

HOUSE BILL REPORT

ESSB 5928

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: Senate Committee on Financial Institutions & Insurance (originally sponsored by Senators Rivers, Palumbo and Hasegawa).

Brief History:

Committee Activity:

Judiciary: 2/22/18 [DP].

Brief Summary of Engrossed 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: Do pass. Signed by 10 members: Representatives Jenkins, 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 memorandums 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 memorandum rescinding the previously issued guidance. The 2018 memorandum 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 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.

Appropriation: None.**Fiscal Note:** Not requested.

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

Staff Summary of Public Testimony:

(In support) This bill is identical to House Bill 2098, which passed off the floor with 82 votes in favor.

(Opposed) None.

Persons Testifying: Krystelle Purkey, Northwest Credit Union Association.

Persons Signed In To Testify But Not Testifying: None.