

# The Banking Law Journal

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**EDITOR'S NOTE: CYBERCRIME**

Steven A. Meyerowitz

**UCC SECTION 4A-207(b) IN THE AGE OF CYBERCRIME**

Benjamin W. Clements

**HOUSE FINANCIAL SERVICES COMMITTEE PASSES CANNABIS BANKING BILL**

D. Jean Veta, Michael Nonaka, and Jenny Scott Konko

**U.S. SUPREME COURT HOLDS FORECLOSURE FIRMS CONDUCTING NONJUDICIAL FORECLOSURES ARE NOT DEBT COLLECTORS UNDER THE FDCPA**

Wayne Streibich, Diana M. Eng, Cheryl S. Chang, Jonathan M. Robbin, and Namrata Loomba

**A NEW ERA OF EXTRATERRITORIAL SEC ENFORCEMENT ACTIONS**

Joshua D. Roth and Alexander R. Weiner

**NY DFS CYBERSECURITY REGULATION, TWO YEARS IN—WHAT COMES NEXT?**

Phyllis B. Sumner, Scott Ferber, Ehren Halse, John A. Horn, and William Johnson

**THE PAYDAY RULE AND THE CFPB'S NEW LENSES**

Quyen T. Truong

**NEW YORK BANKRUPTCY COURT FINDS THAT AIRCRAFT LEASES' LIQUIDATED DAMAGES CLAUSES AND GUARANTEES ARE UNENFORCEABLE**

Arthur J. Steinberg, Christopher T. Buchanan, Jason Huff, and Scott Davidson

**PARTIES SETTLE MIDLAND FUNDING INTEREST RATE LITIGATION**

Susan F. DiCicco and David I. Monteiro

**HEADS OR TAILS? MAKING SENSE OF CRYPTO-TOKENS ISSUED BY EMERGING BLOCKCHAIN COMPANIES**

Jeremy A. Herschaft and Michelle Ann Gitlitz

**THE MANDATORY DISCLOSURE RULES FOR CRS AVOIDANCE ARRANGEMENTS AND OPAQUE OFFSHORE STRUCTURES: CAVEAT CONSILIARIO**

Damien Rios



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June 2019

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<b>Editor's Note: Cybercrime</b> Steven A. Meyerowitz	299
<b>UCC Section 4A-207(b) in the Age of Cybercrime</b> Benjamin W. Clements	302
<b>House Financial Services Committee Passes Cannabis Banking Bill</b> D. Jean Veta, Michael Nonaka, and Jenny Scott Konkko	312
<b>U.S. Supreme Court Holds Foreclosure Firms Conducting Nonjudicial Foreclosures Are Not Debt Collectors Under the FDCPA</b> Wayne Streibich, Diana M. Eng, Cheryl S. Chang, Jonathan M. Robbin, and Namrata Loomba	316
<b>A New Era of Extraterritorial SEC Enforcement Actions</b> Joshua D. Roth and Alexander R. Weiner	320
<b>NY DFS Cybersecurity Regulation, Two Years In—What Comes Next?</b> Phyllis B. Sumner, Scott Ferber, Ehren Halse, John A. Horn, and William Johnson	327
<b>The Payday Rule and the CFPB's New Lenses</b> Quyen T. Truong	331
<b>New York Bankruptcy Court Finds That Aircraft Leases' Liquidated Damages Clauses and Guarantees Are Unenforceable</b> Arthur J. Steinberg, Christopher T. Buchanan, Jason Huff, and Scott Davidson	335
<b>Parties Settle Midland Funding Interest Rate Litigation</b> Susan F. DiCicco and David I. Monteiro	339
<b>Heads or Tails? Making Sense of Crypto-Tokens Issued by Emerging Blockchain Companies</b> Jeremy A. Herschaft and Michelle Ann Gitlitz	342
<b>The Mandatory Disclosure Rules for CRS Avoidance Arrangements and Opaque Offshore Structures: Caveat Consiliario</b> Damien Rios	347

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# House Financial Services Committee Passes Cannabis Banking Bill

*D. Jean Veta, Michael Nonaka, and Jenny Scott Konko\**

*The House Financial Services Committee recently voted 45-15 to advance to the full House of Representatives the “Secure and Fair Enforcement Banking Act of 2019.” The Act would shield banks and credit unions from federal regulatory penalties for providing financial services to legitimate cannabis-related businesses and service providers. The authors of this article discuss the bill.*

On March 28, 2019, the House Financial Services Committee (“HFSC”) voted 45-15 to advance to the full House of Representatives H.R. 1595,<sup>1</sup> the “Secure and Fair Enforcement Banking Act of 2019” (the “SAFE Banking Act” or the “Act”). The SAFE Banking Act would shield banks and credit unions from federal regulatory penalties for providing financial services to legitimate cannabis-related businesses and service providers. The bill, sponsored by Representatives Ed Perlmutter (D-CO) and Denny Heck (D-WA), had nearly 150 cosponsors and passed as an amendment in the nature of a substitute on a bipartisan basis, with eleven Republicans voting in favor of the legislation.

## **BACKGROUND**

Although 47 states, plus the District of Columbia, have legalized or decriminalized some form of adult recreational, medical, or limited-medical marijuana or marijuana cannabidiol oil, the manufacture, distribution, or possession of marijuana is illegal under the federal Controlled Substances Act (“CSA”), except as authorized in very narrow circumstances. The legal uncertainty resulting from the divergence in federal and state law has caused most large financial institutions to decline to provide financial services to cannabis-related businesses directly, as well as to many service providers of

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<sup>1</sup> <https://financialservices.house.gov/uploadedfiles/bills-116-hr1595-p000593-amdt-1.pdf>.

cannabis-related businesses, such as suppliers, landlords, and other vendors. As a result, many cannabis-related businesses that operate legally under state law are forced to operate on a cash-only basis, which creates public safety risks and provides opportunities for money laundering and other financial crimes.

### THE SAFE BANKING ACT

The SAFE Banking Act would create several important protections for depository institutions and federal and state credit unions (collectively, “depository institutions”) that provide financial services to cannabis-related legitimate businesses (“CRLBs”), which are defined broadly to include any individual or company that engages in a wide range of cannabis-related activities in accordance with state law. These protections would also apply to CRLB service providers, defined broadly to include entities that sell goods or services to CRLBs or provide any business services, including the sale or lease of real or any other property, or any other ancillary service relating to cannabis (“Service Providers”). Specifically, the Act would prohibit federal banking regulators from:

- Terminating or limiting the deposit insurance or taking any enforcement or other adverse action under Section 8 of the Federal Deposit Insurance Act solely because the depository institution provides financial services to a CRLB or Service Provider;
- Prohibiting, penalizing, or otherwise discouraging a depository institution—or entity performing a financial service for or in association with a depository institution—from providing financial services to a CRLB or Service Provider;
- Recommending, incentivizing, or encouraging a depository institution not to offer, or to downgrade or cancel, financial services solely because the account holder is or becomes a CRLB or Service Provider, or an employee, owner, or operator of a CRLB or Service Provider; and
- Taking any adverse or corrective supervisory action on a loan made to a CRLB or Service Provider, or an employee, owner, or operator of—or owner or operator of real estate or equipment leased to—a CRLB or Service Provider.

Importantly, the Act provides that for purposes of the Money Laundering Control Act of 1986,<sup>2</sup> “and all other provisions of Federal law,” the proceeds from a transaction conducted by a CRLB or Service Provider shall not be

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<sup>2</sup> 18 U.S.C. §§ 1956, 1957.

considered proceeds from an unlawful activity solely because the transaction was conducted by a CRLB or Service Provider. Moreover, a depository institution—or entity performing a financial service for or in association with a depository institution that provides a financial service to a CRLB or Service Provider—and their officers, directors, and employees) “may not be held liable pursuant to any federal law or regulation” solely for providing financial services to a CRLB or Service Provider, or investing income derived from such services in states where cannabis is legal.

In addition, the SAFE Banking Act:

- Provides protection from criminal, civil, or administrative forfeiture for legal interests in collateral for loans or other financial services to an owner, employee, or operator of a CRLB or Service Provider, or owners or operators of real estate or equipment leased or sold to such businesses.
- Amends the U.S. Bank Secrecy Act to require financial institutions to comply with Financial Crimes Enforcement Network (“FinCEN”) guidance when filing Suspicious Activity Reports (“SARs”) related to CRLBs or Service Providers; any such FinCEN guidance must be consistent with the Act and must not significantly inhibit the provision of financial services to a CRLB or Service Provider in states where cannabis is legal.
- Requires the Federal Financial Institutions Examination Council to develop guidance and examination procedures for depository institutions that provide financial services to CRLBs and Service Providers.
- Requires the federal banking regulators to issue an annual report to Congress containing information and data on the availability of access to financial services for minority-owned and women-owned CRLBs and any related regulatory or legislative recommendations.
- Directs the Government Accountability Office (“GAO”) to carry out a study on the barriers to marketplace entry—including in the licensing process—and access to financial services for potential and existing minority-owned and women-owned CRLBs, and issue a report to Congress that includes any related regulatory or legislative recommendations.

The HFSC passed three amendments to the bill: (1) an amendment from Representative Scott Tipton (R-CO) that would instruct the GAO also to study the effectiveness of SARs relating to CRLBs or Service Providers; (2) an amendment from Representative Steve Stivers (R-OH) that would extend many of the Act’s protections to insurers; and (3) an amendment from Representative Katie Porter (D-CA) that would extend many of the Act’s protections to applicants for depository institution charters.



## **WHAT'S NEXT?**

The SAFE Banking Act will now move to the House floor for debate. Although only three amendments were approved in committee, Representative Perlmutter said he would be happy to negotiate with members on additional amendments when the bill moves to the full House. In the Senate, Senator Jeff Merkley (D-OR) has introduced similar legislation for several years and recently reintroduced the Senate version of the SAFE Banking Act in the 116th Congress. Senate Banking Committee Chairman, Mike Crapo (R-ID), has been largely quiet on the issue of cannabis banking, and his home state of Idaho is one of three states that has not legalized or decriminalized recreational, medical, or limited-medical marijuana or marijuana cannabidiol oil in any form.

Several other bills pending in both the House and the Senate would go further than the SAFE Banking Act and decriminalize cannabis at the federal level. Other bills contain more targeted legislation to provide funding for medical cannabis research, provide safe harbors for veteran use of medical cannabis, and provide broader protections for financial services to cannabis companies. While prospects for enactment of the SAFE Banking Act are unclear, it appears that issues surrounding the legal status of cannabis will continue to receive attention in Congress.