Bipartisan Marijuana Bill Would Permit Banking Legal Cannabis Businesses

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The banking sector should pay close attention to the recent **bipartisan bill supporting marijuana legal reform** (the "Strengthening the Tenth Amendment Through Entrusting States Act" or the "STATES Act") given the increasing difficulty current law creates even for those banks that are deliberately avoiding the cannabis sector. Post mid-term elections, which will see more state referenda, and post the implementation of full legalization in Canada, practical diligence issues in avoiding the cannabis sector in transition will become even more difficult for banks. Even though the STATES Act is unlikely to pass this Congress, it signals a significant push for changes in federal legal policy regarding marijuana that is likely to continue to grow.

The STATES Act, which is an improvement over the proposed **Secure and Fair Enforcement Banking Act** (the "SAFE Act") with respect to issues banks are confronting, seeks to prevent the federal government from interfering with state marijuana laws and would be a significant step toward eliminating the concerns associated with banking cannabis businesses operating lawfully under state law. In this respect, the STATES Act reflects shifting attitudes among Americans, a majority of whom **reportedly** support marijuana legalization. Strikingly, following the June 7th introduction of the bill by Senators Elizabeth Warren (D-MA), Cory Gardner (R-CO) and seven other cosponsors, President Trump **also weighed in**, contrary to the views of his Attorney General, that "he will probably end up supporting" the bill.

The Controlled Substances Act (the "**CSA**") prohibits the manufacturing, distributing, and/or dispensing of Schedule I drugs, including marijuana. The STATES Act would amend the CSA so that it would not apply to marijuana-related conduct that is legal under state law. The STATES Act would not legalize marijuana in states where it is still illegal or legalize marijuana for recreational purposes in a state that has

legalized it only for medicinal purposes. The CSA would continue to prohibit conduct that creates a substantial risk of harm to human life, the distribution of recreational marijuana to persons under the age of twenty-one, and marijuana-related employment of persons under the age of eighteen.

Significantly, the STATES Act would expressly provide that (1) the proceeds of any marijuana transaction conducted in compliance with state law would not be deemed the proceeds of an unlawful transaction under the Money Laundering Control Act or any other provision of law, and (2) marijuana-related conduct that is legal under state law would not serve as a basis for criminal or civil asset forfeiture. This change would be of particular importance to the banking sector, where the classification of marijuana as a Schedule I drug under the CSA creates exposure under federal criminal anti-money laundering laws for banks that provide services to customers engaged in marijuana-related activities that are entirely legal under state laws. The STATES Act would alleviate some of the concerns associated with banking marijuana-related businesses operating legally under state law, paving the way for them to access the U.S. financial system. While the STATES Act is U.S. focused, it might also benefit Canadian banks after the imminent legalization in Canada by providing some comfort around certain U.S. correspondent bank concerns.

The STATES Act is a step toward a clarification of federal law that would give greater deference to the states and would be more helpful to banks than certain of the other pending marijuana legislation. Even though it is not likely to pass imminently, the STATES Act is worth time and attention, given its bipartisan backing and expressions of support from President Trump.

Law Clerk Matt Masaro contributed to this post.