

Marijuana Series: Banking Problems for the Cannabis Industry Remain A Significant

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Earlier this week, we discussed the recent joint letter that the Treasurers of California, Illinois, Oregon, and Pennsylvania sent to Attorney General Sessions requesting a meeting to discuss cannabis and the conflicts between state and federal law. Specifically, the Treasurers sought a meeting in an effort to resolve the uncertainty plaguing financial institutions in states where cannabis is legal in terms of their ability to provide banking services to the cannabis industry. But that is not the only recent letter about that topic, as a bipartisan group of seven Senators wrote a letter to the Chairman, Senator Mike Crapo, and the Ranking Member, Senator Sherrod Brown, of the U.S. Senate Committee on Banking, Housing Affairs Chairman requesting that the Committee hold a hearing on S.1152, the Secure and Fair Enforcement ("SAFE") Banking Act.

The Safe Act, which was introduced in May 2017, would, among other things, create protections for depository institutions that provide financial services to cannabis-related businesses. In their letter, the seven Senators (Senators Cortez Mastro, Gardner, Murkowski, Merkley, Schatz, Murray, and Bennet) explained that a hearing would "allow for a better understanding of the current state of financial services for cannabis-related businesses, the need for legal certainty for financial institutions, and other important issues relating to financial services and the cannabis industry." After describing the uncertain legal environment in which cannabis businesses operate, the Senators cited specific concerns and problems, including that "landlords and security companies[] have had limited access to or are locked out of the banking system, including accessing a checking account, meeting payroll and paying tax revenue, among other financial services. In an industry conducting hundreds of millions of dollars in transactions, the lack of access to financial services has forced many to operate as cash only businesses, raising concerns regarding public safety, money laundering, and other potential crimes." The Senators also supported their request by pointing out that a bipartisan group of 19 Attorneys General had called on Congress to consider legislation that would resolve the conflicts between state and federal law concerning financial services for the cannabis industry.

Meanwhile, in West Virginia, where medicinal marijuana has been legalized, the State Treasurer is seeking similar solutions. On March 30, State Treasurer John Perdue issued a press release titled, "Treasurer searches for medical cannabis banking solutions." In his press release, Treasurer Perdue identified 3 specific actions his office was taking: 1) issuing a request for information ("RFI") "in search of banking solutions for sales, fees, licenses, taxes and other transactions related to state sanctioned medical cannabis in West Virginia"; 2) joining with other State Treasurers to urge Congressional leaders to adopt legislation to protect medicinal marijuana patients; and 3) writing to Treasury Secretary Steven Mnuchin to request clear banking guidance for medical marijuana financial transactions.

As to the RFI, Treasurer Perdue stated that,

"[o]ur hope is to find a banking alternative, similar to other states that have legalized medical marijuana, in an effort to move forward with offering this option to those who need it in West Virginia[.]"

With respect to the need for federal action in this area, Treasurer Perdue reasoned that,

"[t]he fact is that the fate of medical marijuana in West Virginia depends on how President Trump's administration approaches the enforcement of marijuana and banking laws[.] At the very least, I want West Virginia to be treated like all other states that have implemented or started implementation of a medical marijuana program."

Continuing on this issue, Treasurer Perdue pointed out that,

"[t]here are a lot of mixed messages on the federal level regarding this issue[.] Congress can fix this, and I am asking for federal changes on behalf of our citizens."

To be clear, the concerns articulated by Treasurer Perdue, the State Treasurers who wrote to Attorney General Sessions, and the Senators who are seeking a hearing on the SAFE Act are real and are causing problems for the cannabis industry on a daily basis. A recent example from Illinois demonstrates that, as the Bank of Springfield, the main bank for Illinois's medical marijuana businesses, will no longer be providing services for the industry. According to an April 2 article from the Chicago Tribune titled, "Main bank for Illinois' medical marijuana industry is pulling out, leaving some operators to deal in cash," the Bank of Springfield notified its cannabis client that their accounts would be closed May 21. The article, in addition to chronicling the consequences of that decision and the difficulties that cannabis businesses will now face, like relying more on cash transactions and the attendant security and tax problems that brings, included several statements from a bank spokesperson who stated that,

"[t]he bank's stance is that protecting their customers is paramount[.] The Bank of Springfield will not jeopardize any of their customers by working with businesses that operate in the legal gray zone."

The spokesperson also justified the Bank's decision by pointing out that the Obama-era Cole Memo, which Attorney General Sessions rescinded, had been the basis for the Bank's involvement in the cannabis industry and that "[t]he trend had been toward more clarity, and that clarity has gone away."

Whether the Bank of Springfield's decision is an isolated one or will be followed by other financial institutions will be important not just for those trying to do business in the cannabis industry, but also for all the government officials who are seeking ways to provide solutions to this industry.