

Money for Nothing? Marijuana and the Midterms

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I don't think the great Mark Knopfler of Dire Straits was talking about Congress when he [wrote](#) "that's the way you do it, money for nothing," but the recent midterm elections reminded me of that cynical refrain.

A few billion dollars here, a few billion dollars there. We end up with basically the same balance of power in the Senate and a small Republican majority in the House. Did any of it matter for cannabis reform? Actually, maybe.

So let's get the bad news out of the way first. At first blush, it appears that nothing has changed. And given that the outgoing Congress has not passed any meaningful cannabis reform to date, the status quo seems like bad news.

But after further thought, I'm not sure that's true. In fact, even though I'm the resident cynic when it comes to federal cannabis reform amongst the editorial staff here at the *Budding Trends* blog, I think there are at least two reasons to be optimistic about federal cannabis reform in the short and intermediate term.

Lame Duck, Same Duck?

What about a lame duck session? Any chance for movement there?

The Brookings Institution recently [noted](#) that "fiscal issues will be front and center" during the session, including "getting an omnibus spending bill done and deciding whether or not to deal with the debt limit." Further:

While fiscal issues will be front and center, several other legislative items also remain ripe for further action. Reports indicate that one such measure, to codify the federal recognition of same-sex marriages, is likely to be voted on as soon as this week in the Senate; the House had passed a similar bill prior to the elections. Other priorities include reforms to the Electoral Count Act, additional aid to Ukraine, funding for fighting the ongoing COVID-19 pandemic, and extending expiring tax provisions. One item that is especially likely to move—and, perhaps, carry along with it some other provisions—is the National Defense Authorization Act, or NDAA. The annual defense policy bill is seen as a must pass measure, but as a result, it

can end up bearing political conflicts that slow down its progress.

Punchbowl News, however, recently [described](#) the SAFE Banking Act, which we have [written about before](#), as “one of the more interesting legislative items that is likely to be in the mix during the lame-duck session.”

In short, the SAFE Banking Act would “ensur[e] access to financial services to cannabis-related legitimate businesses and service providers” by removing some of the attendant legal and regulatory risks.

Key aspects include:

- Establishing that “proceeds from a transaction involving activities of a cannabis-related legitimate business or service provider” are not “proceeds from an unlawful activity,” such that processing transactions involving these proceeds will no longer constitute money laundering “solely” because the proceeds derived from cannabis.
- Prohibiting federal regulators from terminating or limiting depository insurance solely because a financial institution provides services to a cannabis-related legitimate business.
- Prohibiting federal regulators from taking adverse actions against, or otherwise discouraging, financial institutions from providing services to cannabis-related legitimate businesses.
- Protecting depository institutions from civil, criminal, or administrative asset forfeiture for providing financial services to cannabis-related legitimate businesses.
- Amending the SAR reporting guidelines for cannabis-related legitimate businesses.
- Directing the Financial Crimes Enforcement Network to issue guidance and exam procedures for financial institutions transacting with cannabis-related legitimate businesses.

The Safe Banking Act has passed the House of Representatives seven times and has never had a vote in the Senate. Given the other legislative priorities of the lame duck Congress, I do not believe the Senate will take up the act before the end of the legislative session.

Punchbowl News also notes that two bipartisan bills could also receive lame duck consideration:

The HOPE Act is a bipartisan collaboration between Reps. Alexandra Ocasio-Cortez (D-N.Y.) and David Joyce (R-Ohio.) It would allow states to access federal funds to pay for the expungement of the criminal records for non-violent cannabis offenders.

The CLIMB Act is another bill with some bipartisan support that’s more business-focused. It would clear any “public or private” sources of capital to invest in “legitimate” cannabis firms. It would also amend the Securities and Exchange Act to allow national stock exchanges to list cannabis companies.

Again, I suspect time will run out before Congress gets to these bills in lame duck session.

The Next Congress

If there isn't reform passed during the lame duck session, work begins anew rolling the stone up the Hill (c'mon, you don't always get a Greek mythology-meets-politics pun when talking about pot).

The House may be slightly more conservative, and committee leadership will be in the hands of Republicans. Those are headwinds to cannabis reforms, but likely not fatal. The House votes for cannabis reforms have not typically been entirely along party lines, and if history is a guide more representatives will vote in favor of reform efforts than in the last session.

The Senate appears to be roughly the same ideologically, but the passage of time is likely to increase, not decrease, the odds of cannabis reform. Since the last Senate was seated, a number of new states either adopted medical cannabis programs for the first time, adopted more robust medical programs, or adopted adult use programs. That would seem to make it more, not less, likely for senators in those states (including states like Alabama and Mississippi) to seriously consider at least incremental cannabis reform efforts.

Finally, what about President Biden? Does he care about cannabis – personally or professionally? We [wrote](#) about the president's recent cannabis announcements:

Yesterday, President Joe Biden made two historic announcements which he described as steps to “end” the federal government’s “failed approach” to marijuana. First, he is issuing mass pardons for federal convictions of simple marijuana possession and has encouraged governors to do the same for state-level marijuana offenses. Second, President Biden ordered Secretary of Health and Human Services Xavier Becerra “to initiate the administrative process to review expeditiously how marijuana is scheduled under federal law.”

We also [discussed](#) whether the pre-election announcement was more of a political than substantive move by the president. We will get an answer during the next legislative session. I do not expect the White House to lead any meaningful reform efforts, but I also do not expect it to stand in the way.

For those who continue to work for reform efforts and bipartisanship when compromise seems like a wistful fantasy, remember the [words](#) of Mr. Knopfler:

Through these fields of destruction

Baptisms of fire

I've witnessed your suffering

As the battle raged high

And though they did hurt me so bad

In the fear and alarm

You did not desert me My brothers in arms

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