



CR 102 Memorandum

Cannabis Payment Flexibility (aka Cannabis Flexible Payment Terms)

Date: July 31, 2024
Presented by: Daniel Jacobs, Policy and Rules Coordinator

Background

In March 2023, the Liquor and Cannabis Board (LCB) [approved](#) a rulemaking petition to consider amending [WAC 314-55-115\(1\)](#) to allow the mailing of checks up to three after delivery, for transactions where cannabis licensees purchase cannabis from other licensees.

Currently, rules provide that if payment is made by check, it must be provided prior to or at the time of delivery. Other payment methods identified in WAC 314-55-115 allow payment to be initiated up to one business day post-delivery and require payment be complete no later than 5 business days post-delivery.

Following consultation with the project team, a three-day post-delivery payment window for mailed checks would make mailed checks the outlier when compared to the other identified payment methods in WAC 314-55-115. As such, for stakeholder engagement, the project team decided to draft rule language that would mimic the conditions of other payment methods in rule, rather than create greater flexibility for mailed checks than exists for other methods.

The CR 101 was approved on May 7, 2024 ([WSR #24-11-035](#)) and one comment was received during the informal comment period that ended June 20, 2024. The comment asked about the possible remedy for checks that are paid but have not sufficient funds (NSF).

Stakeholder Engagement

As part of our inclusive rulemaking process, we surveyed cannabis licensees to gather their perspectives on the proposed payment methods regulations. The survey was open from June 3 through July 8, soliciting feedback on [draft rule language](#) that was publicly posted on the Laws & Rules webpage days earlier.

The survey captured feedback from various cannabis licensees, with most survey respondents being producers and/or processors. Most of the respondents supported the proposed changes, though some expressed uncertainty or concern. The survey revealed diverse payment practices, with a notable portion of licensees using checks

regularly, while others never use them. Issues with Not Sufficient Funds (NSF) checks were not widespread but concerns about potential increases in NSF incidents if the rule changes are implemented were noted.

More detailed results of the survey, as well as the wording of the questions, can be found in Attachment B.

Explanation of Changes

Because the current rule language provides no explanation at all for how payment via check should be done, language was borrowed from the existing descriptions of payment methods, specifically credit/debit cards, electronic fund transfers (EFT) and transactions using a money transmitter.

The requirement for an irrevocable invoice before or at the time of delivery and the record-keeping requirement are borrowed from the other payment methods, described in the table below.

The main variation from the existing regulatory framework is due to the unique nature of checks and the possibility of mail for delivery. While the other payment methods require that payment be initiated no later than the first business day, for checks, this means mailing the check.

Similarly, the transaction must be completed no later than five business days following delivery of cannabis for the other payment methods. Here, the analogous point of completion for payment via check would be the depositing of the check, and that is the language used in the proposed rule.

While the comment raised concern about NSF checks, this is already addressed in existing section (6), which states that transactions reported as NSF that are not corrected by the 3:00 pm on the business day following the NSF report are impermissible extensions of credit, and are subject to penalties identified in [WAC 314-55-523](#).

Lastly, to avoid any confusion, a clarifying section defines “delivery” to refer to delivery of cannabis in this rule.

Estimated Costs of Compliance

Under the Regulatory Fairness Act (RFA) in chapter 19.85 RCW, agencies are required to consider the costs that complying with the proposed rules will impose on businesses, unless the proposed rules are subject to an exemption to this requirement. The CR 102 form describes these exemptions in more detail. None of the exemptions apply to this rulemaking.

LCB applied a default estimated compliance cost when analyzing whether the rules would have a disproportionate impact on small businesses as defined in RCW 19.85.020(3). This estimate is a very generous estimate for costs affiliated with any additional required record-keeping. This cost was estimated to be \$500.00. This is less than the minor cost calculated for each type of affected licensee, which is detailed in the Small Business Economic Impact Statement (SBEIS) section of the CR 102 form filed today.

Rule Necessity

These rule changes are needed to address the petition submitted and to bring parity to the conditions on payment for cannabis using check and mailing of checks.

Description of Rule Changes

Section	Current Rule Language	Proposed New Language	Rule Necessity
Title	What methods of payment can a cannabis licensee use to purchase cannabis?	Methods of payment for cannabis licensees purchasing cannabis.	Converting format of title from question to statement.
(1)	(1) Checks,	(1) Checks, under the following provisions:	The language below is copied almost verbatim from other parts of WAC 314-55-115:
		(a) A sale must be initiated by an irrevocable invoice or sale order before or at the time of delivery.	Consistent with (2)(b), (3)(c), and (5)(b).
		(b) Both parties must maintain records of transactions and have the records readily available for the LCB review.	Consistent with (2)(d), (3)(e), and (5)(d).
		(c) The check must be sent, delivered, or mailed by the cannabis licensee no later than the first business day following delivery and must be deposited as promptly as is reasonably practical, and in no event later than five business days following delivery. Any attempt by a cannabis licensee to delay payment on checks for any period of time beyond the minimum as is reasonably practical will be considered an unlawful attempt to purchase products on credit.	Consistent with (2)(e), (3)(f), and (5)(e) with the following changes: <ul style="list-style-type: none"> 1. Changing language around payment initiation to “sent, delivered or mailed.” 2. Clarifying that completion of payment in this context is analogized to deposit of check.
(7)	New Language As used in this section, “delivery” refers to delivery of cannabis.		This is being added to clarify that throughout the rule, “delivery” refers to the delivery of cannabis, as opposed to the delivery of the check if sent via mail. This clarification is needed because of the new reference to delivery of checks.
Throughout	Replaced instances of WSLCB with LCB		Consistent with WSR #24-11-037

Attachments:

Attachment A: CR 101 Informal Comment Table

Attachment B: Survey Results

CR 101 Public Feedback Table – Cannabis Flexible Payment Terms

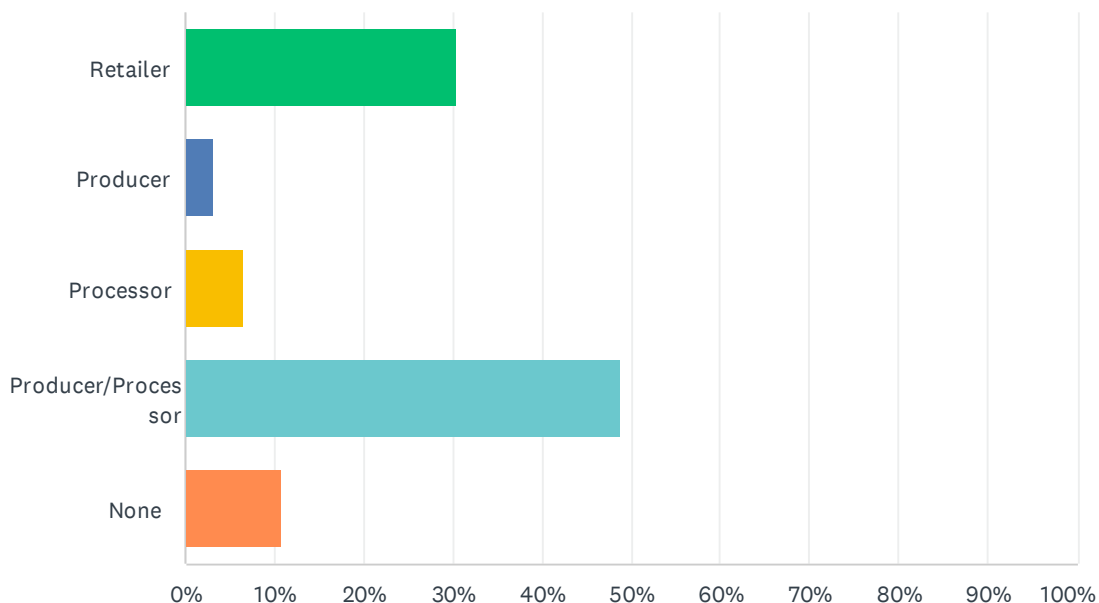
Public feedback received May 8, 2024 through June 20, 2024 on Cannabis Flexible Payment Terms rulemaking presented as CR 101 on May 8, 2024, filed as [WSR 24-11-035](#). As noted in [Notice to Stakeholders](#), public comment open until June 20, 2024.

Name	Feedback	Response
<p>Alison Sheafor-Joy asheaforjoy@aol.com</p>	<p>5/8/24, 2:39 PM</p> <p>Dear Washington State Liquor and Cannabis Board,</p> <p>Thank-you for the notice about WAC 314-55-115 to allow companies 3 days to pay by check. I understand your reasoning for starting with a smaller window, but I'd guess it's been tough for some.</p> <p>However, the problem I see is what are the repercussions if a company doesn't pay? We have had trouble with three companies not paying or refusing to pay the full, agreed upon price. When reporting, we were told it is up to our company to hire lawyers to sue them. Lawyers are an expensive prospect, not one we were willing to take on since this business has such minimal profit margins.</p> <p>Most of us in the great state of Washington want the cannabis business to stay honest. With no repercussions, some companies will just keep taking advantage of the small guys.</p> <p>A suggestion for how to pressure companies to remain honest would be if you had a BBB (of sorts) where cannabis licensees could report complaints against other companies. This list could be open to all WA licensees to view, so that we can check to see if a company has multiple negative reports, and then we can better choose who to do business with and who to avoid.</p> <p>BBLCB has a nice ring to it. :-) Just a suggestion.</p> <p>Thanks for your time, Alison Sheafor-Joy</p>	<p>5/8/24, 3:03 PM</p> <p>Dear Allison:</p> <p>Thank you so much for providing your comment on the CR 101 on Cannabis Flexible Payment Terms. Your input is valuable and we look forward to reviewing your feedback. If we have any questions we will follow up by email.</p> <p>We plan on sending a survey with draft rule language in early June, and I will be sure that you get the link to the survey and the proposed rule language.</p> <p>The Washington State Liquor and Cannabis Board (LCB) relies on public feedback, and welcomes the opportunity to hear more from you! Public participation helps LCB develop inclusive, transparent, and accountable policies and rules that serve the public interest.</p> <p>Please visit the LCB's website for more information about Cannabis Flexible Payment Terms rulemaking and other current rulemaking activities. To get timely updates from LCB, please sign up to be on our GovDelivery email distribution list (select the Rulemaking option along with any other topic of interest).</p> <p>The LCB Board holds public meetings on Wednesdays at 10 a.m., twice monthly. Held both virtually and in-person, the meetings provide an opportunity for members of the public to address Board members during the Public Comment agenda item, or during scheduled Public Hearings held during the Board meetings. Board meetings are also broadcast live on the state's public access TV station TVW.</p> <p>Please visit LCB's Board meeting schedule and information webpage to learn more about observing or participating in a Board meeting. The next Board meeting will be held on Wednesday, May 22, 2024.</p> <p>Thank you again for reaching out!</p> <p>LCB Policy & Rules Coordinators</p>

DRAFT

Q1 What type of Cannabis License do you hold?

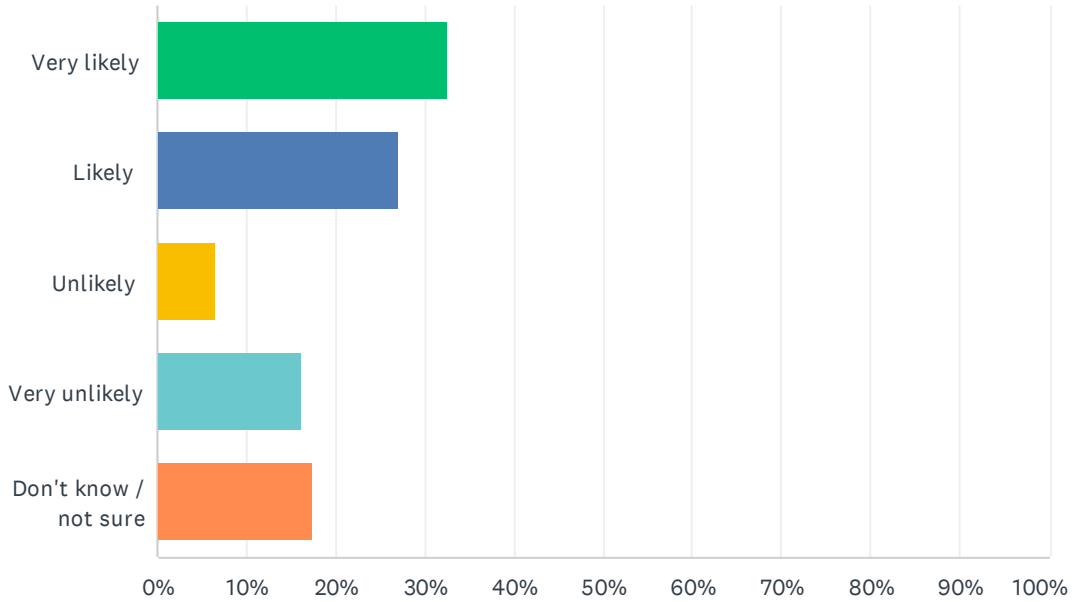
Answered: 92 Skipped: 1



ANSWER CHOICES	RESPONSES
Retailer	30.43%
Producer	3.26%
Processor	6.52%
Producer/Processor	48.91%
None	10.87%
TOTAL	

Q2 Based on the draft rule language above, how likely are you to support these rule changes?

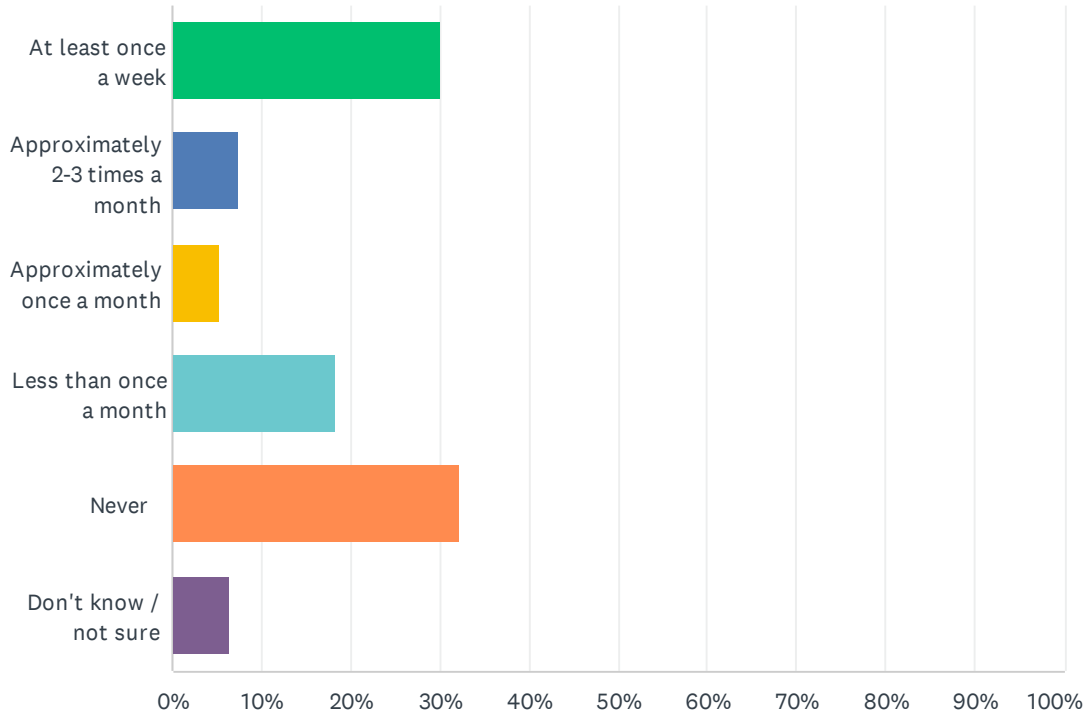
Answered: 92 Skipped: 1



ANSWER CHOICES	RESPONSES
Very likely	32.61%
Likely	27.17%
Unlikely	6.52%
Very unlikely	16.30%
Don't know / not sure	17.39%
TOTAL	

Q3 How frequently do you buy cannabis from other licensees using a check?

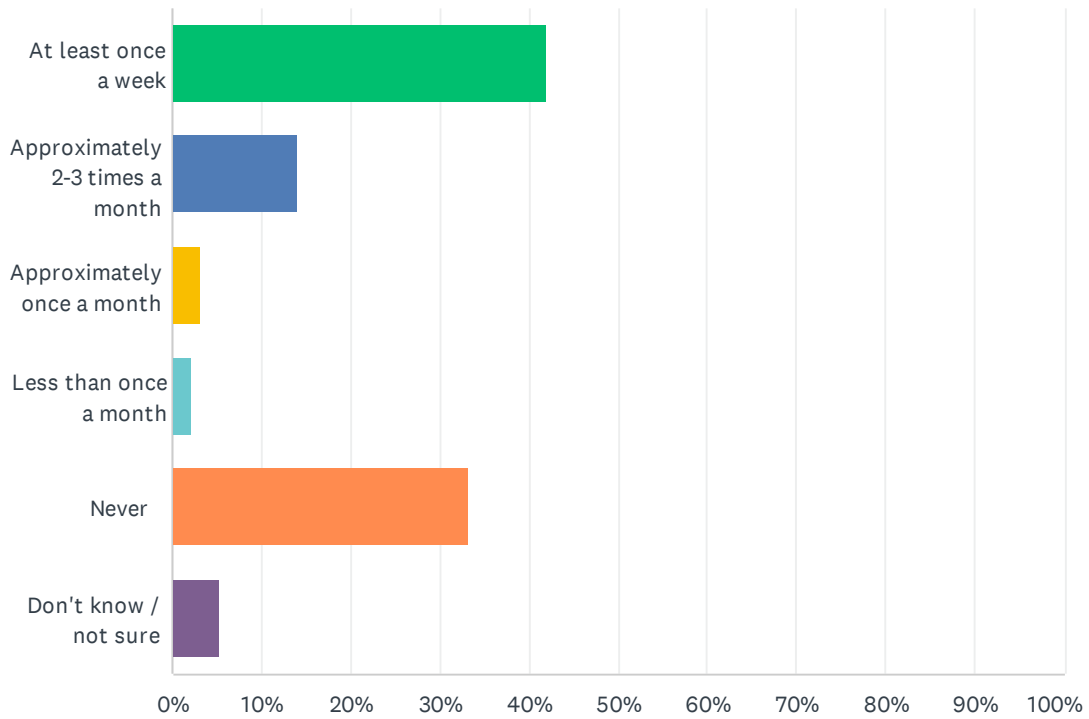
Answered: 93 Skipped: 0



ANSWER CHOICES	RESPONSES
At least once a week	30.11%
Approximately 2-3 times a month	7.53%
Approximately once a month	5.38%
Less than once a month	18.28%
Never	32.26%
Don't know / not sure	6.45%
TOTAL	

Q4 How frequently do licensees buy cannabis from you using a check?

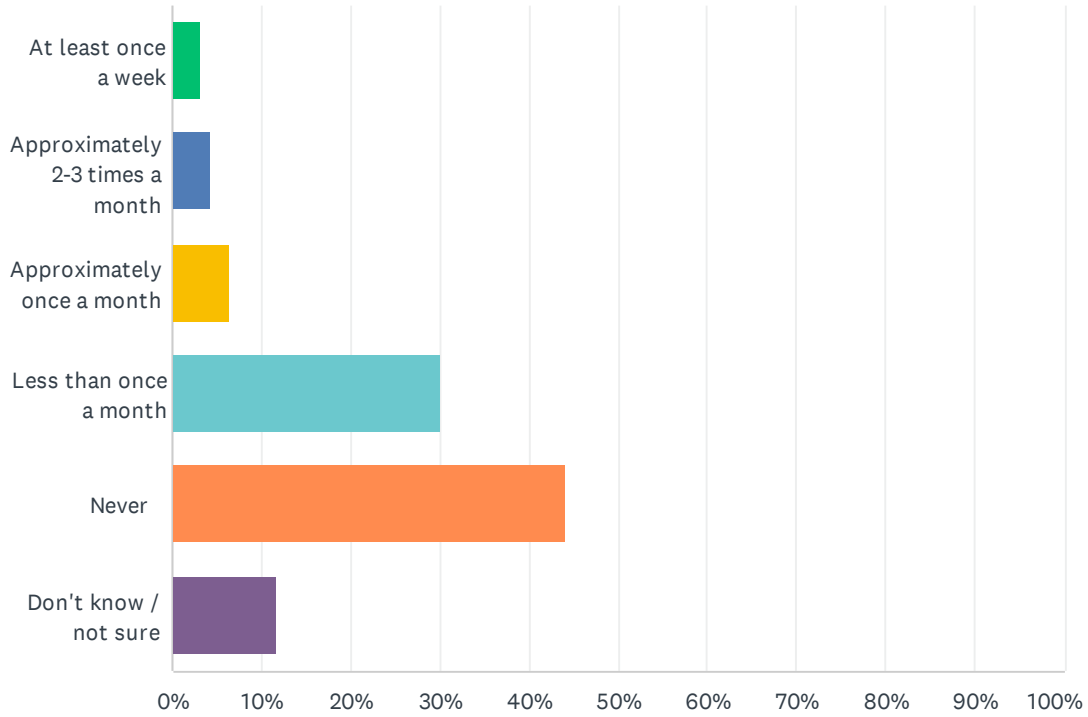
Answered: 93 Skipped: 0



ANSWER CHOICES	RESPONSES
At least once a week	41.94%
Approximately 2-3 times a month	13.98%
Approximately once a month	3.23%
Less than once a month	2.15%
Never	33.33%
Don't know / not sure	5.38%
TOTAL	

Q5 How frequently do you encounter checks that have Not Sufficient Funds (NSF) related issues?

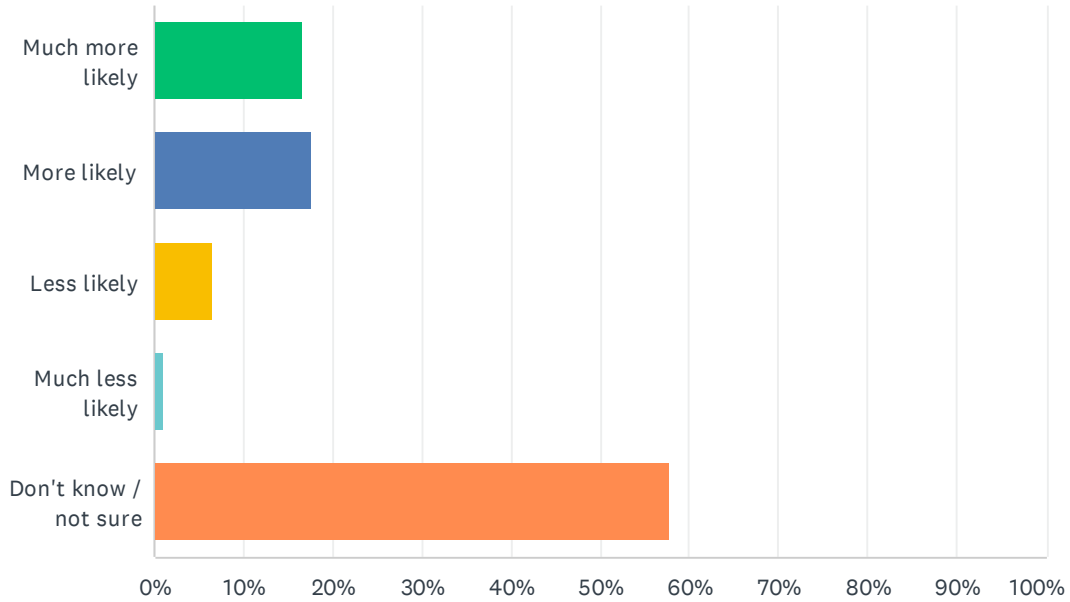
Answered: 93 Skipped: 0



ANSWER CHOICES	RESPONSES
At least once a week	3.23%
Approximately 2-3 times a month	4.30%
Approximately once a month	6.45%
Less than once a month	30.11%
Never	44.09%
Don't know / not sure	11.83%
TOTAL	

Q6 If LCB makes the above rule changes, would you be more or less like to use checks to pay for cannabis?

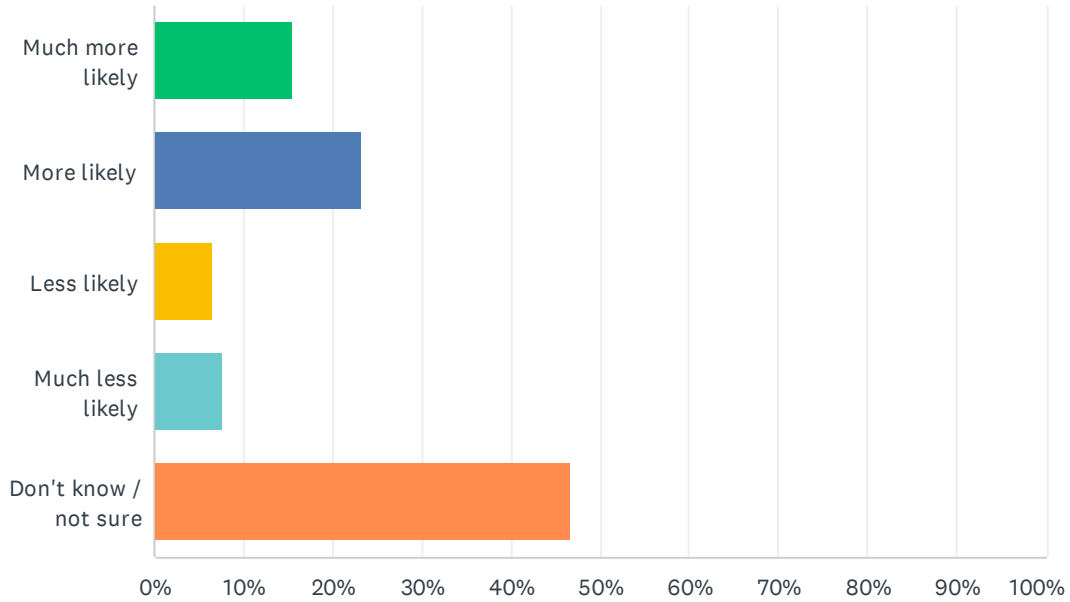
Answered: 90 Skipped: 3



ANSWER CHOICES	RESPONSES
Much more likely	16.67%
More likely	17.78%
Less likely	6.67%
Much less likely	1.11%
Don't know / not sure	57.78%
TOTAL	

Q7 If LCB makes the above rule changes, would you be more or less like to accept checks as payment for cannabis?

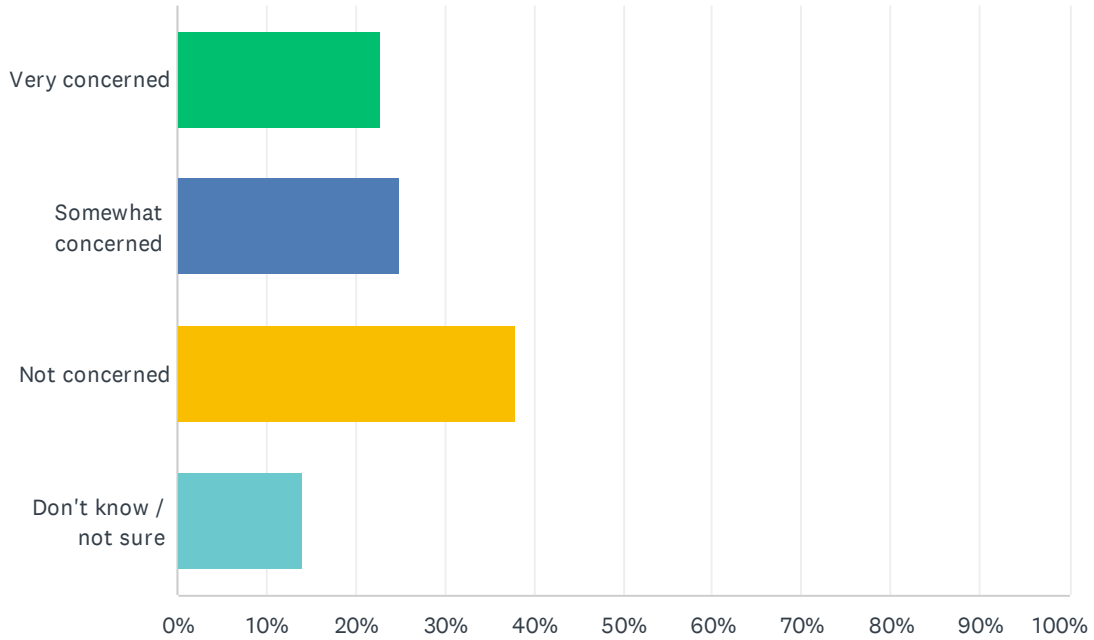
Answered: 90 Skipped: 3



ANSWER CHOICES	RESPONSES
Much more likely	15.56%
More likely	23.33%
Less likely	6.67%
Much less likely	7.78%
Don't know / not sure	46.67%
TOTAL	

Q8 If LCB makes the above rule changes, how concerned would you be about encountering more NSF checks?

Answered: 92 Skipped: 1



ANSWER CHOICES	RESPONSES
Very concerned	22.83%
Somewhat concerned	25.00%
Not concerned	38.04%
Don't know / not sure	14.13%
TOTAL	