Global Alliance for Cannabis Commerce

ENDING CANNABIS PROHIBITION INTELLIGENTLY, RESPONSIBLY, AND SAFELY: THE FEDERAL ROLE IN THE MODERN CANNABIS ECONOMY

Statement before the House of Representatives Energy and Commerce Subcommittee on Health

For the Hearing on "Cannabis Policies for the New Decade"

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GACC is a 501(c)(6) not-for-profit trade organization

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Chairwoman Eshoo and members of the Subcommittee on Health, thank you for hosting this hearing on the pressing issue of reform in federal cannabis laws. The Global Alliance for Cannabis Commerce is honored to offer its insight on these matters today.

The Global Alliance for Cannabis Commerce (GACC) is a California-based 501(c)(6) trade organization representing over a billion dollars of legal global cannabis businesses. GACC advocates in front of government policymakers and legislators to support legalizing and regulating the cultivation, manufacture, distribution, and use of medical and adult-use cannabis products globally. Additionally, GACC has taken the step toward being the industry leader in nationwide private voluntary safety certification. GACC Certified™ is a nationwide voluntary private industry safety standard for cannabis products of all kinds. "Blue Leaf" certification gives licensed sellers and consumers confidence that the legal products that are approved under this program meet accepted safety and purity standards and are genuine. "Safe" means a safe product that is safe and responsible medical and adult use. All current GACC members have pledged to support the development of this standards setting protocol and to adopt and implement it as well when it is effective.

The need for federal reform is clear. Thirty-three states, D.C., and many territories allow for and regulate medical-use cannabis; eleven more do so with adult use—numbers only expected to increase heading into 2020 based on polling data and political trends. A supermajority (67%) of Americans think that cannabis should be legal for adult-use and an overwhelming supermajority (91%) think that it should be allowed for medical-use.[1]The current disconnect between states that have legalized cannabis and the continuing federal prohibition is, as was stated by Attorney General Barr, "intolerable."[2] The question now is not *if* reform will happen federally, but *how*.

Legal operators across the country do not have the benefits of federal regulation over agriculture, pesticide control, food and drug adulteration, and finance—areas where federal regulatory clarity has been a chief component of consumer confidence and commercial success. Cannabis is unique in that it is both of medical and adult-use commercial value, as many states and billions in U.S. investment have shown. U.S. businesses will not be in a position to compete with the emerging international cannabis markets in Canada, Mexico, Europe, Israel, Africa, the Caribbean, and South America if scheduling continues.

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[1] Andrew Daniller, Two-thirds of Americans support marijuana legalization, *Pew Research Center* (Nov. 14, 2019).

[2] *Review of the FY2020 Budget Request for DOJ: Hearing Before the S. Subcomm. on Commerce, Justice, Science, and Related Agencies, Comm. on Appropriations*, 116th Cong. (2019) (statement of Hon. William Barr, U.S. Att'y Gen.).

Origins of Prohibition and the Status Quo

Federal cannabis prohibition began in 1937 with the passage of the Marihuana Tax Act of 1937,[3] a federal law that was unanimously overturned by the Supreme Court in 1969 in *Leary v. United States* for requiring self-incrimination under the Fifth Amendment—famously, hemp farmers had to bring their crop for inspection to D.C. to receive a license, only to be arrested upon presenting their crop for transporting "marihuana" in interstate commerce.[4]

The 1937 Act was passed over the objections of the American Medical Association and effectively de-listed cannabis from the *United States Pharmacopeia*, in which it had been listed since 1870.[5] Cannabis had, before 1937, been regulated as a drug in interstate commerce under the 1906 Pure Food and Drug Act and Harrison Narcotics Act of 1914.[6] As a consequence of the 1937 law, cannabis was excluded from the 1938 Food, Drug, and Cosmetic Act's regulatory scheme. In response to the unanimous 1969 *Leary* decision striking down federal cannabis prohibition, in 1970 Congress passed and President Richard M. Nixon signed into law the Controlled Substances Act.[7] Since then the Controlled Substances Act has listed, cannabis as "marihuana," a Schedule I Controlled Substance, the most restrictive designation possible, and creates a nationwide cannabis prohibition.[8] Indeed this prohibition is more stringent than that which applies to cocaine.

Currently, the federal government maintains a policy regarding enforcement of certain laws against companies operating state authorized legal cannabis businesses that is confusing at best, and as Attorney General Barr said, "intolerable" at worst. Medical markets in states where authorized are protected from federal enforcement by one appropriations amendment[9] while another amendment continues to bar legal business from operating in the District of Columbia, where the law authorizing that business was overwhelmingly supported. Even lawful intrastate businesses are hampered by the existence of other federal laws that create roadblocks to safe financial transactions.

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[3] Marihuana Tax Act of 1937, Pub. L. 75-238, 50 Stat. 551 (Aug. 2, 1937).
[4] Leary v. United States, 395 U.S. 6, 17 (1969).
[5] *See, e.g.*, PHARMECOPŒIA OF THE UNITED STATES (5th Decennial Rev., Philadelphia, J.B. Lippincott & Co. 1877); PHARMECOPŒIA OF THE UNITED STATES (11th Decennial Rev., Philadelphia, J.B. Lippincott & Co. 1936).
[6] *See* Harrison Narcotics Act, Pub. L. No. 223, 38 Stat. 785 (Dec. 17, 1914). Pub. L. 59-384, 34 Stat. 768 (June 30, 1906)
[7] *See* Controlled Substances Act, Pub. L. 91-513, 84 Stat. 1236 (Oct. 27, 1970) (codified at 21 U.S.C. ch. 13).
[8] 21 U.S.C. §§ 802(16), 812; *see also generally Gonzales v. Raich*, 545 U.S. 1 (2005).
[9] Blumenauer-Joyce Amendment (a.k.a., Rohrabacher-Farr Amendment) H.J. Res. 31, the Consolidated Appropriations Act, 2019.

Accordingly, there are thirty-four balkanized legal state markets in the United States in cannabis. As Ilya Shapiro, Director of the Robert A. Levy Center for Constitutional Studies at the Cato Institute pointed out in his article *The Case for Allowing Interstate Trade Among Marijuana-Legal States*, "[b]y default, to succeed, any business has to be vertically integrated from seed to sale in each state. This limits competition and artificially inflates prices. Consumers, particularly elderly patients, many of whom rely on cannabis products to mitigate health concerns, will be at the mercy of businesses that don't have to respond to market forces."[10]

This balkanization has also lead to incredible supply-demand imbalances within the United States itself, threatening state-based cannabis markets. The current federal law remains the single roadblock to address this issue, a roadblock that can be removed through the exercise of Congress's commerce powers. For example, on the supply side, according to a 2019 cannabis crop projection, California cultivators "can produce up to 9 million pounds of crop every year, but the permitted wholesale market can realistically support 1.8 million to 2.2 million pounds."[11] Oregon has six-years' worth of stock,[12] and the state government has approved legislation for interstate commerce that only becomes effective upon federal reform.[13] The result is either the undermining of markets, or the creation of larger black markets.

Conversely, on the demand side, Canadian dispensaries continuously see shortages that could easily be filled by reducing excess West Coast stock.[14] Nevada has seen shortages as well.[15] Louisiana pharmacists—complaining of watching "patients suffer…desperate for [cannabis] medication"— demanded their state allow

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[10] Ilya Shapiro, The Case for Allowing Interstate Trade Among Marijuana-Legal States, *The Federalist* (Mar. 13, 2019), https://thefederalist.com/2019/03/13/case-allowing-interstate-trade-among-marijuana-legal-states/.

[11] Andrew Sheeler, California is growing so much marijuana it could crash the market, *Sacremento Bee* (Mar. 19, 2019 11:04am), https://www.sacbee.com/news/politics-government/capitol-alert/article228120439.html.

[12] Kristian Foden-Vencil, Oregon Is Producing Twice As Much Cannabis As People Are Using, *OPB* (Jan. 31, 2019, 12:00pm), https://www.opb.org/news/article/oregon-cannabis-surplus-2019/.

[13] S.B. 582, 80th Leg. Assemb., Reg. Sess. (Or. 2019); Suhauna Hussain, Oregon has too much cannabis. Two laws may help the state manage its surplus, *L.A. Times* (June 24, 2019, 3:00am), https://www.latimes.com/nation/la-na-oregon-legislature-tackles-supply-marijuana-20190624-story.html.

[14] *E.g.*, Paul Barach, What's Up With Canada's Nationwide Cannabis Shortages? *PotGuide.com* (Dec. 26, 2018), https://potguide.com/pot-guide-marijuana-news/article/whats-up-with-canadas-nationwide-cannabis-shortages/.

[15] *E.g.*, Melina Robinson, Nevada sold out of legal marijuana so quickly, the government used a 'statement of emergency' to bring in more weed, *Business Insider* (Jul. 13, 2017, 9:21pm), https://www.businessinsider.com/nevada-marijuana-shortage-statement-of-emergency-2017-7.

medical cannabis to be available.[16] Illinois, the latest state to legalize, also is projected to face shortages for consumers.[17]

Moreover, as GACC recently pointed out in the *San Francisco Chronicle*, the creation of a larger black market is an "inescapable consequence of supply and demand."[18]

"[B]usinesses cannot reduce prices by scaling up the production of cannabis and reaching a larger volume of the consuming population. This gap in federal law forces legal businesses to compete with black-market operators, which have the unfair advantages of both lower overhead costs per unit and a significantly larger market through their disregard of federal interstate commerce laws. Illegal producers' costs and prices are largely fixed by their illicit nature; they cannot build large, sustainable farms to reduce per-unit costs because of the inherently unstable nature of their business. Legal businesses in the United States, aided by the protections of the commerce clause, can easily compete with and replace the black market if given the chance. Federal law can easily be changed to reach this goal."[19]

Finally, the first-ever public health crisis in cannabis, the vape-related illness outbreak may well have been prevented if there were clear and consistent national baseline for safety. The CDC has associated the vape-related illness with adulterants, such as Vitamin E Acetate, contained within vaporizer cartridges. "Outbreaks such as this are the inevitable consequence of current federal cannabis prohibitions that undermine state cannabis laws and ultimately undermine the development of an effective national program to stop adulterated and counterfeit products…. It is true that [some] fatalities are possibly linked to cannabis vape products from legal dispensaries…However, a few outliers in [over] 1000 cases, where vaporizing products account for roughly half of the billions of times that millions of Americans use cannabis per year, highlights the need to isolate the cause and impose strict testing and purity standards with product recall, anti-counterfeiting, and track-and-trace abilities — features of a legal, not illicit, market."[20]

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[16] Melinda Deslatte, Louisiana medical marijuana backers demand product by May 15, *AP News* (Mar. 25, 2019), https://apnews.com/d3de7002288148deb521be10c0f3eea1.
[17] Kris Krane, Illinois Legalization Is Historic, But Good Luck Finding Cannabis To Buy, *Forbes* (Jun 25, 2019, 12:03pm), https://www.forbes.com/sites/kriskrane/2019/06/25/illinois-legalization-is-historic-but-good-luck-finding-cannabis-to-buy/#16ce50c9e253.
[18] Randal John Meyer, Feds must join California in getting #weedwise on black market, *San Fran. Chron.* (July 2, 2019), https://www.sfchronicle.com/opinion/openforum/article/Feds-must-join-California-in-getting-weedwise-on-14065415.php, *reprinted in* Appendix E.
[19] *Id.*
[20] Randal John Meyer & Jason Beck, Cannabis prohibition has deadly effects, *San Fran. Chron.* (Oct. 19, 2019), https://www.sfchronicle.com/opinion/openforum/article/Cannabis-prohibition -has-deadly-effects-14520544.php.

As mentioned, GACC has created a Standards Committee that will develop certification standard for industry to follow wherever cannabis is legal until the laws are changed to allow for the development of nationwide standards.

The Cannabis Policy Challenge: Necessary Architecture for Federal Cannabis Regulation

By operation of law, the classification of cannabis under any Schedule of the Controlled Substances Act preempts any conflicting state scheme under the federal commerce clause powers be it for medical or adult use.[21] While current federal appropriations law prevents the executive branch from enforcing those laws against state-licensed operators,[22] the regulatory framework of the Controlled Substances Act, and the Food, Drug, and Cosmetics Act, still applies to cannabis because of the federal Supremacy and Commerce Clause powers. Rescheduling cannabis in Schedules II–V does not change this.

To resolve this intolerable dilemma, Congress needs to deschedule cannabis and legalize and regulate interstate and international trade in cannabis products under its Article I, Section 8 Commerce Clause powers. In doing so, Congress could respect both the state right to choose to keep cannabis prohibited within its borders, and the state right to interstate trade of the thirty-three other states that legalized cannabis.

In order to assist in those efforts, the Global Alliance for Cannabis Commerce has publicly released model U.S. federal cannabis legislation that comprehensively and wholly addresses how to regulate cannabis on a federal level, including components to ensure that communities disproportionately harmed by prohibition are not left out from the economic opportunities presented by its legalization.[23] GACC's model legislation takes from some of the best practices that have strong bipartisan support from proposals currently underway.

The GACC model legislation takes a two-track (medical and adult-use) approach to regulating cannabis products safely based on precedents the U.S. Congress has applied to similar issues in the past.

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[21] *See generally Gonzales v. Raich*, 545 U.S. 1 (2005) (holding that the 1970 Controlled Substances Act preempts inconsistent state medical cannabis laws under the effects doctrine, to the extent of wholly intrastate commerce and personal use); *cf. James Clark Distilling Co. v. Western Maryland R. Co.*, 242 U.S. 311 (1917) (same as to intoxicating liquors under Webb-Kenyon Act of 1913 and Wilson Act of 1890).

[22] Blumenauer-Joyce Amendment (a.k.a., Rohrabacher-Farr Amendment) H.J. Res. 31, the Consolidated Appropriations Act, 2019.

[23] *See generally* MODEL U.S. FEDERAL CANNABIS REFORM ACT (GACC 2019), *reprinted in* Appendix A; Appendix B (Section by Section of GACC Model Legislation).

With respect to medical use, millions of patients in the U.S. are currently safely and effectively using cannabis products to treat various ailments. Yet, virtually none of these products are FDA approved, nor could they be used for medical purposes without being put through extensive and time-consuming processes that are not adapted for a medical substance with such varietal applications and that precludes many of them. [24]

GACC proposes that Congress resolve the issue of current cannabis medical products by passing a similar law to the Medical Gas Safety Act of 2012, creating a specialized process for certification of cannabis products that comply with standard pharmaceutical formularies and current state safety requirements. Cannabis tincture, extract, and other various forms were governed by *U.S. Pharmacopeia* formulation for over 80 years before prohibition. Doing so provides the assurances of medical safety, while protecting consumers from the twin perils of adulterated products and loss of access to medicine due to improvident regulation.

With respect to adult use, there are currently eleven states that allow for adult use, with that number trending towards increasing and with a vast majority of the country supporting that policy. The federal government has ample precedent on how to end prohibition of an intoxicating substance while respecting the inherent police power of a state to prohibit such a substance. Indeed, the U.S. Supreme Court for over a century has made abundantly clear that it is within the inherent police power of a state to choose to prohibit intoxicating substances, *except* to the extent that Congress chooses to exercise its Commerce Clause Powers to preempt those decisions.[25] Therefore, GACC proposes that Congress remove cannabis from the Schedules entirely, and simply apply the exiting framework of the Webb-Kenyon Act (1913) and Wilson Act (1890) to cannabis, allowing states to exercise their police power as they see fit, and respecting the right of states to interstate trade and international commerce.

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[24] The FDA notes that only Epidiolex, Marinol and Syndros, have approved marketing applications in the U.S. and notes that IND applications for botanical drugs represents the only current process for approval of cannabis products, and that drug preclusion applies to nondrug cannabis products. *See Generally* FDA Regulation of Cannabis and Cannabis-Derived Products, Including Cannabidiol (CBD) (last updated 12/31/19), https://www.fda.gov/news-events/public-health-focus/fda-regulation-cannabis-and-cannabis-derived-products-including-cannabidiol-cbd#approved.

[25] *See generally, e.g.*, *Gonzales v. Raich*, 545 U.S. 1 (2005) (holding that the 1970 Controlled Substances Act preempts inconsistent state medical cannabis laws under the effects doctrine, to the extent of wholly intrastate commerce and personal use); *James Clark Distilling Co. v. Western Maryland R. Co.*, 242 U.S. 311 (1917) (same as to intoxicating liquors under Webb-Kenyon Act of 1913 and Wilson Act of 1890); *McCormick & Co., Inc. v. Brown*, 286 U.S. 131 (1932) (affirming the validity of Wilson and Webb Kenyon Acts post-prohibition), *abrogated on oth'r grounds by Tennessee Wine and Spirits Retailers Association v. Thomas*, No. 18-96 (2019) (extending the dormant commerce clause to state intoxication statutes that burden interstate commerce).

Further, as is reflected in the GACC model bill, cannabis should, like alcohol, be legalized in a manner that protects our nation's youth from harm. Federal law ought to ensure that no person under the age of 21 should have access to cannabis products without the advice of a licensed physician in consultation with parents or guardians. Federal funding should be increased for training and the presence of Drug Recognition Experts (DREs) for roadside stops to ensure that our roadways are safe. And research should focus on more and reliable methods for detecting intoxicated driving from cannabis, alcohol, opioids, and other substances. Additionally, the regulatory agencies that will be responsible for cannabis ought to have statutory authority to regulate against advertising to children. GACC entreaties the government to work with this industry to ensure that adult use means *adult* use.

Appendix A

GACC Model Legislation

June, 2019

Global Alliance for Cannabis Commerce | 444 W. C Street, Suite 400, San Diego, CA 92101

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116TH CONGRESS **H.R. __**
1ST SESSION

To effectively and intelligently regulate cannabis under federal law, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

June __, 2019

Mr. or Ms. _____ introduced the following bill, which was referred to the Committee on the Judiciary

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A BILL

To effectively and intelligently regulate cannabis under federal law, and for other purposes.

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "[GACC Model U.S. Federal Cannabis Reform Act]".

SEC 2. ORGANIZATION OF ACT; TABLE OF CONTENTS.

(a) TABLE OF CONTENTS.— The table of contents for this Act is as follows:

TITLE I – [GACC MODEL U.S. FEDERAL CANNABIS REFORM ACT]

SEC. 101. NORMALIZATION OF CANNABIS.

(a) CANNABIS REMOVED FROM SCHEDULE OF CONTROLLED SUBSTANCES.—

Subsection (c) of schedule I of section 202(c) of the Controlled Substances Act (21 U.S.C. 812) is amended—

(1) by striking “marihuana”; and

(2) by striking "Tetrahydrocannabinols, except for tetrahydrocannabinols in hemp (as defined under section 1639o of title 7)".

(b) REMOVAL OF PROHIBITION ON IMPORT AND EXPORT.—Section 1010(b) of the Controlled Substances Import and Export Act (21 U.S.C. 960) is amended—

(1) in paragraph (1)—

(A) in subparagraph (F), by inserting "or" after the semicolon;

(B) by striking subparagraph (G); and

(C) by redesignating subparagraph (H) as subparagraph (G);

(2) in paragraph (2)—

(A) in subparagraph (F), by inserting "or" after the semicolon;

(B) by striking subparagraph (G); and

(C) by redesignating subparagraph (H) as subparagraph (G);

(3) in paragraph (3), by striking "paragraphs (1), (2), and (4)" and inserting "paragraphs (1) and (2)";

(4) by striking paragraph (4); and

(5) by redesignating paragraphs (5), (6), and (7) as paragraphs (4), (5), and (6), respectively.

(c) CONFORMING AMENDMENTS TO CONTROLLED SUBSTANCES ACT.—The Controlled Substances Act (21 U.S.C. 801 et seq.) is amended—

(1) in section 102(44) (21 U.S.C. 802(44)), by striking "marihuana,";

(2) in section 401(b) (21 U.S.C. 841(b))—

(A) in paragraph (1)—

(i) in subparagraph (A)—

(I) in clause (vi), by inserting “or” after the semicolon;

(II) by striking (vii); and

(III) by redesignating clause (viii) as clause (vii);

(ii) in subparagraph (B)—

(I) by striking clause (vii); and

(II) by redesignating clause (viii) as clause (vii);

(iii) in subparagraph (C), in the first sentence, by striking “subparagraphs (A), (B), and (D)” and inserting “subparagraphs (A) and (B)”;

(iv) by striking subparagraph (D);

(v) by redesignating subparagraph (E) as subparagraph (D); and

(vi) in subparagraph (D)(i), as so redesignated, by striking “subparagraphs (C) and (D)” and inserting “subparagraph (C)”;

(B) by striking paragraph (4); and

(C) by redesignating paragraphs (5), (6), and (7) as paragraphs (4), (5), and (6), respectively;

(3) in section 402(c)(2)(B) (21 U.S.C. 842(c)(2)(B)), by striking “, marihuana,”;

(4) in section 403(d)(1) (21 U.S.C. 843(d)(1)), by striking “, marihuana,”;

(5) in section 418(a) (21 U.S.C. 859(a)), by striking the last sentence;

(6) in section 419(a) (21 U.S.C. 860(a)), by striking the last sentence;

(7) in section 422(d) (21 U.S.C. 863(d))—

(A) in the matter preceding paragraph (1), by striking "marijuana,"; and

(B) in paragraph (5), by striking ", such as a marihuana cigarette,"; and

(8) in section 516(d) (21 U.S.C. 886(d)), by striking "section 401(b)(6)" each place the term appears and inserting "section 401(b)(5)".

(d) OTHER CONFORMING AMENDMENTS.—

(1) NATIONAL FOREST SYSTEM DRUG CONTROL ACT OF 1986.—The National Forest System Drug Control Act of 1986 (16 U.S.C. 559b et seq.) is amended—

(A) in section 15002(a) (16 U.S.C. 559b(a)) by striking "marijuana and other";

(B) in section 15003(2) (16 U.S.C. 559c(2)) by striking "marijuana and other"; and

(C) in section 15004(2) (16 U.S.C. 559d(2)) by striking "marijuana and other".

(2) INTERCEPTION OF COMMUNICATIONS.—Section 2516 of title 18, United States Code, is amended—

(A) in subsection (1)(e), by striking "marihuana,"; and

(B) in subsection (2) by striking "marihuana,".

SEC. 102. HIGHWAY SAFETY RESEARCH.

(a) STUDY; DEVELOPMENT.—The Administrator of the National Highway Traffic Safety Administration (referred to in this section as the "Administrator") shall—

(1) carry out additional study of the impact of driving under the influence of tetrahydrocannabinol on highway safety; and

(2) develop enhanced strategies and procedures to reliably determine the impairment of a driver under the influence of tetrahydrocannabinol.

(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Administrator to carry out this section $ [Lorem Ipsum] for each of fiscal years 2019 through 2023.

SEC. 103. PUBLIC HEALTH RESEARCH.

(a) IN GENERAL.—The Secretary of Health and Human Services, in consultation with the Director of the National Institutes of Health and the Commissioner of Food and Drugs, shall conduct research on the impacts of cannabis, including—

(1) effects of tetrahydrocannabinol on the human brain;

(2) efficacy of medicinal cannabis as a treatment for specific diseases and conditions; and

(3) identification of additional medical benefits and uses of cannabis.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Health and Human Services, $ [Lorem Ipsum] for each of fiscal years 2019 through 2023, for purposes of carrying out the activities described in subsection (a).

SEC. 104. PROTECT KIDS.

(a) Not later than [Lorem Ipsum] days after the date of enactment of this Act, the Secretary of the Treasury shall promulgate regulations that—

(1) require restrictions on the advertising and promotion of products related to cannabis, if the Secretary determines that such regulation would be appropriate for the protection of the public health, taking into account—

(A) the risks and benefits to the population of individuals age 21 and under, including users and nonusers of cannabis products;

(B) the increased or decreased likelihood that existing users of cannabis products who are age 18 and under will stop using such products; and

(C) the increased or decreased likelihood that individuals age 21 and under who do not use cannabis products will start using such products; and

(2) impose restrictions on the advertising and promotion of products related to cannabis consistent with and to the full extent permitted by the First Amendment to the Constitution of the United States.

SEC. 105. NATIONAL MINIMUM CANNABIS USE AGE OF 21.

(a) ESTABLISHMENT OF FEDERAL MINIMUM CANNABIS AGE.—Chapter 1 of title 23 of the United States Code, is amended by adding at the end the following—

"SEC. 171 (a) WITHHOLDING OF FUNDS FOR NONCOMPLIANCE.—

(1) IN GENERAL.—

(A) The Secretary of Transportation shall withhold 8 per centum of the amount required to be apportioned to any State under each of sections 104(b)(1), 104(b)(3), and 104(b)(4) [1] of Title 23 of the United States Code on the first day of each fiscal year after the second fiscal year beginning after September 30, 2019, in which the purchase or public

possession in such State of cannabis by a person who is less than twenty-one years of age is lawful.

(B) EFFECT OF WITHHOLDING OF FUNDS. No funds withheld under this section from apportionment to any State after September 30, 2019, shall be available for apportionment to that State.

(C) CANNABIS DEFINED. As used in this section, the term "cannabis" means the same as "marihuana" as defined in 21 U.S.C. § 802(16)."

(D) MEDICAL EXCEPTION. The Secretary shall not apply any withholding under this section to States which lawfully permit the use of medical cannabis by persons under the age of 21 on the recommendation or prescription of a qualified medical professional consistent with state law."

SEC. 106. MEDICAL AND ADULT-USE CANNABIS REGULATION.

(a) MEDICAL CANNABIS. The Food and Drug Administration shall have jurisdiction over the regulation of medical cannabis products and cannabis-infused foods only pursuant the Cannabis Safety Act, contained in Section 14 of this Act. It shall not have jurisdiction over the regulation over non-food adult-use cannabis products that do not make medical claims on their labeling or promotional materials, nor shall the Food and Drug Administration's jurisdiction under § 201(p) be construed to extend over such adult-use cannabis products. Nor shall the Food and Drug Administration construe cannabis as a "tobacco product."

(b) ADULT-USE CANNABIS. The Alcohol and Tobacco Tax and Trade Bureau of the Department of the Treasury and the Bureau of Alcohol, Tobacco, and Firearms shall

have primary jurisdiction to promulgate and enforce federal regulations regarding the interstate and international trade of adult-use cannabis, or cannabis products that do not make medical claims on their labeling or promotional materials.

(1) The Alcohol and Tobacco Tax and Trade Bureau of the Department of the Treasury and the Bureau of Alcohol, Tobacco, and Firearms shall, within 6 months of the passage of this Act, propose regulations in accordance with 5 U.S.C. § 553 governing interstate trade in adult-use cannabis or cannabis products that do not make medical claims on their labeling.

(c) SAFE HARBOR. No person shall be deemed to be in violation of this Act with respect to the interstate commerce of adult use cannabis until after the effective date of regulations promulgated by the Bureau of Alcohol, Tobacco, and Firearms issues in accordance with this section. Nothing in this section shall be construed to impact in any respect obligations of any person to comply with otherwise applicable cannabis laws of the State, Territory, or Possession of the United States in which they are doing business.

(d) PRIVATE RIGHT OF ACTION. An adversely-affected person shall have private right of action under the Administrative Procedures Act and the Mandamus Act to compel any officer, employee or agency of the United States to promulgate regulations required under this Act that are not promulgated within the time frames set forth herein. The exclusive venue for bringing any such action shall be the District Court for the District of Columbia.

(e) COMITY FOR STATE LICENSURE. Any person licensed by a state cannabis regulatory authority, in compliance with the guidelines on interstate commerce promulgated by the Alcohol and Tobacco Tax and Trade Bureau of the Department of the

Treasury and the Bureau of Alcohol, Tobacco, and Firearms under the authority granted in this Section with respect to adult-use cannabis, and in compliance with that State, Territory, or Possession's laws, shall be permitted to engage in interstate commerce, but not foreign commerce, without the need for a federal permit or license. Nothing in this Act, or the lawful exercise of rights or privileges granted herein, shall be construed to infringe upon or prejudice the ability of a state-licensed cannabis business to apply for a permit to engage in foreign cannabis commerce in addition to interstate commerce.

(f) TRANSFERRING AGENCY FUNCTIONS WITH REGARD TO CANNABIS.

(1) TRANSFER OF JURISDICTION FROM DRUG ENFORCEMENT ADMINISTRATION TO BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES.—The functions of the Attorney General, acting through the Administrator of the Drug Enforcement Administration relating to Cannabis enforcement, shall hereafter be administered by the Attorney General, acting through the Director of the Bureau of Alcohol, Tobacco, Firearms and Explosives.

(2) REDESIGNATION OF BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES AS BUREAU OF ALCOHOL, TOBACCO, CANNABIS, FIREARMS AND EXPLOSIVES.—

(A) Redesignation.—The Bureau of Alcohol, Tobacco, Firearms and Explosives is hereby renamed the "Bureau of Alcohol, Tobacco, Cannabis, Firearms and Explosives".

(B) References.—Any reference to the Bureau of Alcohol, Tobacco, Firearms and Explosives in any law, regulation, map, document, record, or other paper of the United States shall be deemed to be a

reference to the Bureau of Alcohol, Tobacco, Cannabis, Firearms and Explosives.

(3) REDESIGNATION OF ALCOHOL AND TOBACCO TAX AND TRADE BUREAU AS ALCOHOL, TOBACCO, AND CANNABIS TAX AND TRADE BUREAU.—

(A) Redesignation.—Section 1111(d) of the Homeland Security Act of 2002 (6 U.S.C. 531(d)) is amended by striking "Tax and Trade Bureau" each place it appears and inserting "Alcohol, Tobacco, and Cannabis Tax and Trade Bureau".

(B) References.—Any reference to the Tax and Trade Bureau or the Alcohol and Tobacco Tax and Trade Bureau in any law, regulation, map, document, record, or other paper of the United States shall be deemed to be a reference to the Alcohol, Tobacco, and Cannabis Tax and Trade Bureau.

(4) ADDITION OF CANNABIS TO CERTAIN LEGAL AUTHORITIES RELATING TO INTOXICATING LIQUORS.

(A) Wilson Act.—The Act of August 8, 1890 (commonly known as the Wilson Act or the Original Packages Act; 27 U.S.C. 121), is amended—

(i) by inserting ", or cannabis," after "intoxicating liquors or liquids"; and

(ii) by striking "such liquids or liquors" and inserting "such liquids, liquors, or cannabis".

(B) Webb-Kenyon Act.—The Act of March 1, 1913 (commonly known as the Webb-Kenyon Act; 27 U.S.C. 122), is amended—

(i) by inserting “cannabis or any” after “whatsoever, of any”; and

(ii) by inserting “cannabis or” after “which said”.

(C) Victims of Trafficking and Violence Protection Act of 2000.—Section 2 of the Victims of Trafficking and Violence Protection Act of 2000 (27 U.S.C. 122a) is amended—

(i) in subsection (a)—

(I) by redesignating paragraphs (3) and (4) as paragraphs (4) and (5), respectively; and

(II) by inserting after paragraph (2) the following new paragraph:

“(3) the term ‘marijuana’ has the meaning given the term ‘marihuana’ in section 102 of the Controlled Substances Act (21 U.S.C. 802);”; and

(ii) in subsections (b) and (c), by inserting “or marijuana” after “intoxicating liquor” each place it appears.

SEC. 107. CANNABIS AGRICULTURE.

(a) CANNABIS AGRICULTURAL PRODUCTION. The Agricultural Marketing Act of 1946 (7 U.S.C. 1621 et seq.) is amended by adding at the end the following:

“Subtitle H—Cannabis Production

“SEC. 298A. DEFINITIONS.

"In this subtitle:

"(1) CANNABIS.—The term "cannabis" means the same as "marihuana" as defined in 21 U.S.C. § 802(16).

"(2) INDIAN TRIBE.—The term 'Indian tribe' has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304).

"(3) SECRETARY.—The term 'Secretary' means the Secretary of Agriculture.

"(4) STATE.—The term 'State' means—

"(A) a State;

"(B) the District of Columbia;

"(C) the Commonwealth of Puerto Rico; and

"(D) any other territory or possession of the United States.

"(5) STATE DEPARTMENT OF AGRICULTURE.—The term 'State department of agriculture' means the agency, commission, or department of a State government responsible for agriculture in the State.

"(6) TRIBAL GOVERNMENT.—The term 'Tribal government' means the governing body of an Indian tribe.

"SEC. 298B. STATE AND TRIBAL PLANS.

"(a) SUBMISSION.—

"(1) IN GENERAL.—A State or Indian tribe desiring to have primary regulatory authority over the production of cannabis in the State or territory of the Indian tribe shall submit to the Secretary, through the State department of

agriculture (in consultation with the Governor and chief law enforcement officer of the State) or the Tribal government, as applicable, a plan under which the State or Indian tribe monitors and regulates that production as described in paragraph (2).

"(2) CONTENTS.—A State or Tribal plan referred to in paragraph (1)—

"(A) shall only be required to include—

"(i) a practice to maintain relevant information regarding land on which cannabis is produced in the State or territory of the Indian tribe, including a legal description of the land, for a period of not less than 3 calendar years;

"(ii) a procedure for testing, using post-decarboxylation or other similarly reliable methods, delta-9 tetrahydrocannabinol concentration levels of cannabis produced in the State or territory of the Indian tribe;

"(iii) a procedure for the effective disposal of products that are produced in violation of this subtitle; and

"(iv) a procedure to comply with the enforcement procedures under subsection (d); and

"(B) may include any other practice or procedure established by a State or Indian tribe, as applicable, to the extent that the practice or procedure is consistent with this subtitle.

"(3) RELATION TO STATE AND TRIBAL LAW.—

"(A) NO PREEMPTION.—Nothing in this subsection preempts or limits any law of a State or Indian tribe regulating the production of cannabis, to the extent that law is consistent with this subtitle.

"(B) REFERENCES IN PLANS.—A State or Tribal plan referred to in paragraph (1) may include a reference to a law of the State or Indian tribe regulating the production of cannabis, to the extent that law is consistent with this subtitle.

"(b) APPROVAL.—

"(1) IN GENERAL.—Not later than 60 days after receipt of a State or Tribal plan under subsection (a), the Secretary shall—

"(A) approve the State or Tribal plan if the State or Tribal plan complies with subsection (a); or

"(B) disapprove the State or Tribal plan only if the State or Tribal plan does not comply with subsection (a).

"(2) AMENDED PLANS.—If the Secretary disapproves a State or Tribal plan under paragraph (1)(B), the State, through the State department of agriculture (in consultation with the Governor and chief law enforcement officer of the State) or the Tribal government, as applicable, may submit to the Secretary an amended State or Tribal plan that complies with subsection (a).

"(c) TECHNICAL ASSISTANCE.—The Secretary may provide technical assistance to a State or Indian tribe in the development of a State or Tribal plan under subsection (a).

"(d) VIOLATIONS.—

"(1) IN GENERAL.—A violation of a State or Tribal plan approved under subsection (b) shall be subject to enforcement solely in accordance with this subsection.

"(2) NEGLIGENT VIOLATIONS.—

"(A) IN GENERAL.—A cannabis producer in a State or the territory of an Indian tribe for which a State or Tribal plan is approved under subsection (b) shall be subject to subparagraph (B) of this paragraph if the State department of agriculture or Tribal government, as applicable, determines that the cannabis producer has negligently violated the State or Tribal plan, including by negligently—

"(i) failing to provide a legal description of land on which the producer produces cannabis; or

"(ii) failing to obtain a license or other required authorization from the State department of agriculture or Tribal government, as applicable.

"(B) CORRECTIVE ACTION PLAN.—A cannabis producer described in subparagraph (A) shall comply with a plan established by the State department of agriculture or Tribal government, as applicable, to correct the negligent violation, including—

"(i) a reasonable date by which the cannabis producer shall correct the negligent violation; and

"(ii) a requirement that the cannabis producer shall periodically report to the State department of agriculture or Tribal

government, as applicable, on the compliance of the cannabis producer with the State or Tribal plan for a period of not less than the next 2 calendar years.

"(C) RESULT OF NEGLIGENT VIOLATION.—Except as provided in subparagraph (D), a cannabis producer that negligently violates a State or Tribal plan under subparagraph (A) shall not be subject to any criminal or civil enforcement action by the Federal Government or any State government, Tribal government, or local government other than the enforcement action authorized under subparagraph (B).

"(D) REPEAT VIOLATIONS.—A cannabis producer that negligently violates a State or Tribal plan under subparagraph (A) 3 times in a 5-year period shall be ineligible to produce cannabis for a period of 5 years beginning on the date of the third violation.

"(3) OTHER VIOLATIONS.—If the State department of agriculture or Tribal government in a State or the territory of an Indian tribe for which a State or Tribal plan is approved under subsection (b), as applicable, determines that a cannabis producer in the State or territory has violated the State or Tribal plan with a culpable mental state greater than negligence—

"(A) the State department of agriculture or Tribal government, as applicable, shall immediately report the cannabis producer to—

"(i) the Attorney General; and

"(ii) in the case of a State department of agriculture, the chief law enforcement officer of the State; and

"(B) paragraph (1) of this subsection shall not apply to the violation.

"(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this section.

"(f) EFFECT.—Nothing in this section prohibits the production of cannabis in a State or the territory of an Indian tribe for which a State or Tribal plan is not approved under this section in accordance with other Federal laws (including regulations).

"SEC. 298C. AUTHORITY TO ISSUE REGULATIONS AND GUIDELINES.

(a) "The Secretary shall have sole authority to issue Federal regulations and guidelines that relate to the production of cannabis, including Federal regulations and guidelines that relate to the implementation of section 298B.".

(b) No later than 30 days after enactment, the Secretary of Agriculture shall propose regulations implementing this Act:

(c) Such regulations issued by the Secretary shall take into account the following congressional policy choices and directives:

(1) It is the policy of the United States, that with respect to pesticides used in cannabis farming, that regulations on the use of pesticides in cannabis farming shall encourage farmers to implement "best practices" that aim to sequester carbon in soil to improve soil health and implement protocols, including chemical, biological and cultural methods, to control or prevent the introduction of pests on cannabis cultivation. Pest, as used in this section, means any invasive or harmful insect, predatory animal, rodent nematode or weed, and any form of terrestrial, aquatic, or aerial plant or animal virus, fungus, bacteria or other micro-organism.

(2) The Secretary shall cause cannabis to be added to the agricultural products tracked in the Pesticide Data Program.

(3) That regulations issued under the authority of this section 298C, distinguish between the following types of cannabis cultivation, meaning any activity involving the planting, growing, harvesting, drying, curing, grading or trimming of cannabis:

(A) Mixed–Light Cultivation;

(C) Outdoor Cannabis Cultivation; and

(D) Indoor Cannabis Cultivation.

(b) FUNDING FOR CANNABIS RESEARCH

(1) SUPPLEMENTAL AND ALTERNATIVE CROPS.—Section 1473D(c)(3)(E) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3319d(c)(3)(E)) is amended by striking "(including hemp (as defined in section 297A of the Agricultural Marketing Act of 1946))"; by inserting "(including hemp and cannabis (as defined in sections 297A and 298A of the Agricultural Marketing Act of 1946, respectively))" after "material".

(2) CRITICAL AGRICULTURAL MATERIALS.—Section 5(b)(9) of the Critical Agricultural Materials Act (7 U.S.C. 178c(b)(9)) is amended by striking "(including hemp (as defined in section 297A of the Agricultural Marketing Act of 1946))"; by inserting "(including hemp and cannabis (as defined in sections 297A and 298A of the Agricultural Marketing Act of 1946, respectively))" after "hydrocarbon-containing plants".

(c) LEGITIMACY OF CANNABIS RESEARCH

(1) IN GENERAL.—Section 7606 of the Agricultural Act of 2014 (7 U.S.C. 5940) is amended—

(A) in subsection (b), by inserting " or cannabis" after each appearance of "hemp" in subsection (b); and

(B) by adding at the end the following:

"(d) CANNABIS STUDY AND REPORT.—

"(1) IN GENERAL.—The Secretary shall conduct a study of agricultural pilot programs—

"(A) to determine the economic viability of the domestic production and sale of cannabis; and

"(B) that shall include a review of—

"(i) each agricultural pilot program; and

"(ii) any other agricultural or academic research relating to cannabis.

"(2) REPORT.—Not later than 120 days after the date of enactment of this subsection, the Secretary shall submit to Congress a report describing the results of the study conducted under paragraph (1).".

(d) FEDERAL CROP INSURANCE

(1) DEFINITION OF CANNABIS.—Section 502(b) of the Federal Crop Insurance Act (7 U.S.C. 1502(b)) is amended—

(A) by redesignating paragraphs (10) through (14) as paragraphs (11) through (15), respectively; and

(B) by inserting after paragraph (9) the following:

"(9) CANNABIS.—The term 'cannabis' has the meaning given the term in section 298A of the Agricultural Marketing Act of 1946.".

(2) INSURANCE PERIOD.—Section 508(a)(2) of the Federal Crop Insurance Act (7 U.S.C. 1508(a)(2)) is amended by striking "sweet potatoes, and hemp" and inserting "sweet potatoes, hemp, and cannabis".

(3) SUBMISSION OF POLICIES AND MATERIALS TO BOARD.—Section 508(h) of the Federal Crop Insurance Act (7 U.S.C. 1508(h)) is amended—

(A) in paragraph (1)(B)—

(i) by adding at the end the following:

"(iii) WAIVER FOR CANNABIS.—The Corporation may waive the viability and marketability requirement under clause (i)(I) in the case of a policy or pilot program relating to the production of cannabis."; and

(B) in paragraph (3)(C)—

(i) by adding at the end the following:

"(v) in the case of reviewing policies and other materials relating to the production of cannabis, may waive the viability and marketability requirement under subparagraph (A)(ii)(I).".

(4) AGRICULTURAL COMMODITY.—Section 518 of the Federal Crop Insurance Act (7 U.S.C. 1518) is amended by inserting " cannabis," before "aquacultural species".

(5) RESEARCH AND DEVELOPMENT AUTHORITY.—Section 522(b) of the Federal Crop Insurance Act (7 U.S.C. 1522(b)) is amended—

(A) in paragraph (2), by adding at the end the following:

"(L) WAIVER FOR CANNABIS.—The Board may waive the viability and marketability requirements under this paragraph in the case of research and development relating to a policy to insure the production of cannabis."; and

(B) in paragraph (3)—

(i) by adding at the end the following:

"(C) WAIVER FOR CANNABIS.—The Corporation may waive the marketability requirement under subparagraph (A) in the case of research and development relating to a policy to insure the production of cannabis.".

(e) RULE OF CONSTRUCTION. Nothing in this Act authorizes interference with the interstate commerce of cannabis (as defined in section 298A of the Agricultural Marketing Act of 1946, as added by this Act).

SEC. 108. PROTECTING AND RESPECTING STATE LAWS

(a) Under the constitutional power of the Federal Congress to "regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes":

(1) The transportation or importation of cannabis from any State, Territory, or Possession of the United States that has legalized cannabis into any

State, Territory, or Possession of the United States that has legalized cannabis for delivery or use therein, is hereby lawful interstate commerce;

(2) The transportation or importation into any State, Territory, or Possession of the United States for delivery or use therein of cannabis, in violation of the laws thereof, is hereby prohibited;

(3) No law in any State, Territory, or Possession of the United States that has legalized cannabis shall unduly burden the interstate commerce in cannabis or discriminate against cannabis businesses from another State, Territory, or Possession of the United States;

(4) Nothing in this Act, or an amendment made by this Act, may be construed to modify the authority of the Federal Government to prevent cannabis trafficking from States or Foreign Nations that have legalized cannabis to those that have not;

(5) Nothing in this Act, or an amendment made by this Act, may be construed to prevent the mere transportation of cannabis from States that have legalized cannabis to other States that have, through those States that have not;

(A) The Bureau of Alcohol, Tobacco, Firearms and Explosives shall expeditiously develop and implement a track-and-trace system to ensure that no cannabis merely traveling through a state is diverted.

SEC. 109. FEDERAL CANNABIS AVAILABLE FOR QUALITY TESTING CALIBRATION.

(a) FEDERAL STOCK AVAILABLE.—The Drug Enforcement Administration shall make available upon request and ensure delivery of, from its stock of research cannabis at the University of Mississippi Marijuana Research Facility, to any state-licensed cannabis testing facility, to any state cannabis regulator, to the Alcohol and Tobacco Tax and

Trade Bureau of the Department of the Treasury, the Food and Drug Administration, and the Bureau of Alcohol, Tobacco, and Firearms, a sufficient qualified sample of cannabis for baseline testing and equipment calibration. The size of a sufficient qualified sample for baseline and calibration testing shall be determined by the state cannabis regulator in the state in which the testing lab is located or federal regulator to which the sample is to be transferred.

SEC. 110. LAW ENFORCEMENT CANNABIS TRAINING AND TECHNOLOGY GRANT PROGRAM.

(a) IN GENERAL.—There is created a "Law Enforcement Cannabis Training and Technology Grant Program."

(b) GRANT AUTHORIZATION.— The Attorney General shall carry out and administer the single grant "Law Enforcement Cannabis Training and Technology Grant Program" under which the Attorney General makes grants to States, units of local government, Indian tribal governments, other public and private entities, and multi-jurisdictional or regional consortia for the purposes described in subsection (3).

(c) USES OF GRANT AMOUNTS. — The purposes for which grants made under subsection (2) may be made are—

(1) to train law enforcement officers in the new legal landscape and their duties with respect to civilly policing cannabis production and consumption;

(2) to hire and train new, additional career law enforcement officers educated in cannabis legal issues for deployment in policing across the Nation, including by prioritizing the hiring and training of veterans (as defined in section 101 of title 38);

(3) to procure equipment, technology, or support systems, for the purpose of policing cannabis production and use;

(4) to provide specialized training to law enforcement officers to enhance their conflict resolution, mediation, problem solving, service, and other skills needed to work in partnership with members of the community;

(5) to increase police participation in multidisciplinary early intervention teams;

(6) to develop new technologies, including interoperable communications technologies, modernized criminal record technology, and forensic technology, to assist State, tribal, and local law enforcement agencies in reorienting the emphasis of their activities from treating cannabis consumption as a criminal activity to civil enforcement and enforcement of driving-under-the-influence statutes, and to train law enforcement officers to use such technologies;

(7) to establish school-based partnerships between local law enforcement agencies and local school systems by using school resource officers who operate in and around elementary and secondary schools to combat school-related underage cannabis use, including the training of school resource officers in resolution and intervention skills and techniques to dissuade underage cannabis use without causing underage users to interact with the judicial or juvenile justice systems;

(8) to provide specialized training to law enforcement officers to—

(A) recognize individuals who have a mental illness; and

(B) properly interact with individuals who have a mental illness, including strategies for verbal de-escalation of crises;

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Attorney General, $ [Lorem Ipsum] for each of fiscal years 2019 through 2023, for purposes of carrying out the activities described in subsection (2). There are authorized to be appropriated in years subsequent to fiscal years 2023, such sums as Congress deems appropriate.

SEC. 111. CANNABIS FOREIGN IMPORT AND EXPORT REGULATION.

(a) GENERAL PROVISIONS.

(1) IN GENERAL. — Importers and exporters are responsible for all applicable:

(A) Federal excise taxes and duties collected by U.S. Customs and Border Protection as defined in the Internal Revenue Code; and

(B) Registration and Prior Notice requirements of the U.S. Food and Drug Administration.

(2) UTILIZATION OF OTHER GOVERNMENTAL AGENCIES. — The Secretary of the Treasury may, with the consent of the department or agency affected, utilize the services of any department or other agency of the Government to the extent necessary to carry out his powers and duties under this chapter and authorize officers and employees thereof to act as his agents.

(b) UNLAWFUL BUSINESSES WITHOUT PERMIT.

(1) IN GENERAL.—In order effectively to regulate interstate and foreign commerce in cannabis and to protect the revenue and enforce the postal laws with respect to cannabis:

(2) It shall be unlawful, except pursuant to a permit issued under this section by the Secretary of the Treasury:

(A) to engage in the business of importing into the United States cannabis; or

(B) for any person so engaged to sell, offer or deliver for sale, contract to sell, or ship, in interstate of foreign commerce, directly or indirectly or through an affiliate, cannabis so imported.

(c) PERMIT.

(1) WHO ENTITLED THERETO.—The following persons shall, on application therefor, be entitled to a permit:

(A) Any person who, as of the date of the application:

(i) holds a valid permit under state law; or

(ii) committed an offense that is no longer an offense in that State; or

(B) Any person unless the Secretary of the Treasury finds:

(i) that such person (or in case of a corporation, any of its officers, directors, or principal stockholders) has, within five years prior to the date of application, been convicted of a felony under Federal or State law or has, within three years prior to date of application, been convicted of a misdemeanor under any Federal law relating to cannabis, including the taxation thereof; or

(ii) that such person committed an offense that was not legal under State law in the State when and where the conduct took place; or

(iii) that such person is, by reason of his business experience, financial standing, or trade connections, not likely to commence operations within a reasonable period or to maintain such operations in conformity with Federal law; or

(iv) that the operations proposed to be conducted by such person are in violation of the law of the State in which they are to be conducted.

(2) APPLICATIONS.—The Secretary of the Treasury shall prescribe within 60 days of the effective date of this Act, and consistent with the Paperwork Reduction Act—

(A) the manner and form of all applications for permits under this title (including the facts to be set forth therein) and the form of all permits;

(B) separate applications and permits with respect to the various classes of cannabis, and with respect to the various classes of persons entitled to permits under this title, to the extent deemed necessary by the Secretary for the efficient administration of this title;

(C) specify in any permit the authority conferred by the permit and the conditions thereof in accordance with this title.

(3) DURATION.—

(A) General rule.—Except as otherwise provided in this subsection, a permit issued under this title shall continue in effect until suspended, revoked, or annulled as provided in this title, or voluntarily surrendered.

(B) Effect of transfer.—If operations under a permit issued under this title are transferred, the permit automatically terminates 30 days after the date of that transfer, unless an application is made by the transferee before the end of that period for a permit under this title for those operations. If such an application is made, the outstanding permit shall continue in effect until such application is finally acted on by the Secretary.

(C) Definition of transfer.—For the purposes of this section, the term ‘transfer’ means any change of ownership or control, whether voluntary or by operation of law.

(4) CONDITIONS.—A permit under this title shall be conditioned upon—

(A) compliance with all applicable Federal laws relating to production, sale and consumption of cannabis, as well as compliance with all applicable State laws relating to said activities in the State in which the permit applicant resides and does business; and

(B) payment to the Secretary of a reasonable permit fee in an amount determined by the Secretary to be sufficient collectively over time to offset the cost of implementing and overseeing all aspects of cannabis regulation by the Federal Government; and

(C) such other conditions as the Secretary may deem necessary to assure compliance with this law.

(D) Disclaimer.—The issuance of a permit under this title does not deprive the United States of any remedy for a violation of law.

(d) PERMIT APPLICATION.

(1) IN GENERAL. — Applications for permits to engage in any of the operations set forth in the section must be made on the required form. The application will include all data, written statements, affidavits, documents, or other evidence submitted in support of the application, or upon a hearing.

(2) CONFIDENTIALITY. All financial information submitted by a permit applicant in connection with an application shall be deemed confidential business information and exempt from disclosure under the Freedom of Information Act.

(3) INCOMPLETE OR INCORRECTLY EXECUTED APPLICATIONS. — Incomplete or incorrectly executed applications will not be acted upon, but the applicant shall be entitled to file a new application without prejudice, or to complete the application already filed.

(4) CHANGE IN OWNERSHIP, MANAGEMENT, OR CONTROL OF THE APPLICANT. — In the event of any change in the ownership, management, or control of the applicant (in case of a corporation, any change in the officers, directors, or persons holding more than 10 percent of the corporate stock), after the date of filing of any application for a permit and prior to final action on such application, the applicant shall notify the appropriate officer immediately of such change.

(5) INDIVIDUAL PLANT OR PREMISES.— An application for a basic permit must be filed, and permit issued, to cover each individual plant or premises where any of the businesses specified in this section is engaged in.

(6) DEADLINE.— Within 90 days of receipt of an application, the Secretary or his delegate must notify the applicant whether the application has been approved or denied. This 90 day period may be extended once, by an additional 90 days, if the Secretary or his designee finds that unusual circumstances require additional time to consider the issues presented by an application. If the appropriate TTB officer extends the period, he or she must notify the applicant by letter, along with a brief explanation of the unusual circumstances causing the time period for consideration of the application to be extended. If the applicant receives no decision from the Secretary or his designee within the time periods set forth in this paragraph, the applicant may file a mandamus action l as provided for in section (5)(F) below.

(e) PERMIT REVIEW.

(1) REFUSAL OF PERMIT;.—If upon examination of any application for a permit the Secretary has reason to believe that the applicant is not entitled to such permit, the Secretary shall so notify the applicant and, upon request by the applicant, afford the applicant due notice and opportunity for hearing on the application. If the Secretary, after affording such notice and opportunity for hearing, still finds that the applicant is not entitled to a permit hereunder, the Secretary shall by order deny the application stating the findings which are the basis for the order

(2) DENIAL, REVOCATION, SUSPENSION, AND ANNULMENT.—

(A) Generally.—After due notice and opportunity for hearing consistent with 5 U.S.C. § 553, the Secretary may order a permit under this title—

(i) be denied, revoked or suspended for such period as the Secretary deems appropriate, if the Secretary finds that the permittee has willfully violated any of the conditions of the permit, but for a first violation of the conditions the permit shall be subject to suspension only;

(ii) be revoked if the Secretary finds that the permittee has not engaged in the operations authorized by the permit for a period of more than 2 years; or

(iii) be annulled if the Secretary finds that the permit was procured through fraud, or misrepresentation, or concealment of material fact.

(B) Order to state basis for order.—The order shall state the findings which are the basis for the order.

(3) SERVICE OF ORDERS.—Each order of the Secretary with respect to any denial of application, suspension, revocation, annulment, or other proceedings, shall be served—

(A) in person by any officer or employee of the Secretary designated by him or any internal revenue or customs officer authorized by the Secretary for the purpose; or

(B) by mailing the order by registered mail, addressed to the applicant or respondent at his last known address in the records of the Secretary.

(4) PROCEEDINGS. — The provisions of 27 C.F.R. Part 200— Rules of Practice in Permit Proceedings, as amended from time to time, shall be applicable to the jurisdiction, powers, and duties of the Secretary of the Treasury under this section.

(5) APPEAL.— An appeal may be taken by the permittee or applicant for a permit from any order of the Secretary of the Treasury denying an application for, or suspending, revoking, or annulling, a basic permit. Such appeal shall be taken by filing, in the court of appeals of the United States within any circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia, within sixty days after the entry of such order, a written petition praying that the order of the Secretary be modified or set aside in whole or in part. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Secretary, or any officer designated by him for that purpose, and thereupon the Secretary shall file in the court the record upon which the order complained of was entered, as provided in section 2112 of title 28. Upon the filing of such petition such court shall have exclusive jurisdiction to affirm, modify, or set aside such order, in whole or in part. No objection to the order of the Secretary shall be considered by the court unless such objection shall have been urged before the Secretary or unless there were reasonable grounds for failure so to do. The finding of the

Secretary as to the facts, if supported by substantial evidence, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the proceeding before the Secretary, the court may order such additional evidence to be taken before the Secretary and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Secretary may modify his findings as to the facts by reason of the additional evidence so taken, and he shall file with the court such modified or new findings, which, if supported by substantial evidence, shall be conclusive, and his recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court affirming, modifying, or setting aside, in whole or in part, any such order of the Secretary shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28. The commencement of proceedings under this subsection shall, unless specifically ordered by the court to the contrary, operate as a stay of the Secretary's order.

(6) MANDAMUS - Should the Secretary fail to make a permit application decision within ninety days of submission of a completed application, and applicant shall have the right to compel a decision pursuant to 28 U.S.C. § 1361 in any United States District Court where the applicant resides or does business or in the United States District Court for the District of Columbia. Should the applicant

substantially prevail, such applicant shall be entitled to attorneys fees and costs associated with compelling a decision under this Section.

(7) STATUTE OF LIMITATIONS.—

(A) In general.—No proceeding for the suspension or revocation of a permit for violation of any condition thereof relating to compliance with Federal law shall be instituted by the Secretary more than 18 months after conviction of the violation of Federal law, or, if no conviction has been had, more than 3 years after the violation occurred.

(B) Compromise.—No permit shall be suspended or revoked for a violation of any such condition thereof if the alleged violation of Federal law has been compromised by any officer of the Government authorized to compromise such violation.

(f) PENALTIES.

(1) GENERALLY.—Any person violating this section shall be fined not more than $1,000 per article imported unlawfully.

(2) SETTLEMENT IN COMPROMISE.—The Secretary of the Treasury is authorized, with respect to any violation of this section, to compromise the liability arising with respect to such violation upon payment of a sum not in excess of $500 for each violation to be collected by the Secretary and to be paid into the Treasury as miscellaneous receipts

(3) CIVIL ACTION FOR RELIEF.—The Attorney General may, in a civil action, obtain appropriate relief to prevent and restrain a violation of this title.

(g) IMPORTED CANNABIS QUALITY.

(1) GENERALLY. —The regulations promulgated by the Secretary under this Act shall ensure that any cannabis imported into the United States meets the quality, packaging, and labeling standards for cannabis produced in the United States for the same commercial purpose.

SEC. 112. ESTABLISHMENT OF EXCISE TAX RELATING TO CANNABIS PRODUCTS.

IN GENERAL.—Subtitle E of title I of the Internal Revenue Code of 1986 is amended by adding at the end the following new chapter:

"CHAPTER 56—CANNABIS PRODUCTS

"SUBCHAPTER A. TAX ON CANNABIS PRODUCTS

"Sec. 5901. Imposition of tax.

"Sec. 5902. Liability and Method of Payment

"Sec. 5903. Exemption from Tax

"Sec. 5904. Credit, Refund, or Drawback of Tax

"SEC. 5901 IMPOSITION OF TAX

"(a) IMPOSITION OF TAX.—There is hereby imposed on any cannabis product produced in or imported into the United States a tax equal to X percent of the prevailing sales price of cannabis products sold in the United States during the 12-month period ending one calendar quarter before such calendar year, expressed on a per ounce basis, as determined by the Secretary, distinguishing between the per-ounce price of flower, edible, and concentrate cannabis.

"SEC. 5902. LIABILITY AND METHOD OF PAYMENT.

"(a) LIABILITY FOR TAX.—

"(1) ORIGINAL LIABILITY.—The producer or importer of any cannabis product shall be liable for the taxes imposed thereon by section 5901.

"(2) TRANSFER OF LIABILITY.—

"(A) IN GENERAL.—When cannabis products are transferred, without payment of tax, pursuant to section 5903, the liability for tax shall be transferred in accordance with the provisions of this paragraph.

"(B) TRANSFER BETWEEN PRODUCER AND EXPORT WAREHOUSE PROPRIETOR.—In the case of cannabis products which are transferred between the bonded premises of producers and export warehouse proprietors, the transferee shall become liable for the tax upon receipt by the transferee of such articles, and the transferor shall thereupon be relieved of their liability for such tax.

"(C) TRANSFER FROM CUSTOMS CUSTODY TO PRODUCER.—In the case of cannabis products which are released in bond from customs custody for transfer to the bonded premises of a producer, the transferee shall become liable for the tax on such articles upon release from customs custody, and the importer shall thereupon be relieved of their liability for such tax.

"(D) RETURNED TO BOND.—All provisions of this chapter applicable to cannabis products in bond shall be applicable

to such articles returned to bond upon withdrawal from the market or returned to bond after previous removal for a tax-exempt purpose.

"(b) METHOD OF PAYMENT OF TAX.—

"(1) IN GENERAL.—

"(A) DETERMINATION AND PAYMENT OF TAX.—The taxes imposed by section 5901 shall be determined at the time of removal of the cannabis products. Such taxes shall be paid on the basis of return. The Secretary shall, by regulations, prescribe the period or the event for which such return shall be made and the information to be furnished on such return.

"(B) POSTPONEMENT.—Any postponement under this subsection of the payment of taxes determined at the time of removal shall be conditioned upon the filing of such additional bonds, and upon compliance with such requirements, as the Secretary may prescribe for the protection of the revenue. The Secretary may, by regulations, require payment of tax on the basis of a return prior to removal of the cannabis products where a person defaults in the postponed payment of tax on the basis of a return under this subsection or regulations prescribed thereunder.

"(C) ADMINISTRATION AND PENALTIES.—All administrative and penalty provisions of this title, insofar as applicable, shall apply to any tax imposed by section 5901.

“(2) TIME FOR PAYMENT OF TAXES.—

“(A) IN GENERAL.—Except as otherwise provided in this paragraph, in the case of taxes on cannabis products removed during any semimonthly period under bond for deferred payment of tax, the last day for payment of such taxes shall be the 14th day after the last day of such semimonthly period.

“(B) IMPORTED ARTICLES.—In the case of cannabis products which are imported into the United States, the following provisions shall apply:

“(i) IN GENERAL.—The last day for payment of tax shall be the 14th day after the last day of the semimonthly period during which the article is entered into the customs territory of the United States.

“(ii) SPECIAL RULE FOR ENTRY OF WAREHOUSING.—Except as provided in clause (iv), in the case of an entry for warehousing, the last day for payment of tax shall not be later than the 14th day after the last day of the semimonthly period during which the article is removed from the first such warehouse.

“(iii) FOREIGN TRADE ZONES.—Except as provided in clause (iv) and in regulations prescribed by the Secretary, articles brought into a foreign trade zone shall, notwithstanding any other provision of law, be treated for

purposes of this subsection as if such zone were a single customs warehouse.

"(iv) EXCEPTION FOR ARTICLES DESTINED FOR EXPORT.—Clauses (ii) and (iii) shall not apply to any article which is shown to the satisfaction of the Secretary to be destined for export.

"(C) CANNABIS PRODUCTS BROUGHT INTO THE UNITED STATES FROM PUERTO RICO.—In the case of cannabis products which are brought into the United States from Puerto Rico, the last day for payment of tax shall be the 14th day after the last day of the semimonthly period during which the article is brought into the United States.

"(D) SPECIAL RULE WHERE DUE DATE FALLS ON SATURDAY, SUNDAY, OR HOLIDAY.—Notwithstanding section 7503, if, but for this subparagraph, the due date under this paragraph would fall on a Saturday, Sunday, or a legal holiday (as defined in section 7503), such due date shall be the immediately preceding day which is not a Saturday, Sunday, or such a holiday.

"(E) SPECIAL RULE FOR UNLAWFULLY PRODUCED CANNABIS PRODUCTS.—In the case of any cannabis products produced in the United States at any place other than the premises of a producer that has filed the bond and obtained the permit

required under this chapter, tax shall be due and payable immediately upon production.

"(3) PAYMENT BY ELECTRONIC FUND TRANSFER.—Any person who in any 12-month period, ending December 31, was liable for a gross amount equal to or exceeding $5,000,000 in taxes imposed on cannabis products by section 5901 (or section 7652) shall pay such taxes during the succeeding calendar year by electronic fund transfer (as defined in section 5061(e)(2)) to a Federal Reserve Bank. Rules similar to the rules of section 5061(e)(3) shall apply to the $5,000,000 amount specified in the preceding sentence.

"(c) DEFINITION OF PRICE.—

"(1) CONTAINERS, PACKING AND TRANSPORTATION CHARGES.—In determining, for the purposes of this chapter, the price for which an article is sold, there shall be included any charge for coverings and containers of whatever nature, and any charge incident to placing the article in condition packed ready for shipment, but there shall be excluded the amount of tax imposed by this chapter, whether or not stated as a separate charge. A transportation, delivery, insurance, installation, or other charge (not required by the preceding sentence to be included) shall be excluded from the price only if the amount thereof is established to the satisfaction of the Secretary in accordance with regulations.

"(2) CONSTRUCTIVE SALE PRICE.—

"(A) IN GENERAL.—If an article is sold directly to consumers, sold on consignment, or sold (otherwise than through an arm's length transaction) at less than the fair market price, or if the price for which the article sold cannot be determined, the tax under section 5901(a) shall be computed on the price for which such articles are sold, in the ordinary course of trade, by producers thereof, as determined by the Secretary.

"(B) ARM'S LENGTH.—

"(i) IN GENERAL.—For purposes of this section, a sale is considered to be made under circumstances otherwise than at arm's length if—

"(I) the parties are members of the same controlled group, whether or not such control is actually exercised to influence the sale price, or

"(II) the sale is made pursuant to special arrangements between a producer and a purchaser.

"(ii) CONTROLLED GROUPS.—

"(I) IN GENERAL.—The term 'controlled group' has the meaning given to such term by subsection (a) of section 1563, except that 'more than 50 percent' shall be substituted for 'at least 80 percent' each place it appears in such subsection.

"(II) CONTROLLED GROUPS WHICH INCLUDE NONINCORPORATED PERSONS.—Under regulations prescribed by the Secretary, principles similar to the principles of subclause (I) shall apply to a group of persons under common control where one or more of such persons is not a corporation.

"(d) PARTIAL PAYMENTS AND INSTALLMENT ACCOUNTS.—

"(1) PARTIAL PAYMENTS.—There shall be paid upon each payment with respect to the article a percentage of such payment equal to the rate of tax in effect on the date such payment is due for any—

"(A) contract for the sale of an article wherein it is provided that the price shall be paid by installments and title to the article sold does not pass until a future date notwithstanding partial payment by installments,

"(B) conditional sale, or

"(C) chattel mortgage arrangement wherein it is provided that the sales price shall be paid in installments.

"(2) SALES OF INSTALLMENT ACCOUNTS.—If installment accounts, with respect to payments on which tax is being computed as provided in paragraph (1), are sold or otherwise disposed of, then paragraph (1) shall not apply with respect to any subsequent payments on such accounts (other than subsequent payments on returned accounts with

respect to which credit or refund is allowable by reason of section 6416(b)(5)), but instead—

"(A) there shall be paid an amount equal to the difference between—

"(i) the tax previously paid on the payments on such installment accounts, and

"(ii) the total tax which would be payable if such installment accounts had not been sold or otherwise disposed of (computed as provided in paragraph (1)), except that

"(B) if any such sale is pursuant to the order of, or subject to the approval of, a court of competent jurisdiction in a bankruptcy or insolvency proceeding, the amount computed under subparagraph (A) shall not exceed the sum of the amounts computed by multiplying—

"(i) the proportionate share of the amount for which such accounts are sold which is allocable to each unpaid installment payment, by

"(ii) the rate of tax under this chapter in effect on the date such unpaid installment payment is or was due.

"(3) The sum of the amounts payable under this subsection in respect of the sale of any article shall not exceed the total tax.

"SEC. 5903. EXEMPTION FROM TAX.

"(a) IN GENERAL.—Cannabis products on which the internal revenue tax has not been paid or determined may, subject to such regulations as the Secretary shall prescribe, be withdrawn from the bonded premises of any producer in approved containers free of tax and not
for resale for use—

"(1) exclusively in scientific research by a laboratory,

"(2) by a proprietor of a cannabis production facility in research, development, or testing (other than consumer testing or other market analysis) of processes, systems, materials, or equipment, relating to cannabis or cannabis operations, under such limitations and conditions as to quantities, use, and accountability as the Secretary may by regulations require for the protection of the revenue, or

"(3) by the United States or any governmental agency thereof, any State, any political subdivision of a State, or the District of Columbia, for nonconsumption purposes.

"(b) CANNABIS PRODUCTS TRANSFERRED OR REMOVED IN BOND FROM DOMESTIC FACTORIES AND EXPORT WAREHOUSES.—

"(1) IN GENERAL.—Subject to such regulations and under such bonds as the Secretary shall prescribe, a producer or export warehouse proprietor may transfer cannabis products, without payment of tax, to the bonded premises of another producer or export warehouse proprietor, or remove such articles, without payment of tax, for shipment to a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United

States, or for consumption beyond the jurisdiction of the internal revenue laws of the United States.

"(2) LABELING.—Cannabis products may not be transferred or removed under this subsection unless such products bear such marks, labels, or notices as the Secretary shall by regulations prescribe.

"(c) CANNABIS PRODUCTS RELEASED IN BOND FROM CUSTOMS CUSTODY.—Cannabis products imported or brought into the United States may be released from customs custody, without payment of tax, for delivery to a producer or export warehouse proprietor if such articles are not put up in packages, in accordance with such regulations and under such bond as the Secretary shall prescribe.

"(d) CANNABIS PRODUCTS EXPORTED AND RETURNED.—Cannabis products classifiable under item 9801.00.10 of the Harmonized Tariff Schedule of the United States (relating to duty on certain articles previously exported and returned), as in effect on the date of the enactment of this [Model Legislation title] Act, may be released from customs custody, without payment of that part of the duty attributable to the internal revenue tax for delivery to the original producer of such cannabis products or to the export warehouse proprietor authorized by such producer to receive such products, in accordance with such regulations and under such bond as the Secretary shall prescribe. Upon such release such products shall be subject to this chapter as if they had not been exported or otherwise removed from internal revenue bond.

"SEC. 5904. CREDIT, REFUND, OR DRAWBACK OF TAX.

"(a) CREDIT OR REFUND.—

"(1) IN GENERAL.—Credit or refund of any tax imposed by this chapter or section 7652 shall be allowed or made (without interest) to the producer, importer, or export warehouse proprietor on proof satisfactory to the Secretary that the claimant producer, importer, or export warehouse proprietor has paid the tax on—

"(A) cannabis products withdrawn from the market by the claimant, or

"(B) such products lost (otherwise than by theft) or destroyed, by fire, casualty, or act of God, while in the possession or ownership of the claimant.

"(2) CANNABIS PRODUCTS LOST OR DESTROYED IN BOND.—

"(A) EXTENT OF LOSS ALLOWANCE.—No tax shall be collected in respect of cannabis products lost or destroyed while in bond, except that such tax shall be collected—

"(i) in the case of loss by theft, unless the Secretary finds that the theft occurred without connivance, collusion, fraud, or negligence on the part of the proprietor of cannabis production facility, owner, consignor, consignee, bailee, or carrier, or their employees or agents,

"(ii) in the case of voluntary destruction, unless such destruction is carried out as provided in paragraph (3), and

"(iii) in the case of an unexplained shortage of cannabis products.

"(B) PROOF OF LOSS.—In any case in which cannabis products are lost or destroyed, whether by theft or otherwise, the Secretary may require the proprietor of a cannabis production facility or other person liable for the tax to file a claim for relief from the tax and submit proof as to the cause of such loss. In every case where it appears that the loss was by theft, the burden shall be upon the proprietor of the cannabis production facility or other person responsible for the tax under section 5901 to establish to the satisfaction of the Secretary that such loss did not occur as the result of connivance, collusion, fraud, or negligence on the part of the proprietor of the cannabis production facility, owner, consignor, consignee, bailee, or carrier, or their employees or agents.

"(C) REFUND OF TAX.—In any case where the tax would not be collectible by virtue of subparagraph (A), but such tax has been paid, the Secretary shall refund such tax.

"(D) LIMITATIONS.—Except as provided in subparagraph (E), no tax shall be abated, remitted, credited, or refunded under this paragraph where the loss occurred after the tax was determined. The abatement, remission, credit, or refund of taxes provided for by subparagraphs (A) and (C) in the case of loss

of cannabis products by theft shall only be allowed to the extent that the claimant is not indemnified against or recompensed in respect of the tax for such loss.

"(E) APPLICABILITY.—The provisions of this paragraph shall extend to and apply in respect of cannabis products lost after the tax was determined and before completion of the physical removal of the cannabis products from the bonded premises.

"(3) VOLUNTARY DESTRUCTION.—The proprietor of a cannabis production facility or other persons liable for the tax imposed by this chapter or by section 7652 with respect to any cannabis product in bond may voluntarily destroy such products, but only if such destruction is under such supervision and under such regulations as the Secretary may prescribe.

"(4) LIMITATION.—Any claim for credit or refund of tax under this subsection shall be filed within 6 months after the date of the withdrawal from the market, loss, or destruction of the products to which the claim relates, and shall be in such form and contain such information as the Secretary shall by regulations prescribe.

"(b) DRAWBACK OF TAX.—There shall be an allowance of drawback of tax paid on cannabis products, when shipped from the United States, in accordance with such regulations and upon the filing of such bond as the Secretary shall prescribe.

SEC. 113. CANNABIS SAFETY.

—Subtitle V of title 21 of the United States Code (The Food, Drug, and Cosmetic Act) is amended by adding at the end the following new Part:

"PART J—CANNABIS PRODUCTS

"Sec. 360ggg. Definitions.

"Sec. 360ggg-1. Regulation of medical cannabis

"Sec. 360ggg-2. Cannabis-Infused Foods

"Sec. 360ggg-3. Inapplicability of drug fees to medical cannabis

"**SEC. 360ggg. DEFINITIONS.**

(a) In this part:

(1) The term "designated medical cannabis product" means any "medical cannabis product" that also meets the standards set forth in an official compendium.

(2) Any other medical cannabis product deemed appropriate by the Secretary, after taking into account any investigational new drug application or investigational new animal drug application for the same medical cannabis product submitted in accordance with regulations applicable to such applications in title 21 of the Code of Federal Regulations, unless any period of exclusivity for a new drug under section 355(c)(3)(E)(ii) of this title or section 355(j)(5)(F)(ii) of this title, or the extension of any such period under section 355a of this title, or any period of exclusivity for a new animal drug under section 360b(c)(2)(F) of this title, applicable to such medical cannabis product has not expired.

(b)The term “medical cannabis product” means an article that—

(1) is labeled such that the labeling and promotional claims themselves intend to show uses that bring it within the drug definition; and

w§ 802(16)).

“SEC. 360ggg-1. REGULATION OF MEDICAL CANNABIS PRODUCTS.

(a) CERTIFICATION OF DESIGNATED MEDICAL CANNABIS PRODUCTS.—

(1) SUBMISSION. Beginning 30 days after the passage of this act, any person who seeks to initially introduce or deliver for introduction a designated medical cannabis product into interstate commerce may file with the Secretary a request for certification of a medical cannabis product as a designated medical cannabis product. Any such request shall contain the following information:

(A) A description of the medical cannabis product.

(B) The name and address of the sponsor.

(C) The name and address of the facility or facilities where the medical cannabis product is or will be cultivated and manufactured.

(D) Any other information deemed appropriate by the Secretary to determine whether the medical cannabis product is a designated medical cannabis product.

(2) GRANT OF CERTIFICATION. The certification requested under paragraph (1) is deemed to be granted unless, within 30 days of the filing of such request, the Secretary finds that—

(A) the medical cannabis product subject to the certification is not a medical cannabis product.

(B) the request does not contain the information required under paragraph (1) or otherwise lacks sufficient information to permit the Secretary to determine that the medical cannabis product is a designated medical cannabis product; or

(C) denying the request is necessary to protect the public health.

(3) EFFECT OF CERTIFICATION

(A) In general

(i) Approved uses.— A designated medical cannabis product for which a certification is granted under paragraph (2) is deemed, alone or in combination, as medically appropriate, with another designated medical cannabis product or products for which a certification or certifications have been granted, to have in effect an approved application under section 355 or 360b of this title, subject to all applicable postapproval requirements, for the following indications for use:

(I) the treatment of arthritis.

(II) the treatment of chemotherapy-induced and non-chemotherapy-induced nausea and vomiting

(III) the stimulation of appetite

(IV) the treatment of the symptoms of patients with HIV/AIDS or for anorexia associated with AIDS

(V) the treatment of temporary or chronic pain and analgesia.

(VI) the treatment of muscle spasms

(VII) the treatment of insomnia and restlessness.

(VIII) Any other indication for use for a designated medical cannabis product or combination of designated medical cannabis products deemed appropriate by the Secretary,

unless any period of exclusivity for a new drug under clause (iii) or (iv) of section 355(c)(3)(E) of this title, clause (iii) or (iv) of section 355(j)(5)(F) of this title, or section 360cc of this title, or the extension of any such period under section 355a of this title, applicable to such indication for use for such medical cannabis product or combination of products has not expired.

(ii)Labeling.—The requirements of sections 353(b)(4) and 352(f) of this title are deemed to have been

met for a designated medical cannabis product if the labeling on the final use container for such medical cannabis product bears—

(I) the information required by section 353(b)(4) of this title;

(II) a warning statement concerning the use of the medial cannabis products as determined by the Secretary by regulation; and

(III) appropriate directions and warnings concerning storage and handling.

(B) Inapplicability of exclusivity provisions

(i) No exclusivity for a certified medical cannabis product. No designated medical cannabis product deemed under subparagraph (A)(i) to have in effect an approved application is eligible for any period of exclusivity for a new drug under section 355(c), 355(j), or 360cc of this title, or the extension of any such period under section 355a of this title, on the basis of such deemed approval.

(ii) Effect on certification. No period of exclusivity under section 355(c), 355(j), or section 360cc of this title, or the extension of any such period under section 355a of this title, with respect to an application for a drug product,

shall prohibit, limit, or otherwise affect the submission, grant, or effect of a certification under this section, except as provided in subsection (a)(3)(A)(i)(VIII) and section 360ddd(1)(H) of this title.

(4) WITHDRAWAL, SUSPENSION, OR REVOCATION OF APPROVAL

(A) Withdrawal, suspension of approval. Nothing in this part limits the Secretary's authority to withdraw or suspend approval of a drug product, including a designated medical cannabis product deemed under this section to have in effect an approved application under section 355 of this title or section 360b of this title.

(B) Revocation of certification. The Secretary may revoke the grant of a certification under paragraph (2) if the Secretary determines that the request for certification contains any material omission or falsification.

(b) PRESCRIPTION OR RECOMMENDATION REQUIREMENT.

(1) In general—A designated medical cannabis product is not approved for use without a prescription by a qualified medical professional or a recommendation by a qualified medical professional as defined by the law of the state in which the qualified medical professional is providing said prescription or recommendation.

(2) Certain Historically Understood Uses—

(A) No prescription required for certain uses. Notwithstanding paragraph (1), designated medical cannabis products may be provided without a prescription for the following uses:

(i) the treatment of analgesia.

(ii) the treatment of insomnia and restlessness

(iii) as an appetite stimulant

(B) Labeling. For medical cannabis products provided pursuant to subparagraph (A), the Secretary shall issue labeling requirements within 30 days of the passage of this Act.

(5) NO DRUG PRECLUSION. Notwithstanding any other law, 21 U.S.C. § 331(ll), the "drug preclusion" rule, shall not apply to "marihuana," as defined in 21 U.S.C. § 802(16). Notwithstanding any other federal law or provision of the Food, Drug, and Cosmetics Act, the Food and Drug Administration shall treat cannabis without respect to the doctrine of drug preclusion.

"SEC. 360ggg-2. CANNABIS-INFUSED FOODS

(a) NO SUPPLEMENT/ADDITIVE PRECLUSION. Notwithstanding any other law, 21 U.S.C. § 321(s)(6), shall not apply to "marihuana," as defined in 21 U.S.C. § 802(16). Notwithstanding any other federal law or provision of the Food, Drug, and Cosmetics Act, the Food and Drug Administration shall treat cannabis without respect to the doctrine of dietary supplement and food additive preclusion.

(b) MEDICAL-USE CANNABIS-INFUSED FOODS; CLASSIFICATION AS OLD DIETARY INGREDIENT. Notwithstanding any other law, "marihuana," as defined in 21 U.S.C. § 802(16), shall be deemed to have been marketed in the United States as a dietary ingredient before October 15, 1994 for the purposes of 21 U.S.C. §§ 350b(a), 350b(d).

(c) ADULT-USE CANNABIS-INFUSED FOODS; CLASSIFICATION AS GENERALLY SAFE THROUGH COMMON EXPERIENCE. Notwithstanding any other law, "marihuana," as defined in 21 U.S.C. § 802(16), shall be deemed to be generally recognized as safe through experience based on common use in food prior to January 1, 1958, for the purposes of 21 U.S.C. § 321(s) and 21 C.F.R. § 170.30(a).

"SEC. 360ggg-3. LIABILITY AND METHOD OF PAYMENT.

(a) A designated medical cannabis product, alone or in combination with another designated medical cannabis product or products (as medically appropriate) deemed under section 360ggg–1 of this title to have in effect an approved application shall not be assessed fees under section 379h(a) or 379j–12(a) of this title on the basis of such deemed approval.

SEC. 114. REPATRIATION OF CANNABIS BUSINESS FUNDS AND REVIEW OF CONVICTIONS FOR FEDERAL CANNABIS OFFENSES.

(a) REPATRIATION OF FUNDS. Notwithstanding any other provision of law, the federal government shall not pursue, and shall immediately desist any present administrative or enforcement action against any U.S. person where the cause of controversy is rooted in the illicit cannabis trade for non-violent acts having occurred between the passage of the Marijuana Tax Act of 1937 (Pub. L. 75–238, 50 Stat. 551) and

this Act, nor shall the proceeds of such trade or acts be considered the proceeds of illegal drug trade or a criminal activity.

(1) This provision applies solely to persons who traded exclusively in cannabis rather than other substances controlled under the Controlled Substances Act;

(2) This provision applies to each and every organ of the federal government;

(3) This provision does not apply to acts occurring after the passage of this Act or transactions involving persons under the age of 18 at the time of the transaction;

(4) This provision does not apply to U.S. persons that are or were merely the instrumentality of a foreign agent, "drug cartel," or power;

(5) The federal and administrative courts of the United States shall not have jurisdiction to hear cases brought by the federal government that meet the criteria described in Subsection (1) of this Section.

(b) REVIEW OF CANNABIS OFFENSES. The Attorney General of the United States is directed to review every federal conviction where the convicted individual is currently serving a sentence and the individual was convicted of a cannabis offense between the passage of the Marijuana Tax Act of 1937 (Pub. L. 75–238, 50 Stat. 551) and the passage of this Act, and provide an individualized recommendation to the President of the United States as to a grant of reprieve or pardon. The Attorney General shall recommend a full pardon for any non-violent cannabis offender currently in federal prison, with all

deliberate speed. Nothing in this provision shall be construed to infringe upon the President's sole prerogative under Article II to grant reprieves and pardons.

SEC. 115. RESTORING AMERICAN COMMUNITIES HARMED BY THE WAR ON DRUGS.

(a) GRANTS FOR EXPUNGEMENT OF CANNABIS CONVICTIONS.—There is authorized to be appropriated to the Attorney General to award grants to States and units of local government for the purpose of administering, expanding, or developing expungement or sealing programs for convictions of possession of cannabis $ [Lorem Ipsum] for each of fiscal years 2019 through 2023 with not less than 50 percent of those funds being directed to cover the cost of public defenders or legal aid providers.

(b) CANNABIS OPPORTUNITY TRUST FUND.—

(1) Transfer.—The Secretary of the Treasury shall transfer to the trust fund established under subsection (b) the sum of 20% of the revenue generated by the excise tax on cannabis products described in Section 13 of this Act.

(2) Trust Fund.—

(A) In General.—There is established in the Treasury of the United States a trust fund to be known as the Cannabis Opportunity Trust Fund, which shall consist of amounts transferred under subsection (b).

(B) Use Of Amounts.—Amounts in the trust fund established under paragraph (1) shall be made available to the Administrator of the Small Business Administration to provide loans under section 7(m) of the Small Business Act (15 U.S.C. 636(m)) to assist—

(i) small business concerns owned and controlled by women, as defined in section 3 of that Act (15 U.S.C. 632), that operate in the cannabis industry; and

(ii) small business concerns owned and controlled by socially and economically disadvantaged individuals, as defined in section 8(d)(3)(C) of that Act (15 U.S.C. 637(d)(3)(C)), that operate in the cannabis industry.

(c) GAO STUDY ON DIVERSITY AND INCLUSION.—

(1) Study.—The Comptroller General of the United States shall carry out a study on the barriers to marketplace entry, including in the licensing process, and the access to financial services for potential and existing minority-owned and women-owned cannabis-related legitimate businesses.

(2) Report.—The Comptroller General shall issue a report to the Congress—

(A) containing all findings and determinations made in carrying out the study required under subsection (A); and

(B) containing any regulatory or legislative recommendations for removing barriers to marketplace entry, including in the licensing process, and expanding access to financial services for potential and existing minority-owned and women-owned cannabis-related legitimate businesses.

SEC. 116 COMPTROLLER GENERAL REVIEW OF LAWS AND REGULATIONS.

IN GENERAL.—The Comptroller General shall conduct a review of Federal laws, regulations, and policies to determine if any changes in them are desirable in the light of the purposes and provisions of this Act. Not later than 2 years after the date of the enactment of this Act, the Comptroller General shall make to Congress and the relevant

agencies such recommendations relating to the results of that review as the Comptroller General deems appropriate.

SEC. 117 UNITED STATES INTERNATIONAL CANNABIS COMMERCE POLICY

(a) UNITED STATES TRADE OBJECTIVES WITH RESPECT TO CANNABIS AND AUTHORIZATION FOR TRADE MISSIONS.

(1) The President of the United States and the United States Trade Representative shall send trade missions and engage in treaty-making with foreign jurisdictions that have legalized the import and export of cannabis to provide for the legal trade between the United States and foreign jurisdictions.

(2) The principal negotiating objectives of the United States with respect to trade shall include the removal of unjustified foreign barriers to trade in cannabis, cannabis derivatives, and cannabis products.

(b) RULE OF CONSTRUCTION FOR INTERNATIONAL TREATIES RESPECTING DRUG POLICY; FEDERAL PRIMACY ON SCHEDULING DECISIONS.

(1) It is the policy of the United States, consistent with the Supreme Court decisions in *Reid v. Covert*, 354 U.S. 1 (1957) and *Murray v. The Schooner Charming Betsy*, 6 U.S. (2 Cranch) 64 (1804), that the power of the federal government to control, alter, heighten, lower, abolish, or likewise modify drug control scheduling for any particular substance, including cannabis, is a vested power of the Article I constitutional lawmaking power that no treaty, including the 1961 Single Convention on Narcotic Drugs, the 1971 Convention on Psychotropic Substances, 1972 Protocol Amending the Single Convention on Narcotic Drugs, and the 1988 United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, may infringe upon or otherwise

modify. This provision shall constitute a rule of construction for all federal courts to apply.

SEC. 118. UNIFORMITY OF FEDERAL REFERENCES TO CANNABIS.

— Notwithstanding any other federal law, in any place in the code of the United States, in the statutes of the United States, or in the rules, regulations, guidance, interpretations, or other promulgations of various federal administrative bureaus and agencies, wherever there appears or may appear the term ‘‘marihuana’’ or ‘‘marijuana’’, that term shall be struck and the term ‘‘cannabis’’ shall be inserted, and capitalized consistently with the stricken text’s capitalization.

TITLE II - FINANCIAL INSTITUTION CUSTOMER PROTECTION ACT

SECTION 2. SHORT TITLE.

—This Act may be cited as the “Financial Institution Customer Protection Act of 2019”.

SECTION 201. REQUIREMENTS FOR DEPOSIT ACCOUNT TERMINATION REQUESTS AND ORDERS.

(a) TERMINATION REQUESTS OR ORDERS MUST BE VALID.—

(1) IN GENERAL.—An appropriate Federal banking agency may not formally or informally request or order a depository institution to terminate a specific customer account or group of customer accounts or to otherwise restrict or discourage a depository institution from entering into or maintaining a banking relationship with a specific customer or group of customers unless—

(A) the agency has a valid reason for such request or order; and

(B) such reason is not based solely on reputation risk; and

(C) only when respecting the Supreme Court decision in *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58 (1963) placing First Amendment restrictions on governmental power to disfavor industries or businesses by informal censorship.

(2) TREATMENT OF NATIONAL SECURITY THREATS.—If an appropriate Federal banking agency believes a specific customer or group of customers is, or is acting as a conduit for, an entity which—

(A) poses a threat to national security;

(B) is involved in terrorist financing;

(C) is an agency of the Government of Iran, North Korea, Syria, or any country listed from time to time on the State Sponsors of Terrorism list;

(D) is located in, or is subject to the jurisdiction of, any country specified in subparagraph (C); or

(E) does business with any entity described in subparagraph (C) or (D), unless the appropriate Federal banking agency determines that the customer or group of customers has used due diligence to avoid doing business with any entity described in subparagraph (C) or (D),

such belief shall satisfy the requirement under paragraph (1).

(b) NOTICE REQUIREMENT.—

(1) IN GENERAL.—If an appropriate Federal banking agency formally or informally requests or orders a depository institution to terminate a specific customer account or a group of customer accounts, the agency shall—

(A) provide such request or order to the institution in writing; and

(B) accompany such request or order with a written justification for why such termination is needed, including any specific laws or regulations the agency believes are being violated by the customer or group of customers, if any.

(2) JUSTIFICATION REQUIREMENT.—A justification described under paragraph (1)(B) may not be based solely on the reputation risk to the depository institution.

(c) CUSTOMER NOTICE.—

(1) NOTICE REQUIRED.—Except as provided under paragraph (2) or as otherwise prohibited from being disclosed by law, if an appropriate Federal banking agency orders a depository institution to terminate a specific customer account or a group of customer accounts, the depository institution shall inform the specific customer or group of customers of the justification for the customer's account termination described under subsection (b).

(2) NOTICE PROHIBITED.—

(A) NOTICE PROHIBITED IN CASES OF NATIONAL SECURITY.—If an appropriate Federal banking agency requests or orders a depository institution to terminate a specific customer account or a group of customer accounts based on a belief that the customer or customers

pose a threat to national security, or are otherwise described under subsection (a)(2), neither the depository institution nor the appropriate Federal banking agency may inform the customer or customers of the justification for the customer's account termination.

(B) NOTICE PROHIBITED IN OTHER CASES.—If an appropriate Federal banking agency determines that the notice required under paragraph (1) may interfere with an authorized criminal investigation, neither the depository institution nor the appropriate Federal banking agency may inform the specific customer or group of customers of the justification for the customer's account termination.

(d) REPORTING REQUIREMENT.—Each appropriate Federal banking agency shall issue an annual report to the Congress stating—

(1) the aggregate number of specific customer accounts that the agency requested or ordered a depository institution to terminate during the previous year; and

(2) the legal authority on which the agency relied in making such requests and orders and the frequency on which the agency relied on each such authority.

(e) DEFINITIONS.—For purposes of this section:

(1) APPROPRIATE FEDERAL BANKING AGENCY.—The term "appropriate Federal banking agency" means—

(A) the appropriate Federal banking agency, as defined under section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813); and

(B) the National Credit Union Administration, in the case of an insured credit union.

(2) DEPOSITORY INSTITUTION.—The term "depository institution" means—

(A) a depository institution, as defined under section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813); and

(B) an insured credit union, as defined under section 101 of the Federal Credit Union Act (12 U.S.C. 1752).

Appendix B

GACC Model Legislation Section-by-Section

June, 2019

GACC Model U.S. Federal Legislation Section-by-Section Analysis

Section 1 is the short title.

Section 2 is the table of contents.

Section 101 treats cannabis like beer or similar substances with respect to the Controlled Substances Act and performs conforming amendments.

Section 102 provides an appropriation for an unspecified amount for highways safety studies related to driving under the influence of cannabis.

Section 103 provides an appropriation for an unspecified amount to fund research into effects of tetrahydrocannabinol (THC) on the human brain, the efficacy of medicinal cannabis as a treatment for specific diseases and conditions, and the identification of additional medical benefits and uses of cannabis.

Section 104 protects children from unethical and illegal advertising directed at persons under the age of 21 by authorizing the Alcohol and Tobacco Tax and Trade Bureau of the Department of the Treasury (TTB) to promulgate regulations on the subject.

Section 105 establishes a national cannabis consumption age of 21, with an exception for medical uses consistent with state law and qualified medical caregiver direction, such as with children with epilepsy.

Section 106 establishes the two-track regulatory framework for cannabis medical and adult-use. TTB Is established as the primary regulator of adult-use cannabis. The Food and Drug Administration is given jurisdiction over the regulation of medical cannabis products, based on their labeling claims, and any cannabis-infused foods, with separate pathways for medical edibles and adult-use edibles within the FDA. Section 7 further provides for interstate trade comity, that is, any state-licensed cannabis business may engage in interstate adult-use trade for non-edible cannabis products provided compliance with the TTB regulations. It also transfer's the Drug Enforcement Administration's current authorities with respect to cannabis to the TTB.

Section 107 compels the Secretary of Agriculture to issue regulations regarding the farming of cannabis plants and applies the Hemp Farming Act of 2018 to cannabis.

Section 108 protects the right of states that have not legalized cannabis to maintain their legal regimes and block interstate diversion into their black market. It legalizes interstate trade , and requires the Alcohol, Tobacco, and Firearms Bureau (ATF) to develop and implement a track-and-trace system to ensure that cannabis merely traveling through states where it is illegal does not divert from its legal endpoint, such as with fireworks and alcohol traveling through dry counties.

Section 109 makes available from the DEA's stock of research cannabis at the University of Mississippi Marijuana Research Facility available for baseline calibration testing for cannabis labs with federal uniformity.

Section 110 provides an appropriation for an unspecified amount for state and local police units to be retrained with respect to the new cannabis laws and regulations.

Section 111 regulates the importation and exportation of cannabis by providing for a federal permitting scheme, like that of alcohol, to engage in foreign cannabis commerce, and requires foreign cannabis quality and labeling to be of the same quality as domestic cannabis for the same commercial purpose.

Section 112 establishes a federal excise tax on cannabis for an unspecified percentage to provide new revenues and offset the costs of implementing cannabis legalization.

Section 113 is the "Cannabis Safety Act", which provides for a certification process similar to that in the Medical Gas Safety Act of 2012 to allow state-legal medical and edible cannabis products to avoid the unintended consequence of not having been part of the modern FDA system for 80 years. The Cannabis Safety Act also removes the dire threat of the FDA's outdated and unworkable preclusion rules by exempting cannabis from drug preclusion, and food additive/supplement preclusion to allow for adult and medical edible markets to continue to thrive.

Section 114 repatriates cannabis business funds and directs the Attorney General to review all federal cannabis convictions and provide a recommendation to the President as to reprieve or pardon.

Section 115 provides for restitution for American communities adversely affected by cannabis enforcement by providing for a grants program for expungement of cannabis conviction records, by creating a Cannabis Opportunity Trust Fund funded by 20% of the excise tax revenues, and by requiring the Comptroller General to perform a diversity and inclusion study.

Section 116 requires the Comptroller General to perform a study of all federal laws and regulations to determine if any changes in policy are desirable in light of this Act, to report not more than two years after the passage of this Act.

Section 117 authorizes the President to send trade delegations, established as U.S. policy the objective to remove unjustifiable foreign barriers to international cannabis commerce, and clarifies that Congress retains the power to alter any particular substance's control-scheduling, regardless of international treaty.

Section 118 changes all references to "marijuana" or "marihuana" in federal documents to "cannabis."

Section 201 is the Financial Institution Consumer Protection Act of 2019, which prevents federal banking regulators from performing actions similar to those of Operation Chokepoint against disfavored businesses.