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## SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair  
2019 - 2020 Regular Session

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### SB 51 (Hertzberg) - Financial institutions: cannabis

**Version:** April 29, 2019

**Policy Vote:** B. & F.I. 6 - 1, GOV. & F. 6 -  
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**Urgency:** Yes

**Mandate:** Yes

**Hearing Date:** May 13, 2019

**Consultant:** Debra Cooper

**Bill Summary:** SB 51 would authorize the creation of cannabis limited charter banks and credit unions and authorize the use of special purpose checks issued by those institutions for specified purposes.

#### **Fiscal Impact:**

- This bill would create costs to the Department of Business Oversight (DBO) for the chartering of new banks and credit unions. The overall cost is dependent on the number of new banks and credit unions created, but would be estimated to cost approximately \$2 million per year. (Financial Institutions Fund, Credit Union Fund)  
These costs would include:
  - \$1.86 million in the first year and \$1.78 ongoing for conducting field examinations on the new banks and credit unions.
  - \$270,000 in the first year and \$260,000 ongoing for developing and adopting emergency regulations and for enforcement.
- Unknown, potentially significant costs to the State Treasurer's Office, the State Controller's Office, the Bureau of Cannabis Control, and the Department of Finance for additional workload to prepare for the annual advisory board meeting and to travel to and attend that meeting. (GF / Special Fund)

**Background:** Proposition 215 in 1996 legalized medicinal marijuana in California and Proposition 64 in 2017 legalized adult-use cannabis use in California as of January 2018. However, the cannabis industry has been locked out of the traditional banking system.

Together, the Bank Secrecy Act, the USA Patriot Act, and the Racketeer Influenced and Corrupt Organizations (RICO) Act make it illegal for traditional financial institutions to handle funds stemming from criminal activity, including violations of federal drug laws, and subject financial institutions to possible regulatory sanctions for placing their safety and soundness at risk. The RICO Act also subjects all property bought with the proceeds of illegal activity to forfeiture. Neither the Federal Deposit Insurance Corporation (FDIC) nor the National Credit Union Administration have been willing to provide deposit insurance to banks and credit unions that knowingly provide banking services to cannabis businesses. Additionally, no federal clearinghouse has been willing to clear a check known to have been written by or to a cannabis business and banks and credit unions will not issue credit or debit cards to businesses they know to be cannabis businesses.

**Proposed Law:** This bill would:

- Make various Legislative findings and declarations related to the passage of Proposition 64 in 2016 and Proposition 215 in 1996 and the challenges that the cannabis industry faces with limited access to traditional banking services;
- Establishes the Cannabis Limited Charter Banking and Credit Union Law (CLCL) administered by DBO, which would sunset either when the federal government removes cannabis and cannabis-related substances from the schedule of controlled substances or the federal government enacts legislation that would establish protections for depository institutions that provide financial services to cannabis-related legitimate businesses. This bill would provide that, within thirty days of an event described above, DBO must post notice of that occurrence on its Internet website, send notice to both the Secretary of State and the Office of Legislative Counsel, and provide guidance for the orderly resolution of cannabis limited charter banks (CLCBs) and cannabis limited charter credit unions (CLCCUs);
- Authorize CLCBs and CLCCUs to issue special purpose checks, which are valid only for specified purposes, and to cash special purpose checks, as specified;
- Authorize special purpose checks to be used only for specified purposes, but clarifies that no individual or entity, whether private or public, is required to accept a special purpose check issued by a CLCB or a CLCCU;
- Authorize CLCBs and CLCCUs to cash special purpose checks they previously issued, if those checks are presented to them by non-account holders and the checks were used for one of the aforementioned authorized purposes;
- Require persons wishing to form as a CLCB or CLCCU to obtain a license from DBO, as specified, and to comply with all administrative requirements and enforcement functions Financial Institutions Law and with specified provisions of Banking Law or California Credit Union Law, as applicable;
- Require CLCBs and CLCCUs to adopt policies and practices that allow them to achieve the principles and goals outlined in the federal Bank Secrecy Act and to cooperate with the federal Financial Crimes Enforcement Network;
- Require CLCBs and CLCCUs to obtain and maintain private insurance for themselves and their assets at all times they are engaged in banking services, and authorizes CLCBs and CLCCUs to do all things and assume and discharge all obligations required of them in this regard, which are not in conflict with state law;
- Subject to the approval of DBO, authorize CLCBs and CLCCUs to enter into agreements with one or more other limited charter licensees in order to form a banking network for the purpose of helping each other provide services to cannabis businesses and each other, but expressly provides that a network of this type may not include any institution that is not a cannabis limited charter depository;
- Authorize CLCBs and CLCCUs to charge fees for the services they provide and require each of these entities to conspicuously post the types and amounts of fees it charges on its Internet website in a format intended to provide transparency;

- Require DBO to adopt emergency regulations to implement the CLCL and provides that DBO may not issue CLCB or CLCCU licenses before July 1, 2020, except as specified;
- Establish the Cannabis Limited Charter Bank and Credit Union Law Advisory Board (board) and provide that the board comprises the State Treasurer, State Controller, and the Chief of the Bureau of Cannabis Control as voting members; and the Director of the Department of Finance as an ex-officio, nonvoting member. Amongst other things, requires the board to hold a noticed, public meeting at least once a year, or more often as needed, to review enforcement activity reports from DBO and to draft recommended legislative or administrative actions. This bill would prohibit board members from being compensated for their services.

**Related Legislation:**

SB 930 (Hertzberg, 2018), substantially similar to this bill, would have authorized the creation of cannabis limited charter banks and credit unions and authorized the use of special purpose checks issued by those institutions for specified purposes. The measure was held in the Assembly Appropriations Committee.

**Staff Comments:** It is unknown how many CLCBs and CLCCUs will be created from this bill. The costs assume 12 new CLCBs and/or CLCCUs would be created, which would require eight additional examiners (two examiners per every three new institutions) to examine the banks and credit unions and an additional manager for the examiners. The overall cost would increase or decrease accordingly, dependent on the number of CLCBs and CLCCUs created.

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