

Safe Banking Act 2019

Description

Overview

One of the major impediments to the growth of the legal cannabis industry in the United States is the inability of cannabis businesses to obtain banking services. Under current law, most banks and credit unions refuse to provide services to cannabis related businesses and their owners, employees or service providers (the “Cannabis Industry”) for fear that by providing such services they could be deemed to be engaging in money laundering for a business that is illegal under federal law. Banks and credit unions also risk, among other penalties, losing federal deposit insurance by providing banking services and loans to state licensed, but federally illegal, Cannabis Industry participants. Without traditional banking options, state licensed cannabis businesses are forced to rely on cash to operate, which creates a public safety risk.

On March 28, 2019, the House of Representatives’ Committee on Financial Services (the “Committee”) approved the Secure and Fair Enforcement (SAFE) Banking Act of 2019 (the “SAFE Act”). If enacted, the SAFE Act would open up the United States banking system to participants in the Cannabis Industry. The SAFE Act will go to the full House of Representatives for deliberation and a vote, which have not yet been scheduled.

If enacted, the SAFE Act would prohibit federal banking regulators from terminating or limiting the deposit insurance provided to banks and credit unions under federal law solely because the bank or credit union provides services or loans to a “cannabis-related legitimate business,” which is essentially defined under the SAFE Act as a “manufacturer, producer, or any person or company that . . . participates in any business or organized activity that involves handling cannabis or cannabis products . . . pursuant to a law established by a State or a political subdivision of a State, as determined by such State or political subdivision.” The SAFE Act would also remove any presumption that proceeds from a transaction conducted by a state licensed cannabis business, or its service provider, are proceeds from an unlawful activity. The SAFE Act is intended to alleviate the public safety risk presented by the burgeoning legal cannabis industry’s reliance on cash and to minimize the risk that banks and credit unions face by providing services to businesses that federal law views as engaging in unlawful activity.

What should banks and credit unions consider doing if the SAFE Act becomes law?

Despite the conflicts between the laws of numerous states and federal law, some banks and credit unions are currently providing financial services to state licensed cannabis businesses. The Committee’s approval of the SAFE Act, regardless of whether the SAFE Act becomes law, signals a potential shift in federal cannabis legislation and may influence banks and credit unions to begin offering services, or to increase their existing service offerings, to constituents in the state licensed cannabis industry.

Banks and credit unions that already provide, or are contemplating providing, financial services to Cannabis Industry participants should consider certain steps to mitigate their risks, such as (i) limiting the amount of cannabis related deposits, (ii) retaining the contractual ability to freeze or terminate accounts and (iii) and retaining the right to modify loans if the bank’s practices are called into question by federal regulators. Perhaps most importantly, banks and credit unions should continue to follow existing FinCEN guidance, including the filing of SARs and conduct proper due diligence on prospective clients to ensure that proper state licenses are in place and that account holders are not otherwise disqualified from participating in the Cannabis Industry.

What should you consider doing if you own, operate, are employed by, or provide services to, a state licensed cannabis business and the SAFE Act becomes law?

State licensed cannabis businesses and other Cannabis Industry participants should re-evaluate their banking activities and cash management practices in light of the Committee's approval of the SAFE Act. State licensed cannabis industry constituents should consider revisiting banks and credit unions that previously refused to provide financial services or whose costs were previously prohibitive. State licensed cannabis industry constituents should also attempt to work with multiple banks or credit unions and identify banking and cash management alternatives to mitigate business disruptions in the event that a bank or credit union limits deposits, freezes or terminates accounts, or modifies loans.

This Client Alert is intended to give a high-level overview of the SAFE Act and is not intended to provide any legal advice. Should the SAFE Act be enacted, it may contain different or additional provisions from those contained in its present form, and even if enacted, engaging in the Cannabis Industry will still be illegal under federal law. We will provide updates when there are new developments.

If you would like to discuss your company's state licensed cannabis banking activities or needs, please contact [Brian Reilly](#) at [Partridge Snow & Hahn LLP](#).

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