

Banking and Finance Law Daily Wrap Up, BANKING OPERATIONS—Representative Perlmutter’s cannabis banking amendment to NDAA passes in House, (Sept. 24, 2021)

Banking and Finance Law Daily Wrap Up

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The SAFE Banking Act, which would prevent federal banking regulators from taking action against banks that serve cannabis businesses operating legally under state law, was adopted by the House but faces an uncertain future in the Senate.

On Sept. 23, 2021, Congressman Ed Perlmutter (D-Colo) [announced](#) that the House agreed by [voice vote](#) to an [amendment](#) he offered to the National Defense Authorization Act (NDAA) that would bar federal banking regulators from taking action against banks that serve cannabis businesses operating legally under state law. The Secure and Fair Enforcement (SAFE) Banking Act of 2021 was added as Section 5401 to the NDAA and would prevent federal banking regulators from terminating or limiting insurance for a depository institution because the institution has provided financial services to a cannabis-related legitimate business or service provider. The amendment’s fate in the Senate is unclear, though it does have bipartisan support and some Senate supporters are optimistic about its chances.

Late on September 21, the House agreed by voice vote to adopt Congressman Perlmutter’s amendment to the NDAA, which inserted the SAFE Banking Act of 2021 into the defense authorization bill. The SAFE Banking Act would prevent federal banking regulators from terminating or limiting insurance for a depository institution because the institution has provided financial services to a cannabis-related legitimate business or service provider. The stated purpose of the Act is to increase public safety by ensuring access to financial services to cannabis-related businesses and reducing the amount of cash at such businesses. “I’ve been talking for years about the serious public safety threat that exists in our communities. The SAFE Banking Act will strengthen the security of our financial system and keep bad actors like cartels out of the cannabis industry,” Perlmutter said. The Act requires the Financial Institutions Examination Council to develop, within 180 days, guidance and examination procedures for depository institutions that provide financial services to legitimate cannabis businesses and service providers. The NDAA passed in the House with 316 Yea votes to 113 Nay votes and 2 members not voting.

The fate of the amendment in the Senate is unclear. Senator Jack Reed (D-RI), Chairman of the Armed Services Committee, said the cannabis banking amendment has not been part of discussions on the Senate legislation. Senators Brian Schatz (D-Hawaii) and Rand Paul (R-Ky), both co-sponsors of the Senate version of the banking bill introduced by Oregon Democrat Jeff Merkley, said they support the provision but are not sure whether it will end up in the Senate defense authorization bill or make it through conference. Senate Banking Chairman Sherrod Brown (D-Ohio) reportedly wants any change to cannabis banking laws to include a component providing restorative justice for people and communities most affected by the criminalization of marijuana.

Notwithstanding, the measure does have bipartisan support among senators, and some supporters, including Senator Cynthia Lummis (R-Wyo), are optimistic about its chances. Lummis is one of nine Republican co-sponsors of the Senate version of Perlmutter’s bill. James Ballentine, executive vice president of congressional relations and political affairs at the American Bankers Association, pointed to the “overwhelming, bipartisan support” in the House as a positive sign. “Lawmakers clearly understand the immediate public safety benefits that would come with ending the conflict between federal and state law in those states where cannabis is legal,” Ballentine said. “We think the strong vote bodes well for final action in the Congress later this year.”

Companies: American Bankers Association

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