

The MORE Act

Rep. Jerrold Nadler (H.R. 3884) and Sen. Kamala Harris (S. 2227)

Section-by-Section Summary of H.R. 3884, Post-House Judiciary Committee Markup

Sec. 1. Short Title. The title of this Act is the “Marijuana Opportunity Reinvestment and Expungement Act of 2019” or the “MORE Act of 2019.”

Sec. 2. Findings. Section 2, added in Committee markup, sets forth a number of findings pertaining to the purpose of the legislation.

Sec. 3. Decriminalization of Cannabis. Section 3 would decriminalize cannabis by removing two items—marihuana and tetrahydrocannabinols—from Schedule I of the Controlled Substances Act (CSA) and would make a series of conforming amendments. This section would make the descheduling of cannabis retroactive, including in cases involving juvenile adjudications. Section 3 would also direct the Attorney General to finalize a rulemaking, not later than 180 days after enactment of the MORE Act, removing marihuana and tetrahydrocannabinols from the schedules of controlled substances.

Sec. 4. Demographic Data of Cannabis Business Owners and Employees. Section 4 would direct the Bureau of Labor Statistics to regularly compile, maintain, and make public data on the demographics (i.e., age, race and ethnicity, sex, etc.) of the individuals who are business owners in the cannabis industry and individuals who are employed in the cannabis industry. Section 4 would preserve confidentiality by ensuring that no names, addresses, or other identifying information collected under this section are made available to the public.

Sec. 5. Creation of Opportunity Trust Fund and Imposition of Tax on Cannabis Products. Section 5 would establish an Opportunity Trust Fund within the Treasury consisting of such amounts as would be appropriated or credited to the fund. The Opportunity Trust Fund would have appropriated to it amounts equivalent to the net revenue received in the Treasury from a 5% excise tax on sales of cannabis products manufactured in, or imported into, the United States.

Section 5 would amend the Internal Revenue Code to treat cannabis products in the same manner as tobacco products and manufacturers of cannabis products in the same manner as manufacturers of tobacco products. (“Cannabis products” would not include prescribed drugs and a “manufacturer” would not include someone who is manufacturing a cannabis product for their own personal consumption or use.) Manufacturers of cannabis products would be required to register with the Treasury Department, file a surety bond relating to tax liability for their cannabis products, and pay an annual occupational tax. The cannabis excise tax would generally be determined when a cannabis product is “removed” from a bonded facility’s premises. If a cannabis product moves between bonded facilities and the receiving facility assumes the tax liability from the transferor, no tax would be collected on that transfer. In general, the Internal Revenue Code amendments establishing a cannabis excise tax and those governing the operation of a manufacturer of cannabis products would be effective for calendar quarters beginning one year after enactment of the MORE Act. Amendments establishing the Opportunity Trust Fund would be effective upon enactment of the MORE Act.

The Opportunity Trust Fund would make funds available, without further appropriation, as follows: (1) 50% to the Attorney General for eligible non-profit community organizations to administer services to individuals most adversely impacted by the War on Drugs; (2) 10% to the Attorney General for eligible non-profit community organizations to administer substance use treatment services for individuals most adversely impacted by the War on Drugs; (3) 20% to the Small Business Administration for eligible States or localities to make loans to assist small business concerns owned and controlled by socially and economically disadvantaged individuals that operate in the cannabis industry; and (4) 20% to the Small Business Administration for funds to States and localities to develop and implement equitable licensing programs that minimize barriers to cannabis licensing and employment for individuals most adversely impacted by the War on Drugs.

Sec. 6. Opportunity Trust Fund Grant Programs. Section 6 would establish programs in the Department of Justice and the Small Business Administration (SBA) to be funded from the Opportunity Trust Fund established in Section 5 of the bill.

Subsection 6(a)--Department of Justice Program. Subsection 6(a) would create a Cannabis Justice Office (CJO), with a Director (appointed by, and who would report to, the Assistant Attorney General for the Office of Justice Programs). The Director would be exclusively assigned to the CJO. The CJO would administer the Community Reinvestment Grant Program.

The Community Reinvestment Grant Program would fund eligible non-profit community organizations to provide a variety of services for individuals most adversely impacted by the War on Drugs, to include job training, reentry services, legal aid for civil and criminal cases (including for expungement of cannabis convictions), among others. The Community Reinvestment Grant Program would separately fund eligible non-profit community organizations to administer substance use treatment services for individuals most adversely impacted by the War on Drugs.

Subsection 6(b)—Small Business Administration Programs. Subsection 6(b) would direct the SBA to establish and carry out a Cannabis Opportunity Program and an Equitable Licensing Grant Program. Eligible entities under these two SBA programs would be States and localities that (1) have taken steps to create an automatic process for the expungement, destruction, or sealing of criminal records for cannabis offenses and (2) have taken steps to eliminate violations or other penalties for persons still under State or local criminal supervision for a cannabis-related offense or violation for conduct now lawful under State or local law.

Under the Cannabis Opportunity Program, funds would be made available to eligible States and localities to make loans to assist small business concerns that operate in the cannabis industry that are owned and controlled by socially and economically disadvantaged individuals. Under the Equitable Licensing Grant Program, funds would be made available to eligible States and localities to develop and implement equitable cannabis licensing programs that minimize barriers to cannabis licensing and employment for individuals most adversely impacted by the War on Drugs.

Sec. 7. Availability of Small Business Administration Programs and Services to Cannabis-Related Legitimate Businesses and Service Providers. Section 7 would ensure cannabis-related legitimate businesses and service providers are not prohibited from having access to: (1) services

from Small Business Development Centers; (2) services from Women’s Business Centers; (3) services from the SCORE program; (4) services from Veteran Business Outreach Centers; (5) loan guarantees under the Loan Guaranty Program in section 7(a) of the Small Business Act; (6) assistance under SBA’s Disaster Assistance Program; or (7) assistance under SBA’s Microloan program from intermediaries participating in SBA’s Microloan program. Section 7 would also prohibit the SBA from declining to provide a loan guarantee under the 504/Certified Development Company to an otherwise eligible State or local development company solely because such State or local development company provides financing to an entity that is a cannabis-related legitimate business or service provider.

Sec. 8. No Discrimination in the Provision of a Federal Public Benefit on the Basis of Cannabis. Section 8 would make clear that no person may be denied a Federal public benefit on the basis of any use or possession of cannabis, or on the basis of a conviction or adjudication of juvenile delinquency for a cannabis offense. In addition, Federal agencies would be precluded from using past or present cannabis or marijuana use as criteria for granting, denying, or rescinding a security clearance.

Sec. 9. No Adverse Effect for Purposes of the Immigration Laws. Section 9 would ensure that cannabis is not considered a controlled substance for purposes of the immigration laws, and it would establish that no alien may be denied any benefit or protection under the immigration laws, regardless of whether the conduct, finding, admission, addiction or abuse, arrest, conviction, or juvenile adjudication relating to cannabis occurred before, on, or after the effective date of the MORE Act. Section 9 would make a series of conforming amendments striking marihuana from the Immigration and Nationality Act.

Sec. 10. Resentencing and Expungement. Section 10 has different expungement and sentencing review procedures for individuals (1) who have completed their Federal sentences or adjudications of juvenile delinquency and are no longer under court supervision (i.e., “not under a criminal justice sentence”) and (2) who are still serving their Federal sentences or adjudications or are otherwise under court supervision (i.e., “under a criminal justice sentence”). Section 10 would ensure the appointment of counsel for indigent individuals seeking expungement or sentencing review.

Subsection 10(a)—Expungement for Individuals Not Under a Criminal Justice Sentence. For individuals not under a criminal justice sentence, subsection 10(a) would direct each Federal district, not later than one year after enactment of the MORE Act, to order the expungement of each conviction and juvenile adjudication for a cannabis offense entered by each court in the district, retroactive to the effective date of the Controlled Substances Act (May 1, 1971). However, any individual “not under a criminal justice sentence” would have a right to petition the court for expungement at any point after the enactment of the MORE Act (e.g., if any such individual would need or desire expungement earlier than one year after enactment, or if a court fails to pursue expungement where an individual believes they are eligible). Subsection 10(a) would also direct the court to order the expungement of any associated arrests. Records expunged under subsection 10(a) would be sealed and could only be made available by further order of the court. Finally, subsection 10(a) would direct that each Federal district, to the extent practicable, notify each individual whose conviction or juvenile adjudication has been expunged about such expungement and the effect of the expungement.

Subsection 10(b)—Sentencing Review for Individuals Under a Criminal Justice Sentence. For individuals still under a criminal justice sentence, subsection 10(b) would direct the district court that imposed the sentence or disposition to hold a sentencing review hearing. Sentencing review could be initiated by the individual, the Director of the Bureau of Prisons, the attorney for the Government, or the court. Subsection 10(b) would direct courts to expunge each conviction or adjudication of juvenile delinquency and any associated arrests; vacate any existing sentence or disposition of juvenile delinquency and, if applicable, impose any remaining sentence as if the MORE Act (and its amendments) were in effect at the time the offense was committed; and order all records that have been expunged or vacated under subsection 10(b) be sealed and only be made available by further order of the court.

Subsection 10(c)—Effect of Expungement. In the case of an expungement under subsection 10(a) or 10(b), the effect of the expungement would be the same: an individual may treat an expunged arrest, conviction, or juvenile delinquency adjudication as if it never occurred and the individual would be immune from civil or criminal penalties for perjury, false swearing, or false statements, for failing to disclose the expunged arrest, conviction, or juvenile delinquency adjudication.

Sec. 11. References in Existing Law to Marijuana or Marihuana. Section 11 inserts the term “cannabis” wherever the term “marijuana” (or “marihuana”) appears in existing law.

Sec. 12. Severability. Section 12 provides that if any provision of the MORE Act is held to be unconstitutional, the remainder of the Act and its application to any other person or circumstances will not be affected.

Sec. 13. Cannabis Offense Defined. Section 13 defines a “cannabis offense” as a criminal offense related to cannabis that (1) under Federal law, is no longer punishable pursuant to the MORE Act (or its amendments) and (2) under State law, is no longer an offense or was designated a lesser offense, or whose penalty was reduced under State law pursuant to or following the adoption of a State law authorizing the sale or use of cannabis.

Sec. 14. Rulemaking. Section 14 would direct the Department of the Treasury, the Department of Justice, and the Small Business Administration, not later than one year after the enactment of the MORE Act, to issue or amend any rules, standard operating procedures, and other legal or policy guidance necessary to carry out implementation of the MORE Act. After the one-year period, Section 14 would prohibit the issuance of sub-regulatory guidance without 60-day notice to the appropriate Congressional committee.

Sec. 15. Societal Impact of Marijuana Legalization Study. Section 15, added in Committee markup, would direct the Comptroller General to conduct a study and report to Congress concerning the societal impacts of the legalization of recreational cannabis by States.