i.e., state-authorized);
- to allow businesses that sell marijuana in compliance with state or tribal law to claim certain federal tax credits and deductions;
- to eliminate restrictions on print and broadcast advertising of state-authorized marijuana-related activities;
- to create protections for depository institutions that provide financial services to marijuana-related businesses;
- to specify that a marijuana-related business is entitled to federal bankruptcy protections;
- to establish a process to expunge criminal records related to certain marijuana-related convictions;
- to reestablish federal student aid eligibility for certain students convicted of a misdemeanor offense for marijuana possession;
• to exempt real property from civil forfeiture due to state-authorized marijuana-related conduct;
• to prohibit the inadmissibility or deportability of aliens for state-authorized marijuana-related conduct;
• to specify that drug-related criminal activity, which is prohibited in federally assisted housing, does not include state-authorized marijuana-related conduct;
• to establish a new, separate registration process to facilitate medical marijuana research;
• to authorize health care providers employed by the Department of Veterans Affairs to recommend participation in state marijuana programs; and
• to authorize medical providers through an Indian health program to make medical recommendations regarding marijuana.

H.R.1824 — 115th Congress (2017-2018)
Responsibly Addressing the Marijuana Policy Gap Act of 2017
Committees: House - Judiciary, Energy and Commerce, Ways and Means, Financial Services, Natural Resources, Education and the Workforce, Veterans’ Affairs, Oversight and Government Reform
Latest Action: House - 04/24/2017 Referred to the Subcommittee on Immigration and Border Security. (All Actions)
Related to S. 780 above.

S.1689 — 115th Congress (2017-2018)
Marijuana Justice Act of 2017
Committees: Senate - Judiciary
Latest Action: Senate - 08/01/2017 Read twice and referred to the Committee on the Judiciary.
Summary: https://www.congress.gov/bill/115th-congress/senate-bill/1689
This bill amends the Controlled Substances Act:
• to remove marijuana and tetrahydrocannabinols from schedule I; and
• to eliminate criminal penalties for an individual who imports, exports, manufactures, distributes, or possesses with intent to distribute marijuana.

The bill directs federal courts to expunge convictions for marijuana use or possession.

Finally, it establishes in the Treasury the Community Reinvestment Fund. Amounts in the fund may be used by the Department of Housing and Urban Development to establish a grant program to reinvest in communities most affected by the war on drugs.

H.R.1227 — 115th Congress (2017-2018)
Ending Federal Marijuana Prohibition Act of 2017
Committees: House - Energy and Commerce, Judiciary
Summary: https://www.congress.gov/bill/115th-congress/house-bill/1227
This bill amends the Controlled Substances Act to provide that the Act's regulatory controls and administrative, civil, and criminal penalties do not apply to with respect to marijuana.

It removes marijuana and tetrahydrocannabinols from schedule I. (A schedule I controlled substance is a drug, substance, or chemical that: has a high potential for abuse; has no currently accepted medical value; and is subject to regulatory controls and administrative, civil, and criminal penalties under the Controlled Substances Act.)

Additionally, it eliminates criminal penalties for an individual who imports, exports, manufactures, distributes, or possesses with intent to distribute marijuana.
The bill does, however, make it a crime to knowingly ship or transport marijuana into a state where its receipt, possession, or sale is prohibited. A violator is subject to criminal penalties—a fine, a prison term of up to one year, or both.

H.R.331 — 115th Congress (2017-2018)
States' Medical Marijuana Property Rights Protection Act
Committees: House - Judiciary, Energy and Commerce
Summary: https://www.congress.gov/bill/115th-congress/house/bill/331
This bill amends the Controlled Substances Act to exempt real property from civil forfeiture due to medical marijuana-related conduct that is authorized by state law.

H.R.975 — 115th Congress (2017-2018)
Respect State Marijuana Laws Act of 2017
Committees: House - Judiciary, Energy and Commerce
Latest Action: House - 02/10/2017 Referred to the Subcommittee on Health.
Summary: https://www.congress.gov/bill/115th-congress/house/bill/975
This bill amends the Controlled Substances Act to provide that the Act's regulatory controls and administrative, civil, and criminal penalties do not apply to a person who produces, possesses, distributes, dispenses, administers, or delivers marijuana in compliance with state laws.

To provide for the rescheduling of marijuana into schedule III of the Controlled Substances Act.
Sponsor: Rep. Gaetz, Matt [R-FL-1] (Introduced 04/06/2017) Cosponsors: (3)
Committees: House - Energy and Commerce, Judiciary
Latest Action: House - 04/07/2017 Referred to the Subcommittee on Health.
This bill directs the Drug Enforcement Administration to transfer marijuana from schedule I to schedule III of the Controlled Substances Act. (A schedule I controlled substance is a drug, substance, or chemical that: has a high potential for abuse; has no currently accepted medical use; and is subject to regulatory controls and administrative, civil, and criminal penalties under the Controlled Substances Act. A schedule III controlled substance is a drug, substance, or chemical that: has less potential for abuse than a schedule I or II substance; has a currently accepted medical use; and has low or moderate risk of dependence if abused.)

H.R.4816 — 115th Congress (2017-2018)
Stop Civil Asset Forfeiture Funding for Marijuana Suppression Act of 2018
Committees: House - Judiciary
Summary: https://www.congress.gov/bill/115th-congress/house/bill/4816
This bill prohibits the use of amounts in the Department of Justice Assets Forfeiture Fund for the Drug Enforcement Administration's (DEA's) Domestic Cannabis Suppression/Eradication Program.

Additionally, the bill prohibits the transfer of property to a federal or state and local agency for a purpose pertaining to such a program.

Finally, the bill expresses the sense of Congress that the DEA's marijuana prohibition policy is an inappropriate use of resources.

H.R.2920 — 115th Congress (2017-2018)
Compassionate Access, Research Expansion, and Respect States Act of 2017 or the CARERS Act of 2017
Committees: House - Energy and Commerce, Judiciary, Veterans' Affairs
This bill amends the Controlled Substances Act to provide that the Act's regulatory controls and administrative, civil, and criminal penalties do not apply to a person who produces, possesses, distributes, dispenses, administers, tests, recommends, or delivers medical marijuana in compliance with state law.

The bill also excludes "cannabidiol" (CBD) from the definition of "marijuana"; limits the concentration of delta-9-tetrahydrocannabinol (THC) in CBD to 0.3 percent on a dry weight basis; and deems marijuana grown or processed to make CBD, in accordance with state law, to comply with the THC concentration limit unless the Drug Enforcement Administration (DEA) determines state law to be unreasonable.

The bill directs the Department of Health and Human Services (HHS) to terminate the Public Health Service's interdisciplinary review process that is used to evaluate applications for medical marijuana research. The DEA must license manufacturers and distributors of marijuana for medical research; HHS must register practitioners to conduct research; and the Department of Veterans Affairs (VA) must authorize VA health care providers to provide recommendations and opinions to veterans regarding participation in their states' marijuana programs.
This bill amends the Internal Revenue Code to exempt a trade or business that conducts marijuana sales in compliance with state law from the prohibition against allowing business-related tax credits or deductions for expenditures in connection with trafficking in controlled substances.

S.777 — 115th Congress (2017-2018)
Small Business Tax Equity Act of 2017
Sponsor: Sen. Wyden, Ron [D-OR] (Introduced 03/30/2017) Cosponsors: (6)
Committees: Senate - Finance
Latest Action: Senate - 03/30/2017 Read twice and referred to the Committee on Finance.
Related to H.R. 1810 above.

S.1008 — 115th Congress (2017-2018)
Therapeutic Hemp Medical Access Act of 2017
Sponsor: Sen. Gardner, Cory [R-CO] (Introduced 05/02/2017) Cosponsors: (12)
Committees: Senate - Judiciary
Latest Action: Senate - 05/02/2017 Read twice and referred to the Committee on the Judiciary.
Summary: https://www.congress.gov/bill/115th-congress/senate-bill/1008
This bill amends the Controlled Substances Act (CSA):
- to add definitions for the terms "cannabidiol," "cannabidiol-rich plants," and "tetrahydrocannabinol concentration";
- to exclude cannabidiol and cannabidiol-rich plants from the definition of marijuana; and
- to remove cannabidiol and cannabidiol-rich plants from coverage under the CSA.
It also specifies that no provision of this bill prohibits or restricts the use, production, or distribution of marijuana in a state in which such activities are legal under state law.

H.R.2528 — 115th Congress (2017-2018)
Respect States' and Citizens' Rights Act of 2017
Committees: House - Judiciary, Energy and Commerce
Summary: https://www.congress.gov/bill/115th-congress/house-bill/2528
This bill amends the Controlled Substances Act (CSA) to declare that no provision of the CSA, including criminal penalties, is intended to supersede or preempt a state law that pertains to marijuana.

H.R.5634 — 115th Congress (2017-2018)
Medical Cannabis Research Act of 2018
Committees: House - Energy and Commerce, Judiciary, Veterans’ Affairs
Summary: https://www.congress.gov/bill/115th-congress/house-bill/5634
To increase the number of manufacturers registered under the Controlled Substances Act to manufacture cannabis for legitimate research purposes, to authorize health care providers of the Department of Veterans Affairs to provide recommendations to veterans regarding participation in federally-approved cannabis clinical trials, and for other purposes.
The bill includes provisions that restrict or prohibit the use of funds for:
the enforcement of certain restrictions and reporting requirements for firearms,
bilateral activities with China by NASA or the Office of Science and Technology Policy, and
preventing states from implementing their own laws legalizing medical marijuana or industrial hemp.

None of the funds made available in this Act to the Department of Justice may be used, with respect to any of the
States of Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia,
Hawaii, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota,
Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina,
North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah,
Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming, or with respect to the District of
Columbia, Puerto Rico, or Guam, to prevent any of them from implementing their own laws that authorize the use,
distribution, possession, or cultivation of medical marijuana.

This bill prohibits a federal banking regulator from: (1) terminating or limiting the deposit insurance or share
insurance of a depository institution solely because the institution provides financial services to a legitimate
marijuana-related business; (2) prohibiting or otherwise discouraging a depository institution from offering
financial services to such a business; (3) recommending, incentivizing, or encouraging a depository institution not
to offer financial services to an account holder solely because the account holder is affiliated with such a
business; or (4) taking any adverse or corrective supervisory action on a loan made to a person solely because
the person either owns such a business or owns real estate or equipment leased or sold to such a business. As
specified by the bill, a depository institution shall not, under federal law, be liable or subject to forfeiture for
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specified by the bill, a depository institution shall not, under federal law, be liable or subject to forfeiture for
providing a loan or other financial services to a legitimate marijuana-related business.
Committees: House - Energy and Commerce, Judiciary
Summary: https://www.congress.gov/bill/115th-congress/house-bill/3530
To amend the Controlled Substances Act to exclude industrial hemp from the definition of marihuana, and for other purposes.

H.R.5485 — 115th Congress (2017-2018)
Hemp Farming Act of 2018
Committees: House - Agriculture, Energy and Commerce, Judiciary
Latest Action: House - 04/12/2018 Referred to the Committee on Agriculture, and in addition to the Committees on Energy and Commerce, and the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of...
Summary: https://www.congress.gov/bill/115th-congress/house-bill/5485
To amend the Agricultural Marketing Act of 1946 to provide for State and Tribal regulation of hemp production, and for other purposes.

S.2667 — 115th Congress (2017-2018)
Hemp Farming Act of 2018
Latest Action: Senate - 04/16/2018 Read the second time. Placed on Senate Legislative Calendar under General Orders. Calendar No. 380.
Related to H.R. 5485 above.