

117TH CONGRESS  
1ST SESSION

# S. 862

To create a safe harbor for insurers engaging in the business of insurance in connection with a cannabis-related legitimate business, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

MARCH 18, 2021

Mr. MENENDEZ (for himself, Mr. PAUL, and Mr. MERKLEY) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

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## A BILL

To create a safe harbor for insurers engaging in the business of insurance in connection with a cannabis-related legitimate business, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Clarifying Law Around  
5 Insurance of Marijuana Act” or the “CLAIM Act”.

6 **SEC. 2. SAFE HARBOR FOR INSURERS AND THE BUSINESS**  
7 **OF INSURANCE.**

8 (a) DEFINITIONS.—In this Act:

1           (1) CANNABIS.—The term “cannabis” has the  
2 meaning given the term “marihuana” in section 102  
3 of the Controlled Substances Act (21 U.S.C. 802).

4           (2) CANNABIS PRODUCT.—The term “cannabis  
5 product” means any article that contains cannabis,  
6 including an article which is a concentrate, an edi-  
7 ble, a tincture, a cannabis-infused product, or a top-  
8 ical.

9           (3) CANNABIS-RELATED LEGITIMATE BUSI-  
10 NESS.—The term “cannabis-related legitimate busi-  
11 ness” means a manufacturer, producer, or any per-  
12 son or company that—

13           (A) engages in any activity described in  
14 subparagraph (B) pursuant to a law established  
15 by a State or a political subdivision of a State,  
16 as determined by the State or political subdivi-  
17 sion; and

18           (B) participates in any business or orga-  
19 nized activity that involves handling cannabis or  
20 cannabis products, including cultivating, pro-  
21 ducing, manufacturing, selling, transporting,  
22 displaying, dispensing, distributing, or pur-  
23 chasing cannabis or cannabis products.

24           (4) FEDERAL AGENCY.—The term “Federal  
25 agency”—

1 (A) has the meaning given the term “Exec-  
2 utive agency” in section 105 of title 5, United  
3 States Code; and

4 (B) includes a private attorney described  
5 in section 3002(1)(B) of title 28, United States  
6 Code.

7 (5) FINANCIAL SERVICE.—The term “financial  
8 service”—

9 (A) means a financial product or service,  
10 as defined in section 1002 of the Consumer Fi-  
11 nancial Protection Act of 2010 (12 U.S.C.  
12 5481); and

13 (B) includes—

14 (i) the business of insurance;

15 (ii) whether performed directly or in-  
16 directly, the authorizing, processing, clear-  
17 ing, settling, billing, transferring for de-  
18 posit, transmitting, delivering, instructing  
19 to be delivered, reconciling, collecting, or  
20 otherwise effectuating or facilitating of  
21 payments or funds, where such payments  
22 or funds are made or transferred by any  
23 means, including by the use of credit  
24 cards, debit cards, other payment cards, or  
25 other access devices, accounts, original or

1 substitute checks, or electronic funds  
2 transfers;

3 (iii) acting as a money transmitting  
4 business that directly or indirectly makes  
5 use of a depository institution in connec-  
6 tion with effectuating or facilitating a pay-  
7 ment for a cannabis-related legitimate  
8 business or service provider in compliance  
9 with section 5330 of title 31, United  
10 States Code, and any applicable State law;  
11 and

12 (iv) acting as an armored car service  
13 for processing and depositing with a depos-  
14 itory institution or a Federal Reserve bank  
15 with respect to any monetary instruments,  
16 as defined in section 1956(c) of title 18,  
17 United States Code.

18 (6) INDIAN COUNTRY.—The term “Indian coun-  
19 try” has the meaning given the term in section 1151  
20 of title 18, United States Code.

21 (7) INDIAN TRIBE.—The term “Indian Tribe”  
22 has the meaning given the term in section 102 of the  
23 Federally Recognized Indian Tribe List Act of 1994  
24 (25 U.S.C. 479a).

1           (8) INSURER.—The term “insurer” has the  
2 meaning given the term in section 313(r) of title 31,  
3 United States Code.

4           (9) MANUFACTURER.—The term “manufac-  
5 turer” means a person or company who manufac-  
6 tures, compounds, converts, processes, prepares, or  
7 packages cannabis or cannabis products.

8           (10) PRODUCER.—The term “producer” means  
9 a person who plants, cultivates, harvests, or in any  
10 way facilitates the natural growth of cannabis.

11           (11) STATE.—The term “State” means each of  
12 the several States, the District of Columbia, the  
13 Commonwealth of Puerto Rico, and any territory or  
14 possession of the United States.

15 (b) INSURERS.—A Federal agency may not—

16           (1) prohibit, penalize, or otherwise discourage  
17 an insurer from engaging in the business of insur-  
18 ance in connection with—

19                   (A) a cannabis-related legitimate business;

20                   or

21                   (B) a State, political subdivision of a  
22 State, or Indian Tribe that exercises jurisdic-  
23 tion over cannabis-related legitimate businesses;

24           (2) terminate, cancel, or otherwise limit the  
25 policies of an insurer solely because the insurer has

1 engaged in the business of insurance in connection  
2 with a cannabis-related legitimate business;

3 (3) recommend, incentivize, or encourage an in-  
4 surer not to engage in the business of insurance in  
5 connection with a policyholder, or downgrade or can-  
6 cel the insurance and insurance services offered to a  
7 policyholder solely because—

8 (A) the policyholder is—

9 (i) a manufacturer or producer; or

10 (ii) the owner, operator, or employee  
11 of a cannabis-related legitimate business;

12 (B) the policyholder later becomes an em-  
13 ployee, owner, or operator of a cannabis-related  
14 legitimate business; or

15 (C) the insurer was not aware that the pol-  
16 icyholder is an employee, owner, or operator of  
17 a cannabis-related legitimate business; or

18 (4) take any adverse or corrective supervisory  
19 action on a policy to—

20 (A) a cannabis-related legitimate business,  
21 solely because the owner or operator owns or  
22 operates a cannabis-related legitimate business;

23 (B) an employee, owner, or operator of a  
24 cannabis-related legitimate business or service  
25 provider, solely because the employee, owner, or

1 operator is employed by, owns, or operates a  
2 cannabis-related legitimate business, as applica-  
3 ble; or

4 (C) an owner or operator of real estate or  
5 equipment that is leased to a cannabis-related  
6 legitimate business, solely because the owner or  
7 operator of the real estate or equipment leased  
8 the equipment or real estate to a cannabis-re-  
9 lated legitimate business, as applicable.

10 (c) PROTECTIONS UNDER FEDERAL LAW.—With re-  
11 spect to engaging in the business of insurance within a  
12 State, political subdivision of a State, or Indian country  
13 that allows the cultivation, production, manufacture, sale,  
14 transportation, display, dispensing, distribution, or pur-  
15 chase of cannabis pursuant to a law or regulation of such  
16 State, political subdivision, or Indian Tribe that has juris-  
17 diction over the Indian country, as applicable, an insurer  
18 that engages in the business of insurance with a cannabis-  
19 related legitimate business or service provider or who oth-  
20 erwise engages with a person in a transaction permissible  
21 under State law related to cannabis, and the officers, di-  
22 rectors, and employees of that insurer may not be held  
23 liable pursuant to any Federal law or regulation—

24 (1) solely for engaging in the business of insur-  
25 ance; or

1           (2) for further investing any income derived  
2           from such business of insurance.

3           (d) **RULE OF CONSTRUCTION.**—Nothing in this Act  
4 shall—

5           (1) require an insurer to engage in the business  
6           of insurance in connection with a cannabis-related  
7           legitimate business; or

8           (2) interfere with the regulation of the business  
9           of insurance in accordance with the Act of March 9,  
10          1945 (59 Stat. 33, chapter 20; 15 U.S.C. 1011 et  
11          seq.) (commonly known as the “McCarran-Ferguson  
12          Act”), and the Dodd-Frank Wall Street Reform and  
13          Consumer Protection Act (12 U.S.C. 5301 et seq.).

14 **SEC. 3. GAO STUDY ON DIVERSITY AND INCLUSION.**

15          (a) **STUDY.**—The Comptroller General of the United  
16 States shall carry out a study on the barriers to market-  
17 place entry, including in the licensing process, and the ac-  
18 cess to financial services for potential and existing minor-  
19 ity-owned and women-owned cannabis-related legitimate  
20 businesses.

21          (b) **REPORT.**—The Comptroller General shall submit  
22 to Congress a report—

23           (1) containing all findings and determinations  
24           made in carrying out the study required under sub-  
25           section (a); and



1           (2) containing any regulatory or legislative rec-  
2           ommendations for removing barriers to marketplace  
3           entry, including in the licensing process, and ex-  
4           panding access to financial services for potential and  
5           existing minority-owned and women-owned cannabis-  
6           related legitimate businesses.

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