
Cannabis banking bill likely to pass Senate in 2022 as Democrats align

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Market Intelligence

Legislation permitting banks to lend to cannabis companies may finally cross the finish line this year as Senate Democrats align with their House counterparts.

The Secure and Fair Enforcement, or SAFE, Banking Act says federal banking regulators cannot penalize depository institutions for providing banking services to cannabis-related businesses. Championed by Rep. Ed Perlmutter, D-Colo., the House of Representatives has passed the measure six times, most recently in February 2022, before seeing it stall out in the Senate the previous five times.

Banks are lobbying for the legislation as they seek to lend to an industry that is experiencing explosive growth. The U.S. marijuana market is the world's largest, generating over \$25 billion in regulated sales in 2021 — a figure expected to reach \$40.5 billion by 2025, according to cannabis research firm New Frontier Data.

The bill is likely to benefit from a final push by Perlmutter, who announced in January that he is retiring at the end of the year.

"The bill's biggest champion is leaving at the end of the year," said Daniel Stipano, a former top attorney with the Office of the Comptroller of the Currency and now a partner with Davis Polk. "He will work really hard to get this through."

Senate Democrats have favored a more comprehensive measure that would legalize the drug on the federal level and include restorative justice provisions, such as reversing convictions for non-violent marijuana offenses.

Senate Majority Leader Charles Schumer, D-N.Y.; Sen. Cory Booker, D-N.J.; and Sen. Ron Wyden, D-Ore., are expected to soon introduce a wide-ranging cannabis bill, Booker said in an opinion column published March 14. But the broader bill is destined to fail, according to Isaac Boltansky, policy analyst at BTIG LLC.

"It is too broad, Congress isn't ready for legalization," he said. "It will be introduced and then it will die. At that point we're going to see those three move on from their position and look at SAFE as an acceptable fallback."

The measure may make it through as an amendment to another bill that has broad support, like the spending bill, both Boltansky and Stipano said.

Overview of 3 key federal cannabis bills

	SAFE Banking Act Focus on banking and payments	MORE Act Nationwide descheduling	States Reform Act Nationwide descheduling
Bipartisan sponsors	✓	✗	✗
Contains social justice initiatives	✗	✓	✓
Places a special tax on cannabis	✗	✓	✓
Encourages development of an interstate market	✗	✓	✓
Permits bank accounts for cannabis-related businesses	✓	✓	✓
Permits payments and money transmission	✓	✓	✓
Permits capital markets activity	✗	✓	✓
Permits investment activity	✗	✓	✓
Contains directions to regulators	✓	✓	✓
Protects insurers	✓	✓	✓

As of March 11, 2022.

Sources: BTIG LLC; Davis Polk

Banks seek help

With a difficult regulatory regime, increasing numbers of banks are seeking help setting up their operations, according to Tony Repanich, a former banker who is now president of Shield Compliance. The company helps institutions comply with the regulatory framework around cannabis banking.

"We doubled the number of banks that we're working with just last year," Repanich said in an interview. "There is a good pipeline of prospective banks and credit unions that are interested in cannabis banking operations. They want a little more certainty."

Loans from national banks will soon be critical for cannabis companies, said Valley National Bancorp. Chief Financial Services Officer Rick Kraemer.

"Access to debt at some point is going to be very important to them," he said. "The SAFE Act could bring more lending viability to them."

An official at a credit union said the legislation now headed for the Senate is desperately needed by the cannabis sector.

"Without SAFE banking, lending to a federally illegal sector brings even greater risk than accepting deposits from that sector, because credit risk and collateral risk are added to the equation," said Rachel Pross, chief operations officer at Maps CU in Salem, Ore. The measure "would make a world of difference to cannabis business owners," she said.

While most banks are hopeful that the SAFE Banking Act crosses the finish line, compliance might be difficult and could even cause some banks to exit the transactions the measure allows, according to Safe Harbor Financial CEO Sundie Seefried. Safe Harbor offers financial services to cannabis companies.

"The legislation is very complex," said Seefried. "It will take time for financial institutions and companies to comply. The pressure will be on those financial services providers entering the market and they could find themselves exiting."

Industry optimistic

Industry groups also believe that the sixth time will be the charm for the SAFE Banking Act.

"It's come extremely close. There's bipartisan support. We are at the stage where the SAFE Act can become law," said James Ballentine, executive vice president of congressional relations at the American Bankers Association.

The group has pushed aggressively for enacting the SAFE Banking Act and will continue to do so, Ballentine said in an interview. "We have broad support from our members and we will remain active" until the measure passes.

Banks finding alternatives

As Congress looks to provide lending authority to banks doing business in cannabis, those banks are developing their own cannabis financial products at the state level, according to Safe Harbor's Seefried.

One product is called a "closed loop" payment system, in various stages of development at different banks. Safe Harbor offers one, in addition to checking and savings accounts and other services.

At a high level, according to Seefried, such a system enables consumers to load money into a spending account or electronic wallet that is linked to a payment device, such as a gift card for a specific company.

Valley National Bancorp is in the testing phase of its closed loop product for cannabis companies, said Kraemer.

Without going into specific details, "we're pretty confident that this is going to be a relevant product even after SAFE passes," Kraemer said in an interview with S&P Global Market Intelligence. His bank is based in Colorado, where marijuana is legal.

There is potential that credit card companies may move into the space, financial institution officials said.

"As much money and as big as the market is, somebody is going to look at it at the major credit card company side of the house to begin testing," according to Seefried.

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