

Cannabis Up 'n Smokin'

Legal Aspects

Presented to the California Industrial Hygiene Council
December 10, 2018



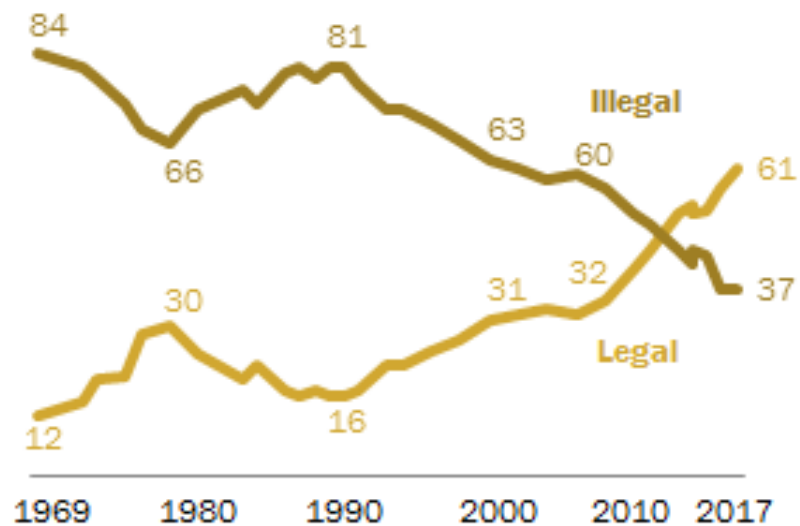
Ian Stewart
Wilson Elser, Los Angeles
Ian.Stewart@wilsonelser.com

Growing Use and Acceptance

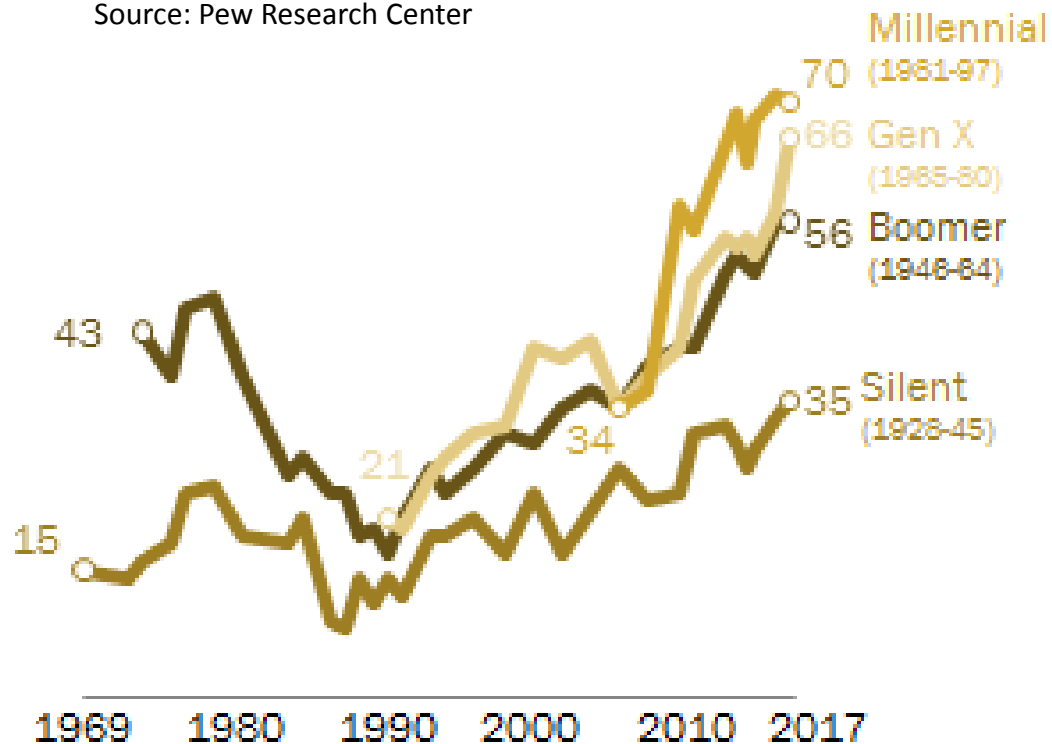


U.S. public opinion on legalizing marijuana, 1969-2017

Do you think the use of marijuana should be made legal or not? (%)



Source: Pew Research Center



Millennial

(1981-97)

Gen X

(1965-80)

Boomer

(1946-64)

Silent

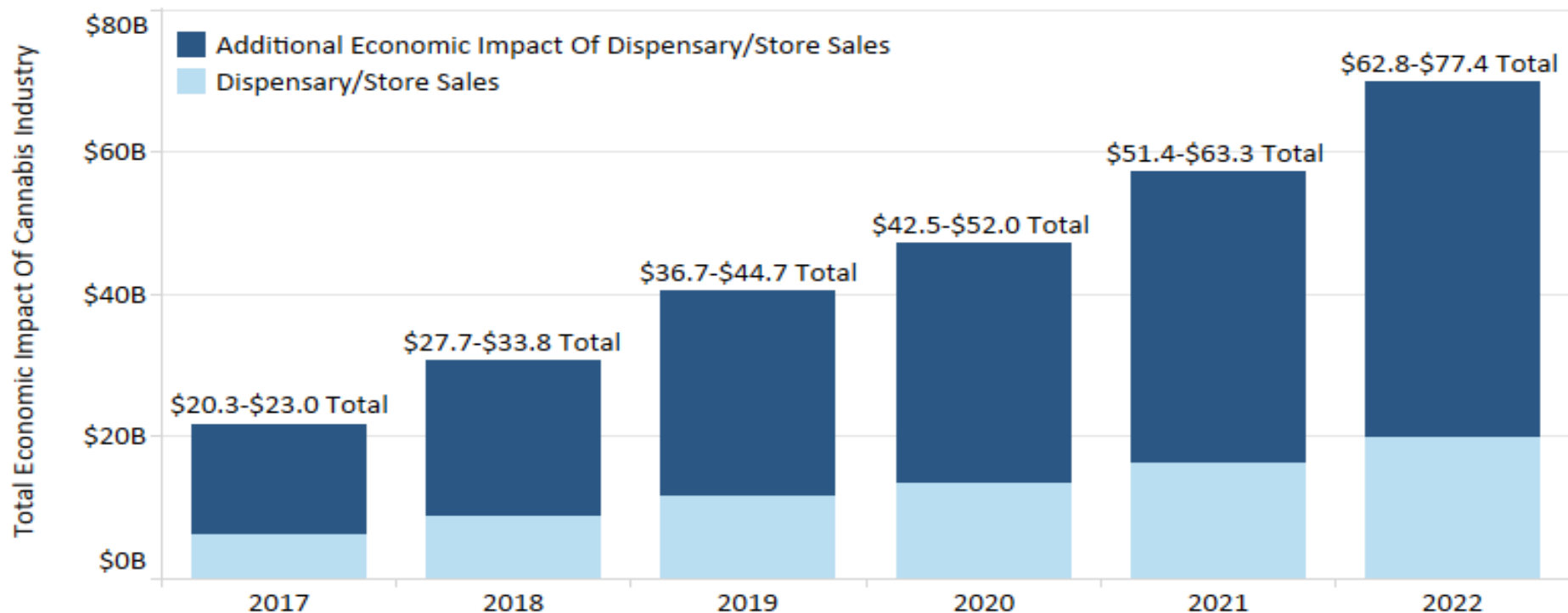
(1928-45)

% who say marijuana should be made legal

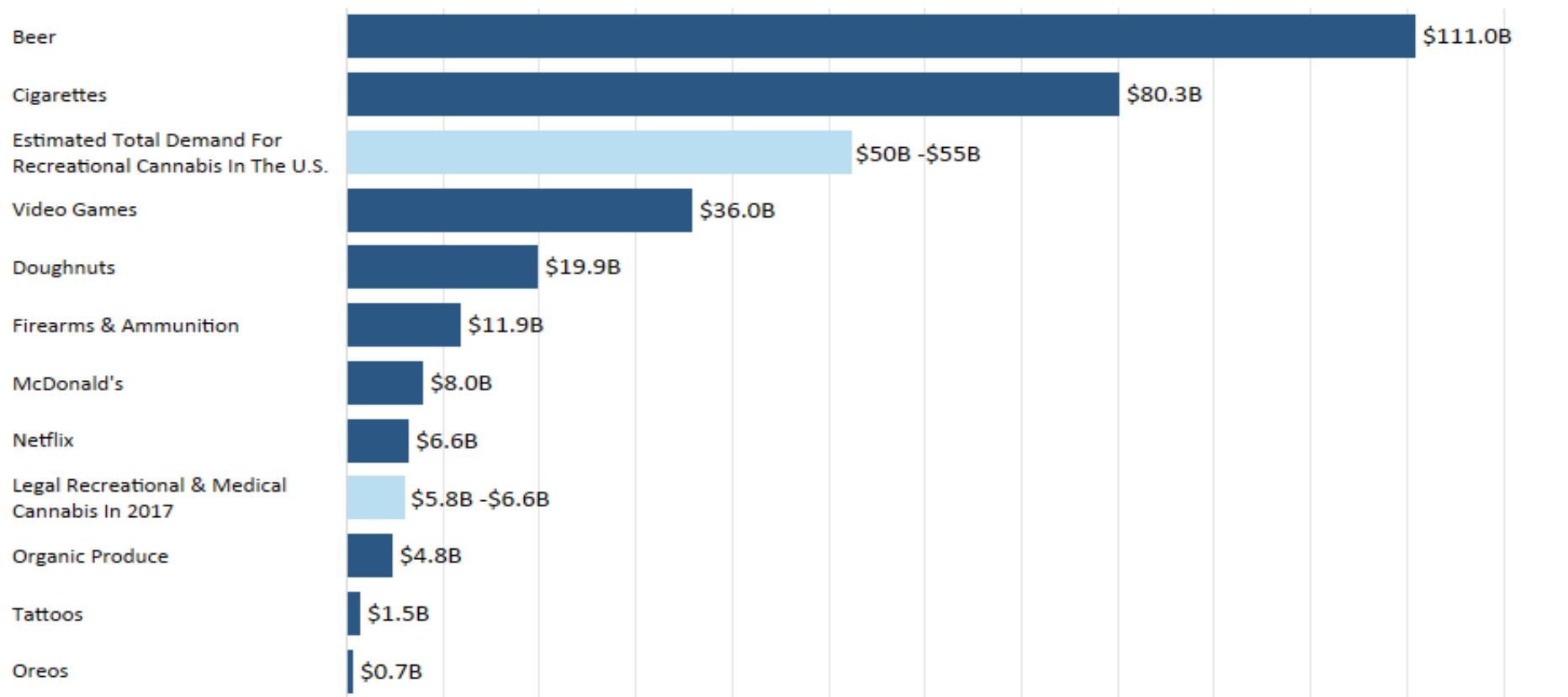
Note: Don't know responses not shown. 1973-2008 data from General Social Survey; 1969 and 1972 data from Gallup. Source: Survey of U.S. adults conducted Oct. 25-30, 2017.



U.S. Cannabis Industry Total Economic Impact: 2017 - 2022 (In Billions Of U.S. Dollars)

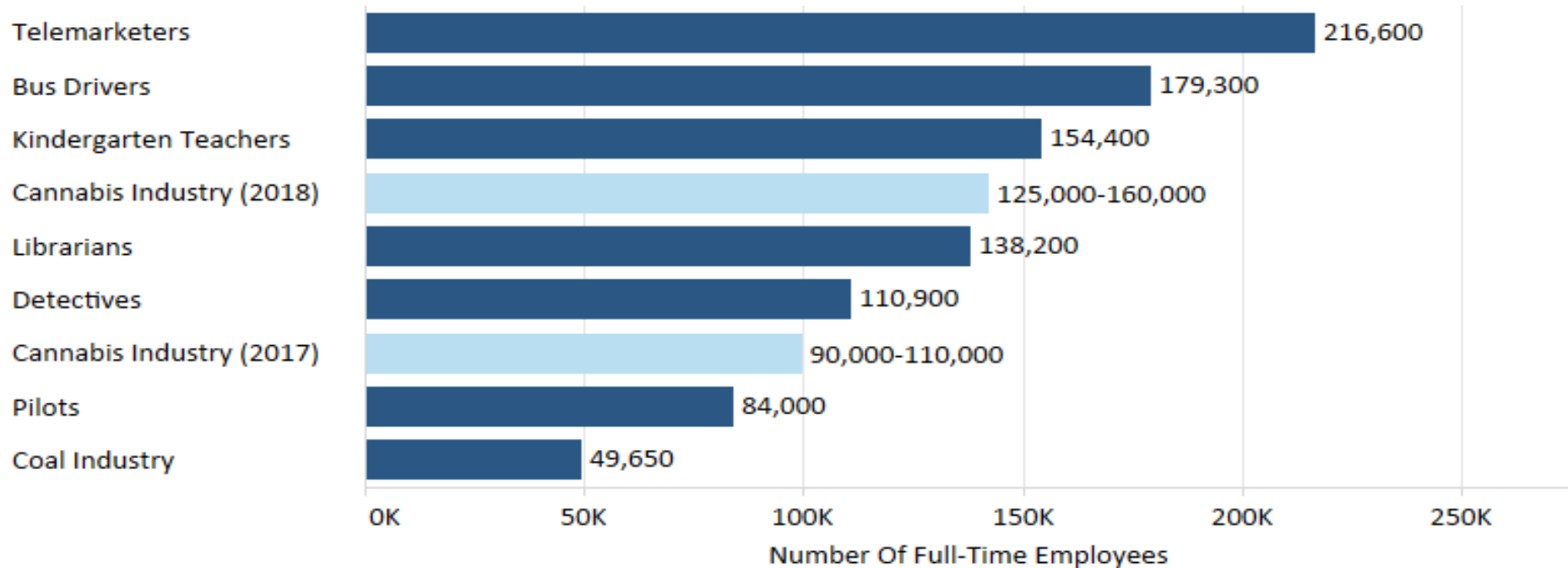


Annual U.S. Cannabis Sales Vs. Other Industries & Goods





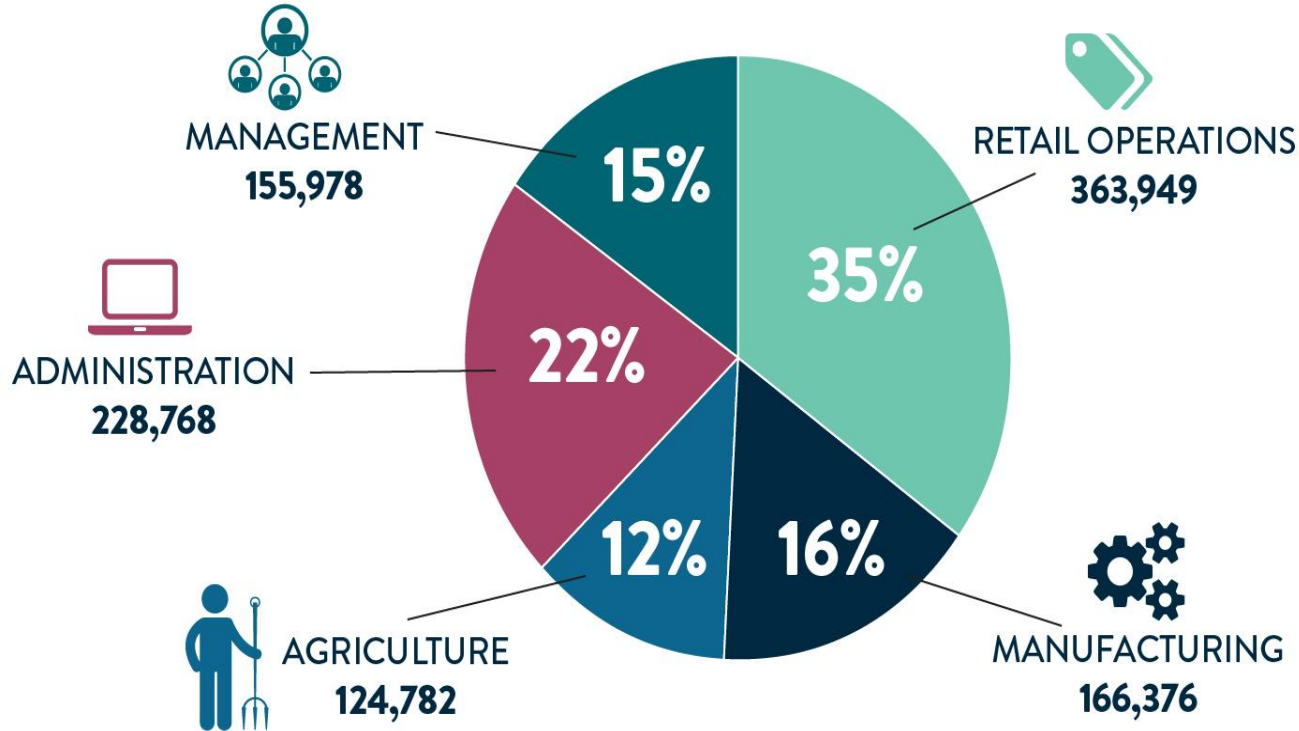
Number Of Full-Time Workers In The Cannabis Industry: Employment Comparisons To Other Mainstream Professions & Industries



Note: Cannabis industry employment figures calculated using number of full-time equivalent workers that support the marijuana industry.
Source: MJBizDaily, U.S. Bureau Of Labor Statistics Employment Projections: 2016-2026. BLS projections includes both full- and part-time workers.
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JOB CREATION WITH FEDERAL CANNABIS LEGALIZATION

FOR MORE INSIGHTS
LIKE THIS VISIT:
NEWFRONTIERDATA.COM



1.04
MILLION
JOBS

POTENTIAL TOTAL OF
CANNABIS JOBS BY 2025

BREAKDOWN OF PROJECTED CANNABIS JOBS BY SECTOR

Expanding Cannabis Consumption Methods





Anderson
Cooper
360

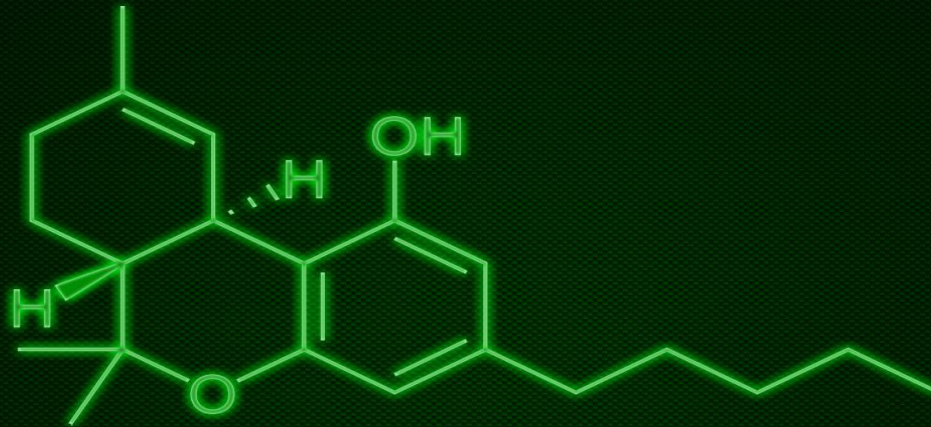
GONE TO POT: CANNABIS TOURS CASH IN

CNN

Cannabis as Medicine

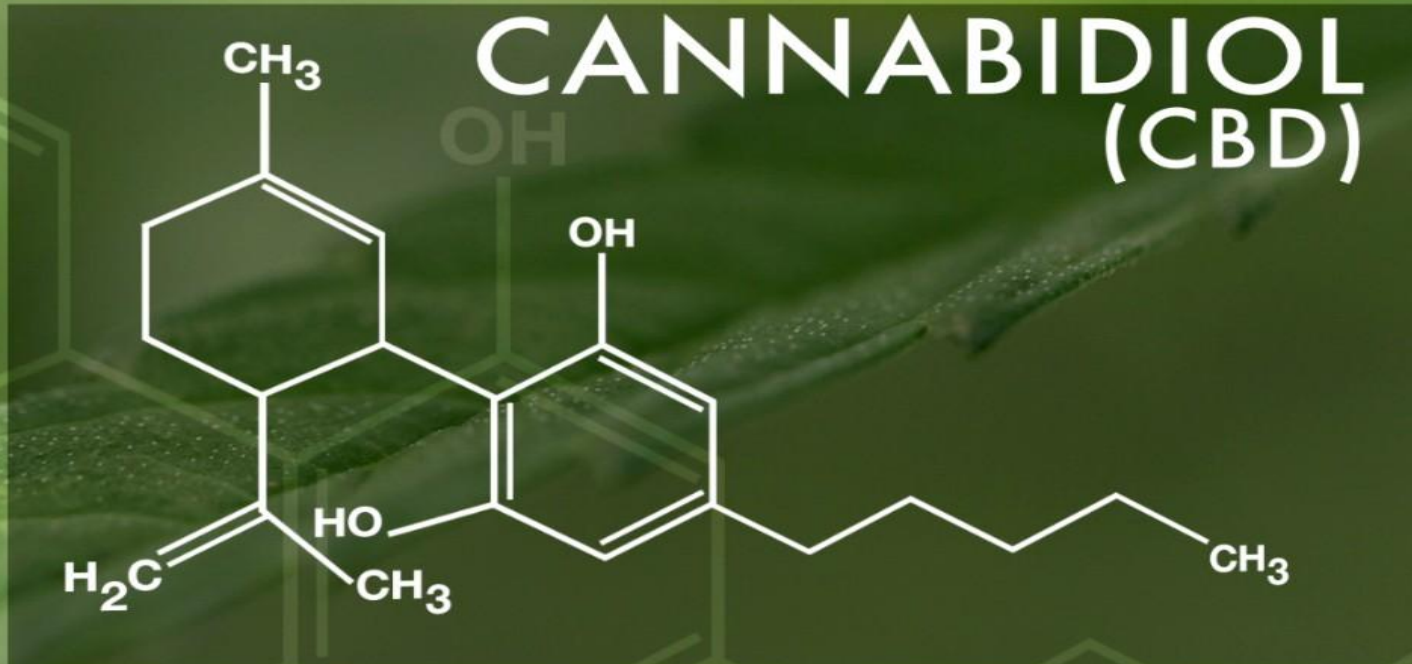


Cannabinoid – THC



Tetrahydrocannabinol

Cannabinoid – CBD



Cannabis Goes Global



Federal Law & Enforcement



PORTLAND MAIN OFFICE
1000 SW Third Avenue, Suite 600
Portland, Oregon 97204
(503) 727-1000
www.usdoj.gov/usao/or

Billy J. Williams
United States Attorney
Bill.Williams@usdoj.gov
(503) 727-1000
Reply to Portland Office



U.S. DEPARTMENT OF JUSTICE
United States Attorney's Office
District of Oregon
Billy J. Williams, United States Attorney

EUGENE BRANCH
405 E 8th Avenue, Suite 2400
Eugene, Oregon 97401
(541) 465-6771

MEDFORD BRANCH
310 West Sixth Street
Medford, Oregon 97501
(541) 776-3564

May 18, 2018

FROM: THE UNITED STATES ATTORNEY FOR THE DISTRICT OF OREGON
SUBJECT: PRIORITIES IN ENFORCEMENT OF FEDERAL LAWS INVOLVING MARIJUANA IN THE DISTRICT OF OREGON

On January 4, 2018, Attorney General Jefferson Sessions, III, rescinded previous Justice Department guidance related to enforcement of federal marijuana laws. U.S. Attorneys around the country were instructed to determine marijuana enforcement policy in light of the specific circumstances in their individual districts. Because Oregon, under state law, previously legalized marijuana, this change raised questions regarding how our District intended to exercise its discretion in marijuana enforcement under the federal Controlled Substances Act. That act prohibits the cultivation, possession, and distribution of marijuana.

In response, and to provide an opportunity to hear and learn from the diverse range of Oregonian viewpoints, I convened a Marijuana Summit on February 2, 2018. The summit was attended by more than 130 people from nearly 70 organizations and represented a wide cross-section of interests and perspectives bearing on federal marijuana enforcement in our state. Among those in attendance were the Governor of Oregon, representatives from 14 U.S. Attorney's Offices, and Oregon congressional delegation staff. The Summit featured presentations by State officials, including the Governor's Marijuana Policy Advisor and Criminal Justice Commission, as well as representatives of the Association of Oregon Counties, Oregon-Idaho High-Intensity Drug Trafficking Area (HIDTA), Federal Bureau of Investigation, Drug Enforcement Administration, Oregon Cannabis Association, affected landowners, banking industry, medical community, and leadership from tribal nations.

Although the views expressed at the Summit were often divergent, the group found consensus in three principal areas. First, there is urgent need for more comprehensive and accurate data on the scope and effect of marijuana production and distribution in Oregon. Second, too few resources are devoted to enforcement and oversight of the State's marijuana regulatory regime. Third, there can be no doubt that there is significant overproduction of marijuana in Oregon. As a result, a thriving black market is exporting marijuana across the country, including to states that have not legalized marijuana under their state laws.



The Federal Landscape

Cole Memo
(2013)



Cole Memo
Rescinded
(Jan 2018)



Rohrabacher-
Blumenauer
Amendment

Multiple bills
working through
Congress

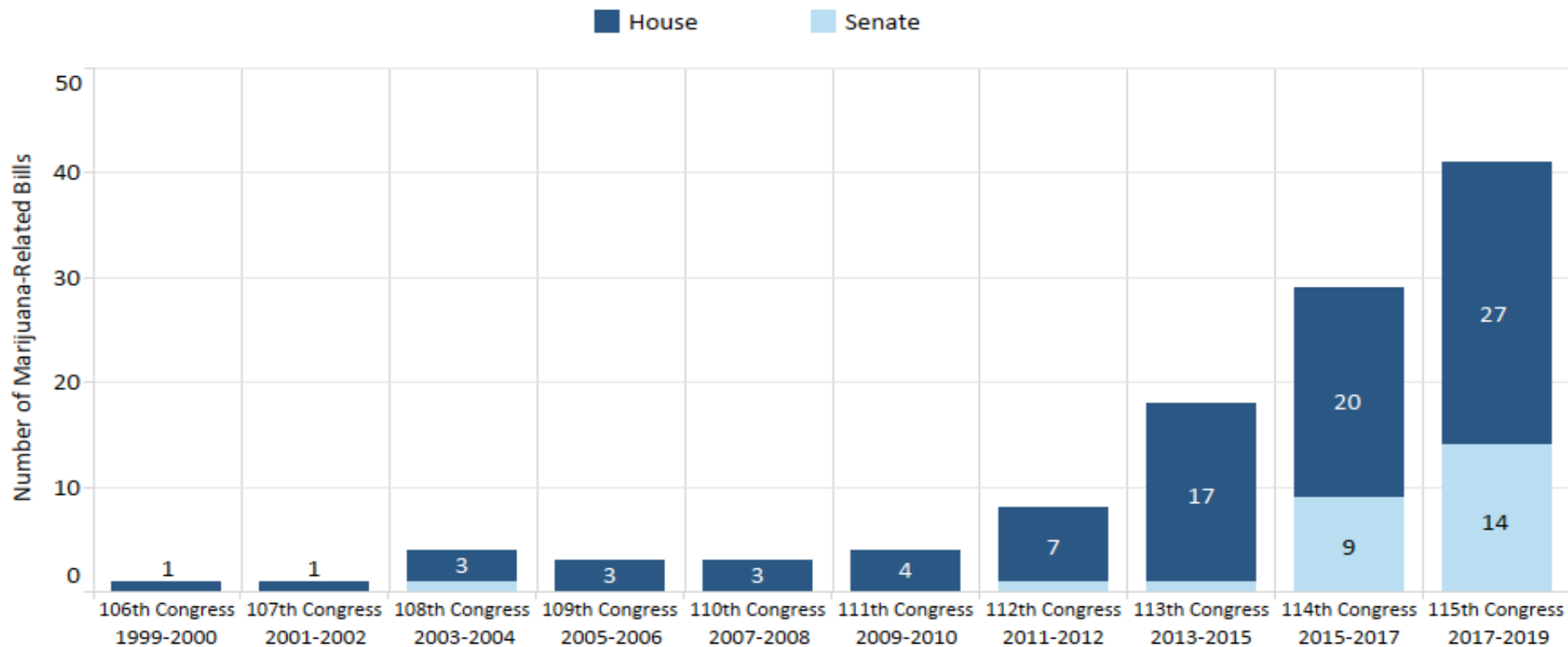
The Wild
Card....



Shawna Thomas
VICE News



Number of Marijuana-Related Bills Before the U.S. Congress: 1999-2018

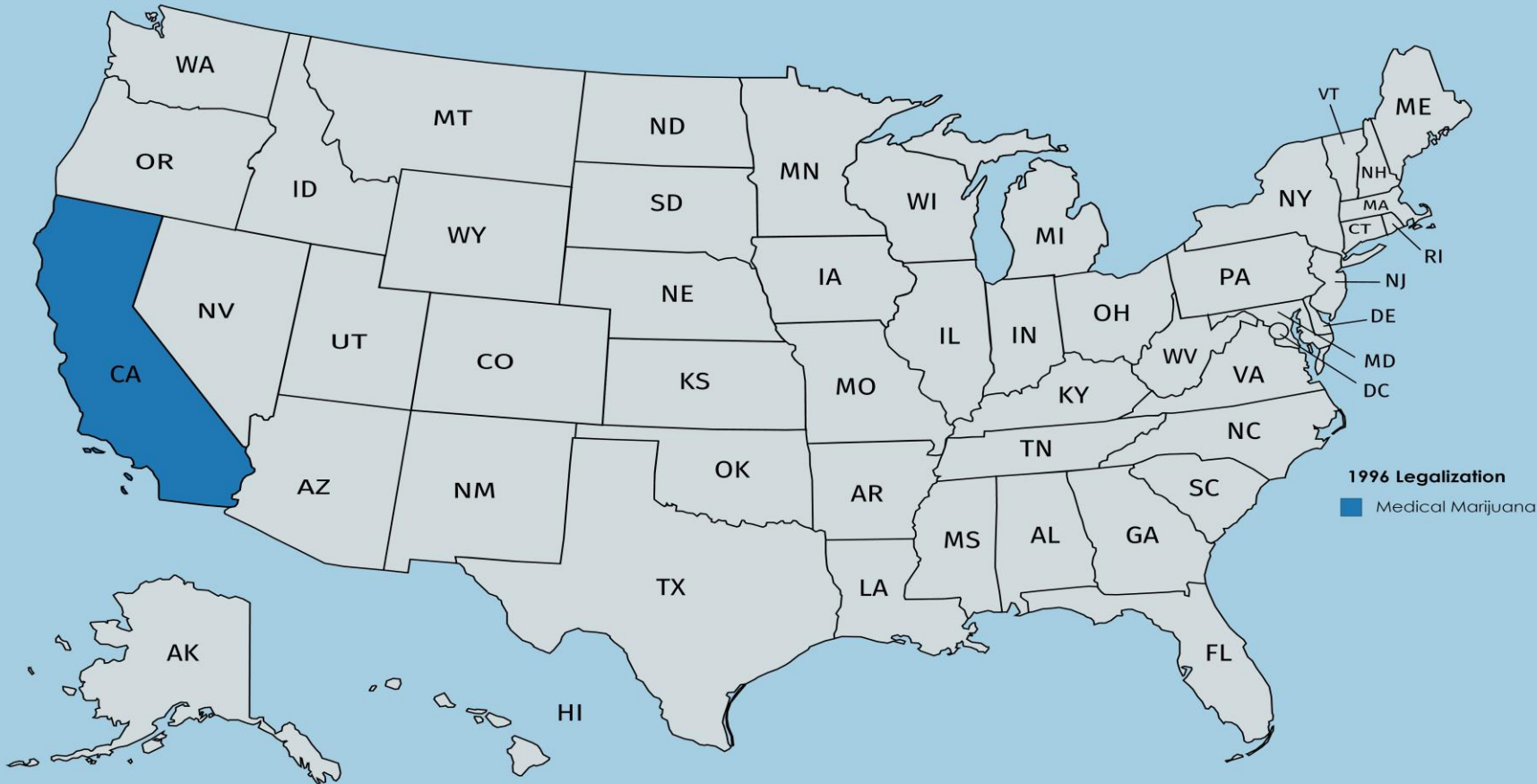


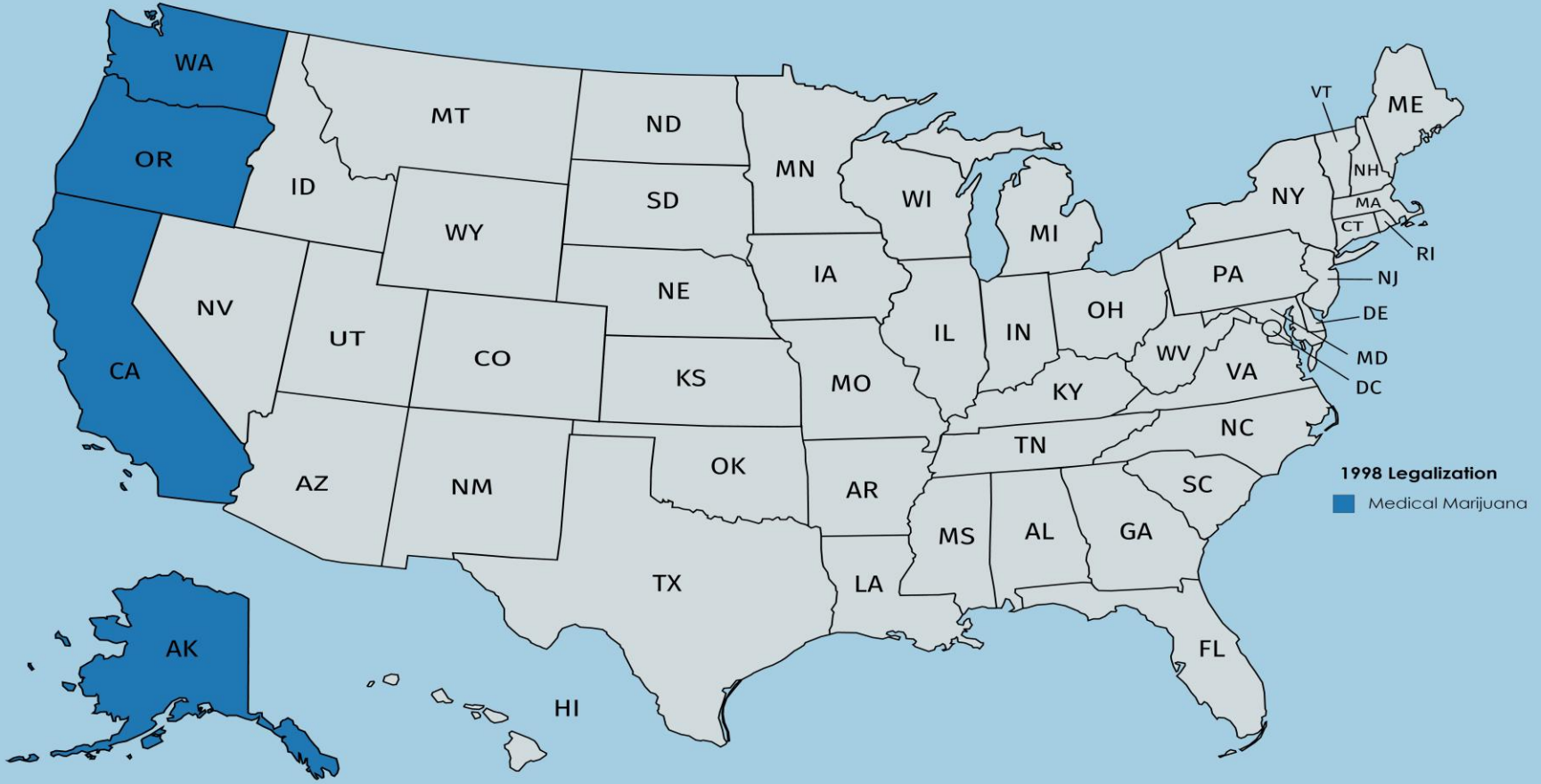
Source: GovTrack

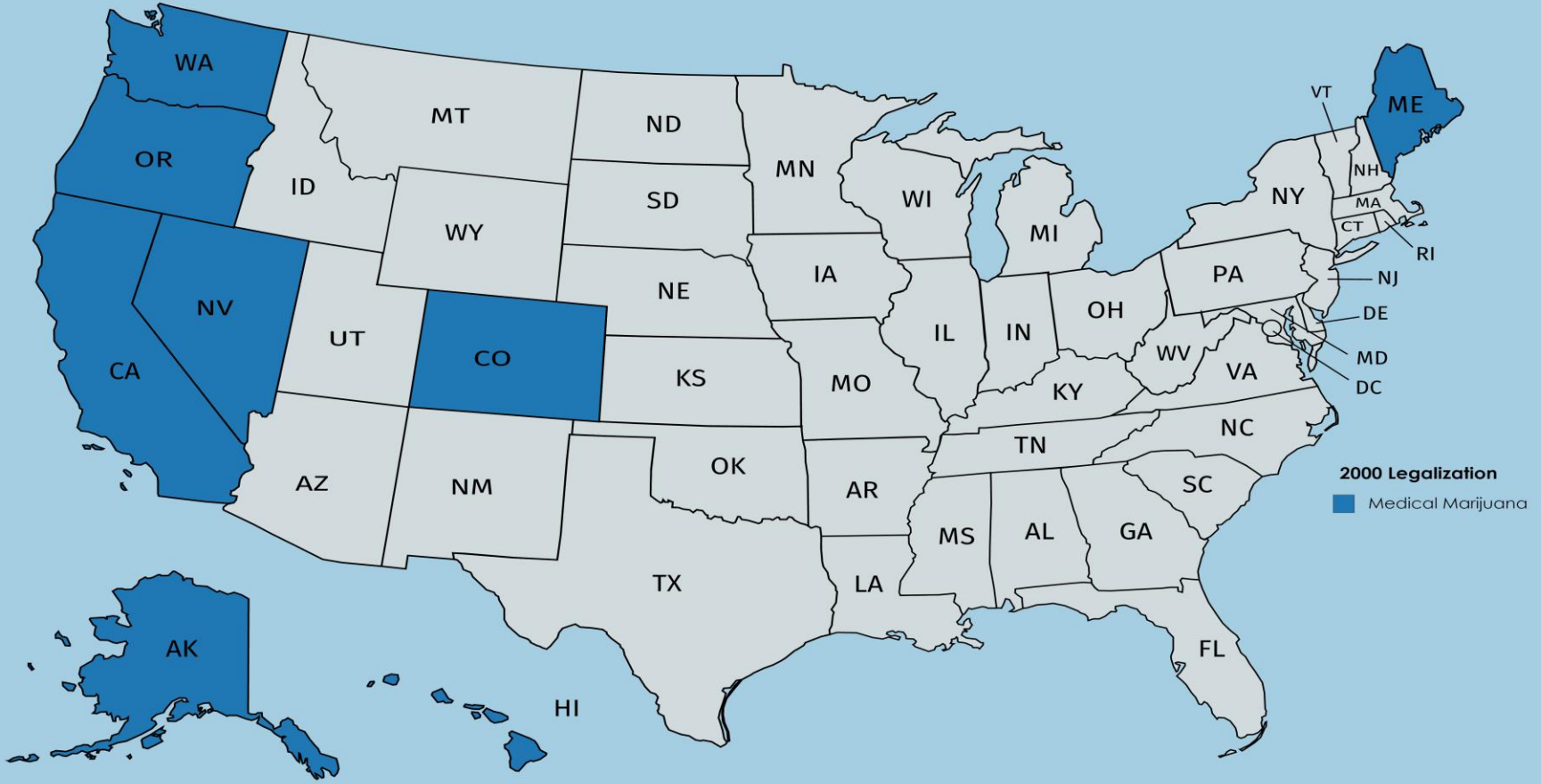
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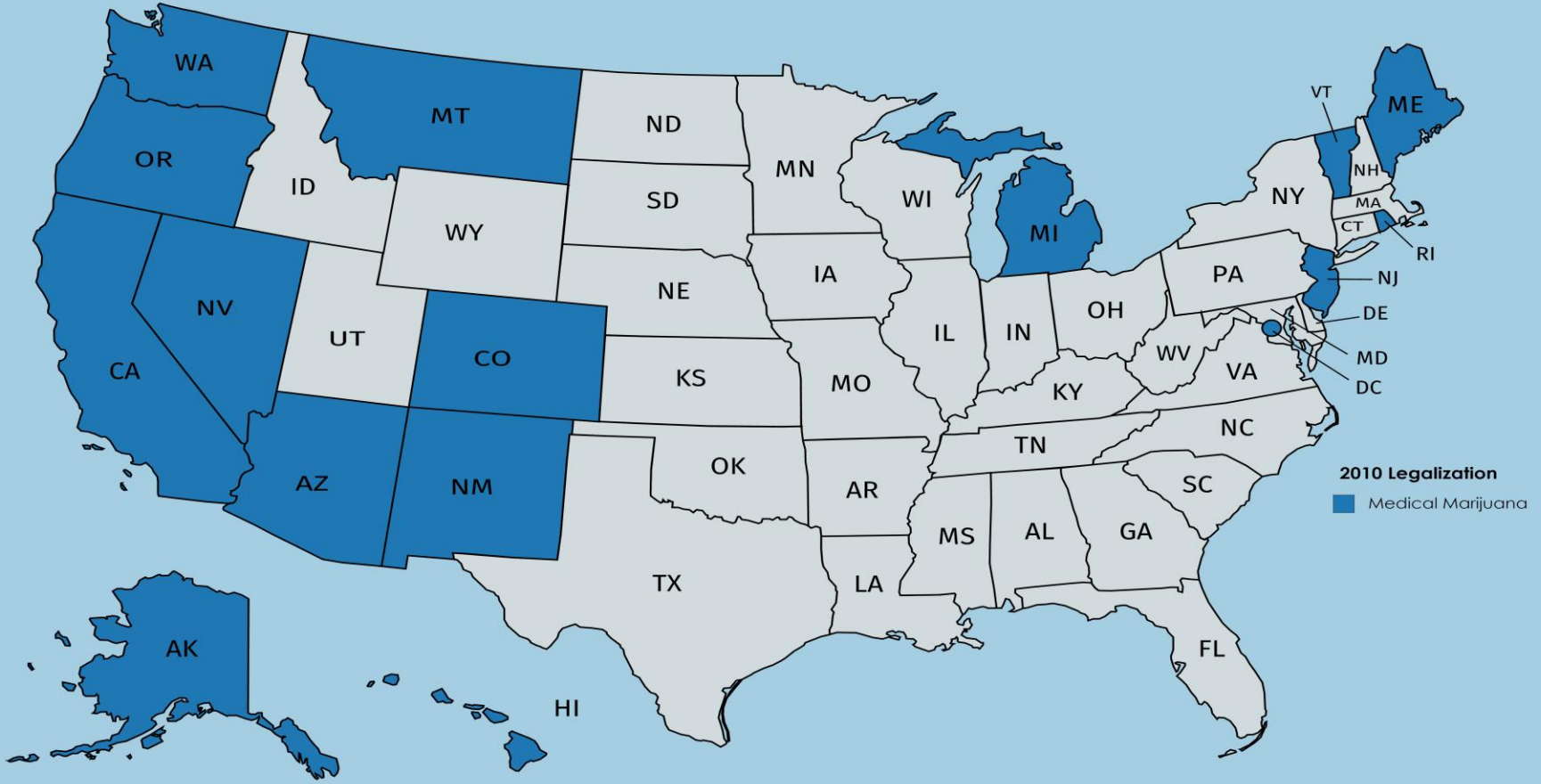
**The Legalization Movement –
An Issue of States Rights**

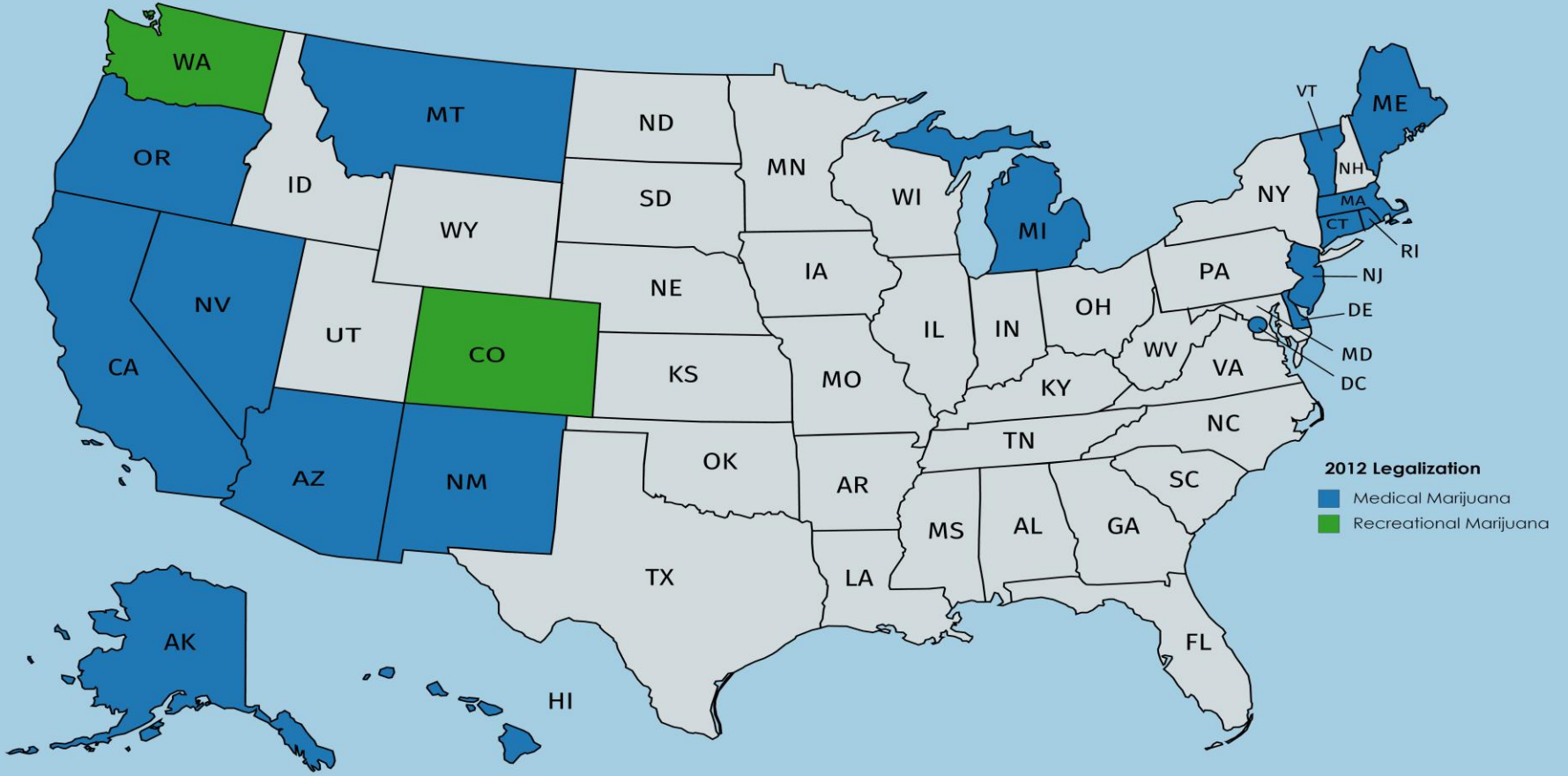


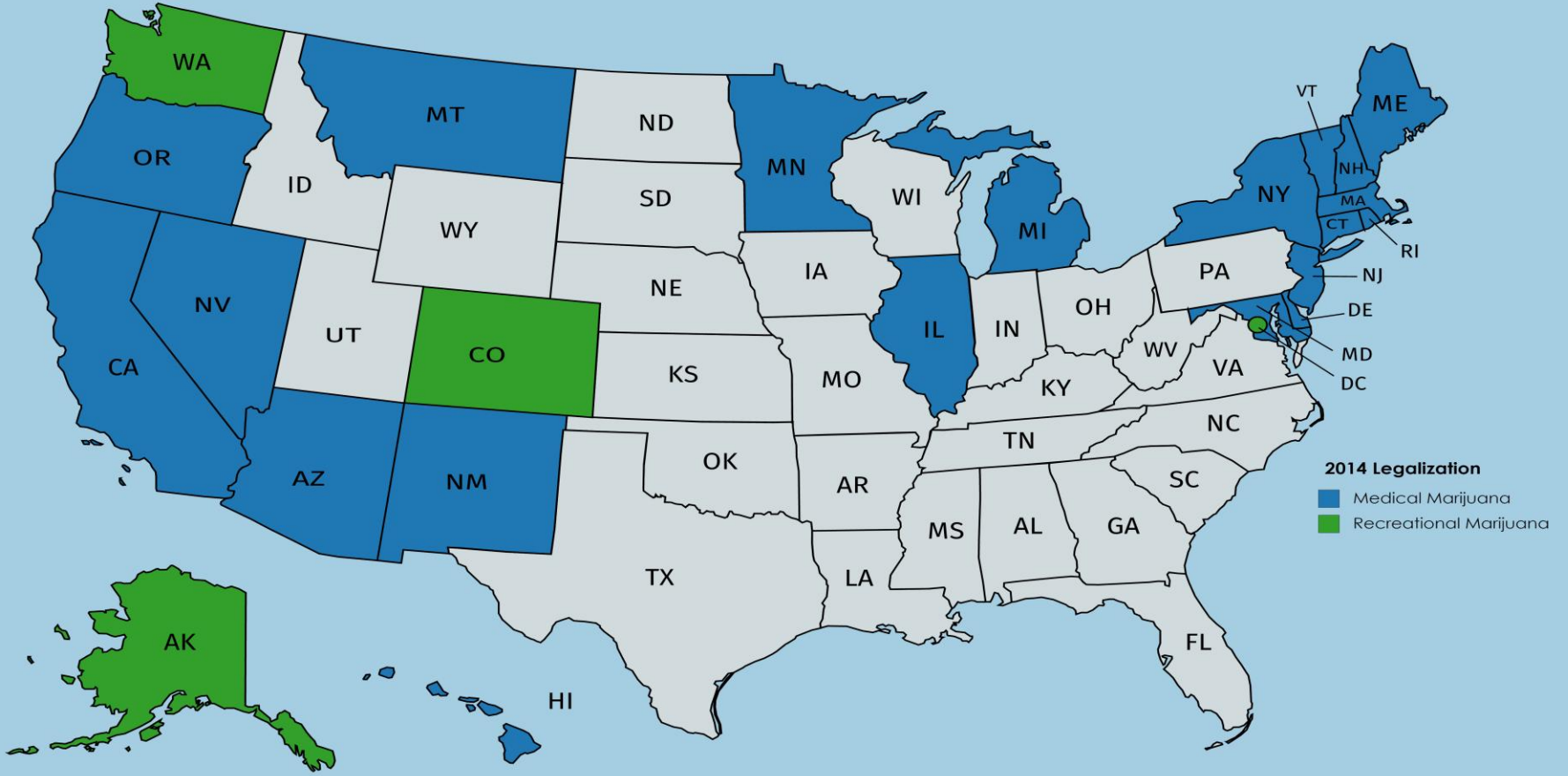


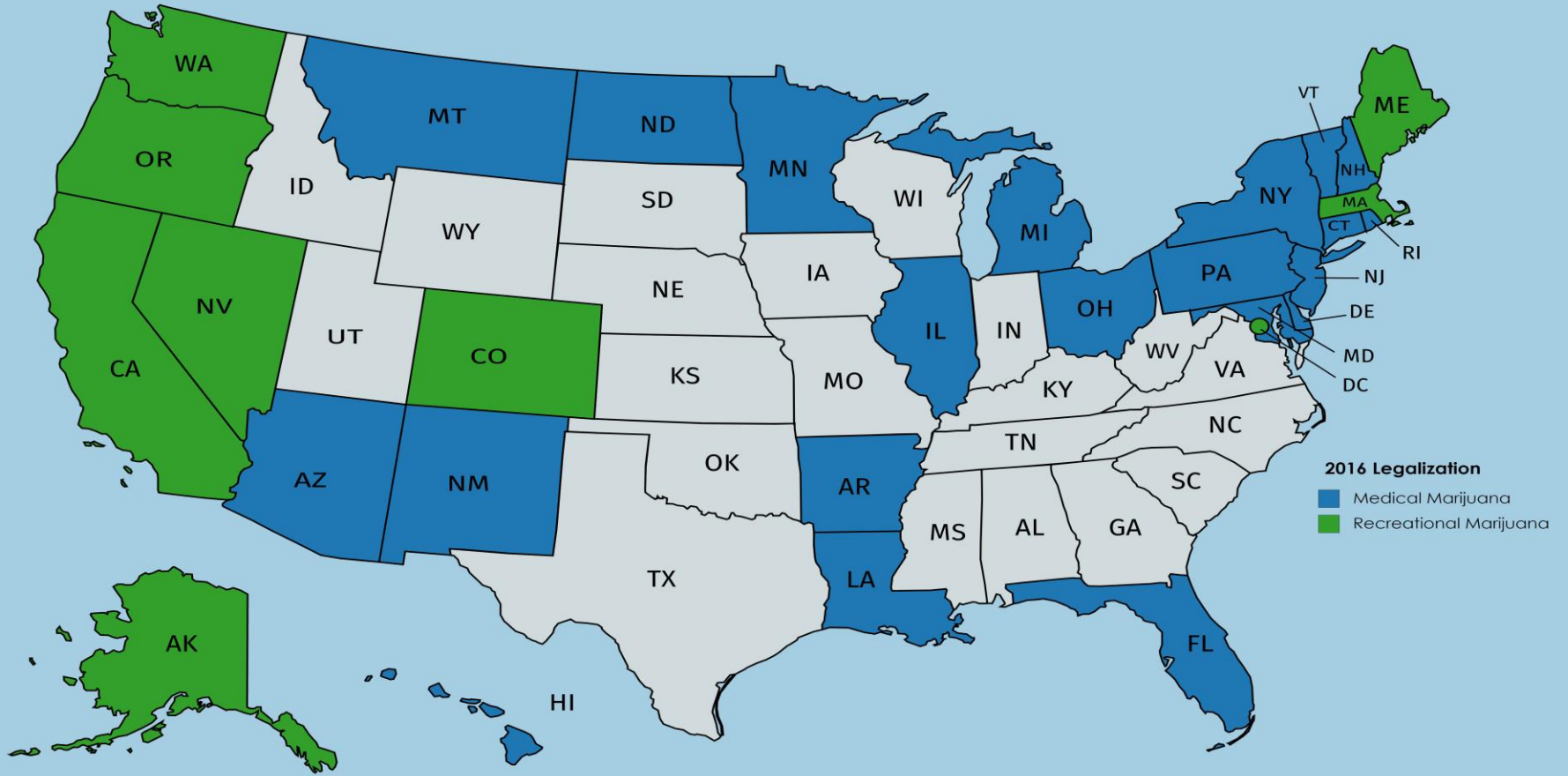


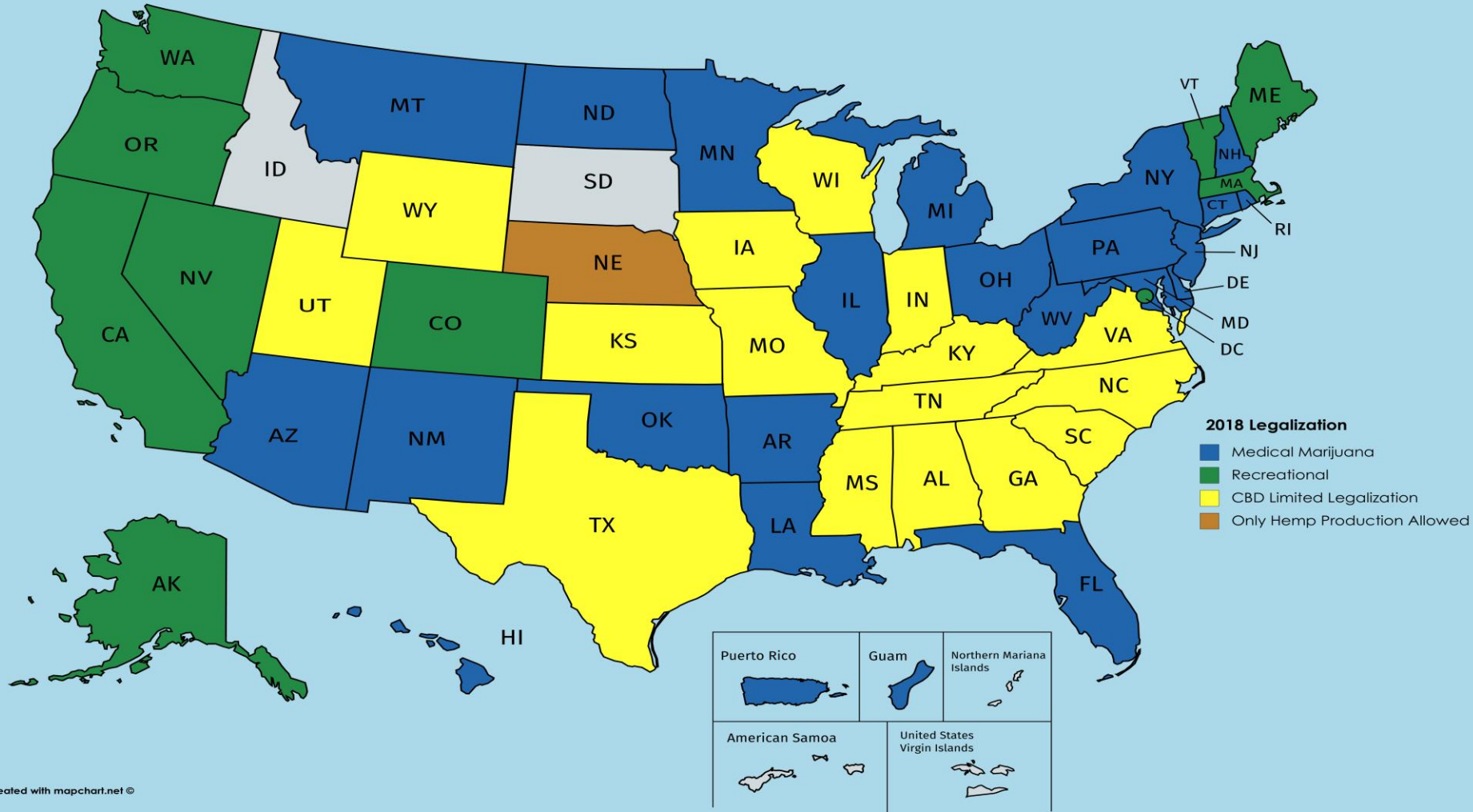












Outgrowths Of Self-Policing & State Laws



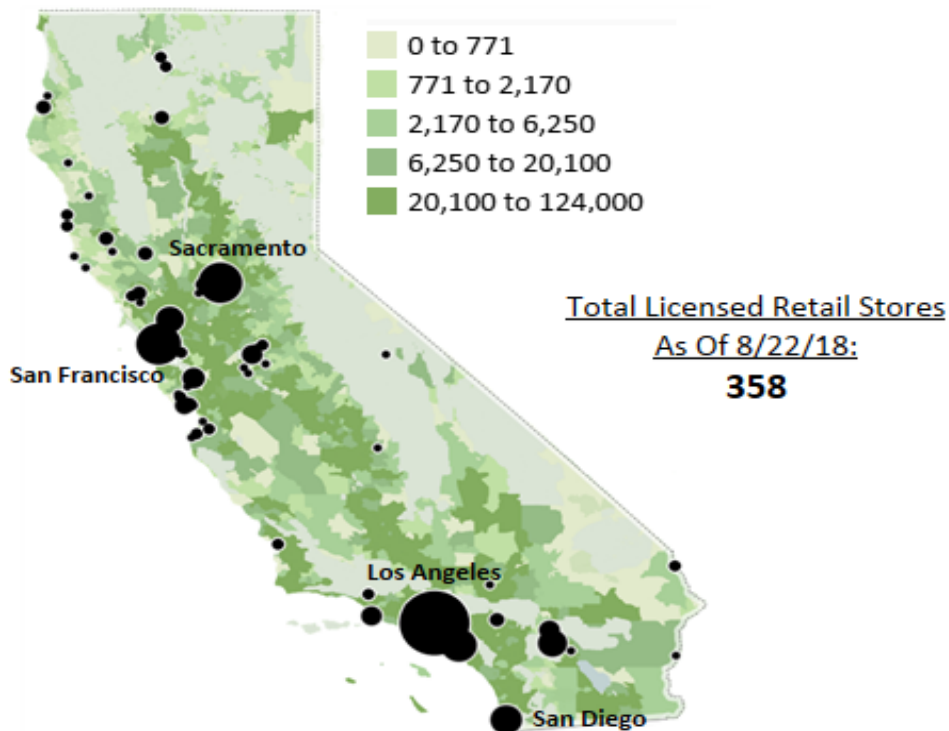
- **Seed to Sale Tracking of Plants & Products**
- **Pesticide Controls & Testing**
- **Advertising Restrictions**
- **Packaging & Labeling Requirements**
- **Controls on Extraction & Production Techniques**
- **Insurance Requirements**



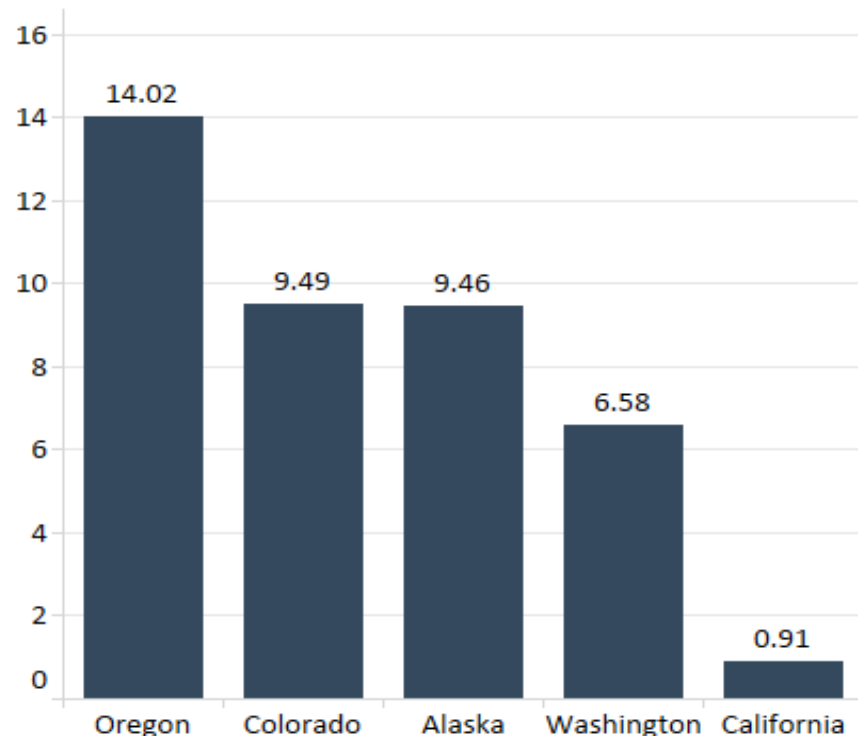
Chart of the Week

Adult-Use Stores In California: Location & Number Per 100,000 Residents

Location Of Licensed Adult-Use Retail Stores & Population By ZIP Code



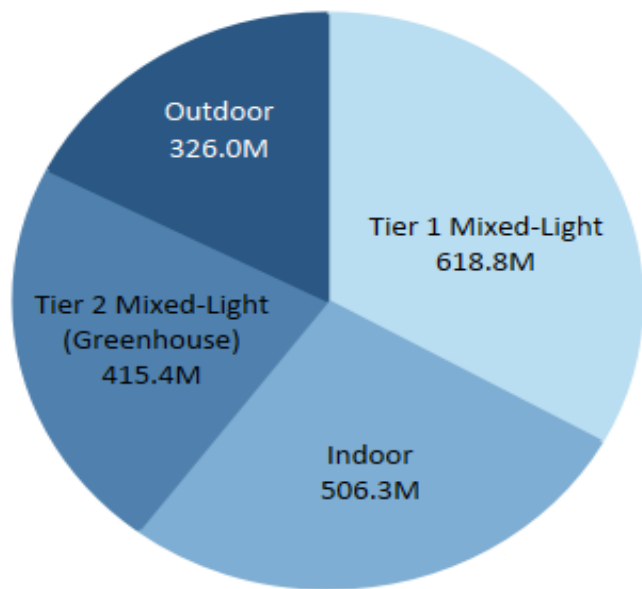
Number Of Licensed Rec Stores Per 100,000 Residents By State



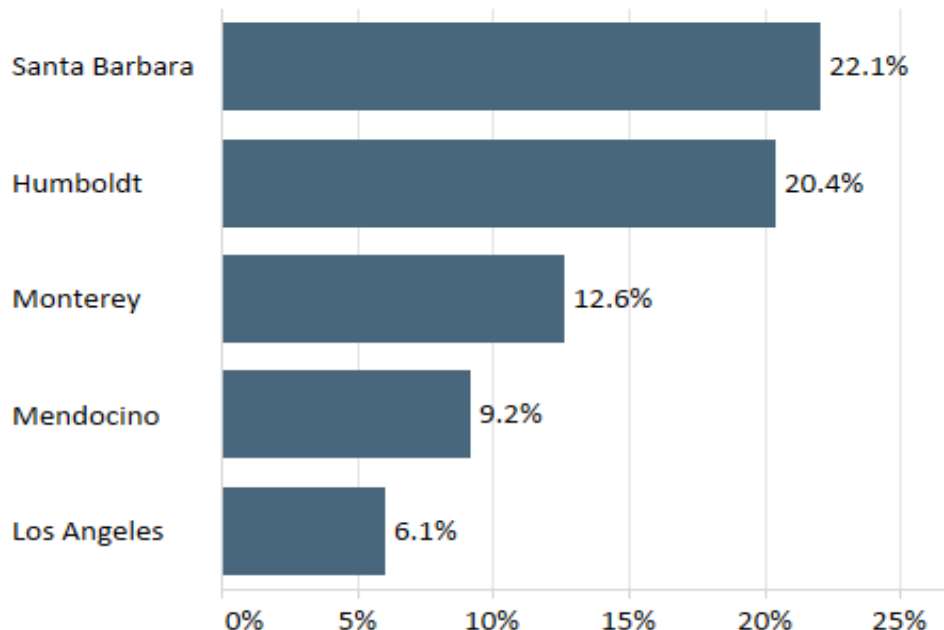


Overview of Licensed Cultivation Capacity in California's Adult-Use Market

Estimated Annual Production Capacity of Current Licensees by Grow Type (grams)



Portion of Estimated Annual Production Capacity by County



Note: Includes only active licenses, data current as of 11/21/18.

Source: Marijuana Business Daily, California Department of Food & Agriculture

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States to Watch – New York



States to Watch – New Jersey



States to Watch – Michigan



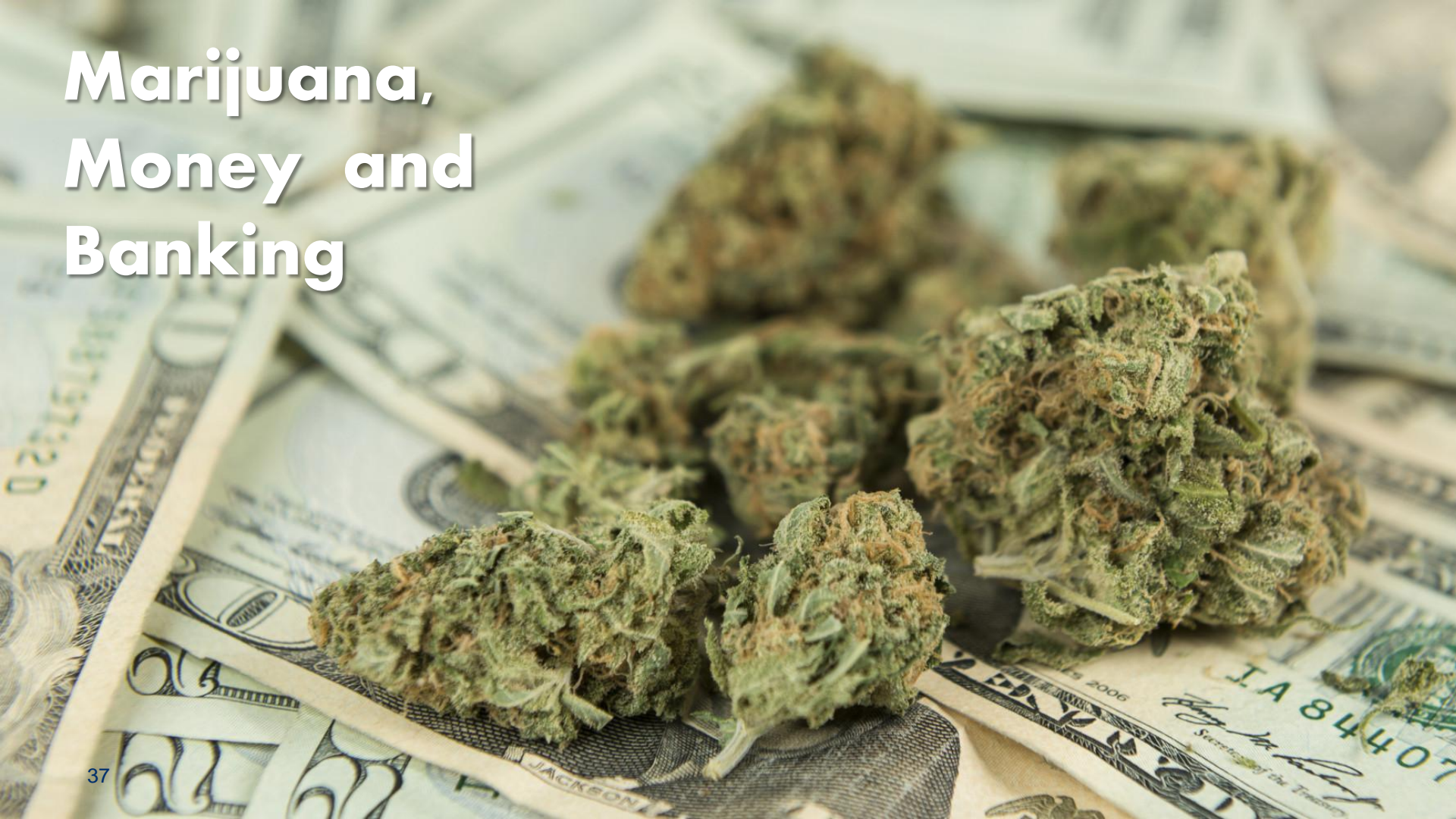
States to Watch – Pennsylvania



States to Watch -- Illinois



Marijuana, Money and Banking





Department of the Treasury Financial Crimes Enforcement Network

Guidance

FIN-2014-G001

Issued: February 14, 2014

Subject: BSA Expectations Regarding Marijuana-Related Businesses

The Financial Crimes Enforcement Network ("FinCEN") is issuing guidance to clarify Bank Secrecy Act ("BSA") expectations for financial institutions seeking to provide services to marijuana-related businesses. FinCEN is issuing this guidance in light of recent state initiatives to legalize certain marijuana-related activity and related guidance by the U.S. Department of Justice ("DOJ") concerning marijuana-related enforcement priorities. This FinCEN guidance clarifies how financial institutions can provide services to marijuana-related businesses consistent with their BSA obligations, and aligns the information provided by financial institutions in BSA reports with federal and state law enforcement priorities. This FinCEN guidance should enhance the availability of financial services for, and the financial transparency of, marijuana-related businesses.

Marijuana Laws and Law Enforcement Priorities

The Controlled Substances Act ("CSA") makes it illegal under federal law to manufacture, distribute, or dispense marijuana.¹ Many states impose and enforce similar prohibitions. Notwithstanding the federal ban, as of the date of this guidance, 20 states and the District of Columbia have legalized certain marijuana-related activity. In light of these developments, U.S. Department of Justice Deputy Attorney General James M. Cole issued a memorandum (the "Cole Memo") to all United States Attorneys providing updated guidance to federal prosecutors concerning marijuana enforcement under the CSA.² The Cole Memo guidance applies to all of DOJ's federal enforcement activity, including civil enforcement and criminal investigations and prosecutions, concerning marijuana in all states.

The Cole Memo reiterates Congress's determination that marijuana is a dangerous drug and that the illegal distribution and sale of marijuana is a serious crime that provides a significant source of revenue to large-scale criminal enterprises, gangs, and cartels. The Cole Memo notes that DOJ is committed to enforcement of the CSA consistent with those determinations. It also notes that DOJ is committed to using its investigative and prosecutorial resources to address the most

¹ Controlled Substances Act, 21 U.S.C. § 801, *et seq.*

² James M. Cole, Deputy Attorney General, U.S. Department of Justice, *Memorandum for All United States Attorneys: Guidance Regarding Marijuana Enforcement* (August 29, 2013), available at <http://www.justice.gov/iso/opa/resources/305201382913275687467.pdf>.

www.fincen.gov

significant threats in the most effective, consistent, and rational way. In furtherance of those objectives, the Cole Memo provides guidance to DOJ attorneys and law enforcement to focus their enforcement resources on persons or organizations whose conduct interferes with any one or more of the following important priorities (the "Cole Memo priorities"):³

- 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 drugged 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.

Concurrently with this FinCEN guidance, Deputy Attorney General Cole is issuing supplemental guidance directing that prosecutors also consider these enforcement priorities with respect to federal money laundering, unlicensed money transmitter, and BSA offenses predicated on marijuana-related violations of the CSA.⁴

Providing Financial Services to Marijuana-Related Businesses

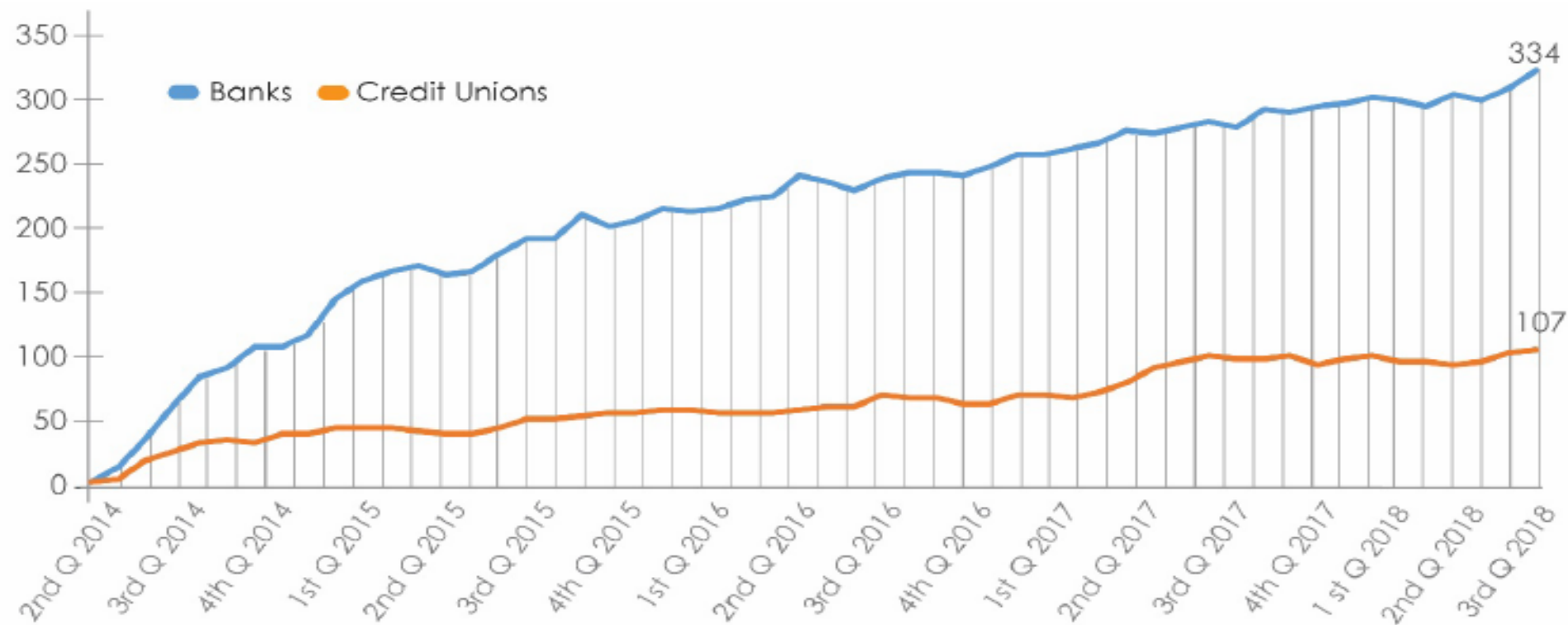
This FinCEN guidance clarifies how financial institutions can provide services to marijuana-related businesses consistent with their BSA obligations. In general, the decision to open, close, or refuse any particular account or relationship should be made by each financial institution based on a number of factors specific to that institution. These factors may include its particular business objectives, an evaluation of the risks associated with offering a particular product or service, and its capacity to manage those risks effectively. Thorough customer due diligence is a critical aspect of making this assessment.

In assessing the risk of providing services to a marijuana-related business, a financial institution should conduct customer due diligence that includes: (i) verifying with the appropriate state authorities whether the business is duly licensed and registered; (ii) reviewing the license application (and related documentation) submitted by the business for obtaining a state license to operate its marijuana-related business; (iii) requesting from state licensing and enforcement authorities available information about the business and related parties; (iv) developing an understanding of the normal and expected activity for the business, including the types of

³ The Cole Memo notes that these enforcement priorities are listed in general terms; each encompasses a variety of conduct that may merit civil or criminal enforcement of the CSA.

⁴ James M. Cole, Deputy Attorney General, U.S. Department of Justice, *Memorandum for All United States Attorneys: Guidance Regarding Marijuana Related Financial Crimes* (February 14, 2014).

Depository Institutions (by type) Providing Banking Services to Marijuana Related Businesses¹
(Data ending 30 June 2018)



Marijuana!

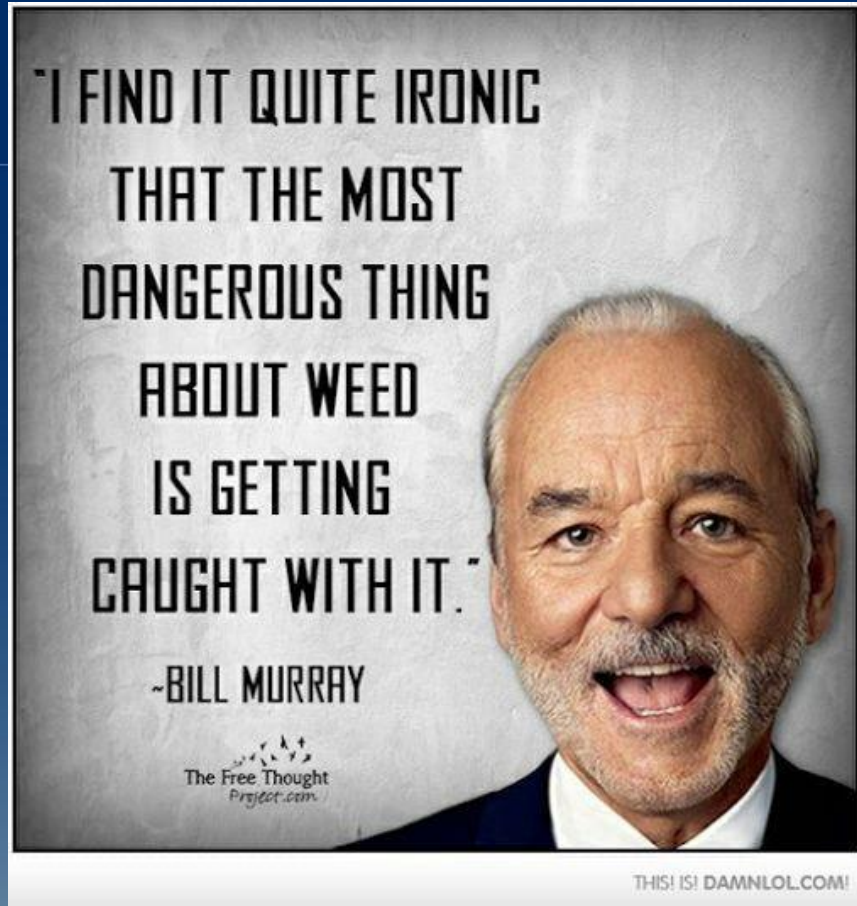


HEY, AT LEAST IT'S NOT CRACK!

The Risks Within the Cannabis Marketplace



So Is It Safe or What?



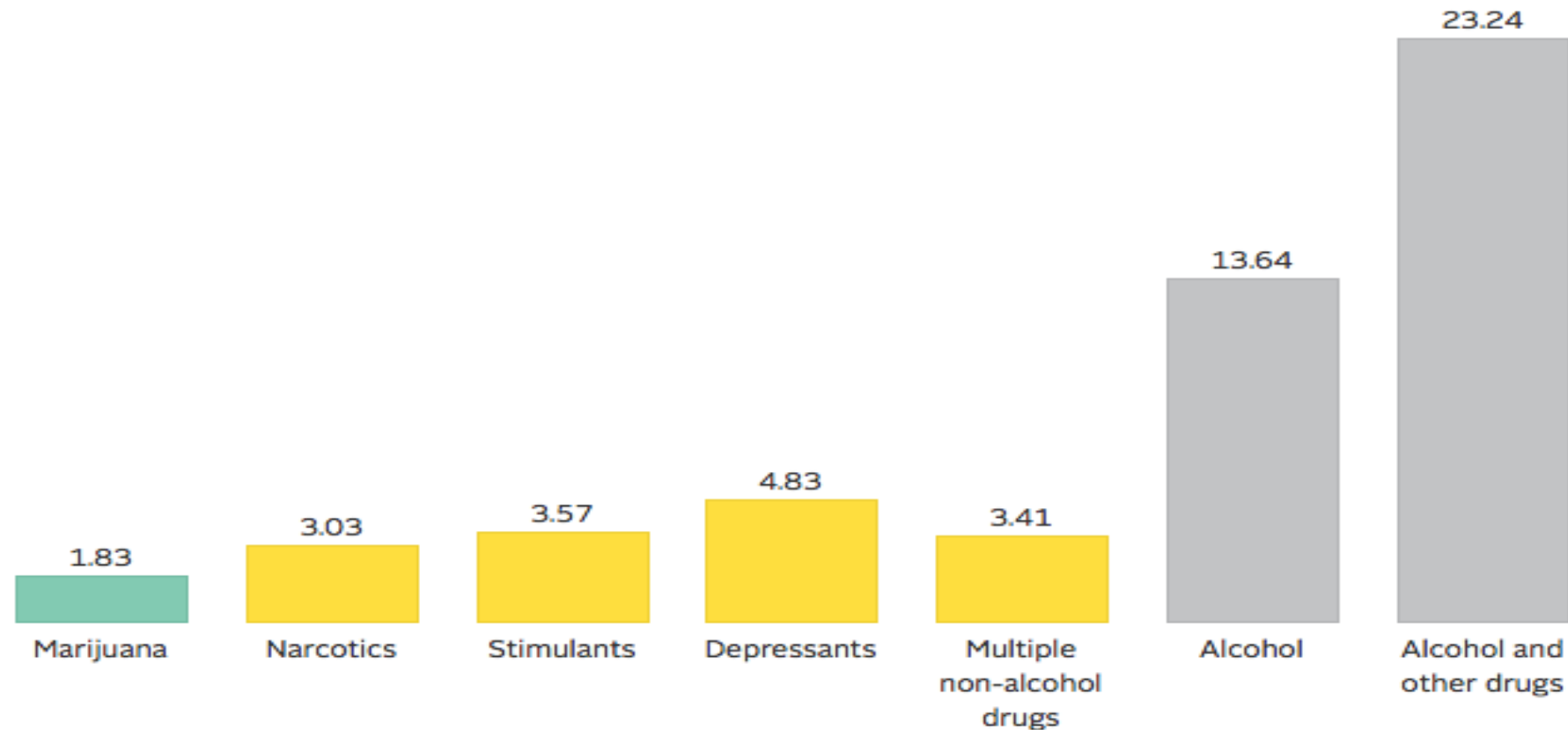
Conflicting Research on Highway Safety

- Highway Loss Data Institute Study – 2017
 - Collision claim frequency 2012-2016 in CO, WA and OR as compared with control states
 - “The legalization of retail sales was associated with a 2.7 percent increase in collision claim frequencies“
 - Controversy of correlation vs causation
- American Journal of Public Health Study – 2017
 - Data on fatal car accidents 2009-2015 in CO and WA as compared with control states
 - No significant association between legalization and fatalities relative to other states

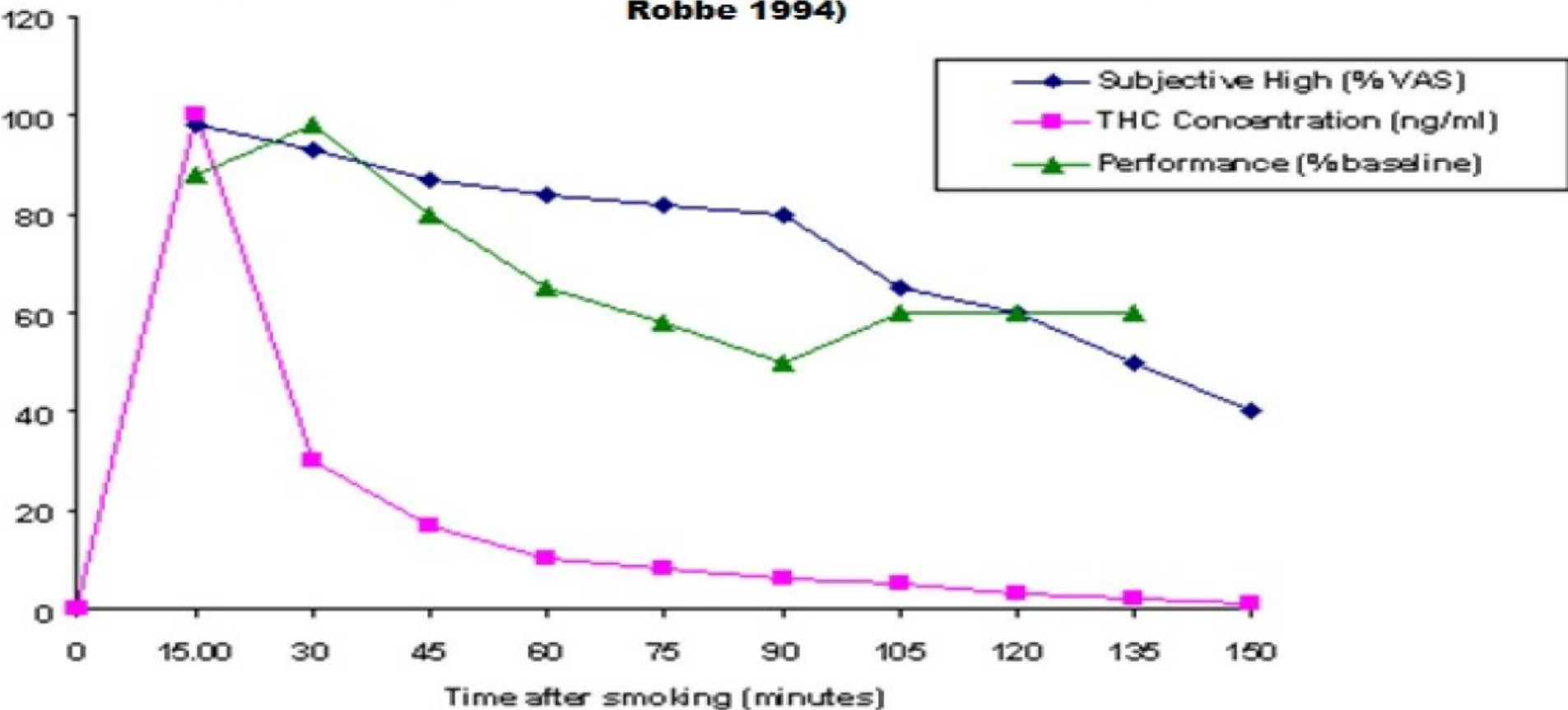


Driving impaired by **marijuana doubles the risk of traffic accidents and death.**

Multiplied risk of a fatal traffic accident while under the influence



Time Course of Standardized THC Concentration in Plasma, Performance Deficit and Subjective High after Smoking Marijuana (Adapted from Berghaus et al. 1998, Sticht and Käferstein 1998 and Robbe 1994)





A close-up photograph of a person's hand holding a black pen with a silver clip, positioned over a computer monitor. The person is wearing a dark suit jacket and a light-colored, patterned shirt cuff. The background shows a blurred office environment with another computer monitor and a person's hand using a mouse. The text "Employment Law" is overlaid on the right side of the image.

Employment Law

Cannabis Infused Edibles



A close-up photograph of a person's profile as they use a white and silver vape pen. A thick, billowing plume of white vapor is being exhaled from the mouthpiece, filling the left side of the frame. The person is wearing a light blue sweater. The background is dark and out of focus.

Product Liability



CANNABIS¹⁰¹
Ingest vs
Inhale





Universal Warning Signs



Contains Marijuana. Keep out of the reach of children.



Packaging and Warnings







Pesticides



RECALLED



MedicalJane

A large crowd of men in blue suits seen from behind, stretching to the horizon under a blue sky with clouds.

Consumer Class Actions



Unfair Competition



“Gram Shop” Liability

Cannabis and Data Privacy / Cybersecurity





Questions?

www.wilsonelser.com/cannabis