



# California Cannabis Coalition *for Model Industry Standards*<sup>TM</sup>

CLEARINGHOUSE FOR CALIFORNIA CANNABIS MODEL INDUSTRY STANDARDS,  
BEST PRACTICES, SAFE HARBORS & SOLUTIONS

CCCMIS RYDSTROMLAW  
FOUNDING SPONSOR OF THE CALIFORNIA GROWERS ASSOCIATION



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## Federal law says Cannabis is illegal; but some 30 states and California say its Legal!

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California Cannabis Coalition for Model Industry Standards™ is the first clearinghouse for California Cannabis industry standards, best practices, safe harbors, and solutions. There are numerous conflicting federal and state issues to reconcile including real estate, banking, investing and lending. The Coalition seeks to convert all related industry and consumer diverse and conflicting self-interests into comprehensive workable solutions, standards, and safe harbors.

## Congressman Dana Rohrabacher's Cannabis Amendment (2018)





**History of CMIS:** Richard Rydstrom, Esq. is a practicing California Attorney with over 27 years experience. CMIS was established to help reconcile disparate interests to help resolve the Great Recession. Richard Rydstrom, Esq. was Chairman of CMIS Mortgage Coalition reconciling diverse disparate interests of the banks and the consumer borrowers in developing neutral solutions to the Great Recession of 2007, including the HAMP mortgage modification program with the U.S. Treasury and the foreclosure and consumer interest groups. When the 110th Congress wanted a neutral analysis and congressional statement regarding the problems and solutions of the pre Great Recession, they chose Mr. Rydstrom. When the AFN banks, servicers and consumer groups wanted a formal explanation and speech regarding the first HAMP Mortgage Modification Program outline from President Obama and the U.S. Treasury, they chose Mr. Rydstrom. Rydstrom's 110th Congressional Statement was termed the Bible for solutions to the Great Recession, by the CEO of AFN. CMIS DC General Counsel was DICKSTEINShapiro; K Street, D.C.



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Cannabis Industry Markets – Some project that the Cannabis market will exceed \$20 billion a year approaching the \$38 billion Movie business and the 7.2 billion California Wine market. California is by far the largest with 39 million people next to Colorado with 5.5m, and Nevada with 3 million.

### California:

California with over 39 million residents is the largest state potential cannabis market for medical (over 62% of sales) and recreational use (over 48% of all sales (2015)). The total California cannabis market is expected to grow from 18.5% over the next 5 years from approx. \$2.76 billion (2015) to **\$6.46 billion by 2020**.

California projects \$1 billion in tax revenues for legalized marijuana sales. States now estimate \$655 million in taxes on retail sales in 2017 far exceeding tax revenue on alcohol.

Data: New Frontier Data Research



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## Cannabis Industry Markets

USA: The overall legal cannabis market is projected to grow 16% (compound annual growth) from \$6.6 billion in 2016 to **\$24 billion by 2025**.

The medical cannabis market is estimated to grow at 12% to 2025 from \$4.7 billion (2016) to **\$13.2 billion in 2025** with adult ore recreational use growing at 21% from \$1.9 billion to **\$10.9 billion**.

If the ***Rohrabacher's Cannabis Amendment*** is expanded to provide federal safe harbors with the *Rohrabacher States' Rights Bill*, the growth will exponential supplying a boost to the federal and state economies.

Data: CAGR Compound Growth estimate by New Frontier Data Research, 2017 Legal Marijuana Outlook Executive Summary Report, Sponsored by Electrum Partners



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## Cannabis Industry Markets Can Balance the State Budgets:

In a period of high (state) income taxes, and with tax revenues falling from cigarettes and lower gas prices, states need to find new and additional revenues from the cannabis industry.

Benefits to Economies: It is obvious that the potential positive fiscal externalities from cannabis tax revenue and sales can enhance growth for the local, state and federal economies, and increase the job market, real estate, travel, and hospitality markets, and the enhance the supply and demand for goods and services.

Social Benefits: Legalizing cannabis can supply monies for opioid addiction programs, drug abuse counseling, law enforcement, infrastructure, children's programs, and other social services. It will also help reduce illegal or illicit activity and drug crimes.

Data Debra Borchardt, Forbes Contributor



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## Cannabis Industry Markets – Public Mandate

A recent survey found:

1. Only 9% of people say Cannabis should be illegal. It is generally believed that over 55% of people say it should be legalized, regulated and taxed.
2. 63% believe that the federal government should legalize Cannabis.
3. 86% believe that Cannabis has valid medical uses.

The 2016 Cannabis Legalization Initiatives found strong public demand:

**The California initiative passed with 57.1%**; Nevada with 54.5%; Florida with 71.3%; ND at 63.8%.  
The average adult use vote was 53%; the average medical use passage vote was 62%.

New Frontier Data Research, 2017 Legal Marijuana Outlook Executive Summary Report, Full Circle Research National Survey of 1671 adults, Jan. 12, 15, 2017





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## Cannabis Industry Markets re JOB CREATION

The Colorado Jobs Example: It is reported that Colorado Cannabis created 18,000 jobs since adult use was legalized in 2014. Of the 18,000, 13,000 jobs are considered direct, full time employment. (FTE) This means that some 72% of jobs created are full time employment, and 28% are indirect or flow as a positive externality to the direct jobs. (70/30)

National Industry Estimates: It is estimated that **by 2020, Cannabis will create 283,422 new jobs** with 198,195 direct, and 45,590 indirect plus 39,636 induced jobs. Direct jobs break down to 35% retail, 22% administration, 16% manufacturing, 15% management, and 12% agriculture.

New Frontier Data Research, 2017 Legal Marijuana Outlook Executive Summary Report, Marijuana Policy Group (MPG)



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## Cannabis Industry Markets re RETAIL SALES EXCISE TAX REVENUE PROJECTIONS:

### National Retail Sales Tax Revenues:

1. In 2017: \$745 million retail tax revenue (with \$609 million from cannabis specific taxes/excise plus \$136 million from state sales taxes from retail sales)
  2. **By 2020: \$2.3 billion retail tax revenue** (with \$1.8 billion from cannabis specific taxes/excise)
- The taxes will be significantly higher as stated numbers do not include county or local taxes.

The Colorado Retail Sales/Excise Tax Example: Colorado used its cannabis tax collections to fund Substance Abuse Prevention (\$7.22m); Jail/Health Services (\$5.10m); School Bullying/Ed (\$2.90m); Drop-out Program (\$2.90m); Local grants (\$2.26m); Youth Monitoring (\$2.2m); Cannabis Research at CSU-Pueblo (\$0.9m)

New Frontier Data Research, 2017 Legal Marijuana Outlook Executive Summary Report,



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## Cannabis Industry Markets re OPIOID & PAIN MEDICATION EPIDEMIC:

Prescribed Opioid relievers have increase 3-fold from 76m (1991) to 207m in 2013 accounting for nearly 100% of hydrocodone (Vicodin) and 81% or oxycodone (Percocet) sales worldwide.

In 2015, opioids were involved in 33,091 deaths (4-fold increase from 1991) and 63% of all drug related deaths.

In 2018, the National Academies of Sciences, engineering, and Medicine (NAS) reports **conclusive evidence that cannabis can effectively treat symptoms of chronic pain.**

In 2016, the University of Georgia found a 11% reduction on annual drug prescriptions in legal cannabis states.

New Frontier Data Research, 2017 Legal Marijuana Outlook Executive Summary Report,



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Cannabis Industry Markets re Federal and State Law Conflicts/Uncertainty:

Feb. 2018: The Cannabis industry is hanging on the thread of operability afforded it by the **Rohrabacher's Medical Cannabis Amendment**. Attorney General Sessions has already revoked the Cole Memo which restricted funding for enforcement by the federal government.

However, with each temporary budgetary extension the **Rohrabacher's Medical Cannabis Amendment** is extended as a minimum safe harbor. But it's now time to expand the **Rohrabacher's Cannabis Amendment** to include adult use, and other safe harbors, and then move to debate the **Rohrabacher States' Rights Bill** so an umbrella safe harbor can be instituted to gain uniform economic and public policy and allow the states to make and implement their own laws – without being deemed - unlawful. In 2018 it's time to expand the scope and reach. Expansion should include recreational purposes, with safe harbors for banking, lending, investments, accelerators, REITS, use of federal mail, and the narrowing of the unlawful paraphernalia definition.

CCCMIS Chairman Rydstrom is calling on Congress to hold cannabis deconfliction hearings to enhance economic and public policy uniformity, and safe harbor lawfulness.



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## Federal law says Cannabis is illegal; but some 29 Legal Medical Marijuana States and DC and 9 Adult Use States and DC including California say its Legal!

**Feb. 2018: Working Solutions** - You cannot ignore the federal law. But you can act to secure mitigating factors in your approach and operation of a state lawful cannabis business. First obtain all applicable local, state and federal licenses, and permits and comply with all rules and laws; Second, never hide cannabis from or hinder a federal and or state investigation.

One working solution is the **SmartCannabisLease** (<http://smartcannabislease.com> ) which deconflicts federal and state law presumptive facts. However, it does not and cannot change federal law. But it can define multiple “uses” and ‘lines of business’ as lawful and cannabis, and you can structure your entities and bank accounts accordingly; to mitigate total exposure of your business, real estate, bank accounts and property.

Another working solution is the **TaxSmartBuildout** ( <http://smartbuildout.com> ) which integrates lines of business with IRC 1245/1250 tax smart construction property flowing into beneficial entity structures. You can allocate lease space according to uses and lines of business and achieve greater and simpler tax accounting base.



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One working solution is the **SmartCannabisLease** (<http://smartcannabislease.com> )

Conflicts Which Must Be Addressed & Knowingly Waived: Some of the topics which must be addressed in the Addendum (as well as the body of the agreement) include but are not limited to: Is the tenant seeking licensure for Cultivation, Manufacturing, Distribution, Testing, Dispensary, or Transportation, and any variations including the Microbusiness license. 1. What are the new proper entity structures available for Cannabis tenants; 2. What percentage ownership/control require licensure and Tenant/Landlord approval; **3. How can we deconflict California and Federal law, if at all;** **4. How can we address Nuisance Breach/Defaults;** **5. How can we address Illegal Unlawful Breach/Defaults;** **6. How can we address Unlawful Use Breach/Defaults;** 7. How can we address compliance with local & California law; **8. Should we, and to what extent, have a Tenant share in pass-thrus/CAM Charges;** **9. Should Landlord share in profits of Tenant;** **10. How much control may Landlord retain;** 11. Should there be more than one licensee per parcel; **12. How far away must premises be from schools and parks;** **13. Must premises be in an Industrial location;** **14. Should Landlord retain or be granted access for repairs and inspections;** **15. Should Landlord or Tenant agree to Work Lists or Build-outs;** **16. Should Work Lists or Build-outs be conditioned on compliance with Use;** 17. Should Tenant and Landlord certify compliance with Local and State Laws (conditional use permits); 18. Should Landlord and Tenant agree to select law and facts including protections in bankruptcy; 19. Are there legal methods to protect wealth and retirement cash flow from the Cannabis industry?



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## Federal law says Cannabis is illegal – TAX ISSUES 1

Cannabis Tax Practices Differ from Common California Business Standards: Generally you cannot deduct expenses from an unlawful activity such as Cannabis (a Federal Schedule I Listed Activity/Substance). However, **IRC 280E** allows for the deduction of items properly allocated to Cost of Goods Sold (“COGS”). Art Huerta of Mar Vista Tax Services says: general California business tax practice requires reporting all income for all activities whether legal or illegal under IRC 61, with ordinary and necessary expenses offsetting such income under IRC 162. Some cases have allowed such expenses but usually **for separated activities** which are not considered illegal, for example caregiving or ancillary products, but not from the sales of cannabis. Impeccable records must be kept and as such you should obtain a **software package that can tie into and track not only sales, but inventory with labor allocation and track and tracing** and use a professional cannabis tax preparer. What items can be allocated to 280E are key lawfully maximizing your COGS deductions (i.e. inventory, security, segregation rooms, etc).

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## Federal law says Cannabis is illegal – TAX ISSUES 2

Cannabis Tax: The IRS disallows all trade or business expenses and deductions under IRC 163 except cost of goods sold (COGS) under 280E. For example Rent, advertising, utilities, wages can't be deducted unless related to the cost of making or purchasing an inventory product as COGS.

IRC 471 (CCA 201504011) requires inventory capitalization to determine COGS under Full Absorption (1.471-11). Expenses considered costs are allocated to COGS as incident and necessary to the manufacturing process, such as repairs, maintenance, utilities, rent, labor, materials, tools, quality control, taxes, depreciation/amortization, insurance and administrative expenses. (Rev Rule 81-272) (263A uniform capitalization)

Assembly may be considered manufacturing under Notice 88-86 regardless to type of business. Making the raw product salable might include drying, adding humidity, assembly, or brand labeling. Seek out a Cannabis Tax expert.

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## Federal law says Cannabis is illegal – Cannabis Market Contract Structure

Unlike the Producer → Distributor → Retailer → Consumer fixed model structure in the Alcohol Industry, Cannabis Licensees must move product from Licensee to Licensee.

The “Cannabis Distributor” (procurement, sale, transport, coordinate third party testing, packaging and labeling compliance).

Licensees may sell cannabis products to any licensee (not only a Distributor). But all Cultivators and Manufacturing Licensees must use a Cannabis Distributor for testing, packaging and labeling. Distributors may earn FEES for these various functions. Distributors must collect and remit TAXES to the Board of Equalization and cultivation and excise taxes to the Ca. Dept. of Tax and Fee Admin. (CDTFA).



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## Federal law says Cannabis is illegal – Cannabis (Distributor) Contract Structure

Issues: Licenses, Duties, Terms, Deadlines, Terminations, Breach, Lack of Exclusivity, White Labeling per BCC rules, Distributors must have Manufacturing License to white label (re-label, re-packaging), Intellectual Property (IP) rights, representations and warranties (compliance with law and practice), specifications, branding, title, quality control, sharing cost of testing, inventory tracking, tax reporting, territory, inspection, purchase order and payment terms and procedures, sales and marketing, federal law illegality.

Charges for Lines of Business: storage, transport, coordination of testing, packaging and labeling.

Contracts MUST state the state of the law, namely that Cannabis is ILLEGAL under Federal Law but LEGAL under California state law. (AB 1159)

Attorney Client Privilege is available even though Cannabis is illegal under Federal Law. (AB 1159)



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