



SB-51 California Competes tax credit: refunds. (2019-2020)

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CALIFORNIA LEGISLATURE— 2019–2020 REGULAR SESSION

SENATE BILL

NO. 51

Introduced by Senator **Hertzberg Durazo**

~~(Principal coauthor: Assembly Member Bonta)(Coauthors: Senators Bradford, Galgiani, Moorlach, Wieckowski, and Wiener)(Coauthors: Assembly Members Jones-Sawyer, Lackey, McCarty, and Gonzalez)(Principal coauthor: Senator Allen)~~
(Principal coauthor: Assembly Member Calderon)

December 04, 2018

~~An act to amend Sections 99, 185, 301, 329, 1003, 1100, 14001.1, and 14101 of, and to add Division 2.5 (commencing with Section 11000) to, the Financial Code, relating to financial institutions, and declaring the urgency thereof, to take effect immediately.~~ *An act to amend Sections 17059.2 and 23689 of the Revenue and Taxation Code, relating to taxation, and making an appropriation therefor.*

LEGISLATIVE COUNSEL'S DIGEST

SB 51, as amended, **Hertzberg Durazo**. ~~Financial institutions: cannabis.~~ *California Competes tax credit: refunds.*

The Personal Income Tax Law and the Corporation Tax Law allow a credit (CalCompetes tax credit) against the taxes imposed under those laws, for each taxable year beginning on and after January 1, 2014, and before January 1, 2030, in an amount as provided in a written agreement between the Governor's Office of Business and Economic Development and the taxpayer, approved by the California Competes Tax Credit Committee, and based on specified factors, including the number of jobs the taxpayer will create or retain in the state and the amount of investment in the state by the taxpayer. Existing law establishes the continuously appropriated Tax Relief and Refund Account and provides that specified payments required to be made to taxpayers, including refunds, are to be paid from that account.

This bill, for taxable years beginning on or after January 1, 2021, would allow a qualified taxpayer, to the extent a CalCompetes tax credit amount exceeds a qualified taxpayer's tax liability for the taxable year, as specified, to elect to be paid a refund from the Tax Relief and Refund Account, not to exceed the amount of total taxes imposed by the state and paid by the qualified taxpayer during the taxable year. The bill would define a "qualified taxpayer" as a taxpayer that has created at least 5,000 prevailing wage, full-time or full-time equivalent jobs in the state each year for a period of 10 years. The bill would require a qualified taxpayer that receives a refund to reinvest the refund into immobile capital equipment that supports infrastructure improvements, expansion, or developments for media production facilities in the state, as provided.

By authorizing new refund payments to be paid from the continuously appropriated Tax Relief and Refund Account, this bill would make an appropriation.

~~(1) Existing law, the Financial Institutions Law, regulates the activities of various financial entities, including commercial banks, industrial banks, trust companies, credit unions, and savings and loan associations. The Banking Law defines and regulates state banks and commits the enforcement of banking laws to the Commissioner of Business Oversight. The California Credit Union Law provides for the licensure and regulation of credit unions by the Commissioner of Business Oversight and makes a willful violation of that law a crime.~~

~~The Control, Regulate and Tax Adult Use of Marijuana Act, an initiative measure approved as Proposition 64 at the November 8, 2016, statewide general election, authorizes a person who obtains a state license under the act to engage in commercial adult-use cannabis activity pursuant to that license and applicable local ordinances. The Medicinal and Adult Use Cannabis Regulation and Safety Act, among other things, consolidates the licensure and regulation of commercial medicinal and adult-use cannabis activities:~~

~~This bill would create the Cannabis Limited Charter Banking and Credit Union Law, to be administered by the Commissioner of Business Oversight and the Department of Business Oversight. The bill would create the Cannabis Limited Charter Bank and Credit Union Advisory Board and specify its composition, to include the Treasurer, the Controller, and the Chief of the Bureau of Cannabis Control, and commit to it the general responsibility for ensuring that this law functions in a safe and efficient way. The bill would prescribe the powers and duties of the board, including reviewing department enforcement reports, holding meetings that would be open to public comment, and issuing its own recommendations, which would be submitted to the Legislature and the Governor. The board would also be required to provide guidance on specified investment activities:~~

~~The bill would provide for the licensure and regulation of cannabis limited charter banks and credit unions for the purpose of providing banking services, as defined, to cannabis businesses. The bill would require a person who desires to be licensed as a cannabis limited charter bank or credit union to submit an application to the department, and would require that person to elect to form under either the Banking Law or the California Credit Union Law. The bill would authorize the department to charge an applicant for a cannabis limited charter bank or credit union license a reasonable fee. The bill would require a licensee to comply with all requirements in the Financial Institutions Law, and either the Banking Law or the California Credit Union Law, as applicable, except to the extent that any requirement of those laws are inconsistent with a provision of the Cannabis Limited Charter Banking and Credit Union Law. By expanding the application of the California Credit Union Law, a willful violation of which is a crime, the bill would impose a state-mandated local program. The bill would require a cannabis limited charter bank or credit union to adopt policies and practices to achieve the principles and goals outlined in the federal Bank Secrecy Act and cooperate with the federal Financial Crimes Enforcement Network. The bill would prohibit a cannabis limited charter bank or credit union from engaging in banking activity with any other financial institution that lacks a limited purpose charter issued under these provisions:~~

~~This bill would authorize a cannabis limited charter bank or credit union to issue to an account holder special purpose checks that would be valid for only specified purposes. The bill would authorize a cannabis limited charter bank or credit union to cash the checks it has issued, including those presented by parties that are not account holders, as specified. The bill would permit these checks to be used for the payment of state and local fees and taxes, payment of rent on property leased by, or on behalf of, the account holder's cannabis business, payment of vendors physically located in California, as specified, and the purchase of state and local bonds, as specified. The bill would provide that a person or entity is not required to accept these checks. The bill would require a cannabis limited charter bank or credit union to obtain and maintain insurance at all times that it is engaged in business, subject to certain requirements including that the insurance be in an amount acceptable to the commissioner. The bill would authorize a cannabis limited charter bank or credit union to charge fees for its banking services, and would require, in these circumstances, that each limited charter bank and credit union conspicuously post on its internet website the types of fees and their amounts, as specified. The bill would authorize a cannabis limited charter bank or credit union to enter into an agreement with another licensee to~~

~~form a banking network, subject to the approval of the commissioner, to facilitate the provision of cannabis banking services.~~

~~The bill would require the Department of Business Oversight to adopt emergency regulations and would prohibit the department from issuing a license for these purposes prior to July 1, 2020, except as specified.~~

~~The bill would make the Cannabis Limited Charter Banking and Credit Union Law inoperative if the federal government removes cannabis and cannabis-related substances from the federal schedule of controlled substances or enacts legislation that establishes protections for depository institutions that provide financial services to cannabis-related legitimate businesses. The bill would also require the department, if either of these events occur, to post notice of the occurrence on its internet website, send notice to both the Secretary of State and the Office of Legislative Counsel, and provide guidance for the orderly resolution of all cannabis limited charter banks or credit unions licensed, as specified. The bill would require each cannabis limited charter bank or credit union to resolve within one year in accordance with specified requirements and would authorize the department to take certain actions to carry out those provisions.~~

~~The bill would make other conforming changes and would also make a statement of legislative findings.~~

~~(2)The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

~~This bill would declare that it is to take effect immediately as an urgency statute.~~

Vote: 2/3 Appropriation: **no**yes Fiscal Committee: yes Local Program: **yes**no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. *Section 17059.2 of the Revenue and Taxation Code is amended to read:*

17059.2. (a) (1) For each taxable year beginning on and after January 1, 2014, and before January 1, 2030, there shall be allowed as a credit against the "net tax," as defined in Section 17039, an amount as determined by the committee pursuant to paragraph (2) and approved pursuant to Section 18410.2.

(2) The credit under this section shall be allocated by GO-Biz with respect to the 2013–14 fiscal year through and including the 2022–23 fiscal year. The amount of credit allocated to a taxpayer with respect to a fiscal year pursuant to this section shall be as set forth in a written agreement between GO-Biz and the taxpayer and shall be based on the following factors:

- (A) The number of jobs the taxpayer will create or retain in this state.
- (B) The compensation paid or proposed to be paid by the taxpayer to its employees, including wages and fringe benefits.
- (C) The amount of investment in this state by the taxpayer.
- (D) The extent of unemployment or poverty in the area according to the United States Census in which the taxpayer's project or business is proposed or located.
- (E) The incentives available to the taxpayer in this state, including incentives from the state, local government, and other entities.
- (F) The incentives available to the taxpayer in other states.
- (G) The duration of the proposed project and the duration the taxpayer commits to remain in this state.
- (H) The overall economic impact in this state of the taxpayer's project or business.
- (I) The strategic importance of the taxpayer's project or business to the state, region, or locality.
- (J) The opportunity for future growth and expansion in this state by the taxpayer's business.
- (K) The extent to which the anticipated benefit to the state exceeds the projected benefit to the taxpayer from the tax credit.

(L) For a credit allocated beginning with the 2018–19 fiscal year, the training opportunities offered by the taxpayer to its employees.

(3) The written agreement entered into pursuant to paragraph (2) shall include:

(A) Terms and conditions that include the taxable year or years for which the credit allocated shall be allowed, a minimum compensation level, and a minimum job retention period.

(B) Provisions indicating whether the credit is to be allocated in full upon approval or in increments based on mutually agreed upon milestones when satisfactorily met by the taxpayer.

(C) Provisions that allow the committee to recapture the credit, in whole or in part, if the taxpayer fails to fulfill the terms and conditions of the written agreement.

(b) (1) For taxable years beginning on or after January 1, 2021, a qualified taxpayer, to the extent an amount allowable under this section exceeds the tax liability computed under this part for the taxable year, and after being credited against other amounts due, if any, may elect to be paid a refund from the Tax Relief and Refund Account. The amount refunded under this subdivision, if any, shall not exceed the amount of total taxes imposed by the state and paid by the qualified taxpayer during the taxable year.

(2) To be eligible for a refund of the credit allowed by this section, the qualified taxpayer shall, upon request, provide necessary information, including certification from GO-Biz that the taxpayer is a qualified taxpayer, as determined by and in the form and manner prescribed by the Franchise Tax Board.

(3) Subdivision (f) shall apply if a qualified taxpayer does not elect to be paid a refund pursuant to this subdivision or if there are excess credits available after the refund is provided pursuant to this subdivision.

(4) A qualified taxpayer that receives a refund pursuant to this subdivision shall reinvest the refund into immobile capital equipment that supports infrastructure improvements, expansion, or developments for media production facilities in the state. A qualified taxpayer shall not reinvest refunds for the improvement of immobile capital equipment unless the improvements are made under a project labor agreement and using a skilled and trained workforce.

(5) For purposes of this subdivision, the following shall apply:

(A) "Qualified taxpayer" means a taxpayer that has created at least 5,000 prevailing wage, full-time or full-time equivalent jobs in the state each year for a period of 10 years.

(B) "Full-time equivalent" means the workload of the full-time equivalent job is comparable to one year of full-time work. One year of full-time work is measurable by the number of hours worked in one year, or by total wages paid in one year for that industry divided by the average annual salary.

(C) "Immobile capital equipment" means property of the type defined in Section 1250(c) of the Internal Revenue Code.

(D) "Project labor agreement" has the same meaning as defined in paragraph (1) of subdivision (b) of Section 2500 of the Public Contract Code.

(E) "Skilled and trained workforce" has the same meaning as provided in Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the Public Contract Code.

(6) (A) The Franchise Tax Board may prescribe any regulations necessary or appropriate to carry out the purposes of this subdivision, including any regulations to prevent improper claims from being filed or improper payments from being made with respect to the refund of the credit.

(B) The Franchise Tax Board may prescribe rules, guidelines, procedures, or other guidance to carry out the purposes of this subdivision.

(C) Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any regulation, rule, guideline, procedure, or other guidance prescribed by the Franchise Tax Board pursuant to this subdivision.

~~(b)~~

(c) For purposes of this section:

(1) "Committee" means the California Competes Tax Credit Committee established pursuant to Section 18410.2.

(2) "GO-Biz" means the Governor's Office of Business and Economic Development.

~~(c)~~

(d) For purposes of this section, GO-Biz shall do the following:

(1) Give priority to a taxpayer whose project or business is located or proposed to be located in an area of high unemployment or poverty.

(2) Negotiate with a taxpayer the terms and conditions of proposed written agreements that provide the credit allowed pursuant to this section to a taxpayer.

(3) Provide the negotiated written agreement to the committee for its approval pursuant to Section 18410.2.

(4) Inform the Franchise Tax Board of the terms and conditions of the written agreement upon approval of the written agreement by the committee.

(5) Inform the Franchise Tax Board of any recapture, in whole or in part, of a previously allocated credit upon approval of the recapture by the committee.

(6) Post on its ~~Internet Web site~~ *internet website* all of the following:

(A) The name of each taxpayer allocated a credit pursuant to this section.

(B) The estimated amount of the investment by each taxpayer.

(C) The estimated number of jobs created or retained.

(D) The amount of the credit allocated to the taxpayer.

(E) The amount of the credit recaptured from the taxpayer, if applicable.

(F) The primary location where the taxpayer has committed to increasing the net number of jobs or make investments. The primary location shall be listed by city or, in the case of unincorporated areas, by county.

(G) Information that identifies each tax credit award that was given a priority for being located in a high unemployment or poverty area, pursuant to paragraph (1).

(7) For allocation periods beginning with the 2018-19 fiscal year, when determining whether to enter into a written agreement with a taxpayer pursuant to this section, GO-Biz shall consider the extent to which the credit will influence the taxpayer's ability, willingness, or both, to create jobs in this state that might not otherwise be created in the state by the taxpayer or any other taxpayer. GO-Biz may also consider other factors, including, but not limited to, the following:

(A) The financial solvency of the taxpayer and the taxpayer's ability to finance its proposed expansion.

(B) The taxpayer's current and prior compliance with federal and state laws.

(C) Current and prior litigation involving the taxpayer.

(D) The reasonableness of the fee arrangement between the taxpayer and any third party providing any services related to the credit allowed pursuant to this section.

(E) Any other factors GO-Biz deems necessary to ensure that the administration of the credit allowed pursuant to this section is a model of accountability and transparency and that the effective use of the limited amount of credit available is maximized.

~~(d)~~

(e) For purposes of this section, the Franchise Tax Board shall do all of the following:

(1) (A) Except as provided in subparagraph (B), review the books and records of all taxpayers allocated a credit pursuant to this section to ensure compliance with the terms and conditions of the written agreement between the taxpayer and GO-Biz.

(B) In the case of a taxpayer that is a "small business," as defined in Section 17053.73, review the books and records of the taxpayer allocated a credit pursuant to this section to ensure compliance with the terms and conditions of the written agreement between the taxpayer and GO-Biz when, in the sole discretion of the Franchise Tax Board, a review of those books and records is appropriate or necessary in the best interests of the state.

(2) Notwithstanding Section 19542, notify GO-Biz of a possible breach of the written agreement by a taxpayer and provide detailed information regarding the basis for that determination.

(e)

(f) In the case where the credit allowed under this section exceeds the "net tax," as defined in Section 17039, for a taxable year, the excess credit may be carried over to reduce the "net tax" in the following taxable year, and succeeding five taxable years, if necessary, until the credit has been exhausted.

(f)

(g) Any recapture, in whole or in part, of a credit approved by the committee pursuant to Section 18410.2 shall be treated as a mathematical error appearing on the return. Any amount of tax resulting from that recapture shall be assessed by the Franchise Tax Board in the same manner as provided by Section 19051. The amount of tax resulting from the recapture shall be added to the tax otherwise due by the taxpayer for the taxable year in which the committee's recapture determination occurred.

(g)

(h) (1) The aggregate amount of credit that may be allocated in any fiscal year pursuant to this section and Section 23689 shall be an amount equal to the sum of subparagraphs (A), (B), and (C), less the amount specified in subparagraphs (D) and (E):

(A) Thirty million dollars (\$30,000,000) for the 2013–14 fiscal year, one hundred fifty million dollars (\$150,000,000) for the 2014–15 fiscal year, two hundred million dollars (\$200,000,000) for each fiscal year from 2015–16 to 2017–18, inclusive, and one hundred eighty million dollars (\$180,000,000) for each fiscal year from 2018–19 to 2022–23, inclusive.

(B) The unallocated credit amount, if any, from the preceding fiscal year.

(C) The amount of any previously allocated credits that have been recaptured.

(D) The amount estimated by the Director of Finance, in consultation with the Franchise Tax Board and the California Department of Tax and Fee Administration, to be necessary to limit the aggregation of the estimated amount of exemptions claimed pursuant to Section 6377.1 and of the amounts estimated to be claimed pursuant to this section and Sections 17053.73, 23626, and 23689 to no more than seven hundred fifty million dollars (\$750,000,000) for either the current fiscal year or the next fiscal year.

(i) The Director of Finance shall notify the Chairperson of the Joint Legislative Budget Committee of the estimated annual allocation authorized by this paragraph. Any allocation pursuant to these provisions shall be made no sooner than 30 days after written notification has been provided to the Chairperson of the Joint Legislative Budget Committee and the chairpersons of the committees of each house of the Legislature that consider appropriations, or not sooner than whatever lesser time the Chairperson of the Joint Legislative Budget Committee, or ~~his or her~~ *the chairperson's* designee, may determine.

(ii) In no event shall the amount estimated in this subparagraph be less than zero dollars (\$0).

(E) (i) For the 2015–16 fiscal year and each fiscal year thereafter, the amount of credit estimated by the Director of Finance to be allowed to all qualified taxpayers for that fiscal year pursuant to subparagraph (A) or subparagraph (B) of paragraph (1) of subdivision (c) of Section 23636.

(ii) If the amount available per fiscal year pursuant to this section and Section 23689 is less than the aggregate amount of credit estimated by the Director of Finance to be allowed to qualified taxpayers pursuant to subparagraph (A) or subparagraph (B) of paragraph (1) of subdivision (c) of Section 23636, the aggregate amount allowed pursuant to Section 23636 shall not be reduced and, in addition to the reduction required by clause (i), the aggregate amount of credit that may be allocated pursuant to this section and Section 23689 for the next fiscal year shall be reduced by the amount of that deficit.

(iii) It is the intent of the Legislature that the reductions specified in this subparagraph of the aggregate amount of credit that may be allocated pursuant to this section and Section 23689 shall continue if the repeal dates of the credits allowed by this section and Section 23689 are removed or extended.

(2) (A) In addition to the other amounts determined pursuant to paragraph (1), the Director of Finance may increase the aggregate amount of credit that may be allocated pursuant to this section and Section 23689 by up to twenty-five million dollars (\$25,000,000) per fiscal year through the 2022–23 fiscal year. The amount of any increase made pursuant to this paragraph, when combined with any increase made pursuant to paragraph (2) of subdivision ~~(g)~~ (h) of Section 23689, shall not exceed twenty-five million dollars (\$25,000,000) per fiscal year through the 2022–23 fiscal year.

(B) It is the intent of the Legislature that the Director of Finance increase the aggregate amount under subparagraph (A) in order to mitigate the reduction of the amount available due to the credit allowed to all qualified taxpayers pursuant to subparagraph (A) or (B) of paragraph (1) of subdivision (c) of Section 23636.

(3) Each fiscal year through the 2017–18 fiscal year, 25 percent of the aggregate amount of the credit that may be allocated pursuant to this section and Section 23689 shall be reserved for small business, as defined in Section 17053.73 or 23626.

(4) Each fiscal year, no more than 20 percent of the aggregate amount of the credit that may be allocated pursuant to this section shall be allocated to any one taxpayer.

~~(h)~~

(i) GO-Biz may prescribe rules and regulations as necessary to carry out the purposes of this section. Any rule or regulation prescribed pursuant to this section may be by adoption of an emergency regulation in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

~~(i)~~

(j) A written agreement between GO-Biz and a taxpayer with respect to the credit authorized by this section shall comply with existing law on the date the agreement is executed.

~~(j)~~

(k) (1) Upon the effective date of this section, the Department of Finance shall estimate the total dollar amount of credits that will be claimed under this section with respect to each fiscal year from the 2013–14 fiscal year to the 2029–30 fiscal year, inclusive.

(2) The Franchise Tax Board shall annually provide to the Joint Legislative Budget Committee, by no later than March 1, a report of the total dollar amount of the credits claimed under this section with respect to the relevant fiscal year. The report shall compare the total dollar amount of credits claimed under this section with respect to that fiscal year with the department's estimate with respect to that same fiscal year. If the total dollar amount of credits claimed for the fiscal year is less than the estimate for that fiscal year, the report shall identify options for increasing annual claims of the credit so as to meet estimated amounts.

~~(k)~~

(l) (1) Notwithstanding Section 19542, on or before October 1, 2019, GO-Biz shall provide to the Legislative Analyst's Office a report on the credits allocated pursuant to this section for the 2018–19 fiscal year. This report shall include the following:

(A) A detailed description of the methodology used to evaluate applications and allocate credits as described by Section 8030 of Title 10 of the California Code of Regulations, or any successor regulation.

(B) For each taxpayer that applies for a credit, a list that includes the applicant's name, "aggregate employee compensation," "aggregate investment," and "cost-benefit ratio" as those terms are defined for purposes of, or used in, Section 8030 of Title 10 of the California Code of Regulations.

(C) For each written agreement recommended to the committee pursuant to this section, a detailed justification for GO-Biz's decision to enter into a written agreement with the taxpayer.

(2) (A) On or before April 1, 2020, the Legislative Analyst's Office shall provide to the Assembly Committee on Revenue and Taxation, the Senate Committee on Governance and Finance, the budget committees of both houses, and the public with a report evaluating the report required by paragraph (1).

(B) GO-Biz, the Franchise Tax Board, and all other relevant state agencies shall provide additional information, as specified by the Legislative Analyst's Office, as needed to research the reports required by this subdivision.

(C) Any information received by the Legislative Analyst's Office pursuant to this subdivision, that has not otherwise been made public, shall be considered confidential taxpayer information subject to Section 19542.

(D) The Legislative Analyst's Office may publish statistics in conjunction with the reports required by this subdivision that are derived from information provided to the Legislative Analyst's Office pursuant to this section, if the published statistics are aggregated to prevent the identification of particular taxpayers under this part.

(H)

(m) This section is repealed on December 1, 2030.

SEC. 2. *Section 23689 of the Revenue and Taxation Code is amended to read:*

23689. (a) (1) For each taxable year beginning on and after January 1, 2014, and before January 1, 2030, there shall be allowed as a credit against the "tax," as defined in Section 23036, an amount as determined by the committee pursuant to paragraph (2) and approved pursuant to Section 18410.2.

(2) The credit under this section shall be allocated by GO-Biz with respect to the 2013–14 fiscal year through and including the 2022–23 fiscal year. The amount of credit allocated to a taxpayer with respect to a fiscal year pursuant to this section shall be as set forth in a written agreement between GO-Biz and the taxpayer and shall be based on the following factors:

(A) The number of jobs the taxpayer will create or retain in this state.

(B) The compensation paid or proposed to be paid by the taxpayer to its employees, including wages and fringe benefits.

(C) The amount of investment in this state by the taxpayer.

(D) The extent of unemployment or poverty in the area according to the United States Census in which the taxpayer's project or business is proposed or located.

(E) The incentives available to the taxpayer in this state, including incentives from the state, local government, and other entities.

(F) The incentives available to the taxpayer in other states.

(G) The duration of the proposed project and the duration the taxpayer commits to remain in this state.

(H) The overall economic impact in this state of the taxpayer's project or business.

(I) The strategic importance of the taxpayer's project or business to the state, region, or locality.

(J) The opportunity for future growth and expansion in this state by the taxpayer's business.

(K) The extent to which the anticipated benefit to the state exceeds the projected benefit to the taxpayer from the tax credit.

(L) For a credit allocated beginning with the 2018–19 fiscal year, the training opportunities offered by the taxpayer to its employees.

(3) The written agreement entered into pursuant to paragraph (2) shall include:

(A) Terms and conditions that include the taxable year or years for which the credit allocated shall be allowed, a minimum compensation level, and a minimum job retention period.

(B) Provisions indicating whether the credit is to be allocated in full upon approval or in increments based on mutually agreed upon milestones when satisfactorily met by the taxpayer.

(C) Provisions that allow the committee to recapture the credit, in whole or in part, if the taxpayer fails to fulfill the terms and conditions of the written agreement.

(b) (1) For taxable years beginning on or after January 1, 2021, a qualified taxpayer, to the extent an amount allowable under this section exceeds the tax liability computed under this part for the taxable year, and after

being credited against other amounts due, if any, may elect to be paid a refund from the Tax Relief and Refund Account. The amount refunded under this subdivision, if any, shall not exceed the amount of total taxes imposed by the state and paid by the qualified taxpayer during the taxable year.

(2) To be eligible for a refund of the credit allowed by this section, the qualified taxpayer shall, upon request, provide necessary information, including certification from GO-Biz that the taxpayer is a qualified taxpayer, as determined by and in the form and manner prescribed by the Franchise Tax Board.

(3) Subdivision (f) shall apply if a qualified taxpayer does not elect to be paid a refund pursuant to this subdivision or if there are excess credits available after the refund is provided pursuant to this subdivision.

(4) A qualified taxpayer that receives a refund pursuant to this subdivision shall reinvest the refund into immobile capital equipment that supports infrastructure improvements, expansion, or developments for media production facilities in the state. A qualified taxpayer shall not reinvest refunds for the improvement of immobile capital equipment unless the improvements are made under a project labor agreement and using a skilled and trained workforce.

(5) For purposes of this subdivision, the following shall apply:

(A) "Qualified taxpayer" means a taxpayer that has created at least 5,000 prevailing wage, full-time or full-time equivalent jobs in the state each year for a period of 10 years.

(B) "Full-time equivalent" means the workload of the full-time equivalent job is comparable to one year of full-time work. One year of full-time work is measurable by the number of hours worked in one year, or by total wages paid in one year for that industry divided by the average annual salary.

(C) "Immobile capital equipment" means property of the type defined in Section 1250(c) of the Internal Revenue Code.

(D) "Project labor agreement" has the same meaning as defined in paragraph (1) of subdivision (b) of Section 2500 of the Public Contract Code.

(E) "Skilled and trained workforce" has the same meaning as provided in Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the Public Contract Code.

(6) (A) The Franchise Tax Board may prescribe any regulations necessary or appropriate to carry out the purposes of this subdivision, including any regulations to prevent improper claims from being filed or improper payments from being made with respect to the refund of the credit.

(B) The Franchise Tax Board may prescribe rules, guidelines, procedures, or other guidance to carry out the purposes of this subdivision.

(C) Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any regulation, rule, guideline, procedure, or other guidance prescribed by the Franchise Tax Board pursuant to this subdivision.

~~(b)~~

(c) For purposes of this section:

(1) "Committee" means the California Competes Tax Credit Committee established pursuant to Section 18410.2.

(2) "GO-Biz" means the Governor's Office of Business and Economic Development.

~~(e)~~

(d) For purposes of this section, GO-Biz shall do the following:

(1) Give priority to a taxpayer whose project or business is located or proposed to be located in an area of high unemployment or poverty.

(2) Negotiate with a taxpayer the terms and conditions of proposed written agreements that provide the credit allowed pursuant to this section to a taxpayer.

(3) Provide the negotiated written agreement to the committee for its approval pursuant to Section 18410.2.

(4) Inform the Franchise Tax Board of the terms and conditions of the written agreement upon approval of the written agreement by the committee.

(5) Inform the Franchise Tax Board of any recapture, in whole or in part, of a previously allocated credit upon approval of the recapture by the committee.

(6) Post on its ~~Internet Web site~~ [internet website](#) all of the following:

(A) The name of each taxpayer allocated a credit pursuant to this section.

(B) The estimated amount of the investment by each taxpayer.

(C) The estimated number of jobs created or retained.

(D) The amount of the credit allocated to the taxpayer.

(E) The amount of the credit recaptured from the taxpayer, if applicable.

(F) The primary location where the taxpayer has committed to increasing the net number of jobs or make investments. The primary location shall be listed by city or, in the case of unincorporated areas, by county.

(G) Information that identifies each tax credit award that was given a priority for being located in a high unemployment or poverty area, pursuant to paragraph (1).

(7) For allocation periods beginning with the 2018–19 fiscal year, when determining whether to enter into a written agreement with a taxpayer pursuant to this section, GO-Biz shall consider the extent to which the credit will influence the taxpayer’s ability, willingness, or both, to create jobs in this state that might not otherwise be created in the state by the taxpayer or any other taxpayer. GO-Biz may also consider other factors, including, but not limited to, the following:

(A) The financial solvency of the taxpayer and the taxpayer’s ability to finance its proposed expansion.

(B) The taxpayer’s current and prior compliance with federal and state laws.

(C) Current and prior litigation involving the taxpayer.

(D) The reasonableness of the fee arrangement between the taxpayer and any third party providing any services related to the credit allowed pursuant to this section.

(E) Any other factors GO-Biz deems necessary to ensure that the administration of the credit allowed pursuant to this section is a model of accountability and transparency and that the effective use of the limited amount of credit available is maximized.

~~(d)~~

~~(e)~~ For purposes of this section, the Franchise Tax Board shall do all of the following:

(1) (A) Except as provided in subparagraph (B), review the books and records of all taxpayers allocated a credit pursuant to this section to ensure compliance with the terms and conditions of the written agreement between the taxpayer and GO-Biz.

(B) In the case of a taxpayer that is a “small business,” as defined in Section 23626, review the books and records of the taxpayer allocated a credit pursuant to this section to ensure compliance with the terms and conditions of the written agreement between the taxpayer and GO-Biz when, in the sole discretion of the Franchise Tax Board, a review of those books and records is appropriate or necessary in the best interests of the state.

(2) Notwithstanding Section 19542, notify GO-Biz of a possible breach of the written agreement by a taxpayer and provide detailed information regarding the basis for that determination.

~~(e)~~

~~(f)~~ In the case where the credit allowed under this section exceeds the “tax,” as defined in Section 23036, for a taxable year, the excess credit may be carried over to reduce the “tax” in the following taxable year, and succeeding five taxable years, if necessary, until the credit has been exhausted.

~~(f)~~

(g) Any recapture, in whole or in part, of a credit approved by the committee pursuant to Section 18410.2 shall be treated as a mathematical error appearing on the return. Any amount of tax resulting from that recapture shall be assessed by the Franchise Tax Board in the same manner as provided by Section 19051. The amount of tax resulting from the recapture shall be added to the tax otherwise due by the taxpayer for the taxable year in which the committee's recapture determination occurred.

~~(g)~~

(h) (1) The aggregate amount of credit that may be allocated in any fiscal year pursuant to this section and Section 17059.2 shall be an amount equal to the sum of subparagraphs (A), (B), and (C), less the amount specified in subparagraphs (D) and (E):

(A) Thirty million dollars (\$30,000,000) for the 2013–14 fiscal year, one hundred fifty million dollars (\$150,000,000) for the 2014–15 fiscal year, two hundred million dollars (\$200,000,000) for each fiscal year from 2015–16 to 2017–18, inclusive, and one hundred eighty million dollars (\$180,000,000) for each fiscal year from 2018–19 to 2022–23, inclusive.

(B) The unallocated credit amount, if any, from the preceding fiscal year.

(C) The amount of any previously allocated credits that have been recaptured.

(D) The amount estimated by the Director of Finance, in consultation with the Franchise Tax Board and the California Department of Tax and Fee Administration, to be necessary to limit the aggregation of the estimated amount of exemptions claimed pursuant to Section 6377.1 and of the amounts estimated to be claimed pursuant to this section and Sections 17053.73, 17059.2, and 23626 to no more than seven hundred fifty million dollars (\$750,000,000) for either the current fiscal year or the next fiscal year.

(i) The Director of Finance shall notify the Chairperson of the Joint Legislative Budget Committee of the estimated annual allocation authorized by this paragraph. Any allocation pursuant to these provisions shall be made no sooner than 30 days after written notification has been provided to the Chairperson of the Joint Legislative Budget Committee and the chairpersons of the committees of each house of the Legislature that consider appropriations, or not sooner than whatever lesser time the Chairperson of the Joint Legislative Budget Committee, or ~~his or her~~ *the chairperson's* designee, may determine.

(ii) In no event shall the amount estimated in this subparagraph be less than zero dollars (\$0).

(E) (i) For the 2015–16 fiscal year and each fiscal year thereafter, the amount of credit estimated by the Director of Finance to be allowed to all qualified taxpayers for that fiscal year pursuant to subparagraph (A) or subparagraph (B) of paragraph (1) of subdivision (c) of Section 23636.

(ii) If the amount available per fiscal year pursuant to this section and Section 17059.2 is less than the aggregate amount of credit estimated by the Director of Finance to be allowed to qualified taxpayers pursuant to subparagraph (A) or subparagraph (B) of paragraph (1) of subdivision (c) of Section 23636, the aggregate amount allowed pursuant to Section 23636 shall not be reduced and, in addition to the reduction required by clause (i), the aggregate amount of credit that may be allocated pursuant to this section and Section 17059.2 for the next fiscal year shall be reduced by the amount of that deficit.

(iii) It is the intent of the Legislature that the reductions specified in this subparagraph of the aggregate amount of credit that may be allocated pursuant to this section and Section 17059.2 shall continue if the repeal dates of the credits allowed by this section and Section 17059.2 are removed or extended.

(2) (A) In addition to the other amounts determined pursuant to paragraph (1), the Director of Finance may increase the aggregate amount of credit that may be allocated pursuant to this section and Section 17059.2 by up to twenty-five million dollars (\$25,000,000) per fiscal year through the 2022–23 fiscal year. The amount of any increase made pursuant to this paragraph, when combined with any increase made pursuant to paragraph (2) of subdivision ~~(g)~~ (h) of Section 17059.2, shall not exceed twenty-five million dollars (\$25,000,000) per fiscal year through the 2022–23 fiscal year.

(B) It is the intent of the Legislature that the Director of Finance increase the aggregate amount under subparagraph (A) in order to mitigate the reduction of the amount available due to the credit allowed to all qualified taxpayers pursuant to subparagraph (A) or (B) of paragraph (1) of subdivision (c) of Section 23636.

(3) Each fiscal year through the 2017–18 fiscal year, 25 percent of the aggregate amount of the credit that may be allocated pursuant to this section and Section 17059.2 shall be reserved for "small business," as defined in

Section 17053.73 or 23626.

(4) Each fiscal year, no more than 20 percent of the aggregate amount of the credit that may be allocated pursuant to this section shall be allocated to any one taxpayer.

(h)

(i) GO-Biz may prescribe rules and regulations as necessary to carry out the purposes of this section. Any rule or regulation prescribed pursuant to this section may be by adoption of an emergency regulation in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(i)

(j) (1) A written agreement between GO-Biz and a taxpayer with respect to the credit authorized by this section shall not restrict, broaden, or otherwise alter the ability of the taxpayer to assign that credit or any portion thereof in accordance with Section 23663.

(2) A written agreement between GO-Biz and a taxpayer with respect to the credit authorized by this section must comply with existing law on the date the agreement is executed.

(j)

(k) (1) Upon the effective date of this section, the Department of Finance shall estimate the total dollar amount of credits that will be claimed under this section with respect to each fiscal year from the 2013–14 fiscal year to the 2029–30 fiscal year, inclusive.

(2) The Franchise Tax Board shall annually provide to the Joint Legislative Budget Committee, by no later than March 1, a report of the total dollar amount of the credits claimed under this section with respect to the relevant fiscal year. The report shall compare the total dollar amount of credits claimed under this section with respect to that fiscal year with the department's estimate with respect to that same fiscal year. If the total dollar amount of credits claimed for the fiscal year is less than the estimate for that fiscal year, the report shall identify options for increasing annual claims of the credit so as to meet estimated amounts.

(k)

(l) (1) Notwithstanding Section 19542, on or before October 1, 2019, GO-Biz shall provide to the Legislative Analyst's Office a report on the credits allocated pursuant to this section for the 2018–19 fiscal year. This report shall include the following:

(A) A detailed description of the methodology used to evaluate applications and allocate credits as described by Section 8030 of Title 10 of the California Code of Regulations, or any successor regulation.

(B) For each taxpayer that applies for a credit, a list that includes the applicant's name, "aggregate employee compensation," "aggregate investment," and "cost-benefit ratio" as those terms are defined for purposes of, or used in, Section 8030 of Title 10 of the California Code of Regulations.

(C) For each written agreement recommended to the committee pursuant to this section, a detailed justification for GO-Biz's decision to enter into a written agreement with the taxpayer.

(2) (A) On or before April 1, 2020, the Legislative Analyst's Office shall provide to the Assembly Committee on Revenue and Taxation, the Senate Committee on Governance and Finance, the budget committees of both houses, and the public with a report evaluating the report required by paragraph (1).

(B) GO-Biz, the Franchise Tax Board, and all other relevant state agencies shall provide additional information, as specified by the Legislative Analyst's Office, as needed to research the reports required by this subdivision.

(C) Any information received by the Legislative Analyst's Office pursuant to this subdivision, that has not otherwise been made public, shall be considered confidential taxpayer information subject to Section 19542.

(D) The Legislative Analyst's Office may publish statistics in conjunction with the reports required by this subdivision that are derived from information provided to the Legislative Analyst's Office pursuant to this section, if the published statistics are aggregated to prevent the identification of particular taxpayers under this part.

(l)

(m) This section is repealed on December 1, 2030.

~~SECTION 1.(a)The Legislature finds and declares:~~

~~(1)In November 2016, California voters passed Proposition 64, the Control, Regulate and Tax Adult Use of Marijuana Act, authorizing recreational use of marijuana subject to specified limits. Medicinal cannabis use has been legal under California law since 1996 with the passage of Proposition 215, the Compassionate Use Act of 1996.~~

~~(2)Since 1996, a network of producers, distributors, and dispensaries have developed in California to serve the needs of the medical cannabis community. All of these businesses are expected to expand, and new businesses are expected to join them, in order to serve recreational cannabis users.~~

~~(3)Cannabis remains illegal under federal law. The United States Drug Enforcement Administration classifies cannabis as a Schedule I drug. As a result, the majority of financial institutions that take deposits, including banks, thrifts, and credit unions, do not serve cannabis businesses. This status precludes cannabis-related businesses from depositing income in, or engaging in other banking-related activities with, federally insured and regulated financial institutions and from using a federal clearinghouse to process their payments.~~

~~(4)Since most financial institutions will not serve cannabis businesses because of the conflict of federal law with state law, these businesses are unable to open and use checking accounts, make or receive electronic payments, or accept credit or debit cards.~~

~~(5)While income from the sale of cannabis products is considered ill-gotten gains by the federal government, that income is still taxable. The Internal Revenue Service specifically states in Publication 525, Taxable and Nontaxable Income, that "Income from illegal activities, such as money from dealing illegal drugs, must be included in your income on Form 1040, line 21, or on Schedule C or Schedule C-EZ (Form 1040) if from your self-employment activity."~~

~~(6)The need for banking services for the cannabis industry is at an all-time high, given that the industry is now expected to generate more than \$8,000,000,000 in revenue annually.~~

~~(7)The lack of banking services has created both regulatory and public safety issues. State and local governments must be able to audit and perform accounting and other accountability functions affecting cannabis-related businesses. This is made significantly more difficult when the majority of transactions are completed with cash.~~

~~(8)With financial services unavailable to cannabis businesses, these businesses are less able to pay taxes and follow California regulations governing cannabis.~~

~~(9)Additionally, the lack of access to financial services has created public safety issues for businesses that need to pay high security costs to safeguard their income and their employees, who risk being robbed when managing and transporting cash.~~

~~(10)California voters have spoken in support of the new cannabis laws. Without a change in law regarding financial services, businesses providing services that are lawful under state law may elect to remain underground and not become regulated, tax-paying California businesses, as the voters intended.~~

~~(11)In furtherance of the will of the voters, the California government has a responsibility to enact appropriate implementing legislation for Proposition 64. The current conflict with federal law creates a significant problem requiring legislative attention. The state has a duty to provide a mechanism to help these lawful businesses to gain access to banking services that is consistent with the will of California voters.~~

~~(b)It is the intent of the Legislature that banks and other financial institutions support and maintain good faith relationships with banks doing business with properly licensed cannabis businesses in this state.~~

~~SEC. 2.Section 99 of the Financial Code is amended to read:~~

~~99.This division, Division 1.1 (commencing with Section 1000), Division 1.2 (commencing with Section 2000), Division 1.6 (commencing with Section 4800), Division 2 (commencing with Section 5000), Division 2.5 (commencing with Section 11000), Division 5 (commencing with Section 14000), Division 7 (commencing with Section 18000), and Division 15 (commencing with Section 31000) shall be known, and may be cited, as the "Financial Institutions Law."~~

~~SEC. 3.Section 185 of the Financial Code is amended to read:~~

~~185."Licensee" has the following meanings:~~

~~(a)Any bank authorized by the commissioner pursuant to Section 1042 to transact banking or trust business:~~

~~(b)Any industrial bank authorized by the commissioner pursuant to Section 1042 to transact industrial banking business:~~

~~(c)Any trust company authorized by the commissioner pursuant to Section 1042 to transact trust business:~~

~~(d)Any foreign (other nation) bank that is licensed under Article 2 (commencing with Section 1780) of Chapter 20 or under Article 3 (commencing with Section 1800) of Chapter 20:~~

~~(e)Any person licensed by the commissioner as a money transmitter pursuant to Division 1.2 (commencing with Section 2000):~~

~~(f)Any person authorized by the commissioner to conduct the business of a savings association pursuant to Division 2 (commencing with Section 5000):~~

~~(g)Any credit union authorized by the commissioner to conduct business pursuant to Section 14154:~~

~~(h)Any foreign (other state) credit union licensed by the commissioner to conduct business pursuant to Chapter 11 (commencing with Section 16000) of Division 5:~~

~~(i)Any foreign (other nation) credit union licensed by the commissioner to conduct business pursuant to Chapter 12 (commencing with Section 16500) of Division 5:~~

~~(j)Any industrial loan company authorized by the commissioner to conduct insurance premium finance business pursuant to Division 7 (commencing with Section 18000):~~

~~(k)Any corporation licensed by the commissioner as a business and industrial development corporation pursuant to Section 31154:~~

~~(l)Any cannabis limited charter bank or credit union authorized by the commissioner to conduct banking services pursuant to Division 2.5 (commencing with Section 11000):~~

~~SEC. 4. Section 301 of the Financial Code is amended to read:~~

~~301.(a)This chapter is applicable to this division, Division 1.1 (commencing with Section 1000), Division 1.2 (commencing with Section 2000), Division 1.6 (commencing with Section 4800), Division 2.5 (commencing with Section 11000), Division 5 (commencing with Section 14000), Division 7 (commencing with Section 18000), and Division 15 (commencing with Section 31000):~~

~~(b)Except as provided in subdivision (c), this article, and Articles 2 (commencing with Section 320) and 3 (commencing with Section 350) are applicable to the administration of laws by the Division of Corporations:~~

~~(c)Sections 329, 330, 332, 335, 336, 357, 378, 379, and 381 are not applicable to the Division of Corporations:~~

~~SEC. 5. Section 329 of the Financial Code is amended to read:~~

~~329.(a)For purposes of this section, the following definitions apply:~~

~~(1)"Applicable law" means:~~

~~(A)With respect to any bank, Division 1.6 (commencing with Section 4800), and any of the following provisions:~~

~~(i)Article 6 (commencing with Section 405) of Chapter 3:~~

~~(ii)Article 3 (commencing with Section 1130) of Chapter 5 of Division 1.1:~~

~~(iii)Chapter 6 (commencing with Section 1200) of Division 1.1:~~

~~(iv)Chapter 10 (commencing with Section 1320) of Division 1.1:~~

~~(v)Chapter 14 (commencing with Section 1460) of Division 1.1:~~

~~(vi)Article 1 (commencing with Section 1530) of Chapter 15 of Division 1.1:~~

~~(vii)Chapter 16 (commencing with Section 1550) of Division 1.1:~~

~~(viii)Chapter 20 (commencing with Section 1750) of Division 1.1:~~

~~(ix)Section 456:~~

~~(x)Section 457:~~

~~(xi)Section 459:~~

~~(xii)Section 460:~~

~~(xiii)Section 461:~~

~~(xiv)Section 1331:~~

~~(xv)Chapter 21 (commencing with Section 1850) of Division 1.1:~~

~~(xvi)Chapter 18 (commencing with Section 1660) of Division 1.1:~~

~~(xvii)Chapter 19 (commencing with Section 1670) of Division 1.1:~~

~~(B)With respect to any savings association, any provision of Division 1.6 (commencing with Section 4800) and Division 2 (commencing with Section 5000):~~

~~(C)With respect to any insurance premium finance agency, any provision of Division 7 (commencing with Section 18000):~~

~~(D)With respect to any business and industrial development corporation, any provision of Division 15 (commencing with Section 31000):~~

~~(E)With respect to any credit union, any of the following provisions:~~

~~(i)Section 14252:~~

~~(ii)Section 14253:~~

~~(iii)Section 14255:~~

~~(iv)Article 4 (commencing with Section 14350) of Chapter 3 of Division 5:~~

~~(v)Section 14401:~~

~~(vi)Section 14404:~~

~~(vii)Section 14408, only as that section applies to gifts to directors, volunteers, and employees, and the related family or business interests of the directors, volunteers, and employees:~~

~~(viii)Section 14409:~~

~~(ix)Section 14410:~~

~~(x)Article 5 (commencing with Section 14600) of Chapter 4 of Division 5:~~

~~(xi)Article 6 (commencing with Section 14650) of Chapter 4 of Division 5, excluding subdivision (a) of Section 14651:~~

~~(xii)Section 14803:~~

~~(xiii)Section 14851:~~

~~(xiv)Section 14858:~~

~~(xv)Section 14860:~~

~~(xvi)Section 14861:~~

~~(xvii)Section 14863:~~

~~(F)With respect to any money transmitter, any provision of Division 1.2 (commencing with Section 2000):~~

~~(G)With respect to any cannabis limited charter bank or credit union, any provision of Division 2.5 (commencing with Section 11000):~~

~~(2) "Licensee" means any bank, savings association, credit union, trust company, cannabis limited charter bank or credit union, money transmitter, insurance premium finance agency, or business and industrial development corporation that is authorized by the commissioner to conduct business in this state.~~

~~(b) Notwithstanding any other provision of this code that applies to a licensee or a subsidiary of a licensee, after notice and an opportunity to be heard, the commissioner may, by order that shall include findings of fact which incorporates a determination made in accordance with subdivision (e), levy civil penalties against any licensee or any subsidiary of a licensee who has violated any provision of applicable law, any order issued by the commissioner, any written agreement between the commissioner and the licensee or subsidiary of the licensee, or any condition of any approval issued by the commissioner. The commissioner shall have the sole authority to bring any action with respect to a violation of applicable law subject to a penalty imposed under this section.~~

~~Except as provided in paragraphs (1) and (2), any penalty imposed by the commissioner may not exceed one thousand dollars (\$1,000) per day, provided that the aggregate penalty of all offenses in any one action against any licensee or subsidiary of a licensee shall not exceed fifty thousand dollars (\$50,000).~~

~~(1) If the commissioner determines that any licensee or subsidiary of the licensee has recklessly violated any applicable law, any order issued by the commissioner, any provision of any written agreement between the commissioner and the licensee or subsidiary, or any condition of any approval issued by the commissioner, the commissioner may impose a penalty not to exceed five thousand dollars (\$5,000) per day, provided that the aggregate penalty of all offenses in an action against any licensee or subsidiary of a licensee shall not exceed seventy-five thousand dollars (\$75,000).~~

~~(2) If the commissioner determines that any licensee or subsidiary of the licensee has knowingly violated any applicable law, any order issued by the commissioner, any provision of any written agreement between the commissioner and the licensee or subsidiary, or any condition of any approval issued by the commissioner, the commissioner may impose a penalty not to exceed ten thousand dollars (\$10,000) per day, provided that the aggregate penalty of all offenses in an action against any licensee or subsidiary of a licensee shall not exceed 1 percent of the total assets of the licensee or subsidiary of a licensee subject to the penalty.~~

~~(c) Nothing in this section shall be construed to impair or impede the commissioner from pursuing any other administrative action allowed by law.~~

~~(d) Nothing in this section shall be construed to impair or impede the commissioner from bringing an action in court to enforce any law or order the commissioner has issued, including orders issued under this section. Nothing in this section shall be construed to impair or impede the commissioner from seeking any other damages or injunction allowed by law.~~

~~(e) In determining the amount and the appropriateness of initiating a civil money penalty under subdivision (b), the commissioner shall consider all of the following:~~

~~(1) Evidence that the violation or practice or breach of duty was intentional or was committed with a disregard of the law or with a disregard of the consequences to the institution.~~

~~(2) The duration and frequency of the violations, practices, or breaches of duties.~~

~~(3) The continuation of the violations, practices, or breaches of duty after the licensee or subsidiary of the licensee was notified, or, alternatively, its immediate cessation and correction.~~

~~(4) The failure to cooperate with the commissioner in effecting early resolution of the problem.~~

~~(5) Evidence of concealment of the violation, practice, or breach of duty or, alternatively, voluntary disclosure of the violation, practice, or breach of duty.~~

~~(6) Any threat of loss, actual loss, or other harm to the institution, including harm to the public confidence in the institution, and the degree of that harm.~~

~~(7) Evidence that a licensee or subsidiary of a licensee received financial gain or other benefit as a result of the violation, practice, or breach of duty.~~

~~(8) Evidence of any restitution paid by a licensee or subsidiary of a licensee of losses resulting from the violation, practice, or breach of duty.~~

~~(9) History of prior violations, practices, or breaches of duty, particularly where they are similar to the actions under consideration.~~

~~(10) Previous criticism of the institution for similar actions:~~

~~(11) Presence or absence of a compliance program and its effectiveness:~~

~~(12) Tendency to engage in violations of law, unsafe or unsound financial institutions practices, or breaches of duties:~~

~~(13) The existence of agreements, commitments, orders, or conditions imposed in writing intended to prevent the violation, practice, or breach of duty:~~

~~(14) Whether the violation, practice, or breach of duty causes quantifiable, economic benefit or loss to the licensee or the subsidiary of the licensee. In those cases, removal of the benefit or recompense of the loss usually will be insufficient, by itself, to promote compliance with the applicable law, order, or written agreement. The penalty amount should reflect a remedial purpose and should provide a deterrent to future misconduct:~~

~~(15) Other factors as the commissioner may, in their opinion, consider relevant to assessing the penalty or establishing the amount of the penalty:~~

~~(f) The amounts collected under this section shall be deposited in the appropriate fund of the department. For purposes of this subdivision, the term "appropriate fund" means the fund to which the annual assessments of fined licensees, or the parent licensee of the fined subsidiary, are credited:~~

~~SEC. 6. Section 1003 of the Financial Code is amended to read:~~

~~1003. Except where explicitly stated or the context provides otherwise, this division is applicable to the following:~~

~~(a) All corporations engaging in commercial banking, industrial banking, or the trust business:~~

~~(b) All national banking associations authorized to transact business in this state to the extent that the provisions of this division are not inconsistent with and do not infringe paramount federal laws governing national banking associations:~~

~~(c) All cannabis limited charter banks that elect to form under this division to the extent that the provisions of this division are not inconsistent with Division 2.5 (commencing with Section 11000):~~

~~(d) All other corporations that subject themselves to the special provisions and sections of this division:~~

~~(e) All other persons, associations, copartnerships, or corporations who, by violating any of its provisions, become subject to the penalties provided for in this division:~~

~~SEC. 7. Section 1100 of the Financial Code is amended to read:~~

~~1100. The articles of each bank shall contain the applicable one of the following statements:~~

~~(a) In case the bank is, or is proposed to be, a commercial bank not authorized to engage in trust business, that the purpose of the corporation is to engage in commercial banking business and any other lawful activities which are not, by applicable laws or regulations, prohibited to a commercial bank:~~

~~(b) In case the bank is, or is proposed to be, a commercial bank authorized to engage in trust business, that the purpose of the corporation is to engage in commercial banking business and trust business and any other lawful activities which are not, by applicable laws or regulations, prohibited to a commercial bank authorized to engage in trust business:~~

~~(c) In case the bank is, or is proposed to be, an industrial bank not authorized to engage in trust business, that the purpose of the corporation is to engage in industrial banking business and any other lawful activities which are not, by applicable laws or regulations, prohibited to an industrial bank:~~

~~(d) In case the bank is, or is proposed to be, an industrial bank authorized to engage in trust business, that the purpose of the corporation is to engage in industrial banking business and trust business and any other lawful activities which are not, by applicable laws or regulations, prohibited to an industrial bank authorized to engage in trust business:~~

~~(e) In case the bank is, or is proposed to be, a trust company (other than a commercial bank authorized to engage in trust business), that the purpose of the corporation is to engage in trust business and any other lawful activities which are not, by applicable laws or regulations, prohibited to a trust company:~~

~~(f) In case the bank is, or is proposed to be, a cannabis limited charter bank, that the purpose of the corporation is to engage in the business of providing limited banking services to cannabis businesses under Division 2.5 (commencing with Section 11000). This subdivision shall become inoperative if Division 2.5 (commencing with Section 11000) becomes inoperative pursuant to Section 11101.~~

~~SEC. 8. Division 2.5 (commencing with Section 11000) is added to the Financial Code, to read:~~

~~2.5. Cannabis Limited Charter Banking And Credit Union Law~~

~~1. General Provisions~~

~~1. Short Title and Construction~~

~~11000. This division is known, and may be cited, as the Cannabis Limited Charter Banking and Credit Union Law.~~

~~2. Definitions~~

~~11005. For purposes of this chapter:~~

~~(a) "Applicant" means a person or entity that submits an application to be licensed by the state to provide banking services to a cannabis business pursuant to this division.~~

~~(b) "Banking services" means 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.~~

~~(c) "Board" means the Cannabis Limited Charter Bank and Credit Union Advisory Board.~~

~~(d) "Cannabis business" means a person licensed to engage in commercial cannabis activity under Division 10 (commencing with Section 26000) of the Business and Professions Code. The term "cannabis business" also includes an ancillary business or profession that serves a person licensed to engage in commercial cannabis activity under Division 10 (commencing with Section 26000) of the Business and Professions Code.~~

~~(e) "Cannabis limited charter bank or credit union" means a person that receives a license following the approval of an application pursuant to Chapter 3 (commencing with Section 11040).~~

~~(f) "Commissioner" means the Commissioner of Business Oversight.~~

~~(g) "Department" means the Department of Business Oversight.~~

~~(h) "Licensee" means a cannabis limited charter bank or credit union.~~

~~2. Administration~~

~~1. The Cannabis Limited Charter Bank and Credit Union Advisory Board~~

~~11010. (a) There is hereby created the Cannabis Limited Charter Bank and Credit Union Advisory Board. The board shall be comprised of the Treasurer, the Controller, and the Chief of the Bureau of Cannabis Control. The Director of Finance shall serve as an ex officio, nonvoting member. Board members shall not be compensated for their services.~~

~~(b) The board shall be generally responsible for ensuring that the Cannabis Limited Charter Banking and Credit Union Law provides a safe and efficient way to pay state and local taxes and fees, to pay rent associated with the account holder's cannabis business, to issue special purpose checks, and legally invest in California's economy, while reducing burdens placed on local government that result from collecting and managing large sums of cash.~~

~~11011. In light of the particular challenges arising from cannabis business activities, the department shall submit reports of enforcement activities to the board for review annually or as the board may require. The board shall meet once a year, or more often as needed, at the board's discretion, to review enforcement activity reports from the department. These meetings shall be noticed and open to public comment. The board shall evaluate the reports and the comments of the public and draft recommended actions to be taken legislatively or administratively, which shall be submitted to the Legislature and Governor. Recommendations provided to the Legislature shall be submitted in compliance with Section 9795 of the Government Code.~~

~~11012. The board shall provide guidance and education to registered broker-dealers and licensed investment advisors on how to accommodate account holders of cannabis limited charter banks and credit unions in purchasing, holding, and selling any of the investments described in paragraph (4) of subdivision (b) of Section 11050.~~

2.Licensing

~~11020.(a)A person may act as a cannabis limited charter bank or credit union after obtaining a license pursuant to this division:~~

~~(b)A cannabis limited charter bank or credit union license is not transferable or assignable.~~

~~11021.A licensee shall comply with all requirements of the Financial Institutions Law (Division 1 (commencing with Section 99)) and either the Banking Law (Division 1.1 (commencing with Section 1000)) or the California Credit Union Law (Division 5 (commencing with Section 14000)), as applicable, except to the extent that any requirement of those laws are inconsistent with a provision of this division, in which case the provisions of this division shall prevail:~~

~~11025.A cannabis limited charter bank or credit union shall adopt policies and practices that allow it to achieve the principles and goals outlined in the federal Bank Secrecy Act (31 U.S.C. Sec. 5311) and cooperate with the federal Financial Crimes Enforcement Network:~~

~~11026.The department shall adopt emergency regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code to implement this division. The adoption of these regulations is deemed to be an emergency and necessary for the immediate preservation of the public peace, health, or safety:~~

~~11027.(a)Except as provided in subdivision (b), the department shall not issue a license under this chapter before July 1, 2020:~~

~~(b)Notwithstanding subdivision (a), the department may issue a license under this chapter before July 1, 2020, if the following conditions are met:~~

~~(1)The regulations required by Section 11026 have been adopted:~~

~~(2)The Commissioner of Business Oversight makes a written finding that the requirement in paragraph (1) has been met and the department is prepared to issue licenses, consistent with the regulations required by Section 11026, and posts the written finding on the department's internet website:~~

3.Application

~~11040.An applicant that desires to be licensed to act as a cannabis limited charter bank or credit union pursuant to this division shall submit a completed application to the department in a form prescribed by the commissioner that satisfies the requirements of this chapter. An applicant that desires to be licensed to act as a limited charter bank or credit union pursuant to this division shall elect to form under either the Banking Law (Division 1.1 (commencing with Section 1000)) or the California Credit Union Law (Division 5 (commencing with Section 14000)), and shall comply with all requirements imposed by those laws, as applicable, except to the extent any requirement of those laws is inconsistent with the provisions of this chapter. The name of a cannabis limited charter bank shall include the ending "cannabis limited charter bank" or the abbreviation "C.L.C.B." or "CLCB." The name of a cannabis credit union shall include the ending "cannabis credit union" or the abbreviation "C.C.U." or "CCU."~~

~~11042.The department may charge an applicant a reasonable fee for a cannabis limited charter bank or credit union license, not to exceed the costs of regulation:~~

4.Authorizations

~~11050.(a)A cannabis limited charter bank or credit union may issue to an account holder special purpose checks that shall be valid for only the purposes specified in subdivision (b). The following text shall be printed on each check in at least 12 point type, with the name of the issuing bank included: "This check is issued by [insert name of bank] and may only be deposited or cashed at this cannabis limited charter bank or credit union or another cannabis limited charter bank or credit union that agrees to accept the check."~~

~~(b)Subject to the limitations of subdivision (d), a special purpose check issued by a cannabis limited charter bank or credit union may only be used for the following purposes:~~

~~(1)To pay fees or taxes to the state or a local jurisdiction:~~

~~(2)To pay rent on property that is leased by, or on behalf of, the account holder's cannabis business:~~

~~(3) 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.~~

~~(4) To purchase the following:~~

~~(A) 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.~~

~~(B) 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 of this state.~~

~~(c) Subject to the limitations of subdivision (d), state and local government offices are authorized to accept a special purpose check issued by a cannabis limited charter bank or credit union.~~

~~(d) 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 pursuant to this section.~~

~~(e) A cannabis limited charter bank or credit union is authorized to cash a special purpose check presented to it by a person or entity that is not an account holder, if that limited charter bank or credit union previously issued that special purpose check to an account holder, and the check was used for one of the authorized purposes specified in subdivision (b).~~

~~11052. A cannabis limited charter bank or credit union shall obtain and maintain private insurance in an amount acceptable to the commissioner for the cannabis depository institution and its assets at all times while it is engaged in banking services. Private insurance shall not be unsatisfactory to the commissioner. In seeking and retaining private insurance, a cannabis limited charter bank or credit union may do all things and assume and discharge all obligations required of it that are not in conflict with state law.~~

~~11054. A cannabis limited charter bank or credit union may enter into an agreement with one or more other limited charter licensees in order to form a banking network. That agreement shall be subject to the approval of the commissioner. The network shall be for the purpose of assisting each other in providing services to cannabis businesses and each other. A network of this type shall not include any institution that is not a licensee under this division.~~

~~11056. A cannabis limited charter bank or credit union may provide accounts to people and entities other than cannabis businesses, pursuant to rules that may be adopted by the commissioner.~~

~~11058. A cannabis limited charter bank or credit union may charge fees for the banking services that it provides. Each cannabis limited charter bank and credit union that charges fees shall conspicuously post on its internet website the types of fees, and the amounts of fees, it charges for its services, in a format intended to provide transparency.~~

~~5. Prohibited Practices~~

~~11100.(a) A cannabis limited charter bank or credit union shall not engage in banking activity with any other financial institution that lacks a limited purpose charter issued under this division.~~

~~(b) A cannabis limited charter bank or credit union shall not engage in any activity under Division 1.1 (commencing with Section 1000) or Division 5 (commencing with Section 14000) other than activity required to accept deposits and perform actions described in Chapter 4.~~

~~(c) Except as otherwise specified in Section 11101, only a cannabis limited charter bank may merge with one or more cannabis limited charter banks. The provisions of Article 1 (commencing with Section 4880) of Chapter 4 of Division 1.6 applicable to mergers between California state banks shall apply to the merger.~~

~~(d) Except as otherwise specified in Section 11101, only a credit union licensed to provide services to cannabis businesses may merge with one or more credit unions licensed to provide services to cannabis businesses. The provisions of Article 1 (commencing with Section 15200) of Chapter 9 of Division 5 shall apply to the merger.~~

~~(e) Except as otherwise specified in Section 11101, a cannabis limited charter bank or credit union shall not be eligible to convert to a federal bank or federal credit union or to another type of business entity.~~

~~6. Operative Conditions~~

~~11101.(a) This division shall become inoperative if either of the following occurs, whichever occurs first:~~

~~(1)The federal government, by legislative or executive action, removes cannabis and cannabis-related substances from the schedule of controlled substances, as defined in the Controlled Substances Act (21 U.S.C. Sec. 812; 21 C.F.R. 1308):~~

~~(2)The federal government enacts legislation that establishes protections for depository institutions that provide financial services to cannabis-related legitimate businesses:~~

~~(b)Within 30 days of the occurrence of either event set forth in paragraph (1) or (2) of subdivision (a), the department shall do both of the following:~~

~~(1)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 shall specify the date that this division shall become inoperative, which shall be one calendar year following the effective date of the events specified in paragraph (1) or (2) of subdivision (a):~~

~~(2)Provide guidance for the orderly resolution of all cannabis limited charter banks or credit unions licensed pursuant to this division. The resolution may involve, but is not limited to, voluntary liquidation of a cannabis limited charter bank pursuant to Division 1 (commencing with Section 99) the merger, dissolution, or conversion of a cannabis limited charter credit union pursuant to Division 5 (commencing with Section 14000), or a sale, merger, or conversion of a cannabis limited charter bank pursuant to Division 1.6 (commencing with Section 4800):~~

~~(c)A cannabis limited charter bank or credit union shall have up to one calendar year to orderly resolve in a manner acceptable to applicable state and federal regulators:~~

~~(d)Notwithstanding subdivision (c), a cannabis limited charter bank or credit union shall comply with all applicable sections of this code and the Corporations Code regarding filings with the Secretary of State:~~

~~(e)If an existing cannabis limited charter bank or credit union licensed pursuant to this division fails in good faith to comply with subdivision (c), the department may take any action under this code it deems necessary, including signing documents on behalf of the cannabis limited charter bank or credit union, to carry out the purposes of this section:~~

~~SEC. 9. Section 14001.1 of the Financial Code is amended to read:~~

~~14001.1. This division is applicable to any person, other than a federal credit union engaging in the business of a credit union in this state. For purposes of this division, "person" shall have the meaning set forth in Section 5065 of the Corporations Code. This division also is applicable to any credit union that elects to form under this division to engage in providing credit union services to cannabis businesses except to the extent that the provisions of this division are inconsistent with Division 2.5 (commencing with Section 11000):~~

~~SEC. 10. Section 14101 of the Financial Code is amended to read:~~

~~14101. The articles of incorporation of every credit union shall set forth the following:~~

~~(a)The name of the corporation, which shall include the phrase "credit union."~~

~~(b)(1)The following statement:~~

~~The purpose of the corporation is to engage in credit union business and any other lawful activities which are not prohibited to a credit union by applicable laws or regulations:~~

~~(2)In the case of a corporation formed under this part that is subject to the Cannabis Limited Charter Banking and Credit Union Law, in addition to the statement required under paragraph (1), the articles shall set forth a statement that the specific purpose of the corporation is to engage in providing limited credit union services to cannabis businesses under Division 2.5 (commencing with Section 11000). This paragraph shall become inoperative if Division 2.5 (commencing with Section 11000) becomes inoperative pursuant to Section 11101:~~

~~(3)By December 31, 2003, each credit union that immediately prior to the enactment of this section was authorized to operate as a credit union shall amend its articles to comply with the provisions of paragraph (1). Notwithstanding Section 7813.5 of the Corporations Code, the amendment of the articles of a credit union as required by paragraph (1) may be adopted by approval of the board alone:~~

~~(c)The name and street address in this state of the corporation's initial agent for service of process in accordance with subdivision (b) of Section 8210 of the Corporations Code:~~

~~(d)The names and addresses of five or more persons appointed to act as initial directors:~~

~~(e)The street address of the corporation:~~

~~(f)The mailing address of the corporation, if different from the street address:~~

~~SEC. 11.No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution:~~

~~SEC. 12.This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:~~

~~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 as soon as possible, it is necessary that this bill take effect immediately:~~