Cannabis Practice Update

December 2020

Marijuana on Congress's Minds

Key Notes:

- U.S. House of Representatives passes legislation which would provide both criminal justice reform and financial boost to cannabis industry
- MORE Act would expunge certain marijuana convictions and remove marijuana from the list of controlled substances
- Additional cannabis related bills expected from the U.S. House of Representatives in the near future

On Friday, December 4, 2020, the U.S. House of Representatives passed the Marijuana Opportunity Reinvestment and Expungement Act (MORE Act) on a largely party-line, 228-164 vote with five Republicans voting in favor of and six Democrats voting against the bill. The MORE Act would decriminalize marijuana on the federal level and allow states to create their own cannabis policies without federal interference, and it would establish a cannabis sales tax to fund a suite of restorative justice programs.

If the bill becomes law, it will remove marijuana from the controlled substances list, thereby eliminating the existing conflicts between state and federal marijuana laws. The MORE Act would also: provide a path for expungement of marijuana convictions for nonviolent offenders with mandatory resentencing hearings upon request by previous offenders; prohibit the denial of federal public benefits to a person on the basis of certain marijuana-related conduct or convictions; allow veterans, for the first time, to obtain medical cannabis recommendations from their VA doctors; liberalize deportation consequences for immigrants with minor marijuana infractions; and impose a 5% tax on marijuana sales. The proceeds of that tax would fund job training, education and legal services for individuals impacted by the prohibition against marijuana and create avenues for them to participate in the marijuana industry.

Removing marijuana from the controlled substances list would provide a significant benefit to the burgeoning cannabis industry. Currently, Section 280E of the federal tax code prohibits business deductions for companies that violate the Controlled Substances Act, and many financial institutions have been reluctant to provide banking services to companies that deal in a controlled substance. In September of 2019, the U.S. House of Representatives passed the Secure and Fair Enforcement (SAFE) Banking Act which would have provided a shield against legal liability for financial institutions that work with state-legal cannabis industry participants, but that bill did not receive a vote in the Senate. The MORE Act is likely to face a similar fate.

The passage of these two bills signals a clear intent on the part of the Democratic majority in the House to make marijuana legislation a priority in the incoming administration. Indeed, more legislation is expected from the House in the coming weeks, including a bipartisan bill which would expand access to cannabis for clinical studies. Following this year's elections, 15 states and the District of Columbia have now legalized recreational marijuana use by adults, while 36 states have enacted or voted to enact medical marijuana laws. These changes have often come through direct voter action, including 28 separate ballot measures legalizing cannabis either for recreational or medical use. The 2020 legalization progress comes as the United States' neighbors to the north and south, Canada and Mexico, have also legalized marijuana for medical and recreational uses. Even if Republicans maintain their control over the Senate, the outlook for the SAFE Banking Act ultimately becoming law is positive in some quarters. As shown by the success of various ballot measures, the cannabis industry continues growing its bipartisan support and foster the advancement of the legal cannabis industry, and it could help state economies recover faster, through both job creation and additional tax revenue.

FOR MORE INFORMATION

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