



SAFE Banking Act - State of Play Memo

May 23, 2022

OVERVIEW

The Secure and Fair Enforcement (SAFE) Banking Act would permit banks from servicing legal cannabis businesses throughout the country, in states where marijuana is legal, without fear of federal reprisal. The majority of these small businesses are cash-only as a result of current federal regulations. The SAFE Banking Act would prevent banking regulators from prohibiting, penalizing or discouraging a bank from working with a state-sanctioned and regulated cannabis business. It would also protect banks working with others, such as a lawyer or landlord servicing a cannabis business. The SAFE Banking Act would be a significant stride towards legal reform for the cannabis industry, helping it move out of a cash economy and into a place where businesses can use cashless payment options such as credit and debit cards, while also accessing necessary financial services more easily.

As of February 2022, 47 states, Washington D.C., and four U.S. territories have legalized the use of recreational or medicinal marijuana, including hemp and CBD products. Notably, this legislation has been a focal point for the industry due to state-legal, cash-only cannabis businesses and their armored vehicles increasingly becoming targets for violent, armed robberies.

LEGISLATIVE HISTORY & STATE OF PLAY

The bipartisan SAFE Banking Act was first introduced in the House by Reps. Ed Perlmutter (D-CO) and Denny Heck (D-WA) and cosponsored by Reps. Warren Davidson (R-OH) and Steve Stivers (R-OH) on March 7, 2019. A draft version of the legislation prompted the first congressional hearing on the issue of cannabis banking by the House Financial Services' Subcommittee on Consumer Protection and Financial Institutions.

On July 10, 2013, Reps. Perlmutter and Heck first introduced a legislative proposal to allow cannabis-related businesses in states with existing regulatory structures to access the banking system. The lawmakers have introduced similar bills every Congress since 2013 and continue to seek alternative pathways to advance the SAFE Banking Act.

Since its introduction, the House has passed the SAFE Banking Act six times -- most recently on February 4, 2022. The legislation was included in H.R. 4521, the America COMPETES Act as an amendment and the full package was approved by a vote of 221-201. However, it has continued to face adversity in the Senate where it has failed to advance under both Democratic and Republican control. The standalone Senate version of the SAFE Banking Act currently has 52 cosponsors, including nine Republicans. On March 28, 2022, the Senate voted 68-28 to advance an amended version of its United States Innovation and Competition Act (USICA) but removed SAFE Banking provisions.

The Senate's decision to strike the SAFE Banking language from USICA means that its fate will be decided in conference committee when leaders from both chambers and both parties will negotiate on finalizing the bill's language. Notably, Republican Leader Mitch McConnell has publicly criticized the inclusion of the banking language as a "poison pill." Meanwhile, the third-highest-ranking Democratic member in the chamber and an appointed member of the conference committee, Sen. Patty Murray (D-WA), has called cannabis banking reform a priority. Her state, in particular, has been experiencing a public safety crisis with more than 50 armed robberies of state-licensed cannabis dispensaries in the first two months of 2022. Furthermore, Chair of the Senate Banking Committee, Sen. Sherrod Brown (D-OH) has indicated that he will support the SAFE Banking Act if it is paired with drug sentencing reform.

Ahead of the bicameral conference committee's first meeting on May 12, 2022, a group of 24 bipartisan senators led by Sens. Jeff Merkley (D-OR) and Jacky Rosen (D-NV) sent a letter to congressional leaders calling for a compromise competitiveness bill to "retain" the text of the SAFE Banking Act included in the House version of the America COMPETES Act. The lawmakers note the legislation would "help cannabis-related businesses, support innovation, create jobs, and strengthen public safety in our communities." They added that the SAFE Banking Act has passed the House six times and has demonstrated broad support from "more than three quarters of the chamber and a majority of the members of each party."

On May 16, 2022, Rep. Earl Blumenauer (D-OR), an appointed conference committee member, indicated that there is a united effort by conferees in both the House and Senate to ensure that the SAFE Banking Act is attached to the final manufacturing bill that is sent to President Biden's desk. He added that at the first meeting of the conference committee on May 12, multiple conferees backed inclusion of the SAFE Banking Act legislative language in the interest of public safety and economic competition. Notably, Sen. John Barrasso (R-WY) expressed opposition to inclusion of the SAFE Banking Act, questioning how it relates to making the U.S. competitive with China in the global economy. The conference committee hopes to finalize its report prior to the August recess.

As of February 2022, the standalone House SAFE Banking Act has 180 bipartisan cosponsors, while the Senate version has 42 bipartisan cosponsors. The bill is backed by the governors of 21 states and U.S. territories along with more than 40 organizations including the American Bankers Association (ABA), American Financial Services Association (AFSA), National Association of State Treasurers (NAST), National Association of Federally-Insured Credit Unions, National Association of Professional Insurance Agents, National Cannabis Industry Association (NCIA), and the U.S. Cannabis Council (USCC), among others.

While momentum and support for the SAFE Banking Act continues to build, it is uncertain whether the bill will remain stalled or be able to move forward with USICA/America COMPETES Act due to push back from key Democratic and Republican lawmakers who have indicated their preference for comprehensive marijuana legalization and social equity reform, rather than standalone cannabis banking reform. However, with the backing of financial institutions and cannabis businesses, the likelihood of some form of cannabis reform passing this year appear strong.

RELATED CANNABIS REFORM LEGISLATION

Although numerous state governments have legalized recreational and/or medicinal cannabis, according to federal law, cannabis is considered a Schedule I drug and remains illegal under the Controlled Substances Act (CSA) of 1970. As such, individuals who grow, possess, use, sell, transport, or distribute cannabis remain subject to federal criminal prosecution.

On April 1, 2022 the House voted 220-204 to pass H.R. 3617, the Marijuana Opportunity Reinvestment and Expungement (MORE) Act, which was introduced by Rep. Jerry Nadler (D-NY) on May 28, 2021. The MORE Act aims to remove cannabis from the CSA and decriminalize it at the federal level, and provide reinvestment opportunities for communities and individuals who have been adversely and disproportionately impacted by the war on drugs and expunge nonviolent, federal cannabis-related convictions. Additionally, the measure would impose a 5% tax on cannabis products and make Small Business Administration (SBA) loans and services available to legitimate cannabis businesses. Speaker Nancy Pelosi (D-CA) called the MORE Act “one of the most important criminal justice reform bills in recent history.” Although most of the Republican Party spoke out and voted against the bill, Rep. Matt Gaetz (R-FL) praised the comprehensive measure, noting it would address the federal government’s “screwed up marijuana policy.” The bill awaits action in the Senate.

On December 2, 2021, Reps. David Joyce (R-OH) and Alexandria Ocasio-Cortez (D-NY) introduced H.R. 6129, the Harnessing Opportunities by Pursuing Expungement (HOPE) Act. The bipartisan legislation would help states expunge cannabis-related offenses by reducing the financial and administrative burdens through a federal grant program that would be funded up to \$20 million for 10 years and be overseen by the Department of Justice (DOJ). The HOPE Act is endorsed by the U.S. Cannabis Council; the National Organization for the Reform of Marijuana Laws (NORML); the Coalition for Cannabis Policy, Education and Regulation; the National Cannabis Roundtable; Last Prisoner Project; the National Cannabis Industry Association; and the Drug Policy Alliance.

On July 14, 2021, Senate Majority Leader Chuck Schumer (D-NY), Senate Finance Committee Chairman Ron Wyden (D-OR), and Sen. Cory Booker (D-NJ) released a 163-page preliminary draft of a bill to federally decriminalize cannabis. On April 14, 2022, Leader Schumer issued a statement indicating that he and his colleagues plan to formally introduce the Cannabis Administration and Opportunity Act (CAOA) before the August recess once they receive feedback from lawmakers and industry stakeholders. The CAO A aims to remove cannabis from the federal list of controlled substances; tax and regulate cannabis at the federal level; and grant states the power to keep or administer their own oversight programs.

NOTABLE STATEMENTS

On January 20, 2022, in an interview with Financial Regulation News, Stephen Hawkins, CEO of the U.S. Cannabis Council indicated that while the SAFE Banking Act “won’t end cannabis prohibition by itself, it’s a vital step on the path to legalization.” He said that cannabis businesses operating entirely in cash is “inefficient and a constant security risk.” Hawkins added that his organization also strongly supports the HOPE Act and plans to engage with Senate Majority Leader Chuck Schumer (D-NY), Senate Finance Committee Chairman Ron Wyden (D-OR), and Sen. Cory Booker (D-NJ) once they formally introduce their comprehensive cannabis reform legislation, the Cannabis Administration and Opportunity Act (CAOA).

On February 7, 2022, Reps. Ed Perlmutter (R-CO) and David Joyce (R-OH) pledged that if passage of the SAFE Banking Act is blocked once again in the Senate, they will continue advocating for the legislation. They stated, “We need to bring some sense to what is really dangerous right now in this space that so many states allow for dispensaries, for grow operations,” Perlmutter said. “There’s just a lot of cash, and that cash can really pose problems.” The following month, Rep. Perlmutter stated “he will be a real pest” and persist in getting this done before he leaves Congress.

On April 20, 2022, Sen. Patty Murray (D-WA) held a press conference in Washington state in support of the SAFE Banking Act. She indicated that marijuana banking is a legislative priority of hers and that as an appointed conference committee member, she is working to ensure the final negotiated bill includes the SAFE Banking Act so that legal cannabis businesses have a safe way to do business. She added that these small businesses are “being forced to operate entirely in cash. It’s dangerous and sometimes even fatal for the employees behind the register, but this situation is also completely preventable.”

On April 27, 2022, Rep. Earl Blumenauer (D-OR), a long-time champion for cannabis reform, joined Rep. Perlmutter in a letter to House and Senate leadership calling for inclusion of the entirety of the SAFE Banking Act in the final version of the America COMPETES Act that will be negotiated by the bicameral conference committee. The lawmakers wrote, “Congress has the opportunity and responsibility to address the violence spurred by our regressive banking prohibitions now. Vulnerable communities cannot wait for the perfect solution for Congress to take substantial steps forward. The SAFE Banking Act is a critical piece of the reform our underserved communities and small businesses need.”

On April 28, 2022, the American Bankers Association (ABA) led 51 state bankers associations representing all 50 states and one U.S. territory in a letter to Senate leaders, urging them to include cannabis banking reform the compromise version of the America COMPETES Act that’s heading to bicameral conference. The bankers associations wrote that the SAFE Banking Act is “urgently needed, and widely supported” bipartisan legislation that would promote transparency and improve tax collection. They added that currently the cannabis industry is “operating primarily in cash, which causes significant public safety concerns and undermines the ability of cannabis regulators, tax collectors, law enforcement and national security organizations to monitor the industry effectively.”

On July 14, 2021, at a press conference to introduce their Cannabis Administration and Opportunity Act (CAOA), Senate Majority Leader Chuck Schumer (D-NY), Senate Finance Committee Chairman Ron Wyden (D-OR), and Sen. Cory Booker (D-NJ) were asked about advancing a smaller proposal that could resemble the SAFE Banking Act. Leader Schumer said the marijuana banking legislation “does not get done what needs to be done,” noting that a comprehensive, justice-focused, cannabis reform bill should be addressed first. Meanwhile, Sen. Booker stated, “I will lay myself down and do everything I can to stop a banking bill that is going to allow all these corporations to make a lot more money off of this, as opposed to focusing on the restorative justice aspect.” Following push back from the industry and lawmakers in regards to his comments, a week later, Sen. Booker clarified his comments, saying he supports the SAFE Banking Act and that it is a “phenomenal bill...that is a necessary sweetener to get people to move along on the equitable justice elements that are really critical.”