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HOUSE BILL 3169: Limited Charter Cannabis Financial Institutions

Chair Lively and members of the House Committee on Economic Development, thank you for opportunity to provide testimony related to House Bill 3169, which would create limited charter cannabis financial institutions. The Oregon Bankers Association (“OBA”) has a variety of concerns related to this proposal.

We acknowledge that the cannabis industry faces very real challenges in accessing banking services and that lack of traditional banking creates concerns ranging from public safety to tax collection. This is true in every state that has some form of a state-legalized cannabis industry, as the barriers – and solutions – are a matter of federal law and regulation. The Oregon banking industry supports federal legislative action to pave the way for banks to offer banking services to cannabis-related businesses.

The good news is that there is growing interest in a federal legislative solution. The United States House of Representatives Financial Services Committee will be marking-up the SAFE Banking Act (H. 1595) Tuesday. The bill essentially provides a safe harbor to protect banks and other financial institutions from criminal prosecution and other penalties for providing traditional banking services to legal cannabis businesses. Congressional action will also give the federal banking regulators clarity in issuing rules and more complete guidance for the banks they supervise. Federal changes are the only way to clearly and effectively address the lack of banking for the cannabis industry in Oregon and around the country.

It is tempting to try to identify workarounds at the state level. The fact is that such solutions generally do not work and raise more questions than answers. In the case of HB 3169, adoption of limited charter cannabis financial institutions is not a workable solution. OBA strongly encourages the committee to seek answers to the many questions HB 3169 raises prior to any committee action. The remainder of our testimony identifies a few of these questions and concerns.

The bill attempts to create a “closed-loop” system in which banking activities for the cannabis industry take place completely outside the banking system. We do not believe this is possible; contact with the banking system will take place.

Beyond this concern, the bill is confusing and unclear. There are a variety of technical issues that HB 3169 does not address. These problems include, but are not limited to:

- Who (other than a cannabis business) may open an account, obtain a loan, or obtain other banking services from, or otherwise be a customer of, a limited charter cannabis financial institution?
- What kinds of deposit accounts may a limited charter cannabis financial institution offer?
- Would a vendor for things like power, lighting and, materials have to open an account with a limited charter cannabis financial institution to receive payment for the goods or services they provide? If the vendor refused to open such an account, how would they get paid? How would that vendor utilize “special purposes check” with their own financial institution?

- How will a cannabis financial institution pay for things that are not on the special purposes list in Section 4(2), such as payment of compensation to employees, payment of judgments, payment of the purchase price for real property, etc.?
- Who would provide deposit insurance and under what circumstances? What are the terms and conditions under which the Oregon Department of Consumer and Business Services (DCBS) would approve private insurance for a limited charter cannabis financial institution?
- Section 6(1) of the bill grants broad rulemaking authority to DCBS to “adopt rules that are necessary or convenient” to carry out the bill. What is meant by necessary and convenient?

We also note the following concerns with the -1 amendment that was made available on Friday:

- New Sections 3(3) and 3(5) of the -1 amendment implicitly recognizes that federal action is imminent. As noted above, federal action likely removes the need for limited charter cannabis financial institutions. A federal solution will pave the way for more financial institutions to offer traditional banking services to the cannabis industry.
- New Section 8 appears to create an “intrastate” loan purchasing program administered by the Treasurer. The proposed program lacks clarity, definition, and proper sideboards.

These are only some of the uncertainties raised by the bill. OBA continues to analyze the bill and the -1 amendment. OBA also continues to lead a Cannabis Banking Coalition of state bankers associations in 25 states to support and press for a federal level solution.

In summary, HB 3169 is not a solution to the cannabis banking dilemma that we currently face. Federal action is necessary and increasingly likely to resolve the uncertainties associated with banking the cannabis industry. Once appropriate federal action takes place and more financial institutions enter the cannabis space, there will be no need for the kind of entity.

If you have questions, please contact Tim Martinez at (503) 510-9019 or Paul Cosgrove (503) 799-5679.