Cannabis Credit Co-ops Interesting, But Flawed

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Concerned over the lack of access to banking services faced by Colorado's new marijuana-related businesses (MRBs), a problem I chronicled in the last edition of this column, the Colorado Legislature has tried to craft a state-level remedy.

The Legislature's attempt, found in House Bill 14-1398, is the creation of new entities called "cannabis credit co-ops." Unfortunately for the businesses, the bulk of the problem this legislation tries to address must be solved at the federal level, and the bill reveals the Legislature's recognition that its efforts may serve little purpose absent federal change.

Co-ops would be regulated by the state commissioner of financial services – similar to credit unions but with differences specific to the supervision of MRB-related finances. The commissioner could approve charters for only 10 co-ops statewide at any one time. Co-ops would be required to have not less than eight Colorado residents serving as incorporators. The legislation provides steps the incorporators must take to receive a charter, details about the required bylaws, background checks and membership requirements, and instructions for the commissioner.

Co-ops receiving charters would be empowered to accept member savings either as payment on shares or as deposits, make loans to members and other co-ops, make deposits into standard banks and national financial institutions insured by an agency of the federal government (but only if those institutions voluntarily accept such deposits, which is unlikely because all such deposits would come from federally illegal activity) and invest in bonds, stocks, mutual funds and other securities.

Since the intent of co-ops is to give MRBs a lawful alternative to their present cash-only operations, the legislation seems sensible. However, limitations and disclaimers included in the legislation reveal the possibility that no charters will ever be issued, and demonstrate how this issue can be solved only by changes in federal law.

For example, beyond the background checks and other application requirements, the bill provides that before a charter is issued, the incorporators "must provide to the commissioner written evidence of approval by the Federal Reserve System Board of Governors for access by the co-op to the Federal Reserve System in connection with the proposed depository activities of the co-op." This seems unlikely.

If such approval is obtained, then the commissioner and the director of the Department of Regulatory Agencies must "convene a stakeholder group, including all trade associations representing banks and credit unions, to identify conflicts … between this article and other provisions of state law …" All such conflicts must be resolved by the General Assembly before the commissioner can issue a charter.

Following receipt of a charter, practical operations for co-ops will remain very risky business. Co-ops must inform members and prospective members of several substantial pitfalls:

- Federal law does not authorize co-ops to accept proceeds from MRBs.
- Deposits with and the capital of co-ops are subject to seizure by the federal government and the state is not obligated to defend co-ops in that event.
- Deposits are neither federally insured nor backed by the state.
- Members must absorb the risk that co-ops could become one-stop shops for the federal government to seize the assets of multiple MRBs.

As an additional disincentive to co-op membership, the legislation acknowledges that co-ops must "comply with all applicable requirements of federal law." These requirements include all of the Suspicious Activity Reports, background due-diligence programs, and customer identification policies that banks and MRBs find so unappealing with the current system.

In the end, while HB 14-1398 may score political points with MRB supporters, the legislation, if signed into law by Gov. John Hickenlooper, may have no practical effect absent changes in federal law.

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