



A Tradition of Stewardship
A Commitment to Service

Agenda Date: 7/10/2017

Agenda Placement: 5B

Napa County Legislative Subcommittee Board Agenda Letter

TO: Napa County Legislative Subcommittee

FROM: Molly Rattigan for Minh Tran - Interim County Executive Officer
County Executive Office

REPORT BY: Michael Karath, Staff Assistant - BOS - 299-1477

SUBJECT: H.R. 2215 (Perlmutter) - Secure and Fair Enforcement Banking Act of 2017

RECOMMENDATION

County Executive Officer seeks discussion and possible action on H.R. 2215 (Perlmutter; D-CO) that seeks to create protections for depository institutions that provide financial services to legitimate cannabis-related businesses.

EXECUTIVE SUMMARY

Access to banking remains one of the most significant hurdles facing the cannabis industry, and state and local regulatory authorities. In essence, all cannabis-related financial activities are conducted in cash. This translates into counties receiving property tax payments in cash, as well as any local regulatory fees and taxes.

The current all-cash business also makes it extremely difficult to audit cannabis operators, as well as ensure compliance with various rules and regulations. Most importantly, the all-cash status presents enormous security challenges to all parties involved in the cannabis industry.

H.R.2215, the Secure and Fair Enforcement Banking Act of 2017, seeks to change federal banking laws to allow banks to handle monies generated from legal cannabis activities.

CSAC: Monitor
RCRC: Support

FISCAL IMPACT

Is there a Fiscal Impact? No

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

BACKGROUND AND DISCUSSION

Under the Controlled Substances Act, it is a violation of federal law to possess, use, cultivate, and/or distribute cannabis. The Controlled Substances Act is enforced by federal law enforcement agents, and prosecutions are made in federal courts by the U.S. Department of Justice (DOJ).

Today, however, 28 states and the District of Columbia have enacted laws allowing for either medical or adult-use of cannabis.

While it is up to each state and its voters to decide how to proceed with cannabis laws, it has become apparent there is a need to align federal and state laws when it comes to accessing the banking system. Current law restricts legitimate licensed cannabis businesses from accessing banking services and products, such as depository and checking accounts. Forcing businesses to operate in all cash is a serious public safety risk.

Today, financial institutions that provide banking services to state and locally licensed cannabis businesses are subject to criminal prosecution for "aiding and abetting" a federal crime, and money laundering. Licensed and regulated businesses are being cut off and unable to accept credit cards, deposit revenues, or write checks to meet payroll, or pay taxes. In fact, cannabis-related legitimate businesses have lost their accounts at both banks and credit unions because of the uncertainty.

In addition to the Controlled Substances Act, there are a variety of federal banking laws (i.e. the Bank Secrecy Act) which impact the ability of monies derived from activities involving cannabis to be banked. In February 2014, the Obama Administration issued guidance to financial institutions and the cannabis industry on how the DOJ would enforce banking laws related to cannabis. Despite these guidance memos, most financial institutions refuse to serve cannabis businesses.

CSAC: Monitor
RCRC: Support

SUPPORTING DOCUMENTS

- A . H.R. 2215 - BILL TEXT - cannabis; banking
- B . H.R. 2215 - RCRC Memo - cannabis, banking
- C . H.R. 2215-Treasurer Chiang Letter

Recommendation: Approve

Reviewed By: Molly Rattigan