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S. 1323

To create protections for financial institutions that provide financial services to State-sanctioned marijuana businesses and service providers for such businesses, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 26, 2023

Mr. MERKLEY (for himself, Mr. DAINES, Ms. ROSEN, Mr. CASSIDY, Mrs. GILLIBRAND, Ms. LUMMIS, Mr. SCHATZ, Ms. MURKOWSKI, Mr. MARKEY, Mr. CRAMER, Mr. LUJÁN, Mr. SULLIVAN, Ms. CORTEZ MASTO, Mr. PAUL, Mr. KING, Ms. DUCKWORTH, Mr. FETTERMAN, Mr. WYDEN, Ms. SINEMA, Mr. PADILLA, Mr. DURBIN, Mr. WELCH, Mr. KELLY, Mr. BENNET, Mrs. MURRAY, Ms. SMITH, Ms. KLOBUCHAR, Ms. WARREN, Mr. KAINE, Ms. STABENOW, Mr. SANDERS, Mr. MENENDEZ, Mr. COONS, Mr. TESTER, Mr. WARNER, Mr. HEINRICH, Mr. HICKENLOOPER, Ms. HIRONO, Mr. PETERS, and Mr. MURPHY) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To create protections for financial institutions that provide financial services to State-sanctioned marijuana businesses and service providers for such businesses, 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,*

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) **SHORT TITLE.**—This Act may be cited as the
 3 “Secure And Fair Enforcement Banking Act of 2023” or
 4 the “SAFE Banking Act of 2023”.

5 (b) **TABLE OF CONTENTS.**—The table of contents for
 6 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Definitions.
- Sec. 3. Safe harbor for depository institutions.
- Sec. 4. Protections for providing services to State-sanctioned marijuana businesses.
- Sec. 5. Protections under Federal law.
- Sec. 6. Requirements for filing suspicious activity reports.
- Sec. 7. Guidance and examination procedures.
- Sec. 8. Banking services for hemp-related legitimate businesses and hemp-related service providers.
- Sec. 9. Treatment of income derived from a State-sanctioned marijuana business for qualification for a federally backed single-family mortgage loan.
- Sec. 10. Requirements for deposit account termination requests and orders.
- Sec. 11. Annual diversity and inclusion report.
- Sec. 12. GAO study on diversity and inclusion.
- Sec. 13. GAO study on effectiveness of certain reports on finding certain persons.
- Sec. 14. Applicability to hemp-related legitimate businesses and hemp-related service providers.
- Sec. 15. Rules of construction.

7 **SEC. 2. DEFINITIONS.**

8 In this Act:

9 (1) **BUSINESS OF INSURANCE.**—The term
 10 “business of insurance” has the meaning given the
 11 term in section 1002 of the Consumer Financial
 12 Protection Act of 2010 (12 U.S.C. 5481).

13 (2) **CBD.**—The term “CBD” means
 14 cannabidiol.

15 (3) **COMMUNITY DEVELOPMENT FINANCIAL IN-**
 16 **STITUTION.**—The term “community development fi-

1 nancial institution” has the meaning given the term
2 in section 103 of the Community Development
3 Banking and Financial Institutions Act of 1994 (12
4 U.S.C. 4702).

5 (4) DEPOSITORY INSTITUTION.—The term “de-
6 pository institution”—

7 (A) means—

8 (i) a depository institution, as defined
9 in section 3(c) of the Federal Deposit In-
10 surance Act (12 U.S.C. 1813(c));

11 (ii) a Federal credit union, as defined
12 in section 101 of the Federal Credit Union
13 Act (12 U.S.C. 1752); and

14 (iii) a State credit union, as defined in
15 section 101 of the Federal Credit Union
16 Act (12 U.S.C. 1752); and

17 (B) includes any minority depository insti-
18 tution, as defined in section 308 of the Finan-
19 cial Institutions Reform, Recovery, and En-
20 forcement Act of 1989 (12 U.S.C. 1463 note).

21 (5) FEDERAL BANKING REGULATOR.—The
22 term “Federal banking regulator” means each of the
23 Board of Governors of the Federal Reserve System,
24 the Bureau of Consumer Financial Protection, the
25 Federal Deposit Insurance Corporation, the Federal

1 Housing Finance Agency, the Office of the Comp-
2 troller of the Currency, the National Credit Union
3 Administration, the Department of the Treasury (in-
4 cluding the Financial Crimes Enforcement Network
5 and the Office of Foreign Assets Control), or any
6 Federal agency or department that regulates bank-
7 ing or financial services, as determined by the Sec-
8 retary of the Treasury.

9 (6) FINANCIAL PRODUCT OR SERVICE.—The
10 term “financial product or service” has the meaning
11 given the term in section 1002 of the Consumer Fi-
12 nancial Protection Act of 2010 (12 U.S.C. 5481).

13 (7) FINANCIAL SERVICE.—The term “financial
14 service”—

15 (A) means—

16 (i) a financial product or service, re-
17 gardless of whether the customer receiving
18 the product or service is a consumer or
19 commercial entity; or

20 (ii) a financial product or service, or
21 any combination of products and services,
22 permitted to be provided by—

23 (I) a national bank or a financial
24 subsidiary pursuant to the authority
25 provided under—

1 (aa) the paragraph des-
2 igned as the “Seventh” of sec-
3 tion 5136 of the Revised Statutes
4 (12 U.S.C. 24); or

5 (bb) section 5136A of the
6 Revised Statutes (12 U.S.C.
7 24a);

8 (II) a Federal credit union, pur-
9 suant to the authority provided under
10 the Federal Credit Union Act (12
11 U.S.C. 1751 et seq.); or

12 (III) a community development
13 financial institution; and

14 (B) includes—

15 (i) the business of insurance;

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

1 original or substitute checks, or electronic
2 funds 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 State-sanctioned marijuana
8 business or service provider in compliance
9 with section 5330 of title 31, United
10 States Code, and any applicable State or
11 Tribal law; 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)(5) of title 18,
17 United States Code.

18 (8) HEMP.—The term “hemp” has the meaning
19 given the term in section 297A of the Agricultural
20 Marketing Act of 1946 (7 U.S.C. 1639o).

21 (9) HEMP-RELATED LEGITIMATE BUSINESS.—
22 The term “hemp-related legitimate business” means
23 a manufacturer, producer, or any person or company
24 that—

1 (A) engages in any activity described in
 2 subparagraph (B) in conformity with the Agri-
 3 culture Improvement Act of 2018 (Public Law
 4 115–334; 132 Stat. 4490), amendments made
 5 by that Act, and the regulations issued to im-
 6 plement that Act by the Department of Agri-
 7 culture, where applicable, and the law of a
 8 State, an Indian Tribe, or a political subdivision
 9 of a State; and

10 (B) participates in any business or orga-
 11 nized activity that involves handling hemp,
 12 hemp-derived CBD products, and other hemp-
 13 derived cannabinoid products, including culti-
 14 vating, producing, extracting, manufacturing,
 15 selling, transporting, displaying, dispensing, dis-
 16 tributing, or purchasing hemp, hemp-derived
 17 CBD products, and other hemp-derived
 18 cannabinoid products.

19 (10) HEMP-RELATED SERVICE PROVIDER.—The
 20 term “hemp-related service provider”—

21 (A) means a business, organization, or
 22 other person that—

23 (i) sells goods or services to a hemp-
 24 related legitimate business; or

1 (ii) provides any business services, in-
2 cluding the sale or lease of real or any
3 other property, legal or other licensed serv-
4 ices, or any other ancillary service, relating
5 to hemp, hemp-derived CBD products, or
6 other hemp-derived cannabinoid products;
7 and

8 (B) does not include a business, organiza-
9 tion, or other person that participates in any
10 business or organized activity that involves han-
11 dling hemp, hemp-derived CBD products, or
12 other hemp-derived cannabinoid products, in-
13 cluding cultivating, producing, manufacturing,
14 selling, transporting, displaying, dispensing, dis-
15 tributing, or purchasing hemp, hemp-derived
16 CBD products, and other hemp-derived
17 cannabinoid products.

18 (11) INDIAN TRIBE.—The term “Indian Tribe”
19 has the meaning given the term “Indian tribe” in
20 section 102 of the Federally Recognized Indian
21 Tribe List Act of 1994 (25 U.S.C. 5130).

22 (12) INSURER.—The term “insurer” has the
23 meaning given the term in section 313(r) of title 31,
24 United States Code.

1 (13) MANUFACTURER.—The term “manufac-
2 turer” means a person who manufactures, com-
3 pounds, converts, processes, prepares, or packages
4 marijuana or marijuana products.

5 (14) MARIJUANA.—The term “marijuana” has
6 the meaning given the term “marihuana” in section
7 102 of the Controlled Substances Act (21 U.S.C.
8 802).

9 (15) MARIJUANA PRODUCT.—The term “mari-
10 juana product” means any article that contains
11 marijuana, including an article that is a concentrate,
12 an edible, a tincture, a marijuana-infused product,
13 or a topical.

14 (16) PRODUCER.—The term “producer” means
15 a person who plants, cultivates, harvests, or in any
16 way facilitates the natural growth of marijuana.

17 (17) SERVICE PROVIDER.—The term “service
18 provider”—

19 (A) means a business, organization, or
20 other person that—

21 (i) sells goods or services to a State-
22 sanctioned marijuana business; or

23 (ii) provides any business services, in-
24 cluding the sale or lease of real or any
25 other property, legal or other licensed serv-

1 ices, or any other ancillary service, relating
2 to a State-sanctioned marijuana business;
3 and

4 (B) does not include a business, organiza-
5 tion, or other person that participates in any
6 business or organized activity that involves han-
7 dling marijuana or marijuana products, includ-
8 ing cultivating, producing, manufacturing, sell-
9 ing, transporting, displaying, dispensing, dis-
10 tributing, or purchasing marijuana or mari-
11 juana products.

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

16 (19) STATE-SANCTIONED MARIJUANA BUSI-
17 NESS.—The term “State-sanctioned marijuana busi-
18 ness” means a manufacturer, producer, or any per-
19 son that—

20 (A) engages in any activity described in
21 subparagraph (B) pursuant to a law established
22 by a State, an Indian Tribe, or a political sub-
23 division of a State, as determined by such
24 State, Indian Tribe, or political subdivision; and

1 (B) participates in any business or orga-
2 nized activity that involves handling marijuana
3 or marijuana products, including cultivating,
4 producing, manufacturing, selling, transporting,
5 displaying, dispensing, distributing, or pur-
6 chasing marijuana or marijuana products.

7 **SEC. 3. SAFE HARBOR FOR DEPOSITORY INSTITUTIONS.**

8 (a) PROHIBITION.—A Federal banking regulator may
9 not—

10 (1) terminate or limit the deposit insurance or
11 share insurance of a depository institution under the
12 Federal Deposit Insurance Act (12 U.S.C. 1811 et
13 seq.) or the Federal Credit Union Act (12 U.S.C.
14 1751 et seq.) or take any other adverse action
15 against a depository institution under the Federal
16 Deposit Insurance Act (12 U.S.C. 1811 et seq.) or
17 the Federal Credit Union Act (12 U.S.C. 1751 et
18 seq.) solely because the depository institution pro-
19 vides or has provided financial services to a State-
20 sanctioned marijuana business or service provider;

21 (2) prohibit, penalize, or otherwise discourage a
22 depository institution from providing financial serv-
23 ices to—

24 (A) a State-sanctioned marijuana business
25 or service provider solely because the business

1 or service provider is a State-sanctioned mari-
2 juana business or service provider; or

3 (B) a State, an Indian Tribe, or a political
4 subdivision of a State solely because that entity
5 exercises jurisdiction over State-sanctioned
6 marijuana businesses;

7 (3) recommend, incentivize, or encourage a de-
8 pository institution not to offer financial services to
9 an account holder, or to downgrade or cancel the fi-
10 nancial services offered to an account holder, solely
11 because—

12 (A) the account holder is a State-sanc-
13 tioned marijuana business or service provider,
14 or is an employee, owner, or operator of a
15 State-sanctioned marijuana business or service
16 provider;

17 (B) the account holder later becomes an
18 employee, owner, or operator of a State-sanc-
19 tioned marijuana business or service provider;
20 or

21 (C) the depository institution was not
22 aware, after conducting sufficient risk-based
23 customer due diligence in accordance with ap-
24 plicable requirements, that the account holder is
25 an employee, owner, or operator of a State-

1 sanctioned marijuana business or service pro-
2 vider;

3 (4) take any adverse or corrective supervisory
4 action on a loan made to—

5 (A) a State-sanctioned marijuana business
6 or service provider, solely because the business
7 is a State-sanctioned marijuana business or
8 service provider;

9 (B) an employee, owner, or operator of a
10 State-sanctioned marijuana business or service
11 provider, solely because the employee, owner, or
12 operator is employed by, owns, or operates a
13 State-sanctioned marijuana business or service
14 provider, as applicable; or

15 (C) an owner or operator of real estate or
16 equipment that is leased to a State-sanctioned
17 marijuana business or service provider, solely
18 because the owner or operator of the real estate
19 or equipment leased the equipment or real es-
20 tate to a State-sanctioned marijuana business
21 or service provider, as applicable; or

22 (5) prohibit or penalize a depository institution
23 (or entity performing a financial service for or in as-
24 sociation with a depository institution) for, or other-
25 wise discourage a depository institution (or entity

1 performing a financial service for or in association
 2 with a depository institution) from, engaging in a fi-
 3 nancial service for a State-sanctioned marijuana
 4 business or service provider solely because the busi-
 5 ness or service provider is a State-sanctioned mari-
 6 juana business or service provider.

7 (b) SAFE HARBOR APPLICABLE TO DE NOVO INSTI-
 8 TUTIONS.—Subsection (a) shall apply to an institution ap-
 9 plying for a depository institution charter to the same ex-
 10 tent as such subsection applies to a depository institution.

11 **SEC. 4. PROTECTIONS FOR PROVIDING SERVICES TO**
 12 **STATE-SANCTIONED MARIJUANA BUSI-**
 13 **NESSES.**

14 For the purposes of sections 1956 and 1957 of title
 15 18, United States Code, and all other provisions of Fed-
 16 eral law, the proceeds from marijuana-related activities of
 17 a State-sanctioned marijuana business or service provider
 18 that conducts all of its marijuana-related activity in com-
 19 pliance with the marijuana-related law of the State, Indian
 20 Tribe, or political subdivision of the State shall not be con-
 21 sidered proceeds from an unlawful activity solely be-
 22 cause—

23 (1) the transaction involves proceeds from a
 24 State-sanctioned marijuana business or service pro-
 25 vider; or

1 (2) the transaction involves proceeds from—

2 (A) marijuana-related activities described
3 in section 2(19)(B) conducted by a State-san-
4 tioned marijuana business; or

5 (B) activities described in section 2(17)(A)
6 conducted by a service provider.

7 **SEC. 5. PROTECTIONS UNDER FEDERAL LAW.**

8 (a) IN GENERAL.—With respect to providing a finan-
9 cial service to a State-sanctioned marijuana business
10 (where such State-sanctioned marijuana business operates
11 within a State, an Indian Tribe, or a political subdivision
12 of a State that allows the cultivation, production, manu-
13 facture, sale, transportation, display, dispensing, distribu-
14 tion, or purchase of marijuana pursuant to a law or regu-
15 lation of such State, Indian Tribe, or political subdivision,
16 as applicable) or a service provider (wherever located), a
17 depository institution, an entity performing a financial
18 service for or in association with a depository institution,
19 a community development financial institution, or an in-
20 surer that provides a financial service to a State-san-
21 tioned marijuana business or service provider, and the of-
22 ficers, directors, employees, and agents of that depository
23 institution, entity, community development financial insti-
24 tution, or insurer may not be held liable pursuant to any
25 Federal law or regulation—

1 (1) solely for providing such a financial service;

2 or

3 (2) for further investing any income derived

4 from such a financial service.

5 (b) PROTECTIONS FOR FEDERAL RESERVE BANKS
6 AND FEDERAL HOME LOAN BANKS.—With respect to
7 providing a service to a depository institution that pro-
8 vides a financial service to a State-sanctioned marijuana
9 business (where such State-sanctioned marijuana business
10 operates within a State, an Indian Tribe, or a political
11 subdivision of a State that allows the cultivation, produc-
12 tion, manufacture, sale, transportation, display, dis-
13 pensing, distribution, or purchase of marijuana pursuant
14 to a law or regulation of such State, Indian Tribe, or polit-
15 ical subdivision, as applicable) or service provider (wher-
16 ever located), a Federal reserve bank or Federal Home
17 Loan Bank, and the officers, directors, and employees of
18 the Federal reserve bank or Federal Home Loan Bank,
19 may not be held liable pursuant to any Federal law or
20 regulation—

21 (1) solely for providing such a service; or

22 (2) for further investing any income derived

23 from such a service.

24 (c) PROTECTIONS FOR INSURERS.—With respect to
25 engaging in the business of insurance within a State, an

1 Indian Tribe, or a political subdivision of a State that al-
 2 lows the cultivation, production, manufacture, sale, trans-
 3 portation, display, dispensing, distribution, or purchase of
 4 marijuana pursuant to a law or regulation of such State,
 5 Indian Tribe, or political subdivision, as applicable, an in-
 6 surer that engages in the business of insurance with a
 7 State-sanctioned marijuana business or service provider or
 8 that otherwise engages with a person in a transaction per-
 9 missible pursuant to a law (including regulations) of such
 10 State, Indian Tribe, or political subdivision related to
 11 marijuana, and the officers, directors, and employees of
 12 that insurer, may not be held liable pursuant to any Fed-
 13 eral law or regulation—

14 (1) solely for engaging in the business of insur-
 15 ance; or

16 (2) for further investing any income derived
 17 from the business of insurance.

18 (d) FORFEITURE.—

19 (1) DEPOSITORY INSTITUTIONS AND COMMU-
 20 NITY DEVELOPMENT FINANCIAL INSTITUTIONS.—A
 21 depository institution or community development fi-
 22 nancial institution that has a legal interest in the
 23 collateral for a loan or another financial service pro-
 24 vided to an owner, employee, or operator of a State-
 25 sanctioned marijuana business or service provider, or

1 to an owner or operator of real estate or equipment
2 that is leased or sold to a State-sanctioned mari-
3 juana business or service provider, shall not be sub-
4 ject to criminal, civil, or administrative forfeiture of
5 that legal interest pursuant to any Federal law sole-
6 ly for providing such loan or other financial service.

7 (2) FEDERAL RESERVE BANKS AND FEDERAL
8 HOME LOAN BANKS.—A Federal reserve bank or
9 Federal Home Loan Bank that has a legal interest
10 in the collateral for a loan or another financial serv-
11 ice provided to a depository institution that provides
12 a financial service to a State-sanctioned marijuana
13 business or service provider, or to an owner or oper-
14 ator of real estate or equipment that is leased or
15 sold to a State-sanctioned marijuana business or
16 service provider, shall not be subject to criminal,
17 civil, or administrative forfeiture of that legal inter-
18 est pursuant to any Federal law for providing such
19 loan or other financial service.

20 (3) FEDERAL NATIONAL MORTGAGE ASSOCIA-
21 TION, FEDERAL HOME LOAN MORTGAGE CORPORA-
22 TION, AND FEDERAL AGENCIES MAKING, INSURING,
23 OR GUARANTEEING MORTGAGE LOANS OR SECURI-
24 TIES.—The Federal National Mortgage Association,
25 the Federal Home Loan Mortgage Corporation, and

1 any Federal agency that has a legal interest in the
2 collateral for a residential mortgage loan, including
3 individual units of condominiums and cooperatives,
4 provided that the collateral is a property designed
5 principally for the occupancy of 1 to 4 families and
6 underwritten, in whole or in part, based on income
7 from a State-sanctioned marijuana business or serv-
8 ice provider, shall not be subject to criminal, civil, or
9 administrative forfeiture of that legal interest pursu-
10 ant to any Federal law for providing, insuring, guar-
11 anteeing, purchasing, securitizing, or guaranteeing
12 payments from a security based on such loan.

13 (4) OTHER PARTIES TO MORTGAGE LOANS.—A
14 nondepository lender that makes a federally backed
15 mortgage loan, as defined in section 9(a), and any
16 person who otherwise has a legal interest in such a
17 loan or in the collateral of the loan, including indi-
18 vidual units of condominiums and cooperatives, pro-
19 vided that the collateral is a property designed prin-
20 cipally for the occupancy of 1 to 4 families and un-
21 derwritten, in whole or in part, based on income
22 from a State-sanctioned marijuana business or serv-
23 ice provider, shall not be subject to criminal, civil, or
24 administrative forfeiture of that legal interest pursu-
25 ant to any Federal law for providing, purchasing,

1 securitizing, accepting, and making payments related
2 to such federally backed mortgage loan solely be-
3 cause loan payments or underwriting are based on
4 income that is in whole or in part from a State-san-
5 tioned marijuana business or service provider.

6 (5) DEFINITION.—In this subsection, the term
7 “collateral” does not include marijuana or a mari-
8 juana product.

9 **SEC. 6. REQUIREMENTS FOR FILING SUSPICIOUS ACTIVITY**
10 **REPORTS.**

11 Section 5318(g) of title 31, United States Code, is
12 amended—

13 (1) by redesignating paragraph (11) as para-
14 graph (12); and

15 (2) by inserting after paragraph (10) the fol-
16 lowing

17 “(11) REQUIREMENTS FOR STATE-SANCTIONED
18 MARIJUANA BUSINESSES.—

19 “(A) IN GENERAL.—With respect to a fi-
20 nancial institution, or any director, officer, em-
21 ployee, or agent of a financial institution, that
22 reports a suspicious transaction pursuant to
23 this subsection, if the reason for the report re-
24 lates to a State-sanctioned marijuana business
25 or service provider, the report shall comply with

1 appropriate guidance issued by the Secretary of
2 the Treasury. Not later than the end of the
3 180-day period beginning on the date of enact-
4 ment of the Secure And Fair Enforcement
5 Banking Act of 2023, the Secretary shall
6 amend the February 14, 2014, guidance titled
7 ‘BSA Expectations Regarding Marijuana-Re-
8 lated Businesses’ (FIN–2014–G001) or issue
9 new guidance to ensure consistency with the
10 purpose and intent of the Secure And Fair En-
11 forcement Banking Act of 2023, and the
12 amendments made by that Act, and that such
13 guidance ensures that a financial institution,
14 and any director, officer, employee, or agent of
15 a financial institution, continues to report sus-
16 picious transactions pursuant to this subsection,
17 as applicable, relating to State-sanctioned mari-
18 juana businesses and service providers to pre-
19 serve the ability of the Financial Crimes En-
20 forcement Network to prevent and combat illicit
21 activity.

22 “(B) DEFINITIONS.—In this paragraph:

23 “(i) FINANCIAL SERVICE; SERVICE
24 PROVIDER; STATE; STATE-SANCTIONED
25 MARIJUANA BUSINESS.—The terms ‘finan-

1 cial service’, ‘service provider’, ‘State’, and
2 ‘State-sanctioned marijuana business’ have
3 the meanings given the terms in section 2
4 of the SAFE Banking Act of 2023.

5 “(ii) INDIAN COUNTRY.—The term
6 ‘Indian country’ has the meaning given the
7 term in section 1151 of title 18.

8 “(iii) INDIAN TRIBE.—The term ‘In-
9 dian Tribe’ has the meaning given the
10 term ‘Indian tribe’ in section 102 of the
11 Federally Recognized Indian Tribe List
12 Act of 1994 (25 U.S.C. 5130).

13 “(iv) MARIJUANA.—The term ‘mari-
14 juana’ has the meaning given the term
15 ‘marihuana’ in section 102 of the Con-
16 trolled Substances Act (21 U.S.C. 802).”.

17 **SEC. 7. GUIDANCE AND EXAMINATION PROCEDURES.**

18 (a) UNIFORM GUIDANCE AND EXAMINATION PROCE-
19 DURES.—Not later than 180 days after the date of enact-
20 ment of this Act, the Federal Financial Institutions Ex-
21 amination Council, in consultation with the Department
22 of the Treasury, shall develop uniform guidance and exam-
23 ination procedures for depository institutions that provide
24 financial services to State-sanctioned marijuana busi-
25 nesses and service providers.

1 (b) LEGACY DEPOSITS.—The guidance and examina-
2 tion procedures described in subsection (a) shall permit
3 a depository institution to accept a deposit of currency
4 from a State-sanctioned marijuana business if—

5 (1) the business received the currency during
6 the 90-day period ending on the date on which the
7 business commenced its relationship with the depository
8 institution;

9 (2) the business provided the depository institu-
10 tion with records sufficient to demonstrate the
11 source of the currency being deposited by the busi-
12 ness;

13 (3) the amount of the currency is reasonable in
14 light of the expected revenue of the business, as de-
15 termined by the depository institution consistent
16 with the risk-based procedures for ensuring compli-
17 ance with the section 5318(h) of title 31, United
18 States Code, and any applicable regulations imple-
19 menting that section; and

20 (4) the depository institution complies with any
21 other applicable reporting requirements pursuant to
22 subchapter II of chapter 53 of title 31, United
23 States Code, and any applicable regulations imple-
24 menting that subchapter.

1 **SEC. 8. BANKING SERVICES FOR HEMP-RELATED LEGITI-**
2 **MATE BUSINESSES AND HEMP-RELATED**
3 **SERVICE PROVIDERS.**

4 (a) FINDINGS.—Congress finds that—

5 (1) section 12619 of the Agriculture Improve-
6 ment Act of 2018 (Public Law 115–334; 132 Stat.
7 5018) legalized hemp by removing it from the defini-
8 tion of marihuana under section 102 of the Con-
9 trolled Substances Act (21 U.S.C. 802);

10 (2) despite the legalization of hemp, some hemp
11 businesses (including producers, manufacturers, and
12 retailers) continue to have difficulty gaining access
13 to banking products and services; and

14 (3) businesses involved in the sale of hemp-de-
15 rived CBD products are particularly affected, due to
16 confusion about the legal status of such products.

17 (b) DEFINITION.—In this section, the term “financial
18 institution”—

19 (1) has the meaning given the term in section
20 5312(a) of title 31, United States Code; and

21 (2) includes a bank holding company, as de-
22 fined in section 2(a) of the Bank Holding Company
23 Act of 1956 (12 U.S.C. 1841(a)).

24 (c) FEDERAL BANKING REGULATORS’ HEMP BANK-
25 ING GUIDANCE.—Not later than the end of the 90-day pe-
26 riod beginning on the date of enactment of this Act, each

1 Federal banking regulator shall update guidance, as in ef-
 2 fect on the date of enactment of this Act, regarding pro-
 3 viding financial services to hemp-related legitimate busi-
 4 nesses and hemp-related service providers to address—

5 (1) compliance with obligations of financial in-
 6 stitutions, as of the date of enactment of this Act,
 7 under Federal laws (including regulations) deter-
 8 mined relevant by the Federal banking regulator and
 9 the Department of the Treasury, including sub-
 10 chapter II of chapter 53 of title 31, United States
 11 Code, and its implementing regulation in conformity
 12 with this Act and the regulations relating to domes-
 13 tic hemp production under part 990 of title 7, Code
 14 of Federal Regulations; and

15 (2) best practices for financial institutions to
 16 follow when providing financial services, including
 17 processing payments, to hemp-related legitimate
 18 businesses and hemp-related service providers.

19 **SEC. 9. TREATMENT OF INCOME DERIVED FROM A STATE-**
 20 **SANCTIONED MARIJUANA BUSINESS FOR**
 21 **QUALIFICATION FOR A FEDERALLY BACKED**
 22 **SINGLE-FAMILY MORTGAGE LOAN.**

23 (a) DEFINITION.—In this section, the term “federally
 24 backed mortgage loan” means any loan secured by a first
 25 or subordinate lien on residential real property, including

1 individual units of condominiums and cooperatives, de-
2 signed principally for the occupancy of 1 to 4 families that
3 is—

4 (1) insured by the Federal Housing Administra-
5 tion under title I or title II of the National Housing
6 Act (12 U.S.C. 1702 et seq., 1707 et seq.);

7 (2) insured under section 255 of the National
8 Housing Act (12 U.S.C. 1715z–20);

9 (3) guaranteed under section 184 or 184A of
10 the Housing and Community Development Act of
11 1992 (12 U.S.C. 1715z–13a, 1715z–13b);

12 (4) guaranteed, insured, or made by the De-
13 partment of Veterans Affairs;

14 (5) guaranteed, insured, or made by the De-
15 partment of Agriculture; or

16 (6) purchased or securitized by the Federal
17 Home Loan Mortgage Corporation or the Federal
18 National Mortgage Association.

19 (b) TREATMENT OF INCOME.—

20 (1) IN GENERAL.—Income derived from a
21 State-sanctioned marijuana business that operates
22 within a State, an Indian Tribe, or a political sub-
23 division of a State that allows the cultivation, pro-
24 duction, manufacture, sale, transportation, display,
25 dispensing, distribution, or purchase of marijuana

1 pursuant to a law or regulation of the State, Indian
2 Tribe, or political subdivision, as applicable, or a
3 service provider (wherever located), shall be consid-
4 ered in the same manner as any other legal income
5 for purposes of determining eligibility for a federally
6 backed mortgage loan for a 1- to 4-unit property
7 that is the principal residence of the mortgagor.

8 (2) LIABILITY.—The mortgagee or servicer of a
9 federally backed mortgage loan described in para-
10 graph (1), or any Federal agency, the Federal Na-
11 tional Mortgage Association, or the Federal Home
12 Loan Mortgage Corporation, may not be held liable
13 pursuant to any Federal law or regulation solely
14 for—

15 (A) providing, insuring, guaranteeing, pur-
16 chasing, or securitizing a mortgage to an other-
17 wise qualified borrower on the basis of the in-
18 come described in paragraph (1); or

19 (B) accepting the income described in
20 paragraph (1) as payment on the federally
21 backed mortgage loan.

22 (c) IMPLEMENTATION.—Not later than 180 days
23 after the date of enactment of this Act—

24 (1) the Federal Housing Administration shall
25 implement subsection (b)—

1 (A) by notice or mortgagee letter for loans
2 insured under title I, title II, or section 255 of
3 the National Housing Act (12 U.S.C. 1702 et
4 seq., 1707 et seq., 1715z–20); and

5 (B) by lender letter for loans guaranteed
6 under section 184 or 184A of the Housing and
7 Community Development Act of 1992 (12
8 U.S.C. 1715z–13a, 1715z–13b);

9 (2) the Department of Veterans Affairs shall
10 implement subsection (b) by circular or handbook
11 for loans guaranteed, insured, or made by the De-
12 partment;

13 (3) the Department of Agriculture shall imple-
14 ment subsection (b) by bulletin for loans guaranteed
15 or made by the Department;

16 (4) the Federal Home Loan Mortgage Corpora-
17 tion shall implement subsection (b) by updating its
18 Single-Family Seller/Service Guide for loans pur-
19 chased or securitized by the Corporation; and

20 (5) the Federal National Mortgage Association
21 shall implement subsection (b) by updating its Sin-
22 gle Family Selling Guide for loans purchased or
23 securitized by the Association.

1 **SEC. 10. REQUIREMENTS FOR DEPOSIT ACCOUNT TERMI-**
2 **NATION REQUESTS AND ORDERS.**

3 (a) CONDITIONS FOR TERMINATION.—

4 (1) IN GENERAL.—An appropriate Federal
5 banking agency may not formally or informally re-
6 quest or order a depository institution to terminate
7 a specific customer account or group of customer ac-
8 counts (including, but not limited to, any account of
9 any customer that is a State-sanctioned marijuana
10 business or service provider) or to otherwise restrict
11 or discourage a depository institution from entering
12 into or maintaining a banking relationship with a
13 specific customer or group of customers (including,
14 but not limited to, with any customer that is a
15 State-sanctioned marijuana business or service pro-
16 vider), unless—

17 (A) the agency has made a written deter-
18 mination that the depository institution is—

19 (i) engaging in an unsafe or unsound
20 practice; or

21 (ii) violating a rule, law, regulation, or
22 order with respect to the relationship of
23 the depository institution with the cus-
24 tomer (or, in the case of a group of cus-
25 tomers, specific customers within the
26 group); and

1 (B) such reason is not based primarily on
2 reputational risk.

3 (2) TREATMENT OF NATIONAL SECURITY
4 THREATS.—If an appropriate Federal banking agen-
5 cy believes a specific customer or group of customers
6 is, or is acting as a conduit for, an entity that—

7 (A) poses a threat to national security;

8 (B) is involved in terrorist financing;

9 (C) is an agency of the Government of
10 Iran, North Korea, Syria, or any country listed
11 from time to time on the State Sponsors of
12 Terrorism list;

13 (D) is located in, or is subject to the juris-
14 diction of, any country specified in subpara-
15 graph (C); or

16 (E) does business with any entity described
17 in subparagraph (C) or (D), unless the appro-
18 priate Federal banking agency determines that
19 the customer or group of customers has used
20 due diligence to avoid doing business with any
21 entity described in subparagraph (C) or (D),

22 such belief shall satisfy the requirement under para-
23 graph (1).

24 (b) NOTICE REQUIREMENT.—

1 (1) IN GENERAL.—If an appropriate Federal
2 banking agency formally or informally requests or
3 orders a depository institution to terminate a spe-
4 cific customer account or a group of customer ac-
5 counts, the agency shall—

6 (A) provide such request or order to the
7 institution in writing; and

8 (B) accompany such request or order with
9 a written justification for why such termination
10 is needed, including any specific laws or regula-
11 tions the agency believes are being violated by
12 the customer or group of customers, if any.

13 (2) JUSTIFICATION REQUIREMENT.—A jus-
14 tification described under paragraph (1)(B) may not
15 be based solely on the reputational risk to the depos-
16 itory institution.

17 (c) CUSTOMER NOTICE.—

18 (1) NOTICE REQUIRED.—Except as provided
19 under paragraph (2) or as otherwise prohibited from
20 being disclosed by law, if an appropriate Federal
21 banking agency orders a depository institution to
22 terminate a specific customer account or a group of
23 customer accounts, the depository institution shall
24 inform the specific customer or group of customers

1 of the justification for the customer's account termi-
2 nation described under subsection (b).

3 (2) NOTICE PROHIBITED.—

4 (A) NOTICE PROHIBITED IN CASES OF NA-
5 TIONAL SECURITY.—If an appropriate Federal
6 banking agency requests or orders a depository
7 institution to terminate a specific customer ac-
8 count or a group of customer accounts based on
9 a belief that the customer or customers pose a
10 threat to national security, or are otherwise de-
11 scribed under subsection (a)(2), neither the de-
12 pository institution nor the appropriate Federal
13 banking agency may inform the customer or
14 customers of the justification for the customer's
15 account termination.

16 (B) NOTICE PROHIBITED IN OTHER
17 CASES.—If an appropriate Federal banking
18 agency determines that the notice required
19 under paragraph (1) may interfere with an au-
20 thorized criminal investigation, neither the de-
21 pository institution nor the appropriate Federal
22 banking agency may inform the specific cus-
23 tomer or group of customers of the justification
24 for the customer's account termination.

1 (d) REPORTING REQUIREMENT.—Each appropriate
2 Federal banking agency shall submit to the Committee on
3 Banking, Housing, and Urban Affairs of the Senate and
4 the Committee on Financial Services of the House of Rep-
5 resentatives an annual report stating—

6 (1) the aggregate number of specific customer
7 accounts that the agency requested that a depository
8 institution terminate, or ordered a depository insti-
9 tution to terminate, during the previous year; and

10 (2) the legal authority on which the agency re-
11 lied in making each request and order under para-
12 graph (1) and the frequency on which the agency re-
13 lied on each such authority.

14 (e) DEFINITIONS.—In this section:

15 (1) APPROPRIATE FEDERAL BANKING AGEN-
16 CY.—The term “appropriate Federal banking agen-
17 cy” means—

18 (A) the appropriate Federal banking agen-
19 cy, as defined under section 3 of the Federal
20 Deposit Insurance Act (12 U.S.C. 1813); and

21 (B) the National Credit Union Administra-
22 tion, in the case of an insured credit union.

23 (2) DEPOSITORY INSTITUTION.—The term “de-
24 pository institution” means—

1 (A) a depository institution, as defined
2 under section 3 of the Federal Deposit Insur-
3 ance Act (12 U.S.C. 1813); and

4 (B) an insured credit union.

5 **SEC. 11. ANNUAL DIVERSITY AND INCLUSION REPORT.**

6 The Federal banking regulators shall submit to Con-
7 gress an annual report containing—

8 (1) information and data on the availability of
9 access to financial services for minority-owned, vet-
10 eran-owned, women-owned, and small State-sanc-
11 tioned marijuana businesses; and

12 (2) any regulatory or legislative recommenda-
13 tions for expanding access to financial services for
14 minority-owned, veteran-owned, women-owned, and
15 small State-sanctioned marijuana businesses and
16 hemp-related legitimate businesses.

17 **SEC. 12. GAO STUDY ON DIVERSITY AND INCLUSION.**

18 (a) STUDY.—The Comptroller General of the United
19 States shall conduct a study on the barriers to market-
20 place entry, including in the licensing process, and the ac-
21 cess to financial services for potential and existing minor-
22 ity-owned, veteran-owned, women-owned, and small State-
23 sanctioned marijuana businesses and hemp-related legiti-
24 mate businesses.

1 (b) REPORT.—Not later than 2 years after the date
2 of enactment of this Act, the Comptroller General of the
3 United States shall submit to Congress a report con-
4 taining—

5 (1) all findings and determinations made in
6 conducting the study required under subsection (a);
7 and

8 (2) any regulatory or legislative recommenda-
9 tions for removing barriers to marketplace entry and
10 success, including in the licensing process, and ex-
11 panding access to financial services for potential and
12 existing minority-owned, veteran-owned, women-
13 owned, and small State-sanctioned marijuana busi-
14 nesses and hemp-related legitimate businesses.

15 **SEC. 13. GAO STUDY ON EFFECTIVENESS OF CERTAIN RE-**
16 **PORTS ON FINDING CERTAIN PERSONS.**

17 (a) IN GENERAL.—Not later than 2 years after the
18 date of enactment of this Act, the Comptroller General
19 of the United States, in consultation with the Attorney
20 General, shall conduct a study on—

21 (1) the effectiveness of reports on suspicious
22 transactions filed pursuant to section 5318(g) of
23 title 31, United States Code, at finding individuals
24 or organizations suspected or known to be engaged
25 with transnational criminal organizations; and

1 (2) whether any engagement described in para-
2 graph (1) exists in a State, an Indian Tribe, or a
3 political subdivision of a State that allows the cul-
4 tivation, production, manufacture, sale, transpor-
5 tation, display, dispensing, distribution, or purchase
6 of marijuana.

7 (b) REQUIREMENTS.—The study required under sub-
8 section (a) shall examine reports on suspicious trans-
9 actions—

10 (1) relating to marijuana-related businesses, as
11 described in the guidance entitled “BSA Expecta-
12 tions Regarding Marijuana-Related Businesses”,
13 published by the Financial Crimes Enforcement Net-
14 work of the Department of the Treasury on Feb-
15 ruary 14, 2014, during the period beginning on Jan-
16 uary 1, 2014, and ending on the date of enactment
17 of this Act; and

18 (2) relating to State-sanctioned marijuana busi-
19 nesses during the period beginning on January 1,
20 2014, and ending on the date that is 1 year after
21 the date of enactment of this Act.

1 **SEC. 14. APPLICABILITY TO HEMP-RELATED LEGITIMATE**
2 **BUSINESSES AND HEMP-RELATED SERVICE**
3 **PROVIDERS.**

4 The provisions of this Act (other than sections 6 and
5 13) shall apply with respect to hemp-related legitimate
6 businesses and hemp-related service providers in the same
7 manner as such provisions apply with respect to State-
8 sanctioned marijuana businesses and service providers.

9 **SEC. 15. RULES OF CONSTRUCTION.**

10 (a) **NO REQUIREMENT TO PROVIDE FINANCIAL**
11 **SERVICES.**—Nothing in this Act shall require a depository
12 institution, an entity performing a financial service for or
13 in association with a depository institution, a community
14 development financial institution, or an insurer to provide
15 financial services to a State-sanctioned marijuana busi-
16 ness, service provider, or any other business.

17 (b) **GENERAL EXAMINATION, SUPERVISORY, AND**
18 **ENFORCEMENT AUTHORITY.**—Nothing in this Act may be
19 construed in any way to limit or otherwise restrict the gen-
20 eral examination, supervisory, and enforcement authority
21 of the Federal banking regulators (including the Depart-
22 ment of the Treasury), provided that any supervisory or
23 enforcement action is not being taken solely because the
24 provision of financial services to a State-sanctioned mari-
25 juana business or service provider.

1 (c) BUSINESS OF INSURANCE.—Nothing in this Act
2 shall interfere with the regulation of the business of insur-
3 ance in accordance with the Act entitled “An Act to ex-
4 press the intent of the Congress with reference to the reg-
5 ulation of the business of insurance”, approved March 9,
6 1945 (commonly known as the “McCarran-Ferguson
7 Act”; 15 U.S.C. 1011 et seq.), and the Dodd-Frank Wall
8 Street Reform and Consumer Protection Act (12 U.S.C.
9 5301 et seq.).

10 (d) LAW ENFORCEMENT AUTHORITY.—Nothing in
11 this Act shall restrict or limit the ability of Federal law
12 enforcement agencies to investigate and prosecute money-
13 laundering crimes involving proceeds of illegal activity
14 other than marijuana-related activities conducted in com-
15 pliance with the law of the State, Indian Tribe, or political
16 subdivision of a State by a State-sanctioned marijuana
17 business or service provider.

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