



Written by [Joe Wolverton, II, J.D.](#) on June 15, 2023

## Colorado Authorizes Online Payment for Marijuana, Nullifying Federal Prohibition

Earlier this month, Governor Jared Polis of Colorado made headlines by signing a groundbreaking bill that legalizes online payments for marijuana within the state, despite the ongoing federal prohibition on cannabis. [House Bill 1279](#) (HB 1279), introduced by Representatives William Lindstedt, Said Sharbini, and Robert Rodriguez on March 30, played a pivotal role in this significant legislative development. By repealing language in state law that previously prohibited online sales of cannabis and incorporating new provisions, the bill now permits licensed retail marijuana businesses in Colorado to accept online payments for the purchase of marijuana and related products.



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However, it is important to note that the law still [upholds certain restrictions](#). For instance, individuals must be physically present at the licensed premises of the retail marijuana store to take possession of the cannabis products they have purchased online. To ensure compliance with informational requirements, marijuana retailers are obligated to provide online shoppers with digital versions of all warning or educational materials that would typically be posted and provided within their physical premises.

HB 1279 successfully passed through the House with a 40-23 vote, followed by equally enthusiastic passage by the state Senate by a vote of 23-12. On June 1, Governor Polis signed the bill into law. The new legislation is set to take effect on August 7, unless a citizen petition is filed to challenge its implementation. This move represents a significant stride forward for the cannabis industry in Colorado, and sets an intriguing precedent for other states grappling with similar issues amid the complexities of federal cannabis regulations.

Enacted in 1970, the federal [Controlled Substances Act](#) (CSA) stands as a testament to the complete prohibition of marijuana by the federal government, despite the irrefutable fact that the federal government lacks any constitutional authority to regulate or ban cannabis — or any other substance — within the territory of the sovereign states. The federal government is powerless in this sphere, regardless of the perspectives held by politically affiliated lawyers and unelected judges who sit for decades on the bench of the Supreme Court.

Think about this question, which never gets asked but is germane to federal regulation of marijuana and other arguably harmful substances: Why was a constitutional amendment necessary to implement federal alcohol prohibition, but a simple statute — albeit absolutely unconstitutional — sufficient to shut down the cultivation, sale, use, and distribution of cannabis?



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The legalization of cannabis in Colorado has successfully dismantled a considerable web of laws that once restricted the possession and usage of marijuana. This bears great significance, as statistics from the FBI reveal that the violation of federal marijuana regulations accounts for fewer than one percent of the arrests made, with state statutes being the trigger of every other charge in the case of growing, using, and selling cannabis. When states cease enforcing marijuana regulations, they effectively eliminate the foundation for almost all marijuana-related arrests.

And consider this: Available data indicate that it would consume a substantial 40 percent of the federal Drug Enforcement Administration's (DEA) annual budget merely to investigate and raid all dispensaries within Los Angeles — an individual city within a single state. This calculation does not even encompass the costs of prosecution. The underlying lesson here is clear: The federal authorities lack the necessary resources to enforce marijuana prohibition without the assistance of states.

If states were to follow Colorado's formula for freedom from federal marijuana prohibition in that and other areas, we would find that the federal government would be unable to muster the men and materiel necessary to accomplish its authoritarian agenda in that arena and every other where it exercises unconstitutional authority. Judge Andrew Napolitano expressed his belief in this thesis in 2014 while discussing then-President Barack Obama's reticence to enforce federal drug laws in states with laws contravening them.

"The federal government does not have the person power and resources to enforce all federal laws on its own," [he said](#). "It needs the assistance of state and local police as well. They don't have that in Washington and Colorado because marijuana is lawful there, so it might be impractical and be too costly for the feds to enforce there."

He then continued:

Our home state of New Jersey could not, for example, use the police to frustrate federal law enforcement. What it could say to state and local police (is) "you will not cooperate." That will make federal enforcement of tighter federal gun laws nearly impossible. If the federal government limits guns in a state, will it need the assistance of state police to enforce those limitations? Yes, they will. And do the states have the right to refuse to enforce federal law that's against state public policy? Yes, they do. That's where we are on this.

Colorado's enactment of HB 1279 is an example of effectively following the advice given by James Madison in [The Federalist](#) No. 46. [In that essay](#), Madison recommends the "refusal to co-operate with the officers of the Union" as a way to stop the federal government's "long train of abuses" in its tracks.

To this end, then, the efforts of Colorado and its sister states to prevent the federal government from carrying out unconstitutional edicts with regard to the prohibition on marijuana are precisely what our Founding Fathers laid out to keep the feds inside the boundaries of their enumerated authority.

By allowing online payments for marijuana products, the ease of purchasing cannabis within the state will undoubtedly increase, consequently expanding the market. This further chips away at the unconstitutional foundation upon which federal prohibition of marijuana is built, gradually and effectively eroding its efficacy.

Regardless of one's personal views on the wisdom of buying, selling, or using marijuana or any other drug, the most important argument against federal prohibition of them is that there is not a single



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syllable of the Constitution authorizing any such federal program. If the power isn't granted to the federal government in the Constitution, then authority over that area remains with the states and the people as described in the Tenth Amendment.

Finally, as was intended in the formation of this confederation of sovereign republics, one can endeavor to influence the laws passed in the state where he resides, but if he is outvoted by his fellow citizens, then he can vote with his feet and choose to live in a state where marijuana and similar substances are banned by state law, thus upholding the Constitution as well as avoiding the political conflict inherent in trying to force one law on more than 300 million people.

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