

Marijuana Legalization Has Other States Green with Envy

The Bottom Line

- In less than a decade, marijuana has gone from illegal to legal in a plurality of states, and the push for legalization is only strengthening.
- Although opportunities abound for the marketing industry in the marijuana industry, there are still legal risks to manage. Agencies and media providers looking to dabble in the space should ensure that they fully understand the legal landscape and how to manage risk.

New York became the 15th state to legalize recreational marijuana this March, following the lead of New Jersey and three other states where voters approved legalizing recreational marijuana this past November. In a year where states are seeking tax revenue wherever they can get it, this has set off a wave of similar legislation in other states where recreational use is expected to be legalized in the coming months.

Recreational Marijuana Legalizations

Up until 2012, recreational marijuana was illegal in all 50 states. In that year, Colorado and Washington legalized marijuana via ballot measures, becoming the first two states where recreational marijuana could be purchased legally. In the following years, a number of states modified their marijuana laws in various respects – including by legalizing medical marijuana and decriminalizing recreational marijuana – but relatively few states moved forward with legalizing recreational marijuana outright, with legalization efforts being mostly concentrated on the West Coast and New England.

However, legalization efforts dramatically increased following the 2020 November election. Four states – New Jersey, Arizona, South Dakota and Montana – chose to legalize marijuana via ballot initiative this past November. As

expected, this development led to legalization efforts elsewhere for a few reasons:

1. First, recreational marijuana is expected to result in at least \$100 million in annual tax revenue for New Jersey alone. Given the steep decline in tax receipts due to the COVID-19 pandemic, the potential for increased tax revenue is a powerful incentive for state legislatures facing budget cuts.
2. Second, as more states legalize recreational marijuana, it becomes virtually impossible for their neighbors to stem the flow of marijuana into their states.

Legalizations in 2021

Where states legalized recreational marijuana, their neighbors quickly followed suit to avoid the loss of tax dollars going across the border. New Jersey's larger neighbor, New York, legalized recreational marijuana this March, and New Mexico's neighbor, Arizona, followed suit in April. Virginia also legalized recreational marijuana in April. The expansion of the map will almost certainly lead to increased legalization efforts as more and more states now border others states where marijuana is legal.

Barriers for Legalizations

Keep in mind, though, that there are still barriers for the marijuana industry for these states and beyond. Although New York has legalized marijuana, the industry cannot open up until regulations are introduced and a licensing regime is established, and if the regulatory scheme for CBD – marijuana's non-intoxicating cousin – is any indicator, this will not happen until sometime in 2022. These regulations often involve specific disclosure requirements and certain limitations and restrictions on advertising for the purchase of marijuana and related products and services.

Despite the actions of the states, marijuana is still considered a Schedule I controlled substance under the United States Controlled Substances Act. Marijuana is therefore illegal on the federal level even when it is legal in a given state. Granted, the Obama administration formalized a non-enforcement policy for state-legal marijuana, and though the Trump administration repealed this policy on paper, neither the Trump nor Biden administrations have shown any appetite to interfere with state-legal marijuana industries.

Still, the risk of federal enforcement – though small, and decreasing by day – has dissuaded some from entering the industry, and banks in particular still have largely avoided the industry for fear of prosecution related to money-laundering charges.

Even so, legalization efforts have picked up steam on the federal level as well. With Democrats occupying the White House, Senate and House of Representatives, there have been several bills introduced that would legalize marijuana, or at least take pressure off of banks who want to accept money from the marijuana industry. The SAFE Banking Act (Secure and Fair Enforcement Banking Act), which would make it easier for the traditional banking industry to operate in this field, has been languishing in Congress for some time. Although the success of such legislation is unclear due to the current political climate, as more states legalize recreational marijuana and the federal appetite for enforcement remains low, the push for the federal government to end its prohibition may grow stronger in the coming months.

For More Information

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