

Will There Ever be SAFE Banking for the Cannabis Industry?

By Michael S. Yashko

The Secure and Fair Enforcement (SAFE) Banking Act of 2019 was passed by the U.S. House of Representatives in September 2019 with a bipartisan vote of 321-103 ([H.R. 1595](#)). Authored by Representatives Denny Heck (D-WA) and Ed Perlmutter (D-CO), the bill is important because it would allow cannabis-related businesses access to financial services that were previously unavailable to them because of their gray-area status – currently marijuana is still illegal as a Schedule 1 drug under the Controlled Substances Act.

While the cannabis industry hoped this bill would be quickly voted on in the Senate, it has been in limbo. It has made the news again because four sponsors of the bill recently sent a letter to Senate Banking Committee Chairman Mike Crapo (R-ID) which cautioned against “adding limitations to the legislation’s safe harbor that impose unworkable burdens on financial institutions, or would jeopardize the larger, bipartisan effort to address public safety concerns associated with cash-only transactions.” Crapo had issued a memo in December 2019 citing concerns stemming from cannabis’ high potency, health risks and its appeal to children in vaping form. He suggested cannabis companies selling products with THC concentrations higher than 2% be excluded from the bill’s protections, a provision the bill’s sponsors felt would defeat the purpose of the bill.

The SAFE Banking Act, if passed in present form, would allow federally insured banks and credit unions to work with cannabis companies in states that have legalized marijuana. The bill would prohibit federal regulators from terminating or limiting deposit insurance and from encouraging banks to close accounts of cannabis industry businesses. Proponents of this legislation stress that it is necessary to ensure public safety. Currently, the cannabis industry must operate largely as cash-only businesses which leads to increased crime, such as violent robberies, and puts store owners and employees at risk. Cannabis industry businesses would be able to open business accounts for paying bills and accepting credit card payments. The SAFE Banking Act clarifies that proceeds from transactions with legitimate cannabis-related businesses would not be considered proceeds from unlawful activity under anti-money laundering statutes.

Increased transparency and increased regulatory compliance are additional arguments in favor of this legislation. It would encourage creation of small businesses, enable existing cannabis businesses to grow, increase access to medical marijuana, and help industrial hemp farmers.

The passage of the SAFE Banking Act would improve the likelihood that other cannabis legislation could be advanced at the federal level. But, while this bill is being sponsored by 33 senators and receiving broad support from financial industry organizations and state attorneys general, it is unclear whether or not it will pass the Republican held U.S. Senate, or pass it in a form with adequate financial protections for cannabis-related businesses.

If you have questions regarding this topic, please contact any of the referenced attorneys.

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