

116TH CONGRESS
1ST SESSION

S. 2201

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

IN THE SENATE OF THE UNITED STATES

JULY 22, 2019

Mr. MENENDEZ (for himself, Mr. PAUL, Mr. MERKLEY, 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 a safe harbor for insurers engaging in the business of insurance in connection with a cannabis-related 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 that is a concentrate, an edible,
7 a tincture, a cannabis-infused product, a topical, or
8 a flower.

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

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

15 (B)(i) participates in any business or orga-
16 nized activity that involves handling cannabis or
17 cannabis products, including cultivating, pro-
18 ducing, manufacturing, selling, transporting,
19 displaying, dispensing, distributing, or pur-
20 chasing cannabis or cannabis products or dis-
21 tributing or deriving any proceeds, directly or
22 indirectly, from cannabis or cannabis products;
23 or

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

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

14 (B) includes a private attorney described
15 in section 3002(1)(B) of title 28, United States
16 Code.

17 (5) FINANCIAL SERVICE.—The term “financial
18 service”—

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

23 (B) includes the business of insurance.

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

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

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

11 (9) MANUFACTURER.—The term “manufac-
12 turer” means a person or company who manufac-
13 tures, compounds, converts, processes, prepares, or
14 packages cannabis or cannabis products.

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

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

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

23 (1) prohibit, penalize, or otherwise discourage
24 an insurer from engaging in the business of insur-
25 ance in connection with—

1 (A) a cannabis-related business; or

2 (B) a State, political subdivision of a
3 State, or Indian tribe that exercises jurisdiction
4 over cannabis-related businesses;

5 (2) terminate, cancel, or otherwise limit the
6 policies of an insurer solely because the insurer has
7 engaged in the business of insurance in connection
8 with a cannabis-related business;

9 (3) recommend, incentivize, or encourage an in-
10 surer not to engage in the business of insurance in
11 connection with a policyholder, or downgrade or can-
12 cel the insurance and insurance services offered to a
13 policyholder solely because—

14 (A) the policyholder is—

15 (i) a manufacturer or producer; or

16 (ii) the owner, operator, or employee
17 of a cannabis-related business;

18 (B) the policyholder later becomes an em-
19 ployee, owner, or operator of a cannabis-related
20 business; or

21 (C) the insurer was not aware that the pol-
22 icyholder is an employee, owner, or operator of
23 a cannabis-related business; or

24 (4) take any adverse or corrective supervisory
25 action on a policy to—

1 (A) a cannabis-related business, solely be-
2 cause the owner or operator owns or operates a
3 cannabis-related business;

4 (B) an employee, owner, or operator of a
5 cannabis-related legitimate business or service
6 provider, solely because the employee, owner, or
7 operator is employed by, owns, or operates a
8 cannabis-related business, as applicable;

9 (C) an owner or operator of real estate or
10 equipment that is leased to a cannabis-related
11 business, solely because the owner or operator
12 of the real estate or equipment leased the
13 equipment or real estate to a cannabis-related
14 business, as applicable.

15 (c) PROTECTIONS UNDER FEDERAL LAW.—With re-
16 spect to engaging in the business of insurance within a
17 State, political subdivision of a State, or Indian country
18 that allows the cultivation, production, manufacture, sale,
19 transportation, display, dispensing, distribution, or pur-
20 chase of cannabis pursuant to a law (including regula-
21 tions) of such State, political subdivision, or Indian Tribe
22 that has jurisdiction over the Indian country, as applica-
23 ble, an insurer that engages in the business of insurance
24 with a cannabis-related business or service provider or who
25 otherwise engages with a person in a transaction permis-

1 sible under State law related to cannabis, and the officers,
2 directors, and employees of that insurer may not be held
3 liable pursuant to any Federal law (including regula-
4 tions)—

5 (1) solely for engaging in the business of insur-
6 ance; or

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

9 (d) RULE OF CONSTRUCTION.—Nothing in this Act
10 shall—

11 (1) require an insurer to engage in the business
12 of insurance in connection with a cannabis-related
13 business; or

14 (2) interfere with the regulation of the business
15 of insurance in accordance with the Act of March 9,
16 1945 (59 Stat. 33, chapter 20; 15 U.S.C. 1011 et
17 seq.) (commonly known as the “McCarran-Ferguson
18 Act”), and the Dodd-Frank Wall Street Reform and
19 Consumer Protection Act (12 U.S.C. 5301 et seq.).

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