

Maybe This Time Will Be Different: Senate Unveils Legislation to Legalize Marijuana

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On Thursday, July 21, 2022, Senators Chuck Schumer, Ron Wyden, and Cory Booker unveiled the long-awaited [Cannabis Administration and Opportunity Act \(CAOA\)](#), which, if passed, would decriminalize marijuana at the federal level and require various federal agencies to establish rules for regulating various aspects of the marijuana industry. This long-sought social equity legislation is also, and importantly, designed to minimize the impact the prosecution of marijuana crimes has on low-level offenders and end the decades of harm suffered by communities of color that have been historically disproportionately affected by such enforcement.

“We see now clearly that cannabis laws are unevenly enforced and, often, unfortunately, devastate the lives of those most vulnerable,” Booker said in his opening remarks yesterday, July 26, to the senate Judiciary subcommittee. And there is no dispute that “the federal government continues to lag woefully behind” in correcting the injustices caused by the existing federal drug law and policies, Booker acknowledged.

So what does CAOA do? Here are a few of the highlights:

- **Legalize it** – CAOA would decriminalize marijuana at a federal level by removing “marijuana” from the Controlled Substances Act (CSA). For those twenty-one and older, the CAOA recognizes state law as controlling the possession, production, or distribution of cannabis.
- **Redefining Hemp** – CAOA proposes to increase the permissible THC (on a dry-weight basis) in “industrial hemp,” which was removed from the CSA under the 2018 Farm Bill, from 0.3% to 0.7%. However, CAOA also proposes including all THC isomers in that total, not just delta-9 THC, which is the only cannabinoid considered when distinguishing between hemp and marijuana under current law.
- **Expungement** – CAOA would expunge the criminal records of low-level federal cannabis convictions, which, as defined by CAOA, relates to nearly all cannabis-related prosecutions from May 1, 1971, through the enactment of CAOA.
- **I’m the Tax Man** – Perhaps unsurprisingly, CAOA would set an excise tax on marijuana producers. The tax would vary depending on the size of the business and would increase over time. Once descheduled and removed from the CSA, the prohibitions applicable to cannabis businesses under tax code section 280E will no longer apply.

- **Red Tape** – The Government doesn't want to miss out on all of the fun. The CAOAs sets up a federal regulatory framework involving numerous agencies (including the Food and Drug Administration, ATF, and TTB) to establish rules and oversight of various aspects of the medicinal and adult use marijuana industries.

Most industry experts do not expect CAOAs to become law as currently drafted. Among other reasons, including the far-reaching nature of CAOAs' provisions and the immense changes the CAOAs would require with respect to both federal and state agencies, there remains resistance to the bill from Republicans in the Senate (and, possibly, some Democrats) specifically to legalizing marijuana and to any tax on marijuana products. Moreover, it is unclear if President Joe Biden backs the legislation as drafted. In the past, Biden has expressed skepticism with respect to legalizing marijuana, instead signaling that he would more likely back an incremental approach (as the House has done) – although the President did recently indicate he categorically did not think marijuana offenses should result in prison.

Yet, even if CAOAs is doomed on arrival, the fact that it has even been introduced has many in the marijuana industry optimistic that long-sought changes to the law and treatment of marijuana at the federal level are forthcoming. Industry experts expect the CAOAs to serve as a building block for a more incremental reform package that Schumer has reportedly been discussing with bipartisan offices in both chambers. In fact, both chambers of Congress are allegedly working on alternatives to CAOAs. If or when it fails to pass, industry insiders expect Congress will enact reform more incrementally, but still largely mirroring the provisions included in the more comprehensive CAOAs, including addressing banking issues (indeed, the SAFE Act continues to stall in the Senate), small business administration loan access, and funding for marijuana research. Notably, the alternative legislation allegedly may not completely remove marijuana from the CSA, as CAOAs does.

Another alternative, referenced above, and one which industry insiders believed was more likely to be enacted until the CAOAs hit the Senate floor just days ago, would be for the Senate to finally take up the [SAFE Banking Act](#). The SAFE Banking Act has passed the House more than six times in the past three years, but continues to stall in the Senate. However, it remains to be seen whether certain influential senators, like Corey Booker, would support such an incremental approach when it does not also address the restorative social justice aspects included in the CAOAs, which he has long insisted be included in any federal marijuana legislation. On this topic, Booker has gone so far as to state, "I will lay myself down to do everything I can to stop an easy banking bill that's going to allow all these corporations to make a lot more money off of this, as opposed to focusing on the restorative justice aspects."

One thing is for certain, there is no longer a question of whether the federal government will take action with respect to cannabis; the only remaining questions are when and how.

Watch the first Senate Judiciary Subcommittee meeting, titled "**Decriminalizing Cannabis at the Federal Level: Necessary Steps to Address Past Harms**" and held July 26, 2022, [here](#).

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