



Banks and Marijuana Businesses

Under federal law, the possession, distribution, and sale of cannabis is still prohibited despite its legalization in several states. Due to its federal standing, any money that can be traced back to a state cannabis operation could technically be considered aiding and abetting a federal crime, and money laundering.¹ These risks can also extend to other companies who work with cannabis businesses. Because of this, many financial institutions view getting involved with cannabis businesses as too big of a risk.

Some have been willing to take the risk, although it can be very costly, and a few banks will now work with cannabis businesses. The practical result is that banking services tend to be limited to the largest, best-capitalized companies, and this can leave small and minority-owned entities without many options. This also means that cannabis businesses must operate in cash, which is dangerous for both consumers and businesses. According to the American Bankers Association's testimony to the U.S. Senate Banking, Housing, and Urban Affairs Committee, Denver (CO) cannabis dispensaries make up less than 1% of all local businesses but accounted for 10% of all reported commercial burglaries from 2012 to 2016. Criminal activity is on the rise and small cannabis businesses² are being targeted, putting their economic stability and the safety of their personnel at high risk.

Additionally, the lack of banking undermines efforts to encourage small and minority-owned businesses to get into the market. Many states are looking for ways to boost social equity participation, but startups have serious challenges getting access to banking resources, creating a barrier to entry for these potential businesses, before they can even start to participate in the social equity programs.

Congress has been working to address this. The Secure and Fair Enforcement (SAFE) Banking Act of 2021, introduced by U.S. Representative Ed Perlmutter, seeks to prohibit federal banking regulators from penalizing financial institutions that serve cannabis-related businesses. Forms of the legislation have been introduced in every Congress since 2013 and passed the House in 2019, 2020, 2021, and 2022.³ Although the legislation has support from banking groups and bipartisan members, many advocates now see banking improvements as too little to be meaningful, distracting from the legalization effort, or even a crass effort of businesses to serve themselves while others go to jail. While banking solutions would no doubt be an improvement over the current landscape, it is not clear if lawmakers and the advocacy community can unite to pass it.

Although there appears to be a federal stalemate for cannabis banking reform, several state legislatures have passed state-law versions of measures that are similar to SAFE Banking, and designed to make banking more accessible to the industry. California, Illinois, Ohio, Oregon, Virginia, and Washington have enacted bills that specify that financial institutions serving legal cannabis businesses are not in violation of the law.⁴ Other states (Michigan, Nevada, Ohio, and Utah) have enacted bills creating closed-loop payment processing systems in which the state acts as a payment processor.⁵

1 Heather Morton, “Banking and Cannabis: Yearning to Be Buds?,” NCSL, March 7, 2022, <https://www.ncsl.org/research/fiscal-policy/banking-and-cannabis-yearning-to-be-buds-magazine2022.aspx#:~:text=Federal%20Legislation&text=introduced%20the%20Secure%20and%20Fair,serve%20legitimate%20cannabis%2Drelated%20business>.

2 SAFE Banking Act of 2021, H.R.1996, 117th Cong. (2021)

3 Morton, “Banking and Cannabis: Yearning to Be Buds?”

4 Id

5 Id