October 25, 2019
10:30 AM – 11:45 AM

Workshop 23

CANNABIS AND COMMERCIAL REAL ESTATE:
BUSINESS OPPORTUNITY AND LEGAL CONUNDRUM

Presented to

2019 U.S. Shopping Center Law Conference
San Diego Marriott Hotel and Marina
San Diego, California
October 23-25, 2019

by

Mark S. Hennigh
Greene Radovsky Maloney Share & Hennigh LLP
One Front Street
Suite 3200
San Francisco, CA 94111
mhennigh@grmslaw.com
(415) 981-1400

Benton B. Bodamer
Dickenson Wright PLLC
150 E. Gay Street
Suite 2400
Columbus OH 43215
BBodamer@dickinsonwright.com
(614) 744-2946
Setting the Stage – The Ever-Changing Legal Landscape of Medical and Recreational Cannabis Businesses

Before discussing the legal commercial real estate issues related to cannabis 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. With the Obama administration’s enforcement approach essentially continuing uninterrupted under the Trump 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 state-compliant psychoactive cannabis. Sometimes referred to as “marijuana,” psychoactive varieties of plants Cannabis sativa, Cannabis ruderalis, and Cannabis indica are differentiated from extremely low-THC (i.e., non-psychoactive) strains of Cannabis sativa l., which is generally referred to as “hemp.” Sales of state-legal cannabis (other than hemp) 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 33 states and the District of Columbia, and in eleven states and the District of Columbia (Colorado, Washington, Oregon, Arkansas, California, Nevada, Massachusetts and Maine) for adult recreational use. In addition to outright legalization, there are decriminalization statutes in other states. 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, with no medical benefits, high risk of abuse, and high risk of addiction. Its current federal status puts marijuana in the same category as heroin, cocaine and opium, in sharp contrast to its legality and use as one of the most-prescribed medical treatments in the early 1900s. The surprising inclusion of marijuana with heroin, cocaine and opium by the Nixon administration in 1970 may, in part, be explained by the following quote from Nixon’s White House counsel and domestic policy advisor. The quote was not contemporaneous with the passage of the Controlled Substances Act but, rather, was made 22 years after passage of the Controlled Substances Act, long after the White House counsel had left the administration.

“The Nixon campaign in 1968, and the Nixon White House after that, had two enemies: the antiwar left and black people. You understand what I’m saying? We knew we couldn’t make it illegal to be either against the war or black, but by getting the public to associate the hippies with marijuana and blacks with heroin, and then criminalizing both heavily, we could disrupt those communities. We could arrest their leaders, raid their homes, break up their meetings, and vilify them night after night on the evening news. Did we know we were lying about the drugs? Of course we did.”

The quote is from John Ehrlichman, who served 18 months in Federal prison for conspiracy, perjury and obstruction of justice in connection with the Watergate break-in.

One provision of the Controlled Substances Act is of particular interest to commercial property owners (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 cannabis cultivation, processing, use and sale preempt any state statute legalizing the same. 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 as to marijuana. 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 and current administrations’ approaches to non-enforcement of the Controlled Substances Act with respect to state-compliant cannabis.

A Note Regarding Hemp

It should be noted that “hemp” (defined by statute as Cannabis sativa l. with a THC concentration of less than 0.3% by dry weight), was broadly legalized at the federal level via the 2018 Farm Bill, pursuant to which the hemp plant and all byproducts were removed from regulation under the Controlled Substances Act (i.e. completely descheduled), hemp was explicitly approved for interstate commerce, and authority for cultivation and regulation of hemp was broadly delegated to the United States Department of Agriculture and state departments of agriculture in states where hemp cultivation, processing, sale, and use of hemp-derived products is legal.
Understanding which states allow or prohibit hemp cultivation (which changes monthly if not weekly) is a key risk factor to understanding local enforcement risk of leasing to a particular tenant.

The two seminal federal actions relaxing the impact of preemption are the Cole Memorandum and the Rohrabacher-Farr Amendment (most recently replaced by the Blumenauer-Norton-McClintock Amendment).

**The Cole Memorandum**

The Cole Memorandum was 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 was “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 stated that “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 stated that enforcement of marijuana laws was not the highest Department of Justice priority. The Cole Memorandum highlighted the enforcement priorities which the Department of Justice then had with respect to marijuana, and these priorities were 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 directed federal prosecutors to direct their prosecution efforts only to the categories described above. The Cole Memorandum noted that, traditionally, enforcement of marijuana laws with respect to small quantities has been left to the states. The Cole Memorandum also assumed 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 concluded 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, could be undertaken without violation of the priorities listed in the Cole Memorandum and, therefore, seemingly without risk of Federal prosecution.

On January 4, 2018, then-Attorney General Sessions issued a memorandum for all United States Attorneys pertaining to marijuana enforcement, rescinding the Cole Memorandum and related memoranda. 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. It is generally understood that many federal prosecutors are still operating under the framework set forth in the Cole Memorandum in setting federal priorities of enforcement.
Rohrabacher-Blumenauer Amendment / Blumenauer-Norton-McClintock Amendment

With Attorney General Jeff Sessions rescinding the Cole Memo the Rohrabacher-Blumenauer Amendment was the only federal law standing in the way of a potential crackdown on medical marijuana, and no technical prohibition on federal enforcement against state-compliant recreational / adult-use cannabis existed.

First passed in 2014, Rohrabacher-Blumenauer (then known as Rohrabacher-Farr) was an amendment to the annual appropriations bill that prohibited the Department of Justice from using federal funds to interfere with state-legal medical marijuana programs.

On June 20, 2019, the Blumenauer-Norton-McClintock Amendment (Amendment 17 to H.R. 3055) passed in the U.S. House of Representatives. It significantly expanded the previous protections afforded by the Rohrabacher-Blumenauer Amendment by withholding federal funding for prosecutions against state-compliant cannabis businesses in medical and adult use programs, and by extending the definition of “states” to include territories including the District of Columbia. Assuming the continued effectiveness and ultimate implementation of the Blumenauer-Norton-McClintock Amendment, the Department of Justice will not be able to use appropriated funds to enforce federal marijuana laws.

The Rohrabacher-Blumenauer Amendment language and likely implementation of the Blumenauer-Norton-McClintock Amendment language, each withholding appropriations to fund implementation and enforcement of federal marijuana laws in states where use is legal, have given comfort to the cannabis wholesale and retail industries. It is against this backdrop of federal disinclination to enforce that the cannabis cultivation, processing, wholesale and retail industries have exploded in the United States.

Other Significant Legislation

As of June 2019, two pending bills in particular have high potential to dramatically advance the medical and adult use cannabis industries under federal law: the Safe and Fair Enforcement Banking Act (the “SAFE Act”) and the Strengthening the Tenth Amendment Through Entrusting States Act (the “STATES Act”).

The SAFE Act would provide guidance to financial institutions choosing to work with state-compliant cannabis businesses, and would shield compliant institutions from the risks of federal criminal proceedings or loss of charter. The legislation was recently advanced from committee in a 45-15 vote, sending it for full House consideration. As of June 2019, the SAFE Act has 152 co-sponsors, nearly a third of the House, which is more than any cannabis legislation reform to date. The SAFE Act itself prohibits a banking regulator from terminating or limiting the deposit insurance or share insurance of a depository institution, or from taking any other adverse action against a depository institution for the sole reason that the depository institution has provided financial services to a state-compliant cannabis-related business or service provider. Further, the SAFE Act would provide that when providing financial services to a state-compliant cannabis-related business, the depository institution may not be held liable pursuant to any federal law or regulation. Along with protecting depository institutions, the SAFE act also protects ancillary business by stating that “the proceeds from a transaction conducted by a cannabis-related legitimate business or service provider shall not be considered as proceeds from an unlawful activity solely because the transaction was conducted by a cannabis-related legitimate business or service provider, as applicable.” The impact on access to capital via passage of the SAFE Act would be transformative for the already-robust state-compliant cannabis industry in the United States.

The STATES Act, if passed, would eliminate any conflict between state and federal law with regards to cannabis use, giving deference to states under a “cooperative federalism” theory, and thereby legalizing all state-compliant cannabis business operations in the United States. Under the STATES Act, federal law would specifically recognize each state’s individual right to control cannabis via legislation and regulation within the state’s borders. Further, the States Act would change the Controlled Substances Act so that it would not apply to cannabis where businesses are acting within state law. Although blocked by Sen. Mitch McConnell in late 2019, the STATES Act is still widely supported on a bi-partisan basis. Many Governors who represent states that have legalized cannabis have signed letters in support of the Act, and many lawmakers in Washington have cosponsored the bill. In April 2019, the bill was reintroduced by Sen. Cory Gardner and a parallel bill was introduced in the House with the hopes that it will be supported by a majority of Democrats in Congress and be a “next step” in the cannabis industry. While the chances of the STATES Act passing are still slim, the recent passage of the Blumenauer-Norton-McClintock Amendment shows that bipartisan moves toward full-scale legalization are possible.

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 cannabis cultivation, production, or wholesale / retail operation that is not both state and federally compliant, I.R.C. § 280(E) prohibits deduction of expenses from a trade or business on federal tax returns. Interestingly, this would extend to a hemp or CBD business in a state that does not permit cultivation, processing, and sale of hemp and hemp-containing products. 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 many marijuana businesses are cash only and do not involve the use of customary banking arrangements, although technology-driven payment platforms and third party service providers, as well as state cooperative and other local banks have largely begun to fill the banking void.

As noted above, the passage of the SAFE Act could have a dramatic impact on the availability of institutional capital in the state-compliant cannabis marketplaces throughout the United States.

**Trademark/Patents**

Trademarks are only permitted with respect to lawful commerce. As a result, registration of trademarks relating to sale of marijuana is not formally permitted. However, given the legality of hemp, and the legality of businesses that do not directly engage in the violation of the Controlled Substances Act, it is possible to structure protections for cannabis business-related brand assets. Similarly, strain / cultivar patents on individual cannabis plants (and processes for extraction, etc.), particularly if based on protection of cannabis meeting the “hemp” definition, is possible through sophisticated and careful patent prosecution.

**Bankruptcy**

Relief under federal bankruptcy laws is not available to marijuana businesses that 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.” No recent jurisprudence has developed regarding a corporate structure with mixed cannabis assets (i.e., operations with both federally-compliant “hemp” and federally-noncompliant “marijuana” assets), and any federal move toward legalization (such as the passage of the STATES Act), would likely provide for full bankruptcy protection.

**Limited Discussion of Individual States (Updated as of 2018)**

**California**

Medical marijuana use has been legal in California for over ten years, and decriminalized since 1996.

California statutes passed in 2015 and 2016 replaced 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, then-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 cannabis 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, CBD, and/or other cannabis 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 (5) 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
Both 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.
APPENDIX

Legislation Pending in the 116th Congress (2019-2020)
April 2019

Marijuana Revenue and Regulation Act
Latest Action: House - 03/22/2019 Referred to the Subcommittee on Crime, Terrorism, and Homeland Security
Summary: To amend the Internal Revenue Code of 1986 to provide for the taxation and regulation of marijuana products, and for other purposes.

S.420 — 116th Congress (2019-2020) Marijuana Revenue and Regulation Act
Sponsor: Sen. Wyden, Ron [D-OR] (Introduced 02/07/2019) Cosponsors: (0) Committees: Senate - Finance
Latest Action: Senate - 02/07/2019 Read twice and referred to the Committee on Finance.
Summary: To amend the Internal Revenue Code of 1986 to provide for the taxation and regulation of marijuana products, and for other purposes.

Latest Action: House - 03/14/2019 Referred to the Subcommittee on Health
Summary: This bill removes federal restrictions on, and creates new protections for, marijuana-related conduct and activities that are authorized by state or tribal law (i.e., state-authorized).

H.R.420 — 116th Congress (2019-2020) Regulate Marijuana Like Alcohol Act
Latest Action: House - 02/08/2019 Referred to the Subcommittee on Conservation and Forestry.
Summary: To provide for the regulation of marijuana products, and for other purposes.

Latest Action: House - 03/18/2019 Referred to the Subcommittee on Indigenous Peoples of the United States.
Summary: To protect the legal production, purchase, and possession of marijuana by Indian tribes, and for other purposes.

Summary: To amend the Controlled Substances Act to reduce the gap between Federal and State marijuana policy, and for other purposes.

Latest Action: House - 03/07/2019 Referred to the Committee on Energy and Commerce, and in addition to the Committees on the Judiciary, and Education and Labor, for a period to be subsequently determined by the
Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.
Summary: To direct the Secretary of Health and Human Services to enter into a 10-year arrangement with the National Academy of Sciences to conduct and update biennially a study on the effects of State legalized marijuana programs, and for other purposes.

Latest Action: House - 03/27/2019 Referred to the Subcommittee on Conservation and Forestry.
Summary: To direct the Secretary of Health and Human Services to enter into a 10-year arrangement with the National Academy of Sciences to conduct and update biennially a study on the effects of State legalized marijuana programs, and for other purposes.

Latest Action: Senate - 02/28/2019 Read twice and referred to the Committee on the Judiciary.
Summary: To direct the Secretary of Health and Human Services to enter into a 10-year arrangement with the National Academy of Sciences to conduct and update biennially a study on the effects of State legalized marijuana programs, and for other purposes.

Latest Action: House - 03/07/2019 Referred to the Committee on Energy and Commerce, and in addition to the Committee on 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 the committee concerned.
Summary: To limit the application of Federal laws to the distribution and consumption of marihuana, and for other purposes.

Latest Action: House - 02/01/2019 Referred to the Subcommittee on Health.
Summary: To extend the principle of federalism to State drug policy, provide access to medical marijuana, and enable research into the medicinal properties of marijuana.

H.R.2071 — 116th Congress (2019-2020) To amend title 18, United States Code, with respect to the sale, purchase, shipment, receipt, or possession of a firearm or ammunition by a user of medical marijuana, and for other purposes.
Latest Action: House - 04/03/2019 Referred to the House Committee on the Judiciary.
Summary: As of 04/09/2019 text has not been received for H.R.2071 - To amend title 18, United States Code, with respect to the sale, purchase, shipment, receipt, or possession of a firearm or ammunition by a user of medical marijuana, and for other purposes.

Latest Action: House - 02/08/2019 Referred to the House Committee on Ways and Means.
Summary: This bill exempts a trade or business that conducts marijuana sales in compliance with state law from a provision in the Internal Revenue Code that prohibits business-related tax credits or deductions for expenditures in connection with trafficking in controlled substances.

Sponsor: Sen. Wyden, Ron [D-OR] (Introduced 02/07/2019) Cosponsors: (3)
Committees: Senate - Finance
Latest Action: Senate - 02/07/2019 Read twice and referred to the Committee on Finance.
Summary: This bill exempts a trade or business that conducts marijuana sales in compliance with state law from a provision in the Internal Revenue Code that prohibits business-related tax credits or deductions for expenditures in connection with trafficking in controlled substances.

Summary: This bill prohibits the Department of Justice from prosecuting marijuana-related conduct that is authorized by state law, subject to specified exceptions.

Latest Action: House - 03/12/2019 Referred to the House Committee on Oversight and Reform.
Summary: To amend title 5, United States Code, to remove limitations on Federal employment for an individual legally using marijuana under the law of the State in which the individual resides, and for other purposes.

Latest Action: Senate - 03/07/2019 Read twice and referred to the Committee on the Judiciary.
Summary: To reform sentencing, prisons, re-entry of prisoners, and law enforcement practices, and for other purposes.

Latest Action: House - 04/03/2019 Referred to the Subcommittee on Nutrition, Oversight, and Department Operations.
Summary: To reform sentencing, prisons, re-entry of prisoners, and law enforcement practices, and for other purposes.

H.Res.163 — 116th Congress (2019-2020) RESPECT Resolution
Summary: Urging action to increase equity within the legal cannabis marketplace.

Summary: 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.

Committee Reports: H. Rept. 116-9 (Conference Report)
Summary: SEC. 537. None of the funds made available under 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, the Commonwealth of the Northern Mariana Islands, Guam, or Puerto Rico, to prevent any of them from implementing their own laws that authorize the use, distribution, possession, or cultivation of medical marijuana.

Latest Action: House - 02/28/2019 Referred to the Committee on the Judiciary, and in addition to the Committees on Financial Services, and Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.
Summary: To protect States and individuals in States that have laws which permit the use of cannabis, and for other purposes.

Latest Action: House - 03/28/2019 Ordered to be Reported (Amended) by the Yeas and Nays: 45 - 15.
Summary: To create protections for depository institutions that provide financial services to cannabis-related legitimate businesses and service providers for such businesses, and for other purposes.

H.R.1151 — 116th Congress (2019-2020) Veterans Medical Marijuana Safe Harbor Act
Latest Action: House - 03/25/2019 Referred to the Subcommittee on Crime, Terrorism, and Homeland Security
Summary: To allow veterans to use, possess, or transport medical marijuana and to discuss the use of medical marijuana with a physician of the Department of Veterans Affairs as authorized by a State or Indian Tribe, and for other purposes.

S.445 — 116th Congress (2019-2020) Veterans Medical Marijuana Safe Harbor Act
Sponsor: Sen. Schatz, Brian [D-HI] (Introduced 02/12/2019) Cosponsors: (1) Committees: Senate - Judiciary
Latest Action: Senate - 02/12/2019 Read twice and referred to the Committee on the Judiciary.
Summary: To allow veterans to use, possess, or transport medical marijuana and to discuss the use of medical marijuana with a physician of the Department of Veterans Affairs as authorized by a State or Indian Tribe, and for other purposes.

Latest Action: House - 03/08/2019 Referred to the House Committee on Veterans' Affairs.
Summary: To authorize Department of Veterans Affairs health care providers to provide recommendations and opinions to veterans regarding participation in State marijuana programs.

Latest Action: House - 02/08/2019 Referred to the Subcommittee on Health.
Summary: To direct the Secretary of Veterans Affairs to carry out a clinical trial of the effects of cannabis on certain health outcomes of adults with chronic pain and post-traumatic stress disorder, and for other purposes.

Committees: Senate - Veterans' Affairs
Latest Action: Senate - 01/17/2019 Read twice and referred to the Committee on Veterans' Affairs.
Summary: To direct the Secretary of Veterans Affairs to carry out a clinical trial of the effects of cannabis on certain health outcomes of adults with chronic pain and post-traumatic stress disorder, and for other purposes.

H.R.747 — 116th Congress (2019-2020) To direct the Secretary of Veterans Affairs to conduct and support research on the efficacy and safety of medicinal cannabis, and for other purposes.
Latest Action: House - 01/24/2019 Referred to the House Committee on Veterans' Affairs. To direct the Secretary of Veterans Affairs to conduct and support research on the efficacy and safety of medicinal cannabis, and for other purposes.