
Congressman Earl Blumenauer

Third District of Oregon

THE PATH FORWARD: FIXING FEDERAL CANNABIS POLICY

National support for federal cannabis legalization is at an all-time high, and trends show that support will continue to grow. Following the 2018 election, all but three states have legalized some form of cannabis within their borders, with 97% of Americans living within those 47 states and nearly 25% of Americans living in states with full cannabis legalization laws. The disparity between federal and state laws will continue to grow as more and more ballot initiatives pass in future elections. Congress must address this disparity, and polling clearly shows that voters want Congress to federally decriminalize cannabis.

Congress is out of step with the American people and the states on cannabis. The 2018 election gave Democrats control of the House of Representatives. If everybody does their part, this Congress will finally reform cannabis legislation with some form of descheduling.

The path forward has never been clearer: the federal government must end the failed prohibition on cannabis and allow states to continue to take the lead in the regulation of cannabis. As we work towards that ultimate goal, Congress must address the current discrepancies between state and federal laws.

There are issues that can be addressed this year, including access to banking, research, and veterans' access for medical cannabis. The ability to move on these popular and badly needed reforms will give an indication about how fast and how far we can make progress. We still believe that by starting in this framework, full legalization and other needed reforms are entirely possible. This is no longer controversial.

This is a blueprint for how most committees in the House can play an active role to bring this about.

STEPS TOWARD SUCCESS

Cannabis legislation is an important agenda item that will make a big difference for the American public. It's impossible to overstate the impact that these reforms could have on criminal justice reform, health care, opioid addiction and protection of our children. Almost every standing House committee has jurisdiction over some aspect of cannabis policy, including:

- **House Judiciary Committee** on the scheduling of cannabis and related criminal justice concerns;
- **House Veterans Affairs Committee** on safe and equal access to medical cannabis for our veterans and intramural cannabis research at the Department of Veterans Affairs (VA);
- **House Energy and Commerce** on cannabis research;
- **House Financial Services Committee** on barriers to the safe access of banking services and capital;
- **House Ways and Means Committee** on the unequal taxation of cannabis businesses;
- **House Small Business Committee** on access to Small Business Administration resources for cannabis businesses;
- **House Natural Resources Committee** on cannabis and tribal sovereignty;
- **House Oversight and Government Reform Committee** on access to federal government jobs for veterans who use cannabis in compliance with their state laws; and
- **House Education and Labor Committee** on access to higher education loans for students who have been convicted for cannabis possession.

In addition to continuing the work needed to once and for all legalize cannabis at the federal level (*options for legalization below*), committees should consider legislation that would responsibly narrow the cannabis policy gap—the gap between federal and state cannabis laws—before the end of the year. These policy issues (*specific legislative options listed below*) should include:

- Restorative justice measures that address the racial injustices that resulted from the unequal application of federal cannabis laws;
- Equal access to pain and PTSD cannabis treatments for our veterans through the Department of Veterans Affairs (VA) and tribal members through the Indian Health Services (IHS);
- Protection for state cannabis programs;
- Removal of barriers to cannabis research;
- Protect private property from civil asset forfeiture;
- Protections of employment of opportunities;
- Access to financial services; and
- Equal taxation for cannabis businesses.

Our ability to turn these bills into law depends on the Senate. While the Senate has been slower on cannabis policy reform than the House and the American people, it beginning to catch up. We must build on this momentum.

Cannabis will be legal at the federal level, and states will be allowed to responsibly regulate its use.

NOW IS OUR MOMENT

This movement is cresting.

Over the last decade, I've worked to build understanding and consensus on the need for reform. We've organized a bipartisan coalition in Congress to support our efforts. The public is demanding action. Now, is our moment.

OUR PROGRESS

On February 13, the House Financial Services Subcommittee on Consumer Protection and Financial Institutions held a [hearing](#) on cannabis banking, and on March 27, the Committee [passed](#) the SAFE Banking Act, by a [45-15](#) vote with 11 Republicans voting yes. The House will likely vote on the bill in the next few months.

On April 30, the House Veterans' Affairs Subcommittee on Health held a [hearing](#) on three cannabis bills— VA Medicinal Cannabis Research Act ([HR 712](#)), Veterans Equal Access Act ([HR 1647](#)), and Veterans Cannabis Use for Safe Healing Act ([HR 2191](#)).

On June 19, the House Small Business Committee held a [hearing](#) on opportunities the legitimate cannabis industry presents for small businesses in states with legal cannabis, as well as entrepreneurs from traditionally underserved communities.

On June 20, the House Veterans Affairs Committee held a legislative hearing on the VA Survey of Cannabis Use Act, a bill to provide cannabis training for VA health providers, VA Medicinal Cannabis Research Act, and the Veterans Equal Access Act.

On June 20, the House passed the Blumenauer-McClintock-Norton amendment ([H.Amdt.398](#)) to the fiscal year (FY) 2020 appropriations bill to restrict the Department of Justice from interfering with state adult-use programs by a [267-165](#) vote. The House also passed an amendment ([H.Amdt.397](#)) that prohibits the Department of Justice from interfering with tribal cannabis programs by voice vote.

On July 10, House Judiciary Subcommittee on Crime, Terrorism and Homeland Security held a [hearing](#) on racial justice and the need for reform of our nation's cannabis laws.

On July 23, the Senate Banking Committee held a [hearing](#) on cannabis banking.

On July 23, Judiciary Committee Chairman Jerry Nadler introduced the Marijuana Opportunity Reinvestment and Expungement Act, a comprehensive decriminalization bill. This important bill:

- Decriminalizes marijuana at the federal level by removing the substance from the Controlled Substances Act. This applies retroactively to prior and pending convictions, and enables states to set their own policy.
- Requires federal courts to expunge prior convictions, allows prior offenders to request expungement, and requires courts, on motion, to conduct re-sentencing hearings for those still under supervision.
- Creates the Opportunity Trust Fund, which includes three grant programs:

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- The Community Reinvestment Grant Program provides services to the individuals most adversely impacted by the War on Drugs, including job training, re-entry services, legal aid, literacy programs, youth recreation, mentoring, and substance use treatment.
 - The Cannabis Opportunity Grant Program provides funds for loans to assist small businesses in the marijuana industry that are owned and controlled by socially and economically disadvantaged individuals.
 - The Equitable Licensing Grant Program provides funds for programs that minimize barriers to marijuana licensing and employment for the individuals most adversely impacted by the War on Drugs.
 - Opens up Small Business Administration funding for legitimate cannabis-related businesses and service providers.
 - Provides non-discrimination protections for marijuana use or possession, and for prior convictions for a marijuana offense.
 - Prohibits the denial of any federal public benefit (including housing) based on the use or possession of marijuana, or prior conviction for a marijuana offense.
 - Provides that the use or possession of marijuana, or prior conviction for a marijuana offense, will have no adverse impact under the immigration laws.
 - Requires the Bureau of Labor Statistics to collect data on the demographics of the industry to ensure people of color and those who are economically disadvantaged are participating in the industry.

On September 25, the House of Representatives passed H.R. 1595, the Secure And Fair Enforcement (SAFE) Banking Act by a 321-103 vote. 229 Democrats, 91 Republicans, and 1 Independent supported the bill's passage.

REFERENCE ADDITIONAL INFORMATION

TOP PRIORITY: LEGALIZE (DESCHEDULE) CANNABIS

By the end of the 116th Congress, we must federally deschedule cannabis. Similar to the end of alcohol prohibition, state and local cannabis laws would not be affected. These four bills are examples of comprehensive legislation to deschedule cannabis on the federal level, leaving the brunt of cannabis regulation to the states:

- [Marijuana Revenue and Regulation Act](#) would federally legalize, regulate, and tax cannabis, similar to the treatment of alcohol. States would still be able to regulate cannabis within their borders.
- [Marijuana Freedom and Opportunity Act](#) would (1) decriminalize cannabis by removing it from the list of scheduled substances under the U.S. Controlled Substances Act of 1970; (2) protect children from cannabis advertising by maintaining the Department of Treasury's authority to regulate cannabis advertising in the same way it does tobacco advertising to ensure that cannabis businesses aren't allowed to target children in their advertisements; and (3) incentivize record sealing and expungement programs by creating a grant program to encourage state and local governments to administer, adopt, or enhance expungement or sealing programs for cannabis possession convictions.
- [Ending Federal Marijuana Prohibition Act](#) would take cannabis off the federal controlled substances list and remove criminal penalties for importing, exporting, manufacturing, distributing or possessing cannabis with the intent to distribute. This would put states in full control of cannabis policy and regulation within their borders.
- [Marijuana Justice Act](#) would (1) remove cannabis from the U.S. Controlled Substances Act, thereby ending the federal criminalization of cannabis; (2) incentivize states to mitigate existing and ongoing racial disparities in state-level cannabis arrests; (3) expunge federal convictions specific to cannabis possession; (4) allow individuals currently serving time in federal prison for cannabis-related violations to petition the court for resentencing; and (5) create a community reinvestment fund to invest in communities most impacted by the failed War on Drugs.

OTHER OPPORTUNITIES FOR ACTION

As mentioned in the timeline, if full legalization cannot be enacted immediately, the House should responsibly close the cannabis policy gap—the gap between federal and state cannabis laws.

- [Responsibly Addressing the Marijuana Policy Gap Act](#) would comprehensively tackle this issue.

There is also standalone legislation that is drafted and ready for quick House consideration to lessen the burden that cannabis prohibition has placed on patients, including veterans; businesses; and those hit hardest by the failed War on Drugs.

Criminal Justice and Equity

Decades of failed drug policy have disproportionately impacted [communities of color](#). African Americans are arrested for violating cannabis possession laws at nearly four times the rates of white Americans; yet, both groups consume cannabis at roughly the same rates.

- Provisions in the [Marijuana Justice Act](#) would (1) incentivize states to mitigate existing and ongoing racial disparities in state-level cannabis arrests; (2) expunge federal convictions specific to cannabis possession; (3) allow individuals currently serving time in federal prison for cannabis-related violations to petition the court for resentencing; and (4) create a community reinvestment fund to invest in communities most impacted by the failed War on Drugs. (Note: The bill would also deschedule cannabis, and more information about the bill is listed above.)
- The [Realizing Equitable & Sustainable Participation in Emerging Cannabis Trades \(RESPECT\) Resolution](#) would show congressional support for equity in the cannabis industry, seeking both economic and reparative justice that ensures that disenfranchised communities will be able to benefit equally in the emerging legal and regulated industry.

Access to Care for Our Veterans

Currently, the Department of Veterans Affairs (VA) specifically prohibits its medical providers from completing forms brought by their patients seeking recommendations or opinions regarding participation in a state medical cannabis program, forcing military veterans to seek the advice of a private, out-of-network physician.

- The [Veterans Equal Access Act](#) would authorize VA physicians and other health care providers to provide recommendations and opinions regarding the use of medical cannabis to veterans who live in medical cannabis states.

Protect State Cannabis Laws

Forty-six states have cannabis laws that conflict with federal cannabis laws. Congress has enacted an appropriations amendment—the Blumenauer-Joyce or Leahy amendment—that prevents the federal government from interfering with state medical cannabis laws. We must expand this amendment to address state adult-use cannabis laws and to codify it so that protections do not rely on the annual appropriations process.

- **[Strengthening the Tenth Amendment Through Entrusting States \(STATES\) Act](#)** would amend the U.S. Controlled Substances Act to allow each state or tribe to determine how best to address commercial cannabis activity within its own borders. Additionally, state-approved commercial cannabis activity will cease to be considered drug trafficking, and proceeds from and assets used in legal cannabis operations would not be subject to forfeiture by the Department of Justice.
- **[Restraining Excessive Federal Enforcement & Regulations of Cannabis Act \(REFER\) Act](#)** would prohibit federal government from intrusion in states and municipalities that have updated their laws regarding cannabis use, possession, cultivation, and distribution.

Promoting Research

Because the federal government classifies cannabis as a Schedule I drug, research on the health effects of cannabis and cannabinoids has been limited in the United States, leaving patients, health care professionals, and policymakers without the information they need to make fully-informed decisions regarding the use of cannabis and cannabinoids. The National Academies of Sciences, Engineering, and Medicine has reported that these barriers “[represent a public health problem](#).”

- **[Medical Marijuana Research Act](#)** would remove barriers inhibiting medical cannabis research by creating a new, less cumbersome registration process specifically for cannabis research; reducing approval wait times, costly security measures, and additional, unnecessary layers of protocol review; and allowing for the private manufacturing and distribution of cannabis for research purposes.
- **[VA Medicinal Cannabis Research Act](#)** would allow for medical research into the safety and efficacy of medicinal cannabis usage on veterans diagnosed with PTSD, chronic pain, and other illnesses and injuries by specifically authorizing the Department of Veterans Affairs to conduct and support research regarding medicinal cannabis; and (2) require the VA to report to Congress on how it intends to exercise that authority.
- **[Marijuana Data Collection Act](#)** would require the National Academy of Sciences to create a federally recognized report on the status of state-level cannabis legalization policies, including both medical and non-medical use, and the effects of cannabis legalization on public health, safety, the economy, the criminal justice system, and more.

Protecting Employment Opportunities

The federal government requires as a condition for employment that all civilian employees at executive branch agencies be prohibited from using federally illegal substances—even if the substance is state-legal and the use is off duty. This requirement means that many Americans (including veterans), who use cannabis to treat chronic pain and PTSD in compliance with their state laws, are precluded from employment with the federal government, the nation’s largest employer of veterans.

- [Fairness in Federal Drug Testing Under State Laws Act](#) would protect federal employment opportunities and treatment options for veterans and other civilian federal agency employees residing in a state or territory where their use of medical cannabis is legal.

Commonsense Access to Banking Services

Although 31 states have legalized medical cannabis, because it is still a Schedule I drug federally, the majority of traditional banking institutions refuse to work with cannabis-related businesses. These businesses are often forced to operate as cash-only, while at the same time missing out on the traditional financial and lending opportunities given to other businesses. Not only is this bad for business, it is a public safety issue.

- [Secure and Fair Enforcement \(SAFE\) Banking Act](#) would allow cannabis and cannabis-related businesses that are legal under state law to access financial services in the banking system and give law enforcement the ability to monitor these transactions. *(See update about the bill above.)*

Cannabis Business Tax Equity

Under current law, businesses may generally deduct related business expenses for income tax purposes. In addition, businesses may be eligible to claim certain tax credits as provided under the tax code. Section 280E of the tax code provides that any person who sells Schedule I or Schedule II substances may not claim tax deductions or credits. As such, cannabis businesses operating in compliance with state law may not deduct the common expenses of running a small business, such as rent, most utilities, and payroll. In addition, these businesses are barred from claiming tax credits, including those intended to incentivize energy efficiency, research and development, or hiring veterans and other disadvantaged groups

- [Small Business Tax Equity Act](#) would create an exception in the tax code to allow businesses operating in compliance with state law to claim deductions and credits associated with the sale of cannabis like any other legal business.