



Analysis of Amended Bill

Author: Hertzberg, et al.	Sponsor:	Bill Number: SB 51
Analyst: Cristina Perfino	Phone: (916) 845-4313	Introduced: December 4, 2018
Attorney: Shane Hofeling	Related Bills: See Legislative History	Amended: March 25, 2019, April 29, 2019, and June 13, 2019

Subject: Cannabis Limited Charter Banking and Credit Union Law

Summary

This bill, under the Financial Code, would establish the Cannabis Limited Charter Banking and Credit Union (CBCU) Law, create the CBCU Advisory Board, provide for the licensure and regulation of CBCUs, authorize CBCUs to issue special purpose checks for specified purposes, and would require CBCUs to be subject to the same requirements as other financial institutions, as specified in this bill.

This analysis only addresses the provisions of the bill that impact the department's programs and operations.

Recommendation – No position.

Summary of Amendments

This bill, as introduced on December 4, 2018, would establish the CBCU Law, create the CBCU Advisory Board, provide for the licensure and regulation of CBCUs, authorize CBCUs to issue special purpose checks for specified purposes, and would require CBCUs to be subject to the same requirements as other financial institutions, as specified in this bill.

The March 25, 2019, amendments added a requirement that each CBCU conspicuously post on its internet website the types of fees and the amounts charged for its banking services, added that if the federal government removes cannabis and cannabis-related substances from the Schedule I Controlled Substances designations or enacts legislation that establishes protections for depository institutions that provide financial services to cannabis-related legitimate businesses, then the CBCU Law becomes inoperative, and made other non-substantive changes.

The April 29, 2019, amendments added a coauthor, removed certain Senate Committee reporting requirements, and added an urgency clause.

Introduced December 4, 2018, Amended March 25, 2019,
April 29, 2019, and June 13, 2019

The June 13, 2019, amendments added that a CBCU must include “cannabis limited charter bank,” “C.L.C.B.,” “CLCB,” “cannabis credit union,” “C.C.U.,” or “CCU” in its name; added a restriction that CBCUs cannot merge with, or convert to, a federal bank or federal credit union; added if the CBCU Law becomes inoperative, then CBCUs must voluntarily liquidate within one calendar year of such event; and made other conforming changes.

This is the department's first analysis of the bill.

Reason for the Bill

The reason for the bill is to provide limited banking services to licensed cannabis and cannabis-related businesses.

Effective/Operative Date

As an urgency measure, this bill would be effective and operative immediately upon enactment.

Program Background

Since cannabis is illegal under federal law, cannabis businesses do not have access to the traditional banking system. Under federal law, it is illegal for traditional financial institutions to handle funds stemming from criminal activity. Financial institutions accepting funds from cannabis businesses are in violation of federal drug laws, and could be subject to regulatory sanctions. Neither the Federal Deposit Insurance Corporation 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. No federal clearinghouse has been willing to provide services to clear a check known to have been written by or to cannabis businesses. Additionally, neither banks nor credit unions will issue credit or debit cards to businesses known to be cannabis businesses.

Federal Law

Federal law prohibits the manufacture, possession, sale, or distribution of cannabis. In 1970, Congress enacted the Controlled Substances Act (CSA), which sets forth five schedules of specified drugs. For a drug to be designated a Schedule I Controlled Substance, CSA states the substance must have “a high potential for abuse,” and have “no currently accepted medical use” in the United States (U.S.). Federal law lists cannabis as a Schedule I Controlled Substance. It is illegal for traditional financial institutions to handle funds stemming from any criminal activity, including violations of federal drug laws.

State Law

Proposition 215 (The Compassionate Use Act of 1996) exempts from specified criminal penalties the possession or cultivation of medical marijuana by patients and primary caregivers. Proposition 64 (The Control Regulate, and Tax Adult Use of Marijuana Act of 2016) provides for the licensure and regulation of commercial adult marijuana activities by various state agencies.

Financial Institutions Law

The Department of Business Oversight (DBO) is authorized to administer the Financial Institutions Law. DBO oversees the operations of state-licensed financial institutions, including [banks](#), [credit unions](#), [industrial banks](#), savings associations, [trust companies](#), [foreign banking organizations](#), [business and industrial development corporations](#), [money transmitters](#), issuers of payment instruments and travelers checks, and [premium finance companies](#).

This Bill

This bill, under the Financial Code, would establish the CBCU Law, which would provide for the licensure and regulation of CBCUs for the purpose of providing banking services, as defined, to cannabis businesses, and would be subject to the same requirements as other financial institutions as specified in this bill.

The CBCU Law would define the following terms:

- “Applicant” would mean a person or entity that submits an application to be licensed by the state to provide banking services to a cannabis business.
- “Banking services” would mean the provision of depository services with respect to cash or other funds and the issuance and acceptance of special purpose checks, including the acceptance and maintenance of deposit proceeds, consistent with the requirements and limitations provided by this chapter.
- “Board” would mean the CBCU Advisory Board (Advisory Board).
- “Cannabis business” would mean a person licensed to engage in commercial cannabis activity and would also include an ancillary business or profession that serves a person licensed to engage in commercial cannabis activity under Division 10 of the Business and Professions Code.¹

¹ Commencing with Section 26000.

Introduced December 4, 2018, Amended March 25, 2019,
April 29, 2019, and June 13, 2019

- “Cannabis limited charter bank or credit union” would mean a person that receives a license following the approval of an application pursuant to Chapter 3.²
- “Commissioner” would mean the Commissioner of Business Oversight.
- “Department” would mean the DBO.
- “Licensee” would mean a CBCU.

The Advisory Board would be created as specified and would be responsible for ensuring that the CBCU Law provides a safe and efficient way to make payments as specified.

The DBO would be required to submit a report of enforcement activities to the Advisory Board for annual review or as the Advisory Board may require. The Advisory Board would be required to hold public meetings at least annually or more often as needed. The Advisory Board would be required to provide guidance and education to registered broker-dealers and licensed investment advisors related to account holders of CBCUs as specified.

Licensing

The DBO would not be allowed to issue a license before July 1, 2020, unless both of the following conditions are met:

- The DBO issues emergency regulations to implement the CBCU Law.
- The Commissioner makes a written finding that the CBCU Law has been implemented and the DBO is prepared to issue licenses.

Application

An applicant would be allowed to act as a CBCU after obtaining a license. Licensees are required to comply with all requirements of the Federal Institutions Law and either the Banking Law or the California Credit Union Law, unless any requirement of these laws are inconsistent with the CBCU Law, in which case the provisions in the CBCU Law would be controlling.

An applicant would be required to submit a completed application to the DBO. The applicant would be required to comply with all requirements imposed by those laws, as applicable. The DBO would be allowed to charge an applicant a reasonable fee for the license, not to exceed the costs of regulation. In addition, the name of a cannabis limited charter bank (CB) must include the ending “cannabis limited charter

² Commencing with Section 11040.

Introduced December 4, 2018, Amended March 25, 2019,
April 29, 2019, and June 13, 2019

bank” or the abbreviation “C.L.C.B.” or “CLCB.” The name of a cannabis credit union (CU) shall include the ending “cannabis credit union” or the abbreviation “C.C.U.” or “CCU.”

Authorizations

The CBCU would be allowed to issue to an account holder special purpose checks. These checks would only be deposited or cashed at the issuing CBCU or any other CBCU that agrees to accept the check.

These checks may only be used for the following purposes:

- To pay fees or taxes to the state or local jurisdiction.
- To pay rent on property that is issued by, or on behalf of, the account holder's cannabis business.
- To pay a vendor that is physically located in California for expenses related to goods and services associated with the account holder's cannabis business.
- To purchase the following:
 - Bonds, interest-bearing notes, or interest-bearing warrants of this state for which the faith and credit of this state are pledged for the payment of principal and interest.
 - Bonds or warrants, including but not limited to, revenue, warrants, of any county, city, metropolitan water district, California water district, California water storage district, irrigation district in the state, municipal utility district, or school district in the state.
 - State and local government offices are authorized to accept special purpose check issued by a CBCU as specified.
 - An individual or entity, private or public, is not required to accept a special purpose check issued by a cannabis limited charter bank or credit union.
 - A CBCU is authorized to cash a special purpose check presented to it by a person or entity that is not an account holder, if that CBCU previously issued that special purpose check to an account holder, and the check was used for one of the authorized purposes specified.

This bill authorizes state agencies, including the Franchise Tax Board, to accept these special purpose checks for any fees or taxes due.

The CBCU would be required to obtain and maintain private insurance in an amount acceptable by the Commissioner, at all times while it is engaged in banking services; and would be allowed to enter into an agreement with one or more other CBCU licensees in order to form a banking network as specified. Agreements will be subject to the approval of the Commissioner.

Introduced December 4, 2018, Amended March 25, 2019,
April 29, 2019, and June 13, 2019

The CBCU would be allowed to provide accounts to people and entities other than cannabis businesses. Fees for banking services may be charged and must be posted on its internet website in a format that is intended to provide transparency. A CBCU would not be allowed to engage in banking activities with any other financial institutions that lacks a limited purpose charter issued under this provision. Only a CB may merge with one or more CBs. Mergers must abide by the provisions of Article 1 (commencing with Section 4880) of Chapter 4 of Division 1.6. Similarly, a CU licensed to provide services to cannabis businesses may merge with one or more CUs licensed to provide services to cannabis businesses as specified. A CBCU would not be eligible to convert to a federal bank or federal credit union or to another type of business entity.

The CBCU Law would become inoperative if either of the following occurs:

- The federal government, by legislative or executive action, removes cannabis and cannabis-related substances as a designated Schedule I Controlled Substance, as defined in the CSA.
- The federal government enacts legislation that establishes protections for depository institutions that provide financial services to cannabis-related legitimate businesses.

In the event either of the two situations occur, the DBO would be required to do both of the following within 30 days:

- Post notice of that occurrence on the homepage of its internet website, and send notice to both the Secretary of State and the Office of Legislative Counsel. The notice would specify the date the CBCU Law would become inoperative, which would be one calendar year following either of the two occurrences listed above.
- Provide guidance for the orderly resolution of all CBCUs licensed pursuant to this division. The resolution would involve, but is not limited to, voluntary liquidation of a CBCU, the merger, dissolution, or conversion of a CU, and the sale, merger, or conversion of a CB.
- A CBCU would have up to a year to orderly resolve in a manner acceptable to applicable state and federal regulators.
- A CBCU would have to comply with all applicable sections of the CBCU Law and the Corporations Code regarding filings with the Secretary of State.
- In the event that a licensed CBCU fails in good faith to comply with the one year time restraint, the department could take any action under this code it deems necessary, including signing documents on behalf of the CBCU to carry out the specified purposes.

Introduced December 4, 2018, Amended March 25, 2019,
April 29, 2019, and June 13, 2019

Implementation Considerations

Department staff has identified the following implementation considerations for purposes of a high-level discussion; additional concerns may be identified as the bill moves through the legislative process. Department staff is available to work with the author's office to resolve these and other concerns that may be identified.

It is unclear whether these entities would be considered banks or financial corporations for tax purposes under Article 3 of Chapter 2 of Part 11 of the Revenue and Taxation Code (R&TC) and be subject to the higher bank and corporation tax rate under R&TC section 23186. To avoid controversies in this area, this issue should be clarified.

Technical Considerations

The bill should be amended to add a comma within Section 11101(b)(2), on page 19, at line 35, after "...with Section 99)."

Legislative History

SB 930 (Hertzberg, et al., 2017/2018) similar to this bill, would have established a CBCU Law. SB 930 failed to pass the Assembly Appropriations Committee.

Federal Legislation

H.R. 1595, SAFE Banking Act of 2019, was introduced in the House of Representatives on March 7, 2019, and is sponsored by Representative Ed Perlmutter, from the 7th Congressional District in Colorado, along with 182 cosponsors. This bill would create protections for depository institutions that provide financial services to cannabis-related legitimate businesses and service providers for such businesses, and for other purposes. This bill has been placed on the Union Calendar, Calendar No. 78.

S. 2227, MORE Act of 2019, was introduced in the U.S. Senate on July 23, 2019, and is sponsored by Senator Kamala Harris from California, along with four cosponsors. This bill would decriminalize and deschedule cannabis from the schedule I controlled substance list, tax the sales, and provide for reinvestment in certain persons adversely impacted by the War on Drugs, for the expungement of certain cannabis offenses, and for other purposes. This bill has been read twice and referred to the U.S. Senate Committee on Finance.

Other States' Information

Review of *Florida, Illinois, Massachusetts, Michigan, Minnesota, and New York* laws found no comparable cannabis banking laws. These states were selected and reviewed due to their similarities to California's economy, business entity types, and tax laws.

Fiscal Impact

This bill would not significantly impact the department's costs.

Economic Impact

Revenue Estimate

This bill, as amended on June 13, 2019, could have a revenue impact on the general fund, but the amount is unknown.

This analysis does not account for changes in employment, personal income, or gross state product that could result from this bill or for the net final payment method of accrual.

Revenue Discussion

It is assumed this bill would allow for a new mechanism for cannabis businesses to remit their payments, but it would not impact their tax liability.

Because it is difficult to predict the number of applicants that would apply and be approved to provide banking services to cannabis businesses as well as the form of financial institutions they would elect, the revenue impact to the General Fund is unknown.

Legal Impact

This bill would authorize the creation of the CBCU Law, which would provide limited banking services to licensed cannabis and cannabis-related businesses. However, federal law lists cannabis as a Schedule I Controlled Substance. It is illegal for traditional financial institutions to handle funds stemming from criminal activity, including violations of federal drug laws. Those entities opening accounts and transacting business with the entrepreneurs for whom the bank is being created, face possible criminal prosecution in federal court.

Legislative Staff Contact

Cristina Perfino
Legislative Analyst, FTB
(916) 845-4313

cristina.perfino@ftb.ca.gov

Jame Eiserman
Revenue Manager, FTB
(916) 845-7484

jame.eiserman@ftb.ca.gov

Jahna Carlson
Acting Legislative Director, FTB
(916) 845-5683

jahna.carlson@ftb.ca.gov