

The Historic Cannabis Administration and Opportunity Act Could Finally End Federal Cannabis Prohibition

Cannabis Business Legal News

By Darren Grady on July 16, 2021

Cannabis, or “marihuana” as it is referred to in the Controlled Substances Act (CSA), has been federally illegal in the United States since 1937. Yesterday, Senate Majority Leader Chuck Schumer (D-NY) announced that he will make legislation ending the federal prohibition of cannabis a top priority. In the recent press conference, Senator Schumer introduced a draft of the Cannabis Administration and Opportunity Act (the “CAOA”), which would lift the federal prohibition on cannabis and, critically, allow state-compliant cannabis businesses to have access to financial services such as bank accounts and loans. This would be a boon for the cannabis industry which has largely been prevented from banking any cannabis derived funds at all. The Act is widely regarded as the most comprehensive bill introduced to end federal prohibition of cannabis, building on the excellent work done by legislators on the Marijuana Opportunity, Reinvestment, and Expungement Act.

Pursuant to the CAOA, which is also sponsored by Senate Finance Committee Chairman Ron Wyden (D-OR) and Sen. Cory Booker (D-NJ), cannabis would, of course, no longer be a controlled substance. The Attorney General would be required to remove cannabis from the CSA (where it is still a schedule I drug - purportedly having no medical value and high potential for abuse) no more than sixty days after the enactment of the law. Individual states will retain control of cannabis policy within their borders. Though the Act would strike cannabis from the CSA, it would not technically “legalize” cannabis. The CAOA would simply end *federal* prohibition on cannabis. States would still have to allow for transportation of cannabis and cannabis related products through their state (similar to the current regulations for interstate transportation for industrial hemp) even if they choose not to allow for the sale and possession of legal cannabis within their borders.

Further, the CAOA would create grant programs to assist those impacted by the so-called “war on drugs,” provide funding for business loans, and provide funding for cannabis licensing programs to assist those disproportionately

affected by draconian cannabis laws and resulting penalties. Further, those in receipt of, or seeking, federal benefits cannot be denied those benefits due to past use or possession of cannabis (or a past conviction for a cannabis crime). The Act also sets forth federal tax provisions on the plant, as well as a codification of the regulation entities. The FDA would be the primary federal regulation agency (a shift away from the DEA). The FDA would handle regulation of the manufacture and marketing of cannabis, including product standards, registration, listing, and labeling information related to ingredients in cannabis products and directions for use of the multitude of cannabis products. The Alcohol and Tobacco Tax and Trade Bureau and the Bureau of Alcohol, Tobacco, Firearms and Explosives and the would also have some regulatory oversight pursuant to the Act.

In commenting on the social justice aspects of the CAOA, Senator Schumer stated that “[a]t long last [the CAOA] would take steps to right the wrongs of the failed war on drugs,” as the Act would also call for the expungement of arrests and convictions for non-violent cannabis offenses. The Act would also allow people currently serving, or subject to, a cannabis sentence to obtain sentencing review.

Finally, as expected, the CAOA will face legitimate passage issues in the Senate (assuming it passes in the House, which it likely will in some form). The Act will need sixty votes in the Senate for ultimate passage before making it to President Biden. There are fifty Democrats in the Senate and it is not readily apparent if all of them support the Act, or would support some revised form of the Act. Even with 100% support from the Democrats, the CAOA would still need ten Republican Senators to vote to pass the Act. Despite these challenges, the introduction of this draft landmark legislation is yet another step in the right direction of much needed and long overdue cannabis reform.

Those individuals and businesses already in the legal cannabis industry, or businesses waiting for the federal status of cannabis to change before entering the market, should monitor the progress of the CAOA and Senator Schumer’s efforts *very* closely. In fact, legislators are asking for public comment to be submitted to Cannabis_Reform@finance.senate.gov by September 1, 2021. So, individuals and businesses in, or wanting to get into, the cannabis industry should make their voices heard. Those businesses should also speak with trusted counsel about how this groundbreaking piece of legislation could significantly change the landscape of the industry in the United States.

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