

BLOGS

Cannabis Insurance

Developing Regulatory Considerations for Cannabis-Related Businesses

Now that 44 states have permitted the use of cannabis to some extent, Congress is taking action to overcome some of the obstacles mentioned in previous post, "[Five Insurance Considerations for Cannabis-Related Businesses](#)". Bills have been introduced in Congress which, if passed, would have a substantial favorable impact on the cannabis industry.

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First, the Secure and Fair Enforcement (SAFE) Banking Act, introduced in the House of Representatives by Ed Perlmutter in March 2019, was reintroduced in April 2021 and co-sponsored by dozens of congressmen on both sides of the aisle. On April 19, the House voted to approve the SAFE Banking Act, and it is now pending in the Senate.

If enacted, the SAFE Banking Act would prohibit federal banking regulators from penalizing any depository institution that provides financial services to "cannabis-related legitimate businesses," even while cannabis remains illegal under federal law. "Cannabis-related legitimate business" is a defined term in the SAFE Banking Act and essentially means a business that engages in the cannabis business (including cultivating, selling, transporting, and selling cannabis) when done pursuant to a law established by a State or political subdivision of the State. The SAFE Banking Act would also state that proceeds of a "cannabis-related legitimate business" are not classified as proceeds from unlawful activity. This is impactful because proceeds from unlawful activity are subject to anti-money laundering laws. The SAFE Banking Act would furthermore create asset forfeiture protections for federal depository institutions that provide loans or other financial services to a "cannabis-related legitimate business. The intention is that federal banking regulators could only terminate an institution's customer account based on a valid reason such as a national security threat or involvement with terrorism and not solely upon the "reputational risk" of the bank's client.

Second, the Clarifying Law Around Insurance of Marijuana (CLAIM) Act was introduced in the Senate in March by Rand Paul, Jeff Merkley, and Bob Menendez. This proposed law would decriminalize and regulate the ability of cannabis-related businesses to purchase insurance.

If the CLAIM Act is enacted, insurers operating legitimately in states where cannabis has been permitted under state law could provide insurance to cannabis-related business without facing prosecution or penalties, even while cannabis

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remains illegal under federal law. Removing these consequences is expected to reduce the problem of insurers placing policy limitations and charging exorbitant premiums to cannabis-related businesses. Theoretically, a business will be able to purchase as much coverage as it needs at a fair rate for each type of policy it desires.

It is believed the Senate's current composition will likely be more receptive to the SAFE Banking Act and CLAIM Act bills than in 2019 when the SAFE Banking Act passed in the House but was not introduced in the Senate by then-Majority Leader, Mitch McConnell. Current Majority Leader, Chuck Schumer, has voiced support for legalization of cannabis under federal law. But Senator Schumer has also voiced concerns that passing the SAFE Banking Act or the CLAIM Act could be an unnecessary compromise that could undermine Congress' ability to accomplish a broader task of legalizing cannabis under federal law.

On July 14, 2021, Senator Schumer, along with Senator Ron Wyden and Senator Cory Booker, released a first draft of the Cannabis Administration and Opportunity Act ("CAOA"). The CAO, if passed would, (among other things) decriminalize cannabis under federal law by removing it from the Federal List of Controlled Substances. The broader sweep of CAO would give greater effect to the SAFE Banking and CLAIM Acts. Senator Schumer's version of CAO would create a fund that would use cannabis tax revenue to invest in communities that were most affected by the drug's prohibition. Additionally, this bill would allow for resentencing of individuals currently serving time for non-violent marijuana crimes to petition for resentencing and automatically expunge federal non-violent marijuana convictions.

This bill would not legalize marijuana in every state. Effectively, the bill would allow states to regulate marijuana without conflicting with federal law. However, it would ensure a state cannot prohibit cannabis from being transported through its borders to other states where cannabis is legal. Overall, it is believed CAO presents the most efficient and comprehensive path ever proposed to provide consumers, businesses, and servicers such as insurers and financial institutions in the cannabis industry the same opportunities as other industries.

Senator Booker does not support the SAFE Banking Act, believing it falls short of the reform needed to support the cannabis industry. President Biden generally opposes complete legalization of cannabis and his opposition could make Senators more willing to compromise to make some progress. State trends and federal efforts make it foreseeable that cannabis-related businesses will have better and fairer insurance and financial options in the not-so-distant future.