

U.S. HOUSE OF REPRESENTATIVES PASSES THE SAFE BANKING ACT OF 2019

The U.S. House of Representatives passed its version of the Secure and Fair Enforcement Banking Act of 2019 (SAFE Banking Act) yesterday. The legislation had significant bipartisan support with 206 U.S. Congressional Representatives signing on as co-sponsors. The legislation also had broad support from the national banking trade groups as well as 43 state banking associations. The legislation will now be sent to the U.S. Senate where Senate Banking Chairman Mike Crapo recently indicated that he wants to hold a vote on legislation that would permit depository institutions to provide financial products and services to the cannabis industry and its service providers.

The SAFE Banking Act would apply to federally insured banks, thrifts and credit unions. If passed by Congress as proposed, the SAFE Banking Act would prohibit federal bank and credit union regulators from:

- Terminating or limiting the deposit insurance or share insurance solely because the institution provides financial services to a cannabis-related legitimate business¹ or service provider.²
- Taking any enforcement action against the institution solely because it provides or has provided financial services to a cannabis-related legitimate business or service provider.
- Prohibiting, penalizing or otherwise discouraging an institution from offering financial services to a cannabis-related legitimate business, service provider or any state or governmental entity that exercises jurisdictions over cannabis-related legitimates businesses.
- Prohibiting or penalizing an institution (or an entity performing a financial service for or in association with the institution) for, or otherwise discouraging an institution (or entity performing a financial service for or in association with the institution) from, engaging in a financial service for a cannabis-related legitimate business or service provider.
- Recommending, incentivizing or encouraging an institution not to offer financial services to an account holder, or to downgrade or cancel financial services offered to an account holder solely because:
 - the account holder is a cannabis-related legitimate business or service provider, or an employee, owner or operator of a cannabis-related legitimate business or service provider; or
 - the account holder later becomes an employee, owner or operator of a cannabis-related legitimate business or service provider.

¹ The SAFE Banking Act defines “cannabis-related legitimate business” to include any person or entity that grows, produces, handles, transports, distributes, sales or uses cannabis or cannabis products as permitted under applicable state law.

² The legislation defines “service provider” to include any person or entity that is not a cannabis-related legitimate business, but that (i) sells goods or services to a cannabis-related legitimate business or (ii) provides any business service, legal or other licensed service or other ancillary service related to cannabis.

- Taking any adverse or corrective supervisory action on a loan made to:
 - a cannabis-related legitimate business or service provider, solely because the business is a cannabis-related legitimate business or service provider;
 - an employee, owner or operator of a cannabis-related legitimate business or service provider solely because he/she is employed by, owns or operates a cannabis-related legitimate business or service provider, as applicable; or
 - an owner or operator of real estate or equipment that is leased to a cannabis-related legitimate business or service provider solely because he/she/it leased the real estate or equipment to a cannabis-related legitimate business or service provider, as applicable.

Additionally, the SAFE Banking Act provides that an institution shall not be subject to federal criminal, civil or administrative forfeiture when it has a legal interest in collateral for a loan or other financial service provided to an owner, employee or operator of a legitimate marijuana-related business or service provider or to an owner, employee or operator of real estate or equipment that is leased or sold to a cannabis-related legitimate business or service provider.

The practical effect of the SAFE Banking Act is to provide a safe harbor to institutions that provide financial products and services to the cannabis industry (recreational and/or medical marijuana) and its service providers. The legislation would not, however, protect an institution for failing to meet its Bank Secrecy Act/anti-money laundering obligations in connection with providing such products and services to these customers.

With respect to the Industrial Hemp industry, the SAFE Banking Act requires the federal banking regulators to jointly issue guidance within 90-days from the enactment of the legislation:

- confirming the legality of hemp, hemp-derived cannabidiol (“CBD”) and other hemp-derived cannabinoid products, as well as the legality of engaging in financial services with businesses selling hemp, hemp-derived CBD products and other hemp-derived cannabinoid products; and
- provide recommended best practices for financial institutions to follow when providing financial services and merchant processing services to businesses involved in the sale of hemp, hemp-derived CBD products and other hemp-derived cannabinoid products.

* * * * *

Luse Gorman is actively assisting institutions nationwide in accepting and addressing the risks related to providing products and services to customers involved at all levels of the cannabis industry. If you need assistance or would like to talk about how we can help you, please contact:

Gary Lax (202) 274-2031
glax@luselaw.com

John J. Gorman (202) 274-2001
jgorman@luselaw.com

Larry Spaccasi (202) 274-2037
lspaccasi@luselaw.com

Kent Krudys (202) 274-2019
kkrudys@luselaw.com

Kip Weissman (202) 274-2029
kweissman@luselaw.com

Jeff Cardone (202) 274-2033
jcardone@luselaw.com

Tom Hutton (202) 274-2027
thutton@luselaw.com

Scott Brown (202) 274-2013
sbrown@luselaw.com

© 2019 Luse Gorman, PC. Luse Gorman, PC is a Washington, DC-based law firm that specializes in representing domestic and foreign financial institutions in the United States. The information provided herein does not constitute legal advice and relates only to matters of federal law and not to any particular state law.

5335 WISCONSIN AVENUE, N.W., SUITE 780 ■ WASHINGTON, D.C. 20015 ■ 202.274.2000 T ■ 202.362.2902 F ■ WWW.LUSELAW.COM