

Cannabis –
State & Federal Laws

Best Practices
for Commercial
& Residential
Properties &
Medical
Marijuana





Today's Presenter:

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Director, Government Affairs
IREM[®]

Agenda

1. Background
2. State & Federal Laws for Medical Marijuana
3. Impact on Rental Property Management
4. Commercial & Residential Marijuana on Properties

Property managers provide

- Safe housing
- Meet codes and obey laws
- Contribute to positive lifestyle, and peaceful enjoyment of their homes

Residents must

- Pay rent on time every time
- Respect their neighbors
- Take care of the rented property

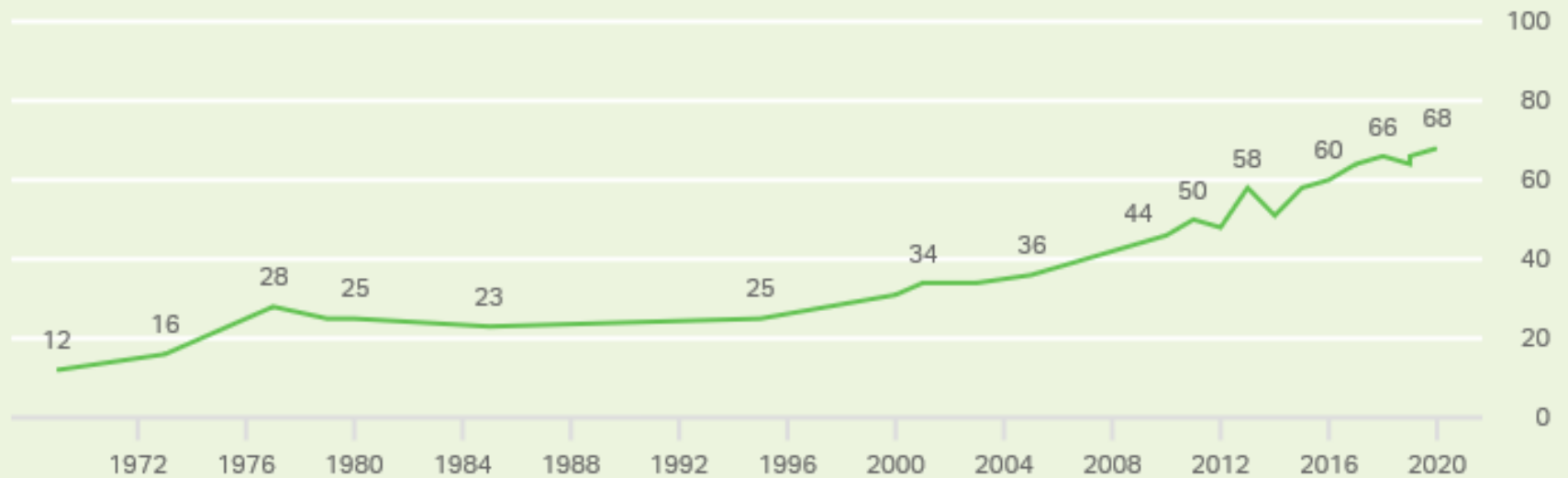
For those who manage to make a difference.™



Americans' Views on Legalizing Marijuana Reach New High

Do you think the use of marijuana should be made legal, or not?

■ % Yes, legal



GALLUP

Americans' Support for Legalizing Marijuana Among Demographic Groups

Do you think the use of marijuana should be made legal, or not?

	Yes, legal %	No, not legal %
Gender		
Male	69	30
Female	66	34
Age group		
18-29	79	21
30-49	75	24
50-64	60	39
65+	55	45
Education		
Not college grad	64	36
College grad	76	24
Household income		
Less than \$40,000	67	33
\$40,000-100,000	68	31
\$100,000+	74	26

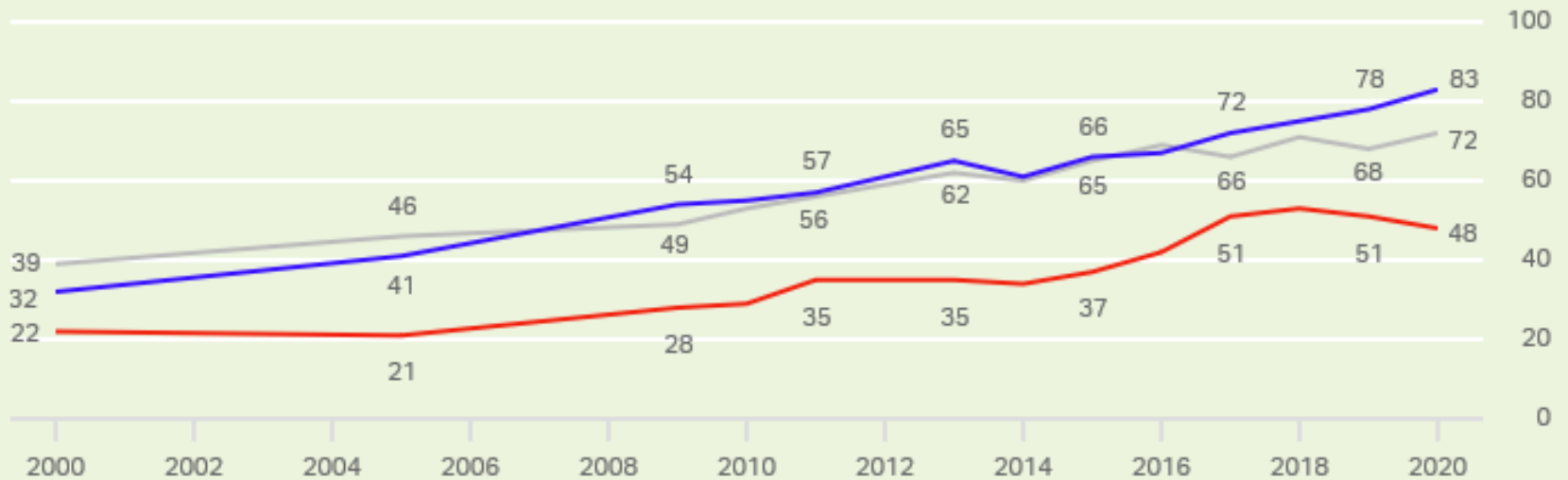
GALLUP, SEPT. 30-OCT. 15, 2020

Partisans' Support for Legalizing Marijuana, 2000-2020

Do you think the use of marijuana should be made legal, or not?

% Yes, legal

■ Independents ■ Democratic ■ Republican

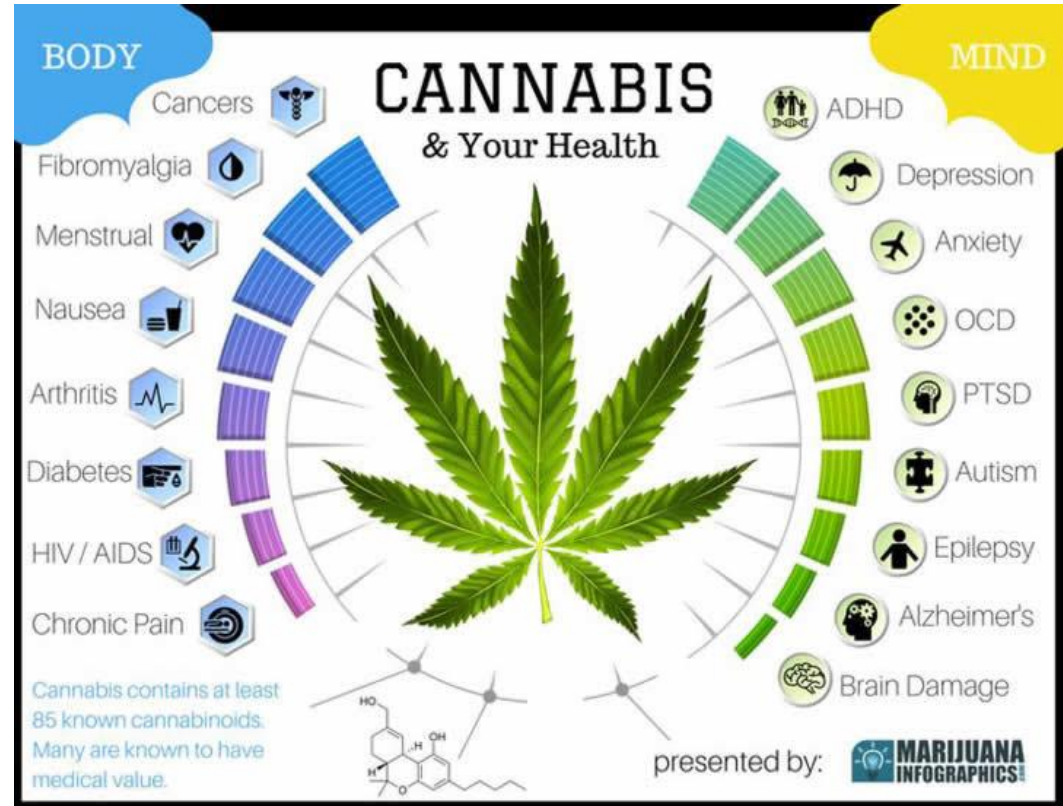


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The two main chemicals used in the application of marijuana are

- **THC** – This is the psychoactive compound in marijuana — i.e. the element that produces the euphoria
- **CBD** – This substance does not produce any psychoactive effects
- **Medical cannabis** usually contains a higher CBD content than does recreational. This means when taking it, patients don't feel the “high” that's associated with THC

- Marijuana advocates and a number of medical associations say that there is medical evidence to justify marijuana as a legitimate treatment
- However, the FDA, CDC and DEA specifically state that there is “no currently accepted medical use”¹



¹<https://www.dea.gov/drug-scheduling>

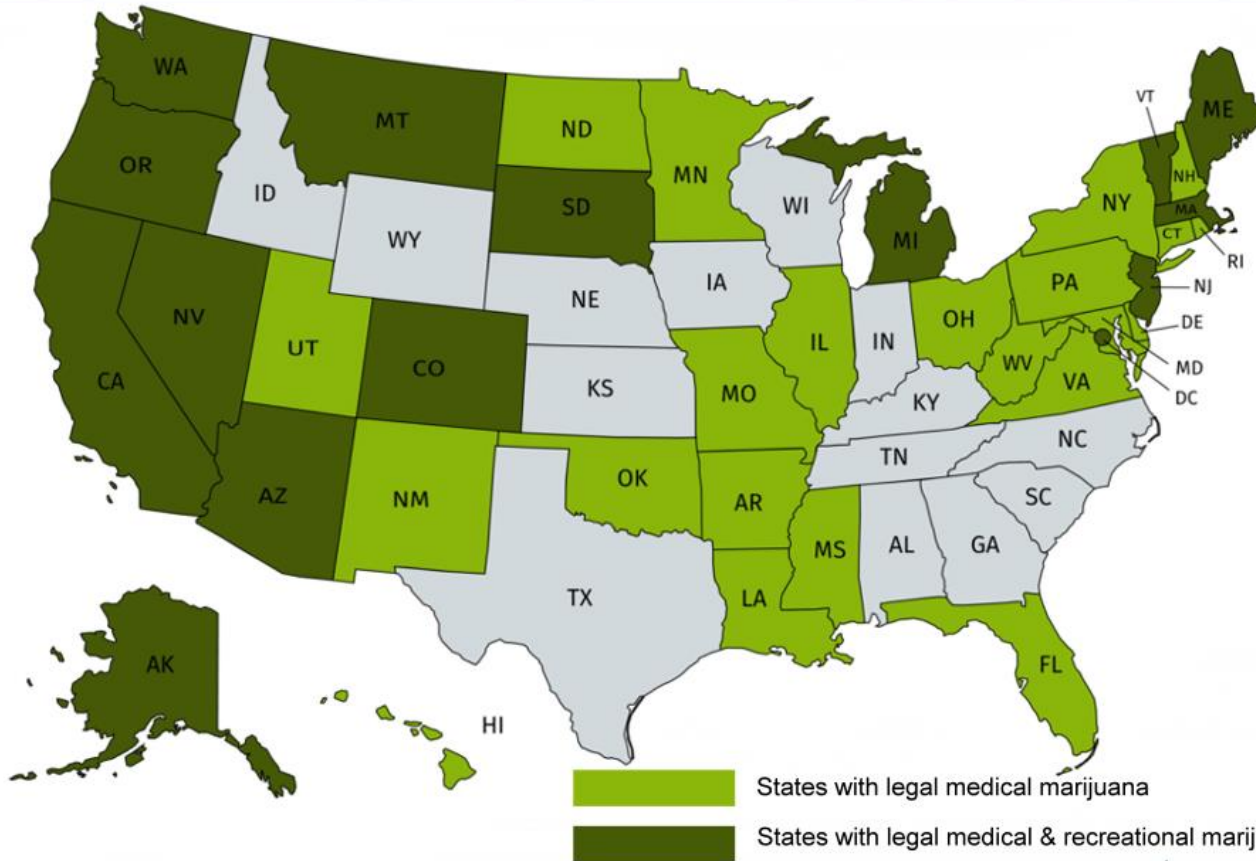
An increasing number of states are legalizing marijuana to varying degrees, but it is still illegal at the federal level. This conflict between federal and state laws creates a complicated situation for real estate owners and managers.

Property managers should check with local officials to ensure they are up to date on medical marijuana regulations. There are tools available to property managers enabling them to deal with marijuana as they see fit, such as lease addendums, with which smoking and illegal drug use can be prohibited.

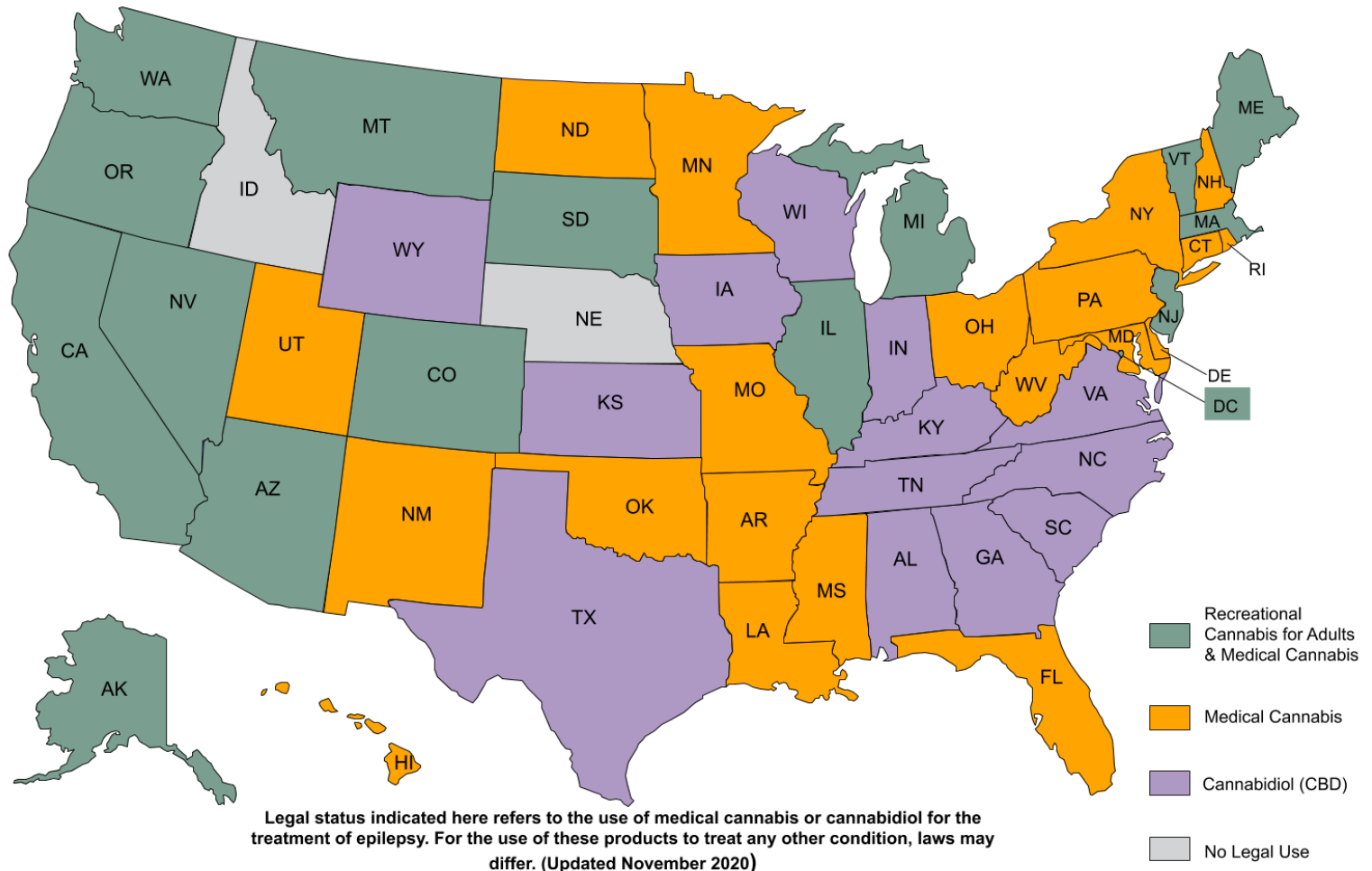
IREM invites guidance from the government on how to implement policy and procedures for the properties real estate owners and managers operate.

- **Legalization** – Possession and use legal under state law
- **Medical** – Allows for prescribed medical use
- **Decriminalization** – Reduce or eliminate penalties for possession of small amounts of marijuana

Legal Medical & Recreational Marijuana States



Cannabis Laws by State

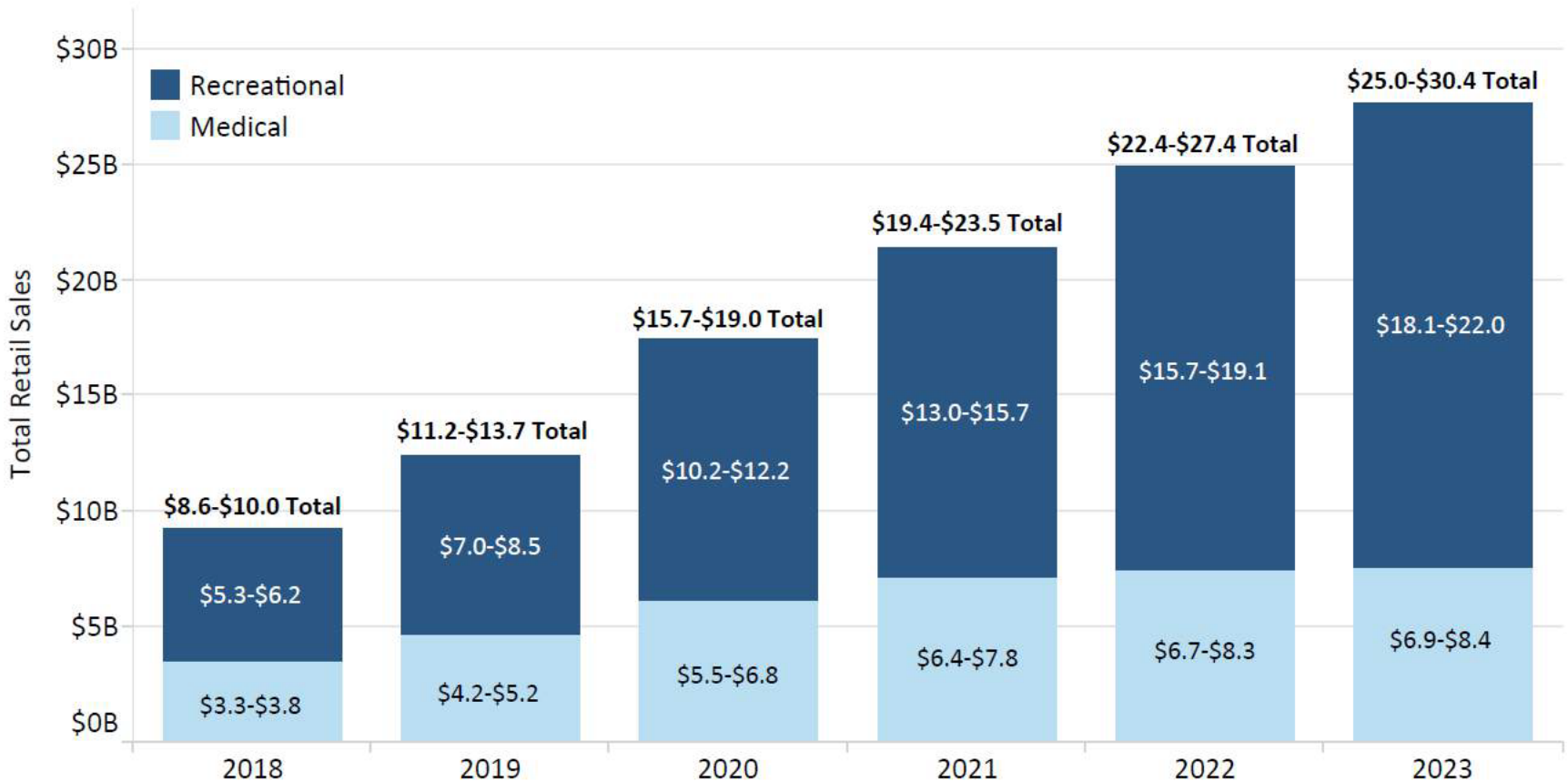


Minnesota HF 600

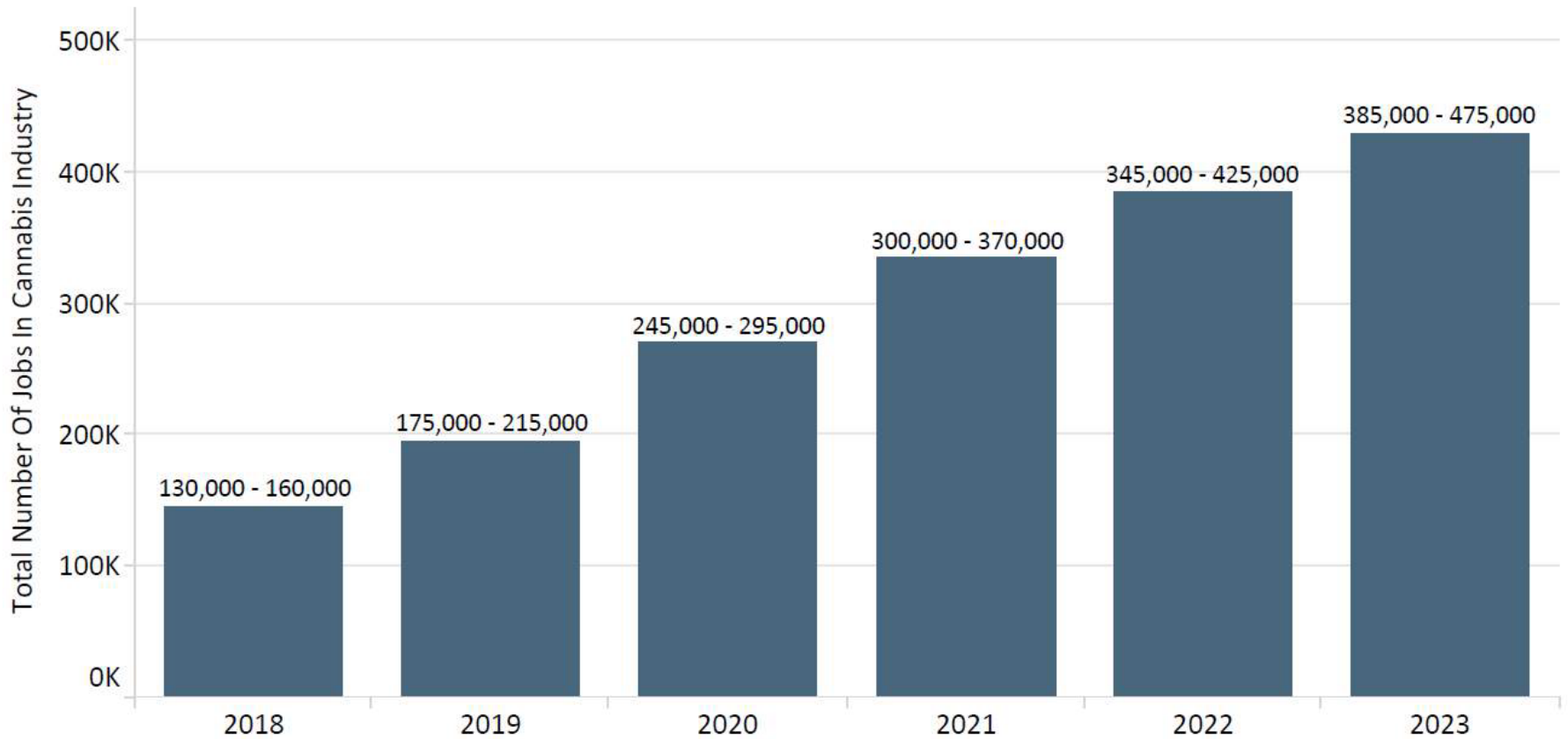
- Legalization of Cannabis
- Create a Cannabis Management Board and an Office of Social Equity
- Provide grants to help those who might lack access to loans and investors to start cannabis-related businesses.

U.S. Cannabis Retail Sales Estimates: 2018 - 2023

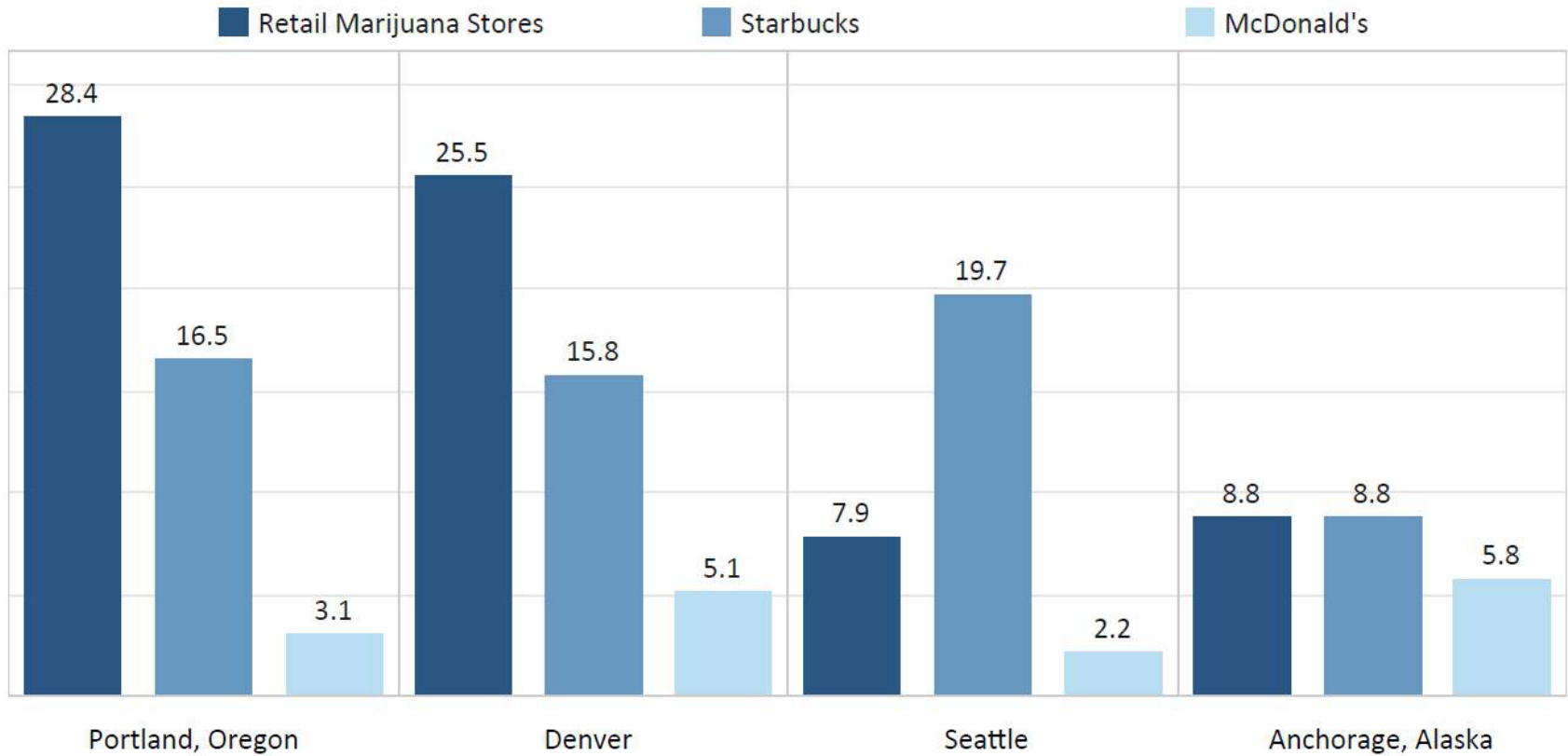
(In Billions Of U.S. Dollars)



U.S. Cannabis Industry Full-Time Employment Estimates: 2018 - 2023



Number Of Retail Marijuana Stores Per 100,000 Residents By City: Comparison With Starbucks & McDonald's

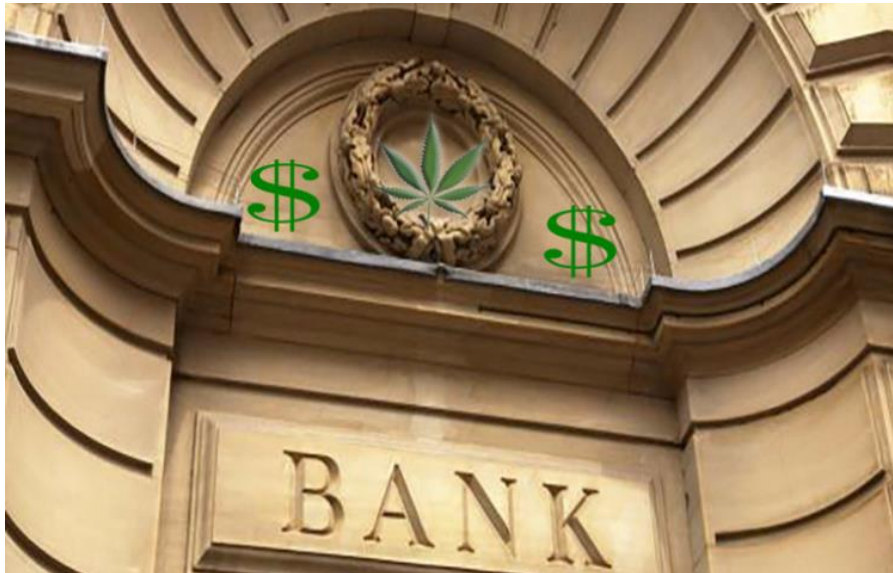


BUT ...

- Federal law still classifies marijuana as a 'Schedule 1' substance – with no legal use
- Not protected by the Americans with Disabilities Act or the Fair Housing Law
- Civil Asset Forfeiture



Because of ongoing federal cannabis prohibition, many banks have been reluctant to work with marijuana businesses



Marijuana businesses are forced to operate on a cash-only basis

The Secure And Fair Enforcement (SAFE) Banking Act

- The bill aims to give clarification to banks and credit unions that serve cannabis companies with, for instance, business accounts for bill paying
- In the 116th Congress, H.R. 1595 (The SAFE Act) was passed by the House 321-103 on September 25th, 2019. On September 26th, the bill was referred to the Senate Committee on Banking, Housing, and Urban Affairs.
- Since the bill was introduced in the 116th Congress and was not passed by the end of the two-year Congressional session, the legislation was cleared from the books. A new bill will need to be reintroduced into the 117th Congress.

Marijuana in ...



- Impact on other residents/tenants
 - Odor
 - Smoke
- Impact on property
 - Residual smoke/odor
 - Mold
 - Utility costs
 - Chance of explosion? (from home extraction setups)

Cannabis & Commercial Leasing

- Get qualified counsel
- There are no standard rules
- Cannabis-Related Business (CRB) lease issues vary widely depending on jurisdiction, parties involved, and the contemplated use (growing, manufacturing, sales)

Permitted Use Needs to Be Given Significant Thought

The standard “Any Permissible Business Use” clause is not going to cut it



CBR Leases May Significantly Impact Common Area Maintenance (CAM) expenses

- Significantly Increase Utility Costs
- Significantly Increase Insurance Costs



Don't Go into Business with Your Tenants



Rights of Early Termination Are Critical



Marijuana in Multifamily Properties



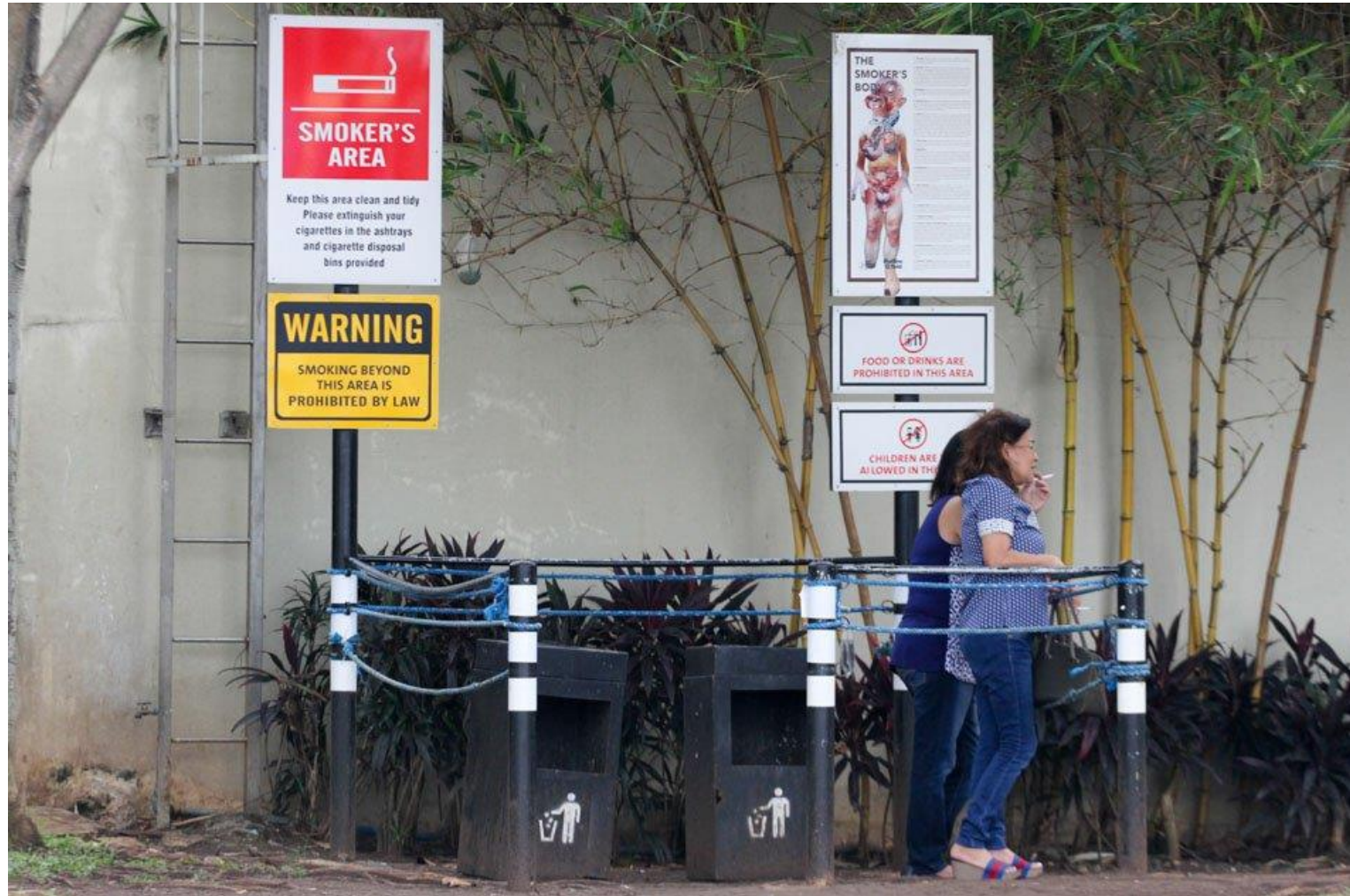
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All smokable, vaporized, vapable and medical marijuana products ingested, smoked, or consumed by a license-holding patient are subject to the same restrictions as tobacco



**NO TOBACCO OR
MARIJUANA SMOKING
AT ANY TIME**





Permits use of medical marijuana – but only in non-smokeable forms

Option 1



Option 2



- Clearly state in the lease – and the lease should give management the right to terminate the lease if this clause is violated
- Indicate that the use or possession of marijuana in the unit is a **non-curable event**
 - A **curable** event is one that uses the process of giving a 30-day cure notice
 - A **non-curable** event is one in which the tenant cannot correct the situation by promising not to do it again

- You **cannot** force tenants to amend lease terms in the middle of the lease
- Issue a 30-day notice to change terms and conditions
 - This way, the tenant will know that by agreeing to the changes in writing they effect sign a new lease - the tenant can stay
 - If the tenant is not willing to accept the changes, the tenant will be required to move, even if eviction must be undertaken to enforce the move

Multifamily Landlords Should Have a Cannabis Policy & the Policy Should be Published



- Add necessary language to rental criteria
- Advertise vacancies in clear language
- Post information in office
- Add terms and conditions to lease
- Enforce lease terms and policy
- Be consistent!

Consistency





Can I grow cannabis?

You can say **NO**

- Even if growing marijuana is approved under state law, it is illegal under federal law

If you say **YES**

- Consider an additional, substantial security deposit
- Require regular inspections

Once you decide on the approach for your rental property

- Add necessary language to rental criteria
- Advertise vacancies in clear language
- Post information in office
- Add terms and conditions to lease
- Enforce lease terms and policy

Consistency



Questions?



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