

# Responsibly Addressing the Marijuana Policy Gap Act of 2019

## **Federalism in Marijuana Policy**

### Sec 101: Elimination of criminal penalties for certain persons complying with state law

This section amends section 708 of the Controlled Substances Act (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. Under current law, state-legal marijuana businesses, individuals complying with state marijuana law, and vendors providing ancillary services to the marijuana industry are subject to criminal penalties under the CSA.

## **Removing Business and Banking Barriers**

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

This section creates an exception to Internal Revenue Code section 280E to allow businesses operating in compliance with state law to take tax deductions and claim tax credits associated with the sale of marijuana. Currently, the federal tax code prohibits any person who sells Schedule I or Schedule II substances from deducting business expenses and claiming tax credits.

### Sec 202: Marijuana print advertising

This section creates an exception to Section 403(c)(1) of the CSA to allow for the written advertisement of marijuana-related activity that is legal under state law without triggering federal law enforcement actions. Currently, the CSA prohibits written advertisements for the sale of marijuana because it is a Schedule I controlled substance.

### Sec 203: FCC safe harbor for marijuana broadcast advertising

This section amends section 309 of the Communications Act of 1934 to prohibit the Federal Communications Commission (FCC) from denying licenses and permits to broadcasters on the grounds that marijuana-related advertisements are against the public interest. These broadcasts must be compliant with the laws of the state in which the broadcaster is licensed and cannot be calculated to induce marijuana sales from residents of states in which marijuana is not legal. Under current law, the FCC has the authority to revoke the licenses and permits of broadcasters when it determines that its broadcasts are contrary to the public interest.

#### Sec 204: Access to banking

This section (1) prohibits federal banking regulators from taking a number of adverse actions against banks serving legal marijuana businesses solely because of marijuana-related funds, and (2) provides depository institutions with immunity from federal criminal charges for handling marijuana-related funds. Specifically for (1), federal regulators are prohibited 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. In each case, these actions are prohibited if performed only on the basis of a bank's connection to the legal marijuana industry.

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.

#### Sec 205: Requirement for filing Suspicious Activity Reports

This section codifies the Financial Crimes and Enforcement Network (FinCEN) guidance for banks serving marijuana businesses, but changes the guidance's requirements for filing suspicious activity reports (SARs). Rather than filing "marijuana limited" SARs for every unsuspecting transaction involving marijuana-related funds, financial institutions will be required to keep internal records documenting unsuspecting marijuana-related transactions. These records will be accessible to regulators investigating suspicious activity. Under current law, FinCEN guidance requires banks servicing marijuana businesses to file a "marijuana limited" SAR with regulators for every marijuana transaction, even if no typically suspicious activity has been identified.

#### Sec 206: Bankruptcy protection

This section entitles marijuana business that are legal under state law to relief under Chapters 7, 11, and 13 - notwithstanding other federal law. The section also entitles marijuana businesses to convert bankruptcy cases to different chapters. Currently, marijuana businesses that are legal under state law are denied access to bankruptcy relief because the proceeds from marijuana business activity are illegal under federal law.

### Sec 207: Tribal marijuana sovereignty

This section 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. Under this section, income from legal marijuana-related activities continues to be counted as income for these purposes. Under current law, tribes engaging with the legal marijuana industry face the possibility that the federal government will pull benefits or void contracts because marijuana possession and business activity is illegal under federal law.

### **Individual Protections**

#### Sec 301: Expungement of criminal records for certain marijuana-related offenses

This section adds a new subchapter in Chapter 229 of title 18 of the U.S. Code that creates an expungement process for two groups of federal marijuana offenders: those who were federally charged for activity that was state legal at the time of offense, and 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. 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 these activities are legal under state law.

#### Sec 302: Limit on drug testing for applicants for federal employment

This section 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 that reside in states that have legalized marijuana. This includes federal positions in the executive, legislative, and judicial branches. Currently, residents of marijuana-legal states applying for positions in the federal civil service can be blocked from consideration for employment because of marijuana-related activity that is legal under state law.

#### Section 303: Fair access to education

This section 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. The section also reestablishes federal student aid eligibility for certain students who are ineligible due to a prior conviction for misdemeanor marijuana possession. 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.

#### Sec 304: Civil forfeiture exemption for marijuana facilities authorized by state law

This section amends section 511(a)(7) of the CSA to exempt real property from being subject to civil forfeiture due to marijuana-related conduct that is authorized by state law. Currently, the Department of Justice has the authority, through civil forfeiture, to seize the property of people who are operating in compliance with state marijuana laws.

#### Sec 305: Prohibition on inadmissibility or deportation of aliens who comply with state law

This section amends sections 212(a)(2)(A)(i)(II) and 237(a)(2)(B)(i) of the Immigration and Nationality Act so that aliens are not denied entry visas and are not subject to deportation due to marijuana-related activity that is legal under state law. Under current law, aliens cannot obtain visas or otherwise be admitted into the US if the individual is convicted of, or has admitted to having committed, a violation of (or an attempt to violate) any federal controlled substances law. Further, the Attorney General has the authority to order the removal of any alien who at any time after admission has been convicted of a violation of (or an attempt to violate) any federal controlled substances law.

#### Sec 306: Screening of applicants for federally assisted housing

This section amends section 579 of 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 definition of “drug-related criminal activity.” Currently, individuals engaged in drug-related criminal activity are not eligible for federally assisted housing, and 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 drug-related criminal activity.

### **Medical Marijuana Research and Access**

#### Sec 401: Medical Marijuana Research Act

This section addresses two barriers currently faced by researchers who wish to conduct legitimate medical research with marijuana. First, it creates a new registration process specifically for medical marijuana, reducing approval wait times, costly security measures, and unnecessary layers of protocol review. Second, once researchers have been approved to conduct this research, this section makes it easier for researchers to obtain marijuana for their studies by reforming production and distribution regulations. The section also allows for the private manufacturing and distribution of marijuana solely for research purposes.

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

This section requiring 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. This includes authorizing them to fill out any forms involved in the process of recommending medical marijuana. Under current law, VA health care workers are prohibited from providing veterans with recommendations regarding legal medical marijuana.

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

This section authorizes Indian Health Service medical professionals to provide recommendations and opinions to patients regarding participation in state marijuana programs. This includes authorizing them to fill out any forms involved in the process of recommending medical marijuana.