

Alert

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Cannabis Industry Alert

Sessions Targets Pot, But Six Bills Could Keep the Industry Rolling

In May, Attorney General (AG) Jeff Sessions sent a letter to Congress that zeroed in on the Rohrabacher-Blumenauer Amendment, a cornerstone of federal cannabis legislation that has handcuffed the Department of Justice from using its resources to enforce the Controlled Substances Act (CSA) in states with marijuana-legalization laws. The amendment was added to the federal budget in 2014 — and has been renewed every year since — but the new AG warned that it could be contributing to a drug epidemic and violent crime. Sessions also recently sent letters critical of state marijuana laws and enforcement policy to Colorado, Washington, Oregon, and Alaska, which some supporters of legalized marijuana saw as an ominous sign of an impending crackdown. Anxiety among supporters only continued to grow as the House Committee on Rules blocked a floor vote to renew the Rohrabacher amendment on September 6.

However, these latest roadblocks may not be insurmountable. The Rohrabacher amendment may be blocked from the House floor, but the bipartisan Senate Appropriations Committee approved the amendment on July 27. The split means the amendment will still have a chance at inclusion in legislation — as the issue must now go before a joint conference committee for consideration. The amendment, which was set to expire on September 30, was extended through December 8. The AG also recently faced push-back (from his own employees, no less) when the Task Force on Crime Reduction and Public Safety, a group of prosecutors and federal law enforcement officials that Sessions appointed to investigate marijuana enforcement policy, reportedly recommended that the department stay in its lane and continue studying the effects of the more hands-off approach that the Obama administration implemented. These rebukes may not convince Sessions to abandon his vision of criminalization, but they suggest legalization isn't folding either. Additionally, a slew of marijuana reform bills that would affect the federal government's ability to pursue the cannabis industry are currently under consideration:

1. The Marijuana Justice Act of 2017 (S. 1689)

Introduced in the Senate on August 1 by Senator Cory Booker, this legislation would remove cannabis and tetrahydrocannabinols from the CSA and make it legal in the United States, subject to state law. This bill also contains a proposed rule that would require federal courts to expunge convictions for a marijuana use or possession offense entered by the court before enactment, and contains provisions for reviewing sentences for some federal crimes related to marijuana. The legislation has been hailed as the most comprehensive marijuana reform bill to have ever been introduced. Unlike other legalization bills, this bill's strong social justice platform could be the tipping point for many votes in Congress.

2. The Compassionate Access, Research Expansion and Respect States (CARERS) Act (H.R. 2920)

This bill was pruned and reintroduced in the House on June 16 after it failed to make it beyond congressional subcommittees in 2015. This bill would prevent the applicability of the CSA to people acting in compliance with state law. The bill would also require the attorney general to issue at least three research licenses under section 303 of the CSA to manufacture and distribute



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marijuana and marijuana-derivatives for research approved by the Food and Drug Administration. The bill would also remove cannabidiol (CBD) from the CSA. Some states allow the use of cannabidiol, which is non-psychoactive and used to treat nervous system diseases like epilepsy, but do not allow it to be produced. Removal from the CSA would no longer make it a federal crime for patients to import CBD from states that allow its production, so long as it contains less than 0.3 percent of THC. Bills solely focusing on amending the CSA to remove cannabidiol from the definition of marijuana are also pending in both the House and the Senate.

3. Secure and Fair Enforcement (SAFE) Banking Act of 2017 (Formerly known as the Perlmutter Amendment) (H.R. 2215 / S. 1152)

This new iteration of a marijuana bank bill was introduced in the House on April 27 and would prohibit federal regulators from prosecuting financial institutions that provide products or services to cannabis-related legitimate businesses in states where the drug is legal. This legislation would not require a bank to provide financial services to cannabis businesses. A variation of this bill was introduced in the Senate on May 17.

4. Small Business Tax Equity Act of 2017 (H.R. 1810)

Owning a small business usually entitles you to a range of tax deductions and credits, but the Internal Revenue Service (IRS) currently classifies owners of cannabis dispensaries under Internal Revenue Code Section 280E. As expected, this has been one of the biggest issues facing cannabis retailers. This Act, introduced in the House on March 30, would amend Section 280E to allow cannabis businesses in compliance with state law to take advantage of deductions associated with operational costs.

5. The Ending Federal Marijuana Prohibition Act of 2017 (H.R. 1227)

Bottlenecks in cannabis supply leave many patients stranded each month. This Act, introduced in the House on February 27, would clear some of the obstruction by removing marijuana and tetrahydrocannabinols from the CSA's schedule of controlled substances, except that it would remain unlawful to ship or transport marijuana from one state to another where it is intended to be received, possessed, sold, or in any manner used, in violation of that state law.

6. The Respect States and Citizens' Rights Act of 2017 (H.R. 2528)

This bill, introduced in the House on May 18, would not revoke the federal government's authority to criminally prosecute cannabis possession, distribution, dispensation, administration, or delivery of marijuana under the CSA, but it would amend the CSA to clarify Congress's intent not to legislate over or in place of state laws that legalize or criminalize cannabis.

While none of these bills are currently set for a vote, they set the framework for what future legislation will look like, and are issues that we will continue to follow closely.

If you want to learn more about the issues discussed in this Alert, please contact a member of Cozen O'Connor's Cannabis Industry Team.

Marijuana is still classified as a Schedule I controlled substance by the U.S. Drug Enforcement Agency, and as such it remains a federal crime to grow, sell and/or use marijuana. Any content contained herein is not intended to provide legal advice to assist with violation of any state or federal law.