

HISTORIC ACTION ON THE HILL: CANNABIS BANKING BILL PASSES HOUSE

As the state-legal cannabis industry continues to march forward at a nearly unprecedented pace, it has remained hobbled by federal legal constraints. The fact that cannabis is illegal at the federal level throws myriad wrenches into the works. Banking is the most notable sticking point.

To run a legitimate business, one needs access to a legitimate bank, but the federal government's stance on cannabis makes banks hesitant to take on cannabis businesses as clients. In a response that many consider overdue at best, the House of Representatives just took a historic step forward when it passed the SAFE Banking Act with an overwhelming 321-103 vote after an animated debate on the floor.

The bill – if it passes in the Senate and is subsequently approved – will open up banking services for state-legal cannabis businesses. This bill would allow cannabis companies greater access to those much needed financial services and protections that only a bank can provide. Passage would also allow cannabis customers to make legal purchases with their credit and debit cards – a current issue that tends to stymie the flow of business (even in this booming industry).

Money Talks

Most pro-cannabis bills are liberal at heart, but the SAFE Banking Act has many conservative backers. The market for state-legal cannabis is projected to hit \$30 billion by 2025, and even banks that eschew the cannabis industry can become ancillary entangled. For example, when the owner of a construction company that's done work for a cannabis business takes on a mortgage, the lending bank touches the flame of this ever-growing gray market.

The financial implications of the cannabis industry have become too important for the feds not to step up. The bill's lead sponsor, Ed Perlmutter (R-CO) – about the bill's intention – says that it “will go a long way in getting cash off our streets.” The basic premise is that providing accessible legal banking for the lucrative cannabis industry makes it that much more likely that cannabis funds will flow through the proper channels rather than through the black market.

Momentum at the State Level

Action at the state level pushed the federal government forward on this issue. States that have legalized recreational cannabis did not wait for federal laws to back them up – they moved forward and generated massive revenues in the process. The size of the industry, alone, signals that the people have spoken and that they resoundingly support legalization.

Banking on It

Under the banking laws currently in place, those banks that provide state-legal cannabis businesses with financial services can be prosecuted under legal statutes that reflect a War on Drugs mentality. In other words, doing business with the cannabis industry is tricky at best, and banks that engage are at risk of breaking money laundering laws and being hit with severe punishments as a result. These punishments include the threat of losing FDIC deposit insurance (the industry standard).

Some cannabis businesses have procured the services of local banks and credit unions that are willing to implement the necessary and not-insignificant legal precautions to provide them with financial services (usually at the premium expense). However, no national or Wall Street banks have rallied. These massive, influential banks have more to lose if things go south, and they require greater legal certainty – such as the SAFE Banking Act could provide.

Cash Economy

The cannabis industry's inability to routinely access banking services leaves many companies operating strictly on a cash basis. Such cash economies come well-equipped with inherent problems, including being far more vulnerable to robbery and facing serious issues related to tax compliance. Further, dealing in large amounts of cash is often a gateway to tax evasion. Cash businesses encounter fewer of the checks and balances that tend to motivate timely tax compliance.

What the Act Doesn't Do

The SAFE Banking Act doesn't alter the fact that cannabis remains a Schedule 1 drug (at the Federal level) under the Controlled Substance Act. As drug policy activists point out, the Act doesn't take a holistic approach to cannabis reform. Instead, the SAFE Banking Act works as a financial tool that serves the cannabis industry but does little to help those communities who've suffered prohibition's harshest consequences, including low-income communities and communities that primarily consist of people of color. Finally, prohibitionists reacted by following their platform and warned that the Act would allow influential cannabis businesses to exploit those same communities and that the health risks associated with high-potency cannabis are far too great to move forward with loosened restrictions. By way of example, they cite the recent rash of vaping illnesses and fatalities.

I'm Just a Bill

With passage in the House, the bill now moves to the Senate. The legislation has been crafted in an effort to make it more appealing to key Republican players – including protections for hemp businesses. The bill's fate, for now, is

uncertain, but this forward motion at the federal level remains unprecedented. The bill's passage in the House is the first congressional action to address protections for state-legal recreational cannabis. If nothing else, the SAFE Banking Act signifies the end of utter inaction on the Hill.