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House of Representatives passes the SAFE Banking Act with an eye toward a more secure financially regulated cannabis industry

By Robert Fisher, Scott Seitz, and Henry Caldwell

Recently, the House of Representatives passed the Secure and Fair Enforcement (SAFE) Banking Act ("SAFE Act" or "Act"), which provides much needed regulatory and legal clarity for how the cannabis industry interacts with the U.S. financial sector. The goal of the SAFE Act is two-fold. First, it seeks to provide cannabis-related businesses ("CRBs") greater access to financial services by safeguarding federally chartered depository institutions from exposure to a wide range of risks and liabilities. Second, by providing CRBs greater access to financial services, the Act strives to promote a safer and more secure operation of CRBs that, at least up until this point, have largely been reliant on cash.

Because marijuana is a Schedule I drug under the Controlled Substances Act, federally chartered depository institutions have been and still remain wary of taking on CRB clients or pursuing cannabis-related opportunities. The SAFE Act, however, is designed to taper those concerns. For example, the Act provides depository institutions a number of safeguards that prohibit federal banking regulators from:

a) limiting or terminating deposit or share insurance solely because a depository institution provides financial services to a cannabis-related business;

b) prohibiting or discouraging the provision of financial services to a cannabis-related business;

c) recommending or encouraging depository institutions not to offer financial services to an account holder solely because the account holder is affiliated with a cannabis-related business; or

d) taking any adverse or corrective supervisory action on a loan made to a person solely because the person either owns such a business or owns real estate or equipment leased or sold to such a business.

Notably, the Act also provides broad protections against violations of federal anti-money-laundering laws, if the money in question stems from state-authorized cannabis sales. If passed, CRBs looking to shift gears from operating exclusively on a cash-only basis would likely gain crucial access to financial services necessary to enable business growth and stability. For example, the SAFE Act would offer business owners in the cannabis space access to FDIC-insured bank accounts, small business loans, electronic-payment processing, and employee benefit plans—privileges that other non-cannabis businesses currently enjoy. The SAFE Act would also allow CRBs to reduce the amount of liquid cash flowing through their businesses, which will reduce security and insurance costs.

It is important to note that the passing of the SAFE Act in the House has no immediate impact on the status quo of the cannabis and banking industries. The Act still needs to pass through the Senate, where it is likely to face heavier opposition. The Senate Banking Committee is expected to hold a vote by the end of this year. Nixon Peabody will continue to track the legislative progress of the SAFE Act as well as other developments related to cannabis reform and provide updates to our clients and readers.

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