

Insights

House of Representatives Passes Historic MORE Act to Decriminalize Cannabis at Federal Level

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On Friday, December 4th, 2020, the U.S. House of Representatives passed H.R. 3884, the Marijuana Opportunity Reinvestment and Expungement Act (MORE Act) by a vote of 228 to 164. If enacted, the MORE Act would end federal prohibition of cannabis, require federal courts to expunge prior cannabis (or marijuana) offenses, and would impose a 5% excise tax on cannabis products to fund criminal and social reform programs. While historic, in that this was the first time that either chamber of Congress took up a bill to legalize cannabis, the vote is largely seen as symbolic, given the current lack of support for decriminalization in the Republican controlled Senate.

Background

Representative Jerry Nadler (D-NY) and then Senator (now Vice President-Elect) Kamala Harris (D-CA) introduced matching bills H.R. 3884 and S. 2227, in the House and Senate, respectively, on July 23, 2019. The Senate Finance Committee has yet to consider S. 2227. The full House was scheduled to vote on the bill in September of this year, but Democratic leadership postponed the vote due to concerns with public perception of passing the MORE Act before passing any additional Coronavirus stimulus relief.

The MORE Act

The MORE Act has been described as the most comprehensive federal cannabis reform legislation in U.S. history. The bill not only decriminalizes cannabis at the federal level, but it also includes significant social and criminal justice measures related to business ownership, employment, and criminal records. These programs would be funded with revenue generated from new excise taxes on cannabis products.

Decriminalization

If passed, the MORE Act would amend the Controlled Substances Act (CSA) by striking 21 U.S.C. 812(c) (10) and (17), which currently list "marihuana" and "Tetrahydrocannabinols" (THC), respectively, as Schedule I substances. Schedule I regulates drugs with a high potential for abuse and no accepted medical use. The CSA imposes criminal penalties for making, trafficking, and possessing listed substances, which also include heroin and LSD.

Federal decriminalization under the MORE Act would apply retroactively to previous marijuana convictions as well as pending cases. This measure would expunge and seal federal marijuana convictions and would condition states' eligibility for new grants on making similar changes to state laws. Additionally, it would impose taxes on cannabis producers and importers, using the revenue to support people arrested for drug offenses, including people with previous convictions who want to participate in the cannabis industry.

Tax and Regulatory Provisions

The MORE Act would establish a 5% excise tax on the sales price of cannabis products manufactured in, or imported into, the United States. This tax would increase to 8% over five years. However, medication approved by the Food and Drug Administration (FDA) and industrial hemp would be exempt from the tax, as would individuals who grow cannabis for personal use and do not sell it.

In addition to the excise tax on cannabis products, the bill imposes a \$1,000 “occupational tax” on individuals or enterprises “engaged in business as a producer or an export warehouse proprietor.” This occupational tax would be imposed on each premises at which such a business takes place.

While the MORE Act reserves authority for the FDA to regulate products containing or being derived from cannabis, the Treasury and the Internal Revenue Service (IRS) would be charged with certain regulatory aspects related to the operation of cannabis businesses. The MORE Act requires cannabis producers and export warehouse operators to obtain permits and file bonds in an amount and form to be determined by the Treasury Secretary. Cannabis products would have to be planted, grown, manufactured, and packaged on the bonded premises of a production facility, except when grown for personal use. The IRS could deny or revoke a permit if it finds that an entity or its executives are unlikely to comply with the bill's provisions, were unable to safeguard tax revenue, or fail to disclose required information.

Cannabis products would generally have to be placed in IRS-approved packages containing required labels and marks before they could be transferred or released. It would be illegal to buy, sell, or possess transferred cannabis products, with the intent to defraud the U.S., if taxes haven't been paid or if the required packaging or labeling are missing. The failure to comply with the various requirements of the MORE Act would result in civil and criminal penalties of up to \$10,000 and 5 years in prison.

Trust Funds and Social 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 be administered by the Justice Department to provide job training, reentry services and other programs to individuals “adversely impacted by the War on Drugs.” Twenty percent of the tax revenue would be used to fund Small Business Administration (SBA) loans to help socially and economically disadvantaged people participate in the cannabis industry. The remaining twenty percent would go to the “Equitable Licensing Grant Program,” administered by the SBA, to fund state licensing programs that meet certain requirements to help minimize barriers to entry into the cannabis industry for low-income people affected by drug arrests.

What's Next for the U.S. and Indiana?

Despite the historic vote in the House, the Senate is not expected to consider the MORE Act, especially if Republicans maintain control after the January 5 special election in Georgia. However, industry insiders point to growing support, with recent Gallup and Pew Research polls showing support as high as 68% of adults in favor of relaxing existing laws, indicating that public sentiment is outpacing political support. In the recent election, five states passed legalization measures in some form (Arizona, Mississippi, Montana, New Jersey, and South Dakota). So far, Indiana has been cautious on this issue.

Legalization in Indiana is not without leadership support, however. Indiana State Representative Jim Lucas (R-Seymour) and Indiana State Senator Karen Tallian (D-Ogden Dunes), both long-time proponents of decriminalization, have each stated publicly their intent to introduce cannabis bills for consideration in the upcoming legislative session. However, Indiana Governor Eric Holcomb is on the record as being against legalization in the state, citing the federal government's continued criminalization of cannabis use as a threshold issue behind his position. It is therefore possible that Indiana's willingness to consider cannabis legalization in the near-term may be influenced by Georgia voters and the fight for control of the U.S. Senate. Stay tuned.

If you have questions about this alert, the MORE Act, or any other legal issues related to the production and sale of hemp and legal cannabidiol products, please contact Kendall A. Schnurpel, Kate E. Trinkle or your regular Krieg DeVault attorney.