
THIRD READING

Bill No: SB 51
Author: Hertzberg (D), et al.
Amended: 4/29/19
Vote: 27 - Urgency

SENATE BANKING & F.I. COMMITTEE: 6-1, 4/3/19
AYES: Bradford, Chang, Caballero, Durazo, Hueso, Portantino
NOES: Morrell

SENATE GOVERNANCE & FIN. COMMITTEE: 6-1, 4/24/19
AYES: McGuire, Moorlach, Beall, Hertzberg, Hurtado, Wiener
NOES: Nielsen

SENATE APPROPRIATIONS COMMITTEE: 4-1, 5/16/19
AYES: Portantino, Bradford, Hill, Wieckowski
NOES: Bates
NO VOTE RECORDED: Jones

SUBJECT: Financial institutions: cannabis

SOURCE: State Treasurer Fiona Ma

DIGEST: This bill authorizes the creation of limited charter banks and credit unions, as specified, and authorizes the use of special purpose checks issued by these institutions for certain purposes, including the payment of state and local taxes, rent, and goods and services, and the purchase of state and local securities, as specified.

ANALYSIS:

Existing law:

- 1) Provides for Proposition 215 (The Compassionate Use Act of 1996), which exempts from specified criminal penalties the possession or cultivation of

medical marijuana by patients and primary caregivers; and Proposition 64 (The Control Regulate, and Tax Adult Use of Marijuana Act of 2016), which provides for the licensure and regulation of commercial adult marijuana activities by various state agencies.

- 2) Provides for the Medicinal and Adult-Use Cannabis Regulation and Safety Act (Business and Professions Code Section 60000 et seq.) and its implementing regulations (California Code of Regulations Title 16, Division 42, Section 5000 et seq.), administered by the California Bureau of Cannabis Control.
- 3) Provides for the Department of Business Oversight (DBO) and gives DBO authority to administer the Financial Institutions Law. The three divisions of the Financial Institutions Law that are relevant for purposes of this bill include Division 1, related to administration, enforcement, and liquidation and conservation (Financial Code Section 99 et seq.); Division 1.1, the Banking Law (Financial Code Section 1000 et seq.); and Division 5, California Credit Union Law (Financial Code Section 14000 et seq.).

This bill:

- 1) Contains findings and declarations related to passage of Proposition 64 in 2016, authorizing the recreational use of cannabis, and to passage of Proposition 215 in 1996, authorizing the medicinal use of cannabis; the significant challenges that cannabis businesses have accessing traditional banking services; the regulatory and public safety issues arising from cannabis businesses' lack of access to banking services; and the responsibility of the state, consistent with the will of California voters, to provide a mechanism to help lawful cannabis businesses gain access to banking services.
- 2) Establishes a new Division 2.5 within the Financial Code (Section 11000 et seq.) called the Cannabis Limited Charter Banking and Credit Union Law (CLCL), administered by DBO. Sunsets this division on the earlier of either of the following:
 - a) The federal government, by legislative or executive action, removes cannabis and cannabis-related substances from the schedule of controlled substances, as defined in the federal Controlled Substances Act (21 U.S.C. Sec.812; 21 C.F.R. Part 1308).
 - b) The federal government enacts legislation that would establish protections for depository institutions that provide financial services to cannabis-related legitimate businesses.

Provides that, within 30 days of an event described above, DBO must post notice of that occurrence on its Internet Web site, send notice to both the Secretary of State and the Office of Legislative Counsel, and provide guidance for the orderly of entities chartered under Division 2.5, as specified.

- 3) Defines the terms banking services, board, cannabis business, cannabis limited charter bank (CLCB), and cannabis limited charter credit union (CLCCU) for purposes of the CLCL.
- 4) Authorizes CLCBs and CLCCUs to issue special purpose checks, which are valid only for specified purposes, and to cash special purpose checks, as specified. Requires each special purpose check to include the following text, in at least 12-point type: “This check is issued by [insert name of CLCB or CLCCU] and may only be deposited or cashed at this CLCB/CLCCU or another CLCB/CLCCU that agrees to accept the check.”
- 5) Allows 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. Special purpose checks may only be used to:
 - a) Pay fees or taxes to the state or a local jurisdiction.
 - b) Pay rent on property that is leased by or on behalf of the account holder’s cannabis business.
 - c) Pay a vendor physically located in California for expenses related to goods and services associated with the account holder’s cannabis business.
 - d) Purchase bonds or interest-bearing notes or warrants backed by the full faith and credit of the state, or bonds or warrants of any local jurisdiction, as specified.
- 6) Authorizes 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.
- 7) Requires persons wishing to form as a CLCB or CLCCU to obtain a license from DBO, as specified, and to comply with all requirements of Division 1 of the Financial Institutions Law (which generally cover administrative and enforcement functions) and with either Division 1.1 of the Financial Code (the Banking Law) or Division 5 of the Financial Code (the California Credit Union

Law), as applicable, but further provides that any requirement of any of those laws that is inconsistent with Division 2.5 does not apply to that CLCB or CLCCU.

- 8) Requires 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.
- 9) Requires 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.
- 10) Authorizes, subject to the approval of DBO, 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.
- 11) Authorizes CLCBs and CLCCUs to charge fees for the services they provide and requires 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.
- 12) Requires 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.

Related/Prior Legislation

SB 930 (Hertzberg, 2018) was substantially similar to this bill. SB 930 was held on the Assembly Appropriations Committee Suspense file.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Senate Appropriations Committee, SB 51 will create costs to 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 is estimated to be approximately \$2 million per year. These costs include \$1.86 million in the first year and \$1.78 million ongoing for conducting field examinations on the new banks and credit unions and \$270,000 in the first year and \$260,000 ongoing for

developing and adopting emergency regulations and for enforcement. SB 51 will also result in 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.

SUPPORT: (Verified 5/16/19)

State Treasurer Fiona Ma (source)
Aeon Botanika
Budberry
California Asian Pacific Chamber of Commerce
California Cannabis Industry Association
California Cannabis Manufacturers Association
California NORML
City of Alameda
City of Irvine Councilmember Melissa Fox
City of Sacramento
City of Santa Monica
Eaze
El Capitan
Gallegos Law Firm
Green Believers
Hard Car Security
La Vida Verde
Los Angeles County
Loudpack
Lovingly & Legally
MedMen
National Cannabis Industry Association
Origin House
Rezai, Khorsandi & Lahijani
Rural County Representatives of California
San Francisco Cannabis Retailers Alliance
Sespe Creek Collective
Southern California Coalition
The Artist Tree
TreeHouse
Undeniable INC
United Cannabis Business Association
Vanguard Concepts

VCC Brands

OPPOSITION: (Verified 5/16/19)

Siskiyou County Sheriff's Department

ARGUMENTS IN SUPPORT: State Treasurer Fiona Ma, sponsor of SB 51, states, "SB 51 is a significant step toward integrating cannabis-related businesses into the California economy in a safe and transparent manner." Numerous other supporters submitted identical letters of support in which they asserted that SB 51 offers a practical solution to the problems faced by an unbanked cannabis industry. The cannabis industry "is a massive industry that we can only expect will continue to grow; yet cultivation, distribution, and retail businesses alike have been forced to operate on a cash-only basis. This is not only impractical from an accounting perspective, but also presents a significant public safety issue."

ARGUMENTS IN OPPOSITION: The Siskiyou County Sheriff's Department opposes this bill, on the basis that it will further exacerbate an out-of-control and largely unethical marijuana industry and will promote wholesale money laundering. Siskiyou County has more than 1500+ illegal marijuana sites on private property, and more in public land areas. The organization believes that this bill, if passed, will lead to more criminalization and victimization.

Prepared by: Eileen Newhall / B. & F.I. /
5/18/19 11:57:47

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