

## Cannabis Law Practice Insurance Practice

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# The House of Representatives Passes a Safe Harbor for Insurance Industry Participants Working With Cannabis Businesses

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On April 19, 2021, the SAFE Banking Act passed the U.S. House of Representatives, this time with a bipartisan vote of 321-101. The bill will move to the Senate where the Senate-filed bill enjoys bipartisan support with 32 co-sponsors. While most reporting on the bill has focused on the safe harbor provisions for financial services organizations working with state-legal cannabis businesses, the bill also includes an often overlooked safe harbor for those engaged in the Business of Insurance (as defined in the Dodd-Frank Act<sup>[1]</sup>) who wish to work with state-legal cannabis businesses.

The safe harbor provision contained in the SAFE Banking Act states that “an insurer that engages in the business of insurance with a cannabis-related legitimate business or service provider or who otherwise engages with a person in a transaction permissible under State law related to cannabis” will not be held liable under federal law or regulation.<sup>[2]</sup>

House passage is by no means a guarantee that the bill will pass the Senate and be signed into law. The SAFE Banking Act first passed the House of Representatives with bipartisan support in 2019. However, it stalled in the Senate where, despite bipartisan co-sponsorship, it never progressed out of committee. Again, in 2020, the bill was folded into the legislation for COVID-19 relief, the HEROES Act, and passed the House once again. But the SAFE Banking Act provisions were negotiated out of the bill that ultimately passed in December 2020.

Democrats now narrowly control the Senate – there is a 50-50 split between Democrats and Republicans, with Vice President Kamala Harris as the tie-breaker – and this may breathe fresh life into the bill, but that remains to be seen. However, for insurers waiting for a safe harbor to enter the state-legal cannabis industry, and for state-legal cannabis businesses waiting for more access to appropriate insurance for the risks any business faces, the SAFE Banking Act could provide a path forward.

1. The Dodd-Frank Act states the “Business of Insurance” “means the writing of insurance or the reinsuring of risks by an insurer, including all acts necessary to such writing or reinsuring and the activities relating to the writing of insurance or the reinsuring of risks conducted by persons who act as, or are, officers, directors, agents, or employees of insurers or who are other persons authorized to act on behalf of such persons.” 12 USC 5481
2. <https://www.congress.gov/bill/117th-congress/house-bill/1996/text>

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