

Cannabis Industry Quarterly Update

Q2 – 2024

A quarterly update from Benesch’s Cannabis Industry Group

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Key Issues

Biden administration formally proposes moving marijuana to Schedule 3

Attorney General Merrick Garland has proposed reclassifying marijuana to Schedule III of the Controlled Substances Act, following President Biden's 2022 directive to review its classification. This change, which reflects substantial evidence against its Schedule I status, will undergo a 60-day public comment period before finalization. If enacted, this reclassification could alleviate heavy tax burdens on marijuana businesses and facilitate medical research. However, synthetic cannabinoids and hemp-derived THC are excluded from this proposal, and further legislative action is required for comprehensive federal cannabis reform.

Senate Majority Leader Chuck Schumer of New York, Senate Finance Chairman Ron Wyden of Oregon and Sen. Cory Booker of New Jersey [applauded](#) the Justice Department’s announcement that it would move cannabis from Schedule I to Schedule III under the federal Controlled Substances Act. They also said that it didn’t solve problems like race-based discrimination, which was created by federal prohibition. Instead, they [promoted](#) a bill that would remove cannabis from the Controlled Substances Act entirely, while adding new federal regulations and oversight.

In the Senate, majority leader Chuck Schumer [holds](#) the power to call a floor vote for the **Secure and Fair Enforcement Regulation (SAFER) Banking Act (S. 2860)**, legislation that intends to provide the green light for financial institutions to serve the cannabis industry without fear of penalty. In particular, Schumer is [one of 36 senators](#) who has signed on to sponsor or co-sponsor the bill, which the Senate Banking Committee [advanced](#) in a 14-9 vote in late September, with three Republicans backing the measure. In September last year, the SAFER Banking Act [cleared](#) the Senate Banking Committee by a vote of 14-9, marking the first time the

Key Issues (continued)

cannabis legislation will get a full floor vote in the Senate. After the funding issue is solved, Schumer has suggested that SAFER could soon be sent to the president's desk. The bill has passed through the House seven times but has continually faced roadblocks before being brought into law.

Schumer [said](#) he planned to bring the bill "to the floor for a vote as quickly as possible." Schumer also [said](#) he was committed to including criminal justice provisions, like the **Harnessing Opportunity by Pursuing Expungement (HOPE) Act**, to the SAFER Banking Act, as well as the **Gun Rights and Marijuana (GRAM) Act**, which would allow state-legal cannabis consumers to purchase and possess a firearm. A Senate staffer told Marijuana Moment that there haven't been any substantive changes in this latest version of the bill, except that language around fair hiring in banking was removed because it has already been addressed in the most recent **National Defense Authorization Act (NDAA)**.

Despite Schumer's optimism, many are skeptical of the bills' likelihood of success. Most advocates and stakeholders are awaiting action on a bipartisan cannabis banking bill that cleared a Senate committee last September and is now awaiting floor action before potentially moving to the House.

Similar to SAFER but with a [narrower](#) scope, the **Clarifying Law Around Insurance of Marijuana (CLAIM) Act** provides a specific safe harbor for insurance companies that serve the cannabis industry. As for financial support, the **Small Business Tax Equity Act of 2023** would exempt cannabis sales conducted in compliance with state law from the prohibition of 26 U.S.C. § 280E, thereby allowing businesses to deduct standard business expenses from their taxes.

Legislators [introduced](#) two companion bills to legalize and regulate CBD in early 2023. The **Hemp and Hemp-Derived CBD Consumer Protection and Market Stabilization Act of 2023** would make the use of hemp and its derivatives, including CBD, as a dietary ingredient in dietary supplements, lawful under federal law, provided that the ultimate dietary supplement is compliant with the Federal Food, Drug, and Cosmetic Act. Similarly, the **CBD Product Safety and Standardization Act of 2023** would require the FDA to develop regulations on CBD products, including the maximum amount of CBD per serving, packaging and labeling requirements, and conditions of intended use. The **Industrial Hemp Act 2023**, introduced in the House and Senate, would reduce regulatory burdens on farmers who grow industrial hemp for non-extraction purposes.

Some bills, like the **Marijuana Opportunity Reinvestment and Expungement (MORE) Act**, would [grant](#) the federal government primary enforcement authority. The **MORE Act** aims for full federal legalization through de-scheduling, focusing on equity provisions, including expungement for certain cannabis offenses and a community reinvestment program. The MORE Act was introduced in the House in September and has yet to be passed by the committee. Other legalization bills, like the **States Reform Act of 2023** and the **Strengthening the Tenth Amendment Through Entrusting States (STATES) 2.0 Act**, would defer much of the enforcement authority to the states. Both bills would remove cannabis from the **Controlled Substances Act (C.S.A.)** entirely and task the Food and Drug Administration (F.D.A.) with regulation of cannabis products. The States Reform Act adopts a dual federal-state regulatory model, like alcohol regulation. Under the **STATES 2.0 Act**, non-legal states would be free to maintain the prohibition of cannabis. Still, interstate commerce in state-law-compliant cannabis would be legalized, so non-legal states would not be able to prohibit shipments to and from legal states from crossing through their borders. Both bills were introduced in late 2023 and have yet to pass through committee.

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Key Issues (continued)

The [Marijuana 1-to-3 Act of 2023](#) would direct the Attorney General to transfer cannabis from Schedule I to Schedule III of the C.S.A. without clarifying or addressing any other provisions of federal law. However, there were other pieces of rescheduling-related legislation introduced last year. The [Deferring Executive Authority \(D.E.A.\) Act](#) would limit the Drug Enforcement Administration's (D.E.A.'s) ability to reschedule cannabis without Congressional approval. The D.E.A. Act sets forth a process for Congressional review of any cannabis rescheduling decision made by the D.E.A. and mandates Congressional approval before any rescheduling decision can take effect. Neither bill has yet passed through the committee.

When addressing equity, two pieces of legislation introduced in 2023 would facilitate expunging or sealing criminal records for non-violent cannabis offenses. The [Harnessing Opportunities by Pursuing Expungement \(HOPE\) Act of 2023](#) targets state criminal records and would make \$20 million in grant funding available to state and local jurisdictions over ten years to ease the administrative burdens of expungement and record sealing. Grant funds could be used for a variety of things including to develop automatic expungement processes, seal records, and support legal aid clinics that assist individuals with the expungement process. At the federal level, the [Clean Slate Act of 2023](#) would require the automatic sealing of records related to certain non-violent cannabis charges. Additionally, the Free to Grow Act, introduced in March through the committee, would allow individuals with felony convictions to own or manage hemp businesses.

Source: Benesch

Industry Regulations

Federal

The reintroduction of the Cannabis Administration and Opportunity Act targets to end federal prohibition of Cannabis

US Senators Cory Booker, Charles E. Schumer, and Ron Wyden have reintroduced the Cannabis Administration and Opportunity Act (CAOA) to end the federal prohibition of cannabis by removing it from the list of federally controlled substances and empowering states to create their laws. The CAO A establishes a federal regulatory framework to protect public health and safety, including regulating the production, labeling, and distribution of cannabis and establishing programs to prevent youth cannabis use.

The Act also removes cannabis from the Controlled Substances Act, eliminating federal prohibition in states that have chosen to legalize medical cannabis or adult-use cannabis. It also directs the National Highway Traffic Safety Administration to create new standards for cannabis-impaired driving.

Finally, the Act regulates cannabis taxes, establishes grants to encourage more research on cannabis, and strengthens worker rights by removing pre-employment and drug testing for cannabis. Furthermore, the Act can enable further investments in communities and individuals most harmed by previous drug policies, prioritizing restorative and economic justice.

Source: U.S. Senators Cory Booker

Federal officials are suddenly seizing cannabis from state-licensed businesses, leaving industry perplexed

New Mexico cannabis businesses report that federal officials have been seizing hundreds of thousands of dollars worth of cannabis from state-licensed cannabis businesses and detaining industry workers in what appears to be a localized escalation of national prohibition enforcement even as the federal government has largely refrained from interfering with the implementation of state legalization laws in recent years.

While operators say they've been able to transport their product to testing facilities and retailers without incident, in recent months, the agency has taken a more proactive approach to enforcing federal prohibition, taking hundreds of pounds of cannabis.

Source: Marijuana Moment

Cannabis company claims DEA review process is unconstitutional in new federal lawsuit

In a new federal lawsuit filed against the leaders of the Department of Justice (DOJ) and the Drug Enforcement Administration (DEA), a Rhode Island cannabis company is asking the court to prevent an administrative law judge for the agency from reviewing the firm's application to manufacture cannabis for research purposes, calling the matter "an unconstitutional proceeding led by an unconstitutional decisionmaker." MMJ BioPharma Cultivation Inc. has previously taken legal action against the federal government, filing a petition for a writ of mandamus last year in the U.S. Court of Appeals for the D.C. Circuit that alleged DEA's yearslong licensing application process [has hamstrung the company's business and stymied innovation that could benefit patients](#). The most urgent issue with the lawsuit is whether an order by the government for MMJ BioPharma to show cause in relation to a manufacturing registration application should go before the DEA administrative law judge.

Source: Marijuana Moment

Industry Regulations (continued)

Schumer says passing cannabis banking bill is part of the senate's 'busy agenda'

Senate Majority Leader Chuck Schumer reiterated his intent to pass cannabis banking legislation as part of a busy agenda. While he expressed hopes to pass the legislation, he stressed the need for bipartisan support. In a [Dear Colleague Letter](#), Schumer stressed how with “divided government, bipartisanship and compromise are the only ways to make progress and get things done that will help the American people.” The banking bill cleared the Senate Banking Committee last September and is pending action on the floor before moving to the House, which passed earlier versions of the proposal in some form seven times in recent sessions.

Source: Marijuana Moment

Yellen would welcome U.S. legislation to aid cannabis banking access

U.S. Treasury Secretary Janet Yellen stated that she would welcome legislation that would settle the conflict between federal and state laws on the sale and use of cannabis that is preventing cannabis firms from accessing the banking system. Most banks, concerned about running afoul of anti-money laundering laws, have [shunned the business](#), forcing cannabis companies to deal in cash, which creates security risks for employees and hampers financing. Yellen also has previously said the issue impedes [collecting taxes](#) from cannabis firms.

Source: Reuters

Congressional leaders' bill extends state medical cannabis protections and calls for studying legalization models

Bicameral congressional leaders released a spending package that contains several cannabis-related items, including bill provisions preserving protections for state medical cannabis programs and report language calling for the federal government to study state legalization laws and expand scientists' access to commercially available cannabis for research. The legislation section covering Commerce, Justice, Science, and Related Agencies (CJS) would maintain a longstanding rider that prevents the Justice Department from using its funding to interfere in implementing state medical cannabis programs.

Source: Marijuana Moment

Industry Regulations (continued)

State

15% of California cannabis businesses default on taxes as 2025 hike comes knocking



The California Department of Tax and Fee Administration (CDTFA) reports that as of Dec. 31, 2023, nearly 15% of the state's cannabis operators—including retailers, distributors, and other tax-obligated businesses—were in default of their sales-and-use tax obligations, totaling **\$189.3 million** in default. The rate for this tax ranges from 7.25% to 10.75% depending on locality.

In addition, 15.4% of California's retail licensees defaulted on their cannabis excise tax, totaling more than **\$54.2 million** in default, according to the CDTFA. The current rate for this tax is 15% statewide but is set to increase to 19% in 2025 automatically.

The ramifications of industry players falling behind on their bills have created widespread ripple effects across the state marketplace, as many of these businesses in default also owe money to cannabis brands and other state-licensed cannabis operators.

Source: Cannabis Business Times

As South Carolina lawmakers urge house vote on medical marijuana bill, new poll shows strong bipartisan support



A new poll shows that as South Carolina lawmakers pressure the House to advance a Senate-passed medical marijuana legalization bill, the reform has overwhelming bipartisan support. The Mason-Dixon Poll, conducted from March 6-11, found that 83% of registered voters are in favor of medical cannabis legalization, including 93% of Democrats, 74% of Republicans, and 84% of independents.

With this support, Sen. Tom Davis (R) was joined by several House lawmakers, the executive director of the SC Compassionate Care Alliance, the state director of Americans for Prosperity, and other allies at a press conference to rally support for his medical cannabis bill, which he's advocated for over recent sessions.

Source: Marijuana Moment

Illinois' medical cannabis expansion delayed



On May 29, 2024, Illinois lawmakers ended a legislative session for medical cannabis expansion without addressing medical marijuana expansion or regulations for hemp products. The [bill](#) aimed to allow every dispensary beyond the 55 original MMJ (Medical Marijuana) retailers to serve patients without levying a retail tax. It also proposed curbside pickup, drive-thru windows, and online doctor exams while reducing employment barriers for those with criminal records to work in the industry. After the session, Green Thumb Industries (GTI) was accused of lobbying against MMJ by the Cannabis Equity Coalition of Illinois, which called for a boycott of the company's products.

Source: MJ Biz Daily

Industry Regulations (continued)

Virginia Governor signs medical marijuana workplace protection bill for firefighters and other public sector workers



Days after vetoing a separate bill to legalize recreational cannabis sales, Virginia Gov. Glenn Youngkin (R) signed legislation to [allow public sector workers like firefighters and teachers to use legal medical marijuana](#) without fear of losing their jobs. The governor signed HB 149, sponsored by Del. Dan Helmer (D), and SB 391, from Sen. Stella Pekarsky (D), and also signed another measure, HB 815, making incremental adjustments to the state's existing medical marijuana system.

The legislation rectifies an oversight in existing protections against private workers to protect public-sector employees. Employers will still be able to forbid cannabis use on the job and take disciplinary action against any employee whose work is impaired because of cannabis use. The proposal also will not change current law regarding federal workers.

Source: *Marijuana Moment*

California issues tips to improve local cannabis business licensing



A California Auditor [released recommendations](#) intended to provide best practices for regulators and governments to improve cannabis business licensing processes and policies. The recommendations offer tips on how to prevent favoritism in issuing licenses, help protect public health and safety, and increase transparency in the process.

Source: *MJ Biz Daily*

Recreational cannabis sales approaching reality in Ohio



On June 7, 2024, the state Division of Cannabis Control began accepting applications for new dual licenses, enabling medical cannabis dispensaries also to commercialize nonmedical cannabis. This follows a 2023 statute approved by voters, allowing Ohioans 21 and over to buy and possess up to [2.5 ounces](#) of cannabis and to grow up to six plants per individual or 12 plants per household at home. License approvals are potentially expected by mid-June, allowing Ohio's network of about 132 medical pot dispensaries to begin selling the products. The law remains subject to change by state lawmakers. A Senate bill introduced recently proposes banning smoking or vaping cannabis products in public and would require home growers to file affidavits with the Division of Cannabis Control.

Source: *AP News*

With legalization dead for the session, Hawaii lawmakers advance incremental bills to expand decriminalization and provide expungements



Following the failure of a proposal to legalize cannabis in Hawaii, lawmakers are moving forward with more modest cannabis reforms, including the House approving a Senate-passed bill to expand the state's limited decriminalization of possession, a Senate committee approved a scaled-back expungements bill that would create a single-county pilot program aimed at clearing certain past offenses. A separate bill to create a broader expungements-focused task force also passed out of the House and now returns to the Senate.

Source: *Marijuana Moment*

Industry Regulations (continued)

Florida adult-use cannabis legalization will appear on ballot, court rules



Lawyers for state Attorney General Ashley Moody argued that the Smart & Safe Florida initiative, known as Amendment 3, was misleading voters. They also argued that it would unfairly entrench the market dominance of Tallahassee-based cannabis multistate operator Trulieve Cannabis, which has to date contributed more than **\$40 million** toward the effort.

However, [in a 5-2 decision](#), the state Supreme Court ruled that the measure “conforms” to state constitutional requirements. If passed by 60% of voters in November, Amendment 3 would allow recreational cannabis sales to Floridians 21 and older at existing medical marijuana treatment centers. The Florida Legislature would have the authority to later pass laws enabling other businesses to enter the adult-use market.

Source: *MJ Biz Daily*

Virginia GOP Governor vetoes adult use cannabis legalization bill, along with separate measure to resentence prior cannabis convictions



Virginia, Gov. Glenn Youngkin (R) has now formally vetoed legal sales legislation [sent to him by lawmakers about a month ago](#), along with a [separate bill to provide resentencing relief for people convicted of past cannabis crimes](#).

In a veto message issued, the governor wrote that “the proposed legalization of retail cannabis in the Commonwealth endangers Virginians’ health and safety.” The governor this session has also greeted less controversial cannabis reforms coldly. Earlier this year, for example, he vetoed a separate proposal that would have prevented the state from using cannabis alone as evidence of child abuse or neglect despite the measure [winning unanimous or near-unanimous approval in votes on the Senate floor](#).

Source: *Marijuana Moment*

Missouri revokes nine social-equity cannabis business licenses for out-of-state companies



Missouri cannabis regulators have revoked nine of the 48 social-equity cannabis licenses issued in October 2023 after finding the companies that obtained them didn’t meet eligibility requirements. Eight were dispensaries linked to out-of-state groups, and one was a wholesale facility. According to the Division of Cannabis Regulation, the “purported majority owners” of the eight revoked licenses lacked knowledge of agreements or operations of the license—and, in some cases, did not know the person who applied for the license on their behalf.

Source: *Missouri Independent*

Industry Regulations (continued)

Bill introduced to protect entities serving the legal cannabis industry



Legislation introduced in the Delaware General Assembly aims to protect banks and other businesses that provide financial services to cannabis cultivators, distributors, and retailers who operate within Delaware's legal cannabis marketplace. House Bill 355 clarifies that these financial services are legal under Delaware state law and aims to reassure financial service providers that they can safely provide their services to legal cannabis businesses without risking criminal liability.

Source: Delaware.gov

Rhode Island Governor puts cannabis business tax deduction in budget as partial federal 280E workaround



The governor of Rhode Island proposes decoupling state and federal tax policy for the cannabis industry as a partial workaround to the Internal Revenue Service (IRS) code known as 280E, which bars cannabis operators from taking deductions for business expenses. As part of his budget proposal for the 2025 fiscal year that was taken up by the House Finance Committee last week, Gov. Dan McKee (D) called for cannabis industry tax relief with specific legislative language that he wants lawmakers to adopt. The governor of Rhode Island proposes decoupling state and federal tax policy for the cannabis industry as a partial workaround to the Internal Revenue Service (IRS) code known as 280E, which bars cannabis operators from taking deductions for business expenses.

As part of his budget proposal for the 2025 fiscal year, which the House Finance Committee took up last week, Gov. Dan McKee (D) called for cannabis industry tax relief with specific legislative language that he wants lawmakers to adopt.

"Rhode Island would join Massachusetts and Connecticut, and at least ten other states, in decoupling from this federal policy" that prevents tax deductions for businesses that work with Schedule I and Schedule II drugs under the Controlled Substances Act (CSA), the executive budget summary says. The governor's office [estimates](#) the reform would save cannabis businesses \$824,642 in Fiscal Year 2025 and \$1.7 million in Fiscal Year 2026. The proposed [text](#) of the legislation says that state-licensed cannabis businesses would be able to take tax deductions in "the amount equal to any expenditure that is eligible to be claimed as a federal income tax deduction but is disallowed under 26 U.S.C. § 280E."

Source: Marijuana Moment

Imminent cannabis legalization in PA urges cooperation with the governor



A rally organized by ResponsiblePA focused on cannabis legalization, regional dynamics, and federal rescheduling actions. Senators Dan Laughlin and Sharif Street expressed optimism about the imminent legalization, but House and Senate leaders must discuss terms with the Governor of Pennsylvania for that to happen. Governor Josh Shapiro has included legalization in his 2024 budget proposal. Laughlin also highlighted ongoing bipartisan support. States surrounding Pennsylvania are progressing with legalization, and the federal government is signaling rescheduling, raising concerns that Pennsylvania's industry may be left behind. Two Pennsylvania House panels held a joint hearing in April to discuss cannabis legalization, with multiple lawmakers questioning the state's top liquor regulator about the possibility of having that agency run cannabis shops.

Source: Marijuana Moment

Industry Regulations (continued)

Colorado enacts new laws and regulations for cannabis industry



Among the new laws and rules [highlighted by the Colorado Marijuana Enforcement Division \(MED\)](#):

- HB 23-1279: Lifts restrictions on online cannabis product orders and payments at retail stores.
- SB 23-271 authorizes regulators to develop rules and potential restrictions regarding chemical modifications, conversions, or synthetic derivatives of cannabinoids. The law also allows cultivators to source cannabis seeds, immature plants, and genetics from providers within and outside of Colorado's regulated market.
- HB 23-1021: Authorizes the MED to embargo and destroy regulated cannabis products when the health, safety, or welfare of the public "imperatively requires emergency action."
- SB 23-199: Allows operators to renew state license applications without local approval if documentation proves licensees sought local approval and have a valid reason for not obtaining it.
- A new allowance for operators to pay a Reduced Testing Allowance Certification Fee if they submit a form noting their understanding of testing rules and requirements, plus payment of the fee.

Several new rules were also enacted regarding the state's hospitality sector and cannabis-consumption providers, including:

- Increasing sales allowances for retail cannabis hospitality businesses up to 1 ounce of flower, 8 grams of concentrate, and 100 milligrams of THC.
- Mandating hospitality businesses provide consumers with information about safe transportation and establishing standard operating procedures to prevent overconsumption and transactions to those displaying visible signs of intoxication.
- Eliminating specific surveillance requirements in areas where spa services are provided.

Source: MJ Biz Daily

Industry Regulations (continued)

Hemp

House committee approves farm bill to ban most hemp-derived cannabinoid products

A House committee amended a significant agriculture bill to impose a general ban on hemp-derived cannabinoids such as Delta-8 THC. Industry stakeholders warn that the measure could potentially criminalize many CBD products at a federal level, as it covers all ingestible hemp products with any level of THC. Rep. Mary Miller, who introduced the amendment, states the goal is to close the 'loophole' created in the 2018 farm bill that allows intoxicating hemp products (like Delta-8) to be sold. While some supported the amendment, claiming a need for greater clarity for fiber hemp producers, several other members opposed it, highlighting the investment in the domestic supply chain for American hemp producers.

Hemp industry stakeholders [recognize](#) a need to address concerns related to the unregulated hemp market; however, they believe that enacting strategic regulations to ensure product safety and prevent youth access is a better solution.

The legislation also contains provisions that would scale back a ban on industry participation by people with drug felony convictions and reduce regulatory barriers for certain hemp farmers.

Furthermore, the farm bill also proposes changes such as reducing [regulatory restrictions](#) for industrial hemp, [creating separate categories](#) for industrial and consumable hemp, and allowing for [independent lab accreditation](#) to ease testing bottlenecks.

Source: Marijuana Moment

US Cannabis Council proposes federal prohibition for hemp-derived products with THC

A cannabis industry trade association is asking U.S. lawmakers to federally prohibit hemp products intended for human or animal consumption that contain "detectable quantities of total THC" in forthcoming Farm Bill legislation. Following is the *additional* definition for hemp proposed by the USCC for inclusion in the Farm Bill.

Products in final form intended for human or animal consumption are:

1. Made or derived from hemp or hemp byproducts; and
2. Contain detectable quantities of total THC and any other intoxicant that can be derived from hemp, including different forms of THC; and
3. Are intended to be consumed or absorbed inside the body by any means, including inhalation, ingestion, insertion, or topical application, shall be excluded from the current definition of hemp and considered cannabis as defined by 21 U.S.C 802(16).

Source: Cannabis Business Times

Industry Regulations (continued)

US Hemp Authority announces adult-use hemp product certification

Hemp products with the potential to impair—such as delta-8 and delta-9 THC products—have proliferated with no federal regulation in recent years, leading to growing concerns about quality, safety, and access by minors. Some have called for drastic action, including a letter from [21 state attorneys general](#) and a more recent statement from a [marijuana trade group](#) that calls for the federal criminalization of all hemp products, even those that are nonintoxicating like CBD.

Such action would devastate the hemp industry, U.S. farmers, and small businesses that sell these products—not to mention deny millions of consumers access to popular health and wellness alternatives.

The hemp industry has advocated for a more reasonable approach—secure federal regulation to protect health and safety and ensure that products that potentially impair are kept out of the hands of children. The industry announced a new effort to assume more responsibility for these products in the continued absence of federal regulation.

The Adult-Use Hemp Product Certification Program will require additional compliance points to promote safety and ensure that products with the potential for impairment are kept out of children's hands.

Source: Cannabis Business Times

Minnesota to crack down on sale of cannabis flower labeled as hemp



Minnesota will be cracking down on illegal sales of raw cannabis flower labeled as hemp as it ramps up to roll out its state-legal adult-use cannabis program, with sales slated to begin in the [first quarter of 2025](#). The state's Office of Cannabis Management (OCM) issued a press release on March 12 announcing "it will begin enforcement to prevent the illegal sales of raw cannabis flower across Minnesota," in response to complaints it has received of retailers selling cannabis flower under the label of hemp flower.

To support the enforcement efforts, the OCM has entered into an agreement with the Minnesota Department of Health (MDH) to add inspection capacity for illegal sales of raw cannabis flowers to its existing capacity for conducting inspections of retailers selling legal hemp-derived cannabinoid products. OCM will add additional inspection capacity using a field mobile testing unit and through a contracted testing lab. In addition to expanding inspection and testing capacity, OCM is asking the state legislature to expedite the timeline—from March 2025 to as early as July 1 this year—for transitioning hemp-derived cannabinoid enforcement from MDH to OCM.

Source: Cannabis Business Times

IL Governor and lawmakers push for hemp regulation, but bill fails to pass



Illinois Governor J.B. Pritzker and other legislators are advocating for the regulation of hemp products like Delta-8 THC due to health concerns among children who may consume the products. State Senator Kimberly Lighford, who sponsored the bill, also stated her concern about children who overdosed on gummies sold at hemp retailers. Despite passing in the Senate (54-1), the bill did not advance to the House before the legislative session ended.

As part of the proposed legislation, products would have a THC potency limit of 0.3%, raising concerns about the impact on the industry, as hemp industry players state it is 'impossible' to create products that do not exceed 0.3%. State Senator Willie Preston was the only senator who voted "no," due to a concern that the bill would harm small businesses.

Source: Marijuana Moment

This story was first [published](#) by *The Center Square*.

Industry Regulations (continued)

DEA states ‘Cannabis-derived THCA does not meet the definition of hemp under the Controlled Substances Act’

The DEA released a letter clarifying that cannabinoid THCA, which converts to Delta-9 THC when heated, should be included in the THC limit for hemp as defined by the 2018 Farm Bill, stating cannabis products must contain less than 0.3% THC. The letter is a response to a request for clarification by cannabis attorney Shane Pennington, who requested the control status of THCA under the Controlled Substances Act. In addition, the letter on THCA comes as federal lawmakers reconsider how to address hemp and cannabinoids under a revised version of the Farm Bill, with a key House committee having recently adopted an amendment that would generally ban hemp-derived cannabinoids such as Delta-8 THC.

Some opponents of this interpretation in the hemp industry, like Jonathan Miller, general counsel for the US Hemp Roundtable, argue that the industry faces a challenge and that ‘most hemp growers, even fiber and grain growers, would be out of compliance.’

Source: Marijuana Moment

[DEA letter](#)

THCA meets legal definition of hemp, operators say—but not everyone agrees

Intoxicating cannabis that is licensed meets state compliance requirements and is turned into consumer packaged goods sold in accordance with state laws is not being sold as cannabis. Instead, it is labeled as THCA—a naturally occurring, nonintoxicating cannabinoid that becomes psychoactive THC when heated and a precursor to THC. When marketed as THCA flower, these buds purportedly meet the Farm Bill’s 0.3% cap on total delta-9 THC and, therefore, meet the definition of federally compliant hemp. Unlike delta-8 THC and other intoxicating hemp-derived cannabinoids created by chemistry and sold through a legal loophole, THCA sellers rely on a combination of well-timed testing and selective—possibly even misleading—labeling and marketing. Whether the THCA flower is federally compliant depends on factors including plant degradation, when and how that flower was tested, and who interprets the rules.

Source: MJ Biz Daily

Delta-8, other hemp-derived ‘intoxicants’ illegal to sell in Arizona without cannabis license, AG says



In her 14-page legal [opinion](#), Kris Mayes said smoke shops, convenience stores, and other locales not licensed by the Arizona Department of Health Services cannot sell products with hemp-derived cannabinoids like delta-8, delta-10, or any other products that have been “synthetically converted” from naturally occurring CBD or other cannabinoids. Her opinion was addressed to state Sen. T.J. Shope and state Rep. Steve Montenegro—both Republicans—who asked the attorney general’s office to examine the issue. This opinion comes after more than a dozen states—including Arizona—[began implementing](#) delta-8 bans in 2021 when the compound became widely popular because its psychoactive effects are similar to delta-9 THC, the principal psychoactive constituent of cannabis.

Source: Cannabis Business Times

Industry Regulations (continued)

Hemp industry calls on house energy & commerce leadership to hold crucial hearing on FDA regulation

In a significant move to address the challenges faced by the U.S. hemp industry, 28 non-profit organizations—representing every element of the hemp food chain and every region of the nation—as well as four leading national dietary supplement organizations—sent [a compelling](#) letter to the leaders of the House Energy and Commerce Committee—Chair Cathy McMorris Rodgers and Ranking Member Frank Pallone, urging the committee to expedite a hearing on the FDA's regulation, or lack thereof, of the rapidly growing hemp market, including products such as CBD. The coalition letter commends the House Energy and Commerce Committee for joining the Senate Health, Education, Labor, and Pensions Committee in issuing a Request for Information last summer. However, while other committees have held hearings on the matter, the Energy and Commerce Committee has not yet acted to bring the RFI ideas to public light through a hearing. This hearing would allow committee members to weigh in on crucial issues for the survival of the hemp industry and the protection of health and public safety.

Source: Business of Cannabis

Iowa makers of cannabinoid-infused beverages sue state over new THC limit



Two Iowa companies, Climbing Kites and Field Day Brewing Co., are suing the state over new THC limits in cannabinoid-infused beverages. The companies claim the Iowa Department of Health and Human Services' interpretation of a recent law, which caps THC at 4 milligrams per serving, will make 80% of their products illegal, significantly impacting their revenue. The lawsuit argues that this interpretation conflicts with the statute allowing up to 10 milligrams of THC per container and violates the Supremacy Clause of the U.S. Constitution.

Source: Marijuana Moment

Payments

Cannabis operators' delinquent payments total more than \$3.8 Billion, report says

Total delinquent payments by U.S. cannabis operators have [exceeded \\$3.8 billion](#) and could balloon to \$4.2 billion in 2024 without some intervention. According to Whitney Economics, the problem stems partly from poor cash-flow management combined with the [heavy tax burden](#) of Section 280E. A survey of an unspecified number of respondents found that:

- Cannabis cultivators are the most impacted by delinquent payments; retailers had the fewest complaints.
- Delinquent payments affect the industry, but smaller and minority-owned businesses are the most impacted.
- Forty-four percent of respondents said delinquent receivables made it harder to service debt, and 34% said they impacted their ability to pay taxes.
- 57.3% of survey respondents said delinquent accounts receivables have an even more significant impact on their cannabis business than Section 280E of the Internal Revenue Code, which prevents cannabis operators from deducting business expenses because MJ is still federally illegal.

California operators have been especially vocal about the delinquent payment problem. In May 2023, a group of cannabis businesses in the state hired a credit association to recoup hundreds of thousands of dollars owed.

Source: MJBizDaily

General Cannabis Business Trends

Report: cannabis capital raises, M&A both down significantly year-over-year

Retail and cultivation businesses continue to lead the industry in fundraising; however, the number of raises industry-wide over the past 12 months has been slashed almost in half, and M&A deal values have fallen through. Retail and cultivation accounted for 51 of the 139 capital raises in cannabis since March 23, 2023, with a total value of \$834.5 million, Viridian found. That's out of \$1.7 billion raised among 11 sectors within the broader cannabis industry. In second place for the most recent 12 months was the cannabis biotech and pharmaceutical industry, which recorded 29 capital raises for \$222.5 million. The cultivation and retail sector also led the industry in M&A activity, Viridian reported, with 46 M&A deals over the past year, compared to eight in the biotech/pharma sector, 14 in the infused products arena, and 10 in the hemp industry.

Viridian reported that mergers and acquisitions are also down 35% year-over-year, with 97 deals struck in the past 12 months compared to 150 the year prior. M&A deal values have also plummeted 70% year-over-year to just over \$1 billion from \$3.6 billion. Viridian found using data from BDSA that market consolidation for brands has also increased over the past two years. This showed that the top 20 cannabis brands went from controlling around 26% of the market in 2020 to nearly 35% in 2023.

Source: Green Market Report

Biggest challenges for the cannabis industry in 2024



Global cannabis sales are expected to increase from \$13.4 billion in 2020 to \$148.9 billion by 2031, according to [Statista](#). That growth opportunity has spawned many startups, IPOs, and a wave of cannabis-related mergers and acquisitions (M&A) involving companies in production, distribution, real estate, retailing, and other areas. In 2023, voters in Maryland and Missouri approved the legalization of recreational cannabis, bringing the total to 24 states and the District of Columbia. An additional 14 states and three territories have legal or decriminalized medical use of cannabis products. Legality and regulation will continue to be pivotal forces driving the industry as different countries and states within the U.S. approach the use and sale of cannabis differently. Banking will continue to be a challenge because cannabis companies within the U.S. cannot legally access traditional banking services. Through partnerships and acquisitions, companies in established "addiction" industries such as alcohol and tobacco will further cement themselves in the cannabis market. Recent rate increases by the Federal Reserve may make it more difficult for cannabis companies to raise capital.

Source: Investopedia

General Cannabis Business Trends (continued)

2024 cannabis predictions

The cannabis industry continues to face challenges such as the heavy tax burden of IRS 280E, the inability to ship across states, and no access to US institutional capital, among others.

Here are the main trends shifting the industry in 2024:

1. Rescheduling of Cannabis

Cannabis is likely to be rescheduled under the federal Controlled Substances Act from Schedule I, where it sits next to heroin, LSD, and Ecstasy, to Schedule III, where it would sit next to Tylenol with codeine, ketamine, and anabolic steroids.

While rescheduling does not legalize cannabis under federal law or allow for the sale of cannabis across state lines, it eliminates the massive tax burden imposed by IRS 280E.

2. SAFE Banking expected to pass

The SAFE Banking Act is expected to pass.

The Act protects banking institutions that provide services to state-licensed, regulated cannabis companies despite their federal illegality.

Rescheduling cannabis and the enactment of the SAFER Banking Act could positively change the 'broken' cannabis financial ecosystem. However, if the Act passes, Benesch does not expect institutions like J.P. Morgan Chase and Citibank to jump in until cannabis is federally legal.

3. Hemp-derived Delta-9 THC increasing in popularity

Products containing hemp-derived Delta-9 THC have entered the market with 'The Agriculture Improvement Act' of 2018 (2018 Farm Bill), which limits Cannabis Sativa L. plant testing to 0.3% Delta-9 THC or less on a dry weight basis to be considered 'hemp.'

Products carrying hemp-derived cannabinoids like Delta-8 and Delta-9 are expected to maintain popularity in 2024, especially with some of the major brands in regulated cannabis launching hemp-derived versions of their best-selling products. However, compliance is expected to be more critical than before. A decrease in Delta-8 sales and an increase in Delta-9 are expected in 2024.

4. THC Beverages

Beverages infused with water-soluble, hemp-derived Delta-9 THC are expected to see significant growth, especially in states like Minnesota, which have specifically legislated that THC Beverages belong in liquor stores with caps on the amount of THC per serving that can be sold.

This trend is expected to continue with states passing laws enabling beer, wine, and liquor distributors to sell THC Beverages.

5. THC Products

THCA products are likely to face increasing legal challenges.

Also, in response to the 2018 Farm Bill, state laws and regulations aim to restrict these products by using post-decarboxylation test results to determine their legality. This could lead to THCA products becoming widely illegal under new state regulations.

6. Cannabis globalization

A [report](#) from Fortune Business Insights projects that the global cannabis market will grow from US \$57.18B in 2023 to US \$444.34B by 2030.

As the US and Canadian markets mature, a significant increase in investments, partnerships, and M&As of international cannabis companies is expected in 2024.

Places like Thailand, Colombia, and Africa are positioned to become significant exporting players given their growing conditions, weather, production costs, etc.

Source: Benesch Law

General Cannabis Business Trends (continued)

One of America's biggest banks entered the cannabis industry: will others follow?

First Citizens Bank, one of the 20 largest banks in the U.S. with over **\$200 billion** in assets, announced it is getting into the cannabis market. This move marks a significant milestone as it becomes the most prominent bank known to serve the cannabis industry. This development is seen as an important step forward for the cannabis sector, signaling its ongoing transition into mainstream acceptance and financial backing. First Citizens Bank highlighted its intention to extend its substantial hemp/CBD platform into the broader cannabis space. This strategic decision underscores the bank's recognition of the growing economic potential within the cannabis industry, which has increasingly moved out of the shadows and into the forefront of legitimate business operations. First Citizens Bank's entry into the cannabis market is a testament to the industry's financial viability and serves as a beacon for other financial institutions. The bank's move is anticipated to pave the way for more banks, including large and smaller entities, to consider offering services to cannabis businesses.

Source: *Benzinga*

Congressional Research Service says lack of banking services makes cannabis businesses' target for theft'

The CRS report found that the lack of banking services offered to the cannabis industry makes businesses "a target for theft" and suggested policy issues Congress should explore as it relates to cannabis banking. The [report](#), published Feb. 6, describes the disparity in federal and state cannabis laws that leave many banks hesitant to offer financial services to state-legal cannabis businesses. The report notes that to help banks provide financial services to the cannabis industry, the Senate Banking Committee [advanced](#) the [Secure and Fair Enforcement Regulation \(SAFER\) Banking Act](#) in September. The legislation, which has yet to be called to the Senate floor for a vote, would offer safe harbor to financial institutions wishing to provide services to state-legal cannabis businesses.

Source: *Cannabis Business Times*

Regulation / Enforcement

Cannabis multistate operators continue to flee regulated state markets

Publicly traded cannabis multistate operators exited regulated cannabis markets through late 2023, continuing a pattern fueled by increased capital costs, high taxes, and the slow pace of federal reform. MSOs are finding it difficult to thrive in mature markets with unlimited available licenses. California, for example, is unlike other markets because consumers are more educated about cannabis and are accustomed to having plenty of choices from both illicit and regulated suppliers. Less mature markets with an oversupply of cannabis are also challenging. For example, [wholesale marijuana prices](#) in Massachusetts have declined by about 25% over the past year because of oversupply and currently average about **\$1,400 per pound**, according to New York-headquartered wholesale cannabis platform Leaflink. As MSOs max out their available retail licenses in various states, many are focused on growing [wholesale cannabis sales](#) in 2024.

Source: *MJBizDaily*

Regulation / Enforcement (continued)

Shock supreme court ruling invalidates New York’s cannabis advertising restrictions



An order issued by the Supreme Court of Albany County ruled that the strict marketing and advertising restrictions placed on cannabis businesses in the state ‘were arbitrary and capricious.’ With the long-criticized restrictions now deemed unconstitutional and vague by the court, dispensaries can freely advertise and fulfill orders on third-party platforms. The case was brought against New York’s Office for Cannabis Management (OCM) and Cannabis Control Board (CCB) by the online cannabis platform Leafly, alongside other petitioners, in September. It argued that restrictions on advertising products on third-party platforms, using paid marketing, or sharing accurate pricing information violated its right to free speech. The state reportedly [failed to provide any evidence](#) to support its reasoning behind these restrictions during the case. The ruling comes amid growing pressure on the state’s cannabis regulators and is expected to open the door for further legal challenges to regulations in the coming months.

Source: Business of Cannabis

‘Proximity protection’ in New York a new battleground for dispensaries



The rule by the Office of Cannabis Management—which requires all dispensaries to be 1,000 feet apart in any municipality with more than 20,000 residents and 2,000 feet apart if the population is under 20,000—has led to a policy of “proximity protection.” That policy has been granted to some of the retail licensees queued up for permit consideration to rule out other possible shop sites. Gracious Greens LLC, a cannabis retail license applicant owned by a service-disabled veteran, asked a state judge to strike down the rule, the Times Union reported, arguing that the rule itself is impossible to follow because it was established before there were any existing legal recreational cannabis shops from which to measure 1,000 feet for any others.

Source: Green Market Report

Massachusetts cannabis stores sue town over host community fees



Three state-regulated cannabis retailers in western Massachusetts [are suing a town government for almost \\$6 million](#) over “community impact fees” levied as part of their host community agreements. The fees, imposed on top of local taxes, help municipal governments offset the potential costs of hosting cannabis businesses. However, the three retailers suing the town of Great Barrington—Farnsworth Fine Cannabis, Rebelle, and Theory Wellness—argue that the town has not incurred any extra costs from their businesses.

Source: MJ Biz Daily

Regulation / Enforcement (continued)

NY Governor Hochul directs comprehensive overhaul of Office of Cannabis Management



Governor Kathy Hochul directed an operational overhaul of the Office of Cannabis Management following the release of a 30-day assessment that identified significant structural limitations to the Office of Cannabis Management. Based on the assessment's findings, Governor Hochul announced immediate actions to reform the licensing processes and increase enforcement against illegal storefronts. The governor also announced establishing a \$5 million grant program to help CAURD licensees and previewed the launch of the Cannabis Enforcement Task Force.

Source: New York State

Colorado bill would force social media platforms to ban users who 'promote' cannabis, psychedelics and hemp products



Among other provisions, SB24-158—a broad proposal around internet age verification and content policies—would require social media platforms to immediately remove any user “who promotes, sells, or advertises an illicit substance.”

The bill's definition of illicit substance includes not only illegal drugs but also many that are legal and regulated in Colorado. It pertains to any controlled substance under state law, including schedules I through V under state law. That means the bill would affect state-legal cannabis, certain psychedelics—which [voters legalized through a 2022 ballot measure](#)—and even some over-the-counter cough syrups that contain small amounts of codeine. Beyond scheduled drugs, the bill specifies that its restrictions also apply to certain hemp products with more than 1.25 milligrams THC or a CBD-to-THC ratio of less than 20 to 1 and most other hemp-containing products intended for human consumption. If enacted into law, companies would also need to publish “a statement that the use of the social media platform for the promotion, sale, or advertisement of any illicit substance...is prohibited.”

Source: Marijuana Moment

Multistate operators to seize 280E tax savings due to the cover of rescheduling

Publicly traded cannabis companies are looking to save tens of millions in taxes in 2024 and possibly recoup taxes paid in previous years. This follows the Biden administration's cannabis rescheduling announcement and the high-profile lawsuit challenging the constitutionality of the Controlled Substances Act. Some companies like Planet 13 Holdings have already filed 'protecting claims for the past three years' that will allow them to amend their prior year tax returns, like how Trulieve amended past returns to successfully obtain \$113 million in tax refunds from the IRS so far. Other companies include TerrAscend Corp. and The Cannabist Co. Holdings Inc.

Source: Green Market Report

Regulation / Enforcement (continued)

Curaleaf considers protesting a U.S. tax by not paying it

According to the chairman of Curaleaf, Boris Jordan, the company is talking to law firms and accounting experts about what would happen if it rebelled against a U.S. tax, which it says is unfair. Jordan stated that there are talks of protesting a key piece of tax law that prevents cannabis companies from deducting expenses like other companies do. He was referring to 280E, which applies to companies that handle federally illegal substances. If the drug gets rescheduled, cannabis companies have said they would benefit from avoiding 280E. Curaleaf is the largest U.S. multi-state cannabis company by market capitalization and reported revenue of more than **\$1.3 billion** in 2023. Trulieve, another multi-state seller, has already challenged the law, saying in its recent fourth-quarter report that it filed amended tax returns based on its own legal interpretation of tax law.

Source: BNN Bloomberg

Cannabis grower to pay \$750,000 for violating state water, wildlife regulations



State officials said a Humboldt County cannabis operation took water from streams and damaged wetlands for years without authorization. The owner called the fine extreme and unfair but agreed to pay and restore the wetlands. A Humboldt County cannabis grower [has agreed to pay \\$750,000](#), remove unpermitted ponds, and restore streams and wetlands after state officials accused him of violating regulations protecting water supplies, wildlife and waterways. Of the total, \$500,000 is a record penalty for a water rights violation in California. [State officials say](#) the violations by Joshua Sweet and the companies he owns and manages, Shadow Light Ranch, LLC and The Hills, LLC, continued for years and were “egregious,” damaging wetlands and other resources. Under the settlement, Sweet will have to pay an additional **\$1 million** if the remediation work outlined is not completed.

Source: Cal Matters

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