

# Marijuana on the Ballot

The White House and congressional seats are up for grabs as voters in several states consider legalizing new markets

*By Omar Sacirbey*



**W**ith this fall's general election the U.S. marijuana industry could see its biggest spike in business opportunities since the 2016 election. Back then, four states—California, Maine, Massachusetts and Nevada—legalized recreational marijuana cultivation and sales through the ballot box, and three more—Arkansas, Florida and North Dakota—approved medical marijuana programs.

On Nov. 3, Arizona, Montana and New Jersey, which all have established medical programs, will hold referendums to legalize recreational marijuana. And voters in Mississippi and South Dakota will vote on legalizing medical marijuana. South Dakota voters will also consider an adult-use marijuana initiative. The passage of most or all of these referendums is more than plausible—and if new markets open, they could create billions of dollars in business opportunities for marijuana entrepreneurs.

Furthermore, federal marijuana policies could change depending on the outcome of the presidential election, as well as 10-15 key U.S. Senate contests. Important U.S. marijuana issues hinging on the election outcome include:

- Banking reform.
- Elimination of Section 280E of the federal tax code.
- A prohibition on using federal funds to interfere with state recreational marijuana markets.
- Legalization of medical and recreational marijuana.
- Greater scientific research involving marijuana.
- Decriminalization of marijuana use.

Beyond the 2020 presidential and congressional races, marijuana entrepreneurs could see several state legislatures pass recreational marijuana laws, especially if New Jersey legalizes it this year. That state could trigger a domino effect along the East Coast, prompting Connecticut, New York and Pennsylvania to follow suit.

All those states legalizing marijuana are unlikely to change President Donald



Steve Hawkins

Trump's attitude toward the plant, but some observers believe it could affect the thinking of Democratic nominee Joe Biden, should he become president.

Moreover, state-budget shortfalls caused by the coronavirus pandemic could encourage more legislators around the country to embrace marijuana because of its revenue-generating potential.

"As we see further legalization in the first half of 2021, when these states meet from January to May in their legislative processes, by the time Congress is taking up cannabis we could be looking at a very different picture than we are right now in terms of the states, and that will influence Biden's evolution," said Steve Hawkins, executive director of the Washington DC-based Marijuana Policy Project.

While the future holds the potential for more business opportunities, marijuana entrepreneurs shouldn't deceive themselves into thinking they will be limitless.

Rather, it's expected that current medical operators in Arizona, Montana and New Jersey would get first crack at recreational licenses if referendums pass in those states. Meanwhile, Mississippi and South Dakota would be among the smaller medical markets if referendums pass there.

Also, it could be a while before these markets get up and running. Consider Maine: Adult-use sales are scheduled to begin this month, nearly four years after the state's voters legalized recreational marijuana.

Still, the importance of New Jersey potentially sparking an eastern domino

## EXECUTIVE SUMMARY

The U.S. marijuana industry landscape could look very promising depending on the outcome of the the Nov. 3 general election, which features MJ ballot referendums in five states, 35 Senate races and the presidential election. Here's what might change:

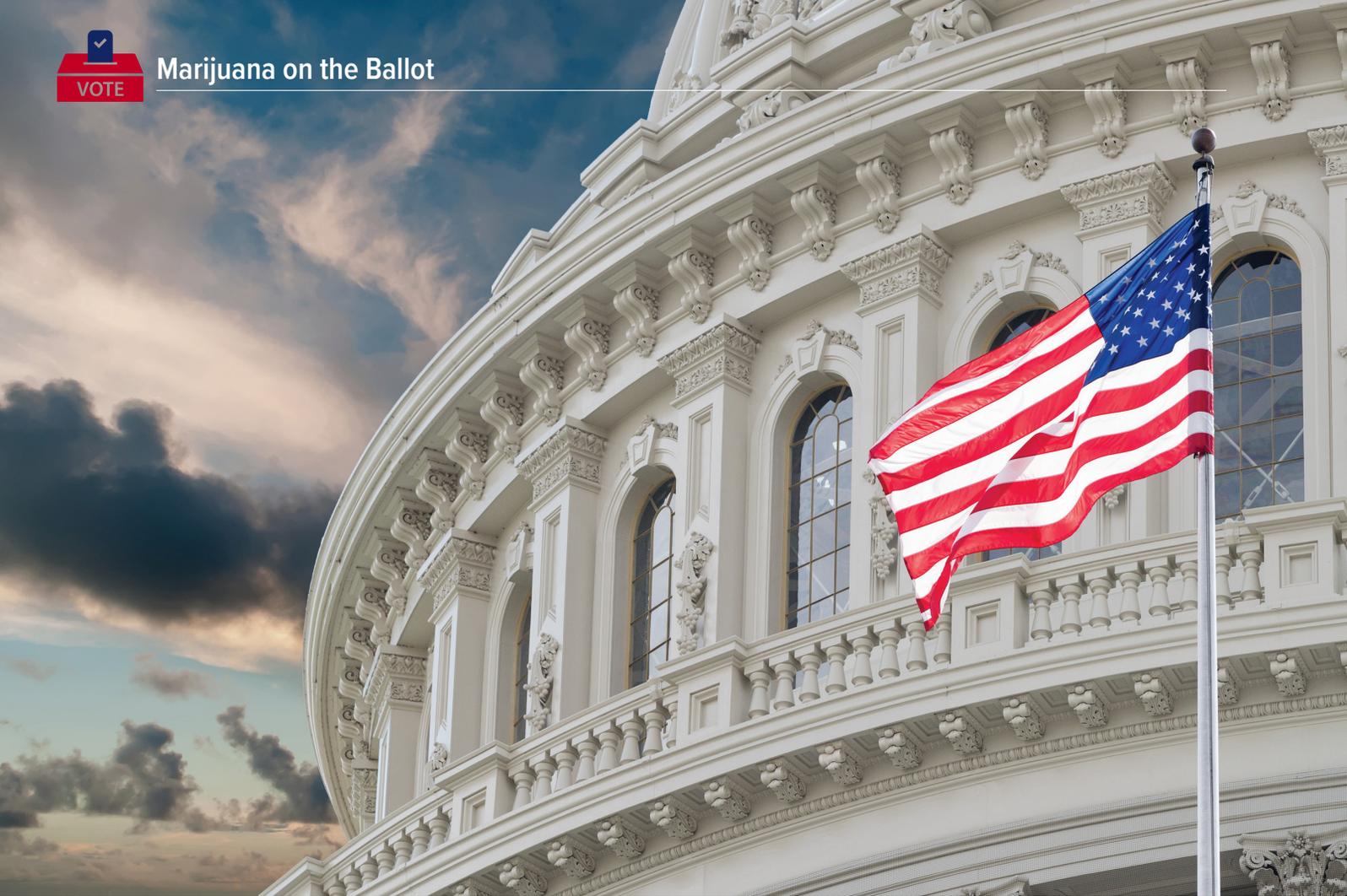
- Entrepreneurs could have five new markets in which to seek opportunity if voters in Arizona, Mississippi, Montana, New Jersey and South Dakota pass legalization referendums.
- The Democratic platform is widely considered more marijuana-friendly than the Republican one, though neither presidential ticket has committed to legalizing cannabis.
- Coupled with the outcome of the presidential election, the outcome of 10-15 close Senate races could determine how much or how little federal cannabis reform gets accomplished in the next four years.
- Depending on who wins the White House and the Senate, marijuana entrepreneurs could see progress in banking reform, abolishing 280E, research and decriminalization.
- Voter referendums that adopt recreational marijuana could put pressure on other states considering legalization—such as New York and Pennsylvania—to approve adult use via their legislatures.

effect and the accompanying opportunities shouldn't be underestimated. Ditto for the potential passage of medical marijuana laws in Mississippi and South Dakota, where legalization seemed inconceivable less than a decade ago.

In this issue, Marijuana Business Magazine takes a deep dive into the November elections to give cannabis businesspeople an eagle-eye view of the ballots, elections and issues that are at stake.



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# BIG CHANGES Could Be Afoot

But the outlook for federal marijuana reform will depend on who wins the White House and controls Congress *By Omar Sacirbey*

**W**hat might the marijuana industry landscape look like after the Nov. 3 general election? Much different? Same old, same old? It depends on what the voters say.

Marijuana business executives can expect federal banking reform, elimination of Section 280E of the federal tax code, a

softening of federal marijuana prohibition and possibly even federal tax-and-regulate style legalization if Democrats retake the White House and U.S. Senate and maintain their comfortable majority in the House of Representatives.

Yet marijuana business executives might get those long-awaited breakthroughs even if just one of

the two—the White House or the Senate—flips from red to blue.

If President Donald Trump defeats Democratic challenger Joe Biden and Republicans maintain control of the Senate, most observers expect continued gridlock on marijuana policy, although some progress might be possible on cannabis banking reform.



“The best chance of anything getting done is a Biden-Harris White House and the Democrats taking the Senate,” said Geoff Bacino, a partner at consulting firm Bacino & Associates in Alexandria, Virginia, and a former federal bank regulator, referencing Biden’s running mate, U.S. Sen. Kamala Harris.



**Geoff Bacino**

“Republicans are much less socially elastic and morally elastic on cannabis than the Democrats,” Bacino said, adding that most of the senators holding up cannabis banking reform have been Republicans.

Currently, Republicans control the Senate 53-47, but 35 Senate seats are up for grabs in November. Of the 23 incumbent Republican senators, 13 are in competitive races, compared with only two of the 12 Democratic incumbents, according to The Washington Post. (See story on page 48.)

Five of the senators defending seats—three Republicans from Arizona, Georgia and North Carolina, plus two Democrats from Minnesota and North Carolina—sit on the Senate banking committee, and the outcomes of those races could be the difference in whether the SAFE Banking Act passes or not. That measure—currently stalled in the GOP-controlled committee—would enable financial institutions to serve cannabis-related businesses without fear of federal punishment.

Here’s a closer look at how key federal marijuana policies might change after November’s election.

## CANNABIS BANKING REFORM

Assuming the House stays blue, the best chance for banking reform is a Democratic White House and Senate majority.

“If you have a Democratic takeover of the White House and the Senate, I think you’re going to see legislation that’s probably more favorable to cannabis banking,” Bacino said. He added that while it’s unlikely the change would happen in the first 100 days of a Biden presidency, it could happen in the first year.

While the 2020 Democratic Party platform doesn’t explicitly call for cannabis banking reform, vice presidential nominee Harris sponsored the SAFE Banking Act, and support from a Biden-Harris White House for such measures is more than likely.



**Steve Fox**

“The issue with the Senate right now is not really a vote-counting issue as much as it is a committee-control issue,” said Steve Fox, a

## Platform Pointers

The Republican and Democratic platforms lack specifics about marijuana reform. But coupled with the positions of the presidential candidates, they can offer a glimpse at how the U.S. legal marijuana marketplace might change depending on whether Donald Trump or Joe Biden occupies the White House in 2021, and which party controls Congress.

### 2020 Republican Party Platform: Primer

The Republican Party maintained the same platform it adopted in 2016, which said next to nothing about marijuana except that state programs flouted federal prohibition.



### 2020 Republican Party Platform: Verbatim

“The progress made over the last three decades against drug abuse is eroding, whether for cultural reasons or for lack of national leadership. In many jurisdictions, marijuana is virtually legalized despite its illegality under federal law. At the other end of the drug spectrum, heroin use nearly doubled from 2003 to 2013, while deaths from heroin have quadrupled. All this highlights the continuing conflicts and contradictions in public attitudes and public policy toward illegal substances. Congress and a new administration should consider the long-range implications of these trends for public health and safety and prepare to deal with the problematic consequences.”

### 2020 Democratic Party Platform: Primer

- Remove marijuana from Schedule 1 of the federal Controlled Substances Act.
- “Appropriately” regulate marijuana by “providing a reasoned pathway for future legalization.”
- Allow states to decide their own marijuana policies.
- Pave the way for more scientific research into marijuana use.
- Change laws to eliminate “uncertainty” for legal marijuana businesses.



### 2020 Democratic Party Platform: Verbatim

“The ‘war on drugs’ has led to the imprisonment of millions of Americans, disproportionately people of color, without reducing drug use. Whenever possible, Democrats will prioritize prevention and treatment over incarceration when tackling addiction and substance-use disorder. We will build on effective models of drug courts, veterans’ courts and other diversionary programs that seek to give nonviolent offenders opportunities for rehabilitation as opposed to incarceration.

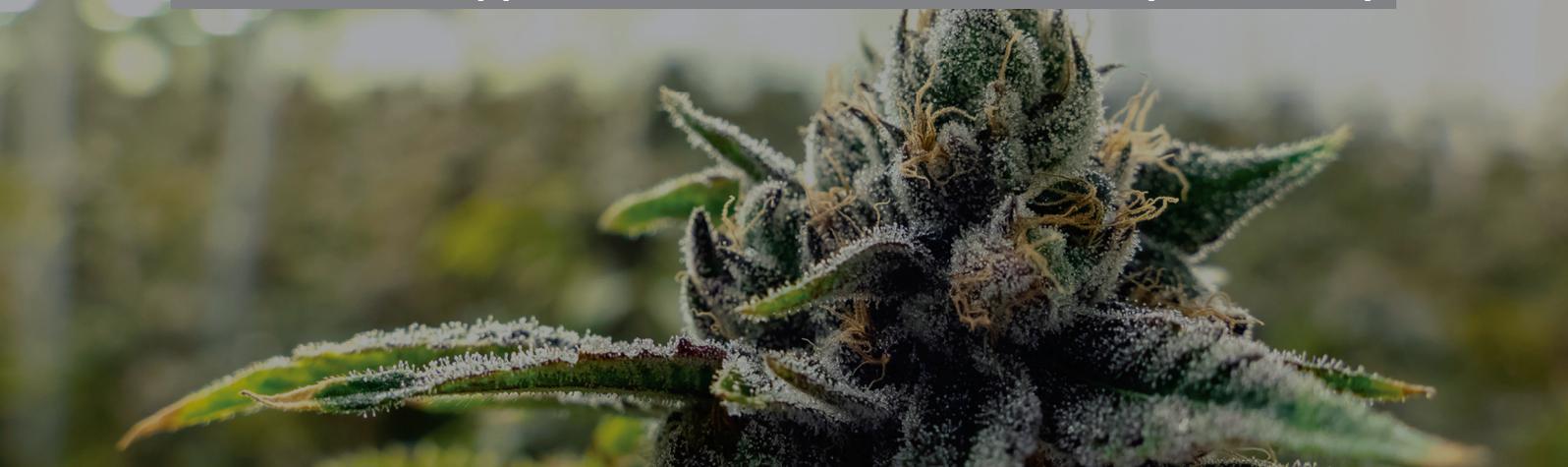
“Because of conflicting federal and state laws concerning marijuana, we encourage the federal government to remove marijuana from the list of ‘Schedule 1’ federal controlled substances and to appropriately regulate it, providing a reasoned pathway for future legalization. We believe that the states should be laboratories of democracy on the issue of marijuana, and those states that want to decriminalize it or provide access to medical marijuana should be able to do so. We support policies that will allow more research on marijuana as well as reforming our laws to allow legal marijuana businesses to exist without uncertainty. And we recognize our current marijuana laws have had an unacceptable disparate impact in terms of arrest rates for African Americans that far outstrip arrest rates for whites, despite similar usage rates.”

– Omar Sacirbey

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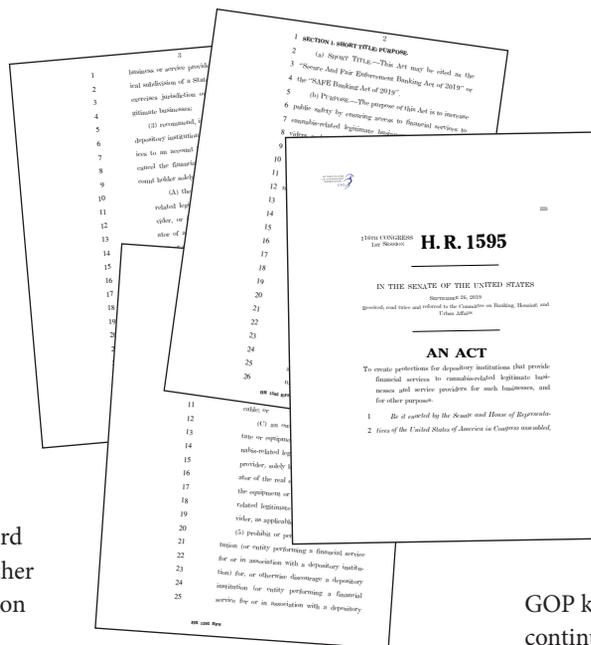


Cannabis lobbyists largely believe a Joe Biden-Kamala Harris White House is more likely to support the SAFE Banking Act.

Washington DC-based attorney with the Vicente Sederberg law firm. “That’s really what held things up more than anything else. It’s not that the SAFE Banking Act is controversial.”

Fox and other observers also believe the SAFE Banking Act could pass if Democrats control the White House but the GOP keeps the Senate.

Bacino estimated that roughly a third of Republican senators support some kind of marijuana reform, a third are opposed to any reform and the other third could go either way depending on the specific legislation.



A Biden-Harris administration that supports the SAFE Banking Act would allow fence-sitting Republicans to vote for the measure without much controversy, observers said.

“I think if you had a Democratic administration, even if the Senate stayed Republican, you might find a few more Republicans willing to cross over if only to get things done,” Bacino said.

If Trump wins and the GOP keeps the Senate, then gridlock will continue, many observers said. “It’s just

really hard to envision a Republican-controlled Senate pushing forward on this,” said Fox, who also co-founded the National Cannabis Industry Association.

## 280E REFORM

Observers also are hopeful that marijuana business executives could see the elimination of 280E, which prohibits standard business deductions by companies that traffic in federally illegal drugs, including marijuana. And while it’s not the “low-hanging fruit” that banking reform is, getting rid of 280E is a very realistic goal, observers said.

“When a new administration comes in, one of the first things they tend to do is reform the tax code in one way or the other. So I would expect there would be a push to do that, and therefore 280E would be on the chopping block,” Fox said.

Others noted that the Democratic platform stipulates that states should be allowed to decide their own marijuana policies. And while the Republican platform is scant on marijuana policy, Trump has also said he believes states should be able to decide the matter on their own.

If Congress can pass the STATES Act, which would give individual states control over whether to legalize marijuana, then it’s also possible to get a special 280E “carve-out” for legal marijuana businesses in states with legal marijuana markets.

“If Biden decides to embrace a state-by-state approach, then that really puts the STATES Act back on the table as a way to create a carve-out for (legal marijuana) businesses and getting rid of 280E that way. Besides a carve-out, the only way 280E will be eliminated is if cannabis gets descheduled,” said Steven Hawkins, executive director of the Marijuana Policy Project.

## FEDERAL LEGALIZATION AND/OR PROHIBITION

When it comes to federal prohibition of marijuana, there could be major changes, but it’s highly unlikely they would entail something as sweeping as



U.S. President Donald Trump has said states should be able to decide whether to regulate marijuana.

outright legalization with Uncle Sam taxing and regulating MJ.

Under the current political balance, expect the status quo to continue.

But the Democratic Party platform calls for both descheduling marijuana and legalizing medical cannabis, both of which would bring about new business opportunities. (See story on page 44.) It’s likely that most Democratic senators would support medical marijuana legalization, and their numbers along with a handful of MMJ-sympathetic Republicans would be enough to pass medical marijuana legalization.

What the federal regulations might look like and how state markets would continue in the interim is unclear.

Descheduling marijuana, meanwhile, would make it much easier and less expensive for universities and research

institutions to conduct clinical trials and other studies into MJ.

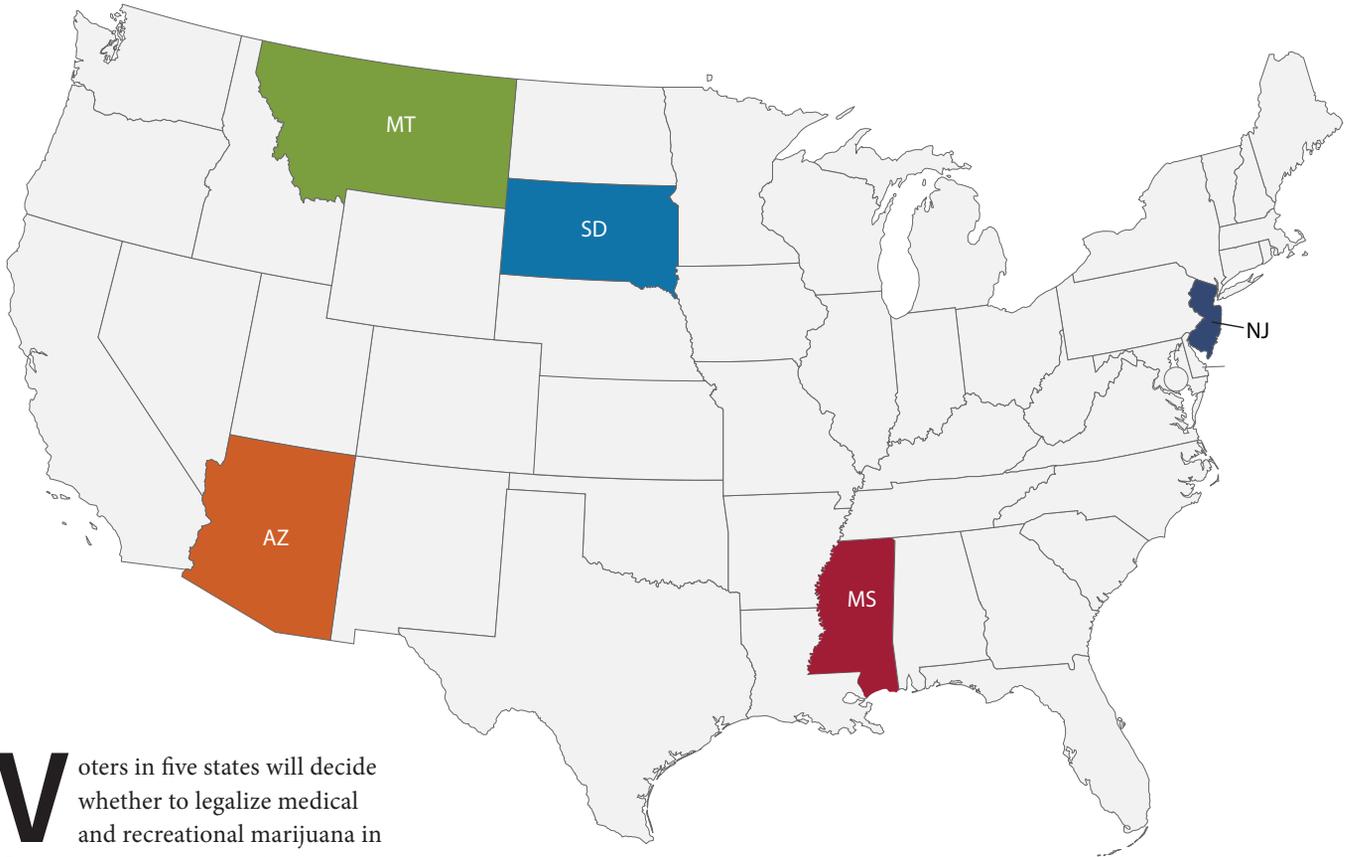
While Biden has so far opposed federal adult-use legalization, Harris has been outspoken in her support of legalizing recreational marijuana. This includes her sponsorship of the MORE Act, which would deschedule marijuana and thereby legalize it federally.

And as more states legalize medical or adult-use marijuana through the ballot box, Biden could feel compelled to take a more serious look at a tax-and-regulate approach—and would have Harris to back him.

“As long as momentum continues to build at the state level, then I think there would just be a stronger argument for, ‘Why don’t we just treat this like alcohol and tax it and regulate it?’” Hawkins said. MBM

# State Snapshots

Five states will offer residents the opportunity to decide on marijuana initiatives next month *By Jeff Smith*



Voters in five states will decide whether to legalize medical and recreational marijuana in November, with billions of dollars in new business opportunities hanging in the balance.

The ballot measures also promise to have regional ripple effects from the East Coast and Deep South to the heartland and Mountain West.

Not a bad turnout for a year in which even more initiatives were expected to qualify for the November ballot, but some were derailed by the coronavirus pandemic and other factors.

In the following pages, you'll find detailed snapshots for each of the five states, including what's on the ballot as well as the outlook for passage.



## ARIZONA

**BALLOT MEASURE:** Proposition 207

**POPULATION:** 7.3 million

**PROJECTED FIRST-YEAR SALES:**

\$375 million-\$400 million

**PROJECTED 2024 SALES:**

\$700 million-\$760 million

If approved by voters in November, Arizona's commercial adult-use marijuana program is expected to generate up to \$760 million in sales in 2024.

It's no wonder Arizona's medical marijuana market has attracted enormous investor interest. Between February 2019 and February 2020 alone, seven multistate operators either acquired or expanded operations in the state's medical cannabis market.

Arizona cannabis attorney Janet Jackim recently said in-state and out-of-state marijuana companies and investors "are trying to gobble up any (MMJ) licenses they can."

Those acquisitions would pay off if the ballot measure is successful, because Arizona's industry-backed recreational

marijuana initiative overwhelmingly favors existing MMJ operators.

The initiative also calls on the state to issue 26 social equity licenses targeting minority entrepreneurs. State marijuana regulators would decide the final rules governing the program.

Arizona-based Harvest Health & Recreation and Massachusetts-based Curaleaf bankrolled the Smart and Safe ballot initiative and are poised to be big winners if it passes.

Harvest already has the largest retail presence in the state with 15 dispensaries supported by four cultivation sites and two processing facilities.

Harvest CEO Steve White told analysts during an earnings call in August that the company is expanding its cultivation and processing capacity in preparation for adult-use marijuana legalization.

“You’re not going to see what you saw in Illinois, where people are running out of product,” White said.

Voters narrowly defeated an adult-use measure in 2016, but support for legalizing recreational marijuana keeps increasing, so the industry is optimistic the initiative will pass this time around.

**Initiative:** Legalize a regulated, commercial adult-use marijuana market.

**Sponsor:** Smart and Safe Arizona

#### License opportunities:

- Arizona has issued roughly 130 vertical medical marijuana licenses to companies that would be eligible to receive recreational MJ licenses as long as their operations are in good standing.
- Additional licenses would be available in counties that don’t have at least two MMJ dispensaries.
- Twenty-six social equity licenses would be available to entrepreneurs living in communities disproportionately affected by the war on drugs through a program to be developed by the state health department.

- Additional recreational marijuana licenses could be granted based on a 1:10 ratio with pharmacies in the state. For example, if the number of pharmacies statewide grows by 100, then the state could issue an additional 10 retail adult-use licenses.

**Tax rate:** 16% tax on the retail sale of adult-use marijuana products.

#### Other important business factors:

- The initiative would set up a recreational program quickly by allowing existing medical marijuana operators to apply for dual licenses between Jan. 19, 2021, and March 9, 2021. The state would then have 60 days to issue a license from the time an application was filed.
- Not-for-profit MMJ businesses would have the option of converting to for-profit status.
- Potency of infused edibles would be limited to 10 milligrams of THC per serving, 100 milligrams per package.
- The state would be required to adopt rules for delivery no later than Jan. 1, 2025, though it could happen as soon as Jan. 1, 2023.

**Likelihood of passage:** 51% of registered voters said they would vote for the initiative while 41% would vote against it, according to a poll conducted in September by Monmouth University.

This margin shrinks among likely voters in a “high-turnout scenario” to 49% for and 43% against. And it disappears in a “low-turnout scenario” of 47% for and 47% against.



## MISSISSIPPI

**BALLOT MEASURE:** Initiative 65, Initiative 65A

**POPULATION:** 2.9 million  
**PROJECTED FIRST-YEAR SALES:** \$240 million-\$265 million\*  
**PROJECTED 2024 SALES:** \$750 million-\$800 million\*

\* Figures are for Initiative 65 only.

Mississippi medical marijuana industry advocates hope their state will be the second in the Deep South to legalize MMJ.

A strong vote of support, industry experts say, also could influence neighboring states such as Alabama, which has yet to legalize MMJ. But legalization advocates in Mississippi face a battle because of a restrictive competing initiative that triggers a tougher voting threshold for passage.

Citizen advocates put forth a business-friendly measure (Initiative 65) in this conservative state, but then lawmakers countered with a measure that is largely undefined but would limit licenses and allow just terminally ill patients to smoke medical marijuana (Initiative 65A).

“It’s just another attempt (by the Legislature) to kill medical marijuana,” said Jamie Grantham, communications director for the citizen-led Medical Marijuana 2020 Campaign.

With competing measures on the ballot, voters will be asked two questions: Whether MMJ should be legalized and, if so, which initiative the voter favors.

An initiative must receive at least 40% of all votes to pass, according to the state’s election rules. In other words, a strong majority will need to answer yes to the first question about legalizing medical marijuana and then clearly support one initiative over another.

Details of the citizen initiative:

**Initiative:** Legalize a commercial medical marijuana market through a constitutional amendment.

**Sponsor:** Mississippians for Compassionate Care



### License opportunities:

- State regulators would be prohibited from limiting the number of MMJ licenses or setting product prices.
- The initiative calls for the Mississippi Department of Health to adopt final program rules by July 1, 2021, and start issuing MMJ licenses no later than Aug. 15, 2021.

**Tax rate:** A state sales tax (currently 7%) would apply. Otherwise, self-funded by user fees.

### Other important business factors:

- Dispensaries would be able to sell no more than 2.5 ounces of marijuana in 14 days per qualified patient.
- More than 20 medical conditions would qualify patients for medical marijuana; physicians also would be allowed some discretion in recommending MMJ.
- Medical marijuana operations would have to be at least 500 feet away from churches, schools and child-care centers.

**Likelihood of passage:** It could be close. A recent survey by California-based political polling firm FM3 Research found that the citizen measure could have just enough support to pass. The poll, funded by the group behind the citizen initiative, showed that 81% of Mississippians favor doctors being able to recommend medical marijuana and 52% favor the citizen initiative.

If those figures hold, the citizen initiative would pass with about 42% of the overall vote (52% of 81% equals 42.6%).



**BALLOT MEASURE:** Initiative 190  
**POPULATION:** 1.1 million  
**ESTIMATED 2019 MMJ SALES:** \$55 million-\$70 million  
**PROJECTED 2020 MMJ SALES:** \$60 million-\$75 million

Montana would join Colorado and Nevada in legalizing recreational marijuana in the Mountain West if residents vote to pass a commercial adult-use initiative in November. The initiative would allow existing medical marijuana operators first entry for a year. Local jurisdictions could vote to opt out of recreational marijuana, so it's unclear how robust of a market the state would have—at least initially.

The state's MMJ market is expected to reach \$60 million-\$75 million in revenues this year, according to the Marijuana Business Factbook. New Approach Montana started collecting signatures for the initiative May 9, while observing strict public health protocols, after being denied permission to gather digital signatures. A recent poll showed a slim majority of residents favor adult-use marijuana legalization, with about 10% of survey respondents still undecided.

**Initiative:** Legalize a commercial recreational marijuana program.

**Sponsor:** New Approach Montana

### License opportunities:

- The state Department of Revenue would license and regulate the industry, with the business license application process beginning by Oct. 1, 2021.
- Existing MMJ operators would get first entry into the adult-use market for a 12-month period.
- Montana doesn't have a medical marijuana license cap and has issued roughly 300 MMJ cultivation licenses, 200 processing licenses and 360 dispensary licenses.
- Local jurisdictions could hold elections for voters to decide whether to prohibit adult-use stores.
- The adult-use initiative calls for 10 cultivation tiers of up to 30,000 square feet, plus a micro-tier of up to 250 square feet.

**Tax rate:** 20% retail sales tax.

### Other important business factors:

- Smokable flower would be permitted.
- A seed-to-sale tracking system would be implemented.
- Montana residency would be required for licensees.
- Marijuana operations would have to be at least 500 feet from churches and schools.

**Likelihood of passage:** In this moderately conservative state, residents supported recreational marijuana legalization by a margin of 54% to 37%, with 10% undecided, according to a University of Montana Big Sky poll published in February 2020.



**BALLOT MEASURE:** Public Question 1  
**POPULATION:** 8.9 million  
**PROJECTED FIRST-YEAR SALES:** \$375 million-\$400 million  
**PROJECTED 2024 SALES:** \$850 million-\$950 million

New Jersey residents are being asked to legalize a commercial recreational marijuana program in November that promises eventually to become a multibillion-dollar business—one that could spur neighboring states to follow suit.

The sparsely worded initiative lacks details such as how many business licenses would be made available. Those laws and regulations would be hammered out later by state lawmakers and cannabis regulators if the measure is successful with voters.

Scott Rudder, president of the New Jersey CannaBusiness Association, is among those who believe current medical marijuana operators would get first crack at the adult-use market in order to accelerate a market launch that could occur by late 2021.

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Rudder predicts a “level of urgency” for lawmakers to pass the ensuing legislation and for regulators to establish the rules because of pressure to generate economic opportunities and tax revenues in wake of the coronavirus pandemic.

Bridget Hill-Zayat, a cannabis attorney with Hoban Law Group who is licensed to practice in New Jersey, agreed. “If the motivation is a drive for tax revenues, they are going to want to move as quickly as possible,” she said.

With racial justice even more of an issue in recent months, Hill-Zayat said New Jersey might issue micro-licenses and loan programs to encourage applicants from diverse backgrounds to apply.

Municipalities, which could levy up to a 2% retail tax on adult-use marijuana products, also might be more motivated to opt-in to recreational marijuana, given their own budget pressures, Rudder said.

Experts expect the ballot initiative to pass, noting that the latest polls show roughly two-thirds of New Jersey residents in favor of the initiative.

If New Jersey Public Question 1 is successful at the ballot box, Rob DiPisa, partner and co-chair of cannabis law group Cole Schotz in Hackensack, New Jersey, predicts a market launch in the second half of 2021, given the likelihood of existing MMJ operators to be fast-tracked for adult use.

**Initiative:** Legalize a commercial recreational marijuana program by constitutional amendment.

**Sponsor:** A supermajority of New Jersey lawmakers passed a measure that put the referendum to legalize an adult-use marijuana program before voters in November.

**License opportunities:**

- Lawmakers and regulators would decide on the number and type of marijuana business licenses available, but existing MMJ operators are expected to get first crack at the adult-use market.

- Currently, New Jersey has 12 vertical medical marijuana licensees. The state plans to issue 24 additional MMJ licenses—four of them vertical and the remainder stand-alone cultivation, processing and dispensary licenses.
- Presuming the ballot measure is successful, state lawmakers would pass enabling legislation and regulations would be developed by the New Jersey Cannabis Regulatory Commission, which was created last year but has yet to get up and running.

**Tax rate:** 6.625% sales tax on adult-use products. Municipalities could pass ordinances to charge local taxes of up to 2%.

**Likelihood of passage:** Residents favor the legalization proposal by a margin of 68% in favor and 26% against with 6% unsure, according to a July poll commissioned by the cannabis law practice of Brach Eichler and conducted by DKC Analytics. An April poll conducted by Monmouth University found 61% of respondents in favor of adult-use legalization.



**BALLOT MEASURES:** Amendment A and Measure 26

**POPULATION:** 884,659

**PROJECTED FIRST-YEAR SALES:**

\$1.5 million-\$2 million\*

**PROJECTED 2024 SALES:**

\$10 million-\$12 million\*

\* Figures are for medical marijuana only

South Dakota could become the first state in the nation to simultaneously legalize medical (Measure 26) and adult-use marijuana (Amendment A) in November.

That would be a milestone for the politically conservative state, especially

considering that MMJ supporters weren't able to collect enough signatures to get a legalization initiative on the ballot in 2018.

**Initiative:** Legalize a recreational marijuana market through a constitutional amendment.

**Sponsor:** South Dakotans for Better Marijuana Laws

**License opportunities:**

- The initiative calls for the state Department of Revenue to issue “enough licenses to substantially reduce the illicit production and sale of marijuana throughout the state.”
- But state regulators also are directed in the initiative to limit licenses “to prevent an undue concentration” in any municipality.
- Four license types would be available: cultivation, wholesale/processing, retail and lab testing.

**Other important business factors:**

- Local jurisdictions could ban marijuana operations in their areas or limit the locations of such operations. But a local government could not prohibit the transportation of marijuana products on public roads by those who are licensed elsewhere.
- The state Department of Health would have to establish program rules within 120 days of the passage of the act, including scoring criteria should a local jurisdiction receive more applicants than the number of licenses allowed.
- Individuals who have a debilitating medical condition as defined by the state would be eligible for MMJ as long as a physician certifies the condition. Such conditions include “severe” or “debilitating” pain.
- A dispensary could not sell more than 3 ounces of cannabis to a qualified patient during a 14-day period. 



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# The DOMINO Effect

New Jersey could be key to legalizing adult-use marijuana on the East Coast *By Jeff Smith*

If New Jersey voters approve a commercial adult-user marijuana program in November (see page 50), insiders predict legalization dominos will fall along the East Coast.

“It’s happening now,” noted Scott Rudder, president of the New Jersey CannaBusiness Association. Massachusetts already has a recreational marijuana market in full swing, and Maine’s is scheduled to launch Oct. 9.

If New Jersey passes the initiative,

“that will be the final hurdle for New York, Pennsylvania and surrounding states,” Rudder predicted. “Once it’s done, it’s done.”

Others agreed.

“It’s going to motivate the surrounding states for sure,” said Bridget Hill-Zayat, a cannabis attorney with Hoban Law Group who is licensed to practice in Maryland, New Jersey and Pennsylvania.

For example, she said, if Trenton, New Jersey, has an adult-use marijuana store,

that’s going to put a lot of pressure on nearby Philadelphia to follow suit and not miss out on potential tax dollars.

“A lot of medical marijuana customers will go over to New Jersey, and that’s a significant amount of revenue Pennsylvania is going to lose,” Hill-Zayat said.

## WORKING TOGETHER

In the fall of 2019, New York Gov. Andrew Cuomo hosted a meeting of Northeast governors to discuss ways

their states could coordinate an adult-use framework and approach.

Those interested in legalization and working on a regional approach included governors from Connecticut, New Jersey, New York and Pennsylvania; Rhode Island also was represented at the meeting.

Cuomo wanted to legalize a commercial adult-use cannabis program in New York via his spring 2020 budget bill, but the coronavirus crisis forced him to shelve those plans.

As of August, adult-use legalization bills were in New York legislative committees, but insiders said it was unlikely that the bills would pass before year-end.

Jeremy Unruh, senior vice president of public and regulatory affairs for Illinois-based PharmaCann, which has a vertically integrated MMJ license in New York, said New York would be in a better position to evaluate a meaningful adult-use strategy after all federal coronavirus stimulus legislation had passed.

Federal lawmakers were still deadlocked over an additional stimulus package as this magazine went to press.

Unruh also said he didn't expect New York to quickly resolve the issue of how to encourage greater participation by minority entrepreneurs in any new recreational marijuana program.

"In my view, New York's next-best opportunity to pick up where it left off (in 2019) will be after the new year, when the General Assembly convenes to address the governor's budget bill," Unruh said.

Rob DiPisa, co-chair of the cannabis law practice at Cole Schotz in New Jersey, concurred, noting experts have long said it would be too difficult to legalize adult use in New York via a stand-alone bill.

The coronavirus pandemic, meanwhile, strengthens the case for legalizing adult-use marijuana through the state's budget bill, DiPisa said. Any new program would generate additional tax revenue for the state's coronavirus-depleted coffers.



**Garden State Dispensary is one of New Jersey's medical marijuana dispensaries expanding cultivation capacity to prepare for an adult-use market.** *Courtesy Photo*

## RACE TO THE FINISH

But by legalizing recreational cannabis through the budget next spring, "it's highly unlikely that New York is going to beat New Jersey," DiPisa said. "The funny thing is, no one is talking about that (competition) much anymore."

Stories were rampant in 2019 about the heated race between New York and New Jersey to be the first to legalize a recreational marijuana program—or risk losing out on cross-border and tourism revenue.

It's possible the two states still could be close in terms of a market launch—perhaps in late 2021.

"But New York's Achilles' heel is that it doesn't have the resources to meet the demand," DiPisa said, even if the state's medical marijuana operators are allowed first entry.

New York's highly restrictive medical marijuana program, which is limited to 10 MMJ licenses and bans flower, serves only about 120,000 patients, a fraction of the state's population of approximately 20 million.

New Jersey had long been a restrictive

medical marijuana market as well, but the state is poised to expand its program from 12 vertically integrated licenses to 36 MMJ permits once certain legal challenges are resolved.

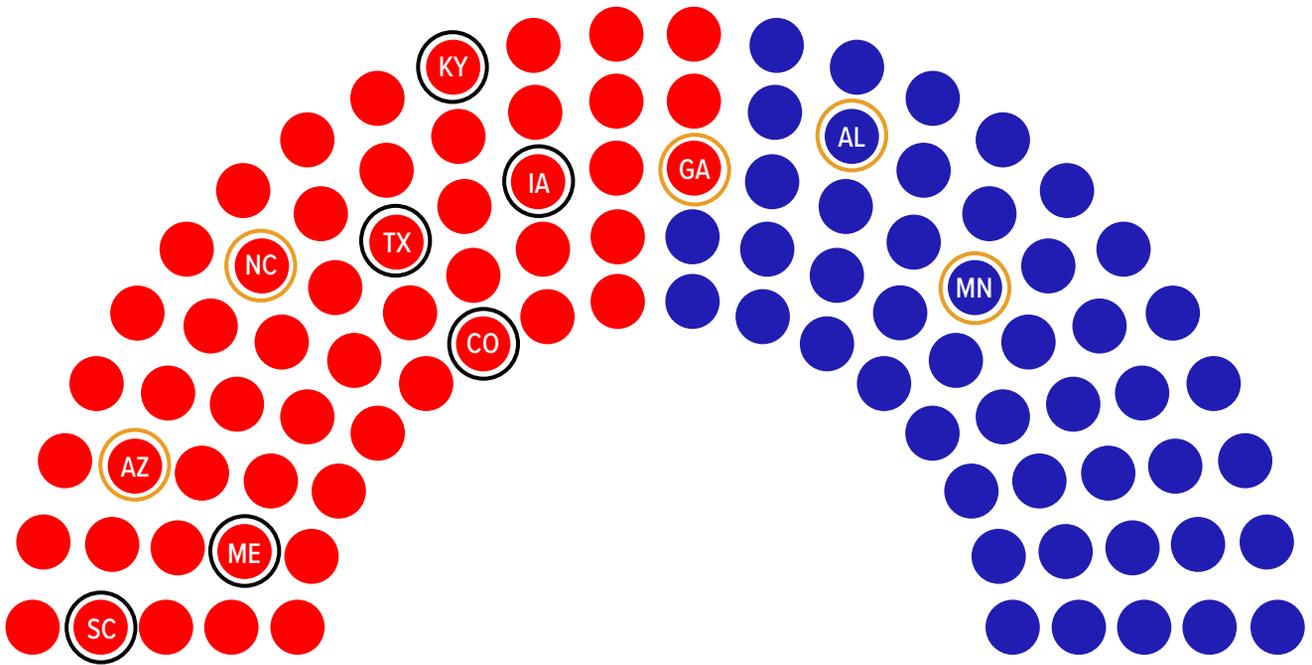
The new licenses to be awarded include four additional vertically integrated permits, five stand-alone cultivation facilities and 15 dispensary licenses.

Meanwhile, the state's current MMJ operators—including Garden State Dispensary, New York-based multistate operator Acreage Holdings and Massachusetts-based MSO Curaleaf—are expanding cultivation capacity to prepare for an adult-use market.

For its part, Curaleaf also is formulating plans to increase its cultivation capacity in New York, Executive Chair Boris Jordan said during an earnings call in mid-August.

"We believe the potential legalization of adult use in New Jersey could kick off a wave of legalization in the Northeast, with New York, Connecticut and Pennsylvania likely to seriously consider adult-use legalization," Jordan said.

Let the dominos fall. **MBM**



# GIANTS

## of the Senate?

Of the 35 seats up for grabs in the U.S. Senate, several would be key wins for those in the marijuana industry *By Omar Sacirbey*

**T**he business outlook for cannabis companies could be significantly different this time next year, depending in large part on which party controls the Senate and which senators are elected.

Observers say a critical component to getting cannabis banking reform, eliminating Section 280E of the federal tax code, and rolling back federal prohibition of marijuana, among other things, is a Democrat-controlled Senate.

It's not just important to have a majority that favors reform, observers say, but to have reform-friendly senators

as committee heads who can help advance marijuana-friendly bills to the floor for final votes.

This was made painfully clear last year, when cannabis banking reform passed the U.S. House of Representatives with bipartisan support but stalled in the Senate banking committee under the command of Idaho Republican Jim Crapo.

Going into November, Republicans have a 53-47 advantage in the Senate. There are 35 Senate races this year, including 15 that are considered competitive and could result in flips. A new Senate could potentially pass

legislation that would save marijuana businesses millions of dollars, depending on the size of the operations.

Here are snapshots of the most important Senate matchups, beginning with five key races that could change the makeup of the all-important banking committee. Incumbents are listed first.

### ALABAMA

U.S. Sen.

Doug Jones

(Democrat)

versus Tommy

Tuberville (Republican)



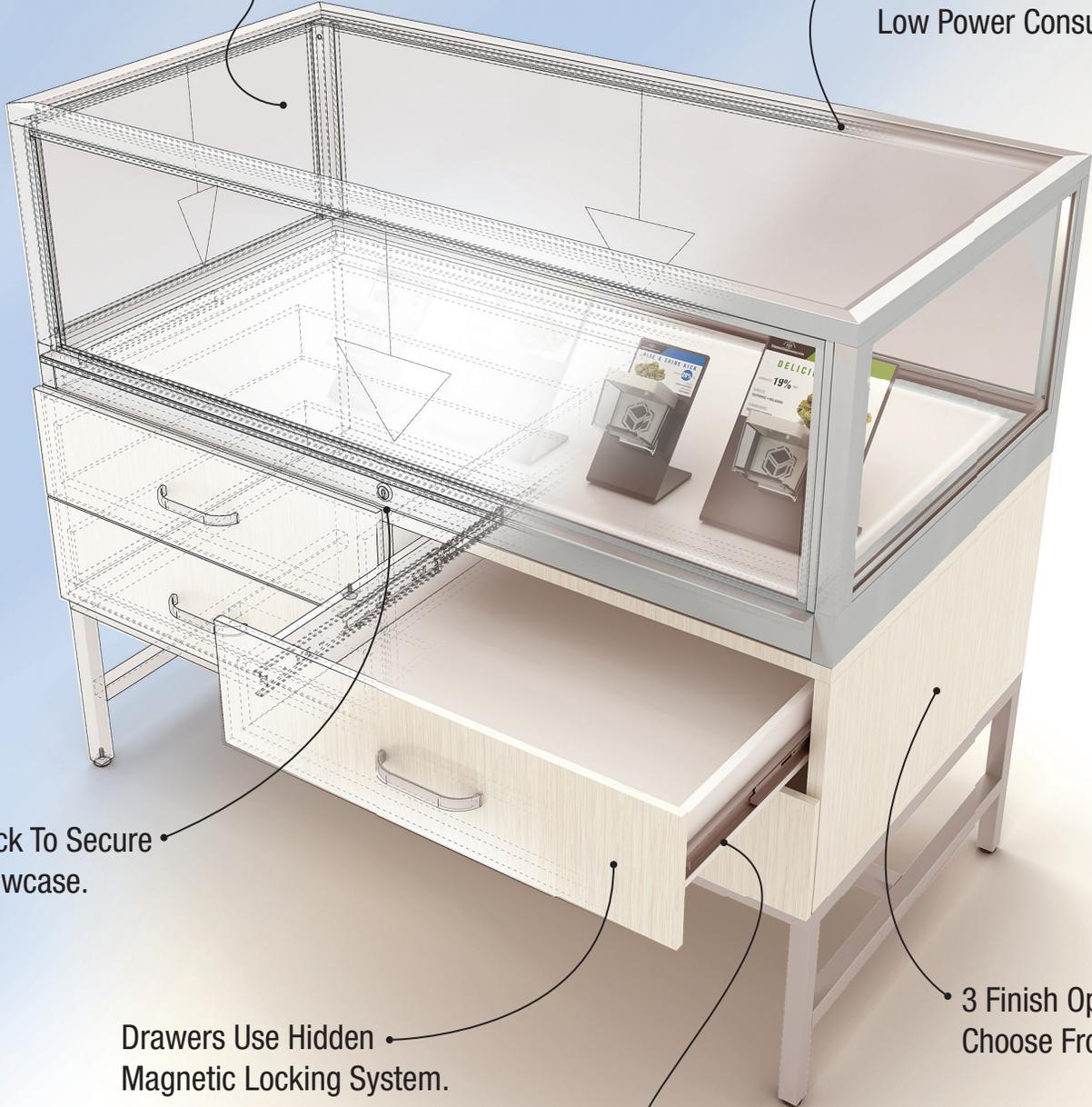


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Despite being a banking committee member, Doug Jones is not one of the 34 senators co-sponsoring the Senate version of the SAFE Banking Act, which would enable financial institutions to serve cannabis-related businesses without fear of federal punishment.

He supports medical marijuana legalization, decriminalization and last year told reporters that cannabis “is really a states’ right issue these days.” Many observers consider Jones to be the most vulnerable Democrat up for reelection.

Jones’ challenger is former Auburn University football coach Tommy Tuberville, who opposes both medical and adult-use marijuana but is open to hearing more about MMJ.

“They’re going to have to prove to me that medical marijuana is good. As long as it’s medical marijuana, as long as you have to have a prescription,” Tuberville told *The Birmingham News*. “If we ever put marijuana on our streets legally, it’s over.”

**Upshot:** There are more outspoken marijuana allies than Jones, but his loss—as is now forecast—would be a pro-cannabis vote lost.

## ARIZONA

U.S. Sen. Martha McSally (R) versus Mark Kelly (D)



Martha McSally is reliably anti-marijuana. She opposes medical marijuana legalization and has voted against legislation such as the McClintock-Polis amendment, which prohibits federal funds from being used to enforce MJ prohibition. A former fighter pilot, McSally in 2019 reversed course and voted for the Veterans Equal Access Amendment, which would allow veterans to legally access medical marijuana.

Her challenger is Mark Kelly, an astronaut, former Navy captain and husband of former U.S. Rep. Gabby Giffords, also an Arizona Democrat. Kelly’s position regarding cannabis is unknown, but if he does win—and polls

show him ahead in the race—it will stem partly from Arizona’s adult-use referendum getting people out to vote. (See story on page 48.)

Roughly 70% of Kelly’s supporters favor recreational legalization, while 23% oppose it. By contrast, 33% of McSally supporters back recreational legalization and 59% oppose it, according to OH Predictive Insights, an Arizona polling firm.

**Upshot:** A Kelly win would be an important flip for marijuana reform. This is a special election to see who serves out the remainder of the late U.S. Sen. John McCain’s term.

## NORTH CAROLINA

U.S. Sen. Thom Tillis (R) versus Cal Cunningham (D)



Thom Tillis has a middling record on cannabis. He opposes recreational and medical marijuana legalization but supports increased research into MMJ.

In a statement to *Vice* magazine in 2018, a Tillis spokesperson said the senator opposes federal recreational legalization. However, Tillis “supports efforts to remove regulatory roadblocks that place unnecessary limits on legitimate research into medical marijuana and derivatives, which includes the potential health benefits, interactions with other prescription medications and appropriate dosage.”

His opponent, U.S. Army veteran Cal Cumberland, hasn’t said much about marijuana. But Cumberland’s website notes that he believes in “allowing states to develop their own regulation and taxation of cannabis, while putting resources into public health and substance-abuse treatment.”

**Upshot:** Of the five close races involving banking committee members, this the closest. Recent polls give Cunningham a sizable lead, but the election gurus at the University of Virginia Center for Politics rate North

Carolina as one of three “toss-up” states, along with Iowa and Maine.

## GEORGIA

U.S. Sen. David Perdue (R) versus Jon Ossoff (D)



David Perdue has said he is open to the medical use of marijuana, while news reports suggest he favors a states’ rights approach to MJ. State Rep. Allen Peake described Perdue as an “eager supporter” of efforts to pass a medical marijuana law in Georgia. Perdue has stopped short of supporting federal legalization and did not co-sponsor the STATES Act. But he appears to support giving legal cannabis businesses access to banking.

Perdue’s opponent, Jon Ossoff, is a former investigative journalist and CEO of media production company Insight TWI. Ossoff recently told *CNBC* that he supports not just decriminalization but nationwide legalization of marijuana.

“The fact that there are people doing time for nonviolent marijuana-related offenses while others are getting rich in the cannabis industry is a grave injustice. I’ll fight for outright cannabis legalization, an end to incarceration for nonviolent drug offenses and expungement of records for nonviolent cannabis offenses,” Ossoff told the cable news channel.

**Upshot:** In mid-September, most polls showed Perdue with a small lead. While Perdue has been softer than most Republicans on marijuana, an Ossoff victory would put an outspoken MJ supporter on the banking committee.

## MINNESOTA

U.S. Sen. Tina Smith (D) versus U.S. Rep. Jason Lewis (R)



A former lieutenant governor in Minnesota, Tina Smith was appointed to the Senate in 2018 to fill the seat vacated when Democrat Al Franken resigned. She

won a special election that year to serve out the remainder of Franken's term.

Smith supported medical marijuana but not recreational legalization until this July, when she surprised many political observers by introducing the Substance Regulation and Safety Act of 2020. The bill deschedules marijuana, authorizes the U.S. Food and Drug Administration to regulate MJ products, promotes the safety and quality control of MJ crops and addresses racial inequities stemming from the war on drugs.

Her opponent, Jason Lewis, also has been a strong supporter of state marijuana programs. "The federal government has no business sending in the FBI and Department of Justice to prosecute people in full compliance with their own state's law," Lewis stressed on Twitter in 2018. As a congressman, he's co-sponsored legislation prohibiting federal money from being used to enforce prohibition and descheduling marijuana to advance research.

**Upshot:** While Lewis would be one of the more pro-marijuana Republicans if elected, Smith's support of federal adult-use legalization makes her a strong industry ally.

### Here are six more Senate races whose outcomes could shape the marijuana industry going forward.

#### COLORADO

U.S. Sen. Cory Gardner (R) versus John Hickenlooper (D)



Cory Gardner is perhaps the most progressive Senate Republican on marijuana, having co-sponsored bills such as the 2018 STATES Act and the 2019 SAFE Banking Act. "I am obligated to the people of Colorado to take all steps necessary to protect the state of Colorado and their rights," Gardner said shortly after former Attorney General Jeff Sessions jettisoned the Obama-era Cole Memo.

But Gardner trails his opponent in polls. After initially opposing

marijuana legalization as the state's top executive, former Colorado Gov. John Hickenlooper became more supportive after the success of legalization in his state. Hickenlooper told Iowa Public Television last year, "We should decriminalize on a federal level. ... Declassify it from a Schedule 1 narcotic" and allow banks to service cannabis businesses.

Hickenlooper also said the federal government should not force legalization on states, but it should have a role in regulating the marijuana industry.

**Upshot:** Each candidate is good for marijuana, but some industry analysts lean toward Hickenlooper because a Democratic majority in the Senate is more likely to advance MJ legislation than a Republican majority Senate.

#### MAINE

U.S. Sen. Susan Collins (R) versus Maine House Speaker Sara Gideon (D)



Susan Collins has at best a checkered record on marijuana reform, voting for amendments that would prohibit the FDA from using federal funds to interfere with state medical marijuana programs but voting against cannabis banking reform and opposing federal recreational legalization.

"From a federal perspective, if there were a bill in the Senate to legalize marijuana, I would vote against it," Collins said in 2018.

Sara Gideon, Collins' challenger, is a former speaker of the Maine House of Representatives who voted for a bill creating a regulatory structure for that state's recreational marijuana program. Gideon's former chief policy adviser, Erik Gunderson, heads Maine's Office of Marijuana Policy.

**Upshot:** Collins has long disappointed marijuana advocates, while Gideon's support for adult use in her own state would make her an industry asset at the federal level.

#### SOUTH CAROLINA

U.S. Sen.

Lindsey Graham (R)

versus Jaime Harrison (D)

Lindsey Graham was initially a nightmare when it came to marijuana reform—opposing medical legalization and the SAFE Banking Act while supporting jail time for MJ possession. More recently, Graham's record has improved somewhat thanks to his support for veterans' access to medical marijuana and amendments prohibiting federal interference in state MJ programs.

Jaime Harrison is an associate chair of the Democratic National Committee and former chair of the South Carolina Democratic Party. He favors the tax-and-regulate approach to federal marijuana legalization.

"I think we should legalize, regulate and tax marijuana like we do alcohol and tobacco," Harrison told CNBC in July. Harrison, a former lobbyist, also helped pass a medical marijuana bill in the South Carolina House of Representatives in 2017, but the legislation never cleared the state Senate.

**Upshot:** While Graham has become less draconian in his approach to marijuana, Harrison's support for federal legalization makes him the industry's clear favorite. And Harrison has a real shot. While Graham was the favorite early in the race, polls show Harrison—who has out-fundraised Graham in the past two finance cycles—in a dead heat with the incumbent.

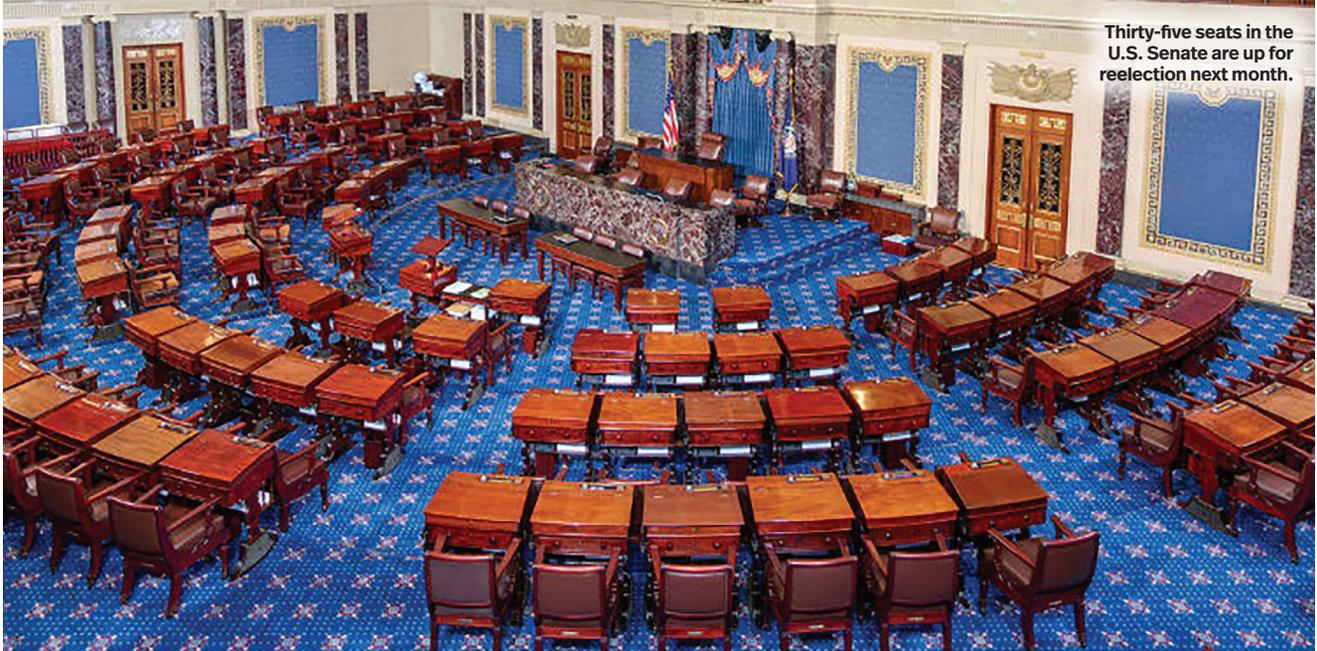
#### TEXAS

U.S. Sen.

John Cornyn (R) versus MJ Hegar (D)



John Cornyn is among the most anti-marijuana senators in Washington DC. He opposes medical marijuana legalization and amendments that would prohibit federal interference into state MMJ programs.



Thirty-five seats in the U.S. Senate are up for reelection next month.

“We have a lot of questions we need to answer before we talk about normalizing a drug like marijuana,” he told *The Dallas Morning News* in February.

Cornyn’s opponent, MJ Hegar, a former Air Force pilot who served in Afghanistan, is unabashedly in favor of marijuana legalization.

Hegar’s campaign website outlines her support for the MORE Act, and in a February debate she said: “I think most people agree that we should legalize marijuana. Being a veteran and being in a community where people suffer—whether it’s from high suicide rates or PTSD or the opioid epidemic—this is something that marijuana could help in every chapter. And the reason I think it needs to go beyond medical is that most veterans are not self-identifying and seeking treatment and doing the necessary things that it would take to actually get a prescription.”

**Upshot:** Although Hegar trailed Cornyn in polls as of mid-September, an upset is still within reach and would be a major win for the marijuana industry.

## KENTUCKY

U.S. Sen. Mitch McConnell (R) versus Amy McGrath (D)  
As Senate majority leader, Mitch

McConnell has been a powerful supporter of hemp and

helped its legalization with passage of the 2018 Farm Bill. But he has been one of marijuana’s staunchest opponents. In July, McConnell blocked cannabis banking reform amendments from making it into a Congressional coronavirus-aid package. He has opposed amendments to prohibit federal interference into state programs and has repeatedly stated his opposition to medical and adult-use marijuana legalization.

Amy McGrath, a former fighter pilot who flew combat missions in Iraq and Afghanistan, beat a much more pro-legalization Democrat, Charles Booker, to win the party’s nomination. She hasn’t spoken in support of recreational marijuana legalization, but her website suggests she supports medical use: “Many veterans suffering from chronic pain and PTSD report improved health outcomes from medical cannabis. I stand with the American Legion in calling for the removal of cannabis as a Schedule 1 drug and permit its use to treat ailments that veterans, and others, face.”



**Upshot:** McGrath isn’t as pro-cannabis as many other Democrats, but she would be an improvement for the industry over McConnell. Of all the competitive races, this could be the hardest to flip.

## IOWA

U.S. Sen. Joni Ernst (R) versus Theresa Greenfield (D)



Jodi Ernst supported the legalization of hemp through the 2018 Farm Bill, but she has vehemently opposed medical marijuana legalization, cannabis banking reform and prohibitions on federal interference into state programs.

Theresa Greenfield, a former urban planner and real estate developer, hasn’t made any public statements about cannabis. However, the political website *ISideWith.org* suggests that a majority of Greenfield voters support marijuana reform, and therefore she might, too.

**Upshot:** Polls have been inconclusive, while the University of Virginia Center for Politics recently moved the race from “leans Republican” to “toss-up.” 



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# A Regulator's **VIEW**

New Jersey official says the state is already busy readying for recreational marijuana *By Omar Sacirbey*

**V**oters in three states with medical marijuana markets might choose to pass adult-use laws. While the change might not happen for months—if at all—some regulators have already started thinking about how their states can best adapt to the shift.

“We are absolutely thinking about the transition to recreational. And we didn’t start thinking about it just with the referendum getting on the ballot,” said Jeffrey Brown, an assistant commissioner with the New Jersey Department of Health, the agency responsible for overseeing the state’s Division of Medical Marijuana.

“This has been on Gov. (Phil) Murphy’s policy agenda from Day One of his administration. I started in March 2018, and while my role has been to focus on the medical program, I also have been planning for what happens if adult use becomes legal.”

Brown’s foremost concern is keeping the state’s medical marijuana program viable if New Jersey legalizes recreational sales, especially since some states that have gone through the same transition have seen their medical programs suffer.

In Oregon, for example, nearly two-thirds of patients gave up their medical marijuana cards, triggering a decline in medical-only dispensaries, according to a 2018 Associated Press report. Oregon once had more than 400 medical dispensaries; today, only a handful remain.

Three issues determine whether medical patients will stay with a medical program, Brown said: product, price and access.

As for product, the concern is regulating high-potency merchandise.

Specifically, how does a program ensure high-dose products are available to medical patients who truly need them? As of now, Brown said, “There aren’t a lot of definitive answers.”

## KEEPING MMJ PRICES DOWN

The price component of ensuring medical marijuana programs remain viable is easier: Keep medical prices and costs lower than recreational marijuana to prevent MMJ patients from abandoning the program in favor of adult use.

To that end, New Jersey has lowered its medical cannabis tax to 2% with plans to eliminate it altogether. Regulators also lowered the cost of obtaining a medical card from \$200 to \$100 per year, and there are discussions to bring the cost of patient cards down even more.

In terms of access, Brown noted that some patients aren’t comfortable buying their medicine from recreational outlets, which might lack the medical feel that some patients enjoy, so it’s important to maintain a healthy number of medical-only stores to serve that demographic.

“I think it’s important to have options on the distribution side in medical, so that everybody can continue to feel comfortable accessing their medicine,” Brown said.

## EQUAL OPPORTUNITY

Another concern is balancing a prompt and smooth rollout of adult-use cannabis with creating a safe and fair program. Brown also wants to ensure minority



Jeffrey Brown

entrepreneurs are given an opportunity to participate in the state’s cannabis industry.

“We’re extremely concerned about being able to provide opportunities to people affected by the war on drugs. We want social equity and social justice to be part of everything

we do—whether it’s a medical market or looking ahead to an adult-use market,” Brown said. “All I can say is that, if I’m asked to work on the adult-use market, I think I would be focused on being as expedient as possible, but (it’s) also more important that we really do it right.”

If New Jersey voters pass a recreational marijuana initiative, program administrative responsibilities will shift to a new Cannabis Regulatory Commission that will be under the Department of the Treasury instead of the health department.

“We know that the Cannabis Regulatory Commission will be tasked with continuing to expand medical,” Brown said. He added that some specific things “will need to be implemented once the commission is up and running,” including home delivery, on-site consumption lounges, a certification program for marijuana handlers and medical research permits.

One final concern: Enough product must be available to meet customer demand, Brown said.

“What you really need to do on the industry side is ensure that there’s adequate supply and product going into adult use,” he said. 

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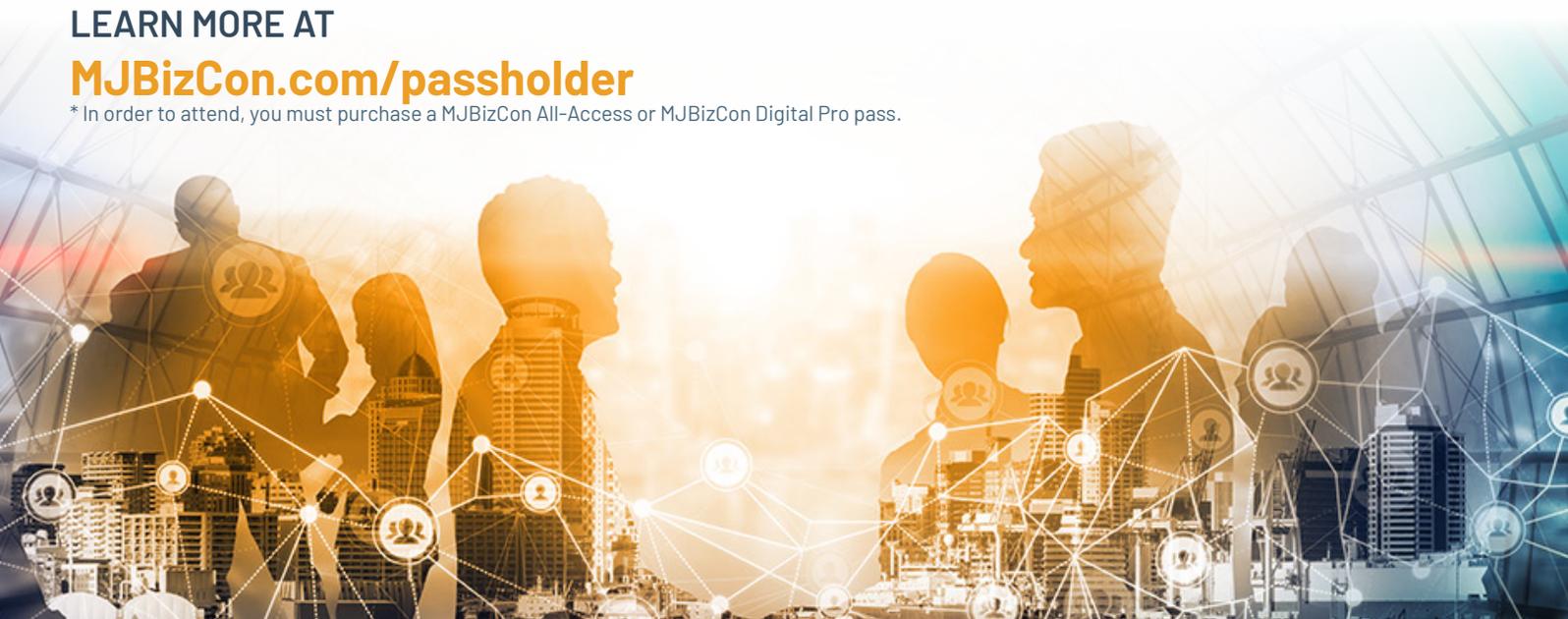
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# LETTER of the LAW

From Maine to Nevada, the way marijuana markets are legalized and regulated determines the success of businesses

By John Schroyer

**W**ith as many as five states poised to legalize some type of marijuana market in November, entrepreneurs might be wondering how soon they can start writing business plans.

The viability of any state cannabis market will depend greatly on the industry regulations that end up being adopted—and the regulatory processes can differ greatly depending on the ballot referendum in question.

For instance, New Jersey's entire ballot measure, which would legalize adult-use marijuana in the state, is a scant four paragraphs. It simply asks if voters want to approve the production, sale and taxation of marijuana, leaving all the details up to the state's Cannabis Regulatory Commission.

Arizona's ballot question would also legalize recreational marijuana, but the text of Proposition 207 is 17 pages long. The initiative has a laundry list of specifics for businesses and regulators to follow, but it leaves final industry rulemaking to the Department of Health.

It's likely there are plenty of entrepreneurs—and, in some cases, existing marijuana companies—eager to do business in each state facing a ballot measure. But the only real guarantee at this point is that success at the ballot box will lead to even more rules for legal operators.

"It's just different in every state," acknowledged David Boyer, a consultant who worked on the victorious 2016 adult-use legalization campaign in Maine.

That's because the laws, politics and procedures are different in every state—particularly for marijuana.

### EXPECT HURDLES

Maine is a cautionary tale on this front because of what Boyer describes as a "series of unfortunate events" that kept recreational marijuana sales from beginning for almost four years after residents voted in favor of the initiative. As of press time, Maine's adult-use sales were slated to begin in early October.

"You can't just do a citizen's initiative and think that it'll come out perfect and on time. You have to be talking to the people who are going to implement this," Boyer said. "I never would have expected it would take this long."

Since 1996, when California voters approved Proposition 215 to legalize medical use, the politicking of marijuana has evolved significantly.

Lawyers, activists, businesses and nonprofit organizations have become increasingly adept at crafting language for both ballot measures and legislative bills that are aimed at creating marijuana industries with solid foundations.

But there are still fairly straightforward ballot questions such as

the one going before New Jersey voters, despite all the policy questions that arise when the subject of how to regulate a federally illegal substance is presented.

One reason for that is because 24 states—including New Jersey—don't have any process for citizen-run campaigns to change state law, meaning it falls on the shoulders of state legislatures.

New Jersey lawmakers couldn't reach a consensus in 2019 on an adult-use marijuana bill, so they decided to ask voters to decide the issue. Hence the simple, open-ended legalization question, which would give the Legislature the political cover to move forward.

### BALANCING ACT

But insiders don't expect the New Jersey regulatory process will be any easier or harder to navigate than Arizona's or Montana's just because it has a simpler ballot question.

Tamar Todd, a former Drug Policy Alliance attorney who's helped draft a dozen different state legalization initiatives, warned that ballot questions can wind up backfiring if they are too rigid.



Tamar Todd



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<p><b>PUBLIC QUESTION NO. 1 PREGUNTA PÚBLICA NRO. 1</b></p> <p><b>CONSTITUTIONAL AMENDMENT TO LEGALIZE MARIJUANA</b></p> <p>Do you approve amending the Constitution to legalize a controlled form of marijuana called "cannabis"? Only adults at least 21 years of age could use cannabis. The State commission created to oversee the State's medical cannabis program would also oversee the new, personal use cannabis market. Cannabis products would be subject to the State sales tax. If authorized by the Legislature, a municipality may pass a local ordinance to charge a local tax on cannabis products.</p> <p><b>INTERPRETIVE STATEMENT</b></p> <p>This amendment would legalize a controlled form of marijuana called "cannabis." Only persons at least 21 years of age could use cannabis products legally. The Cannabis Regulatory Commission would oversee the new adult cannabis market. This Commission was created in 2019 to oversee the State's medical cannabis program. The scope of the commission's new authority would be defined in laws enacted by the Legislature. All retail sales of cannabis products in the new adult cannabis market would be subject to the State's sales tax. If authorized by the Legislature, a municipality may pass a local ordinance to charge a local tax on cannabis products.</p> <p><b>ENMIENDA CONSTITUCIONAL PARA LEGALIZAR LA MARIJUANA</b></p> <p>¿Aprueba usted enmendar la Constitución para legalizar una forma regulada de marihuana llamada "cannabis"? Solo los adultos de 21 años de edad como mínimo podrán usar cannabis. La comisión estatal que se creó para supervisar el programa estatal médico de cannabis también supervisar el mercado nuevo de una persona de cannabis. Los productos de cannabis estarán sujetos al impuesto estatal a las ventas. Si la Legislatura lo aprueba, una municipalidad puede aprobar una ordenanza local para cobrar un impuesto local a los productos de cannabis.</p> <p><b>DECLARACIÓN INTERPRETATIVA</b></p> <p>Esta enmienda legaliza una forma regulada de marihuana llamada "cannabis". Solo las personas de 21 años de edad como mínimo podrán usar productos de cannabis legalmente. La Comisión Reguladora de Cannabis supervisar el nuevo mercado de cannabis para adultos. Esta comisión se creó en 2019 para supervisar el programa estatal médico de cannabis. El alcance de la nueva autoridad de la comisión se definirá en las leyes promulgadas por la Legislatura. Todos los ventas minoristas de productos de cannabis en el nuevo mercado de cannabis para adultos estarán sujetos al impuesto estatal a las ventas. Si la Legislatura lo aprueba, una municipalidad puede aprobar una ordenanza local para cobrar un impuesto local a los productos de cannabis.</p> <p>YES/ Sí <input type="radio"/> NO/ No <input type="radio"/></p>	<p><b>PUBLIC QUESTION NO. 2 PREGUNTA PÚBLICA NRO. 2</b></p> <p><b>PROPERTY TAX DEDUCTION AND EXEMPTION FOR PEACETIME VETERANS</b></p> <p>Do you approve amending the Constitution to give a \$250 property tax deduction to veterans who did not serve in time of war? Do you also approve amending the Constitution to give a 100 percent property tax exemption to certain totally disabled veterans who did not serve in time of war? The widow or widower of these veterans also would receive this \$250 deduction or 100 percent exemption after the veteran's death.</p> <p><b>INTERPRETIVE STATEMENT</b></p> <p>This amendment would give a \$250 property tax deduction to veterans who did not serve in time of war. The widow or widower of a veteran who did not serve in time of war would receive this deduction after the veteran's death. The amendment also extends the 100 percent property tax exemption for disabled veterans to veterans who became disabled during peacetime military service. Persons who became disabled during peacetime military service and reside in a continuing care retirement community would not receive the 100 percent exemption for disabled veterans. Currently, these property tax deductions and exemptions are only given to veterans who served during time of war. The amendment would give the deductions and exemptions to veterans who did not serve in wartime.</p> <p><b>DEDUCCIÓN Y EXEMCIÓN DEL IMPUESTO A LA PROPIEDAD PARA VETERANOS EN TIEMPO DE PAZ</b></p> <p>¿Aprueba usted enmendar la Constitución para dar una deducción de impuestos de \$250 a los veteranos que no prestaron servicio en tiempo de guerra? ¿Aprueba usted también enmendar la Constitución para conceder una exención del impuesto a la propiedad del 100 por ciento a ciertos veteranos totalmente discapacitados que no prestaron servicio en tiempo de guerra? El viudo o viuda de estos veteranos también recibiría esta deducción de \$250 o exención del 100 por ciento después de la muerte del veterano.</p> <p><b>DECLARACIÓN INTERPRETATIVA</b></p> <p>Esta enmienda concedería una deducción del impuesto a la propiedad de \$250 a los veteranos que no prestaron servicio en tiempo de guerra. El viudo o viuda de un veterano que no prestó servicio en tiempo de guerra recibiría esta deducción después de la muerte del veterano. La enmienda también extendería la exención del impuesto a la propiedad del 100 por ciento para los veteranos discapacitados. A los veteranos que se hicieron discapacitados durante el servicio militar en tiempos de paz. Las personas que se hicieron discapacitados durante el servicio militar en tiempos de paz (pero que viven en una comunidad de retiro de cuidados prolongados) no recibirían la exención del impuesto del 100 por ciento para veteranos discapacitados. Actualmente, estas deducciones y exenciones del impuesto a la propiedad solo se conceden a los veteranos que prestaron servicio durante tiempos de guerra. La enmienda concedería las deducciones y exenciones importantes a los veteranos que no prestaron servicio en tiempo de guerra.</p> <p>YES/ Sí <input type="radio"/> NO/ No <input type="radio"/></p>	<p><b>PUBLIC QUESTION NO. 3 PREGUNTA PÚBLICA NRO. 3</b></p> <p><b>CONSTITUTIONAL AMENDMENT TO CHANGE THE LEGISLATIVE REDISTRICTING SCHEDULE IF CENSUS DATA IS DELAYED</b></p> <p>Do you approve amending the Constitution to change when new legislative districts are created if the federal census data is delayed? The current COVID-19 pandemic has delayed census data collection. If New Jersey does not receive the census data in a timely manner, new legislative districts may not be ready in time for State legislative elections in the year ending in one. This change to the redistricting schedule will allow legislators to be elected that year from their existing districts for two consecutive terms. This amendment will be used starting with the next scheduled general election for the State Legislature.</p> <p><b>INTERPRETIVE STATEMENT</b></p> <p>This constitutional amendment changes when new legislative districts are created if the federal census data is delayed. The United States Constitution requires that a census be taken every ten years to count the people living in the country. Census data is then used to create new legislative districts to ensure residents have equal representation from elected officials. However, the current COVID-19 pandemic has delayed census data collection. This may delay census data to the states and may affect the creation of new legislative districts. The State Constitution requires an Apportionment Commission to create new legislative districts every ten years after the federal census is completed. If the census data is delayed, the new legislative districts may not be created in a timely manner to hold elections. This constitutional amendment requires the commission to delay creating the new districts if the Governor receives the federal census data after February 15 of the year ending in one. The commission will adopt the new districts after the November general election, but not later than March 1 of the year ending in two. The new districts will be used starting with legislative elections in the year ending in three. They will continue to be used until new districts are again created by the Apportionment Commission after the next federal census. For the June primary and November general elections in the year ending in one, Senators and Assembly members will use their existing districts to run for a term of two years. The old districts will also be in effect in the year ending in two if any legislative election is held in that year. This amendment requires the commission to begin conducting its business when the Governor receives the census data. It also requires the eleven members of the commission to be appointed by the Chief Justice of the New Jersey Supreme Court within one month after the Governor receives the census data. Nothing in this amendment will alter the appointment of the members of the commission made by the State political party chairs pursuant to Article IV, Section 14, paragraph 1 of the State Constitution on or before November 15, and certified by the Secretary of State on or before December 1, of the year in which the census is taken.</p> <p><b>ENMIENDA CONSTITUCIONAL PARA CAMBIAR EL CRONOGRAMA LEGISLATIVO DE DELIMITACIÓN DE DISTRITOS SI SE DEMORAN LOS DATOS DEL CENSO</b></p> <p>¿Aprueba usted que se enmiende la Constitución para que se cambie cuándo se deben crear nuevos distritos legislativos si se demoran los datos del censo federal? La actual pandemia de COVID-19 ha demorado la recolección de los datos del censo federal. Si Nueva Jersey no recibe los datos del censo a tiempo, los nuevos distritos legislativos pueden no estar listos a tiempo para las elecciones legislativas del Estado en el año terminado en uno. Este cambio al cronograma de delimitación de distritos permitirá que se elijan a los legisladores ese año de sus distritos existentes por un mandato de dos años en el cargo. Los distritos nuevos se usarán a partir de las próximas elecciones generales programadas para la legislatura del Estado.</p> <p><b>DECLARACIÓN INTERPRETATIVA</b></p> <p>Esta enmienda constitucional cambia cuándo se deben crear nuevos distritos legislativos si se demoran los datos del censo federal. La Constitución de los Estados Unidos establece que se debe realizar un censo cada diez años para contar a las personas que viven en el país. Los datos del censo luego se usan para crear nuevos distritos legislativos para asegurar que los residentes tengan igual representación en parte de los legisladores electos. Sin embargo, la actual pandemia de COVID-19 ha demorado la recolección de los datos del censo a los estados y puede afectar la creación de nuevos distritos legislativos. La Constitución del Estado establece que una Comisión de Distribución debe crear nuevos distritos legislativos cada diez años después que finaliza el censo federal. Si los datos del censo se demoran, los nuevos distritos legislativos pueden no estar listos a tiempo para las elecciones. Esta enmienda constitucional requiere que la comisión demore la creación de nuevos distritos si el gobernador recibe los datos del censo federal después del 15 de febrero del año terminado en uno. La comisión adoptará los nuevos distritos después de las elecciones generales de noviembre, pero no después del 1 de marzo del año terminado en dos. Los distritos nuevos se usarán a partir de las elecciones legislativas del año terminado en tres. Los distritos existentes se usarán para un mandato de dos años en el cargo. Los distritos antiguos también estarán en vigencia en el año terminado en uno si cualquier alguna elección legislativa ese año. Esta enmienda requiere que la comisión comience a trabajar cuando el gobernador recibe los datos del censo. Además requiere que el once miembros de la comisión sea nombrados por el presidente de la Corte Suprema de Justicia de Nueva Jersey dentro de un mes de que el gobernador reciba los datos del censo. Nada de lo que establece esta enmienda cambiará el nombramiento de los miembros de la comisión hecho por el presidente de los partidos políticos del Estado, conforme al artículo IV, sección 14, párrafo 1 de la Constitución estatal el 15 de noviembre a más, y certificado por el Secretario de Estado el 1 de diciembre o antes, del año en que se realice el censo.</p> <p>YES/ Sí <input type="radio"/> NO/ No <input type="radio"/></p>
<p><b>VOTE BOTH SIDES OF BALLOT VOTA POR LOS DOS LADOS DE LA PAPELITA</b></p> <p style="text-align: right;"><b>MAGNOLIA BOROUGH</b></p>		

## New Jersey state legislators voted to add Public Question No. 1, which would legalize adult-use marijuana, to the Nov. 3 ballot.

"It's finding the balance," she said. "You want to spell out enough detail to make sure it will happen, but then there's less flexibility to adapt to the market."

Another complication, Todd noted, can be whether a state opts to change its statutes or the state constitution. The former might make it easier to get legalization in front of voters with a lower barrier to enter to the ballot, but it could also make the law easy for an anti-marijuana legislature to repeal or neuter. An attempt to change the state constitution might be tougher to qualify for the ballot, but it would be harder to amend should problems arise.

"You can really screw yourself," Todd said of the legalization process. "One of the areas where it's most difficult is tax rates. If you're taxing on percentage of sales, you may want to start very low and then—once the illicit market goes away, or if prices increase—maybe you'd like to increase it."

### A SEAT AT THE TABLE

There's also a very big difference between states that are launching medical marijuana programs for the first time and those starting an adult-use industry on top of an existing MMJ market. The latter has been the standard, but South Dakota might break the mold if its voters approve both medical and recreational

marijuana next month, which would make it the first state to do so.

"That's sort of open country, but I guarantee you there are lobbyists up there working and saying, 'When this passes, you have to be a resident of South Dakota'" to own a cannabis business, said Denver attorney Christian Sederberg, referring to common state-residency requirements for marijuana business ownership.

Sederberg, who worked closely on the development of Colorado's industry regulations, said having a seat at the table will be one of the keys for those hoping to enter the industry in New Jersey and other potential markets.

"It's really about getting engaged with the legislature and your local government ... to develop a regulatory system," Sederberg said. "You can't influence anything if you don't say anything."

However, he said more detailed ballot questions such as the one in Arizona might allow companies to start laying out their plans soon after the election.

### ENTREPRENEURIAL MARKETS

"If it's a more detailed initiative, you've got most of the tools as a businessperson to decide whether or



Christian Sederberg

not to enter that market," Sederberg said. "If it's a very general question—using New Jersey as an example—you'd have to look at the history of the MMJ market."

Buy-in by state officials can also be key. Voters in Nevada approved recreational marijuana in November 2016, and lawmakers allowed the existing MMJ businesses to transition straight to sales starting in July 2017, only eight months after the vote.

California-based consultant Avis Bulbulyan said Nevada "killed it" in terms of time to market. "Nevada from the beginning decided, 'We're getting into the business of cannabis,'" he said. "They just embraced the idea."

Bulbulyan echoed Sederberg's point about participating in the rulemaking process.

"The regulators are as hungry for information as anybody else," he said. "If you don't get involved and you simply wait for the state to roll out the program, you're going to be dealing with regulations that you had zero influence over," he said. "It's not necessarily about who can cut the biggest check, it's about who can provide the most valuable advice and guidance." MBM



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• Refer to the Basic Applications Table for general mixing recommendations. Please measure accurately. Reduce nutrient strength if plants show signs of stress or if growing in very bright, hot or dry environments.

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**Basic Applications Table**

**Cuttings and Seedlings**

**General Purpose - Mid Vegetation**

**Approach to Bloom**

**Flowering and Fruiting**

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56.7 L (15 Gallons) 208 L (55 Gallons)



# GET THE BEST Return on Investment

Industry veterans share which sectors are the most profitable in new markets

By John Schroyer





Consumers line up to purchase cannabis at Chicago's Dispensary 33 on Jan. 1, 2020, the first day of legal adult-use sales in Illinois. *Courtesy Photo*

**W**ould-be entrepreneurs might be eyeballing the marijuana industry in markets poised to launch based on results of the November election.

But what entry points provide the best return on investment? Could it be retail, with lines of customers that stretch around the block in new markets? What about cultivation or edibles manufacturing, with products that become “must-haves” for marijuana connoisseurs? Maybe distribution, or even an ancillary company that provides packaging, security or some other type of service?

### **ANCILLARY THE EASIEST**

The simplest answer for anyone looking to make as much money as possible in the state-legal U.S. marijuana markets

is to forget about launching a plant-touching business and start some type of ancillary company, several industry experts agreed.

The main reason for that is Section 280E of the federal tax code, which disallows standard business deductions for anyone who traffics in a controlled substance, such as state-licensed marijuana companies. That single provision regularly costs marijuana businesses millions of dollars.

“Why do you think I’m starting an ancillary business? That’s why I’m getting out of the (plant-touching) game,” said Karl Keich, who ran a retail marijuana shop in Seattle for years before selling to a larger conglomerate in 2018. “I was under audit for six years by the IRS. I’m sick of these guys. I’m

starting a software company.”

The lack of a tax burden for ancillary businesses easily inflates their profit margins far beyond what most marijuana retailers, growers and manufacturers enjoy, said Andrew Livingston, director of economics and research at Denver-based law firm Vicente Sederberg.

Arguably, Livingston said, those who make the most profit these days are consultants who traffic only in their own know-how, since there’s no overhead for producing advice. Consultants often are able to parlay their expertise into an ownership percentage of plant-touching companies.

“Sometimes, the people who make the best ROI aren’t even the people who are selling the picks and shovels,” Livingston said. “It’s the people who sell *advice*

on where to get the picks and shovels, because that costs nothing.”

## EVALUATE EACH MARKET

In terms of plant-touching businesses, there’s no hard-and-fast rule about which sectors are the most profitable. That’s because there are just too many differences in how state markets are structured.

Some states have no limit on the number of business permits that can be issued (Colorado, Oklahoma and Oregon, for example) while others allow only a handful of companies to comprise the entire industry (such as Florida, Minnesota and New York).

Also, some states mandate vertical integration while others choose to license growers, manufacturers, retailers and other businesses separately.

“Every state has its own situation,” said Mitzi Hollenbeck, a Rhode Island-based CPA who consults with cannabis companies all over the country.

For those trying to win a marijuana business license, the first step is to analyze how many licenses will be available and choose strategically which type to go after.

For instance, Livingston said, a limited-license market with only a handful of cultivation permits available might put license holders in the best position to reap financial rewards because only a few companies will control the entire legal marijuana supply for a whole state.

But the reverse can also be true: If there are a large number of growers or infused product makers but a relatively small number of retailers, then the retail permits are going to have more intrinsic value.

“Let’s say you’re one of the few retailers in Boston or in a prime location in Seattle: There are going to be a lot of different cultivators you could source from, but you have a lot less competition in your small regional area,” Livingston said. “In that relationship, you’re going to have



Mitzi Hollenbeck

more bargaining power and (can) push those cultivators to compete against each other to provide you with a lower wholesale price.”

## CASH IS KING

Hollenbeck emphasized it’s also crucial to crunch the numbers and analyze what’s doable with the amount of capital immediately available. In that light, she noted, it might be more profitable to invest in a cheaper retail operation than to try to outfit an entire cultivation facility.

“The cost of capital and the cost on the capital investment (for cultivators and manufacturers) is very, very high. ... A lot more so than retailers,” Hollenbeck said.

A major downside for many retailers is expensive rent. Hollenbeck warned that marijuana companies often pay five times market price for commercial space, simply because the industry is federally illegal.

Additionally, retailers often have more 280E exposure than growers and manufacturers, Livingston noted, because companies on the production side of the supply chain can fit more expenses into the cost-of-goods-sold column, which qualify as tax deductions.

For retailers, that means “a lot less of their total operational costs are deductible” when it comes to federal taxes, Livingston said.

In states where it is allowed, vertical integration—where a single company controls its supply chain from seed to sale—might be the most profitable plant-touching business type, Livingston said. Those companies are able to streamline in ways that stand-alone retailers or growers can’t reproduce.

## THE LANDSCAPE WILL CHANGE

A final factor for new market entrants to consider is that change is the only constant in the marijuana industry. That means planning for federal legalization and the possibility of interstate commerce at some point in the coming decade.

“I look at all these clowns that are in Florida ... and I see all these cannabis dispensaries that are ... doomed for failure,” said Keich, the former Seattle MJ retailer. “When interstate commerce is legalized, it’s going to change the game.”

Keich and others believe the production costs for indoor grows, in particular, are going to be far too high once interstate commerce is legal, which will give way to outdoor and greenhouse cultivation operations that rely mostly on sunlight to drive down their operation prices.

“You can grow a pineapple anywhere. Are you going to grow pineapples in Hawaii, or are you going to grow them in Alaska?” Keich offered as an example. “Building a brand that can survive legalization federally, that’s the big one.”

Keich and Livingston both said multistate licensing deals offer some of the best return on investment for plant-touching businesses. Licensing gives a business passive income from new partners but also offers brands the ability to build on a national scale.

“The best ROI is building a brand that people really like and then being able to license that brand out to other states,” Livingston said. “It’s like capital you’ve built and then are able to profit off of by having your partners in other states take up a lot of those costs.” 