

115TH CONGRESS
1ST SESSION

S. 1152

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

IN THE SENATE OF THE UNITED STATES

MAY 17, 2017

Mr. MERKLEY (for himself, Mr. PAUL, Mr. BENNET, Mr. WYDEN, Ms. WARREN, Mrs. MURRAY, Ms. CORTEZ MASTO, Mr. SCHATZ, and Mr. GARDNER) 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 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.**

4 This Act may be cited as the “Secure and Fair En-
5 forcement Banking Act” or the “SAFE Banking Act”.

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

7 A Federal banking regulator may not—

8 (1) terminate or limit the deposit insur-
9 ance or share insurance of a depository institu-

1 tion under the Federal Deposit Insurance Act
2 (12 U.S.C. 1811 et seq.) or the Federal Credit
3 Union Act (12 U.S.C. 1751 et seq.) solely be-
4 cause the depository institution provides or has
5 provided financial services to a cannabis-related
6 legitimate business;

7 (2) prohibit, penalize, or otherwise discour-
8 age a depository institution from providing fi-
9 nancial services to a cannabis-related legitimate
10 business or to a State or Indian tribe that exer-
11 cises jurisdiction over cannabis-related legiti-
12 mate businesses;

13 (3) recommend, incentivize, or encourage a
14 depository institution not to offer financial serv-
15 ices to the owner, operator, or an individual
16 that is an account holder of a cannabis-related
17 legitimate business, or downgrade or cancel fi-
18 nancial services offered to an account holder of
19 a cannabis-related legitimate business solely be-
20 cause—

21 (A) the account holder later becomes
22 a cannabis-related legitimate business; or

23 (B) the depository institution was not
24 aware that the account holder is the owner

1 or operator of a cannabis-related legitimate
2 business; and

3 (4) take any adverse or corrective super-
4 visory action on a loan to an owner or operator
5 of—

6 (A) a cannabis-related legitimate busi-
7 ness solely because the business owner or
8 operator is a cannabis-related business
9 without express statutory authority, as in
10 effect on the day before the date of enact-
11 ment of this Act; or

12 (B) real estate or equipment that is
13 leased or sold to a cannabis-related legiti-
14 mate business solely because the owner or
15 operator of the real estate or equipment
16 leased or sold the equipment or real estate
17 to a cannabis-related legitimate business.

18 **SEC. 3. PROTECTIONS UNDER FEDERAL LAW.**

19 (a) IN GENERAL.—In a State, political subdivision of
20 a State, or Indian country that allows the cultivation, pro-
21 duction, manufacturing, transportation, display, dis-
22 pensing, distribution, sale, or purchase of cannabis pursu-
23 ant to a law (including regulations) of the State, political
24 subdivision of the State, or the Indian tribe that has juris-
25 diction over the Indian country, as applicable, a depository

1 institution and the officers, director, and employees of the
2 depository institution that provides financial services to a
3 cannabis-related legitimate business may not be held liable
4 pursuant to any Federal law (including regulations)—

5 (1) solely for providing the financial services
6 pursuant to the law (including regulations) of the
7 State, political subdivision of the State, or Indian
8 tribe; or

9 (2) for further investing any income derived
10 from the financial services.

11 (b) FORFEITURE.—A depository institution that has
12 a legal interest in the collateral for a loan made to an
13 owner or operator of a cannabis-related legitimate busi-
14 ness, or to an owner or operator of real estate or equip-
15 ment that is leased or sold to a cannabis-related legitimate
16 business, shall not be subject to criminal, civil, or adminis-
17 trative forfeiture of that legal interest pursuant to any
18 Federal law for providing the loan or other financial serv-
19 ices solely because the collateral is owned by a cannabis-
20 related business.

21 **SEC. 4. RULE OF CONSTRUCTION.**

22 Nothing in this Act shall require a depository institu-
23 tion to provide financial services to a cannabis-related le-
24 gitimate business.

1 **SEC. 5. REQUIREMENTS FOR FILING SUSPICIOUS ACTIVITY**
2 **REPORTS.**

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

5 “(5) REQUIREMENTS FOR CANNABIS-RELATED
6 BUSINESSES.—

7 “(A) DEFINITIONS.—In this paragraph—

8 “(i) the term ‘cannabis’ has the mean-
9 ing given the term ‘marihuana’ in section
10 102 of the Controlled Substances Act (21
11 U.S.C. 802);

12 “(ii) the term ‘cannabis-related legiti-
13 mate business’ has the meaning given the
14 term in section 6 of the SAFE Banking
15 Act;

16 “(iii) the term ‘financial service’
17 means a financial product or service, as de-
18 fined in section 1002 of the Dodd-Frank
19 Wall Street Reform and Consumer Protec-
20 tion Act (12 U.S.C. 5481);

21 “(iv) the term ‘Indian country’ has
22 the meaning given the term in section
23 1151 of title 18; and

24 “(v) the term ‘Indian tribe’ has the
25 meaning given the term in section 102 of

1 the Federally Recognized Indian Tribe List
2 Act of 1994 (25 U.S.C. 479a).

3 “(B) REPORTING OF SUSPICIOUS TRANS-
4 ACTIONS.—A financial institution or any direc-
5 tor, officer, employee, or agent of a financial in-
6 stitution that reports a suspicious activity re-
7 lated to a transaction by a cannabis-related le-
8 gitimate business shall comply with appropriate
9 guidance issued by the Financial Crimes En-
10 forcement Network. The Secretary shall ensure
11 that the guidance is consistent with the purpose
12 and intent of the SAFE Banking Act and does
13 not inhibit the provision of financial services to
14 a cannabis-related legitimate business in a
15 State, political subdivision of a State, or Indian
16 country that has allowed the cultivation, pro-
17 duction, manufacturing, transportation, display,
18 dispensing, distribution, sale, or purchase of
19 cannabis, or any other conduct relating to can-
20 nabis, pursuant to law or regulation of the
21 State, the political subdivision of the State, or
22 Indian tribe that has jurisdiction over the In-
23 dian country.”.

24 **SEC. 6. DEFINITIONS.**

25 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 which 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 and

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

23 (ii) provides—

1 (I) any financial service, including re-
2 tirement plans or exchange traded funds,
3 relating to cannabis; or

4 (II) any business services, including
5 the sale or lease of real or any other prop-
6 erty, legal or other licensed services, or any
7 other ancillary service, relating to can-
8 nabis.

9 (4) COMPANY.—The term “company” means a
10 partnership, corporation, association, (incorporated
11 or unincorporated), trust, estate, cooperative organi-
12 zation, State, or any other entity.

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

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

18 (B) a Federal credit union as defined in
19 section 101 of the Federal Credit Union Act
20 (12 U.S.C. 1752); or

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

24 (6) FEDERAL BANKING REGULATOR.—The
25 term “Federal banking regulator” means each of the

1 Board of Governors of the Federal Reserve System,
2 the Bureau of Consumer Financial Protection, the
3 Federal Deposit Insurance Corporation, the Office of
4 the Comptroller of the Currency, the National Credit
5 Union Administration, or any Federal agency or de-
6 partment that regulates banking or financial serv-
7 ices, as determined by the Secretary of the Treas-
8 ury.

9 (7) FINANCIAL SERVICE.—The term “financial
10 service” means a financial product or service, as de-
11 fined in section 1002 of the Dodd-Frank Wall Street
12 Reform and Consumer Protection Act (12 U.S.C.
13 5481).

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

17 (9) INDIAN TRIBE.—The term “Indian tribe”
18 has the meaning given the term in section 102 of the
19 Federally Recognized Indian Tribe List Act of 1994
20 (25 U.S.C. 479a).

21 (10) MANUFACTURER.—The term “manufac-
22 turer” means a person or company who manufac-
23 tures, compounds, converts, processes, prepares, or
24 packages cannabis or cannabis products.

1 (11) PRODUCER.—The term “producer” means
2 a person or company who plants, cultivates, har-
3 vests, or in any way facilitates the natural growth of
4 cannabis.

5 (12) STATE.—The term “State” means each of
6 the several States, the District of Columbia, Puerto
7 Rico, any territory or possession of the United
8 States.

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