



SECURE AND FAIR ENFORCEMENT BANKING ACT OF 2021 (SAFE BANKING ACT)

NEED FOR LEGISLATION

While cannabis use is illegal under federal law, nearly 20 states and the District of Columbia have approved adult use of cannabis and nearly 40 have approved medical use. The conflict between state and federal law has created significant legal and compliance concerns for banks that wish to provide banking services to cannabis-related businesses in jurisdictions where cannabis is legal, known as cannabis-related legitimate businesses (CRLBs), as well ancillary businesses that provide services to CRLBs.

STATE OF PLAY

- The SAFE Banking Act (H.R. 1996), introduced by Rep. Ed Perlmutter (D-Colo.), passed the House in 2021 with broad bipartisan support. In total, the SAFE Banking Act has passed the House six separate times on a bipartisan basis.
- A Senate companion bill (S. 910), introduced by Sens. Jeff Merkley (D-Ore.) and Steve Daines (R-Mont.), has over 40 bipartisan cosponsors. Progress in the Senate has been stymied due to the efforts of some to incorporate SAFE Banking into broader legislation to liberalize cannabis laws that lacks broad bipartisan support.

KEY PROVISIONS OF THE SAFE BANKING ACT

- Prohibits federal banking regulators from taking certain actions against depository institutions that provide financial services to CRLBs or service providers. These include threatening or limiting a bank's deposit insurance, downgrading a loan, prohibiting or discouraging the provision of banking services, or taking any other prejudicial action solely because a bank customer is a CRLB or service provider to a CRLB.
- Provides protection from liability under any federal law for providing financial services to CRLBs and from forfeiture of collateral for loans to such businesses or to owners of real estate or equipment leased to CRLBs.

- Clarifies that the SAFE Act does not impose a new obligation to provide financial services to CRLBs.
- Amends the Bank Secrecy Act to require financial institutions to comply with guidance issued by FinCEN when filing suspicious activity reports (SARs) related to CRLBs.
- Promotes access to banking services for hemp businesses and businesses that sell CBD products by requiring the federal banking regulators to issue guidance that confirms the legality of hemp and CBD products and to recommend best practices for banking such businesses.
- Provides liability protections for Federal Reserve Banks and Federal Home Loan Banks that serve institutions that serve CRLBs and ancillary businesses.
- Includes provisions that prevent bank regulators from ordering or otherwise pressuring banks to close a customer account without a valid reason unrelated to “reputational risk.” If a bank regulator requests closure of a customer account, it must provide a written justification for the request, including any specific laws that the regulator believes the customer has violated.

MESSAGE FOR YOUR MEMBERS OF CONGRESS

- Enacting the SAFE Banking Act is necessary as a matter of public safety. Without access to the banking system, CRLBs are forced to operate in cash, which of course creates risk of violent robbery, for employees as well as customers of CRLBs.
- Banks may be unaware that they are serving ancillary businesses or employees of CRLBs. This puts them in technical violation of federal law. It is an unsustainable situation that can only be remedied with a safe harbor.
- The Senate should pass the House-passed version of the SAFE Banking Act (H.R. 1996) without further delay. This is the shortest path to having the Act signed into law.