

**XV. *The STATES Act: A Response to the Rescission of the Cole Memo***

**A. Introduction**

As of the summer of 2018, nine states have decriminalized the recreational use of marijuana and thirty permit medicinal use.<sup>1</sup> Several other states have some form of pending legislation that will further expand the legal cannabis industry.<sup>2</sup> However, cannabis remains illegal under the federal Controlled Substances Act (CSA).<sup>3</sup> This presents a number of problems for cannabis-based companies and any financial services providers who wish to do business with them.

On October 19, 2009, then-Deputy Attorney General David Ogden published what is known as the Ogden Memo.<sup>4</sup> The Ogden Memo directed U.S. Attorneys away from enforcement of the CSA against medical cannabis businesses.<sup>5</sup> The Attorney General was concerned with public perception of actions against the sick and elderly.<sup>6</sup> The Ogden Memo was followed by the Cole Memo on August 29, 2013.<sup>7</sup> The Cole Memo established new priorities for the

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<sup>1</sup> Matt Laslo, *Elizabeth Warren: Jeff Sessions Acted as Catalyst for Weed Legalization*, ROLLING STONE (Aug. 27, 2018, 12:35 PM), <https://www.rollingstone.com/culture/culture-features/elizabeth-warren-jeff-sessions-weed-legalization-states-act-715651> [<https://perma.cc/LVN7-3VAZ>].

<sup>2</sup> Kris Krane, *At the Ballot Box: These Four States Could Legalize Some Form of Marijuana in November*, FORBES (Aug. 21, 2018, 6:6 AM), <https://www.forbes.com/sites/kriskrane/2018/08/21/at-the-ballot-box-these-four-states-could-legalize-some-form-of-marijuana-in-november/#32405b1f5c95> [<https://perma.cc/GWP4-2NTT>].

<sup>3</sup> 21 U.S.C. § 812 (2012) (leaving untouched the legal status of cannabis).

<sup>4</sup> Memorandum from Deputy Attorney Gen. David W. Ogden, to Selected U.S. Attorneys (Oct. 19, 2009), <https://www.justice.gov/archives/opa/blog/memorandum-selected-united-state-attorneys-investigations-and-prosecutions-states> [<https://perma.cc/P3AZ-CCH4>].

<sup>5</sup> *Id.*

<sup>6</sup> Shannon L. McCarthy & Dawn Newton, *Franchising a Marijuana Business: It's Not Quite Mission Impossible*, 35 FRANCHISE L.J. 357, 360 (2016) (explaining that “the Ogden Memo instructed U.S. attorneys to focus prosecution efforts on manufacturers and distributors, including “Mexican cartels,” while avoiding the spectacle of prosecuting elderly, infirm patients seeking pain relief).

<sup>7</sup> Memorandum from Deputy Attorney Gen. James M. Cole, to U.S. Attorneys (Aug. 29, 2013),

enforcement of marijuana-related offenses and stated that the Attorney General would not enforce federal law in states that had legalized marijuana so long as those states have an effective regulatory and enforcement process.<sup>8</sup> On February 14, 2014, the Financial Crimes Enforcement Network (FinCEN), under the U.S. Treasury, published a memo providing guidance on how financial institutions could provide services to marijuana-related businesses and still meet their obligations under federal law.<sup>9</sup> Some institutions began working with cannabis-based businesses, but on January 4, 2018, Attorney General Jefferson Sessions repealed all guidance under the Obama administration and reaffirmed principles set out 1980 by Attorney General Benjamin Civiletti.<sup>10</sup>

Attorney General Sessions' actions created uncertainty for cannabis-based businesses, state and local governments, and financial institutions who chose to do business with marijuana-related businesses based on the Obama era guidance. This prompted action in Congress, and on June 7, 2018, Senators Elizabeth Warren and Cory Gardner introduced Senate Bill 3032 known as the Strengthening the Tenth Amendment Through Entrusting States Act (STATES Act).<sup>11</sup> The STATES Act would amend the CSA to exclude industrial hemp in the definition of marijuana, exclude persons complying with state law from enforcement under the CSA, and allow financial institutions to offer services to compliant marijuana-based businesses.<sup>12</sup> The passage of this act would legitimize the legal cannabis market and provide cannabis-based businesses with access to much needed financial services. First, Section B provides an overview of the history of cannabis legalization. Next, Section C explains the current obstacles the industry faces to receiving financial services. Then, Section D discusses current enforcement practices pertaining to the sale of cannabis. Section E details the growing support for the STATES Act

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<https://www.justice.gov/iso/opa/resources/3052013829132756857467.pdf>  
[<https://perma.cc/NS5L-ZFNR>].

<sup>8</sup> *Id.*

<sup>9</sup> FIN. CRIMES ENF'T NETWORK, FIN-2014-G001, BSA EXPECTATIONS REGARDING MARIJUANA-RELATED BUSINESS (2014), <https://www.fincen.gov/sites/default/files/shared/FIN-2014-G001.pdf> [<https://perma.cc/4M66-QSD3>].

<sup>10</sup> Memorandum from Attorney Gen. Jefferson B. Sessions, to U.S. Attorneys (Jan. 4, 2018), <https://www.justice.gov/opa/press-release/file/1022196/download> [<https://perma.cc/5TY9-5F4E>].

<sup>11</sup> STATES Act, S. 3032, 115th Cong. § 2 (2018).

<sup>12</sup> *Id.*

as a possible way forward for cannabis legalization; Section F concludes the piece.

### B. A Brief History of Cannabis Legalization

In 1996, California became the first state to legalize the medical use of cannabis.<sup>13</sup> Since 1996, nine states have legalized the recreational use of marijuana, thirty states have decriminalized the medical use, and a total of forty-six allow some form of legal cannabis when industrial hemp is included in the definition of marijuana.<sup>14</sup> While state laws have been gradually moving towards decriminalization, marijuana remains illegal under federal law.<sup>15</sup> As a result, most legal cannabis businesses operate on a cash-only basis because banks refuse to do business with them.<sup>16</sup> However, that trend has been a gradual shift toward some deposit-only services at smaller state-chartered banks.<sup>17</sup>

The federal government appeared to be easing its enforcement of cannabis related businesses in 2009 when Deputy Attorney General David Ogden issued a memorandum to United States Attorneys explaining that the federal government would no longer pursue cases against medical marijuana in states where it had been legalized.<sup>18</sup> Then, in 2013 Deputy Attorney General James Cole issued a memo that set new priorities for the enforcement of federal marijuana laws.<sup>19</sup>

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<sup>13</sup> John Balzar, *Voters Approve Measure to use Pot as Medicine*, L.A. TIMES (Nov. 6, 1996), [http://articles.latimes.com/print/1996-11-06/news/mn-62740\\_1\\_voters-approve-measure](http://articles.latimes.com/print/1996-11-06/news/mn-62740_1_voters-approve-measure) (“Californians bucked years of demonizing marijuana and voted yes Tuesday to legalize use of the drug for medical treatment.”).

<sup>14</sup> Laslo, *supra* note 1.

<sup>15</sup> 21 U.S.C. § 812 (2012).

<sup>16</sup> See Robb Mandelbaum, *Where Pot Entrepreneurs Go When the Banks Just Say No*, N.Y. TIMES (Jan. 4, 2018), <https://www.nytimes.com/2018/01/04/magazine/where-pot-entrepreneurs-go-when-the-banks-just-say-no.html>.

<sup>17</sup> *Id.*

<sup>18</sup> Memorandum from Deputy Attorney Gen. David W. Ogden, *supra* note 4 (“As a general matter, pursuit of these priorities should not focus federal resources in your States on individuals whose actions are in clear and unambiguous compliance with existing state laws providing for the medical use of marijuana.”).

<sup>19</sup> Memorandum from Deputy Attorney Gen. James M. Cole, *supra* note 7, at 1–2 (enumerating these priorities).

The Cole memo explained that given the government's limited resources, the federal government would essentially defer to state law as long as some minimum conditions were met.<sup>20</sup> The Cole memo was followed six months later with new guidance from Cole on marijuana-related financial crimes.<sup>21</sup> This prompted the Department of the Treasury's FinCEN to issue guidance to banks outlining procedures for providing financial services to marijuana-related businesses without running afoul of federal law.<sup>22</sup> However, this trend towards legitimization halted in early 2018 when Attorney General Jefferson Sessions repealed the Cole Memo and any previous guidance that changed the federal government's priorities relating to cannabis.<sup>23</sup>

### C. A \$40 Billion Industry with Limited Financial Services

Economic output from cannabis was estimated to be over \$16 billion in 2017.<sup>24</sup> This number is expected to grow to \$40 billion by 2021.<sup>25</sup> In 2017, the cannabis industry took in roughly \$9 billion in sales, equivalent to the entire snack bar industry.<sup>26</sup> Many financial institutions have been wary of doing business with the cannabis industry due to uncertainty over which direction federal enforcement will go and the lack of clear, consistent guidance from the federal

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<sup>20</sup> *Id.*

<sup>21</sup> Memorandum from Deputy Attorney Gen. James M. Cole, to U.S. Attorneys (Feb. 14, 2014), <https://www.justice.gov/sites/default/files/usao-wdwa/legacy/2014/02/14/DAG%20Memo%20-%20Guidance%20Regarding%20Marijuana%20Related%20Financial%20Crimes%202%2014%2014%20%282%29.pdf> [<https://perma.cc/LQ2S-NEH6>].

<sup>22</sup> FIN. CRIMES ENF'T NETWORK, *supra* note 9.

<sup>23</sup> Memorandum from Attorney Gen. Jefferson B. Sessions, *supra* note 10 ("Given the Department's well-established general principles, previous nationwide guidance specific to marijuana enforcement is unnecessary and is rescinded, effective immediately.").

<sup>24</sup> *Legal Marijuana Industry to Generate \$40 billion in Economic Impact by 2021*, BDS ANALYTICS (Jan. 2, 2018), <https://bdsanalytics.com/press/new-report-legal-marijuana-industry-to-generate-40-billion> [<https://perma.cc/VPB4-7T7D>].

<sup>25</sup> *Id.*

<sup>26</sup> Aaron Smith, *The U.S. Legal Marijuana Industry is Booming*, CNN MONEY (Jan. 31 2018, 4:03 PM), <https://money.cnn.com/2018/01/31/news/marijuana-state-of-the-union/> [<https://perma.cc/S9AZ-82VS>] ("Sales are equivalent to the entire snack bar industry, or to annual revenue from Pampers diapers.").

authorities.<sup>27</sup> This has driven the majority of the cannabis industry to operate on a cash-only basis.<sup>28</sup>

The sale and distribution of marijuana is a crime under the Controlled Substances Act, and anyone who aids or abets the sale of marijuana is punished as a principal.<sup>29</sup> Providing financial services to cannabis-based businesses falls under the aiding and abetting provision of the United States Code, making such provisions very risky for banks.<sup>30</sup> The repeal of the Cole Memo has heightened the uncertainty for financial institutions that wish to do business with the marijuana industry, and no large banks currently do business with cannabis-based businesses.<sup>31</sup> This has created a number of problems with payments and has led to state and federal tax authorities having to arrange for the acceptance of cash payments.<sup>32</sup> Some smaller state chartered banks have been willing to act as depository institutions for cannabis companies, but lending is a problem due to the potential that the underlying collateral may be seized.<sup>33</sup> As a result, the cannabis industry remains largely unbanked.<sup>34</sup>

The resultant cash-only business models create a host of potential issues, including the risk of violent crime.<sup>35</sup> In 2016, a former Marine was shot and killed after just two weeks on the job at a

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<sup>27</sup> Danielle Hunt et al., Miller Nash Graham & Dunn LLP, *The STATES Act—A Solution to the Cannabis Banking Problem on the Horizon*, BANK L. MONITOR (June 8, 2018), <https://www.banklawmonitor.com/2018/06/the-states-act-a-solution-to-the-cannabis-banking-problem-on-the-horizon> [<https://perma.cc/G2QW-JWMX>].

<sup>28</sup> Kevin Murphy, *Legal Marijuana: The \$9 Billion Industry That Most Banks Won't Touch*, FORBES (Sep. 6, 2018, 10:07 AM), <https://www.forbes.com/sites/kevinmurphy/2018/09/06/legal-marijuana-the-9-billion-industry-that-most-banks-wont-touch/#142fcce73c68> [<https://perma.cc/T8SR-DAQQ>].

<sup>29</sup> 21 U.S.C. § 812 (2012).

<sup>30</sup> MICHAEL S. BARR ET AL., FINANCIAL REGULATION: LAW AND POLICY 182 (2d ed. 2018).

<sup>31</sup> *Id.* at 183 (“No larger banks are known to provide banking services to state legal marijuana businesses although some state-chartered banks and credit unions are doing so.”).

<sup>32</sup> *Id.* (explaining that marijuana businesses find it possible to open deposit accounts at banks).

<sup>33</sup> *See id.*

<sup>34</sup> *Id.*

<sup>35</sup> Richard P. Ormond, *Cannabis, Cash, and Crime Banking, Lending, and Insolvency Restrictions Relegate the Legitimate Cannabis Industry in California to an All-Cash Business, Vulnerable to Crime*, 41 L.A. LAW. 22, 23 (2018).

Colorado dispensary during a robbery attempt.<sup>36</sup> In June of the same year, an owner of a dispensary in California escaped unharmed after a gunfight with would be robbers.<sup>37</sup> Seven months prior to that attack, a dispensary owner was shot two times during a robbery attempt at another California dispensary.<sup>38</sup> In October 2012, a California dispensary owner was kidnapped, tortured, and mutilated because he would not tell his captors where the dispensary's cash was kept.<sup>39</sup>

Crime is not the only issue caused by a lack of financial services. Cannabis-based businesses can only accept cash from their customers, and payments to employees, utility providers, suppliers, and landlords must all be handled in cash as well.<sup>40</sup> This has resulted in some cannabis-based businesses trying to circumvent the lack of financial services by using personal bank accounts rather than business accounts, or using "holding companies" to mask the source of income.<sup>41</sup> There have also been consequences for third-party businesses who transact with the cannabis industry.<sup>42</sup> At least one lawyer and several businesses who sell equipment to the cannabis industry have been denied banking or lending service as a result of profits derived from the legal marijuana industry.<sup>43</sup> Furthermore, the Internal Revenue Service charges a ten percent tax on employment taxes paid in cash.<sup>44</sup> All of these examples illustrate the problems associated with an industry that is denied access to financial services.<sup>45</sup> The industry is

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<sup>36</sup> Rick Anderson, *It's Cash Only, and Robbers Know It*, L.A. TIMES, July 11, 2016, at A6.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> Ormond, *supra* note 35.

<sup>40</sup> Rachel Cheasty Sanders, *To Weed or Not to Weed? The Colorado Quandary of Legitimate Marijuana Businesses and the Financial Institutions Who Are Unable to Serve Them*, 120 PENN ST. L. REV. 281, 298 (2015).

<sup>41</sup> *Id.* at 299 (detailing alternative strategies cannabis business owners have tried in an effort to avoid the cash only business problem, but observing that these strategies often fail due to banks obligation to investigate questionable transactions).

<sup>42</sup> *Id.* at 300–01.

<sup>43</sup> *Id.* ("Some non-cannabis businesses also find themselves without banking services because they provide services to the marijuana industry.").

<sup>44</sup> *Id.* at 302.

<sup>45</sup> *Id.* at 300–02.

poised to grow even further, likely resulting in these problems becoming even more pervasive throughout the U.S.<sup>46</sup>

2018 is a potentially major year for cannabis legalization.<sup>47</sup> This year, Vermont passed a non-commercial recreational cannabis bill and Oklahoma legalized the medical use of cannabis.<sup>48</sup> Voters will decide on whether to legalize recreational marijuana in North Dakota and Michigan, and medical marijuana in Utah and Missouri.<sup>49</sup> Additionally, New Jersey may become the first state to legalize adult use through its state legislature.<sup>50</sup> Therefore, at least one, and potentially seven states that will expand their current laws to legalize marijuana in some form. The current trend towards decriminalization will increase the need for access to financial services to alleviate some of the consequences explained above.

#### D. Current Financial Regulation

While marijuana continues to be illegal under the CSA, guidance provided by Assistant Attorney General James Cole and FinCEN established new enforcement priorities designed to exempt legal cannabis from federal enforcement as long as businesses abide by state law and eight enforcement directives.<sup>51</sup> The new priorities, or what is colloquially known as the eight deadly sins, focused enforcement on the following:

- i. Preventing the distribution of marijuana to minors;
- ii. Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels;
- iii. Preventing the diversion of marijuana from states where it is legal under state law in some form to other states;

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<sup>46</sup> Kris Krane, *At the Ballot Box: These Four States Could Legalize Some Form of Marijuana in November*, FORBES (Aug. 21, 2018, 6:16 AM), <https://www.forbes.com/sites/kriskrane/2018/08/21/at-the-ballot-box-these-four-states-could-legalize-some-form-of-marijuana-in-november/#32405b1f5c95> [<https://perma.cc/GWP4-2NTT>].

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> Ormond, *supra* note 35, at 24.

- iv. Preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;
- v. Preventing violence and the use of firearms in the cultivation and distribution of marijuana;
- vi. Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;
- vii. Preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and
- viii. Preventing marijuana possession or use on federal property.<sup>52</sup>

This list remains relevant because it is the precursor to guidance by FinCEN which established procedures for banks to provide services to cannabis-based businesses.<sup>53</sup>

Following the Cole memo, FinCEN published its own guidance for financial institutions that chose to do business with cannabis-based businesses.<sup>54</sup> The FinCEN guidance created a procedure that would allow financial institutions to provide financial services to cannabis-related businesses without running afoul of the Bank Security Act, Anti-Money Laundering Laws, and the CSA.<sup>55</sup> The FinCEN guidance did not eliminate the requirement that banks file suspicious activity reports (SARs) for cannabis-related businesses, but instead created a new system by which financial institutions were required to report, while still providing financial services.<sup>56</sup> FinCEN required that banks continuously monitor their customers and file one of three SARs depending on the level of compliance by the business.<sup>57</sup> Banks should file a marijuana-limited SAR in a situation where the cannabis based business is abiding by state law and not violating one of the Cole Memo's eight deadly sins, a marijuana-priority SAR if the cannabis-based business is violating either state law or the Cole

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<sup>52</sup> Memorandum from Attorney Gen. Jefferson B. Sessions, *supra* note 10.

<sup>53</sup> Memorandum from Deputy Attorney Gen. James M. Cole, *supra* note 21.

<sup>54</sup> FIN. CRIMES ENF'T NETWORK, *supra* note 9.

<sup>55</sup> Sanders, *supra* note 40, at 295.

<sup>56</sup> *Id.* ("FinCEN Guidance provides an extensive list of 'red flags' to help financial institutions determine whether a marijuana business is engaged in activities that implicate federal priorities.").

<sup>57</sup> *Id.* at 296.



Memo, and a marijuana-termination SAR when a bank determines that it runs the risk of violating money laundering laws.<sup>58</sup> This process remains in effect despite the repeal of the Cole Memo by now Attorney General Jefferson Sessions.<sup>59</sup> One consequence of this guidance is a collection of inconsistent administrative rules that have not actually changed the federal laws that are ultimately still enforceable at the discretion of federal administrators.<sup>60</sup>

Unclear guidance has not stopped efforts to bring banking to the cannabis industry.<sup>61</sup> Colorado attempted to create state and city-owned banks that could circumvent the federal requirement for deposit insurance, but no such bank has been chartered.<sup>62</sup> This is in part because of a lack of access to the electronic payment system which requires an application to the Federal Reserve Bank for a master account, or a partnership with a bank that already has a master account.<sup>63</sup> A master account is essentially a “bank account for banks” which comes with access to services from the Federal Reserve.<sup>64</sup> The Fourth Corner Credit Union attempted to fill the void in financial services in 2016, but their application for a master account was denied by the Federal Reserve.<sup>65</sup> On appeal, the Tenth Circuit upheld this denial due to the illegality of marijuana based businesses under federal law.<sup>66</sup> The credit union argued that the now rescinded Cole Memo permitted them to deal with marijuana businesses, but the court rejected this claim because the focus, or enforcement decisions of the

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<sup>58</sup> *Id.*

<sup>59</sup> Ormond, *supra* note 35, at 24 (highlighting FinCEN’s decision to continue with its previous guidance despite Attorney General Session’s new guidance).

<sup>60</sup> Sanders, *supra* note 40, at 297–98 (explaining that “the new administration could easily repeal the guidance and instruct the DOJ to begin prosecuting all violators of the CSA and banking laws, especially if the new administration wishes to thwart the growing trend of legalized recreational marijuana among the states”).

<sup>61</sup> *Id.* at 308.

<sup>62</sup> *Id.* at 310–11.

<sup>63</sup> BARR ET AL., *supra* note 30, at 183 (explaining how a bank may access the payment system).

<sup>64</sup> Fourth Corner Credit Union v. Fed. Reserve Bank of Kan. City, 861 F.3d 1052, 1053 (10th Cir. 2017).

<sup>65</sup> *Id.* at 1054 (“the Reserve Bank determined that the Credit Union simply posed too great a risk to the Federal Reserve System”).

<sup>66</sup> *Id.* at 1053 (“Because the district court correctly declined to lend its equitable power to illegal activity, I would affirm the dismissal with prejudice”).

executive branch does not change the substantive federal law.<sup>67</sup> The Fourth Corner Credit Union was eventually granted a master account, but only after amending its business plan to service “ancillary” marijuana based businesses.<sup>68</sup>

Indirect access to financial services is likely occurring through personal accounts, third-party credit systems, and even middlemen.<sup>69</sup> These issues have prompted congress to propose several bills that would bring banking and other financial services to the billion-dollar legal cannabis industry.<sup>70</sup>

### E. The STATES Act: A Possible Way Forward

Presently, there are at least two bills making their way through Congress that would bring financial services to the cannabis industry. The Secure and Fair Enforcement Banking Act (SAFE Banking Act) was first proposed in 2017 and would prohibit federal banking regulators from limiting deposit insurance, discouraging financial institutions from offering services, or taking action against borrowers because of their affiliation with a legal cannabis-based business.<sup>71</sup> While the SAFE Banking Act attempts to directly remedy issues surrounding the cannabis industry and banking, but a more recent bill goes even further.<sup>72</sup>

On June 7, 2018 Senators Elizabeth Warren and Cory Gardner introduced the STATES Act, which has enjoyed bipartisan support, in part because it would remove industrial hemp from the CSA.<sup>73</sup> The bill also exempts “any person acting in compliance with state laws and

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<sup>67</sup> *Id.* at 1056 (“But this guidance, like the Cole Memorandum, didn’t nullify the CSA or federal money-laundering statutes.”).

<sup>68</sup> BARR ET AL., *supra* note 30, at 183.

<sup>69</sup> *Id.* at 184.

<sup>70</sup> *See, e.g.*, STATES Act, S. 3032, 115th Cong. § 2 (2018); SAFE Banking Act, S. 1152, 115th Cong. (2017).

<sup>71</sup> S. 1152 (“A Federal banking regulator may not—(1) terminate or limit the deposit insurance or share insurance of a depository institution under the Federal Deposit Insurance Act”).

<sup>72</sup> *Id.*; S. 3032 (“Notwithstanding any other provision of law, the provisions of this title as applied to marihuana, other than the provisions described in subsection (c) and other than as provided in subsection (d), shall not apply to any person acting in compliance with State law relating to the manufacture, production, possession, distribution, dispensation, administration, or delivery of marihuana.”).

<sup>73</sup> Hunt et al., *supra* note 27.

regulations governing the manufacture, production, possession, distribution, dispersion, administration, or delivery of cannabis.”<sup>74</sup> If the law passes, the CSA would essentially defer to state laws when it comes to enforcement, protecting individuals who are in compliance with state laws from prosecution.<sup>75</sup> Changing the definition and categorization of marijuana would also allow financial institutions to do business with cannabis-based businesses without the fear of “money laundering prosecution, civil forfeiture . . . and other criminal violations that could lead to a charter revocation.”<sup>76</sup> The availability of financial—and, more specifically—depository services would eliminate the need for all cash businesses and allow large financial institutions to capitalize on the growing, multibillion-dollar legal cannabis industry.<sup>77</sup>

In an important development for the STATES Act, President Donald Trump indicated that he will “probably” support the bill.<sup>78</sup> President Trump’s support stands in contrast to his Attorney General Sessions’ policy of repealing Justice Department guidance that was promulgated under the Obama administration.<sup>79</sup> Bipartisan support for the bill and a growing trend towards marijuana legalization has left many speculating how long it will be before marijuana is legalized on a national level.<sup>80</sup> Full legalization would allow increased competition between financial services providers, and among many large corporations who have been hesitant to enter the cannabis market due to federal law.

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<sup>74</sup> S. 3032.

<sup>75</sup> Hunt et al., *supra* note 27.

<sup>76</sup> *Id.*

<sup>77</sup> Sanders, *supra* note 40, at 313 (bemoaning the fact that congress has not acted to allow much needed financial services to prevent issues with cash only businesses).

<sup>78</sup> Christiano Lima, *Trump Voices Support for Bipartisan Pot Legislation*, POLITICO (June 8, 2018, 9:40 AM), <https://www.politico.com/story/2018/06/08/trump-bipartisan-pot-legislation-633707> [<https://perma.cc/RJ7L-28EC>].

<sup>79</sup> *Id.*

<sup>80</sup> Ian A. Stewart & Dean A. Rocco, *Federal Cannabis Legalization May Be Closer Than You Think*, LAW360 (July 16, 2018, 4:06 PM), <https://www.law360.com/articles/1063280/federal-cannabis-legalization-may-be-closer-than-you-think>.

## F. Conclusion

The lack of a legal avenue to financial services has left a multibillion-dollar industry without access to much of the financial sector.<sup>81</sup> Federal prohibition has forced cash payments by patrons, between cannabis-based businesses, and even to government entities like the IRS.<sup>82</sup> The marijuana industry is vulnerable to violent crime because of the industry's reliance on all cash payments.<sup>83</sup> Additionally, financial institutions have been denied access to a multibillion dollar industry that is poised to grow rapidly in the next decade.<sup>84</sup>

Federal bills like the STATES Act have the potential to legitimize the cannabis industry and open up a new market to large financial institutions.<sup>85</sup> Even Coca-Cola has recently shown interest in cannabis-based beverages.<sup>86</sup> It is hard to imagine large corporations investing in less-than-legitimate business ventures. However, reform is unlikely to occur unless Congress acts.

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<sup>81</sup> *See supra* Section E.

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> Uday Sampath Kumar et al., *Coke Eyes Cannabis-Infused Drink Market*, REUTERS (Sep. 17, 2018, 7:29 AM), <https://www.reuters.com/article/us-coca-cola-jointventure-aurora-cannabi/coke-eyes-cannabis-infused-drink-market-idUSKCN1LX17K> [<https://perma.cc/U5QZ-X5AA>] (“Coca-Cola . . . is closely watching the fast-growing marijuana drinks market for a possible entry”).

<sup>87</sup> Student, Boston University School of Law (J.D. 2020).