STATE OF NEW YORK

9377

IN ASSEMBLY

February 23, 2022

Introduced by M. of A. CAHILL -- read once and referred to the Committee on Banks

AN ACT to amend the state finance law, in relation to enacting the New York state bank act; to repeal certain provisions of the New York state urban development corporation act relating thereto; and providing for the repeal of such provisions upon expiration thereof

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. This act shall be known and may be cited as the "New York state bank act".

§ 2. The state finance law is amended by adding a new article 17 to read as follows:

ARTICLE 17

THE NEW YORK STATE BANK

Section 250. Legislative intent.
251. Definitions.
252. Creation of the New York state banking authority.
253. Purpose.
254. The New York state bank.
255. Board.
256. Capitalization.
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261. Ethical requirements.
262. Fees and taxes.
263. Bank records.
264. Termination of operations.
265. Severability.

§ 250. Legislative intent. 1. The legislature finds that several communities within the state have been adversely affected by a lack of banking services to meet their financial needs. Low-income, inner city and rural communities are often left out of the banking system. Further-

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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more, individuals without lawful immigration status have difficulty accessing banking services, particularly when the process requires a social security number or a form of government-issued identification. The state of New York has an interest in ensuring that communities that are underserved by banking institutions have access to banking services such as low or no cost savings and checking accounts, loans and electronic banking platforms. Providing banking services to these communities will ensure they can safely and securely store their money and have access to financing options that are legitimate alternatives to predatory lending practices, such as high-interest pay-day loans.

2. The legislature finds that a group with insufficient access to banking services is the cannabis industry. The federal classification of cannabis as a Schedule I drug under the Controlled Substances Act of 1970 means most private banks and credit unions are unable to or refuse to service bank accounts held by cannabis-related businesses due to federal money laundering statutes and the bank secrecy act. As a result, cannabis-related businesses are locked out of the banking system, forcing them to rely entirely on cash to conduct transactions. Being cash-oriented leaves cannabis-related businesses disproportionately susceptible to burglary of their property and makes their employees targets of violent robbery. In addition, cash transactions are not traceable by state and federal financial regulators, meaning cash-only cannabis-related businesses can be used to launder money derived from illegal activities. Therefore, the legislature finds that the exclusion of cannabis-related businesses from the banking system constitutes a public safety and financial transparency issue.

3. The legislature finds that the establishment of a publicly owned and operated bank would alleviate issues of financial transparency and public safety by providing a secure depository for the storage and lending of cannabis-related businesses funds and deposits from low-income residents of the state.

4. The legislature finds that in addition to increasing public safety, the provision of banking services to cannabis-related businesses would facilitate sustainable economic growth in New York state. The legal cannabis industry is projected to grow by tens of billions of dollars in coming years. A state owned and operated bank can foster economic growth and capital investment and spur job creation in the cannabis industry by providing collateralized loans to communities underserved by banking institutions, including eligible and registered cannabis-related businesses.

5. The legislature intends to establish the New York state banking authority and the New York state bank to use a portion of the tax revenue received from the sales of legal adult-use cannabis products to serve low-income communities and cannabis-related businesses that are underserved by banking institutions.

§ 251. Definitions. As used in this article, the following terms shall have the following meanings:

1. "Board" means the board of the New York state banking authority.

2. "Authority" means the New York state banking authority.

3. "Department" means the department of financial services.

4. "Superintendent" means the superintendent of the department of financial services.

5. "Cannabis" means all parts of the plant of the genus cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not

include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. It does not include hemp, cannabinoid hemp or hemp extract as defined by section three of the cannabis law or any drug products approved by the federal food and drug administration.

6. "State-chartered banking institution" means any bank, trust company, private banker, savings bank, savings and loan association, foreign banking corporation, or credit union. It does not include the New York state bank.

7. "Comptroller" means the comptroller of the state of New York.

8. "Bank" means the New York state bank.

9. "Bank president" means the president of the New York state bank.

10. "Low-interest capital" means funds that are loaned by the New York state bank to eligible and registered cannabis-related businesses.

11. "Low-interest loans" means funds that are loaned by the New York state bank to qualifying low-income individuals.

12. "Low-income individual" means a resident of the state with an income that does not exceed two hundred percent of the federal poverty level.

13. "Cannabis-related businesses" are New York state registered businesses that contribute to the growth, production, transportation, and distribution of products containing cannabis.

§ 252. Creation of the New York state banking authority. 1. There is hereby created the New York state banking authority. The authority shall be a body corporate and politic constituting a public benefit corporation. The authority shall be governed by five trustees. One shall be appointed by the speaker of the assembly, one by the temporary president of the senate, one by the governor, one by the comptroller and one by the attorney general. The trustees shall serve the following terms:

(a) The trustees appointed by the legislature shall each serve an initial term of five years.

(b) The trustee appointed by the governor shall serve an initial term of four years.

(c) The trustee appointed by the comptroller shall serve an initial term of three years.

(d) The trustee appointed by the attorney general shall serve an initial term of two years.

(e) After the initial terms of the trustees have been completed, all trustees thereafter shall serve four year terms.

2. Each appointed trustee shall be a citizen of the United States and a resident of the state.

3. Each trustee shall hold office until a successor has been appointed and qualified. At the expiration of the term of each trustee and of each succeeding trustee, a new trustee shall be appointed by the party which appointed the outgoing trustee.

4. In the event of a vacancy occurring in the office of the trustee by death, resignation or otherwise, a successor shall be appointed within forty-five days for the remainder of the term by the party which appointed.

5. Three trustees shall constitute a quorum.

6. The trustees of the authority shall serve without salary or other compensation, but each member shall be entitled to reimbursement for

actual and necessary expenses incurred in the performance of their official duties.

§ 253. Purpose. The New York state banking authority shall charter the New York state bank.

§ 254. The New York state bank. 1. The mission of the New York state bank is to serve low-income individuals and cannabis-related businesses that are underserved by private sector banking institutions. To this effect, the bank shall be required to:

(a) Create banking opportunities for low-income individuals in the state. This includes but is not limited to:

(i) offering eligible low-income individuals access to savings and checking account services with nominal or zero minimum balance requirements and multiple options for proving identification; and

(ii) providing banking services to low-income individuals who do not have access to bank accounts or products due to immigration status, lack of literacy, high banking fees, or criminal records;

(b) Loan a portion of state tax revenue received from the sales of legal adult-use cannabis products, pursuant to paragraph (c) of subdivision three of section ninety-nine-ii of this chapter, and deposits into the bank from low-income individuals to provide eligible cannabis-related businesses and low-income individuals access to low-interest capital and loans;

(c) Do business with:

(i) businesses licensed and regulated in New York state;

(ii) businesses licensed outside of New York state only if the bank's dealing with such entities does not violate federal and state financial rules and regulations; and

(iii) state chartered and/or licensed financial institutions that comply with paragraph (d) of this subdivision;

(d) Comply with the federal bank secrecy and anti-money laundering acts, also known as the currency and foreign transactions reporting act, and regulations and guidance relating to the cannabis industry issued by the United States department of justice and federal regulatory bodies including the financial crimes enforcement network or any successor body. This includes, but is not limited to:

(i) establishing an effective anti-money laundering act compliance program as prescribed by rule 3310 of the financial regulatory authority;

(ii) complying with customer due diligence obligations in a manner prescribed by the financial crimes enforcement network;

(iii) reporting certain currency transaction reports to the financial crimes enforcement network in a manner prescribed by its regulations; and

(iv) filing quarterly suspicious activity reports with the financial crimes enforcement network in a manner prescribed by its regulations;

(e) Comply with state regulations, including regulations from the department of financial services, the office of the comptroller, the office of cannabis management, and the authorities budget office; and

(f) Comply with all state laws, including the banking law, the public authorities law, the cannabis law and the provisions of this chapter.

2. In achieving its objectives, the New York state bank shall adhere to the following priorities:

(a) vigorous ethical, accountability and transparency standards;

(b) institutional robustness;

(c) prudent financial and business practices;

(d) long-term solvency;

(e) sustained monetary returns on investments; and

(f) insulation from political influence.

§ 255. Board. 1. The New York state banking authority board is created as the primary governing authority of the bank. The board shall consist of eleven members. The temporary president of the senate shall appoint one member from each of the two largest caucuses of the senate. The speaker of the assembly shall appoint one member from each of the two largest caucuses of the assembly. The comptroller shall appoint three members to the board with substantial managerial experience in banking and finance operations. The trustees of the authority shall jointly appoint four members with substantial community development banking experience.

(a) The board members appointed by the temporary president of the senate and the speaker of the assembly shall each serve initial terms of two years.

(b) The board members appointed by the comptroller shall each serve initial terms of three years.

(c) The board members appointed by the trustees of the authority shall each serve initial terms of four years.

(d) After the initial terms of the board members have been completed, all board members thereafter shall serve four year terms.

(e) Each board member shall hold their position until a successor has been appointed. At the expiration of the term of each board member and of each succeeding board member, a new board member shall be appointed by the party which appointed the outgoing board member.

(f) In the event of a vacancy occurring on the board by death, resignation or otherwise, a successor shall be appointed within forty-five days for the remainder of the term by the party which appointed the vacated board member.

2. Members of the board shall select the chair of the board from among the members whom do not hold political office. The chair shall convene the initial meeting of the board within sixty days after the effective date of this section.

3. Members of the board shall be citizens of the United States and residents of the state.

4. Members of the board that are appointed by the comptroller or the trustees shall not hold elected office at the time of their appointment to the board or have held elected office during the preceding three years at the time of their appointment to the board.

5. The board shall develop and implement the following:

(a) A business plan for the bank that includes timelines for beginning new functions and processes that transition functions and responsibilities to the bank that were previously performed by other entities;

(b) Initial capitalization requirements of the bank using a portion of the tax revenue from the sale of legal adult-use cannabis products, pursuant to section two hundred fifty-six of this article;

(c) A plan to offer low or no cost access to checking accounts, savings accounts and low-interest loans to low-income individuals;

(d) A plan to engage in community outreach and education necessary to encourage low-income individuals to open accounts with the bank;

(e) A plan to explore and develop means of electronic banking that comply with the requirements of paragraph (d) of subdivision one of section two hundred fifty-four of this article;

(f) A plan to commence bank operations by September first, two thousand twenty-three; and

(g) Procedures that comply with all regulations and guidance issued by federal and state regulatory bodies regarding the provision of financial services to cannabis-related businesses, pursuant to paragraph (d) of subdivision one of section two hundred fifty-four of this article.

6. The board shall make requests to the appropriate committees of the legislature regarding any other items necessary to fulfill its requirements pursuant to section two hundred fifty-four of this article. Any request shall include draft legislation for consideration by the legislature.

7. Pursuant to subdivision two of section two hundred fifty-four of this article, the board shall adopt rules regarding:

(a) Safety and soundness standards of the bank;

(b) Criteria for approving, monitoring and evaluating loans;

(c) Eligibility requirements for borrowing;

(d) Eligibility requirements for individuals who apply for checking and savings accounts;

(e) Transparency requirements for bank operations including a plan to issue quarterly reports to the comptroller and superintendent beginning after September first, two thousand twenty-three;

(f) Ethics and conflict of interest requirements for the board and officers and employees of the bank, including rules to ensure that they perform their functions in compliance with the public officers law; and

(g) Other rules and procedures as needed for efficient administration of the bank.

8. The board shall commence bank operations by September first, two thousand twenty-three.

9. The board shall appoint a bank president with substantial experience in banking. The bank president shall serve at the pleasure of the board, on such terms and conditions as the board determines.

(a) The bank president shall provide support to the board, carry out bank policies and programs, and exercise additional authority as may be delegated by the board.

(b) The bank president shall serve a term of five years.

(c) The bank president shall hold office until a successor has been appointed and qualified by the board. At the expiration of the term of each bank president and of each succeeding bank president, a new bank president shall be appointed by the board.

(d) In the event of a vacancy occurring in the office of the bank president by death, resignation or otherwise, a successor shall be appointed within forty-five days for the remainder of the term by the board.

(e) Subject to available funding and consistent with the rules adopted by the board, the bank president may:

(i) employ such additional personnel as are necessary to the operations of the bank. Such employment shall be in accordance with the civil service law; and

(ii) establish advisory committees and contract with public and private sector experts who have special technical expertise if the expertise is necessary to fulfill the requirements of this section and section two hundred fifty-four of this article.

(f) The bank president shall, at their discretion, have the authority to hire and terminate the employment of bank employees.

10. The board shall set policy for the bank; provided that neither the board nor any board member shall be involved in day to day decisions regarding the functioning of the bank. Management decisions shall be made independently by the bank president. The bank president may dele-

gate at their discretion management decisions to bank managers and other employees.

11. Board members shall serve without salary or other compensation, but they shall be entitled to reimbursement for the expenses incurred in discharge of their duties under this article.

12. The trustees of the authority, pursuant to a unanimous vote which all trustees are present for, may remove any board member or the bank president for neglect or violation of the provisions of section two hundred fifty-four of this article, or general misconduct in office as defined by the trustees, after giving such member a copy of the charges against them, and an opportunity to be heard, in person or by counsel, in their defense, upon not less than ten days' notice. If any such member shall be removed, the trustees shall file in the office of the department of state a complete statement of charges made against such member, and their findings thereon, together with a complete record of the proceedings.

13. The bank president and the board members shall be exempt from the provisions of title seven of article fifteen of the banking law.

14. Six members of the board shall constitute a quorum for the transaction of any business or the exercise of any power or function of the authority.

§ 256. Capitalization. The bank shall be capitalized with a portion of the tax revenue derived from the sale of legal adult-use cannabis products, pursuant to section ninety-nine-ii of this chapter, and with deposits from low-income individuals whom open a savings and/or checking account with the bank.

§ 257. Deposit of funds. 1. (a) The bank shall serve as the depository for the portion of the state tax revenue from the sale of legal adult-use cannabis products that is necessary for the initial capitalization of the bank. In addition, the bank shall serve as the depository for deposits from cannabis-related businesses and low-income individuals whom open a savings and/or checking account with the bank.

(b) The comptroller shall deposit into the bank the tax revenue from the sale of legal adult-use cannabis products that is required for the initial capitalization of the bank.

2. All deposits in the bank are guaranteed by the state of New York and shall not be insured through the federal deposit insurance corporation.

3. All income earned by the bank on tax revenue from the sale of legal adult-use cannabis products and other deposits that are deposited in or invested with the bank shall be credited to and become a part of the revenues and income of the bank.

§ 258. Investment requirements and regulations. 1. Before initiating operations, the bank president shall present an implementation plan and any necessary items to the board, that:

(a) identifies the cannabis-related businesses that the bank plans to target initially;

(b) identifies any existing state programs that the bank recommends be transferred under its umbrella, and the steps and timelines for the transitions;

(c) describes additional financing products and services the bank plans to offer, the target markets, anticipated rates, terms and conditions; and

(d) demonstrates how the bank plans to maximize revenues while accomplishing its requirements pursuant to section two hundred fifty-five of this article.

2. Wherever there is in any fund or in cash balances in the bank more than sufficient to meet the current expenditures properly payable therefrom, the bank president is authorized to:

(a) Provide low-interest capital for the financing of, construction, rehabilitation, and improvement of new and existing operations of eligible cannabis-related businesses. Before providing low-interest capital to a cannabis-related business, the bank shall engage in rigorous customer due diligence to evaluate the risks associated with offering particular financial products and services and whether the bank has sufficient capacity to manage such risks effectively.

(b) Provide low-income individuals access to low-interest loans pursuant to paragraph (c) of subdivision five of section two hundred fifty-five of this article; and

(c) Offer low or zero cost checking and savings bank accounts to low-income individuals pursuant to paragraph (d) of subdivision five of section two hundred fifty-five of this article.

3. When investing available funds, the bank president is prohibited from:

(a) Buying, selling and/or accepting deposits of federal funds; issuing letters of credit for public deposits; or providing a safekeeping service for the United States treasury securities, federal agency securities, corporate bonds, tax-free bonds, money market investments, or mortgage backed securities.

(b) Investing in certificates, notes, or bonds of the United States, or other obligations of the United States or its agencies or of any corporation wholly owned by the government of the United States.

§ 259. Financial regulation. 1. The bank shall maintain capital adequacy and other standard indicators of safety and soundness as mandated by the board and the superintendent.

2. The superintendent shall examine the bank in the same manner as a state-chartered banking institution. The bank shall pay the superintendent for reasonable costs of examinations.

3. The bank shall undergo independent audits on the same basis as state-charted banks.

§ 260. Reporting requirements. 1. The bank president shall submit quarterly reports to the board, comptroller and superintendent in a manner and form prescribed by the board. Late reports shall be cause for removal of the president of the bank.

2. The board, in conjunction with the bank president, shall make and submit a report to the legislature on the affairs of the bank by December first of each year. Such report shall be made available for public viewing and analysis on the website of the office of the comptroller. The report shall be posted in a conspicuous place on the website and shall be easy to access and shall be downloadable in several different formats.

§ 261. Ethical requirements. The bank shall not make a loan to any board member, bank president, public officer or employee of the bank. The bank president and employees of the bank shall follow any applicable ethical requirements in rules, policies and procedures adopted by the board.

§ 262. Fees and taxes. The bank is exempt from the payment of all fees and taxes levied by the state or any of its subdivisions.

§ 263. Bank records. 1. Certain bank business records and records of the department relating to the bank are exempt from public disclosure pursuant to article six of the public officers law as authorized by the department.

2. Financial and commercial information and records submitted to either the department or the board for the purpose of administering this article may be shared between the department and the comptroller. Such records may also be used in any suit or administrative hearing involving any provision of this chapter.

3. The provisions of this section shall not prohibit:

(a) The issuance of general statements based on the reports of persons subject to this article if the statements do not identify the information furnished by any person; or

(b) The publication by the superintendent or the board of the name of any person violating this article and a statement of the manner of the violation of such person.

§ 264. Termination of operations. Upon the determination by the board that the private banking industry can adequately service the financial needs of cannabis-related businesses and communities underserved by banking institutions, it shall develop and execute a plan for the dissolution of the New York state bank and the New York state banking authority. In the event of the dissolution of these entities, the board shall transfer all outstanding assets and liabilities of the bank to the comptroller.

§ 265. Severability. If any clause, sentence, paragraph, subdivision, section or part of this article shall be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part of this article directly involved in the controversy in which such judgment shall have been rendered.

§ 3. Paragraph (c) of subdivision 3 of section 99-ii of the state finance law, as added by chapter 92 of the laws of 2021, is amended to read as follows:

(c) Actual and necessary costs incurred by the office of cannabis management [~~and~~], the cannabis control board, [~~and the urban development corporation,~~] the New York state banking authority, and the New York state bank related to the administration of incubators and other financial assistance to qualified [~~social and economic equity~~] applicants including the administration, capitalization, and provision of low [~~and zero~~] interest loans to such applicants pursuant to section [~~sixteen-ee of the urban development corporation act~~] two hundred fifty-six of this chapter. Such costs shall be paid out of revenues received, including, but not limited to, from special one-time fees paid by registered organizations pursuant to section sixty-three of the cannabis law.

§ 4. Section 16-ee of section 1 of chapter 174 of the laws of 1968, constituting the New York state urban development corporation act, is REPEALED.

§ 5. This act shall take effect immediately and shall expire and be deemed repealed upon the dissolution of the New York state bank and the New York state banking authority pursuant to section 264 of the state finance law as added by section two of this act; provided that the state comptroller shall notify the legislative bill drafting commission upon the occurrence of such dissolution in order that the commission may maintain an accurate and timely effective data base of the official text of the laws of the state of New York in furtherance of effectuating the provisions of section 44 of the legislative law and section 70-b of the public officers law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation

of this act on its effective date are authorized to be made and completed on or before such effective date.