IN THE WEEDS: THE STATES REFORM ACT OF 2021, THE LATEST COMPREHENSIVE CANNABIS REFORM BILL

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On 15 November 2021, Representative Nancy Mace (R-SC) introduced a comprehensive cannabis reform bill: the "States Reform Act" (SRA). As discussed in further detail below, the SRA would deschedule cannabis from the Controlled Substances Act (CSA) (and all implementing regulations) yet preserve states' authority to regulate or prohibit cannabis (similar to the legal framework for alcohol); expunge past cannabis convictions; grandfather in existing state licensees; apply a federal excise tax of 3%; and revise the Federal Food, Drug, and Cosmetic Act (FFDCA) to create a pathway for cannabis-infused foods, drugs, dietary supplements, and "designated state medical cannabis products."

KEY FEATURES OF THE SRA

Descheduling Cannabis; Expungement

Like other comprehensive reform bills, such as the "Marijuana Opportunity, Reinvestment, and Expungement (MORE) Act" and the discussion draft of the "Cannabis Administration and Opportunity Act" (CAO), the SRA would remove cannabis from the CSA. However, unlike those proposals, it would also amend the CSA to expressly exclude cannabis. Currently, the CSA excludes distilled spirits, wine, malt beverages, and tobacco from the meaning of "controlled substance" under the CSA; the SRA would do the same for cannabis. Moreover, the SRA would conform federal law accordingly, make any inconsistent regulations invalid, and require the U.S. Attorney General to "administratively revise current regulations" within 30 days of enactment to conform. Such revisions would be expressly excluded from the Administrative Procedures Act.

Similar to the CAO and the MORE Act, the SRA would apply its changes to the CSA retroactively to any "offense committed, case pending, [and] conviction entered," including for juveniles, prior to enactment. However, the retroactivity provision would apply only to nonviolent offenses and expressly excludes any person who worked for a drug cartel. The federal government would be required to dismiss any eligible pending charges and convictions awaiting sentencing.

Consistent with the CAO and the MORE Act, the SRA would direct each federal district to expunge each conviction or adjudication for a nonviolent cannabis offense that was entered by the relevant federal court prior to enactment.

States' Authority to Regulate Cannabis

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The SRA would expressly preserve the authority of states to regulate, and even prohibit, the possession, use, sale, distribution, manufacturer, delivery, and related activities of cannabis within its own borders. However, similar to federal rules for alcohol, it would allow cannabis to be transported through a state to a jurisdiction in which cannabis is lawful, in conformity with federal regulations that will be implemented to govern such transit. Each state would also be able to determine the age limit for purchase of adult-use products, although the federal government would withhold 10% of funding for highways to any state that allowed any person under 21 to purchase adult-use products. Moreover, advertisements could not be directed at any person under the age of 21.

Regulatory Framework

The Food and Drug Administration (FDA) “shall have the same authorities with respect to cannabis products that it has with respect to alcohol and no more.” With respect to cannabis-infused foods and dietary supplements, FDA would be required to issue rules regarding lawful serving sizes. The measure would grandfather in existing medical cannabis products that conform to state law or the U.S. Pharmacopeia, similar to what was achieved by the Medical Gas Safety Act. FDA would have authority to regulate and certify “designated state medical cannabis products,” as well as determine serving sizes, but certified products could be sold interstate. Medical cannabis products that do not qualify for the grandfather provisions or certification, however, would be subject to FDA's existing authorities, regulations, and procedures for new drugs or new uses of drugs.

The Alcohol and Tobacco Tax and Trade Bureau (TTB) (renamed the Bureau of Alcohol, Tobacco, and Cannabis Tax and Trade Bureau) would be responsible for granting permits for the import, export, sale, delivery, or transportation of cannabis across state lines and in international trade; overseeing labeling requirements; collecting taxes; and implementing a track-and-trace program to deter and detect diversion. Any person who holds a state cannabis license to produce, distribute, warehouse, or transport cannabis would be entitled to receive a permit from the TTB. New applicants, however, would need to meet various criteria, including an ability to comply with federal law; commence operations quickly, in conformity with state law; and not have been convicted of a “disqualifying offense.” If a permit is denied, an applicant would be entitled to a hearing and an appeal. The SRA would also implement a temporary safe harbor for any person engaging in interstate commerce in cannabis products or designated state medical cannabis products until the TTB issues final regulations.

Additionally, the SRA would expressly categorize raw cannabis as an agricultural crop, subject to regulation by the Department of Agriculture. The SRA would also ensure that raw cannabis is regulated similarly to raw barley, hops, and grains and includes dual specialty crop designation, pursuant to mandatory rulemaking by the Department of Agriculture. States would be the primary regulator of raw cannabis production, upon approval of production plans by the federal government.

Taxation and Revenue Spending

Like other comprehensive reform proposals, the SRA would impose a federal excise tax. However, in contrast to other proposals, the SRA would implement a single tax rate of 3% and expressly prohibit Congress from increasing the rate for at least 10 years. The tax would be levied at wholesale and based on the removal price of the cannabis. Revenues from the excise tax would be used to fund the Crisis Stabilization and Community Reentry Grant Program, the Edward Byrne Justice Assistance Grant Program, the Community-Oriented Policing Service Program, and the Small Business Administration (SBA) to fund loans for cannabis businesses and service providers under the SBA's 7(a), (b), and (m) programs. Additionally, revenues would help fund small-

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business investment companies, including guarantees of debentures eligible under the Small Business Investment Act.

Pathways for Adult-Use Cannabis Products

To create a pathway for cannabis-infused foods and dietary supplements, the SRA would amend several aspects of the FFDCA. First, the measure would exclude cannabis from the FFDCA's drug preclusion provision (Section 301(ll) of the FFDCA). This amendment would lift the FFDCA's prohibition on incorporating THC and CBD (both of which are active ingredients in approved drugs) into foods. Second, the bill would exclude cannabis from the definition of “food additive” under Section 201(s) of the FFDCA. By doing so, FDA would not need provide premarket approval nor would cannabis need to be deemed generally recognized as safe (GRAS) before incorporating it into foods (interestingly, the SRA would also deem cannabis to be GRAS). Fourth, the SRA would require FDA to issue a rule to clarify intended conditions of use for whole-plant cannabis extracts and individual cannabinoids extracts used for dietary supplements. This provision is intended to facilitate the sale of cannabis products as dietary supplements. To date, other measures have not included provisions expressly addressing these aspects of the FFDCA.

CONCLUSION

The SRA is the newest comprehensive reform bill, and it contributes new ideas to vigorous policy discussion on Capitol Hill, particularly with respect to pathways for adult-use cannabis products and grandfathering existing state-lawful medical products.

Last December, the House of Representatives passed the “MORE Act” by a vote of 228–164, making it the first time either chamber of Congress has approved a measure to deschedule cannabis since enactment of the CSA. In May, Representative Dave Joyce (R-OH) and Representative Don Young (R-AK) introduced the “Common Sense Cannabis Reform for Veterans, Small Businesses and Medical Professionals Act”. A few months later, in July, Senate Majority Leader Chuck Schumer (D-NY) and Senators Cory Booker (D-NJ) and Ron Wyden (D-OR) introduced a widely anticipated discussion draft of their comprehensive reform bill, the : the “CAO.” The senators have been soliciting input from stakeholders over the last few months, and we expect a revised draft to be introduced into the Senate in the near term. We also anticipate consideration of the “MORE Act” by the House of Representatives sometime in 2022.

The next steps on reform legislation remain to be seen with the midterm elections less than one year away, but public opinion continues to favor descheduling cannabis and regulating cannabis commerce.

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