

Date of Hearing: April 22, 2019

ASSEMBLY COMMITTEE ON BANKING AND FINANCE

Monique Limón, Chair

AB 1525 (Jones-Sawyer) – As Introduced February 22, 2019

SUBJECT: Cannabis: financial institutions

SUMMARY: Clarifies that no state law prohibits a financial institution from providing financial services to a licensed cannabis business. Requires a cannabis business to allow regulators to share the business' track-and-trace data with financial institutions.

Specifically, **this bill:**

- 1) Specifies that an entity that receives deposits, extends credit, conducts fund transfers, transports cash or financial instruments on behalf of a financial institution, or provides other financial services for persons licensed to engage in commercial cannabis activity pursuant to this division does not commit a crime under any California law solely by virtue of providing those financial services.
- 2) Authorizes state licensing authorities for cannabis businesses to share application, licensee, and regulatory information, including information in the track and trace system, with financial institutions.
- 3) Requires a cannabis business to sign a waiver allowing state licensing authorities to engage in the authorized activity described in #2 above.
- 4) Specifies that a certified public accountant or certified public accounting firm does not commit a crime under California law solely for providing professional accounting services to a licensed cannabis business.

EXISTING STATE LAW:

- 1) Provides for the licensure and regulation of commercial cannabis activities by various state agencies.
- 2) Authorizes DBO to license and regulate financial institutions, including banks and credit unions (Financial Code Section 99 et seq.).

EXISTING FEDERAL LAW:

- 1) Classifies cannabis as a Schedule 1 substance under the Controlled Substances Act (21 U.S. Code 812 et seq.) and places regulatory restrictions on research, supply, and access to Schedule 1 substances.
- 2) Requires financial institutions to report suspected illegal activity to the federal government (31 U.S. Code 5311 et seq.), including activity of suspected cannabis businesses that operate under state law.
- 3) Provides that all property purchased using proceeds from an illegal activity is subject to forfeiture (18 U.S. Code 1961 et seq.).

FISCAL EFFECT: Unknown

COMMENTS:

1) PURPOSE

The author states:

Despite the widespread support for cannabis as a legitimate business enterprise, the industry faces a unique, but significant, barrier to success. Legitimate cannabis businesses are unable to take advantage of bank accounts, debit or credit cards, and business loans, forcing them to complete most business transactions in cash because cannabis remains a controlled substance at the federal level.

Having an entire industry operating with limited access to banking services is also a serious public safety threat and makes commercial cannabis businesses a target for crime, putting the safety of employees and customers at risk. The lack of access to banking services creates barriers for entrepreneurs interested in pursuing business opportunities in the cannabis industry. Moreover, the inability to obtain business loans disproportionately prevents the communities that have been most affected by the war on drugs from benefiting from this new industry.

In order to increase overall access to banking, AB 1525 would create a safe harbor under state law for financial institutions and accountants that provide services to the cannabis industry. This bill would also require cannabis businesses to share their Track-and-Trace data with banks to facilitate the ability of financial institutions to comply with due diligence reporting requirements to federal regulating agencies.

2) BACKGROUND

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 on to facilitate transactions with their customers. As briefly explained in the Existing Federal Law section above, federal law categorizes cannabis as a controlled substance and prohibits the possession and distribution thereof. Additionally, federal law places requirements on financial institutions to deter money laundering through reporting of suspected illegal activity, which includes commercial activities related to cannabis.¹ Federal law enforcement agencies, such as the Department of Justice, and federal regulators, including the Federal Reserve, National Credit Union Administration, and Federal Deposit Insurance Corp, have discretion in how these laws are implemented and enforced. 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, many cannabis businesses in California do not have access

¹ The Bank Secrecy Act as amended by the USA Patriot Act (31 U.S. Code 5311 et seq.)

to banking services. According to a survey conducted by the California Growers Association in 2017, more than two-thirds of its membership is unbanked, with cultivators having the lowest level of access along the supply chain. Unbanked cannabis businesses are forced to 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.

3) HOW THIS BILL CAN ADDRESS CANNABIS BANKING CHALLENGES

As generally enforced by regulators today, federal law does not strictly prohibit financial institutions from providing products and services to cannabis businesses. Rather, federal law places restrictions and requirements on financial institutions that are burdensome and reduce the incentive for financial institutions to serve the cannabis industry. As a consequence, individual banks and credit unions can decide whether the benefits of engaging with a cannabis business exceed the associated costs and risks. As of December 31, 2018, 551 bank and credit unions were actively providing banking services to cannabis businesses across the country, based on their reports to federal regulators.²

The cost and risk associated with compliance requirements related to anti-money laundering laws are significant concerns for a financial institution considering a relationship with a cannabis business. Federal guidelines require financial institutions to comply with due diligence requirements that the cannabis business is operating legally under state laws and that the business is working to achieve federal priorities related to cannabis activities.³

This bill aims to reduce the cost and risk of complying with these federal requirements by sharing data collected by state regulators on cannabis business activities directly with financial institutions that engage with a cannabis business. In a 2017 report from the State Treasurer's Cannabis Banking Working Group, the working group recommended the following:

The State of California and local governments should create an online portal aggregating data on cannabis businesses from local government units and all 11 state agencies with cannabis regulatory or data-collection responsibilities. The portal should be designed with financial institution compliance needs in mind and provide material to help institutions fulfill their know-your-customer responsibilities. The data should include licensing and regulatory information, data on key personnel, product lists, sources of supply, financial records including major transactions, ongoing regulatory activity including citations for violations, adverse comments, and evidence of suspicious or illegal activities, provided such material is not restricted by disclosure rules or other agreements.

This bill would provide the necessary statutory clarity to ensure that state regulators and licensed cannabis businesses can continue to make progress on this recommendation.

² Financial Crimes Enforcement Network (FinCEN) Marijuana Banking Update, https://www.fincen.gov/sites/default/files/shared/Marijuana_Banking_Update_Public_Dec_2018.pdf

³ BSA Expectations Regarding Marijuana-Related Businesses, <https://www.fincen.gov/resources/statutes-regulations/guidance/bsa-expectations-regarding-marijuana-related-businesses>

4) POTENTIAL FOR FEDERAL POLICY CHANGE

Recent reports indicate that a federal policy change to address the cannabis banking problem may be achievable during the current Congressional session.⁴ In recent years, the California Legislature has considered several bills that propose creative approaches that attempt to sidestep federal constraints. It is unclear whether those proposals would have improved the cannabis banking problem or how those proposals would fare subsequent to a federal policy change.

The proposal in this bill has the potential for positive impact – whether federal policy changes or not. This bill supports the development of a data platform that could deliver important value to financial institutions that are willing to bear the risks and costs of serving cannabis businesses. Even if federal law changes to alleviate risks to financial institutions that serve cannabis businesses, financial institutions will still need to comply with federal “Know Your Customer” and anti-money laundering requirements, meaning that the data platform would still provide value as a tool in managing compliance costs.

5) ARGUMENTS IN SUPPORT

The California Credit Union League writes:

The Financial Crimes Enforcement Network (FinCEN) issued guidelines that financial institutions can serve cannabis if they comply with due diligence reporting obligations related to suspicious activity. Filing suspicious activity reports (SARs) require financial institutions to ensure a business does not violate state law or any federal priority. The track-and-trace information will verify lawful transactions and help expedite SAR filings. Without the requirement in AB 1525 to allow financial institutions access to the track-and-trace data, credit unions run a higher risk of conducting any financial transaction for marijuana-related businesses that is outside of the State of California’s licensing and regulatory requirements.

The California State Association of Counties writes:

AB 1525, as proposed to be amended, will help financial institutions that wish to work with the [cannabis] industry by allowing state licensing entities and the California Cannabis Authority, a local public agency, to share cannabis regulatory data with banks and credit unions so that they might more efficiently and cost effectively fulfill their reporting requirements. Government is uniquely positioned to provide this type of information, as we have access to critical track and trace and state and local compliance data.

6) DOUBLE-REFERRED

This bill is double-referred to the Assembly Business and Professions Committee.

7) PROPOSED AMENDMENTS

⁴ <https://www.americanbanker.com/news/pot-banking-reform-gets-a-boost-from-barr-endorsement>

The author's office has agreed to take amendments that:

- Clarify that a cannabis business has the ability to determine which financial institutions may access their compliance-related data by removing the mandate that a cannabis business must authorize a licensing authority to share data with any financial institution.
- Clarify that a licensing authority, including the California Cannabis Authority, may share compliance-related data with a financial institution upon receipt of a written request and waiver from a cannabis business.
- Clarify that nothing in the bill requires disclosure of information beyond that which is reasonably necessary to facilitate a commercial banking relationship.

These amendments will be processed in the Assembly Business and Professions Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California Credit Union League
California State Association of Counties (as proposed to be amended)
Rural County Representatives Of California
Southern California Coalition

Opposition

None received

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