DrummondWoodsum

ATTORNEYS AT LAW

Medical Marijuana and Industrial Hemp National Tribal Assoication

Copyright 2015 Drummond Woodsum. All rights expressly reserved.

Indian Law Practice Overview

Drummond Woodsum's nationwide Indian law practice provides the highest quality services to sovereign Indian tribal governments and their enterprises and to companies that do business with tribes.

Having worked with tribal nations in New England and across the country for well over 30 years, we draw upon an unmatched depth of experience and understanding of the unique issues and challenges in Indian country.

We offer a full spectrum of services:

- Labor and Employment
- Innovative Financial Transactions
- Carbon Sequestration and "Cap and Trade"
- Gaming, Resort Management and Development
- Commercial and Retail Business Development
- Structuring Tribal Businesses and Defending Tribal Sovereignty
- Mergers & Acquisitions
- Healthcare

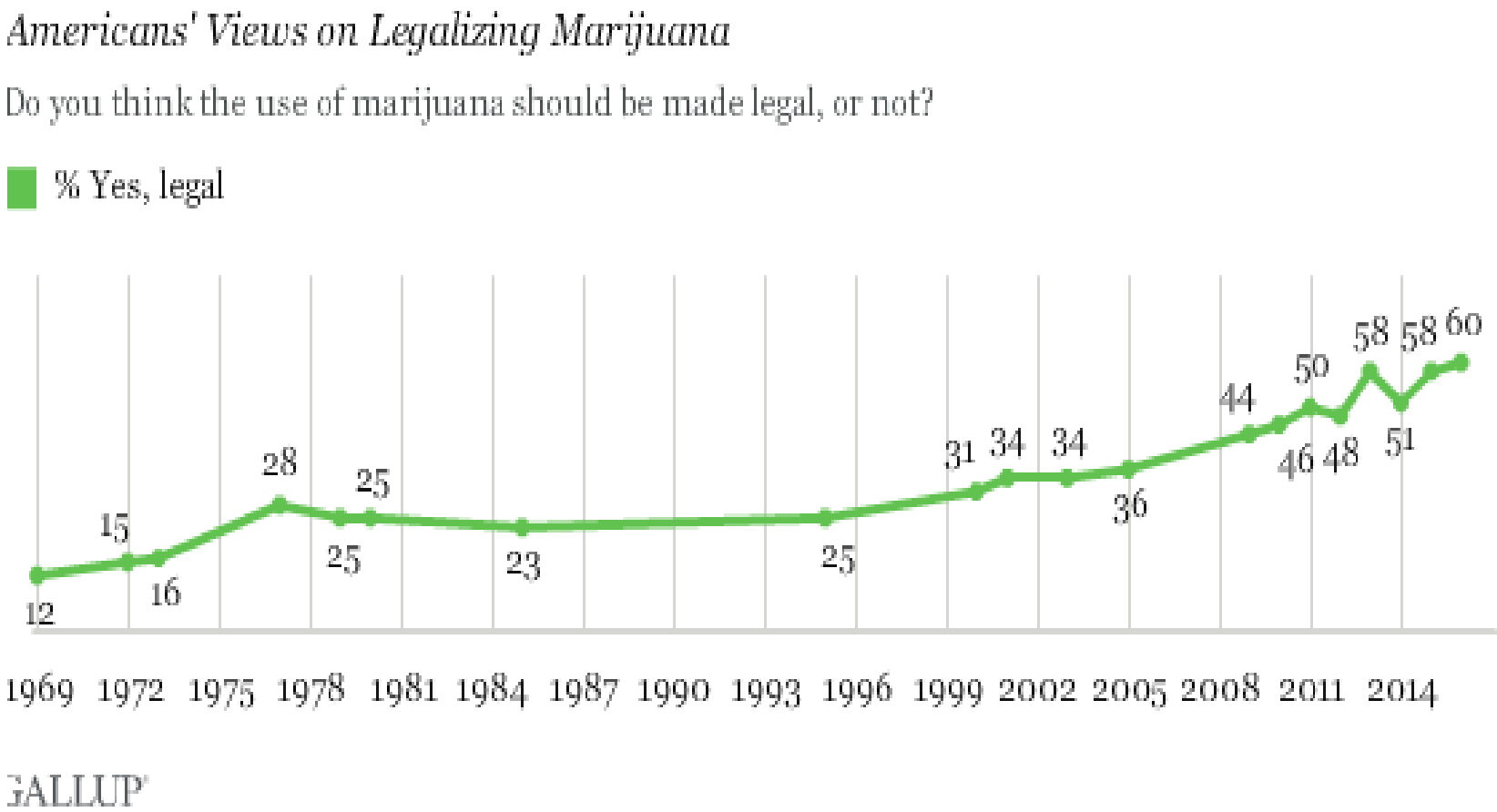
Copyright 2015 Drummond Woodsum. All rights expressly reserved.

Part I: National Trends

Copyright 2018 Drummond Woodsum. All rights expressly reserved.

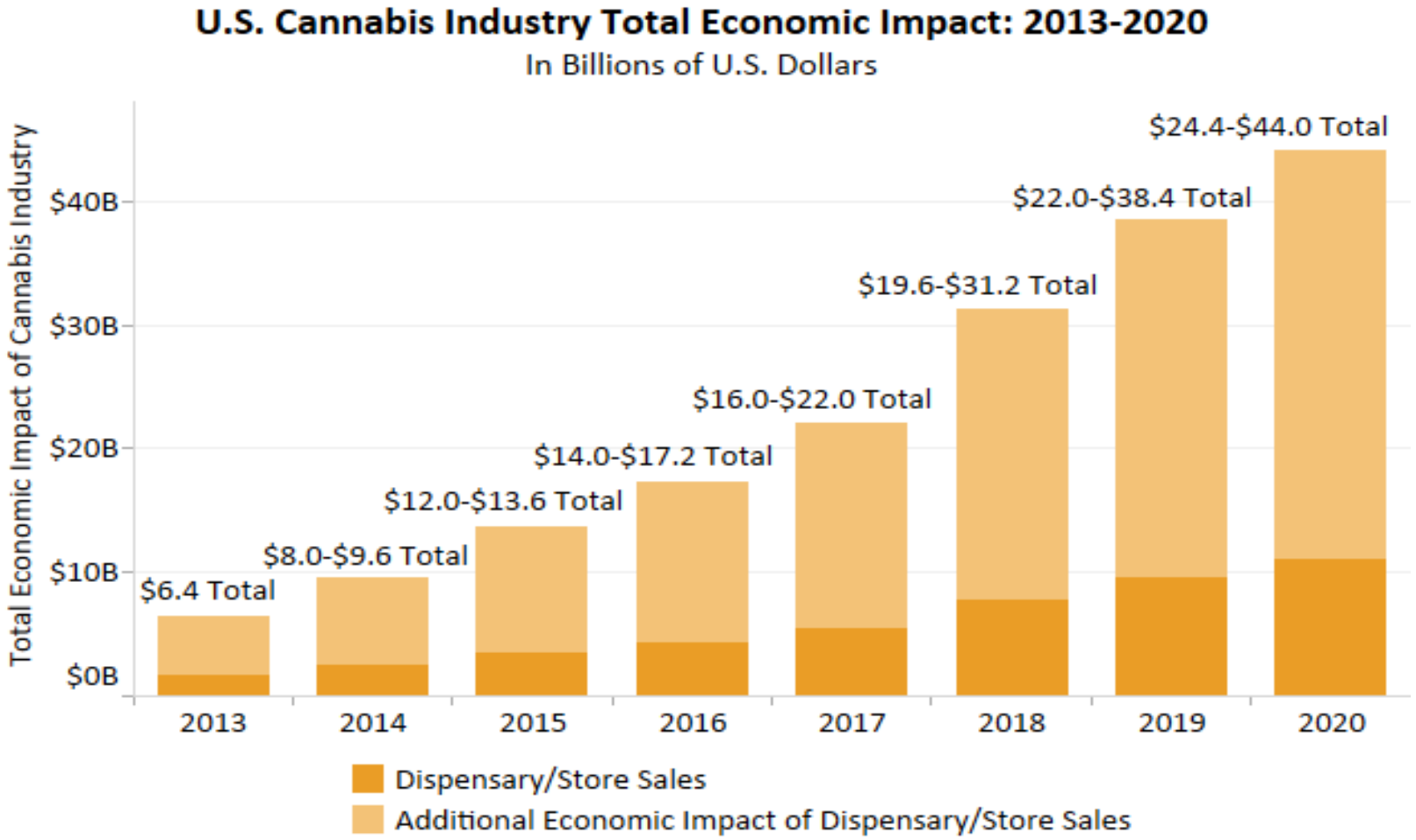
Changing Public Opinion

National support of legalization 60 % in October 2016



Copyright 2015 Drummond Woodsum. All rights expressly reserved.

Business Opportunities in Cannabis

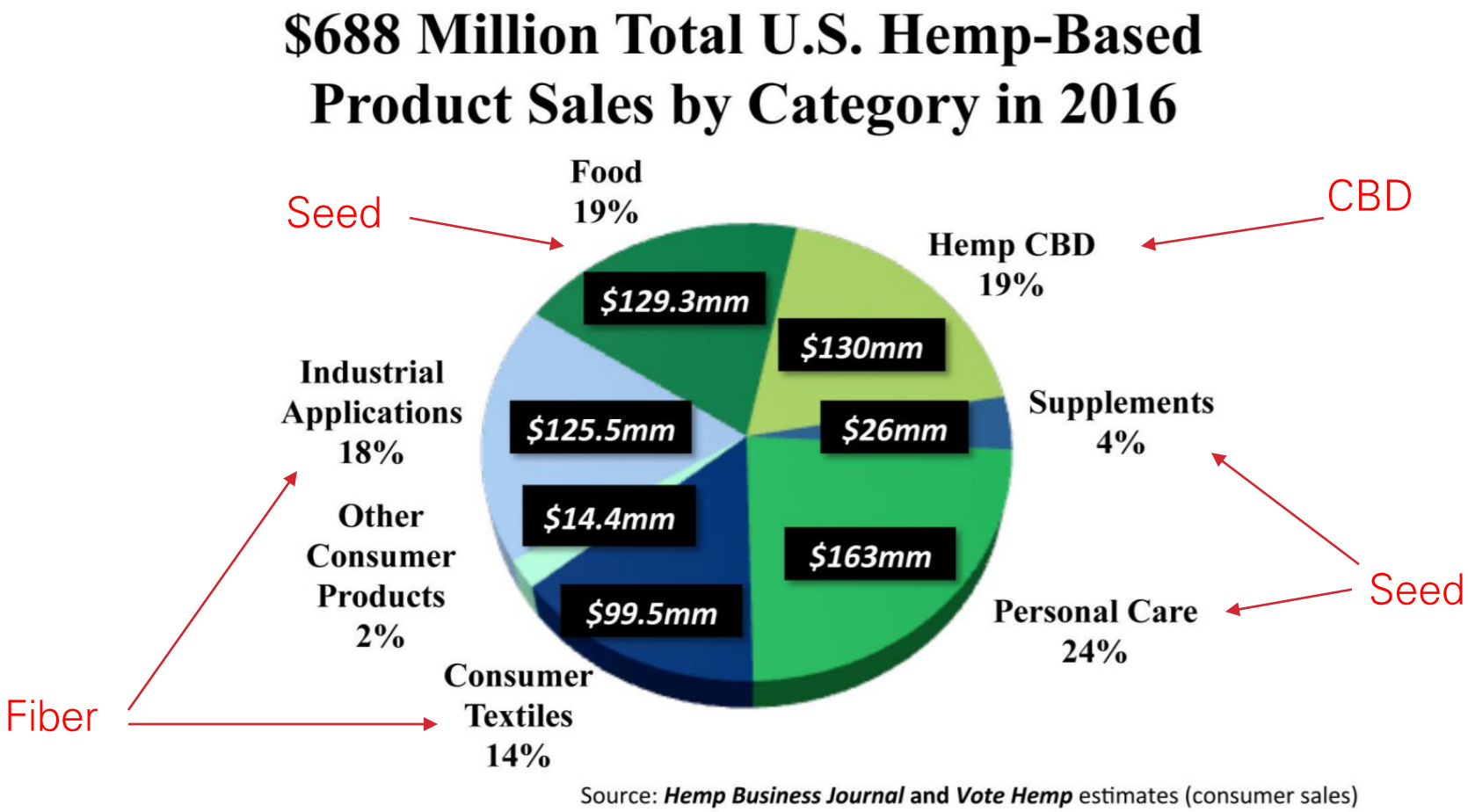


Source: Marijuana Business Factbook 2016

Copyright 2016 Marijuana Business Daily, a division of Anne Holland Ventures Inc. All rights reserved.

Copyright 2018 Drummond Woodsum. All rights expressly reserved.

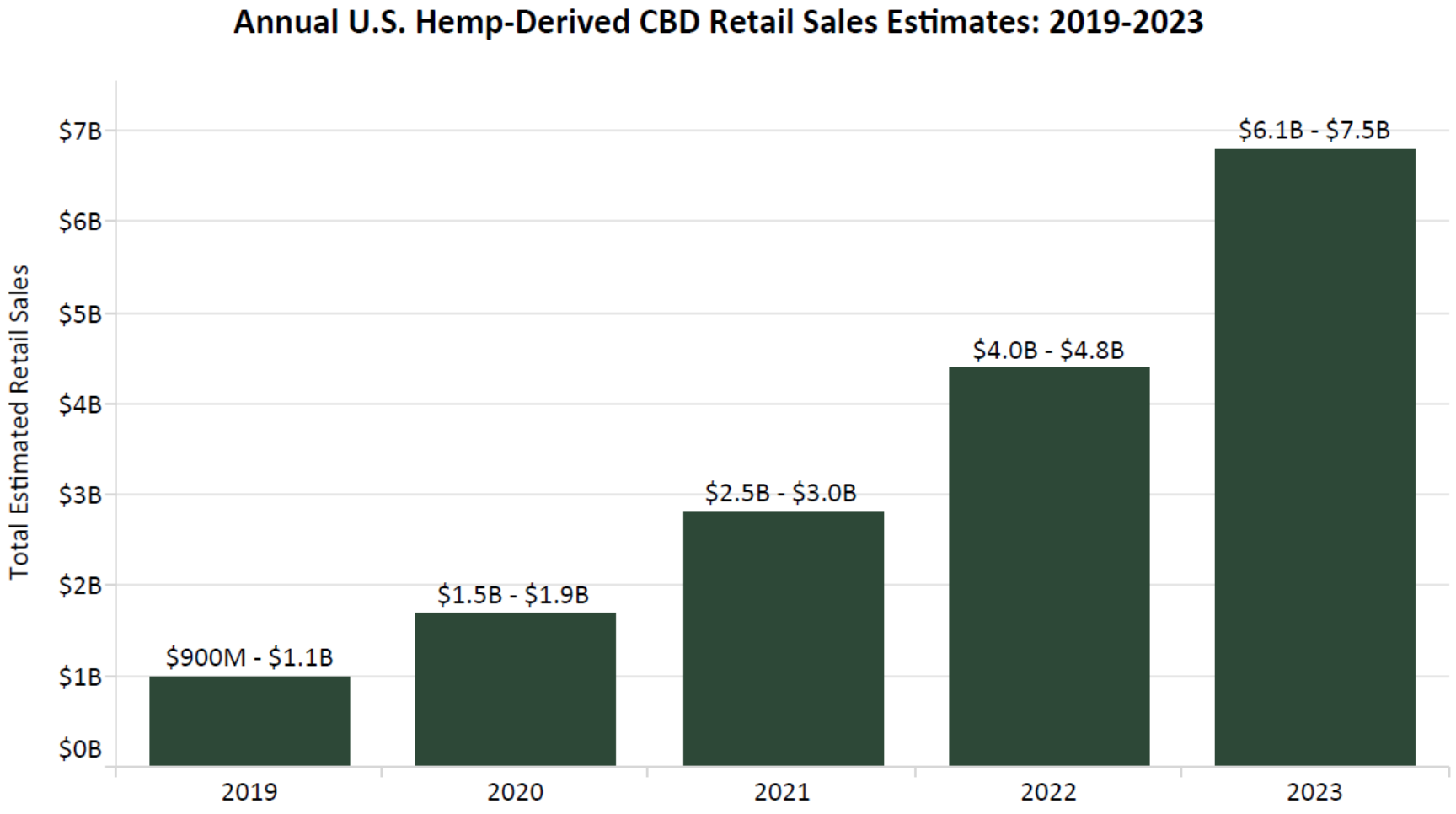
Hemp Market



Source: ***Hemp Business Journal*** and ***Vote Hemp*** estimates (consumer sales)

Copyright 2018 Drummond Woodsum. All rights expressly reserved.

Hemp Market – CBD Retail Sales Estimate



Source: Hemp Industry Daily

© 2019 Hemp Industry Daily, a division of Anne Holland Ventures Inc. All rights reserved.

Hemp Farming and Processing

Copyright 2018 Drummond Woodsum. All rights expressly reserved.

Hemp Farming and Processing

Chart 2: Hemp Acreage by State

STATE	ACRES PLANTED 2016	ACRES PLANTED 2017
Colorado	5,921	9,890
Hawaii	1	0
Kentucky	2,525	3,200
Maine	1	30
Minnesota	51	1,205
Montana	0	542

Copyright 2018 Drummond Woodsum. All rights expressly reserved.

Part II: Federal Law and Policy

Copyright 2018 Drummond Woodsum. All rights expressly reserved.

State and Federal Disconnect

- Marijuana is a Schedule I substance under the US Controlled Substances Act
- Production, processing and sale of marijuana is completely illegal under federal law;
  - Everyone producing, processing and selling marijuana - - even in a state where it's legal for medical or recreational purposes - - is committing a federal crime
- Rohrabacher-Farr (Blumenauer) Amendment

Copyright 2018 Drummond Woodsum. All rights expressly reserved.

2018 Farm Bill

- Removes the plant cannabis sativa L. from the Controlled Substances Act if it or a plant contains no more than 0.3% THC on a dry-weight basis.

- Tells the U.S Department of Agriculture (USDA) to come up with national hemp regulations “as expeditiously as practicable.”

Copyright 2018 Drummond Woodsum. All rights expressly reserved.

2018 Farm Bill

- Allows Tribal Nations to submit hemp-growing regulations plans to the USDA
- Plans must include:
  - THC testing procedures, including inspections done at least annually.
  - Bookkeeping procedures to keep track of land approved for hemp cultivation.
  - Plans for “effective disposal” of hemp plants with too much THC.

Copyright 2018 Drummond Woodsum. All rights expressly reserved.

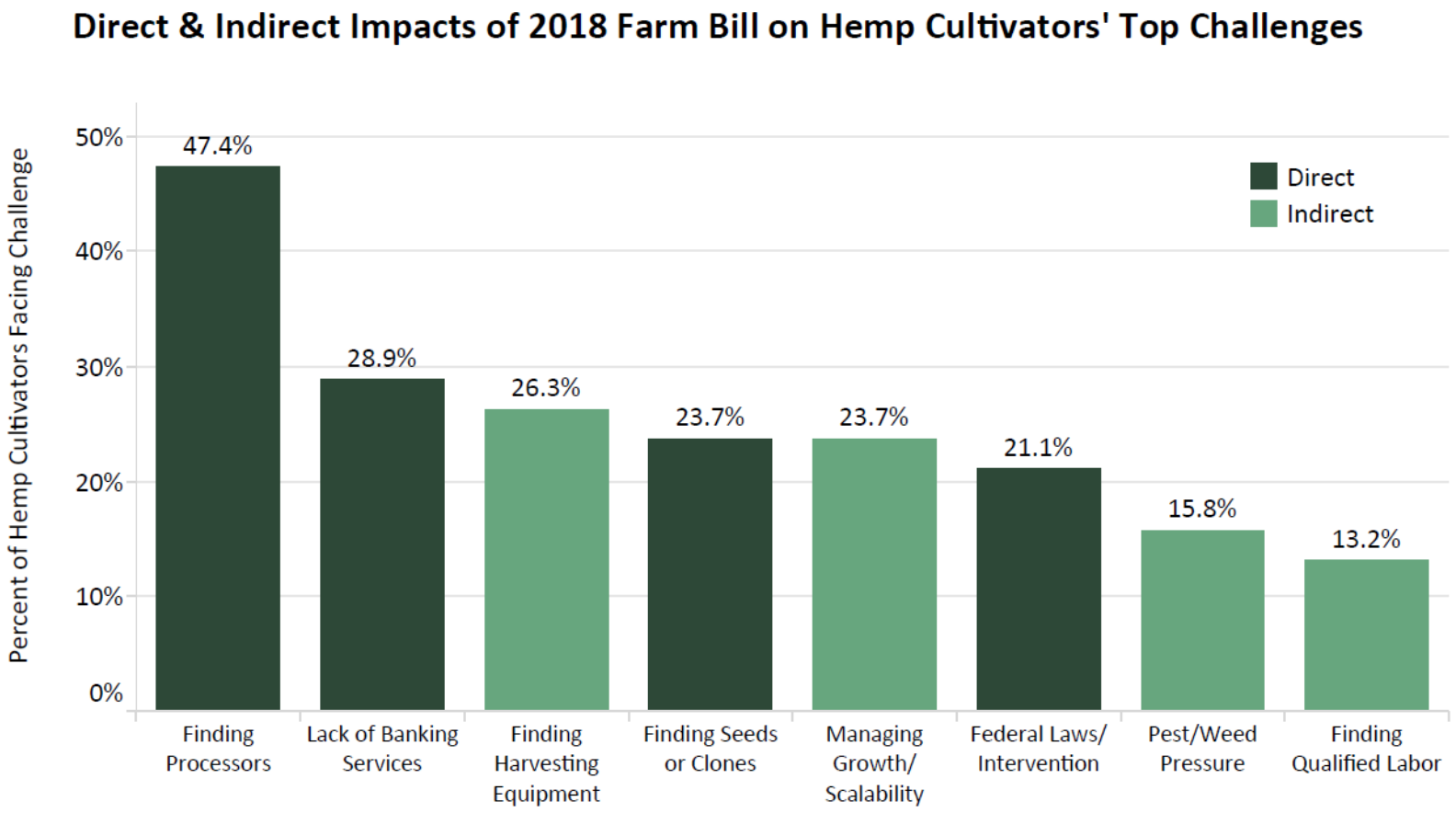
2018 Farm Bill

- Bans hemp cultivation by people with drug felonies in the past 10 years.

- Guarantees that hemp and hemp products can be moved from state to state and imported and exported the same as any other crop

Copyright 2018 Drummond Woodsum. All rights expressly reserved.

2018 Farm Bill



Source: Hemp Industry Factbook

Copyright 2019 Marijuana Business Daily, a division of Anne Holland Ventures Inc. All rights reserved.

Copyright 2018 Drummond Woodsum. All rights expressly reserved.

Possible Federal Laws

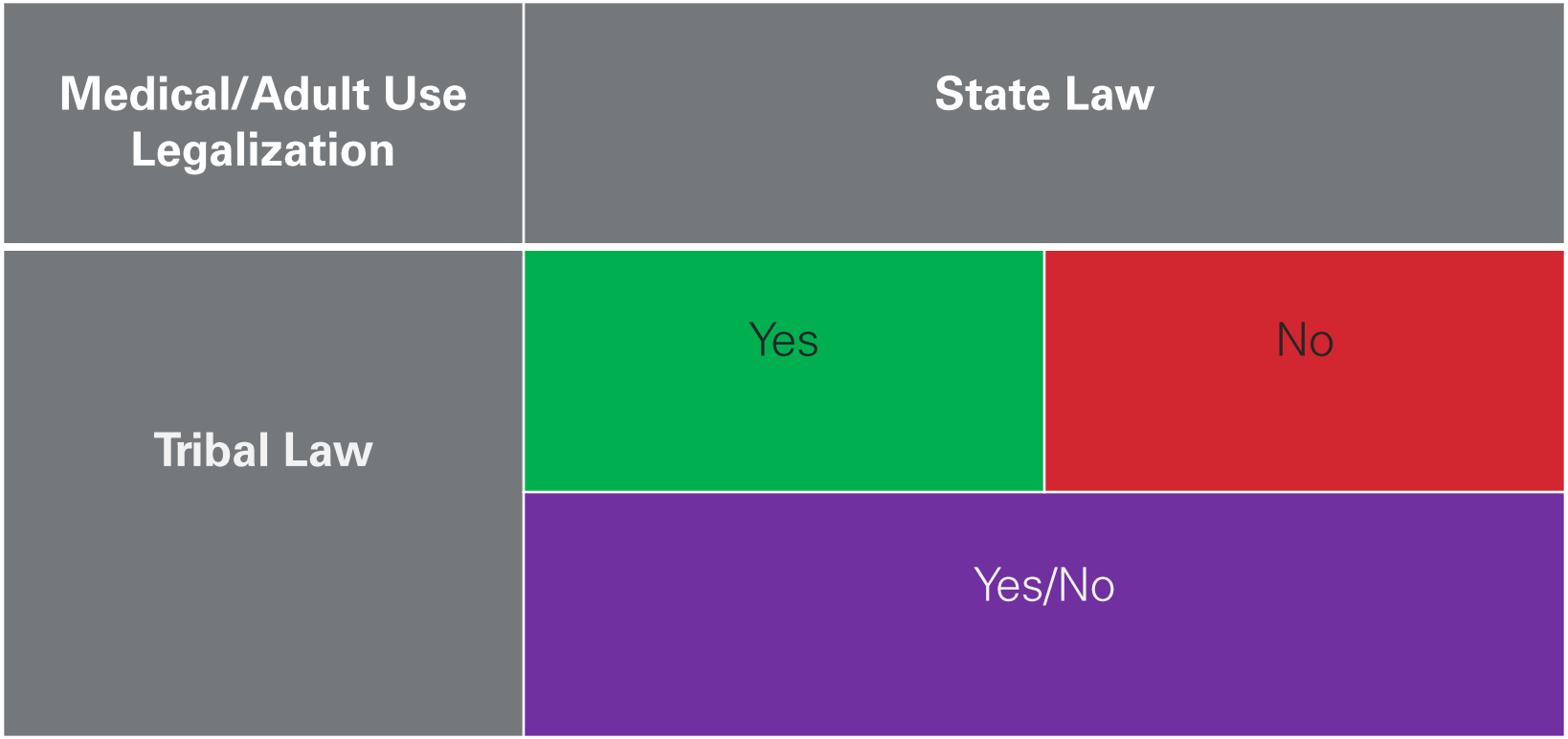
- Proposed legislation
  - STATES Act: Allows Tribal Nations to regulate marijuana in the same manner as the state in which it is located
  - Marijuana Freedom and Opportunity Act, which decriminalizes marijuana at federal level.

Copyright 2018 Drummond Woodsum. All rights expressly reserved.

Part III: Tribal Control

Copyright 2015 Drummond Woodsum. All rights expressly reserved.

Tribal Control of Cannabis



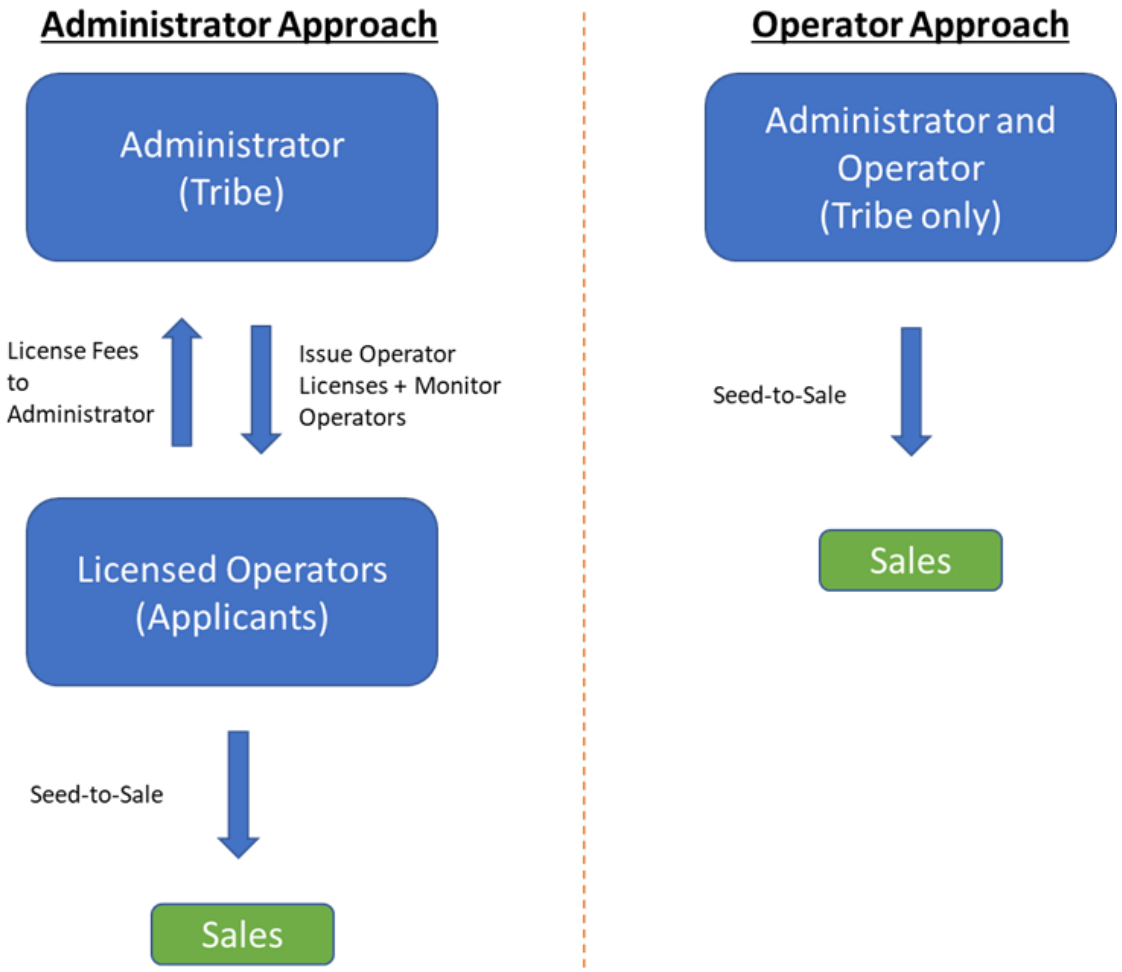
Copyright 2015 Drummond Woodsum. All rights expressly reserved.

Tribal control viewed broadly

- When value is generated through on-reservation activities the tribal interests are strongly established, and the state will be prevented from exercising on-reservation jurisdiction even over non-Indians. *See New Mexico v. Mescalero Apache Tribe,* 462 U.S. 324, 334-36 (1983).
- Tribal civil/regulatory powers
  - Prohibition
  - Tribal Regulation
    - Zoning/Land Use/Leasing Codes
    - Tribal Licensing Authority

Copyright 2015 Drummond Woodsum. All rights expressly reserved.

Tribal Control of Cannabis and Hemp



Copyright 2015 Drummond Woodsum. All rights expressly reserved.

Vegetative

Copyright 2015 Drummond Woodsum. All rights expressly reserved.

Plants Ready for Harvest

Copyright 2015 Drummond Woodsum. All rights expressly reserved.

Drying Room

Copyright 2015 Drummond Woodsum. All rights expressly reserved.

Trim Room

Copyright 2015 Drummond Woodsum. All rights expressly reserved.

Clone Room

Copyright 2015 Drummond Woodsum. All rights expressly reserved.

Packaging

Copyright 2015 Drummond Woodsum. All rights expressly reserved.

Hydro-Carbon Extractor

Copyright 2015 Drummond Woodsum. All rights expressly reserved.

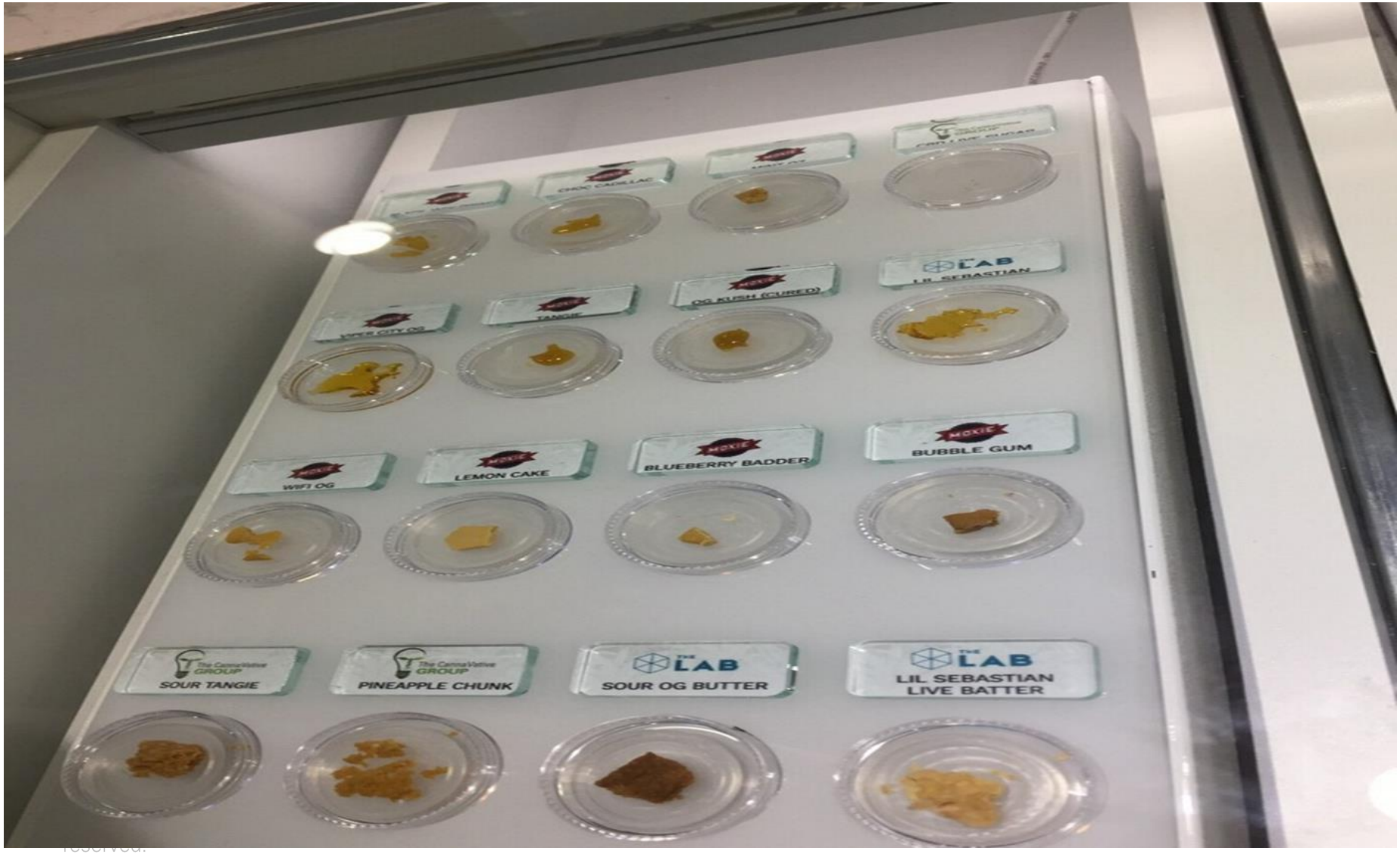
Retail Store

Edible Display

reserved.

Flower Display

Concentrate Display



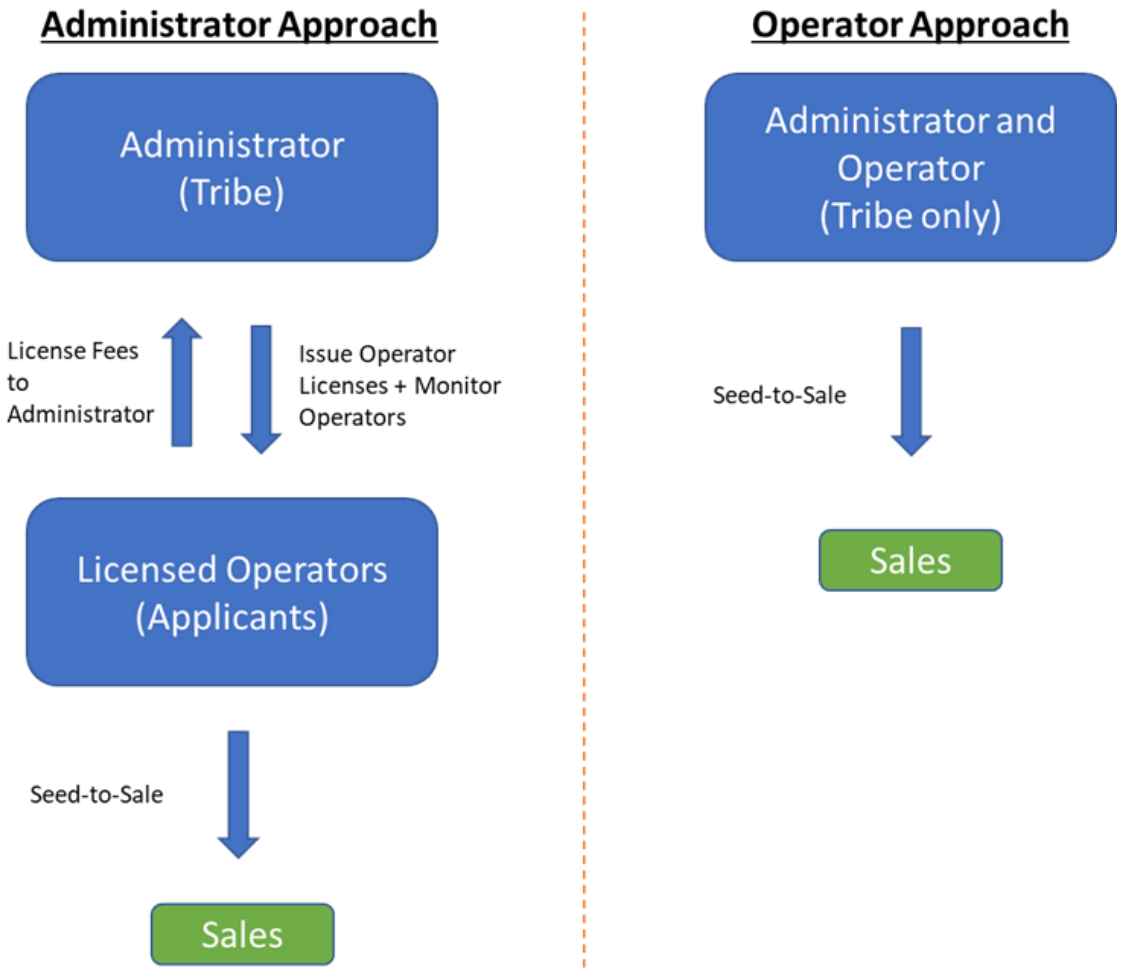
reserved.

How might an RFP process work?

- RFP might contain threshold requirements:
  - Evidence of tax and legal compliance
  - Capital reserves to fund start-up
  - Criminal background check
  - Security and safety plans
- Then use a scoring process that scores:
  - Management experience
  - Technical capacity
  - Plans for: traffic, odor mitigation, environmental protection, other similar issues
  - Local support
  - "Give backs" to community

Copyright 2015 Drummond Woodsum. All rights expressly reserved.

Tribal Control of Cannabis and Hemp

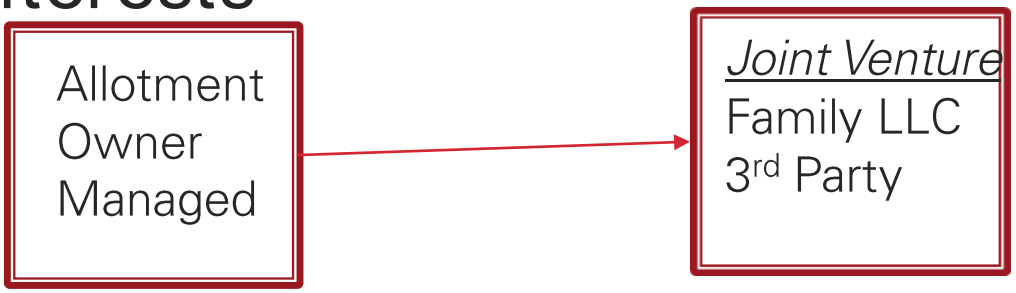


Copyright 2015 Drummond Woodsum. All rights expressly reserved.

How does it work for allotments?

- It doesn't:
  - 25 CFR § 162.014 "What laws will apply to leases approved under this part?"

- But see:
  - 25 USCA § 2220 "Owner-Managed Interests"



Copyright 2015 Drummond Woodsum. All rights expressly reserved.

Section VIII

Public Sector Employment Law Issues in the Age of Marijuana

Copyright 2015 Drummond Woodsum. All rights expressly reserved.

Legalization Act Provisions

- No effect on employment policies
  - Act "may not be construed to require an employer to permit or accommodate the use, consumption, possession, trade, display, transportation, sale or growing of cannabis in the workplace. [Act] does not affect the ability of employers to enact and enforce workplace policies restricting the use of marijuana by employees or to discipline employees who are under the influence of marijuana in the workplace."
- Anti-discrimination:
  - "[E]mployer … may not refuse to … employ or … or otherwise penalize a person 21 years of age or older solely for that person's consuming marijuana outside of the … employer's … property."

Copyright 2015 Drummond Woodsum. All rights expressly reserved.

Section IX

Impaired Driving

Copyright 2015 Drummond Woodsum. All rights expressly reserved.

Impaired Driving Issues and Approaches

- No reliable breath or urine test to assess marijuana impairment
- Only a blood test can determine the amount of active THC in a person's system
- Two possibilities: zero tolerance, or a per se level of active THC in a blood sample
- States seem to be converging on a per se standard of 5 ng/mL of THC as threshold for impairment.
- Need to tailor field sobriety tests to marijuana impairment
- Still no marijuana-specific legislation in Maine

Copyright 2015 Drummond Woodsum. All rights expressly reserved.

Section X

Conclusion

Copyright 2015 Drummond Woodsum. All rights expressly reserved.

Tribal Control

- Compacting
- Tribal laws that are consistent with or more stringent than State laws
- Vertical integration – value generated on the reservation
- Marijuana and Hemp Production are Agricultural uses

Copyright 2015 Drummond Woodsum. All rights expressly reserved.

Drummond Woodsum Regulated Substances Practice Overview

- **Erick Giles**: Erick is the newest member of the Indian Law practice group. Prior to joining Drummond Woodsum, Erick worked for the Indian Land Tenure Foundation concentrating on American Indian property rights and tribal economic development. Erick is a citizen of the Mvskoke (Creek) Nation and has a Master's Degree in City Planning and Public Administration from the University of Oklahoma.

Practice Areas

Indian Law

Tribal Business Enterprise Group

Education

University of Maine School of Law

Copyright 2015 Drummond Woodsum. All rights expressly reserved.

Drummond Woodsum Regulated Substances Practice Overview

- **Ted Kelleher**: Ted heads the firm's Regulated Substances Practice, and has represented dispensaries, tribes, investors, landlords and property owners as they try to navigate the complex and quickly changing world of marijuana laws, regulations and business transactions. Working closely with attorneys in our nationally recognized Indian practice, Ted has counseled Indian tribes across the nation as they consider and explore tribal cannabis enterprises.

Practice Areas

Affordable Housing
Business and Corporate
Indian Law
Tribal Business Enterprise Group
Regulated Substances

Education

Northwestern University Law School

Copyright 2015 Drummond Woodsum. All rights expressly reserved.

Drummond Woodsum Regulated Substances Practice Overview

- **Hannah King**: Hannah is a member of The ArcView Group, a cannabis angel investment platform, 15 member selection committee, Hannah vets investment opportunities in the cannabis industry for consideration by ArcView members. She also advises tribal clients across the country looking to enter the cannabis space on business strategy and development of tribal regulatory regimes.

Practice Areas

Indian Law
- Tribal Business Enterprise Group

Regulated Substances
Employment and Labor

Education

University of Maine School of Law

Copyright 2015 Drummond Woodsum. All rights expressly reserved.

Section X

Questions and (Hopefully) Answers

Copyright 2015 Drummond Woodsum. All rights expressly reserved.

Contact Us

egiles@dwmlaw.com

hking@dwmlaw.com

tkelleher@dwmlaw.com

Visit us online at dwmlaw.com
1-800-727-1941

Copyright 2018 Drummond Woodsum. All rights expressly reserved.