

Lawmakers Reintroduce Bipartisan Cannabis Banking Legislation

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On April 26, 2023, Sens. Jeff Merkley (D-OR) and Steve Daines (R-MT) led a bipartisan group of lawmakers in reintroducing the SAFE Banking Act—legislation that aims to ensure that state legal cannabis businesses have access to banking services.

The legislation would bar federal banking regulators from penalizing a depository institution for providing banking services to a legitimate cannabis or hemp-related business. Prohibited penalties include terminating or limiting a depository institution's deposit or share insurance solely because it provides financial services to a state-sanctioned cannabis-related business, or prohibiting or otherwise discouraging a depository institution from offering financial services to such a business. The measure stipulates that depository institutions are not, under federal law, liable or subject to asset forfeiture for providing a loan or other financial services to a covered cannabis-related business.

The Act also establishes protections for ancillary businesses, stipulating that proceeds from a transaction involving a state-sanctioned cannabis-related business or service provider would not be considered proceeds from an unlawful activity—and thus subject to anti-money laundering laws—solely because it involves proceeds from a cannabis-related business or activity, or provides real estate, legal or other licensed services, or any other ancillary service, relating to cannabis.

Within 180 days of enactment, the Act would require the Federal Financial Institutions Examination Council (FFIEC) to issue guidance and examination procedures for depository institutions that provide financial services to covered cannabis-related businesses.

The bill also imposes a number of reporting requirements, directing federal banking regulators to annually issue a report to Congress on access to financial services for minority-owned and women-owned cannabis-related businesses, including any regulatory or legislative recommendations for expanded access. Relatedly, the Act directs the Government Accountability Office (GAO) to conduct a study centered on diversity and inclusion, and issue a report to Congress on its findings, as well as any recommendations for removing barriers to marketplace entry. Separately, GAO is directed to, within two years of enactment, conduct a study on the effectiveness of reports on suspicious transactions.

Cannabis banking has demonstrated significant bipartisan support. To date, the Act has passed the House seven times—most recently in the House as an amendment to the fiscal year 2023 National Defense Authorization Act (NDAA). Last Congress, the federal push for cannabis banking legislation as part of must-pass year-end legislation like the NDAA and omnibus appropriations bill was supported by the Governor of Colorado and other state officials.

In recent years, members of Congress have been divided on the best course of action as it relates to federal cannabis reform. Some members have favored holding out for comprehensive cannabis reform while others have argued in favor of advancing incremental policies, like banking reform, which were more attainable in the short

term. This debate remained front and center in the 117th Congress as a group of bipartisan senators worked on a compromise that came to be known as “SAFE Banking Plus”. In addition to exploring changes to the SAFE Banking Act itself, these discussions focused on identifying additional legislation such as the Harnessing Opportunities by Pursuing Expungement (HOPE) Act or the Gun Rights and Marijuana (GRAM) Act that could be added to SAFE Banking to form a more comprehensive package. While these additional pieces of legislation were not included in the recently reintroduced SAFE Banking Act, Sens. Merkley and Daines confirmed in a separate statement issued at the time of introduction that there will be an opportunity to add them when the legislation is considered on the floor of the Senate.

The bill as introduced does include changes from previous versions that are expected to help secure the support of members, particularly Democrats, who previously opposed an incremental approach. These changes include adding language to explicitly apply the bill’s protections to community development financial institutions (CDFIs) and minority depository institutions (MDIs), as well as ensuring that workers and operators in the cannabis industry are able to obtain federally backed mortgage loans. In response to concerns raised from some on the Right, this version also includes changes and clarifications intended to ensure that federal law enforcement agencies are able to fully enforce anti-money laundering statutes against unlawful operators.

Akin’s Lobbying & Public Policy team continues to closely monitor and keep clients apprised of the cannabis legislative landscape.

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