

SAFE BANKING ACT PROVIDES FOR MUCH NEEDED FINANCIAL SERVICES TO THE CANNABIS INDUSTRY

Hemp & Medical Cannabis Alert
October 4, 2019

On Wednesday, September 25, 2019, the United States House of Representatives passed the Secure And Fair Enforcement (SAFE) Banking Act of 2019. This is the first stand-alone cannabis reform bill passed by the House. If passed by the Senate and signed into law by the President, the bill will provide much needed relief to the cannabis industry, long prevented from accessing traditional banks, insurance and other financial services companies.

The SAFE Act generally prohibits a federal banking regulator from penalizing a depository institution for providing banking services to a legitimate cannabis-related business. A “cannabis-related legitimate business” means a manufacturer, producer, or any person or company that participates in any business or organized activity that involves handling cannabis or cannabis products, including cultivation, production, manufacturing, selling, transporting, dispensing, distributing, or purchasing cannabis or cannabis products, in accordance with the laws of a state or other political subdivision (i.e. city, town, county).

Specifically, the Act addresses many of the fears held by financial services providers that have kept them from doing businesses with those involved in the cannabis industry. For example, the bill would prevent regulators from using an institution’s work with a legitimate cannabis business as a basis for termination or limitation of deposit or share insurance, adverse action on the supervision of loans or penalties for payment collection or processing. This should provide assurances for institutions concerned about potential prosecution for money laundering or conspiracy charges related to work stemming from work with an industry that remains illegal federally, and accordingly relief to the cannabis industry, which has been severely impacted by the lack of access to traditional financial services in the United States. It would also reduce the risk that loan collateral could be seized by the federal government, which may allow cannabis industry players to access traditional financing sources previously unavailable to them.

In addition to financial institutions themselves, the bill’s protections extend to ancillary businesses that may derive a benefit from a transaction with a cannabis-related business or service provider, as well as the employees of both cannabis-related and ancillary businesses. The Act broadly defines “ancillary businesses.” Essentially,

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ancillary businesses are any businesses or individuals that provide goods or services (business or professional) to cannabis-related legitimate businesses or service providers, which are paid for with proceeds that are generated by cannabis-related activities. This would include, but is not limited to landlords, sellers or lessors of equipment, and lawyers and accountants. And after some revisions to the initial draft of the bill, its protections also apply to insurers of legitimate cannabis businesses.

Given the complexity of financial regulation and the inevitable questions that will arise, the bill directs enforcement agencies to issue guidelines for institutions who work with cannabis-related businesses. For example, the bill would require the Financial Crimes Enforcement Network to address how institutions should handle suspicious activity reports for cannabis-related businesses. The Financial Institutions Examination Counsel would also be required to issue guidelines. These guidelines could form the basis for operational policies and procedures for cannabis companies to ensure access to financial service providers.

Further, acknowledging that hemp businesses continue to have difficulty gaining access to banking products and services following the passage of the Agriculture Improvement Act of 2018 (the 2018 Farm Bill) legalizing hemp and hemp derivatives, the bill requires federal banking regulators to issue joint guidance on the subject. Specifically, the bill directs federal regulators to confirm the legality of hemp and hemp-derived cannabidiol (CBD) products, confirm the legality of providing financial services to those industries and provide guidance on best practices for working with them.

The House's passage of the SAFE Act marks one of the first major steps toward cannabis reform at the federal level. As of this writing, the bill has been received by the Senate and referred to the Committee on Banking, Housing, and Urban Affairs. The Senate's treatment of the bill will be a good indicator of that body's appetite for cannabis reform.

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