



Proposed legislation to decriminalize cannabis

By **Lori B. Green, Rudy S. Salo, Robert Fisher, Hunter D. Raines**

Senate Minority Leader Charles Schumer (D-NY) recently announced plans to introduce a bill in the United States Senate in the coming weeks to completely remove cannabis as a controlled substance under the Controlled Substances Act (CSA), effectively decriminalizing cannabis federally. Senator Schumer stated that the planned bill would also maintain federal authority to regulate cannabis advertising, much like it currently regulates alcohol and tobacco advertising. The bill may also include an excise tax on cannabis, with a portion of tax revenue used to support women and minority-owned cannabis businesses.

Though provisions of the bill will not be widely known before its introduction, removing cannabis from the CSA would empower states to decide whether to legalize cannabis use (including medicinal and/or recreational use) without the risk of federal government interference. In a state approving cannabis use, companies would be free to develop new products and innovate in the space, legitimizing and further opening up a multibillion-dollar industry primed for additional investment. Recent studies estimate that over 120,000 people are employed within the various state-regulated cannabis industries, which is roughly equal to the number of commercial aircraft pilots employed in the United States. The economic development opportunities will continue to entice revenue-starved states.

In contrast, states would also be free to restrict cannabis use within their borders. As Senator Schumer stated “What works best for the citizens of New York . . . or Washington may not work for residents of Kansas or Indiana.” Remaining unclear is whether, by the language of Senator Schumer’s bill, cannabis could be transported between permissive states by traveling through states that continue to restrict cannabis.

Senator Schumer’s bill stems from seeds sown recently by President Trump. Senator Cory Gardner (R-CO) was quoted in a press release on Friday, April 13, saying that “President Trump has assured [Senator Gardner] that he will support a federalism-based legislative solution” to the issue of cannabis legalization. The president’s statement to Senator Gardner was later confirmed by White House spokesperson Sarah Sanders.

Senator Schumer's bill is the latest in what has become a bipartisan effort to reform federal law to respect the right of states to decide the appropriate level of cannabis control. Though Attorney General Jeff Sessions recently rescinded Obama-era guidance to federal prosecutors discouraging enforcement of the Controlled Substances Act with respect to cannabis use in permissive use states (i.e., the "Cole Memo"), we believe that there is significant momentum within the legislative and executive branches to allow states to decide whether to permit cannabis use within their respective borders.

Nixon Peabody will continue to monitor Senator Schumer's bill and will provide subsequent alerts as developments in the cannabis industry continue. To learn about our worldwide experience advising clients on the ever-changing cannabis regulatory landscape, please contact:

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