



May 2020

WHAT YOU NEED TO KNOW ABOUT

# Marijuana and the Stimulus

## PRO POINTS

- **Cannabis business have been allowed to remain open** in many states that have shut down other types of businesses. One notable exception is Massachusetts, where medical shops remain open but recreational shops have closed.
- **Cannabis and cannabis-related businesses do not** have access to the Small Business Administration funding created by the CARES Act — the \$2 trillion coronavirus aid package passed at the end of March. Many also do not have access to bank loans or other forms of capital.
- **Hemp businesses do have access to SBA funding, but** there are lingering questions about banks' willingness to work with businesses that deal with a product so similar to marijuana.

## HOW WE GOT HERE

As businesses around the nation shut down after the onset of the coronavirus pandemic, Congress passed a \$2 trillion funding bill, the CARES Act, which created new loan programs for small businesses. These loans are administered by the Small Business Administration, which won't provide funding to any businesses involved in activity considered illegal under federal law.

Medical or recreational marijuana is legal in 33 states, the District of Columbia and four territories, but it is considered to have no acceptable medical use and high potential for abuse under the federal Controlled Substances Act — along with LSD and heroin.

"In the same way that cocaine dealers in the United States who are suffering under Covid-19 are not going to be eligible for relief under the stimulus bill, cannabis companies won't either," said John Hudak of the Brookings Institution. "There is no difference between a dispensary in Boston and a guy selling cocaine on a street corner."

"Indirect marijuana companies" also may not receive federal aid. These are companies that provide services or equipment to marijuana-related businesses, such as lawyers representing cannabis businesses or companies selling grow lights. The guidance is not black and white, however, in terms of how much involvement with the marijuana industry will make a company ineligible. The SBA, for example, has said that plumbers and computer technicians that happen to service a marijuana business could still access funding.

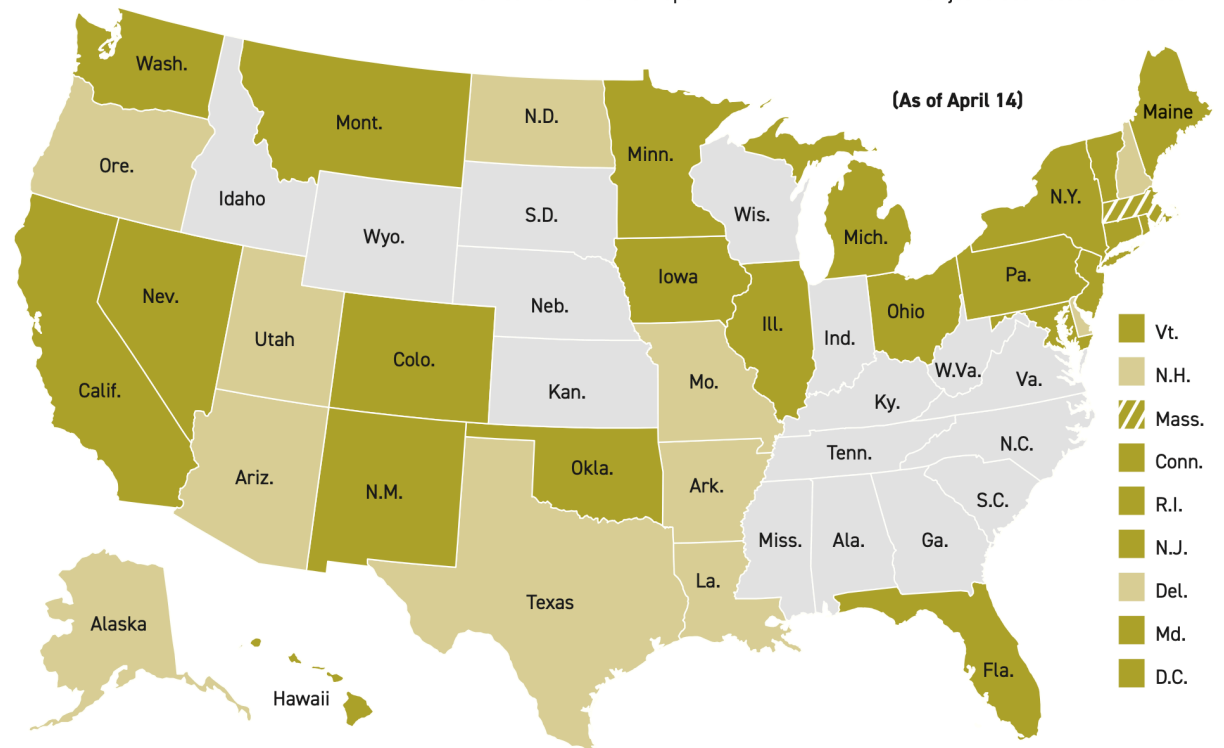
Hemp-based CBD with less than 0.3 percent THC was legalized by the 2018 farm bill, so hemp businesses are eligible for SBA funding if they are operating under a state hemp plan the USDA has approved, and only if they do not also grow, produce, or distribute marijuana. There are questions, however, if banks will be willing to give loans to hemp businesses, because of hemp's similarity to marijuana.



## State policies governing cannabis businesses during the Covid-19 outbreak

While the federal government does not give medical and recreational marijuana businesses access to Small Business Administration loans via the Coronavirus Aid, Relief, and Economic Security Act (CARES), some states deem them essential services.

- States that **have designated** marijuana businesses as essential services
- States that **have not designated** marijuana businesses as essential services but allowed them to remain open
- Medical marijuana businesses are **designated** as essential; recreational marijuana businesses are closed



Source: NORML

### **CANNABIS' FEDERAL STATUS: ALL OF THE RULES, NONE OF THE BENEFITS**

Cannabis businesses are not federally legal, meaning they cannot write off most of their businesses' expenses on federal taxes, cannot access most banking services and cannot be listed on U.S. stock exchanges. But at the same time, they must adhere to federal labor laws and pay payroll taxes and federal income taxes.

In September 2019, the Tenth Circuit Court of Appeals ruled in *Kenney v. Helix* that cannabis companies have to comply with the Fair Labor Standards Act even if they are in violation of the Controlled Substances Act. Marijuana companies also are expected to follow all state and federal social distancing and safety guidelines during the coronavirus shutdown.

The Brookings Institution's John Hudak says the manner in which the federal government wants to engage with the Controlled Substances Act can vary from program to program.



## WHAT'S NEXT

Lawmakers on both sides of the aisle wanted to pass the CARES Act without any big policy fights, and that meant the marijuana industry — which would have been controversial — was left out. Now, however, some lawmakers are pushing for its inclusion in a future coronavirus aid package. Rep. Earl Blumenauer (D-Ore.) and more than 30 other House members from both sides of the aisle signed a letter on April 16 asking House leaders to include language that would open the door for the marijuana industry to access SBA loans. Sens. Jacky Rosen (D-Nev.) and Ron Wyden (D-Ore.) sent a similar letter to Senate leaders on April 22, signed by eight other Democratic senators. The United Food and Commercial Workers International Union, the International Cannabis Bar Association and every major cannabis trade association have also called for the same thing.

Another solution lawmakers have discussed is slipping in language from the SAFE Banking Act — which would give the cannabis industry access to financial services — into the next coronavirus bill. The SAFE Banking Act passed the House in September, and Senate Banking Chairman Mike Crapo (R-Idaho) expressed a desire to mark it up before the pandemic blew up the congressional agenda. Access to banking would give cannabis businesses access to small business loans. Studies also have shown that coronavirus germs live up to three days on paper money, and passage of the SAFE Banking bill would mean an industry that transacts mostly in cash could move to digital transactions during the pandemic. The SAFE Act, however, would not address their exclusion from the CARES Act.

State governments are also discussing solutions, such as creating their own loan or grant programs, but states cannot provide the same amount of money that marijuana businesses may have been eligible for from the federal government. Some states, including California, have offered state-run small business loan programs, which cannabis businesses would theoretically be eligible for. However, the continued lack of access to banking for the industry still hinders access to capital during the shutdown, as many of these state loan programs partner with banks.

### POWER PLAYERS



#### **Sen. Jacky Rosen**

Marijuana businesses in Rosen's home state of Nevada have been hit hard by the shutdown, and as a member of the Senate Committee on Small Business, the Democrat has some power to enact change.



#### **Senate Majority Leader Mitch McConnell**

The senator has opposed the marijuana industry at every turn, and advocates and lobbyists believe it will be very hard to get him to look the other way on any cannabis-related add-ons to a coronavirus package.



#### **House Speaker Nancy Pelosi**

Pelosi supports the cannabis industry enough to get the cannabis banking bill a successful floor vote last fall. She has not yet publicly pushed for its inclusion in a coronavirus package.



#### **Jovita Carranza, administrator of the Small Business Administration**

Carranza is in charge of the SBA, putting her in a position to be able to change the agency's guidance regarding marijuana and indirect businesses.