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## DIVISION OF BANKING

1601 N. Harrison Avenue, Suite 1, Pierre, SD 57501  
605-773-3421

## MEMORANDUM

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NUMBER: 07-016

DATE: November 18, 2021

TO: SOUTH DAKOTA STATE CHARTERED BANKS

FROM: BRET AFDAHL, Director

RE: MEDICAL CANNABIS

During the 2020 general election, South Dakota voters passed Initiated Measure 26<sup>1</sup> to legalize Medical Cannabis in South Dakota. During the 2021 legislative session, House Bill 1203<sup>2</sup> was approved, which authorized banks to engage in business with industrial hemp or marijuana licensees and associated persons. House Bill 1203 was signed by Governor Noem on March 29, 2021, and codified at SDCL 51A-4-1.1<sup>3</sup> and states “A bank may, directly or through subsidiaries, carry on the business of banking, pursuant to 51A-4-1, with any person licensed in this state to engage in the business of industrial hemp or marijuana, or with any person engaging in legal business dealings with such licensee.”

The purpose of this Memorandum is to provide guidance to South Dakota state-chartered banks which plan to provide financial services to Marijuana-Related Businesses (MRB’s). This Memorandum does not cover Recreational Marijuana use in South Dakota.

Prior to offering financial services to MRB’s, your institution must have appropriate risk management practices in place, including:

- A strong understanding of applicable state and federal laws and regulations
- A risk assessment that considers potential impacts to all areas of your institution
- An effective audit program
- Policies and procedures to effectively guide staff
- A training program for staff and management
- Management Information Systems to monitor trends and activities, and
- A robust BSA/AML program that ensures:
  - Appropriate methods exist for identifying and monitoring MRB’s
  - Appropriate and timely monitoring for, and filing of, Suspicious Activity Reports and Currency Transaction Reports
  - Customers have obtained proper state and local licensure
  - Customers possess and maintain necessary records

Additional information on BSA/AML requirements can be found in Financial Crimes Enforcement Network (FinCEN) Guidance titled *BSA Expectations Regarding Marijuana-Related Businesses*<sup>4</sup> issued on February 14, 2014. The Conference of State Bank Supervisors (CSBS) has also produced the CSBS Cannabis Job Aid<sup>5</sup> which is a great resource on Cannabis laws, regulations, and guidance.

Even if your institution doesn't plan to offer financial services to Medical Cannabis growers or dispensaries, it is possible you will have other customers indirectly involved with Medical Cannabis, such as contractors, commercial landlords, and transportation companies. Your institution could be providing indirect services to a MRB in these situations, and you should have policies and procedures in place to guide staff and identify, monitor, and report on these customers, as appropriate.

While Medical Cannabis is now legal in South Dakota, Cannabis remains a Schedule 1 controlled substance and illegal under federal law. I encourage you to review this information with your Board of Directors and Senior Management Team to ensure your institution understands the unique risks involved with Medical Cannabis, and that you have appropriate risk management plans in place.

If your institution is considering providing financial services to MRB's, or if you have any questions, please do not hesitate to contact the Division of Banking at 605-773-3421.

<sup>1</sup> <https://sdsos.gov/elections-voting/upcoming-elections/general-information/2020-ballot-questions.aspx>

<sup>2</sup> <https://sdlegislature.gov/Session/Bill/22368>

<sup>3</sup> [https://sdlegislature.gov/Statutes/Codified\\_Laws/2079271](https://sdlegislature.gov/Statutes/Codified_Laws/2079271)

<sup>4</sup> <https://www.fincen.gov/sites/default/files/guidance/FIN-2014-G001.pdf>

<sup>5</sup> <https://www.csbs.org/job-aids>