

HOUSE BILL REPORT

HB 2098

As Reported by House Committee On:
Judiciary

Title: An act relating to making financial services available to marijuana producers, processors, retailers, qualifying patients, health care professionals, and designated providers as authorized under chapters 69.50 and 69.51A RCW.

Brief Description: Making financial services available to marijuana producers, processors, retailers, qualifying patients, health care professionals, and designated providers as authorized under chapters 69.50 and 69.51A RCW.

Sponsors: Representatives Sawyer, Vick, Kirby and Condotta.

Brief History:

Committee Activity:

Judiciary: 1/9/18, 1/18/18 [DPS].

Brief Summary of Substitute Bill

- Provides that certain entities and persons providing financial services to the regulated marijuana industry do not commit a crime under state law for providing these services.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Jinkins, Chair; Kilduff, Vice Chair; Graves, Assistant Ranking Minority Member; Goodman, Hansen, Kirby, Muri, Orwall, Shea and Valdez.

Minority Report: Do not pass. Signed by 2 members: Representatives Haler and Klippert.

Minority Report: Without recommendation. Signed by 1 member: Representative Rodne, Ranking Minority Member.

Staff: Ingrid Lewis (786-7289).

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Background:

Marijuana is categorized as a Schedule I substance under the federal Controlled Substance Act (CSA). The CSA prohibits the manufacture, possession, use, and distribution of Schedule I substances. Entities and persons dealing with Schedule I substances or their proceeds may be prosecuted for violation of the CSA and certain federal banking statutes, regardless of whether state law permits such activities. In 2014, the Department of Justice issued several policy statements, referred to as the "Cole Memos," stating that financial institutions could face potential criminal liability if they engage in business with marijuana-related businesses. The memos also state that while money laundering statutes, the unlicensed money remitter statute, and the Bank Secrecy Act remained in effect, federal prosecution of a state's legalized market would follow specified enforcement priorities, provided that the state enacted and enforced rigorous regulatory schemes to govern the market.

On January 4, 2018, the Department of Justice issued a short memorandum rescinding the previously issued guidance. The 2018 memo instructs federal prosecutors to follow preexisting principles of prosecutorial discretion established prior to 2014 in the enforcement of marijuana-related offenses.

Qualifying patients, designated providers, and health professionals dealing with limited amounts of marijuana for medicinal purposes have been protected from arrest or prosecution under Washington laws since 1998. Washington voters approved Initiative 502 (I-502) in 2012, which legalized certain marijuana-related activity and established a regulatory system for the production, processing, and distribution of marijuana for recreational use.

While I-502 revised certain provisions in criminal statute to accommodate such legalization in accordance with the requirements of the initiative, financial institutions and persons providing financial services to the regulated marijuana industry may be held liable under the Washington Criminal Code for certain offenses, including but not limited to: money laundering; criminal conspiracy to commit certain drug-related offenses; criminal solicitation; and certain criminal profiteering offenses.

Summary of Substitute Bill:

Specified entities or persons that receive deposits, extend credit, conduct funds transfers, transport cash or other financial instruments, or provide other financial services to licensed marijuana producers, processors, retailers, qualifying patients, health care professionals, or designated providers under Washington law do not commit a crime by providing those financial services.

Substitute Bill Compared to Original Bill:

The substitute bill: (1) expands the category of entities and persons who would be immune from criminal prosecution for providing financial services to licensed marijuana businesses and qualified patients and providers to include: armored car services contracted by financial

institutions; escrow officers and agents; licensed money transmitters; and consumer loan companies; (2) expands the types of covered financial activities to include the transportation of currency or other financial instruments; (3) clarifies that the act applies only to immunity from state criminal prosecution; and (4) removes provisions that restricted evidence of providing financial services to the marijuana industry in any Washington court.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Financial institutions have been a big partner in the legal cannabis market with over a billion dollars in sales every year and over \$300 million in tax revenue. Marijuana businesses need financial services to operate. Without the ability to access bank accounts and write checks, these businesses have to pay employees and vendors in cash. This creates safety risks for the businesses and surrounding communities and makes it difficult for the state to collect taxes.

This bill decriminalizes business transactions with marijuana businesses on a state level. While there is still a risk for prosecution at the federal level, Washington can remove this in our statute to help these businesses thrive and mitigate public safety concerns. As long as marijuana is legal, the banking of the proceeds should be as well.

Providing financial services to marijuana businesses is a risky and time intensive endeavor. Financial institutions are currently money laundering under both federal and state law. Financial institutions work diligently to put in place numerous procedures to mitigate risks associated with cannabusiness. Paramount is the maintenance of the safety and soundness of the credit union to ensure that they comply with state and federal banking laws and assist federal and state agencies in enforcement. Banks have relied on the Cole Memos, which provided guidance on federal enforcement priorities. The memo was rescinded recently, but the Department of Treasury's Financial Crimes Enforcement Network (FinCEN) guidance remains still in effect. While the FinCEN guidance imposes substantial due diligence and monitoring requirements, it does not provide financial institutions safe harbor from potential criminal repercussions.

(Opposed) While the concept of decriminalizing business transactions is a good one, the bill is overly broad. If the provision prohibiting the use of a financial transaction as evidence to prove an element of an alleged crime by a financial institution is removed, the Washington Association of Sheriffs and Police Chiefs would be fully supportive of this bill.

Persons Testifying: (In support) Representative Sawyer, prime sponsor; John Trull, Northwest Credit Union Association; Lynn Ciani, Numerica Credit Union; and Russel Rosendal, Salal Credit Union.

(Opposed) James McMahan, Association of Sheriffs and Police Chiefs.

Persons Signed In To Testify But Not Testifying: None.