

States Aim to Improve Banking Access for Legal Cannabis Industry

Legal cannabis is one of the fastest-growing industries in America. But due to the continued treatment of marijuana as a banned substance akin to heroin under federal law, legal cannabis businesses have been unable to access the banking and financial services that other industries take for granted. Some states, however, are trying to change that.

State Legalization Efforts at Odds with Federal Drug Law

According to the cannabis website Leafly and the consulting firm Whitney Economics, [legal cannabis is not only an \\$18.3 billion industry](#), but also the [U.S. economy's fastest-growing job sector](#), providing more than 340,000 jobs in 2020.

That growth has largely been driven by state legalization efforts. Over the past decade 17 states and the District of Columbia have legalized marijuana for recreational use by those over the age of 21, and 36 states have legalized the use of marijuana for medical purposes.

Under federal drug policy, however, marijuana is still listed as a "Schedule I" drug, meaning that it's considered to have a high potential for abuse and no currently accepted medical use. The designation places marijuana in the same category as heroin, LSD, ecstasy and peyote.

This presents a conundrum for business owners who are legally growing, manufacturing and distributing cannabis. With marijuana banned at the federal level, law enforcement authorities have threatened to target commercial growers with serious criminal statutes—including the Racketeer-Influenced and Corrupt Organizations (RICO) Act, which allows for a private right of action that can be invoked by any citizen who believes their business or property has been damaged.

The specter of a possible RICO investigation and litigation has been enough to dissuade most reputable banks in the U.S. from doing business with any company in the cannabis industry. Those banks that have been willing to try working with marijuana-related companies have often found that complying with federal Bank Secrecy Act (BSA)/Anti Money Laundering (AML) requirements and state laws was too time consuming and labor intensive.

As of the end of 2020, out of the roughly 12,000 banks and credit unions nationwide, just 515 banks and 169 credit unions were providing banking services to marijuana-related businesses,



according to the U.S. Treasury Department. Cannabis industry consultants FinnCann say the number of financial institutions with active cannabis businesses accounts [could actually be even lower](#).

"In spite of the fast-growing shift in cultural attitudes toward marijuana in a number of states, federal prohibition has essentially made it impossible for cannabis businesses to have a relationship with any major bank," said Richard Ehsen, managing editor of the State Net Capitol Journal. "These banks are not only at risk of RICO actions but also money laundering investigations, problems with the Federal Reserve Bank and reputational risk from the public at large. They have largely steered clear of the industry."

Existing Cannabis Banking Options Risky and Costly

So what are the banking options available to those business owners who are operating legally in a number of states? Unfortunately, many cannabis businesses have gone to an all-cash model, concealing their sales and their expenses from tax authorities, and seeking out old-fashioned cash vaults as a way to "bank" their money. The criminal violence and public safety threats often associated with high-cash businesses have now become commonplace in the cannabis industry.

The tech industry has attempted to offer solutions to this problem. They include digital wallets that consumers link to their bank accounts, usually via a smartphone app, allowing them to make purchases from cannabis retailers. But credit card companies like Visa and Mastercard have made it clear they won't allow such transactions on their networks as long as marijuana is federally prohibited.

Another option developed by FinTech companies is the cashless ATM, which lets cannabis customers make purchases with their debit cards that appear to be cash withdrawals. But while effective, the approach is also illegal, and cannabis businesses employing it for payment processing could expose themselves to lawsuits or even criminal prosecution.

The last few years have also seen the rise of so-called “banking alternatives” for cannabis businesses. A wide range of services fall under that umbrella, but in general banking alternatives act as middlemen that connect willing banks with bank-hungry cannabis businesses. They often handle the bulk of the intensive vetting and ongoing auditing and cash collection—for a hefty fee, in some cases as much as 1 percent of a cannabis business’ gross revenue.

Potential Federal Remedy on Horizon

On April 19, 2021 the U.S. House passed HR 1996, the Secure and Fair Enforcement (SAFE) Banking Act. The bill would bar banking-system regulators from penalizing banks or credit unions that do business with a “cannabis-related legitimate business,” their service providers or state or local governments with jurisdiction over the businesses.

Although the measure has drawn wide support, including from the U.S. banking industry and many state governors, its chances are unclear in the U.S. Senate. A major roadblock to marijuana-friendly legislation in that chamber was removed with the transition of former Senate Majority Leader Mitch McConnell (R-Kentucky) to minority leader as a result of the November 2020 election. But current Senate Majority Leader Chuck Schumer (D-New York) is focused on legalization more broadly and has [expressed concern that the banking bill could undermine that effort](#).

States Stepping into Void

As the legal cannabis industry has continued its rapid growth and the SAFE Banking Act has remained in limbo, some state lawmakers “have become more animated about the missed revenue opportunities when local businesses operate on a cash basis,” said State Net’s Ehsen.

A few states, including California, have considered establishing a state-run bank for cannabis businesses that would return profits

to the public by way of funding government initiatives. The idea foundered in the Golden State over concerns about the financial and legal risks it posed.

But in September 2020 California Gov. Gavin Newsom (D) signed AB 1525, affirming banks that do business with licensed cannabis companies and the vendors who serve them are not in violation of state law. The measure also allowed cannabis companies to sign a waiver permitting state or local licensing and regulatory authorities to share their “application, license, and other regulatory and financial information” with financial institutions “for the purpose of facilitating the provision of financial services for that licensee.”

Earlier in the year legal marijuana industry leader Colorado issued guidance to state-regulated banks on how to work with legal cannabis businesses. Then the state enacted HB 1217, allowing state-chartered banks and credit unions to “loan money to any person licensed...for the operation of a licensed medical or retail marijuana business.”

In 2021 more than a dozen states have considered bills dealing with access to banking for legal cannabis companies, three of which have been signed into law. Marijuana banking regulations have also been filed in at least seven states. Meanwhile, state legalization efforts continue apace, with three states—New Mexico, New York and Virginia—enacting recreational marijuana measures in March and April 2021. There isn’t likely to be any letup in such state activity until there’s definitive action from the federal government on marijuana banking or legalization.

Key takeaway: For the time being legislative and regulatory activity dealing with banking access for legal cannabis businesses may come mainly at the state level.

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Much of the information in this article is based on research conducted by State Net and W. Mark Crain, William E. Simon Professor of Political Economy at Lafayette College, and a leading authority on quantitative analysis of government activity.

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