

the buzz:

Cannabis News & Policy Update | Special Pre-Election Edition

October 2024 Edition

ELECTION PREVIEW

Federal Candidates: To retain control of the U.S. Senate, Democrats must defend 23 of the 34 seats up for grabs, including seats in red-leaning states like West Virginia and Montana. Ohio is widely considered a toss-up, as is the presidency, which will decide who gets the vice president's tie-breaking vote in a 50-50 split.

Control of the U.S. House is also up in the air, with more than 20 seats considered "toss-ups" by political pundits.

Why it matters: While cannabis policy reform is growing in popularity among Republicans, it would likely be a higher priority in a Democratic-controlled Congress.

State Ballot Measures: Florida, North Dakota, and South Dakota are voting on measures to legalize cannabis for adult use. The Florida initiative is a state constitutional amendment and must receive at least 60% support to pass. Nebraska is voting on two measures that would legalize marijuana for medical use, which are being threatened by a legal dispute that may not be resolved before the November election. A trial beginning October 29 will determine whether the measure received enough valid signatures to qualify for the ballot. The measures could be invalidated regardless of voter approval if the court sides with the challengers.

Arkansas and Oregon are voting on measures that would impact existing cannabis markets. The Arkansas proposal makes key changes to the medical program that would increase patient access. The Oregon measure would require cannabis product manufacturers and retailers to sign Labor Peace Agreements as a prerequisite for licensure. At the local level, dozens of localities in Kentucky are voting on whether to allow medical cannabis businesses to operate in their jurisdictions.

State Candidates: State-level races could impact several states' chances of passing adult-use or medical legalization bills over the next few years. The Democratic gubernatorial candidates in New Hampshire and North Carolina support legalizing adult-use and medical cannabis, respectively, while their Republican counterparts are strong opponents.

Adult-use legalization in Pennsylvania may be dependent on Democrats maintaining control of the House, while medical cannabis legalization in North Carolina will get a boost if Republicans lose their supermajority in the House. In Hawaii, the current Democratic House Speaker, who has been an obstacle to adult-use legalization, lost in the primary, potentially clearing the way for legalization in 2025.

FEDERAL UPDATES

Marijuana: Vice President Kamala Harris reaffirmed her support for marijuana legalization for the first time since becoming the Democratic Party's presidential nominee. Previously, as a U.S. senator, Harris sponsored the MORE Act, which sought to legalize and tax marijuana at the federal level, among other things. This is the first U.S. presidential election in which both major party candidates have publicly expressed support for legalization.

Hemp: Two hemp-related bills were filed in Congress. On September 25, Sen. Rand Paul (R-KY) filed the Hemp Economic Mobilization Plan Act (S.2227), which would amend the definition of "hemp" to raise the THC threshold from 0.3% delta-9 THC to 1%. That same day, Sen. Ron Wyden (D-OR) introduced the Cannabinoid Safety and Regulation Act, which would create an FDA regulatory framework for cannabinoid products, which it defines as non-synthetic products made or derived from hemp containing any amount of THC. It would also restrict the sale of cannabinoid products to individuals 21 or older, require product testing, and create a national registry for product manufacturers and distributors.

H&H Insight: These bills illustrate similar state trends to further regulate hemp and create consumer "guardrails" or protections for hemp products.

AICPA Letter to Treasury and IRS: On October 22, the AICPA & CIMA issued an open letter to the Department of Treasury and the IRS urging guidance for cannabis businesses in advance of rescheduling marijuana to a Schedule III substance. This letter is a response to the Department of Justice statements by IRS Commissioner Werfel last May that he wants to collaborate and engage with the cannabis industry to address the ambiguities the cannabis industry faces when seeking to comply with US tax laws. The recent AICPA letter responds to this opening salvo and recommends specific transitional issues be addressed promptly with guidance in anticipation of potential rescheduling on issues including: mid-year changes in the law and accounting methods, clarification of tax treatment of issues arising from section 280E not applying, and equal application of 280E to all legal cannabis businesses—both medical and recreational.

LICENSING OPPORTUNITIES

Delaware and Kentucky: Delaware and Kentucky are holding lotteries this month for business licenses in their new cannabis markets. In Delaware, the Office of the Marijuana Commissioner [announced](#) it will hold the first lottery for adult-use cannabis business licenses on October 24. Retail licenses will be awarded at a separate lottery in late November or early December. In Kentucky, Gov. Andy Beshear [announced](#) the lottery for medical cannabis cultivation and processor licenses will occur October 28, with the lottery for dispensary licenses likely to follow in November.

New York: The Cannabis Control Board [awarded](#) new vertically integrated Registered Organization licenses for the first time since 2017. The three new ROs, which were given preliminary licensure approval on October 10, may operate up to four dispensing locations and can transition to the adult-use market. Before obtaining final licenses, they must receive approval of their dispensary locations and complete compliance checks.

Vermont: The Vermont Cannabis Control Board voted on September 25 to [temporarily close](#) the window for retail and tier 2 cultivation licenses, citing concerns about market oversaturation. Retail and tier 2 cultivation applicants have until October 25 to submit new applications, and regulators plan to engage in rulemaking to address imbalances in the distribution of retail stores.

NEW MARKETS

Pennsylvania: A new bipartisan adult-use legalization bill ([HB 2500](#)) was introduced and referred to the House Health Committee on September 19. The bill would establish the state Department of Agriculture as the primary regulator of adult-use marijuana, provide support for small businesses to participate in the market, and implement criminal justice reforms and a “clean slate” policy for residents with past cannabis convictions. The bill has not received a hearing date, and time is running out on the 2024 legislative calendar.

STATE POLICY UPDATES

California: Gov. Gavin Newsom [signed](#) several cannabis-related bills into law on September 30, including [AB 1775](#), allowing retailers to serve non-cannabis food and beverages, and [SB 1064](#), creating a new license for combining multiple business activities. Newsom also approved [SB 1059](#), preventing double taxation by prohibiting cities from including cannabis excise tax in gross receipts.

Colorado: The Marijuana Enforcement Division released [final rules](#) stemming from its [2024 annual rulemaking](#). The rules implement [SB 24-076](#), enacted earlier this year, and include additional updates and changes covering numerous topics that impact marijuana licensees. Issues addressed include license terms and fees; transport manifest requirements; inventory tracking and Metrc; product testing; decontamination methods; sale of non-marijuana food items at marijuana retail stores; and public safety requirements.

Pennsylvania: State lawmakers approved [SB 1051](#) on October 9, allowing medical cannabis dispensaries to obtain state-level tax deductions disallowed under federal Internal Revenue Code section 280E. The bill is awaiting executive action from Gov. Josh Shapiro. Growers and processors were granted this ability via the [2025 state budget](#), which passed in July but unintentionally omitted dispensaries.

H&H Insight: This is an important fix, because the legislature previously omitted dispensaries in the original legislation, and dispensaries are much more impacted by 280E disallowances than producers (cultivators) or manufacturers.

Massachusetts: The state legislature's Joint Committee on Cannabis Policy will hold a **hearing** on October 30 to review the structure of the Cannabis Control Commission. Lawmakers said they will focus on clarifying the roles of the CCC's executive director and commissioners to improve accountability and operational efficiency within the agency. Additionally, the CCC's acting executive director **said** a new executive director is expected to be hired by the end of October.

Washington: The state Liquor and Cannabis Board adopted **rules** to implement E2SSB 5367, which changes the regulation of products containing THC, effective January 7, 2025. The measure was passed in 2023 to address the increasing prevalence and complexity of consumable THC products that followed the 2018 Farm Bill.

The LCB also proposed **rules** to allow the use of Employee Stock Ownership Plans in connection with cannabis, as well as **rules** to correct language around acceptable forms of identification and make it more consistent with other state laws. Comments on the proposals are due November 9 and November 20, respectively.

HEMP UPDATES

Court Decisions: Earlier this month, a federal U.S. district judge in New Jersey **partially blocked** implementation of the **state law** regulating hemp-derived THC products. The judge struck down provisions that prohibit in-state transportation and shipment of hemp cultivated and manufactured out-of-state because they are preempted by the Farm Bill and discriminate against out-of-state companies. The judge is allowing enforcement of the rest of the law, including provisions that limit the sale of hemp products exceeding 0.5 mg THC per serving and 2.5 mg THC per package to licensed marijuana businesses.

In California, a state superior court judge **upheld** emergency regulations prohibiting hemp products from containing any detectable amount of THC. The court concluded that the state Department of Public Health has the authority to implement THC caps via emergency regulations; that the Farm Bill "authorizes states to ban manufacture and sale of hemp final form food products containing THC within its borders;" and that the petitioning businesses failed to show irreparable harm because the potential harm to consumers is greater than to individual businesses. A trial setting conference is scheduled for late November.

Legal Opinions: In September, Mississippi Attorney General Lynn Fitch issued an official **opinion** that it is illegal to sell hemp beverages that would produce intoxication if "drunk to excess." One week later, South Carolina Solicitor General Robert Cook issued his **opinion** that hemp beverages containing less than 0.3% delta-9 THC are legal under state law. Cook recommended the legislature update the state's Hemp Farming Act to address public health, safety, and regulatory concerns related to the sale and marketing of hemp beverages.

***H&H Insight:** Certainly hemp businesses should expect more states to regulate different forms of hemp, especially those products which contain any amount of THC.*

Swing & Sip

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Wednesday, December 4th | 5:00 PM - 8:00 PM

Join Holland & Hart's Cannabis Team at Atomic Golf, Las Vegas' newest high-tech golf venue. Network with fellow cannabis industry professionals as you enjoy cutting-edge golf, refreshing drinks, and delicious bites. Come 'tee it up' with us and make some great connections—no golf experience required!

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