

Proposed bill may ease access to financial services for California cannabis businesses

On August 11, 2020, the California Senate Banking and Financial Institutions Committee will hold a hearing on Assembly Bill 1525. The bill, which passed in the Assembly 68-1, protects financial institutions who provide services to licensed cannabis businesses and increases the viability of these relationships.

A.B. 1525 performs two major functions. First, it clarifies that financial institutions and other entities - including armored car services and public accounting firms - are not guilty of any crimes under California law solely by virtue of the fact that they provide services to licensed cannabis businesses. This would provide institutions with assurance that they can safely engage with the cannabis industry without facing barriers from the state. It also provides needed support for cannabis businesses to function in the marketplace. Financial services are critical for the cannabis industry, as cannabis' largely cash-driven business model has significant dangers. For example, large amounts of cash create an easy environment for fraud, theft and tax evasion. A.B. 1525 encourages both cannabis businesses and financial entities to create mutually beneficial relationships.

Second, the bill allows financial institutions to access applications, licenses and other information for cannabis businesses from state and local authorities and agencies. Under existing federal law, financial institutions are generally allowed to work with licensed cannabis businesses, despite the product's illegal status. However, these financial institutions face burdensome restrictions and requirements to do so. Under the Financial Crimes Enforcement Network (FinCEN) guidelines issued in 2014, institutions must perform tedious due diligence to ensure the business is complying with applicable laws and federal requirements. Because of these requirements, banks and other financial institutions are hesitant to provide services to the cannabis industry. According to FinCEN's March 31, 2020 report, only 710 banks and credit unions supported cannabis businesses across the country, and that number has been in decline since November 2019. [1]

To provide its information to a financial institution under A.B. 1525, a licensee must submit a written request to a state or local licensing authority or agency for the information's release. While it does not explicitly create a centralized database, A.B. 1525 lays the framework for the state to create such a database in the future. Several agencies in the state already gather information on cannabis businesses for licensing and regulatory purposes. In 2017, the State Treasurer's Cannabis Banking Working Group advocated for the creation of an "online portal" to gather all data on cannabis businesses from licensing agencies. A.B. 1525 builds on the existing "track-and-trace" structure by creating a uniform process for sharing that information. This reduces a financial institution's risk in associating with a cannabis business by giving it ready access to the information it needs to comply with FinCEN's requirements.

The bill passed easily through the Assembly, and there were no arguments submitted in opposition. It also received support from the California Credit Union League. But its fate is still uncertain, as the ongoing pandemic pushes other needs to the forefront for the state. The hearing on August 11 will provide a clearer picture of the bill's future.

It is noteworthy that a comparable bill was introduced last year in the U.S. Congress. The Secure and Fair Enforcement (SAFE) Banking Act also seeks to protect financial institutions, but it provides broader and more robust protections like preventing financial institutions from discriminating against legitimate cannabis businesses. The bill passed in the U.S. House in September 2019, but it has not moved in the Senate. House Democrats added protective provisions from the SAFE Banking Act to the HEROES Act COVID-19 relief bill passed in the House in May 2020; however, such provisions were not included in the latest round of legislation unveiled by Senate leaders in late July.

In light of this Congressional standstill, A.B. 1525 could provide a meaningful boost to California's cannabis industry by easing access to financial services for cannabis businesses, and by protecting ancillary companies that serve the industry.

[1] FINANCIAL CRIMES ENFORCEMENT NETWORK, MARIJUANA BANKING UPDATE: DEPOSITORY INSTITUTIONS PROVIDING BANKING SERVICES TO MARIJUANA-RELATED BUSINESSES (March 31, 2020).



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