

# Looking For a Cannabiz Safe Harbor

By: Casey Edmondson

September 11, 2017

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Cannabis businesspeople have hoped, worked, and lobbied for a “safe harbor” for their industry. These tireless efforts have produced results, but the “safe harbor” which currently exists is, to extend the metaphor, filled with shallow water, difficult to enter, and has plenty of reefs.

Federal law is the supreme law of the land, and where it conflicts with state law, federal law controls. But if Congress refuses to budget money to the executive branch so that it can enforce a law, that law exists in a twilight state—it is unenforceable as a practical matter, but still “supreme.” That is what Congress has done in budget amendments in recent years with laws such as the Controlled Substances Act that would intrude on states’ medical cannabis laws. A recent opinion of the Ninth Circuit Court of Appeals has held that while the Controlled Substances Act is still the law, in-state California operators are (for now) beyond prosecution. So exactly how safe is the harbor under the circumstances?

First, the shallows: the federal government, via the DEA, FBI, financial crimes enforcement, and prosecutors at the Department of Justice, still has funding to go after recreational and “adult use” cannabis users, distributors, processors, and cultivators. Next, getting in: only medical cannabis enjoys the limited protection, regardless of state law. Finally, the reefs: the limited protection depends on Congress continuing to pass budgets that do not fund enforcement, and depends on strict compliance with state and local laws.

Stick with the picture of your cannabis business as a ship. Is your ship more exposed when it is off by itself, or when it is in a convoy? Through the ages, staying in tight formation has provided maximum protection from attacks. Putting this into practice in the cannabis business means doing a few things.

One, cannabis business leaders need to maintain the solidarity and camaraderie that have defined the industry for decades. Keeping in touch with your peers—staying plugged in—is key. Two, in an emerging industry, the standards for compliance with local and state law are being created and tested every day. Reliance on experts, officials, and knowledgeable insiders is essential to avoid inadvertently falling out of compliance with state law.

Finally, it means keeping an eye to the sky and a finger to the wind to sense new risks. Recently, the Rules Committee of the House of Representatives advanced an appropriations bill that would not, for the first time in years, any longer include the crucial amendment that prevents federal enforcement against state-legal medical cannabis operators. The House bill still must be reconciled with a Senate appropriations bill that includes the provision, so there is reason to stay hopeful.

On top of everything, cannabis businesses need to deal expertly with everything other businesses handle, from operations, to marketing, to public relations, to unique and general tax issues alike. The increasing public emergence of the industry creates more points of contact with the general public and with government.

As ever, we are in fast-changing times, but there is a great opportunity to stay on top of the state of the industry. Friedemann Goldberg LLP, a business law firm with offices in Santa Rosa, San Francisco, and Sacramento, has organized an event involving “cannabiz” industry leaders in Santa Rosa on Saturday, September 23, 2017. The lineup features John Friedemann, an attorney with decades of banking, business, litigation and real estate law experience, Jim Wood, a California Assemblymember and one of the principal architects in writing California’s marijuana regulations, Hezekiah Allen, Executive Director of the California Growers Association, Tawnie Logan, Chair of the Board for the Sonoma County Growers Alliance, Jamie Garzot, a highly regarded cannabis consultant with Roots Consulting, Tim Ricard, Program Manager with the Sonoma County Economic Development Board, Craig Litwin, Founder of the 421 Group, Jeffrey Titus, an

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industry tax attorney, and Daniel Garcia, Jr., an insurance broker with Vantreo.

Attendees will hear a full day of insight and have several opportunities to talk to speakers and attendees in a free-form environment. The event is from 9:00 AM to 4:30 PM and will be held at the Friedman Center in Santa Rosa. To register for the event, visit [www.frigolaw.com](http://www.frigolaw.com) or call (707) 543-4944.

