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Marijuana Legalization: The Prevailing Issues Every State Should Know
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Social Justice - Oregon

- Marijuana conviction does NOT automatically deny license
- Most marijuana crimes are gone; trafficking in large amounts, and arson related to extract processing still serious
- Marijuana convictions, including felonies, can be expunged
Federal Gaps

• Pesticide use controlled by federal law
• Strict compliance with EPA-approved label
• Label specifies *How* and *ON WHAT*

**Authorized for use on Marijuana**
No Science

- Measure 91 required health & safety standards
- Pesticide Testing
- Agency Cooperation – OHA, OLCC, Ag
  - OHA – Dangerous pesticides?
  - Ag – Allowed pesticides?
  - OLCC – testing regulations
  - OHA – lab certification
The Banking Issue
Banking – federal control

- Federal Reserve system controls the banking system nationwide. Financial institutions cannot operate in the modern (electronic) banking world without a “Master Account”, or without FDIC insurance.
- Bank Secrecy Act (BSA) & Anti-Money Laundering Statutes
  - require banks to report suspicious activity
    - Cash Transaction Reports (CTRs)
    - Suspicious Activity Reports (SARs)
      - Marijuana limited
      - Marijuana priority
      - Marijuana termination
Federal Guidance

• USDOJ Financial Crimes Memo (Feb 2014)
  • If States maintain robust regulation to protect 8 federal priorities, USDOJ probably won’t prosecute financial institutions serving marijuana businesses

• US Treasury FinCEN Memo (Feb 2014)
  • Provides guidance for financial institutions on how to bank marijuana businesses in compliance with BSA and AML
FinCEN Memo

• Clarifies how financial institutions can provide services to marijuana-related businesses consistent with Bank Secrecy Act obligations.
• Due diligence requirements related to Cole Memo (next slide)
• New Suspicious Activity Report (SAR) categories:
  • Marijuana Limited
  • Marijuana Priority
  • Marijuana Termination
FinCEN Memo

• Enhanced due diligence that includes
  • verifying proper state license and registration
  • reviewing the license application
  • requesting from state all available information
  • developing an understanding of normal and expected activity
  • ongoing monitoring of public info
  • ongoing monitoring for suspicious activity
  • ongoing customer due diligence
Banker’s Perspective
No Bank Means:

- No checks
- No electronic funds transfers
  - Payroll, rent, *everything* paid in cash
  - No banking records
- Very hard to operate
- Very hard to regulate

*Security Issues*
Impacts on State Operations

• Problems for State Agencies
  • Revenue
    • Taxes, license fees received in **CASH**
    • Are you prepared to handle that much cash?
  • Treasury
    • Relationship with your state’s banking partner
    • Marijuana taxes & fees - Money laundering?
      • Don’t ask, don’t tell
      • Comingled funds
Armored Car Challenge
A few brave banks
Jan 4, 2018: Sessions Memo

• Rescinds the Cole Memo (Aug 2013)
• Also USDOJ Financial Crimes Memo (Feb 2014)
• ?? US Treasury FinCEN Memo (Feb 2014)
$30 million on the streets?
Legislative Fixes?

• Gardner – Warren STATES bill
  • Strengthening the Tenth Amendment Through Entrusting States
    • Companion bill in House, Joyce-Blumenauer
  • Creates exemption to CSA for states with legal marijuana programs, specifies that compliant transactions are not trafficking or proceeds of unlawful transactions

• Merkley SAFE Banking Bill
  • Secure And Fair Enforcement Act
  • Creates safe harbor for banks
    • NAAG letter in support
Thanks, Enjoy Oregon!