

Cannabis Legislation Year-in-Review

Article By:

Robert J. Guite

Although Congress failed to pass federal legislation legalizing cannabis in 2021, the push to end the federal prohibition of the ever-growing industry continues to gain steam. While Republican lawmakers have traditionally opposed decriminalization, more are beginning to support or even introduce new cannabis legislation.^[1] On top of that, recent polls indicate that an estimated 68% of Americans now support legalization^[2] with many consumers now viewing cannabis as less dangerous than alcohol.^[3] In addition, the industry's total addressable market has been forecasted to grow to \$84B by 2026.^[4]

Federal Efforts

On the federal level, the Democrats have thus far failed to receive enough bipartisan support to overcome the threat of a filibuster in the Senate. In 2021, neither the Cannabis Administration and Opportunity Act nor the Marijuana Opportunity Reinvestment and Expungement Act made much progress. Moreover, the SAFE Banking Act, which would have opened the door for cannabis businesses to access commercial banking services, has thus far failed in the Senate despite broad support in the House.^[5]

However, the Republican led States Reform Act might offer Congress the most realistic chance of decriminalizing cannabis on the federal level. This "compromise" bill, introduced in November, would give individual states the full authority to regulate or prohibit cannabis as they see fit. As a result, cannabis would be descheduled under the Controlled Substances Act, opening the door for cannabis companies to access commercial banking services. In addition, the bill would allow cannabis to be transported in interstate commerce and would also presumably void Section 280E of the federal tax code, which currently bars cannabis businesses from seeking federal tax deductions. Also, the bill would allow cannabis companies to obtain loans and other relief from the Small Business Administration. While passage of the States Reform Act would not result in federal legalization, it would remove many of the federal regulations currently burdening cannabis companies.

In addition, a new bipartisan bill recently introduced in the House seeks to require the FDA to regulate hemp-derived CBD as a food and beverage ingredient. Given the lack of clear federal guidelines ssregarding how much hemp-derived CBD can be added to a food or beverage, this bill would bring clarity to CBD companies by requiring the FDA to finally develop clear rules.^[6]

States Push Ahead

Despite Congress' failure to enact cannabis legislation, the list of states allowing for legal adult use of cannabis grew in 2021. New York, New Jersey, Connecticut, New Mexico and Virginia now belong to the list of states that allow for recreational cannabis consumption. These 18 states account for almost half of the U.S. population.^[7] In addition, medical cannabis became legal in several more states, raising the total to 36 states. On the other hand, in a rare setback, the South Dakota Supreme Court overturned a state ballot initiative that garnered 54% of the vote in favor of legalizing recreational cannabis.

As for hemp products, states have also begun to propose and enact statutes aimed at legislating the use of hemp in consumer products. For instance, Governor Newsom recently signed California's A.B. 45 into law. This will allow producers to include hemp, hemp derivatives, cannabinoids (e.g. CBD), and extracts in food and beverage products as well as dietary supplements, cosmetics, and even pet food.^[8]

Looking Ahead to 2022

Either the States Reform Act or the SAFE Banking Act could realistically be enacted into law in 2022. The 2022 midterm elections will certainly impact if and when either bill becomes law, but the lame-duck period immediately following the elections could provide reluctant legislators an attractive window for a bipartisan compromise. On the other hand, President Biden appears to still oppose recreational cannabis legalization, and it remains unknown whether he would veto any of these bills.^[9]

Even if Congress fails to act, states are beginning to introduce their own legislation to mitigate the hurdles federal prohibition imposes on cannabis businesses. For instance, legislatures in New York, New Jersey, and Missouri have recently introduced bills aimed at circumventing Section 280E of the U.S. tax code by allowing cannabis companies to deduct business expenses from their state taxes. In addition, Michigan has recently introduced a bill that emulates California's A.B. 45 and would allow hemp-derived CBD to be included in foods and dietary supplements.^[10]

While federal legalization did not take place in 2021, cannabis businesses should remain on the lookout for new state regulations and also begin to prepare for possible federal legislation that would open the door on interstate commerce, commercial banking access, and federal tax deductions.

**Skyler Hicks, a law clerk in Sheppard Mullin's San Francisco office, contributed to this article.*

FOOTNOTES

[1] See States Reform Act; Here's what's in the new Republican marijuana legalization bill – Leafly

[2] Support for Legal Marijuana Inches Up to New High of 68% (gallup.com)

[3] Cowen-Research-Themes-2022.pdf (pcdn.co)

[4] *Id.*

[5] A prior article on the SAFE Banking Act can be found here.

[6] What Is the CBD Product Safety and Standardization Act? – CBD Retail Trends

[7] 18 States, D.C. Legalized Weed U.S. – Where Is Marijuana Legal 2021? (esquire.com)

[8] A prior article on A.B. 45 can be found here.

[9] Psaki: Biden unmoved on marijuana legalization despite Schumer legislation – POLITICO

[10] Cannabis Bill Roundup: The Prefiling Season Kicks Off – Law360

Copyright © 2025, Sheppard Mullin Richter & Hampton LLP.

National Law Review, Volume XII, Number 4

Source URL: <https://natlawreview.com/article/cannabis-legislation-year-review>