



The Historic **CANNABIS** **ADMINISTRATION** **AND OPPORTUNITY ACT** *Could Finally End Federal* *Cannabis Prohibition*

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Cannabis, or “marihuana” as it is referred to in the Controlled Substances Act (CSA), has been federally illegal in the United States since 1937. In July 2021, 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 can-

nabis, building on the excellent work done by legislators on the [Marijuana Opportunity, Reinvestment, and Expungement Act](#).

Pursuant to the CAO A, 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 a 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 CAO would simply end federal prohibition on cannabis.

The federal prohibition of cannabis, and the growing number of states that have legalized cannabis, has created a very complex set of issues for commercial transportation companies. After all, transporting cannabis is particularly risky because transporting cannabis over state lines is still considered federal drug trafficking, while the loads are both high value and potentially high risk. Additionally, while a federal government enforcement action against a state-licensed cannabis company is generally considered highly unlikely, there are certain acts that the Department of Justice has commented will greatly increase that likelihood, one of which is transporting cannabis over state lines. Currently, transporting cannabis across a state border (even between two states where cannabis is legal, and even unknowingly) may result in extremely harsh penalties, which could include large fines, federal seizure of assets, criminal prosecution, and loss of federal operating authority and licensures. Passage of the CAO, or any other version of the act that ends federal prohibition of cannabis, would likely help resolve many of these issues and ease the concerns of more traditional motor carriers who are currently hesitant to transport cannabis. Many states already have licenses or some form of regulation for intrastate transport of cannabis only. Under the CAO, all states would 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 CAO 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 and a codification of the regulation entities. The FDA would be the primary federal regulatory 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 would also have some regulatory oversight pursuant to the Act.

In commenting on the social justice aspects of the CAO, Senator Schumer stated that “[a]t long last [the CAO] 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. A period of public comment following the introduction of the CAO expired on September 1, 2021, and there was a robust response from many commenters, including prominent cannabis advocacy groups such as the U.S. Cannabis Council (USCC) and the Marijuana Policy Project (MPP). The USCC has generally praised the comprehensive cannabis reform bill. The MPP, which advocates for the end of federal prohibition as soon as possible, lauded certain aspects of the bill, including re-sentencing and expungement for certain cannabis-related crimes, but also commented that there are elements of the bill they would like to see changed before any enactment effort. The concerns included aspects of the federal tax structure (too much federal tax on top of state taxes already in place), potential negative effects on state-legal cannabis programs (opening of interstate commerce and infusion of national competition hurting small local businesses), and the shift to the FDA as the new regulatory agency over the cannabis industry (they prefer Tax and Trade Bureau at the Treasury Department as a more appropriate agency).

The public comment period also drew a response from the hemp industry. The U.S. Hemp Roundtable, a hemp industry trade association, urged the CAO’s sponsors to include regulations for cannabidiol (CBD) to be legally marketed and sold in food and beverages. This is currently not allowed by the FDA, even though many businesses are actively selling CBD-infused consumables. The hemp industry is concerned with the CAO’s lack of protection for hemp-derived CBD. The comment also asked for the bill to include clarification on the legal definition of cannabis vs. hemp and amend the statutory definition of hemp. The 2018 Farm Bill codified the definition of hemp. Currently, hemp contains no more than 0.3% Delta-9 THC by dry weight. In their comment, the

U.S. Hemp Roundtable proposed that the limit on finished, end-user consumable products be capped at 0.3% total THC, including Delta-8 THC, but that the legal limit on the crop stages of the products be raised to 1.0% by dry weight. Delta-8-THC is a mildly euphoric isomer of delta-9-THC (the well-known psychoactive compound in federally illegal cannabis). Delta-8-THC is typically synthesized from CBD extracted from hemp, and many CBD shops are actively selling Delta 8-THC products.

So, what is next? The bill’s authors may or may not revise the draft based on the feedback received during the public comment period. Then, the actual bill will have to be filed and sent to committee. This is a requirement before a full vote in Congress. As expected, the CAO 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 CAO 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 CAO and Senator Schumer’s efforts very closely. Those businesses should continue to make themselves heard by speaking with industry insiders, lobbyists, and politicians. They should also speak with trusted counsel about how this groundbreaking piece of legislation and the end of federal prohibition of cannabis could significantly change the landscape of the industry in the United States.



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