



The MORE Act: House Plans Historic Vote on Federal Marijuana Legalization

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In December 2020, the House of Representatives [plans to vote](#) on H.R. 3884, the Marijuana Opportunity Reinvestment and Expungement Act of 2019 (MORE Act). The MORE Act is also [pending before the Senate](#). Among other things, the MORE Act would remove marijuana from the schedules of controlled substances under the [Controlled Substances Act](#) (CSA), legalizing many marijuana-related activities at the federal level. Commentators have noted that a vote on the MORE Act [would be the first time](#) the full House voted on a proposal to deschedule marijuana. This Legal Sidebar briefly summarizes the legal status of marijuana in the United States. It then outlines key provisions of the MORE Act before discussing selected considerations for Congress related to the bill.

The Legal Status of Marijuana

Under federal law, the plant *Cannabis sativa* L. and products derived from that plant are generally classified as [marijuana](#), with a couple of exceptions. (The statute uses an archaic spelling, “marihuana,” that was more common when Congress enacted the CSA in 1970, but this Sidebar uses the currently accepted spelling, “marijuana.”) One key exception relates to [hemp](#), a legal classification that includes cannabis and cannabis-derived products containing very low levels of the psychoactive cannabinoid [delta-9 tetrahydrocannabinol](#) (THC). Hemp [is not a controlled substance](#) subject to the CSA, though it remains subject to [other federal laws](#).

Congress classified marijuana as a [Schedule I controlled substance](#) when it enacted the CSA, meaning that marijuana is subject to the [most stringent level of federal control](#). Congress’s decision to place marijuana in Schedule I reflects a legislative [finding](#) that marijuana has a high potential for abuse, no currently accepted medical use, and “a lack of accepted safety for use . . . under medical supervision.” Under the CSA, it is legal to manufacture, distribute, and possess Schedule I controlled substances such as marijuana only in the context of [federally approved research studies](#), subject to exacting [regulatory requirements](#) designed to prevent abuse and diversion. Unauthorized activities involving marijuana are [criminal offenses](#); depending on the activity at issue and the amount of marijuana involved, such offenses may give rise to large fines and lengthy prison sentences.

In sharp contrast to the strict federal control of marijuana, many states take a more permissive approach to marijuana regulation. While [every state once banned marijuana](#), in recent decades many states have

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repealed or limited state marijuana prohibitions. As of November 2020, all but three states have changed their laws to permit at least some use of [cannabis for medical purposes](#). In addition, 15 states and the District of Columbia have removed state prohibitions on [recreational marijuana](#) use by adults age 21 or older.

Notwithstanding these changes to state laws, any activity involving marijuana that is not authorized under the CSA remains a [federal crime](#) anywhere in the United States, including in states that have purported to legalize medical or recreational marijuana. Thus, when states “legalize” a federally controlled substance such as marijuana, the sole result is to repeal or limit criminal controls of the substance [under state law](#). The Department of Justice (DOJ) deprioritized prosecution of [individual activities](#) involving [state-legal marijuana](#) under the Obama Administration. But, in 2018, DOJ issued [guidance](#) reaffirming the authority of federal prosecutors to exercise prosecutorial discretion to target federal marijuana offenses “in accordance with all applicable laws, regulations, and appropriations.” Various [practical considerations](#) and [appropriations limitations](#) prevent DOJ from prosecuting all violations of the CSA. However, even absent criminal prosecution or conviction, individuals and organizations engaged in marijuana-related activities that violate the CSA—including participants in the state-legal cannabis industry—may face [other legal consequences](#) arising from the federal prohibition of marijuana. These collateral consequences may affect areas such as [financial aid eligibility](#), [gun ownership](#), [bankruptcy](#), [tax deductions](#), and [immigration](#). Overall, the growing gap between federal and state marijuana regulation has led to [confusion](#) about the legal status of marijuana and raised numerous [legal](#) and [policy issues](#).

The MORE Act

The MORE Act aims to “decriminalize and deschedule cannabis, to provide for reinvestment in certain persons adversely impacted by the War on Drugs, [and] to provide for expungement of certain cannabis offenses.” Although the expungement provisions focus on federal offenses, the bill generally defines a “[cannabis offense](#)” to include both federal criminal offenses that are no longer punishable pursuant to the MORE Act and state criminal offenses that are no longer punishable (or that are designated as lesser offenses or subject to a reduced penalty) under any “State law authorizing the sale or use of cannabis.” Key provisions of the MORE Act include the following:

- **Federal legalization of marijuana.** The MORE Act would [remove marijuana and THC from the CSA](#) and direct the Attorney General to [promulgate a rule](#) removing those substances from the schedules of controlled substances. The bill would apply retroactively, [requiring expungement](#) of “each conviction or adjudication of juvenile delinquency for a Federal cannabis offense” entered by a federal court before the MORE Act’s enactment. It appears the MORE Act would require expungement of all CSA offenses involving cannabis, ranging from possession of small amounts of marijuana for personal use to large-scale trafficking. Individuals convicted of cannabis offenses in addition to other federal crimes would be [resentenced](#) as if they had been convicted only for the non-cannabis offenses.
- **Removal of some collateral consequences for marijuana-related activities.** As noted above, federal law currently imposes various collateral consequences arising from marijuana’s Schedule I status. The MORE Act would limit those consequences by removing marijuana from Schedule I and would also expressly prohibit the federal government from denying certain benefits based on a would-be recipient’s “use or possession of cannabis, or on the basis of a conviction or adjudication of juvenile delinquency for a cannabis offense.” Specifically, it would prohibit the denial of any “[Federal public benefit](#)”—a [defined term](#) that includes federal loans, grants, and contracts as well as benefits such as welfare, unemployment, and food assistance—or any “[benefit or protection](#) under the [immigration laws](#).” The bill would also bar certain [federally-](#)

[funded programs](#) from declining to provide services or financial assistance to an otherwise eligible small business because the business operates in the cannabis industry.

- **Cannabis tax and grant programs.** The MORE Act would impose a five percent [tax on cannabis products](#) (excluding prescription medications derived from cannabis). Revenues from the tax would be appropriated to several grant programs:
 - A Community Reinvestment Grant Program providing services for “individuals most adversely impacted by the War on Drugs,” including [job training](#), health education, mentoring, literacy programs, and [substance use treatment programs](#);
 - A Cannabis Opportunity Program providing funds for [eligible states](#) to [make loans to assist small businesses](#) in the cannabis industry that are owned and controlled by socially and economically disadvantaged individuals; and
 - An Equitable Licensing Grant Program providing funds for eligible states to develop and implement [equitable cannabis licensing programs](#) that “minimize barriers to cannabis licensing and employment for individuals most adversely impacted by the War on Drugs.”
- **Cannabis industry participation.** The MORE Act would direct the Bureau of Labor Statistics to gather [demographic data](#) about cannabis business owners and employees.

Considerations for Congress

The MORE Act raises multiple legal considerations related to marijuana regulation and controlled substances law more generally. First, the MORE Act would decriminalize marijuana at the federal level but would not directly alter the status of cannabis under state law. Under the CSA, states are free to regulate substances that are not subject to the CSA or other federal law provided there is no “positive conflict . . . such that the [CSA and state law] cannot consistently stand together.” [Several states](#) currently ban the use of marijuana for both medical and recreational purposes. Others permit the use of some cannabis products for medical purposes while banning recreational use. The MORE Act would not alter those state legal regimes; nor would it affect prior state law criminal convictions for cannabis-related offenses. Thus, if the MORE Act became law, it could create a new divide between federal and state law—essentially the reverse of the current [marijuana policy gap](#), since federal marijuana law would become less strict than some state laws. The MORE Act could also highlight the inconsistency between marijuana laws in different U.S. jurisdictions by repealing the uniform federal prohibition and leaving in place a patchwork of varying state laws.

Congress may be content to allow states to [experiment with varying approaches](#) to marijuana regulation. In the alternative, Congress might prefer a more uniform approach, whether that approach is to criminalize or decriminalize marijuana, or something in between. However, while Congress can pass legislation creating a uniform federal policy, there are limits to its ability to affect state law. Congress [lacks the constitutional authority](#) to alter state criminal law, though it is possible Congress could preempt state law through [Commerce Clause](#) legislation (as it did in the [2018 farm bill](#) with regard to the [interstate transportation of hemp](#)). As an alternative, Congress might be able to encourage states to change their laws through the use of the [spending power](#). Funding conditions in the MORE Act might indirectly encourage states to minimize state law criminal consequences related to cannabis. The Act would make certain federal funds available only to “[eligible States](#)” that have taken steps to expunge cannabis convictions automatically and eliminate “penalties for persons under parole . . . or other State or local criminal supervision for a cannabis offense.” Congress could also invoke its spending power to encourage states to regulate marijuana more stringently, and has previously used the spending power to shape drug policy in targeted ways. For instance, since the District of Columbia decriminalized marijuana in 2014,

Congress has annually enacted an appropriations rider that prohibits the District from expending federal funds “to legalize or otherwise reduce penalties associated with the possession, use, or distribution of any schedule I substance under the Controlled Substances Act[.]” While that rider applies only to the District of Columbia, other appropriations riders more generally prohibit the use of any federal funds “to legalize or otherwise reduce penalties associated with” any Schedule I controlled substance or, with limited exceptions, “for any activity that promotes the legalization” of any Schedule I controlled substance.

Second, the MORE Act amends the CSA but does not address other existing federal regulatory regimes that apply to cannabis. For instance, the Food and Drug Administration (FDA) currently regulates certain cannabis products under the Federal Food, Drug, and Cosmetic Act (FD&C Act). The FD&C Act applies to all prescription drugs and prohibits the “introduction or delivery for introduction into interstate commerce of any . . . drug . . . that is adulterated or misbranded.” Because chemicals found in cannabis are used as active ingredients in certain prescription drugs, FDA has taken the position that cannabis and cannabis-derived compounds including THC and cannabidiol (CBD) are drugs that require FDA approval before they may be added to foods, sold as dietary supplements, or marketed for therapeutic use. Nonetheless, unapproved cannabis-derived products, especially those containing CBD, are widely commercially available, and FDA has focused enforcement actions on products that pose the greatest risk to consumers. If Congress chooses to deschedule marijuana under the CSA, it could also consider whether to alter the regulatory regime under the FD&C Act. In addition, or in the alternative, Congress could decide to impose new federal regulations specific to cannabis. As an example, legislation has been introduced that would impose new federal licensing requirements on marijuana businesses.

Third, it is possible that any legislation relaxing the CSA’s restrictions on marijuana could implicate the United States’ international treaty obligations. As discussed in greater detail in a recent CRS report, the United States is a party to drug control treaties including the Single Convention on Narcotic Drugs of 1953 and the Convention on Psychotropic Substances of 1971. Both treaties require signatories to take various steps to control cannabis, including criminalizing unauthorized manufacture, sale, and possession and strictly regulating any legal cultivation. The two treaties are not self-executing—meaning that they do not have the same status as judicially enforceable domestic law—but failure to abide by its treaty obligations could expose the United States to international legal consequences. However, it is also possible that the status of cannabis under the applicable treaties could change. Based on a recommendation by the World Health Organization, the United Nations Commission on Narcotic Drugs plans to vote in December 2020 on a proposal to reschedule cannabis under the drug control treaties.

Finally, the MORE Act decriminalizes cannabis at the federal level but does not apply to controlled substances other than marijuana and THC. Some have called for the general decriminalization of personal drug use, and in November 2020, Oregon passed a ballot initiative to decriminalize the personal use of certain Schedule I and II controlled substances. The same day, District of Columbia voters passed a ballot measure placing prosecution for the use and sale of certain psychedelic plants and fungi “among the Metropolitan Police Department’s lowest law enforcement priorities.” (Both jurisdictions had previously decriminalized marijuana use for medical and recreational purposes. The 2020 D.C. ballot initiative was tailored to comply with the appropriations rider discussed above that limits the District’s ability to decriminalize Schedule I controlled substances.) The recent reforms in Oregon and the District of Columbia created a divergence that falls well short of the divide between federal and state marijuana laws. However, current trends suggest that there may be a broader movement toward decriminalizing controlled substances. Comprehensively addressing such changes is outside the scope of the MORE Act, but Congress may wish to monitor developments in this area when considering future legislation.

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