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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Secure and Fair Enforcement Banking Act” or the “SAFE Banking Act”.

SEC. 2. SAFE HARBOR FOR DEPOSITORY INSTITUTIONS.

A Federal banking regulator may not—

(1) terminate or limit the deposit insurance or share insurance of a depository institu-
tion under the Federal Deposit Insurance Act
(12 U.S.C. 1811 et seq.) or the Federal Credit
Union Act (12 U.S.C. 1751 et seq.) solely be-
cause the depository institution provides or has
provided financial services to a cannabis-related
legitimate business;
(2) prohibit, penalize, or otherwise discour-
age a depository institution from providing fi-
nancial services to a cannabis-related legitimate
business or to a State or Indian tribe that exer-
cises jurisdiction over cannabis-related legiti-
mate businesses;
(3) recommend, incentivize, or encourage a
depository institution not to offer financial serv-
ices to the owner, operator, or an individual
that is an account holder of a cannabis-related
legitimate business, or downgrade or cancel fi-
nancial services offered to an account holder of
a cannabis-related legitimate business solely be-
cause—
(A) the account holder later becomes
a cannabis-related legitimate business; or
(B) the depository institution was not
aware that the account holder is the owner
or operator of a cannabis-related legitimate business; and

(4) take any adverse or corrective supervisory action on a loan to an owner or operator of—

(A) a cannabis-related legitimate business solely because the business owner or operator is a cannabis-related business without express statutory authority, as in effect on the day before the date of enactment of this Act; or

(B) real estate or equipment that is leased or sold to a cannabis-related legitimate business solely because the owner or operator of the real estate or equipment leased or sold the equipment or real estate to a cannabis-related legitimate business.

SEC. 3. PROTECTIONS UNDER FEDERAL LAW.

(a) IN GENERAL.—In a State, political subdivision of a State, or Indian country that allows the cultivation, production, manufacturing, transportation, display, dispensing, distribution, sale, or purchase of cannabis pursuant to a law (including regulations) of the State, political subdivision of the State, or the Indian tribe that has jurisdiction over the Indian country, as applicable, a depository
institution and the officers, director, and employees of the depository institution that provides financial services to a cannabis-related legitimate business may not be held liable pursuant to any Federal law (including regulations)—

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

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

(b) FORFEITURE.—A depository institution that has a legal interest in the collateral for a loan made to an owner or operator of a cannabis-related legitimate business, or to an owner or operator of real estate or equipment that is leased or sold to a cannabis-related legitimate business, shall not be subject to criminal, civil, or administrative forfeiture of that legal interest pursuant to any Federal law for providing the loan or other financial services solely because the collateral is owned by a cannabis-related business.

SEC. 4. RULE OF CONSTRUCTION.

Nothing in this Act shall require a depository institution to provide financial services to a cannabis-related legitimate business.
SEC. 5. REQUIREMENTS FOR FILING SUSPICIOUS ACTIVITY REPORTS.

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

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

“(A) DEFINITIONS.—In this paragraph—

“(i) the term ‘cannabis’ has the meaning given the term ‘marihuana’ in section 102 of the Controlled Substances Act (21 U.S.C. 802);

“(ii) the term ‘cannabis-related legitimate business’ has the meaning given the term in section 6 of the SAFE Banking Act;

“(iii) the term ‘financial service’ means a financial product or service, as defined in section 1002 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5481);

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

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

“(B) REPORTING OF SUSPICIOUS TRANSACTIONS.—A financial institution or any director, officer, employee, or agent of a financial institution that reports a suspicious activity related to a transaction by a cannabis-related legitimate business shall comply with appropriate guidance issued by the Financial Crimes Enforcement Network. The Secretary shall ensure that the guidance is consistent with the purpose and intent of the SAFE Banking Act and does not inhibit the provision of financial services to a cannabis-related legitimate business in a State, political subdivision of a State, or Indian country that has allowed the cultivation, production, manufacturing, transportation, display, dispensing, distribution, sale, or purchase of cannabis, or any other conduct relating to cannabis, pursuant to law or regulation of the State, the political subdivision of the State, or Indian tribe that has jurisdiction over the Indian country.”.

SEC. 6. DEFINITIONS.

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

(2) **CANNABIS PRODUCT.**—The term “cannabis product” means any article which contains cannabis, including an article which is a concentrate, an edible, a tincture, a cannabis-infused product, or a topical.

(3) **CANNABIS-RELATED LEGITIMATE BUSINESS.**—The term “cannabis-related legitimate business” means a manufacturer, producer, or any person or company that—

(A) engages in any activity described in subparagraph (B) pursuant to a law established by a State or a political subdivision of a State; and

(B)(i) participates in any business or organized activity that involves handling cannabis or cannabis products, including cultivating, producing, manufacturing, selling, transporting, displaying, dispensing, distributing, or purchasing cannabis or cannabis products; or

(ii) provides—
(I) any financial service, including retirement plans or exchange traded funds, relating to cannabis; or

(II) any business services, including the sale or lease of real or any other property, legal or other licensed services, or any other ancillary service, relating to cannabis.

(4) COMPANY.—The term “company” means a partnership, corporation, association, (incorporated or unincorporated), trust, estate, cooperative organization, State, or any other entity.

(5) DEPOSITORY INSTITUTION.—The term “depository institution” means—

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

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

(C) a State credit union as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752).

(6) FEDERAL BANKING REGULATOR.—The term “Federal banking regulator” means each of the
Board of Governors of the Federal Reserve System, the Bureau of Consumer Financial Protection, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the National Credit Union Administration, or any Federal agency or department that regulates banking or financial services, as determined by the Secretary of the Treasury.

(7) Financial service.—The term “financial service” means a financial product or service, as defined in section 1002 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5481).

(8) Indian country.—The term “Indian country” has the meaning given the term in section 1151 of title 18, United States Code.

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

(10) Manufacturer.—The term “manufacturer” means a person or company who manufactures, compounds, converts, processes, prepares, or packages cannabis or cannabis products.
(11) **PRODUCER.**—The term “producer” means a person or company who plants, cultivates, harvests, or in any way facilitates the natural growth of cannabis.

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