

Update on Federal Legislation Related to Cannabis

House Commerce & Gaming Committee

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Scope of Presentation

1. Marijuana Opportunity Reinvestment and Expungement Act of 2020 (“MORE Act of 2020”)
2. Strengthening the Tenth Amendment Through Entrusting States Act (“STATES Act”) (2019)
3. Regulate Marijuana Like Alcohol Act (2019)
4. Marijuana 1-to-3 Act of 2021
5. Secure And Fair Enforcement Banking Act of 2019 (“SAFE Banking Act of 2019”)
6. Cannabidiol and Marijuana Research Expansion Act (2019, 2021)

Background: The Five Schedules Under the Federal CSA

- **Schedule I:** No currently accepted medical use and a high potential for abuse
 - Marijuana (cannabis), heroin, LSD, ecstasy, and peyote
- **Schedule II:** High potential for abuse, with use potentially leading to severe psychological or physical dependence
 - Vicodin, cocaine, methamphetamine, oxycodone (OxyContin), fentanyl, and Adderall
- **Schedule III:** Moderate to low potential for physical and psychological dependence
 - Tylenol with codeine, ketamine, anabolic steroids, and testosterone
- **Schedule IV:** Low potential for abuse and low risk of dependence
 - Xanax, Soma, Darvon, Darvocet, Valium, Ativan, Talwin, Ambien, Tramadol
- **Schedule V:** Lower potential for abuse than Schedule IV and consist of preparations containing limited quantities of certain narcotics
 - Robitussin AC, Lomotil, Motofen, Lyrica, Parepectolin

Marijuana Opportunity Reinvestment and Expungement Act of 2020 ("MORE Act of 2020")

1. Introduced in House and Senate:
 - H.R. 3884 (Rep. Nadler-NY) (2019)
 - S. 2227 (Sen. Harris-CA) (2019)
2. "AN ACT To decriminalize and deschedule cannabis, to provide for reinvestment in certain persons adversely impacted by the War on Drugs, to provide for expungement of certain cannabis offenses, and for other purposes"
3. Passed House of Representatives on December 4, 2020

The MORE Act of 2020

- Removes “marihuana” and “tetrahydrocannabinols” from Schedule I of the federal Controlled Substances Act
- Deems these substances to be a drug or other substance not meeting requirements for inclusion on any schedule
- Applies retroactively
- Changes terminology to “cannabis” in federal law
- Retains authority for federal government to require drug testing for cannabis in context of (1) commercial motor vehicles; (2) aviation safety; (3) railroad operations; (4) public transportation programs; (5) federal employees

The MORE Act of 2020

- Requires the Bureau of Labor Statistics to regularly publish demographic data on cannabis business owners and employees
- Authorizes federal regulation of the packaging of cannabis
- Requires producers to obtain a federal permit and file a bond
- Creates the “Opportunity Trust Fund” as new account in Treasury
- Imposes a federal excise tax on cannabis products produced in or imported into the United States (5 percent for first two years, then increasing a percentage point per year until 8 percent)
- Imposes occupational tax of \$1,000 per year on person engaged as cannabis producer or an export warehouse proprietor

The MORE Act of 2020

- Establishes the **Cannabis Justice Office (CJO)**
- Establishes the “**Community Reinvestment Grant Program**” within the CJO to provide funds to eligible entities to administer services for individuals adversely impacted by the War on Drugs (e.g., job training, reentry services, legal aid, literacy programs, youth recreation/mentoring, and health programs)
- Establishes the “**Cannabis Opportunity Program**” within the SBA to provide eligible states/local governments with funds to make loans to assist small businesses owned by socially and economically disadvantaged individuals
- Establishes the “**Equitable Licensing Grant Program**” within the SBA to provide eligible states/local governments with funds to develop/implement equitable cannabis licensing programs that minimize barriers to licensing and employment for individuals adversely impacted by the War on Drugs

The MORE Act of 2020

- Makes available other SBA programs and services to cannabis businesses and service providers
- Prohibits discrimination in federal public benefits on basis of cannabis
- Prohibits denying a benefit/protection under immigration law based on cannabis
- Requires federal district courts to conduct a comprehensive review and issue an order expunging each conviction or adjudication of juvenile delinquency (and associated arrest records) for non-violent federal cannabis offenses entered since May 1971
- Creates a process for sentencing review for individuals currently incarcerated for a non-violent federal cannabis offense
- Requires certain studies and reports to Congress

Strengthening the Tenth Amendment Through Entrusting States Act ("STATES Act")

1. Introduced in House and Senate:
 - H.R. 2093 (Rep. Blumenauer-OR) (2019)
 - S. 1028 (Sen. Warren-MA) (2019)
2. Narrower approach than the MORE Act of 2020
3. STATES Act is state-based approach, to create a safe harbor under the federal Controlled Substances Act for activity in states with legal cannabis
4. Eliminates the federal-state conflict of law for states with legal cannabis
5. Introduced and referred to committees

The STATES Act

- Specifies that the federal Controlled Substances Act as applied to cannabis does not apply to persons acting in compliance with state law relating to the manufacture, production, possession, distribution, dispensation, administration, or delivery of cannabis
- Similarly applies to persons acting in compliance with the law of a federally recognized Indian tribe if the tribal jurisdiction is located within a state also permitting the activity
- Specifies proceeds from transactions in compliance with the act are not proceeds of an unlawful transaction
- Includes limited exceptions

The STATES Act (exceptions)

- Includes exceptions for when federal provisions continue to apply:
 1. Distributing cannabis within 1,000 feet of a truck stop or safety rest area
 2. Distributing cannabis to a person under age 21, unless for medical purposes
 3. Endangering a human life while manufacturing or transporting materials, including chemicals, to manufacture cannabis
- Also specifies the new safe harbor does not apply if person:
 - A. Violates a provision regarding another controlled substance
 - B. Violates a state law regarding cannabis
 - C. Employs or hires a person under age 18

The STATES Act

Requires a study and report to Congress on the effects of cannabis legalization on traffic safety. Must include detailed assessment of:

1. Traffic crashes, fatalities, and injuries, including whether states can accurately evaluate cannabis impairment in those incidents
2. Actions taken by states to address cannabis-impaired driving
3. Testing standards used by states to evaluate cannabis impairment, including any scientific methods used to determine impairment and analyze data
4. Federal initiatives aiming to assist these states with traffic safety

The Marijuana 1-to-3 Act of 2021

1. Introduced in House:
 - H.R. 4323 (Rep. Steube-FL) (2019)
 - H.R. 365 (Rep. Steube-FL) (2021)
2. “A BILL To provide for the rescheduling of marijuana into schedule III of the Controlled Substances Act”
3. Directs the U.S Attorney General to transfer cannabis from Schedule I to Schedule III of the federal Controlled Substances Act
4. Impacts cannabis businesses in relation to Section 280E of Internal Revenue Code (which disallows business deductions for a trade or business that consists of trafficking in Schedule I or II substances)
5. Impacts cannabis research
6. Referred to committees in 2019 and reintroduced in 2021

Regulate Marijuana Like Alcohol Act (2019)

1. Introduced in House:
 - H.R. 420 (Rep. Blumenauer-OR) (2019)
2. Deschedules cannabis from the federal Controlled Substances Act, adds cannabis regulation to the Federal Alcohol Administration Act and other federal alcohol statutes, and makes other changes
3. Introduced and referred to committees

Regulate Marijuana Like Alcohol Act

- Removes cannabis from all schedules under the federal CSA
- Prohibits cannabis from being shipped or transported into any state where it is illegal
- Requires manufacturers, importers, and sellers of cannabis products to obtain a federal permit from the Treasury
- Regulates cannabis advertising, including prohibiting deceptive practices
- Specifies the Food and Drug Administration has the same authority with respect to cannabis as for alcohol
- Transfers jurisdiction related to cannabis from the Drug Enforcement Administration to the Bureau of Alcohol, Tobacco, Firearms, and Explosives, and renames the Bureau accordingly
- Also renames the Alcohol and Tobacco Tax and Trade Bureau accordingly

The Secure And Fair Enforcement Banking Act of 2019 (“SAFE Banking Act of 2019”)

1. Introduced in House and Senate:
 - H.R. 1595 (Rep. Perlmutter-CO) (2019)
 - S. 1200 (Sen. Merkley-OR) (2019)
 - H.R. 1996 (Rep. Perlmutter-CO) (2021) (text still processing online)
2. “AN ACT To create protections for depository institutions that provide financial services to cannabis-related legitimate businesses and service providers for such businesses, and for other purposes.” (2019 version)
3. Passed House of Representatives on September 25, 2019

The SAFE Banking Act of 2019

- Prohibits federal banking regulators from taking a variety of adverse actions against depository institutions, financial services providers, and insurers who engage in business with cannabis businesses or service providers
- Specifies that proceeds from a transaction with a cannabis business or service provider may not be considered proceeds from an unlawful activity
- Does not require depository institutions, financial services providers, or insurers to engage in business with cannabis businesses or service providers
- Adds requirement related to the filing of suspicious activity reports under guidance of the Financial Crimes Enforcement Network (FinCEN)

The SAFE Banking Act of 2019

- Requires an annual diversity and inclusion report by federal banking regulators to Congress, including:
 1. Information/data on the availability of access to financial services for minority-owned and women-owned cannabis businesses; and
 2. Any regulatory or legislative recommendations for expanding access to financial services for minority-owned and women-owned cannabis businesses
- Addresses hemp and CBD issues in context of financial services
- Imposes requirements for when federal banking agencies may request or order a depository institution to terminate customer accounts or restrict or discourage institutions from entering or maintaining banking relationships with customers (need a valid reason not based solely on reputational risk)

Cannabidiol and Marihuana Research Expansion Act

1. Introduced in Senate:
 - S. 2032 (Sen. Feinstein-CA) (2019)
 - S. 253 (Sen. Feinstein-CA) (2021)
2. Passed the Senate in December 2020
3. Generally, reduces certain barriers to researching cannabis and cannabidiol (CBD) and makes related changes

Cannabidiol and Marijuana Research Expansion Act

- Requires the U.S. Attorney General to register a practitioner to conduct research with cannabis if certain federal agencies have reviewed and allowed the applicant's research protocol, so long as the applicant demonstrates effective procedures to prevent diversion and secure the cannabis
- Modifies the registration application process for cannabis research, including adding a timeline for the U.S. Attorney General to act on an application
- Authorizes researchers to more quickly obtain greater quantities of cannabis and to modify research protocols for approved research by notifying the DEA
- Addresses the manufacture of cannabis for research, potentially increasing the number of authorized suppliers of cannabis for registered researchers

Cannabidiol and Marijuana Research Expansion Act

- Reduces barriers to manufacturing and importing cannabis and CBD for inclusion in FDA-approved drugs
- Provides it is not a violation of the federal CSA for a physician to discuss known potential harms and benefits of cannabis as a treatment
- Requires a report on cannabis and CBD, including the potential therapeutic effects of cannabis and CBD on serious medical conditions as well as barriers associated with researching cannabis or CBD in states where the use of these substances is legal

Other Cannabis- Related Federal Legislation

1. Clarifying Law Around Insurance of Marijuana Act (“CLAIM Act”) (2019, 2021)
2. Veterans Cannabis Use for Safe Healing Act (2021)
3. Marijuana Justice Act of 2019
4. Next STEP Act of 2019
5. Marijuana Freedom and Opportunity Act (2019)
6. Marijuana Revenue and Regulation Act (2019)
7. Responsibly Addressing the Marijuana Policy Gap of 2019 (2019)
8. Medical Marijuana Research Act (2019)

Thank You!

