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How to match marijuana business with Illinois financial institutions

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Despite the rapidly growing number of jurisdictions where different forms of cannabis have become legal for medical or recreational use, banks, credit unions and other financial services providers continue to face a complicated puzzle of conflicting state and federal laws governing their activities in this area.

At the federal level, some forms of cannabis have been legalized, such as industrial hemp; however, marijuana remains a Schedule 1 drug under the federal Controlled Substances Act. At the state level, we currently have more than 30 states — plus the District of Columbia — that have legalized marijuana for medical use, and 11 of those states, including the District of Columbia, have legalized marijuana for recreational use. Illinois has legalized marijuana for recreational use beginning Jan. 1.

Given this patchwork of state and federal laws, financial institutions are finding it difficult to determine whether they can legitimately provide financial services to cannabis-related businesses for fear of violating federal law, even in states where marijuana has been legalized for both medical and recreational use.

Perhaps the most significant set of federal laws that financial institutions consider in this area is known as the Bank Secrecy Act, including the Patriot Act.

Without some relief and certainty that their provision of services to cannabis-related businesses will not be prosecuted or met with regulatory enforcement actions, financial institutions seem to remain largely on the sidelines.

Fortunately, there is legislation currently pending in Congress, and at the state level, that aims to provide such comfort to financial institutions.

At the federal level, Congress has seen a number of bills introduced to provide relief, including the SAFE Banking Act, which is the most advanced of the current legislation having passed out of the House of Representatives and is now pending in the Senate. States are also proposing bills to provide similar comfort in the absence of federal action.

In Illinois, where the Cannabis Regulation and Tax Act has legalized adult recreational use of marijuana, a bill was recently introduced to provide specific authority, through a licensing regime, for banks and credit unions providing financial services to cannabis businesses. The bill, the Cannabis Banking and Credit Union Act, creates a new licensing process for banks and credit unions.

This specific license would permit the license holder to provide financial services to cannabis businesses who struggle to pay customary business obligations, such as taxes and rent, because of the nature of their cash-only business. These licenses would be issued by a newly established Cannabis Banking and Credit Union Advisory Board.

The proposed Illinois licensing regime would permit a “cannabis limited charter bank or credit union” to accept and issue special purpose checks to cannabis businesses for specific business purposes, as outlined in the statute.

Such permissible purposes would include payment of fees or taxes to the state or a local jurisdiction, payment of rent on property that the cannabis business leases, payment to a vendor located in Illinois or the purchase of certain bonds or warrants issued by Illinois or a local government or school district in Illinois.

While the prospects for success of this Illinois proposal — and similar state-level proposals — are unclear, the goals are similar and generally favored by financial institutions and their trade groups. Operating in a cash-only environment presents a unique set of challenges and headaches for cannabis businesses.

The nature of the cash-only operation has also caused alarm for regulatory authorities at the state and federal level hungry for the information about these businesses, their operations and their customers.

As in other high-risk businesses, regulatory authorities seek to obtain as much useful information as possible to combat criminal activity in money-laundering, illicit finance and the financing of terrorism.

Monitoring information and data related to the use and distribution of cannabis, and specifically marijuana, could provide useful intelligence relevant for these goals, and ultimately, additional protection for the public. We look forward to continued efforts to solve the puzzle of providing financial services to cannabis businesses.

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