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# Summary of Illinois Marijuana Law

## Brief History



- **Medical Marijuana History**

- Signed August 1, 2013 – Effective January 1, 2014
- “Pilot Program” – created with a sunset provision will cease to operate after four years if not renewed
- Sale should begin in early 2015

- **How to qualify and covered medical conditions**

- **Protections for patients and possession amounts**

- **Law And Regulation**

- Patients may NOT grow their own - must be 18 or over
- Patients must name a state-regulated dispensary to obtain – must be registered in Illinois
- Caregiver 21 or over may pick up medication

# Summary of Illinois Marijuana Law

## Brief History



- **Taxes**

- Regulated by the Illinois Department of Revenue and subject to 7% excise tax and 1% sales tax

- **Program Administration**

- The Illinois Department of Agriculture will be awarding up to 22 permits to grow and cultivate. Any one group cannot own more than 3 cultivation licenses.
- The Department of Financial and Professional Regulation will be issuing up to 60 permits to dispense. Any one group cannot own more than 5 dispensaries.
- The Department of Public Health will be in charge of the patient registry.

- **Plan**

- Within the month, a point system will be established for judging applicants based on their:
  - Proposed security plans
  - Expertise in growing marijuana
  - Plans for patient education

# Activity in Other States

## Projects Future Growth



- **Colorado and Washington**
- **20 other states have legal medical marijuana, subject to specific fees and possession and use restrictions**
- **Those States Are:**  
Alaska, Arizona, California, Connecticut, The District of Columbia, Delaware, Hawaii, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nevada, New Hampshire, New Jersey, New Mexico, Oregon, Rhode Island and Vermont
- **Numerous other states are expected to have either legislative or ballot activity in the coming election cycles permitting either medical use or personal use**

# Early Revenue Impacts

## Actual And Projected Revenue



- **Colorado**

- The state collected nearly \$4.8 million from marijuana related sales tax in June 2014, up from \$4.1 in May 2014.
- To date, Colorado has collected \$25,307,067 in pot taxes. Officials projected the state would collect \$60 to \$70 million by the end of the fiscal year (June 2015)

- **Washington**

- The State of Washington Economic and Revenue Forecast Council is projecting approximately \$51 million in marijuana-related tax revenue for the 2015-2017 budgetary biennium

# Pros and Cons:

## Banking Marijuana Related Business



- **Conflict Of Laws**

- The manufacture, possession and use of marijuana remains illegal under federal law - Controlled Substances Act, 21 U.S.C. §801 et. seq. (“CSA”).
- Banks are federally regulated causing several potential issues:
  - Banking marijuana related activities is, technically, illegal under the same level of law and regulation that governs the banking system
  - The minute the transaction goes over federal lines (i.e., ACH, Check, Wire, ATM, etc.) it is under federal law which views it as illegal
- Many banks do not wish to take on this risk unless or until the current conflict of laws is resolved with a carve out or further provisions.
- All that exists now is the prosecutorial priorities established by the Cole Memorandum in 2013 for the Department of Justice in drug enforcement overall.



## Pros and Cons:

### Banking Marijuana Related Business

#### **Title 18 USC 1956 – Laundering of Monetary Instruments**

- Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity— (A)
  - (i) with the intent to promote the carrying on of specified unlawful activity; or
  - (ii) with intent to engage in conduct constituting a violation of section 7201 or 7206 of the Internal Revenue Code of 1986;or
- (B) knowing that the transaction is designed in whole or in part—
  - (i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or
  - (ii) to avoid a transaction reporting requirement under State or Federal law,

#### **18 U.S. Code § 1957 - Engaging in monetary transactions in property derived from specified unlawful activity**

- Whoever, in any of the circumstances set forth in subsection (d), knowingly engages or attempts to engage in a monetary transaction in criminally derived property of a value greater than \$10,000 and is derived from specified unlawful activity

# Pros and Cons:

## Banking Marijuana Related Business



- **Reputation Risk**
  - Public concern
- **Risk of Seizure by DEA**
- **Lending Risk**
- **Risk of political changes in Washington in 2016**
- **Security Concerns**
  - Marijuana related businesses deal in significant amounts of cash.
  - Banking marijuana related businesses would require enhanced premises security and internal controls addressing the increased presence of cash in banking locations and with regard to transport, etc.
  - Already robberies in Colorado

# Pros and Cons:

## Banking Marijuana Related Business



- **FinCEN Guidance is preliminary and the risk is still on the Bank**
  - FinCEN has lifted the absolute ban on banking marijuana related business customers , but the February 2014 Guidance makes clear that banks and financial institutions bear risks of offering services to this customer base
  - No enumerated requirements of safe harbors were provided but provided specific guidelines to follow in assessing the risk of providing services
- **Federal Enforcement Priorities - Deputy Attorney General Cole memo**
  - Preventing the distribution of marijuana to minors;
  - Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs and cartels;
  - Preventing the diversion of marijuana from states where it is legal under state law in some form to other states;

# Pros and Cons:

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- **Federal Enforcement Priorities (Cont'd)**

- Preventing state-authorized marijuana activities from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;
- Preventing violence and the use of firearms in the cultivation and distribution of marijuana;
- Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;
- Preventing growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and
- Preventing marijuana possession and use on federal property.

# Pros and Cons:

## Banking Marijuana Related Business



- **The required due diligence is costly and resource intensive**
  - FinCEN requires heightened customer due diligence for marijuana related businesses with a list of *minimum* vetting requirements.
  - Traditional BSA/AML monitoring methods are not sufficient - we recommend comprehensive best practices that involves far more than the FinCEN list.
  - The level and degree of dedicated resources required to properly evaluate, monitor and manage these accounts is very high.
  - FinCEN has established a three-level SAR reporting system and established a preliminary list of Red Flags that will require SARs every customer/transaction
    1. “Marijuana Limited”
    2. “Marijuana Priority”
    3. “Marijuana Terminated”



## Pros and Cons:

### Banking Marijuana Related Business

- **FinCEN Memo – February 14, 2014**
- **The FinCEN guidance:**
  - Clarifies how financial institutions can provide services to marijuana-related businesses consistent with their BSA obligations
  - Aligns the information provided by financial institutions in BSA reports with federal and state law enforcement priorities.
  - Enhances the availability of financial services for, and the financial transparency of, marijuana-related businesses.
  - Clarifies how financial institutions can provide services to marijuana-related businesses consistent with their BSA obligations.



## Pros and Cons:

### Banking Marijuana Related Business

- **In assessing the risk of providing services to a marijuana-related business, a financial institution should conduct customer due diligence that includes:**
  - (i) verifying whether the business is duly licensed and registered;
  - (ii) reviewing the license application (and related documentation)
  - (iii) requesting from state licensing and enforcement authorities available information about the business and related parties;
  - (iv) developing an understanding of the normal and expected activity (e.g., medical versus recreational customers);
  - (v) ongoing monitoring of publicly available sources for adverse information about the business and related parties;
  - (vi) ongoing monitoring for suspicious activity,
  - (vii) refreshing information obtained as part of customer due diligence on a periodic basis and commensurate with the risk.

# Pros and Cons:

## Banking Marijuana Related Business



- **Recent Legislation**

- Governor Quinn signed bill to allow medical marijuana for adults and children with seizures
- July 16<sup>th</sup> – Pro Marijuana Banking Bill passes the House of Representatives
  - The House passed the Heck-Perlmutter-Lee-Rohrabacher amendment -- or “Heck amendment” -- to the H.R. 5016 spending bill by a vote of 231-192. The amendment blocks the Securities and Exchange Commission and Treasury Department from spending money to penalize banks and other financial institutions for working with pot businesses that do not break state law.

# Pros and Cons:

## Banking Marijuana Related Business



- **“Cannabis Credit Co-Ops” Have Been Proposed in Colorado – Could There Be A Separate System?**
  - CO HB 14-398 (passed May 2013) creates financial services cooperatives known as “Cannabis Credit Co-Ops” whose members would consist of licensed marijuana businesses, industrial hemp businesses or “entities that provide goods or services to a licensed marijuana business that provide documentation to the Co-Op of an inability to get comparable services from a bank or credit union
  - The chartering of these entities still remains subject to Federal Reserve approval and a number of other complex requirements and it is unclear whether this system will ever be established. However, some are content to “wait and see.”

# Thank you!



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