

Congress May Be Ready to Address Cannabis Banking Concerns

A renewed effort to give the cannabis industry safe access to financial institutions and services returned to Washington last week, as the Secure and Fair Enforcement (SAFE) Banking Act was reintroduced in the U.S. House of Representatives. The bill would protect banks offering services to state-legal cannabis operations and ancillary businesses. The SAFE Banking Act is generally expected to be the most bipartisan cannabis effort in this Congress, and is already bipartisan: two Republicans and two Democrats are taking the lead in sponsoring it: Reps. Ed Perlmutter (D-CO), Steve Stivers (R-OH), Nydia Velazquez (D-NY) and Warren Davidson (R-OH).

A similar bill passed the House of Representatives on a bipartisan vote during the prior Congress, but it did not advance in the Senate, which was then under Republican control. With Democrats now in control of the House, Senate and White House, the cannabis industry is more optimistic on the legislation's chances this time around.

The current bill has more than 100 cosponsors, hailing from both parties. By the end of the last Congressional session, the prior version of the SAFE Banking Act had over 200 co-sponsors, including more than a dozen Republicans. The Senate version of the SAFE Banking Act is anticipated to be filed formally as soon as this week and is hoped to likewise receive bipartisan support. Whether that support is sufficient to actually pass the legislation remains unclear, although there are some significant tailwinds: support from members of both parties, cannabis and banking industry groups, and varying degrees of legalization now in effect in a majority of the states.

The SAFE Banking Act is intended to ensure that financial institutions can support cannabis business clients without facing federal penalties. The risk associated with the cannabis banking has kept many financial service providers from engaging with the industry, forcing such businesses to operate almost entirely on a cash basis, and directly causing higher risk for the operators: theft, lack of access to capital, and significant hurdles by state governments in effectively and efficiently regulating the now-multi-billion dollar industry. The SAFE Banking Act would provide a safe harbor for financial institutions seeking to serve legitimate cannabis-related businesses in states where such activity is legal.

As introduced in the current Congress, the SAFE Banking Act is slightly revised since the prior version of the bill. It explicitly expands banking protections to include hemp and CBD businesses, and clarifies language around insurance and safe harbor provisions. Additionally, a different bill focused specifically on insurance issues in the cannabis market is also anticipated this Congress.

"Thousands of employees and businesses across this country have been forced to deal in piles of cash for far too long," Rep. Perlmutter, the lead sponsor of the bill, said via press release. "It is time to enact SAFE Banking to align federal and state laws and reduce the public safety risk in our communities."

Even as an increasing number of states have legalized marijuana for medical and recreational purposes, financial institutions have continued to point to guidance dating back to 2014 from the Financial Crimes Enforcement Network (FinCEN) which obligates them to submit suspicious activity reports, or SARs, if they provide financial services to cannabis businesses. In the years since that guidance came out, the number of financial institutions supporting cannabis business has slowly increased but nonetheless is dwarfed by the cannabis industry's overall growth in the same period.

The current bill is supported by, among other groups, the American Bankers Association (ABA). In a letter to several members of the House Financial Services Committee, the ABA expressed its support for advancing marijuana banking reform this Congress. The ABA noted that 36 states now have legalized cannabis for medical or adult use, while federal law continues to prevent banks from safely banking cannabis businesses,

including ancillary businesses that provide them with goods and services. “Our member banks find themselves in a difficult situation due to the conflict between state and federal law,” the ABA wrote, “with local communities encouraging them to bank cannabis businesses and federal law prohibiting it. Congress must act to resolve this conflict between state and federal law.”

“The bipartisan SAFE Banking Act would be an important step toward enabling financial services for cannabis-related businesses,” the ABA wrote. “The SAFE Banking Act is not a cure-all” for the many challenges of banking and cannabis industry, “but it is a measure that helps clarify many issues for the banking industry and regulators.”

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