

Second Regular Session  
Sixty-ninth General Assembly  
STATE OF COLORADO

PREAMENDED

LLS NO. R14-1028.01 Kurt Woock x4349

SR14-003

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SENATE SPONSORSHIP

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Senate Committees

Business, Labor, & Technology

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SENATE RESOLUTION 14-003

101 CONCERNING CONGRESSIONAL ACTION TO FACILITATE LEGAL  
102 FINANCIAL SERVICES FOR THE MARIJUANA INDUSTRY.

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1 WHEREAS, All one hundred members of the Colorado General  
2 Assembly took an oath to uphold the United States constitution and the  
3 Colorado constitution; and

4 WHEREAS, Colorado voters recently approved Amendment 64,  
5 a constitutional amendment to legalize the sale and consumption of  
6 recreational marijuana in Colorado, with 55.23 percent of the vote, or  
7 approximately 1.38 million votes, in favor of legalization; and

8 WHEREAS, Hemp has long been recognized for its varied  
9 industrial uses, was sold and used commercially in the earliest days of our  
10 country's history, and was recognized as a valuable cash crop by George  
11 Washington, Thomas Jefferson, and Benjamin Franklin; and

12 WHEREAS, Federal laws, including the "Controlled Substances  
13 Act", the "Bank Secrecy Act", and the "Annunzio-Wylie Anti-Money

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.  
*Capital letters indicate new material to be added to existing statute.*  
*Dashes through the words indicate deletions from existing statute.*

1 Laundering Act", prohibit banks from providing financial services to  
2 marijuana and hemp businesses; and

3 WHEREAS, Directives from federal regulatory agencies such as  
4 the Federal Reserve, the Federal Deposit Insurance Corporation, the  
5 National Credit Union Administration, and the Office of the Comptroller  
6 of the Currency also prohibit bankers from accepting deposits from  
7 marijuana or hemp businesses; and

8 WHEREAS, The "USA PATRIOT Act" directs financial  
9 institutions to establish Enhanced Due Diligence policies, procedures, and  
10 controls where necessary to detect and report instances of suspected  
11 money laundering, which has led to the adoption of Know Your Customer  
12 procedures; and

13 WHEREAS, Know Your Customer procedures require banks and  
14 credit unions to verify the identity of their customers and determine that  
15 the source of their funds is legitimate by obtaining information about the  
16 nature of an account holder's business, customers, and sources of funds;  
17 and

18 WHEREAS, Banks and credit unions that comply with the Know  
19 Your Customer rules will be required by anti-money laundering laws and  
20 regulations to file recurring suspicious activity reports documenting the  
21 financial activities of a legal marijuana business, including filing a  
22 currency transaction report each time a marijuana business makes a  
23 deposit of more than \$10,000 and reporting cash that smells like  
24 marijuana; and

25 WHEREAS, Marijuana remains classified as a schedule I  
26 controlled substance at the federal level, the strictest classification under  
27 the "Controlled Substances Act", and the production of industrial hemp  
28 remains highly restricted at the federal level; and

29 WHEREAS, The United States attorney general recently  
30 announced guidance for financial institutions that wish to provide  
31 banking services to legal marijuana businesses in what has become  
32 known as the Cole Memo; and

33 WHEREAS, This guidance greatly adds to the reporting and  
34 compliance requirements already demanded of banks and credit unions,  
35 including ensuring that the marijuana businesses to which they provide

1 services do not sell to minors, transfer marijuana to a state where its sale  
2 is illegal, involve themselves with organized crime, sell illegal drugs,  
3 encourage the use of marijuana on federal property, or encourage drugged  
4 driving; and

5 WHEREAS, The United States Treasury's Financial Crimes  
6 Enforcement Network, or FinCEN, in coordination with the United States  
7 Department of Justice, also issued a memo outlining expectations for  
8 compliance with the "Bank Secrecy Act", including verifying the  
9 legitimacy of a marijuana business's license and registration, developing  
10 an understanding of the norm for marijuana business transactions and  
11 monitoring each business for deviation from the norm, monitoring  
12 publicly available sources for adverse information on the business and  
13 any related parties, and monitoring for suspicious activity on an ongoing  
14 basis; and

15 WHEREAS, In April 2014, United States Senators Chuck Grassley  
16 and Dianne Feinstein sent a letter to the director of FinCEN, questioning  
17 FinCEN's legal authority to provide banks guidance on violations of  
18 federal law and noting the possibility that a financial institution might  
19 complete a suspicious activity report regarding a marijuana business  
20 customer, and then that specific report could be used against the financial  
21 institution as evidence of the institution being complicit in the act of  
22 money laundering; and

23 WHEREAS, Financial institutions face a significant challenge in  
24 verifying that a marijuana business is in compliance with all of the  
25 guidelines issued by the Department of Justice and FinCEN and face  
26 uncertainty about whether they would be reasonably protected from  
27 prosecution or actions by regulatory agencies, now or in the future, on the  
28 basis of guidance in non-binding memoranda; and

29 WHEREAS, The above-mentioned guidance is a directive to  
30 federal prosecutors to avoid prosecuting financial institutions that comply  
31 with the Cole Memo and FinCEN guidance but does not limit punitive  
32 actions from federal regulatory agencies, including several that operate  
33 outside of the executive branch, such as the FDIC and the Federal  
34 Reserve, whose regulatory actions could be just as damaging to a  
35 financial institution's operations as prosecution; and

36 WHEREAS, The guidance is not enforceable in court, provides  
37 neither a safe harbor from prosecution nor legal defense in court, and can

1 only be considered temporary, short-lived guidance as it could be  
2 reversed by a future administration; and

3 WHEREAS, The guidance from the United States Department of  
4 Justice cannot override federal laws or regulations, which still  
5 characterize acceptance of a deposit from a marijuana business as money  
6 laundering; and

7 WHEREAS, Neither the United States Department of Justice  
8 guidance nor the FinCEN memo provide adequate regulatory and legal  
9 certainty for financial institutions to provide banking services to the legal  
10 marijuana industry; and

11 WHEREAS, Under federal law, banks and credit unions that  
12 conduct business with legal marijuana businesses will still be in violation  
13 of the "Bank Secrecy Act", the "Annunzio-Wylie Anti-Money Laundering  
14 Act", and the "USA PATRIOT Act", and any bank or credit union that  
15 chooses to serve marijuana businesses effectively puts its regulatory  
16 status at risk; and

17 WHEREAS, Colorado and Washington have already legalized  
18 retail marijuana shops, and several other states will be considering full  
19 legalization at the ballot in the 2014 elections; and

20 WHEREAS, Twenty states have already legalized the sale and  
21 consumption of medical marijuana for limited medical uses; and

22 WHEREAS, The medical, retail, and hemp agricultural businesses  
23 that are legally permitted to operate under state laws in dozens of states  
24 are forced to operate as all-cash businesses, including paying for capital  
25 investments such as hydration and lighting equipment in cash,  
26 compensating employees in cash, and renting or purchasing warehouses  
27 and other real estate with large down payments in cash; and

28 WHEREAS, The medical, retail, and hemp agricultural businesses  
29 can accept neither credit nor debit cards from customers because  
30 electronic payments are handled through the banking system; and

31 WHEREAS, Both the state of Colorado and its local municipalities  
32 use bank accounts to audit sales tax collections, and a lack of accounting  
33 information that is typically available for such audits could mean that  
34 Colorado governments are under-collecting tax revenue; and

1           WHEREAS, The storage and transfer of large amounts of cash  
2 necessary for the legal operation of marijuana businesses has already  
3 made these businesses a target for crime and could attract the  
4 involvement of organized criminal enterprises; and

5           WHEREAS, Colorado is unable to address this problem by  
6 chartering a state bank or credit union because all financial institutions  
7 are interconnected through federal banking laws and regulations that  
8 govern national and international commerce; now, therefore,

9           *Be It Resolved by the Senate of the Sixty-ninth General Assembly*  
10 *of the State of Colorado:*

11           (1) That the ability of the federal executive branch to facilitate a  
12 reasonable regulatory structure for the marijuana industry is limited as  
13 long as federal law categorizes marijuana as an illegal substance.

14           (2) That the best solution to the problem of a lack of financial  
15 services for the legal marijuana industry will be comprehensive federal  
16 legislation authorizing banks and credit unions to serve legal marijuana  
17 and hemp businesses.

18           *Be It Further Resolved,* That copies of this Resolution be sent to  
19 all members of the Colorado delegation to the United States Congress, the  
20 speaker of the United States House of Representatives, the United States  
21 Senate majority leader, the United States Senate majority leader pro  
22 tempore, and the president of the United States.