

SAFER Banking Markup
Senate Committee on Banking, Housing, and Urban Affairs
September 27, 2023

Opening Statements

Chairman Brown (D-OH) said they are marking up the SAFER Banking Act and thanked his staff for their work on the bill. He said cannabis banking is just part of the conversation about marijuana policy and that there is more work to be done here. He added that small businesses and employees are running into many of the same issues when it comes to cannabis banking - access to financial services. He said the bill would make it easier and safer for legal cannabis businesses to protect their workers and operate in their communities. Brown then noted how previous witnesses before the committee highlighted the struggle many cannabis businesses face and how they need more reliable access to financial services. He said he remains committed to finding bipartisan paths forward on these issues.

Sen. Daines (R-MT) thanked Ranking Member Scott for facilitating this process even though Scott does not support the bill. Daines said that he is opposed to the legalization of marijuana, but this bill is not about that. He said that all cash model of legal cannabis businesses makes them a target of crimes. Daines said that this bill tackles financial account closures, like Operation Choke Point, and this bill will ensure that regulators cannot target any legal businesses due to political differences. He said that the House can make their own mark on this legislation and make changes as they see fit.

Chairman Brown (D-OH) called up amendment #1, which Brown was offering, and it made technical changes to the bill, as well as Brown #2, Scott #30, Cramer #34, Sinema-Lummis-Daines #35, and Sinema-Lummis-Daines #36.

The Brown Amendment was adopted by voice vote. Sens. Hagerty, Scott, Rounds, Kennedy, Tillis, and Warnock were recorded as no's on the Brown Amendment.

Sen. Crapo (R-ID) offered Crapo Amendment #1 that deals with Operation Choke Point, Title X, of this legislation. He explained what Operation Choke Point was and said that Title X attempts to address this, but it does not get the job done. Crapo said that the problem is that reputational risk is something that financial regulators should not be able to utilize to de-bank or refuse to provide service to certain companies in certain industries. He pointed to gun dealers and auto manufacturers who do not want to make electric cars as examples. He went on to say that his amendment simply says that any federal regulator cannot force, encourage, or pressure a financial business to refuse to provide service to a lawful entity unless the regulator claims that the business is violating a rule, law, or other regulation. He said that reputational risk cannot be

considered an unsafe practice. Crapo said that he is also introducing this on behalf of Ranking Member Scott.

Sen. Reed (D-RI) said that this proposal is well intentioned and thoughtful, but it would undermine the ability of regulators to anticipate problems in banks. He said that the negotiated language allows regulators to effectively regulate, and this amendment would negatively impact regulators.

Sen. Crapo (R-ID) said that the negotiated language attempted to accomplish what Crapo's amendment accomplishes. He read the language and how an agency must show reasonable cause that this financial entity is engaged in or about to engage in an unsafe or unsound practice and then it goes through a number of other things that can be utilized. Crapo considered these other things to be huge loopholes and believed this language made it crystal clear about reputational risk.

Chair Brown (D-OH) said that they worked with Cramer on this issue, and they will not use the SAFER Banking Act to weaken regulators.

Crapo Amendment #1 was not agreed to by a recorded vote of 8-15. Republicans Senators Scott, Crapo, Rounds, Tillis, Kennedy, Hagerty, Vance, and Britt voted in favor.

Sen. Warnock (D-GA) called up amendment #27 and said that he was deeply troubled that they were voting on this bill at this time. He questioned who this SAFER banking bill makes safer and said that it certainly does not include those who are in jail for cannabis-related offenses.

Warnock said that he is not opposed to easing federal restrictions around cannabis and he would support this bill if it substantively addressed the issue of restorative justice. He pointed to how communities have been hurt by the war on drugs and this legislation does nothing to help them. Warnock said that their only legislative priority cannot just be making it safer for financial institutions to serve these businesses, and they must prioritize these communities as well. He said that his amendment would establish a five-year sunset on these policies unless they demonstrate that they have made life better for communities being harmed by the war on drugs. Warnock said that he heard that this bill would help small businesses and entrepreneurs, but he thought they should be held accountable for this goal.

Chair Brown (D-OH) complemented Warnock for his work on this and he wanted to find targeted ways to achieve the goals of the amendment, but he opposed the amendment given the uncertainty it would create for banks and small businesses.

Sen. Warren (D-MA) supported the SAFER Banking Act since it is common sense policy and she thought that the bill is a step in the right direction of making federal cannabis law a little less

out of touch with state laws across the country. She said that this bill does not address the harms of marijuana criminalization on minority communities. Warren said that most people who profit from marijuana businesses are white, and she shared Warnock's concern that his bill would reinforce racial inequities. She said that FinCEN should act to update its red flag guidance to ensure that business owners' past cannabis convictions are not a reason to deny financial services. Warren said that it makes no sense that marijuana remains a Schedule I drug.

Sen. Van Hollen (D-MD) said he does think this bill is an important step forward in eliminating the cash economy and all the risks and burdens that come with it. Van Hollen also supported Warnock's comments and said if the committee has jurisdiction over criminal justice matters, then he would not vote to move this bill forward. He added that we should change marijuana's status as a Schedule I drug and that we need to deal with this issue in a more comprehensive manner. He went on to say that he would support the bill.

Sen Warnock (D-GA) said the question of jurisdiction comes up all the time and that we have the chance to bring up racial justice and close the racial wealth gap. He added that he hopes this bill does not increase the racial wealth gap and if we are serious about this, then we should adopt his amendment to create accountability to this issue.

Brown called a vote on the Warnock Amendment.

Warnock Amendment was not agreed to by a recorded vote of 3-20. Democratic Senators Warren and Warnock audibly voted yes.

Sen. Rounds (R-SD) called up amendment #32 and said that this bill is flawed as it gives protection to cannabis businesses, but not firearms and other businesses. He said that this bill would sunset if cannabis was rescheduled so the industry is not immune from restrictions that other industries must face. Rounds said that this amendment still does not make the bill sufficient, and he intended to withdraw the amendment.

Rounds withdrew his amendment.

Sen. Hagerty (R-TN) offered Hagerty Amendment #29, which would prevent the laundering of fentanyl and methamphetamine proceeds via marijuana businesses. He said that this amendment would address a major loophole and he urged support for it.

Chair Brown (D-OH) said that this amendment is not germane, and it is in the jurisdiction of the Senate Judiciary Committee.

Sen. Daines (R-MT) said that while this is not germane to the Committee, he looked forward to working with Hagerty on this.

Sen. Hagerty (R-TN) said this amendment is germane to the SAFER Banking bill because this bill shields marijuana proceeds from money laundering provisions and allows depository institutions to transact marijuana proceeds. He said his amendment would create civil penalties for anyone in the marijuana supply chain who co-mingles fentanyl and methamphetamine proceeds with marijuana proceeds. He added that helping to ensure only marijuana proceeds are transacted is important and that Chair Brown is blocking a vote on this amendment and requested a roll call vote, overturning the ruling of the chair that the amendment is germane to the bill.

Chair Brown (D-OH) ordered a vote on the ruling of the chair. The ruling was upheld by a recorded vote of 13-10 and was ruled out of order.

Sen. Sinema (I-AZ) said she supported the substance of the amendment and wants to work with Sen. Hagerty on this issue.

Sen. Hagerty (R-TN) said this is an important issue and that his amendment would address the loophole created by this bill. He said he is shocked they are not supporting his amendment.

Sen. Cortez Masto (D-NV) said she also shares Sen. Hagerty's concern and said this legislation does not open a loophole, adding that it is already illegal to commingle marijuana proceeds with fentanyl proceeds. She said she would work with him to ensure law enforcement have the resources they need to address this issue.

Sen. Warnock (D-GA) called up amendment #19, which would require GAO to conduct a study on the racial wealth gap should the SAFER Banking Act become law and provide statistics on minority-owned marijuana businesses after passage of the bill. He said this amendment is about accountability and that the bill has the potential to work toward closing the racial wealth gap. He said that we must ensure this bill is truly helping small businesses and entrepreneurs from communities that were harmed the most by the criminalization of cannabis.

Chair Brown (D-OH) ruled that the amendment was out of order.

Sen. Warnock D-GA) asked for an appeal of that ruling. The ruling was upheld by a recorded vote of 3-20.

Markup of [S.2860](#), *Secure and Fair Enforcement Regulation (SAFER) Banking Act*

S. 2860, the Secure and Fair Enforcement Regulation (SAFER) Banking Act, was moved favorably out of Committee by a recorded vote of 14-9. Sens. Warnock, Scott, Crapo, Rounds, Tillis, Kennedy, Hagerty, Vance, and Britt voted against the SAFER Banking Act.

Chair Brown (D-OH) asked unanimous consent that staff are allowed to make technical and conforming changes. Sen. Warnock objected and requested a recorded vote. The vote was 22-1.

Sen. Lummis (R-WY) thanked Chair Brown and Ranking Member Scott for holding a markup on this bill. She then laid out her reasons for supporting the bill, noting how marijuana is not legal in Wyoming but it is in states surrounding Wyoming, so the federal government must respect the voters in those states. She said the main reason she supported this legislation is because it takes a major step toward ending the banking industry being weaponized. She added that this legislation ensures Operation Choke Point cannot threaten people across the country and that this legislation ensures the government cannot pick winners and losers when it comes to providing everyone access to financial services.

Sen. Cortez Masto (D-NV) thanked Chair Brown and Sen. Daines and said that there are so many legal businesses that cannot use banking services that all other businesses can access. She added that operating as a cash-only business is dangerous and cumbersome. She said she is glad they have passed this bill and hoped it was just the first step at helping cannabis businesses access capital.

Sen. Sinema (I-AZ) said this is a big day and that this bill will provide banking services to cannabis businesses. She thanked Chair Brown and Ranking Member Scott, as well as Sen. Daines for this work on this bill.

Sen. Merkley (D-OR) said a cash economy is an economy for criminals and if you want to rob stores. He added that unbanked operations present the easiest avenue for organized crime to fester and said this bill will help address that. He continued that the second part of this bill was to highlight that financial regulators should not be the moral police and that this bill sends a powerful message here. He went on to say that this bill begins to address the harm minority communities have faced throughout the war on drugs. Merkley said he strongly supports this bill and hopes that we also bring bills to the floor regarding expungement for marijuana offenders. Merkley thanked the Chair and the committee.