



SENATE RESOLUTION 14-003

BY SENATOR(S) Balmer, Jahn, Steadman, Ulibarri, Aguilar, Johnston, Jones, Kerr, Roberts, Tochtrop, Todd.

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

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

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

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

WHEREAS, Federal laws, including the "Controlled Substances Act", the "Bank Secrecy Act", and the "Annunzio-Wylie Anti-Money Laundering Act", prohibit banks from providing financial services to marijuana and hemp businesses; and

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

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

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

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

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

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

WHEREAS, This guidance greatly adds to the reporting and compliance requirements already demanded of banks and credit unions, including ensuring that the marijuana businesses to which they provide services do not sell to minors, transfer marijuana to a state where its sale is illegal, involve themselves with organized crime, sell illegal drugs, encourage the use of marijuana on federal property, or encourage drugged driving; and

WHEREAS, The United States Treasury's Financial Crimes Enforcement Network, or FinCEN, in coordination with the United States

Department of Justice, also issued a memo outlining expectations for compliance with the "Bank Secrecy Act", including verifying the legitimacy of a marijuana business's license and registration, developing an understanding of the norm for marijuana business transactions and monitoring each business for deviation from the norm, monitoring publicly available sources for adverse information on the business and any related parties, and monitoring for suspicious activity on an ongoing basis; and

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

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

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

WHEREAS, The guidance is not enforceable in court, provides neither a safe harbor from prosecution nor legal defense in court, and can only be considered temporary, short-lived guidance as it could be reversed by a future administration; and

WHEREAS, The guidance from the United States Department of Justice cannot override federal laws or regulations, which still

characterize acceptance of a deposit from a marijuana business as money laundering; and

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

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

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

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

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

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

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

WHEREAS, The storage and transfer of large amounts of cash necessary for the legal operation of marijuana businesses has already

made these businesses a target for crime and could attract the involvement of organized criminal enterprises; and

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

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

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

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

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

Morgan Carroll
PRESIDENT OF
THE SENATE

Cindi Markwell
SECRETARY OF
THE SENATE