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Ohio still figuring out how medical marijuana businesses can set up bank accounts

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Mar 20, 2018, 1:34pm EDT

Like other states that have legalized medical marijuana, Ohio is grappling with how cannabis businesses can get bank accounts instead of lugging around bags of cash to pay landlords and tax bills.

Despite what a growing number of state laws say, cannabis remains illegal under U.S. law – and Attorney General Jeff Sessions in particular is eager to crack down. So most banks and credit unions shy away from doing business with cultivators, processors, dispensaries and other parts of the industry – even businesses that have nothing to do with the plant.



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Under current banking laws, financial institutions can't provide services to pot-related businesses because marijuana is illegal under federal law.

Companion bills pending in Ohio's legislature would require the Department of Commerce, one of the agencies overseeing the medical marijuana program, to set up a "closed-loop" payment system. It would work much like PayPal – users create and fund accounts from which they make all transactions to purchase product or pay vendors and employees.

But a cultivator licensee and the state cannabis trade group testified against the proposal, saying it would create barriers for businesses and patients.

There are other options, they said: As of September nearly 400 banks and credit unions nationwide have registered with the federal government that they do business with the cannabis industry. Those institutions pledge to report any suspicious activity to regulators.

It's an open question how protected those institutions are under the law.

"So long as marijuana is a Schedule I controlled substance, you're never going to be completely free of federal oversight," said [Thomas Kern](#), a partner in the regulated industries practice at Benesch, Friedlander, Coplan & Aronoff LLP. "I don't think you will ever eliminate this issue without a change in federal law."

Federal and state proposals

The federal budget contains a provision that explicitly forbids the Justice Department from using government funds to prosecute participants in a state-sanctioned medical marijuana programs, including Ohio's. But that amendment expires with the rest of the continuing resolution Friday, unless Congress extends it again.

A U.S. Senate amendment proposed this month for a pending economic bill would give safe harbor to financial institutions working with "legitimate" cannabis businesses, but it hasn't been acted on.

In other states, individual financial institutions have stepped up: A Colorado credit union serves marijuana businesses in several states; transactions are made through CanPay, a cashless debit system. A Maryland bank offers accounts for a hefty fee to cover daily reporting and oversight.

Ohio's 2016 law establishing the medical marijuana program made a closed-loop system optional. No state operates such a system.

"This will ensure that taxes are paid, that cash cannot be laundered, and that we will be able to track who is buying medicinal marijuana," Rep. [Bill Seitz](#), the Cincinnati Republican who introduced the House version, said in prepared testimony. The Senate version hasn't yet had a hearing.

The Commerce Department is researching options, a spokeswoman said. In his testimony, Seitz interpreted the lack of an announcement so far as unwillingness to

act.

But one of the cultivators awarded a provisional license in Ohio and a trade group oppose the bill, saying it will create an unnecessary barrier for patients and impossibly bog down businesses.

“Office supply vendors will have to register with the closed-loop system and open an account to sell us staples and paper,” said prepared testimony by Mel Kurtz, principal of Cleveland-based Grow Ohio Pharmaceuticals LLC. “No reasonable supply chain would agree to participate under these circumstances.”

Grow Ohio is building a \$15 million indoor cultivation site in Muskingum County. Kurtz testified it’s not using cash.

“We can accept credit and debit cards, cash and checks,” he said. “No one is asking for a closed-loop system – not the banks, credit unions, supply chain, provisional license holders or patients.”

Thomas Rosenberger, executive director of the National Cannabis Industry Association of Ohio, said in prepared testimony that Washington state regulators report 99 percent of all taxes were collected by noncash methods, without a closed-loop system.

State-chartered banks and credit unions that aren’t members of the Federal Reserve offer banking services, he testified. Instead of the FDIC, those institutions are privately insured. (Coincidentally, American Share Insurance, the only private insurer for credit unions, is based in Dublin.)

Seitz remains unswayed. He cited a federal appeals court’s rejection last year of a Colorado credit union’s attempt to open a Federal Reserve master account, needed to hook into the national transaction system.

However, the Kansas City Fed eased back somewhat this February, allowing that credit union to have the account so long as it served advocacy and ancillary businesses, not any that handle cannabis directly.

Seitz's bill had its fourth committee hearing Tuesday.

“One of the biggest issues right now is time,” Kern said. “(If approved,) how quickly can that (closed-loop system) get up and running – as the (entire marijuana) program is theoretically supposed to be up and running by September?”

'Uncertainty in the marketplace'

Ohio's credit unions still are researching whether to serve the industry, said Emily Leite, vice president of government affairs for the Ohio Credit Union League.

“There's a lot of inconsistencies and conflicting information and unknowns,” Leite said. “You see a lot of uncertainty in the marketplace on whether institutions want to participate.”

Dayton-based Wright-Patt Credit Union has sent letters to provisional cultivator licensees that say it may offer them services upon completing its research of the issue. No decision has been made yet, spokeswoman Tracy Szarzi-Fors said via email.

“Our motivation is to work with the State to ensure we have a system in place that protects our communities from the crimes that can come along with an industry that is not banked,” she said.

The credit union trade group has not taken a position on whether to require a closed-loop system. Under the bill, state-chartered financial institutions would bid to create the technology.

Even if an institution is not federally insured, it must follow the Financial Crimes Enforcement Network reporting rules.

“Just because Oregon has done it, or Washington has done it, doesn't mean Ohio can do it,” Leite said.

“Marijuana is just an example of what you see when there's a conflict between state law and federal law,” she said. “There is an unclear path forward.”

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