

# REPORT OF THE CHIEF LEGISLATIVE ANALYST

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DATE: April 02, 2018

TO: Honorable Members of the Rules, Elections, and Intergovernmental Relations Committee

FROM: Sharon Tso   
Chief Legislative Analyst

Council File No. 18-0002-S37  
Assignment No. 18-03-0265

SUBJECT: Resolution (Blumenfield) to SUPPORT S. 1152

CLA RECOMMENDATION: Adopt Resolution (Blumenfield) to include in the City's 2017-2018 Federal Legislative Program, SUPPORT for S. 1152, which would prohibit federal banking regulators from punishing a financial service provider for doing business with a State compliant marijuana-related firm.

SUMMARY:

Resolution (Blumenfield), introduced March 27<sup>th</sup>, 2017, advises that the implementation of the Adult Use of Marijuana Act, the 2016 ballot measure legalizing recreational marijuana sale and use in California, is expected to dramatically increase both the number and size of marijuana-related firms. The Resolution further advises that these firms need access to capital in order to incorporate and expand, but financial service providers are reluctant to loan to such firms out of fear of penalties from federal banking regulators, who still consider marijuana an illegal narcotic. S. 1152 would prohibit regulators from imposing such penalties or otherwise discouraging financial service to marijuana-related firms.

BACKGROUND:

In 2016, California voters approved the Adult Use of Marijuana Act, a ballot measure legalizing recreational marijuana sale and use statewide. The law, which went into full effect at the beginning of 2018, has prompted many marijuana-related firms, such as growers and distributors, to seek state licensing. However, licensing remains anemic in the face of high cost barriers and a dearth of financial institutions willing to grant these firms access to capital.

The federal government still considers marijuana a Schedule I drug under the Controlled Substances Act (CSA). Commercial bankers who provide financial services to marijuana-related firms are subject to prosecution on charges of monetary traffic or investment in illicit substances, which can carry heavy fines, jail time, and even the loss of a federal banking license. Absent these financial services, many marijuana-related firms forgo bank accounts in favor of cash, which creates security problems and makes it more difficult for state cannabis regulators to properly oversee firms or collect taxes.

S. 1152, the SAFE Banking Act, is a bipartisan U.S. Senate bill that would prohibit a federal banking regulator from altering an institution's deposit or share insurance solely for lending to a marijuana-related firm, or otherwise discouraging institutions from offering financial services to such firms. The bill would also prevent corrective supervisory action on a loan solely because it was given to a marijuana-related firm, and would protect an institution from forfeiture for working with such firms.

DEPARTMENTS NOTIFIED:

None

BILL STATUS:

06/08/2017 Committee on Banking, Housing, and Urban Affairs hearings held and printed.

05/17/2017 Introduced in Senate. Read twice and referred to the Committee on Banking, Housing, and Urban Affairs.



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Chris Campbell

Analyst

Attachment: 1. Resolution (Blumenfield)  
2. S. 1152

RESOLUTION

RULES, ELECTIONS, INTERGOVERNMENTAL RELATIONS

WHEREAS, any official position of the City of Los Angeles with respect to legislation, rules, regulations or policies proposed to or pending before a local, state or federal governmental body must have first been adopted in the form of a Resolution by the City Council with the concurrence of the Mayor; and

WHEREAS, in 2016 California voters approved the Adult Use of Marijuana Act, a ballot initiative legalizing recreational marijuana sale and use statewide, which went into full effect January 2018; and

WHEREAS, this legalization is expected to increase both the number and size of marijuana-related firms, especially within the City of Los Angeles; and

WHEREAS, these firms need access to capital, which banks are often reluctant to provide because they fear punishment from the federal government; and

WHEREAS, currently before the U.S. Senate is S.1152, a bill which would prevent federal officials from punishing any financial service provider for doing business with a State compliant marijuana-related firm; and

WHEREAS, this proposal would allow banks to loan these firms the capital they need to set up shop, hire workers, serve their communities, and join this booming sector of the California economy;

NOW, THEREFORE, BE IT RESOLVED, with the concurrence of the Mayor, that by the adoption of this Resolution, the City of Los Angeles hereby includes in its 2017-2018 Federal Legislative Program support for S. 1152 which would prevent federal officials from punishing a financial service provider for doing business with a State compliant marijuana-related firm.

PRESENTED BY:

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BOB BLUMENFIELD  
Councilmember, 3rd District

SECONDED BY:

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MAR 27 2018

115TH CONGRESS  
1ST SESSION

# S. 1152

To create protections for depository institutions that provide financial services to cannabis-related businesses, and for other purposes.

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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

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## A BILL

To create protections for depository institutions that provide financial services to cannabis-related businesses, 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 “Secure and Fair En-  
5 forcement Banking Act” or the “SAFE Banking Act”.

6 **SEC. 2. SAFE HARBOR FOR DEPOSITORY INSTITUTIONS.**

7 A Federal banking regulator may not—

8 (1) terminate or limit the deposit insur-  
9 ance or share insurance of a depository institu-

1           tion under the Federal Deposit Insurance Act  
2           (12 U.S.C. 1811 et seq.) or the Federal Credit  
3           Union Act (12 U.S.C. 1751 et seq.) solely be-  
4           cause the depository institution provides or has  
5           provided financial services to a cannabis-related  
6           legitimate business;

7           (2) prohibit, penalize, or otherwise discour-  
8           age a depository institution from providing fi-  
9           nancial services to a cannabis-related legitimate  
10          business or to a State or Indian tribe that exer-  
11          cises jurisdiction over cannabis-related legiti-  
12          mate businesses;

13          (3) recommend, incentivize, or encourage a  
14          depository institution not to offer financial serv-  
15          ices to the owner, operator, or an individual  
16          that is an account holder of a cannabis-related  
17          legitimate business, or downgrade or cancel fi-  
18          nancial services offered to an account holder of  
19          a cannabis-related legitimate business solely be-  
20          cause—

21                  (A) the account holder later becomes  
22                  a cannabis-related legitimate business; or

23                  (B) the depository institution was not  
24                  aware that the account holder is the owner

1 or operator of a cannabis-related legitimate  
2 business; and

3 (4) take any adverse or corrective super-  
4 visory action on a loan to an owner or operator  
5 of—

6 (A) a cannabis-related legitimate busi-  
7 ness solely because the business owner or  
8 operator is a cannabis-related business  
9 without express statutory authority, as in  
10 effect on the day before the date of enact-  
11 ment of this Act; or

12 (B) real estate or equipment that is  
13 leased or sold to a cannabis-related legiti-  
14 mate business solely because the owner or  
15 operator of the real estate or equipment  
16 leased or sold the equipment or real estate  
17 to a cannabis-related legitimate business.

18 **SEC. 3. PROTECTIONS UNDER FEDERAL LAW.**

19 (a) **IN GENERAL.**—In a State, political subdivision of  
20 a State, or Indian country that allows the cultivation, pro-  
21 duction, manufacturing, transportation, display, dis-  
22 pensing, distribution, sale, or purchase of cannabis pursu-  
23 ant to a law (including regulations) of the State, political  
24 subdivision of the State, or the Indian tribe that has juris-  
25 diction over the Indian country, as applicable, a depository

1 institution and the officers, director, and employees of the  
2 depository institution that provides financial services to a  
3 cannabis-related legitimate business may not be held liable  
4 pursuant to any Federal law (including regulations)—

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

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

11 (b) FORFEITURE.—A depository institution that has  
12 a legal interest in the collateral for a loan made to an  
13 owner or operator of a cannabis-related legitimate busi-  
14 ness, or to an owner or operator of real estate or equip-  
15 ment that is leased or sold to a cannabis-related legitimate  
16 business, shall not be subject to criminal, civil, or adminis-  
17 trative forfeiture of that legal interest pursuant to any  
18 Federal law for providing the loan or other financial serv-  
19 ices solely because the collateral is owned by a cannabis-  
20 related business.

21 **SEC. 4. RULE OF CONSTRUCTION.**

22 Nothing in this Act shall require a depository institu-  
23 tion to provide financial services to a cannabis-related le-  
24 gitimate business.

1 **SEC. 5. REQUIREMENTS FOR FILING SUSPICIOUS ACTIVITY**  
2 **REPORTS.**

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

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

7 “(A) DEFINITIONS.—In this paragraph—

8 “(i) the term ‘cannabis’ has the mean-  
9 ing given the term ‘marihuana’ in section  
10 102 of the Controlled Substances Act (21  
11 U.S.C. 802);

12 “(ii) the term ‘cannabis-related legiti-  
13 mate business’ has the meaning given the  
14 term in section 6 of the SAFE Banking  
15 Act;

16 “(iii) the term ‘financial service’  
17 means a financial product or service, as de-  
18 fined in section 1002 of the Dodd-Frank  
19 Wall Street Reform and Consumer Protec-  
20 tion Act (12 U.S.C. 5481);

21 “(iv) the term ‘Indian country’ has  
22 the meaning given the term in section  
23 1151 of title 18; and

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

1 the Federally Recognized Indian Tribe List  
2 Act of 1994 (25 U.S.C. 479a).

3 “(B) REPORTING OF SUSPICIOUS TRANS-  
4 ACTIONS.—A financial institution or any direc-  
5 tor, officer, employee, or agent of a financial in-  
6 stitution that reports a suspicious activity re-  
7 lated to a transaction by a cannabis-related le-  
8 gitimate business shall comply with appropriate  
9 guidance issued by the Financial Crimes En-  
10 forcement Network. The Secretary shall ensure  
11 that the guidance is consistent with the purpose  
12 and intent of the SAFE Banking Act and does  
13 not inhibit the provision of financial services to  
14 a cannabis-related legitimate business in a  
15 State, political subdivision of a State, or Indian  
16 country that has allowed the cultivation, pro-  
17 duction, manufacturing, transportation, display,  
18 dispensing, distribution, sale, or purchase of  
19 cannabis, or any other conduct relating to can-  
20 nabis, pursuant to law or regulation of the  
21 State, the political subdivision of the State, or  
22 Indian tribe that has jurisdiction over the In-  
23 dian country.”.

24 **SEC. 6. DEFINITIONS.**

25 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 which contains cannabis,  
6           including an article which is a concentrate, an edi-  
7           ble, a tincture, a cannabis-infused product, or a top-  
8           ical.

9           (3) CANNABIS-RELATED LEGITIMATE BUSI-  
10          NESS.—The term “cannabis-related legitimate busi-  
11          ness” means a manufacturer, producer, or any per-  
12          son or company that—

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

17                (B)(i) participates in any business or orga-  
18                nized activity that involves handling cannabis or  
19                cannabis products, including cultivating, pro-  
20                ducing, manufacturing, selling, transporting,  
21                displaying, dispensing, distributing, or pur-  
22                chasing cannabis or cannabis products; or

23                (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) COMPANY.—The term “company” means a  
10 partnership, corporation, association, (incorporated  
11 or unincorporated), trust, estate, cooperative organi-  
12 zation, State, or any other entity.

13 (5) DEPOSITORY INSTITUTION.—The term “de-  
14 pository institution” means—

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

18 (B) a Federal credit union as defined in  
19 section 101 of the Federal Credit Union Act  
20 (12 U.S.C. 1752); or

21 (C) a State credit union as defined in sec-  
22 tion 101 of the Federal Credit Union Act (12  
23 U.S.C. 1752).

24 (6) FEDERAL BANKING REGULATOR.—The  
25 term “Federal banking regulator” means each of the

1 Board of Governors of the Federal Reserve System,  
2 the Bureau of Consumer Financial Protection, the  
3 Federal Deposit Insurance Corporation, the Office of  
4 the Comptroller of the Currency, the National Credit  
5 Union Administration, or any Federal agency or de-  
6 partment that regulates banking or financial serv-  
7 ices, as determined by the Secretary of the Treas-  
8 ury.

9 (7) FINANCIAL SERVICE.—The term “financial  
10 service” means a financial product or service, as de-  
11 fined in section 1002 of the Dodd-Frank Wall Street  
12 Reform and Consumer Protection Act (12 U.S.C.  
13 5481).

14 (8) INDIAN COUNTRY.—The term “Indian coun-  
15 try” has the meaning given the term in section 1151  
16 of title 18, United States Code.

17 (9) INDIAN TRIBE.—The term “Indian tribe”  
18 has the meaning given the term in section 102 of the  
19 Federally Recognized Indian Tribe List Act of 1994  
20 (25 U.S.C. 479a).

21 (10) MANUFACTURER.—The term “manufac-  
22 turer” means a person or company who manufac-  
23 tures, compounds, converts, processes, prepares, or  
24 packages cannabis or cannabis products.

1           (11) PRODUCER.—The term “producer” means  
2           a person or company who plants, cultivates, har-  
3           vests, or in any way facilitates the natural growth of  
4           cannabis.

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

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