



Missouri Legalizes Medical Marijuana – Implications for Banks

NOVEMBER 7, 2018 | PUBLICATIONS

On November 6, 2018, Missourians voted to amend the Missouri constitution to allow the use of marijuana for medical purposes. Amendment 2 allows the use of marijuana for ten medical conditions and imposes a four percent tax on the retail sale of marijuana, with the funds to be used for the health care needs of military veterans. Missouri joins over 30 other states in legalizing marijuana in some form. Despite Missouri's and other states' laws, the manufacture, distribution, and dispensing of marijuana remains illegal at the federal level under the Controlled Substances Act. Banks and other financial institutions must navigate this conflict between state and federal law with limited guidance from regulators.

FEDERAL GUIDANCE

In response to the growing number of states legalizing marijuana in some form, both the Department of Justice ("DOJ") and the Financial Crimes Enforcement Network of the Department of Treasury ("FinCEN") have attempted to provide guidance.

Between 2009 and 2014, the DOJ published four sets of guidelines, generally referred to as the Cole Memo for the author of the last three memorandums. The Cole Memo reaffirmed that federal law prohibited the distribution and sale of marijuana, but acknowledged federal prosecutors had limited resources and, therefore, identified priorities for federal prosecutors to enforce federal drug laws.

In January 2018, current Attorney General Jeff Sessions issued a memorandum rescinding the Cole Memo and all prior guidance on the issue, deeming it "unnecessary." Nevertheless, Session's memo acknowledged federal prosecutors will continue to exercise discretion, only without the previous guidelines. Despite the change in guidance from the DOJ, many US Attorneys have stated the Sessions memo will not alter their approach to bringing criminal prosecutions.

In 2014, FinCEN also provided guidance to clarify financial institutions' obligations under the Bank Secrecy Act ("BSA") regarding the provision of financial services to "marijuana-related businesses." The FinCEN guidance clarified the due diligence a financial institution should perform to assess the risk of providing services to marijuana-related businesses. In addition, FinCEN made clear that state law legalizing marijuana-related activities does not affect banks obligations to file suspicious activity reports ("SARs"). Because marijuana remains illegal under federal law, banks are required to file a SAR on activity involving a marijuana-related business. Unlike the DOJ guidance, the FinCEN remains in full effect and banks are expected to continue to filing SARs on marijuana-related businesses.

WHAT DOES IT MEAN FOR BANKS?

Missouri banks will face serious risk if they choose to bank a business directly engaged in marijuana operations. Until marijuana is legal under federal law, banking a marijuana business will involve laundering funds from an illegal activity. While it is unclear if banks will face prosecution, many banks in other states have chosen to simply avoid banking businesses directly operating a marijuana business. If a bank chooses to bank a marijuana-related business, the bank must comply with the FinCEN guidance to file the necessary SARs, conduct sufficient due diligence, and be aware of potential red flags.

Even if Missouri banks avoid banking any business directly engaged in marijuana operations, they will not be entirely free from risk. Unfortunately, FinCEN's guidance does not define "marijuana-related business." While it's clear that a business growing and selling marijuana is a marijuana-related business, banks are left without guidance as to whether marijuana-related business includes that business's landlord, vendors, or suppliers. While the consensus is that the FinCEN guidance only includes those businesses that deal directly with marijuana plants in some way, such

AUTHORS

- [Rod Nichols](#)
- [Mathew Petersen](#)

RELATED PRACTICES

- [Banking and Financial Services](#)

as growing or selling, banks will face uncertainty when banking businesses that receive funds indirectly from the production and sale of marijuana.

KEY TAKEAWAYS:

1. Despite the change in Missouri law, the production and distribution of marijuana remains illegal under federal law. Thus, banks face serious risks if they choose to bank the new medical marijuana industry.
2. Even if banks choose not to bank businesses directly engaged in the production and sale of marijuana, they may face risks from banking businesses that indirectly receive revenue from the production and sale of marijuana. To reduce risk, Missouri banks should carefully review FinCEN's guidance and ensure they are in compliance.

This post was drafted by [Rod Nichols](#), an attorney in the Springfield, MO office, and [Mathew Petersen](#), an attorney in the Kansas City, MO office. For more information, visit spencerfane.com.