

Date of Hearing: April 26, 2023

ASSEMBLY COMMITTEE ON APPROPRIATIONS
Chris Holden, Chair
AB 766 (Ting) – As Amended April 12, 2023

Policy Committee: Business and Professions Vote: 17 - 0

Urgency: No State Mandated Local Program: No Reimbursable: No

SUMMARY:

This bill requires a commercial cannabis licensee to pay for goods and services sold or transferred by another licensee, no later than 15 days after the date set in the invoice, if the goods and services have a total value of at least \$5,000. This bill requires a licensee who is not paid in full within 15 days to report to the Department of Cannabis Control (DCC) the delinquent payment, and requires DCC to take disciplinary action.

FISCAL EFFECT:

DCC estimates it will need at least \$10.2 million for the first year and \$9.7 million ongoing for various legal, compliance, and administrative staff to implement this bill (Cannabis Control Fund).

DCC states it did not receive requested information from the author and sponsors of the bill on the universe of licensees that currently face the issue of nonpayment for goods and services or data on how prevalent this problem is within the cannabis industry. DCC assumed 40 percent of the existing active licensee population (there were 11,149 licenses at the time of analysis) could be reported to for nonpayment and require DCC to take disciplinary action. DCC will require significant resources to ensure existing resources are not redirected away from core functions of licensing commercial cannabis activity and protecting public health and safety.

DCC states the bill, as written, requires DCC to serve as a contractual arbitrator between licensees and to enforce on those that do not pay their contractual obligations.

COMMENTS:

- 1) **Purpose.** This bill is sponsored by the Cannabis Distribution Association, California Cannabis Manufacturers Association, and California Cannabis Industry Association. According to the author:

The legal cannabis industry doesn't have access to traditional credit and financing options that other small businesses are afforded, nor does it have similar oversight and protections around terms of sale. The resulting financial instability has created a debt bubble across the cannabis supply chain, with licensees of all types experiencing ballooning accounts receivable. AB 766 would address the debt crisis in the California cannabis industry by establishing clear terms of sale

across the supply chain and by establishing oversight of sales on credit payment. This bill would also restrict the flow of goods to licensees who are defaulting on their credit terms.

The author cites a recent cannabis industry report estimating the unpaid debt bubble is over \$600 million across California's supply chain.

2) **Retail Cannabis Credit.** Because commercial cannabis activity is not legal at the federal level, the legal cannabis industry does not have access to the same banking, credit, or financing options available to other industries. Instead, the cannabis industry is mostly cash-based. According to the sponsors, cannabis businesses instead offer goods on credit to make up for the lack of normal financing options. They also note the credit terms may be extended to 60, 90, 120, or more days for payment. However, because there is no way to verify the creditworthiness of any other cannabis licensee, licensees are at risk of becoming overleveraged, owing more debt than they can pay back. The sponsors state the "debt bubble," may lead to a destabilization of the industry. This bill is aimed at preventing further overleveraging by requiring licensees to pay within 15 days of the date on the invoice of cannabis products and establishing reporting and disciplinary requirements for licensees who fail to pay. The requirements are loosely based on California "tied-house" restrictions on alcohol manufacturers and the payment timelines between prime contractors and subcontractors.

3) **Opposition.** A coalition of retailers opposes this bill unless it is amended, writing in part:

[W]e...strongly believe that this solution is much too drastic and punitive in nature and will result in greater net negative for the industry and the state of California...

The same challenges have existed in other states where state legal cannabis markets have existed for many years prior to California passing Prop 64, and those states have seen no need to implement such a punitive solution.

4) **Policy Comment.** DCC notes there is an existing legal system in place for businesses to seek a remedy for contract violations and nonpayment of services, and this bill essentially replicates the functions of the civil court system for contract violations within DCC.

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