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Cannabis Banking

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Issue Update

Thirty-three states have legalized cannabis for medical or adult-use. Federal law (namely, the Controlled Substances Act (21 U.S.C. §801 et seq.)), still considers it an illegal drug and prohibits its use for any purpose. For banks, that means that all proceeds generated by a cannabis-related business operating in compliance with state law are unlawful, and that any attempt to conduct a financial transaction with that money (including simply accepting a deposit), is considered money-laundering. All banks, whether state or federally chartered, are subject to federal anti-money laundering laws.

In fact, the consequences extend beyond cannabis growers and shops to any person or business that derives revenue from a cannabis firm – including real estate owners, security firms, utilities and other vendors. Despite years of non-enforcement by the Department of Justice and attempts by financial regulators to advise banks on identifying and reporting cannabis money, the federal law has not changed. That means banks have been put in the untenable position of violating federal law or refusing financial services to a legal sector of their local economies.

Why It Matters To Your Community

Leaving the cannabis industry unbanked is not a viable option – sales totaled over \$6 billion in 2016 and are conservatively estimated to reach \$24 billion by 2025. Those numbers do not even include the ancillary businesses that violate federal law by providing goods, services, or real estate to cannabis businesses and consequently put their own access to banking services at risk. Cannabis businesses, which are legally permitted under state law, are forced to handle increasing large amounts of cash as a result of their exclusion from the banking system. Cash intensive businesses are difficult to monitor for compliance with tax laws or irregular financial activity and are themselves ripe targets for violent crime. These businesses will be safer and better regulated if they are permitted to use the banking system, which would increase the transparency and accountability of the industry and better protect our communities.

Recommended Action Items

Only Congress can resolve the divide between state and federal law. Without a change in federal law, neither the federal banking agencies nor state governments can remove the legal restrictions on providing banking services to marijuana-related businesses. According to an ABA survey, 90 percent of bankers said Congress should act to resolve the conflict.

- Allow banks to serve cannabis-related businesses in states where the activity is legal, if they chose to do so.
- Clarify that handling proceeds from legitimate transactions connected to legal state cannabis activity is not money laundering, and that it does not violate any provision of federal law.
- Require federal banking regulators to provide explicit, clear, and uniform expectations regarding the treatment of all marijuana-related accounts.
- Specify that a Financial Crimes Enforcement Network (FinCEN) Suspicious Activity Report is not required solely because a transaction involves proceeds from a legal state cannabis business.