

Cannabis in Wisconsin: What comes next?

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Agenda

- ▶ What's next in Wisconsin?
 - ▷ National Trends
 - ▷ Medical Cannabis
- ▶ What's the Illinois Bankers Association talking about next week?
 - ▷ Federal Issues Banking Marijuana-Related Businesses
 - ▷ Cole Memo/FinCEN Guidance
 - ▷ SAFE Banking Act

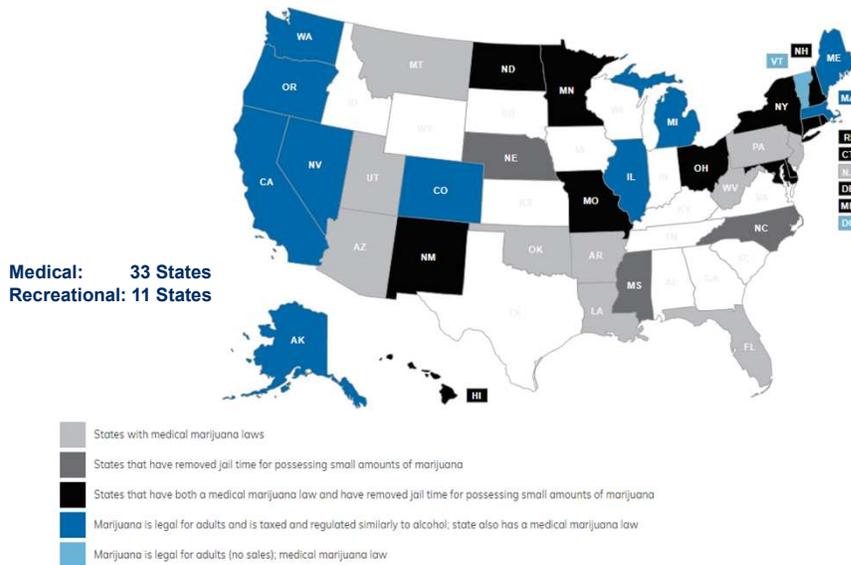
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What's next in Wisconsin?

Cannabis, Marijuana, Hemp

- ▶ **Cannabis** – References the plant *Cannabis sativa* L.
- ▶ **Marijuana** – “All parts of the plant *Cannabis sativa* L., whether growing or not, the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin.”
- ▶ **Hemp** – Any cannabis plant, or derivative thereof that contains ***not more than 0.3 percent THC*** on a dry-weight basis.

State Cannabis Legalization – *Marijuana Policy Project*



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An Island in the Upper Midwest?

- ▶ Michigan
 - ▷ Medical – 2008 ballot initiative
 - ▷ Recreational – 2018 ballot initiative (55.9%)
- ▶ Illinois
 - ▷ Medical Program – 2013 Compassionate Use of Medical Cannabis Pilot Program
 - ▷ Recreational – 2019 Cannabis Regulation and Tax Act
- ▶ Minnesota
 - ▷ Medical – 2014 law
- ▶ Iowa
 - ▷ Low-THC Oil/Medical – Legislation to expand program recently vetoed

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Key Components of Medical Marijuana Proposals

- ▶ Medical Certificate/Registry
- ▶ Physician Approval
- ▶ Qualifying Conditions
- ▶ Regulated Products
- ▶ Licenses – Cultivation, Dispensary
- ▶ Taxation
- ▶ Employment Issues
- ▶ OWI issues

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Medical Marijuana in Wisconsin?

- ▶ Governor Tony Evers
- ▶ Assembly Speaker Robin Vos
- ▶ Senate Majority Leader Scott Fitzgerald

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Governor Tony Evers

- ▶ Budget Proposal:
 - ▷ Medical Cannabis Program
 - ▶ License and regulation of dispensaries by DATCP
 - ▶ Testing Laboratories
 - ▷ Medical Cannabis Registry - Department of Health Services
 - ▶ Registry Identification Card – Requires written certification
 - ▶ “Debilitating medical condition or treatment”
 - ▶ “bona fide practitioner-patient relationship”
 - ▷ Sales Taxation and Surcharge on Sales
 - ▷ Possession Limits
 - ▶ 12 live plants or 3 ounces of usable cannabis
 - ▷ Decriminalization and Expungement

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“ I'd like to have at least a discussion about medical marijuana...I do not support recreational marijuana. If we introduce a bill or had that discussion, it would be around the idea of saying how are we going to ensure that people who are sick and who potentially can have this as a treatment get it, but it does not fall into the hands of kids or people who just want to smoke it because they want to have recreational marijuana? ”

Assembly Speaker Robin Vos (R – Burlington)

Milwaukee Journal Sentinel, Wisconsin's GOP speaker says he wants to consider legalizing medical marijuana, just after rejecting governor's plan, June 28, 2019

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“Some of the results of legalization in other states have been troubling. It would be wise for Wisconsin to take a more measured approach and wait to see how it plays out in other states in the Midwest before rushing any kind of legalization here.”

Senate Majority Leader Scott Fitzgerald (R – Juneau)

Recently stated publicly he doesn't support; not enough backing from Senate Republicans to approve it.

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Public Support for Marijuana in Wisconsin

- ▶ November 2018 Referenda
 - ▷ All advisory referenda on marijuana passed
 - ▷ 16 Counties (5 recreational, 11 medical)
- ▶ Marquette University Law Poll – April 10, 2019
 - ▷ Recreational:
 - ▶ 59% of voters say marijuana use should be legal
 - ▶ 36% percent say it should not be legal
 - ▷ Medical w/ Doctor Prescription:
 - ▶ 83% say it should be legal
 - ▶ 12% say it should not be

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What Comes Next in Wisconsin? Predictions?

Banking Marijuana-Related Businesses

(or, What's the Illinois Bankers Association talking
about next week?)

Unique Challenges

- ▶ Operate on an all-cash basis, subjecting their employees and the general public to serious risk of criminal activity and harm.
- ▶ Challenges remitting state taxes and licensing fees
- ▶ Inability to access modern payment methods
- ▶ Compliance auditing costs, without paper trails
- ▶ Cutting off cannabis from regulated banking system

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Cole Memorandum Priorities

- ▶ Memo from United States DOJ Attorney General James Cole, outlining federal enforcement priorities.
- ▶ August 29, 2013
- ▶ Goal is to prevent:
 - ▷ Distribution to Minors
 - ▷ Revenue supporting criminal enterprises, gangs, and cartels
 - ▷ Diversion of marijuana from states where legal to other states
 - ▷ Cover or pretext for trafficking other illegal drugs or activity
 - ▷ Violence and use of firearms in cultivation and distribution
 - ▷ Drugged driving and exacerbation of other adverse public health consequence
 - ▷ Use of public lands, and attendant public safety and environmental dangers
 - ▷ Possession and use on federal properties

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FinCEN Guidance – February 14, 2014

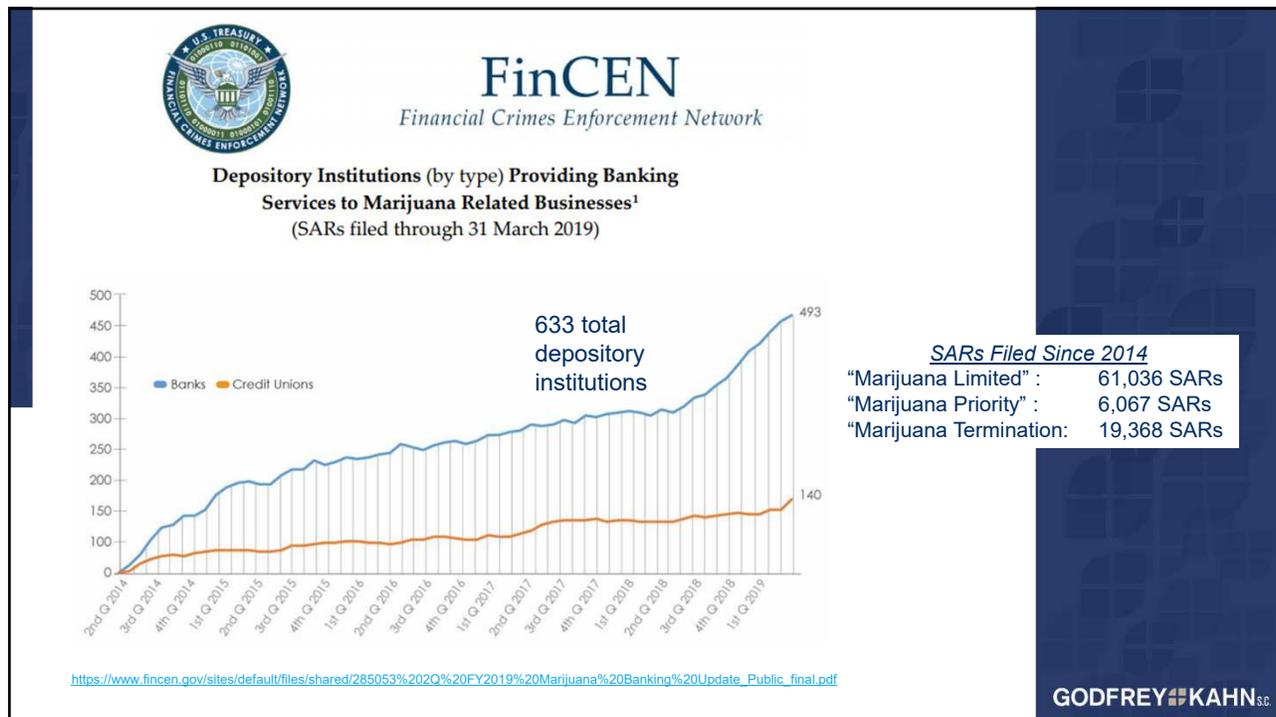
- ▶ Adopts the Cole Memo priorities
- ▶ “Enhance the availability of financial services for, and the financial transparency of, marijuana-related businesses.”
- ▶ Stressed importance of risk assessments and due diligence
- ▶ Suspicious Activity Reports on Marijuana-Related Businesses
- ▶ Currency Transaction Reports

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Suspicious Activity Reports

- ▶ Three Tiers of Marijuana Related SARs
 - ▷ Marijuana Limited
 - ▷ Marijuana Priority
 - ▷ Marijuana Termination
- ▶ Continuing Activity Reports
- ▶ Red Flags

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SAFE Banking Act

- ▶ Protections/Safe Harbors for banking/financial services to "Cannabis-related legitimate business" (CRLBs).
- ▶ Would prohibit federal regulators from taking certain actions, **solely** related to relationships with CRLBs (MRBs):
 - ▷ Terminating or limiting deposit insurance solely for banking CRLBs
 - ▷ Prohibiting, penalizing or discouraging depository institutions from banking CRLBs in states where it is legal.
 - ▷ Recommending, incentivizing or encouraging financial institutions not to bank CRLBs, their owners or employees.
 - ▷ Taking adverse or corrective action on a loan to a CRLB, its owner or employees.
 - ▷ Prohibiting or penalizing institutions or service providers for conducting routine banking functions for CRLBs.

Hearing in U.S. Senate Today

- ▶ Senate Committee on Banking, Housing and Urban Affairs
- ▶ Focused on lack of access to banking services
- ▶ Bipartisan legislation Sen. Jeff Merkley (D-OR) and Sen. Cory Gardner (R-CO)
- ▶ Support from 50 state banking associations, state financial regulators, majority of state attorneys general, bipartisan governors.

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In Conclusion

- ▶ While marijuana legalization may not be imminent in Wisconsin, it is likely on the horizon.
- ▶ Late adoption in Wisconsin may mean more legal certainty and regulatory expectations at federal level.
- ▶ SAFE Banking Act would create protections and safe harbors for banking marijuana-related legitimate businesses, but banks still must comply with state and federal law.
- ▶ Cannabis issues aren't going away.

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Thank you.

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