

## Insights

### After Months of Waiting, We Finally Have Senator Schumer's Cannabis Bill...Sort of

July 15, 2021

By: Kendall A. Schnurpel and Kyle P. Chambers

On Wednesday, July 14, 2021, Senate Majority Leader Chuck Schumer (D-NY), along with Senators Cory Booker (D-NJ) and Ron Wyden (D-OR) released a discussion draft of Senator Schumer's long-promised cannabis bill. The draft of the Cannabis Administration and Opportunity Act ("Draft") was released in an effort to encourage discussion and to solicit comments from lawmakers and the general public ahead of the formal introduction of the bill, which is expected in the fall. As currently drafted, the Draft would decriminalize cannabis federally but would allow states to prohibit its possession, production, and distribution. In addition, the bill would provide for the expungement of non-violent cannabis offenses, establish funding for a wide range of federal cannabis research, and establish grant programs to help socially and economically disadvantaged individuals impacted by the "War on Drugs."

#### Background

On December 4, 2020, the U.S. House of Representatives passed the Marijuana Opportunity Reinvestment and Expungement Act (MORE Act) in a historic vote that marked the first time that either chamber of Congress took up a bill to legalize cannabis (see our prior alert [here](#)). While the 2020 MORE Act did not receive a vote in the (then) Republican controlled Senate, the symbolic vote in the House was heralded as proof that views on cannabis were shifting under the weight of public sentiment. When the Democrats gained control of the Senate after the November 2020 election, Senator Schumer, as Senate Majority Leader, made sweeping cannabis reform a priority. Several pieces of cannabis legislation have already been introduced this year, including a **reintroduction of the MORE Act** and the **reintroduction of the Secure and Fair Enforcement Banking Act** (which would allow state-legal cannabis businesses to access the U.S. banking system). However, stakeholders have been anxiously awaiting the introduction of the Majority Leader's bill, given his commitment to ensure that it receives a vote in the upper chamber.

#### Details of the Draft

As of July 14, 2021, 37 states allow the use of cannabis for medicinal purposes while 18 states have fully legalized adult-use cannabis. Despite growing public support to end cannabis prohibition, Congress (especially the Senate) has been slow to move on the issue. In an acknowledgement that a significant amount of work remains to find the 60 Senate votes needed to pass the bill, its authors have released the Draft with a call for discussion and a stated willingness to compromise (to some extent) on its content. As released, the Draft is influenced by many of the provisions of the MORE Act and provides the following:

- Removes cannabis from the Controlled Substances Act (CSA) and directs the Attorney General to establish a new definition of "cannabis" within the Federal Food Drug and Cosmetic Act (FFDCA), which establishes

requirements for food, dietary supplements, drugs (including biologics), devices, cosmetics, and other substances such as tobacco.

- Transfers primary agency jurisdiction over cannabis from the Drug Enforcement Agency to other departments in the federal government (treating cannabis like alcohol and tobacco).
- Recognizes state law as controlling the possession, production, or distribution of cannabis (e.g., the shipment of cannabis into a state in violation of state law remains prohibited).
- Clarifies that a state may not prohibit the interstate commerce of cannabis transported through its borders for lawful delivery into another state.
- Establishes 21 as the minimum age required to purchase cannabis and limits any retail sales transaction to no more than 10 ounces of cannabis or the equivalent amount of any cannabis derivative.
- Directs the Comptroller General to conduct an evaluation of the societal impact of legalization by states with adult-use of cannabis and the Department of Health and Human Services (HHS) to conduct or support research on the impacts of cannabis.
- Directs the Department of Transportation and HHS to collect data on cannabis-impaired driving and continue research to enable the development of an impairment standard for driving under the influence of cannabis.
- Establishes grant programs aimed at creating opportunity for those harmed by the War on Drugs, including state grants tied to the establishment of state non-violent cannabis criminal record expungement policies.
- Amends relevant sections of the Small Business Act (SBA) and Small Business Investment Act to explicitly make SBA programs and services available to cannabis-related legitimate businesses and service providers.
- Requires, within one year of enactment, each federal district to expunge any arrests and convictions, as well as adjudications of juvenile delinquency, for non-violent federal cannabis offenses.
- Prohibits individuals from being denied any federal public benefit on the basis of use or possession of cannabis or on the basis of a conviction or adjudication of juvenile delinquency for a cannabis offense.
- Prohibits federal agencies from using past or present cannabis use as a basis for denying or rescinding a security clearance.
- Prohibits non-citizens from being denied any benefit or protection under federal immigration laws based on events relating to cannabis.
- Imposes an excise tax on cannabis products in a manner similar to the tax imposed on alcohol and tobacco. The general rate of tax would be 10 percent for the year of enactment and the first full calendar year after enactment. The tax rate would increase annually to 15 percent, 20 percent, and 25 percent in the following years, with a 50 percent credit available for small producers (less than \$20 million in sales annually).
- Establishes operational rules for manufacturers of cannabis products, similar to those for alcohol and tobacco.
- Creates a legal pathway for cannabidiol (CBD) in dietary supplements by amending the definition of “dietary supplement” to remove the prohibition on marketing CBD as a dietary supplement.
- Requires the Secretary of the Treasury, in consultation with other agencies, to establish regulations for the lawful delivery of hemp that inadvertently exceeds the permissible tetrahydrocannabinol (THC) limitations for hemp to a permitted cannabis enterprise for the proper processing of such products.

The offices of Senators Schumer, Wyden and Booker are accepting comments on the Draft from lawmakers and the general public, including advocates, the cannabis industry, public health experts and the law enforcement community. After consideration of those comments, which are due September 1, 2021, a final legislative draft of the bill will be introduced.

Comments may be submitted to: **Cannabis\_Reform@finance.senate.gov**.

If you have any questions regarding the Cannabis Administration and Opportunity Act or with any of the federal or state legal requirements related to cannabis, hemp or CBD, please contact **Kendall A. Schnurpel**.

*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. In addition, 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.*