

Legalization of Recreational Cannabis Finds Success at the State Ballot Box in 2020; Federal Level Questions Remain

November 17, 2020

State Level Legalization Grows

After the dust settled from the elections on Nov. 3, four new states added their names to the growing list of states that have legalized^[1] recreational cannabis. Voters in Arizona, Montana, New Jersey and South Dakota approved ballot measure initiatives with overwhelming support that makes the possession and use of cannabis for adults who are at least 21 years of age legal. Additionally, voters in Mississippi and South Dakota passed ballot measures legalizing medicinal cannabis for patients in their respective states.

The latest ballot measure approvals push the total national count for states that have legalized recreational cannabis to 15 states and Washington, D.C. The 15 states are Alaska, Arizona, California, Colorado, Illinois, Maine, Massachusetts, Michigan, Montana, Nevada, New Jersey, Oregon, South Dakota, Vermont and Washington. With the addition of Mississippi and South Dakota, medicinal cannabis is now legal in 36 states.^[2]

Federal Level Outlook Remains Uncertain

During his campaign, President-elect Joe Biden embraced support for decriminalizing all adult use of cannabis. President-elect Biden also campaigned on legalizing medicinal cannabis and expungements for prior low-level cannabis crimes. However, President-elect Biden has not clearly articulated support for federal level legalization of recreational cannabis use by adults. Often the terms "decriminalization" and "legalization" are used interchangeably, despite having different meanings. Decriminalization would remove criminal punishments and penalties for adult cannabis use from current federal law, but such use would remain illegal under federal law. If passed, decriminalization legislation likely would replace criminal punishments and penalties with civil fines or treatment options. Conversely, legalization would remove all prohibitions in current federal law against recreational cannabis use by adults, similar to current federal law allowing adult use of alcohol and tobacco.

It remains to be seen how the new administration will tackle the many questions surrounding federal level cannabis policy, but one known factor that will play a key role in any changes at the federal level will be which party controls the United States Senate.



Control of the United States Senate will be determined by runoff elections for two Senate seats in the State of Georgia slated for Jan. 5, 2021. Those results are consequential because current Republican Senate Majority Leader Mitch McConnell has previously expressed his lack of support for any federal level cannabis legalization. However, Senator McConnell supported and pushed a provision to legalize hemp (a variety of the cannabis sativa plant with less than 0.3% THC) in the Farm Bill that was signed into law in 2018. In response to that support, McConnell was quoted saying, "I do not have any plans to endorse the legalization of marijuana."^[3] It is likely that if Republicans remain in control of the U.S. Senate after the runoff elections are decided, the legalization of cannabis at the federal level will face an uphill battle. Decriminalization on the other hand, may still be on the table. Even though full legalization is not a slam dunk if Democrats gain control of both chambers, Democratic leadership in the House and Senate have indicated vociferous support on the matter.

For more information on cannabis policy, regulatory and legal issues, please contact Brian Carr, Jennifer Griffin, or your regular Lathrop GPM contact. <https://www.lathropgpm.com/services-industries-cannabis.html>

Our firm's practice with respect to marijuana-related activities is subject to and may be limited by the applicable Rules of Professional Conduct and federal, state and local laws. Marijuana-related practices or activities, including without limitation, the manufacture, importation, possession, use or distribution of cannabis/marijuana are illegal under federal law. Accordingly, the firm's services are strictly limited to the confines of relevant state and local laws and regulations relating to medical marijuana, retail marijuana, and adult use marijuana. The firm's services are not intended to assist in any way with violation of any applicable law. Please also note that the firm also does not provide advice or representation regarding the federal, state or local tax consequences of engaging in any business in this industry.

[1] The terms "legal", "legalized" or "legalization" as used in this article when describing state laws are summary terms. The law of each state must be reviewed to know what is permitted under that state's law and then compared to federal law to have a full understanding of the current status of each issue and the meaning of those terms.

[2] <https://www.mpp.org/issues/medical-marijuana/>

[3] <https://thehill.com/homenews/senate/386791-mcconnell-i-wont-support-legalizing-marijuana>