

Cannabis Business Blog

DC's Up-‘Hill’ Battle

By Brad Deutsch on 1.26.15 | Posted in District of Columbia, Federal

Back in November, DC voters approved a ballot initiative to legalize possession (of up to two ounces) and cultivation of recreational marijuana. One of the many special things about DC, though, is that all ballot initiatives must be submitted to Congress for review before they can take effect. DC thought it best to wait until the new Congress arrived in Washington at the beginning of the year. So, on January 13th, DC sent the ballot initiative to the Hill for the required 30 legislative days of review, which now runs until February 26. In order to ‘disapprove’ the ballot initiative, both the House and the Senate would need to pass a ‘disapproval resolution,’ and then the President would need to sign it. Unless that happens, the ballot initiative will become law. There is no word yet on what will happen on the Hill leading up to the February 26th deadline, but hearings seem likely and litigation is certainly not out of the question. Stay tuned.

Warning Regarding Federal Law: The possession, distribution, and manufacturing of marijuana is illegal under federal law, regardless of state law which may, in some jurisdictions, decriminalize such activity under certain circumstances. Penalties for violating federal drug laws are very serious. For example, a conviction on a charge of conspiracy to sell drugs carries a mandatory minimum prison term of five years for a first offense and, depending on the quantity of marijuana involved, the fine for such a conviction could be as high as \$10 million. In addition, the federal government may seize, and seek the civil forfeiture of, the real or personal property used to facilitate the sale of marijuana as well as the money or other proceeds from the sale. Although the U.S. Department of Justice (DOJ) recently rescinded its guidance regarding prioritization of criminal prosecutions of individuals and entities operating in compliance with effective state regulatory systems, DOJ left in place long standing guidance to federal prosecutors regarding how to exercise this discretion. Individuals and companies are cautioned to consult with experienced attorneys regarding their exposure to potential criminal prosecution before establishing business operations in reliance upon the passage of state laws which may decriminalize such activity. Federal authority to prosecute violations of federal law as crimes or through seizures and forfeiture actions is not diminished by state law. Indeed, due to the federal government’s jurisdiction over interstate commerce, when businesses provide services to marijuana producers, processors or distributors located in multiple states, they potentially face a higher level of scrutiny from federal authorities than do their customers with local operations.