

Cracking the SAFE: Opening the Banking Industry to Cannabis



ALERT | March 25, 2019

Jay A. Dubow | dubowj@pepperlaw.com
Abel Garza | garzaa@pepperlaw.com

On March 26, the U.S. House Committee on Financial Services is scheduled to mark up the Secure and Fair Enforcement (SAFE) Banking Act of 2019. This Act aims to allow banks and financial institutions to engage in business relationships with state-licensed, marijuana-related businesses, without fear of incurring penalties.

Currently, more than 30 states have legalized some form of marijuana use (e.g., medical or recreational). As a result, the cannabis industry has about \$40 billion in annual sales, a number that is expected to reach \$80 billion by 2030. Despite this growth, marijuana-related companies generally lack access to the banking industry, which places them at a financial disadvantage. Because marijuana is still *illegal* at the federal level — despite

THIS PUBLICATION MAY CONTAIN ATTORNEY ADVERTISING

The material in this publication was created as of the date set forth above and is based on laws, court decisions, administrative rulings and congressional materials that existed at that time, and should not be construed as legal advice or legal opinions on specific facts. The information in this publication is not intended to create, and the transmission and receipt of it does not constitute, a lawyer-client relationship. Please send address corrections to phinfo@pepperlaw.com.

© 2019 Pepper Hamilton LLP. All Rights Reserved.

being legalized by many states — banks that conduct business with marijuana-related enterprises risk violating federal drug and money-laundering laws, such as the Bank Secrecy Act. These violations could lead to significant penalties, such as fines and forfeitures.

Accordingly, most banks typically refuse to do business with marijuana-related companies, and these companies, in turn, are deprived of the benefits offered by financial institutions. For example, marijuana-related companies are prevented from depositing their sales receipts into simple checking accounts, forcing them to find an alternative solution, which often amounts to keeping large sums of cash on hand at their physical business locations. According to the SAFE Banking Act, this practice poses a considerable safety concern.

Under the SAFE Banking Act, banks would not face an “adverse action . . . solely because the depository institution provides or has provided financial services to a cannabis related legitimate business or service provider.” The Act would allow marijuana-related businesses to, among other things, apply for loans, open checking accounts, and accept credit cards as payment. This relationship would benefit banks and marijuana-related businesses.

With bipartisan support — as illustrated by the bill’s 138 co-sponsors — the SAFE Banking Act, which would completely change the cannabis financial landscape, appears to be gaining traction. For those companies in the cannabis industry, this legislation could be a game changer for financial transactions and safety. We will continue to monitor this bill as it works its way through Congress.