

BLOG POST

## Marijuandering aimlessly

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There are certain unalienable truths in this world, like “what goes up must come down,” “what goes around comes around,” and “it’s five o’clock somewhere.” Then there are things that are slightly less certain but nonetheless substantially plausible, like how releasing [genetically-engineered mutant mosquitos](#) will surely wipe out Florida or how continuing to [develop artificial intelligence](#) will probably embolden Skynet to take over the Earth (or at least make even [more Terminator movies](#)).

And finally, there are those things that are so agonizingly stupid that they make you want to [scream like a goat](#), like [passing the ball](#) on second and goal from the two with the Super Bowl on the line when you have a running back nicknamed “Beast Mode,” or taking selfies with the pilot while [your plane is crashing](#).

Somewhere between “substantially plausible” and “agonizingly stupid” is the current state of the relationship between legalized marijuana and financial institutions.

Right now, 23 states have legalized at least some form of marijuana use, with the most decriminalized examples coming in Colorado and Washington state. The marijuana businesses are doing quite well – well enough to keep journalists in business coming up with catchy marijuana-related puns like “budtenders,” “cannabusinesses,” or “ganjapreneurs,” or even (painfully) actually *trying* marijuana while wearing [green corduroy jeans](#). (Unfortunately, the outfit could not be blamed on the drug consumption.)

Legalization is only at the state level, meaning that federal law still criminalizes the possession and distribution of marijuana. Not only that, federal criminal law also prohibits money laundering, which provides for criminal sanctions for anyone who conducts financial transactions with assets obtained from certain illegal activities – including the distribution of controlled substances like marijuana – with the intent to promote the “carrying on” of that activity. What does that mean? It means that banks stay away from marijuana businesses because the threat of federal criminal violations hang overhead.

So while it’s all well and groovy to sell marijuana when you are in Colorado, there’s a real problem with what to do with the profits. Since they can’t deposit checks, open bank accounts, or accept credit cards, [marijuana businesses are largely cash-based](#). That means that they take cash, store cash, and when its tax-time, they truck a bunch of [cash to the state to pay taxes](#). According to [the New York Times](#), the “unique burdens” of marijuana businesses include the following:

They pay employees with envelopes of cash. They haul Chipotle and Nordstrom bags containing thousands of dollars in \$10 and \$20 bills to supermarkets to buy money orders. When they are

able to open bank accounts — often under false pretenses — many have taken to storing money in Tupperware containers filled with air fresheners to mask the smell of marijuana.

Well, *that* sure seems like a healthy way to run a business.

When [members of Congress asked](#) the Department of Justice to provide clarification about the relationship between banks and marijuana businesses, the Department characteristically responded with a [memorandum outlining eight priority enforcement areas](#) that — oh, by the way! — did not “preclude[] investigation or prosecution, even in the absence of any one of the factors listed above, in particular circumstances where investigation and prosecution otherwise serves an [important federal interest](#).” That guidance is about as lukewarm as a [Pitbull endorsement](#) and can be summed up in five words: [operate at your own risk](#). [Nationwide Insurance](#) has a better chance of growing unicorns and sprouting rainbows than that memorandum has of convincing anyone to deposit cash generated from a marijuana business.

So that’s unfortunately it right now for marijuana businesses. As much as both the banking industry and the marijuana businesses share a joint interest to hash things out with the government — or at least to blunt the impact of the hazy legal uncertainty on the banks’ willingness to provide account-related services — the only entity that can truly prescribe a fix is Congress. (After all, how will we as a country exceed consumption of [100 acres of pizza a day](#) if we stunt the expansion of marijuana establishments?) While the grass is undoubtedly greener on the other side, proponents of marijuana businesses are not likely to weed out enough uncertainty about the issue to convince Congress to legislate right now.

And if the timing is not right ... then it must be bong.