NELSON HARDIMAN
HEALTHCARE LAWYERS

Cash-only Still Burdening Legal Cannabis Businesses

The legal cannabis industry here in the Golden State and in the more than two dozen other states where it's sanctioned (not t mention our neighbor to the north where it's legal countrywide) promises big profits. You'd be hard-pressed to find an aspiring cannapreneur unaware of the potential bottom line. But here's the rub: the greater the profit, the greater the headache for the majority of legal marijuana businesses. Aside from the product itself, the one thing illicit and legal cannabis ventures have in common? They're both cash-only operations.

In an undeniably electronic age, it may seem archaic to rely on paper money. Indeed, it's becoming more common for retail establishments outside of the cannabis industry to do away with cash sales altogether. Not only is a cashless business far sa ("no cash on premises" is much more of a robbery deterrent than "employee doesn't have combination to safe"), but it's also f more efficient from an accounting standpoint, and it's less costly, too (hiring armed drivers to transport and guard the spoils e up taking a bigger bite out of a business than banking fees would).

None of those pragmatic arguments on their own have the power to change the federal law, however, which still classifies marijuana as a Schedule I drug, alongside substances like heroin and Ecstasy. Because banks operate under federal manda they aren't keen to wade through the murky gray area posed by state-legal money pulled in by a federally-illegal product . . . e when that money is estimated to be $5 billion per year, the projection for California's cannabis transactions alone.

Marijuana businesses should prepare to wait . . . and wa . . . and wait

There are a few exceptions, though — very few. At present there are only five financial institutions in the state willing to work marijuana businesses. All are credit unions, including one in Santa Rosa and one in Santa Cruz. However, if cannapreneurs interested in parking their cash in one of those credit unions, they won't get further than the end of a long waiting list: none are taking on new clients, and the financial institutions themselves are loath to talk about the marijuana businesses they currently service, making it hard for business owners to learn from example.

Marijuana businesspeople might not be hand-wringing over the thorny liability of piles of cash had the 2016 presidential elect had gone another way.

In addition to granting state-compliant legal marijuana businesses some degree of reassurance that the U.S. Department of J (DOJ) would not use its resources to prosecute state-legal operations, the Cole Memo, issued during the Obama administrati also extended some peace of mind to financial depositories wishing to work with legal canna-businesses. Among other contr banks were required to conduct regular audits and report on the movement of marijuana money.

However, former U.S. Attorney General Jeff Sessions, appointed by Donald Trump, rescinded the Cole Memo, and along wit banks' tenuous peace of mind when it comes to dealing with marijuana operations. At this moment, it's anyone's guess wheth William Barr, the new AG, will reinstate the Cole Memo or afford legal marijuana businesses similar reassurances. The curre legal federal climate is such that banks backing marijuana businesses run the risk of being investigated for money laundering being prosecuted for facilitating an illegal business.

It's no wonder most traditional banks, plenty profitable without getting anywhere near marijuana, are choosing to stay away.

California has explored the possibility of developing its own financial institution in order to open its doors to canna-cashflow, b seems like it holds a slim chance of actually happening. The state treasurer released a report at the close of 2018 projecting a substantial loss for the state should it attempt such a feat. It would require $1 billion in investments at the outset, and would b further challenged by a bevy of federal snags should it get that far.

Is there even a whiff of optimism?

Legal marijuana is a growing business, in more ways than one. Although what to do with all that cash presents an incredibly onerous dilemma for many people active in the industry here at home, it’s hard to imagine that it will stay that way in the long run.

According to data released by the U.S. Department of Treasury’s Financial Crimes Enforcement Network in the autumn of 2018, across the country, there are nearly 500 financial institutions extending a hand to cannaprenuers. (Around four-fifths of those are traditional banks and one-fifth credit unions.) That’s up from around 100 five years ago. The majority of those institutions limit their transactions to local cannabis operations.

Despite California’s relatively and dramatically limited options for banking, some industry insiders believe the landscape is likely to grow a bit more lush in the coming year. For instance: Tyler Beuerlein of Hypur, an Arizona-based company that provides banking technology to cash-centric businesses like those in the legal marijuana industry. Beuerlein told *The Mercury News* that he believes that 2019 will see new banking options crop up for California canna-businesses . . . which means that in addition to vigilance in the meantime, business owners will need to strive for patience too.