

Congressional Spending Bill Expands Medical Marijuana Prosecution Protections until September

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On Friday, May 5, 2017, President Donald Trump signed the Congressional spending bill that averted a federal government shutdown and expanded funding through September 30, 2017. The Bill, called H.R. 244, The Consolidated Appropriations Act, 2017, contains provisions expanding the previously known Rohrabacher-Farr amendment, now known as the Rohrabacher-Blumenauer amendment, prohibits the Department of Justice (DOJ) from using federal funds to prosecute any legal medical marijuana businesses in those states that have passed laws permitting those businesses to exist.

The provision, has been amended to include those additional state that have passed medical marijuana laws since Rohrabacher-Farr, including Pennsylvania and the states that voted for medical marijuana during the November elections. It now reads as follows:

“SEC. 537.

None of the funds made available in this Act to the Department of Justice may be used, with respect to any of the States of Alabama, Alaska, Arkansas, Arizona, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Illinois, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming, or with respect to the District of Columbia, Guam, or Puerto Rico, to prevent any of them from implementing their own laws that authorize the use, distribution, possession, or cultivation of medical marijuana.”

While state licensed medical marijuana businesses may finally be exhaling a sign of relief that the amendment has passed, it is important to remember that it is only valid until the end of September. Further complicating things, immediately after President Trump passed The Consolidated Appropriations Act, he issued a statement indicating that he will treat the provisions of Section 537 (Rohrabacher-Blumenauer) “consistently with [his] constitutional responsibility to take care that the laws be faithfully executed.”

While President Trump’s statement may indicate a shift in the previous White House statements differentiating medical marijuana from recreational, it is too early to see if the statement is simply a placeholder for a possible shift in attitudes or an actual threat to the state legalized businesses.

The Rohrabacher-Farr amendment was already tested once in court. In 2015, the DOJ attempted to prosecute state legalized medical marijuana businesses that were protected by the then controlling amendment. In 2016, the 9th Circuit Court of Appeals ruled in U.S. v. McIntosh that the Rohrabacher-Farr amendment “prohibits DOJ from spending funds from relevant appropriations acts for the prosecution of individuals who engaged in conduct permitted by state medical marijuana laws and who fully complied with such laws.” While the amendment does not enjoin the DOJ from prosecuting these businesses for Controlled Substance Act violations, it requires that the DOJ show evidence that their actions do not involve the expenditure of any funds in violation of The Consolidated Appropriations Act, thus making it more difficult, though not impossible for state legal medical marijuana businesses to be criminally prosecuted.

For more information, contact Medical Marijuana Practice Group for updates on Pennsylvania and Federal legislation affecting the Pennsylvania medical marijuana industry.