

**Second Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. R14-1028.01 Kurt Woock x4349

SR14-003

SENATE SPONSORSHIP

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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.

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

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

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

32 WHEREAS, The guidance from the United States Department of
33 Justice cannot override federal laws or regulations, which still
34 characterize acceptance of a deposit from a marijuana business as money
35 laundering; and

36 WHEREAS, Neither the United States Department of Justice

1 guidance nor the FinCEN memo provide adequate regulatory and legal
2 certainty for financial institutions to provide banking services to the legal
3 marijuana industry; and

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

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

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

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

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

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

28 WHEREAS, The storage and transfer of large amounts of cash
29 necessary for the legal operation of marijuana businesses has already
30 made these businesses a target for crime and could attract the
31 involvement of organized criminal enterprises; and

32 WHEREAS, Colorado is unable to address this problem by
33 chartering a state bank or credit union because all financial institutions
34 are interconnected through federal banking laws and regulations that

1 govern national and international commerce; now, therefore,

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

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

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

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