

Cannabis Business Blog

Moving Forward Under Measure 91 Q&A Series: Part I

Foster Garvey on 5.1.15 | Posted in Business, Oregon

During our April 10 event, “Moving Forward Under Measure 91,” in Portland, Ore., we addressed a number of complex issues regarding the developing marijuana industry. This blog series will answer questions that we may not have been able to get to during the Q&A portion of our event. Make sure to keep checking back here, or subscribe to our blog for updates!

“Is the Process of Bankruptcy Different for Marijuana Businesses?”

Some marijuana businesses and their owners have actually been denied the protection of bankruptcy in several U.S. courts. A bankruptcy trustee is an officer of the federal courts, and must uphold federal law. Because marijuana is a Schedule I drug under the federal Controlled Substances Act, some courts have deemed bankruptcy trustees unable to take possession of marijuana businesses and their assets. The trustees are therefore unable to perform their duties, and those bankruptcy cases have been dismissed. See, e.g., *In re Arenas*, 514 B.R. 887 (Bankr. D. Colo. 2014).

While federal bankruptcy protection may be unavailable to marijuana businesses until a change is made to federal law, it is possible that some state-level remedies will be available to insolvent marijuana businesses or their creditors. For more detailed information about marijuana businesses and bankruptcy, and recommendations for how to begin considering state-level approaches, see our article in Marijuana Venture magazine: [“Marijuana business denied protection by bankruptcy court.”](#)

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 Although the U.S. Department of Justice (DOJ) recently rescinded its guidance regarding prioritization of criminal prosecutions of individuals and entities operating in compliance with effective state regulatory systems, DOJ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

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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.