

Lawmakers Reintroduce Key Federal Cannabis Legislation

Kristi L. Wolff, Shea O'Meara

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Two recently-introduced bills are sending a message in Washington D.C.: federal law should harmonize with states on marijuana issues.

The first, the Small Business Tax Equity Act, would upend a little-known section of the tax code and allow cannabis businesses to deduct ordinary expenses on their federal taxes. Currently, section 280E prohibits businesses from writing off expenses like rent and payroll because they are selling a federally illegal drug.

If passed, the law would allow companies in compliance with state law to access the deductions and credits other business are entitled to. Tax equity has become one of the most talked-about issues in the industry with many companies still losing money despite considerable growth in legal state cannabis markets.

The legislation was also introduced – and failed – in the last Congress with 13 House cosponsors and five Senate cosponsors. It is unlikely to face a different fate this year, particularly given that it would reduce federal tax revenue without providing a replacement.

The second, the Veterans Medical Marijuana Safe Harbor Act, was introduced in both the House and Senate with bipartisan support. This bill would allow VA doctors to officially recommend medical cannabis in states where it is legal and provide a five-year “safe harbor” where veterans could not be punished for state-legal cannabis use.

Currently, VA doctors are permitted to discuss cannabis with patients but cannot take the next step of providing the paperwork to actually authorize it. This means veterans are forced to seek care from out-of-network (and out-of-pocket) physicians.

This bill has also seen past legislative failure. In the last Congress, an amendment containing the provision was dropped from the annual budget bill during negotiations.

Despite their uphill political battles, these newly reintroduced bills and their supporters are continuing to push for federal cannabis law that is more aligned with state law and trends. Although unlikely to be passed in this session, these bills create a marker for future discussions, likely post-2024 election season.