

Second Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO

ENGROSSED

LLS NO. R14-1028.01 Kurt Woock x4349

SR14-003

SENATE SPONSORSHIP

Balmer, Jahn, Steadman, Ulibarri

Senate Committees

Business, Labor, & Technology

SENATE RESOLUTION 14-003

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

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.

SENATE
Final Reading
May 5, 2014

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.