Commercial / State-Legalized Cannabis Businesses

NAR Committee:

Commercial Federal Policy Committee

What is the fundamental issue?

Forty-seven states, the District of Columbia, and all four U.S. territories have legalized cannabis or cannabis derivatives for medicinal and/or recreational purposes; however cannabis remains illegal on a federal level. Many cannabis-related businesses that are registered within their respective states experience major challenges accessing financial services due to the legal status of the cannabis industry on a federal level. The cannabis industry remains a cash business, which can be dangerous and challenging for both business owners and communities. Many financial institutions have been reluctant to provide financial services to cannabis-related businesses, because of the legal risks. Alternatively, a small number of state banks and credit unions are currently providing financial services to cannabis related businesses at their own risk.

Beginning in 2017 bipartisan legislation was introduced which would create a safe haven for financial institutions in states that have legalized cannabis allowing them to accept income derived from cannabis and cannabis-related businesses as long as the account holder and business are within the state lines. In addition the legislation provides for greater oversight, reporting, and anti-money laundering around cannabis-related funds in banks, increasing the ability to track the industry's growth and protect against criminal activity.

I am a real estate professional. What does this mean for my business?

There are forty-seven (47) states that have legalized cannabis or a cannabis derivative for medicinal purposes and twenty-three (23) states, the District of Columbia and three territories that have approved cannabis for recreational use. Cannabis is a multi-billion dollar industry in the United States which touches on many other businesses. This issue is likely to impact the real estate industry, as business owners may seek to acquire real estate or may need financing for cannabis-related businesses. It is imperative that real estate professionals continue to track and monitor state cannabis laws, as the industry grows and state laws vary on this issue.

NAR Policy:

NAR supports the rights of states and residents of those states to create laws aligned with state and resident interests. NAR supports allowing businesses that are properly registered and that are legitimate by state standards to have the ability to access banking services.

NAR does not have a position on cannabis legalization.

Opposition Arguments:

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Opponents argue that cannabis is a Schedule-1 controlled substance under federal law, and that state laws legalizing cannabis, for medicinal and/or recreational use are invalid.

Legislative/Regulatory Status/Outlook

In the 118th Congress, the Secure and Fair Enforcement Regulation (SAFER) Banking Act (S.2860) was introduced and would have provided a safe harbor for financial institutions that provide banking services to legitimate cannabis-related businesses. This bipartisan legislation was sponsored by Sens. Merkley (D-OR) and Daines (R-MT). A related bill, the Secure and Fair Enforcement Banking (SAFE) Act (H.R. 2891) was introduced in the House of Representatives, sponsored by Reps. Joyce (R-OH) and Blumenauer (D-OR). This legislation similarly would ensure that financial institutions are legally protected when providing financial services to cannabis-related businesses, while also taking steps to address inequities in the system by extending the safe harbor to Community Development Financial Institutions (CDFIs) and Minority Depository Institutions (MDIs). In addition, it provided that income from cannabis businesses (in states that have legalized it) should receive equal treatment to other types of legal income for purposes of securing a federally-backed mortgage.

On September 27, 2023 the SAFER Banking Act was passed out of the Senate Banking Committee by a bipartisan vote of 14-9, however the bill did not advance beyond that point.

Similar legislation has yet to be introduced in the 119th Congress.

Current Legislation/Regulation (bill number or regulation)

None yet.

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