

# Missouri Financial Institutions Must Prepare for Impending Marijuana Banking Challenges

Insight

01.15.2020

By Zane Gilmer

In November 2018, Missouri voters passed Amendment 2, setting in motion state regulated medical marijuana. Over the last month, the Missouri Department of Health & Senior Services (DHSS) began approving license applications for medical marijuana testing, transportation and cultivation facilities. DHSS will soon approve additional licenses for medical marijuana dispensaries and manufacturing facilities. These facilities will begin operating and selling medical marijuana to consumers shortly. As such, Missouri banks and credit unions must begin preparing for the inevitable legal and compliance challenges they will face from this new industry. Here are some of the initial steps that financial institutions must take to prepare for the cannabis industry.

## LEARN THE EXISTING LAW

In preparing for the new marijuana industry, the first step for Missouri banks and credit unions is to understand the current state of the law with respect to marijuana, at the federal, state and local level. Laws related to, and impacted by, marijuana legalization are ever-changing, complicated, and sometimes confusing and contradictory. Nevertheless, an institution cannot make an informed decision about the business, legal and compliance risks involved in providing services to the marijuana industry without fully understanding these issues. While a full overview of the applicable laws is beyond the scope of this article, some of the laws and regulations the institution must familiarize itself with include:

- Missouri's medical marijuana facility licensing requirements
- Missouri's medical marijuana regulations at the state and local level
- Federal drug laws, including the Controlled Substances Act

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- U.S. Department of Justice (DOJ) historical and current positions, with respect to state legalized marijuana
- Congressional limitations on DOJ's ability to investigate and prosecute state legalized marijuana activity
- Bank Secrecy Act (BSA) and anti-money laundering (AML) laws and guidance related to state legalized marijuana, including guidance issued by the Financial Crimes Enforcement Network
- Relevant bank or credit union regulatory guidance concerning state legalized marijuana
- 2014 and 2018 Farm Bills, U.S. Department of Agriculture's Domestic Hemp Production Program Interim Rule, U.S. Food and Drug Administration's hemp extract guidance, and related state laws and regulations concerning hemp possession, cultivation, processing and distribution if the institution intends to provide services to the hemp industry in addition to the marijuana industry

## ESTABLISH WHETHER THE INSTITUTION WILL PROVIDE SERVICES TO THE MARIJUANA INDUSTRY

After the institution has brushed up on the current state of the law, the next step is to determine whether, and to what extent, the institution will provide services to the marijuana industry. That may sound like a simple enough question, but it is not as simple as saying “our institution is not going to provide services to the marijuana industry,” or “yes, we will provide services just like we do for any other industry.”

For example, if the institution decides it does not want to provide services to the marijuana industry, what does that mean? Does it mean the bank or credit union intends only to prohibit providing services to licensed facilities that grow, sell, test or transport marijuana? What about the owners, investors, or employees of those facilities? What about businesses that provide services to the licensed marijuana facilities, known as ancillary businesses (e.g., contractors, attorneys, accountants, software companies, consultants)? What if the ancillary business's revenue derived from providing services to the marijuana industry is minor—less than 10% of annual revenue? What about companies that sell products that contain cannabis extracts, such as cannabidiol (CBD)? Those companies range from wellness facilities to gas stations to pharmacies and virtually everything in between.

On the other hand, if the institution decides that it will provide services to the marijuana industry, it must similarly outline what that means. For instance, the institution must determine which services—e.g., deposit accounts or loans—the institution would be willing to provide and to which marijuana actors (e.g., licensed facilities and/or ancillary businesses).

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## POLICIES AND PROCEDURES

Regardless of whether or not the institution decides to provide services to the marijuana industry, the institution must develop and implement policies and procedures that reflect that decision. For institutions that will not provide services to the marijuana industry, the institution's policy should clearly reflect that decision and the institution must implement procedures to ensure that: (i) its employees know what the institution's policy is and (ii) there are processes to identify marijuana actors that the institution does not want to provide services to and that those actors are not inadvertently provided services in contradiction to the policy.

If the institution decides to provide services to the marijuana industry, the institution must recognize that it is committing to a significant undertaking from a compliance and cost perspective. For example, the institution will have to develop and implement a robust compliance program to comply with its BSA and AML obligations. That includes extensive initial and ongoing due diligence of the customers and daily transaction monitoring to comply with Suspicious Activity Report and Currency Transaction Report requirements. This will often require adding additional compliance support staff, depending on the size of the marijuana banking program that the institution implements. Importantly, the institution should work with its regulator as it develops and implements its program.

## BOTTOM LINE

State-authorized cannabis sales create unique challenges to financial institutions. To avoid the pitfalls, banks and credit unions cannot simply ignore this new industry; instead, they must take affirmative steps to implement robust policies and procedures to manage the risks posed by the marijuana industry.

For more information on the challenges and next steps for Missouri financial institutions preparing for the cannabis industry, please contact [Zane Gilmer](#) or the Stinson LLP contact with whom you regularly work.

## CONTACT

Zane A. Gilmer

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