

Movement on the SAFE Banking Act? The Senate is Talking the Talk, but Not Ready to Walk the Walk

Cannabis Business Legal News

By Darren Grady on May 19, 2023

Earlier this month, the U.S. Senate Banking Committee met to discuss the SAFE Banking Act, a critical piece of proposed legislation that would make it easier for the cannabis industry to secure and utilize much needed banking services. Overall, the fact that the Act has warranted extensive discussion by legislators is promising, but passage of the Act as currently styled still seems relatively far off. The meeting, which was entitled "Examining Cannabis Banking Challenges of Small Businesses and Workers," heard testimony from bipartisan lawmakers, including the Senators who reintroduced the bill (Jeff Merkley and Steve Daines).

The recent hearing was convened to address the problematic banking related challenges faced by the state legal cannabis industry and its impact on small businesses and employees. While there are increasing options for cashless transactions, including PIN debit and cashless ATM, the industry remains particularly cash heavy. If passed, the Act would prevent federal banking regulators from:

- Prohibiting, penalizing or discouraging a bank from providing financial services to a legitimate state-sanctioned and regulated cannabis business, or an associated business (such as a lawyer or landlord providing services to a legal cannabis business);
- Terminating or limiting a bank's federal deposit insurance primarily because the bank is providing services to a state-sanctioned cannabis business or associated business;
- Recommending or incentivizing a bank to halt or downgrade providing any kind of banking services to these businesses; or
- Taking any action on a loan to an owner or operator of a cannabis-related business.

The Act would also create a safe harbor from criminal prosecution and liability and asset forfeiture for banks and their officers and employees who provide financial services to legitimate, state-sanctioned cannabis businesses, while maintaining banks' right to choose not to offer those services. The bill would also

create protections for hemp and hemp-derived cannabidiol (CBD) related businesses.

While consideration and potential passage of the Act is gaining momentum, eventual approval is not a sure thing. Lawmakers, at present, cannot seem to get on the same page with respect to the scope and intended impact of the Act. Some politicians feel that loosening of banking regulation should be paired with social justice reform. Some believed that new laws that allow banking access should be paired with a rescheduling or de-scheduling of cannabis from the Controlled Substances Act. Some have posited that a cannabis banking reform law needs to allow for even broader access to financial services than is currently allowed by the proposed Act.

For instance, Senator Elizabeth Warren expressed that while cannabis banking reform is long overdue, she is more focused on the de-scheduling of cannabis altogether. She pointed out that, even with the potential passage of the SAFE Banking Act, there could be outstanding risks encountered by banking institutions who decide to provide services to state compliant legal cannabis businesses if cannabis remains federally scheduled as a controlled substance. Senators Ron Wyden, Corey Booker, and Chuck Schumer fully support the SAFE Banking act, but would like to see social justice reform baked into the legislation (including adding cannabis crime expungement to the proposed language, along with the potential for federal grants to support states in expunging cannabis records). Charlie Bachtell, CEO of Illinois' own Cresco Labs, personally attended the hearing. Mr. Bachtell called for cannabis operators to engage with local politicians and lawmakers to push for swift action on cannabis banking reform.

If the Act manages to advance through the committee stage, it would be voted by the Senate for the first time. The Act has been passed by the House of Representatives seven times in the past. While the future is unclear for the SAFE Banking Act, what is clear is that cannabis banking reform continues to gain momentum. It seems that most legislators in Washington D.C. acknowledge that legitimate cannabis businesses need access to banking services, and soon. The question remains, can lawmakers come up with a version of the bill that works for enough legislators to vote for passage.

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