

Is Cannabis Banking Safe Yet? It's a Definite, Maybe

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The distribution and sale of cannabis continues its charge from taboo to mainstream. Cannabis-related commerce will reach billions of dollars annually in the next few years. Everything from medicinal and recreational marijuana, to CBD, to other hemp-derived products is contributing to this growth. Yet the cannabis industry continues to face substantial restrictions resulting from antiquated federal banking laws that Congress has been slow to modernize. These laws have cut off state-licensed cannabis businesses from accessing capital markets, processing payments, and handling their banking and insurance needs. Restrictions imposed on financial institutions preclude them from dealing with, and handling, funds for even state legalized cannabis businesses because cannabis remains a federally controlled substance that is illegal to possess and use. Accordingly, doing business with a cannabis client exposes a financial institution to civil and criminal liability. This has forced the industry to find new, alternative means of conducting business, including through alternative currency. Even state-chartered banking institutions face limitations on the services they can offer. But America's views toward cannabis are changing. Hemp and hemp-derived products are now legal in all 50 states thanks to the passage of the 2018 Farm Bill. The USDA's issuance of its interim final rules last week is even further progress for hemp. For marijuana, change is afoot, too. Eleven states have legalized marijuana for adult use, 33 states have medical marijuana programs, and another 15 states have decriminalized marijuana. Thus, given society's changing attitude, and the related industry growth, it seems that cannabis is here to stay. Entrepreneurs and mainstream *Fortune* 500 companies alike are positioning themselves to get in on the action — and the financial sector is no different. Recognizing the need to allow cannabis businesses access to full-scale financial services, the U.S. House of Representatives recently passed the Secure and Fair Enforcement (SAFE) Banking Act. The bill, if passed by the U.S. Senate and signed into law by the president, would remove many restrictions and penalties that could currently befall financial institutions that engage in business with the burgeoning cannabis sector. At present, the fact that cannabis remains federally illegal (being classified as a Schedule 1 drug under the Controlled Substances Act) is a significant deterrent to financial institutions entering the cannabis space. While the SAFE Banking Act does not change the status of cannabis as a controlled substance, the Act would provide increased protections to financial institutions that provide funding and handle money associated with cannabis commerce in state regions where cannabis has been legalized in some

form. The SAFE Banking Act has generated a lot of excitement and “what ifs” for those in the financial sector eagerly looking to claim their piece of the billion-dollar cannabis green rush sweeping America. Despite the buzz that the SAFE Banking Act has generated, it faces significant roadblocks in the quest to become law. Below we provide a brief overview of the SAFE Banking Act. We outline the obstacles that await if it is ever to become law. And we identify some of the alternative options that businesses operating in the cannabis space are using as they wait for federal law to catch up with modern times. **The SAFE Banking Act** *What the SAFE Banking Act does?* The SAFE Banking Act prohibits a federal banking regulator from:

- Interfering with the deposit insurance of a financial institution for providing financial services to a state-legal cannabis business;
- Interfering with a financial institution offering financial services to a state-legal cannabis business;
- Interfering with a financial institution offering financial services to an individual because of his or her affiliation with a state-legal cannabis business; or
- Taking any improper supervisory action on a loan to an individual because the person owns a state-legal cannabis business or owns real estate or equipment leased or sold to such a business.

The bill also expressly protects financial institutions and insurers from liability and forfeiture under federal law for providing loans or other financial services to state-legal cannabis businesses. *What the SAFE Banking Act does not do?* The SAFE Banking Act does not make cannabis legal. Cannabis (now defined to exclude hemp) would remain a Schedule 1 drug under the Controlled Substance Act. Notably, the SAFE Banking Act does not protect businesses that provide services other than insurance or financial services. *Will the SAFE Banking Act become law?* While there is a similar bipartisan bill pending a vote by the Senate Banking Committee, it is unlikely to advance given the Senate Majority Leader Mitch McConnell’s outspoken stance against the full federal legalization of cannabis with high THC (i.e., marijuana). Other critics of the SAFE Banking Act argue that Congress should be dealing with the bigger societal issues of cannabis instead of making exceptions by creating loopholes that could result in negative unintended consequences. Also, it’s anyone’s guess what the president would do if the Act is passed by both houses of Congress and sent to the president for enactment. **Current Alternatives** *Has federal law’s lack of modernization slowed cannabis’s progress?* No. The federal government’s failure to modernize the rules governing financial institutions servicing the cannabis industry is fueling new cryptocurrencies and alternative currencies as the industry innovates around the federal roadblocks. For example, PotCoin, CannabisCoin, DopeCoin, and HempCoin all have emerged as cryptocurrencies focused on the cannabis space. These currencies have had mixed reviews, and some of their values have been a roller coaster since their launch. But the point remains — federal inaction on a banking solution will not stop industry progression. Outside of cryptocurrencies, smaller community banks and credit unions are posturing to capture some of the cannabis market. Indeed, just recently, the National Credit Union Administration opened avenues for federally insured credit unions to offer financial

services to state-legal hemp businesses. The regulations issued by the administration include many safeguards that banks entering this space must follow to ensure they are banking money involved in lawful hemp enterprises. As all cannabis trends toward mainstream, hemp, with its low THC profile, remains an attractive first step as entire industries try to get their arms around how to deal with the green rush.

Authored By



Kevin P. McCoy



Merrick L. Gross

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