

Cannabis Law: From Seed to Start and Beyond

Brian Vicente

Founding Partner, Vicente Sederberg LLP

VICENTE
SEDERBERG
LLP

Vicente Sederberg LLP



- ▶ Founded in 2010 in Denver, Colorado
- ▶ We offer a full suite of legal, corporate, policy, regulatory, and research services to all types of entities that work within or alongside the cannabis industry
- ▶ Ranked a Band 1 Law Firm by Chambers and Partners USA in its "Nationwide: Cannabis Law" practice category
- ▶ Recognized as a two-time "Cannabis Law Firm of the Year" winner for the 2021 and 2022 Chambers USA Awards
- ▶ Offices in Austin, Boston, Denver, Jacksonville, Los Angeles, Michigan, New York, and New Jersey

Brief History of Cannabis Legalization

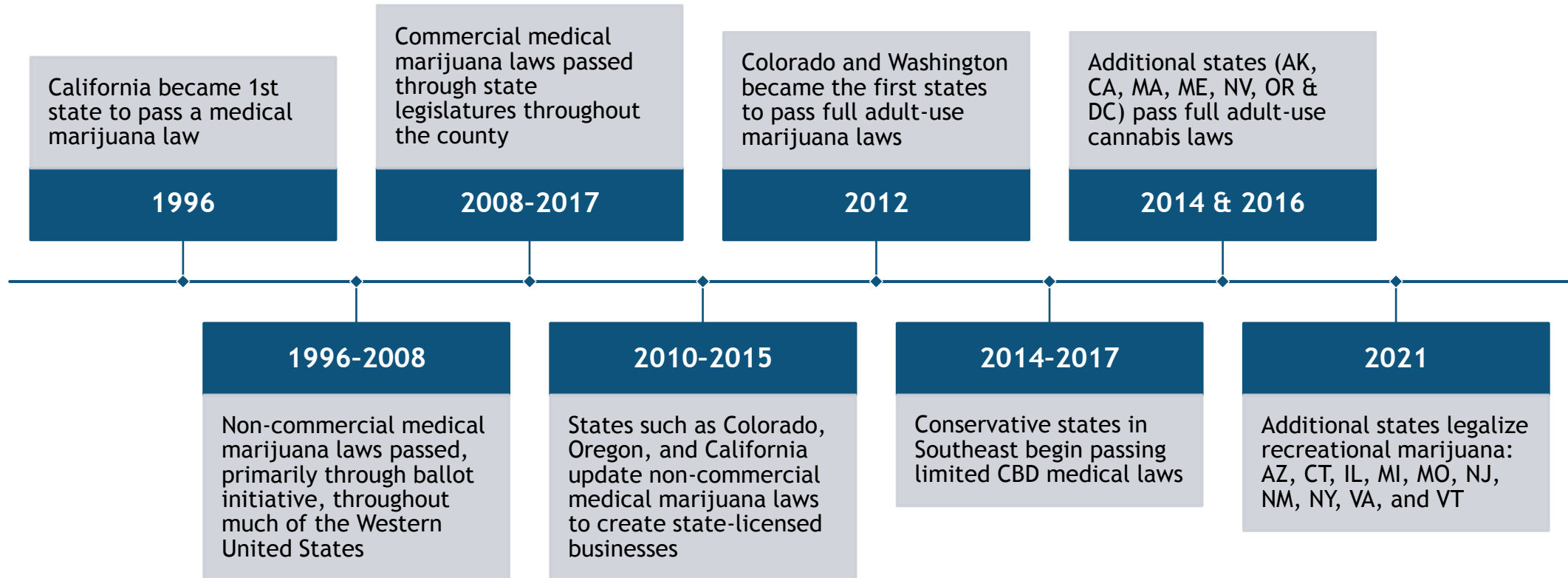
▶ Medical

- 1996-2000

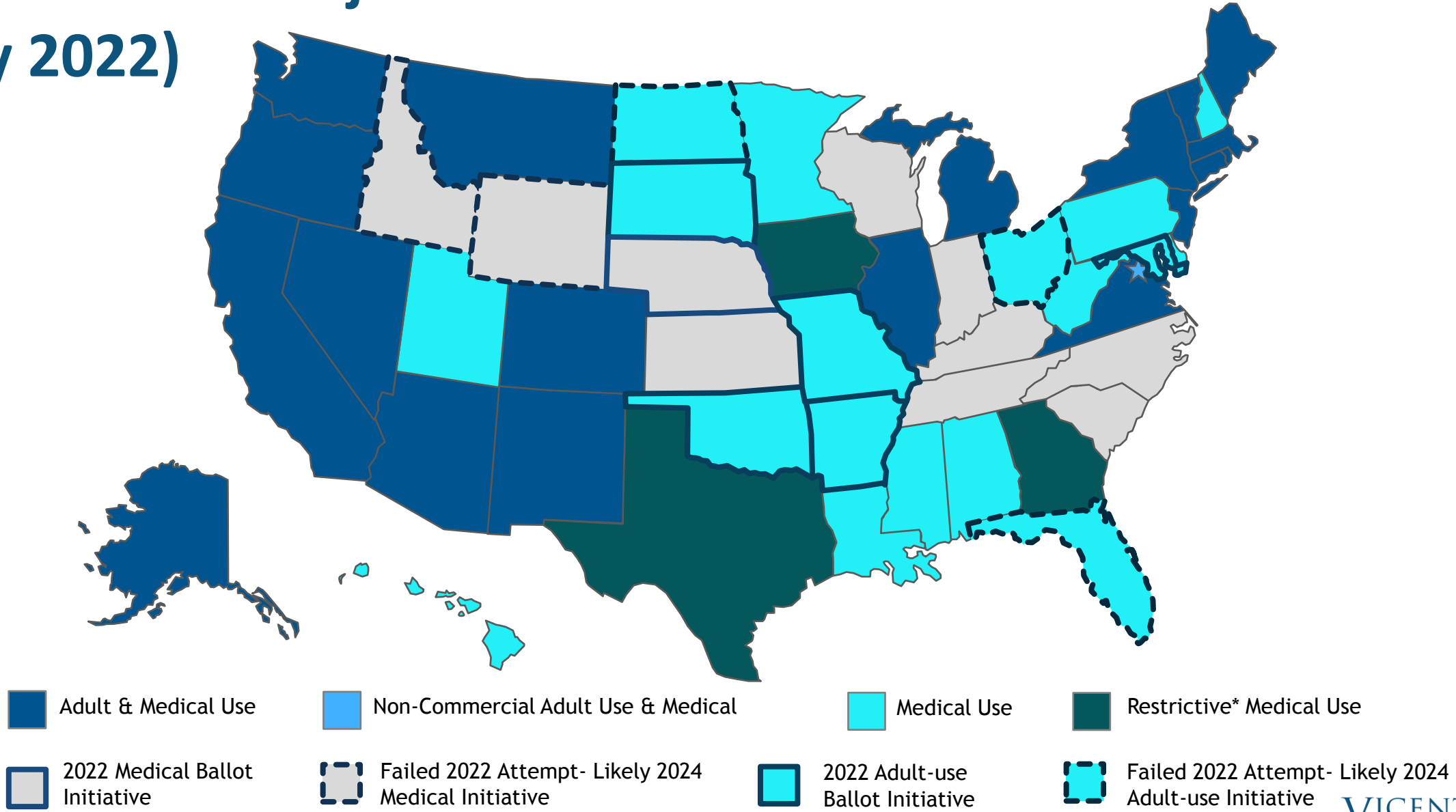
▶ Recreational

- 2012-2020

History of State Marijuana Reform



States With Marijuana Laws and 2022 Ballot Initiatives (July 2022)



Recent Federal Legislation

- ▶ July 21, 2022: Democratic Senate leadership introduced The Cannabis Administration and Opportunity Act
- ▶ April 1, 2022: the MORE Act passed the House of Representatives for the second year in a row
- ▶ Multiple other bipartisan cannabis reforms have been introduced in the House: SAFE Banking Act, HOPE Act, States Reform Act, and Veterans Equal Access Act

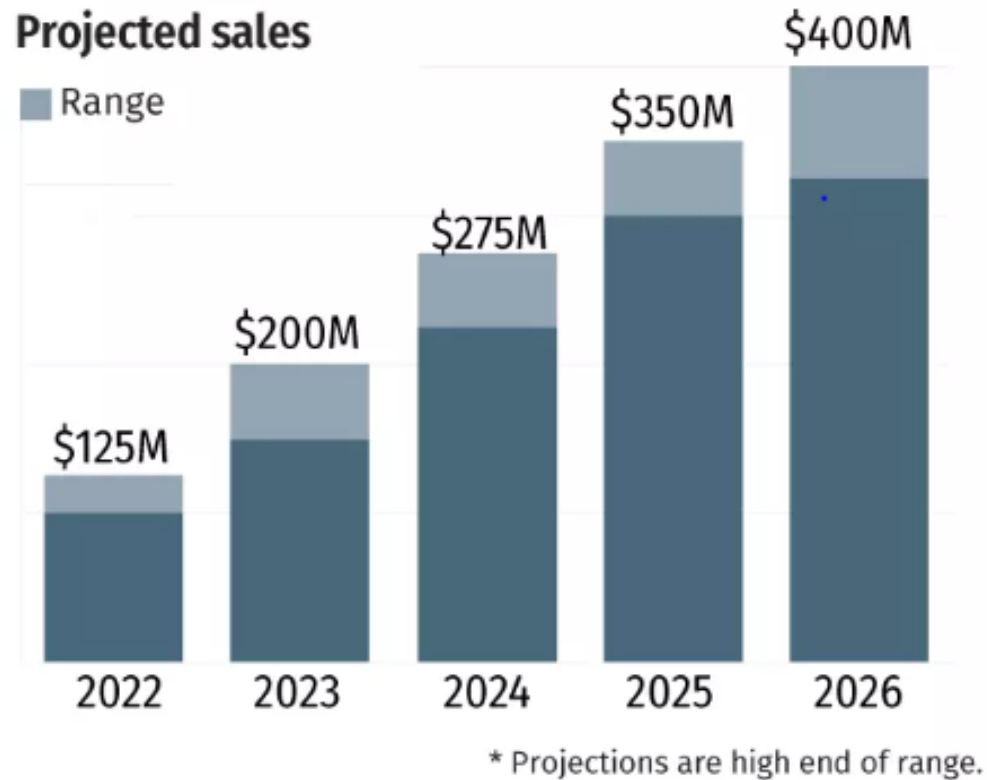
New Mexico Medical

- ▶ 1978: The Controlled Substances Therapeutic Research Act was the first medical cannabis law enacted by any state, allowing for medical use of cannabis through federally-approved research programs.
- ▶ 2007: Governor Bill Richardson signed into law Senate Bill 523, the Lynn and Erin Compassionate Use Act. This established New Mexico as the 12th state to legalize medical use.



New Mexico's Patients

New Mexico Recreational



- ▶ June 29, 2021: the Cannabis Regulation Act legalized the possession of up to two ounces of cannabis, 16 grams of concentrated marijuana, and 800 milligrams of edibles.
- ▶ The Act permits adults aged 21 and older to cultivate up to six cannabis plants at home, with a maximum of twelve mature plants per household.
- ▶ April 1, 2022: adult-use customers may begin to purchase cannabis.

Cannabis Legalization Effect on Criminal Law

Fewer Marijuana-Related Arrests:

- Police nationwide made an estimated 350,150 arrests in 2020 for marijuana-related violations compared to 545,602 in 2019.
- Marijuana arrests are down more than 50% from their peak in 2008, when police made over 800,000 arrests.

Persistent Racial Disparities:

- Despite similar usage rates, Black people are nearly **four times** more likely than White people to be arrested for marijuana possession.
- Differences in surveillance and traffic stops designed to detect the transport of drugs.

Probation & Parole

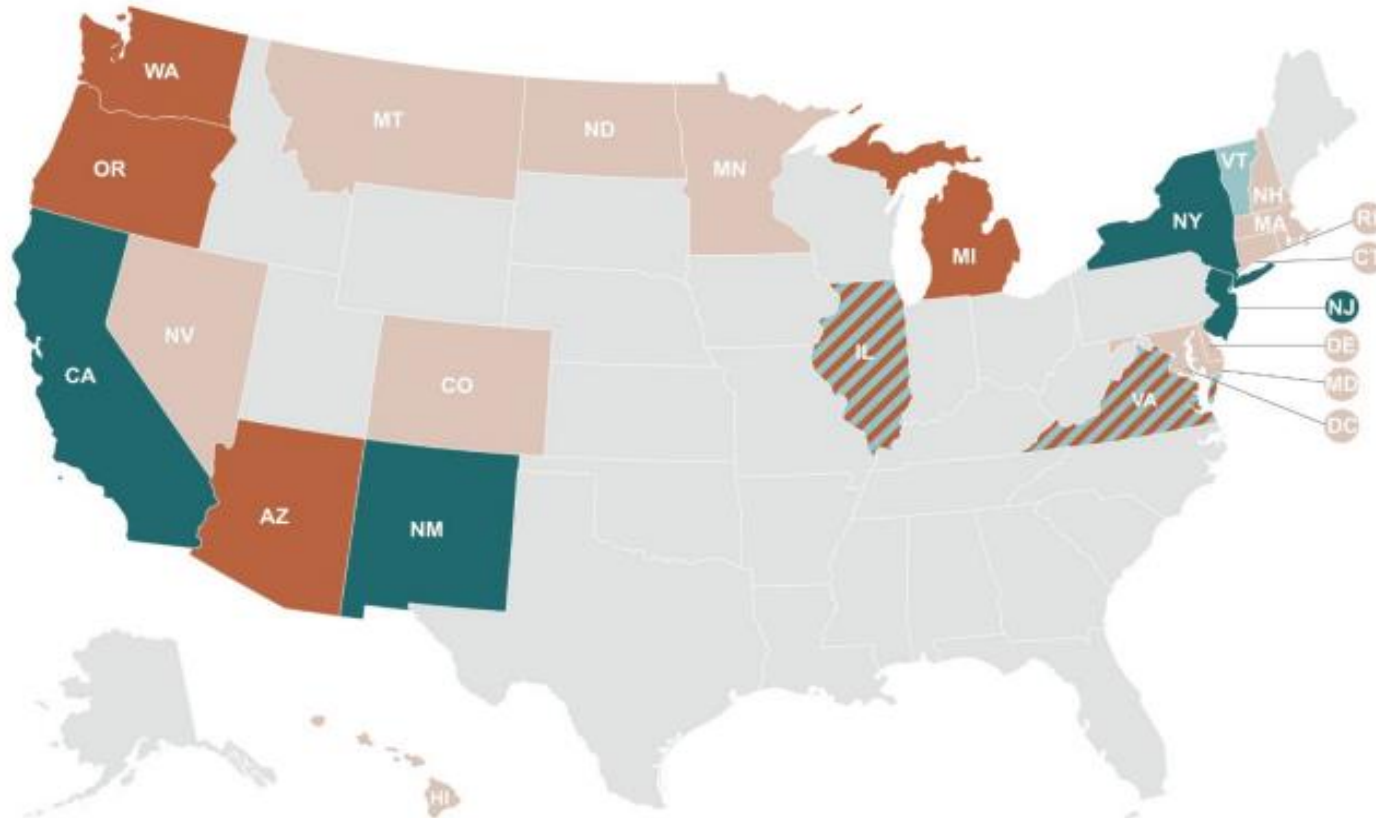
- A handful of states where marijuana is now legal have taken action to ensure it is available to individuals on probation or parole

Cannabis Legalization Effect on Criminal Law

Figure 1. Marijuana Record Relief Laws

State laws specifically authorizing expungement or sealing of marijuana convictions

■ Broader Automatic Relief ■ Limited Automatic Relief ■ Broader Relief By Petition ■ Limited Relief by Petition



Cannabis Legalization Effect on Employment

Employee Rights

- ▶ Laws in twenty-one states prohibit employers from discriminating against workers based on medical marijuana use
- ▶ Six states have passed laws protecting employment rights of recreational marijuana users as well, including statutes which limit an employer's ability to hire/fire workers for their recreational cannabis use
- ▶ All laws have some exemptions for federally mandated drug testing and occasionally for safety-sensitive positions

Cannabis Legalization Effect on Employment

Occupational Injuries

- ▶ Legalization states are not experiencing greater rates of occupational injuries and there is little or no evidence to support a statistical association between cannabis use and occupational accidents.
- ▶ Five years after coming into effect, medical marijuana laws were associated with a 33.7% reduction in the expected number of workplace fatalities.
- ▶ Post medical marijuana laws, worker compensation ("WC") claims have declined, including both the propensity to claim and the level of income from WC.

Cannabis Legalization Effect on Employment

Employee Insurance

- ▶ Five states permit eligible patients to be reimbursed for their medical cannabis-related costs through their works' compensation insurance (WCI) plans
 - ▶ *Connecticut, New Hampshire, New Jersey, New Mexico, New York*
- ▶ Seven states prohibit workers' compensation insurance plans from reimbursing medical marijuana-related costs
 - ▶ *Maine, Massachusetts, Minnesota, Florida, North Dakota, Ohio, Washington*
- ▶ In all other jurisdictions, the law is either silent on the issue or states that insurers are "not required" to reimburse employees

Cannabis Legalization Effect on Family Law

- ▶ Historically, judges have viewed cannabis use by parents as a negative factor when deciding child custody cases
- ▶ Today, legal uncertainty remains as to what effect a parent's use of marijuana will have in civil child custody disputes
- ▶ While some states have implemented laws to protect parents who use cannabis from losing their parental rights, decisions can vary greatly from state to state and judge to judge



Cannabis Legalization Effect on Family Law

Reason for Use is Irrelevant

- The family court doesn't care whether you use marijuana recreationally or medicinally - the main issue is marijuana's effect on the child's welfare.

The Judge May Exercise Discretion

- The law provides a guide that family courts or judges should follow, however, there is significant room in the law for a judge's discretion to determine your case's direction

Use Does Not Solely Determine Child Custody

- Senate Bill 406 states that the use of medical marijuana alone cannot be the basis for state intervention for child abuse or neglect
- Medical cannabis patient status, alone, cannot be used against a parent in custodial proceedings

Cannabis Legalization Effect on Youth Use

There is a large and growing body of evidence demonstrating that cannabis legalization does **not** lead to more youth using cannabis.

National Survey on Drug Use and Health found no spikes in youth cannabis use over the last 10 years

Youth Risk Behavior Survey conducted by the CDC found that lifetime cannabis use among high school students declined from 2013-2019

U.S. Department of Education analyzed surveys of high school students from 2009-2019 and concluded that there was "no measurable difference" in the percentage of students reporting current cannabis use

Cannabis Legalization & Taxes

- ▶ Section 280E of the Internal Revenue Code forbids businesses from deducting otherwise ordinary business expenses from gross income associated with the “trafficking” of Schedule I or II substances, as defined by the Controlled Substances Act
 - ▶ Advertising expenses
 - ▶ Wages and salaries
 - ▶ Travel expenses
- ▶ However, marijuana business owners can deduct the cost of goods sold
 - ▶ Inventory costs

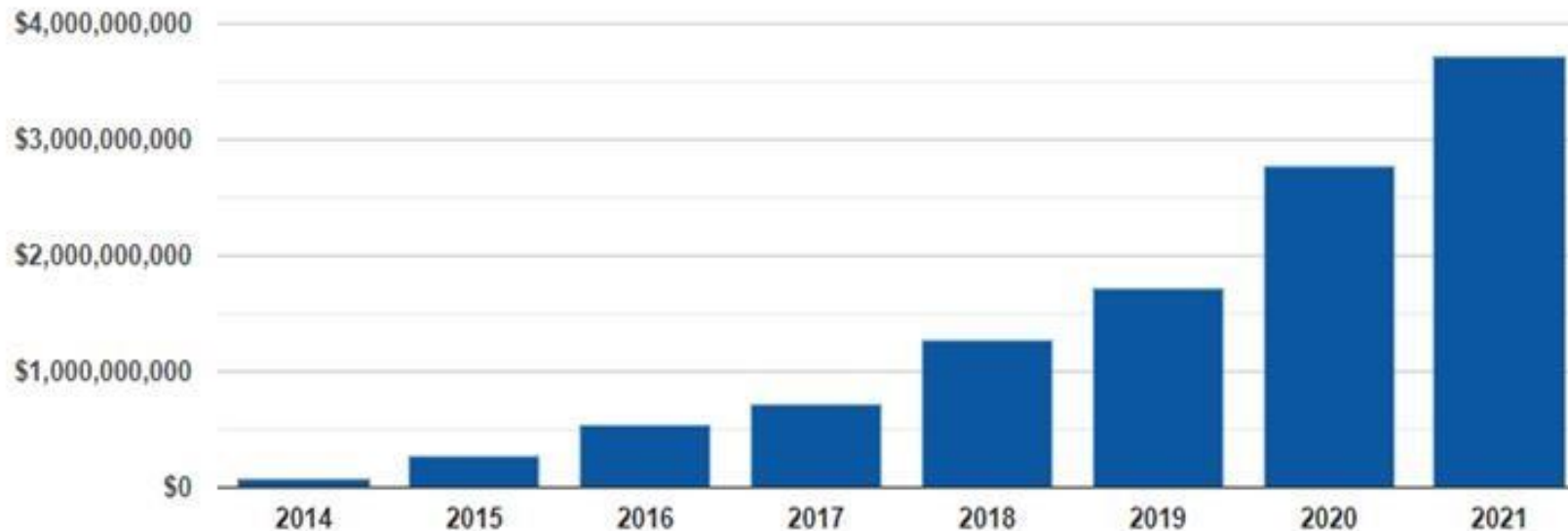
Cannabis Legalization & Taxes

- ▶ As of January 2022, marijuana taxes are levied on legal purchases of marijuana for recreational use in 12 states
- ▶ The possession of marijuana is legal, but taxable retail sales are not yet available in six states, including New Mexico
- ▶ States currently levy three types of marijuana taxes:
 - 1) Percentage of price
 - 2) Weight based
 - 3) Potency based

Cannabis Legalization & Taxes

- ▶ In 2021 alone, legalization states generated more than **\$3.7 billion** in cannabis tax revenue from adult-use sale

Combined Totals By Year (All States)



Litigation Issues & Concerns

- ▶ Business Partner Disputes
- ▶ Landlord-tenant
- ▶ Tax Issues
- ▶ Intellectual Property
- ▶ Class Actions
- ▶ Arbitration or litigation

Ultra Health, Inc. - Class Action Lawsuit

- ▶ January 1, 2022: Senate Bill 317 became effective, expanding the definition of behavior health services
- ▶ February 2022: Ultra Health sent a letter to the health insurers to affirm they will be making payments for qualified medical cannabis patients
- ▶ June 10, 2022: Ultra Health and six individual plaintiffs filed a lawsuit in the 2nd Judicial District Court against seven health insurance agencies to seek recovery for being unlawfully subjected to paying for the entire cost of medically necessary cannabis

Questions?



Thank You!



Brian Vicente



brian@vicentesederberg.com



www.VicenteSederberg.com