

SENATE THIRD READING
SB 51 (Hertzberg)
As Amended September 5, 2019
2/3 vote. Urgency

SUMMARY:

Provides for the licensure and supervision of cannabis limited charter banks and credit unions authorized to offer limited depository services to cannabis businesses.

Major Provisions

- 1) Adds a new division within the Financial Institutions Law (Financial Code Section 99 et seq.) called the Cannabis Limited Charter Banking and Credit Union Law (Financial Code Section 11000 et seq.).
- 2) Provides for the licensure of a cannabis limited charter bank or credit union (hereafter referred to as a "cannabis depository institution" or "CDI") by the Department of Business Oversight (DBO) and requires such licensees to comply with all requirements of the Financial Institutions Law, as applicable, except to the extent that any requirement of that law is inconsistent with the provisions of this bill, in which case the provisions of this bill would prevail.
- 3) Requires a CDI to adopt policies and practices that allow it to achieve the principles and goals outlined in the federal Bank Secrecy Act and cooperate with the federal Financial Crimes Enforcement Network.
- 4) Authorizes a CDI to accept deposits and issue to an account holder special purpose checks that 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 the account holder's cannabis business.
 - d) Purchase bonds or similar debt instruments issued by the state or a local agency.
- 5) Requires a CDI to obtain and maintain private insurance for itself and its assets, in an amount acceptable to DBO.
- 6) Prohibits a CDI from engaging in banking activity (this bill does not define this term) with any financial institution that lacks a limited charter.
- 7) Declares that in order to eliminate public safety issues presented with managing and transporting cash because of the lack of access to financial services for cannabis businesses, to enable state and local governments to accurately perform accounting and other regulatory functions over the cannabis industry, and to enable cannabis businesses to comply with laws regulating the cannabis industry, it is necessary that this bill take effect immediately.

- 8) States the Legislature's intent that banks and other financial institutions support and maintain good faith relationships with banks doing business with properly licensed cannabis businesses in the state.

COMMENTS:

Federal law prevents some cannabis businesses from accessing financial services provided by banks and credit unions, including basic checking accounts and electronic payment services that nearly all business rely to facilitate transactions with their customers. Federal guidelines have provided comfort to several hundred banks and credit unions across the country to serve the cannabis industry; however, these financial institutions are doing so at their own risk of negative regulatory action and criminal prosecution.

Although some banks and credit unions accept the elevated legal risk and compliance costs to serve some cannabis businesses, some licensed cannabis businesses in California do not have access to banking services. Unbanked cannabis businesses transact primarily in cash, which makes the businesses and surrounding community targets for violent criminal activity. Cash businesses also present challenges to state and local tax collection and enforcement efforts.

This bill envisions a partial solution to the cannabis banking problem through the creation of cannabis depository institutions (CDIs). Upon approval by the Department of Business Oversight (DBO) of a charter application, a CDI would be authorized to provide a very limited selection of services to its customers: the acceptance of deposits and the issuance and redemption of special purpose checks.

In order to achieve the vision of SB 930, the state government and the private sector would need to overcome significant challenges to deliver the public benefits that this bill seeks. These challenges include the availability of deposit insurance, frictions in getting cash in and out of a CDI, and developing an appropriate and comprehensive regulatory and supervision structure within DBO. These challenges are discussed in more detail in the Assembly Banking Committee analysis dated June 24, 2019.

According to the Author:

[Cannabis] is a massive industry that we can only expect will continue to grow; yet cultivation, distribution, and retail businesses that cannot find a willing financial institution to accept their business 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 – businesses face security risks because of the volume of cash in their possession.

Arguments in Support:

Organizations that support the bill discuss the challenges faced by unbanked cannabis businesses and express support for finding solutions to the problem.

Arguments in Opposition:

Organizations in opposition state their concerns with the cannabis industry and desire to stop the commercial expansion of the cannabis industry.

FISCAL COMMENTS:

According to the Assembly Appropriations Committee:

- 1) Ongoing costs to DBO in the range of \$2 million each year to adopt emergency regulations, process applications, conduct examinations and enforce the provisions of the bill. These cost estimates rely on optimistic assumptions that enough banks participate in the proposed closed loop system to make it viable. Costs would be lower to the extent the system never becomes operational, though DBO would still incur initial costs of developing regulations and program development. (Financial Institutions Fund, Credit Union Fund)
- 2) Unknown, but likely modest costs for the Treasurer, Controller, and the chief of the Bureau of Cannabis Control to participate in the Board and develop recommendations to the Legislature.

VOTES:

SENATE FLOOR: 36-1-1

YES: Allen, Archuleta, Atkins, Bates, Beall, Bradford, Caballero, Chang, Dodd, Durazo, Galgiani, Glazer, Grove, Hertzberg, Hill, Hueso, Hurtado, Jackson, Jones, Leyva, McGuire, Mitchell, Monning, Moorlach, Nielsen, Pan, Portantino, Roth, Rubio, Skinner, Stern, Stone, Umberg, Wieckowski, Wiener, Wilk

NO: Morrell

ABS, ABST OR NV: Borgeas

ASM BANKING AND FINANCE: 10-0-2

YES: Limón, Chen, Bauer-Kahan, Burke, Cervantes, Gabriel, Grayson, Mark Stone, Weber, Wicks

ABS, ABST OR NV: Choi, Melendez

ASM BUSINESS AND PROFESSIONS: 18-0-1

YES: Low, Brough, Arambula, Bloom, Chen, Chiu, Cunningham, Eggman, Gipson, Gloria, Grayson, Holden, Irwin, McCarty, Medina, Mullin, Obernolte, Ting

ABS, ABST OR NV: Fong

ASM APPROPRIATIONS: 16-1-1

YES: Gonzalez, Bloom, Bonta, Brough, Calderon, Carrillo, Chau, Diep, Eggman, Gabriel, Eduardo Garcia, Maienschein, Obernolte, Petrie-Norris, Quirk, Robert Rivas

NO: Bigelow

ABS, ABST OR NV: Fong

UPDATED:

VERSION: September 5, 2019

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