

# RESPONSIBLY ADDRESSING THE MARIJUANA POLICY GAP ACT

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## **Federalism in Marijuana Policy**

### **Elimination of criminal penalties for certain persons complying with state law (Sec. 101).**

Under current law and related regulations, marijuana is classified as a Schedule I controlled substance under the Controlled Substances Act (CSA). Despite legalization of adult use and medical marijuana in states throughout the U.S., this federal classification subjects individuals and businesses complying with state marijuana law, and vendors providing ancillary services to the marijuana industry, to criminal penalties under the CSA.

This provision amends the CSA to exempt any person acting in compliance with state marijuana law from criminal penalties under the CSA. This includes (1) persons involved in the production, possession, distribution, and testing of marijuana; and (2) secondary vendors providing services to the marijuana industry such as legal representation, payment processing, advertising, security services, property leasing, and scientific and safety testing.

## **Removing Business and Banking Barriers**

### **Allowance of deductions and credits relating to expenditures in connection with marijuana sales conducted in compliance with state law (Sec. 201).**

Under current law, businesses may generally deduct related business expenses for income tax purposes. In addition, businesses may be eligible to claim certain tax credits as provided under the tax code. Internal Revenue Code (IRC) section 280E provides that any person who sells Schedule I or Schedule II substances may not claim tax deductions or credits. As such, marijuana businesses operating in compliance with state law may not deduct the common expenses of running a small business, such as rent, most utilities, and payroll. In addition, these businesses are barred from claiming tax credits, including those intended to incentivize energy efficiency, research and development, or hiring veterans and other disadvantaged groups.

This provision would create an exception to IRC section 280E to allow businesses operating in compliance with state law to claim deductions and credits associated with the sale of marijuana like any other legal business.

### **Marijuana print advertising (Sec. 202).**

Under current law, the CSA prohibits printed advertisements for the sale of marijuana because it is a Schedule I controlled substance.

This provision creates an exception to these prohibitions to allow print advertising of marijuana-related activity that is legal under state law.

### **FCC safe harbor for marijuana broadcast advertising (Sec. 203).**

Under current law, the Federal Communications Commission (FCC) has authority over approving annual permits for broadcasters, which are conditioned in part on such permit advancing the “public interest.” Current law, regulations, and FCC guidance are silent on whether state-legal marijuana advertising would prejudice a determination of “public interest.”

This provision amends the Communications Act of 1934 to make clear that advertising of marijuana in compliance with state law does not prejudice a determination of public interest with respect to broadcast permits.

**Access to banking (Sec 204).**

Under current law, marijuana businesses operating in compliance with state law have difficulty securing and maintaining bank accounts because of the possibility of federal criminal prosecution and adverse action by federal banking regulators. For example, banks serving the marijuana industry face the threat of having their federal deposit insurance revoked by the Federal Deposit Insurance Corporation, and the Federal Reserve has denied master accounts to banks because of marijuana-related funds, effectively cutting them off from the national banking system.

This provision prohibits federal banking regulators from taking certain adverse actions against banks serving state-legal marijuana businesses solely because of marijuana-related funds, and provides depository institutions with immunity from federal criminal charges for handling such funds. Specifically it prohibits federal regulators from: terminating or limiting deposit insurance for banks serving marijuana businesses; prohibiting or discouraging banks from serving marijuana businesses; encouraging banks to cancel or downgrade financial services offered to marijuana business owners, operators, and employees; taking supervisory action on a loan to marijuana business owners or property owners leasing to marijuana businesses; and denying depository institutions master accounts with the Federal Reserve.

**Requirement for filing Suspicious Activity Reports (Sec. 205).**

Under current law, Financial Crimes and Enforcement Network (FinCEN) guidance requires banks servicing state-legal marijuana businesses to file a “marijuana limited” suspicious activity report (SAR) with regulators for every marijuana transaction, even if no typically suspicious activity has been identified. This results in significant compliance burdens for banks serving state-legal marijuana businesses. Because banks filing SARs are admitting to handling marijuana-related funds, the filing requirement also increases the perceived risk of adverse action by federal prosecutors and regulators. In many cases, these issues cause banks to refuse service to legal marijuana businesses.

This provision removes the requirement for banks to file “marijuana limited” SARs for every unsuspecting transaction involving marijuana-related funds of state-legal businesses. Instead financial institutions will be required to keep internal records documenting unsuspecting marijuana-related transactions. These records will be accessible to regulators investigating suspicious activity.

**Bankruptcy protection (Sec. 206).**

Under current law, marijuana businesses legal under state law are denied access to bankruptcy relief because the proceeds from marijuana business activity are illegal under federal law.

This provision entitles marijuana business that are legal under state law to relief under Chapters 7, 11, and 13 - notwithstanding other federal law.

**Tribal marijuana sovereignty (Sec. 207).**

Under current law, tribes engaging with the legal marijuana industry face the possibility that the federal government may deny benefits or void contracts because marijuana possession and business activity is illegal under federal law.

This provision prohibits the consideration of a tribal entity's authorization under federal, state, or tribal law to produce, purchase, or possess marijuana when the federal government (1) allocates or determines eligibility for federal benefits, or (2) determines eligibility for a contract or grant under which marijuana-related activities would otherwise be disqualifying.

### **Individual Protections**

#### **Expungement of criminal records for certain marijuana-related offenses (Sec. 301).**

Under current law, individuals possessing marijuana and those involved in the legal marijuana industry can be charged and convicted of federal crimes under the CSA, even if such activities are legal under state law.

This provision establishes an expungement process for two groups of federal marijuana offenders: (1) those who were federally charged for activity that was state legal at the time of offense, and (2) those whose offense was the possession of an ounce or less of marijuana. After fulfilling all requirements of their sentence, individuals can file a petition to expunge these convictions from their criminal record in the court in which the convictions were obtained.

#### **Limit on drug testing for applicants for federal employment (Sec. 302).**

Under current law, residents of marijuana-legal states applying for positions in the federal civil service can be blocked from consideration for employment because of marijuana consumption that is legal under state law.

This provision prohibits the federal government from requiring the submission of marijuana drug tests and from using the results of marijuana drugs tests in determining eligibility for civil service employment for individuals who reside in states that have legalized marijuana.

#### **Fair access to education (Sec. 303).**

Under current law, any drug offense conviction involving sale or possession of a controlled substance triggers suspension of federal student aid eligibility for a student who commits the drug offense while enrolled in postsecondary education and receiving federal student aid.

This provision amends the Higher Education Act of 1965 to exclude marijuana misdemeanor offenses from the list of offenses that can result in ineligibility for federal education financial aid. It also reestablishes federal student aid eligibility for certain students who are ineligible due to a prior conviction for misdemeanor marijuana possession.

#### **Civil forfeiture exemption for marijuana facilities authorized by state law (Sec. 304).**

Under current law, the Department of Justice has the authority, through civil forfeiture, to seize the property of people who are operating marijuana businesses or possessing marijuana in compliance with state laws.

This provision amends the CSA to exempt real property from civil forfeiture due to marijuana-related conduct that is authorized by state law.

#### **Prohibition on inadmissibility or deportation of aliens who comply with state law (Sec. 305).**

Under current law, noncitizens may be denied entry into the U.S. or deported based on marijuana-related activity, even when legal under state law.

This provision amends the Immigration and Nationality Act to provide that noncitizens may not be denied entry to the U.S. and are not subject to deportation due to marijuana-related activity that is legal under state law.

**Screening of applicants for federally assisted housing (Sec. 306).**

Under current law, individuals engaged in marijuana-related activity are not eligible for federally assisted housing. Public housing agencies and owners of federally assisted housing are required to establish standards that would allow the agency or owner to prohibit admission to, or terminate the tenancy or assistance of, any tenant engaged in marijuana-related activity.

This section amends the Quality Housing and Work Responsibility Act and the U.S. Housing Act of 1937 to exclude marijuana-related activity that is legal under state law from the class of activities for which a person may be denied access to federally assisted public housing.

**Medical Marijuana Research and Access**

**Medical Marijuana Research Act (Sec. 401).**

Under current law, researchers who wish to conduct legitimate medical research with marijuana must obtain a license from the Drug Enforcement Administration and apply for access to the marijuana supply overseen by the National Institutes of Drug Abuse (NIDA). Navigating this process is difficult and time-consuming, and it presents serious legal and funding obstacles to the scientific study of marijuana.

This provision addresses these barriers by creating a new registration process specifically for medical marijuana that will reduce approval wait times, costly security measures, and unnecessary layers of protocol review. In addition, once researchers have been approved to conduct this research, this provision makes it easier for researchers to obtain marijuana for their studies by reforming production and distribution regulations. It also allows for the private production and distribution of marijuana solely for research purposes.

**Provision by health care providers of the Department of Veterans Affairs of recommendations and opinions regarding veteran participation in state marijuana programs (Sec. 402).**

Under current law, Department of Veterans Affairs (VA) health care workers are prohibited from providing veterans with recommendations regarding state-legal medical marijuana.

This provision requires the Secretary of Veterans Affairs to authorize physicians and other health care workers employed by the VA to provide recommendations and opinions regarding the participation of a veteran in a state medical marijuana program.

**Provision by medical professionals of the Indian Health Service of recommendations and opinions regarding veteran participation in state marijuana programs (Sec. 403).**

Under current law, Indian Health Service (IHS) health care workers are prohibited from providing veterans with recommendations regarding state-legal medical marijuana.

This section authorizes IHS medical professionals to provide recommendations and opinions to patients regarding participation in state marijuana programs.