

DELAWARE LEGALIZES RECREATIONAL MARIJUANA



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Delaware, known as “The First State” because it was the first of the original 13 states to ratify the federal Constitution, has become the 22nd state to legalize the possession and sale of recreational marijuana. Delaware’s new marijuana law will remove all state-level civil and criminal penalties for marijuana possession and create a regulated industry for recreational marijuana sales.

In May 2022, Delaware Governor John Carney vetoed a bill that sought to legalize recreational marijuana use. However, during the 2023 Legislative Session, two new bills were introduced to legalize marijuana and regulate its sale, which the Governor is allowing to become law without his signature.

The legal framework of Delaware's recreational marijuana legalization has been structured by two distinct pieces of legislation:

- **House Bill 1** allows individuals 21 years old or above to possess, use, purchase, and share marijuana, but with a limit of one ounce. Anyone under 21 years of age who violates the new marijuana law may be fined up to \$100 for their first offense (although police have the option to issue a citation instead of a fine) and sharing marijuana as a gift with other items in exchange to avoid the one-ounce limit is not allowed. Growing marijuana at home and consuming it in public remain prohibited under the new law.
- **House Bill 2** establishes a regulated system of adult-use marijuana market regulated by the Delaware Alcohol and Tobacco Enforcement and overseen by the market through a new Office of Marijuana Control Commissioner. The agency could approve up to 30 marijuana retail licenses, 30 manufacturing licenses, 60 cultivation licenses, and five testing licenses in the first 16 months. Adult-use marijuana sales would be subject to 15% of the retail sales price of the marijuana product, and the new legislation allocates 7% of the tax revenue collected to a new Justice Reinvestment Fund that will be administered by the Delaware Department of Justice, which will use collected revenues to finance projects that improve the quality of life in communities disproportionately affected by the negative effects of past marijuana prohibitions.

Delaware's Justice Reinvestment Fund is an example of remedial efforts undertaken by states to address the injustice of the past 50 years' "War on Drugs." Among its objectives, the Fund will be used to develop technology to assist qualified applicants with the restoration of civil rights and the expungement of criminal records resulting from marijuana possession charges. The new marijuana law also introduces social equity and microbusiness licenses for Delaware residents. However, municipalities will retain the option to prohibit marijuana businesses from operating by enacting an appropriate zoning and land use ordinance.

While personal use became legal April 23, 2023, the implementation of the sale of marijuana will take time and effort.

Delaware joins a growing number of states that have legalized recreational marijuana in recent years. Currently, the recreational use of cannabis is legal in 22 states: Alaska, Arizona, California, Colorado, Connecticut, Delaware, Illinois, Maine, Maryland, Massachusetts, Michigan, Missouri, Montana, Nevada, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont, Virginia, and Washington.

Additionally, recreational marijuana is legal in the District of Columbia, Guam, the Northern Mariana Islands, and the U.S. Virgin Islands.

Six tribal nations also have legalized the recreational use of marijuana: Eastern Band of Cherokee Indians (North Carolina); Flandreau Santee Sioux Tribe (South Dakota); Oglala Lakota Sioux Tribe (South Dakota); Suquamish Tribe (Washington State); Squaxin Island Tribe (Washington State); and St. Regis Mohawk Tribe (New York).

All of these jurisdictions except Delaware, New Jersey, and Washington allow personal cultivation for recreational use.

Despite these changes in state laws and the expanding legalization of marijuana at the state level, federal law prohibiting marijuana continues unchanged. "Marihuana" remains listed on Schedule I of the Controlled Substances Act of 1970.

According to the U.S. Drug Enforcement Administration, "Schedule I drugs, substances, or chemicals are defined as drugs with no currently accepted medical use and a high potential for abuse." Marijuana is joined on Schedule I by narcotics, such as heroin and lysergic acid diethylamide (LSD). In contrast, drugs, such as hydrocodone (Vicodin), cocaine, methamphetamine, methadone, hydromorphone (Dilaudid), oxycodone (OxyContin), and fentanyl – several of which are responsible for the majority of America's addiction challenges – are listed only as Schedule II substances because of certain "accepted medical use."

Yet, as of April 24, 2023, the laws in 38 states, three territories, and the District of Columbia allow the medical use of marijuana and cannabis products. Despite proven medical practice in many states, the federal government continues to classify marijuana as a narcotic with no accepted medical use.

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Several marijuana-related bills are currently pending before Congress.

The "Marijuana 1-to-3 Act" to reschedule cannabis to Schedule III of the Controlled Substances Act was introduced by Congressman Greg Steube (R-FL) on January 27, 2023.

Congressmen Earl Blumenauer (D-OR) and Brian Mast (R-FL) introduced the Veterans Equal Access Act in March 2023. It would allow Veterans Administration doctors to recommend cannabis to patients in states with medical cannabis programs.

The PREPARE Act, introduced in 2022 and reintroduced on April 14, 2023, by Congressman Dave Joyce (R-OH) and Congressman Mast, with U.S. House Minority Leader Hakeem Jeffries (D-NY), would create a federal "Commission on the Federal Regulation of Cannabis" to study regulatory and tax frameworks for legalization and direct federal departments to do so as well, with a report due in one year.

However, whether any of these federal legislative bills makes its way to passage remains to be seen. The SAFE Banking Act was proposed last year as legislation aimed at allowing banks to do business with lawful cannabis companies operating within states that have legalized marijuana. Although enjoying widespread support, the legislation could not overcome unrelated partisan divisions that kept it from passage.

Looking ahead, the future is not promising for federal marijuana legalization in the near term. Especially with Congress deeply divided politically and a general election scheduled for November 2024, the more likely scenario from Washington is more talk but without much more action.

[Richard M. Blau](#) leads the GrayRobinson Cannabis Law Team, focusing on the laws and regulations that govern the cultivation and production, processing, distribution, sale, and dispensing of medical marijuana, hemp, Cannabidiol (CBD), and related cannabis products. Richard has been rated by Chambers USA since 2007, was among the first lawyers in America to be rated Band 1 Nationwide for Cannabis Law, and is listed in Best Lawyers® in America. Richard has been involved extensively with the legalization of cannabis in Florida since its outset, with the passage of the Compassionate Medical Cannabis Act of 2014 (SB 1030) into law on June 6, 2014. Richard also has represented several investors in the cannabis industry, advising principals on compliance issues associated with Florida Medical Marijuana Treatment Center (MMTC) license acquisitions.

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