

WBA: Banking on marijuana

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Practical Issues Gov. Evers and the Legislature Must Consider

Governor Tony Evers recently announced that his first budget as Wisconsin's governor will include proposals to legalize medical marijuana. While Wisconsin would certainly not be the first state to do this, there are many practical issues that result from such a change in the law that must be considered prior to its passage.

If these proposals pass, many marijuana-related businesses will understandably want to use financial institutions for their banking services just like other businesses do. However, because marijuana is illegal at the federal level, financial institutions are technically unable to offer any products and services to such businesses. As such, banks providing services to a legal marijuana business face possible criminal prosecution for "aiding and abetting" a federal crime and money laundering.

A September 2018 FinCEN report stated that 375 banks and 111 credit unions are providing services to marijuana-related businesses, accepting the risk of prosecution. That's 6.9% of banks and 2% of all credit unions across the United States. Will Wisconsin banks be willing to do so? The answer is unknown.

Governor Evers and the Legislature must consider the following issues and work to help address them so that any potential future legalization of medical marijuana is done in a way that fully protects the citizens and businesses of our state.

Federal and State Law Discrepancies

Like our counterparts around the country, Wisconsin financial institutions must follow strict federal requirements regardless of the state's treatment of marijuana-related businesses. Legalization of medical marijuana will put our state law in direct conflict with the federal law such that any financial institution that provides services to these businesses, directly or indirectly, face legal and regulatory challenges, most notably being charged with money laundering. To fully address the barriers in banking marijuana-related businesses, and ancillary businesses, Governor Evers, the Legislature, and other Cabinet members must work with our U.S. Congressional delegation to pass clear federal legislation permitting such banking activity.

Clear Rulemaking Authority and Regulation Direction

It is also imperative that financial institution regulators at both the state and federal level provide clear, consistent and reasonable rules and oversight addressing both direct and indirect service to state-legal marijuana businesses and the individuals connected to such organizations. A clear set of guidelines in state law would help financial institutions to establish policies to meet their Bank Secrecy Act/Anti-Money Laundering federal requirements. For example, financial institutions may need access to records, licensure, or other documentation to help overcome compliance obstacles. Clear legal guidelines permitting any state agency that may administer a licensing and registration program to share information with financial institutions will be important.

Clear Definitions

A clear definition of "medical marijuana" in state law will be essential in order to help financial institutions start to develop policies. This includes a clear legal standard for what is required to purchase, possess, sell, and use "medical marijuana."

Clear Legal Pathways Critical

Wisconsin financial institutions are concerned about the safety of marijuana businesses, their employees, and customers. A bank is always the safest place to store your money and banks want to keep their communities and small businesses safe. Small businesses without access to banking services are forced to hold large amounts of cash, which puts the business, its employees, and its surrounding community at serious risk. Financial institutions will need clear legal pathways in state law, and most importantly in federal law, in order to offer access to the banking system for these businesses and ancillary businesses.

WBA looks forward to working with Governor Evers and other legislative leaders to

help address these many complex issues.