

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1167 Session of 2022

INTRODUCED BY DiSANTO, STREET, LAUGHLIN, BREWSTER, GORDNER, CAPPELLETTI, REGAN, BOSCOLA, MENSCH, KEARNEY, ROBINSON, MUTH, KANE AND HAYWOOD, MARCH 25, 2022

SENATOR DiSANTO, BANKING AND INSURANCE, AS AMENDED, MARCH 30, 2022

AN ACT

1 Amending Title 12 (Commerce and Trade) of the Pennsylvania
2 Consolidated Statutes, providing for legitimate cannabis-
3 related business.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 Section 1. Title 12 of the Pennsylvania Consolidated
7 Statutes is amended by adding a chapter to read:

8 CHAPTER 55

9 LEGITIMATE CANNABIS-RELATED BUSINESS

10 Sec.

11 5501. Scope of chapter.

12 5502. Definitions.

13 5503. Services to legitimate cannabis-related businesses.

14 5504. Protections for financial institutions, insurers,
15 legitimate cannabis-related businesses and business
16 associates.

17 5505. Access to information.

1 5506. Required disclosures.

2 5507. Ordinary business deductions.

3 5508. Regulations and statements of policy.

4 § 5501. Scope of chapter.

5 This chapter relates to legitimate cannabis-related
6 businesses.

7 § 5502. Definitions.

8 The following words and phrases when used in this chapter
9 shall have the meanings given to them in this section unless the
10 context clearly indicates otherwise:

11 "Business associate." A person that is a customer or
12 supplier of goods or services to or for the benefit of a
13 legitimate cannabis-related business or an officer or director,
14 owner, operator, shareholder, member, employee, agent or
15 financial backer of a legitimate cannabis-related business.

16 "Cannabis." Any substance defined as "marihuana" by section
17 102 of the Controlled Substances Act (Public Law 91-513, 84
18 Stat. 1236) or section 2 of the act of April 14, 1972 (P.L.233,
19 No.64), known as The Controlled Substance, Drug, Device and
20 Cosmetic Act. The term shall include hemp.

21 "Cannabis product." A product that contains cannabis, a
22 cannabis extract or a cannabis concentrate, including, but not
23 limited to, edible products, beverages, topicals, ointments,
24 oils, tinctures, capsules, pills, suppositories, inhaled
25 products, a hemp-derived cannabinoid product or a medical
26 marijuana product as defined in section 103 of the act of April
27 17, 2016 (P.L.84, No.16), known as the Medical Marijuana Act.

28 "Depository institution." As follows:

29 (1) a depository institution as defined in section 3(c)
30 of the Federal Deposit Insurance Act (64 Stat. 873, 12 U.S.C.

1 § 1811 et seq.);

2 (2) a Federal credit union as defined in section 101 of
3 the Federal Credit Union Act (48 Stat. 1216, 12 U.S.C. § 1751
4 et seq.); or

5 (3) a State credit union as defined in section 101 of
6 the Federal Credit Union Act.

7 "Federal financial regulatory agency." The term includes the
8 Federal Reserve System, the United States Treasury, the
9 Comptroller of the Currency, the National Credit Union
10 Administration, the Federal Deposit Insurance Corporation, the
11 Securities and Exchange Commission and the Consumer Financial
12 Protection Bureau.

13 "Financial institution." A depository institution, trust
14 company, licensee, a person subject to the jurisdiction of the
15 Securities Exchange Commission or a person subject to the
16 jurisdiction of the Department of Banking and Securities under
17 the act of December 5, 1972 (P.L.1280, No.284), known as the
18 Pennsylvania Securities Act of 1972.

19 "Financial service."

20 (1) The term includes a financial product or service:

21 (i) as defined by section 1002 of the Dodd-Frank
22 Wall Street Reform and Consumer Protection Act (Public
23 Law 111-203, 12 U.S.C. § 5301 et seq.), regardless of
24 whether the customer receiving the product or service is
25 a consumer or a commercial entity; or

26 (ii) permitted to be provided under the authority
27 of:

28 (A) a national bank or a financial subsidiary
29 under 12 U.S.C. §§ 24 (42 Stat. 767), 24a (113 Stat.
30 1373) and 92a (76 Stat. 668);

1 (B) a Federal credit union under the Federal
2 Credit Union Act;

3 (C) an incorporated institution under the act of
4 November 30, 1965 (P.L.847, No.356), known as the
5 Banking Code of 1965;

6 (D) a credit union under 17 Pa.C.S. (relating to
7 credit unions);

8 (E) a person registered, or exempt from
9 registration, to offer or sell any security, or to
10 act as a broker, dealer, transfer agency, clearing
11 agency or investment company under the Investment
12 Company Act of 1940 (54 Stat. 789, 15 U.S.C. § 80a-1
13 et seq.);

14 (F) a person registered, or exempt from
15 registration, to:

16 (I) offer or sell any security, under the
17 Securities Act of 1933 (48 Stat. 74, 15 U.S.C. §
18 77a et seq.);

19 (II) act as an exchange, a broker, dealer,
20 transfer agent or clearing agent under the
21 Securities Exchange Act of 1934 (48 Stat. 881, 15
22 U.S.C. § 78a et seq.);

23 (III) act as an investment adviser under the
24 Investment Advisers Act of 1940 (54 Stat. 847, 15
25 U.S.C. § 80b-1 et seq.); or

26 (IV) act as an investment company under the
27 Investment Company Act of 1940; or

28 (G) a person acting as a broker-dealer, agent,
29 investment adviser or investment adviser
30 representative in this Commonwealth under the

1 Pennsylvania Securities Act of 1972.

2 (2) The term includes a service, whether performed
3 directly or indirectly, authorizing, processing, clearing,
4 settling, billing, transferring for deposit, transmitting,
5 delivering, instructing to be delivered, reconciling,
6 collecting or otherwise effectuating or facilitating the
7 payments of funds, where funds payments or funds are made or
8 transferred by any means, including by the use of credit
9 cards, debit cards or other access devices, accounts,
10 original or substitute checks or electronic funds transfers.

11 "Hemp." As defined under section 297A of the Agricultural
12 Marketing Act of 1946 (132 Stat. 4908, 7 U.S.C. § 1639o).

13 "Insurance service." A service authorized to be provided by
14 an insurer in this Commonwealth.

15 "Insurer." An entity or person authorized by the Insurance
16 Department to transact the business of insurance in this
17 Commonwealth or designated as an eligible surplus lines insurer
18 as defined in section 1602 of the act of May 17, 1921 (P.L.682,
19 No.284), known as The Insurance Company Law of 1921. The term
20 includes a person licensed by the Insurance Department to sell,
21 solicit or negotiate insurance, and that person's officers,
22 directors, agents and employees.

23 "Legitimate cannabis-related business." A person that
24 participates in any business or organized activity that involves
25 handling cannabis or a cannabis product, including cultivating,
26 producing, manufacturing, selling, transporting, displaying,
27 dispensing, distributing or purchasing cannabis or a cannabis
28 product in compliance with FEDERAL LAW, the laws of this
29 Commonwealth or a law established by another state.

30 "Licensee." A person defined as a licensee by section 2 of

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1 the act of May 15, 1933 (P.L.565, No.111), known as the
2 Department of Banking and Securities Code.

3 "State." Any state, territory or possession of the United
4 States, the District of Columbia, the Commonwealth of Puerto
5 Rico, the Commonwealth of the Northern Mariana Islands, Guam,
6 American Samoa or the United States Virgin Islands or any
7 federally recognized Indian tribe as defined by the Secretary of
8 the Interior under section 104(a) of the Federally Recognized
9 Indian Tribe List Act of 1994 (Public Law 103-454, 25 U.S.C. §
10 479a-1).

11 "Trust company." The term includes:

12 (1) a national bank authorized to exercise trust powers
13 as authorized by 12 U.S.C. § 92a;

14 (2) a trust company as defined by section 102 of the
15 Banking Code of 1965; or

16 (3) an interstate bank as defined in section 102 of the
17 Banking Code of 1965 authorized to exercise the powers of a
18 trust company in this Commonwealth.

19 § 5503. Services to legitimate cannabis-related businesses.

20 (a) Authorization to provide financial services.--A
21 financial institution authorized to engage in business in this
22 Commonwealth may provide financial services to or for the
23 benefit of a legitimate cannabis-related business and the
24 business associates of a legitimate cannabis-related business
25 subject to:

26 (1) the laws and regulations applicable to the provision
27 of financial services to other customers of the financial
28 institution;

29 (2) ~~the~~ ANY APPLICABLE consumer protection laws of this <--
30 Commonwealth;

1 (3) any additional requirements applicable to the
2 institution established for the provision of services TO A <--
3 LEGITIMATE CANNABIS-RELATED BUSINESS OR ITS BUSINESS
4 ASSOCIATES by a Federal financial regulatory agency, the
5 Department of Banking and Securities or a financial
6 regulatory agency of the state under which the institution is
7 organized; and

8 (4) to the extent the institution is providing services
9 to a legitimate cannabis-related business or its business
10 associates in another jurisdiction, any additional
11 requirements applicable to the institution established for
12 the provision of THE services by a financial regulatory <--
13 agency of that jurisdiction.

14 (b) Authorization to provide insurance services.--An insurer
15 may provide insurance services to or for the benefit of a
16 legitimate cannabis-related business and the business associates
17 of a legitimate cannabis-related business subject to:

18 (1) the laws and regulations applicable to the provision
19 of insurance services to other customers of the insurer;

20 (2) ~~the~~ ANY APPLICABLE consumer protection laws of this <--
21 Commonwealth;

22 (3) any additional requirements applicable to the
23 insurer established for the provision of services TO A <--
24 LEGITIMATE CANNABIS-RELATED BUSINESS OR ITS BUSINESS
25 ASSOCIATES by the Insurance Department; and

26 (4) to the extent the insurer is providing services to a
27 legitimate cannabis-related business or its business
28 associates in another jurisdiction, any additional
29 requirements applicable to the insurer established for the
30 provision of THE services by an insurance regulatory agency <--

1 of that jurisdiction.

2 (c) No requirement to provide services.--Nothing in this
3 chapter shall require a depository institution, an entity
4 performing a financial service for or in association with a
5 financial institution or an insurer to provide financial or
6 insurance services to a legitimate cannabis-related business or
7 the business associates of a legitimate cannabis-related
8 business or to any other business.

9 § 5504. Protections for financial institutions, insurers,
10 legitimate cannabis-related businesses and business
11 associates.

12 (a) Actions of government agencies.--~~Except as provided by~~ <--
13 SUBJECT TO THE AUTHORIZATIONS OF section 5503(a) and (b) <--
14 (relating to services to legitimate cannabis-related
15 businesses), no agency or political subdivision of this
16 Commonwealth may:

17 (1) prohibit, penalize or otherwise discourage a
18 financial institution or insurer from providing financial or
19 insurance services to a legitimate cannabis-related business
20 or the business associates of a legitimate cannabis-related
21 business;

22 (2) recommend, incentivize or encourage a financial
23 institution or insurer not to offer financial or insurance
24 services to an account holder, or downgrade or cancel
25 services provided to the account holder, solely because the
26 account holder is a legitimate cannabis-related business or a
27 business associate of a legitimate cannabis-related business;

28 (3) take adverse or corrective supervisory action on a
29 loan made to a legitimate cannabis-related business or a
30 business associate of a legitimate cannabis-related business

1 solely because the loan has been made to a legitimate
2 cannabis-related business or a business associate of a
3 legitimate cannabis-related business;

4 (4) prohibit or penalize a financial institution or
5 insurer performing financial or insurance services in
6 association with another financial institution or insurer
7 from providing financial or insurance services to a
8 legitimate cannabis-related business or a business associate
9 of a legitimate cannabis-related business; or

10 (5) subject the legal interest of a financial
11 institution in the collateral for a loan or another financial
12 service provided to a legitimate cannabis-related business or
13 the business associates of a legitimate cannabis-related
14 business to civil or criminal forfeiture under any laws of
15 this Commonwealth or initiate or participate in proceedings
16 for the civil or criminal forfeiture of a legal interest
17 under Federal law or under the laws of another state.

18 (b) Enforcement authority.--Nothing in this act shall
19 prevent the Department of Banking and Securities, the Insurance
20 Department or the Attorney General, in a manner consistent with
21 the requirements of section 506 of the act of May 15, 1933
22 (P.L.565, No.111), known as the Department of Banking and
23 Securities Code, from undertaking an enforcement action for
24 compliance with the requirements of section 5503(a) and (b) in a
25 manner consistent with subsection (a).

26 (c) Criminal prosecution and civil claims.--No financial
27 institution or insurer, or the directors, officers, employees,
28 agents, owners, shareholders or members of a financial
29 institution or insurer, shall be subject to a criminal
30 prosecution, sanction or claim for damages or any equitable

1 remedy, solely because the institution or insurer is providing
2 financial or insurance services to or for the benefit of a
3 legitimate cannabis-related business or the business associates
4 of a legitimate cannabis-related business.

5 (d) Proceeds of legitimate cannabis-related business
6 activities.--The proceeds of any transaction involving the
7 activities of a legitimate cannabis-related business may not be
8 considered proceeds from an unlawful activity, solely because
9 the transaction involves the proceeds from a legitimate
10 cannabis-related business or a business associate of a
11 legitimate cannabis-related business.

12 (e) Rights and privileges.--No legitimate cannabis-related
13 business, or a business associate of a legitimate cannabis-
14 related business, shall be denied any right or privilege by a
15 State agency solely because of the business's or business
16 associate's lawful participation in the medical marijuana
17 program established under the act of April 17, 2016 (P.L.84,
18 No.16), known as the Medical Marijuana Act.

19 (f) Limited immunity.--If a legitimate cannabis-related
20 business fails to provide the notice required under section
21 5506(a) (relating to required disclosures) to a financial
22 institution or insurer, the financial institution or insurer
23 shall not be deemed in violation of this chapter solely because
24 the financial institution or insurer was not notified and
25 continued to provide services beyond the date at which such
26 services should or could have been terminated as a result of the
27 suspension or revocation of the permit, registration or
28 certification.

29 § 5505. Access to information.

30 (a) Voluntary disclosures.--Section 1307 of the act of April

1 17, 2016 (P.L.84, No.16), known as the Medical Marijuana Act,
2 shall not prohibit the voluntary disclosure of any records or
3 other information by a legitimate cannabis-related business, or
4 a business associate to a financial institution or insurer, as
5 necessary to obtain financial or insurance services to the
6 extent not prohibited by and consistent with any applicable
7 requirements of the Health Insurance Portability and
8 Accountability Act of 1996 (Public Law 104-191, 110 Stat. 1936)
9 privacy regulation as promulgated by the United States
10 Department of Health and Human Services under 45 CFR Pts. 160
11 (relating to general administrative requirements, 162 (relating
12 to administrative requirements) and 164 (relating to security
13 and privacy) and 16 CFR Pt. 313 (relating to privacy of consumer
14 financial information).

15 (b) Restrictions on use of records.--A financial
16 institution, or insurer receiving access to information under
17 subsection (a), the distribution of which would otherwise be
18 prohibited, may only use the information as necessary to satisfy
19 due diligence obligations required to provide financial or
20 insurance services to persons participating in the medical
21 marijuana program established under the Medical Marijuana Act
22 and may not disclose the information records to other persons
23 except for information:

24 (1) required for the filing of suspicious activity
25 reports with the United States Department of the Treasury or
26 the investigation of related reports;

27 (2) requested by the institution's primary regulator,
28 the Federal Deposit Insurance Corporation or the National
29 Credit Union Administration for the purposes of conducting an
30 examination of the institution;

1 (3) as necessary to respond to court orders or subpoenas
2 after providing the person authorizing the release of the
3 records and the institution's primary regulator the
4 opportunity to object to the order or subpoena; or

5 (4) as authorized by a person who is the subject to the
6 confidential information.

7 § 5506. Required disclosures.

8 (a) Notification by legitimate cannabis-related business.--

9 If a legitimate cannabis-related business obtains financial or
10 insurance services from a financial institution or insurer doing
11 business in this Commonwealth, the business shall, within five
12 business days, provide notice to the financial institution or
13 insurer if a cannabis-related permit, registration or
14 certification held by the business or its affiliates under
15 FEDERAL LAW, the laws of this Commonwealth or a law established <--
16 by another state is suspended or revoked.

17 (b) Penalty.--If a legitimate cannabis-related business

18 fails to give the notice required under subsection (a) to a
19 financial institution or insurer, the business or business
20 associate may be assessed a civil penalty up to \$500 per day,
21 not to exceed \$25,000, until the notice is provided. The
22 Department of Banking and Securities shall have authorization to
23 assess civil penalties for failure to give notice under this
24 section to a financial institution, and the Insurance Department
25 shall have authorization to assess civil penalties for failure
26 to give the notice under this section to an insurer.

27 § 5507. Ordinary business deductions.

28 For each taxable year beginning on or after January 1, 2022,
29 NOTWITHSTANDING the provisions of section 280E of the Internal <--
30 Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 280E) shall <--

1 ~~not apply to legitimate cannabis related businesses. Legitimate, <--~~
2 A LEGITIMATE cannabis-related businesses BUSINESS shall be <--
3 allowed a deduction from a tax imposed under Articles III or IV
4 of the act of March 4, 1971 (P.L.6, No.2), known as the Tax
5 Reform Code of 1971, on ordinary and necessary expenses paid or
6 incurred during the taxable year.
7 § 5508. Regulations and statements of policy.

8 The Department of Banking and Securities and the Insurance
9 Department may adopt statements of policy or regulations to
10 implement this chapter and to provide guidance to financial
11 institutions and insurers providing financial or insurance
12 services to legitimate cannabis-related businesses and business
13 associates of a legitimate cannabis-related business.

14 Section 2. The addition of 12 Pa.C.S. §§ 5503 and 5504 shall
15 apply to the provision of financial or insurance services to a
16 legitimate cannabis-related business or a business associate of
17 a legitimate cannabis-related business on or after the effective
18 date of this section.

19 Section 3. Repeals are as follows:

20 (1) The General Assembly declares that the repeals under
21 paragraph (2) are necessary to effectuate the addition of 12
22 Pa.C.S. § 5507.

23 (2) Articles III and IV of the act of March 4, 1971
24 (P.L.6, No.2), known as the Tax Reform Code of 1971, are
25 repealed insofar as they are inconsistent with 12 Pa.C.S. §
26 5507.

27 Section 4. This act shall take effect ~~as follows:~~ <--

28 ~~(1) The addition of 12 Pa.C.S. § 5505 shall take effect~~
29 ~~in 90 days.~~

30 ~~(2) The remainder of this act shall take effect~~

1 ~~immediately.~~ IMMEDIATELY.

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