



To: RCRC Board of Directors
From: Paul A. Smith, Vice President Governmental Affairs
Date: June 12, 2017
Re: H.R. 2215 (Perlmutter) – “Secure and Fair Enforcement Banking Act of 2017” – **ACTION**

Summary

This memo provides an overview of H.R. 2215, the “Secure and Fair Enforcement Banking Act of 2017.” H.R. 2215 would create protections for depository institutions that provide financial services to cannabis-related businesses operating under state-constructed regulatory schemes. RCRC staff recommends the Board of Directors adopt a “Support” position.

Background

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). Under the Obama Administration, the DOJ issued a series of memorandums to U.S. Attorneys regarding the use of federal enforcement resources in states that have enacted "laws legalizing cannabis in some form."

Today, 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 who 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 bank cannabis activities, and suggest that Congress enact statutes to liberalize the banking laws before engaging in financial services to cannabis operators, regardless of whether the operators are conducting their activities in accordance with state statutes.

In 1996, California voters approved Proposition 215 - the Compassionate Use Act – which exempts patients and defined caregivers who possess or cultivate cannabis for medical treatment recommended by a physician from criminal laws which otherwise prohibit possession or cultivation of cannabis. In conjunction with Proposition 215, the Legislature approved Senate Bill 420 (Vasconcellos) in 2003 to further implement the state’s medical cannabis laws, guidelines, and practices.

In the recent enactment of efforts to fund the 2017 Federal Budget, a key section of federal cannabis policy was continued (commonly known as the “Rohrabacher Amendment” after Representative Dana Rohrabacher (R-Orange County)). It reads:

None of the funds made available in this Act to the Department of Justice may be used, with respect to any of the States of Alabama, Alaska, Arkansas, Arizona, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Illinois, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming, or with respect to the District of Columbia, Guam, or Puerto Rico, to prevent any of them from implementing their own laws that authorize the use, distribution, possession, or cultivation of medical marijuana.

In 2015, the Legislature enacted the Medical Cannabis Regulation and Safety Act (MCRSA) to implement a regulatory structure for the commercial cannabis market. And, in 2016, California voters approved Proposition 64 - the Adult Use of Marijuana Act (AUMA) –which legalizes and regulates adult cannabis use (beyond medicinal activities). Both regulatory schemes are in the process of being implemented in order to meet deadlines for licensing that commence on January 1, 2018.

In 2013, the RCRC Board of Directors adopted Policy Principles regarding medical cannabis, including principles that rural counties need under a statewide regulatory scheme. Key aspects of these principles include:

- Local control in determining whether a jurisdiction can allow commercial activities;
- Explicit county taxing authority;

- Addressing environmental degradation;
- Ensuring there is a strict licensing scheme, ending the “collective model”; and,
- Enacting, at both the state and federal levels, the allowance and availability of banking and other financial services to cannabis operators in order to minimize the use of cash.

Issue

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.

To liberalize the federal banking laws with respect to cannabis, the “Secure and Fair Enforcement Banking Act of 2017” has been introduced by Representatives Ed Perlmutter (D-Colorado), Denny Heck (D-Washington), and Dana Rohrabacher (R-California). This effort has been put forth in previous Congresses; however, it has failed to be considered in the House Financial Services Committee due to significant opposition from its Chairman, Representative Jeb Hensarling (R-Texas). However, proponents of H.R. 2215 contend there is a strong majority of House members that support this effort. As such, its provisions could later be incorporated into other legislative vehicles in order for the House to give consent to liberalize the banking laws.

Staff Recommendation

RCRC staff recommends the RCRC Board of Directors adopt a “Support” position on H.R. 2215. The bill is consistent with RCRC’s Policy Principles on access to banking, and minimizing the use of cash by the cannabis industry.

Attachment

- Copy of H.R. 2215 (Perlmutter)
- State of California Treasurer John Chiang’s Letter to the California Congressional Delegation