



2120 L Street, NW, Suite 700  
Washington, DC 20037

T 202.822.8282  
F 202.296.8834

HOBBSSTRAUS.COM

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## GENERAL MEMORANDUM 18-029

### Federal Legislation to Protect State and Tribal Marijuana Activities Introduced

On June 7, 2018, Senators Warren (D-MA) and Gardner (R-CO) introduced the "Strengthening the Tenth Amendment Through Entrusting States Act" or the "STATES Act" as S 3032. The STATES Act would authorize states and Indian tribes, in certain instances, to approve and regulate the growth, production and sale of marijuana free from federal penalties or criminal enforcement. The bill would not change the scheduling of cannabis under the Controlled Substances Act (CSA) – it will remain a Schedule I controlled substance – but it would exempt lawful state and tribal regulated cannabis activities from the penalties of the CSA. The bill would remove hemp from Schedule I of the CSA.

The STATES Act would not provide a blanket exemption from the CSA for marijuana growth, production and distribution by Indian tribes. Instead, the bill is tied to what each state has done, and it would protect only those tribes located in states that have legalized marijuana. Thus, the bill's protections would not extend to tribes located in states that still prohibit marijuana.

The bill would provide protection and certainty to commercial marijuana activity by tribes located in states that have approved commercial marijuana such as Washington, Oregon, California, Colorado, Alaska, Maine, and Massachusetts. The bill would also provide clarity and certainty for tribes engaged in medical marijuana activity in states that permit only medical marijuana. As currently drafted, however, it is not clear whether the bill would protect a tribe engaging in *commercial* marijuana activity if that tribe is located in a state that has approved only *medical* marijuana.

Here is the relevant language of the STATES Act, which provides that the CSA will not apply to:

[A]ny person acting in compliance with State law relating to the manufacture, production, possession, distribution, dispensation, administration, or delivery of marihuana . . . any person acting in compliance with the law of a Federally recognized Indian tribe within its jurisdiction in Indian Country . . . related to the manufacture, production, possession, distribution, dispensation, administration, or delivery of marihuana so long as such jurisdiction is located within a state that permits, respectively, manufacture, production, possession, distribution, dispensation, administration, or delivery of marihuana.

The STATES Act would keep in place the CSA penalties for the sale or distribution of marijuana to people under the age of 21 for other than for medical purposes, as well as the penalties for marijuana businesses employing people under 18. Notably, the STATES Act would

provide tribal- and state-run marijuana businesses with financial security by clarifying that marijuana-related banking transactions are not drug trafficking and are not transactions involved in the proceeds of an unlawful transaction.

We also note that the President Trump has expressed some support for the legislation. When asked about the STATES Act earlier in June, President Trump said, "I support Senator Gardner. I know exactly what he's doing. We're looking at it. But I probably will end up supporting that."

The STATES Act was introduced with co-sponsors from both sides of the aisle: Senators Paul (R-KY), Cortez Masto (D-NV), Murkowski (R-AK), Booker (D-NJ), Sullivan (R-AK), and Bennet (D-CO) and has since garnered more: Senators Flake (R-AZ), and Klobuchar (D-MN). The STATES Act has been referred to the Senate Judiciary Committee. The companion bill in the House, HR 6043, sponsored by Representative Joyce (R-OH) is also a bi-partisan effort with 23 co-sponsors. It has been referred to the House Judiciary and Energy & Commerce Committees.

Please let us know if we may provide additional information regarding the STATES Act.

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Inquires may be directed to:

Ed Goodman ([egoodman@hobbsstrauss.com](mailto:egoodman@hobbsstrauss.com))

Chris Stearns ([cstearns@hobbsstrauss.com](mailto:cstearns@hobbsstrauss.com))

William Norman ([wnorman@hobbsstrauss.com](mailto:wnorman@hobbsstrauss.com))