

Pending Legislation May Provide Marijuana Businesses the Ability to File Bankruptcy

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Client Alert

Federal bankruptcy courts have been unavailable to marijuana businesses due to the Schedule I status of marijuana under the Federal Controlled Substance Act (the "CSA"). Indeed, despite legalization at the state level in a growing number of states, the current position of the United States Trustee is that (1) the bankruptcy system cannot be an instrument for an ongoing commission of a crime, and (2) trustees and other estate fiduciaries should not be required to administer assets in violation of federal law.

Therefore, marijuana businesses operating in states that have legalized its use have been limited to state court remedies for relief from debt, which are oftentimes not uniform or comprehensive. Recently, Senate Majority Leader Schumer, and Senators Booker and Wyden introduced legislation to remove cannabis from the Federal Controlled Substances Act. Their bill, which is entitled the "Cannabis Administration and Opportunity Act," seeks to legalize cannabis at the federal level and allow individual states to create and pass their own cannabis laws. While this proposed legislation is likely to face significant opposition, if signed into law, it opens up the Federal bankruptcy courts to marijuana businesses. Such action would provide marijuana businesses with greater options for debt relief.

If you are in the cannabis industry and struggling with debt, please contact the Porzio bankruptcy and restructuring team who can walk you through your present options.

For a more substantive discussion of the issues faced by marijuana businesses seeking to address debt, please see a recent article authored by Porzio attorneys David E. Sklar and Cheryl A. Santaniello in the *New Jersey Law Journal*.