

Legislative Update: Safe Harbor for Cannabis Banking

Status: While cannabis use is illegal under federal law, more than 20 states and the District of Columbia have approved adult use of cannabis and nearly 40 have approved medical use. The SAFE Banking Act (H.R. 2891) would create a “safe harbor” from adverse regulatory actions for banks that serve cannabis-related legitimate businesses in states in which cannabis is legal. The SAFE Banking Act passed the House seven separate times with bipartisan support during previous Congresses. In September 2023, the Senate Banking Committee passed similar legislation, the SAFER Banking Act (S. 2860).

ICBA Position:

- The conflict between state and federal law has created significant legal and compliance concerns for banks that wish to provide banking services to cannabis-related businesses.
- ICBA supports the SAFE Banking Act, which would create an effective “safe harbor” from federal sanctions for banks that choose to do business with cannabis-related businesses in states where cannabis is legal.
- This safe harbor would extend to banks that serve “ancillary businesses” such as landlords, accountants, utility providers, and other businesses that may be paid in funds ultimately derived from cannabis sales.
- The SAFE Banking Act would prohibit federal banking regulators from threatening or limiting a bank’s deposit insurance, downgrading a loan, forcing a depository institution to end a customer relationship, or taking any other prejudicial action in a state where cannabis is legal, solely because the customer is a cannabis-related business.

Key Talking Points:

Enactment of the SAFE/SAFER Banking Act (H.R. 2891/S. 2860) is necessary as a matter of public safety. Without access to the banking system, cannabis-related businesses are forced to operate in cash, which creates risk of violent robbery, for employees as well as customers.

- Banks may be unaware that they are serving ancillary businesses or employees of CRLBs. This puts them in technical violation of federal law. It is an unsustainable situation that can only be remedied with a safe harbor.
- The SAFE Banking Act has strong bipartisan support and should be passed without delay.