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To create protections for depository institutions that provide financial services to cannabis-related legitimate businesses and service providers for such businesses, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 11, 2019

Mr. MERKLEY (for himself, Mr. GARDNER, Ms. ROSEN, Ms. MURKOWSKI, Mr. BENNET, Mr. SULLIVAN, Ms. HARRIS, Mr. PAUL, Ms. CORTEZ MASTO, Ms. DUCKWORTH, Mr. PETERS, Mr. MENENDEZ, Mr. KING, Mr. SANDERS, Mrs. MURRAY, Mr. MARKEY, Mr. LEAHY, Mr. SCHATZ, Mr. WYDEN, Ms. WARREN, Ms. HIRONO, and Mr. CRAMER) 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 depository institutions that provide financial services to cannabis-related legitimate 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,*

3 **SECTION 1. SHORT TITLE; PURPOSE.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Secure And Fair Enforcement Banking Act of 2019” or
6 the “SAFE Banking Act of 2019”.

1 (b) PURPOSE.—The purpose of this Act is to increase
2 public safety by ensuring access to financial services to
3 cannabis-related legitimate businesses and service pro-
4 viders and reducing the amount of cash at such busi-
5 nesses.

6 **SEC. 2. SAFE HARBOR FOR DEPOSITORY INSTITUTIONS.**

7 (a) IN GENERAL.—A Federal banking regulator may
8 not—

9 (1) terminate or limit the deposit insurance or
10 share insurance of a depository institution under the
11 Federal Deposit Insurance Act (12 U.S.C. 1811 et
12 seq.) or the Federal Credit Union Act (12 U.S.C.
13 1751 et seq.) or take any other adverse action
14 against a depository institution under section 8 of
15 the Federal Deposit Insurance Act (12 U.S.C. 1818)
16 solely because the depository institution provides or
17 has provided financial services to a cannabis-related
18 legitimate business or service provider;

19 (2) prohibit, penalize, or otherwise discourage a
20 depository institution from providing financial serv-
21 ices to a cannabis-related legitimate business or
22 service provider or to a State, political subdivision of
23 a State, or Indian Tribe that exercises jurisdiction
24 over cannabis-related legitimate businesses;

1 (3) recommend, incentivize, or encourage a de-
2 pository institution not to offer financial services to
3 an account holder, or to downgrade or cancel the fi-
4 nancial services offered to an account holder solely
5 because—

6 (A) the account holder is a cannabis-re-
7 lated legitimate business or service provider, or
8 is an employee, owner, or operator of a can-
9 nabis-related legitimate business or service pro-
10 vider;

11 (B) the account holder later becomes an
12 employee, owner, or operator of a cannabis-re-
13 lated legitimate business or service provider; or

14 (C) the depository institution was not
15 aware that the account holder is an employee,
16 owner, or operator of a cannabis-related legiti-
17 mate business or service provider;

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

20 (A) a cannabis-related legitimate business
21 or service provider, solely because the business
22 is a cannabis-related legitimate business or
23 service provider;

24 (B) an employee, owner, or operator of a
25 cannabis-related legitimate business or service

1 provider, solely because the employee, owner, or
2 operator is employed by, owns, or operates a
3 cannabis-related legitimate business or service
4 provider, as applicable; or

5 (C) an owner or operator of real estate or
6 equipment that is leased to a cannabis-related
7 legitimate business or service provider, solely
8 because the owner or operator of the real estate
9 or equipment leased the equipment or real es-
10 tate to a cannabis-related legitimate business or
11 service provider, as applicable; or

12 (5) prohibit or penalize a depository institution
13 (or entity performing a financial service for or in as-
14 sociation with a depository institution) for, or other-
15 wise discourage a depository institution (or entity
16 performing a financial service for or in association
17 with a depository institution) from, engaging in a fi-
18 nancial service for a cannabis-related legitimate
19 business or service provider.

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

1 **SEC. 3. PROTECTIONS FOR ANCILLARY BUSINESSES.**

2 For purposes of sections 1956 and 1957 of title 18,
3 United States Code, and all other provisions of Federal
4 law, the proceeds from a transaction conducted by a can-
5 nabis-related legitimate business or service provider shall
6 not be considered as proceeds from an unlawful activity
7 solely because the transaction was conducted by a can-
8 nabis-related legitimate business or service provider, as
9 applicable.

10 **SEC. 4. PROTECTIONS UNDER FEDERAL LAW.**

11 (a) IN GENERAL.—With respect to providing a finan-
12 cial service to a cannabis-related legitimate business or
13 service provider within a State, political subdivision of a
14 State, or Indian country that allows the cultivation, pro-
15 duction, manufacture, sale, transportation, display, dis-
16 pensing, distribution, or purchase of cannabis pursuant to
17 a law or regulation of such State, political subdivision, or
18 Indian Tribe that has jurisdiction over the Indian country,
19 as applicable, a depository institution, entity performing
20 a financial service for or in association with a depository
21 institution, or insurer that provides a financial service to
22 a cannabis-related legitimate business or service provider,
23 and the officers, directors, and employees of that deposi-
24 tory institution, entity, or insurer may not be held liable
25 pursuant to any 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

6 BANKS.—With respect to providing a service to a deposi-

7 tory institution that provides a financial service to a can-

8 nabis-related legitimate business or service provider

9 (where such financial service is provided within a State,

10 political subdivision of a State, or Indian country that al-

11 lows the cultivation, production, manufacture, sale, trans-

12 portation, display, dispensing, distribution, or purchase of

13 cannabis pursuant to a law or regulation of such State,

14 political subdivision, or Indian Tribe that has jurisdiction

15 over the Indian country, as applicable), a Federal reserve

16 bank, and the officers, directors, and employees of the

17 Federal reserve bank, may not be held liable pursuant to

18 any Federal law or regulation—

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

20 (2) for further investing any income derived

21 from such a service.

22 (c) FORFEITURE.—

23 (1) DEPOSITORY INSTITUTIONS.—A depository

24 institution that has a legal interest in the collateral

25 for a loan or another financial service provided to an

owner, employee, or operator of a cannabis-related legitimate business or service provider, or to an owner or operator of real estate or equipment that is leased or sold to a cannabis-related legitimate business or service provider, shall not be subject to criminal, civil, or administrative forfeiture of that legal interest pursuant to any Federal law for providing such loan or other financial service.

(2) FEDERAL RESERVE BANKS.—A Federal reserve bank that has a legal interest in the collateral for a loan or another financial service provided to an owner, employee, or operator of a depository institution that provides a financial services to a cannabis-related legitimate business or service provider, or to an owner or operator of real estate or equipment that is leased or sold to such a depository institution, shall not be subject to criminal, civil, or administrative forfeiture of that legal interest pursuant to any Federal law for providing such loan or other financial service.

SEC. 5. RULE OF CONSTRUCTION.

Nothing in this Act shall require a depository institution, entity performing a financial service for or in association with a depository institution, or insurer to provide

1 financial services to a cannabis-related legitimate business
 2 or service provider.

3 **SEC. 6. REQUIREMENTS FOR FILING SUSPICIOUS ACTIVITY**
 4 **REPORTS.**

5 Section 5318(g) of title 31, United States Code, is
 6 amended by adding at the end the following:

7 “(5) REQUIREMENTS FOR CANNABIS-RELATED
 8 LEGITIMATE BUSINESSES.—

9 “(A) IN GENERAL.—With respect to a fi-
 10 nancial institution or any director, officer, em-
 11 ployee, or agent of a financial institution that
 12 reports a suspicious transaction pursuant to
 13 this subsection, if the reason for the report re-
 14 lates to a cannabis-related legitimate business
 15 or service provider, the report shall comply with
 16 appropriate guidance issued by the Financial
 17 Crimes Enforcement Network. The Secretary
 18 shall ensure that the guidance is consistent with
 19 the purpose and intent of the SAFE Banking
 20 Act of 2019 and does not significantly inhibit
 21 the provision of financial services to a cannabis-
 22 related legitimate business or service provider in
 23 a State, political subdivision of a State, or In-
 24 dian country that has allowed the cultivation,
 25 production, manufacture, transportation, dis-

1 play, dispensing, distribution, sale, or purchase
2 of cannabis pursuant to law or regulation of
3 such State, political subdivision, or Indian
4 Tribe that has jurisdiction over the Indian
5 country.

6 “(B) DEFINITIONS.—For purposes of this
7 paragraph:

8 “(i) CANNABIS.—The term ‘cannabis’
9 has the meaning given the term ‘mari-
10 huana’ in section 102 of the Controlled
11 Substances Act (21 U.S.C. 802).

12 “(ii) CANNABIS-RELATED LEGITIMATE
13 BUSINESS.—The term ‘cannabis-related le-
14 gitimate business’ has the meaning given
15 that term in section 11 of the SAFE
16 Banking Act of 2019.

17 “(iii) INDIAN COUNTRY.—The term
18 ‘Indian country’ has the meaning given
19 that term in section 1151 of title 18.

20 “(iv) INDIAN TRIBE.—The term ‘In-
21 dian Tribe’ has the meaning given that
22 term in section 102 of the Federally Rec-
23 ognized Indian Tribe List Act of 1994 (25
24 U.S.C. 479a).

1 “(v) FINANCIAL SERVICE.—The term
 2 ‘financial service’ has the meaning given
 3 that term in section 11 of the SAFE
 4 Banking Act of 2019.

5 “(vi) SERVICE PROVIDER.—The term
 6 ‘service provider’ has the meaning given
 7 that term in section 11 of the SAFE
 8 Banking Act of 2019.

9 “(vii) STATE.—The term ‘State’
 10 means each of the several States, the Dis-
 11 trict of Columbia, Puerto Rico, and any
 12 territory or possession of the United
 13 States.”.

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

15 Not later than 180 days after the date of enactment
 16 of this Act, the Financial Institutions Examination Coun-
 17 cil shall develop uniform guidance and examination proce-
 18 dures for depository institutions that provide financial
 19 services to cannabis-related legitimate businesses and
 20 service providers.

21 **SEC. 8. ANNUAL DIVERSITY AND INCLUSION REPORT.**

22 The Federal banking regulators shall issue an annual
 23 report to Congress containing—

24 (1) information and data on the availability of
 25 access to financial services for minority-owned and

1 women-owned cannabis-related legitimate businesses;
2 and

3 (2) any regulatory or legislative recommenda-
4 tions for expanding access to financial services for
5 minority-owned and women-owned cannabis-related
6 legitimate businesses.

7 **SEC. 9. GAO STUDY ON DIVERSITY AND INCLUSION.**

8 (a) STUDY.—The Comptroller General of the United
9 States shall carry out a study on the barriers to market-
10 place entry, including in the licensing process, and the ac-
11 cess to financial services for potential and existing minor-
12 ity-owned and women-owned cannabis-related legitimate
13 businesses.

14 (b) REPORT.—The Comptroller General shall issue a
15 report to the Congress—

16 (1) containing all findings and determinations
17 made in carrying out the study required under sub-
18 section (a); and

19 (2) containing any regulatory or legislative rec-
20 ommendations for removing barriers to marketplace
21 entry, including in the licensing process, and ex-
22 panding access to financial services for potential and
23 existing minority-owned and women-owned cannabis-
24 related legitimate businesses.

1 **SEC. 10. GAO STUDY ON EFFECTIVENESS OF CERTAIN RE-**
2 **PORTS ON FINDING CERTAIN PERSONS.**

3 Not later than 2 years after the date of the enact-
4 ment of this Act, the Comptroller General of the United
5 States shall carry out a study on the effectiveness of re-
6 ports on suspicious transactions filed pursuant to section
7 5318(g) of title 31, United States Code, at finding individ-
8 uals or organizations suspected or known to be engaged
9 with transnational criminal organizations and whether any
10 such engagement exists in a State, political subdivision,
11 or Indian Tribe that has jurisdiction over Indian country
12 that allows the cultivation, production, manufacture, sale,
13 transportation, display, dispensing, distribution, or pur-
14 chase of cannabis. The study shall examine reports on sus-
15 picious transactions as follows:

16 (1) During the period of 2014 until the date of
17 the enactment of this Act, reports relating to mari-
18 juana-related businesses.

19 (2) During the 1-year period after date of the
20 enactment of this Act, reports relating to cannabis-
21 related legitimate businesses.

22 **SEC. 11. DEFINITIONS.**

23 In this Act:

24 (1) **BUSINESS OF INSURANCE.**—The term
25 “business of insurance” has the meaning given such
26 term in section 1002 of the Dodd-Frank Wall Street

1 Reform and Consumer Protection Act (12 U.S.C.
2 5481).

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

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

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

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

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

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

3 (A) a depository institution as defined in
4 section 3(c) of the Federal Deposit Insurance
5 Act (12 U.S.C. 1813(c));

6 (B) a Federal credit union as defined in
7 section 101 of the Federal Credit Union Act
8 (12 U.S.C. 1752); or

9 (C) a State credit union as defined in sec-
10 tion 101 of the Federal Credit Union Act (12
11 U.S.C. 1752).

12 (6) FEDERAL BANKING REGULATOR.—The
13 term “Federal banking regulator” means each of the
14 Board of Governors of the Federal Reserve System,
15 the Bureau of Consumer Financial Protection, the
16 Federal Deposit Insurance Corporation, the Finan-
17 cial Crimes Enforcement Network, the Office of For-
18 eign Asset Control, the Office of the Comptroller of
19 the Currency, the National Credit Union Adminis-
20 tration, the Department of the Treasury, or any
21 Federal agency or department that regulates bank-
22 ing or financial services, as determined by the Sec-
23 retary of the Treasury.

24 (7) FINANCIAL SERVICE.—The term “financial
25 service”—

1 (A) means a financial product or service,
2 as defined in section 1002 of the Dodd-Frank
3 Wall Street Reform and Consumer Protection
4 Act (12 U.S.C. 5481);

5 (B) includes the business of insurance;

6 (C) includes, whether performed directly or
7 indirectly, the authorizing, processing, clearing,
8 settling, billing, transferring for deposit, trans-
9 mitting, delivering, instructing to be delivered,
10 reconciling, collecting, or otherwise effectuating
11 or facilitating of payments or funds, where such
12 payments or funds are made or transferred by
13 any means, including by the use of credit cards,
14 debit cards, other payment cards, or other ac-
15 cess devices, accounts, original or substitute
16 checks, or electronic funds transfers;

17 (D) includes acting as a money transmit-
18 ting business which directly or indirectly makes
19 use of a depository institution in connection
20 with effectuating or facilitating a payment for
21 a cannabis-related legitimate business or service
22 provider in compliance with section 5330 of
23 title 31, United States Code, and any applicable
24 State law; and

1 (E) includes acting as an armored car
2 service for processing and depositing with a de-
3 pository institution or the Board of Governors
4 of the Federal Reserve System with respect to
5 any monetary instruments (as defined under
6 section 1956(c)(5) of title 18, United States
7 Code).

8 (8) INDIAN COUNTRY.—The term “Indian coun-
9 try” has the meaning given that term in section
10 1151 of title 18.

11 (9) INDIAN TRIBE.—The term “Indian Tribe”
12 has the meaning given that term in section 102 of
13 the Federally Recognized Indian Tribe List Act of
14 1994 (25 U.S.C. 479a).

15 (10) INSURER.—The term “insurer” has the
16 meaning given that term under section 313(r) of
17 title 31, United States Code.

18 (11) MANUFACTURER.—The term “manufac-
19 turer” means a person who manufactures, com-
20 pounds, converts, processes, prepares, or packages
21 cannabis or cannabis products.

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

1 (13) SERVICE PROVIDER.—The term “service
2 provider”—

3 (A) means a business, organization, or
4 other person that—

5 (i) sells goods or services to a can-
6 nabis-related legitimate business; or

7 (ii) provides any business services, in-
8 cluding the sale or lease of real or any
9 other property, legal or other licensed serv-
10 ices, or any other ancillary service, relating
11 to cannabis; and

12 (B) does not include a business, organiza-
13 tion, or other person that participates in any
14 business or organized activity that involves han-
15 dling cannabis or cannabis products, including
16 cultivating, producing, manufacturing, selling,
17 transporting, displaying, dispensing, distrib-
18 uting, or purchasing cannabis or cannabis prod-
19 ucts.

20 (14) STATE.—The term “State” means each of
21 the several States, the District of Columbia, Puerto
22 Rico, and any territory or possession of the United
23 States.

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