

SAFE BANKING ACT PROVIDES COMMONSENSE FIX FOR CANNABIS INDUSTRY BANKING

By Erin Stackley

In 1996, California became the first U.S. state to legalize medical cannabis. In the 23 years since, 33 states along with the District of Columbia have legalized the substance for either medicinal purposes, recreational use, or both. Already, this industry has brought in more than \$10 billion in sales and \$1 billion in state tax revenue.

Despite the trend toward legalization on the state level however, cannabis is still classified as a Schedule-1 narcotic under the federal Controlled Substances Act. As a result, there are unique challenges for businesses that work in the cannabis industry, or are tangentially connected to it, in those states that have legalized the substance. Perhaps most pressingly, federally-insured financial institutions are prohibited from working with businesses connected to the cannabis industry under federal anti-money laundering statutes. Though some businesses are able to use state banks and credit unions, in many areas where that is not an option, cannabis is a cash-only industry. This can be dangerous and challenging for both business-owners and the communities they are in.

Real estate is one such industry that is negatively impacted by this prohibition. Cannabis is especially tied to real estate: land is needed to grow the product; warehouses and factories are needed to refine, process, and store it; and retail/

office space is needed for the businesses themselves. Landlords whose tenants work in cannabis frequently have to collect rent in all-cash, and technically—as those funds come from a cannabis-business—federally-insured banks are not supposed to accept that money.

In addition to the safety risks having an all-cash business presents for its community and the employees, there are additional logistical issues it presents. In order to pay taxes, for example, many cannabis businesses have to travel several hours within their state to go to a tax office and pay them—in cash. It

also makes tracking and regulating the industry more difficult, which ultimately undermines efforts to tamp down on money laundering.

The “Secure and Fair Enforcement (SAFE) Banking Act of 2019” was introduced to resolve this tension in the system. Introduced in the House (H.R. 1595) by Representatives Perlmutter (D-OR) and Stivers (R-OH) and in the Senate by Senators Gardner (R-CO) and Merkley (D-OR), this bipartisan legislation creates a safe harbor for banks in states that have legalized cannabis to work with businesses in or connected to that

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industry. By ensuring that financial institutions are legally protected when providing services to cannabis-related businesses, the SAFE Banking Act would also assist in collecting data on this growing industry, and regulating it to protect against money laundering.

The SAFE Banking Act passed the House of Representatives in September 2019 by a bipartisan vote of 321 – 103, a strong showing of support for the measure. The Senate Banking Committee held a hearing on the issue in July 2019, and Chairman Mike Crapo (R-ID) has indicated that he is open to holding a markup of S. 1200 before the end of the year. NAR's policy supports the rights of states and their residents to create laws aligned with state and resident interests. NAR supports allowing businesses that are properly registered and legitimate by state standards to have the ability to access banking services. NAR sent a letter of support to the full House ahead of its vote on H.R. 1595, and also to the Senate Banking Committee for its hearing. NAR will continue to advocate for this common-sense legislation to move in the Senate and ultimately be passed into law this Congress. ▼

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