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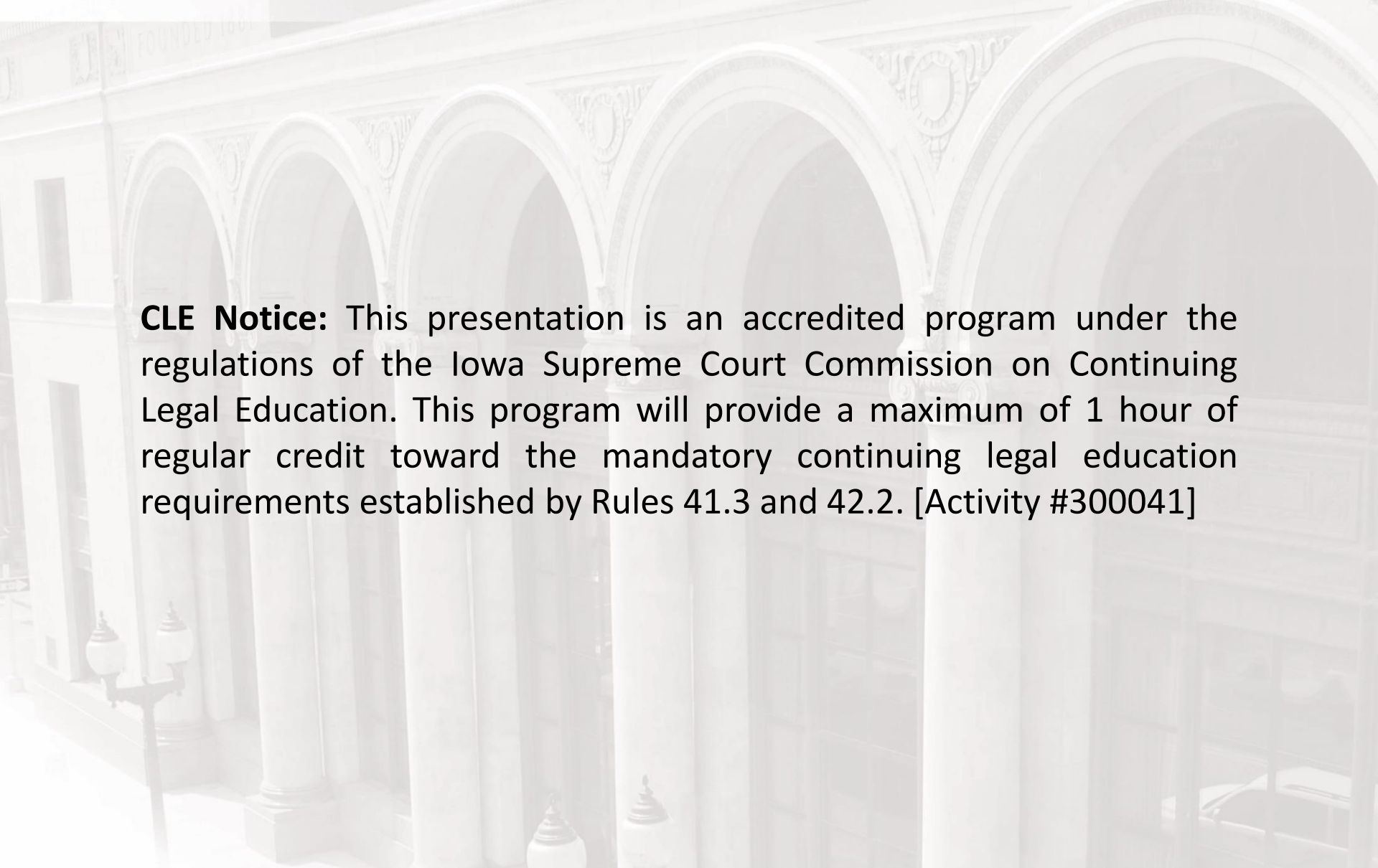
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## New Age Borrowers - Considerations Regarding Marijuana and Marijuana Related Businesses

July 11, 2019



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**New Age Borrowers –**

**Considerations Regarding Marijuana and  
Marijuana Related Businesses**



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# Overview of Marijuana Industry

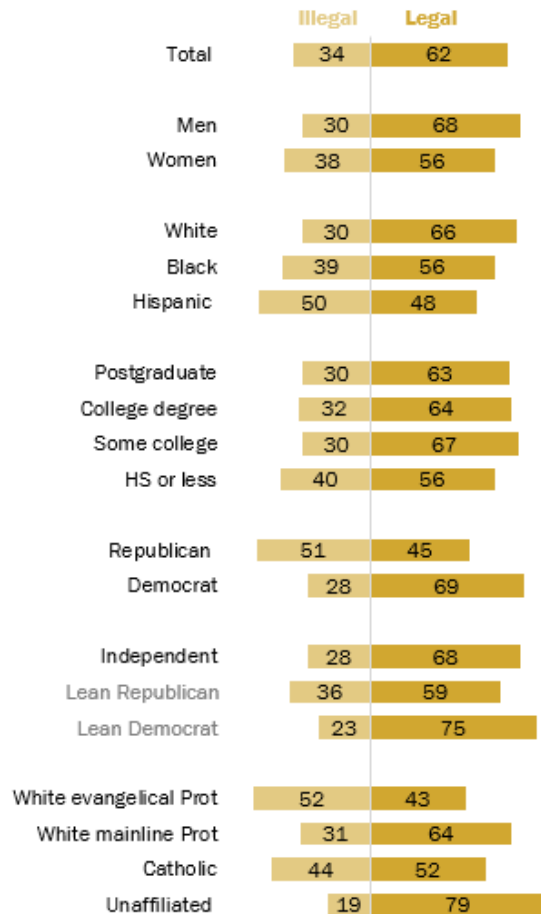
- Growing trend
- Medical vs. Recreational
- Billion dollar industry
- Federal regulations preventing banks' involvement





## Wide partisan gap in opinions about legalizing marijuana use

% who say the use of marijuana should be ...



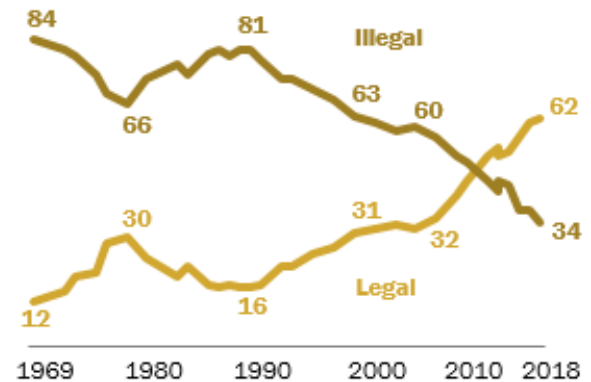
Note: Figures may not add to 100% because of rounding. Whites and blacks include only those who are not Hispanic; Hispanics are of any race. Don't know responses not shown.

Source: Survey of U.S. adults conducted Sept. 18-24, 2018.

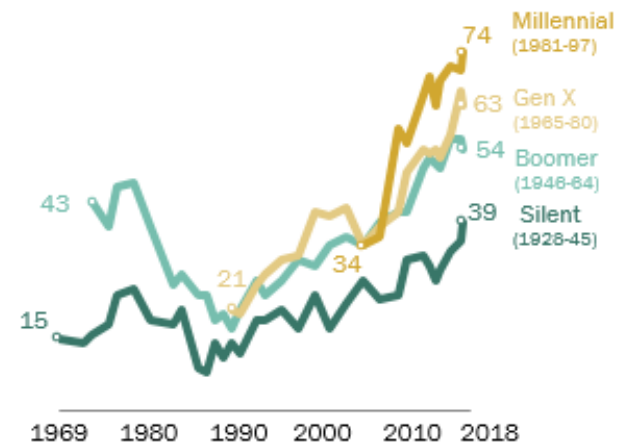
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## U.S. public opinion on legalizing marijuana, 1969-2018

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



% who say marijuana should be made legal



Note: Don't know responses not shown.

Source: Survey of U.S. adults conducted Sept. 18-24, 2018.

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# Growth Trends and States with Pending Legislation

- 62% of Americans favor legalization
- Utah, Missouri, and Oklahoma all passed medical marijuana laws, and Michigan legalized recreational use in 2018
  - IL just legalized recreational use
- Twenty-four states and Guam have pending legalization bills
- Eighteen states have pending decriminalization bills
- Fourteen states plus the U.S. Virgin Islands have pending medical marijuana legislation





# How Much Money?

- Cannabis-derived tax revenue
  - Colorado: \$1 billion in tax revenue since 2014
  - 2018 revenue from legal states:
    - WA \$319 million
    - CA \$300 million
    - CO \$266.6 million
    - OR \$94.4 million
    - NV \$69.8 million
    - AK \$11 million
    - MA \$5.2 million
- Cannabis-derived sales
  - CBD oil is expected to be a \$1.3 billion industry by 2022
  - Colorado: approx. \$6.426 billion in total sales since Jan 2014
    - In 2018, \$1.545 billion in total sales
    - Jan – Mar 2019, \$386 million in total sales
  - Washington: approx. \$3.131 billion in total sales between Jan 2014 and Dec 2017
    - In 2017, \$1.486 billion in total sales



# Marijuana Brought In Millions In Tax Revenue Last Year

Estimated 2018 tax revenue in states where recreational marijuana use is legal\*



CC BY ND  
@StatistaCharts

\* There are 10 legal states (and D.C.) but only seven currently tax and regulate revenue-producing stores.

Source: Leafly

Forbes statista

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# Iowa Medical Marijuana Law

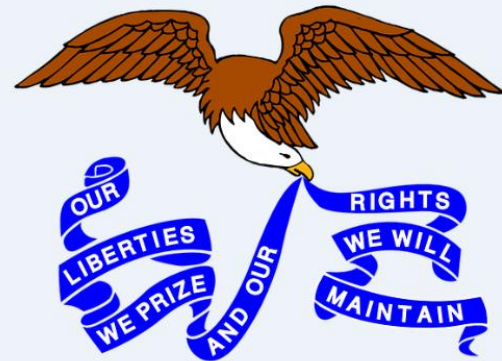
- Available for treatment of specified medical conditions
- Cannabis must be an approved strain
- THC level must be less than 3%
- Iowa currently has five medical marijuana dispensaries
  - Sioux City
  - Council Bluffs
  - Windsor Heights
  - Waterloo
  - Davenport



# Cannabis Legislation in Iowa

HF 732 – Medical Marijuana Bill,  
vetoed by Gov. Reynolds on  
May 24, 2019

Would have expanded the  
3% THC to allow patients  
25 grams of medical marijuana  
in 90 day period



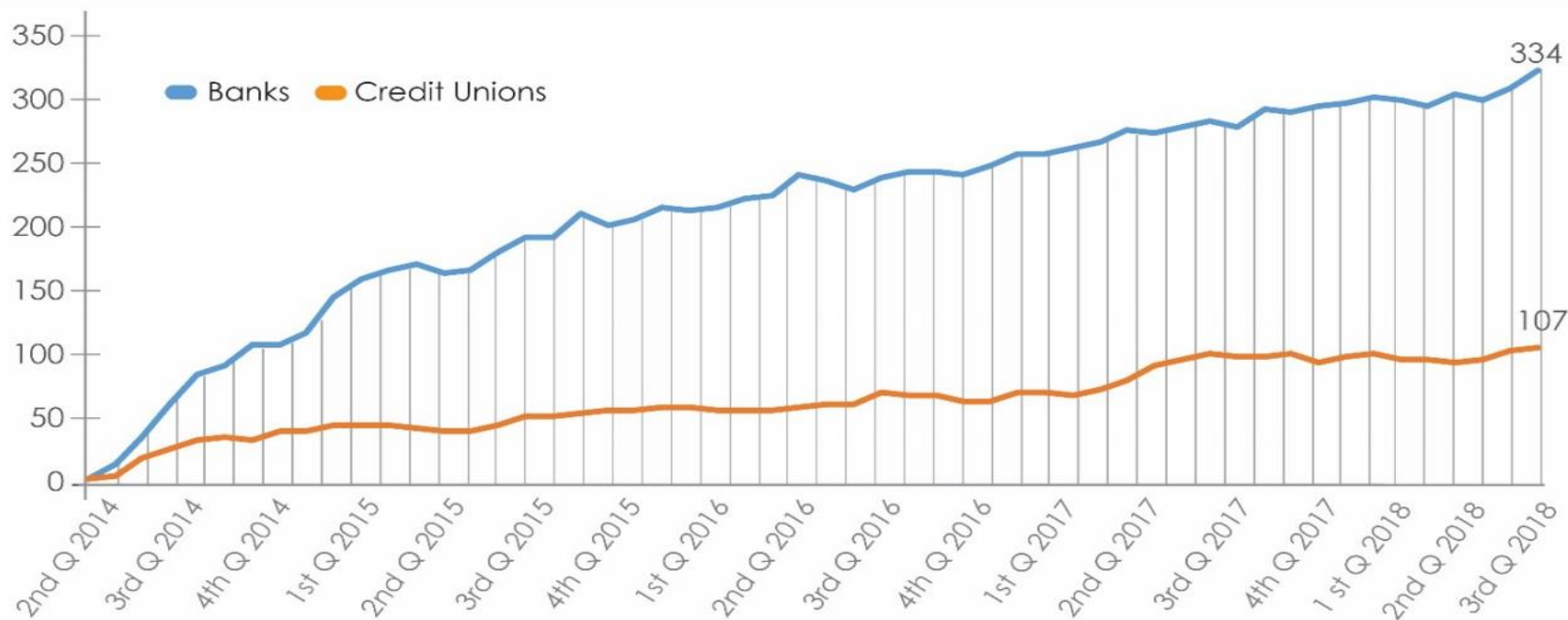
# Marijuana Industry for Bankers



- Marijuana possession and distribution is still illegal under Federal law
- Banks are subject to Federal law
- Direct and indirect involvement
- Risk to banks

## Marijuana Banking Update

**Depository Institutions (by type) Providing Banking Services to Marijuana Related Businesses<sup>1</sup>**  
(Data ending 30 June 2018)



# Current Statutes and Regulations

- Controlled Substances Act (CSA)
  - Marijuana remains a Schedule I narcotic, despite some states passing legislation decriminalizing marijuana
- Money Laundering Control Act (MLCA)
- Bank Secrecy Act
- Limited regulatory guidance
  - Only FinCEN has weighed in
  - CFPB, FDIC, OCC, and Federal Reserve Bank have not offered guidance
- Rohrabacker-Blumenauer Amendment



# Cole Memo



- Department of Justice (“DOJ”) issued in 2013 to all U.S. Attorneys
- Directed U.S. Attorneys to focus enforcement of CSA, as it pertains to marijuana, on 8 priorities
- Current status is unclear



# FinCEN 2014 Guidance

- Risk Evaluation of Customer
- Due Diligence
- Suspicious Activity Reports (SARs)
  - Because Federal law prohibits distribution and sale of marijuana, SAR must be filed
- Currency Transaction Reports (CTRs)
- SAR Categories
  - “Marijuana Limited”
  - “Marijuana Priority”
  - “Marijuana Termination”



# Fourth Corner Credit Union

- Denver-based credit union with a field of membership to serve MRBs
- State charter approved in 2014
- Regulatory roadblocks
  - NCUA denied federal deposit insurance
  - Federal Reserve Bank of Kansas City denied master account
- Still not in operation



# Secure and Fair Enforcement Banking Act (“SAFE” Act)



- Provides “safe harbor” from federal money laundering statutes, which criminalizes transactions made in business of marijuana, even within legal states
  - Currently, cannabis industry still largely cash business
- Passed committee, on calendar to be heard by House floor
- 206 bipartisan cosponsors

# Secure and Fair Enforcement Banking Act (“SAFE” Act) *cont...*

- Places restrictions on banking regulators
- Protections for ancillary businesses
- Protections from Federal laws
- Protections for Federal Reserve Banks
- Forfeiture
- SARs

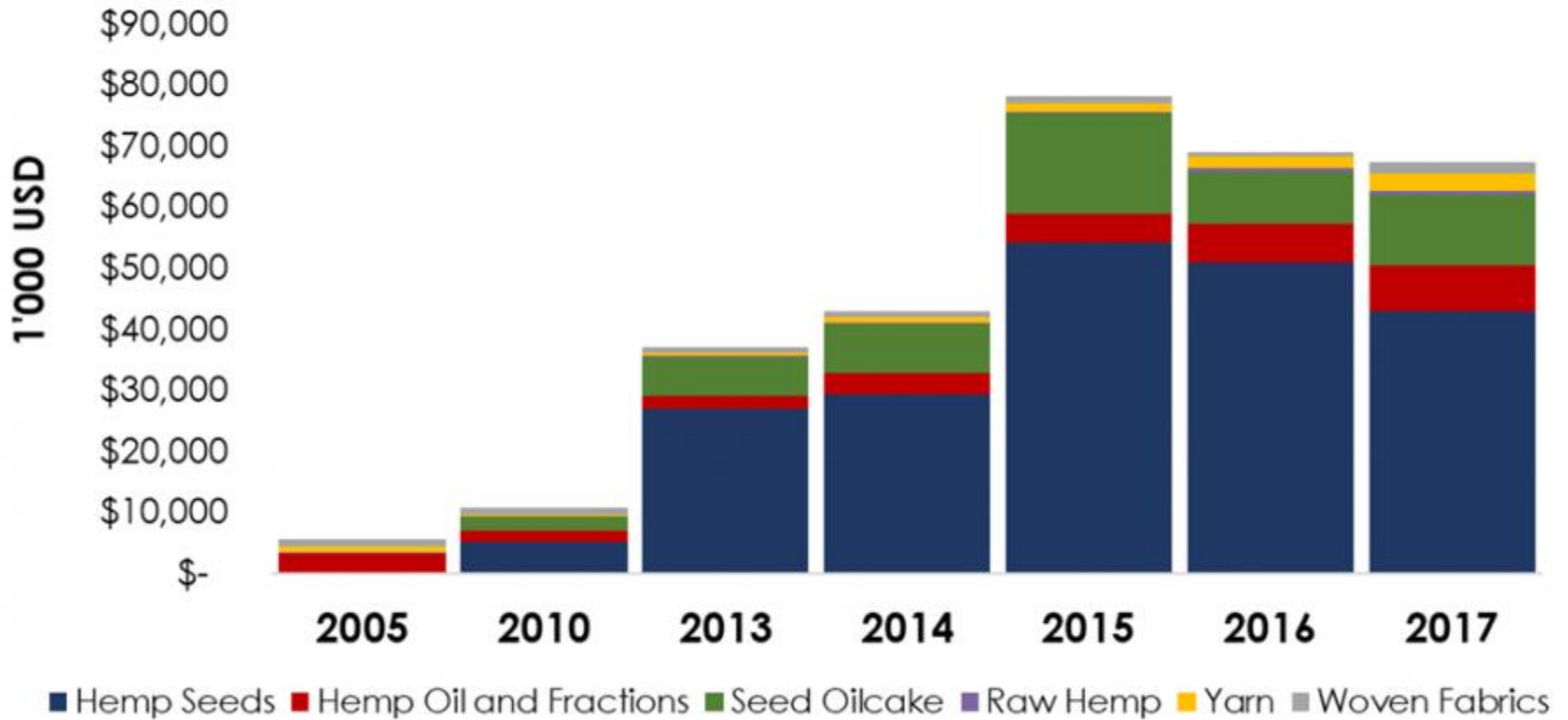
# HEMP



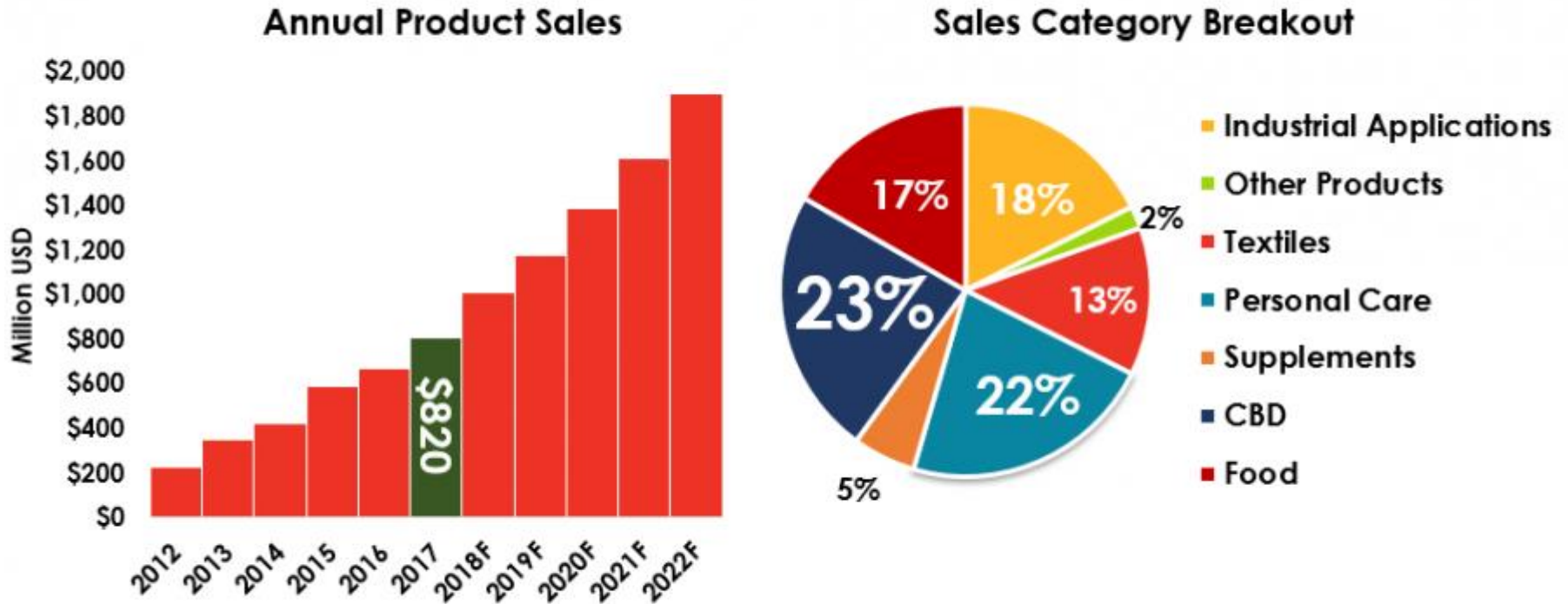
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## Figure 2. U.S. Hemp Product Imports



# Figure 3. Hemp Product Sales



Source: Hemp Business Journal



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# Farm Bill's Impact on Banking Regulations

- Controlled Substances Act
- Money Laundering Control Act
- Banks waiting for other regulatory bodies to weigh in
- New regulations expected soon





# Industrial Hemp - Iowa Hemp Act (SF 599)



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# Hemp in Iowa

- Steps for IA farmers to grow crops:
  - First, wait until the USDA approves the hemp plan
    - USDA aims to review plans [within 60 days](#)
    - Earliest planting season for hemp in Iowa would be 2020
  - Second, apply for a license
    - Section 204.4 of Hemp Act
    - Includes name, legal description of crop site, number of acres, name of hemp variety, background check results, etc.
  - Third, pay licensing fees
    - Section 204.5(b)(2) of the Hemp Act
      - Crop sites ≤5 acres: \$500 plus \$5/acre
      - Crops sites >5 acres but ≤10 acres: \$750 plus \$5/acre
      - Crop sites >10 acre and up to 40 acre limit: \$1000 plus \$5/acre
  - Fourth, comply with inspection requirements, including fees
    - Section 205.8 of the Hemp Act
    - Annual inspections

# Cannabis Oil (CBD)

- Growing industry
- Under Iowa law, needs to be produced in accordance with Federal hemp law
- FDA has not approved hemp-derived CBD for consumption
- FDA will likely be issuing regulations in the coming months



# Lending Risks with Hemp

- Bank needs to monitor crop
- Know your customer
- Regulations will be changing
- Develop a robust compliance program
- Review loan documents
- Will the hemp industry be profitable?





# Employment Considerations Regarding Marijuana Legalization



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# Federal Implications

- Employees of the federal government
- Federal contractors are subject to the Drug Free Workplace Act (applies to employees directly engaged in federal contract work)
- Some employers are subject to federal drug testing regulations (e.g. trucking, aviation)

# Practical Issues with Drug Tests

- Tests for marijuana typically don't establish present impairment
- Tests for marijuana can be positive for weeks or months after use



# Legal Issues with Drug Tests

*State laws vary*

- Maine has introduced significant limits on employee drug testing (e.g. requiring probable cause for belief that employee is under the influence)
- Illinois is not as stringent, but moving in that direction with new marijuana law
- Many states have privacy-based restrictions in place





# Questions for Drug Testing

## *General*

- Safety concerns of the position
- Regulatory requirements

## *Specific*

- Does the employee appear intoxicated?
- Are there other indications of drug use?
- workplace accidents?
- returning from rehab?



# Marijuana – Legal Bases for Termination

- Impaired at work?
- Possession at work?
- Positive drug test?



# Termination for Being Under the Influence

Generally considered misconduct and a valid basis for termination

Illinois 2020-no cause of action for employee terminated based on employer's good faith belief that employee was under the influence

But consider:

- What evidence of impairment?
- If medical, any accommodation issues?
- What impact on the work?

# Marijuana Possession at Work

## *Medical*

- Generally still grounds for termination
- But be aware of privacy and accommodation issues

## *Recreational*

- Grounds for termination



# Termination for Positive Drug Test, i.e. off-duty marijuana use

Whether termination is legal depends on the circumstances and on the state

Legality can be very complex

- Was underlying drug test legal?
- Do any factors indicate impairment at work?
- Medical or recreational use?
  - Courts and states are split, especially if medical



# States Are Split

Restrictions on terminating or rescinding job offer solely because of positive marijuana test:

Arizona, Arkansas, Connecticut, Delaware, Illinois, Maine, Massachusetts, Minnesota, Nevada, New York, Oklahoma, Pennsylvania, Rhode Island, West Virginia

***Caution: this is changing VERY quickly***



# Marijuana and Medical/Disability Accommodations

## *Federal – no protection for marijuana*

- While marijuana can now be prescribed as medication, it is carved out of the ADA

## *State – courts are split and this is changing rapidly*

- State legislatures have been ahead of the courts on this issue, as there are more explicit statutory protections for employees using medical marijuana than there are cases on the issue. Only a few cases:

### No disability law protection for medical marijuana:

- CA (Ross v. Ragingwire Telecomm Inc.)
- CO (Coats v. Dish Network, LLC)
- MI (Casias v. Wal-Mart Stores, Inc.)
- NJ (Cotto v. Ardagh Glass Packing, Inc.)
- NM (Garcia v. Tractor Supply Co.)

### Disability law protection for medical marijuana:

- MA (Barbuto v. Advantage Sales and Marketing, LLC)
- RI (Callaghan v. Darlington Fabrics Corp.)



# Conclusion

- This is a very thorny issue for employers, especially multi-state employers
- State law trend is toward protecting employees' ability to use marijuana, at least for medical purposes
- Zero-tolerance policies were the norm, now will violate the law in many states
- Safest course for employers wishing to avoid litigation is to drop marijuana testing unless there is a specific need, and treat marijuana use like alcohol





# Questions?



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