

House of Representatives Bi-Partisan Passage of SAFE Banking Act Marks Major Step Towards Access to Banks and Credit Unions for Legalized Cannabis Industry

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On September 25, 2019, all but one Democratic and ninety-one Republican members of the House of Representatives joined forces to pass the landmark Secure and Fair Enforcement Banking Act of 2019, commonly known as the SAFE Banking Act. The legislation, which has been in the works for six years and now goes to the Senate, seeks to mitigate the risks associated with legalized cannabis businesses by providing access to financial service to the cannabis industry and service providers for what have largely been all-cash business operations to date.

The SAFE Banking Act precludes a federal bank regulator (as defined by the Act) from the following:

- Terminating or limiting the deposit insurance of a depository institution under the Federal Deposit Insurance Act (FDIC) and the Federal Credit Union Act (FCUA)
- Taking any adverse action against a depository institution under the FDIC
- Penalizing, prohibiting or discouraging a depository institution from providing or engaging in financial service to a cannabis-related legitimate business or service provider
- Encouraging a financial institution to not offer financial service to a cannabis-related legitimate business or service provider
- Taking any adverse supervisory action on a loan made to a cannabis-related legitimate business or service provider or an owner or operator of real estate or equipment leased to a cannabis-related legitimate business or service provider solely because the matter

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involves a cannabis-related legitimate business or service provider.

For purposes of the SAFE Banking Act, the following definitions should be noted:

- “Financial service” means (i) a financial product or service as defined in the Dodd-Frank Wall Street Reform and Consumer Protection Act; (ii) the business of insurance; (iii) authorizing, processing, clearing, settling, billing, transferring for deposit, transmitting, delivering, instructing to be delivered, reconciling, collecting, or otherwise effectuating or facilitating payments or funds where such payments or funds are made or transferred by any means, including use of credit cards, debit cards, other payment cards, or otherwise access devices, or electronic transfer of funds; (iv) acting as a money transmitting business which makes use of a depository institution, and; (v) acting as an armored car service for processing and depositing with a depository institution or the Board of Governors of the Federal Reserve System.
- “Cannabis-related legitimate business” encompasses any business that involves the handling, cultivating, producing, manufacturing, selling, transporting, displaying, dispensing, distributing, or purchasing of cannabis as is authorized under state law.
- “Service provider” includes any business that sells goods or services to a cannabis-related legitimate business, including sale or lease of real or any other property, legal or other licensed services or any other ancillary service, relating to cannabis.
- “Depository institution” includes any depository institution as defined by the FDIC, a federal credit union as defined under the FCUA, and a state credit union as defined under the FCUA.

In order to provide comfort to the cannabis industry, the SAFE Banking Act also makes clear that the proceeds from a transaction conducted by a cannabis-related legitimate business or service provider are not proceeds from an unlawful transaction under federal law simply because the transaction was conducted by a cannabis-related legitimate business or service provider.

Furthermore, a depository institution or insurer that provides a financial service to a cannabis-related legitimate business or service provider – and the officers, directors and employees of that depository institution or insurer – cannot be held liable under federal law solely for providing such service or investing any income from such service.

The protections of the law also extend to a Federal Reserve Bank and its officers, directors and employees, including protection from criminal, civil and administrative forfeiture with respect to collateral for a loan or other financial service provided to a cannabis-related legitimate business or service provider by a depository institution or to a depository institution.

The firm will be closely tracking the status of this legislation as it makes its way through the Senate, where significant opposition is anticipated by many observers. Please contact **Jack Fersko**, the author of this Alert, with questions or for additional information.