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Insights

U.S. House of Representatives Reintroduces the MORE Act: Will 2021 be the Year Federal Cannabis Prohibition Finally Ends?

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On May 28, 2021, the U.S. House of Representatives (House) renewed its efforts to decriminalize cannabis at the federal level by reintroducing the Marijuana Opportunity Reinvestment and Expungement Act of 2021 (MORE Act). A 2020 version of the bill passed the House in December of 2020 with overwhelming support, only to fail to be considered in the then Republican controlled U.S. Senate (Senate). With Democrats now holding a slim majority in the Senate, by virtue of Vice President Kamala Harris holding the tie-breaking vote in the 50/50 chamber, there is increased speculation that the bill may be viable in 2021. The MORE Act would remove cannabis from the Controlled Substances Act (CSA), ending its long-standing federal prohibition and providing states with more authority to regulate cannabis activities.

Background

In December of 2020, the House passed the Marijuana Opportunity Reinvestment and Expungement Act of 2020 (2020 Act), marking the first time that a chamber of Congress had ever voted on the issue of decriminalizing cannabis. While the 228-115 House vote was a win for the bill's supporters, the 2020 Act and its Senate companion bill ultimately died in the Republican-controlled Senate. See our previous alert **here**.

Now, nearly six months later, three additional states have already legalized adult-use cannabis and as many as three others may do so before the end of the year. With this surge in state legalization efforts and the Senate's new (razor thin) Democratic majority, House Judiciary Chairman Jerry Nadler (D-NY), sponsor of the 2020 Act, has reintroduced the bill in the House with the support of five other democratic cosponsors in hopes that the bill can make it through the Senate this time around.

Key Provisions of the MORE Act

Decriminalization

The MORE Act amends the Controlled Substances Act (CSA) by striking 21 U.S.C. 812(c) (10) and (17), which currently list "marihuana" (i.e., cannabis) and "Tetrahydrocannabinols" (THC), respectively, as Schedule I substances. Schedule I regulates drugs with a high potential for abuse and no accepted medical use. This measure would decriminalize cannabis retroactively and would expunge and seal prior federal cannabis convictions.

Tax Provisions

The MORE Act establishes a 5% excise tax on the sales price of cannabis products manufactured in, or imported into, the United States, as well as a $1,000 "occupational tax" on individuals or enterprises "engaged in business as a producer or an export warehouse proprietor."

Loan Programs

The MORE Act establishes a new "Opportunity Trust Fund," to be financed with revenues from the taxes described above. Sixty percent of these funds would be earmarked for a newly established "Community Reinvestment Grant Program" to provide job training, reentry services and other programs to individuals adversely impacted by cannabis laws (i.e., the "War on Drugs"). The other forty percent of these funds would be used for various types of funding programs to help socially and economically disadvantaged people more easily participate in the cannabis industry.

Notable Changes from the 2020 Act

The MORE Act removes language from the 2020 Act that would permit the denial, suspension, or revocation of cannabis business permits based on previous or current legal proceedings involving felony violations of federal or state criminal law related to cannabis or cannabis products. In addition, the MORE Act requires an annual joint study to be conducted by the Comptroller General of the United States and the Administrator of the Small Business Administration, reporting on the individuals and entities receiving equitable assistance under the state and federal programs, required or established by the MORE Act.

Amazon Voices Support for the MORE Act

While many US companies have not taken a public stance on cannabis decriminalization, Amazon recently vocalized its support of the MORE Act. In a blog post from Tuesday, June 1st, Amazon's Senior Vice President of Worldwide Operations & Customer Service Dave Clark stated that Amazon's public policy team will be actively supporting the reintroduced MORE Act. Clark added that Amazon will also no longer be including "marijuana" in its comprehensive drug screening program for any positions not regulated by the Department of Transportation.

While Amazon may end up being the lodestar for other companies wanting to take a public stance on cannabis decriminalization, such a wave of public support has yet to be seen. Even with more states ending cannabis prohibitions at the state level, multi-state companies will continue to face increasingly complex issues as they attempt to navigate their drug screening policies while federal prohibitions remain.

Takeaways

While the push for cannabis decriminalization has been comparatively slow at the federal level, the pace of state legalization efforts has steadily increased in recent years. Following the 2020 election, seventeen states have now legalized adult-use recreational cannabis and thirty-six states that allow medical cannabis. According to the MORE Act, legal cannabis sales totaled $20 billion in 2019 and are expected to surpass $40.5 billion by 2025. While the ultimate outcome of the reintroduced MORE Act in 2021 remains unknown, what is clear is that the cannabis industry is booming and the use of medicinal and recreational cannabis will continue to present challenges for employers struggling to keep up with the rapidly evolving state of the law. Businesses should continue to monitor legislative developments, including those efforts here in Indiana, and Krieg DeVault LLP client alerts. Likewise, multistate employers may wish to reconsider their current drug screening policies to better address the ever-growing list of states permitting some form of cannabis use.

If you have questions about this alert, the MORE Act, or any other legal issues related to your company's drug screening policies, please contact **Kendall A. Schnurpel**, **Kate E. Trinkle** or your regular Krieg DeVault attorney.

Disclaimer. The contents of this article should not be construed as legal advice or a legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only, and you are urged to consult with counsel concerning your situation and specific legal questions you may have. Marijuana remains a federally illegal Class I drug. All activities related to marijuana are currently illegal under the federal laws of the United States and nothing contained on this alert is intended to assist in any way with violation of applicable law.