

THE SAFE BANKING ACT OF 2021

I. Overview

Heralded by the Cannabis industry as “Divine Absolution”, the Secure and Fair Enforcement Banking Act of 2021 (“SAFE Banking Act” or “Act”) aspires to provide legal *Marijuana* growers, processors, transporters and sellers (“*Marijuana Related Businesses*” or “*MRBs*”) with the access to banking that every other legitimate industry enjoys.¹

Banking and cash management have been among legalized *Marijuana's* greatest obstacles and, seeking to align federal and state “financial services access laws” by prohibiting Federal regulators from penalizing banks working with *MRBs*, the United House of Representatives passed the SAFE Banking Act on April 20, 2021.

Despite lessening criminal/administrative penalties and depository insurance obstacles, the Act fails to put legal *Cannabis* on an equal footing with other legitimate industries or make depository accounts and *Merchant Services* either available or affordable.

A. Safe Banking Act's Protections

First, the SAFE Banking Act clarifies that funds from a licensed *Plant Touching MRB's* operations are not proceeds from an unlawful activity after they are received by a third-party. Act, §3. Thus, while not expressly removing MRB funds from the *Bank Secrecy Act's* “money-laundering ambit”, the Act partially legitimizes *Cannabis* cash.

Second, the Act prohibits Federal banking regulators from: (1) terminating/limiting deposit insurance solely for providing financial services to an *MRB*; (2) prohibiting, penalizing, or discouraging a bank from providing financial services to an *MRB*; (3) recommending, incentivizing, or encouraging a bank not to offer, downgrade or cancel financial services solely if account holder is an *MRB* (or its employee, owner operator); (4) taking adverse action on a loan made to a *MRB* (or its employee, owner, or operator); or (5) prohibiting, penalizing or discouraging a bank from providing a financial service to an *MRB*. Act, §§2(a)(1)-(5).

Third, the Safe Banking Act protects banks and insurers providing *MRBs* with financial services from Federal legal or regulatory exposure (including criminal, civil, or administrative forfeiture) solely for providing services or investing income derived from such a financial service. Act, §§4(a)-(d).

B. Safe Banking Act's Failings

Despite diminishing criminal and administrative punishment and depository insurance denial, the Safe Banking Act fails to put *Cannabis* at the same level as other legitimate industries regarding banking services' access.

First, the Act fails to amend the *Bank Secrecy Act* to remove MRBs' proceeds from the

¹ Italicized terms are defined in the Glossary attached as “Exhibit A”.

“money laundering” purview which would make depository accounts and *Merchant Services* both available and affordable to *MRBs*.

Second, instead, the Act incorporates the *FinCEN Guidance*'s requirements foisting onerous compliance demands on *Financial Institutions* preventing from profitably banking *Cannabis*, limiting the number of banks capable of providing financial services, and causing these egregious costs to be borne by *Plant Touching MRBs*. Act, §6(a).

Third, the Safe Banking Act expressly refuses to require banks or insurers to provide financial services to *Plant-Touching* or *Non-Plant Touching MRBs*. Act, §5(a). Thus, because banks and insurers remain free to shun *Cannabis* industry participants, the Act falls staggeringly short of achieving its stated objectives.

II. Marijuana Related Businesses and Applicable Law

A. Marijuana Related Businesses

MRB's take two forms, "Plant Touching" and "Non Plant Touching", and face staggering financial challenges.

First, businesses which “manufacture, distribute, or dispense marijuana” or literally touch *Marijuana* at some point along the supply chain are deemed "Plant Touching". "FIN-2014-G001: BSA Expectations Regarding Marijuana-Related Businesses," FinCEN, February 14, 2014 (“*FinCEN Guidance*”). Licensed by a state or a political subdivision, *Plant Touching MRB's* include: planting, cultivating, harvesting, processing/extracting, testing, packaging, disposing, transporting, and dispensing. *Id.*; U.S. Senate, “S. 1726: Marijuana Businesses Access to Banking Act of 2015,” July 9, 2015; Representatives, H. R. 2076, April 28, 2015.

Further, any entity having a financial or controlling interest (regardless of ownership percentage) in a *Plant Touching MRB* (including "investment" or "management" shell companies) that may seek “to conceal or disguise involvement in marijuana related business activity” is deemed a *Plant Touching MRB*. *FinCEN Guidance*.

Second, businesses providing products and services to *Plant Touching MRB's* but not directly manufacturing, distributing, or dispensing *Marijuana* are labeled "*Non Plant Touching MRBs*". Example of these ancillary businesses include: banking, payment processing and armored car services; commercial real estate (landlord and property management); construction, plumbing and electrical; professional services (accounting, consulting, legal, lobbying and insurance); hydroponics and cultivation products; packaging and supplies; investment; professional training and education; support items retailer (paraphernalia); security services and equipment; technology and software; and advertising, public relations and marketing agencies.

B. Applicable Law

1. Federal Criminal and Civil Law

Presently, 36 states, the District of Columbia and the Commonwealths of Guam Puerto Rico and the Mariana Islands have legalized *Marijuana* programs protected from Federal interference by the *Rohrabacher-Farr Amendment* which, in turn, incorporates the Justice Department's since rescinded "*Cole Memoranda*" Policy.

The Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C. §§ 801, *Et. Seq* (1970) ("*Controlled Substance Act*") lists *Marijuana* next to heroin as a Schedule I controlled substance having "a high potential for abuse" and for which there's "no currently accepted medical use in treatment" and "a lack of accepted safety for use" "under medical supervision". 21 U.S.C. §812(b)(1). The *Controlled Substance Act* prohibits *Marijuana's* manufacture, distribution, dispensation and possession and, pursuant to the U.S. Constitution's Supremacy Clause, state laws conflicting with federal law are generally preempted and void. U.S. Const., Art. VI, cl. 2; Wickard v. Filburn, 317 U.S. 111, 124 (1942)("[N]o form of state activity can constitutionally thwart the regulatory power granted by the commerce clause to Congress").

While still 100% illegal under Federal law, the state legalized *Marijuana* industry's existence partly stems from three (3) rescinded *Department of Justice* "policy clarifying" *memoranda* restraining U.S. Attorneys' *Controlled Substance Act* enforcement in legalized *Marijuana* states. First, in the "Ogden Memorandum of 2009", then Deputy Attorney General David Ogden wrote that combating major drug traffickers remains a central priority and federal resources should not be devoted to "those whose actions are in clear compliance with existing state laws providing for the medical use of marijuana" ("Ogden Memorandum"). Second, in a June 29, 2011 dated memorandum, then Deputy Attorney General James Cole "clarified" that the Ogden Memorandum was "never intended to shield such activities from federal enforcement action and prosecution, even when those activities purport to comply with state law" ("Cole Memorandum I").

Third, in a memorandum dated August 29, 2013, Deputy Attorney General Cole provided that while *Marijuana* remains illegal under the Act, the *Department of Justice* would focus resources on "most significant threats in the most effective, consistent, and rational way" listing 8 *Enforcement Priorities* of preventing: distribution of *Marijuana* to minors; *Marijuana* sales revenue going to criminal enterprises, gangs, and cartels; diversion of *Marijuana* from states where it is legal under state law in some form to other states; state-authorized *Marijuana* activity from being used as a cover or pretext for trafficking of other illegal drugs or other illegal activity; violence and use of firearms in marijuana's cultivation and distribution; drugged driving and exacerbation of other adverse public health consequences associated with *Marijuana* use; growing of *Marijuana* on public lands and attendant public safety and environmental dangers posed by *Marijuana* production on public lands; and *Marijuana* possession or use on federal property ("Cole Memorandum II") (hereafter, the Ogden Memorandum, Cole Memorandum I and Cole Memorandum II are collectively referred to as the "*Cole Memoranda*").

In a January 4, 2018 dated internal guidance to all United States Attorneys entitled "Marijuana Enforcement", then Attorney General Jeffrey B. Sessions rescinded his office's prior *Marijuana* guidances, including the *Cole Memoranda*, instructing that, like its predecessors, his guidance creates no "rights, substantive or procedural, enforceable at law by

any party in any matter civil or criminal" ("*Sessions Memorandum*"). The *Session Memorandum* reiterates that each United States Attorneys' office ("U.S. Attorneys' Office") has discretion in choosing which laws to enforce pursuant to the *Justice Department's* standard operating procedures, *i.e.*, the *U.S. Attorneys' Manual* ("Manual").

Drafted in 1980 as a statement of federal law enforcement principles, the Manual ensures "the fair and effective exercise of prosecutorial discretion and responsibility by attorneys for the government" and promotes "confidence on the part of the public and individual defendants that important prosecutorial decisions will be made rationally and objectively on the merits of the facts and circumstances of each case." Manual, §9-27.001 (Preface).

In the absence of the Attorney General's specific direction, the Manual defines the U.S. Attorneys' Office operations ranging from "criminal prosecutions" to "personnel management". In a section entitled "Principles of Federal Prosecution", the Manual provides that to commence a prosecution the U.S. Attorney must believe that the conduct: "constitutes a federal offense, that the admissible evidence will probably be sufficient to obtain and sustain a conviction, and that a substantial federal interest would be served by the prosecution". Grounds for Commencing or Declining Prosecution, Manual, §9-27.000.

In determining whether a prosecution serves a "substantial federal interest", the Manual instructs weighing relevant considerations, including: Federal law enforcement priorities, including any federal law enforcement initiatives or operations aimed at accomplishing those priorities; nature and seriousness of the offense; deterrent effect of prosecution; person's culpability in connection with the offense; person's history with respect to criminal activity; person's willingness to cooperate in the investigation or prosecution of others; interests of any victims; and probable sentence or other consequences if the person is convicted. Initiating and Declining Charges—Substantial Federal Interest, Manual. §9-27.230

Mirroring the *Cole Memoranda*, the Manual acknowledges that the Justice Department needs to prioritize its use of federal resources and instructs that, in assessing offense's seriousness, must weigh "whether the violation is technical or relatively inconsequential in nature and what the public attitude may be toward prosecution under the circumstances of the case" including that the public "may be indifferent, or even opposed, to enforcement of the controlling statute whether on substantive grounds, or because of a history of non-enforcement, or because the offense involves essentially a minor matter of private concern and the victim is not interested in having it pursued". Manual, §9-27.230 Comment, at 1.

The *Cole Memoranda's* findings are incorporated into *Rohrabacher-Farr Amendment*. Originally passed as an attachment to the Commerce, Justice, and Science Appropriations bill for fiscal year 2014, and repeatedly renewed, the *Rohrabacher-Farr Amendment* prohibits the *Justice Department* from using federal funds to prevent certain states "from implementing their own State laws that authorize the use, distribution, possession or cultivation of medical *marijuana*".

2. Federal Banking Law and Regulation

Any transfer or deposit of monies yielded from *Marijuana's* sale may be deemed "money laundering" in violation of 18 U.S.C. §1956 for the "seller" and a *Bank Secrecy Act* violation by the *Financial Institution*. *FinCEN Guidance* ("because federal law prohibits the distribution and sale of marijuana, financial transactions involving a marijuana related business would generally involve funds derived from illegal activity").

Specifically, in its February 14, 2014 dated "Guidance", the *Department of the Treasury's* ("*Treasury Department*") *Financial Crimes Enforcement Network* ("*FinCEN*") clarified that through adhering to institution specific factors (ex. particular business objectives, evaluation of risks associated with offering particular product or service, and capacity to effectively manage risks), *Financial Institution's* may provide financial services to *MRB's* consistent with *Bank Secrecy Act* obligations by: (i) obtaining and reviewing "marijuana related business and parties" information from licensing and enforcement authorities including application, license, and registration documentation; (ii) developing an understanding of business' normal and expected activity including types of to-be-sold product and to-be-served customers (e.g., medical versus adult use); (iii) monitoring publicly available sources for adverse information about business and related parties; (iv) monitoring for suspicious activity, including *Guidance's* specified red flags; and (v) routinely updating customer due diligence information commensurate with risk. *FinCEN Guidance*.

These "*FinCEN Guidance* 'red flags' indicating state law or *Cole Memoranda* priority violations" include *MRBs*: appearing to use license as a pretext to launder "criminal activity derived funds"; inability to demonstrate a licensed business operating consistently under state law or legitimate source of significant outside investments; concealing or disguising cannabis involvement; are, or have been, subject to a *Marijuana*-related law or regulation enforcement action (including owners and/or operators); engaging in international or interstate activity including making/receiving out-of-state cash deposits or interstate transfers; or purporting to be a "non-profit" while engaged in commercial activity inconsistent with classification. *FinCEN Guidance*.

The *FinCEN Guidance* compounds compliance costs by requiring that a bank providing financial services to a *MRB* file *Suspicious Activity Reports* ("SARs") following aforementioned "red flags" or if it knows, suspects, or has reason to suspect that a conducted or attempted transaction: (i) involves - - or is an attempt to disguise - - funds derived from illegal activity; (ii) is designed to evade *BSA* regulations; or (iii) lacks a business or apparent lawful purpose. *FinCEN Guidance*.

Because, regardless of state law, Federal law bars all growing and selling, all *Marijuana-Related Business* financial transactions involve funds derived from illegal activity requiring banks to file a "Limited", "Priority" or "Termination" SAR with every deposit, withdrawal, or transfer. First, if providing financial services to a business not violating state law or any *Cole Memoranda* priority, a bank must file a "*Marijuana Limited SAR*" listing: (i) subject and related parties information and addresses; (ii) that filing SAR solely because subject engaged in a *Marijuana-Related Business*; and (iii) no additional suspicious activity has been identified.

FinCEN Guidance.

Second, if reasonably believing that a *Marijuana-Related Business* violates state law or *Cole Memoranda* priority, a *Financial Institution* must file "*Marijuana Priority SAR*" providing: (i) subject and related parties information and addresses; (ii) enforcement priorities believed to have been implicated; and (iii) "suspicious activity financial transactions" details including dates and amounts. Third, if "facilitating effective anti-money laundering compliance" requires terminating a "marijuana-related business" relationship, a bank must file a "*Marijuana Termination SAR*" alerting successor *Financial Institution* of potentially illegal activity. FinCEN Guidance.

3. Penalties

This Federal prohibition creates criminal and civil exposure for state-legal *Cannabis* industry participants. First, depending on amount of *Marijuana* possessed, cultivated or sold, the *Controlled Substance Act* impose penalties ranging from incarceration of 15 days to life and fines of \$1,000 to \$1,000,000. 21 U.S.C. § 841(b).

Second, because working together to distribute drugs to a third party forms a "conspiracy" in violation of 21 U.S.C. §846, both *Marijuana* professionals and anyone "furthering sales" (ex., dispensary's landlord) faces conspiracy exposure.

Third, any transfer or deposit of monies yielded from *Marijuana*'s sale may deemed "money laundering" in violation of 18 U.S.C. §1956 for the "seller" and a *Bank Secrecy Act* violation for the *Financial Institution* accepting the deposit and "failing to identify or report financial transaction involving proceeds of *Controlled Substance Act* violation". 31 U.S.C. §531(g).

Fourth, one whom knowingly leases property for purpose of "distributing a controlled substance" may be deemed to be "maintaining a drug premise" subject to criminal (up to 20 years incarceration and fines up to \$500,000 for individuals and \$2 million for an entity) and civil (forfeiture of gross receipts earned from leased space) penalties. 21 U.S.C. §856.

Fifth, property involved in *Marijuana's* sale and distribution may be subject to seizure and forfeiture by the Federal government and, which may, or may not, abide by the "innocent landowner defense".

Sixth, because illegal under Federal law, licensed *Marijuana* growers, processors transporters and sellers are ineligible for protection under the bankruptcy law. In re Arenas, 535 B.R. 845 (10th Cir., August 21, 2015) (affirming Chapter 7 dismissal because majority of debtors' income generated from marijuana business).

C. Operational Difficulties Banking Cannabis Cash

While 706 banks and credit unions provide *Marijuana Related Businesses* with accounts, it is a small fraction of the nation's 11,954 financial institutions, which, to offset

onerous compliance costs, impose service fees reaching \$10,000 per month per account. Due to difficulty in obtaining financial and armored car services and because *Marijuana* is primarily, if not exclusively, a cash business, *MRB's* face overwhelming safety, security and operational issues.

First, *Marijuana Related Businesses* - and their employees, patients and vendors - face physical criminal risk of robbery and assault. Second, the "lack of financial services" access both imposes additional disbursement and "accounting and record keeping" requirements on the *MRB* and results in a massive productivity loss.

Second, because they lack financial services and receive considerable monies in cash, *Marijuana Related Businesses* are forced to use cash to pay employees, landlord, taxes (local, state and federal), utilities (electricity, water), and vendors, thereby passing on the criminal vulnerability, administrative burden and productivity loss.

Third, because insurance typically only covers up to a \$20,000 cash loss and *MRB's* often have between \$200,000 to \$500,000 in cash on hand, theft can be a fatal blow to an enterprise.

Fourth, even if it has a banking account, after writing a check to another *Marijuana Related Businesses*, an *MRB's* account may be flagged and shut down creating huge business interruption issues. Further, following account closures *MRB's* owners and employees often have their personal accounts shut down and experience difficulty in obtain home loans or credit cards.

III. The Safe Banking Act of 2021

A. Legislative History

On March 7, 2019, the Act's initial incarnation, "the SAFE Banking Act of 2019" ("2019 Act"), was introduced in the U.S. House of Representatives with broad bipartisan support.

After passing the House on September 25, 2019, and despite inclusion of its provisions in the Health and Economic Recovery Omnibus Emergency Solutions Act COVID-19 relief bill, a push to include the 2019 Act's provisions in the end-of-year COVID-19 stimulus failed.

On April 19, 2021, the Act passed by the House of Representatives as "H.R. 1996" with minimal changes clarify wording and intent like "depository" institutions being altered to "financial institutions". For further clarification, sections and wording were added: (1) including "Business of Insurance" explaining that nothing in the Act overrides existing laws regulating insurance companies; (2) stating that *FinCEN Guidance* must be updated within 180 days of passage to ensure consistency with changes made by the Act; and (3) updating the "financial services" definition specifying whether the customer receiving the product or service is a consumer or a commercial entity.

B. “Cannabis-Related Legitimate Businesses”, “Service Providers”, and “Financial Services”

Intending to increase “public safety by ensuring access to **financial services to cannabis-related legitimate businesses and service providers** and reducing the amount of cash at such businesses”, the Safe Banking Act defines these terms carefully. Act, §§1(c) & 14(4), (7) & (13) (“Emphasis added”).

First, a “Cannabis-Related Legitimate Businesses” is defined as a “manufacturer, producer, or any person or company” “handling cannabis or cannabis products, including cultivating, producing, manufacturing, selling, transporting, displaying, dispensing, distributing, or purchasing cannabis or cannabis products” pursuant to a law established by a State or its political subdivision.² Act, §14(A)&(B). Adopting the Controlled Substance Act’s “*Cannabis*” definition, the Act defines “Cannabis Product” as any *Cannabis*-containing article including concentrates, edibles, tinctures, or topicals. Act, §14(2)&(3). Further, the Act defines: “manufacturer” as one who “manufactures, compounds, converts, processes, prepares, or packages cannabis or cannabis products”; and “producer” as one who “plants, cultivates, harvests, or in any way facilitates the natural growth of cannabis”. Act, §14(11)&(12).

Second, a “Service Provider” encompasses an entity or person “selling goods or services” to a Cannabis-Related Legitimate Business or providing any Cannabis-related business services (ex., sale or lease of property, legal or other licensed services) excluding “handling cannabis or cannabis products” (ex., cultivating, producing, manufacturing, selling, transporting, displaying, dispensing, distributing, or purchasing”). Act, §13(A)&(B).

Third, the Act’s “Financial Service” provider definition arises from an expansive “financial services and products”³ view encompassing:

1. the business of insurance (as defined in §1002 of the Dodd-Frank Act);
2. authorizing, processing, clearing, settling, billing, transferring for deposit, transmitting, delivering, instructing to be delivered, reconciling, collecting, or otherwise effectuating or facilitating of payments or funds, by any means (including by credit, debit, other payment cards, or other access devices, accounts, original or substitute checks, or electronic funds transfers);
3. acting as a money transmitting business directly or indirectly using a depository institution in connection with effectuating/facilitating a payment for a Cannabis-Related

² For this Article’s purposes, a “State or political subdivision” authorized to establish a legalized *Marijuana* program encompasses any U.S. Commonwealth, territory or possession, Indian Tribe (as defined in §102 of Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a) or Indian Country (as defined in §1151 of title 18). Act, §14(8), (9) & (14).

³ Specifically, the Act’s “Financial Service” provider definition tracks “financial services and products”:

- as defined in §1002 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, 12 U.S.C. §§5481, Et. Seq (“Dodd-Frank Act”); and
- permitted to be provided by a national bank or a financial subsidiary (pursuant to §5136 of 12 U.S.C. §24, et seq. and §5136A of 12 U.S.C. §24a) and a Federal credit union (pursuant to the Federal Credit Union Act).

Act, §14(7).

Legitimate Business or Service Provider in compliance with 31 U.S.C. §5330 and any applicable State law; and

4. acting as an armored car service for processing and depositing with a Depository Institution or Federal reserve bank with respect to any monetary instruments. Act, §14(7).

The Act's "Depository Institution" definition adopts that set forth in §3(c) of the Federal Deposit Insurance Act, 12 U.S.C. §1813(c) and §101 of the Federal Credit Union Act, 12 U.S.C. §1752, and defines "Federal banking regulator" to include the Board of Governors of the Federal Reserve System, Bureau of Consumer Financial Protection, Federal Deposit Insurance Corporation, Federal Housing Finance Agency, *FinCEN*, Office of Foreign Asset Control, Office of the Comptroller of the Currency, National Credit Union Administration, and *Treasury Department* (or any "banking or financial services regulating Federal agency or department it determines). Act, §14(5).

C. Partially Legitimizes Cannabis Cash

Because it clarifies that funds from a licensed *Plant Touching MRB's* operations are not proceeds from an unlawful activity after received by a third-party, the SAFE Banking Act partially legitimizes *Cannabis* cash despite not expressly removing *MRB* funds from the *Bank Secrecy Act's* "money-laundering ambit". Act, §3.

In a section entitled "Protections for Ancillary Businesses", the Act provides that, for Federal law purposes, the yield from a Cannabis-Related Legitimate Business transaction or Service Provider's activities are not "unlawful activity proceeds" solely because involving: (a) these parties; (b) handling, cultivating, producing, manufacturing, selling, transporting, displaying, dispensing, distributing, or purchasing Cannabis or Cannabis Products; (c) selling goods or services to a Cannabis-Related Legitimate Business; or (d) providing Cannabis related business services (ex., sale or lease of property, legal or other licensed services). Act, §§ 3, 14(4)(B) & 14(13)(A).

Unfortunately, the SAFE Banking Act fails to define "ancillary business" or extend the "money-laundering exemption" far enough up the supply chain to be meaningful. For example, although under this provision the cash a dispensary uses to purchase chairs falls outside of the *Bank Secrecy Act's* "money-laundering ambit" for the receiving furniture store, the dispensary purchaser is denied the same protection.

D. Depository Institution's Safe Harbor

The SAFE Banking Act prohibits Federal banking regulators from: (1) terminating/limiting deposit insurance solely for providing Financial Services to a Cannabis-Related Legitimate Business or Service Provider (hereafter, collectively referred to as "Legitimate Cannabis Businesses"); (2) prohibiting, penalizing, or discouraging a bank from providing Financial Services to a Legitimate Cannabis Business; (3) recommending, incentivizing, or encouraging a bank not to offer, downgrade, or cancel financial services solely because account holder is a Legitimate Cannabis Business (or its employee, owner operator); (4) taking adverse

action on a loan made to a Legitimate Cannabis Business (or its employee, owner, or operator); or (5) prohibiting, penalizing or discouraging a bank from engaging in a Financial Services with a Legitimate Cannabis Business. Act, §§2(a)(1-5).

First, the SAFE Banking Act bars Federal Banking Regulators from: (1) terminating/ limiting deposit insurance solely for providing Financial Services to a Legitimate Cannabis Business; and (2) prohibiting, penalizing, or discouraging a Depository Institution from providing Financial Services to a Cannabis-Related Legitimate Business. Act, §2(a)(1)&(2).

Second, the Act forbids Federal Banking Regulators from recommending, incentivizing, or encouraging a Depository Institution not to offer, downgrade or cancel Financial Services solely if account holder is a Legitimate Cannabis Business (or its employees, owners or operators). Act, §2(a)(3)(A)-(C). This protection exists even if the Financial Institution was unaware that account holders are, or become, a Legitimate Cannabis Business (or its employees, owners or operators). *Id.*

Third, the SAFE Banking Act bars Federal Banking Regulators from taking adverse or corrective supervisory actions on: (1) a loan made to a Legitimate Cannabis Business (or its employees, owners or operators); or (2) a real estate or equipment owner or operator solely because business is, or equipment is leased to, a Legitimate Cannabis Business. Act, §2(a)(4)(A)-(C).

Fourth, the Act prevents Federal Banking Regulators from prohibiting, penalizing or discouraging a Depository Institution (or entity performing a financial service for or in association with it) from engaging in a Financial Service for Cannabis-Related Legitimate Business or Service Provider. Act, §4(a)(5).

E. Protection from Federal Liability and Forfeiture

The SAFE Banking Act exempts Depository Institutions (and any entity performing a Financial Service for or in association with it), Federal Reserve Banks or Federal Home Loan Banks, and Insurers providing a Financial Service to a Legitimate Cannabis Business (and its officers, directors, and employees) from liability pursuant to any Federal law or regulation solely for providing, or investing any income derived from, such a Financial Service. Act, §4(a), (b) & (c).

The Act further exempts Depository Institutions, Federal reserve banks and Federal Home Loan Banks from criminal, civil, or administrative forfeiture pursuant to any Federal law for providing a loan or other Financial Service (or having a legal interest in loan collateral) provided to an owner, employee, or operator of a Legitimate Cannabis Business or an owner or operator of real estate or equipment that is leased or sold to it. Act, §4(d)(1) & (2).

F. No Requirement to Provide Financial Services

Because it refuses to mandate providing *MRBs* with depository services, banks and insurers remain free to shun *Cannabis* industry participants and the Safe Banking Act fails to

achieve its “ensuring Financial Services access to Cannabis-Related Legitimate Businesses and Service Providers” objective. Act, §§ 1 (c) & 5(a).

Specifically, the Safe Banking Act does not:

- require a Depository Institution (or related Financial Service providing entity) or Insurer to provide Financial Services to a Legitimate Cannabis Business;
- limit/restrict Federal banking regulators’ general examination, supervisory, and enforcement authority (unless action’s sole basis is for providing Financial Services to a Legitimate Cannabis Business); or
- interfere with insurance regulation in accordance with the Dodd Frank Act or McCarran-Ferguson Act, 15 U.S.C. 1011 *et seq.*.

Act, §§ 5(a)-(c).

Other than “reputational risk” this “get out of jail free” provision enables banks to stonewall Legitimate Cannabis Businesses for any nebulous reason like “inconsistent with long term growth plans” or “added regulatory costs prevents financial viability”.

G. Incorporates FinCEN Guidance’s SARS Filing Requirements

The Act requires that a Financial Institution (and its director, officer, employee, or agent) report a suspicious Legitimate Cannabis Business transaction, the report comply with *FinCEN*-issued guidances, and that, within 180-days of the Act’s enactment, the *FinCEN* Guidance be updated to ensure consistency with Act’s purpose and intent and not “significantly inhibit” providing Financial Services to Legitimate Cannabis Businesses. Act, §6(a).

Unfortunately, by incorporating the *FinCEN Guidance* requirements, the Safe Banking Act foists onerous compliance requirements on *Financial Institutions*. This prevents them from profitably banking *Marijuana*, limits the number of banks capable of providing financial services (and impedes prospect of market competition that would drive down costs), and causes these egregious costs to be absorbed by Legitimate Cannabis Businesses. Act, §6(a).

H. Examination Procedures and Reports

The Act also requires that “uniform guidance and examination procedures” be disseminated, studies be conducted, and reports be issued.

First, within 180 days of the Safe Banking Act’s enactment, the Financial Institutions Examination Council is required to develop uniform guidance and examination procedures for Depository Institutions providing Financial Services to Legitimate Cannabis Businesses. Act, §7.

Second, on an annual basis, the Act requires that Federal banking regulators issue a report to Congress containing information and data on the availability of, and regulatory or legislative recommendations for expanding access to, Financial Services for minority/women-owned Cannabis-Related Legitimate Businesses. Act, §8.

Third, the Safe Banking Act requires the United States Comptroller General (“Comptroller General”) to: (1) study both “marketplace entry” and “financial services” barriers to potential/existing minority/women-owned Cannabis-Related Legitimate Businesses; and (2) issue a Congressional report containing all such ‘barrier removal findings/determinations and regulatory/legislative recommendations” for expanding Financial Services access to these sectors. Act, §9.

Fourth, within two (2) years of enactment, the Safe Banking Act requires the Comptroller General to study “SARS filings’ effectiveness” at finding individuals or organizations suspected or known to be engaged with transnational criminal organizations and whether engagement exists in legalized *Marijuana* jurisdictions for: (a) *Marijuana-Related Businesses* (from 2014 through Act’s enactment); and (2) Cannabis-Related Legitimate Businesses (for 1-year period following Act’s enactment). Act, §10.

I. Application as to Hemp

Except for the SARs filing requirement (and submitting a report on the effectiveness of the same), the Act’s provisions apply equally to Hemp-Related Legitimate Businesses and Hemp-Related Service Providers (hereafter, collectively referred to as “Legitimate Hemp Businesses”) as they would to Legitimate Cannabis Businesses. Act, §11 (a).

The Act adopts the “hemp” definition set forth in §297A of the Agricultural Marketing Act of 1946. 7 U.S.C. 1639o, and defines “hemp-related legitimate business” as a “manufacturer, producer, or person or entity” “handling hemp or hemp-derived cannabinoid products (ex, cannabidiol (“CBD”)) including cultivating, producing, extracting, manufacturing, selling, transporting, displaying, dispensing, distributing, or purchasing” pursuant to the Agricultural Improvement Act of 2018 (“Farm Bill”) and implementing regulations. Act, §11(b)(3)(a)&(b).

The Act defines “Hemp-Related Service Provider” as an entity or person selling goods or services to a Hemp-Related Legitimate Businesses or providing any business services (ex., sale or lease of property, legal or other licensed services) relating to hemp or hemp-derived cannabinoid products. Act, §11(b)(3)(a)&(b).

After noting that, despite the Farm Bill’s full legalization of Hemp (*via* removal from Controlled Substance Act’s “Marijuana” definition), Hemp-Related Service Providers still endure “difficulty gaining access to banking products and services”, the Act requires that, within 90 days of enactment, Federal Banking Regulators update existing guidances for providing Financial Services to Legitimate Hemp Businesses to address: (1) compliance with Financial Institutions’ existing obligations under Federal laws and regulations in conformity with the Act and the Department of Agriculture’s domestic hemp production rules; and (2) best practices for financial institutions to follow when providing Financial Services to Legitimate Hemp Businesses. Act, §§12(a)(1)-(3) &(b)(1)-(2).

J. Requirements for Deposit Account Termination Requests and Orders

Mindful of the baseless and sudden depository account closures that derail *Cannabis* industry participants, the Safe Banking Act provides protections to ensure that account closure requests are valid, clear, contain explanatory notice to both financial institutions and account holder(s), and “closure records” are maintained and reported. Act, §13.

First, to guaranty “depository account termination validity”, the Act prohibits Federal banking agencies from requesting or ordering a depository institution to terminate account(s) - or otherwise restrict or discourage a depository institution from entering into or maintaining a banking relationship – without a “valid reason”. Act, §13(a)(1).

Although failing to specify what constitutes a “valid reason”, the Safe Banking Act deems “reputational risk” concerns as “insufficient” and “National Security Threats” meritorious where customer(s) are (or serve as a conduit for) an entity posing as a national security threat, is involved in terrorist financing, is an agency of the Government of Iran, North Korea, Syria, or any country listed on the State Sponsors of Terrorism list or does business with either of the two former categories (unless a Federal banking agency determines that due diligence was used to avoid doing business with a targeted entity). Act, §§13(a)(1)(a) and 2(A)-(E).

Second, if requesting or ordering a Depository Institution to terminate account(s) for reasons other than national security (or interfering with an authorized criminal investigation), the Act requires a Federal Banking Agency to provide a writing justifying why termination is needed (including laws/regulations deemed to have been violated). Act, §§13(b)(1)&(2). Further, following a Federal Banking Agency’s account termination, the Act requires that the Depository Institution provide depositor(s) with written justification for the termination (including laws/regulations deemed to have been violated). Act, §§13(c)(1)&(2).

Third, the Act requires each appropriate Federal banking agency annually provide Congress with a report stating the: (1) prior year’s aggregate number of terminated account(s); and (2) each termination’s legal authority and frequency with which each such authority was relied upon.

Exhibit A - Glossary

Agriculture Improvement Act of 2018 ("Farm Bill) – Federal statute legalizing *Hemp* and its derivatives and removing them from the ambit of Controlled Substance Act and Drug Enforcement Administration.

Anti-Money Laundering Measures (AML) – Rules helping to detect and report suspicious activity including *money laundering*.

Bank Secrecy Act ("BSA") – Federal statute, *Financial Recordkeeping and Reporting of Currency and Foreign Transactions Act of 1970*, 31 U.S.C. 5311, *Et. Seq.*, requiring *financial institutions* to detect and prevent money laundering through keeping records, and filing reports, of cash transactions of more than \$10,000 and reporting suspicious activity that might form *money laundering*, tax evasion and criminal activities. Prohibits *financial institutions* from accepting deposits and "failing to identify or report financial transaction involving proceeds of *Controlled Substance Act* violation".

Broad Spectrum Hemp – Hemp derived products containing all cannabinoids (including *CBD*) except *THC*, which is completely removed after the initial extraction.

Cannabinoids - Any of various naturally-occurring, biologically active, chemical constituents of *hemp* or *Cannabis* plants including *THC* and *CBD*.

Cannabidiol ("CBD") - One of the 120 active constituent of *Marijuana* having a wide scope of medical and therapeutic applications but low *THC* levels.

Cannabis – Encompasses all *Marijuana* and *Hemp* plants and all flower, products and *Cannabinoids* derived from them.

Cannabis Related Businesses – Encompasses all *Marijuana Related Businesses* and *Hemp Related Businesses*, whether "Plant Touching" or "Non Plant Touching".

Certificate of Analysis – A report from an accredited laboratory listing the types and amount of *Cannabinoids* in a tested sample.

Cole Memoranda – Three (3) internal *Justice Department* memoranda collectively read as describing enforcement priorities for federal prosecutors in legalized *Marijuana* states. First, in the so-called "Ogden Memoranda of 2009", then Deputy Attorney General David Ogden wrote that combating major drug traffickers remains a central priority and federal resources should not be devoted to "those whose actions are in clear compliance with existing state laws providing for the medical use of *Marijuana*". Second, in a June 29, 2011 dated memorandum, then Deputy Attorney General James Cole "clarified" that the Ogden Memorandum was "never intended to shield such activities from federal enforcement action and prosecution, even when those activities purport to comply with state law". Third, in a memorandum dated February 14, 2014, Deputy Attorney General James Cole provided that while *Marijuana* remains illegal under the *Controlled Substance Act*, the *Justice Department* would focus resources on "most significant threats in the most effective, consistent, and rational way" listing 8 *enforcement priorities*.

Controlled Substance Act ("CSA") - Federal statute, *Comprehensive Drug Abuse Prevention and Control Act of 1970*, 21 U.S.C. §§ 801, *Et. Seq* (1970), prohibiting *Marijuana's* manufacture, distribution, dispensation and possession and listing *Marijuana* next to heroin as a Schedule I controlled substance having "a high potential for abuse" for which there's "no currently accepted medical use in treatment" and "a lack of accepted safety for use" "under medical supervision".

Currency Transaction Report (CTR) - Intended to assist in detecting and preventing money laundering, *Bank Secrecy Act* imposed currency reporting requirements of cash transactions of more than \$10,000.

"Enforcement Priorities" - Eight (8) delineated priorities enabling the *Justice Department* to focus on "most significant threats in the most effective, consistent, and rational way" in preventing: distribution of *Marijuana* to minors; *Marijuana* sales revenue going to criminal enterprises, gangs, and cartels; diversion of *Marijuana* from states where it is legal under state law in some form to other states; state-authorized *Marijuana* activity from being used as a cover or pretext for trafficking of other illegal drugs or other illegal activity; violence and use of firearms in *Marijuana's* cultivation and distribution; drugged driving and exacerbation of other adverse public health consequences associated with *Marijuana* use; growing of *Marijuana* on public lands and attendant public safety and environmental dangers posed by *Marijuana* production on public lands; and *Marijuana* possession or use on federal property.

Financial Institutions (FI) - Includes federally or state-chartered banks, national banking associations, bank and trust companies, trust companies, savings and loan associations, building and loan associations, mutual savings banks, credit union or savings banks, and credit card companies.

Financial Crimes Network (FinCEN) - A Treasury Department bureau tasked with safeguarding the financial system from illicit use, combating money laundering and promoting national security through the collection, analysis and dissemination of financial intelligence and strategic use of financial authorities.

FinCEN Guidance - In a "Guidance" dated February 14, 2014, *FinCEN* clarified that through adhering to institution-specific factors (ex. particular business objectives, evaluation of risks associated with offering particular product or service, and capacity to effectively manage risks), *FI's* may provide financial services to *Marijuana-Related Businesses* consistent with *Bank Secrecy Act* obligations by: (i) obtaining and reviewing "Marijuana related business and parties" information from licensing and enforcement authorities including application, license, and registration documentation; (ii) developing an understanding of business' normal and expected activity including types of to-be-sold product and to-be-served customers (*e.g.*, medical versus adult use); (iii) monitoring publicly available sources for adverse information about business and related parties; (iv) monitoring for suspicious activity, including *FinCEN Guidance's Red Flags*; and (v) routinely updating customer due diligence information commensurate with risk.

FinCEN Guidance "Red Flags" - Indicate state law or *Enforcement Priority* violations including *Marijuana-Related Businesses*: appearing to use license as a pretext to launder "criminal activity

derived funds"; inability to demonstrate a licensed business operating consistently under state law or legitimate source of significant outside investments; concealing or disguising *Cannabis* involvement; are, or have been, subject to a Marijuana-related law or regulation enforcement action (including owners and/or operators); engaging in international or interstate activity including making/receiving out-of-state cash deposits or interstate transfers; or purporting to be a "non-profit" while engaged in commercial activity inconsistent with classification.

Financial Services - Tracks "financial services and products": (1) as defined in §1002 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, 12 U.S.C. §§5481, *Et. Seq.*; and (2) permitted to be provided by a national bank or a financial subsidiary (pursuant to §5136 of 12 U.S.C. §24, et seq. and §5136A of 12 U.S.C. §24a) and a Federal credit union (pursuant to the Federal Credit Union Act. Act, §14(7)).

Full Spectrum Hemp – Hemp derived products containing all *Cannabinoids* including *CBD* and trace amounts of *THC* (less than 0.3% dry measure).

Hemp - Cannabis Sativa plant having a *THC* concentration that is less than 0.3% that is cultivated for fiber, seed and other industrial and medical purposes.

Justice Department - The United States Department of Justice responsible for enforcing federal laws and administering justice including overseeing enforcement agencies the Drug Enforcement Agency and Federal Bureau of Investigation.

Know Your Customer Guidelines ("KYC Guidelines") – Guidelines to prevent *FI's* from being used, intentionally or unintentionally, by criminal elements for *money laundering* activities requiring *FI's* to verify the identity of those seeking financial service in conjunction with the *US Patriot Act*.

Marijuana - Cannabis Sativa, Cannabis Forma Indica, and Cannabis Ruderalis plants secreting chemical compounds including *THC* and *CBD* cultivated for medicinal and consumer use. Defined by *Controlled Substances Act* as "all parts of the plant Cannabis sativa L., growing or not; seeds thereof; extracted resin; and every compound, manufacture, salt, derivative, mixture or preparation of such plant, its seeds or resin" but exempting plant components including: mature stalks; produced fiber; oil or cake made from the seeds of such plant; any other compound, manufacture, salt, derivative, mixture or preparation of such mature stalks (except the extracted resin), fiber, oil, cake or the sterilized seed of such plant, which is incapable of germination — *i.e.*, non-psychoactive components or "hemp".

Marijuana Limited SAR - If providing financial services to a business not violating state law or any *Cole Memoranda* priority, a *FI* must file a "*Marijuana Limited SAR*" with the *Treasury Department* listing: (i) subject and related parties information and addresses; (ii) that filing SAR solely because subject engaged in a *Marijuana-Related Business*; and (iii) no additional suspicious activity has been identified.

Marijuana Related Business ("MRB") – Takes two forms. First, "Plant Touching", those in *Marijuana* industry's supply chain touching the item prior to sale to the consumer; *i.e.*, anyone

planting, cultivating, harvesting, processing/extracting, testing, packaging, disposing, transporting, and dispensing *Marijuana*. Second, "Non Plant Touching", those providing products and services to *Plant Touching MRB's*, but not directly manufacturing, processing, transporting, distributing, or dispensing *Marijuana*, including: advertising, public relations and marketing agencies; banking, payment processing and armored car services; commercial real estate (landlord and property management); construction, plumbing and electrical; professional services (accounting, legal, insurance, lobbying and consulting); hydroponics and cultivation products; packaging and supplies; investment; professional training and education; support items retailer (paraphernalia); security services and equipment; and technology and software.

Marijuana Termination SAR - If "facilitating effective anti-money laundering compliance" requires terminating a "*Marijuana-Related Business*" relationship, a *FI* must file a "*Marijuana Termination SAR*" with the *Treasury Department* alerting successor *FI* of potentially illegal activity.

Marijuana Priority SAR - If reasonably believing that *Marijuana-Related Business* violates state law or *Cole Memoranda* priority, *FI* must file a "*Marijuana Priority SAR*" with the *Treasury Department* providing: (i) subject and related parties information and addresses; (ii) enforcement priorities believed to have been implicated; and (iii) "suspicious activity financial transactions" details including dates and amounts.

Merchant Services - A fee-based service provided by a third-party accepting, processing, and settling payment transactions for a merchant for a fee. After purchasing a product, customer "pays" merchant processor using a credit or debit card, the merchant delivers purchased goods to customer, and, after deducting an agreed-upon fee, merchant processor remits payment collected from customer's credit card company or bank to the merchant. Also called "payment processing".

Money Laundering - Concealment of illegally obtained money's origins, often involving transfers to foreign banks or legitimate businesses, in violation of the *Bank Secrecy Act*.

"Money Transmitting" - Transferring funds on behalf of the public by any and all means including transfers within this country or to locations abroad by wire, check, draft, facsimile, or courier. 18 U.S. Code § 1960(b)(2).

Money Transmitting Act - Federal criminal statute, 18 U.S.C. §1960, prohibiting "unlicensed money transmitting businesses" regulating "transferring funds on behalf of the public" but not transmitter's own funds.

Money Laundering Act - Federal criminal statute, 18 U.S.C. §1956, banning transporting funds within the United States "with the intent to promote the carrying on of specified unlawful activity" or knowing that funds represent unlawful activity proceeds and are being transported to "conceal or disguise specified unlawful activity's nature, location, source, ownership, or control" or avoid a state/federal transaction reporting requirement.

Racketeering Transportation Act - Federal statute, *Foreign Travel or Transportation in Aid of*

Racketeering Enterprises Act, 18 U.S.C. §1952 prohibits interstate traveling with intent to distribute "unlawful activity" proceeds defined as "any business enterprise" involving "controlled substances" (as defined in section 802(6) of the CSA); and (2) "intrastate incidents of the traffic in controlled substances".

"RICO" - Federal criminal and civil statute, Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §1964("RICO") prohibiting "racketeering activity". Because CSA violations comprise RICO barred racketeering activity, not only do MRBs fall within RICO's ambit, civil liability exists for those knowingly facilitating a MRB efforts who may be deemed civil RICO conspirators and jointly and severally liable for all injuries caused by the conspiracy. 18 U.S.C. §1964(d); Salinas v. United States, 522 U.S. 52, 63-64 (1997).

Rohrabacher-Farr Amendment - Federal statute incorporating the *Cole Memoranda's* findings. Originally passed as an attachment to the Commerce, Justice, and Science Appropriations bill for fiscal year 2014, repeatedly renewed, the Rohrabacher-Farr Amendment prohibits the *Justice Department* from using federal funds to prevent certain states "from implementing their own State laws that authorize the use, distribution, possession or cultivation of medical *Marijuana*."

Secure and Fair Enforcement Banking Act of 2021 ("SAFE Banking Act") - Passed on April 20, 2021 by the United House of Representatives, the SAFE Banking Act seeks to align federal and state "banking services access" laws by prohibiting federal banking regulators from penalizing banks and credit unions servicing MRBs. The Act prohibits federal banking regulators from: terminating or limiting deposit insurance solely for providing financial services to a Cannabis-related legitimate business or ancillary service provider; prohibiting, penalizing, or discouraging a bank from providing financial services to a Cannabis-related legitimate business or ancillary service provider; recommending, incentivizing, or encouraging a bank not to offer, downgrade or cancel financial services solely because Cannabis-related legitimate business; or taking adverse action on a loan made to a Cannabis-related legitimate business or its employee, owner, or operator or an owner or operator of real estate or equipment that is leased to a Cannabis-related legitimate business. The Act also incorporates the *FinCEN Guidance* listing an approved methodology for providing financial services to MRBs including filing of SARs.

Section 314(b) Information Sharing - To better identify and report potential money laundering or terrorist activities, §314(b) of *USA PATRIOT Act* provides *financial institutions* with ability to share information with one another under a safe harbor offering protections from liability.

Sessions Memorandum - A January 4, 2018 dated internal guidance to all United States Attorneys entitled "Marijuana Enforcement" in which then Attorney General Jeffrey B. Sessions rescinded some of his office's prior guidances, including *The Cole Memoranda*, instructing that, like its predecessors, his guidance creates no "rights, substantive or procedural, enforceable at law by any party in any matter civil or criminal". Re-states that each United States Attorneys' office has discretion in choosing which laws to enforce pursuant to the *U.S. Attorneys' Manual*.

Substantial Federal Interest In determining whether a prosecution serves a "substantial federal interest", the U.S. Attorneys' Manual instructs weighing relevant considerations, including: 1. Federal law enforcement priorities, including any federal law enforcement initiatives or

operations aimed at accomplishing those priorities; 2. nature and seriousness of offense; 3. deterrent effect of prosecution; 4. person's culpability in connection with offense; 5. person's history with respect to criminal activity; 6. person's willingness to cooperate in investigation or prosecution of others; 7. interests of any victims; and 8. probable sentence or other consequences if the person is convicted. Initiating and Declining Charges - Substantial Federal Interest, Manual, §9-27.230. The Manual provides that the Justice Department needs to prioritize its use of federal resources and instructs that, in assessing offense's seriousness, must weigh "whether the violation is technical or relatively inconsequential in nature and what the public attitude may be toward prosecution under the circumstances of the case" including that the public "may be indifferent, or even opposed, to enforcement of the controlling statute whether on substantive grounds, or because of a history of non-enforcement, or because the offense involves essentially a minor matter of private concern and the victim is not interested in having it pursued". Manual, §9-27.230 Comment, at 1.

Suspicious Activity Report ("SAR"). *FinCEN Guidance* required reports from a *FI* providing financial services to a *Marijuana-related business* triggered by suspicious aforementioned "red flags" or if *FI* knows, suspects, or has reason to suspect that a conducted or attempted transaction: (i) involves - - or is an attempt to disguise - - funds derived from illegal activity; (ii) is designed to evade *Bank Secrecy Act* regulations; or (iii) lacks a business or apparent lawful purpose. With every *Marijuana-related business* deposit, withdrawal, or transfer, regardless of state law, federal law bars all growing and selling, all financial transactions involve funds derived from illegal activity requiring *FI* to file a "Limited", "Priority" or "Termination" SAR with the *Treasury Department*.

Tetrahydrocannabinol ("THC") - Principal psychoactive constituent of *Marijuana*.

Treasury Department - United States Department of the Treasury tasked with issuing all paper and coin currency, collecting federal taxes and managing U.S. government debt instruments.

U.S. Attorneys' Manual - An internal *Justice Department* document functioning as a set of standard operating procedures ensuring "the fair and effective exercise of prosecutorial discretion and responsibility by attorneys for the government" and promoting "confidence on the part of the public and individual defendants that important prosecutorial decisions will be made rationally and objectively on the merits of the facts and circumstances of each case." Manual, §9-27.001 (Preface). In the absence of the Attorney General's specific direction, the Manual defines the U.S. Attorneys' Office operations ranging from "criminal prosecutions" to "personnel management". Instructs that to commence a prosecution, U.S. Attorney must believe that conduct: constitutes a federal offense, that the admissible evidence will probably be sufficient to obtain and sustain a conviction; and that a *substantial federal interest* would be served by the prosecution. Grounds for Commencing or Declining Prosecution, Manual, §9-27.000.

USA Patriot Act - Acronym for federal statute, *Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001*, to deter and punish terrorist acts in the United States and around the world and enhance law enforcement investigatory tools.

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